

CAUSE NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, *ET AL.*,

Plaintiffs,

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT, *ET AL.*, (consolidated)

Plaintiffs

V.

MICHAEL WILLIAMS, in his official capacity
as Commissioner of Education, *et al.*,

Defendants,

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

200TH JUDICIAL
DISTRICT

EDGEWOOD PLAINTIFFS' AMENDED DEPOSITION DESIGNATIONS

Edgewood Independent School District, *et al.*, (“Edgewood I.S.D. Plaintiffs”) hereby submit the following Deposition Designations. Plaintiffs reserve their right to designate additional deposition testimony from Defendants’ or Intervenor’s witnesses should Defendants or Intervenor later determine that they will not call such witnesses at trial.

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Depositions excerpts will be supplemented once transcript becomes available.

**Deposition of Steven Flores
Volume I
October 9, 2012**

Depositions excerpts will be supplemented once transcript becomes available.

**Deposition of Tom Currah
Volume I
October 9, 2012**

Depositions excerpts will be supplemented once transcript becomes available.

DATED: October 18, 2012

Respectfully Submitted,
MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.

David G. Hinojosa
State Bar No. 24010689
Marisa Bono
State Bar No. 24052874
110 Broadway, Suite 300
San Antonio, Texas 78205
(210) 224-5476
(210) 224-5382 Fax

By: s/David G. Hinojosa
David G. Hinojosa

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

By my signature below, I certify that on October 18, 2012, I served the foregoing document via electronic mail to all the other parties listed below:

GREG ABBOTT
Attorney General of Texas
DANIEL T. HODGE
First Assistant Attorney General
DAVID C. MATTAX
Deputy Attorney General for Defense Litigation
ROBERT B. O'KEEFE
Chief, General Litigation Division
SHELLEY N. DAHLBERG
Assistant Attorney General Texas
Texas Attorney General's Office
General Litigation Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711
Fax: (512) 320-0667
Taxpayer &

Attorneys for Defendants

Mark R. Trachtenberg
HAYNES AND BOONE, LLP
1 Houston Center
1221 McKinney St., Suite 2100
Houston, Texas 77010
Fax: (713) 547-2600

John W. Turner
HAYES AND BOONE, LLP
I.S.D.
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Fax: (214) 651-5940

Attorneys for Plaintiffs, Calhoun County I.S.D., et al.

J. Christopher Diamond
The Diamond Law Firm, P.C.
17484 Northwest Freeway
Ste. 150
Houston, Texas 77040
Fax: (832) 201-9262

Richard Gray
Toni Hunter
GRAY & BECKER, P.C.
900 West Ave.
Austin, Texas 78701
Fax: (512) 482-0924

Randall B. Wood
Doug W. Ray
RAY & WOOD
2700 Bee Caves Road #200
Austin, Texas 78746
Fax: (512) 328-1156

Attorneys for Plaintiffs, Texas

Student Fairness Coalition, et al.

J. David Thompson, III
Philip Fraissinet
THOMPSON & HORTON, LLP
Phoenix Tower, Suite 2000
3200 Southwest Freeway
Houston, Texas 77027
Fax: (713) 583- 9668

Attorneys for Plaintiffs, Fort Bend

Craig T. Enoch
Melissa A. Lorber
Enoch Kever PLLC
600 Congress, Ste. 2800
Austin, Texas 78701
Fax: (512) 615-1198

Attorneys for Intervenors, Joyce Coleman, et al.

Robert A. Schulman
Joseph E. Hoffer
Ricardo R. Lopez
517 Soledad Street
San Antonio, Texas 78205-1508
Telephone: (210) 538-5385
Facsimile: (210) 538-5384

Attorneys for Texas Charter Schools Association, et al.

s/David G. Hinojosa
David G. Hinojosa

Unofficial copy Travis Co. District Clerk Valya L. Price

CAUSE NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
FAIRNESS COALITION, ET)
AL.,)
)
Plaintiffs,)
)
)
VS.)
)
)
EDGEWOOD INDEPENDENT)
SCHOOL DISTRICT, ET AL.,)
(CONSOLIDATED)) TRAVIS COUNTY, TEXAS
)
Plaintiffs,)
)
)
VS.)
)
)
ROBERT SCOTT, IN HIS)
OFFICIAL CAPACITY AS)
COMMISSIONER OF EDUCATION,)
ET AL.,)
)
Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF
JOSE ALFREDO CERVANTES, Ph.D.
SEPTEMBER 13, 2012

ORAL DEPOSITION OF JOSE ALFREDO CERVANTES, Ph.D.,
produced as a witness at the instance of the Defendant(s),
and duly sworn, was taken in the above-styled and numbered
cause on Thursday, September 13, 2012, from 9:07 a.m. to
4:08 p.m., before Tamara K. Chapman, CSR in and for the
State of Texas, reported by machine shorthand, at the
offices of MALDEF, 110 Broadway, Suite 300, San Antonio,
Texas, pursuant to the Texas Rules of Civil Procedure and
the provisions stated on the record or attached hereto.
Job 52237

1 Exhibit 853..... 93
 2 AEIS Report 2010-11 for E T Wrenn
 3 Middle School
 4 Exhibit 854..... 93
 5 AEIS Report 2010-11 for Brentwood
 6 Middle School
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 8 AEIS Report 2010-11 for Memorial High
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 11 AEIS Report 2010-11 for John F.
 12 Kennedy High School
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 21 of October 2011 - Region 20 Totals by
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 Exhibit 861..... 158
 STAAR Summary Report for Edgewood ISD
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 Edgewood ISD Preliminary Results,
 Prepared by E. Gearhart and J. Street

1 JOSE ALFREDO CERVANTES, Ph.D.,
 2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MS. PENN:

5 Q. Good morning. Would you please state your full
 6 name for the record.

7 A. Jose Alfredo Cervantes.

8 Q. Thank you.

9 And you're Dr. Cervantes, correct?

10 A. Yes.

11 Q. Okay. Have you read the petition in this action,
 12 Dr. Cervantes?

13 A. Yes, I looked at it --

14 Q. Okay. And --

15 A. -- but --

16 Q. Excuse me, I -- just we'll set out some ground
 17 rules from the beginning.

18 Have you been deposed before?

19 A. No.

20 Q. Okay. Just to give you a few ground rules, then,
 21 the court reporter here is recording what we say, so I
 22 will try not to speak over you and you try not to speak
 23 over me, that way she can get both of us --

24 A. Great.

25 Q. -- recorded.

1 And we need verbal answers, so nodding your head
 2 or shaking your head, she can't record that. And so at
 3 times if you -- if you don't and I ask you for a verbal
 4 answer, that's why.

5 I'm going to assume that if you answer my
 6 question that you understood the question. So that said,
 7 if you don't understand the question, please ask me to
 8 clarify, because I can almost guarantee you I will ask at
 9 least one question that is indecipherable. Please ask for
 10 clarification if you need it.

11 How did you prepare for this deposition?

12 A. I looked at the -- the reports that we have in
 13 the office.

14 Q. What reports are those?

15 A. The AEIS report, budget, things like that.

16 Q. Okay. Did you meet with anybody in preparation
 17 for this --

18 A. My budget manager, my executive analyst.

19 Q. Okay. Have you attended any of the depositions
 20 in this suit?

21 A. The one yesterday.

22 Q. That one is --

23 A. That one was San Benito.

24 Q. Okay. Did you take notes at that deposition?

25 A. No.

1 Q. Okay. When did Edgewood decide to join the
 2 lawsuit in this case?

3 A. As soon as we heard about the lawsuit and -- and
 4 that's when we talked, "we" being MALDEF.

5 Q. Okay. Do you have a rough date estimate that you
 6 can give me? I -- I don't need an exact date. A month, a
 7 year?

8 A. I know it was last year. The board -- we took it
 9 to the board and the board approved it. Rough date, I
 10 would say was maybe around March, April.

11 Q. Okay. I'll help you out. I -- this is not a
 12 game to test your knowledge, but I didn't want to pull out
 13 an exhibit if I didn't need to.

14 I'm going to hand you what I'm marking as
 15 Exhibit 822.

16 (Exhibit 822 was marked.)

17 Q. (BY MS. PENN) Do you recognize this document?

18 A. The San Antonio Express News.

19 Q. I'll present to you that it was a news article
 20 from the San Antonio Express News website that I printed
 21 off. And I just would have you look at the second
 22 paragraph there that says: Edgewood trustees voted
 23 unanimously four to zero on Tuesday night to join MALDEF's
 24 coming lawsuit on school finance.

25 And the article is dated November 29th, 2011.

1 Q. (BY MS. PENN) You can answer.
 2 A. No, it's not the required level. The commended
 3 level is mostly in your 90 percent.
 4 Q. Okay. So the commended level is a goal?
 5 A. It's a goal.
 6 Q. Okay. You said you joined this lawsuit because
 7 of concerns over adequacy -- in part over concerns over
 8 adequacy in funding, correct?
 9 A. Uh-huh.
 10 Q. Do you believe increased funding -- excuse me --
 11 would allow the school to improve the quality of education
 12 it's providing its students?
 13 A. I think it would really help with the
 14 professional development --
 15 Q. Okay.
 16 A. -- which, in turn, trickles all the way down to
 17 our students.
 18 Q. So what kinds of improvements would you expect to
 19 see with increased funding?
 20 A. More professional development. Also, more
 21 materials. As you're aware -- or you may not be aware,
 22 but CSCOPE requires a lot of materials --
 23 Q. Okay.
 24 A. -- and that would also help.
 25 Q. Okay. And to clarify, my question is, what kind

1 of improved performance would you expect to see with
 2 increased funding as opposed to where you would spend the
 3 money? What kind of results -- let me clarify there.
 4 What kind of results would you expect to see?
 5 A. Well, it would be -- I think we would be able to
 6 close the gap.
 7 Q. Okay. And close the gap between whom?
 8 A. Between economically disadvantaged and also the
 9 subgroups.
 10 Q. And the other subgroups being what groups?
 11 A. Hispanic, Anglo, African Americans.
 12 Q. Okay. So if I'm understanding you, you would
 13 expect to see, then, across every demographic, there would
 14 be no major achievement gaps between certain demographics?
 15 A. No. What I'm trying to say is that we would
 16 strive to start closing it a little bit more. Not
 17 completely, but that would be a great start.
 18 Q. Okay. Do you think that would result in improved
 19 test performance? And by "test performance," I mean both
 20 TAKS and STAAR, since we're in this position of taking
 21 both right now.
 22 A. That is difficult to answer, because under TAKS,
 23 we were talking about Level I, Level II questions, which
 24 is the rigor. But under the STAAR, we're talking about
 25 Level III and Level IV questioning now, which is more of

1 the rigor. We haven't done that -- that change. There's
 2 no data out there right now, so...
 3 Q. Okay. So you don't know that with increased
 4 funding that would help your students achieve those
 5 improved test scores?
 6 MR. HINOJOSA: Objection; form.
 7 A. What I'm saying is that I believe that there will
 8 be some gains.
 9 Q. (BY MS. PENN) Okay.
 10 A. To what point is hard, because the data's not
 11 there --
 12 Q. Okay.
 13 A. -- from STAAR.
 14 Q. What about more broadly speaking and just looking
 15 at the schools -- or excuse me -- the school district's
 16 accountability rating, would you expect the accountability
 17 rating to improve if the school had improved funding?
 18 MR. HINOJOSA: Objection; form.
 19 A. I think that would -- I think it would help in a
 20 sense. But going back, I mean, it would provide us more
 21 materials to be able to do more things.
 22 Q. (BY MS. PENN) So let me ask you. If -- what do
 23 you think, then, that you need to help you reach your
 24 ideal point where students are reaching the commended
 25 level on TAKS? And understanding that TAKS is being

1 phased out and STAAR is being phased in, but let's make
 2 that a standard right now. What is it that you think,
 3 then, that the school needs to help get its students to
 4 the place where they are reaching the commended level?
 5 A. I think it's a list of things. One is more
 6 professional development. Also, attracting more highly
 7 qualified teachers. Also, more resources and
 8 instructional materials. And the list goes on. At this
 9 point, that's all I can think of, but I know there's more
 10 that I could think of, but...
 11 Q. Okay. And you've listed all of these resources,
 12 you call them. Are these resources, then, that you would
 13 ask the State to provide you?
 14 MR. HINOJOSA: Objection; form.
 15 A. Some, yes. And we get some -- yes.
 16 Q. (BY MS. PENN) Okay. And what I'm trying to
 17 clarify here is whether you are asking the State to
 18 actually provide you the materials or whether you're
 19 asking the State to provide you the funding so that the
 20 school district can purchase those materials. Do you
 21 understand when I'm asking for clarification? Is it that
 22 you're asking the State to provide you those materials and
 23 those resources directly?
 24 A. For the funding for some of the programs that we
 25 have, yes.

1 Q. Okay. Has the district determined a dollar value
2 that it believes it should be provided from the State?

3 MR. HINOJOSA: Objection; form.

4 A. No.

5 Q. (BY MS. PENN) No. Do you have any sort of
6 estimate of what increase in revenue you're seeking in
7 this lawsuit?

8 A. What we're asking is for -- what I -- what I
9 believe is that the items that I've said from providing
10 more professional development, providing more
11 instructional materials, providing more funding so that we
12 could buy some of the programs. When you're a property
13 poor district, I mean, you're limited.

14 Q. Okay. So you don't have an estimate, though, of
15 how much money it would take?

16 A. Not that I can think of one right now.

17 Q. Okay. And to your knowledge, the school district
18 hasn't done that type of analysis?

19 MR. HINOJOSA: Objection; form.

20 A. Not that I'm aware of.

21 Q. (BY MS. PENN) Okay. I'm going to hand you a few
22 documents at once. I'm handing you Exhibit 824, which is,
23 I believe, what you referred to before as the AEIS
24 reports. This one's for the district in total for the
25 2006-2007 school year.

1 each of those years.

2 So for the 2006-2007 school year, what was the
3 accountability rating?

4 A. Academically acceptable.

5 Q. And for the 2007-2008 school year, what was the
6 accountability rating?

7 A. Academically acceptable.

8 Q. And for the 2008-2009 school year, what was the
9 accountability rating?

10 A. Academically acceptable.

11 Q. For the 2009-2010 school year?

12 A. Academically acceptable.

13 Q. And for the 2010-2011 school year?

14 A. Academically acceptable.

15 Q. Okay. And understanding that for each of those
16 years we just talked about, these were years prior to your
17 arrival at Edgewood ISD, correct?

18 A. Correct.

19 Q. And for the '11-'12 school year, your first year
20 as superintendent, TEA is not assigning accountability
21 ratings to schools for the 2011-2012 school year; is that
22 correct?

23 MR. HINOJOSA: Objection; form.

24 A. That's correct.

25 MR. HINOJOSA: I just want to mention for

1 A. Can I step out and get my glasses?

2 MS. PENN: We can go off the record.

3 THE WITNESS: Will that work?

4 MS. PENN: Absolutely.

5 (Break.)

6 (Exhibits 824 through 828 were marked.)

7 Q. (BY MS. PENN) Dr. Cervantes, I've just handed
8 you a stack of documents I'm going to identify one by one.
9 I will identify them broadly as the AEIS reports that were
10 submitted to TEA by Edgewood ISD. And we'll walk through.

11 Exhibit 824 is the AEIS report for the 2006-2007
12 school year. Do you see that?

13 A. Yes.

14 Q. The next exhibit, 825, is the AEIS report for the
15 2007-2008 school year.

16 The next exhibit, 826, is the AEIS report for the
17 2008-2009 school year.

18 Exhibit 827 is the AEIS report for the 2009-2010
19 school year.

20 And then 828 is the AEIS report for the 2010-2011
21 school year. Do you see that?

22 A. Yes.

23 Q. I'm just going to ask you right now to -- let's
24 run through each of these reports. And I just want you to
25 read to me the accountability ratings for Edgewood ISD for

1 the record, because I think that that misstates what's in
2 the record from TEA in that from what I gathered from the
3 Gloria Zyskowski deposition and the Shannon Housson
4 deposition was that TEA is in the process of developing
5 whatever accountability ratings there might be and that
6 those won't be released until, I believe, January of 2013.

7 MS. PENN: Thank you for that clarification.

8 Q. (BY MS. PENN) We do not have at this time
9 accountability ratings for the '11-'12 school year; is
10 that correct?

11 A. Correct.

12 Q. Okay.

13 MS. PENN: Thank you for that clarification.

14 Q. (BY MS. PENN) I'm going to hand you another set
15 of documents. These documents also obtained from TEA.
16 These are what is commonly called the PEIMS reports.
17 Financial data submitted to TEA directly from Edgewood
18 ISD. Are you familiar with these reports?

19 A. Yes.

20 (Exhibits 829 through 833 were marked.)

21 Q. (BY MS. PENN) Okay. I'm going to hand you what
22 I'm marking as Exhibit 829. This is the PEIMS report for
23 Edgewood ISD for the 2006-2007 school year.

24 Exhibit 830 is the PEIMS report for the 2007-2008
25 school year.

1 A. Yes.

2 Q. Okay. And so I -- the broader question is, as
3 Edgewood ISD has received increased revenue and receipts
4 per ADA and per WADA per pupil from 2007 to 2011, yet it
5 has not improved its accountability rating. So why does
6 Edgewood ISD believe that further increased funding will
7 allow it to improve its performance?

8 MR. HINOJOSA: Objection, form.

9 A. We -- we believe that at -- at the end of the
10 day, when we do our budgets and everything, we're still
11 lacking in funding, whether it's instructional primarily,
12 but also facilities. So we believe that the additional
13 funding will help us, will help our students, will help
14 our teachers, from professional development to
15 transportation, everything has increased over the years.
16 Our facilities are deteriorating. Right now I have a
17 school that has no AC on right now. We're having to -- we
18 moved them this week.

19 Q. (BY MS. PENN) What school is that?

20 A. Stafford.

21 Q. And that's an elementary school?

22 A. Elementary. The AC unit -- the chiller went out,
23 so we're trying to get that repaired. But we have
24 facilities that are also...

25 Q. I'm going to show you what I'm marking -- or I'll

1 hand you what I'm marking as Exhibit 835.

2 (Exhibit 835 was marked.)

3 Q. (BY MS. PENN) Have you seen this document before
4 or something like it before?

5 A. Yes.

6 Q. Can you identify it?

7 A. It's -- I believe you printed this out, a KENS5
8 news station.

9 Q. It's a -- I will represent that I printed this,
10 exactly, from KENS5 news station's website. It is an
11 article entitled "Edgewood ISD moves to eliminate dozens
12 of positions." It's from April 5th of 2012. So April of
13 this past year.

14 And I want to look at the second paragraph. At
15 the very end, it says: Edgewood ISD school board held a
16 special meeting Thursday to approve restructuring of
17 staff. It's a measure that will help save the district
18 the money during a time of budget cuts. However, in order
19 to do so, district leaders propose eliminating more than
20 30 positions.

21 Do you see that?

22 A. Uh-huh.

23 Q. And can you describe to me, first of all, what
24 positions were cut?

25 A. The positions that were cut were the -- they're

1 known as temporary interventionists. These positions
2 were positions from the previous year that they had done a
3 RIF -- the district had done a RIF. And in that RIF --
4 which is a reduction in force. And what they did is,
5 they've said these are the people that are going to be
6 cut, so we're just going to keep you for one -- one year
7 and we're going to put you in these positions. And those
8 positions were the temporary interventionists. And when
9 I got there, we were -- I was just following what was
10 already in place.

11 Q. Okay. So it was a plan that was begun before you
12 arrived at the district?

13 A. Yes, uh-huh.

14 Q. Could you -- let me back up. Strike that.

15 Were you required to complete that -- that
16 process when you became a superintendent, or could you
17 have kept those positions if you decided that they needed
18 to be kept?

19 MR. HINOJOSA: Objection, form.

20 A. We'd looked at those positions, but that was the
21 plan that had already been set forth and in order to trim
22 the budget.

23 Q. (BY MS. PENN) Okay. And they were all temporary
24 interventionist positions?

25 A. There was also a curriculum specialist and -- and

1 that was also part of the -- the restructuring.

2 Q. Okay. And describe for me more broadly the staff
3 restructuring project.

4 A. When we looked at restructuring, we looked at all
5 the positions and tried to be more -- getting the right
6 position -- or getting the right person in the right
7 position.

8 Q. And how did that result in a restructuring of the
9 staff, aside -- let me clarify -- aside from these 30
10 positions that were removed, what other staff changes were
11 made?

12 A. Some were promoted, some were demoted, some were
13 moved to other departments. However, looking at this 30
14 positions, I think that's a little inflated. We could
15 probably get you the right number on that.

16 Q. Okay. And to clarify, it does say here the
17 district leaders proposed eliminating more than 30
18 positions. And are you testifying that the district, in
19 fact, did not end up -- you don't believe that they ended
20 up removing all 30 of these positions?

21 A. I believe that that number is not correct.

22 Q. Okay.

23 A. I think it's a lower number than that.

24 Q. Okay. Okay. How did the district determine that
25 the staff restructuring was necessary? And would you like

1 halfway through last year.

2 Q. Who funded that grant?

3 A. TEA.

4 Q. Okay. Will the school continue that program
5 without the grant funding?

6 A. We're really trying to.

7 Q. Okay. You plan to continue the program, though?

8 A. We hope we can continue.

9 Q. Okay. You have no plans to discontinue it at
10 this point?

11 A. Depending on funding.

12 Q. Okay. Okay.

13 (Exhibit 836 was marked.)

14 Q. (BY MS. PENN) I'm going to hand you now what I
15 am marking as Exhibit 836. I'll represent to you that
16 this is news article that I printed from MySanAntonio.com.
17 Do you recognize this -- this article, Dr. Cervantes?

18 A. I haven't read this article.

19 Q. Okay.

20 A. August 17th.

21 Q. I'll give you a minute to look at it, if you
22 want, and I'll read for the record. The headline is
23 "School districts are stepping up to funding challenges."

24 And just let me know when you're ready.

25 (Witness reviews document.)

1 A. Okay.

2 Q. (BY MS. PENN) Okay. The article begins talking
3 about if there's anything Texas school districts gained if
4 they saw \$5.4 billion in school funds trimmed from their
5 funds by the 2011 legislature. It's a skill of how to do
6 more with less.

7 I'd like to look at the third paragraph there
8 that says: But the largest districts in Bexar County
9 found ways to offer raises and retention incentives,
10 including...

11 And it has a list of schools. And the last one
12 is the smaller Edgewood ISD.

13 Did Edgewood ISD offer raises and retention
14 incentives for its staff in August of 2012?

15 A. We gave a 1.5 percent.

16 Q. 1.5 percent raise?

17 A. Raise.

18 Q. Okay. Was that across the board?

19 A. Yes, across the board.

20 Q. For all staff?

21 A. All staff.

22 Q. Not just teachers?

23 A. Not just teachers.

24 Q. Okay. And why did the district decide to
25 implement this raise?

1 A. Well, for the same reason as you see up there in
2 what I mentioned earlier is we're losing our teachers
3 to -- to the Alamo Heights, to Northside. I know some
4 gave bigger raises. Ours was probably the -- the lowest.
5 And we lost teachers.

6 Q. Okay. I was going to ask you, so you still lost
7 teachers after the raise?

8 A. Yes.

9 Q. Okay. And if your concern was about losing
10 teachers, why extend the raise to non-teaching staff?

11 A. Well -- and to keep up with the inflation
12 and -- not with inflation, but with the recession. But
13 most of all because we also have bus drivers, we also have
14 cafeteria workers that shop around. And when there's
15 districts that are, as you see, San Antonio ISD,
16 Northside, Alamo Heights, that they -- they'll go to where
17 it pays them.

18 So trying to be a little competitive, but we're
19 still lagging behind.

20 Q. Meaning you're still losing staff?

21 A. No, there's a -- still a disparity between
22 districts and our district as far as how much we pay.

23 Q. Okay. And it also says that you offered
24 retention incentives?

25 A. No, we didn't.

1 Q. You didn't offer retention incentives? Okay.

2 A. No, that's just -- no, we didn't.

3 Q. Has the district considered offering retention
4 incentives or raises -- or any other sort of financial
5 compensation to only its -- what it considers its best
6 teachers in an effort to prevent those teachers from
7 leaving?

8 A. There isn't money for that.

9 Q. Well, let's back up and think about if you have a
10 one and a half percent raise that you have given across
11 the board, do you know what the total cost of that raise
12 was to the district?

13 A. It's about a -- I can give you an approximate
14 number, I believe.

15 Q. That's fine.

16 A. I think it was like 1.2 million.

17 Q. Million? Okay. So did the --

18 A. I think.

19 Q. Okay.

20 A. I might be wrong on -- totally wrong on that.

21 Q. Okay. We'll use 1.2 as an example. And if
22 you're wrong, it's certainly -- it's not going to create a
23 huge consequence to you.

24 A. Right.

25 Q. But let's just say the district had \$1.2 million

1 that it was going to spend on a 1.5 percent raise across
2 the board to all staff. And you said this was partially
3 in an effort to prevent the teachers and other staff
4 members from leaving Edgewood ISD to go to competitors who
5 were paying more, correct?

6 A. Uh-huh, yes.

7 Q. Had the district considered identifying who it
8 thought would be its best teachers? And we'll just start
9 with teachers. And instead of giving a raise to everybody
10 across the board, giving a raise only to those best
11 teachers --

12 MR. HINOJOSA: Objection --

13 Q. (BY MS. PENN) -- in an effort to prevent those
14 teachers from leaving?

15 MR. HINOJOSA: Objection; form.

16 A. No, we haven't considered that.

17 Q. (BY MS. PENN) Would you consider that?

18 MR. HINOJOSA: Objection; form.

19 A. I've been in districts where -- you're talking
20 about a little bit more of a performance pay or a merit
21 pay.

22 Q. (BY MS. PENN) Sure.

23 A. I've been in districts where TEA has done that
24 DATE or the grant that you pay them by performance and
25 that has really ripped the districts or campuses apart

1 in -- in what I've personally seen. But, you know, when
2 you start putting a dollar amount to -- we saw what
3 happened in Houston ISD, we're seeing what's happening in
4 Chicago right now with the evaluation process that they
5 have out there. We haven't considered that.

6 Q. Okay. And so if I understand you, you feel that
7 the -- we'll just call it the merit pay system in general,
8 any type of financial compensation to reward performance
9 is not a wise decision for a school district to make?

10 A. Well, I'm not saying that it's not a wise
11 decision. But there's a lot of external factors, and I'm
12 not even talking about the internal factors right now, but
13 the external factors of what do you consider, what is the
14 standard? I mean, what would you have done this year when
15 there isn't any -- a passing standard. How would you give
16 that merit pay?

17 Q. Uh-huh. So do you see that -- let's unpack that
18 and -- into a practical consideration, which, I think, is
19 what you're talking about right now, in that it would be
20 difficult to gauge performance because we have changing
21 standards or we have new tests being implemented and you
22 don't have a consistent means of measurement. Is that
23 correct?

24 A. Partially correct.

25 Q. On the practical side.

1 On a more ideological side, if you put -- if you
2 had a way to measure that student's performance that was
3 consistent and that you trusted, that you felt was
4 valid --

5 A. Uh-huh.

6 Q. -- would you be in favor of providing merit pay
7 to teachers then?

8 MR. HINOJOSA: Objection; form.

9 A. You mentioned trust. The trust is -- is not
10 measurable.

11 Q. (BY MS. PENN) Okay.

12 A. And whether you go quantitative or qualitative, I
13 mean, it's -- it still would be -- of course, in a utopian
14 society, you know, everything's perfect. We wouldn't need
15 merit pay. But when you start looking at merit pay, then
16 it has a lot of challenges and a lot of, like I've stated,
17 external factors and internal.

18 Q. But taking -- putting aside the practical
19 challenges of implementing that system, just as a theory,
20 theoretically, would you be opposed to providing merit
21 pay?

22 MR. HINOJOSA: Objection; form.

23 A. I think I would have to really look at it.

24 Q. (BY MS. PENN) Okay.

25 A. I would -- we would really have to research it

1 and -- and plan for it, if that's the -- if that's what
2 we're headed to or the State mandates that. In some
3 cases, the State might.

4 Q. Okay. So is it fair to say, then, that your
5 opposition to merit pay is one of practicality right now?

6 MR. HINOJOSA: Objection; form.

7 A. I wouldn't say a practicality. It's something
8 that you just don't jump into without doing your research.

9 Q. (BY MS. PENN) Okay. And do you feel that you've
10 done sufficient research to have an opinion, then?

11 MR. HINOJOSA: Objection; form.

12 A. Research, I would say that we've looked at it.
13 We've done a little bit, but not -- when I say "a little
14 bit," I'm referring to we've talked about it and we've
15 seen other districts that have implemented it and we've
16 seen what's out there, also, from Houston ISD.

17 Q. (BY MS. PENN) And when you say "we," are you
18 referring to you and the other leadership at Edgewood ISD?

19 A. Yes.

20 Q. Okay. And you've talked about it and decided
21 that that's not the program you'd like to --

22 A. We didn't decide.

23 Q. Okay.

24 A. We didn't decide.

25 Q. Is it an ongoing discussion?

1 A. It's an ongoing discussion, but, I mean, it's a
2 discussion that -- that cannot be involved in one -- one
3 meeting. I mean, several meetings, of course, that are
4 going to have to take place. And, of course, with merit
5 pay, you know, if you're going to extend it to all groups,
6 because I believe that every staff member is as important.
7 The bus drivers, that's the first one that the students
8 see. And if we don't have a way to transport those
9 students to our classrooms, what are we going to have?
10 Not as good for morale. The research, you'll have to look
11 into that.

12 Q. And so for the teachers in your district -- I'll
13 represent I looked on your website and I didn't see that
14 there was a teacher pay schedule for Edgewood ISD and it
15 may be -- there may be one and I just didn't see it. But
16 does Edgewood ISD have a pay schedule for its teachers?

17 A. Yes.

18 Q. Okay.

19 MR. HINOJOSA: And I'll represent that that
20 was produced with the discovery that we --

21 MS. PENN: Okay.

22 MR. HINOJOSA: -- sent and it's identified
23 as the --

24 MS. PENN: As the pay --

25 MR. HINOJOSA: -- salary schedule.

1 subject in which he or she has obtained the master's
2 degree?

3 A. Right.

4 Q. Okay. Why is that?

5 MR. HINOJOSA: Objection; form.

6 A. Well, it produces the lifelong learners that we
7 try to emulate and model, so our students can model that
8 and we keep going. But not only that but it could be a
9 master's degree that they have in public administration,
10 if they're wanting to become an assistant principal or a
11 principal.

12 Still, we find added value from a master's
13 degree, a post-graduate degree, not only for themselves
14 but for the district.

15 Q. (BY MS. PENN) And how much is that stipend
16 for -- that the teacher receives for the master's degree?

17 A. I believe it's 1,500 or 2,000.

18 Q. Per year?

19 A. Per year.

20 Q. Okay. Is the -- the teacher salary schedule set
21 for Edgewood ISD, is that set above the state minimum
22 salary school, do you know?

23 A. I believe so, yes.

24 Q. Okay. Could the district offer the state minimum
25 salary if it wanted to?

1 MS. PENN: Okay.

2 Q. (BY MS. PENN) So is that -- so not having looked
3 at it, I apologize, can you describe for me that pay
4 schedule, how it's set up? Let's start there.

5 A. Well, it has --

6 MR. HINOJOSA: Objection; form.

7 A. It has the -- how many years you've been
8 teaching. It's pretty generic, just like with TASB.

9 Q. (BY MS. PENN) Okay.

10 A. Or that TASB puts out.

11 Q. Okay. And so does it assign a salary for every
12 year of experience a teacher has?

13 A. Yes.

14 Q. Yes. And teachers are paid strictly according to
15 that salary?

16 A. Yes.

17 Q. Okay. Does this district offer a bonus or a
18 stipend for advanced degrees?

19 A. We offer for master's.

20 Q. For master's degrees.

21 Is there any limitation on the area of study that
22 that master's degree has to be in for a teacher to be
23 eligible to receive the stipend?

24 A. No.

25 Q. So a teacher does not have to be teaching in the

1 MR. HINOJOSA: Objection; form.

2 A. As I was -- been talking about, I mean, it's --
3 the market in San Antonio really doesn't allow that.

4 Q. (BY MS. PENN) Okay. So putting aside the wisdom
5 of such a decision, there is nothing in the law or in
6 regulation from TEA that prevents Edgewood from offering
7 the State salary minimum?

8 MR. HINOJOSA: Objection; form.

9 Q. (BY MS. PENN) If you know.

10 A. Personally, no. No.

11 Q. Okay. When Edgewood sets its budget each year,
12 does it look to other districts for guidance or comparison
13 in maybe prioritizing expenditures or ways to save money?

14 A. We're always -- each district's different with,
15 you know, the population and the demographic and the needs
16 and the -- and the needs. But we do consult with
17 Moak & Casey.

18 Q. Moak & Casey, that's a -- can you tell me what
19 that is?

20 A. They're the -- they're the ones that -- for --
21 for State funding and local funding, yeah. We consult
22 with them so that we can make sure we know more or less
23 where we're headed to and how much we can get and...

24 Q. So they consult with you on their -- on your
25 budget?

1 A. Yes, on our budget.
 2 Q. Okay. Does the district have any shared services
 3 arrangements with other districts?
 4 A. I think we have for the visually impaired. I
 5 believe we -- or the deaf, for special ed with Northside.
 6 Q. With Northside. Who hosts the students?
 7 A. Northside.
 8 Q. So those Edgewood students who participate in
 9 this program, they go to Northside to be educated?
 10 A. Yes.
 11 Q. Okay. Does the district participate in a
 12 regional Education Service Center?
 13 A. Yes.
 14 Q. And for what region?
 15 A. 20.
 16 Q. 20. Does it participate in any other region
 17 service centers?
 18 A. No.
 19 Q. Okay. Do you know what services it contracts or
 20 uses through the Region 20 SC?
 21 A. Well, we use a variety of services from them.
 22 One is the TExES, which is more of the PEIMS, the business
 23 side on that. Also, ITCS, I believe, is also another
 24 finance --
 25 Q. Okay. And you said ITCS?

1 A. Yes.
 2 Q. Okay.
 3 A. And that does -- most districts use that system.
 4 Also, we use them for some professional
 5 development and -- and we use them for -- for CSCOPE.
 6 Q. Okay. Does the district participate in any
 7 purchasing co-ops?
 8 A. Yes. With the BuyBoard and there's about
 9 three -- three others.
 10 Q. Okay. And any transportation co-ops?
 11 A. The transportation is part of -- most of the
 12 transportation belong to the co-ops, if you're going to
 13 purchase a bus or something like that.
 14 Q. Oh, okay. Okay. What -- what's the district's
 15 transportation policy with regard to bussing students?
 16 A. We have -- we have major intersections that cross
 17 our district, and therefore we -- we pick up all our
 18 students.
 19 Q. Okay. So you pick up every student in the
 20 district?
 21 A. Yes.
 22 Q. That's a "yes"?
 23 A. Yes.
 24 Q. Okay.
 25 A. At certain sites.

1 Q. Okay. Do you know what percentage of students in
 2 the district actually use the school buses?
 3 A. On what percentage, no, I don't. It's a -- we're
 4 talking the majority of them do.
 5 Q. Okay. Does the district make the Virtual School
 6 Network available to its students?
 7 A. We do.
 8 Q. Do they -- is it available on all campuses?
 9 A. It's available at the high schools, and I believe
 10 it was available at the middle school.
 11 Q. Okay. Does it encourage its students to
 12 participate?
 13 MR. HINOJOSA: Objection; form.
 14 A. Well, the way Texas Education Agency rolled it
 15 out, when you tried to log on a student, there were major
 16 problems with variance.
 17 Q. (BY MS. PENN) Okay.
 18 A. So students did get discouraged and, you know,
 19 word travels. But it wasn't on our end. It was the
 20 difficulties that they were having -- they weren't
 21 ready -- when they rolled it out, it wasn't ready. The
 22 TEA, they should have waited.
 23 Q. Okay. Do you know about how many students
 24 currently participate in the VSN?
 25 A. No, I don't.

1 Q. Do you know what classes the students are taking
 2 through VSN?
 3 A. I'm not sure.
 4 Q. Okay.
 5 A. But it is available.
 6 Q. Okay. And you said that the district received
 7 Edujobs funding from the federal government, correct?
 8 A. Correct.
 9 Q. Do you know how the district spent that money?
 10 A. That was -- I know it had already been decided
 11 when I got there.
 12 Q. Okay. Do you know if there's any money that
 13 remains to be spent?
 14 A. No.
 15 Q. Okay. You don't know or --
 16 A. No, I'm sorry. There -- there's no money to be
 17 spent.
 18 Q. Okay. What is the district --
 19 A. We were doing our last drawdown about -- this
 20 week or last week we did our last drawdown.
 21 Q. Okay. So you just exhausted all those funds
 22 within the last week or so?
 23 A. Yes, uh-huh. Well, when we say "drawdown," we've
 24 already paid for those and now we just have to go and --
 25 Q. And get it.

1 A. Yes.

2 Q. The second paragraph under that heading is a
3 pretty lengthy paragraph, but there's a sentence that
4 begins about halfway down that says: The legislation that
5 passed in July of 2011.

6 Do you see that?

7 A. Yes.

8 Q. Okay. I'm going to read that sentence.

9 [Reading]: The legislation that passed in July
10 of 2011 reduced the State revenues Edgewood ISD would
11 receive by approximately \$4.6 million for the 2011-2012
12 fiscal year. The same legislation also shows that
13 Edgewood ISD would receive approximately \$2 million in
14 increased state funding in the 2012-2013 fiscal year.

15 Do you see that?

16 A. Yes.

17 Q. Did Edgewood ISD, in fact, get \$2 million in
18 increased state funding for the 2012-2013 fiscal year?

19 A. I'm not sure whether we did, because when they
20 did the biennium cuts, we took the cuts up front --

21 Q. Okay.

22 A. -- and -- for the first year. The second year,
23 we weren't going to take a cut. So it might show a
24 disparity there.

25 Q. Okay. Let's look at Page 40. And Page 40 is --

1 in the notes, it describes the district's long-term
2 liabilities. And it has a listing of all the bonds
3 currently outstanding. And you'll see there's an
4 unlimited tax refunding bond Series 2012 that was issued
5 to refund earlier bonds and refinanced at a lower rate.
6 Do you see that? It's the very last line of that listing
7 of bonds.

8 A. Yes.

9 Q. Is that -- have any bonds -- do you know if any
10 bonds have been issued since these refunding bonds were
11 issued in Series 2011?

12 A. No, there hasn't been any.

13 Q. Okay. Okay. When was the district's last bond
14 election?

15 A. It's been about four or five years ago.

16 Q. Okay. So it would have been --

17 A. I'm not sure.

18 Q. Okay.

19 A. I'm not sure.

20 Q. You don't know?

21 A. Wasn't there.

22 Q. Do you know how much was approved in that bond
23 election?

24 A. No, I don't.

25 Q. Okay. Do you know how much approve -- how much

1 money had been approved from the most recent bond election
2 but not issued in bonds?

3 A. I don't.

4 Q. Do you know if there's any money that hasn't been
5 issued in bonds?

6 A. I don't think there is any money left.

7 Q. Okay. Do you know if there's any money from the
8 most recent bond issuance that has not yet been spent?

9 A. I think there's -- everything has been spent.

10 Q. Spent or allocated?

11 A. I think everything has been already spent. I
12 think the last two years, I think they have, like, a bond
13 committee or whatever, but they have nothing to report
14 because there is no more money there.

15 Q. Okay. Does the district then consider holding
16 another bond election?

17 A. We would certainly entertain that.

18 Q. Okay. Have you had a discussion about it yet?

19 A. We've talked about facilities --

20 Q. Right.

21 A. -- and -- but the discussion was very short,
22 because there is no -- we don't have money to go for a
23 bond -- let me rephrase that.

24 The IFA money is not there for us to go out for a
25 bond.

1 Q. Okay. So would it be correct, then, to say
2 there's less incentive to hold a bond election and issue
3 bonds because the IFA money is not -- is no longer
4 available?

5 A. The only way our taxpayers can support this and
6 we can support it is through IFA. Otherwise, we cannot
7 support going on a full -- full bond.

8 Q. Okay. And so -- strike that.

9 I'm handing you now what I'm marking as
10 Exhibit 838.

11 (Exhibit 838 was marked.)

12 Q. (BY MS. PENN) Have you seen this report before,
13 Dr. Cervantes?

14 A. Yes, uh-huh.

15 Q. Can you identify it for us, then?

16 A. It's by the San Antonio Express News, an article
17 on "Edgewood OKs budget with raises and lowers tax rate."

18 Q. Okay. And it's from Tuesday, August 21st of
19 2012, correct?

20 A. Correct.

21 Q. So just a few weeks ago.

22 I want to look at the third paragraph of that
23 article that says: Edgewood officials said state funding
24 tied to student attendance health study and property
25 values have gone up slightly, prompting the board to

1 approve the administration's suggestion to lower the tax
2 rate for a second straight year.

3 Can you describe for me the process or why did
4 the district decide to lower its tax rate for the second
5 straight year?

6 A. We were capped on the M&O side, \$1.17. Our
7 property values went up a little bit. As you can see,
8 it's just a little under a cent almost. It wouldn't have
9 helped us much. We would have gone to the I&S side,
10 because that increase would have gone through the I&S
11 side. And considering that there's no bond or buildings
12 that we're going out for, that wouldn't have helped us.

13 Q. Uh-huh. And so I want to clarify, it was the I&S
14 side of the tax rate that was decreased, correct?

15 A. Yes.

16 Q. And that I&S tax revenue is used to make the
17 principal and interest payments on outstanding bonds,
18 correct?

19 A. Yes.

20 Q. Okay. And due to the property values having
21 increased, the district could lower its tax rate and still
22 make the principal and interest payments on its bonds --

23 A. Yes.

24 Q. -- with the tax revenue with the lower rate?

25 Okay. I'm handing you now what I'm marking as

1 Exhibit 839.

2 (Exhibit 839 was marked.)

3 Q. (BY MS. PENN) Do you recognize this document?
4 And if you don't --

5 MR. HINOJOSA: And the question -- and the
6 question in front of you is whether or not you recognize
7 the document.

8 MS. PENN: Right.

9 MR. HINOJOSA: If you haven't seen the
10 document, then share with her -- I'm sure she's not
11 meaning that --

12 Q. (BY MS. PENN) Yes. Apologize. I -- I don't --
13 and if you don't, I don't expect you to -- to recognize
14 it.

15 A. Yes.

16 Q. I just -- if you've read it before...

17 A. I believe I did read this.

18 Q. Okay. And I'll represent that this is an article
19 that -- obtained from the San Antonio Express News
20 website, and it's an article from Friday, August 24th.
21 The headline says: Local schools dip into their savings.

22 A. Uh-huh.

23 Q. And you said you read this article, correct? Or
24 you think you have?

25 A. Yes, I think I have.

1 Q. Okay. And I don't -- and I'm not even going to
2 ask you about, you know, the details. If you'd like to
3 read the thing, we can wait and let you read it. There's
4 just a few statements in it that I want to ask you about.

5 If you look down, the third from the last
6 paragraph on the front page says: Locally Edgewood
7 allocated \$3.2 million and Southwest ISD used about
8 \$760,000 from their fund balances for facilities
9 improvements.

10 And then when you look at -- you skip ahead to
11 look at the last paragraph on this page, it says: This
12 week, Harlandale and Edgewood - two of the area's poorest
13 districts - said they plan to use a total of \$26 million
14 from their fund balances that will mostly go toward
15 classroom and facility improvements.

16 Do you see that?

17 A. Uh-huh.

18 Q. Okay. I first -- I want to look at this
19 allocation of \$3.2 million from the fund balance for
20 facilities improvements; is that correct?

21 A. That seems to be approximately. I'm not sure
22 whether the writer exaggerates a little bit or -- or not.
23 But it used some -- the approximate amount of that, I
24 believe.

25 Q. Okay. And what facilities improvements did you

1 make -- or will -- do you plan to make with that
2 allocation?

3 A. Well, this is what we've used throughout the
4 year, which was several -- from air conditioning issues to
5 roof, to minor -- minor construction projects, to -- to
6 not only did we use for -- for that, but we used it for --
7 I believe we used it also for some software, for some
8 educational, instructional.

9 Q. Okay. Was that software at the high school
10 level?

11 A. I'm not too sure about that, but we did pull some
12 money out of fund balance so that we could make the
13 repairs and get some of the things that were needed.

14 Q. Okay. And then the next paragraph that we looked
15 at talks about Harlandale and Edgewood. And it says:
16 they plan to use a total of \$26 million from their fund
17 balances that will mostly go toward classroom and
18 facilities improvements.

19 How -- do you know how much of that \$26 million
20 would be attributed -- I assume that Edgewood is not
21 spending all of that \$26 million?

22 A. Right. No. No, we're not.

23 Q. Okay.

24 A. What we did there, we moved \$13 million from
25 undesignated to designated fund balance. And that's where

1 from TEA's website for Gus Garcia Middle School for the
2 2010-2011 school year. And you'll see from that AEIS
3 report, do you see the 2011 accountability rating at the
4 top?

5 A. Yes.

6 Q. As academically unacceptable?

7 A. Right.

8 Q. What does the district do to address an
9 unacceptable campus?

10 A. We identify it as a high priority campus. We cut
11 through a lot of the red tape and we give them more --
12 more professional development, more instructional
13 materials or resources that they need in order to get them
14 out of this unacceptable.

15 Q. Does the district develop any sort of formal
16 improvement plan for this campus?

17 A. Yes.

18 Q. It does. And that's a -- is it a written plan?

19 A. Yes.

20 Q. Okay. And who participates in putting together
21 that plan?

22 A. The middle school, of course. Plus, also the
23 academic, the C&I department.

24 Q. And what is the C&I?

25 A. The curriculum and instruction.

1 Q. Okay. Are you involved -- and let me back up.

2 Is the superintendent involved in that process?

3 A. We're involved in the process and we look at it
4 and we make adjustments, or we kind of facilitate it to
5 make things more expedient, and also to make sure what
6 programs we're going to implement, meet or --

7 MR. HINOJOSA: I'm not sure if -- from the
8 question whether or not you were asking if he was
9 personally involved? Because when you ask the
10 superintendent, sometimes that means the administration.
11 I don't know whether or not he's meaning whether or not he
12 personally, or he through the --

13 MS. PENN: Thank you for that clarification.

14 Q. (BY MS. PENN) Let's talk about the
15 superintendent's role, whether that was you when you came
16 in or the prior superintendent. What is that -- what is
17 the superintendent's role in developing that campus plan?

18 A. Well, to make sure that there is a plan, and to
19 make sure that we abide by the plan.

20 Q. Okay. How does the district determine how much
21 money gets allocated to each of its campuses?

22 A. Every year we do -- we have to do a comparability
23 study from campus to campus to make sure that we're -- to
24 making sure that we allocate the right amount. But --
25 also -- it also depends on grants, whether, like in this

1 case, Gus Garcia would have gotten a grant.

2 Q. And from whom would it have gotten that grant?

3 A. It's the TTIPS grant from the federal government.

4 Q. Okay. And what is that TTIPS grant designed to
5 provide, to address?

6 A. To address more professional development, more
7 instructional materials, more -- to get them out of this
8 stage.

9 Q. Okay. And the TTIPS grant, is that granted only
10 to schools that are rated unacceptable?

11 A. Well, because we were unacceptable, we also did
12 not meet the AYP. That's where the money was coming from.

13 Q. Okay. It was an AYP measurement and the money
14 came from the federal government?

15 A. Yes.

16 Q. Okay. Rather than being tied to the academically
17 unacceptable accountability rating itself?

18 A. Yes.

19 Q. Is that a "yes"?

20 A. Yes.

21 Q. Okay. You said that you perform a comparability
22 study among the campuses to make sure that the right
23 amount of money is being directed to the students. How do
24 you determine what the right amount of money is?

25 A. Every year when you do your -- your Title I

1 grant, you have to -- part of the evaluation is -- and you
2 submit this to Texas Education Agency, the comparability
3 study. And they'll let you know whether you're
4 overfunding one campus or underfunding another campus.

5 Q. Okay. So does the district take into
6 consideration the increased funding for certain student
7 populations that it receives for each pupil?

8 A. Yes.

9 MR. HINOJOSA: Objection; form.

10 Q. (BY MS. PENN) Yes.

11 Does it take into account the district's -- or
12 excuse me -- does it take into account the campus's
13 performance in the prior year?

14 A. Yes.

15 Q. Okay. How so?

16 A. Just by their performance. I mean, if one is
17 acceptable and one is unacceptable, you look to see
18 where -- what they need or what's -- how you can work with
19 them.

20 Q. So does the district try to direct more funds to
21 the campuses that are performing below other campuses?

22 A. Yes. Based on -- you know, we have our LEP
23 students not performing. Do we need to find some money on
24 the professional development to see do the teachers really
25 know, or -- and also the gaps that the LEP student might

1 have compared to a regular student. If we're unacceptable
2 because of the indicator of LEP, then, I mean, yes, we're
3 going to have to.

4 Q. Okay.

5 A. Because it takes -- I guess Mike Moses says it
6 takes two and a half more times to educate a bilingual
7 student than -- than a regular student.

8 Q. Where did you get that information?

9 A. Mike Moses the ex-commissioner of education.

10 Q. Okay. I'm going to hand you what I'm marking as
11 Exhibit 841.

12 (Exhibit 841 was marked.)

13 Q. (BY MS. PENN) And this is the -- I'll represent
14 to you this is the AEIS report you obtained from TEA for
15 Gonzalez Elementary School for the 2010-2011 school year.
16 Do you see that?

17 A. Yes.

18 Q. Okay. A few things I want to look at about
19 Gonzalez Elementary School. And I just noticed when I
20 handed that to you, I believe the page numbers have been
21 cut off when they were photocopied. So I apologize for
22 that. It may make it difficult to find the numbers I'm
23 looking for. I'm sorry.

24 But what I'd like to look at first -- first of
25 all, the rating of Gonzalez Elementary School for the

1 2010-2011 school year, do you see that on the front?

2 A. Yes.

3 Q. What is that rating?

4 A. Academic- -- academically acceptable.

5 Q. Okay. And if you'll turn to Page 5. I don't
6 know if that's -- if that's legible on yours. It's the
7 page that has the heading that says "Student Information"
8 at the top?

9 A. Yes.

10 Q. And it has the student data, total students. Do
11 you see that?

12 A. (Witness nods.)

13 Q. And the total student at Gonzalez Elementary
14 School. Do you see that?

15 A. Yes.

16 Q. What was that number?

17 A. 488.

18 Q. Okay. And the economically disadvantaged
19 percentage -- the percent of students who are economically
20 disadvantaged. Do you see that? If you go down a little
21 further there's a --

22 A. Yes.

23 Q. Okay. What percent are economically
24 disadvantaged?

25 A. 473.

1 Q. And that's the number. And then next to it --

2 A. The percentage. I'm sorry.

3 Q. That's okay.

4 A. 96.9.

5 Q. Okay. And then below that, it has the students
6 with limited English proficiency.

7 A. Yes.

8 Q. Do you see that?

9 How many students have limited English
10 proficiency?

11 A. 112.

12 Q. And how -- what percentage of the total
13 population is that?

14 A. 23.

15 Q. Okay. If you'll turn the page with me to Page 7,
16 to two pages later it talks about actual operating
17 expenditures.

18 A. Okay.

19 Q. And do you see the very first line says: Total
20 operating expenditures?

21 A. Yes.

22 Q. Okay. And there's a -- from the general fund,
23 there's a per student amount of total operating
24 expenditures. Do you see that number?

25 A. Yes.

1 Q. What number is that?

2 A. 5,963.

3 Q. Okay. And then of all funds, do you see that
4 number?

5 A. Yes.

6 Q. Okay. What's the per pupil expenditure?

7 A. \$6,621.

8 Q. Okay. Keep that page open, because I want to now
9 look at another elementary school.

10 I'm going to hand you what I'm marking as
11 Exhibit 842.

12 (Exhibit 842 was marked.)

13 Q. (BY MS. PENN) This is the AEIS report for
14 Stafford Elementary School for the 2010-2011 school year.
15 And I want to look at the same information for Stafford
16 Elementary School. If you would first read off the
17 accountability rating for Stafford Elementary School.

18 A. Academically acceptable.

19 Q. Okay. And then let's turn to what is Page 6 --
20 what I have as Page 6, and it has the heading, the very
21 top line says "Economically Disadvantaged."

22 Do you see that?

23 A. Yes.

24 Q. Okay. That will give you the number and the
25 percentage of students who are economically disadvantaged

1 have any type of criteria on who that can be?

2 A. We usually get either an instructional
3 facilitator or a teacher. We try not to give vice
4 principals because we don't want that "I owe you" bit
5 because you hired me.

6 Q. Fair enough.

7 Have you hired any principals since you came to
8 Edgewood ISD?

9 A. We've hired three this year.

10 Q. And were they -- and you don't have to name the
11 school, but were they elementary, middle school or high
12 school principals?

13 A. Once was middle school, and I believe two or
14 three were at the elementary.

15 Q. At the elementary. Okay.

16 The one that you hired for the middle school,
17 what happened to the principal that he or she replaced?

18 A. She was one that we hired at the -- for one of
19 the elementary spots.

20 Q. So your middle school principal moved to
21 elementary?

22 A. Elementary, yes.

23 Q. And then you replaced the middle school
24 principal?

25 A. We replaced the middle school principal.

1 Q. So then the elementary position that was filled
2 by the former middle school principal, why was that
3 elementary school principal position open?

4 A. Resignation -- or retirement on that particular
5 one.

6 Q. Okay. And you said there were two elementary
7 school principals that you filled. So what happened to
8 the other position that was open?

9 A. The other one was also a retirement, and -- and
10 then the last one was resignation.

11 Q. Okay. And why did that principal resign, do you
12 know?

13 A. They got a job with San Antonio ISD.

14 Q. Okay. So that was initiated by the principal and
15 not by the school district, that move?

16 A. He was looking.

17 Q. He was not asked to leave by the school district.

18 A. Right.

19 Q. Are principals subject to a regular review
20 process?

21 A. Yes.

22 Q. And who has input into that review process?

23 A. The supervisor that oversees the principals.

24 Q. And who is that?

25 A. That would be the chief academic officer or, in

1 this case, be the executive director for elementary
2 secondary.

3 Q. Do you have any input on the principal's
4 evaluation?

5 A. Yes.

6 Q. You do?

7 A. Uh-huh.

8 Q. What kind of input do you have?

9 A. Input as far as looking at scores, looking at
10 data, looking at the walk-throughs that I do, being on
11 campus. We have -- we have two meetings per month with
12 principals, see whether they're meeting the goals of the
13 district.

14 Q. And who attends the meetings that you have with
15 those principals?

16 A. We have two meetings. One is in the morning,
17 which I refer to as my student support team. I don't have
18 a cabinet, per se, because I want everybody's input. And
19 all the directors, whether it's transportation or whether
20 it's maintenance or whether it's director for HR, director
21 for curriculum and instruction, everybody is in that room,
22 so we meet -- and also the chief academic officer and
23 business manager, everyone.

24 And then we meet in the afternoon with all the
25 principals with everybody there still. So that way if the

1 principals have questions, we address it right there.

2 Q. And is there a specific form that the district
3 follows when it evaluates principals?

4 A. Yes.

5 Q. How does it come about, that form?

6 A. That form that they're using is one that the
7 commissioner puts out that has the principal's evaluation
8 on there.

9 Q. And by the commissioner, you're referring to who?

10 A. TEA, Texas Education Agency, I'm sorry.

11 Q. TEA, okay. And how frequently are the principals
12 given formal evaluations?

13 A. Once a year.

14 Q. Okay. What happens when a principal's school is
15 underperforming and -- let's talk specifically about Gus
16 Garcia Middle School. That was the middle school that was
17 rated unacceptable in 2011. How does a principal -- how
18 is that addressed with a principal?

19 MR. HINOJOSA: Objection; form.

20 A. At the very beginning we meet, and we constantly
21 meet throughout the year. They're also provided a, like I
22 had mentioned earlier, top priority, meaning that we send
23 most of our curriculum and instruction department down
24 there to help.

25 They also are provided through the state, through

1 the TTIPS grant, what do they call them, TAP and CAM and
2 all those. They come in and help out. So more or less
3 it's -- it becomes a priority and we just try to stay on
4 top of that.

5 Q. (BY MS. PENN) Was the principal of Gus Garcia
6 Middle School removed from Gus Garcia Middle School after
7 the unacceptable rating?

8 A. I believe that the principal that was there prior
9 to me arriving had retired, I believe. And when I got
10 there, there was already someone named as principal.

11 Q. And so for 2010-2011, Gus Garcia received the
12 unacceptable rating, its principal retired at the end of
13 that year and the school had hired a replacement principal
14 by the time you became superintendent, correct?

15 A. Yes.

16 Q. Does a principal's evaluation take into account
17 student performance?

18 A. Yes. I think there is Indicator 8 -- I'm sorry,
19 Domain 8, and I think it has Indicator 3 that -- 1, 2 and
20 3 that talk about they're going to have to revise it
21 because it said TAKS on there.

22 Q. And does -- as in your contract where you receive
23 a bonus for if the school improves its accountability
24 rating, do principals receive any sort of increased
25 compensation or bonus if their schools perform well?

1 A. No.

2 Q. No. Do they have any sort of financial incentive
3 for increased student performance in the campus.

4 MR. HINOJOSA: Objection; form.

5 A. No.

6 Q. (BY MS. PENN) Do you think that they should?

7 A. It's -- as you can see, I mean, the standard that
8 they have set for me is for 12,000 students.

9 Q. Right.

10 A. And the amount that you saw is very little.

11 Q. Right.

12 A. And if we were to trickle that down to the
13 elementary level or the principals' level, that would be
14 very minute; however, sometimes funding motivates.
15 Sometimes it does just the opposite, too.

16 Q. When you say sometimes funding motivates, explain
17 what you mean by that.

18 A. Say bonus or say extra pay.

19 Q. You think that it motivates the principal -- it
20 could motivate the principals?

21 A. It could, but I do believe if you're passionate
22 for what you do, then you will regardless of whether that
23 carrot's out there or it's not out there, you'll still do
24 well.

25 Q. Have you and have the school board considered

1 instituting a performance bonus for principals whose
2 students perform well?

3 A. We haven't talked about that within this past
4 year.

5 Q. Okay. Would you?

6 A. Talk about it?

7 Q. When I say you, I mean you personally as
8 superintendent. Would you consider it?

9 A. Talk about that? It all goes back to what we
10 talked about earlier.

11 Q. With regard to the teachers you mean?

12 A. With regards to the teachers and also with
13 regards to -- that would apply the same for principals.

14 Q. What do you think should happen to a principal
15 whose students continually underperform? And, you know,
16 I'll give you a hypothetical, say, if the principal at Gus
17 Garcia Middle School had remained there and Gus Garcia
18 Middle School had been rated academically unacceptable a
19 second year in a row, what should happen to that
20 principal?

21 A. Well, we will document and get the documentation
22 and if it continues two or three -- or, say, the second
23 year and -- it could lead to grounds for termination.
24 That's one of the causes out there.

25 Q. How long would you give it before it led to

1 termination?

2 A. You would have to look at every case on a --

3 Q. On a case-by-case basis?

4 A. -- case-by-case basis.

5 Q. Who has the authority to remove a principal?

6 A. The superintendent.

7 Q. And do you have to get board approval to do that?

8 A. No.

9 Q. Have you ever removed a principal in the one year
10 since you've been at Edgewood?

11 A. Yes.

12 Q. And was that principal's removal based on
13 performance?

14 A. It was based on more medical.

15 Q. So it was not a performance related --

16 A. Right.

17 Q. Okay. We talked more about teachers this
18 morning. Do your teachers have a reserved planning period
19 during the day?

20 A. Yes.

21 Q. How long do they have?

22 A. It's their conference period. Either they have
23 53 or 55, depending on which campus you're at. Or an
24 hour.

25 Q. Minutes?

1 transfer that good teacher to the campus that needed it or
2 would you just look for another good teacher to fill that
3 hole?

4 A. We would look for -- for another good teacher.

5 Q. Okay. So you don't really want to transfer
6 teachers between campuses?

7 A. We don't want to hurt that campus that we're
8 removing that good teacher from. It almost goes back to
9 the -- what I refer as the dots, where if you have a black
10 dot, which means not a very good teacher, why are you
11 moving that teacher around? What we need to do is just
12 make sure we get documented and get that teacher out of
13 the district because no matter where you go -- same
14 analogy with the good teachers, because you don't move
15 good teachers because then your other campuses become --

16 Q. Okay. That makes sense.

17 A. You're just going in circles.

18 Q. Understood.

19 Approximately how many teachers new to the
20 district did Edgewood ISD hire for this 2012-'13 school
21 year?

22 A. Approximately, I believe it was between --
23 almost, or maybe we might have passed that number, but
24 about 60.

25 Q. About 60. Okay.

1 Were there any advertised positions that still
2 haven't been filled?

3 A. We filled our last one yesterday. No. Two days
4 ago.

5 Q. What position was that?

6 A. The secondary science.

7 Q. And you find that the -- you mentioned earlier
8 the secondary campuses are the ones that are harder to
9 staff?

10 A. Harder to staff when it comes to math and
11 science.

12 Q. Okay. Do you offer any type of compensation
13 incentive for teachers of those hard-to-staff subjects?

14 A. We give a stipend.

15 Q. And how much is that stipend?

16 A. Offhand, I can't --

17 Q. Okay.

18 A. I don't remember.

19 Q. Okay. And I think you mentioned earlier that you
20 also offer a stipend for bilingual certified teachers; is
21 that correct?

22 A. Correct.

23 Q. Okay. Of the 60 positions that you filled, do
24 you know about how many applicants you had for those 60
25 positions?

1 A. No, I don't.

2 Q. Do you feel like you are able to hire quality
3 teachers for those positions?

4 MR. HINOJOSA: Objection: form.

5 A. That is tough to say because we have not had
6 enough time to observe them to see and also to evaluate
7 them to see.

8 Q. (BY MS. PENN) Understood.

9 Did you feel like they were strong candidates?

10 A. That's just a judgmental opinion. But most of
11 the -- if you recall on the teachers, the principal does
12 the recommendation on those. So I'm not necessarily
13 involved in that process.

14 Q. So you don't personally have --

15 A. I don't personally sit in the committee to know
16 whether I think that they are or they are not.

17 Q. Did you get any feedback from any of the
18 principals about the strength of the applicant pools that
19 they were seeing?

20 A. There was concern. There was concern because, as
21 you know, it's 45 days before the first instructional day
22 that they're allowed to resign penalty free. And right
23 before then, I mean, on the 11th hour, of course, all
24 these -- Northside or Alamo Heights grabbed -- they came
25 and grabbed theirs.

1 Q. So you feel like schools like Northside and Alamo
2 Heights grabbed some of the quality applicants --

3 A. Yes.

4 Q. -- that you would have liked to hire?

5 A. Yes.

6 Q. Do you know where -- does the district keep any
7 kind of records about where most of their applicants,
8 new-to-the-district applicants, are coming from?

9 A. We don't keep a running record per se. We do
10 know where they come from because of their service
11 records. A lot of the ones that we do get are new
12 teachers, new to the --

13 Q. To the profession?

14 A. To the field, yeah.

15 Q. Do you know, are most of them coming from
16 specific universities?

17 A. It's throughout.

18 Q. Do you get a lot of the applicants who are local
19 or who are from the San Antonio area?

20 A. We get some that are local, but we've gone as far
21 as El Paso to recruit, to try to bring teachers from out
22 there over here because we're not getting the pool that we
23 need to get. Or the quality or the high qualified ones.

24 Q. When teachers are hired -- excuse me -- when new
25 teachers are hired to the district, are they given a

1 nowadays and it's more with the instant feedback that they
2 need, quick. You see all these kids with iPhones or you
3 see them -- you know, throughout the state -- not at
4 Edgewood. Edgewood, we're still on the pay card.

5 But they also -- it's not the old days where we
6 have it "Leave it to Beaver" where we have the two-parent
7 homes there at Edgewood. Our kids come from a
8 single-parent home, and it's not the mother and it's not
9 the father. It's the grandmother.

10 Sometimes -- like this week on Monday, we had a
11 kid that got hit -- a sophomore from Memorial -- got hit
12 on Culebra Street. He's in a coma. Sophomore. Doesn't
13 have a mother. Well, the mother is in jail, the father is
14 in jail, no grandparents, lives with a brother off and on.

15 So those are the type of students that we're
16 dealing with. And it's hard for some teachers there to
17 understand that. And to not only understand it, but they
18 don't know how to deal with it because either they haven't
19 been -- because the training or the materials or the tools
20 that they need and the list that I gave you earlier. I
21 mean, it's a tough situation.

22 Q. The teachers who can't make that transition and
23 can't make that improvement, do they then ultimately end
24 up leaving the district?

25 A. Yes.

1 there for that.

2 Q. What tutoring resources does the school provide
3 students outside of their regular classroom instruction?

4 A. Outside of their regular instruction. We have an
5 organization, SA Youth, that works -- helps us out a
6 little bit. And, I'm trying to think. Dr. Cameron --
7 Karen. Or Cameron has the after-school program, also,
8 that helps us out with that.

9 Q. And both Dr. Cameron or Karen and the SA Youth,
10 are those school -- are they related?

11 A. One is SA Youth and the other one is more of a
12 city -- has to do something with -- I can't think of the
13 name right now.

14 Q. That's okay.

15 But both of those resources are not Edgewood ISD
16 resources?

17 A. They're not. They're not. The one that I'm
18 talking about, Cameron, she has applied for a grant
19 because of the low socioeconomic status that we have down
20 there. So we're --

21 Q. But does Edgewood fund either of these two
22 tutorial programs?

23 A. I believe on SA Youth, I think we pay a certain
24 amount.

25 Q. Are there any other tutorial programs that the

1 Q. Okay. By their own decision or by the district's
2 decision?

3 A. No --

4 MR. HINOJOSA: Objection; form.

5 A. -- it's like the dots that I talked about
6 earlier.

7 Q. (BY MS. PENN) Does the district track the number
8 of its high school graduates who go on to attend four-year
9 universities or two-year junior colleges, community
10 colleges?

11 A. There is a component on the AEIS that you could
12 look at to see how many attended a two-year or a community
13 college and how many attended the university. It's hard
14 to -- also to track that because of the private schools.
15 Private schools don't have to submit anything to the
16 State. So we're surrounded in the outside of Edgewood
17 with some private or -- there's a lot of private
18 universities here. So it's hard to tell. But --

19 Q. Do you have any records on -- of the students who
20 go on to college and junior college, if they require
21 remediation in their first year?

22 A. I'm sure if we need to get that -- I'm not too
23 sure whether -- let me rephrase that.

24 I'm not too sure whether we could get that off
25 the AEIS report, but I thought there was an indicator in

1 school district supports?

2 A. We try to do some of our tutoring, but, I mean,
3 it all goes back to finance. There is not enough money in
4 the budget for us to do that, which we wish we had more.

5 Q. Does the school provide any type of summer
6 school?

7 A. Yes, we have to provide that, this past year.
8 And when they did release SSI numbers, that was an
9 extraordinary amount of numbers because of the STAAR, that
10 we had to really dip into the budget and really dip
11 into -- I'm not sure whether we ended up dipping into fund
12 balance or not, but we had -- because what the State asked
13 us to do was incredible.

14 Q. What exactly did that tutorial program look like,
15 then, the one for the STAAR exam?

16 A. Summer school, basically. Remediation is what it
17 was.

18 Q. And how many hours and how many days a week?

19 A. So we could only afford to do it through one
20 month, and -- where in the past we did it for two months.
21 And we were able to afford to do it for one month and we
22 cut down also from five days to four days.

23 Q. And are they full days?

24 A. We opened it up for three sessions throughout the
25 day.

Q. Okay.

A. We went like from 8:00 to 4:00 and 1:00 to 5:00, and then we did an evening one, too, to capture the ones that were working, because a lot of our kids, they get jobs in the evening, so we want to make sure we recover that.

Q. How many students participated in that?

A. It was a big number. This year was extremely big.

Q. Do you have a ballpark number?

A. No, I don't. But I could certainly get one.

Q. When a student fails a TAKS exam, is that student permitted to -- is that student allowed to be promoted to the next grade despite having failed the TAKS exam?

A. It all depends because, as you're aware of, for the SSI years, where fifth grade -- third, fifth and eighth, you weren't allowed to be promoted if you didn't. But it goes to the committee to look at that, which is the parent and the counselor and the principal and all of that, the SSI committee.

Q. Okay. So to clarify, if it's a student -- if it's one of the grades that's non-third grade, fifth grade that requires a test, but say a second grader, if it's a second grader who fails the TAKS exams, then there is a committee that determines whether or not that child should

be promoted?

A. Well, first of all, I mean, second grade don't take the TAKS.

Q. Okay.

A. So --

Q. Right.

A. So let's just say it was a fourth grader. Fourth grader doesn't pass the TAKS, it goes to -- I think they were called a PGC -- the grade placement committee, that's what it is. The GPC. They're the Grade Placement Committee that -- that we're supposed to have, the State requires us, for every district, to have a GPC committee.

They go before the committee and they look at the grades. The parent's involved, like I said, the counselor's involved, the principal's involved, and the teacher of the grade.

They look at that. He or she, the student, might have passed all the courses there in class, but they look at that, also. They look at attendance, they look at discipline and then they make that recommendation. Sometimes it could be the student's not a test-taker. Sometimes the grandma or mom might have passed away within two weeks before the exam or -- so they take all of that into consideration. And that's what the TEA allows us to do, and that's what TEA recommends us to do. So we just

follow their guidelines.

Q. When that, say, fourth grader, even though that fourth grader fails the TAKS exams and the committee decides that the fourth grader should nonetheless be promoted to the fifth grade, once that pupil's in the fifth grade, does he or she then have to retake the fourth grade TAKS and take the fifth grade TAKS?

A. No, they just take the fifth grade TAKS.

Q. So they don't have to make up the prior year's exam?

A. No. That's Texas Education Agency, we follow their guidelines. They tell us to do it, we'll do it.

MR. HINOJOSA: I just want to clarify something on the record here. Y'all are speaking about TAKS and your questions are about TAKS, but in those grade levels that you're speaking of, especially the lower grade levels, there is no TAKS. We have STAAR now.

MS. PENN: Correct.

Q. (BY MS. PENN) And I was just speaking about the TAKS process up until this last year --

A. Okay.

Q. -- outside of the new STAAR exam process.

You said earlier that the district uses CSCOPE for its curriculum; is that correct?

A. Correct.

Q. When I say TEKS, T-E-K-S, do you know what I'm talking about?

A. Uh-huh.

Q. The Texas Essential Knowledge and Skills?

A. Yes.

Q. Do you say TEKS [pronouncing]? How do you want to differentiate pronunciation, TEKS or TEKS [pronouncing]?

A. Well, it all depends on which part of the country you're from. If you're from around the West Texas, the Lubbock area, you say TEKS. And if you're from this neck of the woods you say TEKS.

Q. You say TEKS, okay. I've heard it TEKS and I've been corrected. So I'll say TEKS.

A. I like TEKS personally, because that's what I grew up with.

Q. So are the teachers in Edgewood ISD teaching the TEKS?

A. Yes.

Q. How do you know that?

A. Well, CSCOPE incorporates the TEKS.

Q. And when you say CSCOPE incorporates the TEKS, what do you mean by that?

A. Each lesson in there has the TEKS because CSCOPE has the scope and sequence.

1 Q. And so even though CSCOPE, you're confident,
2 contains the individual TEKS, how do you know that a
3 teacher is actually teaching everything that is in that
4 CSCOPE curriculum?

5 A. Well, we do benchmarks also to make sure. We
6 look at the scope and sequence of where they have to be at
7 a certain time and what TEKS they have -- have introduced
8 and covered. So we have that already plotted out for
9 them. But we do give a benchmark, and it let's us know
10 whether they taught it or how they taught it or maybe they
11 need to reteach it again and all of that.

12 CSCOPE also -- not one program is -- is the best
13 program out there, but CSCOPE, we found that to be the
14 closest one out there right now that would address the
15 STAAR.

16 Q. I'm handing you what I'm marking as Exhibit 861.
17 (Exhibit 861 was marked.)

18 Q. (BY MS. PENN) I'll represent to you that
19 Exhibit 861 is the -- TEA's report of the performance of
20 Edgewood ISD's students for the spring 2012 administration
21 of the STAAR exam.

22 MR. HINOJOSA: These are end-of-course
23 exams.

24 Q. (BY MS. PENN) Yes. The end-of-course exams for
25 the individual classes, Algebra I, geometry, Algebra II,

1 biology, chemistry, physics, English I reading, English II
2 reading, English I writing, English II writing, world
3 geography, world history, U.S. history. And then
4 summaries of those exams.

5 And I don't want to go through each
6 end-of-course exam in detail, but I just -- let's look
7 first at the Algebra I exam. Do you see that? That's the
8 very first page.

9 A. Yes.

10 Q. And it shows here that of all students at
11 Edgewood ISD who took the Algebra I exam, there were 617
12 students who took that exam, correct?

13 A. Yes.

14 Q. And 58 percent hit the Level II satisfactory
15 passed score. Do you see that in --

16 A. Where are you looking at?

17 Q. On the front row.

18 A. Right here?

19 Q. Yeah.

20 A. On the Level II?

21 Q. The Level II satisfactory, 58 percent passing
22 that. Do you see that?

23 A. Yes.

24 Q. When the district has the CSCOPE benchmark
25 assessments and so it is able to assess a student's

1 progression in a certain course throughout the year, is
2 Algebra I one of the courses for which it -- the district
3 gives these benchmark assessments?

4 A. Yes.

5 Q. And how were its students performing on those
6 benchmark assessments in Algebra I during the 2011-2012
7 school year?

8 MR. HINOJOSA: Objection, form.

9 A. If I recall it correctly, they were very low.

10 Q. (BY MS. PENN) Throughout the year?

11 A. Throughout the year.

12 Q. So does that indicate to you, then, that
13 throughout the year the students are not understanding or
14 are not being taught the TEKS?

15 A. No.

16 Q. Why not?

17 A. Well, we're going through the transition of
18 Level I, Level II questioning, to Level III and IV
19 questioning of what the end-of-course has, which basically
20 means everyone's being geared and wired by the State of
21 Texas on how to answer questions at those type of levels
22 now that the rigor has been placed, and that's why we have
23 this one-year transformation -- or transition year to work
24 on the Level III and Level IV questions. So it's a new
25 ball game for everyone.

1 However, I could say that we were still below the
2 state, and we were below.

3 Q. When you say "We were still below the state,"
4 what do you mean? You were below the state on what?

5 A. On Algebra I.

6 Q. Understood. I just want to clarify. When you
7 say you moved from Levels I to II to III and IV on the
8 exam questions, do I understand you to mean, then, that
9 the benchmark assessments that are assessed throughout the
10 year under CSCOPE are not as rigorous, then, as the exam
11 questions that are being given on STAAR?

12 A. No.

13 Q. Okay. What do you mean by that?

14 A. I mean that they were at the rigor level of III
15 and IV.

16 Q. The benchmark?

17 A. The benchmark. Well, that's what I -- when I
18 answered, I said that they were low, just like these were.

19 Q. Understood. And so the district had some idea
20 coming into the STAAR exam that its students were probably
21 not going to perform as well as they had on previous TAKS
22 exams because of these benchmark scores throughout the
23 year?

24 A. Yes, and because it's two different tests, two
25 different exams and, you know, you don't want for me to

1 get into discussion about the TPMs for the state and we're
2 in an election year, too. And we're going into the
3 unknown. And the State talked about rigor and it's going
4 to be more rigorous and -- but they never gave the
5 definition of what "rigor" was until about six -- six
6 months or seven months after they talked about rigor, and
7 we wanted to know what rigor was. So that's where we
8 learned about the level of questioning of III and IV.

9 That's why we set up the benchmarks at those
10 levels, III and IV, at the higher rigor, what we expected
11 that the end of course or STAAR was going to come in at,
12 even though we had no knowledge, we hadn't seen any past
13 exam of the STAAR exam, or the end of course.

14 Q. So when you gave that first benchmark exam, and
15 let's stick with Algebra I just as an example, when you
16 gave the first benchmark -- I'll call it an exam -- and
17 you saw the level of rigor on that exam and that exam was
18 higher, as you said, is that the point at which the school
19 district said, "We have an idea now of how difficult
20 things are going to be, we need to ramp up"?

21 A. We need to ramp up the professional development,
22 we need to ramp up the materials or the -- do they have
23 instructional materials that CSCOPE requires and -- CSCOPE
24 is being promoted by the service center, which is an
25 extension of Texas Education Agency for us to go that

1 route, so we're following that lead.

2 But I felt that we weren't there because we
3 needed either more personnel, more teaching slots or we
4 needed more funding in the instructional materials or --
5 and all of that list that we've been talking about.

6 Q. Okay. And I just want to clarify. I think you
7 may have said this earlier, but based on those benchmark
8 tests, once you begin giving them throughout the year and
9 you saw the students' score, was it your understanding
10 that the TEKS were, in fact, being covered but that the
11 exam was just more rigorous in the types of questions it
12 was asking?

13 A. Well, it opened up to a lot of conversations,
14 and -- and it was the benchmarks, we felt that we were
15 giving it at the rigor level. Had -- now, were we
16 covering them all at the way that -- at the way the scope
17 and sequence was set out?

18 We found out that -- that we had to slow down
19 because when you take all the -- we went from 24 tests
20 that we were giving to 45 exams that we got to give now.
21 So that 187 days that we were -- or 180 days that we're
22 teaching our students has been cut now. And then if you
23 take all the other days that are in there for early
24 release or to maybe school vacation and things of that
25 nature, you're left with about a hundred days. Of that

1 hundred days, you're going to have to squeeze in all your
2 TEKS, or TEKS, in there.

3 Now, are we going too fast? Realize that our
4 students are not prepared in the sense that they don't
5 bring what students from other districts are -- or from
6 the rich school districts already come prepared in the
7 sense of any gaps here and there, so we're having to slow
8 down, fill those gaps.

9 And not only that, but the personnel, the class
10 sizes also made us look and say we could probably do a
11 better job if we had another Algebra I teacher in there so
12 we could split up the 28 or the 30 students that we have
13 in one classroom and go at least 22. So those are
14 conversations that we had that we felt that we could do a
15 better job had we had the funding to do this but, no, we
16 had to operate within what our budget was.

17 Q. Okay. And you mentioned that a teacher is
18 needing to slow down the instruction of some of the TEKS
19 to ensure that the children -- or the pupils, sorry -- are
20 understanding the material. Is that -- am I rephrasing
21 that correctly?

22 A. It's one of those Catch-22s, that if you slow
23 down you're not going to get to the end before the exam
24 where you have to cover all these. This high stakes
25 testing has really put a wrench in the -- in the mix of

1 things now because you've added days for testing and then
2 with the end of course, now you're going to have more
3 retesting dates in there.

4 Q. Have you had any feedback, then, from teachers or
5 principals about teachers being unable to complete the
6 TEKS during the year?

7 A. They -- they all try to complete them.

8 Q. I understand that they try. But have you heard
9 of any who just didn't complete them?

10 A. From principals or teachers?

11 Q. Either one.

12 A. Either one. Some I have heard that they had to
13 slow down or they had to go back and try and -- try and
14 bring it in later in the lesson. But it was tough to
15 complete all of them. That I could tell you. Because I
16 mean, we're -- when you have 30 or 38 students in one
17 classroom at the high school level and they need extra
18 help, you're going to have to do something. And we tried
19 keeping them at lunch, we tried keeping them here and
20 there, and we tried to do pull-outs here and there, but it
21 would have been great had we had additional help from the
22 State.

23 Q. But you didn't hear of anyone not being able to
24 complete them? Or let me put it this way. I'm sorry.
25 Let me rephrase. Strike that.

1 we reach the bar, the bar gets moved.

2 The ACCUPLACER, I know when they first came out
3 with that system they didn't let the school districts even
4 talk about it or teach it -- not teach it, but make the
5 students aware or even make the teachers aware of it. So
6 that's some of the problems that need to get fixed --

7 Q. Okay.

8 A. -- at the college level.

9 Q. At the college level.

10 As an educator on the primary and secondary
11 level, do you have a way of determining whether or not
12 your students are college and career ready?

13 MR. HINOJOSA: Objection; form.

14 A. Rephrase that again.

15 Q. (BY MS. PENN) Just addressing the students under
16 your supervision, elementary, middle school and high
17 school students, once those students get to high school,
18 do you, as their superintendent, do you have an opinion
19 about how you can determine whether they're college or
20 career ready?

21 MR. HINOJOSA: Objection; form.

22 A. How we could determine whether they're college
23 ready. There's a lot of, also, external factors that play
24 into -- I mean, I should say intrinsic factors with the
25 students and whether they're determined to or whether they

1 persevere also. So it's hard. But as a district, we're
2 trying to make sure that they're college ready by
3 providing that commended level, and we feel if our
4 students could get to that commended level that they will
5 be able to go to any university and not be -- having to
6 take the remedial resources.

7 Q. (BY MS. PENN) So if they're commended you feel
8 confident that they can -- they are college and career
9 ready. Is that fair?

10 A. Once again, it goes back to how well they do on
11 the college/career readiness test that they take.

12 Q. So considering that, if a student doesn't reach
13 the commended level, that doesn't necessarily mean they're
14 not college and career ready in your eyes?

15 A. In my eyes, if you're determined to go to college
16 and determined to pass that exam and you study hard and we
17 give you the tools -- and going back to the tools and are
18 we giving -- are we affording the same option or tools
19 that the other districts are giving their students. I
20 mean, do we have the programs that the other districts
21 have, that Alamo Heights or Northside has.

22 And it all comes down to, also, do they have the
23 parental support that other districts have. And you have
24 already heard about our kids, which is, I mean, they're
25 economically disadvantaged. They already have a strike

1 against them. We just need to see how we could get them
2 up to speed and get them there.

3 Q. So, in your opinion, there are students who may
4 not reach the commended level but who are nonetheless
5 college ready?

6 A. Yes.

7 Q. Okay.

8 MS. PENN: Thank you. I have no further
9 questions. Thank you very much for your time. I'll hand
10 you over to your attorney.

11 MR. HINOJOSA: We'll take a break.

12 (Break.)

13 EXAMINATION

14 BY MR. HINOJOSA:

15 Q. Dr. Cervantes, I'm going to ask you a few
16 questions here before we finish for the day. Can you tell
17 me a little bit about the Edgewood community, about the
18 students who attend Edgewood schools?

19 A. We're about 92.9 percent economically
20 disadvantaged. We're in an area that's located in the
21 inner city. Our families, our demographics are mostly all
22 Hispanic. Our students come from mostly of a
23 single-parent home. And like I said earlier, the
24 grandmother is raising them or they have -- it's a very
25 poor district. We don't have any per se Walgreens in our

1 area.

2 In the 16 square miles that Edgewood sits on, it
3 doesn't have banks, either, a bank. We do have a lot of
4 those Money Boxes, those cash checks quick type. It's --
5 the community and the parent involved is somewhat to the
6 extent where they would like to attend but they --
7 considering that they're all blue-collar workers, they
8 don't have a chance to come in after hours or -- it's a
9 very -- it's a community that has pride; however, they
10 don't have the resources to be involved in education.

11 Q. And you've talked a little today about Northside.
12 Does Northside Independent School District border
13 Edgewood?

14 A. Yes. We have Northside that borders and they
15 kind of wrap around us, more or less. We have Kelly Air
16 Force base that has already been closed on the left-hand
17 side of us -- or on the south side, I should say.

18 Q. And speaking of, you know, Kelly and the economic
19 activity, are you all able to tax and receive any revenue
20 from the businesses -- and I forgot the name of the --

21 A. Yes.

22 Q. -- complex there on Kelly Air Force base --

23 MS. PENN: Objection; form.

24 Q. (BY MR. HINOJOSA) -- the old Kelly Air Force
25 base?

1 A. Port San Antonio is now part of Kelly Air Force
2 base, which is part of the city -- or the city has really
3 invested heavily in that. We don't get any taxes or
4 revenue from them. Either they are tax exempt or there
5 has been some type of abatement that's been given for many
6 so years.

7 So the ones that we do see some movement, it's
8 usually some type of tax abatement that the city has done
9 already with them or, in this case, Port San Antonio, we
10 don't get any tax base from them.

11 Q. And you've also mentioned Alamo Heights today.
12 About how far is Alamo Heights from Edgewood?

13 A. I'd say it's about 12 miles. I think it's about
14 12 miles.

15 Q. And y'all are --

16 A. I know how to get there. Fairly near.

17 Q. Are they both located within Loop 410?

18 A. Yes. Yes.

19 Q. Have you ever been to the neighborhoods in Alamo
20 Heights?

21 A. Yes, I have.

22 Q. How would you compare the Alamo Heights
23 neighborhoods to the Edgewood neighborhoods?

24 A. I would compare it as -- the haves and the
25 have-nots. You go there and you see multimillion dollar

1 homes. You go through our district and you'll see homes
2 that are maybe worth 20,000, 40,000, and that's because of
3 the land, not because of the home.

4 I've gotten all the administrators on the bus and
5 we've done -- we've ridden on the buses to see where our
6 kids live, and it's very depressing because we do have
7 homes that are -- like I said, that the land probably
8 costs more than the house itself. But we also have a lot
9 of apartments, low-income housing and low-income for even
10 our senior citizens there.

11 The crime rate there is very high. Very high.
12 We also have not recreational activities that you will
13 find at other -- like the parks that you see at Alamo
14 Heights or on the Northside where they have the nice
15 walking parks, trails and this. You don't see that on the
16 west side.

17 Q. And Edgewood is located on the west side in San
18 Antonio, correct?

19 A. We're located on the west side. Give you an
20 example that we have, you go down Commerce and you'll see
21 about a block or two blocks away from one of the schools
22 we have a strip club there. That's -- and then we have a
23 Money Box across from the strip club. So that's the type
24 of businesses that we have out there.

25 Q. And how about in Alamo Heights, what kind of

1 businesses do you see out there?

2 A. Well, you have the high dollar end businesses
3 where you could go purchase a Gucci or go purchase
4 vehicles, and I know they're opening up a new Volkswagen
5 dealership there. It's totally different from -- compared
6 to --

7 Q. How about the museums, are museums located in
8 Alamo Heights or Edgewood?

9 A. The museums, you'll find some in Alamo Heights.
10 You'll not find a museum in Edgewood.

11 Q. Are the kids in Edgewood held to the same
12 standards by the State as the kids in Alamo Heights?

13 A. Yes, sir.

14 Q. Do you think the kids in Edgewood are less
15 deserving of opportunities than the kids in Alamo Heights?

16 A. No. They're more deserving.

17 Q. When you say "more deserving," what do you mean
18 by that?

19 A. Because earlier I had said that our kids already
20 have a strike against them, because they don't come with a
21 background already that -- like the students from Alamo
22 Heights already come prepared and ready to go because
23 their mother/father have been reading to them and getting
24 them school ready. So when they enter the kindergarten or
25 the first grade there, they're ready to go.

1 Our kids, like I say, coming -- coming from an
2 economically disadvantaged background where they only have
3 one parent and their primary language is -- might not --
4 their primary language is Spanish for some, for a big
5 portion of our students, that they're not school ready
6 when they come to us.

7 Q. Is it your testimony that these kids just simply
8 can't succeed because of the types of families they come
9 from or the environment that they are brought up in?

10 A. They -- they can succeed if you give them the
11 right tools and if you provide the right opportunities.
12 And as I said earlier, the opportunities and the tools
13 don't come to you free.

14 Q. And are you able to provide the tools and
15 opportunities that the children in Edgewood require?

16 A. Not right now.

17 Q. And why not?

18 A. Because we have to live within our budget that we
19 have. We would like to provide more, but there is -- the
20 funding is not there.

21 Q. When you say more, do you just mean more of the
22 same or more as in higher quality? Or what do you mean?

23 MS. PENN: Objection; form.

24 A. More of the higher quality, more of reducing the
25 class size, let's say the class size that we have --

1 classes right now. We filed for waivers with the State
2 last year. We're going to have to file waivers this year
3 again. And also providing more or providing after-school
4 programs, and also providing programs within the school to
5 help our students.

6 Q. (BY MR. HINOJOSA) And speaking of class size,
7 and you talked about the waivers, are you able to bring
8 your class size down, for example, to a ratio of 15 to 1?

9 A. No. Right now we don't have that. We're way
10 above that.

11 Q. Is that something that the district would see as
12 beneficial for the school -- for the children of Edgewood?

13 A. Well, not only the district, but the research
14 shows the smaller the classroom size is -- or the class
15 size is, I mean, the more they'll learn.

16 Q. I'm going to show you what was marked previously
17 as Exhibit 828, the 2011 AEIS report for the school
18 district. I know earlier you were talking about the
19 commended level, the commended performance level for
20 students in the district. But before we get there, I want
21 to go to just simply the TAKS Met Standard for the sum of
22 all grades tested in the school district. And the fourth
23 column from the left, how many -- what percentage of the
24 students in the district after all those years of testing
25 TAKS were able to meet that standard?

1 A. 57.

2 Q. I'm sorry. In the year 2011.

3 A. Oh, 2011. 59 percent.

4 Q. I think you mentioned earlier that most of your
5 students are economically disadvantaged, and so when we
6 look at the economically disadvantaged, what percentage of
7 your students have met that standard?

8 A. 59 percent.

9 Q. And what about percent for LEP students?

10 A. 59 percent.

11 Q. And we can look back as far as Exhibit 824, which
12 is the 2006-2007 AEIS report, and looking at the same
13 indicator on the TAKS Met Standard, sum of all grades
14 tested, for the year 2006 what percentage of students in
15 the district met the standard for all grades tested?

16 A. 52 percent.

17 Q. And for your economically disadvantaged students?

18 A. 53 percent.

19 Q. And LEP students?

20 A. 50 percent.

21 Q. So there was some increase over time from 2007
22 through 2011, correct?

23 A. Correct.

24 Q. Now I want to show you TAKS commended
25 performance, sum of all grades tested. And when we look

1 at the district average, what percentage met the standard
2 in the year 2011?

3 A. 7 percent.

4 Q. And with respect to your economically
5 disadvantaged and LEP students, what percentages
6 respectively met the standard?

7 A. 7 percent and 10 percent.

8 Q. And the district for its LEP students, in the
9 lower grade levels, does the district have dual language
10 programs?

11 A. Yes, sir.

12 Q. And at what schools does the district have a dual
13 language program, if you know?

14 A. At the elementary is -- there is Las Palmas and
15 there is some -- some three or four other campuses. Right
16 offhand --

17 Q. Okay.

18 A. -- right offhand, I can't remember all the dual
19 language.

20 Q. Earlier the State was also talking with you about
21 the college readiness indicators, and I just want to go
22 over some of these indicators with you. Does the district
23 offer advanced course in dual enrollment courses?

24 A. Yes.

25 Q. And what percentage of the students for the

1 2009-2010, which is the last year reported here met the
2 standard?

3 A. 20 percent.

4 Q. And what percent of your LEP students were -- had
5 completed an advanced course, a dual enrollment course?

6 A. 3 percent. 3.6.

7 Q. And a student who simply graduates under the
8 recommended high school program or DA -- or the
9 recommended high school program, would they be deemed
10 college ready solely for just having graduated through the
11 recommended high school program?

12 A. No.

13 MS. PENN: Objection, form.

14 Q. (BY MR. HINOJOSA) Looking at the AP/IB results
15 that are tested -- that are reported here, what percentage
16 of your students tested for AP or IB?

17 A. 25 percent.

18 Q. And what percentage of the students met the
19 criteria?

20 A. 7 percent.

21 Q. Looking now at the Texas Success Initiative,
22 higher education readiness component, it has English
23 language arts reported here. And what percentage of the
24 district's students met that standard?

25 A. 53 percent.

Q. And how about for LEP students?

A. Less than 1 percent.

Q. And math, what percentage in the district -- of the district's students met that standard for the 2011 reported here?

A. 48 percent.

Q. And LEP students?

A. 13 percent.

Q. For SAT results out of the class of 2010, what percentage of your district tested on the SAT?

A. 55 percent.

Q. And do you know whether or not the district received any grants to help pay for those tests?

A. I know we could apply for some, but they only give you a certain number.

Q. All right. And of that 55 percent who tested, what percentage of the students in Edgewood scored at or above the criterion?

A. 3.8 percent.

Q. And then looking at the college-ready graduates as reported here by TEA, this indicator relies on the scale scores for the TAKS test, correct?

A. Yes, sir.

Q. And if we look at both subjects, what percentage of the district's students met it in the class of 2010?

A. 32 percent.

Q. So looking at these college-readiness indicators, do you have an opinion as to whether or not the district is preparing its students to be college ready?

MS. PENN: Objection; form.

A. Not at that percentage.

Q. (BY MR. HINOJOSA) Okay. And is it your opinion that these students just simply can't reach the standards for college readiness?

MS. PENN: Objection; form.

A. Without the tools, they won't be able to reach it.

Q. (BY MR. HINOJOSA) And when we speak of tools, I think one of the things that you mentioned earlier was class size. How about -- is the district able to afford a 10 percent increase for K through 12 teacher salaries?

A. No.

Q. How about -- one of the experts in this case has testified that Washington, D.C. had a performance pay -- and I know that you mentioned your issues with performance pay -- but assuming that the district was able to somehow manufacture a quote/unquote merit based system, would the district be able to afford something in the range of \$25,000 bonuses for teachers?

A. No.

Q. There is a thing called the What Works Clearinghouse that's put out by the federal government. And is the district able to offer programs such as First Things First, ALAS, that's A-L-A-S, Check & Connect and Talent Search?

A. No, sir.

Q. Does the district have the resources to offer those programs?

A. No, sir.

Q. And are those programs the district might be willing to consider if it did have the resources?

A. Yes, sir.

Q. With respect to your ELL programs, is the district able to recruit effective educators who can teach demanding content while developing academic English language skills?

MS. PENN: Objection; form.

A. No, sir.

Q. (BY MR. HINOJOSA) Is the district able to offer, both for ELL and for at-risk youth, high quality extended learning time?

MS. PENN: Objection; form.

A. No, sir.

Q. (BY MR. HINOJOSA) Earlier you had mentioned kind of more generally some of the materials that you would

need, support materials that you would need to help the students achieve the standards in place. And I'm going to go through some materials and ask you whether or not the district is able to afford these materials.

Such as visuals to learn new vocabulary and including sufficient bilingual dictionaries and picture dictionaries for English learners?

A. No, sir.

Q. How about content area text and supplemental materials such as charts and instructional games and manipulatives?

A. No, sir.

Q. Is the district able to offer sufficient and high quality interactive digital technology that incorporates language recognition and customized responses to help enhance literacy?

A. Well, no, sir.

Q. And how about the parental engagement programs, is the district able to offer substantive and high quality parental engagement for their ELL students and for their pre-K programs?

A. No, sir.

Q. Is the district able to offer a pre-K program that has a maximum class size of 15 to 1?

A. No. We have some that are over.

Q. And the district's current pre-K program, does that include funding and requirements under the Head Start program?

A. Yes, and also the State.

Q. And with respect to the State funding, has the district had any cuts in funding for pre-K?

A. Yes.

Q. What was that?

A. Well, we had a -- from the State, when they cut us that amount, the year where we took it in -- the first year -- that amount, because of the \$5.3 billion cuts, we had to cut back on pre-K. And then we got hit by \$500,000 from Head Start, too, last year.

Q. Earlier Ms. Penn had showed to you the STAAR results, and it showed that at least 42 percent of the students did not meet the Level II satisfactory in the district, correct, on Algebra I?

A. Correct.

Q. And I won't go through all of these with you. But on the geometry, that's a higher level course, right?

A. Correct.

Q. On biology, what percentage of these students, according to Exhibit 861, did not meet even the Level II phase-in standard?

A. 68 percent.

Q. What percentage did not? Sorry.

A. 68 percent.

Q. Minus a hundred is -- is it 32 percent?

A. Oh, it's 32. Okay. Well, that's the passing rate, yes. Yeah.

Q. So just to clear up the record. 32 percent of the district's students failed to meet the Level II phase-in standard, correct?

A. Correct.

Q. Looking at English I reading, there was 53 percent of the district's students who tested here did not meet the minimum Level II phase-in standard, correct?

A. Correct.

Q. And English I writing, 72 percent did not meet the minimum Level II phase-in standard, correct?

A. Correct.

Q. World geography, what percentage of students did not meet the Level II phase-in standard?

A. 45 percent.

Q. 35 percent?

A. 35, I'm sorry.

Q. You also mentioned earlier that one of your concerns was the number of students -- or number of questions that were required simply to meet the various levels; is that correct?

A. Correct.

(Exhibit 862 was marked.)

Q. (BY MR. HINOJOSA) I'm going hand you what we're going to mark as Exhibit 862. Are you familiar with what Exhibit 862 is?

A. Yes, sir.

Q. And Exhibit 862 are some STAAR end-of-course results before various exams for the spring of 2012; is that correct?

A. Correct.

Q. And it says here in the lower left-hand corner of 862. Preliminary Results Prepared By E. Gearhart and J. Street.

And who are those individuals?

A. J. Street is our -- the director of testing and Gearhart is the accountability director.

Q. And these documents, they were not prepared specifically for this litigation; is that correct?

A. Correct.

Q. If we go up to the Level II satisfactory at phase-in standard, what was the number and percent of questions needed to achieve the Level II phase-in standard for Algebra I?

A. 20.

Q. And what was the percentage?

A. 37.

Q. And for the Level III advanced the number is 42 out of 54 total questions, or 78 percent, for the Level III standard, correct?

A. Correct.

Q. And what is the Level III advanced standard as far as you understand it?

A. Career readiness.

Q. And what percentage of Edgewood's students met the Level III standard?

A. Zero percent.

Q. And that's zero percent and there is a number indicated here that is less than five. And out of how many total tested in the district?

A. Out of 550 tested in the district.

Q. And so out of 550 tested, it shows 278 did meet the Level II phase-in standard, or 51 percent. Does that mean that 49 percent, or 272 students, would require remediation?

A. Correct.

Q. And earlier, when you were talking about the CSCOPE and the TEKS curriculum and how your teachers try and follow CSCOPE, is that all that is required for students to meet the standards that have been put in place by the State?

MS. PENN: Objection; form.

A. No.

Q. (BY MR. HINOJOSA) We've talked about some of these other things such as class size and professional development and extended learning time programs. Those are the types of other things that need to complement the curriculum taught in the classroom?

A. Yes.

Q. If we go to biology, Page 3 of Exhibit 862. Out of the 54 biology questions on the STAAR end-of-course exam, what was the number and percentage required to meet the Level II satisfactory phase-in standard?

A. 37 percent.

Q. And that's 20 out of 54?

A. Correct.

Q. And for the Level II advanced?

A. 83 percent.

Q. And what percentage of the students met the Level III advanced standard?

A. 2 percent.

Q. And that was 11 out of 650 total students tested, correct?

A. Yes, sir.

Q. And what percentage -- let me do this math quickly.

It looks like 219, or 34 percent of the students did not meet the Level II satisfactory phase-in standard, correct?

A. Correct.

Q. And so all those students would be required to take remediation, correct?

A. Correct.

Q. Okay. Going next to world geography. Out of the 68 questions, how many and what percent of the questions were required to meet the Level II phase-in standard?

A. 46 percent.

Q. And that's 31 out of 68, correct?

A. Correct.

Q. And for the Level III advanced, that was 57, or 84 percent, correct?

A. Correct.

Q. And what percentage met the Level III advanced standard?

A. 3 percent.

Q. So that's 21 out of 663, correct?

A. Correct.

Q. And then it looks like 244 out of the 663 who tested did not meet the minimum Level II phase-in standard, correct?

A. Correct.

Q. And so those students would require remediation, correct?

A. Correct.

Q. And did the State provide you any additional funds for the remediation costs for STAAR?

A. No, sir.

Q. Going now to Page 5 of Exhibit 862. This is the English Language Arts I reading. It says: 56 Possible Total Raw Score Points.

And what percent of the raw score points was required for the Level II satisfactory phase-in standard? And I understand that looking at this, there's two separate numbers here.

A. 50 percent and 79 percent.

Q. And for the level -- and it looks like that was 28 and 30 possible raw score points out of the 56. I'm sorry. Let me restate that.

It looks like it was 28 and 30 raw score points out of the 56 possible total raw score points, correct?

A. Correct.

Q. And the Level III advanced standard, looks like you needed 44 and 46, respectively, or 79 and 82 percent, correct?

A. Correct.

Q. And what percentage of the students in Edgewood

ISD met the Level III advanced standard?

A. 1 percent.

Q. And so that's 9 out of 662, correct?

A. Correct.

Q. And then as far as the Level II satisfactory phase-in standard, it looks like 357, or 54 percent, did not meet that standard, correct?

A. Correct.

Q. Going over to the ELA I writing, which is Page 6 of Exhibit 862. Out of the 62 possible raw score points, what percentage of those raw score points were required to meet this standard?

A. 65.

Q. Okay. That's 40 out of 62, correct?

A. Correct.

Q. And for the Level III advanced college readiness standard, that is 57 out of 62 raw score points, or 92 percent, correct?

A. Correct.

Q. And what percentage of the Edgewood ISD students met that standard?

A. Zero percent.

Q. And it looks like only one out of the 662 students tested in ELA I writing met that Level III advanced, correct?

1 A. Correct.

2 Q. And for the Level II satisfactory phase-in
3 standard, it looks like 72 percent, or 476 students,
4 required remediation, correct?

5 A. Correct.

6 Q. And before we leave this exhibit, on Exhibit 862,
7 it looks like there is also a column on each of these
8 tests where it says the Level II Satisfactory at
9 Recommended Standard, which is the third column from the
10 right, correct?

11 A. Correct.

12 Q. And did the district itself set any of these
13 specific standards, or was that set by the State?

14 A. On these, what they were -- I believe they were
15 set by the State.

16 Q. Okay. And looking at how many students require
17 remediation just after the first year of testing under
18 STAAR, what concerns does that bring to you as the
19 superintendent of a property poor school district?

20 A. Funding, where are we going to get the funding to
21 do all that remediation, to not only -- throughout the
22 school year, because they're going to be retaking this
23 throughout the school year, but also in the summer. When
24 we do the spring assessment, those scores don't come out
25 until the very end of May and then we have to prepare for

1 the summer, and that's an unknown factor on how many we're
2 going to need. So the funding sources of -- is of utmost
3 concern.

4 Q. And what kind of additional resources would 5- or
5 \$600 more for the district bring in?

6 A. 500 or \$600 more for -- per student would really
7 help out. I mean, you could look at reducing the -- the
8 areas where you're getting hit the most on reducing the
9 class size, also providing the Tier 3 remediation that
10 some of our students do need with programs. There's
11 software out there. And also providing the after-school
12 tutorials or Saturday tutorials. And also helping fund
13 additional personnel.

14 But not only that, but also doing the
15 professional development that's needed so that we can make
16 sure we are teaching, that our teachers know what to
17 teach and how to teach. And also when you talk about
18 differentiated instruction, that's where we need to really
19 concentrate, and that requires money to do differentiated
20 instruction.

21 Q. Now, I'm not saying that you just need 5- or
22 \$600, but recognizing that, for example, a Northside
23 Independent School District, which isn't the same as an
24 Alamo Heights, which -- you know, I'm sure the record will
25 reflect that they'll receive substantially more funds than

1 yourself, but, you know, just comparing how Edgewood might
2 compete against a Northside, which, of course, is large
3 in size, but when you get down to the level of funding per
4 student, I mean, that -- what concerns does that bring you
5 with Edgewood being able to tax -- I mean, with Northside
6 being able to tax at a lower rate but still get -- to \$600
7 more per student at least than Edgewood?

8 MS. PENN: Objection, form.

9 A. It's very unfair when you look at that and when
10 you see that a penny will bring in more than what a penny
11 will bring into Edgewood. I mean, there is a big
12 disparity there. But also taking the environment, how our
13 students are economically disadvantaged and aren't school
14 ready when they get to us and the mobility rate that we
15 have in a poorer school district than what you'll have a
16 mobility rate in more well-to-do district, property wealth
17 district.

18 Q. (BY MR. HINOJOSA) And I want to go over some of
19 these exhibits that were shown to you. I'm just going to
20 show you Exhibit 851, Las Palmas, and Exhibit 841, which
21 is H.B. Gonzalez, and I think that Ms. Penn showed these
22 to you earlier and had mentioned, you know, the difference
23 between the operating expenditures between the two
24 schools.

25 And what percentage of teachers at Las

1 Palmas were either a beginning teacher or had one to five
2 years of experience

3 A. A beginning teacher was at about a 9 percent and
4 one to five was at 12 percent.

5 Q. And how about at -- I'm sorry. That was H.B.
6 Gonzalez. Yes. That's H.B. Gonzalez.

7 And now comparing Las Palmas?

8 A. Las Palmas, you see a beginning teacher at a 2.6
9 percent, and you see a one through five years' experience
10 at a 39.2 percent.

11 Q. And so what impact might that have on the
12 different expenditures between the two schools?

13 A. If you're paying more for an experienced teacher
14 on one campus and you are paying less in another campus
15 for teachers that don't have that much experience, the
16 pupil, the student -- per student count will be off on
17 that end.

18 Q. And I know earlier you also went through some
19 bilingual expenditures for Edgewood ISD and it had had
20 some figures reported there. Assuming those figures are
21 reported correctly, do those accurately reflect all of the
22 expenditures that the school district is spending on ELL
23 students?

24 A. No. It doesn't accurately reflect what's being
25 spent on teachers, whether -- the class size is this one

1 and also the teachers -- also the veteran teachers
2 compared to new teachers is -- is also another. But we
3 also spend on programs and so forth.

4 Q. And Ms. Penn had asked you earlier if you knew
5 how much more or how much it would cost -- I'm not sure if
6 she said for an adequate education, but -- and you had
7 mentioned that you did not have -- that you did not know
8 the cost, the exact cost; is that correct?

9 A. Correct. But I do know that we would need more,
10 a whole lot more than what we're receiving.

11 Q. Does the district have the sufficient resources
12 to bring the reasonable and meaningful opportunities that
13 ELL students and low income students need to achieve the
14 standards the State has put in place?

15 A. No, we don't have the resources.

16 Q. And is the district able to tax for maintenance
17 and operation above \$1.17?

18 A. No. We're at the cap already. We already did a
19 TRE. We would love to see them relax that -- that statute
20 that they have and maybe open up to where we could tax at
21 a higher rate, but we're capped at \$1.17.

22 Q. So does the district have any other discretion in
23 setting its current M&O tax?

24 MS. PENN: Objection; form.

25 A. No, sir.

1 Q. (BY MR. HINOJOSA) Earlier, when you were talking
2 with Ms. Penn, she had also talked with you about the
3 state minimum salary and whether or not nothing in the law
4 allowed you to go down to the state minimum salary. Are
5 you aware of mandated teacher pay raises since at least
6 2005-2006?

7 A. Yes, I'm aware of those unfunded mandates that
8 the State passed.

9 Q. Do you know how much a school in Edgewood ISD
10 costs, approximate or not?

11 MS. PENN: Objection; form.

12 A. Are you referring to the building or --

13 Q. (BY MR. HINOJOSA) Yes, the school building. An
14 elementary school building.

15 A. With technology in there and everything, for
16 right now I would say it will run somewhere between 15 to
17 18 million.

18 Q. And how old is your oldest school right now?

19 A. That's --

20 Q. What is your oldest school right now?

21 A. I would say Coronado was our oldest school.
22 We've since closed that now. I'm thinking of Loma Park or
23 even Memorial might be.

24 Q. Memorial High School?

25 A. High School, or --

1 Q. Or JFK?

2 A. JFK, also. I think those were done in the '60s
3 Yeah.

4 Q. And are any of those schools needing to be
5 replaced?

6 A. We have, I'll say, about two or three that need
7 to be replaced from a facility study that I saw that was
8 done about four or five years ago. That's why we decided
9 to try to do another facility study. That facility study
10 that I saw about four or five years ago was done by TASA.
11 Now we're looking at Schreiner to see if they can do a
12 facility study. But they really need replacement.

13 Q. And is 15 to \$18 million that it might cost to
14 build an elementary school in San Antonio to replace one
15 of the currently existing ones that needs to be replaced,
16 would -- I mean, does that amount include for some type of
17 dream school or is it just meeting the basics and the
18 State mandates?

19 A. That's just --

20 MS. PENN: Objection; form.

21 A. That just meets the basic with probably about 600
22 students in that elementary. It probably would not
23 include your playground, your gymnasium. It might not
24 even include your gymnasium in there.

25 Q. (BY MR. HINOJOSA) And is -- are athletics and

1 gymnasiums, how important are they for the students
2 growing up on the west side of San Antonio?

3 A. That's the only safe place where you could say
4 that the students have. It's very important to them.
5 Even though we haven't built a new gymnasium, we painted
6 the walls, basically, and sanded the floor somewhat. But
7 it's very important for them because they do take pride in
8 those facilities. But not only that, but academically and
9 discipline-wise, it helps them and they understand that
10 and they know that.

11 Q. How about their health?

12 A. Their health, it's -- especially in Edgewood,
13 their health has become an issue of very, very important
14 priority that we have because Edgewood, as you know, we
15 have the highest diabetes rate in the city of San Antonio.
16 Our students have also the highest diabetes rate. We're
17 talking about our students and we're talking about our
18 adult population there, also. So anything that -- that we
19 could get them involved in that requires some type of
20 being physically moving is a plus, because, you know, a
21 physical mind is a -- having -- being physically fit will
22 help you learn more. A healthy body is a healthy mind.
23 That's what I was looking for.

24 MR. HINOJOSA: I have no further questions.
25 Thank you, Dr. Cervantes.

1 MS. PENN: Dr. Cervantes, I have just a few
2 follow-up questions for you, and I will make it brief, I
3 promise.

4 FURTHER EXAMINATION

5 BY MS. PENN:

6 Q. You mentioned when you were talking to
7 Mr. Hinojosa that the research shows the benefit of small
8 class sizes. What research in particular were you
9 referring to?

10 A. When I went through my doctoral programs we read
11 more research than anyone would care to, than any insane
12 person would want to read, but all that research that I
13 read has shown --

14 Q. Do you have any in particular that you're
15 thinking of?

16 A. No, not in particular. I mean, not one that I
17 could quote offhand, but I could certainly pull out all my
18 journals and my books that I have read.

19 Q. No need to do that.

20 You also referred to the pre-K funding that
21 Edgewood lost, and that was in the 2010-2011 school year;
22 is that right?

23 A. We lost some from the State.

24 Q. Right. Correction: The funding that you lost
25 from the State.

1 A. Uh-huh.

2 Q. And that was from the PreK Expansion Grant; is
3 that correct?

4 A. Right.

5 Q. Were you aware that the last year that that grant
6 that was awarded, Edgewood was not awarded that grant?

7 A. The PreK?

8 Q. The PreK.

9 MR. HINOJOSA: Objection; form.

10 A. No, what I was talking about was the 500,000 that
11 we lost when I got here, the City of San Antonio Head
12 Start program had cut us \$500,000.

13 Q. (BY MS. PENN) Okay. And so is it your
14 understanding that Edgewood ever received a PreK Expansion
15 Grant from the State?

16 A. From the State? I wasn't here those years so --
17 but since I've been here, we've had a \$500,000 cut.

18 Q. And that was -- just to clarify, that \$500,000
19 cut you're referring to was funding that was provided from
20 the City?

21 A. From the City.

22 Q. Okay. You stated that it's your understanding
23 that the Level III -- the Level III assessment on the
24 STAAR exam is college and career ready?

25 A. That's also -- yes.

1 Q. What's the source of your understanding of that?

2 A. Well, when you look at the proficient level -- or
3 the satisfactory phase-in standard, that's a phase-in,
4 that means it's going to go away.

5 We have the Level III and if we look at the
6 Level II satisfactory, that's going to go up higher in the
7 year 2015-2016. So that -- we do look at the phase-in
8 standard, but we know that's not going to stay there.

9 Q. Right. So in 2016, whenever the final -- the
10 end -- the phase-in period ends for Level II, at that
11 point would you consider a Level II to mean college and
12 career ready?

13 A. Well, the State usually bumps everything up as
14 they go, as they move forward. We would just have to wait
15 and see what 2016 brings us, what they consider as college
16 and career ready at that time.

17 Q. So if I'm understanding you correctly, you're
18 saying that you understand Level III to mean college and
19 career ready because a Level II standard is increasing
20 during the phase-in period?

21 A. It will be -- it will be going away and, yes, and
22 it will be increasing.

23 Q. Thank you very much. I appreciate your time and
24 your patience.

25 (THE DEPOSITION CONCLUDED AT 4:08 P.M.)

1 CHANGES AND SIGNATURE

2 PAGE LINE CHANGE REASON

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JOSE ALFREDO CERVANTES, Ph.D.

1 CAUSE NO. D-1-GN-11-003130
2 TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
3 FAIRNESS COALITION, ET)
4 AL.,)
5)
6 Plaintiffs,)
7)
8 VS.)
9)
10)
11)
12 EDGEWOOD INDEPENDENT)
13 SCHOOL DISTRICT, ET AL.,)
14 (CONSOLIDATED)) TRAVIS COUNTY, TEXAS
15)
16 Plaintiffs,)
17)
18)
19 VS.)
20)
21)
22)
23 ROBERT SCOTT, IN HIS)
24 OFFICIAL CAPACITY AS)
25 COMMISSIONER OF EDUCATION,)
ET AL.,)
Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF
HENRY D. CHAMBERS, JR.
AUGUST 15, 2012

ORAL DEPOSITION OF HENRY D. CHAMBERS, JR., produced
as a witness at the instance of the Plaintiffs Texas
Taxpayer & Student Fairness Coalition, and duly sworn, was
taken in the above-styled and numbered cause on Wednesday,
August 15, 2012, from 9:12 a.m. to 8:55 p.m., before
Tamara K. Chapman, CSR in and for the State of Texas,
reported by machine shorthand, at the offices of Gray &
Becker, P.C., 900 West Avenue, Austin, Texas, pursuant to the
Texas Rules of Civil Procedure and the provisions stated
on the record or attached hereto.

Job No. 51383

PREVIOUSLY MARKED EXHIBITS

Exhibit 102..... 201
Texas Education Agency - 2012-2013
Minimum Salary Schedule
(No Bates - 2 pages)

Exhibit 143..... 394
Section 21.402 of the Texas Education
Code
(No Bates - 5 pages)
Exhibit 151..... 394
Section 21.213 of the Texas Education
Code
(No Bates - 2 pages)

HENRY D. CHAMBERS, JR.,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. GRAY:

Q. Would you state your name, please, sir.

A. I go by H.D. Chambers. Officially, it's Henry
D. Chambers, Jr. I go by H.D.

Q. Mr. Chambers, will you tell the Court what is
your current employment?

A. Superintendent of schools for the Alief
Independent School District.

Q. And for how long have you been superintendent of
schools for the Alief Independent School District?

A. Approximately a year and a half. I began in
April of 2011.

Q. If you will, walk me through briefly your
educational background and that qualifies you to be a
superintendent of the public schools in Texas, and then
walk me through your employment background from your first
employment in education through today being superintendent
of Alief.

A. Graduated high school from Bridge City High
School. Attended Alvin Community College, then Lamar
University, where I received by bachelor's degree in
education with a history and physical education minor.

Then went to Sam Houston State, earned my master's degree
in education. I attended Stephen F. Austin, earned my
superintendent certification. And I earned that in 1999.
And so that's the credentials in which I learned to hold
this position.

My professional background, I began as a high
school teacher and coach at Eisenhower High School in the
Aldine Independent School District. Spent four years
doing that. Spent seven years after that in

Cypress-Fairbanks ISD as a campus administrator, as well
as a high school principal. And then another seven years
in Cypress-Fairbanks in central administration.

And then in 2006, at the end of the 14 years in
Cy-Fair, in 2006 I was named superintendent of schools of
the Stafford Municipal School District, which is in Fort
Bend County, southwest part of the greater Houston area,
and served as superintendent for Stafford for right at
five years, about a month less than five years. And then
in April of 2011, as I mentioned, I was named

superintendent of the Alief Independent School District.
Q. If you will, tell me about Alief Independent
School District. And by that, I mean tell me your ADA,
the breakdown of your -- the population, student
population, the community of Alief. Just kind of give --
give the Court a waiver of what we're dealing with as far

as Alief goes in this case.

A. Alief -- Alief is a -- it's on the west side of
Houston. It's evolved into an urban school district. We
have approximately 45,500 students. We have an ADA at
around 41,500. But in terms of enrollment, it's 45,500.
The student population is extremely diverse. We have 83
percent that are economically disadvantaged based on free
and reduced lunch. We have 36 -- a little over 36 percent
of our students are Limited English Proficient, LEP,
students. The demographic breakdown, 50 percent Hispanic,
32 percent African-American. Those two populations have
really swapped in the last decade. It used to be just the
opposite. Very mobile community of almost 40 percent of
our students -- we have a 40 percent mobility. The reason
for that is we have 55,000 units -- individual units of
apartment complex -- of apartments in our -- in our school
district. So we're a very densely populated school
district.

Q. How many different languages are spoken within --
by the student population within the Alief Independent
School District?

A. At the end of the 2011-2012 school year, we had
approximately 82 different languages that we identified
through our Limited English Proficient department program.

Q. And you have a -- a significant Hispanic

1 population, a significant African-American population, a
2 significant Anglo population. What are some of the other
3 populations that are -- represent the makeup of the
4 student body?

5 A. The -- the more challenging of those student
6 populations -- obviously the two pieces of information
7 that matter, as it relates to educating students, are
8 economically disadvantaged percentages as well as our
9 limited English proficient population. Those two issues
10 have a significant impact on -- on students.

11 As an example, we have right at a little less --
12 and it fluctuates literally from week to week, but it
13 fluctuates. We have a large influx of refugee students
14 from Burma, as an example. We have Burmese refugee
15 students. And those students come to us at all ages.

16 They come to us at three and four years old up to 16, 17
17 and 18-year-old students. And -- and those students
18 are -- because they are here rightfully so through
19 agreements with the State Department, they're housed in
20 our school district and we provide an education for them.

21 Now, I could -- it doesn't -- it's probably not
22 surprising that that's a challenging student population,
23 because many of these students come to us -- our first
24 challenge is not teaching them in terms of content and
25 curriculum. Our first challenge with those students is

1 helping them understand how to work in a school
2 environment, how to -- you know, how to sit at a table
3 with other students. Some of them are very rarely sitting
4 at the table.

5 And so that -- that part of our population, while
6 it's only a thousand students, take a tremendous amount of
7 time and a different mindset than what it might take if
8 you're -- if you're dealing with students who are
9 coming -- they may be economically disadvantaged students
10 but they come to us a little more prepared than even these
11 Burmese refugee students. That's an example.

12 Q. What percent of your students -- and you may have
13 told me this and I may have missed it, but what percentage
14 of your students are English learning students?

15 A. Well, the Limited English Proficient, 40 percent
16 of our students.

17 Q. And for -- do you know what the state average is
18 for those groups that are Limited English Proficient?

19 A. The -- across the state, it's been averaging
20 anywhere from 13 to 15 percent, somewhere in there. So
21 it's around 12.9 to 15, if I remember correctly.

22 Q. So you were -- Alief is approximately three times
23 the state average on Limited English Proficient students?

24 MR. MYERS: Objection, form.

25 A. That's correct.

1 Q. (BY MR. GRAY) What challenges are unique to
2 districts such as Alief with the 83 percent poverty and
3 with the 40 percent or so student population that is
4 Limited English Proficient, what challenges, unique
5 challenges, does that present for districts such as Alief
6 to educate those kids?

7 A. Well, the -- the first challenge -- there are
8 several. The first is the ability to -- to train and to
9 have teachers, adults be able to communicate and to
10 address those students.

11 For example, economically disadvantaged students,
12 the challenges they typically bring to the school systems,
13 there's a -- they have a lack of experience. They have a
14 lack of exposure to things that other students would have.
15 They have a lack -- their ability to retain knowledge is
16 more difficult. Their ability to learn complex things.
17 In other words, in kindergarten, for example, associating
18 the alphabet, beginning to do things like that. Those are
19 people intensive. And so the challenge we have with that
20 student population is having enough adults to help
21 overcome those types of challenges.

22 With our Limited English Proficient it's finding
23 enough teachers who speak the various languages or adults
24 who speak the various languages that we have in our
25 student population in order to be able to communicate with

1 those students. Those students require a greater amount
2 of individualized, whether it's one-on-one time with an
3 adult or small group settings, the -- a typical classroom
4 where you have 22 to 23 to 24 students is going to be
5 much -- it's going to be much more difficult to help
6 that -- those challenging students than it is than if you
7 have them in smaller group settings.

8 So the fact that they come to us being more
9 challenging requires us to put -- to intensify our efforts
10 with -- with additional resources. In some cases it's
11 people. In some cases it's programs. But it's just a
12 more intense diversion of our resources to that
13 population.

14 Q. The -- can Alief -- or can a district that has 83
15 percent poverty and 40 percent Limited English Proficient,
16 in your opinion, can a district such as Alief succeed in
17 educating those kids to the state standard if it has the
18 resources necessary?

19 A. In my opinion, if there are resources available,
20 I believe that -- that we could.

21 Q. And is there anything about these kids that
22 just -- that you're discussing from Alief that just says
23 they can't be educated no matter what, so let's give up on
24 them and ship them away?

25 A. Absolutely not.

Q. The -- does Alief currently have sufficient resources -- and let's talk people first, bilingual teachers, just regular education teachers. Does Alief currently have sufficient teachers to meet the needs of that population?

A. At this time, we do not, in my opinion, no.

Q. The -- why is it -- and you've already touched on this, but be a little bit more expansive. Why is it that the population with 83 percent poverty and 40 percent Limited English Proficient, why does that population need more one-on-one or more small group attention from teachers or aides?

A. Well, the -- as it relates to cognitive learning, whenever a student arrives in our classroom, regardless of their age, when they arrive and they're behind in some aspect of education, whether it's a language barrier or whether it's an economic barrier, in order for -- in order for the school districts -- for Alief, in particular, in order for us to begin preparing that student to meet the level of expectation the State has, whether it's through a standardized test or another form of criteria and reference testing, there is only so much that can happen in the regular classroom, during the regular school day, during the regular school year. "Regular" being defined as a typical eight-hour school day, 177 -- or 180-day

they on grade level, or do they need catch-up work from Day 1?

A. Well, the economically disadvantaged population needs catch-up from day one. Approximately -- not all 83 percent of economically disadvantaged students come to us needing to play catch-up. But on average in our pre-K program, every one of those students, 100 percent of those students, the point that they're in a pre-K program is indicative that they have to -- we have to play catch-up, if you will, to get them to the kindergarten level.

Q. And explain to the Court why pre-K programs for that population are important?

A. Oh, the ability for -- again, going back to the cognitive learning, the way in which the young brain operates at three, four years old, it's critical for us to have those students who are coming from backgrounds that perhaps they were not provided the academic experiences that other children may be coming from, from more -- you know, more affluent or potentially better prepared children. Ages three and four, four-year-old being the pre-K age, we can -- if we can get those children at that age, and even if we have to play catch-up, if you will, it's easier for us to do that and prepare them for kindergarten as opposed to us taking them when they're five years old when we get them.

school year.

So in order to provide that student population and help them either catch up with where they need to be or to even maintain where they should be, we have to provide additional opportunities for learning. So whether those additional opportunities for learning happen after school, within a smaller -- again, one-on-one or in a small group setting, or if they happen on the weekends, or even more extensively they happen in the summer, so we continue through the summer, those are the types of -- and I refer to it as intense, but those are much more intense. They're more costly, they're more expensive, they're more resource intensive.

And that is what that student population, both economically disadvantaged and your LEP and even your mobile student population, that's the challenges that they bring to us. In order for us to continue trying to meet whatever is expected of us, again, whether it's a test or some form of assessment, it's just not enough for it to just happen in the classroom.

Q. The population that Alief is educating, the student population that Alief is educating, are they arriving at kindergarten or pre-K on grade level? When they walk into your door, does the 83 percent poverty and the 40 percent Limited English Proficient students, are

And there's a big difference between educating a four-year-old and a five-year-old. I know it may not seem like it, but there is a difference. And for those students who come to us from economically disadvantaged backgrounds or language barrier background, it's imperative that we get them as quickly as we can. Because the education that they need, they're not receiving outside of the pre-K program.

Q. If you're not -- unable to catch one of these students that needs pre-K or early catch-up work, so to speak, what is the long-term effect with that student? Do they ever get caught up?

MR. MYERS: Objection; form.

A. I mean, there are those that would catch up. The challenges, the odds of a student who we do not -- you know, who do not receive pre-K program -- pre-K services are greatly -- the odds of them catching up or being successful obviously decrease if we do not have a successful pre-K program.

Q. (BY MR. GRAY) And to what degree do you think they decrease if you don't have a successful or a meaningful pre-K program?

A. It's significant. I don't have a percentage in front of me.

Q. Now, you were superintendent of Alief when the

1 legislature enacted the most recent standard for what it
2 expects school districts to produce as far as college
3 ready and career ready graduates, correct?

4 A. Yes.

5 Q. And you have been in education for?

6 A. 27 years.

7 Q. 27 years. In the 27 years you have been in
8 education, is the current state standard that the State
9 has recently adopted, is it the most rigorous and
10 demanding standard that you have ever seen demanded of
11 school districts such as Alief?

12 A. Absolutely, yes.

13 Q. And do you think the standard of having the
14 graduates of Alief and all public schools being college
15 and career ready is, in fact, an appropriate standard for
16 the State to demand of school districts?

17 A. I do.

18 Q. Simultaneously with the State enacting this
19 most -- the new rigorous standard that we've just
20 articulated, did the State simultaneously cut school
21 district -- revenue for school districts?

22 A. They did.

23 Q. And I think the record is already clear that some
24 \$5 billion was cut?

25 A. (Witness nods.)

1 Q. Did Alief participate in those cuts?

2 A. Unwillingly, yes, we did.

3 Q. How much of cuts in Alief's budget did Alief have
4 to absorb when the State cut \$5 billion out of public
5 education?

6 A. Over the binding -- the '11-'12 and '12-'13
7 school year, \$22 million.

8 Q. And the \$22 million that was cut, first, Alief
9 currently has a maintenance and operation tax rate of how
10 much?

11 A. \$1.12 and a half per hundred dollars.

12 Q. So you are -- Alief is within four and a half
13 cents of the maximum tax rate allowed by law, correct?

14 A. That's correct.

15 Q. The -- for each penny of additional tax that
16 Alief taxes, how much money does that raise in rough
17 numbers?

18 A. Slightly over \$1 million per penny.

19 Q. So if Alief was to pass a -- obviously, Alief has
20 already passed a TRE, because you're at \$1.12 and a half,
21 correct?

22 A. That's correct.

23 Q. If Alief was to pass a second TRE and go to
24 \$1.17, that additional 4.5 cents of tax effort would
25 generate about \$4.5 million?

1 MR. MYERS: Objection; form.

2 A. It would be approximately 4.5 million.

3 Q. (BY MR. GRAY) And did you say that the budget
4 cuts that Alief was -- was forced upon Alief when the
5 legislature cut the public education budget was \$22.4
6 million?

7 A. Yes, sir.

8 Q. So if Alief was able to -- or did go to the
9 absolute maximum tax rate, it would only make up 4.5
10 million of the 22.4 million cut?

11 MR. MYERS: Objection; form.

12 A. That -- that's correct. It would -- we would
13 still be approximately \$18 million in -- in reduced
14 revenue for -- for the binding.

15 Q. (BY MR. GRAY) Is there -- as we sit here today,
16 is there anything that Alief and the Alief taxpayers could
17 do to make up the \$22.4 million that the State forced upon
18 Alief as a budget cut?

19 MR. MYERS: Objection; form.

20 A. In terms of additional revenue, none that I'm
21 aware of. That would be it.

22 Q. (BY MR. GRAY) Now, before Alief had to cut its
23 budget \$22.4 million, was Alief able to prepare -- to meet
24 the new state standard and have your graduates, Alief's
25 graduates, be college ready and career ready, were y'all

1 able to do that before you had these budget cuts forced on
2 you?

3 A. In my opinion, no. No.

4 Q. And the effect of these budget cuts, what effect
5 does that have on your ability to make progress and to
6 have your graduates be college and career ready, can you
7 do it as we sit here today?

8 A. In my opinion, no. The impact that it has is
9 it's forced us to only allocate our resources into
10 specific areas as it relates to the way in which we're
11 measured, which are testing.

12 Q. If you will, walk me through, and more
13 importantly, walk Judge Dietz through -- what did Alief
14 have to do when it was -- had this \$22.4 million budget
15 cut forced upon it. Walk us through the cuts that that
16 meant Alief had to do as far as how do you make up that
17 money or what did you cut in order to avoid having to
18 spend that money.

19 MR. MYERS: Objection; form.

20 A. We, like most districts, evaluated our entire
21 budget, came to the conclusion that in many areas in which
22 we first looked could we scrub the budget, could we reduce
23 expenditures in these areas. We had already reduced them
24 to a point where we couldn't reduce them any more prior to
25 this cut. So we had to begin looking at staffing. So

1 some of the specific things we did was we reduced our
2 overall staff by 161 positions for the 2011-2012 school
3 year.

4 Q. (BY MR. GRAY) And how many of those positions
5 were actually teachers teaching in the classroom?

6 A. 99 were for classroom teaching positions.

7 Q. And of the 62 remaining positions, did that also
8 include teacher aides, counselors, other people that help
9 in the education process in the classroom?

10 A. It did. It did.

11 Q. What else did you have to cut besides these 161
12 education positions?

13 A. We reduced what we consider our supply accounts,
14 which are funding for each campus to purchase
15 instructional materials, administrative materials, things
16 that a principal would need to typically use to operate
17 his or her campus. We reduced that by 10 percent, which
18 was a total of \$6 million across the district.

19 In the same vein, we reduced material supplies
20 for many of our support departments, maintenance,
21 transportation, things of that nature. We did not buy as
22 many commodities and great amounts of stock that we used
23 to where we -- some cases we were not able to enjoy the
24 benefit of economy of scale for buying large quantities.
25 So those are the types of decisions that we had to make

1 financially.

2 The other one that was impactful was with
3 technology. Part of the cuts that we experienced from the
4 State, not only from the Foundation School Program cuts
5 but from the allotment cuts, the typical allotment cuts
6 that the agency had provided us were in technology.

7 Q. And what effect was -- what cuts in technology
8 did you have to make?

9 A. Well, we reduced our -- in terms of raw numbers
10 it was cut by \$1.6 million for Alief ISD. And those types
11 of cuts meant that we were not able to continue the
12 replacement cycle that we had in place for our -- for not
13 only our instructional lab, but technology infrastructure
14 across the district. So that -- for '11-'12 we abandoned
15 that for one year with the hopes that we were going to try
16 to build into our '12-'13 budget from local revenue, which
17 we're working on as we speak.

18 Q. What about -- did Alief have a pre-K program
19 prior to these budget cuts?

20 A. We did.

21 Q. And was the pre-K program that Alief had in place
22 a full-day or a half-day program prior to budget cuts?

23 A. It's a half day.

24 Q. Has it always been a half day?

25 A. To my knowledge, yes, sir.

1 Q. Did Alief have, prior to these budget cuts, a
2 program that you were describing earlier as to deal with
3 your Limited English Proficient and your poverty students
4 as far as more one-on-one time, time after school, time
5 during weekends, did Alief have a program to kind of bring
6 those kids along prior to these budget cuts?

7 MR. MYERS: Objection; form.

8 A. We had instructors in place, we had people,
9 positions, teaching positions in place that their focus
10 was working with -- whether individual students or small
11 group settings, as I mentioned earlier, we had them across
12 our school district. And many of those positions were a
13 part of that elimination -- part of that 161 positions
14 that were eliminated, many of those were eliminated
15 because they weren't true classroom teachers of record.
16 In other words, they didn't have a classroom of students.
17 They were support positions, helping teachers.

18 So those were -- a large part of those teaching
19 positions we did eliminate were in those areas.

20 Q. (BY MR. GRAY) And that program that I'm
21 describing, did you have a name that you put on that
22 program?

23 A. Well, we had two names. One was RTI, Response to
24 Intervention. Those are our Response to Intervention
25 teachers. Then we had our what we called Alief helping

1 teachers. But they both served the same purpose, and it
2 was to -- it was to once we identify those most
3 challenging students begin pulling them out and helping
4 them to the extent we can.

5 The other component that really impact- -- in
6 addition to technology that really impacted us was the cut
7 and the removal of what we -- what used to be called
8 Success Initiative, SSI funds. And those funds were
9 identified for -- again for us to provide the resources,
10 whether it's a teacher, whether it's extended time after
11 school, during the school -- or during the summer, those
12 were to help those students who did not perform well on
13 the -- what was the TAKS test in the past for our third
14 and eighth graders.

15 But it was used across all the grade levels for
16 students who do not meet the state standard of being
17 proficient. So those funds were removed as well.

18 Q. Let me ask you two questions about -- or I want
19 to explore two areas. The RTI, that stands for what?

20 A. Response to Intervention.

21 Q. And what program did Alief have in place prior to
22 the budget cuts, describe the Response to Intervention
23 program that Alief had in place prior to these budget
24 cuts.

25 A. It was -- the make-up of it was, as I mentioned,

1 teachers, and we had supervisory area, supervisory people
2 supervising. But what they did, they did several things.
3 One, Response to Intervention is a -- it's twofold. One,
4 it's to take students who may be struggling and who may or
5 may not qualify for special education services, and it's
6 to try and help identify their challenges, address their
7 challenges prior to those students ever being assessed for
8 special education services. So it's an attempt to do
9 that.

10 We also utilize those positions to help with the
11 students who may have -- special education may not be an
12 appropriate avenue; it may be another challenge, it may be
13 a language challenge, it may be other issues that are
14 going on in that student's life, that we would use to help
15 prepare them.

16 So they were in schools, we would -- prior to the
17 cuts, we had these instructors on every one of our
18 campuses, because every one of our campuses are very
19 similar.

20 I didn't mention this earlier when I was
21 describing the school district, but our economically
22 disadvantaged numbers are shared by most of our campuses.
23 We don't have individual pockets of wealth like some
24 districts might. Our high schools have a random draw, so
25 every student goes to a high school based on a random draw

1 and every one of our high schools look identical because
2 of that. We don't have feeder patterns.

3 Q. And Alief is universally poor --

4 A. Yes. So every one of our campuses required those
5 types of support positions for people. One way in which
6 we reacted to the cuts this year is we removed some of
7 those and put a larger student count on each one of those,
8 whether it's an RTI individual or one of our other helping
9 teachers.

10 So instead of having six students on one campus
11 that you dealt with all day long, you may now have 13
12 students across all three campuses that you had to go back
13 and forth. So that's kind of how we had to restructure
14 it.

15 Q. So by cutting P.T.I. teachers and doubling up the
16 work load of the existing teachers or that type of
17 approach, what effect does that have on the education
18 those kids are getting?

19 MR. MYERS: Objection; form.

20 A. Well, I believe it's going to have a detrimental
21 impact on many of them. I believe that the impact that
22 this will have as it relates to student performance, as it
23 relates to how students perform, how they interact with
24 peers, how they interact with their teacher, how they
25 perform in the classroom, and how we measure that

1 performance is going to be negatively impacted, not just
2 for this year. I think it's going to be a -- we may not
3 see the true impact of it for the next two to three to
4 four years if this remains in place.

5 Q. (BY MR. GRAY) It's going to get progressively
6 worse, I think you're saying?

7 A. In my opinion it has all the markings of getting
8 worse, yeah.

9 Q. The effect of cutting the 99 teachers and the 161
10 positions, what effect did that have on class size in
11 Alief?

12 A. Our -- it increased across the board. We applied
13 for more waivers this year in our kindergarten through
14 fourth grade than we've ever applied for to expand in some
15 classes the class size.

16 Q. And does class size, as an educational
17 professional, does class size make any difference?

18 A. Oh, sure. In my opinion it does.

19 Q. What difference does it make?

20 A. Well, I believe if your class size can be -- the
21 smaller the class size -- there are studies that are all
22 over the map on this. But class size makes a difference,
23 in my opinion, in the areas in which you have your more
24 challenging student populations. The smaller the class
25 size is for a classroom of students who come from

1 economically disadvantaged backgrounds or limited language
2 backgrounds, it's going to be much more significant for
3 those student populations than perhaps other student
4 populations that don't have those challenges.

5 That's where I believe that Alief has felt the
6 greatest impact, is because we have such a large number of
7 students that meet those two definition of challenged
8 students.

9 Q. Now, I want to go back to the discussion we had
10 started briefly before on -- I think it was the Student
11 Success Initiative, the SSI. Tell the Court what that
12 program consisted of prior to these budget cuts.

13 A. Well, it consisted of -- in Alief it consisted of
14 multiple after-school programs that took place for
15 students who do not -- who were not successful on their --
16 whatever assessment they took.

17 It included -- we had additional teachers that we
18 would -- in middle school, for example, we would teach
19 what we call trailer classes. So if I was a student and I
20 didn't do well in math and the campus identified me as a
21 student who is trending towards not doing well in math,
22 not only would I take my seventh or eighth grade math
23 class, but I would also take a class in addition to that
24 that was providing additional support during the school
25 day.

1 So we would have staff for those types of
2 courses. Those types of support staff that was helping
3 with that were eliminated as a part of our budget
4 reduction.

5 Q. So the program that was designed to help students
6 that were lagging behind get caught up and not get
7 progressively further and further behind, that program
8 essentially was -- went by the wayside with these budget
9 cuts?

10 A. Yeah, the actual funds to fund things like that,
11 the way Alief handled it was after-school -- in-school
12 trailer classes, as I had mentioned, and then we had some
13 extended summer school programs in helping prepare those
14 students for that assessment.

15 We did not eliminate 100 percent of them, but we
16 eliminated in the neighborhood of 60 to 70 percent of
17 them. So, yeah, we weren't able to fund every one of
18 those positions or those programs.

19 Q. And when you say you eliminated 60 or 70 percent,
20 are you talking about 60 or 70 percent of the teachers?

21 A. Yeah, of the adults. The money that was
22 allocated towards whatever it was that we were doing,
23 which included -- the vast majority of the money was in
24 teachers, yes. And there may have been some discretionary
25 budget that was budgeted for resources or materials that

1 supported the majority of those teachers.

2 Q. Of the Alief student population, what percent, or
3 however you want to describe it, of the kids were in one
4 form or fashion benefitting from the either RTI or the
5 Student Success Initiative prior to these cuts?

6 A. Oh, easily 60 to 65 percent of our students were
7 in some form or fashion receiving benefit from an RTI.
8 Not as great a number as with SSI, because we were really
9 targeting only those students who did poorly on the
10 assessment.

11 Q. So when the RTI is significantly cut and when the
12 Student Success Initiative is significantly cut due to
13 these budget cuts, what impact does that have on the 65
14 percent or so of the Alief student population that was
15 participating in benefitting from those programs?

16 A. I believe in a practical setting it's going to
17 have an impact immediately because they're obviously not
18 being able to be provided the resources that we felt in
19 our opinion needed to help either catch them up or
20 maintain or to even grow.

21 But as I mentioned earlier, I believe the impact
22 is going to be felt over the next two to four to five
23 years in how they perform, their actual performance.

24 Q. Now, the -- as we sit here today, the 99 teachers
25 that are gone, the 161 positions that are gone, the

1 material and supplies that are gone, the RTI intervention
2 program that's significantly wounded, I guess would be my
3 word, the Student Success Initiative that is significantly
4 wounded, does Alief have the ability financially to
5 resurrect these programs or these positions as we
6 currently sit here?

7 MR. MYERS: Objection; form.

8 A. At this time, we -- in our opinion we do not.

9 Q. (BY MR. GRAY) And without additional resources,
10 are these programs and these teacher positions just simply
11 gone?

12 A. At this time, that's correct.

13 Q. Let me shift gears a little bit with you. You
14 were superintendent at Stafford Municipal School District
15 for some five years, correct?

16 A. Yes, sir.

17 Q. And the data I have indicates that they have a
18 property wealth of somewhere close to 600,000 per WADA and
19 that Alief has a property wealth of approximately \$197,000
20 per WADA. I would characterize Stafford as a property
21 wealthy district, and I would characterize Alief as a
22 property poor district. Independent of my own personal
23 characterization, as having been a superintendent in both
24 those districts, tell the Court the things you could do at
25 Stafford because of resources that you simply cannot do at

1 Alief because of a lack of resources.

2 MR. MYERS: Objection; form.

3 A. There's several things that come to mind. One
4 thing that we were able to do in Stafford as a result of
5 the funding level was for taxpayers there was an optional
6 homestead exemption that was able to be offered to the
7 taxpayers, which in Alief, I could do that but it would be
8 extremely detrimental to our school district.

9 But as it relates to the school district it's --

10 Q. (BY MR. GRAY) Let me interrupt you right there.
11 Are you saying in Stafford they had the homeowners'
12 exemption and Alief does not?

13 A. That's correct. That's correct.

14 Q. Okay. Go ahead.

15 A. In Stafford, because of the way in which target
16 revenue is determined, our wealth per child or our target
17 revenue was higher and we were able to do some things that
18 even though we were a smaller district, we had -- Stafford
19 is approximately 3,100 students enrollment, 3,400 students
20 in terms of WADA. But we were able to offer some programs
21 that typically aren't offered in small districts.

22 One that I always discuss or talk about is we
23 were able to offer to a greater, larger percentage of our
24 student population an engineering academy, for example.
25 It was truly a science technology, engineering and

1 the standardized testing. The -- and I guess I'll start
2 with TAKS testing. The State has identified the commended
3 level as being the level that -- on TAKS that was
4 indicative of being college and/or career ready. How did
5 the twelfth graders in Alief do on the last TAKS test,
6 what percent were -- met the commended standard?

7 A. The last junior class that took the exit level,
8 so seniors --

9 Q. Yes.

10 A. Across -- on average, and I don't have -- I'm not
11 going to recall what they were by subject area, but on
12 average, for our exit level takers, our high school
13 seniors that took it as exit level, anywhere from 25 to 40
14 percent, somewhere in that -- in that area. Social
15 studies was higher than the other subject areas.

16 Q. So roughly anywhere -- if you say 25 to 40
17 percent of -- depending on subject matter, hit the
18 commended level. If I back that out, I'm saying anywhere
19 from 75 to 60 percent were deemed not to be college ready.
20 Is that a fair statement?

21 A. Based on that assessment it would be, yes.

22 Q. And, two, let me turn to the STAAR. First, is
23 it -- do you believe that the STAAR test is a more
24 rigorous test than the TAKS test?

25 A. I do.

1 Q. And y'all have only had one round of
2 end-of-course exams for ninth graders under STAAR,
3 correct?

4 A. Uh-huh.

5 Q. Tell --

6 A. Yes. Sorry.

7 Q. Tell the Court how Alief fared in the STAAR
8 end-of-course exams that were given, I guess, last year.

9 A. I don't have anything to compare it to other than
10 how the rest of the state did. We fared well. I guess I
11 would not -- not exceptional. In our Algebra I -- if you
12 take just the phase-in standards -- I don't know if that's
13 what you're asking -- but if you take a look at those
14 standards --

15 Q. Let me do it this way. The Level III the State
16 has identified under STAAR as the standard indicative of
17 college ready and/or career ready --

18 A. Uh-huh.

19 Q. -- how did -- roughly what's the range of scores
20 that Alief students were able to obtain as far as
21 Level III?

22 A. For Level III, anywhere from 18 percent to 30
23 percent, depending on the subject matter.

24 Q. And as far as Level II, the -- not the phase-in
25 standard but the final standard, what percentage roughly

1 are we looking at?

2 A. That was a little -- we performed a little bit
3 better there on the second year of the phase-in, so
4 anywhere from in some cases 40 -- 35 percent up to 45, 46
5 percent.

6 Q. So if I understood you correctly, or Level III
7 under STAAR, did you say 18 to what percent passed it?

8 A. Well, they scored it at the college ready level
9 anywhere from 18 percent to 30 percent. I'd have to --

10 Q. Okay. So roughly 82 percent to 70 percent were
11 deemed not college ready by the state standard on STAAR?

12 A. At this time, that's correct.

13 Q. Now, whether we look at 75 percent or so not
14 being deemed ready by the last round of TAKS testing --
15 being ready, and by that I mean being college ready and/or
16 career ready, according to the state standards -- or we
17 look at STAAR and -- with the determination as to the
18 ninth graders that took it, some 82 to 70 percent were not
19 deemed to be on a college-ready path, from the
20 superintendent of Alief's point of view.

21 What does that tell you as far as the work you
22 have to do and Alief has to do to get your kids college
23 and career ready?

24 A. Well, there needs to be a -- we're going to have
25 to obviously divert as much time, effort and resources as

1 we can to those areas in which we're struggling. And I'm
2 a -- I'm -- we're doing it as we speak. What -- I'm
3 concerned with the ability to provide the resources and to
4 provide the attention and energy, if you will, to those
5 areas.

6 Q. Is the \$22.4 million in cuts that Alief had to
7 undertake in its educational program, did those cuts help
8 or hurt Alief's ability to get your kids college and
9 career ready?

10 MR. MYERS: Objection; form.

11 A. In my opinion, we -- they're -- it's hurting.

12 Q. (BY MR. GRAY) And we've already established that
13 there's -- Alief has no ability to make up those cuts but
14 for the 4.5 cents additional in M&O tax rate. So if Alief
15 is -- has to absorb 18 million of those cuts ad infinitum,
16 so to speak, will Alief, in your judgment, ever get to the
17 point of being able to have even a majority of your
18 graduates being college and career ready, according to the
19 state standards?

20 MR. MYERS: Objection; form.

21 A. In my opinion, it would almost be impossible, in
22 my opinion.

23 Q. (BY MR. GRAY) Now, the -- Alief is a recognized
24 district --

25 A. Yes, sir.

1 Q. -- under the state rating system?

2 A. Yes, sir.

3 Q. And are you familiar with the study the
4 comptroller did called the FAST study, the study to
5 identify efficiencies in school districts?

6 A. I am.

7 Q. And are you familiar with the FAST study to the
8 point that it identified the most -- attempted to identify
9 using their own standards the most efficient and the least
10 efficient school districts?

11 A. Yes, I am.

12 Q. And that rating system rated districts based upon
13 gold stars, I believe. What is the highest rating you
14 could get as far as from the comptroller's point of view
15 identifying the most efficient district in the state, how
16 many stars would that district have?

17 A. Five, approximately.

18 Q. And from the comptroller's point of view on the
19 FAST study, how many stars of five did Alief get?

20 A. Four and a half. 4.5.

21 Q. So Alief was determined by the comptroller to be
22 one of the most efficient districts in the entire state,
23 correct?

24 A. Yes, that's correct.

25 Q. Do you know on the listing exactly where Alief

1 fell of the 1,024 districts, where the comptroller ranked
2 y'all?

3 A. Not compared to all 1,024. I know where we were
4 in our groups. In our group category, we were pretty
5 close to the top.

6 Q. Now -- and being determined to be one of the most
7 efficient districts in the state, first, from your
8 judgment, is Alief one of the most efficient districts in
9 the state, or are you at least making an effort to spend
10 taxpayer and state money wisely?

11 A. In my opinion, we -- by that -- by my definition
12 of being efficient and trying to allocate resources to
13 where they need to be, yes.

14 Q. And as we sit here today, is there any fat on the
15 bone, so to speak, any other areas that Alief can cut
16 without further hindering and hurting the educational
17 opportunities provided to the Alief students?

18 MR. MYERS: Objection; form.

19 A. There -- you know, there's no fat on the bone, if
20 you will. We have -- the amount of discretionary funding
21 that we do have, which is about 14 percent of our total
22 budget, because 86 percent is people, it's staffing, we
23 have reduced that discretionary funding down to levels in
24 which if we start cutting, we will have to -- it will
25 impact the ability to provide transportation, to meet the

1 laws, the requirements of transportation.

2 It -- we wouldn't be able to -- you know, thing
3 that we have no control over, such as insurance cost
4 utility costs, things of that nature, those types of --
5 that type of fat has been cut to the extent where we're --
6 we have no flexibility when we budget.

7 And so I am very confident in saying that that
8 part of it has been -- that part of our budget has been
9 dealt with to the extent we can. In order to start making
10 additional cuts, it will start -- if we start making
11 additional cuts in addition to what we've already done
12 into the remaining 85 to 86 percent of our budget, I would
13 not define that as fat.

14 Q. (BY MR. GRAY) Can Alief, as one of the most
15 efficient districts in the state, can it get to the point
16 that even 50 percent of your graduates are college and
17 career ready as defined by the State without significant
18 additional resources?

19 MR. MYERS: Objection; form.

20 A. Based on my -- based on historical evidence in
21 how students that we are educating right now perform and
22 what it takes to increase that performance, I would say
23 it's probably a fair -- 50 percent is a fair number, that
24 based -- unless we get additional resources we may be able
25 to utilize the resources we have right now to that -- it's

1 going to be difficult to get much higher than that, in my
2 opinion.

3 Q. (BY MR. GRAY) And the programs and the teaching
4 positions that were -- Alief cut because it had to absorb
5 \$22.4 million in cuts, when you cut the Student Success
6 Initiative, when you cut the Response to Intervention,
7 when you cut 99 teachers, when you cut aides, do all those
8 things translate at the end of the day into cutting
9 education for kids?

10 MR. MYERS: Objection; form.

11 A. It cuts educational opportunities for students.
12 It also cuts educational opportunities for the
13 professionals, for teachers to be able to, I guess,
14 accurately and efficiently and provide a quality education
15 for each one of those students, yes.

16 Q. (BY MR. GRAY) If Alief was to have an additional
17 \$2,000 per WADA, being the efficient district that you are
18 as defined by the State, how would you, as the
19 superintendent of Alief, recommend that that \$2,000 be
20 spent and how -- tell Judge Dietz how that would make an
21 educational difference to the kids attending Alief public
22 schools.

23 A. There's -- there's several areas I would focus
24 attention on if I had additional resources, financial
25 resources. One would be early childhood. We -- I would

1 our resources to the best of our ability to do what's
2 expected of us. I'm greatly concerned that we're not --
3 that we're not -- that we're -- in an effort to do that,
4 there are other areas that are just as critical, if not
5 more critical, to the education of a student that we're
6 having to ignore, that's being ignored, whether it's being
7 cut totally from our school district or whether it's being
8 minimized to the point where it's not of any value. And
9 it's almost as though we have it in place but there's
10 really not significant support being given to us.

11 Q. (BY MR. GRAY) And give us a flavor of what it is
12 you're referring to of those types of programs that are
13 either completely nonexistent or are cut to the point that
14 they're meaningless. What are we talking about?

15 A. I think that -- as I mentioned earlier, I think
16 workforce development programs through career and
17 technology education. And I don't mean our -- what some
18 people think of the old industrial tech courses. I'm
19 talking about courses that provide meaningful -- or
20 potential certificate certification programs for students
21 who may or may not be engaged and wanting to go to college
22 as part of their post-secondary plans.

23 School districts, in many cases -- and there are
24 some, ourselves included, who are trying to divert some
25 resources to creating some certificate programs,

1 certification programs, partnering with local community
2 colleges. But that is an area where I believe it would
3 be -- in my opinion, is being ignored. And we're being
4 forced to ignore it because we don't have -- you know, our
5 attention is being diverted to tests, to standardized
6 tests and the accountability system that goes along with
7 that, and the resources available, or the lack of that are
8 not available to support those programs. That's one
9 example that I'm talking about.

10 Q. As we sit here today, do you, as superintendent
11 of Alief, feel that you have any discretion as far as
12 coming up with programs and new opportunities that would
13 be unique to Alief, or are you having to spend all your
14 resources merely attempting to meet state mandates and
15 state requirements?

16 A. I would say almost all -- not all, but almost all
17 of our attention is right now on how do we meet state
18 standards.

19 Q. There has been earlier testimony in this case
20 from the superintendent of Anton, Jim Knight, to the
21 effect that wealthy districts have the ability to use I&S
22 funds to, in essence, supplement their M&O budgets,
23 whether it be by building a library and then getting user
24 fees that go into the M&O fund or whether it be recycling
25 their bus fleet quicker and selling the buses to other

1 districts and then putting the money into M&O. Does Alief
2 have the ability to do -- to utilize I&S funds for M&O
3 purposes at all?

4 MR. MYERS: Objection; form.

5 A. We do not. And the reason we do -- no, we do
6 not.

7 Q. (BY MR. GRAY) And why not?

8 A. The -- well, the -- districts that are able to do
9 that do that because the tax rate on your I&S, the
10 pennies that are associated with your tax rate on your I&S
11 are not subject to recapture, your wealthy districts it's
12 not subject to recapture. So the penny that is generated
13 for the I&S tax rate by the local taxpayer stays in that
14 district. And so that's the main reason they do that,
15 it's easier to -- you won't have to raise your M&O tax
16 rate, which is subject to recapture by the State of Texas.

17 Q. And to the extent that -- well, you're aware that
18 property wealthy districts are doing that type of --

19 A. Sure.

20 Q. -- program?

21 A. Sure.

22 Q. Even though you are not -- Alief is not a
23 property wealthy district, do you begrudge the wealthy
24 districts for their having that ability to do that?

25 A. No. As a matter of fact, we considered it when I

1 was superintendent of Stafford. We didn't do it, but it
2 was available to us. And I would -- if I could do it, I
3 would do it in Alief.

4 Q. Now, the point being, though, that that's just a
5 difference in the system that allows wealthy districts
6 opportunities that poor districts are not afforded.

7 A. It's one -- it's one advantage, yes.

8 Q. One advantage.

9 Now, the -- are you familiar with the weights,
10 and specifically the bilingual weight and the comp ed
11 weight, as far as whether or not they accurately reflect
12 the costs, the real costs the districts such as Alief face
13 in educating comp ed and bilingual kids?

14 A. I'm familiar with the weight system. I may not
15 be familiar with that exact weight for each --

16 Q. And I'm not going to ask you -- this is not going
17 to be a -- we'll have experts dealing with the weights.

18 But as a -- as a superintendent who is actually on the
19 ground educating a significantly large population of comp
20 ed and bilingual kids, do -- in your opinion, do the
21 weights reflect the real cost? In other words, is the
22 amount of money you get pursuant to the weights for comp
23 ed and bilingual, is that reflective of what it really
24 costs to educate comp ed and bilingual kids?

25 A. No, sir.

MR. MYERS: Objection; form.

A. No, sir. It is not in my opinion, no.

Q. (BY MR. GRAY) In your opinion, is it even close?

A. It's not even close, particularly in comp ed and bilingual.

Q. Next I want to ask you about your fund balance. Does Alief maintain a fund balance?

A. We do.

Q. And how much do you currently have in the fund balance?

A. At the end of the -- 2011-'12 audit, we had \$87.7 million in our fund balance.

Q. And what does that translate as far as how many months of operations would that cover?

A. Slightly less than three months. Right at three months.

Q. And why is it that Alief maintains that size fund balance?

A. We maintain it for the dips that -- well, there's several reasons we maintain it. The most significant reason is we maintain it for the dips in which our account balance gets drawn down.

For example, when the State makes their state aid payment to Alief sometime in September, we will utilize fund balance to maintain our cash flow from month to month

while that -- while waiting on that state aid payment.

Same thing happens in November, December, January, moving towards the end of January waiting on the tax collections to come in. So while the audit reflects an 87 million dollar fund balance, this is through all districts, but in Alief it's 87.7 million, there are times during the calendar year and the fiscal year in which that number is drawn down to around anywhere from 12- to \$15 million. But waiting on either state aid payment or waiting on tax collection. So that's the primary reason why it's important for us to maintain that.

The other reasons are as practical, as well, is if we do have unforeseen expenditure challenges that we don't have existing M&O funds for, fund balance is there for us to consider, you know, utilizing. But in my professional opinion, for our district, for our budget, for our -- the environment in which we are in, 87 million is a good, healthy number that I think is reflective of being pretty sound financially to encounter those -- those valleys.

Q. If you didn't maintain that kind of fund balance when you had those valleys from your state money and tax money not coming in, but your payroll continuing, your light bills continuing, what would Alief have to do to keep the doors open?

MR. MYERS: Objection; form.

A. I could speak to that because I haven't done it in Alief but I've done it in the past. Districts, in some cases, have to take out various types of loans. The most common is a tax anticipatory note, a TAN. So they may have to borrow -- you know, if \$5 million is the number that it takes to maintain your cash flow, you have to borrow that and then pay interest on that. If we were to ever be in that environment, that's what we would have to consider.

Q. (BY MR. GRAY) The net effect of when you have to borrow money to keep the doors open, you're paying interest and your actual costs are going on?

A. That is correct. Because the interest is being paid out of your general fund. So that's monies that you could be utilizing for something else that are being diverted that have to pay interest on that note that you borrowed.

Q. Alief's I&S tax rate is, I believe, 21 and a half cents; is that correct?

A. 20.5.

Q. 20.5.

A. Yes, sir.

Q. Okay. The -- and I believe the State equalizes up to 3195 the first 29 cents. So Alief has another 8 and

a half cents of bond funds that would be equalized, correct?

A. That's correct.

Q. Thereafter, Alief would have 21 cents of unequalized funds that would only raise money based upon the local property tax base?

A. That's correct.

Q. Alief has a -- right at \$197,000 per WADA in property tax base, correct?

A. That's correct.

Q. So each penny of I&S tax above 29 cents is going to raise approximately \$197 per WADA, something like that?

A. Yes, sir.

Q. The -- with that kind of limited return on your I&S tax, does Alief have any ability -- other than the 8 and a half cents left on I&S that's equalized, does Alief have any ability to raise any kind of meaningful dollars for additional buildings or facilities or renovations or anything of that sort?

MR. MYERS: Objection; form.

A. Not under the two scenarios you've described. The only way we would be able to raise meaningful monies for capital improvements for these facilities would be through the issuance of a bond referendum.

Q. (BY MR. GRAY) And that could be done for -- 8

1 A. Yeah, very simple. In my opinion, based on the
2 data we have, they -- they keep them in school, they --
3 they also increased the likelihood of graduating, and
4 they, without question in Alief ISD, they increased their
5 performance in the classroom based on those subject areas
6 in which we assessed them.

7 Q. Last question. As we sit here today, as the
8 superintendent of Alief ISD that has been recognized by
9 the State and has been determined to be one of the most
10 efficient districts in the state, can you tell those of us
11 sitting around the table and Judge Dietz, who will be
12 reading this deposition at some point in time, hopefully,
13 that Alief can meet the state standard of having your
14 graduates being college ready and/or career ready for
15 greater than half, just greater than 50 percent, can y'all
16 meet that standard without significant additional
17 resources?

18 A. I don't believe, in my opinion, we're going to be
19 able to. You know, I look at -- I hope I'm answering
20 this -- I hope y'all understand the answer to this -- the
21 response. Based on the rules that have been put in place,
22 based on student performance, what's expected of us by the
23 State of Texas in student performance, which has been
24 defined since 2003, TAKS is what that definition was.
25 That's how we're going to measure how well you do or how

1 well your campus is doing, how well your school district
2 is doing.

3 And then over the last decade there have been
4 other components included to determine how we're spending
5 our money. Are we spending taxpayer money wisely. So
6 there's the FIRST rating, there's the FAST rating, which
7 you asked about earlier. There is the comptroller's gold
8 circle award based on their definition of are you spending
9 your money efficiently.

10 In Alief, based on the state standards that have
11 been put in place, we're a recognized district, meaning we
12 have -- for the most part we have met and exceeded the
13 standards in which the State put in place for student
14 performance. We're at four and a half stars, which by
15 definition from the State of Texas is fairly efficient,
16 meaning we spend our money as wisely as we can and our
17 students perform well.

18 We received the gold award -- or the gold circle
19 award from the comptroller which has to do with
20 transparency, do you tell your taxpayers how you spend
21 your money. Again, four and a half stars.

22 So with all that, I believe that we've done
23 everything the State has asked to do and the State, by
24 their own rules, are saying, yes, you have based on what I
25 described.

1 In my opinion, with all that being said, the
2 standards that are in place now with the reductions that
3 have been imposed upon us for this biennium, we're still
4 not where we need to be. Alief is still doing -- I mean,
5 we did everything that was expected of us, and I don't
6 believe we're still going to be able to meet not only the
7 college readiness standards that are going to be reflected
8 in STAAR and the increased standard -- or and that, but
9 we're not going to be able to meet the workforce readiness
10 standards and expectations that are in place, as I talked
11 about earlier, with us having to divert resources, time
12 and attention from those types of programs and moving them
13 towards what we're being measured on.

14 Long-winded answer, but no, that part of it is
15 where I believe districts, Alief in particular, are not
16 going to be able to meet those standards because of the
17 limited resources and in some cases the continuing
18 reduction in those resources.

19 Q. And despite being as efficient as Alief is,
20 without significant additional resources, Alief simply is
21 not going to be able to prepare its graduates to be either
22 college ready and/or career ready, correct?

23 MR. MYERS: Objection; form.

24 A. That's correct.

25 Q. (BY MR. GRAY) Thank you, sir. I've got no

1 further questions.

2 MR. GRAY: Why don't we take a short break.

3 (Break.)

4 EXAMINATION

5 BY MS. BONO:

6 Q. Superintendent Chambers, we met briefly off the
7 record, but on the record, my name is Marisa Bono. I'm an
8 attorney for MALDEF, and I represent a number of low
9 wealth school districts in this case, Edgewood, McAllen
10 and San Benito, La Feria, Edgewood. And I also represent
11 some parents and students from the Pasadena and Amarillo
12 school districts.

13 Rick already covered a lot of the questions that
14 I had for you this morning, but I might circle back in a
15 little bit more detail. I might be hopping around a
16 little bit, if you'll indulge me.

17 A. That's fine.

18 Q. You mentioned earlier that the percentage of low
19 income students in your district is 83 percent?

20 A. Yes, ma'am.

21 Q. I know you only came on as superintendent in
22 Alief in 2011, but do you know whether or not that
23 percentage has increased or decreased over the past five
24 years?

25 A. It has increased -- and I can go back ten years.

1 But it has increased. In 2002-2003 it was 59 percent, and
2 it has incrementally increased each year since then. In
3 2010-2011 it was 78 percent. In 2011-2012 it was 83
4 percent.

5 Q. So would you describe that growth as -- it's more
6 than steady, it's speeding up?

7 A. It's increasing, yes.

8 Q. And you also mentioned that the percentage of LEP
9 students in your district currently is 40 percent?

10 A. I'm sorry. It's 36 percent.

11 Q. 36 percent.

12 A. 40 percent is mobility, our mobility rate. 36 is
13 our LEP population.

14 Q. And what about that population? Has it been
15 increasing over the past years as well?

16 A. It has.

17 Q. Can you describe the growth?

18 A. Sure. In 2002-2003, it was right at 17 percent,
19 and it has grown at about 1 and a half percent a year.
20 The first five years, from 2002 through 2006-2007, it was
21 about a percent a year. The last five years it has
22 increased a little less than 2 percent a year.

23 Q. And finally the Hispanic population, your
24 testimony earlier was that the current percentage is 50?

25 A. Yes, ma'am.

1 Q. And can you describe the growth in that
2 population --

3 A. Sure.

4 Q. -- in the district over the past five to ten
5 years?

6 A. In the last ten years it's grown by 12 percentage
7 points. It was 38 percent in 2002-2003, so it has
8 grown -- that is our fastest growing population.

9 Q. Thank you.

10 (Exhibit 400 was marked.)

11 Q. (BY MS. BONO) I'm handing you what we've marked
12 as Exhibit No. 400. Do you recognize this as a true copy
13 of the 2010-2011 AEIS report for Alief ISD?

14 A. I do.

15 Q. And this exhibit includes the performance of
16 your students on the TAKS for Grades 3 through 11,
17 correct?

18 A. Yes, correct.

19 Q. The TAKS test did not test all subjects and all
20 grade levels, correct?

21 A. That's correct.

22 Q. But for the subjects that were tested, the TAKS
23 was meant to test the knowledge of the state curriculum,
24 TAKS; is that right?

25 A. That is correct.

1 Q. And so you would want your students to achieve
2 the TAKS standards in all subjects at all grade levels, is
3 that right?

4 A. That's correct.

5 Q. So, in your opinion, would it be appropriate to
6 look at the sum of all grades tested under the All Tests
7 standards in order to gauge student learning against the
8 met standard?

9 A. I would agree to that.

10 Q. Let's turn to Page 4, Section 1. It appears that
11 the sum of all grades tested for the district in 2010 was
12 72 percent; is that right?

13 A. That's correct.

14 Q. And in 2011 it was 73 percent?

15 A. That is correct.

16 Q. So even after roughly eight years of testing,
17 over a quarter of your students failed to meet the minimum
18 standards set by the state on all TAKS tests, correct?

19 A. On all tests, that's correct.

20 Q. And the sum of all grade tests for low income
21 students in 2010 was 70 percent, correct?

22 A. That is correct.

23 Q. And it was 71 percent in 2011?

24 A. Correct.

25 Q. For LEP students it was 63 percent in 2010?

1 A. That's correct.

2 Q. Then 64 percent in 2011?

3 A. That's correct.

4 Q. And you're aware that under current state law
5 students are expected to graduate college ready, right?

6 A. That is correct.

7 Q. Earlier you testified that the rigor of testing
8 from TAKS to STAAR has increased?

9 A. I did.

10 Q. You also discussed the recent performance of your
11 students on the STAAR test, at least your ninth grade
12 students --

13 A. Yes.

14 Q. -- with Mr. Gray. Do you have any information
15 about performance based on this aggregated data; for
16 example, the performance of your low income students or
17 your LEP students?

18 A. I do.

19 Q. Can you describe their performance on that test
20 by itself or as it related to the district-wide
21 performance?

22 A. The district-wide performance, I do not recall
23 individual subject area tests other than both our
24 economically disadvantaged student population and our
25 Limited English Proficient population were lower than all

1 other subpopulations, for all students as well as the
2 breakdown by the city.

3 As it relates to all -- for all economically
4 disadvantaged students, we -- I'm trying to recall. I
5 need go back and look at that before I respond to that. I
6 want to make sure I'm accurate.

7 Q. Maybe we can leave a blank for low income
8 performance or a blank for LEP performance and when you
9 review your testimony you can fill in it?

10 MR. MYERS: Objection; form.

11 A. I sure will.

12
13
14 Q. (BY MS. BONO) I didn't mean to put you on the
15 spot there --

16 A. That's okay.

17 Q. -- it's just that since the results haven't been
18 released, I wasn't able to take a look at them before the
19 deposition today.

20 And looking back at Exhibit 400, TEA also reports
21 a number of indicators reportedly reflecting college
22 readiness; is that right?

23 A. That's correct.

24 Q. If we take a look at Page 10, can you tell the
25 Court what the category AP/IB Results means?

1 A. Those are the advanced placement tests that
2 students that were tested either in the advance placement
3 courses and tests or in the national baccalaureate tests,
4 which are kind of gauges as to whether students are either
5 earning or college ready for those particular courses.

6 Q. So 19 percent of students in the district
7 participated in 2009; is that right?

8 A. That is correct.

9 Q. And 25.4 percent in 2010?

10 A. That's correct.

11 Q. And of those students, less than half scored at
12 or above the college ready standard in both 2009 and 2010?

13 A. That's correct.

14 Q. And the participation of Hispanics was lower in
15 2010 -- 2009 and 2010 -- correct?

16 A. Correct. It was greater in 2010, that's correct.

17 Q. But it was lower than the participation of the
18 district-wide level?

19 A. That's correct.

20 Q. In 2009 it was 18.5 percent; is that right?

21 A. That's correct, in 2009.

22 Q. And in 2010 it was 20.7?

23 A. That is correct.

24 Q. Looking at the Texas Success Initiative at the
25 bottom of the page, through the year 2011, 40 percent of

1 students failed to meet the minimum TSI standard for
2 language arts. Oh, and I kind -- guess I kind of inferred
3 the number there on you. But I took that category as 60
4 percent in 2011 for language arts. If 60 percent students
5 passed, then is it fair to assume that 40 percent students
6 failed to meet the standard?

7 A. Yes, that's correct.

8 Q. And one-third of students failed to meet the
9 standard for math?

10 A. That is correct.

11 Q. And for the same year, 65 percent of Hispanic
12 students failed to meet the minimum TSI standard for
13 English language arts?

14 A. That is correct.

15 Q. And 36.6 percent of Hispanics students failed to
16 meet the minimum standard for math?

17 A. That is correct.

18 Q. Let's take a look at SAT and ACT scores on the
19 next page. In 2010, it looks like only 13.4 percent of
20 students in the district scored at or above the state's
21 criterion for the SAT/ACT?

22 A. That's correct.

23 Q. The average ACT -- SAT was 893?

24 A. Yes.

25 Q. And the average ACT was 18.1?

1 A. That's correct.

2 Q. And only 7.4 percent of Hispanics scored at or
3 above the standard in 2010?

4 A. That is correct.

5 Q. Their average score was 875?

6 A. On the SAT, that is correct.

7 Q. And that was more than a hundred points lower
8 than the average score for white students?

9 A. That's correct.

10 MR. MYERS: Objection; form.

11 MS. BONO: Can you state your objection?

12 Did I do bad math?

13 MR. MYERS: Actually, I think I need to
14 check on the pleading, but I think that you may not be
15 adverse to this witness.

16 MS. BONO: Oh, okay. All right.

17 Q. (BY MS. BONO) And what was the average ACT score
18 for Hispanic students in 2010?

19 A. 875.

20 Q. Looking at the last category on this page,
21 College-Ready Graduates, in 2009, it looks here like less
22 than half the graduates in the district were college ready
23 in both subjects; is that right?

24 A. No. Actually, more than half. 59 percent in
25 2009. 56 percent in 2010.

Q. You're right. I misspoke. Thank you.

And the same was true for 2010?

A. That is correct.

Q. And for both of those years, it looks like less than one percent of ELL graduates were college ready in both subjects. Is that accurate?

A. That is correct.

Q. Earlier you were describing the refugee population in your district and some of the unique challenges that that student population poses for educators and administrators in your district. Do some of these refugee students come from war-torn countries?

A. The -- the majority of ours are from Burma.

Q. Oh, okay. From Burma.

A. And there's civil unrest in Burma, which is why they're -- they're fleeing.

Q. And is it the responsibility of educators and administrators in your district to meet the needs of those students as they come to school?

A. Yes, it is.

Q. And in some cases, does that include meeting the emotional needs of students who are coming to learn?

A. That is true. We find that that's the first need that we have to meet.

Q. And why is that?

A. It's part of the hierarchy of a person's needs. They're being put into an unfamiliar situation with unfamiliar people, speaking an unfamiliar language, asking them to do things that they're unfamiliar with. And in order for us to be able to ask those questions and expect those students to respond to us, we have to earn a bit of trust with them. And so in order to earn that trust, there has to be an emotional tie at some point between the teacher, the educator, whoever that is in our school, on our campus, there has to be an emotional tie that earns that trust so we can begin taking care of the other needs that are coming along. That's my opinion on it.

Q. Earlier you mentioned that the class -- class sizes in your district were increasing across the board. Is that fair?

A. That's true.

Q. And you also mentioned that that has created a lot less individualized attention for students; is that right?

A. That is correct.

Q. And has -- have those factors affected the ability of educators and administrators in the district to establish that trust with the students?

A. It -- due to the fact of us having to reduce some

A. Because these students are literally being moved into our -- into shelters or to dwellings in which accept the agreement between the United States State Department and the United Nations. And once they're -- part of the agreement is, is they would be in -- part of the agreement the federal government has with the State and with the local entity is they will be enrolled in public schools as soon as reasonably possible.

So we literally have some students who are coming to us within a week -- perhaps ten days prior they were in a refugee camp setting somewhere outside the United States. And then a week or two later, they're moved to a new housing location in a foreign country, and then they're put into a school setting, a school environment that none of them are familiar with. So there's an emotional capacity to that -- or an emotional aspect of us trying to help them assimilate to that environment before anything else takes place.

Q. In some of these cases have these students had to leave family members behind?

A. Yes. In most cases, that was the case.

Q. Why is it important for the school -- you said it's important for the school to meet their emotional needs first. Why is it important to meet a student's emotional needs in order for them to learn?

of our staff positions that otherwise would be -- try to go on to meet that emotional need or address that emotional need, yeah, we -- this past year, it was a struggle.

Q. You mentioned having to cut some counselor positions, for example?

A. Uh-huh.

Q. And I assume that -- is it fair to assume that counselors were also addressing some of the needs of those student populations?

A. Very much so.

Q. I think Mr. Gray covered the rest of the questions that I had for you today. Thank you very much for your time.

MS. BONO: And I pass the witness.

MS. MCINTUSH: We don't have any questions this go-around.

(Off the record.)

EXAMINATION

BY MR. MYERS:

Q. Mr. Chambers, my name is Carl Myers, as I mentioned earlier when I met you. And I represent the State of Texas today. And one of the things that I appreciate and that you have done is strive for efficiency, as the comptroller has recognized with the

NO. D-1-GN-11-0031130.

TEXAS TAXPAYER & STUDENT,) IN THE DISTRICT COURT

FAIRNESS COALITION, et al.,)

Plaintiffs)

VS.) TRAVIS COUNTY, TEXAS

EDGEWOOD INDEPENDENT SCHOOL)

DISTRICT, et al.,)

(Consolidated),)

Defendants)

VS.)

ROBERT SCOTT, in his official)

capacity as Commissioner of)

Education, et al.)

Defendants) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

ROB COLEMAN

SEPTEMBER 26, 2012

REPORTED BY: KATHRYN R. BAKER, RPR, CSR #6955

JOB 53503

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2 (CONTINUED)

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4 CERTIFIED QUESTIONS
5 (NONE)
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1 PROCEEDINGS

2 THE REPORTER: Any agreements?

3 MR. GRAY: Whatever we've always been
4 doing.

5 MR. DIAMOND: By the Rules.

6 ROB COLEMAN,

7 having been first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. GRAY:

10 Q. Would you state your name, please, sir.

11 A. Rob Coleman.

12 Q. Mr. Coleman, my name is Rick Gray. I am one of
13 the lawyers for one of the groups challenging the current
14 system school finance in Texas.

15 And as I understand it, you are being
16 offered by the State as a witness in certain areas, and
17 because of that, we're here to take your deposition and
18 find out what you know today, okay?

19 A. Yes, sir.

20 Q. If at any time I ask a question that you don't
21 understand or is unclear, will you not answer it, but
22 instead say, Rick, or Mr. Gray, I don't understand it, or
23 I don't know where you're going; can you clarify it? And
24 I'll do my best to clean it up for you, okay?

25 A. Yes, sir.

1 Q. Two, every question and every answer you give is
2 being taken down by the court reporter, so it's important
3 that we have two agreements. First, if you will let me
4 fully ask the question, I will let you fully answer the
5 question so we're both not talking at the same time.

6 Deal?

7 A. Deal.

8 Q. Second, if you will give me verbal answers, as
9 opposed to shakes of the head or uh-huns or un-huhs, it
10 will be clear what your answer was so the court reporter
11 isn't having to guess what you were trying to say.

12 A. Okay.

13 Q. And, I guess, I need to add a third agreement.
14 You seem to be somewhat of a soft-spoken individual.

15 A. I'll speak up.

16 Q. If you'll do your best to speak up, that would
17 be helpful. One, I hate to admit it, but I'm on the path
18 to hard hearing, so that would help me personally, but it
19 would also help the court reporter, okay?

20 A. Okay.

21 Q. How old of a man are you, sir?

22 A. Forty-seven.

23 Q. And you are an employee of the Texas
24 Comptroller's Office?

25 A. Correct.

1 Q. In the answers to discovery, the State said that
2 your position was assistant director for the fiscal
3 management division?

4 A. Fiscal, yes.

5 Q. Fiscal. What does that entail? What are your
6 job duties in layman's terms?

7 A. We act as the chief accountant for the
8 comptroller. So we deal with all the financial aspects
9 that flow through the comptroller's office. That includes
10 budget oversight; appropriation control is what we call
11 it. We oversee the financial systems that the state
12 agencies use. We prepare a couple of financial reports; a
13 cash report, and the annual financial report. So we pay
14 the bills for agencies that produce warrants. So it's
15 financial -- all financial related to state funds.

16 Q. Are you a CPA?

17 A. I am not.

18 Q. Tell me briefly your educational background;
19 where you went to high school, where you went to college.
20 Just kind of give me a cliff notes version.

21 A. I graduated from Richardson High School, north
22 of Dallas, in 1983. And I went to the University of
23 Texas. Graduated with a bachelor's of business
24 administration in '88.

25 Q. And do you have any postgraduate education, post

1 your BBA?

2 A. No.

3 Q. Are you married?

4 A. No.

5 Q. Do you have any kids?

6 A. Yes.

7 Q. How many kids do you have?

8 A. One.

9 Q. And how old is your child?

10 A. Eighteen.

11 Q. Boy or girl?

12 A. Girl.

13 Q. And where does she reside?

14 A. Currently, Boulder, Colorado; going to college.

15 Q. Is she at the University of Colorado?

16 A. Yes.

17 Q. She is having a very good time, which ought to
18 make you very worried, but that's another matter.

19 Where did your daughter graduate high
20 school?

21 A. Westlake High School.

22 Q. And that's in the Eanes district here in Austin,
23 correct?

24 A. Correct.

25 MR. GRAY: The -- let me mark what's been

1 -- will you mark that as 1700.

2 (Exhibit 1700 marked.)

3 Q. (BY MR. GRAY) Mr. Coleman, I'm handing you
4 what has been marked as Exhibit 1700, which is a series of
5 spreadsheets that Ms. Dahlberg, for the State, was nice
6 enough to e-mail to us yesterday, saying that this would
7 be, as I understand it, to kind of cut to the chase, on
8 the area of your testimony.

9 First, what is it that you expect to
10 testify to at trial?

11 A. General budget information, statewide budget
12 information. I can speak to the roles of the comptroller
13 related to the budget aspect, some general information on
14 how we certified the budget this past session; the
15 processes that the comptroller is involved with. And then
16 the information that's presented here on this spreadsheet.

17 Q. And I'm going to ask you more specific questions
18 about the information on the spreadsheet in a moment, but
19 as far as you understand, is the substance of your
20 testimony captured on this spreadsheet, or will there be
21 areas that you anticipate testifying to that are not
22 reflected on this spreadsheet?

23 A. I think this is just one aspect of what I can
24 speak to. Certainly, the data and some of the numbers are
25 captured within this document.

1 Q. I mean, the reason I'm getting at it is, what
2 the State said in their discovery responses is that
3 Mr. Coleman may testify about the laws relating to the
4 state of Texas' budget, the budget-setting process and
5 legislative appropriations in recent fiscal, F-I-S-C-A-L,
6 years.

7 A. Right.

8 Q. And as we do in litigation, that's not overly
9 descriptive, but I'm not objecting to that because that's
10 kind of the way we do things. What I'm now needing to get
11 from you is more meat on the bone, if I can.

12 What is it that you expect to testify about
13 the laws relating to Texas' state budget?

14 A. I can talk about the certification laws that the
15 comptroller is under, related to the budget. The revenue
16 estimate that is provided to the legislature, which,
17 again, is required by law. There is a spending limit that
18 is in the constitution that I can speak to. There is
19 what's called a post-certification estimate. It's called
20 a certification revenue estimate that, again, is a
21 comptroller function that I can talk about.

22 And then, again, at a high level, related
23 to the funding information for statewide budgets. And
24 then some of the aspects about maybe how some of these
25 numbers were derived, again, at a high level, based upon

1 my work at the comptroller's office.

2 Q. Okay. Now, let me switch gears and ask you --
3 and maybe you've answered all of this together -- but the
4 next area that was set forth in the discovery responses
5 was that you would testify about the budget-setting
6 process.

7 Is there anything more about the
8 budget-setting process that you're going to testify to
9 that you just didn't articulate when I asked you about the
10 laws relating to the state budget?

11 A. I believe the only other thing I can speak to is
12 the fiscal roles, to the degree that I'm aware of them, of
13 the Governor's Office and setting budget parameters, as
14 well as the Legislative Budget Board and their role in the
15 budget process, so to kind of complete the picture of some
16 of the key players involved in the budget.

17 Q. Okay. And then the third area that the State
18 identified that you would be testifying to would be the
19 legislative appropriations in recent years. And I'm
20 assuming that's what's reflected on what we've marked as
21 Exhibit 1700, but I need to ask you: Is that correct?

22 A. Yes, that's correct.

23 Q. Okay. Now, if you will, just kind of start from
24 the top and work down. What is it, as far as the
25 certification laws -- tell me about the certification

1 laws; what is it that you anticipate informing
2 Judge Dietz about them?

3 MS. DAHLBERG: Objection, form.
4 Go ahead and answer.

5 A. The state of Texas has a constitutional spending
6 limit. It's referred to as the pay-as-you-go spending
7 limit. It's defined in Texas Constitution Article 3,
8 Section -- I can't think of the section offhand -- but it
9 prohibits the State from spending or appropriating more
10 money than the revenue that it receives.

11 Q. (BY MR. GRAY) And the appropriation is done
12 based upon the comptroller's revenue estimate, correct?

13 A. The revenue estimate, yes; that's the initial
14 ceiling that the appropriations must be equal to or below.

15 Q. So as I understand it, and you correct me, your
16 office will make a projection on what the total revenue is
17 to be, or estimated to be, and that sets a limit upon how
18 much the legislature can appropriate?

19 A. Correct. For general revenue-related funds;
20 that is correct.

21 Q. And you-all -- "you-all" being the comptroller's
22 office -- from time to time, during the legislative
23 session, will adjust that revenue estimate, either upward
24 or downward, based upon new analysis or new information?

25 A. Correct.

1 Q. And I'm going down the list that you gave me.
2 You said certification laws, revenue estimates, and then
3 spending limit. And I'm assuming that all ties together,
4 being that the legislature can only appropriate what -- no
5 more than what the comptroller's revenue estimate is at
6 any given time?

7 A. Correct.

8 Q. Is there -- in the spending limits, is there any
9 restriction on how the State -- how the legislature can
10 appropriate the bucket of money, so to speak? I mean, do
11 you-all say that we have X billions of dollars, but do
12 you-all, in any form or fashion, limit it to where you
13 have to spend this amount on this item; this amount on
14 this item; this amount on this item, or is that
15 discretionary with the legislature?

16 A. The comptroller doesn't have any role in
17 determining where or how much is appropriated. That's
18 separate. The Legislative Budget Board is involved with
19 budget policy. And I believe there are -- well, from my
20 knowledge of what are called general revenue dedicated
21 funds which is a certain funding source, there are
22 certain requirements on what funds can be used for.

23 So in a general answer, there are in
24 certain pots of money limits that can be spent.

25 Q. Do you know what those limits are, or are you in

1 a position to offer to the Court any guidance in what the
2 legislature could appropriate for any given topic, other
3 than it can't appropriate more than what you-all certify?

4 A. I am not.

5 Q. Okay. The post-certification estimate, what do
6 you mean by that?

7 A. Well, the biennial revenue estimate, that first
8 document, the BRE, we issue that in January, just before
9 the session starts, so that there's a knowledge of what
10 the revenue estimate is; the number that needs to be kept
11 in mind as it comes to appropriations.

12 As the session progresses, certainly other
13 bills are being filed that might affect the revenues
14 coming in, either increase or decrease; whatever the
15 options might be. There might be some other appropriation
16 bills that come through.

17 Generally, most appropriations are in the
18 General Progression Act; however, other bills can include
19 appropriation items. And since it's in -- since the
20 session lasts through the end of May, there's time for
21 economic conditions potentially to change.

22 So the comptroller takes all of that
23 information into account so that when the final
24 appropriations bill is passed, there is that running
25 total. Then there's also the biennial revenue estimate,

1 any adjustments that have occurred in that time frame
2 that, again, give us that certification number so that we
3 can do that comparison to make sure that the
4 appropriations are within the estimate.

5 Q. And if I understand you correctly, at the end of
6 the day, the comptroller has to certify the budget?

7 A. That is correct. That's a constitutional
8 requirement that she has to certify the budget in order
9 for it to be sent to the governor. And if she doesn't,
10 then it goes back to the originating house.

11 Q. And I think what you're saying, but correct me
12 if I'm wrong, is that you-all -- the comptroller comes up
13 with a revenue estimate that is the ceiling, so to speak,
14 for what the legislature can appropriate. But if for
15 whatever reason circumstances change, whether it be
16 economic improvement; whether it be additional sources of
17 money or economic decline and less sources of money, the
18 legislature will pass a budget.

19 And then you-all, being the comptroller's
20 office, will look at that budget, in light of the existing
21 circumstances, and determine to either certify it or not,
22 based upon your existing revenue estimates?

23 A. Correct.

24 Q. So the legislature is not limited to passing a
25 budget that is inconsistent with your initial revenue

1 estimate; as long as what they pass is consistent with
2 your final estimate, it's okay?

3 A. Correct.

4 Q. And, as you and I both know, there is some six
5 months or so in which the legislature is in session, so
6 things do routinely change, I think?

7 A. Yes.

8 Q. Am I correct in understanding that, for example,
9 the economic condition in Texas has changed such that the
10 revenue estimates that the comptroller was working on last
11 time around have turned out to be hopefully -- or
12 thankfully -- some \$9-billion or so underestimated; is
13 that correct?

14 MS. DAHLBERG: Objection, form.

15 Go ahead.

16 A. She -- the original estimate that came out, I
17 believe, was around \$72-billion. The certification
18 estimate, that final number, ended up being, I believe,
19 approximately \$82-billion. Now, all of that is not
20 necessarily based upon economic conditions. There was
21 some legislative actions that also increased that estimate
22 amount.

23 Q. (BY MR. GRAY) And by "legislative actions,"
24 you are talking about additional fees and things that
25 would generate additional revenue for the State?

1 is going to be accurate or not?

2 A. I'm not aware.

3 Q. Okay. I have heard or read information that
4 causes me to believe that it's off by another \$8- or
5 \$9-billion.

6 Is that consistent with your understanding?

7 A. Not that I'm aware of.

8 Q. Okay. The next area that you were answering
9 questions for me was funding information statewide for the
10 budgets, I believe you said. And I also have a problem of
11 not being able to read my own handwriting after I take
12 notes.

13 So tell me if, one, if I'm accurately
14 reciting what you said and, two, how does that fit into
15 your anticipated testimony?

16 A. Yes, I believe you are saying that accurately,
17 and it's reflecting that information that's in this
18 handout.

19 Q. Okay. Then I'm going to get to the handout in
20 just a second then.

21 You next told me that you anticipated
22 testifying about the fiscal role of the Governor and the
23 Legislative Budget Board in setting parameters. Tell me
24 what role the Governor has in setting funding parameters.

25 A. Well, the Governor is, by statute, designated as

1 A. Correct.

2 Q. Is it to be -- the swing from 72-billion to
3 82-billion is some, what, 13 or so percent off, if my math
4 is right. And you're more of a mathematician than I am, I
5 promise you. But is it typical that the estimate can be
6 off by that much, or was this an unusual year for the
7 comptroller to have missed it by that much?

8 A. Well, it is an estimate. You know, the economy
9 does change, and it's unknown, necessarily, what bills
10 going into a legislative session are going to affect some
11 of those drivers of that number. And, again, she did do
12 two adjustments during the session to let the legislature
13 know that there were going to be additional funds coming
14 in.

15 In March she raised the estimate by
16 \$300-million, based on sales tax for the current year,
17 which was fiscal year '11. In May, she also raised the
18 estimate by \$12-billion related to sales tax and motor
19 vehicle sales tax and oil production tax.

20 So as she knows economic condition-wise
21 those changes, and she does try to let the legislature
22 know so that they can take that into consideration for the
23 spending that they are trying to do.

24 Q. And as we sit here today, has your office done
25 an analysis to determine if the \$82-billion final estimate

1 the State's chief budget officer, so he has one role.

2 Then there is also what's called the Legislative Budget
3 Board, which is a standing permanent committee with
4 members from the House and Senate.

5 Effectively, that organization determines
6 the budget that would ultimately be submitted to the
7 legislature. However, the Governor's office and the LBB,
8 Legislative Budget Board -- can I use acronyms?

9 Q. Yes. Use LBB, and we'll all know what we're
10 looking for.

11 A. -- they send out instructions to the agencies
12 prior to each legislative session. So, jointly, both of
13 those offices send out instructions called the Legislative
14 Appropriations Request, LAR, informing the agencies on
15 parameters that they need to submit their budget requests
16 for the coming session.

17 The agencies, then, they know their
18 operations; they know their business. They submit a
19 budget to the LBB. The LBB takes that information and
20 compiles that information into a document called the
21 legislative budget estimate, which is what is provided to
22 the legislature.

23 And that document shows what the agency has
24 expended -- has a year or two of historical data. It has
25 the amount that the agency requested for funding for this

1 Q. Okay. So from the fiscal size-up, as far as you
2 know, the expended budgeted in '06 -- '04-'05 is
3 comparable to estimated budgeted in '06-'07?

4 A. Yes.

5 Q. And is it comparable to appropriated in '12-'13?

6 A. Yes.

7 Q. Okay. Now, what is it intended, whether it be
8 the expended/budgeted column or the estimated/budgeted
9 column or appropriated column, what are these numbers
10 reflected intended to show? Is it intended to show what
11 was actually spent; what was available to be spent; what
12 was estimated might be able to be spent? What are these
13 numbers supposed to tell me?

14 A. For the '04-'05, when it has the word
15 "expended," there's two years within that biennial.

16 Q. Correct.

17 A. The '04 number, in this reflection of the table,
18 were actual expenditures. The budgeted number was what
19 the agency, as reported to the LBB, felt that they were
20 going to spend for the rest of that year.

21 Q. Okay. But I only have one number. So is that
22 the expended number or the budgeted number?

23 A. Well, it's a biennial total. So those numbers
24 are just aggregated not out by each year, but into a
25 biennial total.

1 A. Yes.

2 Q. And that is a \$3-billion reduction in funding
3 for public education between '10-'11 and '12-'13?

4 A. Correct.

5 Q. If I look at any given year, the column that is
6 labeled Percent of Total, is that merely to reflect --
7 when I add up all of those percents from Article 1 all the
8 way through Article 12 on the left-hand side, should they
9 total 100 percent?

10 A. Yes.

11 Q. So that is showing what percent of the overall
12 budget is allocated to any given area?

13 A. That is correct.

14 Q. So, again, focusing on public education, am I
15 understanding correctly that in '04-'05, 27.5 percent of
16 the total budget, including all funds, including federal
17 funds, was allocated towards public education?

18 A. Correct.

19 Q. And, for example, above that would be, on Health
20 and Human Services, there was 34.6 percent that would be
21 appropriated for Health and Human Services?

22 A. Correct.

23 Q. Is there any way, by looking at page 1, and I'm
24 only looking at page 1 right now, that you can break down
25 these total funds, for example, in -- I will focus on

1 Q. Okay. So I think I'm understanding. What
2 you're saying is that under public ed, the 34.84-billion
3 number, that is what was actually expended in '04, and it
4 is what was budgeted or estimated to be spent in '05. And
5 those two things were combined to come to the 34.8-billion
6 number?

7 A. Correct.

8 Q. Okay. While we're on this topic, go to '12-'13
9 and explain to me, again, the change in terminology from
10 expended/budgeted to estimated/budgeted to now
11 appropriated.

12 What is your understanding of what that is
13 supposed to be showing?

14 A. The fiscal size-up is published usually
15 December/January of the current fiscal -- of the current
16 biennial. So for '12-'13, these amounts total out to what
17 the general appropriations bill is, plus any other
18 appropriations bill. So there is no activity. There
19 hasn't been any expenditures or estimated expenditures as
20 detailed in the prior iterations of it.

21 Q. So if I am looking at '10-'11, the \$53.7-billion
22 number for public education -- do you see where I am?

23 A. Yes.

24 Q. Does that indicate that it is a \$3-billion
25 reduction from '10-'11 to '12-'13?

1 '04-'05, the \$126.7-billion appropriation, is there any
2 way to determine how much of that 126.7-billion is general
3 revenue, general revenue dedicated, federal or other
4 funds?

5 A. Contained in the fiscal size-up is a breakdown
6 of all those funding sources.

7 Q. Okay. But it's not reflected on Exhibit 1700?

8 A. Correct.

9 Q. Okay. Now, before I move on, what is the
10 difference between general revenue and general revenue
11 dedicated?

12 A. General revenue is available for general
13 spending purposes. So it is a certain type of funding
14 source. General revenue dedicated is a type of funding
15 source that has specific legislative requirements usage,
16 if you will, and so it's just a different category of
17 funding.

18 Q. Okay. And then federal funds, that is all --
19 any and all monies received by the federal government?

20 A. Correct.

21 Q. And what are other funds?

22 A. That's a broad category. There are some, what
23 we call appropriated funds. General revenue is
24 Appropriated Fund 1, so it's the detailed accounting
25 aspect of the tracking the State information. There are

1 some funds, for example, the Funds 6, which is the highway
2 fund. That is not general revenue; it's not fed funds.
3 It's not a dedicated fund. It's another fund.

4 So the other funds, again, is just a broad
5 category of other sources. There are some things, for
6 example, something called appropriated receipts, which,
7 again, is a collection -- it's a funding source for an
8 agency based upon dollars that they receive for whatever
9 purpose.

10 So they're collections receipts to that
11 agency. Some agencies use that to fund their operations.
12 So that goes in this other funds category.

13 Q. You mean, for example, if the -- back in the day
14 when I was at the Attorney General's Office and where
15 Ms. Dahlberg is currently at the Attorney General's
16 Office, if the attorney general is to receive attorney's
17 fees in some case, would that be characterized as other
18 funds?

19 A. It depends. It depends on where the money is
20 deposited. If those monies were going into GR and there
21 was appropriation authority to them. I mean, some
22 agencies collect fees, and they can't spend those fees.
23 It's not a one-to-one scenario.

24 Q. Is there any federal money in the other fund
25 category?

1 A. No, it's all in federal funds.

2 Q. So all federal money is in the federal fund
3 category. The other fund category is funds that are
4 received through various fees or various sources that are
5 not part of the general revenue fund?

6 A. Right. It's funds that are not those other
7 three.

8 Q. Okay. Is there some discretion to determine
9 whether something is classified general revenue or other?

10 A. Yes. Well, the general revenue fund is, again,
11 collections. That is where the majority of taxes, for
12 example, come in. Other funds are typically established
13 because legislation requires that they be created. So a
14 bill will indicate that Fund X shall be created for
15 whatever purpose.

16 There is a path to creating a fund in the
17 State, and a part of that path has to clear a couple of
18 hurdles. We don't -- the State doesn't want a whole bunch
19 of funds because it's more tracking and more accounting
20 and maybe not efficient in some aspects. And so there is
21 a bill that passes in the session that basically either
22 authorizes whether that fund is going to exist or whether
23 it's going to be consolidated.

24 So, typically, the comptroller doesn't
25 basically identify what category. It's based upon the

1 legislation that is passed.

2 Q. Got it. Okay.

3 Going back to Exhibit 1700, if I look at
4 the top column on page 2, and I'm just on page 2, still
5 trying to understand it, if I move from '04-'05 to '12-'13
6 under the Public Education column, am I reading it
7 correctly to see that in '04-'05 there was 34.8-billion
8 expended or budgeted on public education and in '12-'13
9 there is 50.7-billion appropriated?

10 A. I'm sorry; in public education?

11 Q. Yes, sir.

12 A. 34.8, which years are we talking about?

13 Q. Just the two extremes; '04-'05 and '12-'13.

14 A. Okay. Yes, 34.8-billion to 50.7-billion.

15 Q. Now, are you aware of any of the drivers for
16 what caused the budget to be 34.8-billion for public
17 education in '04-'05 and what drove it to 50.7-billion in
18 '12-'13?

19 A. No.

20 Q. I mean, there were -- there's all sorts of
21 legislative policy choices. There is enrollment growth.
22 There is cost of -- a greater increase in high-cost kids.
23 There is any number of things that are involved in the
24 growth from 34.8 to 50.7, correct?

25 MS. DAHLBERG: Objection, form.

1 A. I have no knowledge of why those numbers are
2 what they are.

3 Q. (BY MR. GRAY) Are what they are?

4 A. Right.

5 Q. I mean, if one wanted to just look at the raw
6 numbers, one might say, well, there has been a roughly
7 16-billion increase in funding of public education,
8 correct?

9 A. According to those numbers, yes.

10 Q. But that increase may all be driven by the fact
11 that we have got more kids; it may not be a greater
12 commitment to public education. One simply can't tell by
13 looking at these numbers?

14 A. I do not know.

15 Q. Okay. And, likewise, if I look at the
16 \$3-billion cut in public education from '10-'12 to
17 '12-'13, according to these numbers, again, you don't know
18 if that cut is because that there are less kids or the
19 legislature just made -- reduced its commitment to public
20 education or what; you just know there is a \$3-billion
21 cut?

22 A. Correct.

23 Q. Are you familiar with the increase standards
24 that has been placed on school districts to make their
25 kids college- and career-ready?

1 functions have changed potentially over each biennial.

2 Q. (BY MR. GRAY) So am I correct then in looking
3 at the -- again, looking at the public education column,
4 in '08-'09, there were \$35.7-billion -- and I'm using the
5 term "spent," and that may not be accurate because I know
6 it's estimated and budgeted, but there was 35.7-billion
7 for public education, correct?

8 A. Correct.

9 Q. And in '10-'11, that was reduced by \$2-billion
10 to \$33.79-billion, correct?

11 A. Correct.

12 Q. And then in '12-'13, that has been reduced
13 another, approximately, \$500-million, correct?

14 A. Correct.

15 Q. Now, the -- again, the same question that I
16 asked you about earlier, you don't have any knowledge
17 about the policy choices involved with how these numbers
18 were derived in whether or not these numbers reflect the
19 real cost of meeting anything given mandate? You just
20 know here's what the numbers are as reflected by the LBB
21 on the report?

22 A. Correct.

23 Q. For example, we do know that according to, on
24 general revenue funds for whatever reason, the legislature
25 reduced the funding for public education by \$2-billion of

1 general revenue funds from '08-'09 to '12-'13, correct?

2 A. Correct.

3 Q. And you don't know whether or not that is a
4 reflection because there just is a whole lot less kids in
5 the system; whether or not the kids in the system are less
6 costly to educate today compared to yesterday, so to
7 speak, or whether or not the legislature just chose to
8 ignore growth and reduce the funding and commitment for
9 public education? You simply don't know any of what I
10 just said, what's true or what's not true?

11 MS. DAHLBERG: Objection, form.

12 A. I don't know the policy choices. I am familiar,
13 to some degree, based upon the allocation of funding
14 sources. So I have knowledge of that, yes. It did
15 decrease \$2-billion, but there was another funding source
16 that was used to contribute to public education.

17 Q. (BY MR. GRAY) And the other funding source
18 you're talking about is the federal money?

19 A. Correct.

20 Q. And what the legislature took, or that's maybe
21 not the right terminology, as I understand it from what
22 you just said, the legislature chose to essentially
23 replace general revenue with federal dollars in what I'm
24 calling the stimulus that was out there; is that correct?

25 MS. DAHLBERG: Objection, form.

1 A. I don't know that I would say "replace." Again,
2 the legislature determines those allocations that support
3 an appropriation. So a choice was made to make it what it
4 was.

5 Q. (BY MR. GRAY) Well, what I'm getting at is
6 maybe we'll do it this way. If you'll look back on
7 page 1 -- and we've earlier established that there has
8 been a \$3-billion cut from '10-'12 to '12-'13; are you
9 with me?

10 A. Yes.

11 Q. And then we flipped over, on page 2 and
12 established that there is a \$2-billion cut in real State
13 revenue from '09-'10 to '12-'13, correct?

14 A. Correct.

15 Q. And I think what you're telling me is that when
16 the State, when it reduced its commitment to public
17 education, relied on the back of the federal government to
18 make up that shortfall, the federal government's
19 commitment was essentially a one-time check and that
20 federal government check has gone away; is that correct?

21 MS. DAHLBERG: Objection, form.

22 A. Our funds did not last into '12 and '13.

23 Q. (BY MR. GRAY) And because those federal funds
24 have gone away, that's why when you look at the all funds
25 category, you see the \$3-billion reduction in support for

1 public education?

2 A. I'm not entirely sure about that. I think
3 there -- that is a part of that. Certainly all funds did
4 not extend to -- I do not know the composition of that
5 full number.

6 Q. Okay. But the vast majority of it is going
7 away, and I'm searching for the right word, but the
8 disappearing of the federal funds?

9 A. I'm not aware if it's the vast majority.

10 Q. Okay. So a good bit of the \$3-billion cut to
11 public education may have been state funds the legislature
12 took more away, and you just don't know; is that right?

13 A. I'm aware of what the budget numbers are. I
14 have some knowledge about the funding sources to those,
15 and then I can, you know, look from biennial to biennial
16 to see how those allocations, if you will, changed.

17 Q. Got it. Now, let's just look at, I don't care,
18 whichever year you want to. I'm on page 2, the General
19 Revenue Funds-Statewide Summary. If you look at '12-'13,
20 the \$81.2-billion, how much -- that is 81.2-billion of
21 money that is available for the legislature to appropriate
22 however they see fit. It's not dedicated money; it's not
23 money that has strings attached to it. It's money that's
24 available for the legislature to make policy choices on,
25 correct?

1 A. Because I liked it over there.

2 Q. (BY MR. GRAY) I mean, was one of the driving
3 forces why you moved into the Westlake area the
4 educational opportunities that would be afforded to your
5 daughter by going to the Eanes Public Schools?

6 MS. DAHLBERG: Objection, form.

7 A. Yes.

8 Q. (BY MR. GRAY) And, you know, although I no
9 longer live in the Westlake area, I lived for years in the
10 Westlake area. You know the Eanes school district is a
11 superb school district?

12 A. Yes.

13 Q. And I take it you are quite happy with the
14 education that your daughter received by going to Eanes?

15 MS. DAHLBERG: Objection, form.

16 A. Yes.

17 Q. (BY MR. GRAY) What district were you living in
18 before you moved into the Eanes district?

19 A. AISD.

20 Q. And the -- are you aware that by simply moving
21 from AISD to Eanes, you were able to reduce the tax rate
22 that you paid on your residence?

23 MS. DAHLBERG: Objection, form.

24 A. No.

25 Q. (BY MR. GRAY) Not total dollars. I'm talking

1 about the rate.

2 A. No.

3 Q. Okay. Do you know that you pay in Eanes \$1.04
4 per \$100 evaluation?

5 MS. DAHLBERG: Objection, form.

6 Q. (BY MR. GRAY) And if you don't know, you don't
7 know.

8 A. I know it's something like that.

9 Q. And you know in Austin the current rate is
10 1.079, almost \$1.08; are you aware of that?

11 A. No.

12 Q. Okay. Are you aware that Austin, for taxing at
13 1.08, has less money to spend on kids in Austin than Eanes
14 has taxing at \$1.04 to spend on their kids?

15 MS. LAWRENCE: Objection, form.

16 A. No, I'm not aware.

17 Q. (BY MR. GRAY) As a numbers person, if I was to
18 give you an option, you can live in District A and pay a
19 higher tax rate and have less money spent on your
20 daughter's education, or you can live in District B and
21 pay a smaller tax rate and have more money spent on your
22 daughter's education, as a numbers person, which district
23 would you pick?

24 MS. DAHLBERG: Objection, form.

25 MS. LAWRENCE: Objection, form.

1 A. Am I speaking as a person or as an employee of
2 the comptroller's office?

3 Q. (BY MR. GRAY) You are speaking as a person
4 As a human being who has a --

5 A. Better education opportunities for my daughter.

6 Q. And that would mean moving into Eanes, paying
7 less tax, and getting a better education for your
8 daughter?

9 MS. DAHLBERG: Objection, form.

10 Q. (BY MR. GRAY) And as a person, do you think
11 it's right that the State has a constitutional obligation
12 to provide educational opportunities to all kids in
13 districts -- have some districts that are markedly
14 advantaged and some districts that are markedly
15 disadvantaged, as far as the educational opportunities
16 they can provide to their kids?

17 MS. DAHLBERG: Objection, form.

18 MS. LAWRENCE: Object to form.

19 A. I have no opinion.

20 Q. (BY MR. GRAY) But given the choice that we
21 have just discussed, you would pick the district and, in
22 fact, did pick the district that taxed low and provided
23 greater educational opportunities for your daughter?

24 MS. DAHLBERG: Objection, form.

25 A. Correct. That is what I picked.

1 MR. GRAY: I thank you, sir. I don't think
2 I have any further questions. I will let others ask
3 questions, then I will check my notes and go from there.

4 Thank you. Nice to meet you.

5 (Examination was concluded at 10:24 a.m.)

6 MR. GRAY: Do you want to take a short
7 break or do you-all want to keep plugging along?
8 (Recess in the proceedings from 10:24
9 to 10:33 a.m.)

10 (Examination began at 10:33 a.m.)

11 EXAMINATION

12 BY MR. SANCHEZ:

13 Q. When you were talking about the estimates that
14 the comptroller's office gives to the legislature on which
15 they must base their appropriations, are those estimates
16 solely general funds estimates that you provide, or do you
17 also do estimates of other sources of income for the
18 legislature to consider?

19 A. The revenue estimate does have other funds in
20 there, and federal funds, but that's just for
21 informational purposes. But based upon the information
22 that they gather through that compilation process, the
23 only requirement for the legislature is that it's within
24 the available general revenue amounts that are estimated.

25 Q. So you said that it is within the general. What

1 is "it"?

2 A. The budget. That the amount that they
3 appropriate out of general revenue funds is within that
4 general revenue estimate.

5 Q. So does the comptroller's office have any
6 certification responsibilities as far as the spending of
7 non-state funds?

8 A. From a certification standpoint, no.

9 Q. Okay. I was curious about you said this came
10 from the publication that you compiled information from to
11 make this table, legislative budget, legislative board,
12 the fiscal size-up report?

13 A. Right. It's referenced in the source.

14 Q. So do you know where they get the information to
15 prepare the fiscal size-ups?

16 A. As their role as providing budget information to
17 the legislature, they're privy to that information. The
18 agencies also have to report information to them. So
19 their organization has the data collection processes in
20 place to produce this document.

21 Q. When you say that they have the data collection
22 processes in place, does that mean the comptroller's
23 office itself does not have those data processes in place?

24 A. We do, but they're different.

25 Q. So does the comptroller's office prepare

1 anything that is similar to the fiscal size-up independent
2 of the fiscal size-up?

3 A. Similar to the fiscal size-up?

4 Q. Yes.

5 A. No, we do not.

6 MR. SANCHEZ: Okay. That might be
7 everything that I have. I will pass the witness.

8 (Examination was concluded and Examination
9 began at 10:37 a.m.)

EXAMINATION

10 BY MS. LAWRENCE:

11 Q. Mr. Coleman, I'm Lacy Lawrence. I'm with the
12 law firm of Haynes and Boone. We represent another group
13 of plaintiff school districts in this case. Not the bad
14 guys, despite what you might have heard from Mr. Gray
15 earlier.

16 I don't want to tread the ground that, you
17 know, our other two attorneys have already covered today,
18 but bear with me; I'm going to jump around, and I'm going
19 to get a little free help out of you to help me understand
20 all of this today.

21 Let me start with looking at Exhibit 1700,
22 which are the two pages of budget documents that you
23 prepared for us. I first want to clarify, when you
24 referred to the biennial totals, I just want to make sure

1 I understand what these numbers represent. So where I see
2 at the top of the All Funds Statewide Summary page, the
3 fiscal year 2004 to 2005, and it has an expended budget
4 amount for public education of about 34.8-billion. That
5 is the amount for two years, correct, the total amount for
6 '04-'05 and '05-'06; is that right?

7 A. It's fiscal year '04, fiscal year '05.

8 Q. Okay.

9 A. So it's two fiscal years.

10 Q. I understand it. What do you count then as a
11 fiscal year? What's the calendar for that?

12 A. Fiscal year starts September 1. So, for
13 example, for 2004, the beginning of the fiscal year was
14 9/1/2003 to 8/31/2004. So it's September through August
15 is the fiscal year.

16 Q. And that example you just gave us is fiscal year
17 2004?

18 A. Correct. 9/01/03 to 8/31/04.

19 Q. Now, with Mr. Gray, we walked through what funds
20 fall within the category of all funds. And I think that's
21 outlined below. We've got general funds -- or excuse me;
22 general revenue funds, general revenue dedicated funds,
23 federal funds and other funds, correct?

24 A. Correct.

25 Q. Is there anything else that would fall within

1 all funds that doesn't fall within that description?

2 A. No.

3 Q. Are there any types of funds the State would
4 receive, either federal sources or other sources, that
5 would not show up within all funds?

6 A. No.

7 Q. We've got two pages to Exhibit 1700. One is All
8 Funds and the second page is the General Revenue Funds -
9 Statewide Summary.

10 Which of the two summary documents, All
11 Funds or General Revenue Funds, do you consider to be the
12 more relevant sources of funds to look at?

13 MS. DAHLBERG: Objection, form.

14 A. It just depends on what you're interested in,
15 honestly.

16 Q. (BY MS. LAWRENCE) So sitting here today, you
17 don't have an opinion over -- you don't have an opinion
18 between the All Funds summary or the General Revenue Funds
19 summary as to which numbers we should be focused on?

20 A. The only distinction is that the general revenue
21 funds are subject to the certification process that
22 relates to the revenues.

23 Q. So the general revenue funds are subject to the
24 certification requirement, but not the all funds? The all
25 funds are not subject to that same requirement; is that

1 Q. Do you have any reason to disagree with the
2 information that was provided in Figure 181?

3 A. No.

4 Q. And you haven't performed any kind of inflation
5 adjustment to the numbers that you provided for us in
6 Exhibit 1700?

7 A. Correct.

8 Q. Okay. We might be able to leave Exhibit 1701 at
9 least for a little bit; maybe for good.

10 In your position with the comptroller's
11 office, do you ever deal with the Rainy Day Fund?

12 A. Yes.

13 Q. Okay. Tell me what is your involvement with the
14 Rainy Day Fund.

15 A. My area does the actual transfers of the
16 accounting transfers. We do the tracking for the
17 Rainy Day Fund.

18 Q. Do you know, roughly, what the current balance
19 of the Rainy Day Fund is?

20 A. About \$6.1-billion.

21 Q. Is that high historically or lower than what
22 we've had in the past?

23 A. It's high.

24 Q. Is there -- well, looking back at Exhibit 1700,
25 we've talked about the various sources of funding. And in

1 all funds we have the general revenue funds, the general
2 revenue dedicated funds, the federal funds, and the other
3 funds. If funds from the Rainy Day Fund are used, would
4 they show up in the all funds numbers?

5 A. Yes.

6 Q. And which fund category would they fall within?

7 A. It's an other fund.

8 Q. It's an other fund.

9 Now, can you tell by looking at these
10 numbers on Exhibit 1700 in which biennials Rainy Day Funds
11 have been used?

12 A. No. No, I can't.

13 Q. So if I wanted to find that out, I would have to
14 go look at documents that show a little bit more detail in
15 the other fund amount?

16 A. I'm trying to think. The appropriation under
17 Rainy Day Fund for this past session was actually a
18 transfer of cash and not appropriated as an expenditure.
19 So that \$3.2-billion won't be reflected in this
20 presentation.

21 Past uses of the Rainy Day Fund have been
22 appropriated directly to an agency for expenditure. I
23 don't recall if those are to be spent out of the actual
24 fund number that is the Rainy Day Fund from an accounting
25 perspective, or whether those funds were transferred to

1 like their operating fund. GR, they use.

2 So I'm not sure how that would show up. It
3 may be different, depending.

4 Q. So there is some way to figure out when and how
5 and where the Rainy Day Funds were used, but it could vary
6 from year-to-year, biennial-to-biennial?

7 A. Yes. Certainly there is a history of all the
8 uses of the Rainy Day Funds and the bills that allowed
9 that.

10 Q. And, again, I apologize for jumping around a
11 little bit, but you had a little bit of a discussion with
12 Mr. Gray about your preparation of Exhibit 1700.

13 A. Yes.

14 Q. And I understand that you went to the
15 Legislative Budget Board fiscal size-up documents and
16 pulled that information from those documents to create
17 your Exhibit 1700; is that correct?

18 A. Correct.

19 Q. Why did you decide to pull that information to
20 use for this?

21 A. That document is really good about consolidating
22 all bills that relate to an appropriation. So, for
23 example, the '12-'13 amounts, it has the impact of SB2 in
24 here; it has the impact of other bills. '10-'11 have the
25 impact of HB4 in here.

1 To use the appropriations bill, that is
2 just one bill, when subsequently there might be changes or
3 adjustments to that. So this presentation is a more
4 complete picture of these biennial amounts.

5 Q. Why did you decide to do it by biennial, as
6 opposed to by fiscal year?

7 A. I believe that's the same presentation in the
8 fiscal size-ups, so I just went with that.

9 Q. Do you have any opinion as to which way to view
10 the data is more useful using it biennial versus -- or by
11 fiscal year?

12 A. The biennial revenue estimate is an estimate for
13 the two years. So if you pay more at the first year,
14 obviously, you pay less in the second or vice versa. So
15 the biennial presentation -- I don't have an opinion.
16 They just represent different views of the data.

17 Q. I want to talk real quick about sort of a change
18 in the funding source for public education a few years
19 back. You understand that back in 2006 there was House
20 Bill 1, which had the effect of compressing the
21 M&O tax rate.

22 Are you familiar with that?

23 A. Somewhat.

24 Q. So the tax rates went from, for many districts,
25 from \$1.50 to \$1.00.

1 Do you understand that?

2 A. Yes.

3 Q. And with that, with that compression of the
4 local property tax rate, there was an estimate that there
5 would be about a \$6.5-billion reduction in school district
6 tax revenues, local tax revenues.

7 Are you familiar with that? Does that
8 number sound right?

9 A. Based upon the information I've read in fiscal
10 size-up, it sounds in the ballpark.

11 Q. Okay. So as I have got it, it was the
12 Legislative Budget Board in one of its fiscal size-ups, so
13 that for 2008, the local tax revenues could be reduced by
14 about 6.58-billion as a result of the compression.

15 Does that sound about right to you?

16 A. I'm not -- I'm not familiar with the purpose of
17 the legislation, per se, as opposed to the effects on the
18 statewide accounting of the revenues and establishing of
19 the funds. That's where my focus tends to be, on that
20 kind of information.

21 Q. Well, very good clarification. So is it your
22 understanding that the effect of that legislation was that
23 we were going to have about 6.5-billion in a reduction in
24 local tax revenues?

25 Is that your understanding?

1 A. I'm not aware of the specific information.

2 Q. Okay. So you might not be familiar with the
3 specific amount of dollars, but you understand that as a
4 result of House Bill 1 passed in 2006 and the compression
5 of the tax rates, there was going to be a reduction in the
6 amount of local tax revenue available for public school
7 funding in Texas?

8 A. I'm aware of the creation of a Property Tax
9 Relief Fund and some of the parameters around that. How
10 that offset anything, that's where I do not delve into.

11 Q. And thank you for bringing that up because I do
12 want to get into that fund. And I just want to start
13 with, first, this premise of as a result of House Bill 1
14 and the compressed tax rates; there was going to be a
15 reduction in the amount of local tax revenue that was
16 raised for public school funding; is that correct?

17 A. That is my basic understanding.

18 Q. Okay, very good. Well -- and you just mentioned
19 this tax relief fund, and I want to jump into that.

20 Because of the reduction in local revenue,
21 local tax revenue, there needed to be a different source
22 for that revenue, correct?

23 MS. DAHLBERG: Objection, form.

24 A. I don't deal with the policy. I just know the
25 results.

1 Q. (BY MS. LAWRENCE) Well, okay. The result was
2 that there was a different source for revenue, correct?

3 A. A new fund was created.

4 Q. Okay. Tell me, what was that fund?

5 A. The Property Tax Relief Fund.

6 Q. And tell me what went into that fund?
7 A. It was the change in tax collections related to
8 the franchise tax, tobacco taxes, and I think one other,
9 motor sales end-use tax. So it was the change in the
10 legislation over the previous legislation. So that change
11 in collection is what went into the Property Tax Relief
12 Fund.

13 Q. And are you familiar at all with the estimates
14 of how much revenue was expected from the Property Tax
15 Relief Fund?

16 A. Generally.

17 Q. So give me -- if you know numbers off the top of
18 your head, I'll take them.

19 A. I think the original estimate was \$6.5-billion;
20 in that ballpark.

21 Q. And that was the original estimate. Then do you
22 know whether or not the Property Tax Relief Fund met that
23 estimate and raised that amount of revenue?

24 A. I believe they did not.

25 THE REPORTER: Can we stop for a minute?

1 (Pause in the proceedings from 11:04
2 to 11:06 a.m.)

3 Q. (BY MS. LAWRENCE) Okay. Mr. Coleman, right
4 before we had to take that break, we were talking about
5 the compression of the local tax rates and the creation of
6 the property relief -- the Property Tax Relief Fund,
7 excuse me, and the impact that had. And I believe your
8 testimony was that there was a certain amount of revenue
9 that was projected to be generated each year by that fund
10 or each biennial by that fund?

11 A. I believe that 6-billion number, a biennial
12 number.

13 Q. Okay. Was a biennial number.

14 A. I believe. I'm -- I believe.

15 Q. Okay. So it could be yearly, it could be
16 biennial, you're not sure, but 6-billion is the number
17 that you recall as being the amount that should have been
18 generated during each time period?

19 A. Yeah. I believe the biennial estimate, yes.

20 Q. Okay. And I believe you also testified that
21 it's your understanding the Property Tax Relief Fund did
22 not generate the amount of projected revenue?

23 A. Correct.

24 Q. It was less than the amount that was originally
25 projected; is that right?

1 been a reduction from one year to the next.

2 Q. And what I was -- my question is: The fact that
3 the Property Tax Relief Fund was overestimated what it
4 would bring in by, I think you said approximately
5 \$2-billion, although you're not positive, you're telling
6 me that that 2-billion may or may not have some
7 relationship to the 2 or \$3-billion that's cut from public
8 education; you just don't know?

9 A. I am not -- I am not sure if the decrease
10 relates to the Property Tax Fund performance.

11 Q. Fair enough. Now, if you will, turn to Exhibit
12 1701. If I understood you correctly, it was documents,
13 such as 1701, that you used to create Exhibit 1700?

14 A. Correct.

15 Q. And 1701 is just the document for '12-'13, but
16 you would have had a similar document for '04-'05, '06-'07
17 and so on?

18 A. Yes.

19 Q. Okay. Now, if you will, on Exhibit 1701 -- and
20 did you fiscally -- is this the portion of the size-up
21 that you used in putting together Exhibit 1700?

22 A. No.

23 Q. What portion of the size-up did you use that is
24 not 1701?

25 A. I used the fiscal size-up of Figure 5, page 6,

1 in the source box. Those are the specific tables that I
2 used.

3 Q. Okay, gotcha.

4 And is, you know, like on this Figure 5,
5 page 6, is it contained in the same document that these
6 portions of pages that now make up 1701 are in?

7 A. Yes.

8 Q. And I want to focus with you on two quick things
9 and I'll end.

10 First, if you will, turn to page 235.

11 A. (Witness complies.)

12 Q. And I'm looking at Figure 192. Does this --
13 does the LBB, in their size up, determine that Texas ranks
14 31st as far as teacher salaries?

15 MS. DAHLBERG: Objection, form.

16 A. This data was prepared by the LBB. I have no
17 knowledge, other than what I see on the paper.

18 Q. (BY MR. GRAY) So assuming it's correct, that
19 means there's only 19 states that pay worse than Texas, as
20 far as teachers go?

21 MS. DAHLBERG: Objection, form.

22 A. According to that chart.

23 Q. (BY MR. GRAY) Okay. Now, if you will turn to
24 page 237 and Figure 195. And according to the Legislative
25 Budget Board's analysis, does it show that Texas ranks

1 37th, as far as what we actually spend on our kids for
2 public education?

3 MS. DAHLBERG: Objection, form.

4 A. According to the LBB chart here in front of me,
5 yes, that's what that says.

6 Q. (BY MR. GRAY) And according to the Legislative
7 Budget Board's analysis, there's only 13 states that spend
8 less than Texas does on educating our kids?

9 A. According to the chart.

10 Q. And if the State has an articulated policy of
11 creating a first-class education system that creates
12 college-ready and career-ready graduates, if the State
13 truly wants to meet that requirement, is it your sense
14 that the State can continue funding its education at the
15 level of 37th out of 50th in this state -- in this
16 country?

17 MS. DAHLBERG: Objection, form.

18 A. I have no opinion.

19 MR. GRAY: Okay. Thank you, sir. I've got
20 no further questions.

21 (Further Examination was concluded and

22 Further Examination began at 11:45 a.m.

23 FURTHER EXAMINATION

24 BY MS. LAWRENCE:

25 Q. Okay. Just a couple of things to give myself a

1 little bit more clarification.

2 Mr. Coleman, if you'll look at Exhibit 1701
3 and flip to page 221, which has Figure 182 on it --

4 A. Yes.

5 Q. -- and you see the heading there says: Major
6 Foundation School Program Cost Drivers and Legislative
7 Actions, 2012-2013 biennial.

8 Do you see that?

9 A. Yes.

10 Q. Have you reviewed this figure before?

11 A. I have not, or not this exact one. I have seen
12 something similar, but not this one.

13 Q. Okay. So in looking at the figures, since you
14 have seen some similar, are you relatively familiar with
15 what it's referring to here?

16 A. Some of it.

17 Q. Well, tell me, what does the figure mean where
18 it talks about the total 2012-2013 cost drivers?

19 A. I believe the term "cost drivers" are just
20 elements that impact how much things cost.

21 Q. It lists a few of those cost drivers here. Are
22 you familiar with any of those?

23 A. A couple of them.

24 Q. Okay. Tell me which ones are you familiar with.

25 A. The RF funds, the \$3.3-billion. I'm aware that

1 CAUSE NO. D-1-GN-11-003130
2 TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
3 FAIRNESS COALITION, et)
4 al.,)
5)
6 Plaintiffs,)
7)
8 vs.)
9)
10 EDGEWOOD INDEPENDENT)
11 SCHOOL DISTRICT, et al.,)
12 (consolidated))
13) TRAVIS COUNTY, TEXAS
14 Plaintiffs,)
15 vs.)
16)
17 ROBERT SCOTT, in his)
18 Official Capacity as)
19 Commissioner of Education,))
20 et al.,)
21)
22 Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION
VIRGINIA DAY
September 26, 2012

Reported by:
Rebecca J. Callow, RPR, CRR, CSR-8925
Job No. 53529

1 VIRGINIA DAY,
2 having been first duly sworn, testified as follows:
3 EXAMINATION
4 BY MR. HINOJOSA:
5 Q. Good morning, Ms. Day. My name is David
6 Hinojosa. I'm an attorney with MALDEF, the
7 Mexican-American Legal Defense and Education Fund, and
8 we represent parents of low-income and English language
9 learner children, as well as a few property-poor
10 districts in San Antonio and in the Valley.
11 (Mr. Thompson enters deposition room.)
12 Q. (BY MR. HINOJOSA) My first question is, have
13 you ever been deposed?
14 A. Yes.
15 Q. In what cases?
16 A. I think it was MALDEF v. Nelson. I don't
17 remember the name of the trial. I apologize.
18 Q. What was the subject matter?
19 A. It was on bilingual education and Limited
20 English Proficiency.
21 Q. Was that U.S. v. Texas, do you recall?
22 A. I don't. I'm sorry.
23 Q. Approximately when was that?
24 A. I want to say 2005.
25 Q. Okay.

1 A. I'm not so good with dates.
2 Q. It might be 2006, but I won't hold you to it.
3 That's fine.
4 A. It may be. Yeah.
5 Q. And what was the subject matter of your
6 testimony?
7 A. The Limited English Proficient Student Success
8 Initiative.
9 Q. And did you testify at trial?
10 A. No.
11 Q. All right. Have you ever been deposed in any
12 other time?
13 A. No.
14 Q. Do you remember if you were deposed by me?
15 A. No.
16 Q. I don't either. I was just wondering, because
17 I was at MALDEF for that case.
18 A. It was -- there were a couple of women
19 attorneys.
20 Q. Oh, okay.
21 A. I don't remember their names.
22 Q. All right. All right. So let me just go ahead
23 and remind you about a few things regarding depositions.
24 I'm sure your attorneys have mentioned this to you
25 already, but one, we're not here for an endurance

1 contest, so if you need a break at any time, just let me
2 know. If there's a question pending, you know, I might
3 want to ask you to answer that question before we take a
4 break, but just let me know.
5 Also, try to wait till I finish my
6 question before you answer it, because the court
7 reporter can only take one of us speaking at one time.
8 And is there any reason, medical or
9 otherwise, why you might not be able to tell the truth
10 today?
11 A. No.
12 Q. And you understand that you're taken -- that
13 you've been administered an oath here today that your
14 testimony that you give today will be the same as if you
15 provided it in court. Correct?
16 A. Sure.
17 Q. And another thing is, is that if you can answer
18 verbally, yes or no, instead of uh-huh or huh-uh or
19 shaking or nodding the head, that would be great. That
20 way, the court reporter can take down everything that's
21 said.
22 A. Okay.
23 Q. And we are relying on your testimony and your
24 truthful testimony here today. I'm going to be asking
25 you questions, and if you have any difficulty

1 understanding my questions, please let me know. Okay?
2 A. Okay.
3 Q. And is it fair that -- if you answer a
4 question, is it fair for me to assume that you
5 understood the question?
6 A. Yes.
7 Q. So let's get started. Tell me your background
8 about where you graduated from high school and then
9 moving on up educationally.
10 A. Okay. I graduated from LBJ High School in
11 Austin, Texas. I have a bachelor's degree in
12 communications from University of Texas at Austin, and
13 that is the extent of my educational background.
14 Q. And when did you get your bachelor's degree?
15 A. 1988.
16 Q. Do you have any type of professional
17 certificates or specializations?
18 A. No, I do not.
19 Q. Have you ever been a teacher?
20 A. No, I have not.
21 Q. Have you been an administrator in a school
22 district?
23 A. No.
24 Q. Have you ever held any position in a school
25 district?

1 A. I was a substitute teacher at Manor ISD.

2 Q. And Manor ISD, where is that?

3 A. Manor, Texas.

4 Q. All right. But do you know relative, just for
5 the record --

6 A. East of Austin.

7 Q. How many times do you recall serving as a
8 substitute?

9 A. Oh, two to three times a week from 1986 to '87,
10 if memory serves. I wouldn't swear to that. I don't --
11 roughly.

12 Q. Yeah. And that's fine if you want to qualify
13 it as "roughly," because we're not going to hold you to
14 it.

15 A. Right. Yeah. It's been a long time.

16 Q. And do you recall what subjects or was it just
17 a range of subjects that you --

18 A. It was elementary school. So kindergarten
19 through 5th grade.

20 Q. Do you consider yourself an expert in
21 education?

22 A. No.

23 Q. Do you consider yourself an expert in education
24 administration?

25 A. Can you tell me what you mean by

1 "administration"?

2 Q. Sure. You know, I know that you testified
3 earlier that you had never been an administrator in a
4 school --

5 A. So no. In that capacity, no.

6 Q. Is there another case where you might consider
7 yourself an expert in education administration?

8 A. The word "administration" is occasionally used
9 at TEA to talk about administering a particular
10 educational program. So in that case, yes, I would.

11 Q. Okay. And what programs would you consider
12 yourself an expert in education administration, as you
13 just described?

14 A. Early childhood education. What else...

15 Currently, general -- the GED program and
16 the Adult Basic Ed. program.

17 Q. The -- can you tell me about your work
18 experience upon graduating from UT in 1988?

19 A. Sure. I spent a year as a representationist at
20 Fisher Controls, and then I joined TEA in 1989 in the
21 audio/visual department. I was involved in video
22 production from '89 to -- I want to say '98. I began
23 working in grant administration in '98 through 2004, and
24 2004 through current, I'm program administrator of a
25 variety of programs over the course of that time.

1 Q. From 2004 to current did you say?

2 A. Yes.

3 Q. When you say that you were a grant
4 administrator from 1998 to 2004, what grants did you
5 administer?

6 A. There was one called Ready to Read, and the
7 Reading Excellence Act Grant program. The -- Head Start
8 Educational Component Grant. And then in 2000, I
9 think -- without my résumé in front of me, I might have
10 my years wrong -- I joined the Grants Administration
11 Division. And then I didn't work on any particular
12 program, I was in charge of -- of the financial end of
13 grant programming. Getting grants out the door,
14 essentially.

15 Q. All right.

16 A. Approving applications, supervising people who
17 approved applications, and negotiated applications.

18 Q. Some of the grants that you had mentioned here
19 were the Ready to Read Grant. Is that grant -- was that
20 a federal or state grant?

21 A. That was a state grant.

22 Q. Do you know whether or not that grant is still
23 in existence?

24 A. It is not.

25 Q. Do you know whether or not there was any

1 analysis of whether the Ready to Read Grant was leading
2 to improve the outcomes --

3 A. I don't know.

4 Q. How about with respect to the Reading
5 Excellence Act? Was that federal or state?

6 A. It was federal.

7 Q. And is that grant still in existence today?

8 A. No.

9 Q. Do you know whether or not there was an
10 analysis of --

11 A. I don't.

12 Q. And the Head Start Educational Component Grant.
13 Is that still in existence today?

14 A. No.

15 Q. And do you know why any of these grants were
16 discontinued?

17 A. No.

18 Q. And what was the purpose of the Head Start
19 Educational Component Grant?

20 A. It was to provide early literacy professional
21 development to Head Start professionals as well as
22 public school professionals, and encourage that
23 collaboration.

24 Q. Do you know how much the grants were or did
25 they vary?

1 A. I'm sorry. They varied, but I don't even
2 remember the ranges.

3 Q. Before you graduated from UT, did you have any
4 other employment other than the substitute teaching
5 position that you mentioned?

6 A. Yes.

7 Q. What was that?

8 A. I worked at Video Barn for many years. I
9 worked at a retail institution called Foley's for many
10 years. Odd jobs. I don't recall all of them.

11 Q. Okay. Were there any jobs related to early
12 childhood that you had?

13 A. No.

14 Q. Have you ever taught in a Head Start early
15 child -- public early childhood or private early
16 childhood program?

17 A. No, sir.

18 Q. Have you ever been an administrator of an early
19 childhood Head Start or preschool program?

20 A. No, sir.

21 Q. Have you ever created a Head Start public
22 preschool or private preschool program?

23 A. No.

24 Q. Have you ever published on early childhood?

25 A. No, sir.

1 Q. Have you ever conducted any studies on the
2 effectiveness of early childhood programs?

3 A. No.

4 Q. And I'm asking these questions because what I
5 understand your position here is that you're testifying
6 as an -- as a fact witness on early childhood, but not
7 an expert. Is that your understanding?

8 A. That's my understanding.

9 Q. Now, what is your current position?

10 A. Director of Early Childhood Education and Texas
11 GED State Director and Adult Basic Ed. state
12 coordinator.

13 Q. And let's take -- did you say the Texas GED
14 program?

15 A. Yes.

16 Q. Tell me about your duties and responsibilities
17 there.

18 A. I am responsible for oversight of the testing
19 centers in Texas who are GED testing centers.

20 Q. And when you mean "oversight," what -- what
21 does that more specifically entail?

22 A. Ensuring that those centers are following the
23 policies and procedures of the General Education
24 Development, GED, program.

25 Q. When you say the "policies and procedures," are

1 you talking about regulations by the state or...

2 A. Those are policies and procedures of the
3 National GED Program, which is a partner of a private
4 company called Pearson. They establish their policies
5 and procedures and then certify testing centers who can
6 carry out the testing.

7 Q. And you said --

8 A. So they aren't state.

9 Q. All right. So when you said "Pearson," is that
10 the same company that has developed the STAAR test, if
11 you're aware?

12 A. I believe so.

13 Q. They've got their hands everywhere.

14 The Adult Basic Education coordinator. Is
15 that what you are?

16 A. Yes.

17 Q. Tell me about your duties and responsibilities
18 there.

19 A. It's very similar. I oversee a number of
20 grants to local entities who are operating adult basic
21 education programs, literacy, civics, English as a
22 second language courses for adults.

23 Q. And what are the sources of these grants that
24 you oversee?

25 A. Some are state -- there are some state funds,

1 and then the bulk of it is federal funds. And I don't
2 know the amount.

3 Q. Do you know the approximate percentage of each?

4 A. I don't.

5 Q. Is federal more than 50 percent?

6 A. Yes. I believe federal is more than
7 50 percent, but I couldn't be sure without looking at
8 numbers in front of me.

9 Q. And what is the amount of the grants
10 approximately? I mean, are we talking about a hundred
11 million? 10 million?

12 A. I believe it's in the neighborhood of
13 60 million for the state. I will qualify and say that
14 that's a new program that I'm running, so without the
15 facts and figures in front of me, I couldn't be sure.

16 Q. Okay. And how long have you been running the
17 GED program?

18 A. Since July 2012.

19 Q. And how many persons work under you
20 specifically for the GED program?

21 A. 1.5 FTEs.

22 Q. And that's other than you.

23 A. Correct.

24 Q. And how many different testing centers are
25 there in Texas?

1 A. 55 -- no. I'm sorry. That's adult education
2 centers. I believe there's 110 to 115 testing centers.

3 Q. And another thing also, feel free to always
4 clarify any questions. We want to make sure that we
5 have the most accurate record here. Okay?

6 How many persons do you supervise in the
7 Adult Basic Education?

8 A. That -- we don't have a staff for that.

9 Q. So you perform all the duties and
10 responsibilities there?

11 A. Yes.

12 Q. And as the director of early childhood in
13 Texas, how long have you held that position?

14 A. 2005.

15 Q. And was this your first position in early
16 childhood?

17 A. No. As I said, prior to that I oversaw grants
18 for the Head Start Educational Component program and the
19 Ready to Read Program in the late '90s.

20 Q. And your duties overseeing the Ready to Read
21 and the Head Start Component Grant, those entailed
22 reviewing applications and approving or denying
23 applications. Is that right?

24 A. Right. Negotiating.

25 Q. Negotiating?

1 A. Correct.

2 Q. What do you mean by that?

3 A. We would -- I would negotiate with the school
4 districts appropriate amounts of the grants, dollar
5 figure of the grants. They would apply for an amount,
6 if we felt like it should be more or less, we would
7 negotiate that. If they included something in the grant
8 application that wasn't appropriate, we would ask them
9 to remove that from their program. If they failed to
10 include something that was required, we would ensure
11 that they included that in the program. That type of
12 negotiation.

13 Q. And what sort of guidance did you have in order
14 to determine whether or not something was appropriate or
15 inappropriate in an application?

16 A. We had the statute, the rider. We had a great
17 deal of technical assistance from the grants division.
18 In addition -- we had a request for applications that
19 was developed by myself, but in addition to that, a
20 number of early childhood experts and stakeholders that
21 included very best practices into the RFA, and we made
22 sure those were being carried out.

23 Q. All right. So tell me what are your duties and
24 responsibilities as the director of early childhood.

25 A. Currently I am the technical assistance

1 provider to school districts and education service
2 centers and advocates for the requirements of early
3 childhood education in Texas, for best practices for
4 distributing the Texas Prekindergarten Guidelines. I
5 also --

6 Q. I'm sorry. What was that last one?

7 A. The Texas Prekindergarten Guidelines.

8 Q. All right.

9 A. I also oversee the grant called Texas School
10 Ready!. There is a network of education service centers
11 employees referred to as Texas School Readiness
12 Integration Specialists. We oversee their work and
13 their functions as well. So there's technical
14 assistance provided to those folks as well.

15 Q. The Texas School Readiness Integration unit,
16 did you say?

17 A. Specialists.

18 Q. Are those employees at TEA?

19 A. They're employees of our education service
20 centers.

21 Q. Okay.

22 A. In addition, I also oversee the Kindergarten
23 Readiness System. We refer to that as "KRS."

24 Q. Anything else?

25 A. If I remember something, I'll mention it later.

1 Q. All right. You stated first that you're a
2 technical assistance provider to school districts,
3 educational service centers, and private -- is that
4 private providers?

5 A. I think I said advocates. So that could be any
6 other individuals working in the field of early
7 childhood education who might need clarification on our
8 statutes or programs.

9 Q. Does the state provide funding for private
10 preschool programs or any grants?

11 A. Not direct funding.

12 Q. And what do you mean by that?

13 A. In the Texas School Ready! program, funding is
14 provided to the University of Texas Health Science
15 Center to operate local programs. The lead agent for
16 their local programs may be private or nonprofit or
17 public school early education providers. They don't
18 provide funding to them, but they do provide
19 professional development goods and services.

20 Q. And tell me what type of technical assistance
21 that you provide school districts, educational service
22 centers, and private advocates?

23 A. A great deal of it is on the -- currently is on
24 the Kindergarten Readiness System, which is a program to
25 determine which early childhood providers are providing

1 classrooms to facilities, what do you mean by that?

2 A. We previously had used this mechanism and made
3 the designation of certified or not certified or school
4 ready or not school ready, whatever term you want to
5 use. We previously did that on a classroom-by-classroom
6 basis. So you might have two classrooms in a
7 four-classroom facility certified, and two classrooms
8 not certified.

9 We received a great deal of input from the
10 providers that that wasn't preferred and so we've
11 modified the program in a number of ways, one of which
12 is to say that a particular center or school is
13 designated as ready or not ready. We still will provide
14 classroom-by-classroom information to the facility
15 director or principal, but overall, it will be campus
16 based or site based or facility based, and we don't have
17 that data yet. That won't come until spring 2013.

18 Q. How many -- I don't know if I should ask this
19 in terms of classrooms or programs, but let me ask
20 classrooms first.

21 How many classrooms are measured under the
22 KRS?

23 A. I think it was in the neighborhood -- I don't
24 have the fact -- I'm not terribly good with remembering
25 numbers. If I had the fact sheet in front of me, I

1 could tell you. But I think it was in the neighborhood
2 of 5000 classrooms, including public pre-K, Head Start,
3 and licensed child care.

4 Q. Does that include private home day -- home
5 providers?

6 A. No, it does not.

7 Q. And when you say private licensed providers,
8 who are those licensed by?

9 A. The Department of Family and Protective
10 Services.

11 Q. Do you know how many total classrooms there are
12 that would include public pre-K, Head Start, and private
13 licensed?

14 A. In the state?

15 Q. Yes.

16 A. No, I do not.

17 Q. So do you know -- do you have an idea of how
18 many classrooms are covered under KRS as opposed to how
19 many --

20 A. No, I do not.

21 Q. Do you know how many programs have sought to be
22 measured under KRS but were denied?

23 A. I don't believe any were.

24 Q. All right. So, you know, I'm just trying to
25 get back at -- maybe I should have asked this question

1 first. But it seemed to me that some of the issues with
2 KRS are related to, you know, data collection and
3 interfacing with TEA. So do you know of any programs or
4 classrooms for early childhood that have not been able
5 to overcome issues with data collection or interfacing
6 with TEA or any other policies?

7 A. I am not familiar with any.

8 MS. COLMENERO: David, I just want to ask
9 for a clarification. Are you -- what years are you
10 referring to with respect to KRS, because I think
11 there's a distinction there. And you may know it, but
12 if you could specify the years I think that might help
13 Gina.

14 Q. (BY MR. HINOJOSA) Would that help?

15 A. Yes. That would help.

16 Q. I mean, you've been communicating with me in
17 today's terms. Correct?

18 A. Correct.

19 Q. All right. So how long has the KRS been in
20 existence?

21 A. KRS began in -- with the 2012 school year.

22 Q. So now I have a question, because now I'm a
23 little confused. Prior to 2012, did TEA measure the
24 quality of early childhood programs?

25 A. Yes.

1 Q. Under what criteria?

2 A. It was similar, a little more expansive. It
3 also included factors from the prekindergarten year,
4 including practices and knowledge base and experience of
5 teachers and of principals and how their classrooms were
6 structured and what types of professional development
7 they had received, and other criteria.

8 Q. And did that criteria have a name?

9 A. That was called Texas -- Texas School Ready
10 Certified was the name that was in use during those
11 years from 2006 through 2012.

12 Q. And so would you say that the KRS has
13 streamlined the measurement criteria from what existed
14 before under the Texas School Ready! certified?

15 MS. COLMENERO: Objection. Form.

16 A. Yes.

17 Q. (BY MR. HINOJOSA) And in what ways?

18 A. The KRS is not -- let me see how to put this.

19 It no longer examines the practices of
20 early childhood education programs, and relies instead
21 on the results those programs are producing.

22 Q. And what was the process of how -- was it TEA
23 who was in charge of examining these practices under the
24 prior system?

25 A. No. That was contracted with the University of

1 Texas Health Science Center at Houston for that
2 analysis.

3 Q. Was that the State Center?

4 A. Yes. That's one of their names.

5 Q. What was the reason why the TEA changed from
6 the Texas School Ready! certified to KRS?

7 A. There were a number of reasons. The
8 legislature -- certain members of the legislature
9 indicated that they felt like that the professional
10 development and intervention programs being provided by
11 UT Health and the measurement of those programs served
12 as a conflict of interest to have the professional
13 development provider and the effectiveness measurement
14 being administered by the same organization. They felt
15 like that was a conflict of interest.

16 We heard from a wide variety of
17 stakeholders that they felt it was a violation of their
18 local control and decision-making to examine the
19 practices of the classroom or to limit our classroom
20 practices analysis. That if they -- they felt like if
21 they were getting the job done, that that should be the
22 primary factor.

23 So as a result of hearing from both
24 legislators and stakeholders, we separated Texas School
25 Ready! intervention and professional development program

1 from what had been the Texas School Ready! certified
2 program, and moved that program to another organization.

3 It is currently administered from

4 Education Service Center 17, who contracts with -- who
5 subcontracts for the data collection and analysis work.

6 Q. Do you know who they subcontract with?

7 A. Yes. Oz Systems. O-z. Oz Systems, Inc.
8 Optimization Zorn, Z-o-r-n.

9 They conducted -- Region 17 conducted an
10 RFP process and selected them as the bidder -- or as the
11 bid winner.

12 Q. So what does Oz System do now with respect to
13 the Texas School Readiness?

14 A. They provide the web-based interface for early
15 childhood providers to enter information about the
16 children they serve, basically classroom rosters, and
17 their particular facility, what type of facility they
18 are, whether they're a Head Start, a public school, what
19 have you, a handful of questions about that. And then
20 they provide the interface for all Texas schools to
21 report to TEA the results of the kindergarten diagnostic
22 screenings that are required. And so they fulfill a
23 statute for that.

24 Then they provide the matching program to
25 ensure that they are finding the children's scores from

1 a particular pre-K program to wherever they went to in
2 kindergarten, and provide that match program -- match
3 system for us. And then they collect the kindergarten
4 data, analyze the success of the students and the
5 results of their diagnostics, and report back based on
6 facility whether or not a program was successful.

7 Q. Okay. So this Oz Systems --

8 A. Oh, I'm sorry. May I clarify? They also
9 provide help desk support, technical assistance support,
10 a web site, web interface, that type of thing.

11 Q. Do you know how much the contract amount is for
12 Oz Systems?

13 A. Three -- approximately 4.25 million.

14 Q. Are there any monitoring or evaluations made on
15 site of preschool programs?

16 A. No.

17 Q. And so I just want to be clear on this. The Oz
18 Systems, Inc., they are the subcontractor for the KRS?

19 A. Correct.

20 Q. All right.

21 MS. COLMENERO: Can we go off the record
22 and take a break?

23 MR. HINOJOSA: Go ahead.

24 (Mr. Thompson leaves deposition room.)

25 (Recess from 10:00 a.m. to 10:14 a.m.)

1 Q. (BY MR. HINOJOSA) All right. Ms. Day, how
2 many people do you have working under you as -- in the
3 early childhood education program?

4 A. One FTE.

5 Q. And who is that?

6 A. Howard Morrison.

7 Q. And what position does Howard Morrison hold?

8 A. He's a program specialist.

9 Q. And by "program specialist," what does he do?

10 A. He provides a great deal of technical
11 assistance to the field, he coordinates and oversees the
12 activities of the Texas School Readiness Integration
13 Specialist at the education service centers, he provides
14 a great deal of technical assistance to the school
15 districts and to the public, primarily regarding
16 eligibility for prekindergarten. He manages the
17 contract grants end of the process, so getting the
18 applications to, say, the State Center for the Texas
19 School Ready! program, for Region 17, for the KRS
20 program, or the 20 service centers for the SRI programs,
21 and manages those budgets and -- or negotiates those
22 budgets and activities.

23 Q. Do you believe that you have -- well, let me
24 ask you this:

25 Has there been any reduction in the early

1 childhood staff since you've been the director?

2 A. Yes.

3 Q. What was that reduction?

4 A. Let me think how many people directly worked
5 for the early childhood program. So we previously had
6 four and a half FTEs.

7 Q. Not including yourself?

8 A. Not including myself.

9 Q. And were you overstaffed at that time?

10 A. No.

11 Q. And how has the reduction in staff affected
12 your ability to carry out your duties and
13 responsibilities, as well as the people under you?

14 A. It hasn't had a huge impact, because many of
15 the other individuals were working on the
16 Prekindergarten Early Start Grant that is no longer in
17 existence, and so the duties that they were carrying out
18 are no longer required.

19 Q. How many people worked on the Early Start
20 Grant?

21 A. Two.

22 Q. And they were fully assigned to the Early Start
23 Grant?

24 A. Yes.

25 Q. So it looks like you still lost at least

1 2-point -- or 1.5. Is that right?

2 A. That's correct.

3 Q. I'll represent to you that I recall deposing a

4 TEA representative, a director of a program -- maybe it
5 was bilingual -- and she mentioned having fielded over
6 7000 e-mails a year regarding eligibility requirements,
7 program implementation, and so forth. Do you have any
8 idea of how many questions your office fields? Even if
9 it's not by year, if it's by week or day or month, an
10 average?

11 A. I would say 30 a week perhaps. Before two
12 years ago we had a very limited web site. When we lost
13 staff, Howard and I worked very hard to have a lot more
14 information on our web site and available to the public.
15 We feel like that has reduced that burden a great deal.
16 Not "burden," challenge.

17 Q. So would you say that -- that you are still
18 understaffed today?

19 A. Yes. May I ask for a clarification?

20 Q. Sure.

21 A. Is that pertaining only to early childhood?

22 Q. Well, I was going to actually follow up with
23 you on that. When you say that you're understaffed, you
24 feel that you're understaffed in early childhood.

25 Correct?

1 A. Yes.

2 Q. All right. And do you also feel that you're
3 understaffed in any of the other programs that you
4 oversee?

5 A. So I feel I am understaffed in early childhood
6 by about .5 FTE at the most, primarily because I myself
7 have acquired additional functions of GED and Adult
8 Basic Ed., so the activities that I was able to carry
9 out for early childhood have -- I can't carry out quite
10 as many and the burden is falling more on Mr. Morrison.
11 For the other two programs, I would say I'm also
12 understaffed.

13 Q. And how many FTEs would you say that you're
14 understaffed for Texas GED program first?

15 A. In my personal opinion, basically 1.5.

16 Q. And Adult Basic?

17 A. I would -- I would cover those two together.

18 Q. Okay.

19 A. GED and Adult Basic Ed. often have overlapping
20 functions, so for the two of them I would say 1.5. In
21 my opinion. I'm not speaking for TEA.

22 Q. Oh, no, no. I understand.

23 What percentage of your -- the divisions
24 of these programs that you oversee -- what percentage of
25 funding is federal versus state or other?

1 A. I don't have those figures in front of me. I
2 would have to get back to you on that. I'm sorry.

3 Q. Would you say just approximately that at least
4 50 percent of your funding is from federal?

5 A. Are you talking about the funding of the staff
6 or the funding of the programs?

7 Q. The funding of the staff.

8 A. Oh. It's a hundred percent state.

9 Q. So you receive federal grants for early
10 childhood and GED and adult basic education?

11 A. Not for GED, but for the other two.

12 Q. But none of that funding is used, at least to
13 your knowledge, to help pay for the staff?

14 A. No.

15 Q. And how about as far as the grants? What
16 percentage of the funding for those grants that you
17 oversee is federal?

18 A. I wasn't informed that math would be required.

19 Q. Just if you have an approximate.

20 A. I'm sorry. Without the numbers in front of me,
21 I --

22 Q. Would you say --

23 A. I would -- the majority is federal, but not an
24 overwhelming majority. How is that for qualifying?

25 Q. That's fine.

1 analysis of Texas pre-K students entering kindergarten
2 and determining how many students are actually ready for
3 kindergarten?

4 MS. COLMENERO: Objection. Form.

5 A. Ready based on...

6 Q. (BY MR. HINOJOSA) Ready based on the testing
7 instrument that they're taking.

8 A. No. There's a reason for that.

9 Q. Sure. Go ahead.

10 A. Well -- there may be a reason for that. The
11 Texas School Ready! certified program was limited to
12 those early childhood programs that were involved in one
13 or another of TEA's grant programs and was not opened up
14 to any -- to all the programs in the state. So although
15 we collected a significant amount of data of
16 kindergarten students and their reading diagnostic, at
17 that time we were only collecting from five of the
18 diagnostic instruments on the commissioner's list
19 because of system limitations. So we only collected
20 approximately 75 percent of the group that was eligible
21 to participate, which was approximately 400 school
22 districts, tops. So it did not cover all the districts
23 in the state.

24 The Kindergarten Readiness System is open
25 to any public school, Head Start, or licensed child care

1 that is interested in participating, but it is brand
2 new, so we don't have an analysis or a data yet for that
3 one. So we don't have a collective -- we don't have the
4 information necessary to say what -- whether or not
5 students are -- across the state, every student ready
6 for school. Did that make sense to anybody?

7 Q. Yes. It did.

8 A. Sorry.

9 Q. Can you tell us sitting here today what
10 percentage of students from public pre-K are
11 kindergarten ready --

12 MS. COLMENERO: Objection. Form.

13 Q. (BY MR. HINOJOSA) -- in Texas public schools?

14 A. No, I cannot.

15 Q. Can you tell us how many -- or what percentage
16 of students are kinder ready who attended private
17 preschool programs --

18 A. No --

19 Q. -- licensed programs?

20 A. No, I can't.

21 Q. Can you tell me how many or what percentage of
22 students are kinder ready who attended Head Start
23 programs?

24 MS. COLMENERO: Objection. Form.

25 A. No, I cannot. The system, again, that we've

1 been using does not cover the whole state.

2 Q. (BY MR. HINOJOSA) And for those classrooms
3 that have been found to not be certified or certified --
4 well, tell me, has the -- the state has already found
5 whether or not classrooms are ready or not ready under
6 KRS. Correct?

7 A. Not under KRS yet.

8 Q. Not under KRS?

9 A. No.

10 Q. So that has yet to be implemented?

11 A. Correct. One thing that should be understood,
12 it's a two-year system. So we collected prekindergarten
13 data under KRS in FY '12. We just barely began
14 collecting the kindergarten data of those same students
15 in FY '13, so we don't have results yet.

16 Q. Do you know when you might have those results?

17 A. 2013. Spring 2013.

18 (Exhibit No. 917 marked.)

19 Q. (BY MR. HINOJOSA) I'm going to hand you what
20 we've marked as Exhibit 917. And do you recognize what
21 Exhibit 917 is?

22 A. Yes.

23 Q. Do you recognize this as a copy of the TEA web
24 site regarding Texas prekindergarten data?

25 A. Yes.

1 Q. Are you aware of any of the data -- and please
2 feel free to look over it. Are you aware of any of the
3 data reported here that is incorrect?

4 A. Not to my knowledge.

5 Q. And according to Exhibit 917, it states that
6 the pre-K student enrollment for 2011-2012 including
7 three- and four-year-olds was 225,037. Correct?

8 A. Correct.

9 Q. And then it says 215,922 are FSP eligible.
10 "FSP" stands for Foundation School Program. Correct?

11 A. Correct.

12 Q. And so these roughly 10,000 to 11,000 other
13 students who are not FSP eligible, do you know who those
14 students constitute?

15 A. No. Not without speculating.

16 Q. So they might be, for example, students who pay
17 tuition?

18 A. They might be. They might be students who are
19 in the special education PPCD program. They might be
20 students who are locally funded. Any range of things.

21 Q. And the students who -- regarding the special
22 education, can you explain what you said there?

23 A. So there's a federal program called Preschool
24 Program for Students with Disabilities known as the
25 PP -- no, for Children with Disabilities -- known as the

1 PPCD program, which entitles a child who is determined
2 to have special needs to a half a day pre-K program.

3 Q. And below these figures that I was talking
4 about on student enrollment it has the subpopulation
5 student groups, and -- and there's a qualifier there
6 stating that students may be counted in multiple
7 categories. And that means, for example, an LEP student
8 might also be economically disadvantaged and counted
9 twice there. Correct?

10 A. Correct.

11 Q. Do you know what percentage of LEP students,
12 for example, are being served in three- or four-year-old
13 pre-K programs versus the overall number who would be
14 eligible?

15 A. Can you ask the question again?

16 Q. Sure. It says 90,880 LEP students. Correct?

17 A. Correct.

18 Q. And those are just the students who attended
19 pre-K. Correct?

20 A. Correct.

21 Q. So of all the LEP three- and four-year-old
22 students who might be out there, do you know what
23 percentage are actually attending pre-K?

24 A. No.

25 Q. How about for economically disadvantaged?

1 A. No, I do not.

2 Q. How about for homeless, military children, or
3 foster care?

4 A. No, I do not.

5 Q. Do you know what the estimate for the --

6 A. Can I qualify that?

7 Q. Sure.

8 A. I actually do know on foster care. There are
9 approximately -- or have been approximately 10,000
10 letters sent by DFPS to students -- to families of
11 children who may be eligible for foster care. Only 1300
12 of them are engaged, so that's a little over 10 percent.

13 Q. Okay. Thank you. Do you know what percentage
14 of the students enrolled in pre-K programs versus the
15 overall eligible students...

16 A. No.

17 Q. Let me ask that a little better. And I'm
18 basically asking you the same question that I asked you
19 right now, but let me try to get it a little more clear.

20 Do you know what percentage of all
21 eligible three- and four-year-old students are actually
22 attending pre-K programs as reported here?

23 A. No.

24 Q. It also says there's 8197 pre-K teachers. Is
25 that correct?

1 A. Correct.

2 Q. And here it's reported that 1039 districts,
3 including within that 3238 campuses, offer a
4 state-supported half-day pre-K program. Correct?

5 A. Correct.

6 Q. And since the year 2008-2009 it looks like the
7 pre-K enrollment has gone up about 25,000 students. Is
8 that correct?

9 A. Correct.

10 Q. Now, of that 200,000 reported in 2008-2009, do
11 you know what percentage of those students were FSP
12 eligible?

13 A. No.

14 Q. It also looks like in 2008-2009 there were 9230
15 pre-K teachers, and for the year 2011-2012 it had went
16 down to 8197. Correct?

17 A. Correct.

18 Q. And those teachers don't include aides. Is
19 that correct?

20 A. Correct.

21 Q. Do you know why there was a decline of over
22 1000 pre-K teachers from 2008-2009 to 2011-2012?

23 A. No.

24 Q. Do you know what the average class size is of a
25 pre-K class?

1 A. Not for the State of Texas. I do for the Early
2 Childhood Grant program that covered approximately
3 350 -- I forget exactly the number of districts, but
4 that was approximately 18.5.

5 Q. Now, was that a pupil/teacher ratio or was that
6 an actual class size?

7 A. Boy, I don't remember.

8 Q. Do you know the difference?

9 A. Yes.

10 Q. And the early childhood grant program expired
11 when?

12 A. I believe it was class size.

13 The early childhood grant program
14 expired -- the end date of those grants, I believe, was
15 December 2011, but I would have to get back to you for
16 sure. I believe we extended the length.

17 Q. Do you know how much those grants ranged?

18 A. The highest amount was 5 million, the lowest
19 amount was in the range of 40,000, I believe.

20 Q. And was the funding based on per pupil or was
21 there other --

22 A. It was based --

23 Q. -- was there other criteria?

24 A. It was based on per pupil.

25 Q. And what was the amount per pupil?

1 A. I don't recall.

2 Q. Roughly?

3 A. \$900 per pupil.

4 Q. And that was -- was that a supplement on top of
5 state funding?

6 A. Yes.

7 Q. And what was the purpose of the Early Childhood
8 Grant?

9 A. To provide professional development,
10 high-quality supplies and materials, mentoring, progress
11 monitor -- student classroom progress monitoring,
12 licenses and training, funding to support local
13 collaborations between Head Start child care and public
14 school, and -- those were the primary purposes.

15 The funding could also be used for teacher
16 salaries, teacher aides, field trips, what have you.

17 Q. Were you aware if any of these expenditures
18 that the grant covered, whether any of them were
19 unnecessary?

20 MS. COLMENERO: Objection. Form.

21 A. Not to my knowledge.

22 Q. (BY MR. HINOJOSA) So they all -- you know, the
23 professional development that you mentioned, the
24 high-quality supplies and materials, the training, the
25 mentoring, all these factors that you just mentioned,

1 these were necessary for the districts to carry out
2 their program. Correct?

3 MS. COLMENERO: Objection. Form.

4 A. I believe they were helpful in improving
5 programs.

6 Q. (BY MR. HINOJOSA) Okay.

7 A. Necessary in carrying out programs, I don't
8 believe so, by virtue of the fact that there were many
9 districts who didn't get the grant and still carried out
10 pretty good programs.

11 Q. Does TEA know how much the variation ranges in
12 districts being able to afford pre-K?

13 A. No.

14 Q. I'm not sure if I asked this. If I did, you
15 know, I apologize. But do you know what -- why there
16 was a decline in the teachers from 9230 in 2008-2009 to
17 8197?

18 A. No, I don't.

19 Q. Have you heard any reasons why this might have
20 happened?

21 A. I can say that I am certainly aware that school
22 districts had some funding cuts in the last legislative
23 session. Beyond that, I couldn't say.

24 Q. And the -- if you look at the student
25 enrollment of 225,000 and you look at the pre-K teachers

1 of about 200, that's about 30 students for every pre-K
2 teacher. Correct?

3 A. That sounds about right. If that's what the
4 math --

5 Q. Do you have --

6 A. Many pre-K teachers teach two cohorts of
7 students. They have a morning session and an afternoon
8 session. So in many cases there are double the amount
9 of teachers -- double the amount of students per teacher
10 because they have a morning class, that's a full roster
11 of however many students, and then they'll have an
12 afternoon class of different students.

13 Q. So do you know how many teachers as reported
14 here would fit that criteria?

15 A. I don't know.

16 Q. At the bottom here under "Eligibility" -- and
17 we're speaking of Exhibit 917 -- it says "A district
18 shall offer kindergarten classes if the district
19 identifies 15 or more children who are eligible and are
20 at least four years of age."

21 Is that accurate?

22 A. Yes.

23 Q. Are there exceptions where a district does not
24 have to offer pre-K classes if the district identifies
25 15 or more children who are eligible?

1 A. There is a statutory exception available, to my
2 knowledge. There are no districts who are approved for
3 that exception.

4 Q. What's the statutory exception?

5 A. If a school district is required to build
6 facilities in order to implement the program, or
7 construct facilities.

8 Q. Are you aware of any districts that might have
9 a program but might have a waiting list for students to
10 enter because they don't have space or some other
11 reason?

12 A. I'm not aware of any currently. Occasionally
13 that's the type of technical assistance that we get
14 called about, whether they can have a waiting list or
15 someone reports that there is a waiting list. When that
16 happens, we certainly investigate with the school
17 district and ensure that they've corrected that action
18 and that they are no longer keeping a waiting list of
19 four-year-olds.

20 Q. And what districts have you heard from?

21 A. I can't remember specific districts.

22 Q. And in the next sentence it says "A school
23 district may offer pre-K classes if the district
24 identifies 15 or more eligible children who are at least
25 three years of age."

1 Do you know how many districts are --
2 well, let me ask you first.

3 Is that an accurate statement?

4 A. Yes.

5 Q. Do you know how many districts offer
6 three-year-old pre-K classes?

7 A. I do not know.

8 Q. The next sentence says that "A district may not
9 charge tuition for a pre-K class offered under this
10 section." Correct?

11 A. Correct.

12 Q. And does that mandate only apply to students
13 eligible under the criteria set in statute?

14 A. Correct.

15 Q. Do you know how many school districts offer
16 tuition-paid pre-K?

17 A. Currently 37.

18 Q. And is there a list of these districts on your
19 web site?

20 A. I don't believe it's on our web site.

21 Q. And what's the amount of funding that school
22 districts receive for a pre-K student?

23 A. Approximately \$3650 for -- for a student, but I
24 understand that there are additional rates applied for
25 certain categories of students, such as LEP or

1 bilingual. I'm not familiar with the funding part of
2 things that much, but I do know it's a little more than
3 the 3650 because they have certain weights applied.

4 Q. Do you know whether districts offer ELL
5 identified students in grades 3 -- ages three and four
6 pre-K, whether or not they offer bilingual programs?

7 A. I believe many do.

8 Q. Do you know how many?

9 A. No, I don't.

10 Q. Do you know of any of the constraints that
11 school districts have in serving ELL students in pre-K
12 programs?

13 A. I don't.

14 Q. Of the 5000 classrooms that were measured under
15 the certification process, do you know what percentage
16 of those or how many of those actually were determined
17 to be ready or not ready?

18 A. Approximately 3100.

19 Q. And does TEA have an analysis or a study or an
20 evaluation of how or why the 19 -- the approximate 1900
21 districts that were not gauged as ready or not ready?

22 A. TEA does not. We did contract with the
23 University of Texas Health Science Center to carry out
24 and implement that program. They reported to each
25 school district who did not meet the certified standard

1 areas of weakness to work on through correspondence, but
2 we didn't receive that correspondence.

3 Q. All right. And did TEA have any -- a role in
4 that specific analysis?

5 A. No.

6 Q. And who at the UT Health Science Center
7 performed this analysis?

8 A. There was -- there's a gentleman named
9 Dr. Jeffrey Williams, and another gentleman named
10 Dr. David Anthony, and the other person there is
11 Dr. Paul Swank. And they performed the analysis under
12 the direction of Dr. Susan Landry.

13 Q. Are you aware of any criticisms of the report
14 issued by UT Health Science Center?

15 A. Which report?

16 Q. Well, I think you had mentioned that the UT
17 Health Science Center had conducted a study of the
18 districts that did not meet certification. Is that
19 right?

20 A. Let me clarify.

21 Q. Sure.

22 A. It wasn't necessarily a study. They did
23 provide information back to each individual classroom if
24 they were not certified the areas where they had
25 weaknesses and needed to work on. I'm not aware of any

1 criticisms of those classroom analyses and feedback.

2 Q. Did you analyze -- did you read the -- was it a
3 report? Was it reduced to a report?

4 A. They were individual letters for each
5 classroom, because the weaknesses in the -- in their
6 performance varied from classroom to classroom. So I
7 have read one or more of those letters, but not very
8 many.

9 Q. And you're not going to be offering an opinion
10 on whether or not students in preschool programs in
11 Texas are ready or not ready. Correct?

12 A. Correct.

13 MS. COLMENERO: Objection. Form.

14 A. Correct.

15 Q. (BY MR. HINOJOSA) All right. Going back to
16 Exhibit 917. It states here a child is eligible for
17 enrollment in free pre-K if at least three years of
18 age, and it has a number of criteria there. I won't go
19 through them, but are those correct?

20 A. Yes.

21 Q. Are there any additional criteria that would
22 make a student eligible for enrollment in the free pre-K
23 program for three-year-olds?

24 A. This document doesn't cover the PPCD program
25 that I mentioned earlier. So students may be eligible

1 if they don't meet this criteria for a half day of
2 prekindergarten if they meet the eligibility for the
3 PPCD program.

4 Q. I think earlier you mentioned that districts
5 get 3650 for each eligible student. Is that right?

6 A. That's correct.

7 Q. Is that on an ADA -- well, you mentioned the
8 weights. Right?

9 A. Correct.

10 Q. Are you aware of any analysis that's been done
11 by TEA or any other person or entity costing out the
12 cost of a pre-K program and reaching this dollar amount
13 of 3650?

14 A. No.

15 Q. Do you know where this 3650 came from?

16 A. A full ADA is 73, and so it's half of a full
17 ADA.

18 Q. And you won't be offering an opinion in this
19 case about whether or not this 3650 is sufficient to
20 provide an adequate preschool program for eligible
21 students. Correct?

22 A. No.

23 MS. COLMENERO: Objection. Form.

24 Q. (BY MR. HINOJOSA) And have you yourself done
25 any analysis of the cost of an adequate preschool

1 program?

2 A. No.

3 Q. Are you aware of anybody at TEA who has done
4 such a --

5 A. No.

6 Q. Going back to Exhibit 917. It states here that
7 the funding for 2011-2012 is about 718 million.

8 Correct?

9 A. Correct.

10 Q. And that dropped from 748 million in 2010-2011.
11 Correct?

12 A. Correct.

13 Q. Do you know why there was a drop in funding?

14 A. I do not. But as it indicates, it's
15 preliminary. We rely on the state funding division for
16 this data, and we are frequently told that it is point
17 in time -- these numbers are based on a point in time;
18 and there may be a final number that happens either in
19 the following school year or late in the school year
20 that shows the final, final, final number, and so these
21 numbers occasionally change again.

22 Q. I'm very familiar with that number of changing
23 financial data.

24 What point in time were you using for the
25 718 million-dollar fee?

1 A. It was likely the October snapshot data.

2 Q. Do you have an opinion on whether or not
3 high-quality preschool programs for ELL and low income
4 students can help better prepare those students to
5 achieve the state standards?

6 MS. COLMENERO: Objection. Form.

7 You can answer.

8 A. Can you repeat the question? I am sorry.

9 Q. (BY MR. HINOJOSA) Sure. Do you have an
10 opinion on whether or not high-quality preschool
11 programs for ELL and low income students can help better
12 prepare those students to achieve the standards put in
13 place by the state?

14 A. Yes. I have a personal opinion.

15 Q. What's your opinion?

16 A. I believe it can.

17 Q. And are you intending to offer an opinion
18 regarding that subject matter in this case?

19 A. No.

20 Q. All right. And you're familiar with funding
21 for preschool programs. Correct?

22 A. State funding for pre-K programs, yes.

23 Q. We were talking earlier about the pre-K early
24 start programs, and it looks like the amount of the
25 appropriations for 2010-2011 was about 208,600,000.

1 Does that sound right?

2 A. That sounds about right.

3 Q. And for the 2011 -- or 2012-2013 was zero.

4 Correct?

5 A. Correct.

6 Q. And did TEA have a position on whether or not
7 those funds should be cut?

8 A. If so, I don't recall.

9 Q. Did you provide testimony on behalf of TEA or
10 are you aware of anybody else on behalf of TEA providing
11 testimony concerning the elimination of the pre-K early
12 start program's funding?

13 A. I don't think I did. I don't recall if anyone
14 else did. I don't recall.

15 Q. Do you have an opinion on whether or not it was
16 a move in the right direction for the State of Texas to
17 cut pre-K early start programs?

18 MS. COLMENERO: Objection. Form.

19 You can answer.

20 A. I don't have an opinion on that.

21 Q. (BY MR. HINOJOSA) Never had an opinion on
22 that?

23 A. No. My opinion is that the people of Texas
24 elect their representatives, and they follow what they
25 think their constituency wants to do.

1 Q. Do you consider yourself an advocate for pre-K
2 students?

3 A. Yes.

4 Q. Why is that?

5 A. I think as -- personally, as a human being,
6 everybody's interested in the well-being of three- and
7 four-year-old children and their ability to succeed at
8 school and life. I don't know how else to answer that.

9 Q. Are you aware of any other program cuts by the
10 legislature that have effected pre-K programs in Texas?

11 A. There was a reduction in the Texas School
12 Ready! program from seven and a half million per year to
13 three and a half million per year. I'm not aware of any
14 other reductions.

15 Q. And when you say the Texas School Ready!
16 program, is that basically KRS?

17 A. No. That is the Texas School Ready!
18 intervention and professional development program that
19 is administered by UT Health Science Center of Houston,
20 also known as the State Center.

21 Q. Are you aware of any cuts made by the
22 legislature that effected the other two programs that
23 you oversee, GED and Adult Basic Education?

24 A. No. I'm not aware. I believe cuts were made
25 to those. There is no state funding for GED.

1 whether -- are you familiar with that program?

2 A. Very limited familiarity.

3 Q. Do you know whether or not cuts to the Teacher
4 Mentor Program have effected school districts' ability
5 to offer high-quality pre-K programs?

6 A. I don't believe it has.

7 Q. What's the basis for that?

8 A. I don't recall any specific pre-K facets to
9 that program, unless there was a teacher who was being
10 offered services under that program who might have been
11 an elementary teacher, might have been a pre-K teacher.
12 There could have been some pre-K teachers included, but
13 it would have been a very small percentage, I believe.

14 Q. So --

15 A. I'm not aware of any pre-K teachers involved in
16 that program.

17 Q. Okay. And what's the basis for your statement
18 there?

19 A. My recollection of that program in its last
20 iteration was that it was being -- that it was focused
21 on math and science programs most likely for secondary
22 students. But I'm not the person to ask, I'm sorry,
23 about that.

24 Q. That's fine. Because it sounds like you're
25 saying that you do know, but then again you maybe don't

1 Q. Okay. Thank you.

2 A. And wasn't -- there wasn't any before either.

3 Q. Are you aware of whether cuts to the LEP
4 Student Success Initiative and special projects has
5 effected preschool programs?

6 A. There was a preschool program in that rider
7 that was specific to preschool LEP. I'm sorry. I don't
8 recall the amount. Approximately 3 million. So I
9 believe that was included in that cut for the LEP SSI
10 program.

11 Q. If I represent to you that the LEP Student
12 Success Initiative and Special Grants Projects was cut
13 from 19,400,000 in 2010-2011 biennium to zero in
14 2012-2013, would you have any reason to disagree?

15 MS. COLMENERO: Objection. Form.

16 Go ahead.

17 A. No. I'm sorry. I don't recall. But that
18 is -- that was a preschool program that was cut. So to
19 your earlier question about am I aware of any other
20 pre-K programs that were -- that were cut in the
21 legislature, I apologize. I had forgotten about that
22 on -- because it was included in another area of the
23 agency that I had forgotten about.

24 Q. (BY MR. HINOJOSA) All right. Thank you. How
25 about the Teacher Mentor Program? Do you know

1 know --

2 A. I see what you're saying.

3 Q. -- and so I'm just trying to --

4 A. What knowledge I have --

5 Q. -- yeah -- figure out what your facts are.

6 A. What knowledge I do have of the program is
7 peripheral based on colleagues who ran the program, and
8 it's very limited. If there was a pre-K component to
9 the program, I would have been included in the
10 discussions and in the administering of that program.
11 That's what the basis of my assertion is that because I
12 was not included in those policy decisions, I'm pretty
13 certain.

14 Q. So it looks like under the Teacher Mentor
15 Program the school districts were able to assign a
16 mentor teacher to classroom teachers who had less than
17 two years of teaching experience. Does that sound
18 familiar?

19 A. That sounds familiar.

20 Q. And looks like, you know, districts could be --
21 could use that funding for teacher stipends for
22 mentoring teacher stipends, scheduling time for mentor
23 teachers to provide mentoring, to assign classroom
24 teachers and mentoring support through providers of
25 mentor training.

representative in the Texas House of Representatives office, and I haven't seen the study.

Q. Do you know when that study was produced -- or I mean, published?

A. I believe it was in July 2012, but I haven't -- like I said, I haven't seen it, so I don't know where it's published.

Q. Are you familiar with the findings in that report?

A. No, I'm not.

Villarreal. Representative Villarreal.

Q. Mike Villarreal?

A. Yes, I believe.

Q. Are you aware of long-term effects from pre-K programs such as less grade repetition, less special education placement, or increased high school graduation rates?

A. Yes.

MS. COLMENERO: Objection. Form.

A. Yes.

Q. (BY MR. HINOJOSA) Are you aware of any criticisms of the Head Start programs in Texas?

A. Yes.

Q. What are those criticisms that you're aware of?

A. I'm aware of a report on the National Head

Start program. I'm sorry, I don't recall the title, where it was published, or when; in the last couple of years. But essentially that criticized the program for not providing enough cognitive development in ensuring that students are able to perform at grade level in kindergarten.

Q. Are you aware of TEA or any other contracted entity with TEA that has performed a similar analysis of Head Start programs here in Texas?

A. No.

Q. Are you aware of any research conducted by TEA or any other person or entity analyzing the relationship of the higher standards that Texas has moved to under STAAR versus the quality of pre-K programs?

A. No. Are you aware any plan that TEA might have in place in order to determine whether or not the pre-K programs in Texas are adequately preparing the students so that they can be ready for the new STAAR?

MS. COLMENERO: Objection. Form.

Go ahead.

A. No. I'm not aware.

Q. (BY MR. HINOJOSA) Have there been any discussions at TEA whether the state should conduct a study in order to make sure that these students that are coming out of pre-K programs are adequately prepared to

succeed on the STAAR further on down the line?

A. No, I'm not aware.

Q. Do you believe as the early childhood director that somebody should be looking into that issue to make sure that these students can succeed further down the line?

MS. COLMENERO: Objection. Form.

Go ahead.

A. I believe that somebody should. I don't necessarily believe that is TEA.

Q. (BY MR. HINOJOSA) Not TEA, who should it be?

A. I think that institutions of higher education or research institutions may be better staffed and have more capacity to conduct those types of inquiries.

MS. COLMENERO: Can we go off the record for a second?

MR. HINOJOSA: Sure.

(Discussion off the record.)

Q. (BY MR. HINOJOSA) In the year 2010-2011, Texas provided a state funding to serve about 52 percent of the state's four-year-olds and 6 percent of three-year-olds. Does that sound right?

MS. COLMENERO: Objection. Form.

A. I don't know.

Q. (BY MR. HINOJOSA) You don't know? Do you know --

A. Can you ask the question again?

Q. Sure.

A. Just to make sure I understand what I don't know.

Q. Let me ask you first. Do you know how many four-year-olds in the State of Texas were being served in pre-K programs with state funding in the year 2010-2011?

A. I'm referring to Exhibit 917. We list an enrollment of 224,335 students. So that's what I know.

Q. Do you know how many four-year-olds there were in Texas in the year 2011-2012?

A. I would say it wouldn't be that different than what's listed here in the 2000 -- 2010 census of 386,901 four-year-olds and 390,260 three-year-olds.

Q. And if those increases had -- well, strike that.

Would you state that Texas has made or not made progress over the last decade in expanding access to pre-K?

A. Yes. We have.

Q. And would you also agree that there remains considerable need for further expansion just at age

1 four?

2 MS. COLMENERO: Objection. Form.

3 A. I wouldn't -- I don't -- I wouldn't make that
4 statement.

5 Q. Would you disagree with that statement?

6 A. I wouldn't agree or disagree with that
7 statement.

8 Q. So you don't have an opinion on whether or not
9 there remains considerable need for further expansion of
10 pre-K in Texas at age four?

11 MS. COLMENERO: Objection. Form.

12 A. I don't have an opinion on that.

13 Q. (BY MR. HINOJOSA) How about for
14 three-year-olds?

15 A. I don't have an opinion on that.

16 Q. Do you know whether or not the state funding
17 for pre-K over the last three years or so has declined
18 or gone up?

19 A. It's declined.

20 Q. Do you know how much it's declined?

21 A. The last three years or so?

22 Q. Yes.

23 A. Well, there was the 200 million-dollar TEKS
24 grant that was not funded. Regular ADA funding -- I'm
25 sorry. I don't know off the top of my head. I just

1 know based on what's reported by the state funding
2 division. So in 2009-2010, I guess overall it has
3 actually -- well, that's just the Foundation School
4 Program. It's increased from 714,000 to 718 and
5 change -- I'm sorry -- million rather, but there was a
6 200 million-dollar reduction, approximately, in the
7 grant program. So it's overall declined.

8 Q. And at the same time that this has gone up
9 between 2009-2010 to 2011-2012, there's also been an
10 increase in the number of students. Is that right?

11 A. Yes.

12 Q. So that increase might -- the increase in the
13 number of students might account for the increase in the
14 FSP there. Correct.

15 A. Correct.

16 Q. Do you know whether or not the funding per ADA
17 itself has gone up or down in the years that you've been
18 at TEA?

19 A. I believe it has gone up.

20 Q. Are you --

21 A. I'm not a state funding expert, so I don't.

22 Q. And, you know, I'm just asking your knowledge
23 as the director.

24 A. Yeah. Um-hmm.

25 Q. Has the funding per ADA for pre-K programs ever

1 gone down since you've been at TEA?

2 A. Not to my knowledge.

3 Q. Not even within the last year?

4 A. I don't know.

5 Q. All right. In Texas, assistant teachers are
6 not required to have an education beyond a high school
7 diploma. Correct?

8 A. I believe that's correct.

9 Q. And Texas doesn't require comprehensive
10 screenings for health and other problems for entry -- at
11 entry to pre-K. Correct?

12 A. Correct.

13 Q. And it does not conduct regular site visits to
14 monitor program performance. Correct?

15 MS. COLMENERO: Objection. Form.

16 A. No. Texas relies on local school districts and
17 boards of trustees to monitor school programs.

18 Q. (BY MR. HINOJOSA) So just because the way that
19 I asked the question, I just want to make sure that the
20 record's clean on this.

21 The Texas Agency does not conduct regular
22 site visits to monitor program performance. Correct?

23 A. Correct.

24 Q. Does the Texas -- does Texas Education Agency
25 conduct any site visits regarding program performance of

1 school districts in pre-K?

2 A. I don't know. Texas has a performance-based
3 monitoring -- or the agency has a performance-based
4 monitoring division. I'm not aware of everything they
5 cover.

6 Q. In addition to the one FTE that you said that
7 works under you under the early childhood, is there
8 another professional staff to oversee the pre-K special
9 education?

10 A. Yes.

11 Q. And does that person only oversee pre-K special
12 education?

13 A. I don't know.

14 Q. Do you know who that person is?

15 A. Currently that position is vacant.

16 Q. Do you know whether or not it's looking at
17 being filled or is it just going to remain vacant?

18 A. No. I believe -- I think the position has been
19 posted and they're in the process of evaluating
20 candidates.

21 Q. Are you aware of how your staffing for early
22 childhood compares to that of other states?

23 A. No, I'm not.

24 Q. Do you have any reason to disagree with the
25 statement that there are smaller states that have ten

1 this -- I think you referred to it as school
2 integration?

3 A. School readiness integration specialists?

4 Q. School readiness integration. And do you
5 consider yourself an expert in school readiness
6 integration?

7 A. No. Not an expert.

8 Q. All right. And you don't have any reason to
9 doubt Dr. Barnett's expertise in those areas. Correct?

10 MS. COLMENERO: Objection. Form. What
11 areas?

12 MR. HINOJOSA: Well, the areas of school
13 readiness integration and monitoring.

14 MS. COLMENERO: Objection. Form.

15 A. I don't -- I have no knowledge of his expertise
16 or lack thereof in school readiness integration.

17 Q. (BY MR. HINOJOSA) Okay.

18 A. I've never seen any evidence of his expertise
19 in school readiness integration.

20 Q. Well, you read his report. Right?

21 MS. COLMENERO: Object --

22 A. Yes.

23 Q. (BY MR. HINOJOSA) What other areas, did you
24 disagree with or find disagreement with Dr. Barnett's
25 report?

1 optimal?

2 A. I was paraphrasing. I was referring to his
3 producing large increases in long-term success have had
4 class sizes of 18 or less.

5 Q. So in looking back at this, you would agree
6 with me that the optimal class size is 18. Correct?

7 A. I agree.

8 MS. COLMENERO: Objection. Form.

9 Q. (BY MR. HINOJOSA) And once again, you don't
10 have expertise in that area. Correct?

11 A. No.

12 Q. All right. Any other facts that you disagree
13 with and/or opinions made by Dr. Barnett in his report
14 that you disagree with?

15 MS. COLMENERO: Objection. Form.

16 A. Again, with my just sort of limited time to try
17 to recall what my specific issues were, he makes a
18 statement on page 19 that important -- the cost of such
19 changes are relatively modest, and by that I assume he
20 means changes to the pre-K program. And consist -- and
21 these are what he would recommend, consist of coaching,
22 professional development and planning time, and some
23 changes in educational materials.

24 I contend that those are not relatively
25 modest cost changes.

1 A. There was an area where he stated that a --
2 there was a study that showed that the optimal class
3 size in some report was 18 to 1, and then in the next
4 paragraph he stated that the class size should be 15 to
5 1. And I didn't find a rationale for why it would be
6 different than the study he cited of 18 to 1, why it
7 should be 15 or 18.

8 Q. Are you familiar with that specific study that
9 he mentioned?

10 A. No, I'm not, except for that he mentioned it.
11 And I was -- I made a note that he mentioned that the
12 optimal was 18 and then in the next paragraph he
13 recommended 15.

14 Q. Let's go there right quick. It's on page 2, I
15 believe, on the first full paragraph.

16 A. Yes.

17 Q. Second sentence it says "Specifically Texas
18 places no limits on class size or ratio, and programs
19 with the strongest evidence of producing large increases
20 in long-term school success have had class sizes of 18
21 or less with two adults in the classroom."

22 Correct?

23 A. Right.

24 Q. All right. So where does it say "optimal"
25 there in that sentence, that class size of 18 is

1 Q. (BY MR. HINOJOSA) Do you know whether or not
2 "modest" meant in terms of the gains that could be
3 derived compared to the cost?

4 MS. COLMENERO: Objection. Form.

5 A. I did not read it that way. I read it simply
6 as the pure form of is it costly or not costly to make
7 these changes.

8 Q. (BY MR. HINOJOSA) And you're not offering an
9 opinion on whether or not these changes would actually
10 improve --

11 A. No.

12 Q. Hold on. Let me get this.

13 You're not offering an opinion on whether
14 or not coaching and professional development in
15 conjunction with planning time, plus some changes in the
16 educational materials might improve -- might or might
17 not improve pre-K programs. Correct?

18 MS. COLMENERO: Objection. Form.

19 Go ahead.

20 A. It is my personal belief that those things are
21 effective in increasing prekindergarten programming
22 And quality.

23 Q. (BY MR. HINOJOSA) Do you know what the cost of
24 these changes would be?

25 A. I think that's a broad question that has a lot

1 of -- that doesn't have enough parameters to necessarily
2 make a statement.

3 Q. Sure. Let me go ahead and try to reel that in,
4 because I think earlier your testimony was that you
5 thought that these changes were not relatively modest.
6 Is that correct?

7 MS. COLMENERO: Objection. Form.

8 A. In my opinion those are not modestly cost --
9 costs.

10 Q. (BY MR. HINOJOSA) So what's the basis for your
11 opinion that these are not relatively modest cost
12 changes?

13 A. In my capacity as administrator of a number of
14 grant programs, both in early childhood and in other
15 grades, the majority of the costs in an intervention or
16 a program improvement grant program, are in the areas
17 especially of professional development, certainly in
18 coaching, and in purchasing of high-quality materials.

19 There does tend to be a cost listed in
20 these grant programs related to common planning times
21 and how to develop those common planning times, and so
22 what I have seen is that in those grant programs those
23 are the majority of the costs.

24 Q. And what kind of costs are we talking about?

25 A. So we're talking about the cost of paying a

1 provider of professional development and coaching which
2 can be a great deal of manhours both on -- in terms of
3 the entity that is conducting the training, but also in
4 terms of release time for teachers and aides and others
5 involved in the training. Substitutes who might have to
6 be in class for those teachers to go to training. Extra
7 duty pay and time for teachers who are involved in the
8 training if it's not during class time. Technology used
9 for professional development, if it is distance learning
10 on the part of the teachers. Salaries for coaches and
11 mentors and facilitators, travel for coaches and
12 mentors, travel for people conducting professional
13 development and attending professional development and
14 on and on and on.

15 So I don't know if I -- there's a lot of
16 costs involved in professional development and coaching.

17 Q. And do you know what kind of price tag we're
18 talking about? I think earlier you had mentioned one of
19 the grants was \$900 per student. Is that typically in
20 the area that you would find for --

21 A. I haven't seen any analysis of a grant cost on
22 a -- for professional development per student, but I
23 can -- let's see. Without the documentation in front of
24 me, I'd hesitate to put a percentage or a dollar figure
25 on how much a grant might spend on professional

1 development. But it is not insignificant.

2 Q. All right. So I think earlier you said that
3 the early childhood grant that had expired in
4 December 2011 was \$900 per pupil. Correct?

5 A. Correct.

6 Q. And that had covered things including
7 professional development and high-quality supplies and
8 materials and training and mentoring. Correct?

9 A. Correct.

10 Q. So is it your testimony that \$900 might not
11 cover all that needs to be done related to professional
12 development with pre-K programs?

13 MS. COLMENERO: Objection. Form.

14 A. It might -- in some cases it is enough, in
15 other cases it isn't enough.

16 Q. (BY MR. HINOJOSA) All right. Any other areas
17 or -- let me ask you first.

18 Are there any actual facts reported in
19 Dr. Barnett's report that you disagree with?

20 A. No.

21 Q. Are there any other opinions made by
22 Dr. Barnett in his report that you disagree with?

23 MS. COLMENERO: Objection. Form.

24 A. Not that I can think of at this time, no.

25 Q. (BY MR. HINOJOSA) And in this case, you're not

1 intending to offer opinions -- expert opinions rebutting
2 the expert opinions that Dr. Barnett made in this
3 report. Correct?

4 A. No.

5 Q. Have you testified as a witness on early
6 childhood education before the committees of the
7 legislature?

8 A. Yes.

9 Q. And what subjects have you testified?

10 A. I testified on the School Readiness
11 Certification System that was at that time known as
12 Texas School Ready Certification. I've testified on the
13 Texas School Ready! program. I have testified on the
14 Early Childhood Program in general. I have testified on
15 use of the Federal Child Care Development Fund Block
16 Grant. Those are the early childhood areas in which
17 I've testified.

18 Q. Earlier I think you had said that 3100 --
19 approximately 3100 certified classrooms. Is that
20 correct?

21 A. That's correct.

22 Q. And for those classrooms that did not meet
23 certification, what, if anything, did the state provide
24 to those districts, aside from, you know, the letter
25 that was provided from Dr. Landry, I believe?

MS. COLMENERO: Objection. Form.

Go ahead.

A. In most cases, the state provided additional professional development and intervention services, technical assistance.

Q. (BY MR. HINOJOSA) The professional development. What areas did that cover?

A. It covered many areas. I'm sure it was customized for each entity that was providing services to children depending on where their needs were, but in general, professional development covers early numeracy, early language and literacy strategies, classroom management strategies, strategies for students that are ELL, strategies for the various subject areas of early childhood.

Q. And this professional development is -- who provides that professional development?

A. It had been provided by the Texas State Center for Early Childhood Development, UT Health Science Center.

Q. Was there ever any analysis that you're aware of on the effectiveness of the professional development in improving student outcomes?

A. There was a report -- there have been a couple of reports -- I'm not going to remember them all. There

was a report conducted by the LBB, prior to the last session, so probably in December 2010 it was published. There was an evaluation conducted through a contract with TEA in 2007 -- I'm sorry, I don't get dates right. They're all on our reports page of our web site.

There were annual reports from the State Center themselves about their -- their program and the evaluation of their programs. Those are the ones that I am familiar with.

Q. Are they no longer providing the professional development in the area of early childhood?

A. No. They are.

Q. They are. Who else provides professional development for early childhood issues?

A. The School Readiness Integration Specialist at the Education Service Centers. Those are the two that are provided by the state. But there are many, many providers out there.

Q. And does this professional development cost money?

A. Yes.

Q. Do you know how much?

A. The total allocation to the State Center for their program, which includes professional development as well as other things, is three and a half million a

year. The School Readiness Integration Specialists are 2.2 million a year.

Q. Are you aware of any evaluation or audit of the effectiveness of the early childhood education services provided by the Educational Service Centers?

A. No.

Q. And how many hours are required to be provided under the half-day pre-K program?

A. Three hours of instructional time.

Q. All right. And how about full-day pre-K programs?

A. Seven hours of instructional time. Including rest periods, meals, naps, et cetera.

Q. And the half-day pre-K program, does that include meals?

A. No. The three hours does not include mealtime.

Q. But are meals provided under the public preschool program?

A. Some provide meals, some do not.

Q. Do you know whether or not the state provides funding for the meals?

A. No. Meals are provided through the National School Lunch and Breakfast Program.

Q. So is it your testimony that half-day pre-K programs in Texas that students attending those programs

will receive free or reduced price lunch under the National School Lunch Act?

MS. COLMENERO: Objection. Form.

A. The half-day program?

Q. (BY MR. HINOJOSA) Yes.

A. Some do, some do not.

Q. Whose decision is that?

A. The local school district.

Q. Under the pre-K guidelines by TEA, are you familiar with TEA recognizing that ELLs may take additional time through the stages of second language acquisition to learn and use English?

MS. COLMENERO: Objection. Form.

A. I'm not familiar with the ELL program. I'm sorry.

Q. (BY MR. HINOJOSA) Are you familiar with the pre-K guidelines?

A. Yes. I'm sorry. Can you repeat the question? The pre-K guidelines "what" now?

Q. Sure. I was just wondering -- and I apologize. I meant to have the pre-K guidelines in front of me. I was asking you whether or not...

MS. COLMENERO: Can we go off the record while you look that, David?

MR. HINOJOSA: Sure.

(Discussion off the record.)

MR. HINOJOSA: I'm not going to enter this. Perhaps counsel will enter this later.

Q. (BY MR. HINOJOSA) Under the kindergarten readiness, the system analysis -- and this states "A straightforward approach to recognizing excellence in pre-K."

Are you familiar with these -- with this document?

A. Yes.

Q. And we're looking at now the revised Texas Prekindergarten Guidelines approved by the commissioner in May of 2008.

A. Yes.

Q. Are those the most recent guidelines?

A. Yes.

Q. In here on page 10 it states "Children who are English language learners differ in their rates of English language acquisition. It is important to be supportive of a child's emotional, as well as academic needs during second language acquisition. It is also important for the teacher to understand that some children, when learning a second language, experience 'silent' periods during this time. They are listening actively and gathering information about the new

language. As they acquire sufficient English by listening, children enter a stage of early production in which they use telegraphic speech..."

And it goes on there. Does that sound accurate?

A. Yes.

Q. Are you familiar with any inaccurate representations or facts made in the Revised Texas Prekindergarten Guidelines?

A. No.

Q. And in here, it goes on at the end and it says "Children who are English language learners should be encouraged to express their understanding in their home language while teachers actively increase the child's use of the English language."

Correct?

A. Yes.

Q. Going to under "Instructional Recommendations," it states "Children who are English language learners and in a prekindergarten classroom should receive instruction in a manner they can understand and at their English proficiency level."

Correct?

A. Correct.

Q. All right. And is that an accurate statement

as well?

A. Yes.

Q. Do you recall testifying before the House Public Education Committee on early childhood about April 2008?

A. That sounds about right.

Q. And in discussing the statewide half-day pre-K program, you mentioned that the ADA coverage at that time was 3650. Correct?

A. Correct.

Q. And you also testified that stagnant and reduced funding was, quote "causing challenges for districts," end quote, in the pre-K expansion grant program. Correct?

A. Correct.

Q. And what was the basis for your statements there?

A. The Prekindergarten Expansion Grant Program was began in approximately -- was begun in approximately 1999. When school districts applied for that grant, they applied based on the number of prekindergarten children they had at that time. And that -- and they, in some cases, applied for less funding of their own volition than they were eligible to receive based on their enrollment. Over the course of the next eight or

nine years, that grant program was operated in such a manner as to hold those accounts steady, because there was no increased funding. So as enrollment grew in those districts, the funding did not grow because the grant was held at level funding for each grant for each district.

This meant that if a district had doubled the enrollment, they were only eligible to receive in that grant program the amount that they received in 1999, or when they entered the program. Some of those dates might be a little different. There were some modifications, but very little. Overall that was the result of that policy.

When we changed that grant program, which had been known as the Prekindergarten Expansion Grant to the Prekindergarten Early Start Grant using the same statute, we allowed districts to apply for an amount of money, approximately \$900 per child based on their current enrollment, so they could serve their current number of students. That's what that discussion was about. It wasn't necessarily -- it wasn't about the ADA.

Q. And so the -- the challenges that you had mentioned there, that was reflected in what your testimony was just right now is that --

1 A. To the best of my recollection.

2 Q. Do you recall the open-mic fiasco at a state
3 board meeting?

4 A. Yes, I do.

5 (Exhibit No. 918 marked.)

6 Q. (BY MR. HINOJOSA) I'm going to hand you what
7 we've marked as Exhibit 918. I won't ask you to look at
8 it just yet, but, you know, please feel free to use it
9 there as a recollection in order to help refresh your
10 memory in case you might not know.

11 But can you tell me what the issue was
12 with respect to, you know, the open mic issue at the
13 state board meeting back in December 2008?

14 A. It's been a long time, but what I recall is
15 that I was being criticized by a superior for allowing
16 the State Center an extended period of time to report
17 some data that they were required to report. They had
18 missed a deadline and at that time, I believe it was a
19 result of a hurricane in Houston. I don't remember
20 which one, but they were compromised with regard to
21 staffing not being available, et cetera, because they
22 were dealing with their hurricane issues so they were
23 late in reporting some data.

24 My supervisor at the time didn't feel I
25 should give them an extension, and said that they were

1 taking advantage of me. And I asserted that I felt
2 otherwise. That was --

3 Q. The gist?

4 A. That was the core of the issue, yeah.

5 Q. Okay. And so you were discussing this issue
6 regarding the State Center with TEA Deputy Commissioner,
7 Lizzette Reynolds. Is that right?

8 A. Yes.

9 Q. And you were unaware at the time that your
10 conversation was being broadcast live over the Internet.
11 Right?

12 A. Correct.

13 Q. And in a statement that you made following the
14 broadcasted private conversation, you stated that TEA
15 had relied heavily on the State Center to carry out,
16 quote, "high-quality, early childhood reform efforts
17 across the state," end quote. Correct?

18 A. Yes.

19 Q. And you also stated that TEA relied heavily on
20 the State Center's research and expertise. Correct?

21 A. Correct.

22 Q. And in the conversation with Ms. Reynolds, you
23 mentioned not having the expertise to argue the case
24 regarding the State Center. Correct?

25 A. I don't remember what I was referring to there.

1 Q. Okay. Let me ask you this question.

2 So on Exhibit 918 that I've handed you
3 it's an excerpt from the Houston Chron
4 Blog/Texas Politics 2008 Open Microphone Records.

5 And this is -- this Exhibit 918 accurately
6 reflects the conversation with Ms. Reynolds. Correct?

7 A. I think so. Yes.

8 MS. COLMENERO: Objection. Form.

9 Q. (BY MR. HINOJOSA) Were there any challenges
10 collaborating with certain individuals at the State
11 Center at this time?

12 A. Not for me.

13 Q. When you say "not for me," why do you qualify
14 it?

15 A. Well, I think this transcript is evidence that
16 Ms. Reynolds felt challenged in collaboration with them.
17 I think the grants office had some feelings of being
18 challenged, some disagreements. I did not have any
19 disagreements with them.

20 Q. How about today? Do you have any disagreements
21 with the State Center?

22 A. No.

23 Q. Do you continue to rely heavily on their
24 expertise?

25 MS. COLMENERO: Objection. Form.

1 A. I would say we rely on their expertise and
2 their research of the past, yes.

3 Q. (BY MR. HINOJOSA) Are you aware of any other
4 facts regarding the Early Childhood Education Program
5 that you intend to offer testimony on in this case?

6 A. No.

7 Q. All right. Thank you very much, Ms. Day.

8 MR. SENCENBAUGH: Take a break?

9 MS. COLMENERO: Yes.

10 (Mr. Hinojosa leaves deposition room.)

11 (Recess from 12:30 p.m. to 1:39 p.m.)

EXAMINATION

13 BY MR. SENCENBAUGH:

14 Q. Ms. Day, I just want to go through the outline
15 from this morning that Mr. Hinojosa went through with
16 you and kind of just clear up a few things, and
17 hopefully stay in the same order he was in. So I'm
18 going to jump around a little bit, but I'm going to try
19 keep it consistent with what you were asked this morning
20 so we have a little bit of clarity on that.

21 First I want to ask you about your work
22 experience. You were talking about earlier between '98
23 and 2004 that you did grant administration. Is that
24 correct?

25 A. Yes.

1 which is a whole sort of accounting that is used by many
2 agencies. So yeah, there are the funding divisions.
3 Discretionary grants provides the funding to the
4 grantees.

5 Q. Okay.

6 A. Manages that.

7 Q. But in your role that you're describing here,
8 you wouldn't have been creating the grant itself?

9 A. No. The legislature or the --

10 Q. So some third-party, legislature, or a federal
11 agency would have created a grant for a certain activity
12 or a certain, you know, program or something like that?

13 A. Yes.

14 Q. Okay. Okay. That's what I kind of wanted to
15 clear up.

16 Now, earlier you said that you currently
17 have three positions. I understood you to be director
18 of early child education at TEA, GED director -- state
19 GED director, I'm not sure how you phrased that, and
20 Adult Basic Ed. state coordinator. How much time do you
21 spend on each of these jobs? Can you allocate for me?
22 30 percent? 40 percent? 50 percent?

23 A. I'd say 10 -- I don't know. Boy, 15 percent
24 Adult Basic Ed. 15 percent GED. 70 percent early
25 childhood. Maybe over the course of a year, but it

1 certainly varies within that. In August, I'm probably
2 closer to 95 percent early childhood because that's
3 enrollment season.

4 Q. Okay.

5 A. But it varies.

6 Q. And you've held the job as Adult Basic Ed.
7 state coordinator for how long?

8 A. Since August 2012.

9 Q. Since August?

10 A. About a month.

11 Q. A little over a year -- oh, I'm sorry. A
12 month.

13 A. Just about a month.

14 Q. And then the GED state director you've been
15 for -- is that over a year?

16 A. No. About seven weeks.

17 Q. Seven weeks? Okay.

18 Do you anticipate having these other two
19 jobs permanently?

20 A. Yes.

21 Q. Is it your understanding that those two jobs
22 have been phased out as independent full-time positions
23 for another person?

24 A. Yes.

25 Q. Okay. And going forward, you don't anticipate

1 someone being hired on to take your role as either GED
2 state director or Adult Basic Ed. state coordinator?

3 A. No, I do not.

4 Q. Is it your opinion that those other jobs
5 require a full-time equivalent employee or not?

6 MS. COLMENERO: Objection. Form.

7 A. No.

8 Q. (BY MR. SENCENBAUGH) Okay. Do you feel like
9 you can spend an adequate amount of time to perform the
10 jobs -- the tasks necessary for each of those three
11 jobs?

12 A. Yes.

13 Q. Now, I understand in this case you've been
14 designated to offer testimony on the development and
15 operation of early childhood programs in Texas and
16 funding for those programs. Is that an accurate
17 statement?

18 A. That sounds right.

19 Q. Okay. And we've talked about what I would
20 understand to be one of those programs here today which
21 would be the KSR program. Is that the right way to say
22 it.

23 A. KRS.

24 Q. Kindergarten...

25 A. Kindergarten Readiness System.

1 Q. Kindergarten Readiness System. Okay.

2 And how was that program developed?

3 A. Well, there is a statute that requires the
4 state to develop a School Readiness Certification
5 System -- that's what it's called in statute -- that
6 measures the effectiveness of licensed child care, Head
7 Start, and public prekindergarten programs.

8 Q. When was that statute passed? Do you recall?

9 A. I -- I couldn't -- I'm sorry. Mid-2000s.

10 Q. Okay.

11 A. That's the best I'm going to do without
12 something in front of me.

13 Q. And go on. I'm sorry.

14 A. So I believe the requirement also states that
15 the State Center for Early Childhood Development -- a
16 statute, rather, would be the agency that would help to
17 create this program; and that it would be based on
18 research. So we engaged the UT Health Science Center
19 who houses the State Center for Early Childhood
20 Development in a unit known as the Children's Learning
21 Institute to develop said program.

22 We provided them with funding for
23 developing the parameters, establishing the analysis
24 process, et cetera, then we -- then they contracted with
25 Oz Systems in order to do the data collection and the

1 matching.

2 Q. Okay. Let me just break it up in a few
3 questions and maybe streamline it a little bit.

4 How did you choose Oz to perform those
5 services?

6 A. Oz Systems was selected by UT through a
7 competitive bid process.

8 Q. And were you involved in any way with that
9 solicitation?

10 A. I don't recall. I may have reviewed the RFP.
11 I don't recall.

12 Q. Okay. And what were the --

13 A. Let me clarify that. I believe the very first
14 iteration of that contract, the State Center selected Oz
15 based on a sole source because there was a time
16 impediment to get the program up and off the ground in a
17 certain amount of time, and it was determined that they
18 were the provider that could do that.

19 Q. Okay.

20 A. And I think the following year was a
21 competitive bid process.

22 Q. And I understand that to sort of answer the
23 question of the financial aspect of it, but selecting
24 on -- what do you mean when you say it had to be based
25 on research? What research specifically?

1 A. I think it was -- well, my understanding of the
2 term was that it was sort of a globally used term to
3 take into account the validity and reliability of the
4 early reading diagnostic instruments that are
5 administered for kindergarten children. And so to the
6 extent that those are based on assessment research of
7 young children, the School Readiness Certification
8 System is also based on that --

9 Q. But the KSR -- I'm sorry to interrupt. The
10 KSR -- KRS.

11 A. KRS.

12 Q. KRS? Well, the KRS doesn't actually -- the KRS
13 chooses the diagnostic tool. Correct?

14 MS. COLMENERO: Objection. Form.

15 A. No.

16 Q. (BY MR. STENCENBAUGH) No?

17 A. The diagnostic tool is selected by the
18 district.

19 Q. Okay. Does KRS -- does the program require --
20 I understood the program required the district to choose
21 amongst a particular set of diagnostic tools. Correct?

22 A. Yes. The set of tools that are approved by the
23 commissioner.

24 Q. And so the research you were speaking about was
25 to ensure that the district was using a diagnostic tool

1 that was based on research?

2 A. Correct.

3 Q. Is that what you mean by that term?

4 A. Yes.

5 Q. Did you mean anything else by that term?

6 A. Not that I recall.

7 Q. Okay.

8 A. Well, let me -- I will say in the previous
9 iteration that I mentioned where the -- when it was
10 known as Texas School Ready Certified, there were a
11 number of factors from the pre-kindergarten year that
12 were taken into account by the State Center in the
13 certification process, such as the curriculum being
14 used, the teachers' background and knowledge and
15 professional development, those types of classroom
16 strategies that were being used. Those were also
17 indicators of, you know, best practices in research, and
18 so those were taken into account in the previous
19 iteration of KRS, known as Texas School Ready Certified.

20 Q. And those have been phased out in the current
21 version of KRS?

22 A. That's right.

23 Q. And I understand the purpose of KRS is to
24 ultimately make a designation of a particular school or
25 a particular provider. Is that right?

1 A. Yes.

2 Q. And what was the name of that designation
3 again? School Ready Certified?

4 A. Prekindergarten Center of Excellence, is what
5 the designation will be.

6 Q. And what was the prior designation under TSRC?

7 A. Texas School Ready Certified.

8 Q. What percentage of studied schools reached that
9 designation under TSRC?

10 A. Without the numbers in front of me, I'd say
11 60 percent.

12 Q. Do you think approximately 60 percent?

13 A. Yeah. Approximately.

14 Q. And why were the other characteristics you
15 mentioned that were studied under TSRC about the method
16 of delivery for pre-K programs, why were those phased
17 out under the KRS system?

18 A. Primarily through stakeholder input and at the
19 request of school districts and providers who felt that
20 they were burdensome in their collection process, and
21 that it was not necessary for us to evaluate their
22 results, and that results were the primary goal.

23 Q. And was that based on, in your understanding,
24 any research about the most effective methods for
25 delivering pre-K services to children?

MS. COLMENERO: Objection. Form.

A. It was based on feedback from school districts.

Q. (BY MR. SENCENBAUGH) And you understood that feedback to be that the prior collection of the data was too burdensome to school districts?

A. Yes.

Q. And is there anything else that you're aware of that TEA relied upon to phase out those additional data collection methods from TSRC to KRS?

A. No. Not that I recall.

Q. We started to talk about this earlier, but what was your role in the development of KRS?

A. As the funder, my role was to ensure that the program was meeting the obligation of the statute and that the State Center was, in fact, providing the service to ensure that the grants and contracts that need to be in place were in place to do so. That's essentially it.

Q. Okay. And so you didn't have any role -- and you spoke a little bit earlier about a formula that Oz used to make the determination of a Pre-K Center for Excellence. Correct?

A. Correct.

Q. Now, you didn't have any role in developing that formula?

A. No.

Q. And do you have any knowledge about the research upon that -- what that formula is based upon?

A. No. I'm not a statistician.

Q. Okay.

A. But what we -- what we do have documentation on is that it's based on standard statistical methodologies, and that was the purpose of the Texas Southern University being involved; and we made sure that when Region 17 ran their competitive process that they included requirements that the bidders use standard, proven, valid, and reliable statistical processes.

Q. And your testimony on this would be based on the representation from -- you said Texas Southern? Who was the entity that --

A. I believe that was the entity.

Q. Okay.

A. I might have to get back to you on that.

Q. But you don't plan to offer any testimony related to the validity of the formula --

A. No.

Q. -- used by -- used for KRS?

A. No.

Q. Nor do you plan to offer any testimony on the

research upon which that formula is based. Is that correct?

A. Correct.

Q. Now, from what I understood from what I saw on the web site from your prior testimony this morning, KRS will do a single measure of children upon entering kindergarten, having previously identified those children by the service provider for the pre-K services they received, and a set of, you said five or six criteria, things such as children of a military member or a veteran or something like that; and then use those two pieces of information to determine whether the pre-K provider should be designated a Pre-K Center for Excellence. Correct?

A. Correct.

Q. Okay. And so there's no screening of the children upon entering the pre-K service provider?

A. No.

Q. And there's no attempt to -- strike that.

There's no curriculum that the pre-K service provider has to follow in order to be -- designated a Pre-K Center for Excellence?

A. No. That's local control.

Q. And as I understand it, there's no requirements of any kind on the pre-K center to be designated a Pre-K

Center for Excellence meeting the statistical formula that we talked about that was developed by Oz?

MS. COLMENERO: Objection. Form.

A. Correct.

Q. (BY MR. SENCENBAUGH) Now, do you know, is that a subjective or an objective test? And if you don't understand how I'm asking that question, I can clarify.

A. I believe it to be objective.

Q. Objective? Okay. So the KRS would not say that, okay, the best 30 percent of pre-K centers we have are going to be designated Pre-k Centers for Excellence, and everyone else would be -- not get that designation?

A. Correct.

Q. So they have to meet an objective measure to be designated a Pre-K Center for Excellence.

A. I'm afraid I would have to refer you back to the statisticians who developed the algorithm to explain that more than I did this morning.

Q. Okay. Now, did you have any input into exactly what would be required to meet that objective test?

A. What we --

Q. Because I understand you put out an RFP.

A. Right. Right. Right. We required in the -- in the RFP, we required that all -- that the system be able to serve any program type, whether it's licensed

1 child care, Head Start, or public prekindergarten. We
2 require that the system be able to collect data on all
3 of the different diagnostic tools on the commissioner's
4 list. We required that the system be able to collect
5 whether or not students -- how students are made to be
6 eligible on what their specific sort of demographic
7 criteria are. We require that they be able to match
8 students from pre-K to K. So I'm not sure what -- did
9 that answer your question?

10 Q. So --

11 A. So yeah. In writing the RFP, we put those
12 requirements in.

13 Q. And those are measurements of the demographic
14 characteristics of the students. Correct?

15 A. Correct.

16 Q. And measurements of the service provider's
17 categorization --

18 A. Sure.

19 Q. -- whether that be a school district or a Head
20 Start program or private program?

21 A. Correct.

22 Q. Did you have any input on deciding what would
23 be sufficient to meet the objective measure you've
24 described to get to a Pre-K Center for Excellence?

25 A. Yes. We said that it needed to be based on how

1 the children performed when they got to kindergarten.

2 Q. And how well must they perform to meet that
3 objective test?

4 A. It's measuring whether or not the program had
5 an impact on whether the children performed either
6 developed or not developed on the kindergarten
7 assessment.

8 Q. Now, I understand that, but what exactly is
9 that measure?

10 A. It varies from instrument to instrument.

11 Q. Okay. And which instruments are you talking
12 about?

13 A. The instruments on the commissioner's list of
14 diagnostic -- reading diagnostics.

15 Q. Okay. And how many measurements are there?
16 Three or four different --

17 A. I think there's 11.

18 Q. Okay. There's 11 potential --

19 A. Um-hmm. Commissioner's --
20 (simultaneous discussion.)

21 Q. -- instruments that make that --

22 A. Right.

23 Q. I imagine, and correct me if I'm wrong, that
24 you could take, you know -- hypothetically let's say
25 there's 50 questions on one of these instruments. Okay?

1 And a child entering kindergarten may get 20 of these
2 questions right, the next child may get 25 questions
3 right, the next child may get 30 questions right. Where
4 do you decide the cutoff in terms of has that child met
5 the measure needed to designate that center as a Pre-K
6 Center for Excellence?

7 MS. COLMENERO: Objection. Form.

8 Go ahead.

9 A. We don't decide the cutoff. The publishers who
10 create these assessment instruments set a particular
11 level that would indicate whether a child was ready or
12 not ready. The term -- there are various terms used,
13 developed or still developing. Each instrument has
14 their own term. Met benchmark, didn't meet benchmark.
15 So the publisher sets that bar.

16 Q. (BY MR. SENCENBAUGH) That's what I was trying
17 to get at. So the publisher sets the bar for the
18 individual diagnostic tool?

19 A. Right.

20 Q. Who sets the bar for how many children or what
21 percentage of children in any given service provider
22 must meet that tool in order to be designated a Pre-K
23 Center for Excellence?

24 A. That's not how the system works.

25 Q. Okay.

1 A. The system takes a look at -- and I may have to
2 refer to the analysis documents that we have on our web
3 site, but it's not a percentage of students, it's taking
4 a look at the whole group of children from a
5 kindergarten program and seeing whether there was an
6 impact on that group or not an impact on that group
7 based on how the group performed. And what -- in
8 addition to how the group performed, how each of those
9 children would have been expected to perform given their
10 particular characteristics.

11 So there are 20 -- 21 different
12 characteristics of a pre-K side that all have a separate
13 weight that is developed based on the averages of how
14 those children perform on each instrument across the
15 state. So the system is designed to be agnostic as to
16 which instrument the school district has decided to
17 adopt as their instrument from the list. And agnostic
18 as to the curriculum on the pre-K side and the strategic
19 practices on the pre-K side, and basically saying
20 regardless of what instrument is used, was there an
21 impact.

22 So you may have kids leaving a
23 prekindergarten program going to five different school
24 districts who are assessed on five different
25 instruments. So we're not looking at the individual

1 students' score, we're looking at the whole program
2 impact algorithm of that whole set of students compared
3 to how those children should be -- would be expected to
4 perform against all the other children who have that
5 criteria -- who have those sets of criteria, which could
6 be very different. You could have in one classroom a
7 child who is a boy, military, LEP, going to a district
8 that is using DIBELS; and in the same classroom you can
9 have a child who is a girl, low socioeconomic, foster,
10 going to a district using TPRI.

11 So the algorithm is established to weight
12 those characteristics based on how every other child who
13 does that -- who has those characteristics and takes
14 that particular assessment does across the state, and
15 group them back into their prekindergarten classroom and
16 say was there an impact overall on the prekindergarten
17 classroom.

18 Q. Okay. And who developed the statistical method
19 that you're describing?

20 A. Dr. Ken Pool, who is the CEO of Oz Systems.

21 Q. Okay. Are you aware of any research from any
22 third party that either validates or contradicts the
23 reliability of that kind of a statistical measure?

24 A. My understanding is that they are standard
25 statistical methodologies. It's not research based on

1 early childhood, it's based on statistics and
2 algorithms. So to the extent that they follow the
3 national and international standards established for the
4 industry, which they do, and they're certified by those
5 boards and bodies, that's the validation that we have.

6 Q. But in this case, you wouldn't be offering an
7 opinion on the reliability of that particular method as
8 an expert?

9 A. As an expert, no.

10 Q. Okay.

11 A. They were selected based on the fact that they
12 are experts in their field and that they have met
13 international and national standards on statistical
14 analysis and methodologies.

15 Q. Okay. Now, this discussion that we've been
16 having about KRS, I understand that to be one of the
17 programs that you are in charge of. Is that the right
18 way to say that?

19 A. Sure.

20 Q. And that you might offer testimony on at trial.
21 Is that right?

22 A. Sure.

23 Q. What other early childhood programs do you
24 anticipate offering testimony on?

25 A. I can tell you what other programs I have

1 oversight on. I don't know what I might be asked at
2 trial.

3 Q. Okay.

4 A. I do oversee the Texas School Ready Early
5 Childhood Program, I oversee the school readiness
6 integration specialist network at the Education Service
7 Centers, and I oversee, to the extent that one oversees
8 sort of the statutory regulations and requirements for
9 public pre-K.

10 Q. Okay. And is that the early -- earlier you
11 were talking about the technical assistance you provide
12 to individual school districts. Is that what we're
13 talking about for that last one?

14 A. Yes.

15 Q. Questions about -- you used an example about
16 somebody called and there was a child that wasn't potty
17 trained. You would answer that question and give them
18 guidance?

19 A. Yes.

20 Q. Okay. Are there any other programs -- early
21 childhood programs in Texas that you would either -- are
22 in charge of now or that you anticipate you would offer
23 testimony on?

24 A. No.

25 Q. Okay. Now, earlier you asked some questions

1 about what was introduced as Exhibit 917 about
2 eligibility for pre-K in Texas. And it was represented
3 to you on the web site. It says "A district shall offer
4 prekindergarten classes if the district identifies 15 or
5 more children who are eligible and are at least four
6 years of age."

7 Is that accurate?

8 A. Yes.

9 Q. Just to make sure I'm clear and the record's
10 clear, when you say "offer services," that means that
11 the district will directly offer the service. Is that
12 correct? What I mean by that is --

13 A. No.

14 Q. -- the district will actually set up a
15 classroom, a pre-K classroom.

16 A. A district may do that. A district may offer
17 services in other ways.

18 Q. Okay. What other ways could a district offer
19 services that would meet the statutory requirement under
20 your understanding?

21 A. They could contract with their local Head Start
22 agency, who would then provide those services.

23 Q. And how else could they meet that statutory
24 requirement?

25 A. They could contract with a licensed child care

1 program.

2 Q. Okay. And when you say "contract," what do you
3 mean by that?

4 A. Contract for services. That would be an
5 agreement between the two parties for stipulating what
6 services are to be provided and whether or not there
7 will be moneys exchanged.

8 Q. Okay. And would the state require placing any
9 requirements on those programs in terms of curriculum,
10 staffing, support, anything like that?

11 A. They would do the same requirements for a pre-K
12 program; and they would be a minimum of three hours of
13 instructional time, that there be a certified teacher.
14 And that they used a state board of education pre-K
15 instructional system, also known as a curriculum.

16 Q. Okay. Jumping back a little bit about KRS.
17 You had said that the populations are -- earlier in your
18 testimony, that the populations are weighted in terms of
19 doing that diagnostic measure when they get to
20 kindergarten. What do you mean by that?

21 A. Each -- well, I would have to refer you to the
22 actual statisticians that came up with the algorithm for
23 more details, but my understanding is that each criteria
24 of the 21 criteria that are examined are assigned a
25 value based on the likelihood of that particular

1 population being -- performing at grade level when they
2 get to kindergarten, when looking at aggregate total of
3 the state's population of students in that criteria.

4 Q. And do you know anything specifically about the
5 values assigned to each one of these different criteria
6 beyond the fact that there are values assigned?

7 A. I may have some documentation. But essentially
8 what it is saying is that of all the children who are,
9 say, LEP children and who take Tejas LEE, 70 percent of
10 them pass -- or score as developed, for instance. This
11 is a hypothetical. And so there's a numerical
12 statistical number assigned as a weight to that
13 particular criteria. So a child who has a set of
14 criteria, those numbers are going to be assigned to that
15 particular score; and then that will determine the
16 likelihood of whether that student can be expected to
17 score developed or developed [sic]. And if he scores
18 developed, he's sort of on the plus side; if they score
19 not developed, they're on the minus side.

20 And when looking at the aggregate
21 classroom of the pre-K class, did they all score -- did
22 their numerical figures result in a plus or a minus is
23 basically how it works.

24 Q. Okay.

25 A. The weights are actually not known until we

1 have all of the scores of all of the students across the
2 state; because we need to know how the whole total group
3 of students scored before we can assign the weight.

4 Q. Okay.

5 A. It's not assigned in a vacuum.

6 Q. Now, a moment ago you had talked about -- I
7 guess when you said your management or oversight of the
8 professionals at the regional service centers. Describe
9 what you mean by that. What exactly are you doing in
10 that role?

11 A. We establish the job description, we establish
12 the priorities that we want them to carry out as far as
13 activities and tasks. We determine the percentage of
14 time there to be engaged in this particular project,
15 which is a hundred percent. We establish their travel
16 budgets, we manage their reporting. There's a great
17 deal of reporting that they have to do quarterly and
18 annually about the nature of the trainings and
19 professional development they provide and to whom and by
20 what type of provider, and we convene them frequently --
21 not frequently. We convene them twice a year and we
22 convene them monthly through conference calls.

23 Q. And about what percentage of your time do you
24 spend supervising the individuals -- these 20
25 individuals at the regional service centers? Just

1 ballpark.

2 A. Personally, 5 percent.

3 Q. Okay. And describe for me some of their
4 duties.

5 A. Well, primarily they are tasked with developing
6 and implementing school readiness integration
7 partnerships, which are the partnerships that exist
8 between Head Start, licensed child care, and public
9 prekindergarten. They were initially organized as a
10 group to train school districts on how to do those
11 partnerships. They're very tricky, they're very
12 complex, and they can be somewhat time consuming to get
13 started. We're talking about formal partnerships that
14 result in many, many different entities working
15 together.

16 Q. Would this be the contracts that you spoke
17 about earlier?

18 A. Yes. It became a requirement of the
19 Pre-kindergarten Early Start Grant when we changed it
20 from one method to another. So they were primarily
21 engaged as our first accelerators in the field to help
22 districts understand how to work through all of the
23 processes that need to be in place in order to establish
24 that kind of a partnership.

25 They've been very successful. They

MS. COLMENERO: Yeah.

(Recess from 2:34 p.m. to 2:38 p.m.)

Q. (BY MR. SENCENBAUGH) Ms. Day, what percentage of schools are currently eligible for KRS and signed up to participate? Let me rephrase.

What percentage of pre-K service providers are eligible to participate in KRS and are currently signed up to participate?

A. A hundred percent of Head Start-licensed child care and public pre-K programs are eligible.

Q. And that would be any entity that could satisfy the once you have 15 four-year-olds, you must provide a --

A. It could be, but licensed child care could have fewer than 15. Head Start could have fewer than 15.

Q. Right.

A. Public pre-K could have fewer than 15.

Q. Right.

A. So any of them are eligible to participate. A percentage -- I'm trying to remember what our last number was of how many we had currently enrolled. I'm so sorry. I don't know how many we have currently enrolled.

Q. A ballpark? Are you talking 30 percent? 50 percent? 70 percent?

A. I would go with 30 percent.

Q. And --

A. This is its first year of being open to everybody, so yeah. I would say 30 to 35 percent.

Q. And is there any factor or weight or measurement that's incorporated into the formula used to determine a Pre-K Center for Excellence with regard to the number of schools that -- number of pre-K services providers that are actually participating?

A. No. It's -- each is judged on its own.

Q. And obviously you have to participate in order to get a chance to get the designation.

A. Yes.

Q. Will there be some sort of publicity or program to announce the schools -- the service providers that make the Pre-K Center for Excellence?

A. That has yet to be determined.

Q. Has the -- okay. Now, earlier you said something. I wanted to make sure I was clear about it.

There's no curriculum -- mandatory curriculum for pre-K in Texas. Correct?

A. Correct.

Q. When you had talked about the folks at the regional service centers working with curriculum, you were talking about, I would assume -- and correct me if

I'm wrong -- implementation of the guidelines?

A. That's one thing on which they may train. They may also train districts using the district's selected curriculum that they have requested.

Q. Okay.

A. The pre-K guidelines are not a curriculum. They are standards.

Q. Okay.

A. We don't refer to them as a standard because that has its own meaning in statute, so we refer to them as guidelines. But essentially they are framework and guidelines, and then the district will select their own curriculum. The SRI specialists may train on any number of things in that field. They may train on the guidelines themselves, they may train on helping a district select a curriculum that's based on the guidelines, they may train on the curriculum that the district has selected.

Q. Okay. And there's nothing to prevent a district or a service provider from saying I want to ignore all these guidelines and just come up with my own curriculum?

A. A provider, there's nothing keeping them from ignoring them.

Q. Okay.

A. School districts, it would be hard for them to ignore them, because the instructional systems that are adopted by the State Board of Education that districts are required to use in their pre-K classrooms are based on the guidelines.

Q. Okay.

A. So when publishers respond to the call for instructional items to be adopted, they have to base their curriculum that they're proposing on the pre-K guidelines.

Q. But there's no -- like you said, there's no requirement that a service provider outside of a district, with the limited exception you just spoke about, essentially to determine its own curriculum.

A. Correct.

Q. And they could do that and then if they had -- if they meet the appropriate measures that we talked about that were developed by Oz, they could even be a Pre-k Center for Excellence?

A. Correct.

Q. And that's separate and apart from their curriculum and the other factors that were taken out for KRS?

A. Correct.

Q. Are you familiar with the National Institute

NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
FAIRNESS COALITION, et al.,)

Plaintiffs,)

v.)

EDGEWOOD INDEPENDENT SCHOOL) TRAVIS COUNTY, TEXAS
DISTRICT, et al.,)
(consolidated))

Plaintiffs,)

v.)

ROBERT SCOTT, in his official)
capacity as Commissioner of)
Education, et al.)

Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF
DR. WILLIAM DUNCOMBE
Austin, Texas

Wednesday, October 3, 2012

Reported by:

SUSAN S. KLINGER, RMR-CRR, CSR

JOB NO. 53113

EXHIBITS (continued)

| No. | Page | Description |
|--------------|------|---|
| Exhibit 1154 | 206 | Podgursky analysis looking at the variation between forecast and actual |
| Exhibit 1155 | 209 | Exhibit 3367 |
| Exhibit 1156 | 213 | Alternative costs of adequacy |
| Exhibit 1157 | 227 | Baker/Duncombe article |
| Exhibit 1158 | 228 | Duncombe article, 1/25/11 |
| Exhibit 1159 | 229 | STATA program to create the teacher variable |

DR. WILLIAM DUNCOMBE,
having been first duly sworn, testified as follows:

EXAMINATION

BY MS. HALPERN:

Q. Would you state your name for the record, please?

A. William David Duncombe.

Q. Dr. Duncombe, have you ever been deposed before?

A. Yes.

Q. How many times?

A. Twice.

Q. And in what litigation were you deposed?

A. Well, I can tell you the states.

Q. Okay.

A. Not being a lawyer, I don't remember the cases. Missouri, I think it was 2006 or '07 -- I should know all of this -- and Nebraska, and it was either -- I think it might have been 2008, I think. Sorry, I don't have that at my fingertips here.

Q. Did you testify in those court cases as well as being deposed?

A. I testified in Missouri.

Q. But not in Nebraska?

A. Not in Nebraska.

Q. Do you know what happened in the Nebraska litigation?

A. It was settled out of court, is what I understand.

Q. What is your understanding of what the outcome of the Missouri litigation was?

A. You know, I'm not sure I knew. I mean, I was testifying in the trial court, and I think -- I'm not positive what happened in that point.

Q. Do you recall ever hearing that the Court ruled for the defendants in that case?

A. I don't recall hearing that.

Q. In the Missouri litigation, which party hired you?

A. The City of St. Louis.

Q. A plaintiff in the lawsuit?

A. A plaintiff in the lawsuit.

Q. And in the Nebraska case, which party hired you?

A. The plaintiff.

Q. And you were deposed, but didn't testify at trial?

A. That's correct.

Q. To your knowledge, did the case actually go to trial?

A. I don't think it did.

Q. Okay.

A. That was my impression.

Q. All right. Other than those two depositions, have you been deposed in anything else, any other kind of litigation?

A. Not that I remember.

Q. Okay. Did you present a cost function study in the Missouri litigation?

A. I did.

Q. Did you have a cost function model in the Nebraska litigation?

A. I did.

Q. All right. Other than those two cases, have you presented cost function models in any other litigation?

A. No.

Q. Okay. Prior to this lawsuit, had you done any work in the state of Texas?

MR. FRAISSINET: Objection, form.

Q. Well, let me rephrase then. Prior to this lawsuit, had you done any work that involved the use of Texas data?

A. Well, I think the answer is yes.

Q. Okay.

A. And then I've done some national -- done some research on national trends regarding school finance, so Texas would have been included.

Q. All right. Let me start with the -- the

1 based on those demographic characteristics?

2 MR. FRAISSINET: Objection, form.

3 A. I have to repeat myself here, but the idea here
4 is that I'm matching myself, if I'm a district, with
5 that far away district on student performance. I'm
6 thinking -- I'm looking at what my peers are doing in
7 the way of performance. And so that ideally would be
8 the instrument. But I've had in the past, a problem
9 with that failing overidentification tests because it --
10 if I'm looking at them, they can be looking at me. So
11 I'm taking a step removed from that and looking at
12 factors that are, have been found to be related to that
13 performance.

14 MS. HALPERN: I'm done. Pass the witness.

15 (Off the record.)

16 EXAMINATION

17 BY MS. BONO:

18 Q. Hello, Dr. Duncombe. My name is Marisa Bono.
19 I'm an attorney with MALDEF. I represent a number of
20 low wealth districts in this case, in addition to
21 parents and children who attend school in the Pasadena
22 and Amarillo school districts and who are low income and
23 ELL. Just for full disclosure today, clearly Ms.
24 Halpern has a background in statistics, I do not. And
25 so to the extent that you're able, if you can kind of

1 keep your explanations to me at a very basic level, and
2 also for the Court, I would appreciate that. And where
3 I don't understand something, I'm going to ask you for
4 clarification. And just please bear with me on that
5 end. I brought my brain Maribel with me today, but I
6 don't know how far she's going to get me.

7 MR. FRAISSINET: Ms. Taylor may be willing
8 to testify. I'm sorry.

9 Q. We were a few minutes late this morning, but I
10 assume Ms. Halpern covered some of your background and
11 education. And so if I ask any questions on that end
12 that are redundant, I apologize. But I would like to
13 know if you have taught any coursework related to ELL or
14 bilingual education?

15 A. I have not. You mean a course, for example, in
16 curriculum design or --

17 Q. Anything related to ELL or bilingual education.

18 A. No. I've taught an education policy course and
19 so certainly, that is a topic that is brought up in the
20 course. It is not, it is not beyond -- we are talking
21 about that as part of the broader education policy
22 course in that way.

23 Q. Okay. And have you received any specialized
24 training in ELL or bilingual education specifically?

25 A. No, I haven't.

1 Q. Have you -- I'm assuming the references you
2 listed in your CV, the articles and the books or
3 chapters in books you have written, I'm assuming that is
4 a selective, those are selective. You didn't put the
5 entire universe of publications you have ever written
6 into that group; is that fair?

7 A. Well, that was my attempt.

8 Q. Okay.

9 A. I appear to have forgotten a rev.

10 Q. Okay. Have you ever published any research
11 specifically related to ELL or bilingual education?

12 A. No, I have not. I've done studies that, in which
13 as we can see cost function studies, these are
14 considered as possible cost factors. But no, I have
15 not.

16 Q. Okay. Other than studies that have included LEP
17 characteristics as part of a cost function, you have not
18 performed any research or published any research
19 specifically related to ELL or bilingual education; is
20 that fair?

21 A. You know, I think that is probably a fair
22 characterization, yes.

23 Q. Do you consider yourself an expert on ELL
24 programs?

25 A. No.

1 Q. Can you please describe what you were tasked with
2 doing in this case, in your own words?

3 A. The task or the charge, I guess that I received
4 was to estimate a cost function for the State of Texas
5 and to use that to examine required spending associated
6 with particular potential standards that the State may
7 be moving towards.

8 Q. On the first page of your first report, Exhibit
9 1142.

10 A. Okay.

11 Q. In the --

12 A. The table of contents?

13 Q. Page 1.

14 A. Okay.

15 Q. In the first paragraph there, it looks like one
16 of the factors that you considered was school districts'
17 share of disadvantaged students?

18 A. Yes, that's one of the factors that you would,
19 that is outside of district control that is likely to
20 affect the cost of achieving a certain performance
21 level.

22 Q. And I know that -- well, tell me how, how did you
23 define disadvantaged students?

24 A. Well, in this case, I identified students that
25 were likely to require additional resources based on

1 some past. There has been a lot of both education cost
2 functions and production functions. And so measures
3 that are very common are poverty, English deficiency and
4 special education.

5 Q. For the purposes of what you actually reported on
6 in your report, it looks to me like you defined
7 disadvantaged students as those students who qualified
8 for free and reduced lunch. And I think that there was
9 some discussion about that earlier. But could you,
10 could you clarify exactly how you decided to use that
11 definition?

12 A. Well, the percent -- my understanding is, as I
13 didn't look in detail at the Texas school finance
14 system, that percent economic disadvantaged, which is
15 the percent subsidized lunch is sort of the child
16 poverty measure that is commonly used by the State of
17 Texas. It is also similar to what -- anyway, it is the
18 percent of subsidized lunch is a common child poverty
19 measure that is used across -- not perfect, but it's a
20 common measure.

21 Q. Do you agree that there are some students who
22 might be educationally disadvantaged who are not
23 necessarily impoverished?

24 A. There certainly is the possibility of that, yes.

25 Q. In this case, you were designated to testify to

1 costs involved in meeting the increased student
2 performance standards, and of educating disadvantaged
3 students including low English proficiency students.
4 Are you aware that you were designated to provide that
5 expert testimony in this case?

6 A. Yes.

7 Q. And as you probably guessed by now, I'm
8 interested in the testimony that you might provide
9 related to LEP students. And I'm going to use ELL and
10 LEP interchangeably, if that is okay with you?

11 A. That is fine.

12 Q. Do you intend to provide expert testimony in this
13 case related to the cost of educating LEP students?

14 A. I'm not going to provide -- I'm not going to be
15 testifying about that in the case directly. As I
16 indicated previously, the percent of economic
17 disadvantaged measure includes a high share of LEP
18 students or a's percent economic disadvantaged, so that
19 measure that is capturing a broad set of students.

20 Q. And I'm going to get to that in just a second.
21 But first can you tell me if you reviewed the expert
22 reports in this case from Drs. Gandivol or Dr. Bompa?

23 A. No, I did not.

24 Q. There has been a lot of discussion about the
25 measure of teacher salaries in your cost model. Are you

1 familiar with the fact that bilingual and ESL teachers
2 in Texas must be certified to teach bilingual or ESL
3 classes?

4 A. I have not looked at the certification
5 requirements in Texas, no.

6 Q. And are you familiar with the fact that in Texas,
7 because of the high demand for certified bilingual and
8 ESL teachers, many districts in Texas offer a stipend
9 that may go up to as much as \$2,500 annually?

10 A. I was aware of that. That was actually, if I
11 can -- again, as far as that, that was one of the
12 variables in the teacher data that I had. And so I
13 used, I both looked at that as well as with and without
14 it. And it didn't, there wasn't a lot of difference
15 between them, so I took the base salary without it. But
16 I was aware based on the teacher salary data, yes.

17 Q. If we look at page 8 of 1142, your first report.

18 A. Okay.

19 Q. In footnote 7, you state that you created a
20 teacher salary measure which includes bilingual and --
21 I'm assuming that was supposed to be ESL, not ELS,
22 teacher incentive pay?

23 A. I'm sorry.

24 Q. That's okay. Is that what you are referring to
25 there?

1 A. That is what I'm referring to, yes.

2 Q. So the base salary measure does not include the
3 bilingual ESL incentive pay?

4 A. My understanding is that it doesn't include it.

5 Q. It does not?

6 A. It does not.

7 Q. You said in the same footnote, and I think this
8 corresponds with the testimony you just provided, that
9 since this measure is very highly correlated with the
10 measure using base salary, you used the base salary
11 measure in the analysis. What do you mean by "highly
12 correlated"?

13 A. The predictive teacher salary, sort of average
14 experience in education level for the district, using
15 you know, base salary or base salary plus the bilingual
16 incentive pay, that the correlation between them as a
17 simple bivariate correlation was very, was quite high.

18 Q. What is, so what is, what is the, what is the
19 cutoff for high is what I'm trying to get at?

20 A. Well, you know, I didn't report it here. My, if
21 I remember right, it was over .95. That is doing this
22 from memory, but I remember it being quite high. Over,
23 over .9.

24 Q. And can you explain what the significance of
25 being over .9 is, to both me and the Court?

1 A. Well, what that is suggesting is that if you --
2 these two measures move together very closely. And so
3 that you know, there is a strong positive linear
4 relationship between them. So they, they move together
5 very closely.

6 Q. And you said that that correlation is not
7 reported here. Is there some place where in the
8 documents you provided to counsel that were produced in
9 this case, where I could find what the exact number was
10 or the exact correlation was?

11 A. I would have to look through it, but I think that
12 the, I think that the teacher data, the Texas teacher
13 data program -- yes, if you look, and I don't have the
14 output from it. But if you take Exhibit 1159 and you go
15 to the last page, it has got by year, a correlation that
16 is looking at the predicted teacher salary and the
17 predicted teacher salary 2. I believe that predicted
18 teacher salary is base salary and predicted teacher
19 salary 2 includes the ESL incentive.

20 Q. Where are you looking right now, where on the
21 page?

22 A. I'm sorry, I'm sorry.

23 Q. I know you said it is the last page, but where on
24 the page?

25 A. Last page, if you go five lines -- not lines, but

1 five sort of blocks of starts by year sort PW core ECWI.
2 Do you see that?

3 Q. Yes, I do.

4 A. That is a correlation within each year of ECWI,
5 the raw measure of teacher salary, the predicted teacher
6 salary, education experience constant and the principal
7 salary.

8 Q. And where -- so right now, just now you were
9 talking about over -- right now I was just, we were just
10 talking about the fact that you thought it was over .9.
11 Where do you see that?

12 A. Well, this is just the, the program used to
13 estimate it. I don't have the output file with me.

14 Q. Okay.

15 A. But the output file, this would produce output
16 that would identify that.

17 Q. The number that would appear in the output file?

18 A. That's correct, that's correct.

19 Q. Okay. And when you said that you created a
20 teacher salary measure which included bilingual ESL
21 teacher incentive pay, how did you create that measure?

22 A. Well, let's see. If we go to the third page, at
23 the bottom of the page, it says, "Creating data set of
24 full-time teacher s with ESL incentive pay." If you
25 move to the next page. Let me check something real

1 quickly here. I just want to get you to the right. The
2 third line down it says, Keep if pay type is equal to 80
3 or pay type is equal to 15. Do you see that third line?

4 Q. Yes.

5 A. If my memory serves me, pay type 80 is base
6 salary and pay type 15 is ESL salary. Incentive,
7 excuse me.

8 Q. So that is based on the potential stipends;
9 correct, that we were just discussing?

10 A. Well, yes, I believe that's what these are.

11 Q. What about -- so are you aware of the fact --
12 does this, does this measure include any tuition paid by
13 districts for the tuition of regular education teachers
14 to become bilingual or ESL certified?

15 A. I don't believe so, no.

16 Q. Are you aware of those costs on average?

17 A. I do -- no, I have no information on those costs.

18 Q. That is not part of the data that you were
19 provided with?

20 A. That's not part of the data, yes. Well, let me
21 rephrase that. That is not part of the salary data.

22 Q. Okay.

23 A. It is included in the -- I'm presuming it is
24 included in the spending data that was used in the cost.

25 Q. Okay.

1 A. So that would include operating spending, which
2 covers a variety of types. While I have not looked at
3 it specifically, it's certainly possible that that
4 spending measure includes the tuition, the payments for
5 tuition.

6 Q. But as we sit here right now, do you know with
7 any certainty whether or not it was included?

8 A. I don't know with certainty if it was included.
9 I know with a fair amount of certainty it was not
10 reflected in the salaries. But I don't know with
11 certainty whether it is reflected in the spending.

12 Q. But if it was reflected in spending, it would
13 have been in operations, spending for operations?

14 A. Well, I don't, I don't know what fund code it
15 would be, what functional code. You know, I don't, I
16 don't have the accounting codes in front of me. So I
17 don't know where it would fall in the accounting system.

18 Q. Are you familiar with the Texas requirement in
19 elementary schools that school districts are required to
20 offer a bilingual program if they have more than 20 kids
21 speaking the same language in the same grade level?

22 A. I'm not aware of that, no.

23 Q. And you weren't aware of that at the time that
24 you conducted your report?

25 A. That's correct.

Q. Let's take a look at footnote 12 in Exhibit 1142.

MR. FRAISSINET: What page?

Q. Sorry, page 10. Actually, it starts on page 9. I'm looking at the second full sentence of that footnote on page 10.

A. Starting with, "There is"?

Q. Starting with, "It would be useful to separate."

A. Sorry, page 10, okay.

Q. It says, "It would be useful to separate LEP students classified as economically disadvantaged from those who are not, and include the latter category in the model as a separate variable. Unfortunately, the data presently available to me has too many missing observations due to masking, to include this variable in the analysis." Can you describe what you mean by masking?

A. Masking is when data, when a percent or I believe in this case there were accounts that were provided for a district. They're not presented because they're so few students that there is a concern that you would be able to identify a student. So it is typically done for privacy reasons.

Q. If the data that you had been presented with didn't have, didn't -- did not have this issue with the missing observations, would it have been useful to use

that data and separate out LEP students into a separate category?

A. Well, I think what I'm saying here is it would be useful to identify, develop a measure of LEP students that are not classified as economically disadvantaged, and include that as a variable in the model.

Q. You said in your report that poverty has consistently been found to be negatively correlated with student performance. Are you familiar with similar negative correlations between LEP students and student performance?

A. Certainly, there are a number of studies that have looked at relationships of student demographics and student performance. To the best of my memory, there certainly are at least several that have identified ESL or percent LEP as negatively related to performance.

Q. Of the studies that you remember, do you recall if those students were students who were also students who were living in poverty, or whether their status as LEP was considered alone?

A. Well, I mean again, I'm sort of pulling things out of my head here. But just from memory, from what I can remember, these would include percent poverty and the percent LEP as separate measures.

Q. Do you know whether limited English, do you know

whether LEP status has been found to be negatively correlated with student performance in Texas?

A. I haven't, I have not, I haven't looked at that. I don't, I don't, I don't recall a study that I've seen that has found that. But certainly it is, there could be studies out there. I just don't remember off the top of my head, a study.

Q. So you wouldn't be able to provide any testimony today as to whether or not ELL students require additional services and support, independent of any status they may have as low income students?

A. The cost function result is not identifying a separate effect. Because as I said, I had no -- I couldn't come up with any separate measure, because there was an overlap. So I can't testify whether there is, they require additional resources based on my findings.

Q. Well, how about this. I will represent to you that in this case, there are ELL experts and superintendents who will testify that there are additional costs for ELL students unrelated to their poverty, and that those costs include things like summer school to ensure that those students don't lose their English over the summer. And materials, textbooks in two languages. Costs related to services that are

necessary for that student population.

Do you have any reason to dispute those additional costs?

A. I don't have any, I don't, I don't -- my estimates don't provide evidence to really reflect on that, those either way.

Q. Do you dispute that the educational needs of ELL students in learning academic English goes beyond their need to overcome poverty?

A. I don't dispute that. I really don't, as I said. I was not asked to look at that specifically. So I can't comment based on my analysis one way or another on this.

Q. And in fact, in footnote 12, you state that ELL students or LEP students are a group of students that are likely to require additional resources?

A. I do state that.

Q. Do you agree that your poverty variable doesn't necessarily capture the costs associated with LEP students who are not economically disadvantaged?

A. It is possible that it doesn't capture that, yes.

Q. Well, there is a percentage of students who are not economically disadvantaged; correct?

A. Yes.

Q. And you didn't include a variable for that

1 population of students in your analysis?

2 A. I did not.

3 Q. Do any of your cost variables include factors
4 like bilingual aides in pre-K programs?

5 A. Well, okay. Go ahead.

6 Q. I'm sorry. Let me try to be a little bit more
7 clear. You have a cost function for teacher salaries;
8 is that fair?

9 A. Well, the cost function is capturing spending,
10 and teacher salaries are one of the variables that is
11 included that influence variations in spending.

12 Q. And is the spending on bilingual aides in pre-K
13 programs, is that captured by your variable for teacher
14 salaries?

15 A. The teacher salary is a base salary measure, sort
16 of an average, an average education and experience
17 level. I'm presuming that some of those teachers may be
18 teachers that fall into the category you are talking
19 about, but I don't have a measure that captures directly
20 the salaries associated with those teachers.

21 Q. So does this measure include the salaries for
22 aides, teacher aides?

23 A. This does not, no, these are certified teachers,
24 I believe.

25 Q. What about spending for resources such as

1 additional counselors or bilingual support personnel.

2 Are those costs reflected in the variables you set out
3 in your report?

4 A. They may be reflected in the spending number I
5 didn't look specifically to see. I can't tell you with
6 complete certainty, but they certainly could be
7 reflected in the spending number.

8 Q. But you're not certain?

9 A. I think it is likely, but I would have to go back
10 and, you know, this is the case where I have to just
11 literally look at the accounting codes and figure out to
12 make sure.

13 Q. Are you aware of any differences in costs for
14 services for an ELL student who is in 2nd grade versus
15 an ELL student who attends high school?

16 A. Can you repeat that question?

17 Q. Are you aware of any differences in costs for an
18 ELL student who attends 2nd grade versus an ELL student
19 who attends high school?

20 A. I wasn't asked to study that, so I really can't
21 render an opinion on that.

22 Q. Okay. And when you say you can't render an
23 opinion, can you say how those may or may not be
24 accounted for in your analysis?

25 A. Well, if there are additional resources

1 associated with those students, they will be reflected
2 in the spending number. Assuming that again, I think my
3 guess is -- my judgment is they're there, but I can't
4 state with certainty. They also have a percent students
5 in high school, and it is possible that may be picking
6 up something, but I didn't look at it specifically.

7 Q. But short of looking at the raw data itself and
8 examining the accounting codes, you wouldn't know
9 whether it has been accounted for one way or other; is
10 that fair?

11 A. I can't right now off the top of my head tell
12 you. It is certainly something that could be
13 determined, but I can't say with certainty.

14 MS. BONO: That is all the questions I have
15 for you today. I pass the witness. Thank you for your
16 time.

17 EXAMINATION

18 BY MS. SABERIAN:

19 Q. My name is Amy Saberian and I'm an attorney with
20 Texans For Real Efficiency and Equality in Education.
21 They're also known as the efficiency intervenors in this
22 lawsuit. Have you, have you heard of our organization
23 or my client's organization or of the efficiency
24 intervenors in this case?

25 A. I've been told there is a group called the

1 efficiency intervenors. But beyond that, I don't -- I
2 haven't been -- I don't know much about you-all.

3 Q. Have you read any of our pleadings in this case
4 or our petitions in intervention?

5 A. I don't think so.

6 Q. Are you aware of any of our allegations in this
7 lawsuit?

8 A. I don't think I have read anything about your, as
9 you say pleadings, so I don't, you know, off the top of
10 my head, I can't.

11 Q. Are you aware of anything our, my client's group
12 is claiming in the lawsuit?

13 A. Well, in judging by the title of efficiency,
14 that --

15 MR. FRAISSINET: If you know, answer. We
16 all want to go home. If you know the answer, you can
17 answer.

18 A. I don't know.

19 MS. HALPERN: Let the record reflect that
20 counsel is outrageously coaching his witness at 6:15.

21 MR. FRAISSINET: Ms. Halpern, it is --

22 A. This is a gift of 6:15.

23 Q. It has already come up today in this deposition
24 that Mr. Robert Hanushek is someone that you know of; is
25 that correct?

1 CAUSE NO. D-1-GN-11-003130
2 TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
3 FAIRNESS COALITION, ET)
4 AL.,)
5)
6 Plaintiffs,)
7)
8 VS.)
9)
10)
11)
12 EDGEWOOD INDEPENDENT)
13 SCHOOL DISTRICT, ET AL.,)
14 (CONSOLIDATED)) TRAVIS COUNTY, TEXAS
15)
16 Plaintiffs,)
17)
18)
19 VS.)
20)
21)
22)
23 ROBERT SCOTT, IN HIS)
24 OFFICIAL CAPACITY AS)
25 COMMISSIONER OF EDUCATION,)
ET AL.,)
Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF
CHARLES DUPRE
AUGUST 14, 2012

ORAL DEPOSITION OF CHARLES DUPRE, produced as a witness at the instance of the Plaintiffs Texas Taxpayer & Student Fairness Coalition and duly sworn, was taken in the above-styled and numbered cause on Tuesday, August 14, 2012, from 9:08 a.m. to 6:52 p.m., before Tamara K. Chapman, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Gray & Becker, 900 West Avenue, Austin, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.
Job Number: 51382

Exhibit 292..... 212
 2010-11 Academic Excellence
 Indicator System, Pflugerville ISD, Delco
 Primary
 (No Bates - 10 pages)
 Exhibit 293..... 295
 TT&SFC Deposition, August 14, 2012,
 Teacher Retention Rates
 (No Bates - 2 pages)

PREVIOUSLY MARKED EXHIBITS

Exhibit 105..... 288
 V.T.C.A., Education code 21.251
 (No Bates - 2 pages)

CHARLES E. DUPRE,
 having been first duly sworn, testified as follows:

EXAMINATION

BY MS. HUNTER:

Q. Good morning, Superintendent. Would you state your name for the record, please.

A. Charles E. Dupre, D-U-P-R-E.

Q. And what is your position?

A. Superintendent of schools in Pflugerville ISD.

Q. And how long have you been superintendent at Pflugerville?

A. Six years.

Q. What position did you hold before that?

A. I was deputy superintendent at Pflugerville ISD.

Q. Okay. And before that?

A. I was associate superintendent of finance in Fort Bend Independent School District.

Q. And did you have another position before that one?

A. I was budget officer and internal auditor in Fort Bend before I was CFO.

Q. When did you begin in Fort Bend?

A. In 1995.

Q. And was that your first job in education?

A. It was.

Q. Okay. Let's talk a little bit about Pflugerville ISD. What is the student population there?
 A. Roughly 23,000 students.
 Q. And that's a K through 12 district?
 A. Yes.
 Q. How many of your students are eligible for the free and reduced -- Federal free and reduced lunch program?
 A. We're at about 52 percent.
 Q. And how many of your students are eligible for EEL program?
 A. Roughly 20 percent.
 Q. Let's talk a little bit about your minority population. How many African Americans are there in your district?
 A. I think a little over 20 percent.
 Q. What about Asians?
 A. About 9 or 10 percent.
 Q. And what about Hispanics?
 A. Roughly 40 to 45 percent.
 Q. And what is your revenue per WADA, Superintendent?
 A. It's about \$2,500. A little over \$2,500.
 Q. Per student?
 A. Yes.

Q. Okay. How is Pflugerville rated?
 A. We're an acceptable school district.
 Q. And have you been recognized at any point?
 A. Yes, we were recognized two years ago.
 Q. Okay. And today you're acceptable. Are some of your campuses recognized?
 A. I think we have a few that are recognized.
 Q. And what about exemplary?
 A. I think we have one or two that are exemplaries, yeah.
 Q. Do you have any that are unacceptable?
 A. We do. We have two.
 Q. So there is quite a range of accreditation status among your campuses; is that correct?
 A. There is.
 Q. Let's tell the Court where Pflugerville is located.
 A. Pflugerville ISD is located northeast of Austin, between Austin and Round Rock. Part of our district includes the city of Austin, all the city of Pflugerville and then ETJ in the city of Pflugerville.
 Q. So your surrounding districts would include Austin and what other districts?
 A. Austin, Round Rock, Manor, Hutto, Elgin. Leander is nearby. I don't think they border us directly, but

1 that's one of them that we consider surrounding us.

2 Q. When did Pflugerville begin cutting its budget?

3 A. Let's see. I've been in the district six years.

4 We've probably been cutting four or five of those years.

5 Q. What necessitated the cutting?

6 A. Really the inadequacy of state funding.

7 Q. Did you make more major cuts in response to this
8 legislature's failure to fully fund the system?

9 A. Yes, we did.

10 Q. What kind of cuts was Pflugerville forced to
11 make?

12 A. Well, we had to cut a total of about \$8.5 million
13 from our budget. A lot of that came through -- well, most
14 of it came through staffing. We were able to eliminate
15 about 25 high school teachers and about 25 middle school
16 teachers and -- which those were the key areas that we
17 cut. We also cut 22 positions from central administration
18 and kind of district support.

19 Q. How did the cuts that you had to make at the high
20 school level impact the educational quality you were able
21 to deliver to your students?

22 A. To accomplish those reductions in staff we had to
23 increase class sizes, which it would be detrimental to the
24 students in our district.

25 Q. Is it particularly detrimental given the

1 population that you service?

2 A. Yes, that's why it's detrimental, because of the
3 numbers of students that we have that come from poverty,
4 the number of English language learners that we have, they
5 need smaller class sizes and more direct interaction with
6 their teachers than we're able to provide.

7 Q. What kind of class sizes are you experiencing at
8 the high school level?

9 A. Well, we use a factor in assigning staff of 30
10 to 1, but because of the variances in the various courses
11 and how we have to assign staff we have some classes that
12 are up to 35 and 38 students this year.

13 Q. Because some classes are by their nature smaller;
14 is that right?

15 A. Correct.

16 Q. What kind of classes are smaller?

17 A. Some of the career classes. Some of the very
18 specialized intervention classes that we have are smaller.
19 Some of the high-level advanced placement courses are
20 going to be smaller.

21 Q. Are you familiar with the term "stem" courses?

22 A. Absolutely.

23 Q. Would you explain what stem courses are to the
24 Court?

25 A. They are a variety of courses that comprise kind

1 of the science, technology, mathematics areas. It's
2 considered an area of high need and high focus in
3 education today because of the economic condition of our
4 nation based in those areas and the high demand for future
5 work force in those areas, in the technology engineering
6 fields.

7 Q. How large are those classes?

8 A. Well, it depends on which class you're
9 referring to. Some of the courses are math and science
10 classes, relatively advanced classes, and they're some of
11 our larger classes, 35 to 38 I would say. Some are a
12 little smaller, if you're talking about some of the career
13 technology courses.

14 Q. And what about labs? Do you have labs for your
15 science courses?

16 A. We do. We're required to have labs for all of
17 our science.

18 Q. Are they smaller classes?

19 A. They are not, which is challenging because often
20 we push the limit of whether we're actually accomplishing
21 enough lab time for our students. There are state
22 requirements about how much lab time, but we really push
23 the limits on that because of the class sizes and the
24 difficulty, if not impossibility, of having a meaningful
25 and effective lab for the number of students in the class.

1 Q. And when you say "meaningful and effective lab,"
2 do labs require equipment?

3 A. They require equipment and they also require
4 setups. Setup time and time for students to engage.

5 Q. And are those all challenges in the size classes
6 you have?

7 A. They are. They are.

8 Q. Tell me what the impact was at the middle school,
9 cutting the 25 teachers that you had to cut.

10 A. We felt a significant impact at the middle
11 school.

12 Q. In what way?

13 A. Because the way we accomplished the reduction is
14 we actually reduced the school day from seven periods to
15 six periods, and what that meant in our district is if you
16 look at our student data, we have had a significant upward
17 trajectory in student performance because we were able to
18 dedicate teacher planning and collaboration time around
19 their students' needs.

20 To eliminate the reduction, we had to eliminate
21 one period of their planning time and that meant the
22 teachers were not able to effectively collaborate or plan
23 or provide the level of student interventions that are
24 required at the middle school level.

25 Q. Let's explain to the Court how a seven-period day

1 A. Well, that depends. Because what you're not
2 accounting for in this or the discussion about Wieland and
3 the comparative data there is the different populations
4 that are in the schools. All the schools you're pointing
5 out have the more affluent and less diverse populations.

6 Q. Okay. So it would be an absence of what that you
7 need? You need more what --

8 A. Well, the research tells --

9 MS. HUNTER: Let her ask the question.

10 Q. (BY MS. SANDERS) You need more what to reach
11 those students that are economically disadvantaged,
12 bilingual -- the category of students that you're talking
13 about?

14 A. We need more teachers to reduce class sizes. We
15 need more in staff to intervene on behalf of the students,
16 to be able to meet with them one on one, two on one, to
17 provide the intensive interventions they need. We also
18 need training for teachers to be able to help them more
19 effectively be -- to be prepared to more effectively deal
20 with the students in their classrooms.

21 Q. You mentioned when you were talking with Ms. Hunt
22 er that a couple of years ago Pflugerville ISD was a
23 recognized district. Do you recall that testimony?

24 A. Yes.

25 Q. And after you were already at Pflugerville?

1 A. Correct.

2 Q. Are you aware of the history of Pflugerville
3 Independent School District prior to the time of your
4 arrival?

5 A. Not a great deal, no.

6 Q. Okay. Are you aware of the last time -- and what
7 year -- let me clarify for the record, what year was
8 Pflugerville ISD a recognized school district during your
9 tenure?

10 A. I'm going to -- last year, I want to say the
11 '9-'10 school year --

12 Q. Okay.

13 A. -- is what I believe.

14 Q. And has there been any other time during your
15 tenure?

16 A. No.

17 Q. Do you know what the years looked like
18 three years prior to your tenure?

19 A. What I can answer is that my understanding is
20 under the current -- or the previous accountability
21 system, the TAKS system, the district has never been
22 recognized under that system. They had been recognized
23 under the TAAS system prior to that.

24 Q. Do you remember when TAKS came into place versus
25 TAAS?

1 A. No. It was before I got to Pflugerville, but I
2 couldn't tell you exactly when.

3 Q. So you couldn't say for purposes of the record
4 what their academic rating was prior to your arrival in
5 2006?

6 A. The only rating I'm familiar with has been
7 acceptable for many years.

8 MS. HUNTER: Is this a good time for a lunch
9 break? It's 12:30.

10 MS. SANDERS: If that works for y'all.
11 That's fine.

12 MS. HUNTER: Before we take break I'd like
13 to object to the admissibility of Exhibit 254 as
14 introduced because it's inaccurate, and I'm doing this
15 objection right now so that if you want to change the
16 exhibit and reintroduce it after lunch, you're welcome to
17 do that.

18 MS. SANDERS: Thank you. I would be happy
19 to do that. If there is any other screw-ups in it, I lay
20 it at your feet to find them because I probably went
21 Campus Group versus Campus on these generally. I got into
22 the habit of falling into -- I think we end up in the same
23 place as far as the point so -- but I appreciate that.

24 MS. HUNTER: I object to it and I don't take
25 on the task of reviewing it to see if there are any

1 other --

2 MS. SANDERS: But if you're going to
3 withdraw your objections based on the corrections I've
4 got, but otherwise I'll figure it out.

5 MS. HUNTER: Thanks.

6 (Break for lunch.)

7 EXAMINATION

8 BY MR. HINOJOSA:

9 Q. Good afternoon, Mr. Dupre. My name is David
10 Hinojosa. We represent five properties in some of the
11 poorest school districts in the state of Texas, as well as
12 parents of English language learner or low-income students
13 in Pasadena and Amarillo school districts. And I have a
14 few questions this afternoon for you.

15 (Exhibit 281 was marked.)

16 Q. I've handed you Exhibit 281. Do you recognize
17 Exhibit 281 as a true and correct copy of the 2010-2011
18 AEIS report?

19 A. It appears to be.

20 Q. If you could look it over, please tell me if you
21 have any reason to doubt its accuracy as a true copy of
22 the 2010-2011 AEIS report.

23 A. I do not.

24 Q. And in this report, among, you know, all the
25 different data that is in this, there is also reporting of

1 the performance of students in your district on the TAKS
2 test, correct, for Grades 3 through 11?

3 A. Yes.

4 Q. Are you aware of any reporting deficiencies with
5 respect to any of the data in this report?

6 A. I'm not.

7 Q. And the TAKS test didn't test all subjects at all
8 grade levels, correct?

9 A. Correct.

10 Q. But for the subjects that were tested, the TAKS
11 was meant to test the knowledge of the State curriculum
12 for students, correct?

13 A. Correct.

14 Q. And so is it one of your expectations that your
15 students achieve the TAKS standards in all subjects at all
16 grade levels?

17 A. It's our desire that they meet commended
18 standards in all subjects and all levels.

19 Q. All right. And with respect to the TAKS
20 standards, just the met standards that I want to go to
21 right now, would it be appropriate to look at the sum of
22 all grades just with respect to trying to see how you
23 performed -- your students performed and against that
24 standard as reported by TEA?

25 A. Yes.

1 Q. All right. So if you can go to Section 1, Page 4
2 of Exhibit 281. On this page, under TAKS Met 2011
3 Standards, Sum of All Grades Tested, which is the middle
4 set of numbers reported here, it shows, if we look at LEP
5 students under All Tests, 59 percent meet the minimum
6 standards on all tests, correct?

7 A. Correct.

8 Q. And then 66 percent for economically
9 disadvantaged students, correct?

10 A. Correct.

11 Q. And 76 percent of students in the district
12 meeting the minimum TAKS standard as reported here,
13 correct?

14 A. Yes.

15 Q. And so even after roughly about eight years of
16 TAKS testing, you still had one-quarter of your students
17 failing to meet the minimum standard on all the tests,
18 correct?

19 A. Correct.

20 Q. And you understand that under current state law
21 students are expected to graduate college ready?

22 A. I do.

23 Q. And the met standards that we just went over on
24 TAKS, would those reflect college readiness?

25 A. Not necessarily.

1 Q. Because some of these students who might have met
2 the standard might have met only the minimum standard and
3 therefore not college ready; is that correct?

4 A. That's correct.

5 Q. And we'll go over some of the TAKS college
6 readiness standards in a bit.

7 Would it be appropriate to look at the Commended
8 Level under TAKS in order to get a better picture of what
9 students are performing at the college readiness criteria?

10 A. I believe so.

11 Q. So if we look at the TAKS Commended Performance,
12 Sum of All Grades Tested in the year 2011, it looks like
13 only 9 percent of LEP students met the standard, correct?

14 A. Yes.

15 Q. And only 10 percent, one out of ten, economically
16 disadvantaged students, correct?

17 A. Yes.

18 Q. And then only 16 percent of the students in the
19 district met the minimum commended standard, correct?

20 A. Correct.

21 Q. And so after, once again, you know, eight years
22 or so of testing under the TAKS, you still had 84 percent
23 of your students overall not being able to meet the
24 standards, correct?

25 A. Yes.

1 Q. And under the performance of STAAR, compared to
2 the performance on the minimum met standard on TAKS, do
3 you know how overall your students performed on --
4 comparing the deficiency standard on STAAR compared to the
5 met standard under TAKS?

6 A. We don't have that data yet.

7 Q. Let's look at some of the college readiness
8 indicators that are -- beginning at the bottom of Page 9,
9 Section I.

10 Now, first off, I don't want to go through the
11 specific graduation rates, but the percentage of students
12 showing here that graduated by class of 2010 or class of
13 2009, that would not be a reflection of the students
14 graduating college ready, correct?

15 A. That is correct.

16 Q. And let's look first at the Advanced Course/Dual
17 Enrollment Completion. You're familiar with these -- with
18 this variable?

19 A. Yes.

20 Q. And for LEP students in the year 2009 and 2010,
21 it looks like only 13.4 percent had met the criteria for
22 that indicator, correct?

23 A. Yes.

24 Q. And 20.5 percent of economically disadvantaged
25 students?

1 A. Correct.

2 Q. And overall, the district had only 28.8 percent
3 of the students participating -- or meeting that criteria,
4 correct?

5 A. Yes.

6 Q. And if we go to the next page, under AP/IB
7 Results, under Tested, that's just a percentage of
8 students who would be available to be tested as opposed
9 to, you know, the overall students in the district,
10 correct?

11 A. Say that again.

12 Q. Well, let me just get to it, because I think the
13 record will speak for itself as far as what the variable
14 states.

15 But on the percentage of students tested here in
16 the district, it's reported as 27.7 percent, correct?

17 A. Yes.

18 Q. And if we look at the race gap, data is not
19 reported for economically disadvantaged and LEP students,
20 but for African Americans it only shows 14.9 percent,
21 correct?

22 A. Yes.

23 Q. And 18.1 percent for Hispanics and 39.5 percent
24 for whites, correct?

25 A. Yes.

1 the percentage tested it shows 71 percent of the students
2 tested, correct?

3 A. Yes.

4 Q. And then for whites it shows 77.2 percent, for
5 African Americans 79.3 percent, and 56.2 percent for
6 Hispanics, correct?

7 A. Yes.

8 Q. And of those 71 percent who were tested, only
9 28.1 percent in the district met the criteria for the
10 class of 2010, correct?

11 A. Correct.

12 Q. And it's 10.5 percent for African Americans,
13 17.9 percent for Hispanics and 46.3 percent for white
14 students, correct?

15 A. Yes.

16 Q. And the college readiness indicator related to
17 the performance on TAKS that's reported low on Page 10,
18 Section 1 of Exhibit 281, for both subjects it shows
19 55 percent of students meeting the criteria there,
20 correct?

21 A. I'm not following. Oh, both subjects under --
22 yes.

23 Q. And 46 percent for economically disadvantaged
24 students?

25 A. Correct.

1 Q. And then of those who were actually tested, it
2 shows only 62.6 percent overall in the district meeting
3 the criteria, correct?

4 A. Yes.

5 Q. And then there's gaps in the examinees meeting
6 the criteria by race for African Americans, Hispanics,
7 compared to whites, correct?

8 A. Yes.

9 Q. And then if we look at the Texas Success
10 Initiative, the higher education readiness component
11 reported here, for English language arts in the year 2011,
12 it shows 61 percent of the students are meeting that
13 criteria, correct?

14 A. Yes.

15 Q. And then looking at economically disadvantaged it
16 goes down to 50 percent, and only 12 percent for LEP
17 students, correct?

18 A. Yes.

19 Q. In mathematics it shows 68 percent meeting the
20 criteria in 2011 overall in the district, correct?

21 A. Yes.

22 Q. And then only 56 percent of economically
23 disadvantaged and 46 percent of LEP students, correct?

24 A. Correct.

25 Q. Now, looking at the SAT/ACT results, as far as

1 Q. And only 8 percent of LEP students, correct?

2 A. Yes.

3 Q. Now, assuming that these criterion meet the
4 actual college readiness criteria that aligns with the
5 State's expectations for students, how would you describe
6 the performance of students in your district overall?

7 A. Less than adequate.

8 Q. And is it your testimony in looking at where the
9 data is reported, both on TAKS and on these college-ready
10 criteria, you acknowledge that the district has
11 significant gaps between LEP and the district average and
12 economically disadvantaged than the district average,
13 correct?

14 A. Yes.

15 Q. And the district average actually would include
16 both LEP and economically disadvantaged students in it,
17 bringing down that percentage, correct?

18 A. Yes.

19 Q. Is it your testimony that the LEP students and
20 economically disadvantaged students just simply cannot
21 meet these criteria reported here in the AEIS report?

22 A. Can you clarify that question?

23 Q. Is it your testimony that LEP students just
24 simply cannot meet the TAKS recommended performance
25 criteria, but there is absolutely -- you know, even if you

1 had all the money in the world, that they still wouldn't
2 be able to meet the standards?

3 A. That is not my testimony.

4 Q. And what is your opinion with respect to the
5 performance -- I'll take it first with ELL students. What
6 is your opinion as to whether or not they can achieve the
7 criteria set forth here in the AEIS report that we just
8 went over?

9 A. I believe they can achieve it through an adequate
10 and equitable distribution of resources.

11 Q. And does the district have the adequate and
12 equitable resources it needs to provide these students the
13 meaningful opportunity to achieve the standards put in
14 place by the State?

15 A. We do not.

16 Q. How about with respect to economically
17 disadvantaged students, what is your opinion on whether or
18 not they can achieve the criteria set forth that we just
19 went over?

20 A. I believe the students are capable of achieving
21 the criteria given the adequate and equitable distribution
22 of resources.

23 Q. And what is the outlook given the current
24 resources that the district has and the implementation of
25 the STAAR now?

1 A. I think the outlook is that at best we'll
2 maintain -- or that at worst we'll maintain; that we might
3 be able to make incremental increases, but not substantial
4 increases.

5 Q. And do you expect the performance of LEP students
6 and economically disadvantaged students in particular to
7 increase sufficiently where a vast majority of those
8 students will be presented with the opportunity to achieve
9 these standards? Is that too run-on for you?

10 A. It was.

11 MS. HUNTER: I'm going to object to the
12 form.

13 MR. HINOJOSA: All right. Well, I'll leave
14 it at that. Thank you very much.

15 (Off the record.)

16 MS. SANDERS: First, with permission from
17 counsel and the witness, I wanted to substitute
18 Exhibit 254, which has, even in its corrected version, two
19 handwritten notations. They are eliminating the notation
20 for Riojas Elementary School because it was a brand-new
21 school and did not have a per student entry; and for
22 Windermere Elementary, correcting the number to 6,365.

23 FURTHER EXAMINATION

24 BY MS. SANDERS:

25 Q. Is that correct?

1 A. Yes.

2 (Exhibit 254 was re-remarked and replaced
3 original.)

4 Q. (BY MS. SANDERS) You mentioned in your
5 examination with Ms. Hunter that the community was very
6 supportive of Pflugerville school district. Is that
7 correct?

8 A. Yes.

9 Q. But you mentioned at the same time that you
10 wanted to avoid -- you, as a district, wanted to avoid
11 placing the burden on the local people because
12 Pflugerville is a bedroom community. Is that accurate?

13 A. Yes.

14 Q. And so by that you mean you don't have a large
15 industrial base?

16 A. That's correct.

17 Q. You do have some large industries in your area,
18 right?

19 A. Not a -- we have a few. We do have a business
20 tax base, but not substantial.

21 Q. And is Dell in your area?

22 A. I think that they have a small plant somewhere in
23 our district but their larger complex is in Round Rock
24 ISD.

25 Q. And they provide some internships for you?

1 A. I don't think we're actively engaged with Dell.
2 I don't know for sure.

3 Q. Who would be in charge of that sort of outreach
4 program or community involvement with your organization?

5 A. It comes from a couple of different areas. Our
6 community relations staff, our career technology staff
7 would be the primary two.

8 Q. Would you be the leader in terms of creating
9 policies of reaching out and trying to get some of those
10 career technology resources available for the students?

11 A. Well, under the big picture I would be
12 responsible for that, but typically that's going to be the
13 director of career and technology.

14 Q. Have you ever made any kind of request of them to
15 make that interaction with Dell, either the Round Rock
16 facility or the Pflugerville facility, to try to get
17 outreach programs, guest lecturers, externships?

18 A. Well, part of the issue that we have with the
19 largest corporations like that is that they're hard to
20 even get into to have the initial meeting. So it's always
21 on our list and we try to work our community connections
22 to get those contacts, but I couldn't tell you if we've
23 been successful at Dell or not.

24 Q. Is that because you personally have not tried to
25 do that?

1 CAUSE NO. D-1-GN-11-003130
2 TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
3 FAIRNESS COALITION, ET)
4 AL.,)
5)
6 Plaintiffs,)
7)
8 VS.)
9)
10)
11)
12 EDGEWOOD INDEPENDENT)
13 SCHOOL DISTRICT, ET AL.,)
14 (CONSOLIDATED)) TRAVIS COUNTY, TEXAS
15)
16 Plaintiffs,)
17)
18)
19 VS.)
20)
21)
22)
23 ROBERT SCOTT, IN HIS)
24 OFFICIAL CAPACITY AS)
25 COMMISSIONER OF EDUCATION,)
ET AL.,)
Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF
MICHEAL FRENCH
AUGUST 16, 2012

ORAL DEPOSITION OF MICHEAL FRENCH, produced as a witness at the instance of the Plaintiffs Texas Taxpayer & Student Fairness Coalition, and duly sworn, was taken in the above-styled and numbered cause on Thursday, August 16, 2012, from 9:04 a.m. to 5:06 p.m., before Tamara K. Chapman, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Gray & Becker, P.C., 900 West Avenue, Austin, Texas pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 52081

Exhibit 469..... 164
 State of Texas Assessments of
 Academic Readiness, Summary Report (for
 Quinlan), Algebra I, Spring 2012
 (Bates
 060812-Z5764R00-1169080000-0001367 -
 060812-Z5764R00-1169080000-0001385)
 Exhibit 470..... 164
 State of Texas Assessments of
 Academic Readiness, Summary Report
 (statewide), Algebra I, Spring 2012
 (Bates 072312-758ST723-000000000-0000001
 - 072312-758ST723-000000000-0000003 and
 072312-758ST723-000000000-0000031)
 Exhibit 471..... 228
 State of Texas Assessments of
 Academic Readiness, Summary Report
 (statewide), English Writing, Spring 2012
 (Bates 072312-758ST723-000000000-0000019
 - 072312-758ST723-000000000-0000024, and
 072312-758ST723-000000000-0000036)
 Exhibit 472..... 238
 Education Code, Subchapter E, Section
 21.201
 (No Bates - 9 pages)

MICHEAL FRENCH,
 having been first duly sworn, testified as follows:
 EXAMINATION

BY MS. HUNTER:

Q. Good morning. Would you state your name for the
 record?

A. Micheal French.

Q. And what is your position, Mr. French?

A. I'm the instructional leader and the
 superintendent of Quinlan ISD.

Q. And how long have you been superintendent of
 Quinlan?

A. Four years.

Q. What was your position before that?

A. I was the superintendent at Scurry-Rosser ISD.

Q. Where is Scurry-Rosser?

A. It's in Kaufman County.

Q. And you were superintendent of Scurry-Rosser,
 were you any other positions at Scurry-Rosser?

A. Yes. I was a teacher all the way through campus
 administrator, special programs director, special ed
 director, curriculum director, assistant superintendent
 and then eventually superintendent.

Q. And what teaching areas did you teach in?

A. In Scurry-Rosser?

Q. Yes.

A. In Scurry-Rosser I did vocational special
 education.

Q. And when did you begin at Scurry-Rosser?

A. I believe it was either '99 or 2000.

Q. And what were your education positions before
 that?

A. Classroom teacher at the elementary level and the
 middle school level, both general education and special
 education.

Q. In what school districts?

A. Mesquite and Garland.

Q. And what is your educational background?

A. I have a bachelor's degree from the University of
 Texas at Tyler and a master's degree from Texas A&M
 Commerce with my superintendent certification from the
 same school, and those hours applied to a doctorate
 program that I'm not finished with.

Q. I understand. Let's talk a little bit about
 Quinlan. What size school district is it?

A. We're a good size 3A. Roughly 2,500 kiddos.

Q. And you're pre-K through 12; is that correct?

A. Yes, ma'am.

Q. And what is the -- what percent of kids do you
 have that are eligible for the federal free and reduced

lunch program?

A. I'll give you the real data and then the
 make-believe data.

Q. Okay.

A. And I'll explain. It's roughly 69, 70 percent
 that's in our --

Q. Participate.

A. -- in the free and reduced lunch. But if you
 look at our elementary campuses, it's significantly higher
 than that. And you have some people from the same
 families that the secondary students don't turn in their
 form, and in my opinion -- and it's just that, that, my
 opinion -- I think they're embarrassed to turn it in. So
 if you're looking at reality, I think it's between 75 and
 80 percent.

Q. And what is your breakdown in terms of ethnic or
 minority groups?

A. We're primarily white but we have about 15
 percent Hispanic.

Q. How about African-American?

A. Very little.

Q. What about Asian?

A. Very, very little.

Q. And what is the -- your Hispanic population, has
 that been growing?

1 those are things, with more resources, I think we'd be
2 able to develop.

3 Q. Also, I didn't -- we didn't explore -- I didn't
4 ask you about your librarian situation. Do you have
5 librarians in your school?

6 A. I have one district librarian and the rest are
7 paraprofessionals.

8 Q. And how does that impact the education of your
9 students?

10 A. There is no library per se instruction. It's you
11 check out a book.

12 Q. Is there any help with reading development
13 through the library at all?

14 A. No, ma'am.

15 Q. And would you make any changes to that if you had
16 additional funding?

17 A. Oh, yes, ma'am.

18 Q. What would you do?

19 A. I would actually have our librarian instill a
20 love of reading with our kids early. We would have them,
21 once again, especially like at the three-year-olds, the
22 four-year-olds, reading to our kids. It goes back to that
23 thousand hours of lap time exposure. We would like to
24 expand Accelerated Reader, which is a fantastic reading
25 comprehension development program. And we have some of

1 that but not near enough. And a certified librarian who
2 has expertise in reading would help promote and develop
3 that program.

4 Q. And right now I assume that, like most Texas
5 school districts, your district pays on a salary schedule,
6 a step salary schedule?

7 A. Yes.

8 Q. Would you make any change to how teachers are
9 paid if you had additional funding?

10 A. Yes, ma'am.

11 Q. What would you do differently?

12 A. I would make it competitive so that we wouldn't
13 continue losing teachers.

14 Q. Would you consider any merit pay programs?

15 A. We have, but the state cut the DATE grant.

16 Q. You don't have the grant anymore for the merit?

17 A. No, ma'am.

18 Q. Is that a program that you think has value?

19 A. I think it can if administered properly.

20 Q. What would you do in terms of your facilities if
21 you had more adequate funding?

22 A. I would equip them for modern education, make
23 them safe, not leaking, and I would have adequate HVAC in
24 all rooms.

25 Q. What about your roofs and your asbestos?

1 A. Yes, ma'am, we would definitely not have them
2 have leaking roofs, and there is asbestos in our older
3 middle school buildings. So it's in the -- it's in the
4 carpet mastic. So what we have to do is lay over that
5 carpet because of the large amount of money required to do
6 asbestos remediation. So if we had a lot more money, we'd
7 be able to do that.

8 Q. At the moment you can just put a Band-Aid on that
9 problem?

10 A. Yes, ma'am.

11 Q. Do you currently offer art to your students?

12 A. I believe we have a couple of sections at the
13 high school, but at the lower levels we have a
14 paraprofessional that teaches a few sections at one
15 elementary campus.

16 Q. Does art have value for kids for an education?

17 A. It has value to human beings, yes, ma'am.

18 Q. In what way? Tell the Court.

19 A. We have English and we have literature and we
20 have math and we have history. We talk about culture, and
21 that's art. It would be a real dull world without art,
22 culture and those things. And our kids aren't exposed to
23 that in the home. So if they -- by and large, if they
24 don't get it at the schoolhouse, they'll never see it. If
25 we don't show them a DaVinci or we don't show them a

1 sculpture of David, they're not going to see it.

2 Q. Are art classes important to become college ready
3 or to become career ready?

4 A. I believe so.

5 MS. HUNTER: I'm going to pass the witness.

6 (Break.)

7 EXAMINATION

8 BY MS. BONO:

9 Q. Yes. Good morning, Mr. French. We met
10 informally off the report, but on the record, my name is
11 Marisa Bono. I'm an attorney with MALDEF, and I represent
12 a number of low wealth districts in this case in addition
13 to some students and parents who live in the Pasadena and
14 Amarillo School Districts.

15 Ms. Hunter covered a lot of ground with you this
16 morning, and so I might be hopping around a little bit, if
17 you'll indulge me, but I think I'll be relatively quick.

18 You mentioned earlier that the percentage of low
19 income students in your district is about 70 percent. Is
20 that right?

21 A. Did you say low income?

22 Q. Yes.

23 A. Yes.

24 Q. And that population, has it increased over the
25 past five to ten years?

1 A. Let's back up. I actually mentioned that it was
2 between 70 and 80 percent, depending on how you looked at
3 it.

4 Q. Okay.

5 A. What was your second question?

6 Q. So based on your concerns about there potentially
7 being under-representation of low income students in your
8 district, or students who aren't reporting themselves as
9 being low income?

10 A. Yes.

11 Q. So that population -- I know you've only been
12 superintendent in the district for about four years, but
13 to your knowledge, has that population grown over the
14 past, let's say, five to ten years?

15 A. Yes, ma'am.

16 Q. And how would you describe that growth?

17 A. Well, if you look from '05-'06, it's doubled. I
18 can't remember if it's 14 or 16 percent, but I do recall
19 that it has doubled.

20 Q. It's increased -- so in '05-'06, the population
21 was approximately half low income?

22 A. Are you talking about Hispanic LEP or low income?

23 Q. Low income.

24 A. Then I'm wrong. Back up, correct myself. I'm
25 sorry. I need to listen a little better.

1 Q. That's okay. I will be asking you lots of
2 questions about --

3 A. That's been pretty stable as far as the eco
4 disadvantaged, although I have seen a little bit of uptick
5 even in the percentages over the last years. We've pretty
6 much been poor for a long time.

7 Q. So the population has increased and the growth
8 has been steady?

9 A. The growth of the economically disadvantaged. I
10 would say that would be a fair statement.

11 Q. Let's talk about LEPs now. Currently in your
12 district, what percentage of the population is LEP?

13 A. I believe it's between 14 and 16 percent. If I
14 had my AEIS report, I could tell you specifically.

15 (Exhibit 451 was marked.)

16 Q. (BY MS. BROWN) I'm handing you what I've marked
17 as Exhibit 451. Could you identify that document for me,
18 please?

19 A. 2010-11 Academic Excellence Indicator System.

20 Q. And why don't you go ahead and flip to the page
21 where you can get that demographic that I asked you about.

22 A. If you look on Section II, Page 1, you have
23 Ethnic Distribution, Hispanic, as 16 percent.

24 Q. Hispanics are 16 percent, and then going down a
25 little further looks like the LEP population is 6.6

1 percent; is that right?

2 A. Yes, ma'am.

3 Q. And from what you can tell looking at the exhibit
4 in front of you, does that look like a true and accurate
5 copy of the 2010-2011 AEIS report for your district?

6 A. Yes, ma'am.

7 Q. You mentioned earlier that you think that the LEP
8 population has at least doubled over the past five years;
9 is that right?

10 A. I would say Hispanic population.

11 Q. Your Hispanic population has doubled.

12 A. Not LEP. I would have to go back and look.

13 Q. I can represent to you, or even have a copy if
14 you want to see it, that the LEP population in your
15 district for 2005-2006 was 2.4 percent. Does that sound
16 about right?

17 A. That would be in range, yes.

18 Q. So that population has about tripled within the
19 past five years?

20 A. Yes, ma'am.

21 Q. This report includes the performance of your
22 students on the TAKS test for Grades 3 through 11; is that
23 right?

24 A. Yes, ma'am.

25 Q. The TAKS doesn't test all subjects in all grade

1 levels, right?

2 A. Correct.

3 Q. But for the subjects that are tested, TAKS is
4 meant to test the knowledge of the state curriculum, TEKS.
5 Is that your understanding?

6 A. Minimum skills test, yes, ma'am.

7 Q. And so you would want your students to achieve
8 the TAKS standards in all subjects at all grade levels.
9 Is that fair?

10 A. I would want all my students to make a hundred on
11 everything that they do because that's what they deserve.

12 Q. For the purposes of determining your students'
13 mastery of the standards set forth by the State, would it
14 be appropriate to look at the Sum of All Grades Tested
15 under the All Tests standards in order to gauge their
16 student learning?

17 A. Yes, that's more accurate.

18 Q. Well, let's take a look at Page 4, Section I.
19 Here it looks like in 2010 the Sum of All Grades Tested
20 for the district was 60 percent; is that correct?

21 A. Yes.

22 Q. And in 2011, it was 73 percent?

23 A. Yes.

24 Q. So even after roughly eight years of testing,
25 over a quarter of your students failed to meet the minimum

standards get forth by the State; is that fair to say?

A. Yes, ma'am.

Q. And looking at the same category for low income students in 2010, 60 -- only 64 percent of students met the sum for all grades -- for all tests; is that right?

A. Yes, ma'am.

Q. And that percentage was 68 percent in 2011?

A. Yes, ma'am.

Q. And I think you alluded to this earlier, but under state law, students are expected to graduate college ready, right?

A. Yes.

Q. That's an expectation set forth by the State?

A. Yes.

Q. You also discussed STAAR earlier. Is it your understanding that the rigor of testing from TAKS to STAAR has increased?

A. For STAAR, I believe it has substantially increased.

Q. You mentioned -- you had a conversation with Ms. Hunter about the performance of your students on STAAR. Do you have -- that information obviously hadn't been released yet for your district, but do you have any recollection of the performance of your low income students on the STAAR test this year?

A. A cursory review, and I've not broken it up by demographic groups. When you're talking about low social economic groups, you're talking about three-quarters of our students.

Q. Sure.

A. So you just look in general on your scores. I believe we have a mixed bag of results, but the majority of our scores are below what neighboring districts have.

Q. Okay. And is it your understanding that your low income students -- and I realize that that's a very large proportion of your district, but even with that proportion being large, do you know whether or not your low income students performed under your low -- your non-low income students in the district on the STAAR test?

A. My assumption would be without question.

Q. Looking back at Exhibit 451, TEA also reports a number of indicators that are supposed to reflect college readiness. Is that your understanding?

A. Yes, ma'am. What page are you on?

Q. I'm going to take a look here at Page -- I think it's Page 3, Section 1. Looking under the college readiness indicators at the bottom, TEA reports that less than 10 percent of the district's students had advanced course or dual enrollment completion through 2010; is that correct?

A. Yes, ma'am.

Q. And for Hispanic students, those percentage were lower at -- looks like they didn't rise above 7 percent, is that correct, for both 2008-2009 and 2009-2010 school years?

A. Yes, ma'am.

Q. If you can turn the page for me. Looking at the Texas Success Initiative through the year 2011, it looks like -- and I'm going to invert these numbers that are reported here. But looking at these numbers, it looks through the year 2011, 35 percent of students failed to meet the minimum TSI standards for language arts?

A. In 2011?

Q. Uh-huh.

A. Yes.

Q. And 35 percent of students failed to meet the standard for math?

A. Correct.

Q. In 2010, over half of your Hispanic students failed to meet the standard for math?

A. Yes.

Q. The category below, looking at SAT and ACT scores, in 2010, 15 percent of your students in the district scored at or above the state's criterion for the SAT/ACT?

A. 15.8 percent.

Q. And the average SAT score in 2010 for the district was 924; is that right?

A. Yes.

Q. And the average ACT was 9.2?

A. 19.2.

Q. Excuse me.

These stars here under the Hispanic category, what do those stars represent?

A. I believe they're -- it wasn't a measured group because of the amount of students in that area. I think.

Q. When I look at -- when I look -- for 2010, for example, when I look at the -- it looks like the class of 2010, 33.3 percent of Hispanic students were tested. Is that a fair reading of the data reflected here?

A. Where are you at?

Q. Under -- so when I look at the category for tested --

A. Oh, okay.

Q. -- 2010, it looks like 33.3 percent of Hispanics were tested?

A. Correct.

Q. But then looking beneath that, it says that none of those students tested were at or above the 2010 criterion; is that right?

1 A. That's correct.

2 Q. And if we take a look at the last category on
3 this page, only a third of the graduates in the district
4 were college ready in both subjects; is that right? For
5 2010?

6 A. 30 percent, yes, ma'am.

7 Q. Uh-huh. And 34 percent for 2009?

8 A. Yes.

9 Q. What's your opinion on how your district's
10 students are performing under the college readiness
11 indicators we just reviewed?

12 A. In my opinion, they're below the state's
13 standard. That's pretty reflective in the percentages
14 here.

15 Q. And it's consistent with the testimony you
16 offered this morning; is that right?

17 A. Yes, ma'am.

18 Q. Regarding their readiness for college?

19 A. Yes.

20 Q. I want to review now some testimony that you
21 offered this morning about the services that your district
22 is able to provide for your low income student population.
23 Can you -- can you describe a little bit more specifically
24 why it's the district's responsibility to meet the social
25 and emotional needs of its students in order to advance

1 their learning?

2 A. When you look at Maslow's research and one of the
3 things on the hierarchy of needs is safety and well-being,
4 and that's pretty standard in the education field and in
5 the child psychology field. When a student comes to you
6 hungry or distressed, that impedes any type of learning.
7 And it kind of equates -- once again, I'll use analogies.
8 If you have a toothache, you're not going to be focused on
9 depositions or anything else. Our kids have the same type
10 of toothache at home, and it's real hard for them to focus
11 and -- and concentrate. And you bring that baggage into
12 the classroom. And we need that type of counseling and
13 services to teach them how to cope.

14 Q. It sounds like trust and security are
15 exceptionally important in the classrooms in your
16 district. Is that fair to say?

17 A. Yes, ma'am.

18 Q. And that without having -- without being able to
19 establish that sense of trust and security, you're not
20 going to be able to get your students caught up?

21 A. That's a fair statement.

22 Q. And you're certainly not going to be able to
23 prepare them to meet the state standards; is that right?

24 A. Exactly.

25 Q. All right. And you also mentioned going out into

1 the community and trying to find basic health services,
2 like dental services, for example. And I guess that
3 analogy -- so I guess that analogy you just provided is
4 actually not an analogy for your district.

5 A. That's true.

6 Q. But you -- is it fair to say that you seek to
7 provide those services for your students for the same
8 reasons, that without their basic health needs met,
9 they're not going to be able to focus on their learning?

10 A. Yes, ma'am.

11 Q. You were talking about how the district was
12 forced to reduce its pre-K program to half day for
13 four-year-olds in 2011-2012, and you mentioned that
14 attendance dropped when that happened. Do you know why
15 attendance dropped as a result of the cut to half-day?

16 A. I couldn't tell you specifically. But my
17 assumption is, is transportation. Because when you're a
18 half-day program, you know, the parents would have to come
19 pick them up. And -- and I think that was a factor.

20 Q. And in your experience, based on your interaction
21 with families in your district and your observations of
22 families in your district, the reason they can't pick them
23 up is because they're at work during the day, at least in
24 some cases?

25 A. And that would be an assumption in some places.

1 But in a lot of places, they don't have reliable
2 transportation themselves.

3 Q. You also mentioned that there are a lot of
4 parents who are currently incarcerated?

5 A. Yes.

6 Q. So it's possible that caregivers are just not
7 available during the day?

8 A. Yes, ma'am.

9 Q. Earlier today you talked about -- you mentioned
10 how the district really wants to and would want to,
11 especially with additional resources, to strive for the
12 continuity of teaching staff in the classroom. What
13 impact does the continuity have of -- what impact does the
14 continuity of teaching staff have on the ability to
15 establish trust and security in the classroom?

16 A. Well, especially at the secondary level, when --
17 when a student develops a relationship with a teacher, a
18 coach, what have you, they develop that trust. And
19 they'll come to them with issues that they can help them
20 get through, problems at home. They feel more forthright
21 coming forward with "I'm struggling in this academic
22 area." When it's a stranger, that's a setback and you
23 start over. And it's hard to develop trust without that
24 continuity.

25 Q. With the fluctuation in family life that you

described for your students earlier this morning, do you believe that there's any sort of prevalence of -- scratch that. I won't go into that.

Earlier you mentioned your desire to create more classroom interventions for your students. You also mentioned that many of your students come to the district two, even three years behind, if not more. Is that accurate?

A. That would be fair.

Q. Is there any way to get these students caught up without providing interventions outside of the traditional class day?

A. I don't believe so.

Q. Can you describe the challenges, if any, that the growth in the LEP population has presented for your district?

A. Well, we're talking about language acquisition. And when you have a STAAR and EOC standard that is pretty lofty, it's -- it's increasingly difficult for them to pass an English assessment when their homes are not native speaking English and they don't have the language -- they haven't acquired the language to be ready for those STAAR and EOCs.

Q. Are many of the LEP students in your district also low income?

A. Yes, ma'am.

Q. And so they encounter -- in addition to the challenges that they present by being limited English proficient, they also bear the same challenges as your low income students?

A. Yes.

Q. What does your district do currently to educate LEP students?

A. We have one teacher that goes throughout the district and works with LEP students. And our primary instruction method is emersion. Rosetta Stone.

Q. You have Rosetta Stone English?

A. Yes, ma'am.

Q. For your LEP students?

A. Yes, ma'am.

Q. When you say that you have one teacher that goes throughout the district, what does -- what does that look like? Does she -- does she alternate campuses day by day? Does she visit multiple campuses in -- in a day? How does that work?

A. Her day is spread real thin. She's all over the place in that district.

Q. Why doesn't the district have -- well, first of all, is -- does the services that that teacher provides, are those services sufficient for the needs of your LEP

students?

A. No.

Q. And why not?

A. Because to really help students -- LEP students, I think you need a dual language approach to education. And -- and that requires attracting teachers that are bilingual. And we've had a bilingual posting now for two or three weeks and we're unable to fill it, so we're going to have to hire someone that does not speak Spanish. So...

Q. Why does the district -- why do you believe the district has not filled its posting?

A. I believe because of our pay scale is not sufficient to attract and retain those highly qualified bilingual certified teachers.

Q. Well, if the district has the need for a bilingual teacher, why doesn't the district offer -- and that pays, the reason that that position has not been filled, why doesn't the district offer a higher rate of pay for that position?

A. You can't get blood out of a turnip.

Q. So the district's reasons for using emersion to serve its LEP students is not based on any sort of -- it's not based on student performance. Is that fair?

A. In my opinion, it's the most economical way to do

the minimum required.

Q. That decision was driven by the district's financial situation and not based on any sort of sound educational reason?

A. I would say that's accurate.

Q. If the district had additional resources, what types of services would the district provide for its LEP students?

A. Well, what I would like to see is from pre-K through fifth grade every student in our district be taught in a dual language program, both English and Spanish in alternating two-week intervals. Because research will tell you native speaking English students also achieve higher, as well as your LEP students. If you want to get to that critical level, if you can provide -- especially at an early age, they're like sponges. If you can provide instruction in both languages, we'd see some exponential academic growth, I believe.

Q. So you think your non-Spanish-speaking students could actually benefit from their peers who don't speak English?

A. No doubt. If you look at the research done by Gomez & Gomez, there is no doubt research supports dual language.

Q. What about your own experience as an educator and

1 as a superintendent, does your own experience support
2 that?
3 A. Yes.
4 Q. Are there any other services that the district
5 would provide to LEP students besides a pre-K to five dual
6 language program?
7 A. I would like to hire a translator at each campus.
8 I would like to be able to provide more literature in
9 Spanish, and that takes resources. And it would be a
10 dream to be able to provide kind of like a community
11 liaison for our Hispanic population, because a -- a lot of
12 times there is a fear and a distrust with the parents
13 because they don't speak English. So they're a little bit
14 skeptical because they're not understanding what's going
15 on.
16 Q. Why do you -- why is it important to get parents
17 involved with the schools?
18 A. Well, parent involvement is essential because you
19 want what's happening at the home to be reinforcing what's
20 happening at the school. And when there's a disconnect,
21 it just doesn't -- doesn't work.
22 Q. Currently, do you have any knowledge as to how --
23 are there translators --
24 A. I have no knowledge, ma'am. I have none at all.
25 Q. Do you have translators at any of your campuses

1 currently?
2 A. Actually, we just hired a receptionist at our
3 elementary level that speaks Spanish. But the majority of
4 the time, it's our custodians.
5 Q. Okay. And so at those campuses where you don't
6 have translators, other than custodial staff, do you know
7 how those campuses are communicating with parents about
8 their children's education?
9 A. Other than the custodian. Now, we did have one
10 principal that left to Rockwall ISD. He was our -- he was
11 bilingual. And he was kind of our point guy when we had
12 some serious issues to translate but he's no longer with
13 us.
14 Q. What about in administration, are there
15 individuals in central administration who are able to
16 communicate with Spanish-speaking families?
17 A. No.
18 Q. Do you think the inability to communicate with
19 the parents of Spanish-speaking or non-English-speaking
20 children is affecting their performance at school?
21 A. Yes.
22 Q. In what way?
23 A. Well, if parents don't understand what the
24 homework is, if they don't understand what the weekly
25 bulletin is, if they don't understand what they're seeing

1 in the kids' take-home packet, how to reinforce the
2 learning in the classroom, what's expected, when to attend
3 this, when to attend that, they're a nonparticipatory
4 parent in the child's education, through no fault of their
5 own.
6 Q. And based on your experience, if you were able to
7 enhance the ability of your campuses to communicate with
8 the parents of these children, do you think that they --
9 that their academic performance would improve?
10 A. Yes.
11 Q. You mentioned some services earlier that you had
12 to cut as a result of the recent budget cuts. Are there
13 any services for LEP students that the district had to
14 cut?
15 A. Well, any of the services we cut our LEP students
16 are eligible for, so, yes.
17 Q. Has the district ever had community liaisons, for
18 example, for LEP students and their families?
19 A. Specifically for LEP students?
20 Q. Yes.
21 A. No, ma'am.
22 Q. Has the district had community liaisons of any
23 sort in the past?
24 A. We have a lady that serves multiple purposes and
25 that does some of that kind of stuff, but she's not

1 qualified, really, to do the LEP side of it.
2 Q. Does she speak Spanish?
3 A. No, ma'am.
4 Q. The dual language program and the availability of
5 translators, those sorts of services that you stated you
6 would provide if the district had additional resources, do
7 you believe that the availability of those services would
8 help close some of the achievement gaps we discussed from
9 the AEIS report?
10 A. Yes.
11 Q. Based on your -- based on your personal, your
12 very personal testimony coming from an impoverished
13 background yourself and based on your experience with the
14 students and aptitude of your students in your district,
15 is it your testimony today that low income students just
16 can't compete -- just can't perform on par with non-low
17 income students, if given the opportunity?
18 A. Poor doesn't mean dumb. A poor student, given
19 the resources and the proper instruction that resources
20 provide, can achieve anything. They're not dumber.
21 Q. And what about your LEP students, is it your
22 testimony today that LEP students just aren't capable of
23 performing on par with nonLEP students?
24 A. No, ma'am. They're capable.
25 Q. And you believe all the students in your district

1 could perform if they were given the meaningful
2 opportunity; is that right?

3 A. Yes, ma'am.

4 Q. Thank you for your time this morning. I have no
5 further questions for you.

6 MS. BONO: I pass the witness.

7 THE WITNESS: You're welcome.

8 (Break.)

9 EXAMINATION

10 BY MS. CRISP:

11 Q. Good afternoon. I know that we've met
12 previously, but my name is Kaycee -- previously before
13 this deposition started. My name is Kaycee Crisp and I'm
14 from the Attorney General's office. And I'm here on
15 behalf of the state defendants in this lawsuit. So I just
16 wanted to ask some additional questions to those that
17 you've already been asked today.

18 And I wanted to start by talking about kind of
19 your position as superintendent of Quinlan ISD. So you
20 said that you've been superintendent for four years; is
21 that correct?

22 A. Approximately four years.

23 Q. Okay. And so what was the first school year that
24 you served in that position?

25 A. '8-'9.

1 Q. 2008-2009. Okay.

2 And at what point in that school year were you
3 brought in?

4 A. July 1st.

5 Q. And you had previously been a superintendent --
6 and what was the district, Scurry-Rosser?

7 A. Yes.

8 Q. And why did you leave that position?

9 A. I think the Good Lord called me to Quinlan ISD.

10 Q. So it was for the Quinlan ISD position that you
11 left?

12 A. (Witness nods.)

13 Q. All right. Do you have a contract with Quinlan
14 ISD?

15 A. Yes, ma'am.

16 Q. And what does your contract say about student
17 performance at the campus and district level?

18 A. Whatever the contract normally says.

19 Q. Do you know if it contains any provisions about
20 that?

21 A. I would have to refer back to it, but I know -- I
22 don't know specifically, no.

23 Q. Do you think that your position has any
24 expectations with regard to campus and student performance
25 as part of your continued employment?

1 MS. HUNTER: Objection; form.

2 Q. (BY MS. CRISP) You can still answer the
3 question.

4 A. Can you repeat it or rephrase it?

5 Q. Sure. What do you think that the expectations
6 are with regard to your job as far as campus and student
7 performance go?

8 A. Our expectations are our district goals. That's
9 the expectation that the school board set for me.

10 Q. Okay. And let me go ahead and enter -- since
11 you're talking about the district goals, I'd like to kind
12 of talk about those a little bit. So I'm going to enter
13 two exhibits.

14 (Exhibit 452 was marked.)

15 Q. (BY MS. CRISP) I'm going to mark this as 452,
16 and this is the Quinlan ISD Mission Statement.

17 And 453 is going to be the Quinlan ISD District
18 Goals.

19 (Exhibit 453 was marked.)

20 Q. (BY MS. CRISP) I apologize in advance. The
21 formatting is a little strange because of how it printed
22 from your website, but I will represent to you that these
23 were taken from the Quinlan ISD website.

24 Looking first at the district mission statement,
25 could you read that for the benefit of the Court, please.

1 A. "The mission of Quinlan Independent School
2 District is to ensure that all children have access to
3 quality education that enables them to achieve their full
4 potential and fully participate now and in the future in
5 the social, economic and educational opportunity of our
6 state and nation."

7 Q. Do you feel like that accurately states your
8 district's mission?

9 A. The mission, yes.

10 Q. I gather from your answer that you feel that it
11 doesn't accurately state something else?

12 MS. HUNTER: Objection; form.

13 A. Yes.

14 MS. HUNTER: It doesn't give the weather
15 report either, so I think you have be more specific.

16 Q. (BY MS. CRISP) Is there something you feel like
17 it doesn't accurately represent?

18 MS. HUNTER: Objection; form.

19 MS. CRISP: I'll strike the question.

20 Q. (BY MS. CRISP) The mission statement makes a
21 reference to quality education. What is your
22 understanding of what this term means under the mission
23 statement?

24 A. Since I was not a part of developing this mission
25 statement, it was there before I, I have no idea what that

1 Q. Now, is this an administrative slot that you just
2 really don't need?

3 A. No. It's a -- the individual that works with
4 at-risk kids that we'll -- we'll double up.

5 Q. You testified about grant money that you use or
6 have available and you did testify about some of the state
7 grants that no longer exist. Are you sure -- can you be
8 sure that the federal grants that you've had in the past
9 will continue?

10 A. No, they're actually talking about sequestering
11 Title I funds and they sent us out a letter this summer
12 that Title I special ed funds would be reduced by 10
13 percent.

14 Q. And the funds that you got through the stimulus
15 program that's used for salaries, was that a one-time
16 deal?

17 A. The reason -- yes, it was one-time.

18 Q. Okay. Are you providing health insurance for
19 your teachers?

20 A. We provide the part that -- the minimum the state
21 requires of us to provide. The majority of health
22 insurance is purchased by the individual.

23 Q. And is that amount rising over the years?

24 A. Are you talking about the cost of the individual?

25 Q. The cost of the individual teacher?

1 A. Oh, yes. Every year it seems like for the last
2 three or four years it's went up 4, 6, 8 percent.

3 Q. And there was some testimony about your salary
4 going from 150,000 to 180,000. I just want to be clear on
5 the record, when it went up to 180,000, did you get any --
6 did they continue giving you your benefits as an extra?

7 A. No. I lost my health insurance and disability
8 and all that. I had to pick all that up on my own.

9 Q. And that's why the salary went up, to make up for
10 that?

11 A. It was -- yeah, it was...

12 Q. Okay.

13 MS. HUNTER: I pass the witness.

14 FURTHER EXAMINATION

15 BY MS. BONO:

16 Q. Mr. French, earlier this morning when you were
17 talking about the consolidation of the elementary schools
18 in your school district, you said that as a result of the
19 consolidation there was an HVAC system that was
20 nonfunctioning in the wing of one of the elementary
21 school.

22 A. (Witness nods.)

23 Q. Was that -- is that in the vacant elementary
24 school or in the one that's still servicing students?

25 A. That's the one we're using.

1 Q. Is it that the -- it's not functioning well or
2 it's not functioning at all?

3 A. Depends on the day.

4 Q. And so on the days that it's not functioning, are
5 there students who are in classrooms in that wing?

6 A. That has been in the past, yes.

7 Q. And how does that affect -- does that affect
8 their learning at all?

9 A. I think so. When it's hot or miserable your
10 focus isn't going to be as good, in my opinion.

11 Q. Has there ever been a situation where it was so
12 hot you had to discontinue class or --

13 A. We've moved to other parts of the building that
14 aren't classrooms.

15 Q. Which parts of the building?

16 A. Mainly like a cafeteria, that type of setting.

17 Q. And were those suitable for classroom
18 instruction?

19 A. I don't think so. It's not ideal.

20 Q. You also talked about the desire, if you had
21 additional funds, to provide career and tech programs like
22 prenursing, electrical training, plumbing. Were those
23 just wish list items or were those -- in your mind, are
24 those necessary to help your students become career or
25 college ready?

1 A. I think they're necessary for college and career
2 ready. I think those are viable occupations that our
3 kiddos could have a nice middle class life.

4 Q. Does the offering of programs like that have any
5 impact on student engagement?

6 A. Yes.

7 Q. Can you describe that?

8 A. Those type of programs are different than the
9 normal core: Math, science and stuff. Kids tend to be
10 drawn to those type of different type of programs, and it
11 sparks an interest in their passion, not necessarily in
12 the state's passion.

13 Q. So once students are able to identify something
14 that they're passionate in, they have more of an incentive
15 to attend school?

16 A. Yes. It's kind of like when you're declaring a
17 major, you try to pick a major that you enjoy and it makes
18 it a lot easier to go to class when you're working on your
19 major and not the basics.

20 Q. There was some discussion with Mr. Diamond about
21 computer instructional software. Can you use computer
22 software to teach a child if the child doesn't know how to
23 use a computer?

24 A. No, ma'am.

25 Q. And can you use instructional software if you

1 don't have the resources to purchase computers?

2 A. You have to have the infrastructure.

3 Q. Does infrastructure include sufficient broadband
4 in addition to equipment like computers?

5 A. Yes, ma'am.

6 Q. Just now with your attorney, Ms. Hunter, you
7 mentioned some federal funds that were one-time funds.

8 Were you referring to the ARRA funds?

9 A. Yes, ma'am.

10 Q. And I actually don't know the answer to this
11 question. It's my understanding that in addition to being
12 one time, there are no longer ARRA funds available. Is
13 that your understanding?

14 A. That's my understanding of 266 funds.

15 Q. And if you could take a look again at
16 Exhibit 467, the salary schedule compared to the state --
17 minimum state's salary schedule compared to the Quinlan
18 salary schedule for teachers. Do you know if there is --
19 if the state minimum annual salary schedule is based on
20 any sort of educational reason?

21 A. I don't know of any.

22 Q. You don't know -- do you know if the State's ever
23 conducted a study linking these -- this salary schedule
24 with student achievement, for example?

25 A. I'm not aware of it.

1 Q. And you testified multiple times today that you

2 set your salary schedule to make yourself more competitive
3 in the market?

4 A. (Witness nods.)

5 Q. And you also testified that competitiveness, that
6 the purpose you want to be competitive is to maintain
7 teacher continuity in your classrooms; is that right?

8 A. That is correct.

9 Q. In your experience, having low teacher turnover
10 is linked with higher student performance and achievement?

11 A. Yes.

12 Q. Especially with your low-income students?

13 A. Yes.

14 Q. And your LEP students?

15 A. Yes.

16 Q. So you have an educational reason for setting
17 your salary schedule the way you do?

18 A. Yes.

19 Q. If you could take a look at Exhibit 467, which
20 was -- it has teacher proficiency numbers and rates, at
21 the top, the pie chart. You had mentioned that you
22 weren't familiar with this exhibit. Were you not familiar
23 with the information contained in it? Was that your
24 testimony?

25 A. I've never seen this before.

1 Q. Okay. And it doesn't have a year on it, correct?

2 A. Correct.

3 Q. Or a website address?

4 A. Not that I can see.

5 Q. There is not really any way for you to verify the
6 accuracy of this document?

7 A. That's correct.

8 Q. And last, if you could take another look at the
9 STAAR results, that's Exhibits 471, 470 and 469. I'd like
10 to take a look at the comparison between the state scores
11 in English I Writing and Quinlan scores in English I
12 Writing again if you'll indulge me.

13 A. Okay.

14 Q. I'm looking at the performance of Quinlan's
15 Hispanic students on the STAAR test, and it looks like 35
16 percent performed at Level II, Satisfactory; is that
17 right?

18 A. Let me see. Yes, ma'am.

19 Q. And that's below the state average -- or the
20 state percentage of 44 percent?

21 A. Yes, ma'am.

22 Q. And none of your Hispanic students scored at
23 Level III, correct?

24 A. That's correct.

25 Q. And that's lower than the state, but that's not

1 really saying much since the state percentage was
2 1 percent, right?

3 A. Yes.

4 Q. Going farther down, looking at your economically
5 disadvantaged students, it looks like 34 percent of your
6 students who qualified for free meals scored at Level II;
7 is that right?

8 A. Yes, ma'am.

9 Q. And that's 6 percentage points lower than the
10 state?

11 A. Yes, ma'am.

12 Q. And then none of your students who qualified for
13 free or reduced meals scored at Level III; is that right?

14 A. Yes, ma'am.

15 Q. And if we could take a look at the Algebra I
16 results now. Again, taking a look at Hispanic students,
17 in your district, 3 percent of Hispanic students scored at
18 Level III; is that right?

19 A. Yes, ma'am.

20 Q. And that's lower than the state percentage?

21 A. Yes, ma'am.

22 Q. And both your kids who qualify for free and
23 reduced lunch scored lower than the state percentages at
24 Level III?

25 A. Yes.

NO. D-1-GN-11-003130

| | | |
|----------------------------|---|-------------------------|
| TEXAS TAXPAYER & STUDENT | § | IN THE DISTRICT COURT |
| FAIRNESS COALITION, | § | |
| et al., | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| v. | § | |
| | § | |
| EDGEWOOD INDEPENDENT | § | |
| SCHOOL DISTRICT, et al., | § | TRAVIS COUNTY, TEXAS |
| (consolidated) | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| v. | § | |
| | § | |
| ROBERT SCOTT, in his | § | |
| official capacity as | § | |
| Commissioner of Education, | § | |
| et al. | § | |
| | § | |
| Defendants. | § | 200th JUDICIAL DISTRICT |

ORAL DEPOSITION OF KAREN K. GARZA, PH.D.

Austin, Texas

Monday, July 30, 2012

Reported by:

MICHAEL E. MILLER, FAPR, RDR, CRR, CSR

JOB NO. 51375

DEPOSITION EXHIBITS
KAREN K. GARZA, PH.D.
July 30, 2012

| NUMBER | DESCRIPTION | MARKED |
|-------------|--|--------|
| Exhibit 94 | 2010-11 AEIS Report, Lubbock ISD | 98 |
| Exhibit 95 | 2005-06 AEIS Report, Lubbock ISD | 110 |
| Exhibit 96 | Employee Totals for Lubbock ISD for 2005-2012 | 150 |
| Exhibit 97 | 2006 District AEIS Report, Lubbock ISD | 150 |
| Exhibit 98 | 2007 District AEIS Report, Lubbock ISD | 151 |
| Exhibit 99 | 2008 District AEIS Report, Lubbock ISD | 151 |
| Exhibit 100 | 2009 District AEIS Report, Lubbock ISD | 151 |
| Exhibit 101 | 2010 District AEIS Report, Lubbock ISD | 151 |
| Exhibit 102 | 2012-2013 Minimum Salary Schedule | 160 |
| Exhibit 103 | Adopted 2012-2013 Teacher/Librarian/Nurse Schedule | 160 |
| Exhibit 104 | Comparison of 2012-2013 State Minimum Salary Schedule to 2012-2013 Lubbock ISD Salary Schedule | 161 |
| Exhibit 105 | Texas Education Code 21.251 | 187 |

DEPOSITION EXHIBITS

| NUMBER | DESCRIPTION | MARKED |
|-------------|--|--------|
| Exhibit 106 | Summary of Teacher Data on AEIS Reports for Lubbock ISD for 2005-2012 | 203 |
| Exhibit 107 | Summary of Student Demographic Data | 208 |
| Exhibit 108 | Summary of Average Class Size on AEIS Reports for Lubbock ISD from 2005-2012 | 300 |

PROCEEDINGS

(July 30, 2012 at 9:05 a.m.)

KAREN K. GARZA, Ph.D.,

having been duly sworn, testified as follows:

EXAMINATION

BY MS. HUNTER:

Q. Good morning, Dr. Garza.

A. Good morning.

Q. Would you state your name for the record, please?

A. Karen Garza.

Q. And what is your position?

A. I'm superintendent of schools for Lubbock Independent School District.

Q. And how long have you been that superintendent?

A. Starting my fourth year.

Q. Where were you prior to being superintendent?

A. Prior to going to Lubbock, I was the chief academic officer and second in command of Houston ISD for four years. And prior to that, I was deputy superintendent in Corpus; and before that, I was the Associate Executive Director for Government Relations for Texas Association of School Administrators.

I started my career as a classroom

teacher, and then principal, moving up through the system.

Q. Okay. And you graduated from UT, your undergraduate degree?

A. No. My undergraduate was from University of Houston, and my graduate degree is from University of Texas here in Austin, my doctorate.

Q. And if I remember correctly, your major was English undergraduate?

A. Yes.

Q. Okay. So did you do a dissertation when you got your doctorate?

A. Yes, ma'am.

Q. And what was that in?

A. My title was -- or my thesis was the role of the superintendent leadership in establishing a learning organization -- an organization that is adept to adjusting to change and responsive to change.

Q. Okay. Let's talk a little bit about Lubbock ISD. How many students do you have at Lubbock?

A. We have about 29,000 students.

Q. And I think probably everybody knows where Lubbock is, but just for the record, where is Lubbock located?

A. In West Texas.

Q. Okay.

A. In the panhandle of West Texas on the south plains.

Q. Heading toward New Mexico?

A. Yes, ma'am.

Q. All righty. And it's a K-through-12 school district, correct?

A. Yes, ma'am.

Q. Okay. And how many campuses do you have?

A. We have 52 campuses. We have -- 65% of our students live in poverty, about 55% of them are Hispanic, about 13% African-American, and about 30% white.

Q. Okay. And are you familiar with your revenue per WADA?

A. Yes. We're about \$5300 per student.

Q. And you are rated acceptable; is that correct?

A. Yes, ma'am.

Q. Are all of your campuses acceptable?

A. No.

Q. Okay. Tell me about that.

A. We have eight schools that are currently rated as unacceptable. One of those has been closed, so we now, currently, have seven unacceptable schools.

Q. And are they elementary or middle schools?

A. They're a mixture of all, predominantly

secondary, though, middle school and high school. We have two elementaries that are unacceptable.

Q. For the benefit of the court reporter and for the record, we need to let each other finish before we answer, so I'll try not to talk over you, and the same for you.

When your academically -- or economically disadvantaged kids show up for the first day of their school career, are they prepared to compete with those students who are not academically disadvantaged?

A. No, absolutely not. In fact, our schools that are unacceptable and our schools that are marginally acceptable, it's because of achievement gaps between our students living in poverty and our students that are not. There are significant learning gaps. School readiness is a very definite concern with children living in poverty.

The research is very clear about students coming to school. Those that live in poverty have 45% of the academic vocabulary that children living in homes where you have professional parents live. Those are gaps that are significant, particularly in urban school settings like ours.

We have other issues associated with that; you know, food insecurities. We even have a program with the Junior League on Fridays that we send packets of food

home with children, believe it or not, because they will not have food over the weekend. So we have challenges like that.

New research that is very compelling, also, that's been written of late around the developmental issues associated with brain development and poverty, lack of healthcare available to them.

So those are some of the major issues we have with school readiness with our population of students.

Q. So those students have a big catch-up to do when they arrive at your door; is that correct?

A. Significant catch-up.

Q. Okay. And what kind of programs do you, as a school district, need to offer those students to give them a chance to succeed?

A. We need much more school time. They need much more instructional opportunities to accelerate them and catch them up. That's insufficient during the school day because they're -- you know, they have to have additional instructional time, whether that be extending the school day for them or quality summer programs, which, this year, we were unable to do.

Sadly, and something I worry a lot about right now is the fact that we have been unable to offer

summer school programming for grades 3 through 8 this year for the first time in a long, long, long time.

Q. Okay.

A. And that is as a result of the elimination of the AMI, the accelerated math instruction funding; and the ARI, the accelerated reading instruction.

We've had to focus all of our time, attention and energies around making sure that our high-school students -- those that have failed the end-of-course exams for the first time this spring.

So all of our energies and focus, our resources. We had to budget well over \$200,000 for our summer school program for the 9th grade students. I believe that's going to be significantly insufficient in the coming years, as we add additional grades and as students have to take more and more tests.

Q. Okay. As you add additional grades to the grades that are being currently tested at end-of-course exams, is that what you mean?

A. Yes, ma'am, as we add additional grades.

Q. All right. And as a result of having to focus your energy and your dollars on helping those kids who have to pass those end-of-course exams, are you indicating that you're not able serve the needs of the economically disadvantaged as well as you would like to?

answered this morning, but I am going to circle back to some of the testimony that you already provided.

For example, you spoke -- you were talking about some of the demographic changes in your district. What percentage of students in your district at this point are low-income or qualified for free and reduced lunch?

A. 65%.

Q. And has there been a change in that population over time?

A. That's a growing number. In fact, in our last AEIS report, it was about 63.5%, and it's just growing. So this year we anticipate it will be well over 65%.

Q. And can you describe the growth? Has it been steady, exponential, slow?

A. I think that's a relative term. I think for Lubbock, it would be -- it's a pretty fast-paced growth. I think the economy has affected that acceleration in the number of families that are qualifying for free and reduced lunch, so I definitely think there has been some growth.

Interestingly enough, we do compare quite a bit to the State in terms of our breakdown on demographics, and those are areas that you'll see we're pretty comparable to the State of Texas.

That's been limited by way of funding. We certainly need to do more there, but we have been providing some of that, which is, I think, essential.

We are funding a full-day pre-K program by redirecting some of our Title I monies. We believe that's essential for the students that we're responding to in terms of poverty.

We've also utilized, and are continuing to utilize, some of our Title II dollars to pay teachers additional dollars to go to our -- some of our students and teach -- I mean, teach in some of our schools that have our highest percentage of poverty and our students that are most at risk. And we've been using some federal dollars to do that.

What we've found in our circumstances is that in our schools where we had the hardest to teach, we had our most novice teachers, in many cases, and we knew we had to change that direction. The only way we were able to do that is consider paying teachers who have a proven track record more dollars. And, again, we're doing that with federal money.

Q. Anything else?

A. That's all I can think of right now.

Q. Okay. And you mentioned earlier that you had to eliminate certain summer school programs that you

Q. Okay. As superintendent of the district, do you think that that growth has posed any challenges for your school district?

A. I believe the growth in the students coming from poverty has had a profound effect on our school system and our ability to respond to student need. It's clear that the evidence suggests, in terms of the research literature and just in terms of our experiences and working with our students, that when you're coming to school and you're -- you know, food-challenged in terms of the worries that you have about having food, that has an effect.

The effect it has on brain development and certainly the effect on students coming to school ready to learn most definitely affects our ability to respond to our students.

Q. And you mentioned some things that your district is doing to meet the needs of your low-income students. Can you describe those efforts in further detail?

A. With our limited funding and just looking at what we have in terms of our title and federal monies, and redirecting those to some certain areas of critical need, we are trying to provide as much intervention as we can within the school day.

believe were beneficial for your low-income students.

Are there any other programs that you found you have had to cut as a result of the budget cuts in your district?

A. We've -- again, we've been very intentional about not cutting programs and services to students, if we could. Summer school is probably the most significant reduction that we've had, the one that I'm very concerned about.

We also have much limited -- much fewer opportunities for extended day at our schools. And, again, not having interventionists, co-teachers in classrooms and qualified instructional aides, like we used to have, we don't have near as many, that is going to have an effect on our students and their ability to be accelerated and performing with their age-appropriate peer group.

Q. You mentioned some concerns earlier about the sustainability of certain programs in your district, and also concerns about cutting staff and administrators.

Of the programs that you just listed that you believe benefit low-income students in your district, do you believe any of those programs are at-risk as a result of budget cuts?

A. Everything is at-risk as a result of budget

cuts. We have no -- we've maximized every efficiency we have throughout our system. So moving forward, without additional state revenue, we will have to look at cutting programs and services that are direct services to students, whether that be some of our dropout prevention activities, whether that be additional intervention, whether that be specific programs and services outside the school day.

I will tell you that every time we make a cut, though, in response to diminishing resources, there is another complicating effect. The money under our current funding system follows the student, so anytime we have less student services, compelling programs that are attractive to families, what happens is, they go to other school districts.

We have eight school systems within our county and it's a very competitive marketplace, so every time we're unable to offer something that's compelling and unique and something that we believe parents believe is responsive to students, if we don't, those are dollars and revenue that we lose for our system as a whole.

So that's why we've got to not only make the cuts, but keep our district solvent as we move forward, meet the standards, the increasing standards from the State. At the same time, we can't lose sight of

the fact that as we make these adjustments, we have folks and people and communities and parents that say, "You're not offering what my child needs, so I'm going to go to another school system."

And by the way, there's other school systems around us that are all funded at a higher level than we are.

Q. So in the rubric that you're facing when you're trying to decide what goes first, what program goes first, that's another consideration that you have, is this challenge that you face of competition from your neighboring districts?

A. Number one -- the factors we look at, number one, when we make a cut is, how is it going to affect our student performance, first and foremost. That has to be the most compelling driving force for where we cut and where we leverage resources.

Secondly, we have to consider the effect on our teachers. We've got to create conditions where our teachers are able to be successful with their students; and over time, we're affecting that.

The more we affect that by teaching -- increasing class sizes, by taking some of what they consider valuable support, such as that instructional aide, out of their classroom, all of that makes their

difficult -- their increased class size, all that makes their job much more difficult.

And you know what? It gets to the point, where I might decide -- some of my best-performing teachers and highest-performing teachers may say, "You know what? I'm tired of that. I'm going to this other school system that has less challenges in terms of the student demographics."

So we have to look at how it affects student performance, number one; secondly, how it affects our teachers and their ability to be successful with their students; and then third, we have to consider how that might affect a parent's perception of our ability to respond to their child's needs, because they will go to another school district or maybe to a charter school.

Q. You've mentioned the need to retain your more effective, more experienced teachers; some limited interventions that you've provided for low-income students; the full-day pre-K that you're able to offer with Title I; certain dropout prevention programs.

Are any of those -- are any of those programs not necessary or not important for student performance in low-income student groups?

A. If they weren't necessary or essential, we wouldn't be offering them. And we would not --

particularly in a time where we do not have the luxury of spending any resource on something that's nonessential, and, therefore, everything that we're doing right now, I believe, is essential to setting our students up for success. And, quite frankly, we're not doing nearly enough.

Q. And are there low-income students in your district who are not receiving services that they need to bring them back up to par with their peers?

A. I believe the answer to that is yes. I mean, our summer school. The lack of summer school for grades 3 through 8 is, I think, a very definite and glaring example of students not getting what they need.

Secondly, our lack of ability to staff classrooms for inclusion to the point where we need to, in terms of additional co-teachers and instructional aides, I think is very much a concern.

May I add to that?

Q. Absolutely.

A. I know I focused a lot on our at-risk learners, because I believe that's -- that is where we have our greatest challenge in our ability to meet -- you know, have our students, every one of them, graduate to the state standard.

But in terms of our ability to provide for

1 the -- for all students, but particularly right now our
2 students that are excelling, the rich program offerings,
3 like our AP classes, advanced placement classes, our
4 dual-credit classes, we have one school that has
5 international baccalaureate. All of those programs, we
6 rely a lot on local foundations.

7 We submit an application to local
8 foundations. They're supporting it. And, quite frankly,
9 in the absence of having those local dollars to support
10 those programs, we would not be in a position to do that
11 either.

12 Q. And I'd imagine foundation money fluctuates?

13 A. It fluctuates. We have to apply for it every
14 year. We can't count on it. In some cases, you know,
15 the stock market and their ability -- the economy,
16 depends upon how much money they have available to
17 support us.

18 Q. Can you rely on foundation monies to
19 supplement some of the programs that you've described
20 that provide services for low-income students?

21 A. Well, we've actually applied for a number of
22 things that help our low-income students, but, again, we
23 can't rely upon any of the foundation monies. Those
24 are -- come and go every year.

25 Q. And earlier you mentioned the importance of

1 being able to plan to meet the needs of your students, to
2 be able to plan in advance, more than even two years in
3 advance, for your programming. I'd imagine that
4 statement applies to providing services for your
5 low-income students?

6 A. That's absolutely -- that is the case.

7 Q. Would you say it's even more important for
8 that population?

9 A. It's more important for that population,
10 because we have to have sustainability of those programs,
11 and what we do that might be successful one year, we need
12 to continue to do that the next year. So we need to have
13 the ability to sustain those programs over time.

14 Students that live in poverty, those
15 challenges and the at risk conditions for which they are
16 coming to school, those don't go away and those don't
17 change.

18 So even our ability -- let's assume for a
19 moment that we're successful with a particular child to
20 get them back on track with their age-appropriate peers.
21 We can't let down our guard because of the conditions
22 from which they're coming from. They could lose track
23 again very quickly, if we don't stay on top of it.

24 Q. I'd like to -- well, let me ask you this:

25 It's not your contention today that low-income students

1 aren't capable of performing on par with non-low-income
2 students, is it?

3 A. No, it's not.

4 Q. And low-income students are held to the same
5 standards as non-low-income students; is that right?

6 A. They are held to the same standard. I will
7 tell you they come to school with unique challenges and
8 conditions that the school districts have to be -- my
9 school district has to be responsive to.

10 So not all of our low-income minority
11 students -- not all of them are behind. But if you look
12 at the gaps in our performance, you will see that we have
13 a larger number of -- we have significant learning gaps
14 between our African American and Hispanic students and
15 our white students, and so we do have achievement gaps.

16 Q. And do similar achievement gaps exist between
17 low-income students and non-low-income?

18 A. Those same gaps exist.

19 Q. Okay. And I'll get into those with a little
20 bit more specificity in just a moment, but I'd like to
21 ask the same sort of general range of questions for ELL
22 students now, or your English language learner students.

23 What percentage of students in your
24 district currently are ELLs?

25 A. Right now, about 3%.

1 Q. And do you think that number accurately
2 reflects the population in your school district?

3 A. No.

4 Q. Why is that?

5 A. If you'll look again, our demographics are
6 very similar to the State, and you'll see in that
7 particular area, we're very much below the State, while
8 our demographics are very similar.

9 I will tell you that we probably would
10 never mirror exactly the State because those challenges
11 and students coming to school without strong skills in
12 English or the predominant language in the home not being
13 English is different across the state in different areas.

14 So I'm not going to suggest that we have
15 the same percentages as other areas, but I will tell you
16 I think we're underidentifying students who need English
17 language services, and I think it's largely because we've
18 had parents deny the programs.

19 We've not been able to offer the programs
20 in every one of our schools, so a parent would find him
21 or herself in a position of having to either deny service
22 so their child could go to that neighborhood school that
23 might be, by the way, within walking distance of their
24 home, or going, you know, a number of miles to another
25 school that has the program. And you can imagine there

are parents that deny the program as a result.

Q. Do you have any idea or any sort of ballpark estimation of how many families or how many students are in that situation, where their parents have opted out, so they're not being reported as ELLs?

A. I don't have that number available, but I can get it for you.

Q. Why are ELL programs only available at certain schools in the school district?

A. A couple of different reasons. Number one is, we've been limited in our resources available to have those programs in every school. We are trying to expand and have more options in all of our neighborhood schools, but, again, that takes resources to do that.

Furthermore, it's very difficult to staff with qualified staff, bilingual, ESL, dual-language teachers, in many cases. Again, we're competing with all the larger districts, our peer group in West Texas, for the same qualified people in those areas, and our teacher salaries are lower than our peer group. So I believe that has a bearing on our ability to staff those programs.

And keeping in mind, having been from Houston, where we had, also, large numbers of students, ELL students, we were able to staff the classrooms at a

higher level, we had fewer qualifying students, so it just cost us more to offer those programs in West Texas, because you might not have a full 1 to 22 number of students in a class at a grade level, for an example.

Q. Do you think that Lubbock ISD's location in Texas affects its ability to attract qualified ELL teachers?

A. Oh, no doubt. No doubt.

Q. And why is that?

A. Well, in fact, we've tried to recruit from the Valley. We just have had a very difficult time finding bilingual ESL teachers that are qualified, because they can go to other parts of Texas, where they're paid more. And we just -- it's been a significant challenge for us.

Q. Have you had to eliminate ELL programs at your schools because of budget cuts?

A. No, we haven't. And, again, we've not done that because we're compelled to respond to the students' needs. If they're not getting quality instruction and preparation in that area, they're not going to do well on the state assessment program.

Q. Do you think the ELL programs are one of those items that could potentially be on the chopping block in light of the current -- either the current budget cuts or any future cuts?

A. Again, as far as I'm concerned, everything is at-risk. We've wanted to expand our dual-language program. The research is clear; dual-language programs benefit, not only the ELL student, but also students where English is the primary language at home. It benefits both students academically.

But it's difficult to support the development of those programs with the limited resources that we have.

But everything -- everything is at-risk in the future.

Q. Based on your observations and your interactions with families in the district, do you think that parents opt out of schools that provide these types of services for their students because they don't want that type of programming for their kids?

A. That has not been my experience. I think it's more a challenge of the proximity to the programs for them. Keep in mind that if -- you know, there's a level of comfort associated with the fact that that school down the street is maybe where I went to school, or certainly I know the people in that school, and just there's a level of comfort.

You lose that when you're sending or proposing to send their child to a school that they're

not accustomed to or familiar with, that they believe is a long way from their child and their ability to respond to their child.

Q. You mentioned that students can often walk to their neighborhood schools. Is transportation an issue, in your experience, for some of these families?

A. Transportation is an issue, although we try to respond to that, obviously, with our busing, our bus services. But it still is an impact in terms of families being able to access that school. And, you know, there -- it does affect families and their ability to be engaged in the school.

Q. So you mentioned this 3% number as being at least the percentage of ELLs reported in your district or identified in your district. Has that number changed over time?

A. No. I'm hoping it will in the future, if we're able to respond with more programs and services. But no, it has not significantly changed over the recent past.

Q. I'd like to talk now about the performance of these student groups on the TAKS test in your district. And I was looking for the STAAR data online, and I didn't see it. Has Lubbock not released it yet?

A. Oh, we've released our information.

1 Q. Okay.

2 A. But keep in mind, in grades 3 through 8, the
3 State has not released what the passing score is, so all
4 we have is percent of the items correct. So passing, we
5 will not have passing until November to January, at some
6 point.

7 Q. Okay. I see.

8 (Garza Deposition Exhibit 94 marked.)

9 BY MS. BONO:

10 Q. Dr. Garza, the court reporter just handed you
11 what's been marked as Exhibit 1. Do you recognize this
12 document?

13 A. Yes.

14 MS. HUNTER: Wait a second. I thought we
15 were marking all exhibits consecutively.

16 (Discussion off the record.)

17 BY MS. BONO:

18 Q. Okay. Dr. Garza, you've been handed what's
19 been marked as Exhibit 94. Do you recognize the
20 document?

21 A. Yes, I do.

22 Q. Can you identify it for me?

23 A. This is our 2010-2011 AEIS report, which is
24 the Academic Excellence Indicator System report for
25 Lubbock ISD.

1 Q. What does that stand for?

2 A. That stands for economically disadvantaged.

3 Q. And the category next to it, "LEP," what does
4 that stand for?

5 A. Limited English-proficient.

6 Q. And would you agree that limited
7 English-proficient is the same or similar to ELL
8 students?

9 A. That's correct.

10 Q. If we could go down to grade 7, at the bottom,
11 there are four categories: "Reading," "Mathematics,"
12 "Writing" and "All Tests." What does the "All Tests"
13 category stand for --

14 A. All tests --

15 Q. -- or represent? Excuse me.

16 A. I apologize.

17 Q. I apologize.

18 A. "All tests" represents how many of these
19 students took every one of these tests and what their
20 percentage of passing was.

21 Q. So let's look at the district average. What
22 percentage of students passed all tests in 2011?

23 A. 65%.

24 Q. And it looks like that number was 71% in 2010;
25 is that right?

1 Q. And what kind of information is contained in
2 this report?

3 A. All variety of information; largely,
4 performance of our students, aggregated by grade level
5 and testing area. It also includes some demographic
6 information and some financial information and
7 performance -- I mean, teacher experience levels,
8 et cetera.

9 Q. Can you turn to page 3 of the report for me,
10 please?

11 A. I'm sorry, what page?

12 Q. Page 3. And I'm looking at grade 7, at the
13 top. There's a heading that says "TAKS Met 2006
14 Standard." I don't know if there's more than one page 3.

15 A. My page 3 starts with grade 8, 9 and 10. Am I
16 on a different --

17 Q. Oh, I see. We have different years. Let me
18 get the right one out. If you could turn to page 2 for
19 me, please.

20 A. Okay.

21 Q. And I'm looking at the headings on the top.
22 On the far right-hand side, there's a category that says
23 "Econ Disad," the heading at the very top. If I could,
24 please? Right there (indicating).

25 A. Oh.

1 A. That's correct.

2 Q. If we go a little farther to the right, to the
3 category of "White" students, what was the percentage
4 passing all tests in 2011?

5 A. 85%.

6 Q. And in 2010?

7 A. 89%.

8 Q. Going further along to the category for
9 "Economically Disadvantaged," what percentage of students
10 passed all tests in 2011?

11 A. 53%.

12 Q. And in 2010?

13 A. 59%.

14 Q. And last, the ELL students, what percentage
15 passed all tests in 2011?

16 A. 39%.

17 Q. And that number was 55% in 2010?

18 A. That's correct.

19 Q. Could you turn the page for me, please? I'm
20 looking at grade 9.

21 For the year 2011, the district average --
22 or the district percentage of students passing all tests?

23 A. In 2011?

24 Q. That's right.

25 A. 57%.

1 Q. And in 2010, it was 62%?

2 A. That's correct.

3 Q. For the white students, that number in 2011

4 was about 20% higher, 77%?

5 A. That's correct.

6 Q. And in 2010, it was 81%?

7 A. Correct.

8 Q. The economically disadvantaged students in

9 2011 was 42%?

10 A. Correct.

11 Q. And it was 48% in 2010?

12 A. Yes.

13 Q. And for ELL students in 2011, the percentage

14 was 30%?

15 A. Yes.

16 Q. And for 2010, it was 40%.

17 A. That's correct.

18 Q. Are these reflective of the achievement gap

19 that you were talking about earlier for low-income and

20 non-low-income students?

21 A. Yes, it is.

22 Q. And generally for the 2010-2011 academic year,

23 did these gaps exist for low-income versus non-low-income

24 students?

25 A. That's correct.

1 54%?

2 A. Yes.

3 Q. And 2010, we have 32%?

4 A. That's correct.

5 Q. This was for 11th graders?

6 A. Yes, under TAKS.

7 Q. Under TAKS.

8 What was the likelihood that a low-income

9 student in grade 11 -- you know what? Scratch that. You

10 don't need to speculate.

11 Let's go ahead and keep going forward to

12 college readiness, the college readiness rates on

13 page 9 -- oh, excuse me, it looks like it's page 10.

14 About halfway down, there's a category

15 called "College Readiness Indicators," and what does that

16 category reflect?

17 A. The category of "College Readiness" includes

18 advanced placement courses, dual enrollment completion,

19 the number of graduates under the recommended high-school

20 program, distinguished achievement program, AP, IB

21 results. That's what that section includes.

22 Q. Let's look at the --

23 A. You want me to continue?

24 Q. Oh, I'm actually looking at the next page, on

25 the SAT/ACT results. Are those college readiness

1 Q. And for ELL students versus non-ELL students?

2 A. That's correct.

3 Q. And in these examples we just listed, the

4 low-income students were substantially -- performing

5 substantially below the district average and the average

6 for white students, correct?

7 A. That's correct.

8 Q. And the same is true for ELL students?

9 A. Yes.

10 Q. Let's take a look at the next page, for

11 grade 11. In 2011, the district percentage of students

12 passing all tests was 78%?

13 A. That's correct.

14 Q. And in 2010, it was 74%?

15 A. Yes.

16 Q. The percentage for white students in 2011 was

17 91%?

18 A. Yes.

19 Q. And in 2010, it was 90%?

20 A. Yes.

21 Q. For low-income students in 2011, we have 69%?

22 A. Yes.

23 Q. And in 2010, 60%?

24 A. That's correct.

25 Q. And last, the ELL students for 2011, we have

1 indicators as well?

2 A. Yes, they are.

3 Q. And what's the last category? It says "Both

4 Subjects." It's the very last --

5 A. Yes.

6 Q. -- category on the left.

7 What does that represent?

8 A. That represents the performance of our

9 students in both English language arts and mathematics,

10 according to the college-ready standard.

11 Q. I'm looking at the class of 2010 for the SAT

12 scores, and it looks like the number of -- it looks like

13 the average SAT score for the district was 1020; is that

14 right?

15 A. That's correct.

16 Q. For Hispanic students, it was 926?

17 A. That's correct.

18 Q. And for white students, it was 1087?

19 A. Yes.

20 Q. Under "Low-Income" and "LEP" students, it says

21 "n/a," or not applicable. Why is that?

22 A. The reason is, the SAT test currently is a --

23 students opt in to take that test, and so right now,

24 they're not having to declare themselves as economically

25 disadvantaged or not.

1 Q. I see.
 2 A. It's a test that's given on a separate testing
 3 day. It's not administered during the school day.
 4 Q. And is the same true for the ACT?
 5 A. That's correct.
 6 Q. And so looking at the ACT scores for the class
 7 of 2010, it looks like the average score for the district
 8 was 20.8?
 9 A. That's correct.
 10 Q. For Hispanic students, it was 18.8?
 11 A. Yes.
 12 Q. And for white students, it was 23.1?
 13 A. Yes.
 14 Q. So it looks like it's fair to say for the
 15 class of 2010, Hispanic students were scoring, on
 16 average, lower than both the district average and white
 17 students; is that right?
 18 A. That's correct.
 19 Q. Why are the -- I'm looking at the graduation
 20 and dropout rates on page 9. Do you know why those
 21 aren't included under the college readiness indicators?
 22 A. The Texas Education Agency determines which
 23 factors are included within the college readiness.
 24 Q. I'm looking at the four-year completion rate
 25 for grades 9 through 12 at the class of 2010. It looks

1 A. That is correct, for the class of 2010.
 2 Q. And for white students, it's 93.5%?
 3 A. That is correct.
 4 Q. For low-income students, it's 74.9%?
 5 A. That is correct.
 6 Q. And for LEP students, it's a little over half,
 7 at 52.9%?
 8 A. Yes.
 9 Q. The dropout rate for the district is 10.5%?
 10 A. It depends where -- you're looking at
 11 completion rate. That's a little bit different than the
 12 dropout rate. The dropout rate is listed above.
 13 "Dropped out" means they did not complete.
 14 Q. I see.
 15 A. It's under the completion factor, and that
 16 means they did not complete with their age-appropriate
 17 peer group. They may have gone on for a fifth year,
 18 et cetera. Dropout rate is a different number, and
 19 that's listed in the sections just above that.
 20 Q. Is it the section that says "Annual Dropout
 21 Rate (Grades 9 through 12)"?
 22 A. That's correct.
 23 Q. And that was -- for the year 2009-2010, it was
 24 4.9 for the district?
 25 A. Yes.

1 like the district average for -- well, first, tell me:
 2 When it says "Graduated," what does that percentage
 3 reflect?
 4 A. It means they've completed their high school
 5 within four years, with their age-appropriate peer group.
 6 Q. And the dropout percentage, what does that
 7 reflect?
 8 A. That means that those are students who had not
 9 completed.
 10 Q. The district doesn't have any sort of special
 11 formula to determine what the dropout percentage is? Is
 12 it just a straight number of how many students didn't
 13 complete the requirements for that year?
 14 A. It's a little bit more complicated than that.
 15 Under the completion rate, it is a true completion rate,
 16 how many started with their age-appropriate peer group,
 17 how many completed four years later.
 18 These are calculations that the state
 19 agency, Texas Education Agency, determines. The dropout
 20 rate, however, which is different than the completion
 21 rate, does include within it certain lever factors that
 22 makes it a little bit different calculation.
 23 Q. And so looking at the graduation rates for the
 24 district as a whole, it looks like that percentage is
 25 79.9%?

1 Q. And for white students, it was 2%?
 2 A. That is correct.
 3 Q. For low-income students, it was 2.9%?
 4 A. That's correct.
 5 Q. And for LEP students, it was 6.5%?
 6 A. Yes.
 7 Q. Your district staff worked to -- worked to
 8 prepare and provide the information that's reflected in
 9 the report; is that right?
 10 A. Yes. This information is submitted through
 11 the PEIMS system, which is the state system for capturing
 12 this data.
 13 Q. And so --
 14 A. And you're going to ask me to tell you what
 15 "PEIMS" stands for?
 16 Q. Yes.
 17 A. Public Education Information Management
 18 System, I believe.
 19 Q. Okay. And --
 20 MS. COLMENERO: I had it written down too.
 21 BY MS. BONO:
 22 Q. So, to the best of your knowledge, all of the
 23 information reflected in this report is accurate?
 24 A. Yes.
 25 Q. And I'm not going to make you go through

1 specific percentages for the previous years, but I would
2 like you to at least identify these documents so that we
3 can have them for the record.

4 (Garza Deposition Exhibit 95 marked.)

5 BY MS. BONO:

6 Q. You've been handed what's been marked as
7 Exhibit 95. Do you recognize this document?

8 A. Yes, I do.

9 Q. And can you identify it, please?

10 A. It's the 2005-2006 Academic Excellence
11 Indicator System report for Lubbock ISD.

12 Q. And this is a similar report to the one we
13 were just looking at; it's just from a different school
14 year?

15 A. That's correct.

16 Q. And it reflects the same type of information
17 as the report that we were just looking at?

18 A. Yes.

19 Q. And, to your knowledge, the information
20 contained herein is accurate?

21 A. Yes, the information is accurate. Some of the
22 indicators may have changed over time, and that's what I
23 was trying to compare. This is an evolving system, so
24 back in '05 -- I haven't looked at '05-06 in quite some
25 time, so I'm assuming the same information is included.

1 them over the lunch break and answer your question
2 afterwards.

3 MS. BONO: Sure. We'll why don't you take
4 a look real quick. We can go off the record. And I'll
5 tell you what pages it's on.

6 THE REPORTER: Did you want to go off?

7 MS. BONO: Sure. Let's go off.

8 (Discussion off the record.)

9 BY MS. BONO:

10 Q. So, Dr. Garza, you've had the opportunity to
11 review the information contained in this report. And is
12 it fair to say that gaps exist between low-income and
13 non-low-income students for grades 7, 9 and 11 in the
14 "All Tests" category?

15 A. That's correct.

16 Q. And is it fair to say that those gaps also
17 exist for ELL students and non-ELL students, grades 7, 9,
18 11, in the "All Tests, TAKS" category?

19 A. That's correct.

20 MS. HUNTER: Let me object one moment.
21 Just to clarify, when you say "gaps," you mean gaps
22 between those performances and the performances of white
23 students, or the performance of the district?

24 BY MS. BONO:

25 Q. So -- both.

1 but there may be some subtle adjustments, but those are
2 altered by the Texas Education Agency.

3 Q. Sure.

4 In Exhibit 94, we were talking about gaps
5 in performance between low-income and non-low-income
6 students on the TAKS test, on ACT scores, SAT scores,
7 dropout rates -- is it more accurate to say dropout rates
8 or completion rates?

9 A. They're kind of the inverse of one another,
10 but calculated a little differently. So we always talk
11 about dropout and completion.

12 Q. Okay. The numbers we talked about
13 specifically were dropout rates?

14 A. We talked about completion rates as well.

15 Q. Completion. And/or graduation rates?

16 A. Same thing.

17 Q. Yes.

18 And, to your knowledge, do similar gaps
19 exist between these student groups in this academic year,
20 2005-2006?

21 MS. HUNTER: Let me object. I think
22 before the superintendent can answer that question, she's
23 going to have to look at those years.

24 MS. BONO: Sure. Sure.

25 MS. HUNTER: So she'll be glad to look at

1 A. The answer to that is yes, in both areas. The
2 achievement gaps exist between white students, but also
3 between our district average white students and also our
4 economically disadvantaged students.

5 Q. And what about performance on the SAT and ACT
6 tests, can you describe the -- can you describe the gaps
7 in that performance?

8 A. I can reflect upon the gaps as it relates to
9 the demographics of the student groups in terms of
10 Hispanic and white, African-American, compared to the
11 district average. Economically disadvantaged is not
12 available, nor is LEP available.

13 But yes, there continue to be, between our
14 student groups, achievement gaps.

15 Q. And in the graduation rate, are there gaps
16 there?

17 A. That's correct, there are gaps.

18 Q. It's not your contention today that ELL
19 students are not capable of performing on par with
20 non-ELL students, is it?

21 A. No, it's not.

22 Q. And we talked earlier about some of the
23 services that your district provides for low-income
24 students, and you mentioned ELL programs that are
25 contained at least at some schools for ELL students.

1 Can you describe what types of services
2 are offered through those programs?

3 A. Trained teachers who are trained in ESL
4 instruction. There are very specific strategies that are
5 successful with helping children whose predominant
6 language is not English in the home. That takes a
7 trained teacher to do that, but we offer ESL programming.

8 We also offer bilingual programming, where
9 we offer instruction in the core areas in Spanish with
10 support in the content areas as well. And then we offer
11 a dual-language program as well.

12 Q. Are there any others that you can think of?

13 A. Again, I'm not going to suggest that limited
14 English-proficient students can't learn, but we do have
15 to provide additional support for them.

16 They have to stay up and be well prepared
17 for success on the state assessment program. And if they
18 get behind learning the language, they get behind then in
19 the content areas, such as science and social studies,
20 and the gaps will be exacerbated over time.

21 So we have to do some things that are
22 different and more intensive to make sure that they're
23 learning the language and staying on top of the content
24 knowledge for that grade level as they move ahead, which
25 requires additional support and resources.

1 There is a certain time that they can take the Spanish
2 version, certain number of years that they can take the
3 Spanish version of the test.

4 But keep in mind, in many cases, depending
5 upon the circumstances for which they come to our school
6 district, they may not even be fluent in their native
7 language, which creates a compounding problem for school
8 systems.

9 Q. And does the district receive additional
10 funding for students in that type of situation?

11 A. Yes, we do receive weighted funding for those
12 services, but I don't believe that that's sufficient to
13 cover those costs.

14 Q. And why not?

15 A. Well, when you consider the fact that it's
16 very difficult to find bilingual teachers -- keep in mind
17 bilingual teachers have to be fluent in both Spanish and
18 in English -- it's very difficult. They also have to be
19 trained to provide quality instruction for our students
20 in that area.

21 We have found that we have to have a very
22 structured process to ensure that teachers aren't -- you
23 know, there's a strong balance between instruction in
24 Spanish and instruction in English. If they fall too
25 much to instruction in Spanish because that's what the

1 Q. So you're talking about this dual challenge of
2 both keeping them up to speed and helping them learn
3 English. What types of challenges does that present, if
4 any?

5 A. Qualified teachers is a challenge, and
6 providing the additional time, support and training for
7 teachers as well. And then again, the intervention that
8 I've mentioned under previous questions are very
9 important for students that are learning a language.

10 If you can imagine and think for a moment
11 about a student that enters our system at 5th grade that
12 does not speak English and the content that they're
13 expected to understand and know in the areas of social
14 studies, science, mathematics, for example, and they're
15 in classrooms where they don't know the language.

16 So they have to learn the language, first
17 and foremost, but we have to develop strategies to ensure
18 that they're also keeping up to grade level on those
19 other content areas as they're learning this language.
20 It's very difficult to accomplish.

21 Q. Are students who entered school later, in
22 5th grade, for example, and began learning English
23 later -- are they still held to the same standards as
24 other students?

25 A. Yes, they're held to the same standards.

1 student is accustomed to, then they won't be strong
2 enough in English down the road.

3 So we have to have a very, very prescribed
4 and very managed program for our students in bilingual
5 programs.

6 Q. It sounds like those students need quite a bit
7 of support?

8 A. Yes.

9 Q. What happens to students who attend schools
10 that don't offer those types of services?

11 A. That's a challenge. If a student enters a
12 school and Spanish is not -- I mean, excuse me, English
13 is not their native language -- and we find it's the
14 case, by the way, in areas where you might have a student
15 who has the same issues, but maybe they're coming in from
16 another foreign country, who they're just -- it's
17 essentially a full-immersion program.

18 And what we hope in most cases is that
19 we're able to provide an ESL-trained teacher that
20 understands the strategies and skills for teaching
21 students core content knowledge and helping them overcome
22 the fact that there's some language differences between
23 the instruction and the students' native language.

24 It's very, very difficult, and very
25 difficult in circumstances where you do not have the

1 right teacher and the right program to ensure that those
2 students don't get farther and farther and farther
3 behind.

4 Q. Are there ELL students in the district who are
5 not receiving the services that they need to both get up
6 to speed with their grade level and learn English?

7 A. Yes, that is, in fact, the case. Keeping in
8 mind there's a lot of nuances affecting that, whether or
9 not they're qualified and designated as an LEP student is
10 if a mother or parent, you know, wants the services;
11 furthermore, what they put on their native language
12 chart, whether or not Spanish is spoken in the home or
13 English is spoken in the home.

14 If, in fact, English is spoken in the
15 home, in many cases, it's not the English that they need
16 to learn to be successful in school in many cases, if
17 they're living in poverty. It may be a mixture of
18 Spanish and English. And sometimes it's not the same
19 articulate English that you would have from a
20 middle-income or upper-income family.

21 Q. Would ELL students benefit from summer school?

22 A. Oh, absolutely. In fact, I think the research
23 is pretty clear that that's the student population that
24 is considered high at-risk, that suffers the most from a
25 summer lag, and would benefit the most from intensive,

1 quality summer programming.

2 Q. Does the school district or do schools within
3 the school district have an obligation to communicate
4 with parents who don't speak Spanish -- or don't speak
5 English, about their children's education?

6 A. Yes.

7 Q. And how do -- how do schools meet that
8 responsibility?

9 A. It's very difficult, but we do make every
10 attempt or every effort to try to communicate with
11 parents in the language for which they're most
12 comfortable, whether that be translation of literature
13 that's sent home with a student, or we also have a school
14 messaging system where we also communicate messages to
15 parents both in Spanish and English.

16 Q. And does the school district receive
17 additional funds for those services, to provide those
18 services?

19 A. Our school messenger systems or our
20 translation services -- our school messenger system, the
21 answer is no, but we believe that's incumbent upon us.
22 We must communicate with parents. Our ability to be
23 successful with children, we have to use every
24 communication system we can, so we're compelled to do
25 that.

1 With translation services, we do receive
2 limited Title III money from the federal government where
3 we're able to provide the translation services.

4 Q. Why is communication with parents important
5 for the success of students?

6 A. Again, the research literature is very clear
7 that a student whose parents, despite whatever challenges
8 they may experience at home, if they support teaching and
9 learning and value education, then a student is going to
10 be more prone for success and more situated for success,
11 if, in fact, that's the case.

12 We believe that if we communicate
13 aggressively with parents it arms them to be better in
14 terms of supporting their child in that process.

15 Q. Do you think that schools in your district
16 have all the resources they need to communicate with
17 their non-English-speaking households?

18 A. No. In fact, in many cases where we have high
19 predominance or predominance of Hispanic families, it is
20 my belief that we need parent liaisons in those schools
21 who are able to speak Spanish and are able to get into
22 homes and communicate with families. We're unable to
23 provide that service right now; and, quite frankly, we
24 have challenges in hiring bilingual staff.

25 When I look at the demographics of our

1 staff as compared to our student population, I'm always
2 concerned when we do not have a principal or assistant
3 principal or high level -- or teachers who are able to
4 speak the language and be able to interact and develop a
5 rapport with families, and that's a significant challenge
6 for us, particularly in West Texas.

7 We don't have nearly enough bilingual
8 professionals in our schools.

9 Q. So there are currently no parent liaisons in
10 your district?

11 A. Currently, we do not have -- at the campus
12 levels, we do not have any parent liaisons. We have two
13 or three individuals that we pay for through Title I
14 monies that do a lot of support and training for our
15 parents. That's something that's required by No Child
16 Left Behind, as you're probably aware.

17 But, again, that's insufficient with the
18 kind of interaction we're talking about, in that at a
19 school level, when I need to interact with and work with
20 parents, ensuring that children are successful, and
21 language is a barrier, we need more people at the campus
22 level who are able to communicate with parents, if
23 there's a language barrier.

24 Q. And you also said there's a lack of bilingual
25 staff?

1 A. We're constantly challenged with securing
2 sufficient bilingual staff to support our programs.
3 Q. And why is that?
4 A. In our part of the country, we -- you know,
5 Texas Tech does not produce enough graduates that are
6 bilingual and are fluent.
7 We are compelled and we have to recruit in
8 South Texas and other parts of -- you know, other parts
9 of Texas to be able to respond to that need, although
10 it's difficult because in most areas, they can -- it's
11 hard to convince them to move to West Texas, number one,
12 and secondly, of course, our salaries are not as
13 competitive as some of our peer groups across the state.
14 Q. If you had more resources, do you think you'd
15 have -- do you think you'd be more competitive for hiring
16 bilingual staff?
17 A. That's -- we would have to use some additional
18 resources to make it compelling. You know, just like any
19 economic model or any business model, if you have a
20 greater need in a certain area, you drive resources to
21 that need to try to -- you know, if you have a shortage
22 of particular staff, you increase the salaries there so
23 you can draw more people to that particular area. It's
24 difficult to do that under the circumstances.
25 Q. And the same is true for qualified teachers

1 A. In terms of what it would cost? I don't have
2 that number. I mean, I think it's something that I'm
3 certainly interested in listening to some of the expert
4 witnesses talk about. It's something that we have
5 contemplated, and it's hard to determine or ascertain
6 that exact number.
7 But I will tell you, given our current
8 circumstances, what we're currently provided is sorely
9 inadequate to meet the challenges of our diverse
10 population that we were just discussing, both our at-risk
11 students, our economically disadvantaged students, and
12 then our students that do not speak English.
13 Our current funding system is sorely
14 inadequate to meet those needs, and I think it's going to
15 be exacerbated, significantly so, with this new testing
16 program from the State of Texas and the new graduation
17 requirements.
18 MS. BONO: That's all the questions I have
19 for you at this time. Thank you.
20 MS. HUNTER: What time is it?
21 MS. COLMENERO: About noon.
22 MS. HUNTER: Why don't we take a lunch
23 break for an hour.
24 (Recess taken, 12:04 p.m. to 1:14 p.m.)
25 ///

1 and teachers' aides?
2 A. That is correct. And, quite frankly, also
3 with our leadership at the campus level. We've had to
4 invest resources, Title I federal dollars, to try to
5 develop our own bench, if you will.
6 We've had to develop programs to help
7 encourage more minority candidates to go into campus
8 leadership, and that's not without its challenges.
9 Q. The Title I funds that you receive, is that
10 sufficient to provide the services for ELL students that
11 are needed in your district?
12 A. No. In fact, our Title III dollars, if you
13 look at it, are significantly insufficient to support
14 bilingual, dual language and ELL students.
15 Q. And the resources that we've just discussed,
16 the district would provide those for its ELL students, if
17 it had additional funds?
18 A. If we had additional funds, we would provide
19 additional supports, absolutely, for those particular
20 populations of students, no doubt.
21 Q. Are the ELL rates that you receive from the
22 State sufficient?
23 A. No, they're not.
24 Q. Is there any place that I could look for a
25 number on what would be sufficient?

1 EXAMINATION
2 BY MR. FRAISSINET:
3 Q. Good afternoon, Dr. Garza. How are you?
4 A. Good afternoon. I'm fine.
5 Q. My name is Philip Fraissinet. I represent the
6 group of districts in this case known as the Fort Bend
7 ISD plaintiffs. Do you understand that?
8 A. Yes.
9 Q. And you and I have known each other for some
10 time, have we not?
11 A. Yes.
12 Q. You'll be happy to know that I have just a few
13 questions for you this afternoon. I think your testimony
14 this morning was very thorough, so I have only a few
15 follow-up questions for you.
16 First of all, I'd like to ask a few
17 questions about academically unacceptable campuses, okay?
18 I believe you testified this morning that you have eight
19 districts -- or campuses that are currently designated as
20 academically unacceptable; is that right?
21 A. Yes, we have eight, with one of those having
22 been closed since that time.
23 Q. And what's the basic breakdown between high
24 school, middle school and elementary school?
25 A. I believe we have two elementary schools, then

1 that particular premise. If a student is not
2 experiencing success in school, whether that be success
3 in a classroom, success on a state assessment, a STAAR
4 test or end-of-course exam, and now requiring them to
5 pass those in order to graduate and receive a certain
6 score, I think very much there's a direct correlation
7 between that and the dropout rate.

8 Q. And then early on in the testimony, you were
9 asked about whether there were certain curriculum
10 programs that you couldn't afford to have, and one of the
11 things you explained was that if you didn't have certain
12 programs, parents would take their children and move them
13 to a different school district. And I wanted to explore
14 a little bit what the impact was for the district, if
15 that happened.

16 Obviously, you could lose money because
17 it's based on your ADA, but let me ask you: What kind of
18 student is most likely to be removed from your district
19 and taken to a different district, if you don't have a
20 certain curriculum?

21 A. The parents and the families of our students
22 that tend to evaluate and look very critically at what
23 one school offers over what another school offers are
24 those parents that are very motivated for their children
25 to excel, so much so that they're willing to drive their

1 school.

2 Q. And when those students -- if those students
3 leave, are you left with the population that's even more
4 difficult to serve?

5 A. Harder to teach. That's why you'll find a lot
6 of urban systems with higher percentages of children with
7 special needs, special education students. You can look
8 at the data across the state and you'll find that to be
9 true.

10 Q. Now, in your experience -- you've talked
11 about, you know, parents who are not as involved or who
12 can't transport their students to other districts.

13 In your experience, is that synonymous
14 with parents who don't value education?

15 A. Absolutely not. In fact, as I mentioned
16 earlier in my testimony, I've not ever encountered a
17 parent who did not care about the quality of education
18 their child receives. They want better for their child.
19 They want things -- they want their child to have
20 opportunities.

21 So in many cases, there's lots of value
22 for education. Their attention and their support of that
23 education might be limited in -- just because of the
24 resources available to them, and the focus of their time
25 and energies may be on something else.

1 child to one school district over the other.

2 But currently, every student that -- or
3 every family that determines that another school district
4 provides something that's more compelling than we do,
5 those are dollars that are leaving our system and going
6 to another school system.

7 Q. Is there also some kind of impact, based on
8 the kind of student that you're losing?

9 A. The kind of students we typically lose are,
10 again, those who have motivated parents. Our most
11 challenged, most at-risk students are not parents --
12 not -- are not parents of students that are struggling.

13 Case in point: We have all kinds of
14 choice that is required in our system. We have PEG,
15 public education grants. We have choice that's provided
16 through schools not meeting AYP. Those are schools where
17 you have high minorities, high levels of student poverty,
18 yet very few parents avail themselves of going to a
19 different school, which is evidence to suggest that if
20 students left our system because there's something more
21 compelling in another system, those are the exact same
22 students we really need to keep in our system.

23 Those are the kids that perform well,
24 typically. They're going to take more advanced placement
25 courses. They're going to be very involved in the

1 In many cases, we have single parents,
2 teenage parents raising children, or in some cases,
3 grandparents raising children in those circumstances.

4 MS. HUNTER: Thank you, Doctor. I pass
5 the witness.

6 EXAMINATION

7 BY MS. BONO:

8 Q. I just have a couple of questions.

9 Dr. Garza, earlier there was some
10 discussion about either the percentage or the number of
11 students from Lubbock ISD who go on to attend two- and
12 four-year universities.

13 Does a student who goes on to attend a
14 two-or four-year university necessarily -- does that
15 necessarily mean that that student is prepared to succeed
16 in that program?

17 A. No. I'm simply -- I'm simply relaying the
18 percent that we currently know are going on to a two- or
19 four-year university. I'm not relating how many of those
20 are prepared for college-level work.

21 Q. You also mentioned earlier that the district
22 had to eliminate four early childhood centers as a result
23 of budget shortfalls. Did the elimination of those
24 programs result in the reduction of access to those
25 programs for students?

1 A. No.

2 Q. And do all the low-income students and ELL
3 students in your district have access to childhood
4 programs, early childhood education programs?

5 A. Yes.

6 Q. And is the district able to do that solely
7 using the funds that it receives from the State?

8 A. As I indicated earlier, we use a combination
9 of funds: Half the day provided for the State, we also
10 have some Head Start grants through the federal
11 government, and our Title I monies that we're able to
12 utilize to support those programs.

13 Q. And over the years, have your Head Start and
14 Title I monies fluctuated?

15 A. Every year, those dollars fluctuate.

16 Q. You also discussed an increase in graduation
17 rates and a decrease in dropout rates for low-income and
18 ELL students. Are you confident about the district's
19 ability to continue those trends into the future?

20 MS. COLMENERO: Objection, form.

21 You can answer.

22 A. As I indicated in my earlier testimony, we've
23 been very intentional about addressing that issue, so I
24 am pleased that we're seeing progress, although it's not
25 sufficient, if you compare the groups to where we need to

1 be.

2 But as I indicated earlier, we're
3 investing additional local dollars in additional staff
4 through our Alpha system at the high schools to support
5 that and to ensure that all of our students have a
6 relationship with a counselor and a school administrator
7 at the campus level.

8 Moving forward with no additional revenue,
9 I'm very concerned about our ability to maintain that
10 level of support for our students. As I indicated
11 earlier, everything is at risk. If we do not have
12 additional funding in the coming years, we will have to
13 look to see what else can be cut.

14 MS. BONO: Thank you for your time.

15 EXAMINATION

16 BY MR. FRAISSINET:

17 Q. Dr. Gerza, just a couple of questions on
18 minimum salary. There's been some discussion about a
19 minimum salary schedule today.

20 Do you know whether the State -- who sets
21 the minimum salary schedule?

22 A. The Legislature and the State of Texas.

23 Q. Do you know whether the Legislature has
24 conducted any studies on which to base the minimum salary
25 schedule?

1 A. No. In fact, I've not heard any reference to
2 any studies on that.

3 Q. You're not aware of any labor market analyses
4 to determine what the minimum salary schedule should be?

5 A. No, sir. I believe it's been pretty static
6 for many years.

7 Q. In Lubbock, what do you think would happen if
8 you, all of a sudden, tried to pay on a minimum salary
9 schedule?

10 A. As I indicated in my earlier testimony, it
11 would be irresponsible, because teachers would leave our
12 system in droves, if we did not compete with our peer
13 districts.

14 Q. So what drive -- fundamentally, what drives
15 the salaries you pay in Lubbock ISD? Is it minimum
16 salary schedule, or is it the salary you need to pay to
17 draw talent based on competition in your area? What
18 really drives that decision?

19 A. The marketplace drives that decision. We look
20 at who we're competing with for talent. We have to
21 continue to remain competitive to keep our best teachers,
22 once we've hired them, to keep them in our system.

23 So we have to constantly be watching what
24 our neighboring and peer group districts are doing.

25 I might also mention that the State

1 requires that we pay the TRS contribution above the state
2 minimum. So, in fact, if the State were to increase the
3 state minimum salary schedule, it would actually reduce
4 some costs to districts for the TRS in kind amount.

5 Q. Well, I want to get at that point a little bit
6 differently. So if the State determined that the salary
7 schedule had to be increased based on some sort of labor
8 market study, would that increase the cost to the State,
9 the amount of money that the State would need to
10 contribute to TRS?

11 A. Absolutely, it would. It would increase the
12 cost for the State of Texas, yes.

13 Q. There's sort of an incentive for the State to
14 have a lower salary -- minimum salary schedule, isn't it?

15 MS. COLMENERO: Objection, form.

16 A. It's an incentive because, currently, the
17 system requires that local school districts pick up those
18 differences; and the State has been reticent to do that,
19 obviously.

20 BY MR. FRAISSINET:

21 Q. So when you do pay above the minimum,
22 conversely for the school district, there's a cost to the
23 district, when you choose to pay above the minimum
24 because you're carrying the full load of the TRS
25 contribution, are you not?

1 CAUSE NO. D-1-GN-11-003130
2 TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
3 FAIRNESS COALITION, ET)
4 AL.,)
5)
6 Plaintiffs,)
7)
8 VS.)
9)
10)
11)
12 EDGEWOOD INDEPENDENT)
13 SCHOOL DISTRICT, ET AL.,)
14 (CONSOLIDATED)) TRAVIS COUNTY, TEXAS
15)
16 Plaintiffs,)
17)
18)
19 VS.)
20)
21)
22)
23 ROBERT SCOTT, IN HIS)
24 OFFICIAL CAPACITY AS)
25 COMMISSIONER OF EDUCATION,)
ET AL.,)
Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF
ANITA GIVENS
SEPTEMBER 14, 2012

ORAL DEPOSITION OF ANITA GIVENS, produced as a witness at the instance of the Calhoun County Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on Friday, September 14, 2012, from 9:04 a.m. to 12:46 p.m., before Tamara K. Chapman, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Haynes and Boone, LLP, 600 Congress Avenue, Suite Austin, Texas, pursuant to the Texas Rules of Civil 1300, Procedure and the provisions stated on the record or attached hereto.

Job No. 53612

1 request for production, I did review those as we submitted
2 them.

3 Q. Okay. Have you spoken with or corresponded with
4 any experts, any of the State's experts in this case?

5 A. No.

6 Q. Okay. And you said you had 30 minutes of
7 preparation for this deposition. Was that with your --
8 with Ms. Dahlberg?

9 A. Yes.

10 Q. Okay. Let's start with your -- a little bit
11 about your work background. How long have you worked at
12 the TEA for?

13 A. I've been there for 21 years.

14 Q. 21 years. Very good.

15 What is your current title?

16 A. Associate commissioner for standards and
17 programs.

18 Q. And I had a question. What is the difference
19 between an associate commissioner and a deputy
20 commissioner? I wasn't quite clear. I saw a hierarchy
21 chart, but I wasn't quite clear what the relationship is
22 between those two titles.

23 A. I report to the deputy commissioner.

24 Q. Okay. When did you begin your role as associate
25 commissioner of standards and programs?

1 A. I was the acting associate beginning in fall of
2 2008 and became the associate in the spring of 2009.

3 Q. And what are your job responsibilities in this
4 position?

5 A. I supervise the curriculum division, the division
6 of federal and state education policy and the division of
7 Instruction materials and educational technology.

8 Q. And with respect to the curriculum, does that --
9 tell me a little bit more about what that entails.

10 A. Well, the curriculum division is responsible for
11 the Texas Essential Knowledge and Skills for graduation
12 requirements and for all of the instructional programs,
13 such as career and technical education, gifted and
14 talented education, bilingual education and the foundation
15 and enrichment curriculum programs.

16 Q. You have -- you have a role in the development of
17 the TEKS and ongoing development of the TEKS?

18 A. Yes, I am responsible for the ongoing development
19 of the TEKS.

20 Q. Okay. And the second area you talked about was
21 the federal and the state? I missed the rest of it.

22 A. The title of it is federal and state education
23 policy.

24 Q. Does it have to do with NCLB?

25 A. Yes, we have responsibility for policies related

1 to NCLB, IDEA and many of the state initiatives.

2 Q. What type of state initiatives?

3 A. The college and career readiness standards, the
4 TSTEM academies, the early college high schools. A number
5 of programs such as the 21st Century grants, the
6 Communities in Schools grants, virtually all of the
7 programs that were funded through -- through state or
8 federal grants to school districts.

9 Q. And the third category was instructional
10 materials and education technology?

11 A. Yes.

12 Q. Tell me a little bit more about what that role
13 entails.

14 A. Well, that division is responsible for
15 facilitating the call for, review and adoption of
16 instructional materials through the State Board of
17 Education's adoption process. They also manage and
18 distribute instructional materials through our electronic
19 EMAT system, the educational technology component,
20 responsible for the long range plan of technology by the
21 State Board of Education and all of the programs under
22 educational technology that are implemented in school
23 districts.

24 Q. Very good. And who do you report to in this
25 role?

1 A. I report to the deputy commissioner for policy
2 and programs, and that's Michael Berry.

3 Q. And how many people do you have working under
4 you?

5 A. 95.

6 Q. And who reports directly to you and what are
7 their jobs?

8 A. Well, in the standards and programs office, I
9 have Norma Torres Martinez. She's the director of
10 standards and alignment, is responsible for professional
11 development initiatives that align to our TEKS.

12 I also have Kerry Ballast, who's the special
13 projects director, and she manages a number of our special
14 projects, including Project Share.

15 And then the division directors for the three
16 divisions. Monica Martinez is the curriculum division
17 director, Gene Lenz is the director for federal and state
18 education policies, and John Lopez is the director for
19 instructional materials and education technology.

20 Q. Has the TEA suffered budget cuts in connection
21 with your particular area?

22 A. Yes, they have.

23 Q. Could you describe kind of the nature of those
24 cuts and how it's affected your particular division?

25 A. Well, prior to the 2011-12 school year, I had

responsibility for curriculum and instructional materials and educational technology. At that time, we had approximately a hundred people in our department. We lost about 40 percent of those in the reduction of force. And then I received the federal and state education policy division as part of the reorganization. Many of the state grants that were part of the state initiatives division had been eliminated, so that staff was significantly reduced, as well. So there are fewer programs that we now implement under that policy.

Q. Can you give me some examples of programs that have been eliminated?

A. A large number of our dropout recovery and retention programs, many of the individual grant programs that were authorized under House Bill 2237 were eliminated or significantly cut in terms of the funds available. The Student Success Initiative was significantly cut in the funds that were available, but we still administer those grants that are still in place in school districts, as well as the limited funds that are now available for those programs.

Q. I imagine your job has become more difficult in light of all these cuts?

A. In light of all of the changes that we have experienced, yes, there is much more challenging

opportunities

Q. So let me ask you -- so you're acting associate -- you became acting associate commissioner in 2008. What was your immediately -- your job immediately before that?

A. Immediately before that, I was the deputy associate commissioner for standards and alignment.

Q. And when did you hold that position?

A. From January of 2008 until September of 2008.

Q. What were the major responsibilities of that job?

A. At that time, the Division of Curriculum, Division of Instruction Materials and Education Technology and Federal Programs reported to me.

Q. And so what was your immediate -- your job immediately before that, before January 2008?

A. From April of 2005 until January of 2008, I was the division director for the Instructional Materials and Educational Technology Division.

Q. And that's primarily textbooks and --

A. Correct. Primarily textbooks and educational technology.

Q. Very good.

And then immediately before that?

A. Well, prior to that I was the division director for the Educational Technology Division, and that was from

1994 until 2003. And then in 2003, we were merged with the curriculum division. So I still had educational technology, but we were under the curriculum division umbrella.

Q. So you had many, many years of experience of -- with respect to education technology in particular?

A. Yes, sir.

Q. Very good.

And I think I read somewhere that you were a teacher at one point; is that correct?

A. That's correct.

Q. What grades did you teach?

A. I taught kindergarten, second grade and then a computer classroom for all elementary students.

Q. And why did you decide to leave teaching, out of curiosity?

A. I was appointed to the State Board of Education software advisory committee and began working at the state level on education technology issues.

Q. Very good.

Have there been any other education-related boards or committees that you've served on while -- while you've been at TEA?

A. Yes. I served on the International Society for Technology in Education, known as ISTE, board of directors

for five years. I served on the State Educational Technology Directors Association board of directors and was chair of that board for six years. I also served on several other committees that were formed related to educational technology.

Q. Did that give -- did your service on those boards give you a good sense of how Texas stacks up against other states?

A. Yes. I had the opportunity to understand where other states were in that realm and where Texas fit into the picture.

Q. With respect to technology primarily?

A. Yes, sir.

Q. And curriculum, too?

A. Primarily with technology.

Q. Okay. Let's talk about -- you were designated to talk -- strike that.

You've been designated to testify on the subject of, quote, the history, development and implementation of the Texas Essential Knowledge and Skills.

Are you aware of that?

A. Yes.

Q. Have you been asked to testify on any other topics besides that one?

A. No.

1 you?

2 A. Yes, it does.

3 Q. And if you would, turn to a few pages in
4 at Page -- looks like it's 74.2. Let me know when you've
5 found it.

6 A. Yes.

7 Q. And if you look at the second sentence of 74.2 --
8 would you just read it to me?

9 A. It says: The district must ensure that
10 sufficient time is provided for teachers to teach and for
11 students to learn English language arts, reading,
12 mathematics, science, social studies, fine arts, health,
13 physical education, technology applications and, to the
14 extent possible, languages other than English.

15 Q. And that's part of the -- part of the description
16 of what the required elementary curriculum is, correct?

17 A. That's correct.

18 Q. And if you notice on 74.3, Section (a)(1) and
19 Section (b)(1), both of those provisions also have similar
20 language about the district must ensure sufficient time is
21 provided to teachers to teach and for students to learn
22 various curriculum items for those -- those levels of
23 schooling, as well, correct?

24 A. That's correct.

25 Q. And when it says that the district must provide

1 sufficient time for students to learn, I guess I want to
2 ask, do you have an impression of what that might mean?
3 How would you -- what would be your understanding of that
4 provision?

5 A. My understanding is that districts would
6 determine the length of class periods and what it takes to
7 provide the opportunity for -- the time for students --
8 teachers to teach and for students to learn.

9 Q. And for students to learn, that might mean --
10 that might require some amount of individualized
11 instruction, too, depending on the student population or
12 the students that they have?

13 A. Yes.

14 Q. Look at 74.4 on the next page. It looks like
15 74.3 goes through and -- and describes the required
16 curriculum and specifies number of courses that students
17 must require. Looking at 74(B)(G) career and technical
18 education, they talk about 16 different career clusters.
19 I'm wondering, is that -- is that purely in the district's
20 discretion as far as which of those clusters they offer in
21 a particular campus?

22 A. Yes. As it states, they must offer at least
23 three, but they can select from this list of 16.

24 Q. And it might depend on what type of employment
25 opportunities are available in that district that might

1 affect their choice, as well?

2 A. Yes, districts make the choices as to what makes
3 the most sense at their location.

4 Q. And I thought there used to be a rule at some
5 point that if ten students in a district or in a campus, I
6 can't remember the rule, petition for a particular course
7 to be offered, that the district was required to offer
8 that? Do you have any recollection of that rule?

9 A. Yes, there was a rule, that -- that stated that.

10 Q. Do you recall -- I couldn't find it. Do you know
11 if it's still in existence?

12 A. No, the State board revised these rules and
13 that's no longer included.

14 Q. Do you know why that rule was eliminated?

15 A. Primarily the discussion with the State board was
16 that some districts thought that if a group of ten
17 students indicated we wanted to take a course that no one
18 had ever heard of, that that might be interpreted to mean
19 the district had to offer that course. And basically what
20 the result was, is to clarify that language so that
21 districts offer courses, but if there are not sufficient
22 students to sign up, they don't have to teach that class
23 if there's less than ten students who sign up for that
24 class.

25 Q. Understood. Understood.

1 Okay. I think we can set aside the code and
2 the -- the Administrative Code, but we're going to come
3 back to that when we talk about college readiness.

4 But I do want to ask you some other TEKS-related
5 questions. Are there textbooks for every content area of
6 TEKS?

7 A. There are currently adopted textbooks for every
8 content area of TEKS.

9 Q. Does that include the enrichment curriculum, as
10 well?

11 A. For most of the enrichment curriculum, there are
12 State board adopted textbooks for much of the enrichment
13 curriculum. There may be areas in which there were no
14 instructional materials submitted for State board
15 adoption, but there are materials available for districts
16 to purchase.

17 Q. And what is STAAR, S-T-A-A-R?

18 A. That's the State assessment -- the State -- that
19 is an acronym we use so frequently, I have to stop and
20 think what it means. But it's the -- I believe it's the
21 State of Texas Assessment of Academic Readiness.

22 Q. And that's an assessment designed to measure how
23 students are doing on -- how students are learning the
24 TEKS?

25 A. That is my understanding, yes.

1 Q. And it's designed to be aligned with the TEKS,
2 correct?
3 A. Correct.
4 Q. And the TAKS test was also designed to be aligned
5 with the TEKS, as well?
6 A. That is correct.
7 Q. Is it your understanding that the STAAR exam is
8 now more aligned or better aligned with the TEKS than the
9 TAKS exam was?
10 A. I think the STAAR exam is aligned to assess
11 different portions of the TEKS at a greater level of
12 intensity than the TAKS test.
13 Q. Could you explain that answer, I guess, in a
14 little more depth?
15 A. As the STAAR test was developed, there was a
16 process used to identify the readiness standards and the
17 supporting standards so that teachers and students would
18 understand where the focus of the assessment would be
19 placed. And so therefore, by that process, the STAAR exam
20 focuses greater emphasis on the readiness standards and
21 less on the supporting standards. It's my understanding
22 that TAKS just tested all of the standards at whatever
23 level deemed as the test was developed.
24 Q. And when you're using the term "readiness
25 standards," are you referring to the college and career

1 readiness standards?
2 A. They could be the college and career readiness
3 standards, but there are many standards in the TEKS that
4 are essential, that really are the foundation of being
5 ready for the next grade level. And so they may include
6 standards that are not the college readiness standards.
7 Q. Now, STAAR does not test every element of TEKS,
8 correct?
9 A. That is correct.
10 Q. It doesn't test the enrichment curriculum,
11 correct?
12 A. Correct.
13 Q. And it doesn't test certain grades, correct?
14 A. Correct.
15 Q. K through 2?
16 A. Correct.
17 Q. And it only tests certain subject areas, even in
18 the foundation curriculum -- well, it doesn't test every
19 grade level in every -- in every subject of the foundation
20 curriculum, does it not -- does it? Strike that. That
21 was an awful question.
22 For example, science is not tested at every grade
23 level, correct?
24 A. That's correct.
25 Q. And history is not tested at every grade level?

1 A. That is correct.
2 Q. The State prioritizes which areas need to be
3 tested; is that right?
4 A. Yes.
5 Q. Doesn't mean that the other subjects aren't
6 important, right?
7 A. Correct.
8 Q. When -- in the design of the STAAR, do the
9 curriculum specialists in the TEA get involved in --
10 again, strike that. I'm sorry.
11 Do the TEA curriculum specialists have any input
12 in the design of the STAAR exam?
13 A. Yes, they do.
14 Q. They're involved to help make sure that the STAAR
15 is accurately assessing how students are performing on the
16 TEKS?
17 A. Yes.
18 Q. Okay. Most STAAR exams just sample portions of
19 the tested curriculum, too, correct? So, for example, a
20 ninth grade algebra end-of-course exam may not test all
21 aspects of the required knowledge and skills that are set
22 forth in the algebra TEKS?
23 A. That is correct.
24 Q. And the same with other subject areas, too?
25 A. That's my understanding.

1 Q. The same one, correct?
2 A. Yes.
3 Q. Because you can't do that in a single test with a
4 limited amount of time; is that right?
5 A. It would be very difficult.
6 Q. Okay. Let's talk for a few minutes about the
7 recommended high school program. What is the recommended
8 high school program?
9 A. Well, the recommended high school program is the
10 graduation plan that is recommended for all high school
11 students to pursue, to ensure that they are ready when
12 they graduate from high school for whatever direction they
13 want to follow after graduation.
14 Q. And what is -- how long has the recommended high
15 school program been in place?
16 A. It began with the entering class of 2007.
17 Q. And if I could turn your back -- your attention
18 back to the -- Chapter 28 of the Education Code, which is
19 Exhibit 735, and flip back to 28.025. It looks like it's
20 on Page 49 of the exhibit. Is this the provision that --
21 is this the provision of the statute that implements the
22 recommended high school program?
23 A. Yes.
24 Q. And it's also set forth in 74.71 of the
25 Administrative Code, correct?

1 purposes.

2 (Discussion off the written record.)

3 MR. TRACHTENBERG: Take a break.

4 (Break.)

5 (Exhibit 741 was marked.)

6 Q. (BY MR. TRACHTENBERG) Ms. Givens, welcome back.

7 Let me hand you what I've marked as Exhibit 741. And I

8 will represent to you again that I found this off of the

9 TEA website as it indicates on the bottom. Do you

10 recognize this document?

11 A. Yes, I do.

12 Q. Can you tell me what it -- what it is?

13 A. This is the board item that was presented to the

14 State board in April of 2012 for the adoption of the

15 essential knowledge and skills for mathematics.

16 Q. This is -- this reflects the fact that the new
17 TEKS -- the new math TEKS have been adopted by the full
18 SBOE; is that correct?

19 A. That is correct.

20 Q. And it looks like if you look at the section
21 called Previous Board Action, it looks like the math TEKS
22 were amended in 2006 and 2009? Or maybe -- tell me if I'm
23 reading that wrong. But if you look at the first
24 paragraph under Previous Board Action.

25 A. Yes, that is correct.

1 Q. Okay. They've gone through -- am I reading that
2 correct, they've gone through two sets of revisions before
3 this most recent one since -- since the last trial?

4 A. That is correct.

5 Q. Okay. Now I want you to focus on the next page.
6 There's a section call Fiscal Impact. And if you would
7 read for me the second paragraph under that section.

8 A. There are anticipated fiscal implications for
9 school districts and charter schools to implement the
10 revised texts, which may include the need for professional
11 development and revisions to district developed databases,
12 curriculum and scope and sequence documents. Since
13 curriculum and instruction decisions are made at the local
14 district level, it is difficult to estimate the fiscal
15 impact on any given district.

16 Q. And the TEA hasn't made any effort to estimate
17 those costs; is that right?

18 A. That's correct.

19 Q. Now, districts have -- is CSCAPE the right
20 terminology? Does that ring a bell, CSCAPE?

21 A. CSCAPE is a curriculum management system.

22 Q. And districts -- many districts use that?

23 A. That is one that some districts use, yes.

24 Q. And so tell me how the revisions to the math TEKS
25 would be reflected -- how does that change the CSCAPE, or

1 how does that get implemented?

2 A. Any curriculum management system, such as CSCAPE,
3 would then need to go in and update the information that's
4 in that system to ensure that the materials that are
5 located there are aligned with the new TEKS.

6 Q. And that would be, for example, districts that
7 have their own scope and sequence system that would take
8 a lot of effort on their part to make sure that that
9 system is aligned with the new TEKS; is that correct?

10 A. If a local district has their own, then they
11 would update their own. If they purchase one like CSCAPE,
12 then the vendor usually does that.

13 Q. All right. And if they have their own, it could
14 be a significant expense to make those updates?

15 MS. DAHLBERG: Objection; form.

16 A. I'm not aware of what it might cost a district to
17 update that.

18 Q. (BY MR. TRACHTENBERG) Okay. And, again, it
19 references -- this fiscal impact paragraph references the
20 need for professional development at the district level.
21 You would agree that there -- in addition to the offerings
22 that you all make online and through your face-to-face
23 academies, there may be substantial additional
24 professional development costs the districts fund to get
25 their teachers up to speed on the new TEKS?

1 MS. DAHLBERG: Objection; form.

2 A. Yes. Since that's a local implementation than
3 what the local district does, then, yes, it would be up to
4 them.

5 Q. (BY MR. TRACHTENBERG) Right. But you recognize
6 that districts are, in most cases, are incurring fiscal --
7 incurring costs in terms of professional development with
8 every new revision of the TEKS?

9 MS. DAHLBERG: Objection; form.

10 A. Probably.

11 Q. (BY MR. TRACHTENBERG) And did the TEA request
12 any additional funds for districts through the Foundation
13 School Program to account for the increased costs of
14 professional development or any other costs associated
15 with the implementation of the new revisions to the TEKS?

16 A. We have requested funding from the State for the
17 State level professional development. I'm not aware of
18 any requests that relate to the Foundation School Program.

19 Q. Let's talk about college and career readiness
20 standards. And if you turn back to your -- to the Texas
21 Education Code, which is, again, Exhibit 735. And if you
22 flip back to Page 26, I'm looking at Section 28.008 of the
23 Education Code. And if you just take a minute to review
24 Paragraphs (a), (b) and (c).

25 (Witness reviews document.)

(Witness reviews document.)

A. Yes, I do.

Q. And on Page 24 of the document, your name is listed as a member of the steering committee; is that correct?

A. That is correct.

Q. And tell me what your involvement was in the preparation of this report.

A. Well, since our department is responsible for school libraries, we collaborate with the State Libraries and Archives Commission on the processes that impact school libraries. And so the steering committee was just that, a committee that reviewed the work of the librarians who contributed to this report and then finalized the recommendations of the report.

Q. And do you agree with the conclusions of the report?

A. Yes, I do.

Q. If we could turn to Page 2 of the report. This is the executive summary. It says: Funding - Additional funding is needed from local districts in the state and is key to enabling public school library programs to meet educational goals.

That was a finding of the study you agreed with?

A. Yes.

Q. And the second bullet point: As more funding is available, school library programs will be able to acquire the resources identified as necessary to a good program, such as current materials, staffing, facilities and technologies.

Do you agree with that finding as well?

A. Yes.

Q. And then under standards, it says: To ensure that the necessary funding, resources and services needed for school library programs contribute to students' success are in place and that the funds are actually allocated to the library program. TEA should engage in discussion with the school library community regarding the issue of mandatory standards and consider using the standards as the basis for data collection to document progress in providing quality library programs.

Was that ever done following this report?

A. Yes.

Q. And what was the outcome of that discussion?

A. Well, we continue to have ongoing discussions with school librarians and talk about these recommendations. The library standards are considered voluntary as opposed to mandated standards. It's left up to the local district as to how they implement those standards.

Q. Have any of the funding recommendations been implemented since the issuance of this report?

A. The K-12 databases were provided through funding from the legislature to TEA that went to the State Library and Archives Commission. And so at the state level, there were library resources funded for all students and teachers in the K-12 system in Texas.

Q. Explain that again. I'm sorry.

A. Okay. There are a number of online resources that school libraries use to provide these types of materials in their libraries. And so since the issuing of this report, there was funding from the legislature to provide what we call the K-12 databases. This is online databases of curricular materials, resources, things that students and teachers can use. Similar to what you would find in a library in print, but these are electronic.

Q. Okay.

A. And so TEA facilitated the exchange of those dollars to the State Library and Archives Commission and they made those databases available to all of our school libraries.

Q. Okay. And we'll talk about in just a minute how responsive that was to the specific recommendations on funding. But before we do that, let's turn to Page 5.

And there are a number of items here about why we should

care about school libraries.

The first item says: School libraries are critical for student achievement. Across the United States, research has shown that students in schools with good libraries learn more, get better grades and score higher on standardized test scores than their peers in schools without libraries. And from Alaska to North Carolina, more than 60 studies have shown clear evidence of this connection between student achievement and the presence of school libraries with qualified school library media specialists.

You agree with that conclusion?

A. Yes.

Q. If you would just look through the remaining four bullet points in this box: That school libraries have an important role in teaching, that school libraries are leading the way for technologies in school, that school libraries inspire literacy, and that school libraries don't matter without highly qualified library media specialists.

You agree with all those statements, as well?

A. Yes.

Q. And if you turn to Page 10 of the report. This talks more specifically about some of the funding needs that were outlined by the survey participants; is that

1 correct?

2 A. Yes.

3 Q. So the highest ranked need is: 93.84 percent of
4 the survey respondents said that they needed funding to
5 enable school libraries to meet the recommendations of the
6 School Library Standards and the long-range plan for
7 technology, 2006 to 2020.

8 Was that funding ever provided?

9 A. The funding for implementation of the long-range
10 plan for technology was the technology allotment, and so
11 there was funding available to implement the long-range
12 plan and could be used to implement the library standards.

13 Q. What about the second bullet point:
14 Collaboration among --

15 I'm sorry, the third bullet point: Professional
16 library staff to meet the needs of students, teachers, the
17 school community, in accordance with the School Library
18 Standards and SBEC Standards for Certification.

19 Do you believe there was adequate funding to
20 provide adequate library staff for districts?

21 A. Funding is provided to districts, and the
22 decision as to whether they use that for library staff or
23 other staff is left up to the local district.

24 Q. But districts just faced significant budget cuts.
25 Do you have any practical sense as to whether districts

1 have been able to -- since this report was issued, whether
2 districts have been able to augment their library staff?

3 A. I don't think they've augmented their library
4 staff.

5 Q. The next bullet point was -- discussed the need
6 for current -- funding for current library materials to
7 support TEKS and student success.

8 Again, at the State level, there was no
9 additional State funding for this particular --

10 A. Not targeted specifically for libraries, no.

11 Q. Has there been any State funding since the
12 issuance of this report targeted at libraries?

13 A. Not that I'm aware of.

14 Q. Turn to Page 14 of the report. It says:

15 Additional funding from local districts and the State is
16 key. It will require a consensus on the need for and a
17 commitment to allocate or ask for the funding needed.

18 This is a role for the Texas Education Agency. TEA needs
19 to provide leadership in communicating the need for
20 additional funding and requesting State funding.

21 Do you agree with that recommendation?

22 A. Well, the library community has always
23 recommended that TEA advocate for additional dedicated
24 funding for libraries.

25 Q. But they haven't succeeded in that advocacy at

1 this point, have they?

2 A. Well, the decisions for the request that the
3 agency makes for funding come from a wide variety of
4 sources, and those are made at the executive level.

5 Q. Understood. But to the extent that this is
6 recommending additional funding from the State for
7 libraries, that recommendation has not been adopted or
8 implemented effectively, correct, by the legislature?

9 A. There has been no specific additional funding for
10 libraries that I'm aware of.

11 Q. So if you turn to Page 15 of the report. There
12 is a series of bullet points called action points for
13 recommendations that are specific to the TEA. I wonder if
14 we could just go through these and tell me which ones have
15 been adopted -- which ones have been implemented or
16 followed and which ones have not.

17 So the first bullet point is: Provide funding to
18 enable school libraries to meet the recommendations of the
19 standards and the long-range plan for technology, 2006 to
20 2020.

21 A. The funding that I'm aware of is the K-12
22 database funding and the technology allotment.

23 Q. And that database is just an electronic database
24 that libraries can access on their own? I'm not sure --
25 explain to me a little more --

1 A. Okay. For example, the K-12 database might be a
2 database of 2- to 300 professional journals. So instead
3 of receiving all of those in print and housing them in the
4 library, teachers and students have access to those online
5 journals.

6 There's also specific K-12 resources for student
7 use in the classroom, and teacher use in the classroom,
8 that are provided electronically as opposed to provided in
9 print in the local library. One of the most popular
10 components of the K-12 databases was Encyclopedia
11 Britannica collection, so -- Encyclopedia Britannica
12 online.

13 Q. Okay. So just additional resources so they don't
14 have to house them locally?

15 A. That's correct.

16 Q. Second bullet point says: Call for the standards
17 to be revised to ensure appropriateness and usefulness
18 over time, perhaps using the new American Association of
19 School Librarians' Standards for the 21st Century Learner,
20 as well as the other recent examples of library standards.

21 Has that been implemented?

22 A. No, the State board has not asked us to update
23 the library standards.

24 Q. Next bullet point: Consider the standards as the
25 basis for data collection to document progress and

1 providing quality library programs.

2 Has that been implemented?

3 A. To some extent, that is implemented through the
4 campus school technology and readiness charts.

5 Q. Okay. We've already talked about the funding.
6 What about a few bullet points down: Ensure that all
7 campuses in the State of Texas have identified a school
8 library with library services available to students and
9 educators.

10 Has that been -- has that recommendation been
11 implemented?

12 A. No, it has not.

13 Q. What about the next bullet point: Provide
14 support and training for school libraries through the 20
15 regional Education Service Centers across the state?

16 A. Yes, that has been done.

17 Q. Ensure that -- the next bullet point: Ensure
18 that all campuses in the State of Texas have identified a
19 school librarian who serves each campus and have data --
20 I'm sorry.

21 -- and have entered this data into the PEIMS and
22 other data collection systems?

23 A. Those campuses that do have an identified school
24 librarian do enter that data, but there has not been an
25 effort to ensure that all campuses have a designated

1 school librarian.

2 Q. Very good. And the last recommendation: Promote
3 collaboration among librarians and teachers to teach
4 state-mandated curriculum standards, integrate resources
5 into student lessons and share instructional strategies
6 that can support student achievement across the curriculum
7 and ensure the success of all students.

8 A. That is continually being done.

9 Q. In what respect?

10 A. We have regular TETN, which is videoconferencing
11 sessions, with our school librarians on a monthly basis.
12 And so there is an opportunity for school librarians
13 across the state to participate in those video conferences
14 with the agency and share best practices and talk about
15 the implementation of the strategies that are mentioned
16 here.

17 Q. A few bullet points down under "The TEA and
18 Schools of Education." Did anybody follow the
19 recommendation listed here to provide support for the
20 educator preparation and professional development needed
21 to become a certified librarian, increasing the
22 availability of these librarians for schools across the
23 state?

24 A. I'm not familiar with what might have been done
25 in the educator preparation program.

1 Q. Okay. Have you ever testified before the Texas
2 Legislature?

3 A. Yes, I have.

4 Q. On how many occasions?

5 A. Quite a few. Probably close to a hundred, I
6 would estimate.

7 Q. So I will not ask you to summarize your testimony
8 in front of the legislature.

9 Generally what topics are you usually asked to
10 address when you testify?

11 A. Generally those that fall within my area of
12 responsibility, instructional materials, educational
13 technology, the curriculum standards. Any of the various
14 programs that fall within our area of responsibility.

15 Q. Very good. Let me show you two more documents.
16 First I'm going to mark as Exhibit 745.

17 (Exhibit 745 was marked.)

18 Q. (BY MR. TRACHTENBERG) Do you recognize this
19 document?

20 A. Yes, I do.

21 Q. What is it?

22 A. This is a white paper that was developed by the
23 Intel Foundation to talk about the changes in Texas that
24 have happened over the last several years in terms of
25 providing more flexibility to school districts with regard

1 to digital content.

2 Q. And you're quoted on the second column on the
3 right on the first page; is that correct?

4 A. That is correct.

5 Q. Could you read your quotation, please?

6 A. "One size does not fit all. Local schools want
7 to choose the solution or combination that will work for
8 them."

9 Q. I'm sorry. There is a -- if you actually look at
10 the text of the article on the second column on the right,
11 you see there is a quote that begins, "Teachers may be"?

12 A. Okay.

13 [Reading]: Teachers may be reluctant to rely on
14 digital content if they also have to provide alternatives
15 to meet the needs of students who don't have access to the
16 hardware. When digital content is used in lieu of
17 traditional textbooks, every student must have access.

18 Q. And then the quote continues.

19 A. [Reading]: School districts often are very
20 interested in using digital content but do not have
21 sufficient resources to provide the hardware to the
22 teachers and students to ensure meaningful access. When
23 sufficient hardware is available, digital content is
24 likely to be used in more subject areas, more grade levels
25 and embraced by more teachers, students and parents.

1 Q. Is that still your opinion?

2 A. Yes.

3 Q. And does that mean -- when we talk about digital
4 content, is this, generally speaking, replacements for
5 textbooks or supplements to textbooks?

6 A. In most cases it's both. In some instances it's
7 in lieu of the traditional textbook. In more cases it's
8 supplement to the printed textbook.

9 Q. How do we make sure -- if it's in lieu of, does
10 that mean that all students must have some form of
11 interface to be able to read the -- to be able to review
12 the electronic information, do they have to have a laptop
13 or an iPad or some form of technology?

14 A. When districts make the choice of using
15 electronic textbooks versus print textbooks, then, yes,
16 the student needs to have some technology device that
17 makes it possible for them to access that digital content.

18 Q. Do you have any sense as to how widespread this
19 is? I mean, the use of digital content instead of
20 traditional textbooks?

21 A. I think we're seeing more and more districts move
22 to what I would call the hybrid approach where they're
23 using some digital content in lieu of traditional
24 textbooks, but I'm not aware of very many districts that
25 have exclusively gone to digital content. But there are a

1 number of districts who are moving in that direction.

2 Q. The districts that do that, do they provide
3 generally laptops or what is the form of technology they
4 usually --

5 A. Well, in most cases in recent years they have
6 provided laptops or tablets. Now they're moving into the
7 area of iPads, iPods and other devices that can access the
8 digital content.

9 Q. I assume students are allowed to take those home?

10 A. In most cases students are allowed to take them
11 home, or in some cases the school districts allow students
12 to bring their own device. So if they have one, they can
13 use their own and if they don't have one, the district
14 issues them one.

15 Q. Is there a statute or rule that says that you
16 can't use this digital content unless it's accessible,
17 made accessible to all students, or is that just common
18 sense?

19 A. Well, the statute says that districts are
20 required to provide students access to the instructional
21 materials that cover the essential knowledge and skills.
22 How districts provide that access is up to the local
23 district.

24 Q. Very good. Thank you.

25 Last document, Exhibit 746.

1 (Exhibit 746 was marked.)

2 Q. (BY MR. TRACHTENBERG) I will represent to you
3 that I pulled this off of the Houston Chronicle website.
4 It's a fairly old article, but you had a nice quote in it.
5 I wanted to ask you about. And if you wouldn't mind
6 just -- if you look about halfway through the document,
7 this article quotes you as saying: I think we've learned
8 a great deal over the last several years about how the
9 pieces of the puzzle have to fit together. It is not the
10 amount of technology you have, it's how well you're using
11 it.

12 You also commented: The biggest obstacle is
13 getting teachers comfortable with technology and training
14 them how to use it.

15 And then it quotes you as saying: It takes a
16 lot of time to teach technology in the depths we need to.
17 We are asking a lot of teachers. On top of everything
18 else that they have to do, we are asking them to learn all
19 of this technology. And we are asking them to accept
20 something that came into being after they became teachers.
21 Teachers play the most important role. The quality of
22 education is in their hands.
23 Is this still kind of a fair description of the balance
24 between teachers of -- technology and teaching in the
25 classroom still?

1 A. No, I don't believe so. This was in 2001. Now
2 ten years later there is a much more widespread
3 familiarity with technology because our teachers in the
4 classroom now are using technology in their everyday
5 lives.

6 Q. Right.

7 A. So I think the situation is a bit different now,
8 a decade later.

9 Q. Would you agree that for the technology to be
10 effective, the teachers have to be effective, too?

11 A. Absolutely.

12 Q. And the teachers have to know and be familiar
13 with the technology to make sure students can benefit from
14 the technology; is that right?

15 A. That's right.

16 Q. Okay. I recall you testified that you reviewed
17 all the pleadings in this case. Do you have any opinions
18 on the school district's claims in this lawsuit?

19 A. I haven't reached any conclusions about the
20 school district's claims in this lawsuit.

21 Q. Do you have any opinions as to whether the State
22 is satisfying its constitutional duty to provide a general
23 diffusion of knowledge?

24 MS. DAHLBERG: Objection; form.

25 A. I believe the State has fulfilled its obligation.

1 TAKS were something that parents could take home and go
2 over with their kids, correct?

3 A. Yes.

4 Q. And so, again, for that to work with -- for the
5 materials that are on Project Share to work, parents would
6 have to have access to a computer?

7 A. Yes.

8 Q. Okay. I want to switch gears a little bit and
9 talk about the instructional materials allotment. Now, up
10 until 2011 the State purchased textbooks for school
11 districts directly, correct?

12 A. Yes.

13 Q. And then they also provided a technology
14 allotment to school districts?

15 A. Yes.

16 Q. And it's my understanding that the instructional
17 materials allotment is a combination of those two things,
18 into one allotment?

19 A. Yes.

20 Q. Does the amount that the -- is the instructional
21 materials allotment equal to the amount that the State
22 would have purchased on textbooks plus the amount they
23 would have spent on the technology allotment? Is what was
24 allotted in -- for the IMA in 2011 equivalent to the
25 textbook cost plus technology allotment for 2009?

1 A. I'm not sure.

2 Q. Okay. You mentioned that -- when you were
3 testifying earlier with Mark, you discussed the fact that
4 the math TEKS are not going to be -- the State board has
5 decided the math TEKS won't be implemented unless the IMA
6 is allotted -- enough money is allotted for materials for
7 the math proclamation textbooks, correct?

8 A. Yes.

9 Q. How is that amount calculated?

10 A. The projections that we calculated for
11 Proclamation 2014 is based on the average cost of
12 instruction materials the last time we adopted math or
13 science or technology applications and then increase at
14 the inflation rate. And then we also used the student
15 population and projected the growth of students to come up
16 with a projected average cost of instruction materials.

17 Q. And then, though, is that how you -- I know that
18 the agency recently submitted its LAR. Is that where that
19 IMA number comes from?

20 A. Yes.

21 Q. Does it also include additional money for
22 technology in addition to what districts would -- it would
23 cost districts to buy the math materials?

24 A. Well, we calculated what we call continuing
25 obligations that districts would have for instruction

1 materials and technology based on what they've been
2 purchasing, and so that's all wrapped into that total
3 estimated amount.

4 Q. Is that amount enough to include what districts
5 would have also received under the technology allotment
6 under the old system?

7 A. It's not a per student cost, so we didn't roll in
8 a per student amount into that figure. But that
9 instruction materials allotment could be used to purchase
10 many of the same things that the technology allotment
11 could be used to purchase.

12 Q. Previously the technology allotment was a per
13 student cost?

14 A. Yes, it was.

15 Q. Or allotment?

16 And that allotment was on top of what the
17 districts -- on top of instructional materials that were
18 purchased by the State?

19 A. Yes, it was separate from instruction materials.

20 Q. Okay. And now I want to hand you Exhibit 748.
21 (Exhibit 748 was marked.)

22 Q. (BY MS. MCINTUSH) Do you recognize this
23 document?

24 A. Yes, I do.

25 Q. And if I'm correct, you testified before the LBB

1 staff yesterday about this?

2 A. Yes.

3 Q. Now, this first -- the first page of this is --
4 it's titled "4.A. Exceptional Item Request Schedule,"
5 correct?

6 A. Yes.

7 Q. Can you tell me what an exceptional item request
8 is?

9 A. That's a request for funding above the base
10 funding that we received the previous biennium.

11 Q. And this first one is for technology and
12 instructional materials, correct?

13 A. Yes.

14 Q. Now, the paragraph -- the first paragraph under
15 Descriptions/Justification, says that: The projected cost
16 for Proclamation 2014 and continuing obligations exceed
17 the appropriation from the 82nd Legislature, correct?

18 A. Yes.

19 Q. And so this is what you were talking about before
20 about your estimating how much it will cost districts to
21 buy textbooks for the 2014 math proclamation?

22 A. Yes.

23 Q. And it also says that the Proclamation 2014 also
24 includes science -- so it's math K-8, science K-12 and
25 technology applications, correct?

1 A. Yes.

2 Q. Now, the next paragraph discusses how these
3 districts -- how these materials are funded, what -- at
4 the State level, correct?

5 A. Yes.

6 Q. And it comes from the permanent school fund, is
7 the ultimate source of materials of funds for this
8 allotment, correct?

9 A. Yes.

10 Q. And the mandatory payout from the pertinent
11 school fund to the available school fund will cover all
12 this allotment, both the base level and the exceptional
13 item request, correct?

14 A. Yes.

15 Q. So there's not actually any request for general
16 revenue funds to be added to this?

17 A. Correct.

18 Q. And am I reading this right, this isn't an
19 exceptional item request to give districts more money,
20 it's just enough to get them what they need for the new
21 proclamation and continuing obligations?

22 A. Correct.

23 Q. Are there any other exceptional item requests in
24 this list that relate to departments that are under you?

25 A. No.

1 Q. Are did you request any other special item --
2 exceptional item requests within your -- when you talked
3 to people within the agency, did you ask for any for your
4 department that were not included in the LAR?

5 A. There were discussions of a number of different
6 exceptional items.

7 Q. And what were those?

8 A. One of those was with regard to professional
9 development. Another was with regard to the kindergarten
10 readiness system. One of those was with regards to the
11 Student Success Initiative and Project Share.

12 Q. And what were you requesting for professional
13 development, or what were you discussing?

14 A. We were discussing the need for ongoing funding
15 to continue to update our professional development to
16 ensure that we continue to stay abreast of changes in the
17 TEKS and where students were having difficulties on the
18 end-of-course and STAAR assessments.

19 Q. I'm guessing that because the TEKS is not -- is
20 almost constantly changing, you have to almost constantly
21 change your professional development curriculum to keep up
22 with it or continually change?

23 A. We need to continually change. I wouldn't say
24 constantly, but continually change.

25 Q. And is that true for districts also, they have to

1 continually update their professional development to
2 ensure that the TEKS are being taught in the classroom?

3 A. Yes.

4 Q. Okay. And what were you requesting with regards
5 to kindergarten readiness?

6 A. The kindergarten readiness system is an online
7 data collection system that tracks pre-K students and
8 kindergarten students as they move through the system and
9 to certify prekindergarten programs as being programs that
10 do prepare students adequately for kindergarten.

11 Q. Sort of you talked about -- we've talked a lot
12 today about the vertical alignment, and is it just the
13 next step in that?

14 A. Correct.

15 Q. Does that program fall underneath your --
16 underneath your supervision?

17 A. Yes.

18 Q. And what department is it in?

19 A. That's in federal and state education policy.

20 Q. And what types of things would you have done --
21 how much money were you discussing requesting for that
22 program?

23 A. For the kindergarten readiness?

24 Q. Yes.

25 A. I believe it was in the neighborhood of

1 \$12 million.

2 Q. And what type of things would that have funded?

3 A. Again, this online data collection system so that
4 we could collect pre-K data and kindergarten data and then
5 analyze the relationship from those students once they
6 enter kindergarten, matching them back to the pre-K
7 program that they were in.

8 Q. So assess the effectiveness of that pre-K
9 program?

10 A. Of that pre-K program, yes.

11 Q. And, I'm sorry, I'm going to go back to
12 professional development for a moment. How much were you
13 hoping to request for that?

14 A. We talked about 24 to \$36 million.

15 Q. Okay. And what about SSI?

16 A. We talked about the -- there is a rider known as
17 the SSI rider and that should there be an opportunity to
18 increase the amount of funds in that rider to support some
19 of the programs that we're implementing this year that
20 that would be one of the things that we would want to
21 engage in a conversation with the legislature on.

22 Q. And SSI is the Student Success Initiative?

23 A. Yes.

24 Q. And that is remedial education for students who
25 are either not succeeding on or at risk of not succeeding

1 on STAAR?

2 A. That is correct.

3 Q. And that SSI money, how much did you discuss
4 asking the legislature for?

5 A. We didn't have a specific amount in those
6 discussions.

7 Q. Is SSI money, is that something that would have
8 gone to the agency or would that have been -- or would
9 that have gone to districts?

10 A. Typically some or all of SSI money is granted to
11 school districts.

12 Q. And then what about for Project Share, what were
13 you requesting there?

14 A. We were requesting \$10 million for the support of
15 the platform and the State level implementation of Project
16 Share.

17 Q. What do you mean by "for support of the
18 platform"?

19 A. Okay. We currently have a statewide license for
20 the Epsilon platform and then we use other supports for
21 the Project Share gateway. So it's the underlying
22 technology that supports Project Share.

23 Q. So it's for the technology, not necessarily for
24 development of courses that would have gone on --

25 A. Correct.

1 Q. Now, the other special items that are
2 requested -- that are listed in this request, do any of
3 these special items go -- other than instructional
4 allotment, do any of these special item requests go to --
5 directly to the district or is it TEA-level requests?

6 MS. DAHLBERG: Objection; form.

7 Q. (BY MS. MCINTUSH) We can go through them one by
8 one if that's easier.

9 A. Just looking at each of these, since they're not
10 in my area, it appears that they are for the agency's
11 infrastructure to support the various projects which are
12 mentioned.

13 Q. Okay.

14 MS. MCINTUSH: I may have a few more
15 questions. I'd like to go through my notes. I don't know
16 if you want to take a lunch break now and let me go
17 through them and I can finish up after that.

18 (Discussion off the written record.)

19 MS. MCINTUSH: Okay. Can we just take a few
20 minutes?

21 MS. DAHLBERG: Okay.

22 (Break.)

23 Q. (BY MS. MCINTUSH) Going back to those special
24 items that you had originally wanted to request, why were
25 those a priority for you? And we can do them one by one

1 if it's easier.

2 A. I think the priority for me was to make sure that
3 we continue the work that we've started and that we're
4 responsive to the changing needs in the field.

5 Q. And those riders would have helped you do that?

6 A. Yes.

7 Q. Or not riders, exceptional item requests?

8 A. Exceptional items.

9 Q. I have rider on the brain because I remember --
10 and my notes are not clear -- you mentioned Rider 42 from
11 2009?

12 A. Yes.

13 Q. And my notes aren't clear on what that was used
14 to fund.

15 A. Rider 42 was used to fund all of the professional
16 development work that we're currently doing as well as the
17 SSI grants, the schools and a number of other provisions
18 in that rider.

19 Q. And you mentioned that you were still using the
20 \$90 million from that rider?

21 A. Correct.

22 Q. How much money do you have left of that
23 90 million?

24 A. Well, it's all been granted to either our content
25 developers or to the ESCs to turn around the training, and

1 so they're in the process of using it and they will
2 continue to use that through this school year.

3 Q. Do you think it will run out this school year?

4 A. Well, it expires this school year, so we will use
5 it all before the end of this biennium.

6 Q. And the exceptional items you requested for
7 professional development in SSI, would that have continued
8 some of that funding?

9 A. Yes.

10 Q. Now, I wanted to go back to something you
11 discussed with Mark, which was the change to the
12 recommended high school program being the default?

13 A. Yes.

14 Q. Now, one of the things you discussed were the
15 barriers that were put into place in the Education Code to
16 make the recommended high school program the default and
17 barriers to taking the minimum program, correct?

18 A. Yes.

19 MS. DAHLBERG: Objection; form.

20 Q. (BY MS. MCINTUSH) Do you have an opinion on
21 whether those barriers have worked? Are more students
22 graduating under the recommended high school program now
23 than were before that was put into place?

24 A. I believe so.

25 Q. So that means more students are taking four years

1 of science instead of two?

2 A. Yes.

3 Q. And more students are taking four years of math
4 instead of three?

5 A. Yes.

6 Q. Does that mean school districts have to hire
7 more teachers who can teach that fourth year of science?

8 MS. DAHLBERG: Objection, form.

9 A. I think it depends.

10 Q. (BY MS. MCINTUSH) If a district has more
11 students taking four years of science instead of two,
12 would they have to offer more science courses to enroll
13 those kids?

14 MS. DAHLBERG: Objection, form.

15 A. Yes.

16 Q. (BY MS. MCINTUSH) And if a district has more
17 students taking four years of math instead of three, would
18 they have to offer more math courses to enroll those
19 additional students?

20 MS. DAHLBERG: Objection, form.

21 A. Yes.

22 Q. (BY MS. MCINTUSH) Okay. And the same would be
23 true of the other courses that are added on, foreign
24 language, et cetera, for the recommended high school
25 program?

1 A. Yes.

2 Q. Now, I want to bring up an entirely new topic,
3 but I think it will be brief, and that's the Texas Virtual
4 School Network.

5 A. Yes.

6 Q. Just to give us something to work off of, I'm
7 going to mark Exhibit 749.

8 (Exhibit 749 was marked.)

9 Q. (BY MS. MCINTUSH) The fourth question on this
10 list -- if you flip to the -- I don't know what page it
11 is, but the Receiving District Administrators section.
12 Page 2, it looks like, of this exhibit. It says -- the
13 Question 4 says: Do I have to let my students take Texas
14 Virtual School Network courses.

15 Correct?

16 A. Yes.

17 Q. And Texas Education Code 26.003 does, in fact,
18 require that school districts allow -- and open enrollment
19 charter schools allow students to take Texas Virtual
20 School Network courses, correct?

21 A. Yes.

22 Q. Now, a few years ago -- I guess in 2011 the state
23 level funding for the Texas Virtual School Network was
24 eliminated, correct?

25 A. Yes.

1 Q. So the cost for the virtual school network is
2 borne entirely by the school districts, correct?

3 A. Yes.

4 Q. And it also says here under Question 3: Can
5 students drop a course during the semester?

6 It says: Yes, students may drop a Texas Virtual
7 School Network course at any time during the semester.

8 Correct?

9 A. Yes, they can drop, but there are different
10 periods during the semester of what the impact of their
11 dropping the courses are.

12 Q. Can you explain that to me?

13 A. Well, as it says, if they drop within the first
14 14 days of the course, then the district is not charged
15 the fee for the student to participate in the course, but
16 if they continue beyond that or almost to the end of the
17 course and then drop, then the district is still required
18 to pay for the services that were rendered.

19 Q. Now, if a student -- there are circumstances
20 under which the district can get ADA funding for a student
21 enrolled in the Texas Virtual School Network, correct?

22 A. Yes.

23 Q. Does that money go to the district that is
24 providing the course or the district whose student is
25 taking the course?

1 A. To the district of the student who's taking the
2 course.

3 Q. So if I am a student in Austin -- let's use a
4 different example so it makes a little bit of sense. If I
5 am a student in smaller rural school district and I am
6 taking a class offered by Amarillo ISD, Amarillo ISD gets
7 the funding or the small school district gets the funding?

8 A. The small school district gets the funding.

9 Q. What incentive does Amarillo ISD have to offer
10 the course to other people, to other students?

11 A. Well, typically, they're offering the course
12 already and they have some students in that course, but
13 they can -- they have room for additional students to join
14 that course. And so by providing that course to other
15 districts, they provide that service to other districts
16 and then the receiving district, that small rural
17 district, pays for their student to have access to that
18 particular course.

19 Q. Does any of that payment go to the providing
20 school district?

21 A. Yes.

22 Q. Okay. Now, the teacher is in the providing
23 school district, correct?

24 A. Yes.

25 Q. The first question under Receiving District

1 report and some of the funding that was recommended in it.
2 Is there -- does the TEA LAR for the upcoming biennium
3 include any rider request for library funding?

4 A. No.

5 Q. And there's no special item request for library
6 funding?

7 A. No.

8 MS. MCINTUSH: That's it. No further
9 questions.

10 EXAMINATION

11 BY MR. RICE:

12 Q. Hello, Ms. Givens. My name is Roger Rice. I'm
13 representing the Edgewood School District. And since I'm
14 coming to you long distance and vice versa, if you can't
15 hear me or understand me, please tell me.

16 I'd like to go back to an area that Mark began
17 with and it won't be quite as extensive, but do you recall
18 he took you through Section 74.1 that described the
19 essential knowledge and skills?

20 A. Yes.

21 Q. I pulled that off of your website as he was
22 talking, and I noticed that there were amendments
23 effective January 9, 2007, another one April 21, 2010, and
24 another one effective May 30th, 2012. And I'm wondering
25 whether or not it's possible for you to tell us what those

1 amendments were. In other words, what were the changes
2 that were brought in with those three amendments?

3 A. I'm looking at that exhibit, and I can start with
4 the ones that were in 2012 because those were amendments
5 to identify specific courses that counted for certain
6 credits, such as those courses that now account for the
7 fourth math or science credit. That was one of the
8 amendments that was most recently made since the math TEKS
9 had just been adopted.

10 Q. Okay. So that -- would that be in (b)(2) or (3)?
11 Is that what I'm looking at?

12 A. Actually, if you're talking about the 74.1(b)(2)
13 and (3), that are the new -- those are the new essential
14 knowledge and skills for math and science, but I believe
15 the amendments that are made to Chapter 74 are in a
16 different section in which it talks about what courses are
17 eligible to count for those credits.

18 Q. Okay. Now, would you describe those amendments
19 as related to the new college readiness standards or not?
20 What are they? How do they relate to these college
21 readiness standards?

22 A. Well, actually, they relate to the Sections 74.73
23 and 74.74 that talk about the credits earned for the
24 recommended high school program.

25 And so, for example, in 74.73, No. 2, for math,

1 four credits, then it articulates the specific math
2 courses that now could be used to satisfy that fourth math
3 credit.

4 Similar, in (3), the specific courses that would
5 count for the science credit, and those include additional
6 math and science courses as well as certain career and
7 technology education courses.

8 Q. Okay. Have there been any changes in recent
9 years in the TEKS standards that go directly to the area
10 of college readiness --

11 A. As --

12 Q. -- as you discussed it today?

13 A. As each of the essential knowledge and skills for
14 each content area were revised, then the college readiness
15 standards were included in those TEKS. And so that
16 happened for English language arts, for science, for
17 social studies, for CTE, for technology applications, and
18 for math.

19 Q. And when did that happen?

20 A. For English language arts and reading, I believe
21 those were effective for the 2009-'10 school year. Science
22 and CTE for the '10-'11 school year. Social
23 studies for the '11-'12. Technology applications for
24 '12-'13. And then math K-8 will be for the '14-'15 school
25 year.

1 Q. Is it fair to say that those revisions that you
2 just mentioned speak to the increased rigor and depth that
3 we now see in the -- as reflected in the STAAR?

4 A. Yes.

5 Q. Now, also -- well, kind of retread a little bit
6 in the area of professional development, if I might. Now,
7 you mentioned earlier that under your branch of the TEA
8 comes professional development initiatives aligned to the
9 TEKS. And I think you described them. Would that include
10 the changes that you just mentioned; in other words, the
11 professional development related to those changes?

12 A. Yes.

13 Q. Okay. And I think that you mentioned Rider 42,
14 and Holly just asked you how much of the Rider 42 money
15 was left. Do you recall that question and answer?

16 A. Yes.

17 Q. Okay. So I'm looking at your website and there
18 is a discussion of professional development academies that
19 says that there will be a second series implemented during
20 the summer of 2011 as funding remains available.

21 And my question to you is whether or not those
22 academies existed in 2012?

23 A. Yes, they did.

24 Q. Okay. Is there still money for those
25 academies --

1 A. Yes.

2 Q. -- for this year?

3 A. Yes.

4 Q. There is.

5 Okay. And you mentioned the Student Success
6 Initiative. I looked at a document that was provided in
7 this case that just showed the annual per pupil SSI
8 funding over the last number of years. And is it fair to
9 say that this year or the year before there has been
10 significantly less SSI funding than in prior years?

11 A. Yes.

12 Q. Okay. And SSI, is that kind of used for things
13 like small group instruction or extended day or summer
14 school? Are those typical uses for the SSI?

15 A. Yes.

16 Q. Okay. All right. Now, let me ask you, sort of
17 related to this whole notion of evolving TEKS standards.
18 How does that play out at the level of teacher training in
19 the colleges and universities that -- does what teachers
20 are -- would-be teachers are taught change as the
21 standards change?

22 MS. DAHLBERG: Objection; form.

23 A. We are making the professional development on the
24 new TEKS available to our educator preparation programs,
25 they are also aware of the new standards as they are

1 adopted by the State board, and they are encouraged to
2 incorporate that into their programs.

3 Q. (BY MR. RICE) I mean, is there a process whereby
4 TEA, for lack of a better word, requires or, you know, in
5 order to run a teacher prep program you need to show that
6 you've modified to take into account the new standards or
7 is it not quite that rigorous?

8 A. That's not my area of responsibility. I'm not
9 familiar with the exact requirements.

10 Q. Okay. I was also looking at your website.

11 Apparently there was a Rider 42, professional development
12 research study. Are you familiar with that?

13 A. Yes.

14 Q. Okay. I think it acknowledges you, thanks you in
15 the beginning.

16 They say in there, and this will be familiar to
17 you, that professional development could be improved with
18 additional focus on college and career readiness
19 standards.

20 What was the concern that was being reflected?

21 A. That study evaluated the very first
22 implementation of our professional development. Those
23 evaluators actually sat in on the training of trainers and
24 provided that feedback to the professional development at
25 times, and that feedback has been incorporated into the

1 professional development.

2 Q. The feedback, as you understood it, was there
3 needed to be more training in college and career readiness
4 standards?

5 A. More emphasis on the college and career readiness
6 standards.

7 Q. Okay. Now, one thing you haven't been asked
8 about, so I will ask you about, part of your shop concerns
9 the ELPS; is that right?

10 A. Yes.

11 Q. And just for the record, what is the -- what's
12 that acronym, what is the ELPS?

13 A. It's the English Language Proficiency Standards.

14 Q. Okay. And what are they? Can you describe what
15 the ELPS are?

16 A. Those the standards that indicate the strategies
17 that teachers should use to improve upon students'
18 acquisition and use of the English language.

19 Q. Okay. And are they measured in some manner? Is
20 there an assessment that measures that?

21 A. Typically our English language learners take the
22 TELPAS, which is one of our state assessments.

23 Q. And again, for the record, what is the TELPAS?
24 Can you spell that out, pronounce it? What does that
25 stand for, what does TELPAS stand for?

1 A. I believe it's Texas English Language Proficiency
2 Assessment. I'm not exactly sure, but something along
3 those lines.

4 Q. Now, what's the relationship between the ELPS and
5 the TEKS standards?

6 A. Well, the ELPS are additional standards that
7 inform how the TEKS can be implemented with a focus on the
8 needs of English language learners.

9 Q. Now, if I'm correct, the ELPS really look at
10 English language proficiency; is that right?

11 A. Yes.

12 Q. So they don't measure, for example, a student's
13 performance in math or science or history; is that right?

14 A. Correct.

15 Q. Okay. Now, how were the ELPS developed?

16 A. They were developed by a writing team similar to
17 the process that we use for the essential knowledge and
18 skills.

19 Q. And when did that happen?

20 A. I believe it was in 2006 or '07, I'm not exactly
21 certain.

22 Q. Now, the ELPS, are those the standards that are
23 described in -- would be Section 74.4 where it says:
24 English language proficiency language standards?

25 Are those the ELPS?

1 A. I'm looking for that in the document. I believe
 2 so.
 3 Q. And have the ELPS been changed to reflect the new
 4 college readiness standards at all?
 5 A. The ELPS have not been revised since they were
 6 first approved.
 7 Q. Okay. That's really my question. Thank you.
 8 Now, I'd like to ask you, what's the relationship
 9 between the ELPS and TELPAS and NCLB, which I believe
 10 comes under your bailiwick?
 11 A. The English Language Proficiency Standards were
 12 developed at the request of the U.S. Department of
 13 Education for compliance with NCLB.
 14 Q. I see. Okay.
 15 I'm going to skip around a bit. I do apologize
 16 for that.
 17 I think you said earlier in response to a
 18 question from Holly that there were 20,000 teachers who
 19 had taken, I believe it was, the online PD courses. Did I
 20 hear that right?
 21 A. Yes, sir.
 22 Q. And I think she asked you whether or not that was
 23 20,000 courses or 20,000 teachers; in other words, if a
 24 teacher took two courses, would they be counted twice in
 25 that 20,000. I didn't catch the answer on that.

1 Now, in terms of these courses, is there an exam
 2 that attaches to them? In other words, so I'm a teacher
 3 and I take one of your courses, how do you know if I
 4 learned anything?
 5 A. There are quizzes embedded into those courses
 6 which are checks for understanding; and in some cases, at
 7 the end of the course teachers can determine whether or
 8 not they have successfully completed the course. And
 9 that's necessary in order to receive the continuing
 10 professional education credits that they get for the
 11 course.
 12 Q. Well, I mean, does somebody score those quizzes
 13 and -- is there an expectation that a teacher will pass a
 14 certain number of quizzes or pass them at a certain level?
 15 A. Those are built into each individual course and
 16 vary by course.
 17 Q. Fair enough. Who, then, determines that any
 18 given teacher passed the course?
 19 A. Again, that's built into the individual course.
 20 Because they're online, it's an automatic calculation and
 21 the teacher knows that at the end of their completion of
 22 the course.
 23 Q. Okay. Now, in terms of -- the courses we're
 24 talking about, I take it they run the range of your PD
 25 courses; is that right? I mean, we're not talking about

1 A. I believe they would be counted twice, yes.
 2 Q. So do you know how many actual separate
 3 individual teachers took those courses?
 4 A. We have that data but I don't have it with me.
 5 Q. Is that reported, do you know, online on the TEA
 6 website?
 7 A. Not to my knowledge.
 8 Q. Okay. Now, does the data that you do have tell
 9 you what -- the nature of the teacher, by which I mean was
 10 it a history teacher or math teacher or ESL teacher or
 11 bilingual teacher? Does it describe that? Does it link
 12 that 20,000 number to the kind of teacher?
 13 A. We have the individual names of the teachers that
 14 have completed those courses, and so I believe that we
 15 could connect that to the types of teachers that are
 16 enrolled in those courses.
 17 Q. But you -- have you seen that done so that you
 18 could sit and say, well, you know, we know that, oh, there
 19 were 4,000 algebra teachers who took the courses, things
 20 of that nature?
 21 A. Those are reports that are due to us through the
 22 Education Service Centers who facilitate the enrollment of
 23 those courses, and the reports that would have that data
 24 have not yet been submitted. They're due later this fall.
 25 Q. Okay. Fair enough.

1 any one course here?
 2 A. There are a wide variety of them, yes.
 3 Q. Would you know, for example, in that 20,000
 4 number how many of that reflected teachers who took the
 5 ELPS standards course?
 6 A. Yes.
 7 Q. All right. Do you know that number offhand?
 8 A. Not offhand.
 9 Q. Or how many took the foundation curriculum
 10 course?
 11 A. I don't have that data with me.
 12 Q. Okay. And -- we could ask for that and you could
 13 provide it; is that right? It's something knowable, is
 14 really what I'm getting at.
 15 A. Yes, it is.
 16 Q. That's fine.
 17 Now, have you had occasion to look, at least
 18 informally, at the 2012 STAAR results?
 19 A. Yes.
 20 Q. Okay. And I'm looking at, for example, the
 21 English writing for Level English III and I'm seeing that
 22 the limited English proficient kids, only 8 percent were
 23 satisfactory as against 38 percent of all kids. I guess
 24 my question is -- and I'll give you just another example
 25 of what I'm looking at and I'll frame my question in.

1 In terms of physics, 71 percent of the current
2 LEP kids were unsatisfactory as against 39 percent of all
3 kids. And I'm wondering if you have any sense, since
4 bilingual ed and ESL comes under your aegis, I would
5 represent that those look like pretty low numbers of
6 success, and I'm just wondering why.

7 MS. DAHLBERG: Objection; form.

8 A. I don't know that I have an explanation for why.

9 Q. (BY MR. RICE) Well, have you been part of any
10 discussions at TEA about why, why the LEPs are doing so
11 poorly on STAAR?

12 A. No, we have not had those conversations yet.

13 Q. Do you think that maybe classroom teachers, you
14 know, an algebra teacher in Edgewood or a physics teacher
15 in San Benito might have to modify their instruction on
16 the -- so that LEP kids, limited English proficient kids,
17 can succeed on these college readiness standards and these
18 end of courses?

19 A. Yes, they should.

20 Q. I'm sorry?

21 A. Yes.

22 Q. Okay. And do you know how -- can you give us
23 some examples of how a teacher could modify their teaching
24 to help those LEP kids pass these end-of-course exams?

25 A. One of the strategies that the ELPS promotes and

1 our professional development covers is academic
2 vocabulary, making sure that an English language learner
3 has the opportunity to connect the academic vocabulary in
4 a course like physics so that they can understand what
5 those terms mean.

6 Q. And how would they be accessing this academic
7 vocabulary that you mentioned? Would that happen just in
8 sort of normal course of events or does that require
9 anything different in, say, the daily planning that a
10 teacher would do?

11 A. That would require some additional daily planning
12 for the teacher.

13 Q. Okay. Would it require -- would kids benefit
14 from supplemental instruction of any kind?

15 A. For beginning English language learners, yes.

16 Q. And are you -- have you been part of any
17 conversations, have you read anything over at TEA that
18 would suggest the resources that a school district would
19 need in order to give that kind of extra instruction to,
20 you say, beginners, limited English kids?

21 A. Yes.

22 Q. I'm sorry. You have been?

23 A. Yes.

24 Q. Okay. And when I say what kind of resources, you
25 know, have there been discussions of, well, you know,

1 they'll have to do this many more hours or acquire this
2 additional kind of materials? Were those kind of
3 conversations what we're referring to there?

4 A. Actually, our conversations have been around the
5 materials, the instruction materials that were adopted in
6 Proclamation 2010 and 2011 for teachers of English
7 language learners, and so there are instruction materials,
8 teacher editions, made available to teachers specifically
9 for that purpose, to help our high school teachers
10 understand how to address the needs of English language
11 learners. And so we've had conversations about those
12 materials that are available in the extent to which
13 districts are ordering those materials.

14 Q. I see. Now, we just talked about beginner
15 students who were limited English proficient. I was
16 looking at the TELPAS Manual for Raters and Test
17 Administrators found on your website, Spring 2012. And it
18 talks also about ELLs who were at the level of so-called
19 advanced high level of English proficiency. What does
20 that mean, advanced high level as opposed to beginner?
21 Can you describe that?

22 A. Well, in the four levels for English language
23 learners, beginning, intermediate, advanced and advanced
24 high, that would be those that have reached almost
25 complete efficiency with the English language but still

1 need a little bit of additional practice or academic
2 support.

3 Q. So if you look -- I'll represent to you that you
4 will find on Page 28 of that TEA document a statement
5 that, quote: An ELL with advanced high level of English
6 language proficiency who is not achieving academically
7 needs interventions related to the subject matter taught,
8 not second language acquisition, end of quote.

9 First of all, are you familiar with that sentence
10 I just read?

11 A. No, I'm not familiar with that document.

12 Q. Okay. Could you tell me what interventions an
13 advanced high ELL kid would need beyond second language
14 acquisition if they were not able to be satisfactory in
15 these courses?

16 A. Well, my understanding of that statement is if
17 that was performance in a course such as physics, they
18 need additional intervention in physics, not necessarily
19 additional help with the English language but more the
20 conceptual understanding of the content of the physics
21 classes.

22 Q. I guess my question went to what would an
23 educator mean when they say "needs interventions." You
24 know, I could think of a number of contexts under which
25 somebody would use that phrase, but I'm just trying to

1 understand it in kind of TEA terms. What does it mean to
2 say, "needs interventions"?

3 A. Typically the term "intervention" means that the
4 student was not successful the way the content was
5 presented the first time and so that additional strategies
6 or avenues for presenting the content in different formats
7 and different ways would be necessary to help their
8 understanding of that content.

9 MR. RICE: Just one second, please.

10 Q. (BY MR. RICE) Now, in terms of the professional
11 development that is offered by TEA, particularly in the
12 area of ELPS, is that required for teachers in order to
13 hold their jobs or is that, you know, something in the
14 nature of it's offered by TEA and hopefully people will
15 pick up on the offer?

16 A. It's offered by TEA and it's optional for school
17 districts to require/not require that teachers
18 participate.

19 Q. When we think about training for bilingual or ESL
20 teachers in Texas, those folks have very definite
21 requirements that would include training of the ELPS, is
22 that right?

23 A. Yes.

24 Q. But that wouldn't necessarily be true of the math
25 teacher or the science teacher or the social studies

1 teacher; is that correct?

2 A. Yes.

3 Q. And do you have any -- have you seen anything in
4 writing at TEA or have you been part of any discussions
5 that could help me understand what it would require for a
6 school district to have all of their teachers, or at least
7 all of their teachers that has an ELL kid in their class,
8 get thoroughly trained in the ELPS, how to teach ELL kids,
9 what that would require by way of resources?

10 A. The conversations I've been a party to have
11 revolved around the ELPS academies that we do offer, and
12 those ELPS academies are some of our more popular
13 professional development opportunities. Many of those are
14 taught in person, many of those are also available online.
15 And the types of things that we can continue to provide in
16 those ELPS academies are geared specifically for different
17 types of teachers at the different grade bands.

18 Q. So assuming that I'm, I don't know, a physics
19 teacher somewhere and I have my curriculum, I have my
20 materials, are there at this point specific ELL/physics
21 materials that I have or is it something I can go out and
22 acquire so that I could have that with me in class?

23 A. I'm not aware of ELL physics-specific materials,
24 but there are ELL science-specific materials.

25 Q. Okay. If I were to walk you through each class,

1 ELL biology, ELL Algebra II, ELL geometry, I mean, if you
2 follow where I'm going with this, are there, in fact,
3 defined ELL materials for all of these end-of-course
4 courses?

5 A. Not specific to each individual course, but I'm
6 aware of.

7 MR. RICE: I pass the witness at this point.

8 FURTHER EXAMINATION

9 BY MR. TRACHTENBERG:

10 Q. I wanted to ask you about the relationship
11 between the TEA and the regional service centers. And as
12 the TEA has suffered budget cuts, has more responsibility
13 been shifting over to the regional service centers?

14 A. Not necessarily. I think the service centers
15 have also suffered similar cuts, and so they continue to
16 do the same things for us now that they have done in the
17 past.

18 Q. Okay. So the relationship between the TEA and
19 the service centers has basically been fairly stable?

20 A. Yes.

21 Q. You mentioned that you had reviewed Robert
22 Scott's testimony. I was just wondering, it was fairly
23 long -- his was a very long deposition. Were you focused
24 on any particular aspects of his testimony?

25 A. There were just some aspects of his testimony

1 regarding to the methodology for SSI that I was asked to
2 look at.

3 Q. And was any of his testimony inaccurate on SSI?

4 A. No.

5 Q. Have you met with anyone in the TEA concerning
6 these lawsuits? I'm not asking you for any type of
7 discussions you've had -- where counsel is involved, but
8 just at the TEA with any other TEA employees.

9 A. Only to the extent that other TEA employees in my
10 department have been asked to provide information on the
11 lawsuit.

12 Q. Understood.

13 Do you believe that the TEA is currently
14 adequately funded?

15 A. That's a very difficult question to answer.

16 Q. I think I get it.

17 Let me ask you one final question -- or set of
18 questions. When you saw the STAAR results for the first
19 administration, were you surprised at the results?

20 A. No.

21 Q. You recognize from looking at those results that
22 we have quite a long way to go to get our students to meet
23 college readiness standards?

24 A. Yes.

25 MR. TRACHTENBERG: That's all I have. Thank

1 CAUSE NO. D-1-GN-11-003130
2 TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
3 FAIRNESS COALITION, ET)
4 AL.,)
5)
6 Plaintiffs,)
7)
8 VS.)
9)
10 EDGEWOOD INDEPENDENT)
11 SCHOOL DISTRICT, ET AL.,)
12 (CONSOLIDATED)) TRAVIS COUNTY, TEXAS
13)
14 Plaintiffs,)
15)
16 VS.)
17)
18 ROBERT SCOTT, IN HIS)
19 OFFICIAL CAPACITY AS)
20 COMMISSIONER OF EDUCATION,)
21 ET AL.,)
22)
23 Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

LAWRENCE HARRIS

Friday, September 7th, 2012

Reporter: Daniel Skur
Job No. 53112

ORAL DEPOSITION OF LAWRENCE HARRIS, produced as a witness at the instance of the Defendant(s), and duly sworn, was taken in the above-styled and numbered cause on Thursday, September 7th, 2012, from 9:02 a.m. to 2:55 p.m., before Daniel J. Skur, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Haynes and Boone, 600 Congress Avenue, Suite 1300, Austin, Texas pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

APPEARANCES
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.

Luis Figueroa
MALDEF
110 Broadway
San Antonio, Texas 78205

FORT BEND ISD PLAINTIFFS

Holly G. McIntush, Esq.
THOMPSON & HORTON
400 West 14th Street
Austin, Texas 78701

COMMISSIONER SCOTT, IN HIS OFFICIAL CAPACITY; TEA;
COMPTROLLER OF PUBLIC ACCOUNTS, SUSAN COMBS, IN HER
OFFICIAL CAPACITY:

Angela V. Colmenero, Esq.
ATTORNEY GENERAL OF TEXAS
300 West 15th Street
Austin, Texas 78701

CALHOUN COUNTY PLAINTIFFS:

Lacy M. Lawrence, Esq.
HAYNES AND BOONE
2523 Victory Avenue
Dallas, Texas 75219

APPEARANCES (Continued)
EFFICIENCY INTERVENORS:

Melissa A. Lorber, Esq.
ENOCH KEVER
600 Congress Avenue
Austin, Texas 78701

ALSO PRESENT:
Mr. Benjamin Dower, Law Fellow

PROCEEDINGS

LAWRENCE HARRIS,

having been duly sworn, testified as follows:
(9:02 a.m.)

EXAMINATION

BY MS. COLMENERO:

Q. Good morning, Mr. Harris.

A. Good morning.

Q. My name is Angela Colmenero, and I'm from the attorney general's office, and I represent the defendants in this lawsuit. Will you please state your name for the record?

A. Lawrence Ainsley (phonetic) Harris.

Q. And the court reporter, before we began, gave you some groundrules to follow for the deposition. And do you understand the rules that he asked you to follow?

A. Yes.

Q. Good. And just to add to some of the groundrules the court reporter told you about before we started, there's going to be -- I'm going to be asking questions during this deposition, and your lawyer who is sitting next to you, Ms. Lawrence, may object to some of the questions, and I would just ask that you allow her an opportunity to object and then go ahead and answer the question after that so -- it's a legal issue that

1 will be addressed later with the court. Do you
2 understand that?

3 A. Yes.

4 Q. Okay. At any time during this deposition if
5 you need a break, just let me know and we can take one.
6 My only request is that if there's a question pending,
7 that you go ahead and answer it, and then we can go
8 ahead and take a break. Do you understand?

9 A. Yes.

10 Q. And at any time if you don't understand any
11 of the questions that I'm asking, just let me know.
12 I'll be happy to rephrase and ask the question perhaps
13 in a more clear manner. Do you understand?

14 A. Yes.

15 Q. Great. Mr. Harris, have you ever had your
16 deposition taken before?

17 A. Yes.

18 Q. And what were the circumstances that you had
19 your deposition taken?

20 A. A friend's divorce.

21 Q. Is that the only time that you've sat for a
22 deposition?

23 A. Yes.

24 Q. And when did you sit for this deposition?

25 A. 20 years ago.

1 Q. Were you, I guess, a witness to this
2 proceeding?

3 A. Yes.

4 Q. Have you ever testified under oath before?

5 A. Yes.

6 Q. When have you testified under oath?

7 A. In front of the United States Senate, United
8 States House, and several legislative bodies, state
9 senate of Florida, state house of Florida.

10 Q. And when did you testify before the United
11 States Senate?

12 A. Matters regarding appropriations bills,
13 matters regarding health care, matters regarding national
14 security, matters regarding budget, matters regarding
15 the administration of various departments within the
16 legislative branch of government.

17 Q. And at what time period were you testifying
18 before the United States Senate?

19 A. Between 1987 and '98.

20 Q. And were you testifying before the United
21 States Senate due to a job that you held?

22 A. Yes.

23 Q. Okay. And what job was that?

24 A. It was a variety of jobs. I worked for a
25 United States senator on his staff. I worked for the

1 Republican conference committee, and I worked for the
2 United States Senate sergeant at arms.

3 Q. And then you also mentioned that you
4 testified before the United States House. During what
5 period did you --

6 A. Same period.

7 Q. -- testify? Okay. And the testimony before
8 the state legislatures in Florida, the house or the
9 senate, what was the time period that you testified
10 before them?

11 A. That would have been three or four years ago.

12 Q. And what were the circumstances that you
13 provided that testimony?

14 A. I was providing testimony regarding public
15 opinion concerning offshore oil drilling.

16 Q. And the testimony that you provided to the
17 state legislature in Florida, was that as a result of a
18 survey that you conducted?

19 A. Correct.

20 Q. And who commissioned you to perform that
21 survey?

22 A. An advocacy group, an energy group.

23 Q. Have you ever testified in a court of law
24 before?

25 A. Only in the divorce thing.

1 Q. Okay. And so -- let me just go back then.
2 So the only -- the times you've testified under oath
3 have been related to your work in the United States
4 Senate, your work in the United -- or before the United
5 States House, and then as well as the testimony you
6 provided to the legislature in Florida.

7 A. Correct.

8 Q. And no other times have you testified before
9 a legislative body besides those instances?

10 A. No.

11 Q. Okay. Have you ever testified as an expert
12 witness before?

13 A. No. Not in a -- not in a trial or a
14 deposition, no.

15 Q. Okay. So have you ever been retained as an
16 expert witness in any kind of court proceeding before?

17 A. No.

18 Q. Okay. Great.

19 MS. COLMENERO: I'm going to go ahead
20 and mark an exhibit.

21 (Deposition Exhibit 1022 marked.)

22 MS. LAWRENCE: And Angela, you may have
23 missed an email this morning. I was informed last night
24 after I sent the email out about the exhibit numbers
25 that the intention was to have expert numbers be a

1 thousand and above, and so we had talked about Harris
2 starting then at 1022.

3 MS. COLMENERO: I did miss that email,
4 but let's just go ahead and we can renumber these so
5 that way they're consistent.

6 BY MS. COLMENERO:

7 Q. Mr. Harris, I'm handing you what's been
8 marked as Exhibit 1022. Is this a copy of your bio that
9 you provided to us as part of your expert report?

10 A. Yes.

11 Q. Okay. And we're going to talk about some of
12 the statements in your bio, but let me ask you some
13 additional questions. Where did you attend college?

14 A. University of Maryland.

15 Q. And when did you receive your degree --

16 A. 1983.

17 Q. You remember that groundrule, let's just try
18 not to --

19 A. Okay.

20 Q. -- talk over one another and I'll try not to
21 talk over you, either.

22 And what was your degree in?

23 A. Government and politics.

24 Q. Did you do any postgraduate expert work?

25 A. No.

1 Q. Do you do any -- did you study any courses in
2 statistics while you were at the University of Maryland?

3 A. Yes.

4 Q. And did you study any courses in political
5 science --

6 A. Yes.

7 Q. -- while you were there? Did you do any
8 course study in courses involving survey methods?

9 A. Yes.

10 Q. What courses were those?

11 A. It would have been a survey course.

12 Q. Uh-huh. After you graduated from college,
13 what was your -- what job did you take?

14 A. My associate and I started this firm.

15 Q. I'm sorry, you said you graduated from
16 University of Maryland in 1983?

17 A. Correct.

18 Q. Okay. And you started Mason-Dixon Polling in
19 what year?

20 A. '84, '85.

21 Q. Okay. And were you employed anywhere prior
22 to Mason-Dixon Polling?

23 A. Yes.

24 Q. And where were you employed?

25 A. A strip club.

1 Q. Okay.

2 A. As bartender.

3 Q. Okay. Thank you for that clarification.

4 And when you first started Mason-Dixon
5 Polling, you said you were one of the founding members
6 of the company, correct?

7 A. Yes.

8 Q. And what were your responsibilities when you
9 started the company?

10 A. Every -- jack-of-all-trades. It was just the
11 two of us right out of college, so everything.

12 Q. Okay. And have you worked anywhere else
13 since you started Mason-Dixon Polling up until today?

14 A. Yes.

15 Q. And what other jobs have you held?

16 A. I worked in the United States Senate from
17 1986, '87 until 1999.

18 Q. And did you hold the position at the United
19 States Senate while you were also working at Mason-Dixon
20 Polling?

21 A. No.

22 Q. Okay. So was there a break of service --

23 A. Yes.

24 Q. -- in your employment at Mason-Dixon Polling
25 while you worked at the United States Senate?

1 A. Yes.

2 Q. Okay. And what position did you hold
3 from '86 to '87 until 1999 with the United States
4 Senate?

5 A. I held a variety of positions. My first
6 position I was administrative director to a U.S.
7 senator, then I went to work for the leadership office.
8 I was a shared employee with the conference with the
9 off -- with the personal office, did work with the
10 appropriations committee. My last job I was chief of
11 staff to the United States Senate sergeant at arms.

12 Q. And the last position you held, the sergeant
13 at arms position, was that in the 1999 time frame?

14 A. Yes.

15 Q. How would you describe the work that
16 Mason-Dixon Polling and Research performs?

17 A. Our firm is an independent polling firm. We
18 are not aligned with any particular party. We do public
19 policy polling and survey research for newspapers, news
20 media. That is what we are primarily known for,
21 electioneering polling, et cetera, a lot of work on
22 public policy polling that runs the gamut of state,
23 local, and federal public policy issues. We also do
24 work for advocacy groups, for think tanks, for public
25 relations firms, and occasionally market research.

Q. I'm going to go -- I want to talk about some of those -- the work that y'all performed in a second, but I forgot to ask, why did you decide in 1999 to leave the -- your work with the Senate sergeant at arms and return to --

(Interruption by the reporter.)

BY MS. COLMENERO:

Q. And return to Mason-Dixon Polling?

A. My boss's boss lost his election.

Q. Okay. You mentioned that Mason-Dixon performed some electioneering polling?

A. Uh-huh.

Q. Can you explain what that is?

A. We survey voters as to their likelihood and voter intent and preference for particular candidates or issues.

Q. And is that what the kind of general public thinks of as a political poll which is --

A. I assume that's what they think.

Q. Would you -- would you vote that -- would you vote for candidate A or would you vote for candidate B, is that kind of an electioneering poll at its basis?

A. Sure.

Q. And then you mentioned some public policy issue polling that Mason-Dixon Research and Polling

performs. What percentage of your work would you say is related to this public opinion polling?

A. You're making a distinction between public opinion polling and what?

Q. And, for example, electioneering polling.

A. About half and half.

Q. Okay. You mentioned in your expert report that you have conducted more than 75 polls in your career similar to the one that's conducted here. Do you recall that?

A. Yes.

Q. And when you say -- when you're referring to the 75 polls, how would you -- are you -- would you define those polls as public opinion polls?

A. They are of the public, yes.

Q. Okay. And what kind of surveys have you performed, let's take the last year for example, that you would consider to be similar to the one that you performed in this case?

A. There, in Atlanta, is a tax issue regarding a funding scheme for regional transportation projects.

Q. Uh-huh.

A. Because the -- there's a great demand for transportation infrastructure. It's not funded. There's currently no funding available. The state set

forth a scheme to provide individual regions with taxing authority and which they could designate those funds for projects that they regionally propose which would have to be approved by the state. And we, for the Atlanta Journal Constitution was our client, asked us to survey registered voters to find out their opinion and voter preference on those issues.

Q. And when you performed this project for this Atlanta tax issue, did you conduct a survey? You said you conducted a survey of registered voters, correct?

A. Yes.

Q. Did you design that survey?

A. Did the questionnaire?

Q. Yes.

A. I collaborated in designing the questionnaire.

Q. And does your firm actually conduct the interviewing?

A. We source that out to our primary vendor, Discovery Research of Salt Lake City, Utah.

Q. And then does your outside vendor who performs the interviewing provide you with the results from the interviews?

A. Correct.

Q. And then does your firm, at least for

purposes of this Atlanta tax issue, does your firm then analyze those results?

A. Yes.

Q. And then your firm then reports it to your client.

A. Correct.

Q. Okay. When you conduct -- or do you think that designing a questionnaire survey for a public opinion poll requires a different, I guess, technique or analysis than designing a questionnaire for an electioneering poll?

A. Could you be a little more specific?

Q. Sure. Is there a different methodology that you employ when you're designing a questionnaire for an electioneering poll when you're asking people do you support candidate A or candidate B versus when you are conducting public opinion poll and you're trying to gauge public opinion on a certain issue?

A. The methodologies are the same in that you want to follow standard accepted methodologies that ensure you do not bias the question.

Q. And can you describe for me some of the standard methodologies that you employ when designing a public opinion survey questionnaire?

A. Well, you want it to be as plain vanilla,

1 simple English as if you were talking to a neighbor
2 across the fence post. Easily understood by the
3 respondent and easily understood by the reading -- by
4 the -- by the consumer of the information.

5 Q. And how do you ensure that the questionnaire
6 that you design for public opinion polls that you
7 conduct, as you stated, is -- that can be understood by
8 the respondent as they listen to it?

9 A. Well, from 20 plus years of experience, from
10 both my education and from collaborative efforts with my
11 associate, Brad Coker, our executive direct -- managing
12 director of our firm, and it's not -- not that
13 complicated a process.

14 Q. Okay. Do you do any pilot testing of
15 questions that you develop as part of your surveys?

16 A. Do you mean do we field them?

17 Q. You do kind of like a test run on the
18 questions --

19 A. Occasionally.

20 Q. Okay. And why on certain occasions do you do
21 that and not in others?

22 A. If it's a particularly complex issue and,
23 let's say, that it were a ballot initiative that the
24 actual text of the ballot is four paragraphs, well, I
25 can't ask four paragraphs' worth. I can't keep somebody

1 on the phone that long. So I've got to distill it.
2 Well, then, somebody's got to decide, you go through the
3 process, what is -- how do you best and fairly reflect
4 the actual, not just verbiage, but intent of the
5 whatever the issue or proposition may be and how do I
6 boil that down into -- excuse me, simple, clear,
7 understandable English.

8 Q. Okay.

9 A. That provides them with the opportunity to
10 respond appropriately.

11 Q. So in certain circumstances, you make the
12 decision that it might be necessary to do some test runs
13 out in the field to see whether or not the public
14 understands some of the questions that are being asked
15 in the survey.

16 A. Yes.

17 Q. And then in others, you make the decision
18 that that's not necessary.

19 A. The vast majority of cases we do not.

20 Q. Okay. But that's a decision that you at
21 Mason-Dixon Polling make; is that correct?

22 A. Unless a client requests.

23 Q. Okay. And you said that you ensure that the
24 general public understands some of the questions. You
25 mentioned the 20 years of experience that you have and

1 your education that you have, but then you also
2 mentioned that you ensure that based on the
3 collaborative efforts you have with someone named Brad
4 Coker?

5 A. Yes.

6 Q. And can you tell me who Brad Coker is?

7 A. He's the managing director of the firm.

8 Q. Okay. And how many people are employed at
9 Mason-Dixon Polling and Research?

10 A. The two of us.

11 Q. Okay. And what is Mr. Coker's background?

12 A. He is a political science graduate from
13 University of Baltimore.

14 Q. And how long has he worked at Mason-Dixon
15 Polling?

16 A. The whole time.

17 Q. Okay. So he was one of the --

18 A. Correct.

19 Q. -- founding people with you?

20 A. He's the --

21 Q. The other half?

22 A. He's the owner.

23 Q. Okay.

24 A. And yes.

25 Q. Okay. Have you published any articles

1 related to the science of public opinion polling?

2 A. No.

3 Q. Have you been recognized in any journals or
4 periodicals in your field?

5 A. I know that our surveys are continually
6 referenced.

7 Q. And where are they referenced?

8 A. In every major newspaper and magazine in the
9 country.

10 Q. And when you say they're "referenced," is it
11 based on electioneering polls that you conduct?

12 A. Primarily.

13 Q. Is it based at all on any public opinion
14 polls that you conduct?

15 A. You're making a distinction again. You mean
16 issue polling.

17 Q. Okay. We'll call it issue polling.

18 A. As opposed to -- as opposed to election
19 polling of candidates.

20 Q. Okay. I understand the distinction, so let's
21 go forward with that understanding.

22 A. Okay.

23 Q. So you've been recognized in newspapers and
24 other periodicals regarding electioneering polling?

25 A. Correct.

1 Q. And then you also mentioned -- or I asked
2 have you been recognized in periodicals or newspapers
3 regarding any issue polling that you've conducted.

4 A. Yes, you did.

5 Q. And you said not as much, is that -- did I
6 hear that correctly?

7 A. Again, it's about 50/50.

8 Q. Okay. Have any of the issue polling polls
9 that you've conducted ever been critiqued in any of
10 these newspapers or periodicals?

11 A. Yeah, and we're very good at it.

12 Q. Okay. And have you ever received negative
13 criticism?

14 A. On occasion.

15 Q. And do you recall what issue poll that you
16 received negative criticism for?

17 A. Do not remember a specific one.

18 Q. Do you remember some of the problems that
19 were highlighted in the criticism that you received --

20 A. No.

21 Q. -- regarding that poll?

22 A. No.

23 Q. So you don't recall if it was any kind of
24 bias -- the bias nature of the --

25 A. It was not an issue of that at all.

1 Q. Okay. So have any of your polls ever been
2 critiqued, you know, not -- not just limited to
3 periodicals or newspapers, have they ever been critiqued
4 as being biased in any kind of way?

5 A. If you're a candidate and I got you down in a
6 poll, you don't like me. If you're a candidate and
7 you're up in my poll, I'm the best thing since sliced
8 bread.

9 Q. I understand. And now, separating the
10 electioneering polls and focusing on issue polling.

11 A. Uh-huh.

12 Q. Have you ever received any negative criticism
13 as one of your issue polls being biased in any sort of
14 way?

15 A. No.

16 Q. Okay. Well, -- I may have already asked this,
17 and I'm sorry if I have and -- to make sure you repeat
18 this, but with respect to designing the actual
19 questionnaire, --

20 A. Uh-huh.

21 Q. -- either in an electioneering poll or an
22 issue poll, do you participate in that process?

23 A. Yes.

24 Q. Does Mr. Coker participate in that process?

25 A. Yes.

1 Q. Does anybody else at your company participate
2 in that process?

3 A. No.

4 Q. Do you -- is it the normal course for you to
5 design such a questionnaire in collaboration with your
6 client?

7 A. Absolutely.

8 Q. Okay. And do you participate with respect to
9 issue polls or electioneering polls in any kind of
10 sample design weighting?

11 A. Sample design weighting?

12 Q. Yeah.

13 A. I do not. My associate, Brad Coker, who
14 does -- conducts the number crunching, if weighting is
15 needed, that he would be the one to do that.

16 Q. Okay. So it's fair to say that you don't
17 necessarily deal with any kind of weighting issues with
18 respect to a survey.

19 A. Correct.

20 Q. Do you deal at all with any kind of the
21 numbers analysis portion of surveys?

22 A. Certainly.

23 Q. Okay. But when you said he handles the
24 number crunching, what exactly are you referring to?

25 A. He receives the data file and puts the --

1 enters the data file into a statistical package that --
2 desktop PC software, StatPac, and he will run the
3 frequency tabulations and the cross tabulations.

4 Q. Okay. In preparation for today's deposition,
5 have you reviewed any depositions that have been taken
6 in this case?

7 A. No.

8 Q. Did you review any documents in preparation
9 for today's deposition?

10 A. Yes.

11 Q. What documents did you review?

12 A. The filing.

13 Q. When you say "the filing," what court -- are
14 you referring to a court document?

15 A. Yes.

16 Q. Are you referring --

17 A. The petition.

18 Q. The petition. Are you referring to the
19 petition that has been filed for the Calhoun County
20 plaintiffs?

21 MS. LAWRENCE: We are called the -- in
22 this context, we are called the Calhoun County
23 plaintiffs.

24 MS. COLMENERO: Yeah.

25 BY MS. COLMENERO:

Q. Okay. Did you review any other petitions in this case?

A. No.

Q. Did you -- in preparation for today's deposition, did you conduct any interviews, excluding the one -- any conversations you may have had with your lawyer, did you conduct any interviews with outside third parties?

A. No.

Q. Okay. And did you have an opportunity to talk to your lawyer prior to today's deposition?

A. This lawyer?

Q. I'm sorry. Ms. Lawrence, who is the lawyer for the Calhoun County plaintiffs.

A. Yes.

Q. Okay. And when did you meet with her?

A. Yesterday.

Q. And how long did that meeting last?

A. About five hours.

Q. Okay. When were you first retained in this case?

A. I believe the first phone call I received was back in June, possibly, May or June.

Q. Uh-huh. And when you had this conversation regarding being retained as an essential expert in this

case, were you given any assignment at that point in time?

A. In that initial phone call?

Q. Yes.

A. I think it was just can you please give me, Larry, a back of the envelope idea of time frame, schedules, what you think would constitute sufficient sample size and schedule and cost.

Q. Okay. When were you given an assignment in terms of going out and conducting the survey?

A. Upon the execution of an agreement.

Q. Okay. And what directions were you given with respect to the survey that you conducted?

A. It was initially one survey of the Greenville Colley School District.

Q. I'll clarify for the record. I think you're referring to the Grapevine-Colleyville school district.

A. Yes. I'm sorry.

Q. Okay. So your initial assignment only consisted of one school district?

A. Correct.

Q. When did your assignment grow to include the two additional districts that are part of your report?

A. Upon completion and submission of the first.

Q. Okay. When did you complete the very first

survey regarding Grapevine-Colleyville?

A. It's on the document. I would have to reference the document.

Q. Okay. And we'll get to that in one second.

A. June something. I don't...

Q. Okay. And before you actually completed the survey for Grapevine-Colleyville, were you -- did you receive any directions in terms of how the survey was to be conducted or how the survey was to be designed with respect to the Grapevine-Colleyville school district?

A. They relied on our expertise in those matters.

Q. And what documents were provided to you in order to assist you in conducting that survey?

A. I had asked for and received a document that outlines the research objectives for the project.

Q. And do you recall what the research objectives were for this specific project?

A. Yes. They wanted to gauge, measure, and document registered voters' opinions and attitudes towards specific tax increases --

Q. Uh-huh.

A. -- regarding the independent school district.

Q. Did you select the district to conduct the survey in?

A. No.

Q. Did you do any kind of research in terms of the district you were being asked to perform the survey in?

A. Research its demographic profiles through census data, through voter data.

Q. And why did you find it -- why did you decide to do research in terms of the census and the demographics for that particular district?

A. Because part of the methodologies that you want to fairly reflect the population of your universe. And knowing -- and we know what that is through census data and through voter registration history.

Q. And what --

A. Or voter turnout history.

Q. Okay. And what did you learn about Grapevine-Colleyville in terms of the demographics of that school district?

A. It is on the demographic page of that document.

Q. Okay. You can't recall at this instance? I'm sorry --

A. Are you asking what percentage were male and female or --

Q. I'm saying if you could just give me a

1 general observation of what you -- for example, what do
2 the political affiliations tend to be in the
3 Grapevine-Colleyville Independent School District?

4 A. Heavily Republican.

5 Q. And in terms of the racial demographics, what
6 do those tend to be in Grapevine-Colleyville?

7 A. More Caucasian than not.

8 Q. And did you -- besides the racial
9 demographics and political affiliations, did you look at
10 any other kind of information?

11 A. Age.

12 Q. Okay. And why would you consider age
13 important?

14 A. Because you want to make certain that your
15 end result fairly reflects the voting age population.

16 Q. Okay.

17 A. So that my final result when I compare how
18 many people over the age of 65 who were registered to
19 vote matches fairly what the census bureau --

20 Q. Sure.

21 A. -- tells us.

22 Q. And did you also look and see gender as well?

23 A. Yes.

24 Q. Okay.

25 A. But that's laws of nature right there.

1 That's a 50/50, just so happens.

2 Q. I understand. Okay. And so you receive the
3 instruction for Grapevine-Colleyville. You said you did
4 some demographic research in terms of that specific
5 school district. What did you go -- what did you do
6 next in terms of designing the survey?

7 A. Well, having then -- having received the
8 research objectives from the client, we then drafted the
9 questionnaire, which was a collaborative and iterative
10 process.

11 Q. And when you say it was a "collaborative
12 process," are you referring to the fact it was a
13 collaborative process between you and the lawyers from
14 Haynes and Boone who retained you?

15 A. It was a collaborative effort between myself,
16 my colleague Brad Coker, and Haynes and Boone.

17 Q. And how many drafts of the questionnaire were
18 developed during that process?

19 MS. LAWRENCE: Let me stop you right
20 here. I mean, we do -- we do certainly have an
21 understanding and agreement in this case that we're not
22 sharing too much information about communications with
23 counsel. I think so far, you know, we're fine, but I
24 just want to go ahead and raise that flag that we're
25 getting a little close.

1 MS. COLMENERO: I understand. And I'm
2 just concerned really in terms of the drafting process
3 of the questionnaire.

4 A. Uh-huh.

5 BY MS. COLMENERO:

6 Q. And I don't want to know about specific
7 communications you had with counsel --

8 A. Uh-huh.

9 Q. -- but just in terms of the drafts that --

10 A. Right.

11 Q. -- were exchanged back and forth, was it -- I
12 mean, how long did the drafting process take?

13 A. Less than a week.

14 Q. Okay.

15 A. And then just several emails.

16 Q. Okay. And do you recall how many drafts of
17 the questionnaire were circulated?

18 A. Couple.

19 Q. Okay. So once you had -- oh, and after the
20 survey questionnaire was designed, did you believe that
21 it was necessary for this kind of survey that you may
22 need to do some pilot testing?

23 A. No.

24 Q. And why did you make that determination with
25 respect to this survey?

1 A. It was not a difficult nor complicated
2 exercise.

3 Q. Why do you think it's not a difficult or
4 complicated exercise in terms of the issues that you
5 were being asked?

6 A. Because compared to the hundreds of surveys
7 I've conducted previously, it was not.

8 Q. And, I mean, one of the issues in the survey
9 deals with the notion of recapture.

10 A. Uh-huh.

11 Q. And do you consider the notion or the idea or
12 the theory behind recapture provisions to be something
13 that the general public is familiar with?

14 A. I don't know.

15 Q. Okay. But you determined that it was not a
16 complicated issue, that people wouldn't have difficulty
17 understanding if asked in a questionnaire?

18 A. It is explained in the questionnaire, and it
19 is explained in simple arithmetic terms.

20 Q. Okay.

21 A. That's why I thought it not complicated.

22 Q. Okay. So let me -- so after the survey is
23 designed, how did you go about developing the sample of
24 individuals who were going to be questioned?

25 A. Our objective was to interview registered

1 A. You see a lot of movement from -- the
2 movement is from undecideds.
3 Q. Yes.
4 A. You get your 10 points from the undecideds,
5 not from those against.
6 Q. Okay.
7 A. Opposition remains steady. Those supporting
8 it increases, and that number comes from the undecideds.
9 Q. Okay. In terms of the individuals who
10 were -- showed some resistance to the tax increases from
11 a dollar four to a dollar seven or a dollar four to a
12 dollar 13 --
13 A. You mean who would vote against it?
14 Q. Yes. Do you -- as part of your opinion in
15 this case, do you have any analysis, or what is the
16 basis you have to support what the resistance that those
17 members of the electorate show to tax increases?
18 A. I can only refer to the population, not to
19 individuals.
20 Q. Uh-huh.
21 A. And from the looks of -- from the data,
22 there -- in Frisco there's a good, solid, hard core
23 percentage that regardless don't want new taxes.
24 Q. Okay. And the basis for that observation?
25 A. Because the numbers don't change when we get

1 rid of the recapture.
2 Q. Okay. And you're just looking at -- you're
3 just -- you're making that observation based on the
4 numbers that you reported as the basis of your survey.
5 A. Correct.
6 Q. Okay. So I think I just have a couple more
7 questions for you. Do you consider voters' reluctance
8 to express support for a tax increase an indication that
9 they believe the district doesn't need any money?
10 A. No.
11 Q. Okay. You're not making an opinion about
12 that in this case?
13 A. No.
14 Q. Do you consider the reluctance to vote in
15 favor of a tax increase do you consider that the
16 voter -- let me start over, sorry.
17 By participating in an election, a local
18 election where such tax rate -- tax rate issues could be
19 decided, does that voter -- that voter has an
20 opportunity to participate in the electoral process,
21 correct?
22 A. If they're registered.
23 Q. So registered voters who participate in local
24 elections, they have the ability to participate in the
25 electoral process?

1 A. That's my understanding.
2 Q. Okay.
3 A. That's how we do it in Maryland.
4 Q. Okay. So we know that even if an issue that
5 is unsuccessful on a ballot, such as a tax rate
6 increase, that even if that issue was unsuccessful, that
7 the members of the elected electorate who participated
8 and voted in that election, by participating, they are
9 exercising their electoral power, correct?
10 A. By definition.
11 Q. Okay.
12 MS. COLMENERO: I have no additional
13 questions for you at this time. So I'm going to pass
14 the witness over to Mr. Figueroa.
15 MR. FIGUEROA: All right.
16 MS. LAWRENCE: Can I take a two-minute
17 timeout?
18 (Recess held.)
19 EXAMINATION
20 BY MR. FIGUEROA:
21 Q. Hi. I'm Luis Figueroa. I represent a number
22 of the low-wealth districts, Edgewood, McCallum, San
23 Benito, La Feria, and Harlingen as well as parents of
24 low income English language learners who attend school
25 in Pasadena and Amarillo school districts. We will

1 continue as was under the same rules that you were just
2 operating under. If you could please allow me to
3 complete my answer and answer orally so the court
4 reporter can correctly answer or correspond the answer,
5 and I'll do my best to do the same. Does that sound
6 good to you?
7 A. Yes.
8 Q. Okay. If you don't understand a question,
9 please tell me, and I'll try to rephrase it. And if you
10 need a break, just let me know.
11 I was going to start with some of the
12 bio questions that I don't want to repeat anything, but
13 some questions that I just was curious about. Who did
14 you work for in the U.S. Senate?
15 A. I worked for Senator Connie Mack. I worked
16 for Greg Casey, who was a Senate sergeant at arms. I
17 worked for Senator Mack in his capacity as a member of
18 the Senate and also his capacity as a member of
19 leadership in the Senate.
20 Q. And which candidates have hired you to do
21 their polling?
22 A. Which candidates?
23 Q. Yes.
24 A. We don't do candidate polling. We do news
25 media. We're non partisan. We occasionally do a local

election, not a statewide election, for a county council person, but no statewide elections, no -- we -- we maintain our non partisan reputation, and when we do do those smaller down valley -- you know, local races, it is few and far between, and it's not work that we really seek out, and we do it for both Republicans and Democrats.

Q. Fair enough. And the companies you mentioned, I know you mentioned newspapers, what other companies have hired you to do their polling?

A. NBC news, literally scores of newspapers around the country, but we also do work for advocacy groups, and as I mentioned, before PR firms and the like.

Q. Could you mention a few of those advocacy groups?

A. Every Child Matters, it's an child advocacy group; Fight Crime, Invest in Kids, it is a child advocacy group; National Federation of Independent Business. So -- we've done work for technology companies, for timber industry, so we run the gamut of, you know, liberal advocacy groups as well as business and more conservative groups.

Q. Sounds good. And what are some of the general challenges that are -- occur in developing

questions in a poll?

A. It's not so much a challenge. It is the responsibility to make certain that you draft it in a fair and unbiased fashion.

Q. So when you're looking at a poll question, how do you decide if it's a good question suited for the general poll?

A. Well, depends upon the purpose of the question. If I'm doing it for internal purposes for an advocacy group and I'm message testing, I might ask questions and throw in hyperbole and things that I want to move people with.

Q. Uh-huh.

A. So my bar there is, well, I'm supposed to be tweaking and goosing and whatever. If I'm doing it for the newspaper or for an exercise like this, my job is to shoot it straight down the middle and to get it plain vanilla, like you're talking at a neighbor across the fence, and this is defensible both according to our standards, the standards that we comport to with the American Association of Public Opinion Researchers, as well as our clients. We don't shoot straight, we don't have a reputation. We don't have a reputation, we go out of business. Our business model is an independent, non partisan group that finds -- that plumbs the

attitudes and opinions of the public.

Q. And so as a general rule on one of those straight-shooting polling questions, you want your questions to be as unambiguous as possible.

A. We want them to be as understandable as possible to the respondent, to the average voter.

Q. And have you ever done a push poll?

A. No, we do not engage in push polling. We -- that's not polling, that's advocacy.

Q. And what are some typical biases found in polls, and how do you control for those biases?

A. Well, for instance, the question was asked earlier, well, why not attribute some of the features and benefits that would occur should we raise these taxes? Well, I can make you -- I can write a question to make you weep and write a check that moment, but that would be biased, and that would not do -- not comport to not just standards, but that was not the job.

Q. Uh-huh.

A. The job here was to ask a straightforward question, do you support this tax increase rate from here to here. Yes or no? Well, how about from this rate, here to here, yes or no. By the way, as you may know, under Texas law, should you do this, you're going to recapture -- the state's going to recapture X amount.

Do you support it now? I mean, it is as straightforward as you see.

Q. So isn't it true that in some polls that are legitimate, they will have inconsistent answers?

A. I don't understand the question.

Q. I'll give you an example. Do you support increasing teacher pay versus do you support increasing taxes? Is it plausible that both of those questions could have an inconsistent answer?

A. Those are two different questions.

Q. So let's say, for example, you ask the polling question, do you support increasing teacher pay and increasing revenue for those teachers, you may get one answer -- you may get an answer on that poll question that may be inconsistent with a question about do you support increasing taxes.

A. Yes, but there's a -- but there's a -- two different questions. They're not -- they're not being -- it's not one question being gamed. It's two different questions.

Q. Sure. And so sometimes two different questions totally legitimate can have an answer that, in practice, results in an inconsistency; is that correct?

A. No. Those are two different questions.

Q. So if someone said we need to have more

1 revenue for schools and someone said we need to look up
2 various options for that revenue, including taxes, and
3 the two answers came out differently, would you call
4 that an inconsistency, or would that just be separate
5 questions?

6 A. You could ask a question, do you support an
7 increase in teacher salary.

8 Q. Uh-huh.

9 A. Yes or no? There could be another question
10 that says, do you support an increase, excuse me, in
11 teacher salary paid for by an increase in taxes. Two
12 legitimate questions, but two different questions, and
13 yes, you would get different results, but they're
14 different questions.

15 Q. Fair enough.

16 A. So it's not a contradiction. You're
17 providing more information. It's a different question
18 that's going to result in a different response.

19 Q. That makes sense. Have you ever found or
20 have any of your polls ever proved to be inaccurate?

21 A. I'm certain that if you go back over the
22 years, you will find a poll or two that -- and not many,
23 that are outside the margin of error, and remember
24 that's a 95 percent probability that it will fall
25 within. But if -- we are known for our accuracy, we are

1 tested at every election, I'm assuming that's how they
2 found us, and that's why people do business with us.
3 We've been nationally recognized as one of the top tier
4 pollsters in the country, but certainly there's been a
5 race somewhere along the line where, you know, we were
6 outside the margin of error.

7 Q. Do you have any particular recollection of
8 one or two of those?

9 A. No.

10 Q. Did you get paid to do this poll?

11 A. Yes.

12 Q. Okay. Have you ever done a poll specific to
13 a school district?

14 A. To -- not -- not to independent school
15 districts, but to a county district, for instance. Is
16 your question have you done work for other schools?

17 Q. No, that's not my question. My question is:
18 Have you done a poll specific to a school district?

19 A. Yes.

20 Q. So you have done a poll that was just for --

21 A. Montgomery County, Maryland.

22 Q. That's a county, right?

23 A. Correct.

24 Q. How about one that was for Montgomery County
25 Independent School District?

1 A. No.

2 Q. Okay. So you've never done a poll that only
3 questioned people living in one school district?

4 A. Most of -- most of the places where we do
5 work, they're not independent school districts. They're
6 part of counties and run on a different structure.

7 Q. Got it. Have you done polls specific to
8 educational issues?

9 A. Absolutely.

10 Q. And have you done polls specific to taxpayer
11 issues?

12 A. Absolutely.

13 Q. Okay. Are there specific challenges specific
14 to a school district, to a poll designed for a school
15 district?

16 A. In generating the sample in some places, the
17 school district will lapse several counties, or there
18 will be several districts in a particular county which
19 is why we screen to make certain that we got the right
20 respondent by having that as one of the screeners, do
21 you live in the independent school district of Frisco.

22 Q. So that was one challenge you faced in
23 conducting the poll in this case?

24 A. I wouldn't call it a challenge. It's
25 something to be mindful of. It's easily resolved; it's

1 just something to be mindful of.

2 Q. Something you have to overcome --
3 (Interruption by the reporter.)

4 BY MR. FIGUEROA:

5 Q. Something you have to overcome in designing
6 of your question?

7 A. Overcome is too strong a word. Something to
8 be mindful of.

9 Q. Did you have to adjust for it in your
10 questionnaire?

11 A. Yes, it's simply resolved by confirming and
12 asking in the questionnaire, do you live in this school
13 district.

14 Q. So the answer to that question was yes, you
15 had to adjust for it in your questionnaire?

16 A. Yes.

17 Q. Thank you. Were these three school
18 districts -- I'm sorry, how were these three school
19 districts picked for this survey?

20 A. They were chosen by the client.

21 Q. And what are the -- I think you talked about
22 this. What are the racial and ethnic demographics of
23 the registered voters of Grapevine-Colleyville?

24 A. They are found in the demographic. It is 82
25 percent -- our survey results, 82 percent white Anglo, 4

1 percent African American, 9 percent Latino, 5 percent Asian or other, and 6 percent -- 1 percent refusing to say.

Q. And based on your knowledge of Texas, do those demographics match the State of Texas as a whole?

A. No, it matches the demographics of this county or this independent school district.

Q. Right. But not Texas as a whole.

A. Correct, nor should it.

Q. Right. And what are the racial ethnic demographics of Frisco county?

A. 76 percent white Anglo, 9 percent African American, 12 percent Latino, 2 percent Asian or other.

Q. And do those demographics match the demographics of Texas as a whole?

A. No. It matches the demographics of that independent school district.

Q. Okay. And for Calhoun ISD, could you go over those demographics as well?

A. And again, these are the results found in our survey, which fairly reflect or very close to the census data, 56 percent white Anglo, 3 percent African American, 39 percent Latino, 1 percent Asian or other.

Q. And those don't -- those demographics do not match the demographics of Texas as a whole.

A. No. They match the demographics of Calhoun County.

Q. Okay. Now, you mentioned a lot about the goals of this survey. Am I accurate in saying the goal was to receive the predictive value of registered voters in those school districts?

A. I'm sorry?

Q. The goal of the survey, the goal of the survey was to assess a predictive value or prediction of how registered voters in those counties feel about this issue?

A. It was not to predict. It was the objective, not goal, the object -- survey research objective was to measure and document voters' opinion towards a dollar four to a dollar seven increase, a dollar four to a dollar 13 increase, and then providing them the information about the -- about the capture and how that would impact their opinion.

Q. So it was not the objective of the survey to make election results?

A. No. It was to measure current support or opposition to the various taxing proposals as outlined in each of the surveys.

Q. And it was a survey of registered voters?

A. Correct.

Q. Not likely voters.

A. Correct.

Q. So -- okay. Is it harder to sample younger voters?

A. There are fewer of them, and it is marginally more difficult to get them, but -- so it is marginal but not an insurmountable feat, and one that we accomplished in each of our surveys.

Q. And is it also harder to sample lower socioeconomic voters?

A. It is, but hard-line phone penetration is 99 percent, even in low income areas, so there -- it's more difficult not because of the telephone. It has more to do with a cultural suspicion of who is on the other end of the phone and why the hell are you asking me these questions. However, those are registered voters, and that's a different type of person. They're vested. They're interested. They're engaged. They understand the process, and are more likely to talk to you.

Q. And, again, the people you polled were registered voters, but not necessarily likely voters. I think you called it that before.

A. Some certainly were likely. I can't tell you the percentage.

Q. Sure. And is it also hard to sample Latino

or Hispanic voters?

A. It is. We did use in Calhoun County bilingual interviewers. They were offered it. None of them -- everyone preferred to do it in English, but we offered that as an option.

Q. And did you -- strike.

Where did you get your information for the poll, the data that you provided on the polls in terms of the numbers --

A. You mean the tax rates, et cetera?

Q. Yes.

A. From my client.

Q. So you didn't do any independent research to verify any of that information?

A. No.

Q. Okay. And that's the same -- so that information includes the current tax rates for the district?

A. Correct.

Q. The 40 -- and then how did you determine that 47 percent of the revenue raised by local school districts would be retained in Grapevine and Calhoun?

A. Provided by the client.

Q. Okay. Why were the tax rates ranging from a dollar four to a dollar 17 chosen as the amounts to

1 poll?

2 A. My understanding is that the dollar four was
3 the minimal opportunity and that the dollar 17 was the
4 maximal possible increase, and that that -- that -- the
5 dollar seven amount was in between the two. So we went
6 from the low end, the high end, and one in the middle.

7 Q. Did you do any independent research to know
8 whether that was low end or in the middle or high end?

9 A. No.

10 Q. So those numbers were provided --

11 A. Came from the client.

12 Q. Okay.

13 A. And, again, it was my recollection and
14 understanding that that is how those numbers were
15 derived.

16 Q. For the question on recapture, why was a
17 dollar 13 chosen as the predetermined example?

18 A. That -- that was given to us by the client,
19 but, again, it's the --

20 Q. That was the number provided for you by the
21 client --

22 A. Correct. Correct.

23 Q. Thank you. Okay. Oh, you had mentioned
24 earlier that the demographics of the school districts
25 were leaning Republican; is that correct?

1 A. Well, I can tell you exactly for each, the
2 breakdown. In Frisco, the breakdown is 21 percent
3 Democratic, 50 percent Republican, 29 percent
4 Independent or other. In Calhoun, 30 percent Democrat,
5 36 percent Republican, 34 percent Independent or other.

6 Q. And -- go ahead.

7 A. And Grapeville (sic) -- don't have tabs. It
8 is 19 Democrat, 46 Republican, and 35 percent
9 Independent or other.

10 Q. So what you presumed, based on those numbers,
11 that the polled areas were generally more conservative
12 than --

13 A. More Republican.

14 Q. More Republican. So you wouldn't make a
15 presumption that they would be more conservative based
16 on that?

17 A. I would, but I didn't want you to come back
18 and say, how do you know that they're conservative or
19 liberal.

20 Q. But you -- yeah, you would concede that --

21 A. Yes.

22 Q. -- conservatives, Republicans, --

23 A. Yes.

24 Q. -- are more likely to be antitax as well?

25 A. Yes.

1 Q. Okay. And, again, these were based on those
2 school districts. You don't necessarily presume that
3 that's -- would be the case across the entire State of
4 Texas?

5 A. It would not be. It is only specific to the
6 jurisdictions surveyed.

7 Q. Great. Did you ever consider asking whether
8 persons would be in favor of raising tax rates to help
9 provide a basic education to the district students?

10 A. That was not a stated objective, no.

11 Q. Did you consider asking would persons would
12 be in favor of raising taxes to help students meet
13 increasing state standards?

14 A. No.

15 Q. Or to help make up for the state budget cuts?

16 A. No.

17 Q. Or to help teachers keep their jobs?

18 A. No.

19 Q. Okay. Do you think if those questions had
20 been phrased that way it would have changed the outcome
21 of the poll?

22 A. It would have been a different poll; those
23 are different questions. It would not have changed
24 these numbers unless I put them up front and -- if I
25 asked these questions in the same order, it would not

1 impact it. Had I asked those questions beforehand,
2 it -- it may have impacted. And certainly, if you ask
3 them and then give them some information just as we do
4 with the give back, we see that it changes attitudes and
5 opinions. Any time you're going to add some meaningful
6 stimulus, you're going to change an opinion.

7 Q. So we don't know necessarily what those
8 answers would have been. You're not making any
9 predictions as to what would have been an answer for the
10 question, would you be in favor of raising tax rates to
11 help provide a basic education to the district students?

12 A. I do not know the answer to that question,
13 correct.

14 Q. So -- I know we covered this. You asked
15 registered voters. So if a thousand -- let's say, for
16 example, a thousand people were registered to vote in a
17 jurisdiction, and you polled a random sample of those
18 thousand people, would it be reliably predictive of the
19 election results if only 10 people showed up to the
20 polls in the next election? I'm sorry, not if 10
21 people, a hundred people, 10 percent. Let me ask it
22 again.

23 A. You mean the sample size of ten people out of
24 a hundred?

25 Q. Right, or a hundred people out of a thousand,

1 sure, either way, 10 percent.

2 A. Well, there's -- as I mentioned before,
3 there's a formula, and I can tell you exactly what the
4 margin for error would be if you give me the size of the
5 population and the number of people being interviewed.
6 So, would I make any decisions based on interviewing ten
7 people? No.

8 Q. I guess what I'm wondering about is, if only
9 a tiny amount of people who are registered actually show
10 up for the polls, how predictive is a sample of
11 registered voters for the election?

12 A. Well, I can tell you that on an off-year
13 election in many states, 40 percent -- only 40 percent
14 show up. Woeful -- you know, so -- but we are reliably
15 and able to predict the elections assuming we do it near
16 the election and assuming nobody has put their foot in
17 their mouth in between when we did the last poll and the
18 election has taken place. So having a lesser voter
19 turnout that -- which is part of the key, figuring out
20 how many people are going to show up. You know, they
21 always say, you know, it's game day, who can get their
22 people to the polls. So turnout does impact it, but for
23 your average exercise, you know, having 40 percent show
24 up, you're able to divine and -- not divine, we can
25 predict by using screeners.

1 A. All it would say is if the vote were held
2 that day what the result would be.
3 BY MR. FIGUEROA:

4 Q. So it's difficult to determine what it would
5 be for a future election with a small turnout?

6 A. It is of less value to predict that. What I
7 can tell you simply and plainly is that these people in
8 these three jurisdictions don't like taxes, and they
9 don't like the recapture. That -- that is the clear
10 finding based on my years in politics and polling and
11 public policy.

12 Q. Well, we'll get into that. I was going to
13 ask you about the assumption that they're opposed to
14 taxes based on this question. But we'll go into that in
15 a little bit. But thank you for that answer.

16 Do you know how long recapture has been
17 a part of the Texas school finance system?

18 A. No.

19 Q. And are you aware that recapture started at a
20 lower level in years past?

21 A. I was. I am.

22 Q. Were you aware that school boards
23 consistently raise taxes in spite of recapture in many
24 of these districts?

25 A. I don't know how many. I'd be interested in

1 Q. And when you do that prediction, would that
2 be a poll of likely voters?

3 A. We -- it depends upon if it were the day
4 before the election, we would have the tightest screen
5 possible. If it were a month out or a year out or for
6 nonexistent -- something like this, we wouldn't screen
7 for -- screen for it.

8 Q. And would it still be a good predictive value
9 of the election if you did not ask for likely voters and
10 turnout was minuscule?

11 A. It depends upon the type of election, if it's
12 a presidential, if it's a ballot initiative, some of
13 these things are far down ballot, that even likely
14 voters, even though they go in and pull the lever for
15 president, they don't -- they don't flip the switches
16 for the down ballot.

17 Q. So --

18 A. -- still.

19 Q. Sorry about that. Let's assume it's an off,
20 off election, one of these elections that, you know, you
21 and your mother vote for and nobody else knows about.
22 So for a very small election, how predictive would be --
23 would it be if you did a poll ten months earlier based
24 on registered voters, not likely voters?

25 MS. LAWRENCE: Object to form.

1 knowing that number.

2 Q. And you are aware that recapture was held
3 constitutional by the Texas Supreme Court?

4 A. I am, and I'm also aware of their concerns.

5 Q. And you didn't share any of that information
6 as part of your poll.

7 A. No. That was not a research objective.

8 Q. And did you poll whether or not any of the
9 persons knew of any of that information when answering
10 these questions?

11 A. No, I did not ask that question, but I did
12 inform everyone at one stage or another in the process.

13 Q. You informed them of how much money they
14 would be losing, right?

15 A. Yes, we informed them of the capture back and
16 the impact that it has on their opinion.

17 Q. But you did not inform them about how long it
18 has been in place, how much it started at, whether it's
19 constitutional?

20 A. That was not material to my purpose.

21 Q. Okay. And did you mention that recapture
22 sometimes benefits neighboring school districts?

23 A. No.

24 Q. Okay. And it's plausible that some of those
25 respondents had relatives or friends in neighboring

1 school districts?

2 A. Certainly.

3 Q. Did you include a statement in your poll
4 clarifying that the districts would still receive the
5 same amount of revenue as other districts across Texas
6 for the tax increases?

7 A. No.

8 Q. Okay. Or that districts were already
9 receiving more revenue than many other school districts
10 despite taxing lower?

11 A. No.

12 Q. This information may have changed the outcome
13 of the poll; is that correct?

14 MS. LAWRENCE: Object to form.

15 A. I don't know the answer to that question. It
16 would have been a different poll, different questions.
17 BY MR. FIGUEROA:

18 Q. Sure. Okay. I'm going to go a little bit
19 about the process of the survey. Was the survey
20 performed by a human or by --

21 A. Humans.

22 Q. Okay. Is there a greater chance of error
23 with human pollers versus robocalls or -- I don't know
24 if robocalls is the correct term.

25 A. In my opinion, no. Human interviewers are

1 much more reliable. The completion -- a robocall, you
2 can ask two questions before and you never -- you don't
3 know who is answering the phone. Could be a 12 year old
4 just pressing buttons for the heck of it.

5 Q. Is there a debate within the --

6 A. There is.

7 Q. -- polling community? Okay. Do you know the
8 argument on the other side?

9 A. That it is great for one or two questions and
10 that for those one or two questions, they're fairly
11 reliable, but you can't go into depth, you can't repeat
12 a question, you can't clarify. You're relying on --
13 you're putting the onus on the respondent to interface
14 with the telephone properly as opposed to having a
15 trained interviewer who can clarify and make more
16 efficient both the process and the experience for the
17 respondent.

18 Q. And by the same account, by not being able to
19 clarify or respond to the respondent, do you -- do you
20 have the benefit of reducing bias?

21 A. I wouldn't say bias. I would say accuracy.
22 Well, to the extent that inaccuracy biases a survey,
23 those are two different terms and two different
24 meanings.

25 Q. Could you explain the difference between

1 inaccuracy and bias?

2 A. Well, an inaccuracy is somebody hitting the
3 wrong button and coding it a for to an against. A bias
4 would be a poorly written question that gooses it and
5 makes it so that it would be -- we call it the kid the
6 puppy question. Whatever you want to ask, do you agree,
7 blah-blah-blah blah-blah, and I won't shoot the puppy.
8 So who is going to disagree with that?

9 Q. So I guess my question is, when you have a
10 human poller and someone asks for a clarification on,
11 for example, what a term means?

12 A. They would -- they have a script, and they
13 stick to the script.

14 Q. So they aren't able to respond to --

15 A. They can read the question.

16 Q. And so when you said that -- earlier that a
17 human could reduce inaccuracies because they could
18 respond to the respondent, you mean that they can only
19 repeat the question. That's the extent of their --

20 A. No, the example I gave was I'm on the phone.
21 I hit -- and I'm on a robocall, and I hit the wrong
22 button, how do I go back and change that? I don't know.
23 I hang up the phone or press another button or what am I
24 doing now. A human being can say and confirm, okay, so
25 you are -- I'm just clarifying -- if there's any

1 confusion on their part, can you read the question
2 again? And they will read the question again and then
3 read the options for response again and clarify the
4 factual -- the information they have in front of them.

5 Q. And we also -- on the other hand, we also
6 don't know what the human surveyor is saying or not
7 saying to the respondent, right?

8 A. They are monitored on occasion, and there's a
9 good degree of quality control.

10 Q. Okay. Fair enough. Was there an instruction
11 process for non-English speakers?

12 A. As I mentioned, we had available bilingual
13 interviewers, and when a Spanish -- Hispanic surname
14 comes up or an accent or any communications issue is
15 identified, we are prepared to -- we're prepared to do
16 it in Spanish. We -- you know, we didn't have --
17 there's not a large Asian population, or we didn't --
18 but didn't have to worry about that. But there is a
19 protocol, and if they answer in Spanish, then it would
20 be transferred to a bilingual, but it would be -- by a
21 matter of course, Spanish surnames would be given to a
22 bilingual speaker. And then depending upon that initial
23 interaction, it would be determined that if they spoke
24 Spanish or not and they would be given the choice, would
25 you -- in Espanol or Ingles.

1 Q. So if the Spanish speaker initially answered
2 and the person did not have a Spanish surname and was
3 given an English-dominant questionnaire, that Spanish
4 speaker was asked to hold on while a bilingual
5 questionnaire could be found?

6 A. Well, there's a room with 60, so it's not --
7 it's very efficient and as seamless as possible. It is
8 not -- it is -- it is a common issue that is worked
9 through seamlessly for an effective and productive
10 experience for both the respondent and the interviewer.

11 Q. Well, I guess my question is, what is the
12 respondent told while the call is being transferred or
13 found?

14 A. I would imagine that it was just -- just --
15 if somebody doesn't speak English at all, it would
16 immediately -- the person would say just a moment please
17 in English, and then they would be transferred to a
18 Spanish speaking bilingual interviewer, and then that
19 bilingual interviewer would ask them in Spanish or
20 English, do you prefer to take this in Spanish, or would
21 you prefer to take it in English.

22 Q. And do you have any data on how many
23 respondents did their survey --

24 A. 39 percent were Hispanic, a handful -- none
25 preferred to take it in Spanish in Calhoun County, which

1 has the highest percentage of Hispanic.

2 Q. And in the other two counties -- the other
3 two school districts?

4 A. Don't know the answer to the question.

5 Q. Okay. Did you keep data on attempted calls
6 that failed?

7 A. Yes.

8 Q. And do you have the results of that data?

9 A. I don't have it with me. I can provide it.

10 Q. Okay. What times were the calls? Were they
11 daytime or evening?

12 A. Evening primarily.

13 Q. Were surveyors asked to speak to the heads of
14 households?

15 A. They were asked to speak to a registered
16 voter in the house.

17 Q. So that could have been any one of anybody in
18 the house.

19 A. Correct.

20 Q. Okay. And what was the process for multiple
21 household members, meaning you had two children over the
22 age of 18, a mother and father and grandmother, who was
23 the person that was asked to respond?

24 A. We typically take the first adult on the
25 phone, and as I mentioned earlier, when we have reached

1 a target point with a particular demographic, we would
2 then ask for the male in the house or the head of
3 household male who is also a registered voter.

4 Q. Earlier you mentioned you had a 40 percent
5 cooperation rate; is that right?

6 A. Yeah, about -- yes, so that means that of the
7 people we actually got on the phone, 40 percent said
8 sure, I'll take it.

9 Q. And how many of those were terminate --
10 actually, let me go back a second. What is meant by
11 terminate on the instructions?

12 A. Terminate means that they don't pass the
13 screener and that -- oh, you're not a registered voter,
14 terminate, hang up. Thank for your participation, you
15 don't qualify.

16 Q. And of that 40 percent cooperation rate, how
17 many were terminated?

18 A. All of them would have -- that's part of the
19 cooperation rate.

20 Q. That's part of the cooperation rate?

21 A. Yes, that they -- that they answered the
22 phone, they qualified, and they cooperated and completed
23 the survey.

24 Q. I see. So it also includes those who may
25 have gone halfway through the survey and decided this

1 was taking too long and hung up?

2 A. Right. That would have been an incomplete
3 survey and tossed.

4 Q. And do we have data separating termination
5 from those that were attempted and failed?

6 A. I can provide that. Don't have that with me.

7 Q. But the data is just aggregated in that way?

8 A. Yes.

9 Q. Okay. And did you check whether the final
10 500 matched your universe demographically?

11 A. Yes, we reviewed it throughout the process,
12 and it does fairly reflect the demographics of the --
13 each jurisdiction.

14 Q. Do you know what percentage were terminated
15 versus -- you had mentioned how many cooperated. Do you
16 know what the percentage was that were terminated?

17 A. Well, the only reason for termination would
18 be if they did not -- if they weren't registered to vote
19 and did not live in the district.

20 Q. Right.

21 A. So -- and again, I don't have that in front
22 of me.

23 Q. And do you have data on why they were
24 terminated, just aggregated, i.e. --

25 A. I don't know if they would have kept track of

1 they weren't registered or they weren't living in the
2 jurisdiction.

3 Q. So you don't know how many respondents were
4 terminated because they did not know whether they lived
5 in the selected school district?

6 A. Correct, I do not know.

7 Q. And if someone responded to that question, I
8 do not know if I live in Calhoun ISD or just in Calhoun
9 County, was that person terminated?

10 A. Yes, they would have to have affirmatively
11 responded to, yes, I live in Calhoun County or whichever
12 county.

13 Q. You mean Calhoun school district?

14 A. Yes. The survey questionnaire says do you
15 live in the -- are you registered to vote in Texas,
16 screener 1. Screener 2, do you live in the Frisco
17 Independent School District?

18 Q. And you're aware that school districts and
19 counties are different political boundaries in Texas?

20 A. Yes, I mentioned that earlier.

21 Q. Okay. Why was the option of undecided not
22 read as an option for respondents?

23 A. Because you tend to get more undecideds. You
24 want -- I want to tell you how people feel. Do you want
25 to raise taxes, yes or no, and they can offer it and

1 we'll accept it, but it's a technique of probing, you
2 know, as opposed to saying -- as opposed to saying yes,
3 no, or undecided, or they hem and haw, and then, well,
4 come on, you know, you just yes or no. And then if they
5 have an opinion, they will give it, and if they don't,
6 they can say they're undecided and there you go.

7 Q. So based on your experience, how does the
8 option of undecided affect results of the survey?

9 A. It produces less undecided votes, less
10 undecided responses. What we're doing is --

11 Q. I understand that. I guess my question is,
12 what percentage of people will choose undecided if given
13 an option?

14 A. On this particular question, I couldn't tell
15 you.

16 Q. In a general, in your experience in surveying
17 and polling, what's the normal --

18 A. Depends upon if it's a polemic question like
19 taxes, very few. People have very strong feelings about
20 taxes. If it were, you know, hey, do you want the
21 Beltway Green Road to go east of the river or west of
22 the river, nah, I don't know, undecided.

23 Q. Would you say it would be higher on a
24 question that's ambiguous, for example, a question about
25 vouchers when the person may not know what the word

1 voucher means?

2 A. Yes.

3 Q. Okay. So you don't know what percentage
4 people generally select undecided when given that
5 option?

6 A. Depends upon -- as I just mentioned, it
7 depends on the question.

8 Q. Okay. What would occur if the respondents
9 asked about recapture?

10 A. If the respondent asked one of the
11 interviewers about the recapture?

12 Q. Correct.

13 A. They would say I don't have that information,
14 I can -- the only information I have is the question
15 before me.

16 Q. And they would then be forced to give an
17 answer yes or no?

18 A. Or they could say undecided or they could say
19 then I don't want to do it. I quit.

20 Q. And but undecided wasn't read to them. They
21 would have to have affirmatively come up with that
22 response.

23 A. Yes, and, you know, the way it works,
24 blah-diddy-blah, so if the Calhoun Independent School
25 District held such an election to approve an increase

1 from 1.04 to 1.07, would you vote for the tax or against
2 the tax increase? And just human nature, they will go,
3 yeah, I'm for it. Somebody said, gee, I just don't
4 know. Even though it was not a proffered option, people
5 say, gee, I just don't know. And that would go down as
6 an undecided.

7 Q. Okay.

8 A. And I'm trying -- I'm trying to elicit an
9 opinion. Giving my client a bunch of undecided although
10 that's useful information --

11 Q. Uh-huh.

12 A. -- you want to know which way they're going,
13 which way they're leaning. It might be on the fence, so
14 if they are on the fence and you say undecided, then
15 people will opt for it just as a matter of course. My
16 job is to get the best information possible.

17 Q. -- so your objective is to try to get an
18 answer, yes or no?

19 A. Yes. How do people feel about the taxes, and
20 undecided is one of them, but you know, low single --
21 low double digits, you know 10, 15 percent.

22 Q. But you would prefer a yes or no to an
23 undecided?

24 A. No, I prefer the right answer.

25 Q. Okay. So I guess let me understand

1 completely. You had said earlier your objective is to
2 get the best information.

3 A. Right.

4 Q. And for that reason, you do not include I
5 don't know or undecided.

6 A. Correct. But they have -- as I just offered
7 by way of example, how this works in practical
8 application, folks can offer undecided or don't know,
9 and it's recorded.

10 Q. And so when the respondent says, what do you
11 mean by recapture, the respondent repeats the
12 question --

13 A. Correct.

14 Q. -- and that person is then given the choice
15 of yes, no, and nothing else?

16 A. The question is read to them again.

17 Q. Without the undecided.

18 A. Correct.

19 Q. Okay. And there was no explanation of why
20 recapture exists or is required by law?

21 A. Pardon me?

22 Q. There was no explanation of why recapture
23 exists or is required by law?

24 A. Well, it's mentioned that it exists.

25 Q. No, but why it exists.

1 Q. Okay. Now, on page 1 of your report, you
2 state the margin of error is greater for demographic
3 subgroups such as age and gender.

4 A. Correct.

5 Q. Can you explain that?

6 A. Well, for instance, in this first question,
7 that's 500 people. When you go to the cross
8 tabulations, the universe, for instance -- here we have,
9 you know -- question. Question. Okay. Here we have a
10 cell of Democrat -- here we have a cross tabulation
11 between party.

12 Q. For the record, could you identify?

13 MS. COLMENERO: I was going to ask
14 identify which district.

15 A. I'm sorry, this is on page 3 of Calhoun,
16 Calhoun County cross tabulations. Here you see the
17 number 47 above the percentage 31.5?

18 BY MR. FIGUEROA:

19 Q. Uh-huh.

20 A. That means that there were 47 Democrats that
21 said that. Margin for error for that, for a sample size
22 of 47, is double digit, about 12 percent. So when I
23 look at that, that could be 10 points higher or 10
24 points lower. Now, I have a greater degree of
25 confidence because I'm looking at other things. I'm

1 A. No.

2 Q. Why is there a plus or minus rate of 4.5
3 percentage for -- I'm sorry, that's standard. Why is
4 there a plus or minus rate of 4.5 percentage?

5 A. That is the margin for error for the survey.
6 That means that any one -- any individual finding could
7 be 4 and a half percent one way or 4 and a half percent
8 the other way.

9 Q. How many more respondents would have been
10 required to achieve a plus or minus rate of 3 percent?

11 A. 800.

12 Q. 800. Good to know.

13 A. And doubles the cost.

14 Q. It doubles the cost --

15 A. Well, it's all labor, you know, it's...

16 Q. That's the predominant reason why it was set
17 at a plus or minus rate of --

18 A. No, I say that because that's a reliable,
19 sufficient, statistically valid sample size and margin
20 for error -- to have a part of a public policy
21 discussion.

22 Q. Sure. Okay. The more respondents you have,
23 the more accurate the polling is going to be; is that
24 correct?

25 A. The lesser margin of error results.

1 looking at distribution. I'm looking at consistency
2 from question to question so that I can say -- I can say
3 with a degree of confidence that certainly within the
4 margin of error of that 10 percent, but I would have
5 confidence that, you know, that that's not an out of
6 line number, but quite simply, the smaller the number of
7 people you talk to, the higher the margin of error.

8 Q. That makes sense.

9 A. And so the whole sample was 500. It's
10 smaller for demographic subgroups like party where you
11 have cells of 40 and 50, et cetera.

12 Q. And racial and ethnic minorities would fall
13 within a subgroup where the margin of error would be
14 greater?

15 A. Yes, any analysis of -- of a demographic
16 subgroup that is less than the total would be a greater
17 margin for error.

18 Q. Do you know what the margin of error was for
19 Hispanics?

20 A. In which survey?

21 Q. All three.

22 A. Well, they're double digit. I can tell you
23 that much.

24 Q. Okay. And would the same would be -- I
25 imagine for African Americans, which were an even

1 smaller percentage, would -- the margin of error would
2 be even higher?

3 A. Uh-huh.

4 Q. Okay. And the margin of error for each age
5 range?

6 A. Same.

7 Q. Did you consider sampling to adjust for the
8 larger error rate for these subgroups?

9 A. That was not my objective.

10 Q. Okay. Okay. Another question. Did you
11 consider sampling all of the property rich school
12 districts? Was that ever in consideration?

13 A. It was never a consideration of mine.

14 Q. Would that have been possible?

15 A. If the money is right.

16 Q. Sure. So assuming that there's the resources
17 for it, it is possible.

18 A. It's doable, yeah.

19 Q. Doable.

20 THE WITNESS: Bless you.

21 BY MR. FIGUEROA:

22 Q. Is it possible to assume one school district
23 sample would automatically apply to another school
24 district?

25 A. You mean the findings?

1 survey researcher, say -- you know, make a claim. I can
2 make a suggestion and an analogy and anecdotally --
3 anecdotally I did a survey over here which mirrors your
4 city. Now, but I don't -- haven't surveyed your city,
5 but here is what these people had to say.

6 Q. And there's no research that academically
7 that says that that would be accurate to say that one
8 school district would apply to another school district
9 other than anecdotal --

10 A. Correct.

11 Q. And that was not your objective --

12 A. Correct.

13 Q. -- in this -- in this survey. And it was not
14 your objective to do a state-wide polling?

15 A. Correct.

16 Q. Okay.

17 MR. FIGUEROA: Thank you very much.
18 That's all the questions I have.

19 MS. COLMENERO: I have no additional
20 follow-up questions.

21 MS. MCINTUSH: We don't -- Fort Bend
22 plaintiffs do not have any questions.

23 MS. LAWRENCE: I actually have about a
24 handful of questions, maybe five or six.

25 THE WITNESS: Am I bleeding anywhere

1 Q. Yeah. Let's say we did a sample size of
2 Austin ISD. Could we assume the results would be the
3 same in San Antonio ISD?

4 A. No.

5 Q. Okay.

6 A. Different population.

7 Q. Different population, so you would have
8 different results.

9 A. Correct. Now, to the extent that it mirrored
10 it demographically, socioeconomically, ethnically, you
11 could make some -- it would be fair to --

12 Q. You could make some educated guesses?

13 A. Yeah. Yeah.

14 Q. But all of those would have to match in order
15 for -- at least be very close in order for it to be
16 statistically accurate?

17 A. Well, it's not -- it's anecdotally accurate.
18 It's not statistically accurate. Only for the
19 jurisdiction that you surveyed you can make an
20 assumption that, well, a wealthy white district is going
21 to go do this. An inner city minority population is
22 going to do this. And you can find that -- you know,
23 that happens all the -- that's just true.

24 Q. But it's not statistically accurate.

25 A. Right. It would be -- I could not, as a

1 yet?

2 MS. LAWRENCE: Mr. Harris, I do want to
3 say you've been going for, you know, an hour and 50
4 minutes or something like that. Do you need a quick
5 break?

6 THE WITNESS: Do not.

7 EXAMINATION

8 BY MS. LAWRENCE:

9 Q. Okay. We'll just jump right into it.

10 Mr. Harris, I have just a couple of
11 questions for you to touch on a line of questioning you
12 went through with Ms. Colmenero. Ms. Colmenero asked
13 you earlier what your opinions or what opinions you're
14 rendering in this case. Do you recall that?

15 A. I do.

16 Q. Okay. And I just want to make sure I'm very,
17 very clear. First, do you have any opinions as to the
18 methodology employed in your surveys?

19 A. I have a strong opinion that we employed
20 sound methodological principles and processes that
21 produced a sound survey research result.

22 Q. And those are the processes and methodologies
23 that you've spoken about today during your deposition?

24 A. That is correct.

25 Q. And what is the basis for your opinion

1 regarding the methodologies and processes employed in
2 your surveys?

3 A. My familiarity with and employment of sound,
4 proved, statistical, and survey research methodologies
5 which comport to several national associations,
6 Association of Public Opinion Pollsters, et cetera.

7 Q. Do you have any opinions regarding the
8 accuracy of your survey results?

9 A. I have a strong opinion that if an election
10 were -- yes, that they are true and correct, and if an
11 election were held tomorrow, based on this data, that it
12 would fall out just as you see before you.

13 Q. And is the basis for that opinion regarding
14 the accuracy of the results the same as the basis for
15 your other opinions in this case?

16 A. It is, and the fact that our firm has a
17 tremendous track record for call on races.

18 Q. Now, you and Ms. Colmenero also had an
19 exchange regarding whether you were testifying regarding
20 facts or opinions. Do you recall that?

21 A. Yes.

22 Q. And this is another thing I wanted to just
23 make sure I'm sure on. Just very generally, do you
24 stand by everything in your report, whether it's
25 considered to be a fact or opinion?

1 A. Yes.

2 Q. Now, as part of your testimony today and as
3 part of, you know, this expert report that you
4 submitted, you've interpreted and explained the results
5 of your surveys for us. What gives you the unique
6 ability to be able to interpret and explain survey
7 results?

8 A. Having been involved as a survey researcher
9 and a public policy expert and a public employee in the
10 United States government regarding these very same
11 issues for the past 30 years.

12 MS. LAWRENCE: Mr. Harris, thank you.
13 We'll reserve the rest for trial. If anybody has any
14 follow-up?

15 MS. COLMENERO: I have no follow-up.

16 MR. FIGUEROA: I just have one question
17 because I was confused with one of your answers.

18 FURTHER EXAMINATION

19 BY MR. FIGUEROA:

20 Q. Did you just state that you believe those
21 results would mirror the results of an election?

22 A. If the election were held tomorrow and on the
23 ballot was the simple proposition, do you -- that if any
24 one of these questions were placed on the ballot just as
25 they are read here, that the vote would shake out and

1 result in these -- in these similar -- within the margin
2 of error of the findings we have here. Now, of course,
3 we have undecideds and they -- where they move, we
4 wouldn't know for sure, but typically, the undecideds
5 move against change.

6 Q. Doesn't that assume that the universe of
7 people who show up at the polls is the same as the
8 universe of registered voters?

9 A. That's the assumption I'm making.

10 Q. Okay.

11 MR. FIGUEROA: Thank you.
12 (Deposition concluded at 2:55 p.m.)
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1 CHANGES AND SIGNATURE

2 WITNESS: LAWRENCE HARRIS

DATE: 9-7-12

3 PAGE LINE

CHANGE

REASON

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21 I, LAWRENCE HARRIS have read the foregoing
22 deposition and hereby affix my signature that same is
23 true and correct, except as noted above.
24

25 _____
LAWRENCE HARRIS

1 CAUSE NO. D-1-GN-11-003130
2 TEXAS TAXPAYERS & STUDENT) IN THE DISTRICT COURT
3 FAIRNESS COALITION, et)
4 al.,)
5)
6 Plaintiffs,)
7)
8 vs.)
9)
10 EDGEWOOD INDEPENDENT)
11 SCHOOL DISTRICT, et al.,)
12 (consolidated))
13) TRAVIS COUNTY, TEXAS
14 Plaintiffs,)
15 vs.)
16)
17 ROBERT SCOTT, in his)
18 Official Capacity as)
19 Commissioner of Education,)
20 et al.,)
21)
22 Defendants.) 200TH JUDICIAL DISTRICT

ORAL VIDEOTAPED DEPOSITION
SHANNON HOUSON
July 18, 2012

Reported by:
Rebecca J. Callow, RPR, CRR, CSR-8925
Job No. 51471

| NO. | DESCRIPTION | PAGE |
|------------|--|------|
| Exhibit 78 | 2012 Adequate Yearly Progress Guide - Section II: System Overview | 115 |
| Exhibit 79 | Summary of Final 2011 AYP Results - 12/9/2011 | 127 |
| Exhibit 80 | Key Legislation Related to Assessment and Accountability | 137 |
| Exhibit 81 | Select Committee on Public School Accountability, Panel 1, March 27, 2008 - Gold Performance Acknowledgments (GPA) | 142 |
| Exhibit 82 | Proposed Framework for Distinction Designation System - 6/25/2012 | 146 |
| Exhibit 83 | Chapter 12, State Accountability Ratings: 2013 and Beyond | 156 |

THE VIDEOGRAPHER: On the record at 9:04.
SHANNON HOUSSON,
having been first duly sworn, testified as follows:
EXAMINATION

BY MR. TURNER:

Q. Mr. Housson, good morning.

A. Good morning.

Q. Would you state your full name for the record, please?

A. Shannon Housson.

Q. Mr. Housson, my name is John Turner, and I represent a group of school districts in this lawsuit. I refer to them as the Calhoun County plaintiff districts. I'm going to be asking you some questions today in this deposition. Some of the other attorneys here may have some questions after me.

First question for you is, have you ever had a deposition before?

A. I believe so. I'm sorry. I've been -- I've participated in SOAH hearings, so I believe the answer is yes. It's been -- it's been a while.

Q. You've given testimony before in SOAH hearings you said?

A. Correct.

Q. S-O-A-H? All right. To your knowledge, have

you ever sat to answer questions in a deposition in a lawsuit before?

A. No. I don't believe so.

Q. Let me just cover a few ground rules before I get into my questions today. As I said, I'll be asking you questions today and you understand that you're giving answers under oath. Correct?

A. Correct.

Q. And do you understand that you will be -- that your answers today might be shown to the judge and be made part of the record in this lawsuit?

A. Correct.

Q. I will do my best to ask clear questions today, but if at any point you feel you don't understand a question I ask or don't understand something I say, please let me know and I'll do my best to rephrase or clarify it. Is that okay?

A. Yes.

Q. We have the deposition being videotaped today. It's also being recorded by the reporter, and so I will do my best to let you finish your questions -- I'm sorry -- finish your answers to my questions before I move on to the next question and not talk over you. And at the same time, if you can, try to make sure I have finished with my question before you begin to answer.

Is that all right?

A. Yes.

Q. And the last thing I'll say, if you need a break at any point today, please just let me know. We're glad to go off the record and take a break. We'll probably take a midmorning break anyway, but if you need another one, just let us know.

A. Okay.

Q. Now, Mr. Housson, you have been chosen to offer testimony today on a couple of topics that were in our deposition notice. Is that right?

A. Correct.

Q. And you've been kind enough to hand me your copy of the deposition notice. And I'm going to mark that as an exhibit here. Exhibit 71.

(Exhibit No. 71 marked)

Q. (BY MR. TURNER) And I understand that you are here to offer testimony on questions -- I'm sorry -- topics 5 and 6 in that notice. Is that right?

A. That's correct.

Q. I'm just going to read those topics. "Topic 5: The relationship between performance on STAAR and Adequate Yearly Progress (AYP), including any sanctions to be developed for districts and campuses with low ratings."

1 Topic 6 is, "The relationship between
2 performance on STAAR and the state accountability rating
3 system currently under development and scheduled to be
4 phased in for 2013, including any sanctions to be
5 developed for districts and campuses with low ratings."

6 Are those the two topics on which you're
7 prepared to testify today?

8 A. Yes.

9 Q. Now, have you done anything to try to prepare
10 yourself to testify on behalf of the TEA on those two
11 topics?

12 A. We have met with the staff from the AG's office
13 in a couple of meetings prior to this meeting.

14 Q. And I don't want to ask you to talk about
15 anything you discussed with the Attorney General's
16 Office. Aside from the discussions you've had with
17 them, have you had any discussions with anybody else to
18 prepare for this deposition?

19 A. No.

20 Q. Have you reviewed any documents to try to
21 prepare for the deposition?

22 A. I've refreshed my memory on the documents that
23 are online that -- in regard to the accountability
24 development that's underway for 2013.

25 Q. You're talking about documents on the TEA's web

1 site?

2 A. Correct.

3 Q. And, in general, would you consider yourself to
4 be knowledgeable about the topics, the two subjects,
5 that we just read on that deposition notice?

6 A. Yes. I believe so.

7 Q. Could you tell me, please, your current title
8 at TEA?

9 A. My title is director.

10 Q. And director of which division?

11 A. Director of the Division of Performance
12 Reporting.

13 Q. Could you summarize for me what the division of
14 performance reporting does?

15 A. In general, the division is responsible for the
16 evaluation of the state accountability rating system,
17 and the Federal Adequate Yearly Progress rating system,
18 and the performance reports that are required in Chapter
19 39.

20 Let me add, following a reorganization at
21 the agency in 2011, we also were -- we also -- are also
22 responsible for the performance-based monitoring system
23 as of September 2011.

24 Q. How many employees work in the division of
25 performance reporting?

1 A. 33.

2 Q. Do all those 33 employees report either
3 directly or indirectly to you?

4 A. Yes.

5 Q. And to whom do you report directly inside TEA?

6 A. Criss Cloudt, Associate Commissioner for
7 Assessment and Accountability.

8 Q. I'd like to ask you a little bit about your own
9 background and how you came to your position. Could you
10 summarize for me, please, your basic educational
11 background beginning with high school and then through
12 any degrees you've received?

13 A. I'm a product -- product of Texas Public
14 Schools. Graduated from Eastland High School in 1981.
15 I came to UT Austin and graduated in 1985 with a
16 bachelor of arts. And stayed for -- and then went to
17 graduate school, and graduated in 1987 with a
18 master's -- an MBA in finance. And I joined Texas
19 Education Agency in August 1988, in the student
20 assessment division. My title, I believe, in that
21 position was a statistician.

22 Q. All right. Great. And that leads to my next
23 question. I was going to then ask if you could
24 summarize, please, your work experience. Am I correct
25 that you started at the TEA right after you received

1 your master's degree in 1987?

2 A. No. I worked for a brief while in Dallas at a
3 firm -- private firm, Fidelity Investments, before
4 joining TEA.

5 Q. And have you been at the TEA continuously since
6 you started?

7 A. Yes.

8 Q. That's an impressive record of service. And so
9 you started in 1988. And could you summarize for me,
10 please, the positions you've held at TEA since that
11 time?

12 A. I don't remember all the job titles, but
13 essentially I was working in the reporting unit of the
14 student assessment division, and we were responsible for
15 the scoring and the quality control and the reporting of
16 the assessment results that the state testing program
17 was administering at that time beginning in 1988; it
18 would have been the TEAMS program, and in 1999, the TAAS
19 testing program.

20 And that continued -- well, I had several
21 promotions, I guess, during those periods ending as a
22 manager -- Manager IV in the student assessment
23 division, and then took a -- took a position in the
24 performance reporting division in July of 2004. And
25 I've been with the -- with the -- my current division

1 recognized methods. Correct?

2 MS. DAHLBERG: Objection. Form.

3 A. Correct.

4 Q. (BY MR. TURNER) Okay. Mr. Housson, I
5 appreciate your time this morning. I appreciate your
6 work for the State of Texas.

7 MR. TURNER: And I, at this point, will
8 pass the witness and let my colleagues ask you
9 questions.

10 A. Thank you.

11 (Discussion off the record)

12 EXAMINATION

13 BY MR. HINOJOSA:

14 Q. Mr. Housson, my name is David Hinojosa. We met
15 earlier. I'm with MALDEF, the Mexican-American Legal
16 Defense and Educational Fund, and we represent five
17 property-poor school districts in this case, as well as
18 parents of low-income and English Language Learner
19 children.

20 You understand that the same rules that
21 Mr. Turner mentioned at the outset of your deposition
22 apply --

23 A. Yes.

24 Q. -- as well to my questions?

25 A. Yes.

1 Q. And please let me know if you don't understand
2 a question. Don't answer a question that you don't
3 understand. I'll be more than happy to repeat it,
4 because you understand I'm relying on the accuracy of
5 your answers. Correct?

6 A. Correct.

7 Q. We'll stay right here on Exhibit 76, which is
8 the Frequently Asked Questions About the AYP System.
9 And at the bottom of Exhibit 76 it mentions that -- the
10 last sentence, it says, "In order to transition to new
11 graduation rate student requirements, Texas will request
12 the AYP graduation rate targets remain constant."

13 And what are they referring to as the new
14 graduation rate student group requirements?

15 A. So right above that sentence there's the
16 statement that, "There are federal requirements for 2012
17 that cannot be amended, such as:" it refers to the
18 performance standards in the second line, "2012 AYP
19 graduation evaluations of all students and every student
20 group."

21 Q. Yeah. And what are those graduation rates,
22 though?

23 A. So the change for 2012 that this is talking
24 about, that's the -- actually the question that's being
25 asked at the top: "What has changed for 2012 AYP

1 evaluations?"

2 The change is that for the first time, as
3 required by the federal regulations, all states have to
4 not only look at the all students group for the
5 graduation rate, but -- but each student group.

6 Q. Okay. And so before this change was made, how
7 did AYP look at graduation rates?

8 A. Yeah. Okay. So prior to this year, for
9 example, 2011, to meet the standard for the graduation
10 rate in AYP, the campus or district could meet the
11 graduation rate target of 75 percent or show an
12 improvement from the prior year of 1.0 percentage points
13 or more, or made enough progress to be on track to meet
14 the graduation rate goal of 90 percent, or be -- if
15 evaluated on the five year graduation rate, meet a
16 target of 80 percent.

17 Q. Okay. I'm going to hand you this just in case
18 you maybe need to reference it. I think you did a great
19 job of outlining the requirements there, but I'm going
20 to hand you what we're going to mark as Exhibit 77.

21 (Exhibit No. 77 marked)

22 Q. (BY MR. HINOJOSA) Do you recognize what
23 Exhibit 77 is?

24 A. Yes.

25 Q. And this is a true copy of the State and

1 Federal Accountability Update PowerPoint created by
2 yourself and Esther Regalado on June 14th, 2012?

3 A. Yes.

4 Q. Okay. Going back to Exhibit 76. In that last
5 sentence it also says, "Texas will request the AYP
6 graduation rate targets to remain constant."

7 And what was the reason that Texas is
8 expected to request the AYP graduation rate to remain
9 constant?

10 A. The reason the request was made and submitted
11 to the USDE was, the addition of the student groups in
12 2012 that had not been required to be evaluated in prior
13 years represented another increase in the rigor of the
14 federal accountability system.

15 Q. And why --

16 A. So we were --

17 Q. Sorry.

18 A. So we were requesting that the USDE not also
19 require that the targets that have been required in the
20 past that I referred to earlier, which are on the
21 PowerPoint you just handed out in Exhibit 77 on slide
22 10, that we hold those constant and not increment, for
23 example, the four-year annual graduation target of
24 75 percent we asked to not change.

25 Q. And what would be the likely result if you had

1 not asked for the graduation rates to be -- to remain
2 constant?

3 A. The U.S. Department of Education would have
4 clarified what is the -- to answer the question, for
5 each year, each state has to submit a workbook to the
6 USDE for review and approval. And that includes a
7 description of each component of the AYP system that's
8 going to be evaluated in that year.

9 For the graduation rate, you have to
10 specify what's your target for that year. The reference
11 you're making to Exhibit -- Exhibit 76 is saying, in our
12 proposal, it was submitted we did not change the target
13 of 75 percent that we've asked for and have been
14 approved to use in the past.

15 Q. And the 75 percent ordinarily would have to be
16 increased above 75 percent. That's the change that
17 you're referring to. Correct?

18 A. Yes. Yes. Thank you.

19 Q. And what would have been the likely outcome if
20 Texas had not requested that the constant -- that the
21 graduation rate remain constant, as far as being able to
22 meet AYP for both the state and school districts?

23 MS. DAHLBERG: Objection. Form.

24 A. The outcome would have been there would -- it
25 would have been more difficult for a campus or a

1 district or the state to meet the graduation rate
2 indicator for AYP if the standard was increased.

3 Q. (BY MR. HINOJOSA) Okay. And before 2012, had
4 the graduation rate targets -- did those apply to
5 individual student groups?

6 A. No, they did not.

7 Q. And by the individual student groups that are
8 suggested under AYP, what groups are those?

9 A. There's seven total. So in addition to all
10 students there's African-American, Hispanic, white,
11 economically disadvantaged, limited English proficient,
12 and special education.

13 Q. And you're familiar with the groups that are
14 analyzed as disaggregated groups for state
15 accountability purposes. Correct?

16 A. Yes.

17 Q. And I'm just talking about the ratings. And
18 how do those groups under AYP compare to the groups that
19 are evaluated under the state accountability rating
20 system?

21 A. Well, to compare to the groups that were
22 evaluated in the previous accountability system, which
23 no longer exists, it was the same groups except the
24 special-ed group and the limited English proficient
25 group, LEP, were not included as a separate student

1 group evaluated in the state accountability system.

2 Q. And I was looking at the framework in other
3 documents that you looked at with Mr. Turner regarding
4 the developing state accountability system, but I did
5 not see any reference to the evaluation of LEP students
6 as a disaggregated group even under the performance
7 index. Is that accurate? Would you agree?

8 (Witness reviews document)

9 A. The document we reviewed earlier that is
10 Exhibit 74, that's the workgroup proposal?

11 Q. (BY MR. HINOJOSA) Yes.

12 A. The purpose of that document is to outline the
13 framework of the accountability system and the potential
14 indicators that will be used. There is a separate
15 document that was -- that was reviewed and discussed
16 with the technical advisor committee at the same meeting
17 in May 2012 that focused on student groups and the
18 issues and options to be considered for the new -- for
19 the new system, and there was a discussion for the
20 race/ethnicity student groups, limited English
21 proficient, and special education specifically for
22 English language learners as we've looked at in an
23 earlier PowerPoint.

24 There's workgroups that have been assigned
25 with -- tasked with specific tasks related to the new

1 development. We talked about the end-of-course
2 workgroup, there was a specific workgroup that's tasked
3 with reviewing the -- all issues and topics related to
4 English language learners and how -- how they are to be
5 appropriately evaluated under the new accountability
6 system.

7 Q. So as it sits right now, and as you understand
8 the system, is there an actual proposal that exists
9 where the performance of LEP students as a disaggregated
10 group will be evaluated under the new accountability
11 rating system?

12 A. That is under development.

13 Q. But is there an actual proposal that I can look
14 at, and that maybe you can identify for me here today,
15 where it is being proposed that LEP students be
16 evaluated as a disaggregated group for accountability?

17 A. There's the document that's available online
18 from the May 30 ATAC that talks about the options and
19 possibilities for -- for each of the student groups in
20 the new system, so yes.

21 Q. Are you aware of LEP students ever being
22 evaluated under the state accountability rating system
23 as a disaggregated group?

24 A. Yes.

25 Q. Under which system was that?

A. In 2011 there was the ELL progress measure that was added as an additional indicator in the last year of the rating system that has a specific set of criteria that had to be met in order for a campus or district to be rated recognized or exemplary.

Q. Would evaluating the ELL progress measure cause a district at a certain performance level to be rated academically unacceptable?

A. No.

Q. It was only for recognized or exemplary status. Correct?

A. Correct.

Q. And is there minimum size requirement for the ELL progress measure?

A. There was.

Q. And what was that minimum size requirement?

A. Without the accountability manual for that year in front of me, it's -- I don't want to go from memory.

Q. Do you know if it was more than 50 or less than 50?

A. Less than 50.

Q. More than 30?

A. We could -- we could refer to that manual. My recollection is it was 30, actually.

Q. Okay.

A. But I would want to defer to the...

Q. No. And I understand that. I appreciate that.

And the minimum size of 30 for the other groups and other purposes in the state accountability rating system as it most recently existed, was that minimum size of 30?

A. The -- it depends on the indicator you're referring to. There's completion rates that were evaluated, dropout rates. But for the assessment program in general, the minimum size criteria were -- it's kind of twofold. 30, and at least 10 percent of all students evaluated, or 50.

So, in other words, the campus that had 31 students evaluated in a student group, but that group was less than 10 percent of all students on that campus, that group was not evaluated. But if that number was 50 or higher, the student group was evaluated.

Q. And the minimum -- the minimum size requirements, can you just briefly describe what is intended by the minimum size requirements?

A. Yes. It's -- it's one of the technicalities of an evaluation -- an evaluation system you want to consider so that you basically produce a valid and reliable outcome for a campus and not base it on a sample or a group of students that, as an example, could

be not representative of the campus.

So a campus that has five students in a student group evaluated in a rating system that -- that those five would not likely be representative of overall campus performance, so the decision of what the minimum size criteria are weigh the need to evaluate all students as -- as individual student groups, versus creating a label that's reliable and valid over time, and recognize that even students -- even though students may not be evaluated separately under student groups that don't meet minimum size, they're always included in the all students category.

Q. And one of the problems with including students below a certain threshold in the all student category, is that perhaps their underperformance may be masked by the over -- or the performance of other student groups. Correct?

MS. DAHLBERG: Objection. Form.

Q. (BY MR. HINOJOSA) That's a potential problem. Correct?

MS. DAHLBERG: Objection. Form.

A. All students need to be evaluated so that you include all the results that you have for the campus. And student groups give you the additional evaluation for a specific set of students. And so, by definition,

all students that are included on the campus represent students that -- that comprise all the demographic groups of that campus.

Q. (BY MR. HINOJOSA) But TEA recognizes that the reason why you want to look at disaggregated groups is to make sure certain groups are not falling through the cracks. Correct?

A. Correct.

Q. And so, for example, you could have a campus with 40 ELL students out of a total campus size of 200 who are actually testing, for example, on the reading test, and all 40 of those students fail -- well, let's -- let me drop back, because that cuts against the minimum size requirement.

If there's 25 students on -- ELL students on a given campus, and all 25 of those students fail, but 75 other students on campus who take the reading test pass, that would show 75 percent passing for meeting minimum standard on TAKS. And the state accountability rating system would -- at least with respect to that one particular subject area being tested, would show that that -- that that campus met the minimum standard for academically acceptable. Correct?

MS. DAHLBERG: Objection. Form.

A. In that scenario, mathematically that would be

1 correct.

2 Q. (BY MR. HINOJOSA) All right. And the TEA --
3 does TEA believe that a minimum size criteria of 25
4 would not be valid and reliable?

5 A. Again, part of the --

6 MS. DAHLBERG: Objection. Form.

7 A. Part of the new system development is reviewing
8 the criteria that's been used in the past and evaluating
9 what -- what criteria would be appropriate. So whether
10 it's 20, 25, 30, 50, whatever the number, that's the --
11 that's under discussion.

12 Q. (BY MR. HINOJOSA) But you're familiar with the
13 minimum size criteria of 30, for example, developed by
14 TEA. Correct?

15 A. Yes.

16 Q. And did TEA when developing the minimum size
17 criteria of 30 consider a minimum size criteria of 25 or
18 20?

19 A. My understanding is the minimum size criteria
20 were initially developed when the first rating system
21 was designed in 1994. And it might have been reviewed
22 when the new system was implemented in 2004. That's --
23 that was prior to my involvement in the rating systems.
24 So I believe, without direct knowledge, the answer is
25 yes. Whenever they looked at minimum size they would

1 look at different scenarios and look at the outcome
2 based on those.

3 Q. I wasn't sure about your answer. Did you say
4 that you don't have direct knowledge but you believe,
5 for some reason, that TEA did look at this class size of
6 25 or 20?

7 A. The minimum size criteria had to be set when
8 the first system was implemented in 1994. So I was
9 trying to respond. My assumption is that analysis of
10 what those minimum sizes were at that point looked at
11 more than just one set of numbers, 30 and 50. That's my
12 assumption, but I was not involved in that development.

13 Q. Okay. That's fine. And are you aware of any
14 documentation or data or other evidence that TEA has in
15 disproving that the minimum class size of 20 or 25 would
16 not be appropriate for state accountability rating
17 purposes?

18 A. I'm not aware of any analyses that look
19 specifically at 20 or 25.

20 Q. Going back to Exhibit 76 on AYP. I'll try to
21 stay on AYP.

22 A. Okay.

23 Q. I'm looking at page 2. And the last paragraph
24 of question number 2 here begins, "A very small number
25 of Texas students in grades 8 and below may be enrolled

1 in a high school course other than English I, Reading
2 and Algebra I. End-of-course assessments for the
3 students include English III Reading, Geometry, and
4 Algebra II with performance standards measured at the
5 STAAR phase-in standard as required for graduation."

6 It goes on, "Texas will include each of
7 these assessments in the evaluation of AYP reading or
8 mathematic results for students in grades 8 and below.
9 Note that it was not possible to establish a TAKS
10 equivalency standard for these assessments since there
11 was not sufficient content alignment or overlap with a
12 corresponding TAKS high school assessment."

13 And I have a question about that last
14 sentence there. What is meant by the statement that
15 there was not sufficient content alignment or overlap
16 with the corresponding TAKS high school assessment?

17 A. First on that question, you're reading
18 through -- I think you said for the students include
19 "English III Reading," it actually says "English II
20 Reading."

21 Q. Oh, I'm sorry. Yes. You're right.

22 A. So English II Reading, Geometry, and Algebra II
23 do not have sufficient content alignment or overlap with
24 the TAKS high school assessment that has been -- that
25 currently -- that previously existed for high school.

1 Q. What is meant by that? Does that mean that the
2 STAAR covered content above and beyond what that was
3 covered on the TAKS high school assessment?

4 A. I think it means exactly as written that, for
5 example, Algebra II -- the Algebra II end-of-course
6 assessment for STAAR, there was not a grade 10 -- what
7 you have as choices is grade 9 mathematics, grade 10
8 mathematics, or grade 11 mathematics as an assessment
9 that you might try to align the two to see if -- if
10 there is an equivalency that can be determined between
11 those two assessments. And that statement is saying
12 there was not one for those three subject areas.

13 Q. And I understand. Do you know whether or not
14 the problem was that -- or one of the problems might
15 have been that there was content that was tested on, for
16 example, the Algebra II exam that just was not tested on
17 TAKS grade 10, TAKS grade 11 math?

18 MS. DAHLBERG: Objection. Form.

19 A. Well, the over -- the content of the specific
20 assessments Algebra II versus TAKS grade 10 math, grade
21 11, I would defer to the assessment staff who build
22 those assessments; but as a general response, yes.
23 There was -- again, as stated here, the words are "not
24 sufficient content alignment or overlap," and maybe --
25 it may be possible that the grade 11 TAKS math test has

1 algebra questions on it, but not a sufficient number
2 that would give you the ability to say that there is
3 enough overlap with an end-of-course assessment that is
4 only focused on Algebra II instruction.

5 Q. (BY MR. HINOJOSA) Okay. Going to the next
6 page, question 4 of Exhibit 76. What -- what does this
7 chart tell us?

8 A. So the question is asking what are the
9 assessment and performance standards for the '11-'12 AYP
10 elevations. And the first column shows for the enrolled
11 grade 3 through 8 and separately for grade 10, all
12 assessments that are given to Texas public schools and
13 what standard is planned to be evaluated for 2012 AYP.

14 Q. And so if we go to the right-hand column,
15 "Performance Standard Plan for AYP Calculations," for
16 grades 3 through 8, it has a STAAR assessment there in
17 the left-hand column, and then it will say "Bridge to
18 TAKS Met Standard" in the right-hand column for the
19 first three. Correct?

20 A. No. The first row says, Bridge to the TAKS Met
21 Standard, the second row says Bridge to the TAKS-M Met
22 Standard, and the third row says Bridge to the TAKS-Alt
23 Met Standard.

24 Q. And those were bridged to the corresponding
25 STAAR test. Correct? Modified to modified, alternate

1 to alternate.

2 A. Yes; which is significant.

3 Q. When we get to STAAR modified end-of-course
4 English I Reading and Algebra I, first can you explain
5 what the STAAR modified end-of-course English I Reading
6 and Algebra I would be?

7 A. Again the assessments that are built for the
8 STAAR testing program, I'll defer to the specialists in
9 the student assessment division, but for -- in general,
10 for each of the end-of-course assessments that are built
11 under STAAR, there are forms developed specifically for
12 students served -- served with special education
13 services that are defined as STAAR modified, and there's
14 a STAAR alternate test form.

15 Q. Okay. And so do you know what happened, why
16 there was no standard available performance results not
17 included in AYP as it's stated there?

18 A. I'll defer to the assessment staff in terms of
19 the timelines for the standard-setting process that's
20 still ongoing for the STAAR program, but from my memory,
21 the STAAR modified EOC results -- STAAR modified
22 standards for end-of-course assessments are still to be
23 set later this fall.

24 Q. So for at least for these -- well, let me ask
25 you, just for the record, on the STAAR modified

1 end-of-course English II Reading and Geometry
2 assessment, the performance standard indicates that it's
3 not operational/results not included in AYP?

4 A. Right.

5 Q. And what is meant by not operational results?

6 A. Again, I will defer to the assessment staff.
7 My understanding is the STAAR modified form for
8 end-of-course English II and Geometry was not
9 administered in spring 2012. It's -- there is a
10 phase-in of that assessment still to come. But I would
11 defer -- I would defer to the assessment staff to what
12 that phase-in schedule is.

13 Q. So it's fair to say that the students who
14 tested at least on those exams during this past year
15 would not be included in the AYP results that are
16 released on August 8. Correct? As far as their
17 performance is concerned, not their participation.

18 A. To the extent that there's -- in grades 3
19 through 8, the student who is receiving special
20 education services and enrolled in a high school course
21 that is English II or Geometry, those students would not
22 be in AYP.

23 Q. And their -- the performance of those students
24 also taking the STAAR modified end-of-course English I
25 Reading and Algebra I would also not be included.

1 Correct?

2 A. No. That's not correct.

3 Q. Their performance?

4 A. Their performance would not be included but
5 they would be counted and credited for participating.

6 Q. All right. And these are all the grade levels
7 that are assessed under AYP. Correct?

8 A. Yes.

9 Q. And it's only -- math and reading are the
10 subjects. Correct?

11 A. For grade 10 it's English Language Arts.

12 Q. All right. Aside from grade 10 English
13 Language Arts and grade 3 to 8 math and reading, those
14 are the only subjects tested or evaluated under AYP.

15 Correct?

16 A. That's correct.

17 Q. And there's not grades K through 2. Correct?

18 A. Correct.

19 Q. Or grade 9, 11, or 12. Correct?

20 A. Correct.

21 Q. And even within these assessments and when AYP
22 considered, there's minimum size requirements as well
23 under AYP. Correct?

24 A. Yes.

25 Q. And those minimum size requirements differ from

1 the minimum size requirements under the state
2 accountability rating system. Correct?

3 A. Yes.

4 Q. Are the minimum size requirements under AYP
5 mandated by the state or are they a minimum? For
6 example, you know, if the minimum size requirement is
7 50, can the state actually choose to go lower than that
8 or do they have to have students evaluated at a minimum
9 size of 50?

10 A. Well, as referenced earlier, the AYP
11 evaluations are based on the review and approval of the
12 workbook that's submitted annually to the USDE. So the
13 Texas workbook addressed what the minimum size criteria
14 are for Texas, and that's reviewed annually by the USDE
15 and approved by them. And so...

16 Q. So are you saying that the minimum size
17 requirements -- and let me just get this straight.

18 The minimum size requirements as far as
19 assessments are concerned is -- is what?

20 A. Again, the AYP guide for -- our AYP evaluations
21 has that detail. From memory, the criteria are
22 50 students -- 50 percent and 10 percent of the -- all
23 students, or if you have 200 or more, that group's
24 evaluated.

25 Q. Is this the guide that you're referring to?

1 A. 20 -- 2012 AYP guide, yes.

2 MR. HINOJOSA: Okay. I'm going to go
3 ahead and mark this the next exhibit, Exhibit 78.

4 (Exhibit No. 78 marked)

5 Q. (BY MR. HINOJOSA) Sir, I've handed you what's
6 been marked as Exhibit 78. And this is titled
7 "Section II: System Overview, The 2012 Adequate Yearly
8 Progress Guide."

9 Do you recognize this document, Exhibit
10 78, as being the same?

11 A. Yes.

12 Q. Can you locate the section where the minimum
13 size requirements are discussed for AYP purposes?

14 A. Yes. So on page 35, there is the criteria for
15 minimum size. Keep in mind there is a participation
16 requirement for AYP and -- and you've been asked a few
17 questions about performance. So page 35 is the
18 participation minimum size, and performance -- give me
19 one second.

20 I've found for the graduation rate
21 indicator, the minimum size are on page 55 and 56. And
22 still one second for the performance.

23 Q. How about maybe page 49?

24 A. That sounds right. Yes. Thank you.

25 Page 48 and 49 have those requirement

1 criteria.

2 Q. All right. And for the LEP student group, if
3 we look at page 49, it says "The minimum size is
4 elevated based on students currently assigned LEP in
5 2011-2012. If the LEP student group meets the minimum
6 size requirement based on current year identification,
7 the performance evaluated will include students who were
8 identified as LEP in the prior two years as described."

9 Correct?

10 A. That's correct.

11 Q. And what is meant by this paragraph here?

12 A. Well, it may help, the third paragraph lists
13 how students are coded as either, a currently identified
14 LEP student, and when it says "coded," it's talking
15 about identified on the assessment document. There's --
16 there's only three categories -- or actually four.
17 There's only four categories they can be identified.
18 That third paragraph says, as either currently
19 identified LEP student, that's a code of C; or students
20 that have met the criteria for bilingual/ESL program
21 exit, and is no longer classified as LEP in PEIMS and in
22 the first or second year of monitoring as required by
23 statute.

24 M1, which is first year of monitoring or
25 M2, second year of monitoring. Again, this is after

1 they're no longer identified as currently LEP. Those
2 are the three codes that are evaluated -- that are used
3 to evaluate the LEP student group if the current LEP
4 count meets the minimum size criteria.

5 Q. All right. So the LEP students for AYP
6 purposes include students who have exited the program.
7 Correct?

8 A. Yes.

9 Q. Within their first or second year.

10 A. Yes. That's right.

11 Q. And then for all the student groups -- and when
12 you mentioned these earlier with respect to AYP
13 performance calculations, the minimum size is 50 or more
14 students in the test group for the subject and the
15 student group must comprise at least 10 percent of all
16 test takers in the subject. Correct?

17 A. Yes.

18 Q. Or where the test results of 200 or more
19 students in the student group, even if that group
20 represents less than 10 percent of all test takers in
21 the subject. Is that correct?

22 A. Yes.

23 Q. Now, is it your testimony that TEA itself
24 proposed these minimum size requirements?

25 A. Yes.

1 Q. So it could have went down to 30 or could have
2 suggested the same minimum size requirements for the
3 state accountability system. Correct?

4 A. It could have. Correct.

5 Q. And these are different. Correct?

6 A. Yes.

7 Q. And can you tell me the reason why TEA chose to
8 have different minimum size requirements under AYP as
9 opposed to the state accountability rating system?

10 A. I believe there were a number of factors that
11 were considered, and the workbook that's posted online
12 that's -- again, as I mentioned earlier, submitted to
13 the USDE for approval includes some of the rationale for
14 that -- for that criteria.

15 Q. But does it explain how or what the difference
16 is between the 30 minimum size criteria used under the
17 state accountability rating system compared to the 50
18 proposed to the federal government?

19 A. Yeah, I -- yes. I don't believe it has a
20 contrast -- a comparison to the criteria used in the
21 separate evaluation system, it's based on the rationale
22 that was developed for the workbook that was submitted,
23 I believe in -- for the first time in 2003. And then
24 again, that was work that was done before I was part of
25 the performance reporting division.

1 But, in general, to summarize, one of the
2 rationale is, there were more groups evaluated in the
3 federal system when it was required, and that -- in 2003
4 than the state system. So the additional groups that --
5 for evaluating AYP, there was discussion and the
6 decision to require a little higher minimum size
7 criteria.

8 Q. Do you know what percentage of LEP students
9 statewide are not considered under AYP because they
10 don't meet the minimum size criteria at given campuses
11 or school districts?

12 A. Keep in mind, all LEP students are included in
13 AYP as part of the all student's group.

14 Q. Yeah. And I'm just talking about as a
15 disaggregated group, LEP students. Do you know either
16 the number or the approximate percentage of LEP students
17 that are not considered as a disaggregated group at a
18 given campus -- or at campuses or at the district level
19 across the state?

20 A. I do not know from memory and I'm not sure if
21 there's -- what analysis have been done on that specific
22 question, but there may be some data that we've looked
23 at in the past on that question.

24 Q. How about with respect to any of the
25 disaggregated groups for AYP purposes? Are you aware of

1 any analysis that's been done that have shown the
2 effects of this minimum size criteria on whether or not
3 those disaggregated groups are not evaluated under AYP
4 as a disaggregated group?

5 A. From memory again, it is possible that the
6 workbook itself has some data that has some of that
7 information as part of the proposal that's -- that was
8 made to the USDE, and that might be a -- that might be a
9 reference that could be looked at for that question.

10 But I'm not aware of anything recently that's been done
11 to look at it, for any student group evaluated what
12 percent of kids are not included in AYP.

13 Q. What's the name of the workbook?

14 A. The -- well, there's a -- there's a new
15 workbook submitted every year. It's the Consolidated
16 State Accountability Workbook, and it's on the AYP web
17 site. And it's posted after they've been given their
18 approval for the current year evaluation.

19 Q. Do you know how many students in school
20 districts in the State of Texas are excepted from AYP?
21 How many students fall outside being evaluated whether
22 it's under the all student group or other?

23 A. How do you mean excepted or fall out?

24 Q. Well, you know, for instance, the total number
25 of students in grade K through 2, and the students in

1 grade 9 that aren't tested. There's a number of other
2 students, perhaps, you know, at a campus that doesn't
3 have 50 students testing in a given subject.

4 A. But, again, the 50 criteria only apply to the
5 student groups. All students are included in the all
6 students group, so there's not students left out of AYP
7 simply because they're not evaluated in one of the six
8 student groups.

9 Q. But if -- is there not a minimum size
10 requirement for AYP purposes for even a district-wide?

11 A. No. Not for all students. The minimum size
12 requirements are the student groups.

13 Q. All right. So do you know how many students
14 fall outside of the state accountability rating system?

15 A. There is a -- a section of the AEIS report that
16 has data that indicate the participation rates on the
17 state accountability system. So that information is
18 provided for every campus, district, region, and state
19 each year.

20 Q. Okay. Do you know the approximate percentage,
21 whether it's, you know, 25 percent across the state or
22 more?

23 A. I hesitate going from memory, since there's a
24 lot of numbers on those -- on those reports, so I'd
25 refer you to that. I don't -- I don't want to go

1 from -- memory, but -- I'll stop -- I'll stop there.

2 Q. Okay. That's fine.

3 Do you know what percentage of students
4 in -- are excepted under AYP in the State of Texas?

5 A. There are participation -- what we refer to
6 participation data tables also on the AYP web site that
7 disaggregate -- that show the disaggregation for all
8 students, African-American, Hispanic, all seven groups
9 in terms of the number of students enrolled and the
10 number of students who submitted an assessment document.
11 So you can see that breakout for the participation
12 indicator.

13 Q. Let's go to page 15 of the Exhibit 78. And
14 here it talks about certain campuses that are an
15 exception to AYP. Correct?

16 A. Page 15 describes how districts and campuses
17 are -- which districts and campuses are evaluated.

18 Q. And which are not evaluated?

19 A. Yes.

20 Q. And so this group which would include new
21 campuses, campuses that close midyear, JJAEPs and
22 DAEPs, with the particular qualifier there, are
23 examples of campuses that would not be subjected to AYP.
24 Correct?

25 A. Yes.

1 details about that.

2 Q. Okay. Thank you.

3 The -- the performance of students that
4 have not been enrolled for a full academic year is also
5 not considered for AYP purposes. Is that correct?

6 A. Similar to state accountability. If a student
7 is mobile, if you will, between the fall PEIMS snapshot
8 date and the date of testing, the school is not held
9 accountable for the ratings evaluation for that student
10 who has changed campuses. That's true for both state
11 and federal.

12 Q. And the PEIMS snapshot date that you spoke of,
13 what date is that?

14 A. Typically it's the last Friday of October each
15 year.

16 Q. Is that also considered a peak enrollment
17 period of time at TEA? Are you aware?

18 MS. DAHLBERG: Objection. Form.

19 A. I've never referred to it that way.

20 Q. (BY MR. HINOJOSA) Okay. But it's not your
21 understanding that that would be a peak enrollment
22 period of time?

23 A. I wouldn't know.

24 Q. Okay. That's fine. Now, has TEA looked at the
25 demographics of students who are mobile and would not --

1 Q. And do you know what students are excepted from
2 testing under the -- under AYP?

3 A. Give me a little more specific example of what
4 you're asking.

5 Q. Well, for example, are new immigrant ELL
6 students within their first year in a U.S. school tested
7 under AYP?

8 A. There's a discussion about the inclusion of
9 recently arrived unschooled immigrants in the AYP guide
10 that we can refer to.

11 Q. Let's go to page 27 of Exhibit 28 -- 78 -- I'm
12 sorry. And there's a table there titled, "Grades 3
13 through 8 Reading and Mathematics Assessments."

14 A. Well, the -- the first -- the pages I was
15 alluding to are on page 22 and 33 and 34 in terms of how
16 students who are recent immigrant English language
17 learners are included or not included in AYP.

18 Q. Okay. And I was just going to refer you to on
19 page 27, a little footnote there below the table that
20 says "Students in their first year in U.S. schools who
21 are tested on any of the tests listed above are counted
22 as participants, but excluded from the performance
23 calculation." Correct?

24 A. That is correct. And that's Exhibit 3 and
25 Exhibit 4. That's on the pages I referred to give the

1 and whose performance would not be evaluated under AYP
2 or under the state accountability rating system?

3 A. That information is reported on the AIS reports
4 that I referred to earlier. There's data that looks at
5 participation in the state accountability system, as I
6 said, aggregated for every campus, district, region, and
7 state.

8 Q. Does it break out the reasons, though, why
9 certain students might not be subjected to the rating
10 system?

11 A. Yes. The question you're asking at this point
12 was about the students who were mobile between the
13 snapshot date in the fall and spring. And yes, there's
14 a row of information for each student group that's
15 reported that shows what percent of kids are mobile
16 between those two points in time.

17 Q. Okay. Going to Exhibit 77 -- well, let me ask
18 you one question about Exhibit 78.

19 On Exhibit 78, are there any inaccuracies
20 or misrepresentations that you're aware of?

21 A. Not that I'm aware of.

22 Q. And on Exhibit 77, are there any inaccuracies
23 or misrepresentations that are made on this document?

24 MS. DAHLBERG: Objection. Form.

25 A. Not that I'm aware of.

1 Q. (BY MR. HINOJOSA) And is this the most recent
2 iteration of Exhibit 77?

3 A. Yes.

4 Q. Under the new graduation indicator for AYP,
5 Texas is now going to a five-year graduation rate. Is
6 that correct?

7 A. No.

8 Q. Well, can you tell me if -- if the State of
9 Texas is using a five-year graduation rate for any
10 purpose?

11 A. Yes. The five-year graduation rate has been
12 part of the AYP evaluation, I believe, since 2009.

13 Q. Okay. And before 2009, it was a four-year
14 graduation rate?

15 A. Correct.

16 Q. All right. And what was the result of moving
17 from a four-year graduation rate to a five-year
18 graduation rate?

19 A. Well, to clarify, there's not moving to one
20 rate versus the other, it's adding the five-year rate as
21 an additional indicator that could be in addition to the
22 four-year rate. So the target, as we discussed earlier,
23 for the four-year rate, 75 percent, we're holding it
24 constant, and the target for the five-year rate is
25 80 percent. And if you miss one and meet it on the

1 other, you meet AYP.

2 Q. And has there been any analysis in order to
3 determine how, perhaps, school districts and/or campuses
4 have benefited from the inclusion of the five-year
5 graduation rate?

6 A. Yes.

7 Q. And what has that analysis resulted in?

8 A. Again, that's an example of we have the data
9 and it's posted online, and I can refer you to it, but
10 I'm not going to try to recollect from memory the
11 differences in it -- in the four-year rate and the
12 five-year rate. But there is a summary of the AYP
13 results for 2011 that's online that has a specific table
14 that addresses that question.

15 Q. All right. But would you say, just
16 generally -- I don't need any specific data. Would you
17 say generally that -- that more school districts and
18 campuses have been able to meet AYP as a result of the
19 inclusion of the five-year dropout rate on top of the
20 four-year dropout-- graduation rate -- sorry.

21 A. By design the answer is yes, because it only
22 can help you.

23 Q. I think Mr. Turner was going over with you some
24 of the AYP results from 2010 and perhaps 2011.

25 (Exhibit No. 79 marked)

1 Q. (BY MR. HINOJOSA) I'm going to hand you what
2 we're going to mark as Exhibit 79. Exhibit 79 is titled
3 "Summary of Final 2011 AYP Results."

4 Do you recognize Exhibit 79 as being a
5 true copy of the same?

6 A. Yes.

7 Q. And this is dated December 9, 2011. Are you
8 aware of any changes or adjustments that have been made
9 to these results since that time?

10 A. There have been no changes or adjustments.

11 Q. Would you agree that overall there were fewer
12 school districts and campuses that met AYP in the year,
13 2011, compared to the year 2010?

14 A. Well, the -- on the bottom of page 1 on the
15 Exhibit 79, there's that comparison. And fewer district
16 campuses met AYP in 2011 compared to 2010 as that data
17 showed.

18 Q. And it looks like there was a pretty
19 significant drop between 2011 and 2010. Would you
20 agree?

21 MS. DAHLBERG: Objection. Form.

22 A. There's -- there is a difference of 353
23 districts that did not meet AYP in 2011 compared to
24 2010. And there's a difference of 1822 campuses between
25 those two years.

1 Q. (BY MR. HINOJOSA) So does TEA normally monitor
2 the number and percentages of districts and campuses
3 meeting AYP?

4 A. Yes.

5 Q. And that's -- and had TEA predicted this drop
6 between 2010 and 2011?

7 A. I can't recollect if we had analyses available
8 to us that would have given us a potential impact,
9 because we -- we always know that the assessments given
10 each year are going to result in different performance
11 outcomes. So you have to anticipate what that change in
12 performance is if you want to have a reasonable guess as
13 to what it would be.

14 Q. Well, you had the same assessments from 2010 to
15 2011, didn't you?

16 A. Yes. I believe they were --

17 Q. For AYP purposes.

18 A. I believe they were -- there was no change in
19 assessments.

20 Q. And, I mean, it just looks like going from
21 78 percent of districts in 2010 meeting AYP to 51 or
22 50 percent meeting AYP in 2011, would you not say that
23 that's a significant drop?

24 MS. DAHLBERG: Objection. Form.

25 A. It's a -- it's a large drop from the prior

1 year. And there's analyses that show for every year
2 AYP's been evaluated in Texas since 2003 these same
3 numbers, so it's not difficult to see the relative
4 changes across time for each of the years.

5 Q. (BY MR. HINOJOSA) So are you saying that we
6 could look back -- well, between 2009 and 2010, do you
7 know whether or not there was an increase in the number
8 of districts and campuses meeting AYP compared to 2009?

9 A. Again, I -- I don't want to go from memory, but
10 the data that's online show the results for all years
11 evaluated, 2003 through 2011. And we can -- we can pull
12 that data and look at it and see, but I can't go from
13 memory on what that change was.

14 Q. So does -- do the 2011 AYP results -- does that
15 fall under your purview?

16 A. Yes.

17 Q. And so you're telling me here today that you
18 don't -- that you're not familiar -- and, once again,
19 I'm not asking you about, you know, any exact results or
20 the data, but just your general impressions and opinions
21 about how districts and campuses met AYP from the year
22 2009 to the 2010 school year.

23 A. All I'm saying is, I can't recall from memory
24 the numbers that were released three years ago, but we
25 have the data available. We can look at those data and

1 do those analyses.

2 Q. Did TEA analyze the potential result of -- of
3 access to resources by school districts and any
4 relationship it might have to the AYP result?

5 MS. DAHLBERG: Objection. Form.

6 A. For the area I'm responsible for, the
7 performance that we have to meet are meeting federal
8 requirements to have a workbook approved by the USDE
9 that define what the evaluations are for 2000 -- for any
10 of the year of the ratings, and that's -- that's a
11 process that's done every year. And so what we do to
12 meet the federal requirements are what's provided in
13 that workbook.

14 Q. (BY MR. HINOJOSA) All right. But do you even
15 look at the revenue per WADA, for example, for given
16 school districts in the State of Texas?

17 A. That's an example of information that's not
18 required to be considered in that workbook that's
19 submitted to the USDE.

20 Q. So when your answer is you do not look at that.

21 A. Correct.

22 Q. All right. And in setting the standards under
23 the state accountability rating system and AYP, you
24 don't consider the level of resources, school funding,
25 available to any given school district. Correct?

1 A. No.

2 Q. That's not correct?

3 A. The...

4 Q. And I'm talking about the rating system, not
5 what's reported in the AIES system because I know it
6 reports a lot of information, but as far as --

7 Let me break this down. For AYP purposes,
8 you said that you don't consider the level of resources
9 that school districts get in submitting the workbook to
10 the U.S. Department of Education. Correct?

11 A. Correct.

12 Q. And in setting the parameters for the state
13 accountability rating system, as it most recently
14 existed, did the state consider the level of resources
15 available to school districts in setting the rating
16 system?

17 A. So the process to set standards for the state
18 system is quite different from the federal
19 accountability system. The state accountability system,
20 as we've alluded to, since the initial stages of
21 developing the current accountability system, the one
22 that just ended, was based on input from advisory
23 committees similar to those that are being formed now
24 that looked at the new -- the statutory requirements,
25 the new assessment, and that -- at that time, TAKS; and

1 made recommendations to the commissioner on what the
2 accountability standards should be.

3 And part of their deliberation of what
4 those standards are do take into account the number of
5 factors that want -- that need to be considered in an
6 evaluation system: student population, student
7 demographics of -- of schools, changing populations of
8 Texas public school students, funding issues. That's
9 the role of the advisory group is to -- is to provide
10 their input on the appropriate standards for the
11 evaluation system. And that's what they do -- that's
12 what they have done each year of the current system.

13 Q. Are you aware specifically of any consideration
14 of level of funding that school districts have available
15 to them in these advisory committees setting the
16 standards?

17 I'm wondering if you can point me to, for
18 example, any specific documents that discuss the level
19 of resources available to school districts.

20 A. Again, the committees make the recommendations.
21 And part of their deliberations, when they are convened,
22 address their concerns with any number of facets of
23 public school challenges and that's -- that's -- that's
24 why they are convened to provide their input.

25 The...

1 Q. And, if you can -- you know, maybe I'm asking
2 this a little differently than I should.

3 I'm just wondering if you can point me to
4 any specific information detailing level of funding for
5 school districts that they have available in these
6 committees' considerations of -- that they take into
7 account in rating schools.

8 A. Well, they have the information that's provided
9 to them from the school finance division, and it's also
10 reported on the AIS reports annually at their campus and
11 district levels. Again, that's part of the information
12 they have and bring to the table when they're convened
13 to advise on the accountability system.

14 As part of our review of the system and
15 the standards that are proposed, that's not analyses
16 that we provide to them as part of their consideration.
17 But as educators coming to the table to provide input,
18 that's part of their conversation and discussion of the
19 things that they feel should be considered whenever
20 there's a recommendation to be made on an accountability
21 standard.

22 Q. Are you aware of any study analyzing the cost
23 that it would take for school districts to meet any
24 given rating of the state accountability system?

25 A. I'm not aware personally of any study that

1 would be under our purview.

2 Q. Are you aware of any study or analysis
3 that would -- that the committees and/or TEA has taken
4 into account in publishing the rating system for the
5 cost of any disaggregated groups in achieving the
6 various levels in the accountability system?

7 A. I'm not aware personally of any studies that
8 they've looked at for the -- for the -- for the advisory
9 groups that we've had on the prior system.

10 Q. And in -- as you're moving forward with making
11 recommendations to the commissioner, are you aware of
12 the state analyzing the costs that it will take for
13 either school districts and/or any student disaggregated
14 groups to meet the minimum standards in the rating
15 levels that the state may adopt?

16 MS. DAHLBERG: Objection. Form.

17 A. That's a -- that's still to be determined what
18 role that analyses play in the development.

19 Q. (BY MR. HINOJOSA) Yeah. And I'm just
20 wondering right now, as we sit here today, can you tell
21 me whether or not there is any intention that you're
22 aware of to consider the cost of meeting any given
23 rating system in the new accountability system for
24 either school districts and/or disaggregated groups?

25 MS. DAHLBERG: Objection. Form.

1 Q. (BY MR. HINOJOSA) If you're not aware you can
2 tell me you're not aware.

3 A. We haven't considered that question at this
4 point in the development.

5 Q. Thank you.

6 MS. DAHLBERG: David, I really need a
7 lunch break. Maybe 30 minutes. How much longer do you
8 have with him?

9 MR. HINOJOSA: Oh, I mean, I'd have to
10 look over my notes, but yeah. Probably 20 minutes.

11 MS. DAHLBERG: I mean, the witness
12 probably would like a lunch break too.

13 MR. HINOJOSA: Oh, no, no. Yeah. No.
14 Definitely. I'll give that to you.

15 MS. DAHLBERG: How are you doing?

16 A. We'll need a lunch break at some point.

17 MR. HINOJOSA: Yeah. That's fine. I was
18 trying to --

19 MS. DAHLBERG: Well, if you're going to
20 take 20 minutes, I can go 20 minutes, but if we're going
21 to go an hour and 20 minutes, I can't make it.

22 MR. FRAISSINET: I don't have very much.
23 I probably have 15 or 20 minutes whenever you want. So
24 it's up to y'all. But if you're almost done, we may all
25 want to just get it done.

1 MS. DAHLBERG: Okay. I mean, do you want
2 to do 20 minutes?

3 MR. HINOJOSA: It's up to you and the
4 witness. If you all want to do -- I think, 40, 45
5 minutes, or all right now, or break for lunch. I'm more
6 than happy to do either one. It doesn't matter.

7 MS. DAHLBERG: Can we go off the record
8 for a minute, please?

9 THE VIDEOGRAPHER: Off the record, 12:36.

10 (Recess taken)

11 (Exhibit No. 80 marked)

12 THE VIDEOGRAPHER: Back on the record,
13 12:50.

14 Q. (BY MR. HINOJOSA) Mr. Housson, I've handed you
15 what's Exhibit 80. And this is titled, "Key Legislation
16 Related to Assessment and Accountability" with a
17 subtitle, "State Accountability Statutory Requirements
18 2013 and Beyond," pages 1 to 36.

19 Do you recognize this document, sir?

20 A. Yes.

21 Q. And is it a true copy -- is Exhibit 80 a true
22 copy of the Key Legislation Related to Assessment and
23 Accountability?

24 A. Yes.

25 Q. Under -- on page 3, for the 2006 79th Texas

1 Legislation, third called session, describes HB 1 here
2 has the accreditation system authorized. And are you
3 aware of any changes that occurred in 2006 to the
4 accreditation system as a result of HB 1?

5 A. The accreditation system is under the purview
6 of the associate commissioner for -- I don't remember
7 her title, but it's under Laura Taylor's responsibility.
8 So it's a separate group that oversees the accreditation
9 process.

10 Q. So with respect to any of these items listed
11 here where it says "Expands accountability sanctions for
12 academically unacceptable campuses and adds
13 interventions for campuses that receive academically
14 acceptable accountability ratings."

15 Are you aware of that actually taking
16 place?

17 A. Yes. I believe so, but that's under -- another
18 group that is responsible for following up on the
19 interventions and sanctions as a result of unacceptable
20 ratings.

21 Q. How about with the development of student
22 growth measures under HB 1? Are you familiar with that
23 development?

24 A. That would be under the responsibility of the
25 assessment division and the -- the work that they did

1 following that legislation to begin that development.

2 Q. Well, I think you testified earlier, perhaps,
3 about the state possibly using student growth measures
4 as part of its state accountability system that it's
5 considering currently. Correct?

6 A. Yes. Based on the requirements in House Bill
7 3.

8 Q. Okay. What about with respect to any of the
9 changes in 2007 on the 80th Texas Legislature on page 3
10 of Exhibit 80? If you can just read over those -- you
11 don't need to read over those aloud, but can you tell me
12 whether or not any of those duties fell under your watch
13 as the division chief?

14 A. There's a reference to development of college
15 readiness standards with the Texas Higher Education
16 Coordinating Board. Again, this is six years ago, but I
17 believe that led to discussions that added indicators
18 that were reported in the academic -- academic
19 excellence indicators system.

20 Q. And for state accountability purposes -- state
21 accountability rating purposes, the addition of college
22 readiness standards on the AEIS report did not
23 necessarily affect a district or a campus rating.
24 Correct?

25 A. That's correct.

1 Q. And I think you were referencing 2006, the 79th
2 Texas Legislature. Let's go down to 2007, the
3 80th Texas Legislature, SP 1031 on page 3 of Exhibit 80.
4 And can you tell me whether or not any of those items
5 listed there beginning with "EOC testing program
6 replaces high school TAKS and graduation requirement,"
7 all the way down to "Select Committee on Public School
8 Accountability."

9 A. Well, specifically the last entry, "Select
10 Committee on Public School Accountability" was a group
11 that was formed and met throughout -- throughout this --
12 the calendar year 2008, I believe, across the state that
13 we provided some -- when requested, some presentations
14 for, and they -- they, again, met at various locations
15 across Texas and got public input on the public
16 school -- on the school accountability system that
17 resulted in the recommendations that were made that, I
18 believe, were part of the discussion that resulted in
19 House Bill 3 in the 2009 81st Texas Legislature.

20 Q. Okay. And more specifically, do you know which
21 changes were made under House Bill 3 as a result of the
22 select committee on public school accountability were?

23 A. Well, there's a number of them. And the
24 listing on page 4 of this -- this Exhibit 80 is just a
25 very, very high level summary of what those are. So the

1 reference to existing academic excellence indicator
2 system will be replaced as a basis for district and
3 campus accreditation and ratings is accurate.

4 The academic distinction criteria will be
5 implemented. Those are new requirements in the statute
6 per House Bill 3. And, of course, the new STAAR
7 assessments are mandated and the reference to "Gold
8 Performance Acknowledgments," which was a system that
9 was in place, was taken out of the statute, and the last
10 year of that system was in 2011. And, again, the last
11 line is the requirement, obviously, that a new system be
12 developed and implemented for the first time in 2013.

13 Q. And with respect to the item that says, "An
14 academic distinction designation and specific rating
15 criteria will be implemented with percent proficient in
16 college readiness to be phased in," are you aware of
17 such an indicator existing in the most recent
18 accountability system?

19 A. Could you be more specific about which
20 indicator you're referring to?

21 Q. Yeah. Well, here it looks like HB 3 required
22 that an academic distinction designation and specific
23 rating criteria be implemented with percent proficient
24 in college readiness to be phased in.

25 A. So, again, this -- this phrasing is a very high

1 level summary of House Bill 3, but the prior system had
2 specific rating criteria to evaluate a percent passing
3 on TAKS. This is a -- the phrasing "academic
4 distinction designation" is new in the statute beginning
5 in House Bill 3. That will be part of the new system
6 that was not part of the prior system.

7 And college readiness as a standard set on
8 the new STAAR -- I'm sorry -- the assessments obviously
9 that are now in place that are STAAR have a Level II
10 standard -- have a Level II performance standard, and
11 level III is what the college readiness phrase is
12 referring to.

13 Q. I'm going to hand you what we're going to mark
14 as Exhibit 81. This is titled "Select Committee on
15 Public School Accountability."

16 A. Okay.

17 (Exhibit No. 81 marked)

18 Q. (BY MR. HINOJOSA) Now, do you recognize that
19 Exhibit 81 as being a true copy of the Select Committee
20 on Public School Accountability?

21 A. Yes.

22 Q. You've seen this document before. Correct?

23 A. Yes.

24 Q. And I know that you're not sure exactly --
25 well, let me ask this way:

1 Has the commissioner decided what college
2 readiness indicators will be reported for college
3 readiness?

4 A. Are you referring --

5 MS. DAHLBERG: Objection. Form.

6 A. Are you referring to Exhibit 81 or --

7 Q. (BY MR. HINOJOSA) Well, I'm going to ask you
8 more specifically about this, but I understand under
9 statute there's supposed to be college readiness
10 criteria set for the student to achieve on the English
11 II -- no. English III and Algebra II test. Correct?

12 A. Yes. That is under the responsibility of the
13 assessment division. That's right.

14 Q. And so what I'm asking is, with respect to the
15 accountability rating system that will soon be
16 implemented -- well, first adopted and then implemented,
17 do you know which college readiness criteria the state
18 is considering as part of its rating system, if any at
19 all?

20 MS. DAHLBERG: Objection. Form.

21 A. Well, the earlier exhibit that describes the
22 performance index workgroup proposal, Exhibit 74,
23 discusses the indexes that have been proposed for the
24 new framework, and that includes Index 4, that is -- is
25 referred to as "Post-secondary readiness" that would be

1 looking at percent of students who meet Level III
2 performance on the STAAR assessment. So those -- that
3 standard on STAAR is being considered in the new rating
4 system.

5 Q. (BY MR. HINOJOSA) And the commissioner has
6 final say on whether or not to include any other college
7 readiness indicators. Correct?

8 A. Correct.

9 Q. So looking at Exhibit 81, on slide -- I guess
10 it's slide 4 titled "GPA Indicators," it has here,
11 Advanced/Dual Enrollment Course Completion, Advanced
12 Placement, IB Results, Attendance Rate, and then
13 Commended Performance on TAKS for the Reading/ELA,
14 Mathematics, Writing, Science, and Social Studies.

15 And are you aware of any of these
16 indicators that might be considered under the new
17 accountability system changing, of course, TAKS to
18 STAAR?

19 A. Well, to be precise, this slide actually
20 continues on the next page on slide 5, so there's a
21 total of 14 indicators that were evaluated. In this
22 system, this exhibit refers to as Gold Performance
23 Acknowledgments.

24 The House Bill 3 includes new requirements
25 for distinction -- distinction designations in academic

1 achievement, in reading, mathematics, science; and
2 social studies, I don't believe has been touched on yet
3 in this discussion. So the answer is yes. The -- some
4 of the indicators that are listed in slides 4 and 5 are
5 part of the -- are some of the indicators that are being
6 evaluated or discussed as potential indicators in the --
7 in the system that we were -- we refer to as the
8 academic achievement distinction designation.

9 Q. And just to clear up things. On Exhibit 81, on
10 page 6, there's some GPA college readiness indicators
11 there. There's six of them included. And are any of
12 those indicators there, has -- has TEA determined any of
13 those indicators not to be valid moving forward for
14 accountability purposes?

15 MS. DAHLBERG: Objection. Form.

16 A. Again, the -- to be precise, it may not be all
17 that's listed on slide 6, but of those --

18 Q. (BY MR. HINOJOSA) And I'm just talking about
19 these six right here. I'm just wondering if any -- if
20 Texas Education Agency or the commissioner has made any
21 decision at this time that any one of these indicators
22 might not be valid?

23 MS. DAHLBERG: Objection. Form.

24 Q. (BY MR. HINOJOSA) For accountability purposes.

25 A. No.

1 Q. I'm going to hand you what we're going to mark
2 as Exhibit 82. This is titled "Proposed Framework for
3 Distinction Designation System."

4 (Exhibit No. 82 marked)

5 Q. (BY MR. HINOJOSA) Do you recognize Exhibit 83
6 as a copy of the Proposed Framework for Distinction
7 Designation System?

8 A. Yes.

9 Q. And this is dated June 25th, 2012. Are you
10 aware of any more recent document?

11 A. No.

12 Q. The -- Exhibit 82, was this created by the
13 Texas Education Agency?

14 A. Yes.

15 Q. Okay. And what was the basis for the creation
16 of this document?

17 A. As I just alluded to, an additional requirement
18 in House Bill 3 is the development of distinction
19 designations. The division of performance reporting is
20 responsible for one group of those, specifically the
21 academic achievement distinction designations. At this
22 point in Reading, ELA, and Mathematics.

23 House Bill 3 also had very specific
24 requirements that the development of this -- of these
25 distinctions are to be -- are to be conducted with --

1 with the advice of advisory groups that are based on
2 members selected by the Governors's office, the
3 Lieutenant Governor's office, and the Speaker of the
4 House. And so each of those offices submitted
5 nominations of members that have been identified and
6 have been convened in April 2012, and this document is
7 one of the documents reviewed with that -- with that
8 group in the meeting that was held on June 25, 2012.

9 Q. Under Stage 1 of Exhibit 82, it states here
10 on -- regarding the determining campus comparison group
11 it says, quote: For each campus, identify a group of
12 campuses that are demographically most similar to the
13 profile campus.

14 And what is meant by that statement?

15 MS. DAHLBERG: Objection. Form.

16 A. Well, the second sentence answers the question.
17 It says, "The attached description of campus comparison
18 groups used for reporting and Gold Performance
19 Acknowledgment in the previous accountability system."
20 It's -- it says "See Attached."

21 And if that's included, we can talk about
22 that -- what that means.

23 Q. (BY MR. HINOJOSA) Yeah. It's not attached.
24 Correct?

25 MS. DAHLBERG: I just want to make sure

1 that we're on topic with respect to the notice in areas
2 5 --

3 MR. HINOJOSA: It's the accountability on
4 STAAR --

5 MS. DAHLBERG: Well, it's the relationship
6 between performance on STAAR and YP and state
7 accountability. I'm just making sure that we're not
8 straying too far outside these areas.

9 MR. HINOJOSA: Yeah.

10 Q. (BY MR. HINOJOSA) And this relates to the
11 accountability system and performance on STAAR.
12 Correct? I know it's not final yet, but as it's being
13 considered, the performance on STAAR and the state
14 accountability system is a part of Exhibit 82. Correct?

15 A. The distinction designations that are, again,
16 required in House Bill 3 are separate from the rating
17 system that will assign a label to be acceptable or
18 unacceptable. This is an additional evaluation, if you
19 will, that will be in addition to the rating evaluation.

20 Q. But the distinction designation system is still
21 part of the greater accountability system. Correct?

22 A. It is under the section of -- it is under
23 Chapter 39, Requirements for Accountability.

24 Q. All right. And when it talks about
25 comparing -- under Stage 2, it says "Student

1 demographics are used for campus grouping rather than
2 creating student groups for performance evaluation."

3 What is meant by that statement?

4 A. Well, it's probably not going to be helpful to
5 discuss that specific statement without getting the
6 context of the first question that describes how the
7 campus comparison groups are formed. So without the
8 attachment, it's hard -- we can go into a lot of detail
9 about the methodology that's been used and give a
10 context for that second bullet that talks about student
11 demographics.

12 Q. Well, are you -- are you -- what I'm trying to
13 get at is, has the state ever compared a group of
14 campuses that are demographically most similar to a
15 profile campus for accountability purposes?

16 A. It has --

17 MS. DAHLBERG: Objection. Form.

18 A. It has used campus comparison groups to -- to
19 assign a Gold Performance Acknowledgment to campuses in
20 terms of comparable improvement. And that's done in
21 relation to similar campus types.

22 Q. (BY MR. HINOJOSA) So is there anything new as
23 to how campus groups will be identified demographically
24 under this distinction designation system compared to
25 the old system under Gold Performance Acknowledgments?

MS. DAHLBERG: Objection. Form.

A. The first paragraph, the last sentence addresses that question. It says "The accountability technical advisory committee will develop a methodology for identification of campus comparison groups to meet the needs of the new accountability system."

Q. (BY MR. HINOJOSA) So it hasn't been developed yet.

A. Correct.

Q. Now, is this meant to -- for example, are you generally familiar with the demographics of Edgewood ISD schools in San Antonio?

MS. DAHLBERG: Objection. Form.

A. In general, yes.

Q. (BY MR. HINOJOSA) High minority, high poverty rate in Edgewood ISD. Correct?

MS. DAHLBERG: Objection. Form.

A. In general, that's my understanding.

Q. (BY MR. HINOJOSA) And are you generally familiar with Highland Park in Dallas and the demographics of those schools? Just generally speaking.

A. Yes, in general.

MS. DAHLBERG: Objection. Form.

Q. (BY MR. HINOJOSA) And those two school districts, you know, have schools that wouldn't likely

align very closely demographically. Correct?

MS. DAHLBERG: Objection. Form.

A. And I'm sorry --

Q. (BY MR. HINOJOSA) On race and SES.

A. Most likely they would be different.

Q. So do you know if this distinction designation system is being designed so that, for example -- and just for these purposes only, you might not compare a school in Edgewood ISD against a school in Highland Park.

MS. DAHLBERG: Objection. Form.

A. Well, the answer is, we can -- it's already available online, given the methodology that was used for the system that was referred to as Gold Performance Acknowledgments, across any campus in Edgewood ISD and see which campuses were identified as the comparable campuses to that school.

Q. (BY MR. HINOJOSA) I'm just asking you right now with -- as far as your familiarity with the system as it operates. Would you expect an Edgewood ISD school to be compared to a Highland Park school for distinction purposes?

MS. DAHLBERG: Objection. Form.

A. Well, without knowing the list of 40 -- it's actually in the prior system, 40 campuses that were

identified and what that set of campuses are relative to a campus in Edgewood, I'm simply -- I would simply be speculating whether any particular campus in any district is on there or not.

To answer your question, in general, it would not be likely that a campus with a completely different set of demographics would be directly comparable to a much different campus given that there's 8500 and something campuses in the state, and there's likely the methodology identified some other set of campuses that are closer to that school.

Q. (BY MR. HINOJOSA) Okay. And on page 4 of Exhibit 82 it talks about the initial recommendations on standards for 2013. And it looks like there are three different options that are being presented as a starting point for discussion of the rigor of the distinction designation system. And my question to you is whether or not you know at this time if TEA is leaning to one of the three more than the other two?

MS. DAHLBERG: Objection. Form.

A. We do not know at this time.

Q. (BY MR. HINOJOSA) Let's go back to Exhibit 80, and that's the Key Legislation Related to Assessment.

A. Um-hmm.

Q. And here in the middle of page 5 beginning

with, "House Bill 1, enacted by the 78th Legislature in 2003 is a comprehensive reform and finance bill that impacted many aspects of public school finance, property tax relief, public school accountability, and other related matters."

Would you agree with that statement?

MS. DAHLBERG: Objection. Form.

A. To the extent of my memory of a specific bill passed eight years ago, I believe that would be generally accurate.

Q. (BY MR. HINOJOSA) Okay. How about the next sentence where it says, "The accountability system integrates the statewide curriculum; the state criterion-referenced assessment system; district and campus accountability; district and campus recognition for high performance and significant increases in performance; sanctions for poor performance; and school district, and state-level reports."

Would you agree with that statement with respect to the most recent accountability system?

MS. DAHLBERG: Objection. Form.

A. No.

Q. (BY MR. HINOJOSA) Why not?

A. That's a broad -- that sentence is simply a broad statement of the term "accountability system."

1 The areas of responsibility that have -- in terms of our
2 scope of responsibilities, don't include sanctions for
3 poor performance, don't include statewide curriculum,
4 and don't include the assessment program.

5 Q. Yeah. And I understand that you're saying that
6 those specific duties don't fall under your division's
7 purview, but this is a more general statement about the
8 accountability system itself, and whether or not it
9 integrates these various items stated here on page 5 of
10 Exhibit 80. And are there any of these items listed
11 here for which you would disagree that are not included
12 as part of the greater accountability system?

13 MS. DAHLBERG: Objection. Form.

14 A. As a broad -- as a broad sweeping overview of
15 all things that impact or could comprise public school
16 education and accountability aspects of it, that
17 sentence includes a list of -- lists a number of factors
18 that were part of that system.

19 Q. (BY MR. HINOJOSA) Okay. Do you expect the new
20 accountability system that's developed to phase in
21 increasingly higher expectations for districts and
22 campuses compared to the most recent accountability
23 system?

24 MS. DAHLBERG: Objection. Form.

25 A. The president -- the precedent in the prior

1 systems has been that the -- the expectations do -- may
2 increase, and that's based on the recommendations made
3 by the advisory groups and determined based on the
4 commissioner's decisions. So the answer is yes; that as
5 a system, when initiated, will continue to set
6 increasing expectations based on the input from
7 educators through the advisory process, and through all
8 the inputs that the commissioner will have to make all
9 those decisions as time goes -- moves forward.

10 Q. (BY MR. HINOJOSA) On the next page, page 6 of
11 Exhibit 80, on the last paragraph here beginning, "On
12 August 8th, 2013, the district and campus performance
13 ratings will be issued for the first time under the new
14 system."

15 Is that statement accurate?

16 A. Yes.

17 Q. In the next sentence it states, "Ratings will
18 be based on percent proficient indicator."

19 Is that statement accurate?

20 A. Yes.

21 Q. Next sentence, "The percent college ready
22 indicator will be a report only."

23 Is that statement accurate?

24 A. Yes.

25 Q. "On August 8th, 2014, district and campus

1 performance ratings are issued for the second time.
2 Under the new system ratings will be based both on
3 percent proficient and percent college ready
4 indicators."

5 Are those statements accurate?

6 A. Yes; with the caveat that the early description
7 of the performance index will determine what -- how
8 those indicators will be incorporated in the framework.

9 Q. Okay. So how they might be incorporated has
10 yet to be determined, but they will be incorporated as
11 indicators --

12 A. Yes.

13 Q. -- under the new accountability system.
14 Correct?

15 A. As described here, yes.

16 Q. I'm handing you what we're going to mark as
17 Exhibit 83.

18 (Exhibit No. 83 marked)

19 Q. (BY MR. HINOJOSA) "This is titled a Chapter 12,
20 State Accountability Ratings: 2013 and Beyond."

21 Do you recognize Exhibit 83 as a true copy
22 of this document?

23 A. Yes.

24 Q. And is Exhibit 83 a chapter out of the HB 3
25 transition plan?

1 A. Yes.

2 Q. And what is the purpose of this document?

3 A. The purpose of this document was to meet a
4 statutory requirement to provide to the Texas
5 Legislature by December 1, 2010, a report that described
6 the process that will be used to develop and implement
7 new state accountability -- the new state assessment and
8 accountability systems.

9 Q. On page Roman numeral II-129, under the section
10 titled "Student Groups Rates/Ethnicity," it says, "The
11 new accountability rating system will be based on the
12 new federal race/ethnicity definitions that were
13 collected in PEIMS for the first time in the 2009-2010
14 school year. Accountability advisory groups will
15 recommend possible changes to the accountability
16 race/ethnicity student groups to be evaluated for 2013
17 and beyond."

18 Is that an accurate statement?

19 A. Yes.

20 MS. DAHLBERG: Objection. Form.

21 Q. (BY MR. HINOJOSA) And with respect to these
22 alternatives that are listed here, it doesn't look
23 like -- well, I know that these are only alternatives,
24 but are you aware if any of these recommendations
25 here -- or alternatives, I should say, have been adopted

1 by the committee, the ATAC committee or the APAC
2 committee?

3 MS. DAHLBERG: Objection. Form.

4 A. As I referred to earlier, there's a document
5 that was reviewed with the ATAC committee in the May 25
6 meeting that was specific to the student group question.
7 And so each of -- I believe each of these three options
8 or alternatives described here were part of that
9 document, and there was others also presented. But at
10 this point there's not a recommendation that they have
11 made on the student group question at this time.

12 Q. (BY MR. HINOJOSA) And on page 136 of Exhibit
13 83, under "Decisions to be Made," it speaks of
14 assessments for English language learners.

15 A. Yes.

16 Q. And here it says, "In 2011, the ELL Progress
17 Measure was incorporated in the state accountability
18 system to evaluate progress towards reading proficiency
19 in English for current and monitored LEP students."

20 It says, "The commissioner shall determine
21 how the STAAR and TELPAS assessment results for ELLs
22 will be used to determine ratings in the new
23 accountability system."

24 And my question to you is, has the
25 commissioner determined how the STAAR and TELPAS

1 assessment for ELLs will be used to determine the rating
2 system and accountabilities.

3 A. As I mentioned earlier, the workgroups that are
4 tasked with specific topics related to the new system
5 development include the workgroups specific to English
6 language learners.

7 Q. At this time, the commissioner hasn't
8 determined how the STAAR or TELPAS results will be used
9 in -- for ELLs in the new accountability rating system.
10 Correct?

11 A. Correct. Not at this time.

12 Q. And have there been any specific discussions
13 that you're aware of of how ELL student assessments will
14 be integrated into the new accountability
15 development accountability system?

16 MS. DAHLBERG: Objection. Form.

17 A. That is -- that is in progress, so there's
18 no -- nothing specific that we can say has been formed
19 as a firm recommendation.

20 Q. (BY MR. HINOJOSA) Okay. Going back to Exhibit
21 72, which was the 2013 Accountability Development --

22 MS. DAHLBERG: What exhibit, David?

23 Q. (BY MR. HINOJOSA) -- on page 11.

24 MR. HINOJOSA: 72.

25 Q. (BY MR. HINOJOSA) Okay. Page 11 titled,

1 "Proposal for Accountability Framework." It states
2 there, the third bullet, "Focus on narrowing performance
3 gap between historically disadvantaged and advantaged
4 students."

5 A. Yes.

6 Q. What is the performance gap that's being
7 referenced here?

8 MS. DAHLBERG: Objection. Form.

9 A. Well, again, the -- slide 11 is reflecting
10 the -- as it says, the expectations of the committee
11 members when they developed the proposed framework of
12 what the accountability system should address. And that
13 bullet, I believe, is referring to, as we reviewed
14 earlier on slide 6, goal of the accountability system
15 that are in the statute is, one includes -- the third
16 one includes "Closing advanced academic performance
17 level gaps among groups."

18 The reference here is that the new -- the
19 accountability system would -- would meet that goal by
20 focusing, as it says, on narrowing any -- any gap
21 between student groups that have historically -- that
22 are comprised of historically advantaged versus
23 disadvantaged student groups.

24 Q. (BY MR. HINOJOSA) And performance gap, that
25 would mean a gap in student groups on the state

1 standardized tests. Correct?

2 A. Typically that's --

3 MS. DAHLBERG: Objection. Form.

4 A. Typically that would be a measure that would be
5 used for that kind of...

6 Q. (BY MR. HINOJOSA) The performance gap could
7 also mean other standardized tests, such the ACT or SAT.
8 Correct?

9 A. It could. Yes.

10 Q. And when we're talking about historically
11 disadvantaged students, would that include economically
12 disadvantaged students?

13 A. I believe it would.

14 Q. ELL students?

15 A. Yes, possibly.

16 Q. Special education students?

17 A. Possibly.

18 Q. Any other groups of students that you're aware
19 of that might be considered historically disadvantaged?
20 How about black or Latino students?

21 A. Yes; the -- yes. Those could be included in
22 that category.

23 Q. Any other groups of students that you're aware
24 of that would be defined as historically disadvantaged?

25 A. None that I can think of now.

1 Q. And when it talks about advantaged students,
2 would that mean non-low income white students?

3 MS. DAHLBERG: Objection. Form.

4 A. It could; but it's more likely they were --
5 again, this is their wording from the committee members
6 themselves of describing types of student groups; but it
7 more likely is a group of -- the group of students who
8 are non-economically disadvantaged.

9 Q. (BY MR. HINOJOSA) All right. And -- well,
10 what would the performance gap be between black and
11 Latino students and what comparison or group would be
12 the advantaged group?

13 A. Well, that's a --

14 MS. DAHLBERG: Objection. Form.

15 A. That's a topic that's being discussed with the
16 technical committee members of what is the perfect
17 comparison group in a campus that may -- may be a
18 hundred percent identified as economic disadvantaged;
19 what's the comparison group. So that's -- that's one of
20 the challenges is, how to develop these kinds of
21 measures when there's not -- not a diversity of groups
22 on -- on a specific campus.

23 Q. (BY MR. HINOJOSA) Are you aware of the gaps
24 between white and African-American and Latino students
25 in the most recent STAAR results?

1 A. The table we reviewed earlier has those --

2 Q. Yeah. I'm not going to ask you about any
3 specific gaps, but I'm just wondering if you're
4 generally familiar with the performance gaps on the
5 latest STAAR test between African-American and Hispanic
6 students, as opposed to white students?

7 A. Yes --

8 MS. DAHLBERG: Object to form.

9 A. -- I'm generally familiar with the STAAR
10 results for all the student groups.

11 Q. (BY MR. HINOJOSA) And you're aware of the
12 achievement gaps between ELL students and non-ELL
13 students in the most recent STAAR testing?

14 MS. DAHLBERG: Objection. Form.

15 A. Yes.

16 Q. (BY MR. HINOJOSA) As well as between
17 economically disadvantaged and non-economically
18 disadvantaged students?

19 MS. DAHLBERG: Objection. Form.

20 A. Actually the tables I think we were referring
21 to earlier from the assessment division, disaggregated
22 student groups by the economically disadvantaged group,
23 but didn't have a breakout of non-disadvantaged student
24 groups.

25 Q. (BY MR. HINOJOSA) All right. So then you --

1 you've had a number of years of experience reviewing the
2 results of disaggregated data. Correct?

3 A. Correct.

4 Q. Have you ever seen any testing instrument by
5 the State of Texas where non-economically disadvantaged
6 students have not performed as well as economically
7 disadvantaged students?

8 MS. DAHLBERG: Objection. Form.

9 A. Well, I think you -- I think you had your
10 question backwards.

11 Q. (BY MR. HINOJOSA) Well, let me ask it this
12 way:

13 Have you ever seen economically
14 disadvantaged students on the top end of the performance
15 gap compared to non-economically disadvantaged students?

16 MS. DAHLBERG: Objection. Form.

17 A. I can't speak to every assessment or set of
18 results that may have been -- that may be out there, but
19 in general, the non-disadvantaged student group
20 typically outperform students who are economically
21 disadvantaged.

22 Q. (BY MR. HINOJOSA) And do you know specifically
23 any work being done by the agency or any committee that
24 is analyzing the educational needs for disaggregated
25 groups such as ELL students, economically disadvantaged

1 students, in order to improve performance on the STAAR
2 test?

3 MS. DAHLBERG: Objection. Form.

4 A. I can only speak to the development that's
5 underway for the new accountability system. And the
6 slide that describes the framework on the slide 10,
7 describes -- performance index 3 focuses on closing
8 performance gaps between students based on socioeconomic
9 status.

10 Q. (BY MR. HINOJOSA) Yeah. And I'm just asking
11 you if you know specifically what is being done by
12 either the committee and/or the agency to fulfill that
13 target.

14 MS. DAHLBERG: Objection. Form.

15 A. Again, I can only speak to what is proposed for
16 the accountability system that will give credit for
17 schools that make gains in closing performance gaps and
18 reward that achievement in this framework that's being
19 -- that's being developed.

20 Q. (BY MR. HINOJOSA) And anything else as far
21 as -- you know, is there any analysis of the educational
22 resources that are available to disaggregated groups at
23 various districts across the State of Texas?

24 MS. DAHLBERG: Objection. Form.

25 A. That would be -- that would be outside my scope

1 of responsibilities, and may -- may absolutely be taking
2 place in other areas in the ADC and the education
3 service centers in districts in general in Texas.

4 Q. (BY MR. HINOJOSA) Earlier I think you had
5 mentioned the high school completion rates. As the high
6 school completion rates were evaluated under the most
7 recent state accountability system, that did not
8 necessarily mean that a student graduated in order to be
9 a high school completer. Correct?

10 MS. DAHLBERG: Objection. Form.

11 A. The -- in general, that is correct. The
12 indicator used in the 2011 rating system was referred to
13 as the completion rate indicator, and you -- and the
14 campuses received credit for students that either
15 graduated within four years of starting their 9th grade
16 year or continuing school in the fifth year of their
17 senior year.

18 Q. (BY MR. HINOJOSA) All right. Thank you very
19 much, Mr. Housson.

20 MR. HINOJOSA: I pass the witness.

21 EXAMINATION

22 BY MR. FRAISSINET:

23 Q. Hello, Mr. Housson. How are you?

24 A. Good so far.

25 Q. My name is Philip Fraissinet. I represent the

1 Fort Bend ISD group of plaintiffs in this case. And you
2 and everybody will be happy to know that I have only a
3 few questions for you, and you'll be done shortly.
4 Okay?

5 Both Mr. Turner and Mr. Hinojosa asked you
6 some questions about AYP. I have just a couple
7 follow-ups on that. They discussed district and campus
8 results with you. I just want to confirm the results of
9 both -- or they talked with you about state districts
10 rather, and I want to ask you a question about campus
11 and charter results.

12 The information I have is 2010 about 4.4
13 percent of campuses in the system failed to meet AYP.
14 Is that consistent with your recollection or
15 understanding?

16 A. Well, if there's an exhibit to refer to, I can
17 confirm that, but it's...

18 Q. I'd be happy to do that. It's Exhibit 79. Do
19 you have Exhibit 79?

20 A. Yes.

21 Q. And, again, my question was with regard to
22 campus performance in 2010, the percentage of districts
23 that -- or campuses that failed to make AYP, about
24 4.4 percent. Is that right?

25 A. Yes. That's correct.

1 Q. And in 2011, that number had increased to
2 25.7 percent of districts that failed to -- of campuses
3 that failed to make AYP?

4 A. That's correct.

5 Q. With regard to the charter schools, in 2010 --
6 I don't know whether Exhibit 79 addresses charters or
7 not. The data I have, it says the charters in 2010,
8 about 12.3 percent of charter schools had not met AYP.
9 Is that right?

10 A. That's not written in narrative form in Exhibit
11 79, but the data table, if you're referring -- if you're
12 actually reading it, that would be -- that sounds
13 correct.

14 Q. Well, I just -- I won't hold you to a specific
15 number, but is that consistent with your recollection --

16 A. Yes.

17 Q. -- that it was about 12, 13 percent?

18 A. Yes.

19 Q. And last year, the number for charter schools
20 had increased to 25 and a half percent. Is that
21 consistent with your recollection?

22 A. Yes.

23 Q. And I understand that final determinations for
24 2012 have not been made and will not be made until
25 August 8th.

1 A. Correct.

2 Q. Did I understand your testimony that TEA
3 already does possess the data and information it needs
4 to make AYP determinations for 2012. Is that right?

5 A. Those -- the data files that will be used to
6 develop the outcomes for AYP are being processed at this
7 time.

8 Q. And your testimony, I believe, is that there's
9 programming and processing and quality control --

10 A. Correct.

11 Q. -- going on. Right?

12 A. That's correct.

13 Q. Subject to that qualification, have you or any
14 of your staff looked at the data in order to start the
15 decision-making with regard to AYP status?

16 A. Not at this time.

17 Q. You have no sense -- sitting here today, no
18 sense whatsoever whether the state is likely to make or
19 not make AYP?

20 A. Correct. Not at this time.

21 Q. There's been no preliminary assessment or
22 evaluation of that either?

23 A. Not at this time, no.

24 Q. You talked with Mr. Turner a little bit about
25 the statutory requirement that by 2019 -- 2019-'20 that

CAUSE NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
FAIRNESS COALITION, ET)
AL.,)

Plaintiffs,)

VS.)

EDGEWOOD INDEPENDENT)
SCHOOL DISTRICT, ET AL.,)
(CONSOLIDATED)

TRAVIS COUNTY, TEXAS

Plaintiffs,)

VS.)

ROBERT SCOTT, IN HIS)
OFFICIAL CAPACITY AS)
COMMISSIONER OF EDUCATION,)
ET AL.,)

Defendants.)

200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF
SUSAN KINCANNON, Ed.D.
SEPTEMBER 6, 2012

ORAL DEPOSITION OF SUSAN KINCANNON, Ed.D., produced as a witness at the instance of the Edgewood Independent School District Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on Thursday, September 6, 2012, from 9:12 a.m. to 2:23 p.m., before Tamara K. Chapman, CSR in and for the State of Texas, reported by machine shorthand, at the offices of The Attorney General of the State of Texas, 300 West 15th Street, 11th Floor, Austin, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 52235

Exhibit 638..... 113
 University of Texas - Austin Approved
 Certification Areas
 Exhibit 639..... 122
 Belton ISD 2012-2013 Hiring Schedule
 for Classroom Teachers, Librarians, and
 Nurses (RN)
 Exhibit 640..... 124
 TEA 2012-2013 Minimum Salary Schedule

SUSAN KINCANNON, Ed.D.,
 having been first duly sworn, testified as follows:

EXAMINATION

BY MR. HINOJOSA:

Q. Good morning, Dr. Kincannon. My name is David Hinojosa. I'm an attorney with the MALDEF, Mexican American Legal Defense and Educational Fund in San Antonio. And we represent five property-poor school districts. Those school districts are Edgewood ISD in San Antonio, La Feria, San Benito, McAllen and Harlingen, all in the Valley. And we also represent a couple of parents of low income and English language learners with both equity and adequacy claims against the State of Texas in this case.

And so I have some questions here for you. First I'm going to lay some of the ground rules. Have you ever had your deposition taken before?

A. No, I have not.

Q. All right. Well, congratulations.

A. Thank you.

Q. So just to start off with a few kind of ground rules, you understand that your testimony here is provided under oath and it's the same as if you were in a courtroom, correct?

A. Yes.

Q. And is there any reason why, medical or otherwise, why you might not be able to tell the truth today?

A. No.

Q. And right now you're answering verbally, so please do that, because the court reporter can't take down head shakes or head nods.

And if you need a break at any time, it's not a marathon, just let us know. If there's a line of questioning that we're going through or a question pending, I'd ask for you to answer that question, and then we can proceed, you know, with a break afterwards.

If you don't understand a question, please let me know. Sometimes, you know, school finance is confusing to many people, including lawyers, so sometimes we might ask a confusing question. But I want to make sure that you understand every question. So is it safe to assume that if you answer a question, that you understood it?

A. Yes.

Q. And, also, like what you're doing right now, try not to speak over me. If you're anticipating a question and you want to start answering, wait until I finish answering -- asking the question before you answer, because the court reporter can't take down both of our -- both of us saying something at the same time. Okay?

A. Okay.

Q. All right. Can you tell me a little bit about Belton community, about where it's located and a little bit about, you know, the industry and the community there?

A. Uh-huh, sure. We are located off of I-35 between Waco and Austin, about 40 miles south of Waco and about 60 miles north of Austin. To the west of us about 20 miles is Fort Hood. And we have pretty much service industries, although we have some major corporations in the area, not within the Belton ISD school boundaries, but we are a major medical center. We have Scott & White health clinics, a major medical center, Veterans Administration and a new Seton hospital in Harker Heights, close to Fort Hood. We have McLane Technologies and some other manufacturing types of companies that are not in Belton ISD but are close in the general area.

Q. And approximately how many students do you have in your school district?

A. We have currently about 9,800 students.

Q. And is that growing from years past?

A. We are a growing school district. In fact, we are a fast growth school district. We have grown 40 percent over a ten-year period from census to census. From 2000 to 2010, we grew 40 percent. We grew approximately 20 percent over the last five years.

1 Q. And are you what's commonly known as a Chapter 42
2 district?
3 A. Yes.
4 Q. And has Belton, in at least the last ten years,
5 been -- ever been a Chapter 41 district?
6 A. Never.
7 Q. And looking at the student demographics -- I'm
8 not going to enter this as an exhibit, because I only have
9 one copy of it. But I'm looking at the 2005-2006 --
10 A. Uh-huh.
11 Q. -- AEIS report for Belton. And it looks like,
12 according to this report, it shows that you had 7,526
13 students during that school year. Does that sound
14 correct?
15 A. That sounds correct.
16 Q. And how long have you been at Belton?
17 A. I have been the superintendent for about a year
18 and nine months, and this is my 13th year in the district.
19 Q. Okay. What position were you before you were
20 superintendent?
21 A. I was deputy superintendent for three years,
22 assistant superintendent for curriculum and instruction
23 for five years, and I was principal for two years. I hope
24 that adds to 13. This is my 13th year.
25 Q. And what were your duties as a deputy

1 marked as Exhibit 609. And do you recognize Exhibit 609
2 as a true and correct copy of the Belton ISD 2010-2011
3 AEIS report?
4 A. Yes.
5 Q. And if you can turn to Section II, Page 1, where
6 it lists the student information there. And it looks like
7 the African -- the total student population grew from the
8 7,500 figure in 2005-2006 to 9,232 for this school year of
9 2010-2011, correct?
10 A. Yes.
11 Q. And when we look at your demographic information,
12 it looks like your African American population stayed
13 about the same percentage wise at 6.8, but increasing from
14 510 to 631, correct?
15 A. Yes.
16 Q. And then your Latino population looks like it
17 increased from 27.8 percent to 30.5 percent, correct?
18 A. Yes.
19 Q. And the numbers there are increasing from 2,095
20 back in 2005-2006 to 2,813 in the year 2010-2011, correct?
21 A. Yes.
22 Q. And then the whites, it looks like it went from
23 63.3 percent down to 57.6 percent, correct?
24 A. Yes.
25 Q. There was still an overall growth in the numbers

1 superintendent?
2 A. As a deputy superintendent, I was responsible for
3 day-to-day management and supervision of principals. I
4 handled many personnel issues and generally assisted the
5 superintendent in the day-to-day operations of the school
6 district.
7 Q. Okay. How about over curriculum and instruction?
8 A. I managed all the curricular programs for the
9 district, the federal programs, all of our staff
10 development, development of curriculum documents, and had
11 about 13 directors working under me in instruction.
12 Q. Looking back at the 2005-2006 AEIS report, it
13 looks like at that time you had 6.8 percent
14 African-American at 510 total students, Hispanics were
15 27.8 percent, 2,095. Whites were 63.3 percent at 4,764.
16 Native American, 1 percent at 77. And Asian Pacific
17 Islanders at 1.1 percent or 80. And -- did I read that
18 correctly?
19 A. I can't see it, but, yes, I believe that's
20 accurate. Yes.
21 Q. And you mentioned some of the growth in the
22 district. I'm going to go ahead and enter this next
23 document as an exhibit.
24 (Exhibit 609 was marked.)
25 Q. (BY MR. HINOJOSA) I've handed you what's been

1 from 4,764 to 5,320, correct?
2 A. Yes.
3 Q. And it looks like the Native Americans and Asians
4 stayed roughly the same, although the Asian Pacific
5 Islanders, it looks like it went up to about 1.5 percent
6 from the 1.1 percent in 2005-2006, correct?
7 A. Yes.
8 Q. And going further down, it looks also -- so you
9 would agree with me that, you know, the -- the larger
10 percentage of the growth in the district has been from the
11 Hispanic students; is that correct?
12 A. Yes, that's accurate.
13 Q. And then looking at the economically
14 disadvantaged student groups, it looks like in 2005-2006
15 you had 44.7 percent, and that grew to 48 percent in
16 2010-2011, correct?
17 A. Yes.
18 Q. And the LEP student population also grew from 6.6
19 percent to 7 percent, correct?
20 A. Yes.
21 Q. And is -- are these growth rates somewhat
22 consistent with us moving through the 2012-2013 school
23 year?
24 A. Yes.
25 Q. And do you believe that ELL students, English

1 language learner students, can perform on par with
 2 non-English language learner students if being provided
 3 the necessary programs and services that they require?
 4 A. Yes. If the resources are available to provide
 5 the education to get them to where we'd like them to be,
 6 yes.
 7 Q. And do you agree that low income students can
 8 also perform on par with nonlow income students if
 9 provided the necessary programs and services that they
 10 need?
 11 A. Yes.
 12 Q. I'm going go through some performance data for
 13 the -- looking at Exhibit 609. And in these AEIS reports,
 14 they have TAKS performance data reported in them, correct?
 15 A. Yes.
 16 Q. And for the lower grades, TAKS is not offered any
 17 longer, but it's been replaced by the STAAR, correct?
 18 A. Yes.
 19 Q. And the TAKS test, it didn't test all subjects at
 20 all grade levels, correct?
 21 A. Yes.
 22 Q. And for the subjects that were tested, the TAKS
 23 was meant to test the knowledge of the state curriculum in
 24 those specific subject areas, correct?
 25 A. Correct.

1 A. I don't recall the first year it was
 2 administered.
 3 Q. Administered for accountability purposes, when
 4 you went from the old TAAS to the TAKS, was that
 5 approximately 2003-2004? Or if you don't remember, that's
 6 fine.
 7 A. I don't recall the exact year.
 8 Q. All right. But through the year 2010-2011, the
 9 TAKS test had been tested for at least six to seven years,
 10 correct?
 11 A. Yes.
 12 Q. And so if we look at the TAKS performance
 13 standards under the All Tests for 2011, Sum of All Grades
 14 tested, it shows district wide there was 80 percent of the
 15 students meeting the minimum standard on all tests,
 16 correct?
 17 A. Yes.
 18 Q. So that was one in five students in the district
 19 that still were not meeting that minimum TAKS standard,
 20 correct?
 21 A. That's correct.
 22 Q. And if we look at economically disadvantaged, it
 23 goes down to 70 percent, and for LEP, 47 percent, correct?
 24 A. Correct.
 25 Q. Now, do you understand that under current state

1 Q. And so would it be appropriate -- and you want --
 2 let me back up there.
 3 And so you would want your students to achieve
 4 the TAKS standards in all subject areas at all grade
 5 levels, correct?
 6 A. Yes.
 7 Q. And so would it be appropriate to look at the Sum
 8 of All Grades tested under the All Test standards in order
 9 to gauge student learning against just the Met Standard,
 10 the TAKS met standard?
 11 A. Yes and no. You can't look at the total to see
 12 how the district is generally performing. But to see how
 13 all kids are performing, you would have to look at
 14 individual subgroups as well.
 15 Q. Okay. And -- and for those individual subgroups,
 16 it's still appropriate to look at the All Test standard,
 17 correct?
 18 A. Yes.
 19 Q. All right. So if you could turn to Page --
 20 Section I, Page 3 of Exhibit 609. The TAKS test started
 21 in approximately -- it was first administered in around
 22 2003-2004; is that right?
 23 A. No, I don't think so. The TAKS came online in
 24 1997.
 25 Q. Okay. The TAKS test?

1 law, students are expected to graduate college ready?
 2 A. Yes.
 3 Q. And merely because students are meeting the
 4 minimum standard on the TAKS test, would that indicate
 5 that students are college ready?
 6 A. No.
 7 Q. Or on track to be college ready?
 8 A. No.
 9 Q. The -- and do you understand that the rigor of
 10 testing from TAKS to STAAR has increased?
 11 A. Yes.
 12 Q. And how would you describe the increase and the
 13 rigor?
 14 A. I understand that the increase in rigor is
 15 significant based on the results that we've seen so far.
 16 We've had some sample questions that we've reviewed. But
 17 based on the information that we have seen so far, it is
 18 generally more difficult for our students.
 19 Q. Are you familiar with the longitudinal study that
 20 was conducted by Pearson, it was a -- maybe not a
 21 longitudinal study -- but a bridge study --
 22 A. Yes.
 23 Q. -- that was conducted by Pearson, where the rigor
 24 of the TAKS was compared to the rigor of the STAAR?
 25 A. Yes.

1 Q. And it showed that on certain tests, that the
2 guessing standard under the STAAR was actually higher than
3 the TAKS met standard?

4 MS. PENN: Objection; form.

5 Q. (BY MR. HINOJOSA) Are you familiar with -- with
6 the results of that study? Not the specific results, but
7 just generally.

8 A. I have not studied that report. I'm familiar
9 with the bridge data for our district --

10 Q. Oh, okay.

11 A. -- in terms of looking to see how many students
12 would have passed under TAKS as compared to how many
13 students passed under STAAR.

14 Q. Oh, okay. So that's a little different than what
15 I'm speaking of. So I'll represent to you that on the
16 record -- in the record in this case, Pearson had
17 conducted a study just to see where the TAKS met standard
18 might be, among the other indicators, where it might fall
19 along the different standards under STAAR, such as the
20 guessing standard Level 1, Level 2, Level 3, compared to a
21 number of indicators. And -- and then on certain tests,
22 the TAKS met standard was lower than the STAAR guessing
23 standard. You know, assuming that, you know, what I've
24 represented to you is correct, what sort of concerns does
25 that bring to you as a superintendent of Belton?

1 MS. PENN: Objection; form.

2 THE WITNESS: Answer?

3 MS. TEKELL: (Nods.)

4 A. Well, we continue to be concerned about ensuring
5 that all of our students meet the TAKS -- or STAAR
6 standards. And so under a new system that's more
7 difficult, we would be even more concerned about our
8 subgroups that weren't performing well on the TAKS
9 assessment who are now required to take a more rigorous
10 exam.

11 Q. (BY MR. HINOJOSA) And would it -- you mentioned
12 earlier that, you know, simply meeting the minimum
13 standard under TAKS that we just went over, among the
14 various student groups in your district, that that would
15 not match up with college readiness. Would perhaps a more
16 appropriate indicator be the TAKS commended performance of
17 students in your district?

18 A. I don't know that I understand. Are you asking
19 would the TAKS commended be more equivalent to college
20 ready?

21 Q. Yes.

22 A. -- readiness?

23 Yes. Commended is at the highest level with
24 scaled scores. And so those students who are performing
25 at those highest levels under the state system would be

1 considered college ready.

2 Q. Okay. So let's look at the data for 2011 for the
3 district under All Tests. It looks like 17 percent were
4 meeting the standard, which meant that 83 percent were not
5 meeting the commended standard under All Tests, correct?

6 A. Are you down at the bottom?

7 Yes, that's correct.

8 Q. And for the economically disadvantaged students,
9 it looks like only 8 percent were meeting the commended
10 standard on All Tests, but 92 percent were not, correct?

11 A. Correct.

12 Q. And for LEP students, it shows 1 percent meeting
13 the standard, meaning 99 percent were not meeting the
14 standard, correct?

15 A. Correct.

16 Q. And is it your testimony that these students --
17 it's basically a lost cause, that they just cannot be
18 brought up to meet the standard?

19 A. No.

20 Q. And what, in your opinion as superintendent of
21 Belton, is prevent -- preventing many of these students
22 from achieving these standards?

23 A. We -- gosh, there are lots of reasons, and most
24 of those reasons -- I would say probably all of those
25 reasons are tied to resources. We have a need to continue

1 to develop skills in our teachers, to be able to assist
2 students to come to school not ready to learn and students
3 who have -- who come to us at risk because they are
4 limited English proficient or because they are
5 economically disadvantaged. And so we need more funding
6 for professional development for our staff.

7 We need certified bilingual instructors for our
8 bilingual -- bilingual classrooms. We've had to write an
9 exception every year that I can remember because we
10 haven't had appropriately certified bilingual teachers.
11 Although we do offer a sign-on bonus for bilingual
12 teachers, we haven't -- it's not significant enough to
13 attract bilingual teachers to our school district. It's
14 a -- there's a great shortage in our area of the state.
15 We don't have a university in our area who offers --
16 currently offers bilingual certification program, and so
17 we -- we are very limited in where we can pull teachers
18 from.

19 We need additional teachers for interventions for
20 students who are behind, who aren't getting or
21 understanding the text in the classroom instruction, and
22 so they need much more support.

23 Q. And just for the record, what is a bilingual
24 exception?

25 A. A bilingual exception is basically the -- TEA

1 asked us to look at each classroom in the state that
 2 serves bilingual students, limited English proficient
 3 students. And of those classrooms, we're required to have
 4 a bilingually certified teacher to serve those students at
 5 every grade level where there are a certain number of
 6 students. I believe that number is ten, but that may be
 7 inaccurate. And so when we look at that, we go to the
 8 classroom level and identify the teachers that are
 9 certified in bilingual education. And each year we have
 10 not met that requirement and we have some classrooms that
 11 have teachers who are not certified.

12 Q. And has the State ever denied an exception that
 13 the district has sought?

14 A. They have not denied our exception, but they have
 15 asked us to write plans each year to try to remediate the
 16 situation.

17 Q. And you mentioned offering a stipend for
 18 bilingual teachers. How much is that stipend?

19 A. It is -- we have a \$3,000 per year stipend for
 20 bilingual teachers.

21 Q. Okay. Let's go now to the college ready
 22 indicator section of this report, which begins on
 23 Section I, Page 8. And it's beginning with the third
 24 section there from the top. And your district, it offers
 25 advanced course and dual enrollment classes?

1 A. Yes.

2 Q. Is it both of those?

3 A. Yes.

4 Q. And it looks like in the year 2009-2010, which is
 5 the most current data reported here, that 25 percent or
 6 one-quarter of those districts -- of those students
 7 eligible to participate in advanced course and dual
 8 enrollment were taking courses, correct?

9 A. Yes.

10 Q. And looking at economically disadvantaged
 11 students, it looks like only 13.5 percent of those
 12 students were taking them, and 7.6 percent of the LEP
 13 students were taking those courses, correct?

14 A. Yes.

15 Q. And if we look down to the AP/IB results -- does
 16 the district offer AP courses?

17 A. Yes.

18 Q. Is it a wide range? Would you consider it a wide
 19 range or --

20 A. Yes.

21 Q. How about IB, does it offer IB courses?

22 A. No.

23 Q. And it looks like the students eligible to take
 24 the AP test, it looks like -- well, not the students that
 25 are eligible to take, but it looks like in the district

1 20.3 percent of students in the year 2010 tested for AP,
 2 correct?

3 A. Yes.

4 Q. And of those students, 52.9 percent met at or
 5 above the criterion, correct? Looking right below that,
 6 the tested growth.

7 A. Oh, I'm sorry. Yes.

8 Q. And so of the one -- of the roughly one out of
 9 five students that actually test for AP, only one out of
 10 two of those students are actually meeting the criterion,
 11 correct?

12 A. Yes.

13 Q. And then if we go down to the SAT results, the
 14 ACT results --

15 Well, first, if we look at the Texas Success
 16 Initiative, the higher education readiness component, it
 17 looks like one out of three students in the district was
 18 not meeting that standard in English language arts in
 19 2011, correct?

20 A. Correct.

21 Q. And then for economically disadvantaged, it looks
 22 like just over one out of two students, or 54 percent, was
 23 meeting the standard, correct?

24 A. Yes, that's correct.

25 Q. And then for LEP students, only one out of seven

1 of those students was meeting the standard, correct?

2 A. Correct.

3 Q. And for math, it looks like the district -- only
 4 72 percent were meeting the standard in 2011 in the
 5 district, correct?

6 A. Correct.

7 Q. And then economically disadvantaged it was 61
 8 percent, and LEP it was 53 percent, correct?

9 A. Correct.

10 Q. Going next to the SAT/ACT results, and the
 11 percentage of the students tested at Belton for the class
 12 of 2010 was 52 percent, correct?

13 A. Correct.

14 Q. And of those 52 percent who actually tested, only
 15 one out of three students met the at or above criterion,
 16 correct?

17 A. Correct.

18 Q. And it doesn't have the economically
 19 disadvantaged or LEP information reported here, correct?

20 A. Correct.

21 Q. So we're just going to look at some of the
 22 disaggregated ethnic groups reported here. And for the
 23 class of 2010, 59.5 percent of the African-Americans had
 24 tested, but only 13.6 percent met the at or above
 25 criterion, correct?

1 A. Correct.

2 Q. And for Hispanics, 46.8 percent of the students
3 were tested, but only 20 percent met the standard,
4 correct?

5 A. Correct.

6 Q. And for whites, 53.8 percent of those students
7 were tested, but only 41.2 percent met at or above
8 criterion, correct?

9 A. Correct.

10 Q. Going to the last indicator, which says the
11 college ready graduates -- and we're going to just look at
12 both subjects here. And those are English language arts
13 and mathematics. But in the district only 52 percent of
14 the students met the criterion under college ready,
15 correct?

16 A. Correct.

17 Q. And are you -- I'm not going to ask you if you're
18 familiar with the exact standards, but are you familiar
19 that this specific indicator relates back to scale scores
20 on the TAKS test?

21 A. Yes.

22 Q. The TAKS exit test?

23 A. Yes.

24 Q. And for economically disadvantaged, only 31
25 percent from the class of 2010 met this college ready

1 indicator?

2 A. Yes.

3 Q. And less than 1 percent of LEP students met the
4 standard, correct?

5 A. Correct.

6 Q. And after going over these specific indicators on
7 college readiness and the TAKS commended, what is your
8 opinion on how your district's students are performing
9 against college readiness criterion?

10 A. We aren't performing very well by our own
11 standards. We'd like to see more students achieving a
12 higher level on those college readiness standards.

13 Q. And does the district feel that it has the
14 sufficient resources in order to provide all the programs
15 and services that are just needed to present the
16 opportunity for students to achieve the standards that's
17 been put in place?

18 MS. PENN: Objection, form.

19 A. Absolutely not.

20 Q. (BY MR. HINOJOSA) What -- does the district have
21 any surrounding Chapter 41 districts?

22 A. We do. Salado ISD next door to us is a
23 Chapter 41 district.

24 Q. Have you ever worked in a Chapter 41 district?

25 A. No.

1 Q. Are you generally familiar with the offerings in
2 the -- which district was it, again?

3 A. Salado, ISD.

4 Q. S-A-L-A-D-O?

5 A. A-D-O, yes.

6 Q. Are you generally familiar with their educational
7 program?

8 A. Generally, I would say yes.

9 Q. And is there any competition that the district
10 has with Salado for any resources?

11 Let me ask it this way: Who are the district's
12 main competitors when it comes to teachers and
13 administrators and staff?

14 A. Our main competitors are most of the districts in
15 our surrounding area, particularly -- when it comes to
16 staff? Is that the question?

17 Q. Yes.

18 A. Or to resources?

19 Q. Staff.

20 A. When it comes to staff, our main competitors are
21 Killeen ISD, which is next to -- sits next to Fort Hood,
22 and Midway ISD, Georgetown ISD, and Copperas Cove ISD and
23 Salado ISD somewhat.

24 MR. HINOJOSA: All right. I have no further
25 questions. Thank you.

1 THE WITNESS: Thank you.

2 (Break.)

3 EXAMINATION

4 BY MS. PENN:

5 Q. Dr. Kincannon, I'm Amy Penn. I'm with the
6 Attorney General's office. We met earlier today off the
7 record, not on the record.

8 Have you read the petition in this action?

9 A. Yes.

10 Q. So do you agree with every statement in that
11 petition?

12 A. I believe so.

13 Q. Okay.

14 (Exhibit 610 was marked.)

15 Q. (BY MS. PENN) I'm going to hand you what I'm
16 marking as Exhibit 610. Can you identify that document,
17 please?

18 A. This is a -- an article -- this is an article in
19 the Belton Journal, which is our local newspaper.

20 Q. Okay. In the first paragraph there, it says: In
21 response to continued inequities in the public school
22 finance system, the Belton ISD Board of Directors voted
23 unanimously at their regular meeting on September 19th, to
24 "join with other Texas public schools, taxpayers and
25 parents as an unincorporated association for the purpose

1 TEKS?

2 A. No.

3 Q. No? Okay.

4 How do you believe that students should be
5 required to demonstrate that they have mastered a
6 particular subject area?

7 A. Would you say that one more time?

8 Q. How do you believe that a student should have to
9 demonstrate that he or she has mastered the content in a
10 particular subject area?

11 A. To whom?

12 Q. To the school.

13 A. To the school. I think teachers have -- can use
14 a variety of data to determine whether a student has
15 mastered a curriculum. And so I think, you know, one
16 single test, the TAKS test or the STAAR test, would not
17 necessarily identify all students who haven't mastered or
18 who have mastered the curriculum. So I would say that it
19 would take a variety of methods to accurately assess
20 whether a student has mastered the curriculum.

21 Q. Okay. And would one of those methods be some
22 type of standardized test?

23 A. Sure.

24 Q. Okay. And would that answer, then, change when
25 we talk about demonstrating a mastery to the State?

1 A. Could you ask me the question?

2 Q. Uh-huh. How should a student be required to
3 demonstrate that he or she has mastered a subject area?

4 A. To the State?

5 Q. To the State.

6 A. Well, the only system that we have is the current
7 system that's in place for the State to collect data on
8 students. And so if I were to change it, we might have
9 teacher input into each student who is -- to reflect some
10 type of mastery level of the curriculum.

11 Q. Okay. And that would just rely on the teachers'
12 own discretion?

13 A. Yes.

14 MS. PENN: Okay. Thank you very much for
15 your time. I am done with my questions.

16 THE WITNESS: Thank you.

17 MR. GRAY: Take a quick break.

18 (Break.)

19 EXAMINATION

20 BY MR. GRAY:

21 Q. Dr. Kincannon, I'd like to just ask you a few
22 questions just to clarify a few things, and then we will
23 be done.

24 Earlier counsel for the State was asking you
25 about some of the STAAR testing data for Belton. And I

1 believe you said you didn't have some exact results or
2 test results for some grades but you did for others. What
3 grades did you have results for, test results for?

4 A. We had passing results at the high school level
5 for end-of-course exams, and then Grades 3 through 8 all
6 we had were raw scores with no passing results.

7 Q. Okay.

8 A. So we -- the State didn't give us a -- a cutoff
9 to know which of those students would have passed or not
10 passed at the -- in Grades 3 through 8. But at the high
11 school level, we knew which students met the standard.

12 Q. Okay. And are you familiar with the phase-in
13 standard and the recommended standard and the difference
14 between the two?

15 A. Yes.

16 Q. And based on -- let's start with the 3 through 8,
17 the raw scores that you have that weren't the passing
18 scores. Based on -- well, let me first go back.

19 What is your understanding of the difference
20 between the phase-in standard and the recommended
21 standard?

22 A. The phase-in standard is at a -- requires that
23 the students get fewer questions correct in order to be
24 counted as a student who has passed the examination. And
25 the recommended standard is a standard that we will be

1 moving towards and students will have to get more
2 questions on the exam correct in order to be considered as
3 passing.

4 Q. Now, when you say "moving forward," are you
5 saying that the recommended standard is the standard that
6 the State is -- that is where they're going and where the
7 standard eventually will be?

8 A. Yes.

9 MS. PENN: Objection; form.

10 Q. (BY MR. GRAY) The -- going back to the Grade 3
11 through 8 raw scores. For -- based on the phase-in, what
12 were -- I know it wasn't passing scores, but what do those
13 scores indicate to you on how your students are doing?

14 A. Yeah, we didn't have phase-in or recommended
15 numbers at Grades 3 through 8.

16 Q. I'm sorry. I apologize. The high school is
17 where you have the passing scores.

18 A. Yes.

19 Q. Let's go there. Tell me about the high school
20 scores where you had passing scores for the phase-in
21 standard.

22 A. Yes. At the high school level, we -- at the
23 phase-in standard, we -- we had results that ranged from
24 approximately 67 percent in our lowest area for all
25 students. However, we had some groups that were lower.

1 And then we had some scores in the 80 percent and some
2 that were in the 90s. And then when you looked at the
3 recommended standard, which the State is moving towards,
4 those results were generally cut in half.

5 So we know that approximately half of our
6 students would fail at the recommended level and not be
7 able to graduate from high school.

8 Q. So, I mean, just to make sure I understand what
9 you were saying, the phase-in scores compared to the
10 recommended scores, the recommended scores were about 50
11 percent worse than the phase-in scores were for all
12 students?

13 A. Yes.

14 Q. Okay. And in order to make those scores, the
15 recommended, in order to make them -- make them better,
16 what -- you know, and improve student performance, what
17 does Belton ISD need?

18 A. We need more resources. We need resources to get
19 kids at higher levels in the elementary grades. We have
20 students who come behind in learning. They come to us not
21 ready for kindergarten, so we need early childhood
22 intervention. We need remediation all through the lower
23 grades, all through middle school. And then at the high
24 school level, we need to be able to catch students who
25 still aren't there. And so we need additional teaching

1 staff, we need additional professional development in
2 order to provide quality trained staff at every grade
3 level so that we catch students before they get to high
4 school.

5 Q. And in order to do all those things you just
6 listed, what does Belton need in order to do those things?

7 A. We need more money. We need equitable funding.

8 Q. Next I'd like to talk to you -- the counsel for
9 the State asked you a couple of questions about the bond
10 issue that Belton recently had.

11 A. Uh-huh.

12 Q. And they pointed out one member of the community
13 that wasn't happy with that bond election. You held
14 public hearings on this bond election -- or did Belton
15 hold public hearings for this bond election?

16 A. Yes, we held hearings in multiple formats and in
17 different locations for community members to come and
18 learn about the bond and to give comments back to us.

19 Q. And did community members give comments, voice
20 objections and show up at those opportunities?

21 A. Yes.

22 Q. Okay. And in order for a bond to pass, is it
23 correct that over 50 percent of those who vote on the bond
24 have to approve that bond?

25 A. Yes.

1 Q. So if the community of Belton or members of the
2 Belton community wanted to defeat that bond, they could
3 have done so?

4 A. Yes.

5 Q. Next I want to talk to you about the competition
6 or the competitiveness there is for teachers and staff
7 that counsel for the State asked you briefly about. And I
8 believe you mentioned, and correct me if I'm wrong, that
9 the, I guess, surrounding districts that you are
10 competitive with or compete with for teachers and staff is
11 Killeen, Midway, Georgetown, Copperas Cove and Salado?

12 A. Yes.

13 Q. Okay. And which of those districts are Chapter
14 41 district, do you know?

15 A. Salado ISD and Midway ISD.

16 Q. Okay. And is there anything about Killeen ISD
17 that would give them an advantage over Belton in competing
18 for teachers and staff?

19 A. Yes. Killeen ISD serves a large population of
20 military students. Even though they're located very close
21 to us, they have the majority of students who have a
22 family member who's in active military. And they receive
23 approximately \$30 million outside of the school funding
24 formula system to pay for things that they need for their
25 school district that we don't receive.

1 Q. And that could include using that money to hire
2 teachers or salaries?

3 A. Yes.

4 Q. Okay. And then what -- in Copperas Cove, do they
5 have anything that would give them an upper hand or an
6 advantage over Belton in hiring or competing for teachers?

7 A. Yes. They, too, receive impact aid funding, and
8 I believe that that is approximately 8 to \$10 million per
9 year.

10 Q. And they could use that funding to compete for
11 teachers and salaries?

12 A. Yes.

13 Q. Okay. And is -- is Georgetown a 41 or 42
14 district?

15 A. I -- I think they're a 42.

16 Q. Okay. And are they the closest district in
17 proximity to Belton than the others you've named?

18 A. No, Temple ISD.

19 Q. Temple is.

20 A. Uh-huh.

21 Q. Okay. And does Georgetown have any certain
22 advantage over Belton ISD that you can --

23 A. They have a higher tax base, and so the -- for
24 every penny of tax that they have, they can raise more
25 money than we do.

1 Q. And do the surrounding districts that we just
2 named, are you aware of their salary schedules and what
3 they pay teachers?

4 A. Yes.

5 Q. And does Belton -- let me rephrase.

6 Is -- is Belton able to compete with those salary
7 schedules and salaries they pay their teachers?

8 A. Yes. We do that by studying each year, using
9 data that we get from TASB, and we complete a compensation
10 study. And we work to stay as close in salaries as
11 possible to them so that we do not lose our good teachers
12 to them. Especially at the end of the teaching career, we
13 have lost teachers to Killeen ISD. At the end of their
14 careers, they'll move districts in order to get their
15 average up so that they can have a higher retirement
16 salary.

17 Q. You said at the end of their careers, so these
18 are your most experienced teachers who do this?

19 A. Yes.

20 Q. And when you are replacing those teachers that
21 leave, would you say you're replacing them more with
22 early, inexperienced first-year teachers or further down
23 in their career teachers?

24 MS. PENN: Objection; form.

25 A. Typically, we would replace them with more

1 programs and stay competitive, what would Belton ISD need?

2 A. We would need additional money to stay
3 competitive.

4 Q. And, Dr. Kincannon, as -- in your position, as
5 superintendent of Belton ISD, is Belton ISD an adequately
6 funded district?

7 A. No.

8 Q. And in your position as superintendent of Belton
9 ISD, do you believe that the way the State distributes
10 money amongst school districts is fair?

11 A. It is not fair. Our -- and I want to add -- I
12 just want to comment on that. Our -- our taxpayers are
13 paying \$1.17, where all of the area districts are paying
14 \$1.04 on their M&O tax rate, so that we can provide the
15 education that we do. And so our taxpayers are carrying
16 the burden of funding our -- our public schools so that
17 our kids can have what they need, whereas other districts
18 do not have to do that.

19 And that's complicated by the fact that we're a
20 fast growth school district, because we also have a higher
21 I&S rate to be able to fund facilities to accommodate our
22 students for the growth.

23 MR. GRAY: Okay. Well, thank you,
24 Dr. Kincannon. I have no further questions.

25 THE WITNESS: Thank you.

1 inexperienced teachers. We have -- we invest a lot of
2 money in our teachers, and so we do not like to see them
3 leave at the end of their careers to move to another
4 district.

5 Q. (BY MR. GRAY) And we spoke -- a second ago you
6 were telling me that Salado was a Chapter 41 district,
7 Midway was a Chapter 41 district. Killeen got government
8 money for having -- serving military children. And
9 Copperas Cove got 8 to \$10 million worth of State aid.

10 A. Federal aid.

11 Q. I'm sorry, federal aid. I excuse me. Federal aid.

12 And you told me that they -- you know, those
13 districts are -- have the ability to increase salaries if
14 they want to and pay more based on that aid they're
15 getting. And if they were to -- if those districts that
16 you compete with for teachers and staff were to raise
17 their salaries, would Belton be able to do that in order
18 to stay competitive?

19 MS. PENN: Objection; form.

20 A. We would have to do that in order to stay
21 competitive and we would have to do that at the sacrifice
22 of that possibly some of our programs we'd have to cut
23 something in order to be able to do it. And we feel like
24 we are pretty minimal in our programs now.

25 Q. (BY MR. GRAY) So in order to avoid having to cut

1 MS. PENN: I'm done.

2 (THE DEPOSITION CONCLUDED AT 2:23 P.M.)

1 CAUSE NO. D-1-GN-11-003130
2 TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
3 FAIRNESS COALITION, et)
4 al.,)
5)
6 Plaintiffs,)
7)
8 vs.)
9)
10 EDGEWOOD INDEPENDENT)
11 SCHOOL DISTRICT, et al.,)
12 (consolidated))
13) TRAVIS COUNTY, TEXAS
14 Plaintiffs,)
15 vs.)
16)
17 ROBERT SCOTT, in his)
18 Official Capacity as)
19 Commissioner of Education,))
20 et al.,)
21)
22 Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION
STEPHEN KLEIN, Ph.D.
September 24, 2012
Austin, TX

Reported by:
Rebecca J. Callow, RPR, CRR, CSR-8925
Job No. 53119

(Exhibit Nos. 1113, 1114, 1115, 1116 marked.)

STEPHEN KLEIN, Ph.D.,

having been first duly sworn, testified as follows:

EXAMINATION

BY MS. BUNKER-HENDERSON:

Q. Good morning. I'm Nicole Bunker-Henderson. I represent the Texas Education Agency and the other defendants in this litigation. And if you would please state your name for the record?

A. It's Stephen Klein. K-l-e-i-n.

Q. Thank you.

A. Could you excuse me for one moment? I need to put my hearing aid in.

Q. Okay. That's important.

(Discussion off the record.)

Q. (BY MS. BUNKER-HENDERSON) So, Dr. Klein, there are just a few ground rules for the deposition, which is that the court reporter has to be able to record the things that each of us are saying. I have a very loud voice generally, but if you can't hear me, you can just ask me to speak up. I've rarely been asked to speak up, but if you need to, you do so. I won't have any problem with it.

We have to be careful not to speak over

each other. I will try to wait until you've completed your answer before I ask another question, and if you will wait until I've completed the question that will make this woman much happier.

If your counsel has objections, usually he will just say "objection," and you can continue to answer unless he instructs you not to. If you need any breaks, please feel free to take a break. I'm happy to take a break any time.

At the point when I ask you a question and you don't understand what the question is, which will inevitably occur, just ask me to rephrase the question and I will try to make the question a better question that you can answer.

Dr. Klein, have you ever had your deposition taken before?

A. Yes.

Q. Okay. And when was that?

A. I don't recall the last one. It was several years ago. I was actually having a deposition. Probably about four or five years ago.

Q. How many times have you had your deposition taken?

A. Two or three dozen.

Q. Okay. So you're familiar with all these

processes then?

A. Some I am.

Q. Have you ever testified under oath before?

A. Yes.

Q. Okay. And can you tell me when those were?

A. The last one was two weeks ago.

Q. Okay. And what was that?

A. That was a hearing before an administrative law judge about possible termination of a teacher.

Q. Okay. A teacher contract?

A. No. A teacher in the school system.

Q. Okay. And where was that?

A. In Los Angeles.

Q. Have you ever testified in any cases in the State of Texas before?

A. I don't recall doing that. That's possible, but I don't recall.

Q. Okay. And I assume, then, you've testified in a court of law before. Is that correct?

A. Yes.

Q. And can you explain to me those cases that you've testified in a court of law?

A. One had to do with the admission of somebody to the Alaska bar examination -- Alaska bar. I've testified several times in cases dealing with voting

rights in federal court. I've testified regarding the appropriateness of the death penalty. I'd have to look back at my CV to see the different kinds of cases I've worked on, but there's been quite a few.

Q. Can tell me about the testimony that you provided in the Alaska bar examination case?

A. Sure. There was an applicant who was using the computer -- laptop computer to answer the essay questions and had a glitch in the software that interfered with his -- the time he had to answer some of the questions, and he was complaining that the accommodation that was provided wasn't adequate.

Q. And so what was your testimony in that case?

A. That it was adequate and the score that he earned -- he would have failed even if that whole section was removed from the exam.

Q. Have you ever testified as an expert witness before?

A. Yes.

Q. Okay. And were those the cases that you previously mentioned?

A. Yes.

Q. Have you -- has a court ever refused to certify you as an expert before?

A. No.

1 study.

2 Q. Can you describe how that's done?

3 A. Yes. It involves taking items from one test
4 and putting them in another test that's given to a group
5 of students. And based upon the scores on the questions
6 that were repeated, they could adjust the scores so that
7 the two tests are on the same footing.

8 Q. Is it your understanding that that empirical
9 analysis was conducted in the same manner for both the
10 3-through-8 bridge study and the end-of-course bridge
11 study?

12 A. I'd have to go back and look at that. I don't
13 recall that. I was focusing on the 3 through 8.

14 Q. Is your report offering a critique of the
15 end-of-course bridge study?

16 A. Not that I'm aware of.

17 Q. So is it your understanding that the empirical
18 analysis as you just described it was -- that's how TEA
19 conducted it for purposes of the 3 through 8 bridge
20 study?

21 A. You want to repeat that one again?

22 Q. Yes. So you just described how you believed
23 the empirical analysis was conducted.

24 A. My understanding of how the empirical analysis
25 was conducted was what I said.

1 Q. And is it your understanding that that is how
2 the empirical analysis was conducted for purposes of the
3 3-through-8 bridge study?

4 A. Correct.

5 Q. Okay. Is it your opinion, then, that the
6 empirical analysis, or Stage 2, was properly conducted
7 in this case?

8 A. Yes.

9 Q. In your report on page 3 right here, you state,
10 "In Stage 3, Texas used a procedure called
11 equipercentile scaling to conduct its impact analysis."

12 Can you describe to me the source of that
13 belief or statement?

14 A. I believe it was from document 1117.

15 Q. Okay. Can you identify -- or would you recall
16 where in there?

17 A. Not offhand. I'd have to go back and look at
18 it.

19 Q. Okay. Does your statement on page 3, does that
20 mean that you believe equipercentile scaling was used in
21 the impact analysis?

22 A. That is my understanding is that equipercentile
23 scaling was part of the impact analysis.

24 Q. Okay. And that's only for the 3-through-8
25 bridge study. Is that correct?

1 A. That's all we were talking about.

2 Q. So you didn't -- you are not offering an
3 opinion about the end-of-course bridge study?

4 A. That is correct.

5 Q. Okay. Can you describe what equipercentile
6 scaling is or how that's done?

7 A. Basically it says the highest score on one test
8 is set equal to the highest score that was earned by
9 anybody on the other test, and so on down
10 percentage-wise. It's essentially a rank ordering of
11 the two tests on a scale.

12 Q. So is it your opinion, then, that it was
13 improper -- or would be improper to use equipercentile
14 scaling in the 3-through-8 bridge study in this case?

15 A. It was -- no. It wasn't our opinion. Our
16 opinion had to do with using it to measure change.

17 Q. Okay. Well, let's go back so I'm clear on
18 this.

19 What was Stage 1 of Texas's bridge study?

20 A. That was the content analysis.

21 Q. And what was Stage 2?

22 A. That was the empirical analysis.

23 Q. And what was Stage 3?

24 A. The equipercentile.

25 Q. And is it your opinion that it was improper to

1 use equipercentile for the purpose of this bridge study?

2 A. It was our opinion that it was improper to use
3 equipercentile to measure change.

4 Q. What is your understanding of what the purpose
5 of the bridge study in this case was?

6 A. Our understanding of the purpose was that it
7 was to see whether the performance was going to align
8 the two tests, the STAAR and the TAKS tests.

9 Q. For what purpose?

10 A. To see whether there was change.

11 Q. Why did Texas want to see whether there was
12 change?

13 A. I think to satisfy the requirements for AYP.

14 Q. So for the purpose that this bridge study was
15 conducted for purposes of AYP, is it your opinion that
16 it was improper to use the equipercentile method?

17 A. It was our opinion that it was improper to use
18 equipercentile method to measure change.

19 Q. When you say "change," what do you mean?

20 A. Change in students' performance between years.

21 Q. In grades 3 through 8?

22 A. Correct.

23 Q. How do you define the impact analysis?

24 A. It appears that the impact analysis is
25 synonymous with equipercentile in this study.

Q. In grades 3 through 8?

A. Correct.

Q. Can you explain why you believe the equipercentile method cannot measure change in this case?

A. Perhaps the best reason is that it's circular. Because the circular reasoning.

Q. And what is the circular reasoning, in your mind?

A. The equipercentile assumes that there is no change.

Q. And --

A. So to use a testing method to measure change seems contradictory.

Q. How does the equipercentile assume that there's no change?

A. Well, we can go through Dr. Davis's report.

Q. Okay.

A. And I believe she says that. I'd have to find it.

Well, on the very first page of that report she says "Stable performance was only assumed at state level."

So at the state level it was assumed that there was no change.

Q. And it's your understanding that stable performance was assumed at the statewide level in applying the equipercentile method?

A. That's right.

Q. Okay. So on page 3 of your report you say in the first full paragraph, that starts with "In Stage 3..." is the first sentence?

A. Okay.

Q. The next sentence says "This analyses focused on finding a single score point, namely one that would pass the same percentage of 2012 STAAR test takers as passed the corresponding 2011 TAKS test."

A. Yes.

Q. What did you mean by that?

A. By "passed" the category, I believe it was categorized as proficient. The percent that would be categorized as proficient. But the two tests were aligned so that they would have the same people in passing, reaching the proficient stage.

Q. And is it your opinion that it's an invalid assumption that statewide performance would be stable from 2011 to 2012?

A. I think the best way to put it that it's circular reasoning to assume that it is stable. And then try to use that technique to see whether it's

stable or not is contradictory.

Q. Is it your opinion that the 3 through 8 bridge study as conducted could not have shown a lower percentage of students meeting the proficient level on TAKS in 2012?

A. Whether the Stage 3 procedure would show a lower percentage?

Q. I'm talking about the bridge study overall. The whole -- all three stages.

When you get to the end, is it your opinion that the results of the study could not have shown that a lower percentage of students achieved the proficient level, or TAKS-met, would have in 2012?

A. I don't think that was our conclusion. I think our conclusion was that it was biased in that direction.

Q. So is it your opinion that the study could have shown a lower percentage of students achieving the proficient level in 2012?

A. It is possible it could have shown it, but it would have been a biased estimate.

Q. And why again would it have been a biased estimate?

A. Because the Stage 3 by itself wouldn't show it.

Q. Rather than using the equipercentile method in the 3-through-8 bridge study, what method would you have

used?

A. The empirical method.

Q. And how do you define the empirical method?

A. It's equating one test to the other using standard procedures. I believe that the procedures that were used were IRT procedures, and that would be perfectly acceptable.

Q. What is IRT?

A. Item Response Theory.

Q. So is it your opinion that Texas should have used the -- an empirical-only analysis in grades 3 through 8?

A. Yes.

Q. In your opinion, what conditions must be present for you to feel comfortable to using an empirical-only analysis?

A. That the tests have similar content and they have similar psychometric properties.

Q. What do you mean by "psychometric properties"?

A. Reliability would be the first one that would be most important.

Q. Any others?

A. Well, the shape of the distributions would be similar.

Q. Anything else?

1 A. Not offhand.

2 Q. In your opinion, were all the conditions
3 necessary for appropriate use of the empirical-only
4 analysis present in this case?

5 A. Well, that's a matter of degree. And I would
6 say that we wouldn't have problems with them using only
7 the empirical analysis to do the bridge. The problems
8 come up with the bias that's built into the -- what
9 you're -- what's called the impact analysis and the
10 equipercentile analysis, the way it was used.

11 Q. So, in your opinion, if Texas applied an
12 empirical-only analysis in grades 3 through 8 with no
13 impact analysis, the bridge study would have been more
14 reliable? Is that your opinion?

15 A. I'm not sure it would be more reliable. It
16 would be more valid.

17 Q. More valid. Okay. And valid for what purpose?

18 A. For making the bridge.

19 Q. Do you have any reason to believe that
20 statewide performance would not have been stable or flat
21 from 2011 to 2012?

22 A. I don't have any reason to believe it one way
23 or the other.

24 Q. Did you run any data or conduct any analysis
25 that showed that fewer campuses would have met AYP using

1 the empirical-only analysis?

2 A. I didn't. I saw something that would suggest
3 that that might be the case.

4 Q. Okay. And what was that?

5 A. I believe it was some documents that Mr. Turner
6 showed me yesterday in terms of -- or it might have been
7 something in Dr. Davis's report that would show that.

8 Q. Dr. Klein, in your mind, are there different
9 types of impact analyses?

10 A. Yes.

11 Q. And what are some of the impact analyses?

12 A. Well, usually when the term is used, "impact
13 analysis," it's not used the way it's used here.
14 Usually it is used to say what percentage of the people
15 would pass if we adopted a different cut score. That's
16 typically there would be like somebody would use the
17 Angoff procedure.

18 Q. Use --

19 A. -- to get a -- Angoff, A-n-g-o-f-f.

20 Somebody would use that procedure to
21 estimate what would happen, how many people would pass;
22 and then that's shown to the subject matter experts and
23 asked whether they would endorse that or not. And the
24 term "impact analysis" is usually used in that context.
25 Pearson uses it in that context to see what the effect

1 would be if they used that standard. That's the part
2 that was confusing to me to begin with in looking at
3 this.

4 So in answer to your question, is it
5 common to use an impact analysis; yes, but not the way
6 that term is defined here.

7 Q. Do you consider equipercentile scaling to be a
8 form of impact analysis?

9 A. No. I would consider impact analysis to be
10 looking at what the effect would be of using a
11 particular standard. Equipercentile scaling is the way
12 of putting tests on a common scale.

13 Q. What are other ways of putting tests on a
14 common scale?

15 A. Empirical analysis is one, or you would use the
16 technique that's used now in Texas for the bar, exam
17 which is having a comparable means of standard
18 deviations.

19 Q. So it's your testimony, if I'm understanding
20 correctly, that it would be proper to use empirical
21 analysis in the 3-through-8 bridge study, but it would
22 be improper to use equipercentile scaling in the
23 3-through-8 bridge study?

24 A. That is correct, for the purposes of measuring
25 change.

1 Q. Is that what you understood the purpose of the
2 bridge study to be?

3 A. Yes. It was the purpose -- my understanding of
4 the purpose of the bridge study was to see how much
5 change has occurred, if any change has occurred.

6 Q. But am I understanding correctly that you agree
7 that the change -- the 3-through-8 bridge study as
8 conducted could have shown fewer students meeting the
9 proficient measure?

10 A. I would agree with that to the -- but I would,
11 again, add the qualifier that it would be a biased
12 estimate.

13 Q. By "biased," do you mean a less likely outcome?

14 A. No. It would be an outcome that was affected
15 by the circular reasoning that's going on.

16 Q. Do you have any way to measure the degree to
17 which you believe it would be affected by the use of the
18 equipercentile method?

19 A. Not off the top of my head. But, I mean, we
20 can look at the difference between the empirical method
21 and the impact method/equipercentile method and see what
22 differences there are.

23 Q. What was your understanding of why Texas chose
24 to use the impact -- to include the impact analysis in
25 the final numbers used for the bridge study?

1 A. I don't know what their motivation was. I'd
2 have to speculate about that.

3 Q. Was it your understanding that the state used
4 the impact analysis numbers or something other than the
5 impact analysis numbers for its final results for the
6 bridge study?

7 A. My understanding is they used the average of
8 the two methods.

9 Q. And you're not familiar with why Texas used
10 that method -- used that number?

11 A. I don't know for sure. I'd have to go back and
12 look whether they were unhappy with the empirical
13 analysis.

14 Q. Is it your understanding that the department of
15 education approved the use -- the various stages for the
16 bridge study?

17 A. I believe that is the case, based upon
18 Dr. Davis's report.

19 Q. Would that indicate to you that the department
20 of education was satisfied that whatever numbers were
21 arrived at were reliable for the purpose for which they
22 were being used?

23 A. I don't know what the department of education
24 is thinking. That's not my -- my bailiwick.

25 Q. Is it your opinion in this case that TEA's use

1 of rounding in this case was inappropriate for the use
2 of the AYP bridge study?

3 A. I think that it may have biased the results.

4 Q. What do you mean by "biased the results"?

5 A. Pushed the results in one direction.

6 Q. Is it your opinion that that was inappropriate
7 for the use of the AYP bridge study, though?

8 A. I'm not sure whether that's appropriate or not.
9 It certainly biased the data a certain direction. It
10 was done for the ostensible reason for favoring
11 students, and whether that should be done or not is a
12 philosophical question to some degree.

13 Q. Are you familiar with Texas's historical use of
14 rounding in the student assessment realm?

15 A. No. I'm not familiar with that.

16 Q. Would you consider it appropriate to round down
17 in the study if you knew that Texas always rounded in
18 favor of the students in K through 12 assessment
19 studies?

20 A. Well, what that conjures up is Emerson's famous
21 line of "A foolish consistency..."

22 Q. So it's your opinion that it's never
23 appropriate to round down in favor of students?

24 A. No.

25 Q. When is -- when might it be appropriate?

1 A. I'd have to look at the situation.

2 Q. So it's on a case-by-case basis, in your mind?

3 A. Yes.

4 Q. And are you familiar with any literature on the
5 topic of rounding in favor of students?

6 A. Not offhand.

7 Q. So in your opinion, are there any
8 psychometricians who agree that rounding in favor of the
9 student is appropriate?

10 A. I can't speak to that.

11 Q. Okay. So it's not your opinion today that
12 rounding in favor of the student is never appropriate.
13 Is that correct?

14 A. That's correct.

15 Q. Okay. Dr. Klein, let's go ahead and turn to
16 your NAEP and TAKS report. I see that you are listed as
17 the primary author on this report. Is that correct?

18 A. Yes.

19 Q. And what did you do to prepare this draft?

20 A. I developed a set of specifications for data
21 tables that I wanted filled in.

22 Q. Have you provided us a copy of your data
23 tables?

24 A. I believe so. You'll have to ask Mr. Turner
25 about that.

1 MR. TURNER: I believe the answer to that
2 is yes. It was in the production.

3 MS. BUNKER-HENDERSON: Okay.

4 Q. (BY MS. BUNKER-HENDERSON) Okay. So you filled
5 in the data tables and then what did you do next?

6 A. I had them fill in the data tables.

7 Q. Okay.

8 A. I created the tables.

9 Q. Yes.

10 A. And specified what information was to go into
11 the cells of those tables.

12 Q. Okay.

13 A. And then I also specified what figures would be
14 drawn to portray those data so we could contrast NAEP
15 and TAKS scores and that's what was done. And I used
16 that to -- as the basis for the conclusions and text in
17 my report.

18 Q. What was the conclusion of your NAEP and TAKS
19 study?

20 A. I think we could go to the report.

21 Okay. If we go to page 10, "Summary and
22 Conclusions." I think that pretty much summarizes it.

23 Q. So for the purpose of your testimony in this
24 case, this -- you believe this fairly -- on page 10
25 fairly summarizes your opinions related to TAKS and

1 NAEP. Is that correct?

2 A. Yes, that's correct.

3 Q. Did you run any other data or studies other
4 than that that appears in this case -- in this report?

5 A. I don't believe so.

6 Q. Did you draw on any articles or research for
7 the purpose of reaching your conclusions in this case?

8 A. No.

9 Q. And so your study is simply a comparison of
10 effect sizes between gains on TAKS and NAEP. Is that a
11 correct statement?

12 A. Not entirely, because we also looked at the --
13 the gap differences between racial/ethnic groups.

14 Q. Okay. And so you -- your study was also a
15 comparison of the gap in effect sizes of whites and
16 various racial and ethnic groups on TAKS and NAEP. Is
17 that correct?

18 A. That's correct.

19 Q. Are you familiar with the Texas Essential
20 Knowledge and Skills, what we call in Texas the TEKS or
21 the TEKS, depending on where you're from?

22 A. Yes. I'm not familiar with the -- I understand
23 that they exist. I don't know what the details of those
24 are.

25 Q. What do you understand those to be generally?

1 A. Test specification -- well, I look at them as
2 content specifications that would lead to the test
3 specifications. Those are the goals, as it were, that
4 would then provide the basis for test specifications.

5 Q. Do you understand that Texas Essential
6 Knowledge and Skills to be Texas's curriculum?

7 A. That's my understanding.

8 Q. And then did you review the -- what I think you
9 said is the test blueprint for TAKS?

10 A. I did not review them.

11 Q. Okay. So have you personally reviewed the
12 TEKS?

13 A. No.

14 Q. And have you reviewed the test blueprint for
15 the TAKS, the T-A-K-S, test?

16 A. No.

17 Q. Do you know specifically what the TAKS
18 assessment tests?

19 A. My understanding is they correspond to the
20 specifications, but that's all I know.

21 Q. Are you familiar with the content of the NAEP
22 test?

23 A. I have some understanding of the content of the
24 NAEP test.

25 Q. Have you recently reviewed either test

1 blueprints or actual tests for NAEP?

2 A. No.

3 Q. So do you know how much overlap there would be
4 in the content between the TAKS and the NAEP test?

5 A. I don't know how much overlap there would be
6 and what the nature of that overlap would be or how
7 important it is.

8 Q. So do you have an opinion about whether those
9 tests are similar or dissimilar in terms of what they
10 test?

11 A. I don't have an opinion of the degree of
12 similarity or dissimilarity in what they test.

13 Q. But you understand that TAKS tests the Texas
14 curriculum. Correct?

15 A. Correct.

16 Q. And NAEP doesn't necessarily test our
17 curriculum, does it?

18 A. It's not designed -- NAEP is not designed to
19 test Texas's curriculum, it's designed to test the
20 national curriculum.

21 Q. And to your --

22 A. It's actually not so much a curriculum, it's
23 designed to test national standards.

24 Q. To your knowledge, do Texas classroom teachers
25 teach national curriculum or national standards?

1 A. I would imagine that some of the things they
2 teach correspond to that, but they also teach things
3 that correspond to Texas. It's not that they're --
4 these things aren't mutually exclusive. We don't want
5 to leave that -- give people the wrong impression, that
6 there's overlap, but there's not necessarily one is
7 designed for one purpose and one is designed for another
8 purpose.

9 Q. But you haven't discussed any study or review
10 of the content overlap in those two assessments?

11 A. That is correct.

12 Q. On page 2 in your report, Table 1, the second
13 column, second row, you state that NAEP is voluntary.

14 A. That's right.

15 Q. What do you mean by "voluntary"?

16 A. Schools can either participate in it or not
17 participate in it. Individual schools.

18 (Exhibit No. 1119 marked.)

19 Q. (BY MS. BUNKER-HENDERSON) Dr. Klein, I'm going
20 to hand you what's been marked as Exhibit 1119. Under
21 No. 1, "NAEP Assessment Schedule Under No Child Left
22 Behind Act."

23 A. Yes.

24 Q. Can you read what that first sentence says
25 under that heading?

NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
FAIRNESS COALITION, et al.,)

Plaintiffs,)

v.)

EDGEWOOD INDEPENDENT SCHOOL) TRAVIS COUNTY, TEXAS
DISTRICT, et al.,)
(consolidated))

Plaintiffs,)

v.)

ROBERT SCOTT, in his official)
capacity as Commissioner of)
Education, et al.)

Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

JIM KNIGHT

Austin, Texas

Thursday, August 9, 2012

Reported by:

SUSAN S. KLINGER, RMR-CRR, CSR

JOB NO. 51381

E X H I B I T S (continued)

| No. | Page | Description |
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| Exhibit 222 | 138 | "The Great Divide" |
| Exhibit 223 | 139 | "Is there a revolution brewing in education" |
| Exhibit 224 | 139 | "School Finance - What size is Your bucket." |
| Exhibit 225 | 139 | "School Finance - What is adequate, fair and equitable." |
| Exhibit 226 | 139 | "School Finance - The Legislative blame Game Part 2" |
| Exhibit 227 | 172 | Anton 2011 financial report |
| Exhibit 228 | 184 | 2010-2011 Staff Salaries |
| Exhibit 229 | 184 | 2011-2012 Staff Salaries |
| Exhibit 230 | 192 | 2010-2011 Superintendent Salaries |
| Exhibit 231 | 192 | 2011-2012 Superintendent Salaries |
| Exhibit 232 | 196 | 3/29/12 Board minutes |
| Exhibit 233 | 217 | 2/16/12 Board minutes |
| Exhibit 234 | 220 | 1/10/12 Board minutes |
| Exhibit 235 | 222 | Bulldog Bark, Nov/Dec 2010 |
| Exhibit 236 | 247 | 2012-2013 Minimum Salary Schedule |

JIM KNIGHT,
having been first duly sworn testified as follows:
EXAMINATION
BY MR. GRAY:

Q. Would you state your name, please, sir?

A. Jim Knight.

Q. And Mr. Knight, where are you employed?

A. Anton Independent School District.

Q. What do you do for the Anton Independent School District?

A. I'm the superintendent of schools there.

Q. How long have you been the superintendent of schools there?

A. Two years as of this August.

Q. Will you tell us briefly your educational background?

A. I did my Master's at West Texas A&M University. Got my Bachelor of Science at Texas Tech University. Got some leadership, educational leadership training at Harvard the summer of 2010.

Q. Is that Harvard college in Massachusetts?

A. Yes, uh-huh.

Q. Harvard University?

A. Then, and then in both -- all the way from elementary principal all the way through middle school

E X H I B I T S (continued)

| No. | Page | Description |
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| Exhibit 237 | 261 | 2011 rating |
| Exhibit 238 | 261 | 2010 rating |
| Exhibit 239 | 261 | 2009 rating |
| Exhibit 240 | 262 | 2008 rating |
| Exhibit 241 | 263 | Anton Average Class size by Year |
| Exhibit 242 | 316 | WADA list |
| Exhibit 243 | 316 | Anton ISD: Revenue per WADA |

principal, secondary principal through coaching, teaching through all levels in education.

Q. What is your Master's in?

A. Masters in educational leadership.

Q. Can you also give us a brief synopsis of your work in education, starting when you first became a teacher/coach and take us all the way through your current employment at Anton?

A. Okay. You want to start with the first employment that I started at, or do you want just at Anton?

Q. Start with your first employment and tell me the district you worked at and kind of work me all the through.

A. Lubbock ISD. My first position, I was a junior high coach and history teacher in 1987. I stayed there two years. Went from there to Borger Independent School District in North Plains. Was there six years as a coach, high school coach, assistant basketball coach and teacher of world history, American history. From there went from Borger to Floydada ISD back in the South Plains. I was there two years as head basketball coach and government economics teacher, high school seniors.

And went from Floydada to Panhandle ISD back up in the Northern Plains, and coached there for six years

1 A. Rating recognized.
 2 Q. It was recognized. And its revenue per WADA?
 3 A. 4,544.
 4 Q. And for 2010-2011, what was its rating?
 5 A. Acceptable.
 6 Q. What was its revenue per WADA?
 7 A. 4,894.

8 MS. PENN: Thank you. No more questions.

9 MR. HINOJOSA: Can I ask a couple of quick
 10 questions on follow-up on that.

11 EXAMINATION

12 BY MR. HINOJOSA:

13 Q. Does a recognized rating in 2009-2010 have any
 14 direct correlation with college readiness as, career and
 15 college readiness as required by the state?

16 A. No.

17 Q. How about an acceptable rating in 2010-2011?

18 A. No.

19 MR. HINOJOSA: Pass the witness.

20 MR. FRAISSINET: One question.

21 FURTHER EXAMINATION

22 BY MR. FRAISSINET:

23 Q. Are you familiar with, in relation to that same
 24 point, Texas Performance Measures, TPM?

25 A. Yes.

1 Q. Did the -- and that was used for a while as part
 2 of the ratings?

3 A. Yes.

4 Q. And then that was eliminated?

5 A. Yes.

6 Q. And did the elimination of that measure have the
 7 effect in some cases to lower a district's rating?

8 A. Yes.

9 Q. Do you know whether that had anything to do
 10 with --

11 A. I would have to go back and look, but it
 12 significantly raised ratings in districts as well as, I
 13 mean, because you can take in exceptions and that type
 14 of thing. I would have to --

15 Q. You are not aware of, on these years, whether
 16 TPM --

17 A. I haven't. I would have to, I would have to
 18 look.

19 MR. GRAY: If you don't know, just say that.

20 A. I don't know.

21 MR. FRAISSINET: That all I've got.

22 FURTHER EXAMINATION

23 BY MR. DIAMOND:

24 Q. Then I'm going to continue very quickly with what
 25 I had. I looked at my notes. Follow-up on the \$200,000

1 grant for the math thing. Y'all got to keep the 24
 2 computers; right?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes.

6 Q. And then if you could, find Exhibit 223, the "Is
 7 there a revolution brewing in education?" I have got
 8 just a couple of questions on that.

9 A. Got a few of them on here. Got it.

10 Q. On this -- sorry, in the second paragraph of
 11 that, three lines down toward the end of that third line
 12 it says, "If we do not deliver a quality education
 13 system that prepares our students for college and
 14 careers, Texas will surely falter." Did I read that
 15 correctly?

16 A. Yes.

17 Q. And that is a quote -- is that a quote you made
 18 from Bill Hammond?

19 A. Yes, looks like that.

20 Q. And do you agree with that quote?

21 MR. HINOJOSA: Objection, form.

22 A. Well, I mean, I said we agree with Bill Hammond
 23 up above it, so I do agree.

24 Q. Do you agree or do you believe we're currently
 25 delivering the quality education system that prepares

1 our students for college and careers?

2 A. No, we just testified that we weren't.

3 Q. Okay. And just so it is clear on the record, you
 4 understand I represent the Texas Association of Business
 5 in this lawsuit?

6 A. I do now.

7 Q. Okay. Down on the third paragraph, second full
 8 sentence. It says, "To prepare students for the global
 9 market, we must first transform how we deliver
 10 instruction in the classroom." Did I read that
 11 correctly?

12 A. Yes.

13 Q. Is that -- that is your sentence; right?

14 A. Yes.

15 Q. First of all, why do we want to prepare students
 16 for the global market?

17 A. Because we have a global economy.

18 Q. Okay. What do you mean by transform how we
 19 deliver instruction in the classroom?

20 A. I mean, we can't continue to just sit and get
 21 drill and kill, bubble assessment, all the things that
 22 the high stakes testing is causing us to do. If we want
 23 true 21st century learning and global, and for a global
 24 student to come out to be able to operate in the global
 25 economy. And until we do that, we're going to keep

NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT § IN THE DISTRICT COURT
FAIRNESS COALITION, §
et al., §

Plaintiffs, §

v. §

EDGEWOOD INDEPENDENT §
SCHOOL DISTRICT, et al., § TRAVIS COUNTY, TEXAS
(consolidated) §

Plaintiffs, §

v. §

ROBERT SCOTT, in his §
official capacity as §
Commissioner of Education, §
et al. §

Defendants. § 200th JUDICIAL DISTRICT

ORAL DEPOSITION OF ROY D. KNIGHT

Austin, Texas

Tuesday, July 31, 2012

Reported by:

MICHAEL E. MILLER, FAPR, RDR, CRR, CSR

JOB NO. 51376

DEPOSITION EXHIBITS
ROY D. KNIGHT
July 31, 2012

| NUMBER | DESCRIPTION | MARKED |
|-------------|---|--------|
| Exhibit 109 | 2010-11 AEIS Report for Lufkin ISD | 51 |
| Exhibit 110 | Spring 2012 STAAR English/Social Studies EOC Results | 62 |
| Exhibit 111 | 2009-10 AEIS Report for Lufkin ISD | 84 |
| Exhibit 112 | 2009-09 AEIS Report for Lufkin ISD | 84 |
| Exhibit 113 | 2007-08 AEIS Report for Lufkin ISD | 84 |
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| Exhibit 115 | 2005-06 AEIS Report for Lufkin ISD | 85 |
| Exhibit 116 | 2010-11 School Report Card for Trout Primary | 95 |
| Exhibit 117 | 2010-11 School Report Card for Slack Elementary | 95 |
| Exhibit 118 | 2010-11 School Report Card for Kurth Primary | 95 |
| Exhibit 119 | 2010-11 School Report Card for Herty Primary | 95 |
| Exhibit 120 | 2010-11 School Report Card for Dunbar Primary | 95 |
| Exhibit 121 | 2010-11 School Report Card for Coston Elementary | 95 |
| Exhibit 122 | 2010-11 School Report Card for Brookhollow Elementary | 95 |
| Exhibit 123 | 2010-11 School Report Card for Brandon Elementary | 95 |

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DEPOSITION EXHIBITS

| NUMBER | DESCRIPTION | MARKED |
|-------------|---|--------|
| Exhibit 124 | 2010-11 School Report Card for Anderson Elementary | 95 |
| Exhibit 125 | 2010-11 School Report Card for Lufkin Middle | 95 |
| Exhibit 126 | 2010-11 School Report Card for Lufkin High School | 95 |
| Exhibit 127 | Summary of Teacher Information for Lufkin ISD from 2005-2011 | 141 |
| Exhibit 128 | Comparison of Lufkin ISD Teacher Salaries to State Minimum Salary Schedule | 150 |
| Exhibit 129 | Summary of Average Class Size on AEIS Reports for Lufkin ISD from 2005-2012 | 163 |

PROCEEDINGS

(July 31, 2012 at 9:10 a.m.)

ROY D. KNIGHT,

having been duly sworn, testified as follows:

EXAMINATION

BY MR. GRAY:

Q. Will you state your name, please, sir?

A. Roy D. Knight.

Q. And, Mr. Knight, what you do?

A. I'm superintendent of schools at Lufkin Independent School District.

Q. And how long have you been the superintendent of schools at Lufkin Independent School District?

A. I came on as deputy in the summer of '05 and then in '06, January of '06 took over as superintendent of schools.

Q. Will you give the Court briefly a -- your educational background that qualifies you to be superintendent of Lufkin.

A. Well, this is my 39th year in the school business. I started as a high school teacher, a junior high teacher, coach in Cameron, Texas, in Central Texas. Along the way in that 39 years, made stops in -- from Cameron to Lufkin to DeKalb to Hallsville and back to Lufkin.

Along the way I got my master's degree in management and ultimately my superintendent certification, both at -- what was formerly East Texas State University, now Texas A&M-Commerce.

Q. Did both your master's and your superintendent certification come from what's now Texas A&M Commerce?

A. Yes.

Q. And the schools that you have held positions in during your 39 years are Cameron, DeKalb, Hallsville and Lufkin, correct?

A. Correct.

Q. And you've had two stints at Lufkin?

A. Yes, sir.

Q. Describe for the Court the Lufkin Independent School District. First, where is it located?

A. Well, we're located in Angelina County in East Texas about 100 miles north of Houston on Highway 59. We're a blue collar community, founded as a sawmill town, and historically have been driven by the timber industry.

Q. Give the Court some information regarding the population of Angelina County. What's your poverty situation in the county?

A. We -- almost 75% of my kids qualify for free and reduced lunch, and the poverty level of the county overall is high compared to the state level. I don't

1 for worst-case scenarios, and if -- at the rate things
2 are going, I can pay three months worth of salaries and
3 then we're about done.

4 MR. GRAY: Thank you, sir. I have no
5 further questions.

6 THE WITNESS: Yes, sir.

7 MR. GRAY: Y'all want to take a break and
8 then start up?

9 (Recess taken, 10:13 a.m. to 10:27 a.m.)

EXAMINATION

10 BY MR. HINOJOSA:

11 Q. Mr. Knight, my name is David Hinojosa and I'm
12 an attorney with MALDEF, and we represent five
13 property-poor school districts in this lawsuit. Those
14 are Edgewood, San Benito, La Feria, Harlingen and
15 McAllen.

16 A. Yes, sir.

17 Q. And we also represent parents in Amarillo and
18 Pasadena who are parents of English language learner and
19 at-risk youth.

20 A. Yes, sir.

21 Q. And I have some questions for you. Earlier
22 you were talking about some of the programs that you've
23 been forced to cut as a result of the reduced funding
24 such as the full-day -- or the reduced staffing through
25

1 attrition, the class sizes, eliminating some of the art
2 and German classes as well.

3 And these decisions, did the board and you
4 as a superintendent make these decisions thinking they
5 were in the best interest -- the best educational
6 interest of the children that you serve?

7 A. No, sir. As a matter of fact, they were
8 really tough decisions, as we convened about these, and I
9 said repeatedly we won't do -- we may make a financially
10 sound decision to keep us from going broke, but we won't
11 do this without consequences to our kids.

12 Q. And were these decisions the district wanted
13 to make, exercising its own discretion over its programs
14 and services?

15 A. No, sir. No, sir.

16 Q. I want to go over some data with you, so we're
17 going to submit the 2010-2011 AEIS report for Lufkin.

18 A. Okay.

19 (Knight Deposition Exhibit 109 marked.)

20 BY MR. HINOJOSA:

21 Q. I've handed you what's been marked as
22 Exhibit 109. Do you recognize this as a true copy of the
23 2010-2011 Lufkin ISD performance report --

24 A. Yes, sir.

25 Q. -- the AEIS, the Academic Excellence Indicator

1 System?

2 A. Yes, sir.

3 Q. And, to the best of your knowledge, is the
4 information as reported here by the Texas Education
5 Agency accurate?

6 A. Yes, sir.

7 Q. In teaching the students of Lufkin ISD, is it
8 important that each student at each grade level in each
9 subject achieve the standards that have been put in place
10 by the State?

11 A. Yes, sir, it is.

12 Q. If we can go to what is beginning at page 3 --
13 actually, the bottom of page 2, "TAKS Met 2011 Standard,
14 (Sum of All Grades Tested)," and then it goes over to the
15 third page?

16 A. Yes, sir.

17 Q. Would it be appropriate to look at the TAKS
18 Met 2011 Standards in order to get a gauge of how
19 students in Lufkin ISD were performing as measured
20 against those standards put in place?

21 A. Yes, sir, it is, in fact, the performance
22 standard we were held to at the time.

23 Q. All right. And if we look at the "All Tests,"
24 it shows that -- and work with me, because I'm going to
25 be --

1 A. Okay.

2 Q. -- doing a little subtraction from 100% in
3 order to determine what percentage were not meeting the
4 standard.

5 A. Okay.

6 Q. But looking at the LEP, which is the far right
7 column, it looks like 36% were still failing to meet the
8 minimum TAKS standard.

9 A. Are you on page 3?

10 Q. Yes.

11 A. Okay. Yes, sir, that's correct.

12 Q. And for the economically disadvantaged, there
13 were 27% of the students still failing to meet the
14 minimum TAKS standard on all tests?

15 A. Yes, sir.

16 Q. And that was -- when did the TAKS test begin?
17 Was that around 2003-2004?

18 A. Yeah, that would be -- yes, sir, as my memory
19 serves me.

20 Q. And so after, you know, seven or eight years
21 of testing to the TAKS test, you still had substantial
22 numbers of --

23 A. Yes, sir.

24 Q. -- economically disadvantaged and LEP children
25 not meeting the standard; is that correct?

1 A. That's correct.

2 Q. Now, are you familiar with -- generally
3 familiar with how the -- some of the alignment studies
4 between the old TAKS test and the new STAAR test have --
5 what the results of those alignment tests have looked
6 like?

7 A. Yes, just recently. There was some published
8 information about that.

9 Q. And are you familiar with -- and I'll
10 represent to you that in the record in this case thus
11 far, there has been testimony from persons from Pearson
12 and the Texas Education Agency showing that the old TAKS
13 Met Standard was below the guessing standard on the new
14 STAAR test -- on certain of the new STAAR tests.

15 Are you familiar with that?

16 A. Yes, sir, I am.

17 Q. And so -- and you're familiar with the State
18 having added the college readiness standard?

19 A. Yes, sir.

20 Q. And that occurred before the year 2011,
21 correct?

22 A. Correct.

23 Q. And so do these TAKS results here that we just
24 looked at on the 2011 TAKS Met Standard (Sum of All
25 Grades Tested), does that indicate whether or not your

1 students are career and college-ready?

2 A. No, it doesn't. As a matter of fact, up until
3 this year or the beginning of last year, we were coached
4 that the best measure was percentage of kids commended,
5 and I don't see that reflected in this particular
6 document. But those -- our percentage of commended
7 students, which was equated at the time with college and
8 career-ready, was far lower than these passing rates.

9 Q. And if we look actually in the next set of
10 data, it's titled, "TAKS Commended Performance (Sum of
11 All Grades Tested)."

12 Do you see that, sir?

13 A. There we go. Yes, sir, I do.

14 Q. And in the far right column for the "All
15 Tests" standard --

16 A. 17%?

17 Q. -- it shows --

18 A. No, that's just reading. I'm sorry.

19 Q. Hold on right quick.

20 Let's go to the row of "All Tests." Do
21 you see that?

22 A. I do.

23 Q. All right. And if we go to the LEP, which is
24 the far right column, what percentage of LEP students met
25 the commended performance on all tests?

1 A. 4%.

2 Q. And that's for the year 2011, correct?

3 A. Correct.

4 Q. And then if we go to the column just to the
5 left of that, which is "Economically Disadvantaged," what
6 percentage met the "All Tests"?

7 A. 9%.

8 Q. And then districtwide, looks like it's the
9 third column from the left, and what percentage met the
10 "All Tests" TAKS Commended Performance?

11 A. Would that be in the red?

12 Q. Yes.

13 A. 15%.

14 Q. And what do these results indicate in the
15 district?

16 A. It indicates that English language learners
17 and children of poverty struggle on standardized tests,
18 and that we've got a lot of work still to do to bring
19 those kids up to the new college and career-ready
20 standard.

21 Q. Let's go to the college readiness standards,
22 and I'm sorry that these aren't page-numbered, but -- 5.

23 A. Yeah, next to the last -- or next to the
24 bottom?

25 Q. Yes.

1 A. One above the bottom.

2 Q. And the College Readiness Indicators, these
3 are as defined by the Texas Education Agency under the
4 Academic Excellence Indicator System, and I just want to
5 review a couple of these indicators with you.

6 When we look at Advanced Course and Dual
7 Enrollment Completions, first can you tell me briefly
8 what advanced course and dual enrollment completion rates
9 might show?

10 A. Well, it indicates the number of kids, first
11 of all, that take the -- dual enrollment would be kids
12 that are in a class that is typically sponsored by a
13 local university or these days sometimes it can be even
14 distance learning.

15 For us specifically it means a partnership
16 with Angelina College, our local community college,
17 students that are dually enrolled in a course which for
18 us could be either a college algebra course or a U.S.
19 history course.

20 Q. Okay.

21 A. The other advanced courses are our advanced
22 placement courses.

23 Q. And the far right column, what percentage of
24 the students in the year 2009-2010, which is the latest
25 data reported here -- what percentage of LEP students

1 were taking the advanced course dual enrollment?

2 A. 4.8%.

3 Q. And what percentage economically
4 disadvantaged?

5 A. 10.7.

6 Q. And even districtwide, what percentage did you
7 have?

8 A. 28.3%.

9 Q. And what do -- well, let me go ahead and go to
10 some other data right quick.

11 If we look at AP/IB Results -- and AP
12 stands for advanced placement; is that correct?

13 A. Yeah, and I'm looking for that here. All
14 right, I've got it.

15 MR. FRAISSINET: David, can I make a
16 suggestion, so the record is clear down the road, that we
17 at least number the pages of the witness copy?

18 MR. HINOJOSA: Sure, if that's fine with
19 everybody.

20 MR. FRAISSINET: Is everybody okay?
21 Because it's going to be hard later on, talking about
22 page numbers.

23 MR. HINOJOSA: Yeah, this is not the PDF
24 version that I was using either. It looks like there's
25 10 total pages; is that right?

1 MR. FRAISSINET: Yes.

2 BY MR. HINOJOSA:

3 Q. All right. So we're looking at page 5,
4 leading over to page 6 on College Readiness Indicators of
5 Exhibit 109, and does the district offer AP courses?

6 A. Yes.

7 Q. How about IB courses?

8 A. No.

9 Q. And IB is international baccalaureate,
10 correct?

11 A. Correct.

12 Q. Do you know how many AP courses are offered by
13 the district?

14 A. We have -- I'll do the math here. We have
15 approximately, at the junior and senior level -- of
16 course we have a number of pre-AP, so typically I say
17 it's 36 pre-AP and AP courses, but the actual AP amount
18 is about a dozen AP courses.

19 Q. Okay. And here it looks like there's not any
20 data for the economically disadvantaged or LEP students?

21 A. Yeah, not disaggregated in that fashion.

22 Q. But as far as the district, when we're looking
23 at the percentage of students tested in AP, it looks like
24 it's 27.6% in the year 2010; is that correct?

25 A. Correct.

1 Q. So roughly three-quarters of your students are
2 not taking AP?

3 A. Taking AP courses, that's correct.

4 Q. And if you look at the number of examinations
5 over the criterion, of that 27.6% that are tested, it
6 looks like just less than half of those are meeting the
7 criterion; is that correct?

8 A. Correct. 22.

9 Q. And let's go down to the SAT ACT Results, and
10 the percentage tested there for the class of 2010
11 districtwide was less than one-half, at 47%; is that
12 correct?

13 A. Correct.

14 Q. And then of that 47%, only roughly one-quarter
15 met at or above the criterion; is that correct?

16 A. Correct.

17 Q. And for -- if you can bear with me, we're
18 going to go to race now. It looks like for
19 African-Americans, there were only 3.4% of
20 African-Americans meeting at or above the criterion for
21 ACT and SAT as reported here in the AEIS report, correct?

22 A. Correct.

23 Q. And for Hispanics, that was 11.4%; is that
24 correct?

25 A. Correct.

1 Q. And for whites, that was 47.1%, correct?

2 A. Yes, sir, correct.

3 Q. Now, if we go to the College-Ready Graduates,
4 and are you familiar with this particular indicator,
5 where it basically uses a given scale score on the TAKS
6 English test?

7 A. Yes.

8 Q. And for both subjects, if we go to the far
9 right column for LEPs, it looks like less than 1% have
10 met that standard; is that correct?

11 A. Correct.

12 Q. And sticking with the class of 2010, it looks
13 like districtwide, one-half of your students failed to
14 meet the college-ready indicator on TAKS in both
15 subjects, correct?

16 A. Correct.

17 Q. And for African-Americans, that was 31%, and
18 for Hispanics, it was 38%; is that correct?

19 A. Correct.

20 Q. And so as we move into the end-of-course exams
21 and looking -- reflecting back on TAKS scores, and on
22 those college readiness indicator scores that we just
23 reviewed, what does that tell you as far as how the
24 students of Lufkin ISD are currently meeting the college
25 and career readiness standards that the State has put in

1 place?

2 A. Well, I think it points to the common
3 indicator here that both these subpopulations are my
4 children of poverty, and I'd also say my Anglo population
5 would be just as low with -- what it says is they're not
6 meeting college-ready standards.

7 Q. And what predicament does this place the
8 district in when -- I believe your testimony earlier was
9 that the weights were insufficient to meet the needs of
10 those students, so what predicament does that place the
11 district in when you have groups of students competing
12 for limited resources?

13 A. Well, it creates financial hardship on them
14 and their -- well, if your question is about limited
15 resources at the school house, that means I've got to
16 make value judgments at some point in time over
17 whether -- an example I've used in the past is am I
18 buying new school buses, am I deferring roof maintenance,
19 am I raising class size? And the answer to that is yes
20 to all of those.

21 MR. HINOJOSA: I'm going to hand you what
22 we're going to mark as Exhibit 110.

23 (Knight Deposition Exhibit 110 marked.)

24 BY MR. HINOJOSA:

25 Q. Exhibit 110 is the "Spring 2012 STAAR

1 English/Social Studies End-of-Course Results," and this
2 is a true copy of the EOC results that we have, correct?

3 A. Correct.

4 MR. GRAY: Do you want to number the pages
5 as we did before, even though there's only two of them.

6 MR. HINOJOSA: There's only two.

7 BY MR. HINOJOSA:

8 Q. And does the phase-in 1 standard that's in the
9 far right column that says, "At Phase-In 1 Standard,"
10 does that tell you that students are meeting or on track
11 to achieve college readiness?

12 A. No, this is just the very basic phase-in
13 standard 1 for use at this point in time, and it doesn't
14 indicate at all that we're college-ready.

15 Q. And if we look at the English I Reading exam,
16 for example, and you're going to look at economically
17 disadvantaged and LEP students --

18 A. Yeah.

19 Q. -- it's showing roughly two-thirds of the
20 students not meeting the Level II Satisfactory standard,
21 correct?

22 A. Correct.

23 Q. And then for LEP students, it was a 94% that
24 failed to meet that standard, correct?

25 A. That's -- yes, sir.

1 Q. And looking at English I Writing, for
2 economically disadvantaged, it looks like 78% failed to
3 meet that standard statewide, correct?

4 A. Correct.

5 Q. I'm sorry. Let me make sure that the record
6 is clear, because the numbers that I was going over
7 before were the state standards.

8 A. LEP is 12% of my kids passing, which means 88%
9 did not in the phase-in standard in English I Reading.

10 Q. Okay. Let me see this again, because I'm not
11 sure if we're seeing the right numbers based on your
12 testimony there.

13 A. All right.

14 Q. The Level II Satisfactory standard --

15 A. Okay, not phase-in, but at the final standard,
16 is that where you're talking about?

17 Q. Yeah.

18 A. Okay.

19 Q. Because I think earlier you testified that the
20 phase-in standard might not --

21 A. That's -- yeah. That won't apply for this
22 year, to the next group of kids coming.

23 Q. And let's just be sure not to talk over each
24 other, because I think that the record isn't going to be
25 able to catch both the full question and your answer.

1 A. Yes.

2 Q. So looking at the Level II Satisfactory
3 English I Reading, it looks like 81% of your economically
4 disadvantaged students failed to meet that standard, is
5 that correct?

6 A. 71.

7 Q. Oh, 71. Sorry. I'm a lawyer.

8 A. I was a math teacher.

9 Q. And then --

10 MR. GRAY: I think it's 81.

11 MR. HINOJOSA: No, it's 71%.

12 THE WITNESS: 29.

13 MR. GRAY: I'm looking at the wrong one.
14 English I Reading, I'm sorry.

15 MR. HINOJOSA: English I Reading.

16 MR. FRAISSINET: It might be helpful to
17 look at the passing.

18 BY MR. HINOJOSA:

19 Q. It's a rote exercise, but what we're going to
20 be looking at right now is the Level II Satisfactory for
21 Lufkin, the percentage met, okay?

22 A. At the final standard?

23 Q. Yes.

24 A. Okay.

25 Q. And that 71% not meeting the English I

1 standard for economically disadvantaged, correct?

2 A. Correct.

3 Q. And LEP, you had 0%; is that correct?

4 A. That's correct.

5 Q. And on English I Writing, you had 81% of your
6 economically disadvantaged students not meeting the same
7 standard, correct?

8 A. Correct.

9 Q. And 100% of LEP students not meeting the
10 standard, correct?

11 A. Correct.

12 Q. And we see similar patterns for the rest of
13 the subjects of world geography and algebra; is that
14 correct?

15 A. That's correct.

16 Q. And then if we look at Geometry, it looks like
17 you had 100% of economically disadvantaged meeting that
18 standard; is that correct?

19 A. That's correct, and here's why. These are
20 kids who are in their freshman year. These will be my
21 top 25% grads, who had Algebra I in the 8th grade. So to
22 draw conclusions from this group alone would be
23 misleading.

24 Q. And how many economically disadvantaged
25 students are we talking about there?

1 A. You know, those are designated funds for
2 children of poverty and special ed populations. I'll
3 lose around \$600,000 total, and we -- as we built a
4 budget, we've yet to determine all the cuts that that
5 will involve, but it will involve both staff and
6 classroom supplies.

7 Q. And are federal funds a sufficient and stable
8 source of funding that the district can rely on from one
9 year to the next?

10 A. They are no more sufficient and stable than
11 the state funds.

12 Q. And when we -- earlier you were testifying
13 about the difference between property-wealthy and
14 property-poor districts

15 A. Yes, sir.

16 Q. And you're aware that the students in the
17 districts that you mentioned, that they're held to the
18 same standards as the Lufkin ISD students; is that
19 correct?

20 A. Yes, sir.

21 Q. And is it your position in this case that the
22 system should be leveled up to help close the gaps
23 between property-rich and property-poor districts?

24 A. As opposed to leveling down?

25 Q. Yes.

1 A. Nine.

2 Q. Nine who were tested?

3 A. Correct.

4 Q. And what's the number who met the standard?

5 A. Six.

6 Q. Now, is it your testimony that these
7 economically disadvantaged and LEP students cannot meet
8 this -- standards that have been put in place by the
9 State of Texas, and not just looking at the resources
10 that you have, but assuming that you could provide them
11 the reasonable opportunities to achieve the state
12 standards put in place, is it your opinion that these
13 students cannot meet those standards?

14 A. These children are not genetically inferior to
15 another group. They just come from a different exposure
16 and experiences that puts them incredibly far behind.
17 And our efforts with these kids is to catch them up, and
18 obviously this -- your poorest have the hardest time
19 getting caught up to this newest standard.

20 Q. And I believe recently there was an article in
21 the newspaper where the current congressional action
22 might cut federal funding. Are you familiar with that?

23 A. Oh, yes. The sequestration.

24 Q. And how might that affect, further affect the
25 Lufkin ISD operations?

1 A. Oh, absolutely. If we found a successful
2 formula with property-wealthy schools that allows them to
3 achieve a high degree of success, then it's foolish for
4 me to say, "Well, let's just take money from them and
5 give it to us." That's not how you improve the
6 educational system for our kids, college-ready as a
7 growing state. That's foolishness.

8 MR. HINOJOSA: Pass the witness, thank
9 you.

10 MR. FRAISSINET: I'm going to go next. I
11 only have a few questions, so I'm going to ask from here
12 if that's okay.

13 MR. GRAY: Sure.

14 EXAMINATION

15 BY MR. FRAISSINET:

16 Q. Mr. Knight, my name is Philip Fraissinet. I
17 represent the plaintiff group known as the Fort Bend ISD
18 Plaintiffs. Do you understand that?

19 A. Yes, sir.

20 Q. I have only a few questions for you by way of
21 follow-up. First of all, a couple of questions with
22 regard to Exhibit 110, which is the document we were just
23 looking at.

24 A. Yes, sir.

25 Q. If I understand your testimony correctly, you

1 A. Yes.

2 Q. If Lufkin was to offer the state minimum
3 salary for teachers zero through 10 years experience,
4 would Lufkin be actually paying less than what the
5 individuals skinning chickens at Pilgrim's Pride is
6 earning?

7 A. Yes.

8 Q. If Lufkin was to offer the state minimum
9 salary for year zero to 10, would Lufkin be competitive
10 with any of the comparable sized districts in your
11 geographic region?

12 A. No, sir. We would be the lowest paid --
13 paying district in the county, with the highest level of
14 poverty.

15 Q. If Lufkin was to offer the state minimum
16 salary for ELL teachers, would you be able to attract, in
17 your judgment, any ELL teachers?

18 A. No, sir, in my judgment.

19 MR. GRAY: Thank you. I have no further
20 questions.

21 EXAMINATION

22 BY MR. HINOJOSA:

23 Q. Mr. Knight, very briefly, the effects of class
24 size, are you aware of the effects of class size on
25 students other than student performance; for example, on

1 student behaviors?

2 A. Well, I know what happens in our school
3 district with those kids, but as far as formal studies,
4 no. I'd be happy to elaborate on those experiences.

5 Q. Sure.

6 A. Probably the greatest example of that just
7 last year was a brand-new teacher loaded up with a group
8 of kids that were overflow kids -- you know, I've told
9 you we bus kids to vacancies, overflow kids -- and it was
10 overwhelming to that teacher just to deal with a class of
11 22 kindergartners, and -- without being hard to work
12 with.

13 Q. And do you know how class size, smaller class
14 size might affect a student -- a teacher's relationship
15 with the students, and how it might positively affect the
16 student behavior?

17 A. Sure. Well, one is it affords the teacher
18 more individual time with those kids, and then they're
19 able to offer lots of support, a lot more support than if
20 they have a classroom packed with kids. I can't afford
21 teacher's aides to help share some of those
22 responsibilities in the classroom.

23 Q. Earlier the State was going over with you
24 about your increase in graduation rates. First off,
25 students that end up graduating as a result of taking

1 part in the Panther Academy, that doesn't mean that those
2 students have graduated college-ready; is that correct?

3 A. Correct.

4 Q. And then when you look at the 80% or so that
5 was on Exhibit 126 that are graduating under the
6 four-year graduation rate, one, that means that one out
7 of every five students approximately is not graduating at
8 all, correct?

9 A. Correct.

10 Q. And on top of that, the overall cohort for,
11 for example, the 2010 class that was on Exhibit 126, that
12 would actually exclude not just -- well, it would exclude
13 leavers as authorized under statute and regulation,
14 correct?

15 A. Correct, yes.

16 Q. And by "leavers," that might mean, for
17 example, as in years past, a student whose neighbor
18 reports that that student left the country, correct?

19 A. Yes.

20 Now, I have to have some documentation
21 other than just their neighbor said that

22 Q. Okay. And the 80% graduation rate, even
23 taking that as a whole, that doesn't mean that those
24 students have graduated college-ready, correct?

25 A. Correct.

1 Q. And perhaps a more accurate reflection of
2 those students graduating college-ready would be
3 indicated in the college readiness indicators that TEA
4 includes in its AEIS report, correct?

5 A. Right. It's the only legal definition that
6 we're held to.

7 Q. And even looking at the highest percentage of
8 students indicating college readiness under there, I
9 believe under both subjects it was 50% on Exhibit 109 for
10 both subjects on the TAKS; is that correct?

11 A. I --

12 Q. Approximately?

13 A. Approximately, yes, sir.

14 MR. HINOJOSA: Pass the witness.

15 EXAMINATION

16 BY MR. FRAISSINET:

17 Q. Mr. Knight, just a couple of follow-up
18 questions to Mr. Gray's questions.

19 First, on minimum salary schedule, how
20 many state-mandated teacher pay raises have there been in
21 the last six years or so?

22 A. Oh, my goodness. Well, the one big one that
23 Mr. Diamond asked about earlier, where we not only
24 were -- where we were required to give the hefty teacher
25 pay raise, but we also had to give -- were required by

NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
FAIRNESS COALITION, et al.,)

Plaintiffs,)

v.)

EDGEWOOD INDEPENDENT SCHOOL) TRAVIS COUNTY, TEXAS
DISTRICT, et al.,)
(consolidated))

Plaintiffs,)

v.)

ROBERT SCOTT, in his official)
capacity as Commissioner of)
Education, et al.)

Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF
FLOYD MICHAEL MILES
Dallas, Texas
September 19, 2012

Reported by:
SUSAN S. KLINGER, RMR-CRR, CSR
JOB NO. 52894

1 FLOYD MICHAEL MILES,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. DEANE:

5 Q. Would you state your name for the record, sir?

6 A. Floyd Michael Miles.

7 Q. Okay. And is it Mr. Miles?

8 A. Yes.

9 Q. Okay. Mr. Miles, my name is --

10 A. Just Mike.

11 Q. -- Bill Deane. I'm an assistant attorney general
12 here representing the defendants in the lawsuit that
13 your school district, among several others, filed
14 against the State. And with me is Linda Halpern. Have
15 you ever met either one of us before today?

16 A. No.

17 Q. Okay. And, sir, have you ever been deposed
18 before today?

19 A. Yes.

20 Q. Okay.

21 A. Not on this lawsuit.

22 Q. Not on this topic, I understand. What kind of
23 deposition were you in?

24 A. In Colorado on dismissal cases, teacher
25 dismissal. And also a lawsuit in Colorado, the Lobato

1 case, similar lawsuit where the State -- the districts
2 sued the State for inadequate funding.

3 Q. Okay. And how did that lawsuit turn out?

4 A. The plaintiffs prevailed, and I think it happened
5 in the Supreme Court of Colorado. I'm not sure what the
6 result was.

7 Q. Okay. Okay. And what school were you at in
8 Colorado?

9 A. School district, Harrison School District in
10 Colorado.

11 Q. And you were the superintendent there?

12 A. Yes.

13 Q. Okay. Let me just go over some deposition rules,
14 and you probably already know all of these, but I'll run
15 through them. If at any time that you need a break
16 today or if you ever want to talk to your counsel, just
17 let me know and we will stop the deposition and you can
18 take a break. Do you understand that?

19 A. Yes.

20 Q. Okay. And this is certainly not an endurance
21 contest. If you need a restroom break, just tell me you
22 need a break. You don't have to tell me the reason.
23 Just tell me you need a break and we will stop. If you
24 answer my questions today, I hope you understand it's
25 under oath, the same as if you were in front of the

1 judge.

2 A. Yes.

3 Q. And if you need to ask me to rephrase or restate
4 a question, please do so. And by the same token, if you
5 answer my question, I'm going to assume that you
6 understood it. Is that okay?

7 A. That's okay.

8 Q. Okay. And no matter how rambling my questions
9 are, it would be courteous if you could wait until I
10 finish the question before you start your answer, and
11 then I will show you the same courtesy and let you
12 finish your answer first so that the young lady to my
13 right can record our question and answer without
14 interruption. Is that okay?

15 A. Okay.

16 Q. And during the deposition if you hear me say, is
17 that a "yes," or is that a "no," I'm not trying to be
18 impolite. There are times when we in conversation will
19 do what both of us have been doing, which is nodding our
20 heads or saying "uh-huh" or "huh-uh," and that is not
21 clear if it's a yes or a no. So if you hear me say, is
22 that a "yes," please understand I'm not trying to be
23 discourteous. Is that okay?

24 A. That's okay.

25 Q. Okay. What did you do to prepare for the

1 deposition today? And I'm not asking about
2 conversations with your attorneys. Other than
3 conversations with your attorneys, what did you do?

4 A. Besides the conversation with the attorney?

5 Q. Yes, sir.

6 A. I looked at a couple of our tax rates, or our tax
7 rate, and that's it.

8 Q. Okay. Anything else?

9 A. No.

10 Q. Did you talk to anyone other than your attorneys
11 in preparation for the deposition?

12 A. I asked Alan King about the tax rate.

13 Q. Okay. And Alan King is the chief financial
14 officer?

15 A. He's the interim superintendent, but also
16 assuming some of the duties of chief financial officer.

17 Q. He is currently the interim superintendent?

18 A. He was the interim superintendent, sorry.

19 Q. Oh, I see.

20 A. And he's now chief of staff and assumes some of
21 the duties of chief financial officer.

22 Q. Okay. When did you start as superintendent in
23 Dallas?

24 A. Officially, the 1st of July of this year.

25 Q. And, of course, this lawsuit was filed in

1 lunch.

2 Q. I understand.

3 A. And the one context question there -- well, we
4 got pretty close to giving me an opportunity to answer,
5 so...

6 Q. Mr. Miles, have I been courteous to you today?

7 A. Yes, I have.

8 Q. Thank you.

9 MR. DEANE: I will pass the witness.

EXAMINATION

10 BY MR. FIGUEROA:

11 Q. I'm Luis Figueroa, and I represent a number of
12 the low wealth districts, including Edgewood, McAllen,
13 San Benito, La Feria, and Harlingen, as well as some
14 parents of low-income and English language learners
15 and -- who attend school in Pasadena as well.

16 So we'll follow along with the same rules. If
17 you have any questions, misunderstandings about my
18 questions, feel free to ask me.

19 When you need to take a break, let me know, and
20 if we could -- you could wait for me to finish, and I'll
21 try to do the same, wait for you to finish so we get a
22 clear record, that will be great. Does that sound good
23 to you?

24 A. Sounds good.

1 look at the total students above that?

2 A. 100,859 for the count, 62.7 percent.

3 Q. Thank you. And then beneath that, you see where
4 it says -- do you see that it represents 83 percent who
5 were economically disadvantaged?

6 A. Yes, I see that.

7 Q. And 29.9 percent were limited English proficient?

8 A. Yes.

9 Q. We're going to compare to the next exhibit I have
10 here, which is the current 2010-2011 AEIS reports.

11 MR. FIGUEROA: If we could get this one
12 marked as well.

13 (Exhibit 870 marked.)

14 Q. So you have been handed what has been marked as
15 Exhibit 870. Do you recognize that as the 2010-2011
16 academic excellence indicator system?

17 A. Yes.

18 Q. And looking again on page -- section 2, page 1 of
19 the report, can you let me know you what you see as the
20 Hispanic total student population?

21 A. 106,983, 68.2 percent.

22 Q. So looking at the 2005-2006, that percentage has
23 increased over the past six years?

24 A. Yes.

25 Q. Looking at the economically disadvantaged, you

1 Q. Thank you. So I wanted to start off with some
2 demographics, realizing that you are new to the school
3 district, but I wanted to just kind of go over some of
4 the changes to the demographics in the school district.
5 I'm going to hand you the 2005-2006 AEIS report.

6 MR. FIGUEROA: Let me get that marked.
7 (Exhibit 869 marked.)

8 Q. I'm a little short on copies, but thank you. You
9 have been handed what has been marked as Exhibit 869; is
10 that right?

11 A. Yes.

12 Q. Are you familiar with this report?

13 A. I produced a couple of them.

14 Q. We're just going to flip to -- towards the back,
15 page -- section 2, page 1.

16 A. (Witness complies.)

17 Q. If you could take a look at the -- I think
18 distribution of these school districts, can you tell me
19 what the Hispanic population was in 2005, 2006?

20 A. Hispanic population?

21 Q. Yes.

22 A. 104,432 students.

23 Q. And the percentage?

24 A. 15.2 percent.

25 Q. Okay. So that is looking at graduates. Can we

1 see that -- does it say 87.1 percent for 2010-2011?

2 A. Yes.

3 Q. What has been your perception of the growth of
4 the economically disadvantaged within the Dallas ISD,
5 realizing that I know you've not been here the whole
6 time, but what has been your understanding?

7 A. My understanding is that it has grown.

8 Q. Has it been -- can you describe the growth? Has
9 it been exponential or steady?

10 A. For economically disadvantaged?

11 Q. Yes.

12 A. I think steady.

13 Q. And then looking at the limited English
14 proficiency, do you see where it says 37.8 percent?

15 A. Yes.

16 Q. And that is an increase from 29.9 percent in
17 2005-2006; is that right?

18 A. That's correct.

19 Q. And how would you describe that growth over
20 these -- these six years, what has been your
21 understanding?

22 A. I also think steady growth.

23 Q. Now, sticking to the 2011 -- the 2010-2011 AEIS
24 report, it includes the reporting of the performance of
25 your students on the TAKS for grades 3 through 11; is

1 that your understanding?

2 A. Earlier pages or what?

3 Q. Yes, on the early pages.

4 A. Yes.

5 Q. And were you aware that the TAKS test didn't test
6 all subjects in all grade levels?

7 A. Yes, I'm aware of that.

8 Q. And for the subjects that were tested, the TAKS
9 was meant to test the knowledge of the state curriculum
10 or TEKS; is that your understanding?

11 A. My understanding is it's a test of the state
12 standards.

13 Q. Based on the TEKS curriculum?

14 A. TEKS are a way of describing some of the
15 objectives of those standards.

16 Q. Okay.

17 A. That's my understanding.

18 Q. And would it be true to say that you want your
19 opportunities to achieve the TAKS standard in all
20 subjects and all grade levels?

21 A. I would like the students to have increased
22 proficiency in all the tests.

23 Q. And on all the tests, right, including to meet
24 the TAKS standards?

25 A. Yeah. I mean, I'm not sure what you mean,

1 meaning passing rates, commended rates.

2 Q. We will get into that. Maybe I will ask you
3 about that. Would -- is your goal to get it to the met
4 standard or commended standard?

5 A. We're actually looking at that right now and met
6 standards is important, but we're trying to increase the
7 number of students in the commended rate. And part of
8 my hesitancy is I don't know what the accountability
9 system, I don't know what met or attrition will be. We
10 may even use different words under the new STAAR.

11 Q. Fair enough. So in your opinion, is it
12 appropriate to look at the sum of all grades tested
13 under the all test standard in order to gauge student
14 learning against the met standard?

15 A. All tests?

16 Q. Uh-huh. Was it -- let me repeat it. So do you
17 think it's appropriate to look at sum of all grades
18 tested under the all test standard in order to gauge
19 student learning against the met standard?

20 A. I think -- I think this is one test of many, or
21 one metric of many. I think all tests is one gauge of
22 proficiency. It would be good to move that all test
23 score up.

24 Q. Fair enough. If we could turn to section 1, page
25 4 down see where it says, "TAKS met 2011 standards, sum

1 of all grades tested" in the middle?

2 A. Yes, I see that.

3 Q. And in that section it says, "all tests," and you
4 have the 2011 and 2010 years. Do you see that?

5 A. I'm sorry, I'm on the 2011-2010. I see that in
6 the middle.

7 Q. Great. And so you see where it says, TAKS met
8 2011 standard all tests, and then it has it broken down
9 among the various subgroups?

10 A. Yes, all grades tested.

11 Q. So for the district, does it say 67 percent in
12 2011, and 66 percent in 2010 for your TAKS met standard?

13 A. Are we on section 1, page 4?

14 Q. Section 1, page 4 yes.

15 A. For the district?

16 Q. For the district?

17 A. In the middle section?

18 Q. Yes.

19 A. Oh, for all tests, 66 and 67?

20 Q. Yes.

21 A. I see that.

22 Q. Okay. And for the economically disadvantaged, 66
23 and 65 percent?

24 A. Yes, I see that.

25 Q. Right next to that for the limited English

1 proficient, does that say 61 and 58 percent for 2011 and
2 2010?

3 A. Yes.

4 Q. Okay. So after about eight years of testing, is
5 that your understanding that there has been about eight
6 years of testing for TAKS?

7 A. I don't know when TAKS started.

8 Q. Okay.

9 A. If you are looking at 2005, that would be before
10 then if it's eight years.

11 Q. So after all the years of TAKS testing, would it
12 be accurate to say about 35 percent of the LEP students
13 failed to meet the minimum standards set by the State in
14 all TAKS testing?

15 A. For LEP students?

16 Q. That's right.

17 A. It would be about 40 percent.

18 Q. Okay. And is it your understanding that under
19 current state law, students are expected to graduate
20 college-ready?

21 A. Yes, that's my understanding.

22 Q. And I think you talked about this earlier. Is it
23 your understanding that the testing from TAKS to STAAR
24 has increased?

25 A. Well, from what I understand, the rigor of the

1 test from TAKS to STAAR has increased.

2 Q. Do you have any understanding of how the rigor

3 has increased? Could you describe that?

4 A. I have not studied the two tests, but I've been

5 told by folks in the district that there is more

6 writing, there is more open response questions, and some

7 of the questions involve more critical thinking.

8 Q. Are you -- do you happen to be familiar with the

9 study conducted by Pearson where the rigor of the TAKS

10 test was compared to the rigor of the STAAR?

11 A. No, I'm not familiar.

12 Q. I will represent to you that the record in this

13 case shows that the study revealed that on certain tests

14 compare the TAKS met standard was near or below the

15 guessing standard under STAAR. Does that surprise you?

16 A. No.

17 Q. That seems consistent with what you understand of

18 the two tests?

19 A. Well, what seems consistent is that the rigor and

20 the passing standards under TAKS seems low to me, but

21 since I don't have the comparable cut points for the

22 STAAR test, it's hard for me to say definitively.

23 Q. Fair enough. Is it your opinion that the TAKS

24 met standard reflects college readiness, or is that too

25 low of a standard?

1 A. My sense is it's too low.

2 Q. So a more accurate indicator might be the

3 commended level under tax?

4 A. Under TAKS, yes.

5 Q. Okay. So let's move over to section I, page 4,

6 where it talks about the TAKS commended performance.

7 Now, under the all test section as -- again, does it say

8 that for the district in 2011, 10 percent met the

9 commended standard in 2011?

10 A. Yes.

11 Q. And 9 percent in 2010?

12 A. Yes.

13 Q. And for the economically disadvantaged, what are

14 the percentages there for 2011 and 2010?

15 A. 9 and 8 percent, respectively.

16 Q. And for the Limited English proficiency?

17 A. 9 and 7 percent.

18 Q. So the low income and LEP students never made it

19 above 10 percent in 2010 and 2011; is that correct?

20 A. That's correct.

21 Q. We're going to move to the college-ready

22 indicators, which is on -- which is on page 10, section

23 I, page 10. Are you familiar with these college-ready

24 indicators?

25 A. No.

1 Q. Would you agree that they represent TEA's

2 indicators that signify whether a student is ready for

3 college or ready for -- for work?

4 A. Well, it seems to be readiness related to

5 academics, but I'm not sure about readiness for work.

6 Q. More for college-ready, in other words, for

7 college, for higher education?

8 A. Yes. What I'm saying is that I'm not sure we

9 have defined work or career ready well in the state or

10 in the community.

11 Q. Okay.

12 A. So it's hard for me to say this would be an

13 indicator of that, but I think for college readiness,

14 these are metrics that make sense.

15 Q. Okay. So turning to section I, page 10, TEA

16 reports that about 28 percent of the districts said

17 Spanish students had advanced course or dual enrollment

18 completion through 2010; is that correct? Do you see

19 that?

20 A. For dual enrollment?

21 Q. Uh-huh.

22 A. Completion is there.

23 Q. Correct.

24 A. I see 28.3 percent, yes.

25 Q. And what is the percentage for whites that have

1 dual enrollment?

2 A. 48.9.

3 Q. And now, looking at the Texas Success Initiative,

4 which is at the bottom of that page, do you see that?

5 A. Uh-huh, yes.

6 Q. In the year 2011, 40 percent of the students

7 failed to meet the minimum TSI standard for language

8 arts?

9 A. Of Hispanic students?

10 Q. Of the total. So 60 percent passed, 40 percent

11 failed?

12 A. In 2010, yes.

13 Q. And in -- yeah, in the English language arts, so

14 we're looking at the 2011 English language arts for the

15 district?

16 A. Yes, 60 percent.

17 Q. Okay. And only 22 percent of the LEP students

18 met the minimum standards for language arts?

19 A. That's correct.

20 Q. And 15 percent for 2010?

21 A. Yes.

22 Q. And about 63 percent of the district met the

23 standards for math in 2011?

24 A. Yes.

25 Q. And 41 percent of LEP?

1 A. Yes.

2 Q. And 36 percent in 2010 for LEP?

3 A. Yes.

4 Q. If we come over to the next page for the SAT/ACT
5 results, you talked earlier about your plan for the
6 district, and you talked about raising the standards for
7 ACT/SAT; is that -- did I understand that correctly?

8 A. Yes.

9 Q. So this is an indication, I guess, of where we
10 are now. Does it reflect on this chart that 62
11 percent -- 62.3 percent of Hispanics met the standard
12 for the SAT/ACT?

13 A. Well, it says tested, not met the standard.

14 Q. Okay, right. So that's right. So beneath that,
15 how many were at or above the criterion?

16 A. 7.3 percent.

17 Q. And that was for 2010?

18 A. Yes.

19 Q. And for 2009?

20 A. 7.7 percent.

21 Q. And now if we could just skip ahead to the last
22 line, which is the college-ready graduates. For the
23 district, how many -- well, what was the percentages for
24 the district for both subjects for the college-ready
25 graduates?

1 A. 40 percent.

2 Q. And for 2009?

3 A. 34 percent.

4 Q. And for the economically disadvantaged in 2010?

5 A. 37 percent.

6 Q. And then for the LEP?

7 A. 10 percent.

8 Q. So about 90 percent of the LEP students failed to
9 meet the TSA standard for a college-ready graduate; is
10 that your understanding of what that says?

11 A. Yes.

12 Q. Okay.

13 A. It was in English and math.

14 Q. Now, is it your expectation that graduates should
15 be college-ready in all subjects, not just one?

16 A. They should be college-ready as we've defined it
17 in a more limited fashion than all subjects.

18 Q. What is your opinion of how the district's
19 students are performing under the college-readiness
20 criteria we just went over?

21 A. I don't -- I think most of our students are not
22 college-ready.

23 Q. More work needs to be done?

24 A. Yes.

25 Q. Okay.

1 A. A lot more work needs to be done.

2 Q. Now, earlier you described the growth in
3 population for the low-income students in your district.
4 Has that student population created any challenges for
5 your districts?

6 A. I mean, I said earlier it's not so much the
7 growth in poverty, per se. It's the growth in the lack
8 of proficiency of students coming into the system or
9 growth of kids who need additional resources coming into
10 the system, and so I would tend to focus more on that.

11 Q. And what is your district going to do to try to
12 meet those challenges?

13 A. So the Destination 2020 plan is a blueprint for
14 trying to meet those challenges. And the key at least
15 with the resources we have right now and the plan that
16 we have for this year is to try to have an effective
17 teacher in every classroom, try to have effective
18 principals, try to improve the quality of instruction,
19 try to align the curriculum, try to ensure alignment to
20 the STAAR objectives versus the TAKS objectives, try to
21 have assessments that are midyear and end of year that
22 are much more rigorous. Try to professional develop the
23 staff, reorganize the leadership departments, have a
24 smaller span of control, raise the level of
25 accountability, provide effective structural feedback.

1 Q. Are any of those specific to, or are there
2 additional efforts being made for this population, the
3 economically disadvantaged?

4 A. We are continuing the programs that we have in
5 place for kids who are behind who lack the proficiency
6 or need more English language skills.

7 Q. Would you like to do more for those students?

8 A. I would like to do more for all students, but
9 yes, I would.

10 Q. Since you want to do more, what is holding you
11 back from being able to implement more programs for
12 these children?

13 A. I think resources is -- and when I say
14 "resource," I mean resources at large, time, energy,
15 people, money.

16 Q. If you had those resources, would you provide
17 them?

18 A. Yes.

19 Q. Now, let's -- switching gears to the English
20 language learners. Earlier you described the growth in
21 the ELL student population in your district. Has that
22 student population created any challenges for your --
23 for your district in growth of ELL?

24 A. Yes. There specifically the challenges are
25 numerous, especially in getting dual-language teachers

1 or bilingual teachers and bilingual administrators.
2 That is -- that has been tough.

3 Q. The district wants to provide additional support
4 for those -- for those children?

5 A. Well, beyond getting the teacher, which is huge,
6 we try to make sure the class sizes are a little bit
7 smaller for those courses. We would like to have some
8 co-teaching models, but that's more expensive to do.
9 There is interpretive needs that we always seem to be
10 behind in. There is parent involvement concerns where
11 if we don't have an interpreter at some of the meetings,
12 it is going to be much more difficult. We have to
13 translate more documents into Spanish, but most of it is
14 around the classroom and making sure we have enough
15 teachers to serve the kids.

16 Q. And that is to increase -- do you believe all of
17 those changes of those needs would increase achievement?

18 A. Well, I mean, with some footnotes, yes. It's
19 not just a matter of increasing number of teachers. You
20 have to have effective teachers, and it's not just a
21 matter of getting a bilingual teacher. It has to be an
22 effective bilingual teacher.

23 But yeah, if I had effective bilingual teachers,
24 more of them and appropriately staffed, it would help
25 improve instruction and help improve achievement.

1 would help close the achievement gaps that we looked at
2 earlier?

3 A. I think resources matter, especially in the
4 bilingual education where we have an achievement gap
5 like the ones we have.

6 Q. Do you believe that the ELL students can achieve
7 the standards set by the State?

8 A. Yes.

9 Q. And what about the low-income students, are they
10 capable of achieving the state standards?

11 A. Yes.

12 Q. And in order for them to achieve those
13 standards -- I'm sorry, let me strike that.

14 Those students can perform, but only if they're
15 given a meaningful opportunity; is that right?

16 A. I don't know what that means, but any opportunity
17 that they need an effective teacher, they need an
18 effective principal and a good system, so it's not just
19 about providing them an opportunity.

20 Q. Now, have you had your deposition taken before?

21 A. Yes.

22 Q. Could you describe the circumstances of that?

23 A. I had my deposition taken several times, a couple
24 of times related to teacher dismissals, and once related
25 to a lawsuit in Texas called the Lobato case where the

1 Q. And what are the obstacles preventing you from
2 achieving those needs?

3 A. I think there's several obstacles. One is time
4 and energy and some financial resources. For example,
5 we have to -- we can't just recruit, although
6 recruitment is one part. We also have to provide a
7 pipeline of professional development and a pipeline of
8 bilingual teachers so that when you have vacancies, we
9 can hire quickly and not -- and not wait so long.

10 Q. Are resources another issue that poses an
11 obstacle?

12 A. I mean, resources -- I mean, every teacher then
13 needs resources, so every classroom created needs
14 resources, so it would be part and parcel of the same
15 conversation.

16 Q. And as a result of budget cuts, does that make it
17 more difficult to achieve those -- achieve those goals?

18 A. I think in a district where the budget -- where
19 we don't have a lot of money in the fund balance, any
20 budget cut makes it more difficult to achieve the goals
21 of the district.

22 Q. And if you had those resources and were able to
23 implement the programs that you just talked about with
24 teachers, with getting the effective teachers that you
25 just talked about, do you believe that those programs

1 State -- where the district sued the State for
2 inadequate funding of public education.

3 Q. Did you mean Colorado?

4 A. Colorado, sorry.

5 Q. Could you describe briefly what the Lobato case
6 was about? I think you may have right now, but a little
7 more detail?

8 A. Well, the districts sued the State, claiming that
9 there was inadequate public funding, or funding for
10 public education.

11 Q. And you were the superintendent of Harrison ISD
12 at the time?

13 A. Harrison School District, yes.

14 Q. Harrison School District. Did you testify in
15 court in that trial?

16 A. Yes, I did.

17 Q. Can you compare -- do you know and can you
18 compare your per-pupil rates in Harrison School District
19 versus your per-pupil rates here in Dallas?

20 A. The per-pupil operating revenue in Colorado was
21 around \$6,500 per student when I left. And it's -- I
22 believe it's around 5,500 here.

23 Q. Do you believe that that poses an additional
24 obstacle for you here that -- that you -- that you would
25 have to overcome dealing with the lower per-pupil rate?

1 A. Well, I'm hesitant to compare pupil rates,
2 because every state is different.

3 Q. Sure.

4 A. But there's mandates, there's different cost of
5 living, things like that, but I can say this, you know:
6 Most superintendents with a \$5500 per-pupil operating
7 revenue -- well, I see that as low.

8 Q. Now, with your per-pupil rate in Harrison, were
9 you meeting all your goals?

10 A. Well, again, yes, we set some targets, part of
11 that gauged by the revenue that we have. The same case
12 here, if I had a budget of X, I'm going to try to do the
13 goals that would meet that budget rather than setting
14 goals where I already know that I'm going to need a
15 million more dollars, the answer is, yes, we met our
16 goal.

17 Q. Okay. We can go into that in a little more
18 detail. Let's move on for a little bit.

19 Can you tell me a little bit about Focal Point?

20 A. Yes. Focal Point is a consulting company to
21 which I am a partner and used to do some consulting,
22 which I no longer do.

23 Q. Okay. And what services does Focal Point
24 provide?

25 A. Focal Point provided educational services to

1 districts and schools related to improving the quality
2 of instruction and raising student achievement.

3 Q. And how was it funded?

4 A. Focal Point is a private consulting group.

5 Q. So it was funded through fees through the school
6 district, or there was a -- the school districts would
7 pay for the service?

8 A. School districts would pay for the services.

9 Q. And what was the expectation of the school
10 districts when Focal Point was brought in?

11 A. Well, every district is different, so some people
12 asked Focal Point to help them align the curriculum and
13 just wanted workshops. Some wanted professional
14 development for principals, some wanted an assessment of
15 how effectively they would be getting instructional
16 feedback, so it varied.

17 Q. Was the goal to increase achievement?

18 A. That was the main goal, but we tailored it for
19 what the districts wanted.

20 Q. Sure. And how much did it typically cost for a
21 school district?

22 A. It varied, but it depended on what they were
23 asking for. And if I could give a -- it's hard to give
24 an average because the services are so different, but I
25 would say it would cost on average a district about

1 \$2,000 a day for training.

2 Q. And in your opinion, was it worth the service for
3 school districts?

4 A. I'm probably biased, but yes.

5 Q. And it helped meet the goals for those school
6 districts?

7 A. For many districts, I think the facts would be
8 there that the answer is yes.

9 Q. Were there one or two school districts that you
10 could briefly describe where it was successful?

11 A. Center, Colorado is a school district where Focal
12 Point helped out, very helpful in the results.
13 Patterson, New Jersey. Extremely good results based on
14 Focal Point's work.

15 Q. So in those cases, the additional resources of
16 bringing in a consultant paid off for them?

17 A. Yes. It's hard to generalize, I would say.

18 Q. But in those cases?

19 A. But in those cases, yes.

20 Q. And Harrison ISD had to cut \$4 million from its
21 budget in 2010; is that correct?

22 A. I'm trying to remember. I don't think it was 4.
23 It was about 6 percent, so it was probably somewhere
24 closer to 2 and a half million.

25 Q. Okay.

1 A. I'm not -- but I'm not sure.

2 Q. Okay. And then in 2011, 2012, was there another
3 cut?

4 A. Yeah. Actually in three years, I think it was 12
5 and a half million dollars.

6 Q. Okay.

7 A. Something like that.

8 Q. Okay.

9 A. It varied year to year.

10 Q. Okay. And these budget cuts necessitated cuts in
11 staff?

12 A. Yes, it did.

13 Q. Does it sound right that you had to cut 70
14 licensed staff?

15 A. Yes.

16 Q. And about 25 support staff?

17 A. Yes.

18 Q. Okay. And most of the licensed staff numbers
19 that were cut were teachers?

20 A. Yes.

21 Q. Did it have an adverse impact on the instruction
22 in Harrison School District?

23 A. Well, that's a hard question to answer. The
24 quality of our instruction remained high, so in that
25 way, no, I mean, we still had high quality instruction.

1 Q. Okay. I think when you testified in trial, you
2 testified I think it would. So I guess what I'm asking
3 is, at the time, did it feel that it would have an
4 impact?

5 A. No, not reading the transcripts, but if someone
6 asked me, would cutting more teachers have an adverse
7 impact, I'm sure someone asked me if I -- if the quality
8 of instruction the last year and the quality of
9 instruction the year before, we still had good
10 instruction.

11 Q. Okay. You had to put off some capital
12 improvements --

13 A. Yes.

14 Q. -- in Harrison. And similar to what you're
15 having to do in Dallas is putting off capital
16 improvements?

17 A. Yes, we did have to do that in Harrison.

18 Q. Now, do you think that there is a larger cost to
19 try to educate at-risk students?

20 A. Yes.

21 Q. And do you think there is a larger cost to teach
22 limited English proficient children?

23 A. Yes.

24 Q. And I think at the time, you had stated that --
25 or you had estimated that the per-pupil amount to

1 educate an ESL student is around 8,500. Does that still
2 sound accurate to you?

3 A. It does, in Colorado dollars.

4 Q. Do you think that varies considerably in Texas?

5 A. I don't know.

6 Q. Okay.

7 A. I know what we had to pay extra to educate ESL
8 students in Colorado.

9 Q. Okay. And special education students also cost
10 more to educate than non-special education students?

11 A. Yes.

12 Q. Do you think there is a point where decreasing
13 resources is going to start affecting a school's ability
14 to get all of its kids prepared for the future
15 workplace?

16 A. No question.

17 MR. FIGUEROA: I think those are all the
18 questions I have. Thank you very much for your time,
19 and I appreciate all the work that you do for the
20 schools of Dallas ISD.

21 THE WITNESS: Thanks.

22 MS. BONO: No questions from Calhoun County.

23 EXAMINATION

24 BY MR. NORRED:

25 Q. I'm Warren Norred, and I represent the

1 intervenors. Do you know what that means?

2 A. No.

3 Q. So you have not read --

4 A. Someone told me quickly, but I forgot.

5 Q. Have you had the opportunity to read any of the
6 pleadings in this case --

7 A. No.

8 Q. -- at all. So we're all just people asking you
9 questions, and you have no idea what this is about
10 really?

11 A. I have a vague idea.

12 Q. Vague idea, that's fair enough. I represent
13 people who -- who would like to have better, more
14 parental freedom to choose their own school, charter
15 school, supporters, and voucher supporters. So that
16 will kind of give you an idea. I'm Warren Norred, and
17 you can call me Warren.

18 Are you relatively new, three months into this?

19 A. Right. Officially 1st of July.

20 Q. Have you had a chance to meet with your
21 legislative delegation that represent this area?

22 A. I've met some of them.

23 Q. Okay. Have you already gone into sales mode, we
24 need more money, or has this been just an informal?

25 A. Informal.

1 Q. Okay. Have you ever testified before any
2 legislative committee in Texas?

3 A. No.

4 Q. Anything in Colorado?

5 A. Yes.

6 Q. On this other subject you were talking about?

7 A. Well, that was in court, but in the legislation
8 it was -- I testified on Senate Bill 191, which was
9 about teacher evaluation.

10 Q. We'll get to that in just a minute. Have you
11 become familiar with the TASA, the --

12 A. Yeah, I know a little bit about it. I'll be
13 going to the first meetings here pretty soon.

14 Q. Are you familiar with recapture and how our
15 system works vaguely?

16 A. Yes.

17 Q. Okay. Do you think that this is a proper way to
18 handle funding of the State's school system?

19 A. I don't know enough about it to really be
20 definitive about it.

21 Q. I'm just asking your opinion. If you were the
22 Czar of the world and you're coming into Texas, how
23 would you set it up?

24 A. How would I set up funding of schools?

25 Q. Right.

1 CAUSE NO. D-1-GN-11-003130
2 TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
3 FAIRNESS COALITION, et)
4 al.,)
5)
6 Plaintiffs,)
7)
8 vs.)
9)
10 EDGEWOOD INDEPENDENT)
11 SCHOOL DISTRICT, et al.,)
12 (consolidated))
13) TRAVIS COUNTY, TEXAS
14 Plaintiffs,)
15 vs.)
16)
17 ROBERT SCOTT, in his)
18 Official Capacity as)
19 Commissioner of Education,))
20 et al.,)
21)
22 Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION
ALLAN ODDEN, Ph.D.
September 27, 2012
Austin, TX

Reported by:
Rebecca J. Callow, RPR, CRR, CSR-8925
Job No. 53121

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ALLAN ODDEN, Ph.D.,
having been first duly sworn, testified as follows:

EXAMINATION

BY MS. HALPERN:

Q. Would you state your name for the record, please?

A. Allan Odden.

Q. Dr. Odden, what is your profession?

A. Professor.

Q. And where are you a professor?

A. Well, professor emeritus now at the University of Wisconsin Madison. I'm still full-time in the research center.

Q. All right. And have you been retained by one of the plaintiff groups in this case?

A. Yes.

Q. Which one?

A. The one represented by --

Q. Mr. Turner?

A. -- Turner, and Mr. Fraissinet.

Q. All right.

A. Both.

Q. Let me ask you who -- with whom have you had conversations about this case? Who have you talked to about this lawsuit or about your testimony in it?

1 A. Just the lawyers.
 2 Q. Have you had conversations with anybody other
 3 than the lawyers about this lawsuit?
 4 A. No.
 5 MR. TURNER: Objection. Form.
 6 Q. (BY MS. HALPERN) You can answer.
 7 A. People in the Picus firm, but nobody else.
 8 Q. Have you had conversations with any of the
 9 other testifying experts in this lawsuit?
 10 A. No. Not about -- I mean, I met -- I've had a
 11 short "Hello" interaction with Bill Duncombe in New York
 12 but nothing about this case.
 13 Q. How about Steve Barnett? Have you had any
 14 conversations with him?
 15 A. Yes.
 16 Q. Can you tell me when that occurred?
 17 A. That occurred in the past four to six weeks.
 18 We talked to him about his opinion about our version of
 19 the preschool model and the degree to which our
 20 preschool model aligned with his recommendations.
 21 Q. Okay. Did you make any changes to your
 22 preschool model as a result of taking to Mr. Barnett?
 23 A. No, we did not.
 24 Q. What have you done to prepare for your
 25 deposition today? What documents, for example, have you

1 reviewed?
 2 A. Mainly reviewed our report. I've looked a
 3 little bit at some of the previous articles, but not in
 4 depth, and then had conversations with the lawyers.
 5 Q. Have you reviewed any other expert reports of
 6 any other experts in this lawsuit?
 7 A. I did receive the ones for the defense, so the
 8 one from Tim Guthrie and Russ Whitehurst and Michael
 9 Podgursky and Steve Barnett -- his response to the
 10 Whitehurst one. I've not seen anything on the plaintiff
 11 side.
 12 Q. Steve Barnett has a response to the Whitehurst
 13 report?
 14 A. Yes.
 15 Q. Okay.
 16 MS. HALPERN: Has that been produced to us
 17 yet, Counsel?
 18 MR. TURNER: I believe that is within the
 19 zone of the protection, and that's not -- we're not
 20 referring to a formal expert report.
 21 MS. HALPERN: Oh, okay.
 22 Q. (BY MS. HALPERN) All right. Dr. Odden, have
 23 you been deposed before?
 24 A. No.
 25 Q. Have you ever testified in a court of law?

1 A. Once.
 2 Q. When was that?
 3 A. Sometime, I think, in the late '70s. Either
 4 late '70s or very early '80s.
 5 Q. What kind of matter was it?
 6 A. It was a school finance case in Colorado.
 7 Q. Who retained you in that case?
 8 A. I really was not retained, I testified on
 9 behalf of the plaintiffs.
 10 Q. Okay. On behalf of the plaintiffs. So
 11 although you've been involved in the field of school
 12 finance for many years, you've never actually been a
 13 witness before?
 14 A. No. Well, except for that one.
 15 Q. In 1970?
 16 A. Right. Yeah.
 17 Q. Okay. Are you currently participating in any
 18 other school finance litigation other than this Texas
 19 case?
 20 A. I think the answer to that is no.
 21 Q. Have you been asked to do a report for any
 22 other school finance litigation other than Texas?
 23 A. The answer to that still is technically no.
 24 Q. Have you done a report involving the school
 25 finance system of any other state other than Texas in

1 the last two years, sir?
 2 A. Well, the answer to that is yes.
 3 Q. Okay.
 4 A. For the State of New Jersey, but there's not a
 5 ongoing case right now.
 6 Q. All right. And who retained you in that case?
 7 A. The Attorney General's office.
 8 MR. TURNER: May I request a brief break
 9 so we can call?
 10 MS. HALPERN: Yes.
 11 (Discussion off the record.)
 12 Q. (BY MS. HALPERN) Dr. Odden, can you tell me
 13 how you came to be an expert in this case? Who
 14 contacted you?
 15 A. I believe Lynn Moak contacted Larry Picus.
 16 Q. Okay.
 17 A. And talked about there might need to be -- the
 18 need for an evidence-based analysis.
 19 Q. All right.
 20 A. And then that led into our being retained by
 21 the two lawyers.
 22 Q. Okay. And Dr. Picus is your business partner?
 23 A. Yes.
 24 Q. How many years have you been associated with
 25 Larry Picus?

1 A. Since the late '80s. We were both professors
2 at University of Southern California.

3 Q. Okay. Forgive me for asking this, but the
4 report nowhere specified your compensation rate. Do you
5 mind telling me what it is for your testimony in this
6 case?

7 A. For the testimony?

8 Q. For the work you're doing on this case that was
9 supposed to be provided and it wasn't, so I have to ask
10 you out loud.

11 A. Okay. Well, the contract for the report was, I
12 think, 80,000.

13 Q. Okay.

14 A. And then for testimony and deposition
15 testimony, there's a potential additional 20,000.

16 MR. TURNER: Just, for the record, I do
17 believe the engagement letter was provided.

18 Q. (BY MS. HALPERN) All right. Not in the
19 materials that I've seen.

20 MR. TURNER: I'm fairly confident it was
21 provided. We provided all of our engagement letters in
22 one production together.

23 MS. HALPERN: But separate from the
24 reports? That may be the answer.

25 MR. TURNER: Maybe so. Yes.

1 Q. (BY MS. HALPERN) So it was 80,000 for the
2 report and you say up to 20,000 for the testimony?

3 A. Yes.

4 Q. Is your -- is the 20,000 for the testimony
5 contingent in any way on the outcome of the case?

6 A. No.

7 (Exhibit No. 1300 marked.)

8 Q. (BY MS. HALPERN) Let me go ahead and hand you
9 what I've marked as Exhibit 1300.

10 Dr. Odden, can you identify Exhibit 1300
11 for the record?

12 A. It's my CV.

13 Q. And according to this, as you indicated
14 earlier, you are a professor emeritus at the University
15 of Wisconsin. When did that cease? When did you stop
16 teaching there?

17 A. Last December 31st.

18 Q. Why did you stop teaching?

19 A. I'm 68 and a half.

20 Q. Okay. All right.

21 A. It was time.

22 Q. Now, you list that you're a professor emeritus
23 and also that you're the director of strategic
24 management of human capital and public education, a CPRE
25 project. Can you tell me what that is?

1 A. That was a project that started in 2008 and it
2 really is focused on primarily teacher talent, but also
3 it has minor focus on principal talent and teacher
4 effectiveness and trying to shift the system from sort
5 of like traditional personnel administration, which
6 isn't very effective, to a more strategic approach to
7 acquiring, developing, evaluating, and promoting
8 teachers and principals.

9 (Exhibit No. 1301 marked.)

10 Q. (BY MS. HALPERN) Let me show you what I've
11 marked as Exhibit 1301.

12 A. Yes.

13 Q. Can you tell me what that is.

14 A. I believe this is from the web page.

15 Q. Of?

16 A. So it's an overview of -- of SMHC. The project
17 was called SMHC.

18 Q. All right. Strategic Management of Human
19 Capital --

20 A. Right.

21 Q. -- the entity you were just discussing?

22 A. Right.

23 Q. Okay. And you were doing that with Jim Kelly?

24 A. I did it with Jim Kelly, yes.

25 Q. He's a character, sir, isn't he?

1 A. I don't know what you mean by "a character."
2 But he's a long-time personal and professional
3 colleague.

4 Q. Okay. Now, on this sheet, it lists some of
5 the -- there are bullet points of goals here for what
6 you want to do. And let me ask you, what strategies do
7 you personally favor for teacher compensation?

8 MR. TURNER: Objection. Form.

9 You may answer.

10 A. For several years we've been laying out
11 strategies for what we initially called changing the
12 teacher salary schedule from step and lane today to one
13 based on what initially was called knowledge and skills,
14 and today it could be called kind of measures of teacher
15 effectiveness.

16 Q. (BY MS. HALPERN) Okay.

17 A. And we started those -- that effort initially
18 with seminars with leaders of the national unions, and
19 we worked all over the country at the state and district
20 level on trying to move the system towards those new pay
21 systems.

22 Q. Do you -- do you believe that student
23 achievement should be a factor in teacher evaluation?

24 A. Yes.

25 Q. Okay. So you would support a value-added

1 approach to teacher compensation when you look at how
2 much the students have improved on that teacher's watch?

3 A. I wouldn't do it that way, no.

4 Q. How would you do it, sir?

5 A. Well, value added is -- is one metric for
6 measuring whether the teachers' kids in their own class
7 have improved. There are other metrics. So I would say
8 some set of metrics would be part of the evaluation.
9 And then another part of the evaluation would be a
10 measure of structural practice, and they would be put
11 together to come up with a more -- let's say a summative
12 decision about whether the level of performance was
13 probably from 1 to 4 or 1 to 5.

14 Q. So some set of student achievement metrics
15 coupled with the teacher's performance in the classroom
16 and the assessment of that teacher's effectiveness?

17 A. Right.

18 Q. Do you think the teachers should be compensated
19 more for having a master's degree, regardless whether
20 the master's degree is in or out of their field of
21 specialty?

22 A. No.

23 Q. No?

24 A. No.

25 Q. Okay. Why not?

1 A. Because my take on the research is that -- is
2 that a general master's is not linked to learning gains.
3 But research -- there's a data system where you know
4 what the master's degree is in, let's say math and
5 science, or math education and science education. That
6 research shows that having a master's degree is
7 associated with greater learning gains. So we've --
8 we've said for years that the master's should be
9 restricted to the area of licensure if it's going to be
10 included in the salary structure.

11 Q. Do you think that -- that school districts that
12 reward teachers based on -- I think the phrase you used
13 was step and lane?

14 A. Right.

15 Q. "Lane" meaning years out?

16 A. Right.

17 Q. That that's an inefficient practice?

18 A. It's what I would call in the -- I would call
19 it neutral. It doesn't reinforce the strategic goals of
20 the system, which is improving performance by improving
21 instructional practice, so it's at best neutral. And a
22 system that had more effectiveness metrics would be a
23 system that would be more aligned with what the system
24 needs to do to boost learning -- student learning.

25 Q. Well, it's worse than neutral, isn't it, sir?

1 Isn't it almost pernicious, because it ties up money
2 that could be used to reward good teachers by channeling
3 guaranteed increases to teachers who maybe aren't so
4 good?

5 A. Some argue that way. I sort of argue it's
6 neutral, and it should be changed to a more strategic
7 structure.

8 Q. Okay. You say you've talked to teacher's
9 unions about that?

10 A. Yes.

11 Q. Who else have you talked to about that?
12 Everybody who will listen?

13 A. I mean, a lot of people. State legislative
14 committees, state departments of education, local school
15 systems, state conferences. We ran a series of
16 conferences on this, so...

17 Q. Have you talked to school superintendents about
18 this?

19 A. Oh, yes.

20 Q. What kind of reactions do you get from school
21 superintendents when you talk to them about this?

22 A. It's mixed --

23 MR. TURNER: Objection. Form.

24 You may answer.

25 A. It's mixed from everybody.

1 Q. (BY MS. HALPERN) Okay. Did you talk to any
2 school superintendents in Texas about the idea of
3 switching to merit pay?

4 A. Not recently. And I -- we've had Texas
5 superintendents at some of our conferences when Pat
6 Forgione was superintendent at Austin, talked to him.
7 Not formally. It was not part of that effort. But
8 we've had people from Dallas at our conferences. This
9 is several years ago, so nothing recent.

10 Q. Okay. I'd like you to turn back if you would
11 to your CV, Exhibit 1300, and I want -- I want this in
12 front of you because this is not a memory test.

13 A. Okay.

14 Q. If the answers to any of my questions require
15 you to look at your CV in order to refresh your
16 recollection about dates, times, feel free to do that as
17 we go through this.

18 A. Okay.

19 Q. Can you tell me for -- well, actually before we
20 go there.

21 You were on the faculty at University of
22 Southern California for four years. Is that right?

23 A. No. For nine years.

24 Q. Okay. I guess I can't count. I see '89 to
25 '93, but presumably you were there before that.

1 money, you're not just lowering class size, period.
2 You -- you want to -- you want to use all your resources
3 effectively.

4 Q. Okay. On page 5 of your report, you have a
5 discussion of full-day kindergarten. Is that right?

6 A. Yes.

7 Q. Now, you cite evidence -- or you cite studies,
8 rather, that say that you -- you say that full-day
9 kindergarten is better than half-day kindergarten. Is
10 that right?

11 A. Yes.

12 Q. The studies that you cite, the studies that you
13 rely upon, are they those that are contained in the
14 paragraph on page 5 of your report under the heading
15 "Full-Day Kindergarten Program With a Class Size of 15"?

16 A. Let me see. What page is that?

17 Q. 5.

18 A. I think so. Yes.

19 Q. And the first article you cite is by somebody
20 named Cooper?

21 A. Yes.

22 (Exhibit No. 1315 marked.)

23 Q. (BY MS. HALPERN) I'm showing you what I've
24 marked as Exhibit 1315, and ask you if you recognize
25 that.

1 A. Yes.

2 Q. What is Exhibit 1315?

3 A. It's the Cooper meta-analysis.

4 Q. So Exhibit 1315 is the Cooper article cited in
5 your report on page 5 with respect to the topic of
6 "Full-day Kindergarten Program with a Class Size of 15"?

7 A. Yes.

8 Q. Is it your view that there is evidence showing
9 a causal link between full-day kindergarten -- I'm
10 sorry.

11 Is it your view that there is causal
12 evidence showing that full-day kindergarten is better
13 than half-day kindergarten?

14 A. My view is when --

15 MR. TURNER: Objection. Form.

16 Go ahead.

17 A. My view is when you put all these studies
18 together, that the weight of the evidence is that
19 full-day kindergarten has a positive effect versus
20 half-day kindergarten. And that one of the issues that
21 we all in the policy translation world deal with as
22 academics always have caveats. So they might say be
23 careful about using these findings to do anything, we
24 need more research, et cetera, et cetera, so -- and so
25 what I've -- I've tried to do here is to cite some of

1 the major reviews of literature. All of them have
2 findings that -- not necessarily super-definitive, but
3 findings that full-day kindergarten does have a positive
4 effect.

5 And the last study, the ECLS Study using
6 the ECLS database, which is a more current study,
7 longitudinal nationally representative sample of kids
8 also found that full-day kindergarten kids did better than
9 half-day kindergarteners.

10 Q. (BY MS. HALPERN) I'm sorry. What study are
11 you referring to now?

12 A. That's the Denton, West, and Walston Study.
13 And most states have, like -- and like Texas, have made
14 the policy decision that they'll support full-day
15 kindergarten, and so we include it in the model.

16 And in our modeling for Texas, which gives
17 districts the option of having a full- or half-day, most
18 have, as I understand it, a full day. We didn't adjust
19 up the half-day kindergarten numbers to full-day to
20 produce higher costs. We just took the numbers that
21 existed.

22 Q. I just want to focus on your statement,
23 "Research shows that full-day kindergarten, particularly
24 for students from low income backgrounds, see
25 significant positive effects on student learning."

1 And with respect to the research
2 component, you cited Cooper with the 2010 article,
3 Fusaro with a 1997 article, Gullo with a 2000 article,
4 Slavin Karweit and Wasick with a 1994 article. Is that
5 right?

6 A. Yes.

7 Q. And now you're telling me also that you rely on
8 the 2003 article also cited in this paragraph by Denton,
9 West, and Walston?

10 A. Right.

11 Q. Are there any other sources that you rely on
12 for your proposition that research that full-day
13 kindergarten has significant positive effects?

14 A. Not that I can recollect right now.

15 Q. Are you aware of any potential downsides for
16 children from full-day kindergarten?

17 A. There might have been some comments in some of
18 these studies of possible behavior problems, but other
19 than that, no.

20 Q. In your mind, would that be an issue about
21 which school districts might differ?

22 A. Well, that's -- the answer is yes. Not
23 necessarily on the downside, but school districts some
24 might or might not want full-day kindergarten, so the
25 Texas policy on that issue is an appropriate way to deal

1 that in front of you still?

2 A. Yes. Well, I did.

3 Q. That was the very first exhibit we had today.

4 On page 24 you have all your research
5 papers.

6 A. Well, 24 are --

7 Q. Page 24.

8 A. -- yeah -- papers not published.

9 Q. Okay. Got it.

10 A. So starting on page 6 would be articles and
11 chapters.

12 Q. Now, is the -- the evidence-based approach
13 utilized based on professional research and literature?

14 A. Yes.

15 Q. And that professional research would include
16 researching on bilingual and ESL programs?

17 A. Yes.

18 Q. Are you familiar with the difference between
19 bilingual and ESL programs?

20 A. To a certain degree, yes.

21 Q. Are you familiar with the Texas requirement in
22 elementary school that school districts are required to
23 offer bilingual programs if they have 20 or more kids
24 speaking the same language in the same grade level?

25 A. Let's say no.

1 Q. And so would it be clear to you if by

2 "bilingual education" we meant programs for where the
3 language is in the language of the students and is the
4 primary instruction, whereas ESL is primarily a pullout
5 and program that is a supplement to the instruction in
6 the classroom. Would that make sense to you?

7 A. Yes, it would.

8 Q. Okay.

9 A. And I think our model is neutral with respect
10 to the language of instruction and provides the
11 additional resources for the pull-out-specific ESL
12 instruction.

13 Q. So when you refer to in your reports, you're
14 mainly talking about ESL, the pullout approach?

15 A. The additional services, yes.

16 Q. Are you familiar that bilingual and ESL
17 teachers in Texas must be certified to teach bilingual
18 or ESL programs?

19 A. That's usually the case in most school
20 districts.

21 Q. Okay. Now, starting with some of the
22 economically disadvantaged students. Is it correct that
23 you find they cost 2226 extra for each economically
24 disadvantaged student?

25 A. That's what we stipulated, yes.

1 Q. And you understand that not all ELL children
2 are economically disadvantaged. Right?

3 A. Yes. And that's very different in Texas than
4 in many other states.

5 Q. Okay. Can you explain that to me? How do
6 other states differentiate?

7 A. Well, for example, I've done work in
8 New Jersey. Something like -- a high percentage of the
9 ELL/LEP students are also eligible for free and reduced
10 price lunch.

11 Q. Okay.

12 A. So what happens.

13 Q. Go ahead.

14 A. I think that's not the case in Texas. There's
15 a large number of students from maybe ELL backgrounds
16 that are not LEP, as I understand it, and are not --

17 Q. Economically disadvantaged?

18 A. -- economically disadvantaged.

19 Q. Right. Okay. And you understand that the
20 educational needs of ELL students and learning academic
21 English goes beyond the need to overcome poverty?

22 A. Yes.

23 Q. So going to your findings for ELL students on
24 page 2 of your report, which I believe is 1304.

25 A. Okay.

1 Q. Was that correct? Is it 1304?

2 A. Yes. What page?

3 Q. So on Table 2, page 12. On the top there it
4 says, "One teacher for every 100 LEP students." Is that
5 correct?

6 A. Yes.

7 Q. How did you determine the ratio of one teacher
8 for every 100 LEP students?

9 A. Over the past several years when we've had
10 groups reviewing our recommendations, and specifically
11 people who have had LEP students in their schools, we've
12 talked about how they've structured their -- either
13 sheltered English, which is the main focus these days,
14 or bilingual programs with regular -- with the regular
15 teacher allocation. And then we've asked in addition
16 how they structured their ESL additional services. And
17 this additional staffing has been, in almost all
18 instances, adequate to provide those additional
19 services.

20 Q. And that applies to all three of those programs
21 that you mentioned; structured, immersion, as well as
22 ESL, as well as Bilingual Ed.?

23 A. Yes.

24 Q. And is your 100-to-1 extra teacher ratio, is it
25 premised on spending \$590 for one extra teacher? Is

1 that what your Table 3 on page 13 says?

2 A. Was the question was the teacher part 590?

3 Q. Yes. So let me reask it.

4 So your 100-to-1 extra teacher ratio is
5 premised on spending \$590 for one extra teacher?

6 A. Right.

7 Q. And that's what is displayed on Table 3, page
8 13?

9 A. But -- yes. And we add the substitute teachers
10 for that teacher and instructional materials for that
11 incremental additional service.

12 Q. Now, would you agree that effective ELL
13 education programs may require extended time, plus
14 parent programs?

15 A. The parent -- the parent programs would come in
16 mainly on the educational disadvantaged side. That's
17 where we have that. So the additional pupil support
18 what we provide an additional one teacher for -- or one
19 FTE position for every 100 educationally
20 disadvantaged -- or economically disadvantaged students.

21 We don't specify how that could be used,
22 but that could be used for parent program -- parent
23 involvement programs. Could be family liaison, it could
24 be caseworkers, it could be -- depending on the
25 intensity of the economic disadvantage. It could be

1 used for parent programs.

2 Q. So if a student was ELL but not economically
3 disadvantaged, would you agree that a parent program
4 would be beneficial to that student as well?

5 A. We don't have that in our model.

6 Q. You don't have that in your model, but would
7 you agree that that might be necessary for an effective
8 ELL program?

9 A. If we did, we would have put that in our model.

10 Q. Okay. So you're not sure?

11 A. Well, we -- we put it in, again, on the
12 educationally disadvantaged side. And what we're saying
13 is, in those cases, it probably would be useful. But
14 for non-economically disadvantaged students, we sort of
15 concluded that it may not be needed. It's not needed.

16 Q. Did you look into it for ELL programs?

17 A. In terms of having this reviewed by a lot of
18 people, it's never come up.

19 Q. What about professional development for all
20 teachers or LEP students?

21 A. The model includes professional development for
22 everybody.

23 Q. And no -- the model does not include
24 professional development specifically for ELL programs?

25 A. Well, what's in the model is the ten days of

1 training for all teachers, including teachers in either
2 bilingual or sheltered English or ESL programs. It
3 includes \$100 per pupil for trainers and it includes
4 instructional coaches. So we feel -- and that's for --
5 that's an ongoing set of resources, and we feel that's
6 sufficient for all the professional development needs of
7 the school.

8 Q. So there's nothing specifically for ELL, but it
9 should cover all that's necessary?

10 A. There's nothing for ELL, but it should cover
11 everything that's necessary.

12 Q. And what about SIFE programs. Are you familiar
13 with SIFE programs? S-I-F-E.

14 A. Tell me what that is. That may be -- I might
15 not.

16 Q. They are for students that come in that have
17 not had a formal education or a lower level of
18 education --

19 A. Like welcome centers?

20 Q. That's another similar program like newcomer
21 centers, SIFE programs.

22 A. Yes.

23 Q. So does your model account for these programs?

24 A. It -- it may and it may not. It may, because
25 those students would probably be economically

1 disadvantaged, and they would trigger all these
2 resources so that a school could mount a program like
3 that.

4 Q. So under the model, if the student is not
5 economically disadvantaged, it doesn't account for the
6 ELL students as a standalone?

7 A. Right.

8 Q. So the 1-to-100 LEP student ratio may be
9 insufficient depending on the ELL's age, prior classroom
10 knowledge, and history if they're not economically
11 disadvantaged?

12 A. Well, we've concluded no, and we've had this
13 reviewed by a lot of people who are involved with
14 teaching ELL students. So we don't think it's
15 insufficient.

16 Q. And let's go back to that. Who reviewed it
17 that was familiar with bilingual education --

18 A. Well, we've had people in states like Arizona,
19 Washington, Wisconsin would be three states. I can't
20 remember all the people, but I've asked people
21 specifically. Anabel is an expert on that and -- Anabel
22 Aportela in Phoenix, Arizona. So we've sort of tried to
23 get input on this to say here's what we're suggesting.

24 Q. And Anabel Aportela?

25 A. Anabel Aportela?

1 Q. She's a researcher or a --

2 A. Well, she is now a policy analyst, and she's --
3 I'm trying to think. She worked for the State
4 Department in Arizona. She was a graduate student at
5 University of Wisconsin Madison and she's been -- she's
6 now working there on an ongoing set of issues on school
7 finance adequacy, and has really used this model.

8 Q. Were there any organizations that specialize in
9 bilingual education that you referred to when it came to
10 English language learners?

11 A. I can't -- I can't recall, but we had -- when
12 we did the work in Arizona, we had two professional --
13 we had two stakeholder input panels, we called them,
14 review the recommendations. And we didn't get a
15 recommendation for enhancing the model.

16 Q. And who was -- I'm sorry. Go ahead.

17 A. And some of them were -- should have been from
18 such organizations, but I can't remember -- I don't have
19 the list of people here, but we were trying to get input
20 and critique.

21 Q. Were there any academic researchers or people
22 who have published on ELL costs that you can recall that
23 reviewed --

24 A. That they sent us to? I don't think so.

25 Q. On page 7 of your report you state to estimate

1 professional development are quite generous. So there's
2 sufficient -- we would argue there's sufficient
3 resources in there to get teachers bilingual certified.

4 Q. When the -- examining the professional
5 development, did you look into the cost specifically of
6 bilingual and ESL professional development and
7 certifications to determine if those costs were higher
8 than the average professional development and
9 certification?

10 A. No.

11 Q. Did you factor in career ladder tuition costs?

12 A. You mean like a career ladder salary instructor
13 in a system?

14 Q. Yes.

15 A. No.

16 Q. Would these tuition costs --

17 A. But they would be captured in the average
18 salary figure.

19 Q. To the extent that you didn't account for
20 these, would they have added to the cost of bilingual
21 and ESL teachers in a district with LEP students?

22 A. I think the only one that would be the
23 incentives for bilingual teachers.

24 Q. On -- also on Table 1, page 9, you find 140
25 per-pupil cost for instructional material. Is that

1 the costs of the evidence-based core model, you relied
2 on the 2010-'11 average salary of individuals employed
3 in the school district across Texas. Is that correct?

4 A. Yes.

5 Q. Does this mean average costs of teachers?

6 A. I think what it means is we've got an average
7 salary, and then we estimated an average benefits and
8 then we added to that five extra days to get an average
9 price figure.

10 Q. Was this broken down by subject area?

11 A. No.

12 Q. Are you familiar with in Texas because of the
13 high demand for certified bilingual and ESL teachers,
14 many districts in Texas offer a stipend that may go up
15 to 2500 annually?

16 A. I not familiar with that, but I'm not
17 surprised.

18 Q. And this stipend would add to the cost of
19 bilingual and ESL teachers in a district with LEP
20 students?

21 A. It could. Yes.

22 Q. Did you factor in the cost to districts of
23 paying tuition for teachers to become bilingual or ESL
24 certified?

25 A. Not directly. But our recommendations for

1 right?

2 A. Right.

3 Q. And on page 12, Table 2, you find a need for a
4 10-dollar extra cost for instructional materials for LEP
5 students. Right?

6 A. Yes.

7 Q. On page 7 you explain after the per-pupil cost
8 of technology, instructional materials, assessments,
9 student activities, you relied on current research and
10 practices in other states as well as Texas?

11 A. Well, we've done -- if that's what we said,
12 that's what we said. Where is that?

13 Q. On page 7.

14 A. Right.

15 Q. Would those other states essentially be Arizona
16 and Washington? Were those the states you had
17 mentioned?

18 A. No. The major issue there is on the
19 instructional materials and the technology, we've done
20 sort of a detailed analysis in Wyoming, Washington. We
21 might have done it in Wisconsin. On --

22 Q. And were those -- sorry. Go ahead.

23 A. On the instructional materials and the
24 technology.

25 Q. And were those studies that you did in Wyoming

1 and Wisconsin and the other states specific to LEP
2 instructional materials?

3 A. It was a general analysis of the materials for
4 elementary schools, middle schools, and high schools.

5 Q. But not specific to ELL?

6 A. No.

7 Q. Assuming that ELL's need a range of materials
8 in Spanish and various levels of English proficiency,
9 what does \$10 buy?

10 A. Well, the major money for the core classes
11 would be the 140 per pupil. 140, 140, and 175 per
12 pupil. And \$10 is just an estimate of maybe some
13 additional materials for ESL classes, but not for the
14 core instructional classes.

15 Q. So what would you expect to get with the \$10?
16 What would be some --

17 A. I can't give you the specifics.

18 Q. Does it account for specialized computer
19 software?

20 A. That would be in the technology.

21 Q. Which is included in the \$10. Is that right?

22 A. No. The technology is \$250 a pupil for ongoing
23 technology, which is a combination of hardware and
24 software, the specifics of which could -- are going to
25 vary a lot by school, school district, and needs.

1 Q. And that was for general classes -- right? --
2 not specific to ELL, the 250 you just referenced --

3 A. It wasn't specific to any specific subject or
4 need, but I think we would -- we would be confident to
5 say that that's a fairly robust number that could be
6 used for the specific needs of any individual school.

7 Q. Okay.

8 A. Whether it was a school with a number of ELL
9 students or not.

10 Q. Okay. What about programs like Rosetta Stone?
11 Did you look at the cost of those particular programs?

12 A. No.

13 Q. Did you look at any states that had as
14 significant an ELL population as Texas?

15 A. Well, I would say Arizona and Washington would
16 probably be the most --

17 Q. So, in your opinion, Arizona and Washington
18 have similar ELL population --

19 A. Well, they've got -- they have large ELL
20 populations.

21 Q. Would you say they're similar to Texas?

22 A. That's a more technical question. I mean,
23 nobody's similar to Texas because it's big. Probably
24 California is more similar.

25 Q. And did you look at California in terms of ELL

1 programs and the costs for ELL programs --

2 A. I've reviewed some of the materials, and most
3 of those teachers are bilingual. And all teachers have
4 to be, to some degree, bilingual certified. I think
5 it's BCLAD and CLAD, so it's a normal part of the
6 certification for everybody.

7 Q. I'm going to try to be good now, so that we
8 don't interrupt the record. So let's make sure we both
9 finish here.

10 A. Okay.

11 Q. So let me ask again. You said you looked at
12 certain states with significant ELL populations, and you
13 also mentioned that California has a -- a similar ELL
14 population to Texas. Is that a fair characterization?

15 A. I don't have numbers. I just know it's a large
16 state, there's large numbers, they have many third-,
17 fourth-, fifth-generation students from non-English
18 speaking background. So in that sense, I was saying
19 that they're similar; but other than that, no.

20 Q. And it wasn't something you specifically took
21 into account, which was the number of ELL students in
22 Texas.

23 A. Well, other than our recommendations. Right.

24 Q. Okay. Does your recommendations and your study
25 assume a school district with a multitude of language

1 needs?

2 A. We think it's sufficient for that as well as if
3 there's just -- yes.

4 Q. On page 4, you cite the Tennessee STAR Study,
5 which we talked about earlier. Right?

6 A. Yes.

7 Q. Did this study -- this study did not include
8 ELL students, bilingual education, or ESL programs.
9 Correct?

10 A. I don't believe it did.

11 Q. Is it correct that there is no research cited
12 in your paper to not support funding bilingual or ESL
13 education aides?

14 A. To not support that? We don't have any
15 instructional aides other than special education aides
16 in our model.

17 Q. Is your report saying that we should not
18 support funding for ESL and bilingual educational aides?

19 A. I think the answer to that is yes.

20 Q. On page 7 and page 21, the model for pre-K
21 includes special education instructional aides which we
22 refer to as SPED, but the table does not reflect
23 bilingual instructional aides. Is that correct?

24 A. Right.

25 Q. Are you familiar with Dr. Steven Barnett?

1 A. Yes.

2 Q. Okay. Do you find that he's well regarded in

3 the field of early childhood learning?

4 A. Yes.

5 Q. If Dr. Barnett has found that based on the

6 revenue that bilingual aides would be appropriate, that

7 would be additional costs. Correct?

8 A. I can't answer that. I don't think so. We

9 talked to Dr. Barnett about our model and he pretty much

10 agreed that our model reflected what he would recommend.

11 And I think for a bilingual class, since we provide a

12 teacher and an aide for each class, the aide could be a

13 bilingual aide.

14 Q. To the extent that he finds that aides would be

15 appropriate, you wouldn't disagree with him.

16 A. Well, I'd have to see what he says. I've not

17 heard him say to be a teacher, plus a non-bilingual

18 aide, plus a bilingual aide. My guess is he would say

19 if you have a -- if you have a multi-language classroom

20 or a classroom of ELLs -- well, if it's ELLs and it's

21 multi-language, then that's one thing; but if it's a

22 bilingual classroom, find an aide with the native

23 language of the children.

24 But we did talk to him about our model,

25 and he pretty much agreed that our model was sufficient.

1 That's never come up. The director of pupil services

2 usually covers special-ed, bilingual, Title I, et

3 cetera. And then in a larger district they begin

4 specializing. So while we don't have it here, if this

5 were applied to a district like Austin or San Antonio,

6 there would be a sufficient number of positions that

7 they could have more specialized staff.

8 Q. Did you examine states where bilingual

9 education is mandated?

10 A. I think it's mandated in just about every

11 state, yes. It's been mandated in Arizona, it's

12 mandated in Washington. It's required in --

13 Q. Bilingual education, not English as a second

14 language.

15 A. Oh. Well, I'm sorry. Okay. Well, it's not --

16 I don't think -- I think that's illegal now, isn't it,

17 in Arizona? So we've done it in -- well, we've done it

18 in states where there's a significant ELL population.

19 Q. Again, your model didn't distinguish between

20 these types of programs?

21 A. No.

22 Q. Did you include a cost for ongoing assessments?

23 A. Like short-cycle assessments?

24 Q. For example, assessments that determine whether

25 the student is -- should be placed in a certain program

1 Q. Did you specifically talk about the bilingual

2 aides in the model?

3 A. I don't think we did.

4 Q. So you really don't know what he's found in

5 terms of bilingual aides?

6 A. No. But he didn't raise any issue with our

7 model.

8 Q. Okay. That's fair. You list director of pupil

9 services, director of special education services, and a

10 director of assessment and evaluation on page 16, Table

11 4.

12 A. Right.

13 Q. But you do not list a director of bilingual

14 education or English language learner programs. Is that

15 correct?

16 A. Right.

17 Q. Are you aware that many school districts with

18 ELL students have a director of bilingual or ELL

19 programs?

20 A. Yes.

21 Q. Would you agree that such a position might be

22 necessary since bilingual education is mandated in

23 Texas?

24 A. It may or may not. Again, we've had this

25 staffing structure reviewed in a number of states.

1 or exited from a certain bilingual education program.

2 A. I think that would come in -- yes. We've got

3 \$25 per pupil for -- specifically for ongoing student

4 assessments which could be short-cycle diagnostic, it

5 could be for language, or whatever.

6 Q. So you agree that ESL programs would have a

7 range of ongoing diagnostic formative assessments that

8 measure both language proficiency and content?

9 A. We think that should be for all classrooms --

10 for the major classrooms of core subjects, yes.

11 Q. But you would agree that ESL programs would

12 have a -- its own assessment related to language

13 proficiency?

14 A. We didn't get into that level of detail on

15 that.

16 Q. Okay.

17 A. My guess is the \$25 would be sufficient to have

18 those assessments.

19 Q. But you didn't get into that level of detail?

20 A. No.

21 Q. You agree that ESL/bilingual education programs

22 will have to identify students for placement and exiting

23 the program via assessments?

24 A. Yes.

25 Q. Your report does not include short-cycle

1 diagnostic assessments for pre-K. Is that correct?

2 A. That's a good question.

3 Q. I'm sorry. Your report does include short
4 cycle diagnostic assessments for pre-K on Table 7. Is
5 that correct? Right?

6 A. I think it does. Table 7, page -- right.

7 Q. Yes. Okay. But your report does not include
8 the cost for -- specifically for ELL assessments?

9 A. Again, we don't have it specific to any content
10 area or need, and we've sort of concluded that that
11 figure is a robust figure. So it could be allocated
12 within any particular school to the specific needs of
13 that school.

14 Q. But it did not include a specific allotment for
15 ELL assessment?

16 A. You mean an additional one?

17 Q. Yes.

18 A. It doesn't include an additional one, no.

19 Q. Okay. Are you familiar with the STAAR testing?

20 A. At a very general level.

21 Q. And how does it compare to other state
22 accountability tests on a general level?

23 A. Well, my understanding of STAAR is it's
24 supposed to be testing college and career to standards,
25 and the vast bulk of states are moving to new

1 assessments that are supposed to be testing a much more
2 rigorous passing or proficiency standard, and not many
3 of them yet have those assessments. So Texas could be
4 ahead on having some assessment like that, but that's on
5 the agenda for just about every state in the country.

6 Q. And are you aware that it is more rigorous than
7 the TAKS exam? Is that your understanding?

8 A. Yes.

9 Q. Is it possible that for a rigorous test such as
10 STAAR, the cost of education per pupil could even be
11 higher than the estimates from other states that may not
12 be using an assessment as rigorous as STAAR?

13 A. Well, our understanding is college and career
14 ready requires a much higher level of learning
15 achievement, and pretty much everybody agrees that a lot
16 of improvement has to be made towards that goal. And
17 our model is pretty much designed to get districts on a
18 substantial improvement trajectory rather than just a
19 small improvement trajectory.

20 Q. So if the assessment is as rigorous as STAAR,
21 and other states may not be quite at that level, it
22 might cost a little bit higher than those other states?

23 A. We've thought a little bit about the rigorous
24 assessments, and we've not modified our model.

25 Q. Okay.

1 A. So our model was designed to allow schools to
2 place themselves on a steep trajectory of improvement
3 and that would be, we think, adequate for even
4 STAAR-type exams.

5 Q. But your model was based on -- actually, let me
6 strike that.

7 But you do agree that STAAR is more
8 rigorous than the other -- than TAKS and other
9 accountability tests in other states?

10 A. The STAAR pass level yes. One might argue
11 that the STAAR pass level might be on a -- roughly on a
12 plane with the TAKS commendable level or advanced in
13 other states.

14 MR. FIGUEROA: Okay. I think that is all
15 the questions I have.

16 (Discussion off the record.)

17 EXAMINATION

18 BY MS. LORBER

19 Q. My name is Melissa Lorber, and I represent the
20 efficiency intervenors in this case.

21 Are you aware of anything about the
22 efficiency intervenors in this lawsuit?

23 A. Not anything specific.

24 Q. What are you aware of?

25 A. Very little. I've not read anything.

1 Q. So you haven't read our pleadings?

2 A. I don't think so.

3 Q. Okay. Have you read any of the reports from
4 the experts that the efficiency intervenors have
5 retained in this case?

6 A. No.

7 Q. Do you plan to read any of their expert
8 reports?

9 A. I've read a lot. If somebody gave them to me I
10 could read them.

11 Q. Okay. But do you plan -- have you been asked
12 or do you plan to provide any expert testimony in this
13 case in response to or about any of the experts that
14 were retained by the efficiency intervenors?

15 MR. TURNER: Objection. Form.

16 You may answer.

17 A. Okay. To date, no.

18 Q. (BY MS. LORBER) And that includes -- is it true
19 that you, therefore, do not plan to provide any expert
20 testimony or opinions about Eric Hanushek?

21 MR. TURNER: Objection. Form.

22 A. I'm not quite sure what I'll be asked for, but
23 I have not read any report that Eric has written for
24 this particular case, or I may be -- just like I was
25 asked by the previous person, I may be asked questions

1 CAUSE NO. D-1-GN-11-003130
2 TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
3 FAIRNESS COALITION, ET)
4 AL.,)
5)
6 Plaintiffs,)
7)
8 VS.)
9)
10)
11)
12 EDGEWOOD INDEPENDENT)
13 SCHOOL DISTRICT, ET AL.,)
14 (CONSOLIDATED)) TRAVIS COUNTY, TEXAS
15)
16 Plaintiffs,)
17)
18)
19 VS.)
20)
21)
22)
23 ROBERT SCOTT, IN HIS)
24 OFFICIAL CAPACITY AS)
25 COMMISSIONER OF EDUCATION,)
ET AL.,)
Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF
ALLAN E. PARKER, JR.
OCTOBER 2, 2012

ORAL DEPOSITION OF ALLAN E. PARKER, JR., produced as
a witness at the instance of the Defendant(s), and duly
sworn, was taken in the above-styled and numbered cause on
Tuesday, October 2, 2012, from 9:07 a.m. to 1:07 p.m.,
before Tamara K. Chapman, CSR in and for the State of
Texas, reported by machine shorthand, at the offices of
The Attorney General of the State of Texas, 300 West 15th
Street, 11th Floor, Austin, Texas, pursuant to the Texas
Rules of Civil Procedure and the provisions stated on the
record or attached hereto.

Job Number: 53198

ALLAN E. PARKER, JR.,

having been first duly sworn, testified as follows:

EXAMINATION

BY MS. PENN:

Q. Good morning.

A. Good morning.

Q. Can you state your full name for the record, please.

A. My name is Allan Parker.

Q. Mr. Parker, my name is Amy Penn and I'm an attorney for the Attorney General's office. We met earlier off the record. I'm representing the defendants in this action. Where are you currently employed?

A. At The Justice Foundation.

Q. And are you a practicing attorney with the Justice Foundation?

A. Yes, I am.

Q. Okay. Can you give me a little bit of a background on what The Justice Foundation does?

A. All right. We're a nonprofit public interest litigation foundation, a charitable organization, 501(c)3, and we were founded in 1993 to litigate in landmark cases for limited government, free markets, private property and parental rights. So we have a broad agenda in that sense.

Right now most of the work we're doing is

somewhat concentrated in kind of three areas. We have pro-life work where we are attempting the reverse Roe v. Wade and Doe v. Bolton, the two cases that brought abortion to America, and we represent 5,200 women hurt by abortion.

We also have a center against forced abortions, because in talking with those women we found out that there is a lot of forced abortion in America, which is illegal, can be prevented.

And then the third thing we do is I spend some of my time on school choice.

Q. And in what areas do you hold yourself out as an expert?

A. It depends on who -- when I'm asked the question and what we're doing at times. I guess school law, I would consider myself a school law and education expert because of my experience in it for a long time. I'm also an expert on women's health and abortion. Most of our practice right now is before the U.S. Supreme Court, so I have some expertise in that. I'm trying to think what I just put on my State Bar profile. Probably maybe administrative law, things like that.

Q. Economics?

A. Yes.

Q. What areas in particular of economics?

A. I would say basic economic strategy in terms of -- like I would not call myself an expert economist, but I have economic training.

Q. Okay. On what areas are you testifying as an expert in this case?

A. I'm testifying factually that I believe the current educational system in Texas that is established by the Texas legislature is constitutionally inefficient.

Q. And so what area would you describe that as?

A. Perhaps a combination -- well, mostly it's based on my experience as a school law lawyer. Starting out, I represented public school districts from 1979, when I graduated from law school, University of Texas here in Austin, and so I went to work representing school districts. So I have practical experience. And then, of course, I studied school law during that time. That's when I began to study it.

And so then I was a professor of law. From '79 to '87 I was the practicing lawyer in Corpus Christi representing school districts and other types of litigation. And then I taught civil procedure at St. Mary's University from 1983 to -- let's see, '79 -- '87 to '93, six years. And while I was there I taught civil procedure basically, but I also got education law into the curriculum. I taught it about every two years so

that students would have a chance to take it either their second or third year of law school but didn't teach it every semester. So about every two years. And then we did some education law symposiums there that students help put on and everything.

And then in 1993, we founded The Justice Foundation, and we basically litigated for school choice, which was our first case, on behalf of low income Hispanic students and their families. And then I was appointed by the State Board of Education to be on the open-enrollment charter school evaluation team in 1995 when they passed the open-enrollment charter school program, and I did that for a few years.

Then we also -- The Justice Foundation had a parents' rights counsel, which we don't currently have, but we represented parents against school districts at times, though mostly we would also do education or help educate parents how to be advocates for their own children.

Did that answer the question?

Q. Not exactly. So would you identify education law as the area in which you're opining in this case?

A. Well, not so much law. I'm testifying as a factual expert.

Q. But it is your background in law that you believe

1 gives you this expertise?

2 A. Yes.

3 Q. Yes, okay. Have you ever been involved in
4 drafting any legislation regarding education?

5 A. Yes, I have.

6 Q. How frequently?

7 A. Starting in about 1991, I think, I was a
8 professor at St. Mary's and I worked as a volunteer.
9 That's when I started writing about school choice, and it
10 was kind of a new reform movement in the '90s. I started
11 writing about it and I offered my assistance to
12 legislators starting in 1991, '93, '95, I think '98. And
13 in about 2000, I stopped doing much drafting.

14 Q. Okay. So would it be fair to say, then, since
15 2000 you haven't really been involved in drafting
16 legislation regarding education?

17 A. Yes, though last session I did help draft the
18 Texas Taxpayers Savings Grant program.

19 Q. And by "last session" meaning the 2011 session?

20 A. Yeah. 2011, yes. That Representative Sid Miller
21 introduced.

22 Q. Have you ever given testimony in court,
23 Mr. Parker?

24 A. I think I have on attorneys' fees before.

25 Q. Do you know about when that was?

1 charging \$250 an hour, so that would be about \$2,500.

2 Q. You estimated -- if you had to issue a bill
3 today --

4 A. That's an estimate, yeah. I haven't issued a
5 bill or anything.

6 MR. DIAMOND: I think there was a typo on
7 his designation for hourly fees. So it's 250, if I'm
8 remembering correctly.

9 MS. PENN: I'll make a note of that.

10 Q. (BY MS. PENN) Mr. Parker, have you read the
11 pleadings in this action?

12 A. Not all the pleadings, no. I've read the
13 efficiency intervenor pleadings. Those are pretty much
14 the only ones.

15 Q. Okay. So would it be fair to say, then, that the
16 legal arguments and factual contentions of the parties,
17 you're most familiar with the Texas taxpayers efficiency
18 intervenors' positions; is that correct?

19 A. Yes.

20 Q. Are you familiar with the positions of the other
21 parties?

22 A. Oh, perhaps in a general sense.

23 Q. But not with any specificity?

24 A. Because of newspaper reporting and things like
25 that, yes. Not with any specificity.

1 A. Oh, gosh. Probably back in the '80s when I was
2 in private practice.

3 Q. Prior to 2000?

4 A. Yeah, definitely prior to 2000.

5 Q. Have you been deposed before?

6 A. I don't think I have. I can't remember any time
7 when I've been deposed. You'd think, well, you'd remember
8 that. So I don't think I have. I don't think I have.

9 Q. Okay. But in court whenever you testified, that
10 was as a fact witness, correct?

11 A. Yeah, but pretty much on attorneys' fees. Right.

12 Q. Have you ever been qualified as an expert before?

13 A. Not other than on attorneys' fees.

14 Q. Have you ever been disqualified as an expert?

15 A. No. I haven't done much expert testifying. I
16 think this is my first time to testify as an expert
17 witness.

18 Q. And is this your first retention as an expert in
19 any case, whether or not you've testified?

20 A. I believe so, yes.

21 Q. Are you charging fees for your work in this case?

22 A. Yes.

23 Q. And how much have you billed to date?

24 A. I haven't really billed anything to date. I've
25 done about ten hours' work on my report and I think I'm

1 Q. Have you read other experts' reports in this
2 case?

3 A. I've read a few. I've read four of them.

4 Q. Which ones were those?

5 A. You want to know which ones those were? Moe,
6 Hill and Adams, though I think it's called Texas --
7 McAdams, I think it's called Texas study group or
8 something like that. But the author is McAdams and
9 someone else. And then I've read Kallison's, the Equity
10 Center expert, on readiness for college.

11 MR. TURNER: I think there may be a slight
12 misstatement there, but you read Kal Kallison's report?

13 THE WITNESS: Yes.

14 MR. TURNER: He's a home group expert for
15 Calhoun County.

16 THE WITNESS: Okay, sorry. I made a
17 misstatement. Thank you, and please correct me.

18 (Discussion off the record.)

19 A. That's who it was, Kallison. Yes.

20 Q. (BY MS. PENN) So those are the four reports?

21 A. I'm not clear on who's who in the litigation or
22 what their stance is legally or anything.

23 Q. That's fine. As long as you know their names
24 then that's enough.

25 A. Yes. That's whose I read.

Q. Did anyone review the drafts of your report that you've submitted in this case before you submitted it?

A. Yes.

Q. Who was that?

A. Basically the attorney, Chris Diamond, and also Kent Grusendorf.

Q. Did they provide comments and feedback on your drafts?

MR. DIAMOND: I think we're going outside of the Rule 11 on that. I don't know where people have been drawing the line, but I think we're going to claim privilege on that.

MS. PENN: Okay.

Q. (BY MS. PENN) Did anyone assist you in drafting your report, Mr. Parker?

A. I wouldn't say --

MR. DIAMOND: Other than counsel.

Q. (BY MS. PENN) Other than counsel.

A. Oh, no.

MR. TURNER: Just as an aside, Mr. Grusendorf's not counsel, correct?

MR. DIAMOND: That's right.

Q. (BY MS. PENN) But to clarify, other than your counsel, Mr. Diamond, did anyone assist you in drafting the report?

A. I wouldn't say Kent Grusendorf assisted me, but I did let him read it and he talked with me about it, yes.

Q. Did anyone else draft any other portions of your report?

A. No.

Q. No? So except where you've indicated by quotes and things in your report, you drafted the rest of --

A. Yeah. Sure. Some of the data comes from other people and that sort of thing.

Q. I'm going to hand you what I'm marking as exhibit 1133.

(Exhibit 1133 was marked.)

Q. (BY MS. PENN) Take a look at it and let me know if this is the report that you've submitted in this case as your expert report.

A. Yes, assuming you haven't changed anything, which I doubt that you would do. And it looks like my report.

Q. I'm going to hand you now what I'm marking as Exhibit 1134.

(Exhibit 1134 was marked.)

MS. PENN: To identify this for the record, this is the plea in intervention filed by the efficiency intervenors in this case.

Q. (BY MS. PENN) Do you recognize this document, Mr. Parker?

A. It appears to be a copy of their Second Amended Plea In Intervention.

Q. What I'd like for you to do is hold those two documents next to each other. Turn with me, if you will, to the introduction of the plea. Do you see that? The very first page of the plea. It begins: The Texas Constitution guarantees an efficient system of public free schools.

Do you see that?

A. Yes.

Q. Turn with me, if you will, to Paragraph 27 of your report. Can you read for me the first sentence of Paragraph 27.

A. "The Texas Constitution guarantees an efficient system of public free schools."

Q. This Paragraph 27 is a -- I'll give you a second to look at it and compare it to the introduction in the plea. This appears to be a word-for-word copy of the introductory paragraph of the plea; is that correct?

A. Yes.

Q. Okay. So did you --

A. I think I took it from there and said I believe this to be true in my expert opinion.

Q. So did you draft the plea in this action?

A. No.

Q. So you just copied this paragraph from the plea and added it to your report?

A. Yes.

Q. Okay.

A. And then, of course, I reviewed it to see if I believed those things.

Q. So presumably you agreed with that paragraph --

A. Yes.

Q. -- which is why you added it to your report?

A. Yes.

Q. So a few others I wanted to ask you about. Let's turn to Paragraph 5 of the plea. And let's look at the very end of Paragraph 27, which is on Page 16 of your report.

A. Oh, wait. Sorry, I was looking on the wrong paragraphs. 5 of the plea and 27 of mine?

Q. Yes, sir. On Page 16. The sentence in your report on Paragraph 27 at the end, which begins: The Texas school finance system has undergone recurring litigation.

Do you see that?

A. Yes.

Q. And so does that also, the rest of that paragraph, does that come from Paragraph 5 of the plea?

A. I believe so, yes.

Q. Okay. And then let's look at Paragraph 8 of the plea. And look at paragraph -- I'm sorry.

A. I'm sorry, doing the wrong thing again. 8 of the plea.

Q. 8 of the plea and Paragraph 28 of your report. Are those also the same paragraphs?

A. Yes.

Q. And then finally let's look at Paragraph 11 of the plea. And I want to compare that to Paragraph 18 of your report. Paragraph 11 of the plea begins: The statutory cap on the number of charter schools breeds inefficiency in the system of public free schools.

Do you see that?

A. Yes.

Q. And Paragraph 18 of yours begins with that same sentence?

A. Uh-huh.

Q. Are those also the same paragraph?

A. I made some changes in this. It's not exactly the same thing.

Q. Okay. So what changes did you make?

A. Well, like, for example, "The current statutory cap on the number of charter schools is further evidence of inefficiency" is what I put in my report. And the way they say it is it "breeds inefficiency" in the pleadings.

I guess I was just more comfortable with the language it's "further evidence of inefficiency," though it does breed inefficiency.

Q. You don't think that changes the meaning of the sentence?

A. Not in a way that I see the significance of it, but I do feel like it's further evidence of inefficiency.

And so I should go through each sentence. I may have made -- that's what I say, I basically started with it and then read it and said do I agree with it or do I need to change something.

(Witness reviews document.)

A. In fact, a lot of it does look different.

Q. (BY MS. PENN) There is a sentence, the third --

A. They have something about -- this looks a lot different. I mean, "The Defendant Commissioner of Education, Robert Scott," and I don't have anything about Robert Scott in mine.

Q. Exactly. But the next sentence that begins "An estimate 56,000 students," that's the same sentence --

A. Yes.

Q. -- that you have.

A. Yes.

Q. But I believe from "An estimated 56,000 students" to the end of that paragraph in Paragraph 11 of the plea,

I believe that's the same --

A. Yes.

Q. -- language as is in your report?

A. And since you brought that up, the point is, I was going to perhaps change that. I attended the senate education committee hearing on choice and efficiencies in public schools on August 24th, and at that hearing the Texas charter schools said that they had approximately 70,000 students on the waiting list, and so I'm relying on their estimates. And that they were likely to be higher when they had all of the data at that. So that -- but at that time I was relying upon that factual evidence, yes.

Q. Okay. So as you sit here today, that 56,000 number that's in Paragraph 18 that reads, "An estimated 56,000 students are on waiting lists across the state," you would change that to say, "An estimated 70,000 students"?

A. Yeah, based on the testimony that I heard at the senate education committee hearing.

Q. Is there anything else in your report as you sit here today that you would change?

A. I don't know. I didn't -- well, I didn't -- in some of the ellipses in the prior case law and stuff, I did not go back and review the prior case law because I

feel like I'm not here as an expert on the law, I mean, per se. So I did not go back and review that.

Q. Understood. So to the extent that any law has changed, it wouldn't be reflected in --

A. Right.

Q. -- what you've written?

A. Right.

Q. So other than these paragraphs that came from the efficiency intervenors' plea, is the remainder of the report original to you?

A. Yes. Yes -- and -- well, other than things I copied or -- I mean, cited. But it is -- the report's original with me.

Q. Okay.

A. Yes.

Q. Other than where you have noted quotations or citations to information?

A. Yes.

And obviously the reason I picked those facts is they were relevant to the efficiency intervenors' pleas.

Q. Understood. I'm going to hand you now what I'm marking as Exhibit 1135.

(Exhibit 1135 was marked.)

Q. (BY MS. PENN) This is just another version of your report. However, so that we know, we're not going to

1 talk about the parts that you didn't draft. I just
2 redacted the paragraphs that came from the efficiency
3 intervenors' pleas. Does that make sense?

4 A. Sure.

5 Q. Turn with me to Page 2 of your report.

6 A. Exhibit 1135?

7 Q. Yes, sir.

8 A. The new one. Page 2?

9 Q. Page 2.

10 A. All right.

11 Q. In Paragraph 7 you talk about how you were
12 selected by the State Board of Education to be part of the
13 open-enrollment charter school evaluation team.

14 You mentioned that earlier, but could you give me
15 a little bit more background on what that is exactly?

16 A. Well, in 1995 there were some significant
17 education reform attempts in Texas, and one of the things
18 created was open-enrollment charter schools. And it
19 probably was in the bill. I can't quite remember, but
20 there was probably an evaluation component of the bill.
21 But for whatever reason, the State Board of Education did
22 some evaluation, and I was one of the people selected to
23 be on that evaluation team. Frank Kemmerer from North
24 Texas State and some other people, I can't remember,
25 selected by the State Board of Education.

1 required school board member training.

2 What is that training?

3 A. If you're a member of an elected school board in
4 Texas you have to have a certain number of minimum hours
5 of continuing education and it has to be approved --
6 provided by an approved provider and the State Board of
7 Education -- or maybe the commissioner in that case -- has
8 to approve the -- sort of like continuing legal education
9 credits for lawyers. And because of our parental rights
10 counsel and education work, we did some school board
11 member training, probably from about, I'm thinking, '95 to
12 '98, '99, three or four years there. I think we provided
13 it possibly three or four times.

14 Q. So you don't --

15 A. An annual course. We do not do that now. And I
16 am probably not an approved provider unless they just
17 continue once you're approved you're approved forever,
18 like a lot of them now.

19 Q. In perpetuity.

20 A. Yeah. I haven't checked because we don't provide
21 it, so I don't know if it's expired or not.

22 Q. Turn with me, if you will, to Page 3 of your
23 report. The very last sentence on that page in
24 Paragraph 9 you say: I believe the Texas system of public
25 free schools is constitutionally inefficient as a matter

1 Q. The members were selected by the board of
2 education?

3 A. Yeah, the members of the open-enrollment charter
4 committee.

5 Q. Did you issue any sort of report?

6 A. We did. I think several in the early years.

7 Q. Can you give me a date range of when those
8 reports would have been issued?

9 A. Well, probably '96 to -- the one I was on
10 probably '96 to '99, something like that.

11 Q. Do you know about how many reports you issued?

12 A. I think we did one or two for the first couple of
13 years. There probably were more than that.

14 Q. Okay.

15 A. I got off the committee after a while -- after
16 two or three years, and then I think the committee may
17 have continued, also.

18 Q. I was going to ask you that. Do you know if the
19 committee is still in existence?

20 A. I don't know. I don't think so because I
21 probably would have heard something about it, but it could
22 be in existence. I don't know.

23 Q. Okay. The end of that Paragraph 7 you also state
24 that because of your experience, The Justice Foundation
25 itself was at one time an approved provider of the

1 of fact.

2 Is that ultimately your expert opinion in this
3 case?

4 A. Yes.

5 Q. Okay. Do you have anything you would add to
6 that?

7 A. What's in my report.

8 Q. Okay.

9 A. I mean...

10 Q. Other than the elaboration and the support,
11 that's the --

12 A. Yeah, that's my only expert conclusion fact in
13 this case, yes.

14 Q. Okay.

15 A. I'm not testifying on any of the other issues
16 that might be in the case, unless I'm asked. But that's
17 my intent, yes.

18 Q. How would you define "constitutionally
19 inefficient" as opposed to "inefficient"?

20 A. Well, I suppose there is a continuum of
21 efficiency that one could imagine in a public school
22 system. On one end would be the purest form that would
23 produce the most efficiency would be if every child's
24 share of education funding followed the child to the
25 school of the child's choice and there were pretty much an

1 unlimited number of providers who could provide that
2 service.

3 So that would provide you the maximum possible
4 efficiency that I think we've designed in human existence.
5 So that would be on one end.

6 When I say "constitutionally," I don't know --
7 because it's a suitable and efficient system, I'm not sure
8 that the courts would require the legislature to go all
9 the way to that end.

10 But at the other end you have a very rigid
11 bureaucratic top-down extremely dysfunctional and
12 extremely inefficient system, which is I believe where we
13 are, as a practical matter, in our Texas public school
14 systems today. Rigid top-down control, extremely
15 bureaucratic, extremely difficult to innovate, extremely
16 susceptible to political pressures and extremely
17 responsive to the needs of adult stakeholders in the
18 system rather than the consumers.

19 Q. Understood.

20 A. So what I'm saying is, it's so far to the extreme
21 end that I think it's very obviously unconstitutional even
22 if the Supreme Court gave some deference to the
23 legislatures, as I'm sure it should and will.

24 Q. So to clarify, you just said that you believe
25 that the inefficiency is so extreme that it is

1 unconstitutional, correct?

2 A. Yes.

3 Q. How is that an opinion of fact?

4 A. Well, it's like a negligence case or something, a
5 doctor, that you commit negligence in this case. I mean,
6 I'm applying the legal Durham that the Supreme Court used
7 effective of results with little waste. So in that sense
8 I'm applying the Court's definition of efficiency to the
9 factual situation that I see. So to me that's a factual
10 conclusion.

11 And I'm using the Supreme Court's definition.
12 I'm not using my historical research or my opinion about
13 what the Texas Constitution might mean, I'm trying to
14 apply the current Texas Supreme Court's definition of
15 efficiency to the factual situation that I know exists.
16 So it's -- perhaps you might call it the application of
17 law to fact as an expert witness.

18 Q. And you believe that the application of law to
19 fact in this case renders an opinion of fact?

20 A. But I don't think you have to be an expert in law
21 to do that. I think an expert -- other educational
22 experts could apply -- as long as you're using the common
23 definition or the definition of that word that the Supreme
24 Court says is the right definition, then in a sense that's
25 a factual -- that really is a factual determination.

1 Q. And I want to go back to the analogy you just
2 raised to a doctor testifying in a negligence trial.
3 Would a doctor then testify about whether or not someone
4 was negligent?

5 A. Well, they'd use terms like did they fall below
6 the standard of care in the profession. And, yes, they'd
7 testify about whether or not someone's negligent, yes.

8 Q. And so I want to go back to where you identified
9 the definition of "efficient" as coming from the
10 Constitution and from the courts; is that correct?

11 A. Yes.

12 Q. And so your opinion relies on the definition of
13 "efficient" as provided by the Supreme Court of Texas?

14 A. Yes.

15 Q. So could the Court adopt a different definition
16 of "efficient"?

17 A. The Court certainly could.

18 Q. And if it did, would that change your opinion in
19 this case?

20 A. Well, if they gave a different definition of
21 "efficiency," yeah, I would -- I'd have to apply that
22 definition to the facts.

23 Q. Okay.

24 A. It could or could not. I mean, it could or -- it
25 depends on how they change the definition, yes.

1 Q. Turn with me, if you will, back to the plea.
2 That was Exhibit 1134. I just want to focus quickly on
3 Paragraphs 21 and 22 of the plea. I'll point you to
4 Paragraph 21 that says -- this comes under Heading 4,
5 Causes of Action in the plea.

6 It says: For the reasons stated above, the
7 efficiency intervenors request that the Court render
8 judgment declaring that the current system of public free
9 schools violates Article VII, Section 1 of the Texas
10 Constitution and that it is not efficient in providing for
11 the general diffusion of knowledge in order to preserve
12 the liberties and rights of the people.

13 And then when you turn to Paragraph 22, it's a
14 similarly worded paragraph that says: The intervenors
15 seek a judgment that Texas Education Code Chapter 21 is
16 not efficient as required by Article VII, Section 1 of the
17 Texas Constitution, and are therefore are
18 unconstitutional.

19 Do you see that?

20 A. Yes.

21 Q. Are those two statements consistent with your
22 expert opinion in this case?

23 A. Yes.

24 Q. So your expert opinion is the actual decision
25 that the efficiency intervenors are asking the Court to

1 make in this case?

2 MR. DIAMOND: Object to the form.

3 A. You want to restate that for me?

4 Q. (BY MS. PENN) How is the opinion that you're
5 rendering in this case, how would it differ from the
6 decision that the efficiency intervenors are asking the
7 Court to make?

8 MR. DIAMOND: Object to the form.

9 A. Yeah, I'm -- I don't know. I'm not -- I mean,
10 I've read their pleading, but I haven't thought about how
11 it differs from there. I've thought about what do I
12 believe to be true. I don't know. I believe these
13 conclusions are true and factually based, based on my
14 experience. So that's all I know.

15 Q. (BY MS. PENN) Let me ask it another way. Do you
16 understand the efficiency intervenors to be asking the
17 Court to render a judgment that the Texas system of free
18 public schools is inefficient and, therefore,
19 unconstitutional?

20 A. Yes, I think that's it. But I'm not sure if I've
21 read their latest pleading.

22 Q. I'll represent to you this is the most recent
23 pleading.

24 A. Okay. Good.

25 Q. So based on these two paragraphs and their causes

1 of action, do you understand the efficiency intervenors to
2 be asking the Court for a declaratory judgment that the
3 Texas system of free public schools is unconstitutional
4 because it is inefficient?

5 A. Yes.

6 MR. DIAMOND: Object to the form.

7 Q. (BY MS. PENN) You can answer.

8 A. I say yes. That's what it seems to me.

9 Q. And your opinion in this case is that the Texas
10 system of free public schools is unconstitutional because
11 it is inefficient?

12 A. Yes.

13 I want to say I'm not their lawyer. You know,
14 they may change their pleadings or whatever.

15 Q. Understood.

16 A. Reading that yes.

17 Q. Let's turn to Page 4 of your report. And I want
18 to look at Paragraph 10.

19 A. And I'm using the Exhibit 1135, the redacted one?

20 Q. 1135. Yes. I apologize. From here on out when
21 I talk about your report, I'll be referring to
22 Exhibit 1135.

23 A. All right.

24 Q. In Paragraph 10 you have a number of bullet
25 points or numbered bullet points after the introduction

1 that says that: The major evidence that the current
2 system is inefficient as a matter of fact is that it is
3 not "productive of results" and the facts are...

4 And you list a number of facts.

5 A. Uh-huh.

6 Q. Are these the facts that you've used to support
7 your expert opinion?

8 A. Well, there are other facts in the rest of the
9 opinion, also. So these are some of them and then there's
10 others in different paragraphs.

11 Q. Why did you decide to highlight these particular
12 facts?

13 A. Well, I think they're some of the most important
14 facts, like not graduating sufficient numbers of students
15 who are prepared for college. I tell you, I did read the
16 Kallison report in preparation for this, and he documents
17 very well the lack of preparedness of Texas students for
18 college. And one would think that that's a basic
19 underlying purpose of the system. And it wouldn't take
20 much legislative effort to get students prepared for
21 college, right?

22 And yet his report also shows the structural
23 problems in producing that high achievement. Number one,
24 for example, he shows how the legislature has to attempt
25 to establish high standards. One would think that every

1 district in the state would be trying to establish high
2 standards and getting all of it in an efficient system.

3 But he documents how the top-down system attempts
4 to deal with a very serious problem, and that a general
5 diffusion of knowledge today should produce, I believe,
6 the vast majority of students ready for college, and
7 instead we have about maybe -- you know, it's a little
8 hard to measure, but I'd say 10 to 20 percent of students
9 adequately well prepared for college.

10 Q. I want to just focus a little further on that
11 statement. This comes from Statement A of Paragraph 10,
12 correct?

13 A. Yes.

14 Q. And you say there that: Texas public schools are
15 not graduating sufficient numbers of students who are
16 prepared for college.

17 What do you consider sufficient?

18 A. Well, this is actually a fundamental question in
19 the whole case. It's a difficult question to answer. But
20 if you had a system that provided efficiency, then you
21 would automatically produce the most efficient and best
22 results possible. Since we have such a highly
23 inefficient, extremely inefficient system, I believe
24 constitutionally inefficient system, it's difficult to say
25 what the proportion ought to be. And it's like if we

1 pressures will be to restrict what charter schools can do.

2 Q. So ideally you would have a charter school
3 program in which charter schools were completely
4 unregulated by the State?

5 A. Yes. And regulated by market forces which is
6 consumer accountability and demand, yes.

7 Q. Let's look at your conclusory paragraph on

8 Page 19.

9 A. Yes.

10 Q. The second sentence says: We provide food stamps
11 to the poor but we don't require anyone to eat in a
12 particular restaurant or buy from a particular grocery
13 store.

14 Are you aware that food stamps actually cannot be
15 used in restaurants?

16 A. I think I am aware of that.

17 Q. And you are aware that food stamps actually can
18 only be used in particular grocery stores?

19 A. Well, ones that comply with the State's
20 requirement to accept it, yes.

21 Q. Yes. So we do, in fact, provide food stamps and
22 dictate where those food stamps can be used, correct?

23 A. To some degree. It's a pretty wide variety of
24 grocery stores.

25 MS. PENN: I have no further questions.

1 it's now known as The Justice Foundation.

2 Q. Okay.

3 A. Though we also d/b/a in Texas as the Texas
4 Justice Foundation.

5 Q. But my statement, although I misspoke in the name
6 of your entity that you formed in, I believe, 1994 --

7 A. '93.

8 Q. -- is a correct statement as far as what you've
9 done?

10 A. Yes.

11 Q. I take it, then, at no time in your life have you
12 been a public school teacher?

13 A. That is correct.

14 Q. At no time in your life have you been a public
15 school administrator?

16 A. That is correct.

17 Q. At no time in your life have you served on the
18 school board or the operating side of any public school
19 district or public education entity?

20 A. Well, when you broadened it to "operating side,"
21 I was general counsel and a lawyer for school boards,
22 numerous of them, but I was not an employee. But I was
23 counsel to school boards, so I did advise them on many of
24 the decisions that they made. So when you broadened it to
25 "operating"...

1 Thank you very much for your time.

2 THE WITNESS: Thank you.

3 (Break.)

4 EXAMINATION

5 BY MR. GRAY:

6 Q. Good afternoon, Mr. Parker.

7 A. Good afternoon.

8 Q. My name is Rick Gray. I represent a group called
9 the Texas Taxpayer & Student Fairness Coalition and I have
10 a few follow-up questions, but hopefully not too many. No
11 disrespect, but as I understand it, you're a lawyer?

12 A. Yes.

13 Q. And your graduate degree and your only graduate
14 training is in law?

15 A. That's correct.

16 Q. And you got your law degree from the University
17 of Texas?

18 A. Correct.

19 Q. In 1979?

20 A. Correct.

21 Q. And since then you have either practiced law or
22 taught law up until the time that you were a founder of
23 what is now known as the Texas Justice Foundation,
24 correct?

25 A. It was founded as the Texas Justice Foundation,

1 Q. Good clarification. And you jumped one question
2 ahead of me. Maybe I'll rephrase it this way.

3 A. But I've not been a school board member or
4 employee.

5 Q. Other than being an outside lawyer for a number
6 of districts in and around Corpus Christi when you were
7 with the Gary, Thomasson firm in Corpus Christi, you've
8 never had any involvement in the day-in and day-out
9 operations of a school district?

10 A. That is correct.

11 Q. Your report that -- as I read it, you have not
12 done any independent research to put together your report,
13 correct?

14 A. That is correct.

15 Q. You have relied on newspaper articles or other
16 publication -- public articles, Mr. Grusendorf's study
17 back in 1994, but you haven't done anything independent on
18 your own?

19 A. Not in the terms of a research study or something
20 like that, no. I'm also basing it on my 33 years of
21 experience and the open-enrollment charter school a little
22 bit.

23 Q. Your 33 years of experience as a lawyer?

24 A. Yes.

25 Q. Now, in the beginning of your examination by

1 with other students in other nations, other states, and it
2 would have been a lot cheaper. But we had to adopt the
3 one-size-fits-all, well, we're not going to test unless
4 it's something we're teaching on in the classroom.

5 And so it -- and then in the political control
6 model, as I said earlier, if the standards -- or if the
7 standards then when the first time you do the test reveal
8 that students are achieving at too low a level, the
9 pressure tends to be more on lowering the standard than
10 raising the student achievement.

11 Q. (BY MR. TURNER) You're familiar with the new
12 STAAR assessment system in Texas?

13 A. In general, yes. I've not made a specific study
14 of it. Not in detail on it, but yes.

15 Q. Do you have any opinions about whether movement
16 to STAAR from the previous system has been a good thing or
17 bad thing?

18 A. I have mixed feelings about it. And I see the
19 repetitive pattern that I see over 30 years of education
20 reform. I've been involved in education reform since the
21 beginning of my -- I happen to come into the law and legal
22 field in education reform times. I started out doing
23 special ed due process hearings, for example, because they
24 passed the education of all children's handicap because
25 handicapped children were not getting educated adequately

1 in the public schools, so we had a reform effort. I'm
2 sorry, maybe I'm a professor sometimes.

3 Q. Whether you believe the movement to the new STAAR
4 system has been a good or a bad thing.

5 A. I think it's good in -- I think measuring
6 achievement is a good thing, of students. It's the best
7 outcome we'd like to see in education, is high student
8 achievement at low cost. That's efficiency. So yes, I
9 believe the STAAR is a good concept. I already begin to
10 see the results of the pressure to lower the STAAR
11 standard not to what students should be learning but what
12 they're kind of learning under the current inadequate,
13 inefficient system.

14 Q. So would you agree with the notion that the STAAR
15 standard is generally a higher one than we have seen
16 previously under the TAKS and other tests in the past?

17 A. That's my understanding on what I've read. I
18 have not looked at the old test and the new test to
19 determine that. But that's my understanding, that it's an
20 attempt to try to raise the standard a bit, yes.

21 Q. It sounds like you, in general, would be a
22 supporter of that.

23 A. I do. I think if you're in the current system --
24 you know, there is lots of ways to reform the current
25 system, and everyone seems to recognize it has

1 unacceptably low levels of achievement. I would support
2 testing.

3 I guess you could say yes, I'm an advocate of
4 testing the basics and publishing the results, yes.

5 Q. Do you have any criticism of the State's current
6 curriculum?

7 A. Not that I'm aware of, no. I -- I don't have any
8 strong opinions about the curriculum.

9 Q. Do you have an opinion on whether today teachers
10 in Texas public schools are generally overpaid or
11 underpaid?

12 A. No, I don't have an opinion on that.

13 Q. Do you have a feeling as to what the right level
14 of teacher average salary should be?

15 A. Well, let me say, because I do believe that
16 choice factors and competition would help set that at a
17 truly adequate level, I don't tend to think it's at the
18 right level today. When you say is it adequate, you know,
19 it seems to be adequate enough to attract people into the
20 profession to teach the children seated in the classrooms.
21 So from a minimal, is it doing -- is it keeping the
22 classes full and the teacher in front of them, yes.

23 But one of the things that I think a more
24 efficient system would do would be to allow variation in
25 teacher salaries and allow compensation for performance so

1 that maybe some teachers get paid more than other
2 teachers. So in that sense, that's when you say is it
3 adequate or not, I -- my personal opinion based on what
4 I've seen is there should be more flexibility. The way
5 the current system works, it's probably okay, you know,
6 but -- but it's part of the whole system's inefficiency.

7 Q. If the State were to move over a period of time
8 toward the system you're advocating, one that is -- where
9 schools are not run by the government but where government
10 provides funding for each child to spend that education
11 dollar how the child and its parents decide, do you have
12 an opinion as to whether teacher salaries under that
13 scenario would be on average higher or lower than they are
14 today?

15 MR. DIAMOND: Object to form.

16 A. Yeah, I object to the form because I'm not
17 actually advocating a system here. I'm just saying the
18 current system is constitutionally inefficient. That's my
19 thing. In my opinion as -- but I'm not advocating for
20 anything today.

21 Q. (BY MR. TURNER) And maybe --

22 A. If you want to ask what my opinion is about
23 something or...

24 Q. During the course of your testimony today I think
25 you expressed your view a number of times that the system

ought to allow for, I think you said, money to follow the student and that government shouldn't be in the business of running the schools, but they should be providing funding for --

A. I never said that government couldn't run schools, because there are good government schools, and if people have a choice to go somewhere else if it's not meeting their needs, then it could be part of an efficient system.

Q. Okay. Fair enough. And I'm not trying to mischaracterize --

A. That's what I'm saying. But yes, I think in a system, if there was deregulation of the public schools on salary levels and if there was adequate number of suppliers, then I think it's very clear that some students -- some teachers might be paid much more than they currently are under the current system.

Q. All right. And so that kind of goes to the question I was trying -- and I wasn't trying to mischaracterize, by the way. I'm not trying to twist anything you said earlier.

What I was really trying to get at is, under the reform structure that you advocate, have you formed an opinion as to whether, in the end, average teacher salary would be higher or lower than it is today?

A. I don't have an opinion absolutely as to what it would be in the end because no one can see the end at this point in time. And by that I mean, you need a constitutionally efficient system that allows innovation, and I'm not sure that we've seen today what is the best way to educate in today's environment with technology and other things that could be done.

I could envision, for example, schools, and I've talked to educators' group, where a group of educators take 60 students, and that's all they take, and they teach them by Socratic method. The teachers would be very highly paid in that method. For sure what the results would be, I'm not sure at this point. It hasn't been tried necessarily, and there could be testing of the results and to see whether parents would want that kind of education. I think there would be some, but not everybody. But we don't need one-size-fits-all. So I'm not sure what the end would be that I can really give you an expert opinion on that.

But let me say this. But I do believe, clearly, some teachers would get higher salaries.

Q. Let me ask you if you can turn to your report, Paragraph 10. I think Ms. Penn asked you a little bit about this document earlier -- or, I'm sorry, about the section we're turning to.

A. And let me say this, just to answer your question wholly. If the schools were deregulated and the suppliers were able to do it, then one of the most important inputs into the educational process is good teachers. And so I think there would be pressure upward to improve teacher salaries in such a system. That I can state confidently.

I'm sorry, then, what was your page question?

Q. All right. So let's go to Paragraph 10. And you were asked -- I think earlier today Ms. Penn asked you whether you believe Texas schools are currently sufficiently funded, and I think you said you thought they were; is that right?

A. Yes.

(Exhibit 1139 was marked.)

Q. (BY MR. TURNER) So let me hand you Exhibit 1139. You go on here in this Paragraph 10 to cite several, I guess, subpoints in this paragraph. In Section B you say, "The problem is not a lack of funding," and then you have several other citations about funding levels in that paragraph. Do you see that?

A. Yes.

Q. And you cite there a couple of sources, but one of them is the 2010 FAST report, the executive summary?

A. Yes.

Q. And first of all, just to be clear, you did not

do any independent research or analyses of your own about the funding level issue other than what you mentioned here. Would that be accurate?

A. Yes, that is correct. The citations were just to get some rough numbers and things like that. I did not do independent research on funding levels.

Q. So I've handed you Exhibit 1161. Is this the FAST report executive summary that you were referring to, I think, in Footnotes 3, 4 and 5 in the report?

A. It probably is. I'm trying to see if there was an executive summary page. Well, there it is.

Q. The whole thing --

A. The whole executive summary, okay.

Q. The whole executive summary.

A. I was looking for a page of this, but now I see every page is -- yes, yes, yes.

Q. If you look at Page 8 there, begins a section there on Public Education Spending in Texas. Does this section illustrate some of the spending data that you were relying on when you made the statements you did here in your report?

A. Yes.

Q. Have you reviewed this before?

A. You mean this particular page, or the whole report?

1 A. I have not heard of that.

2 Q. So I take it you wouldn't have any opinions one
3 way or the other as to which of those two would be an
4 appropriate one to use for these purposes?

5 A. No, I have no opinion on that.

6 Q. Now, if you turn back to the chart on Exhibit 5
7 here on Page 10, I'll represent to you, and I'm not asking
8 you to accept it, but just for our discussion here, that
9 if you take the \$7,095 for 1998 and apply the Consumer
10 Price Index to that number and try to get it in 2008
11 dollars, it comes out to \$9,372. Okay? And now, that is
12 a lower figure than the 11,978, would you agree?

13 A. Yes.

14 Q. Now, I'll also represent to you if you take the
15 figure that is shown for 2001, 2001 and '2, the 9,123?

16 A. Yes.

17 Q. And adjust that for inflation using the Consumer
18 Price Index to get 2008 -- I should say make the 2001
19 figure constant to the 2008, then for 2008 that 9,123
20 would be worth \$11,091.

21 A. I assume you're correct on the math.

22 Q. Assuming I've done that correctly, that would
23 indicate that the change in inflation-adjusted spending
24 per student from let's just start with 2001 at the moment
25 to the 2008 time period, has been something like about

1 \$900 per student, the difference between the 11,978 to the
2 \$11,091. Does that sound correct to you?

3 A. Assuming the math's correct and assuming your
4 assumptions are correct, yes.

5 Q. Now, would the -- the information in this chart
6 and that you've cited in your report apply to -- does this
7 encompass spending both on maintenance and operations as
8 well as capital expenditures by school districts?

9 A. I believe that the \$11,000, yes, it includes
10 both.

11 Q. So that would include expenditures on new
12 facilities, debt service to pay off bonds that are used to
13 finance capital expenditures, correct?

14 A. I believe that's correct.

15 Q. Do you know how the picture would change if you
16 just looked at maintenance and operations funding and
17 excluded the capital in-debt?

18 A. No, I've not done that analysis.

19 Q. Now, capital in-debt service spending on building
20 some facilities, that's typically something that is funded
21 by the sale of bonds in individual school districts,
22 correct?

23 A. Yes.

24 Q. And that typically will have to be approved
25 locally by a vote of citizens in the district; is that

1 right?

2 A. Yes.

3 Q. Do you have any criticism, by the way, of that
4 system?

5 A. Yes, it's part of the inefficiency of the system.
6 And just, if you ask my personal opinion, yes. Because we
7 have the concentration of students under one dominant
8 political control system, then we tend to have to build
9 one big building to put them in. It requires a bond
10 issue, it requires all of the community to essentially
11 agree on one thing. It tends to promote the extreme
12 rigidity of the system and we build large schools.

13 Again, there is a substantial body of research,
14 for example, that shows small schools have higher student
15 achievement. And so if people were allowed to go to a
16 variety of schools, it would probably result in more
17 schools or it might produce the one large school that
18 because people have been able to choose the best school
19 tends to be the one that produces the best results.

20 So in the education system around the country
21 where you see large urban districts and there is this kind
22 of -- there is this monopoly efficiency, okay, everybody
23 has to go to this school, let's build it real big and
24 build one school instead of two, there is some cost
25 savings that might come with that. But it doesn't

1 necessarily relate to student achievement.

2 One of the problems in many schools is the
3 schools are too large. The children get lost.

4 Q. You think it might well be the --

5 A. And that's bureaucratic inefficiency. Oh, well,
6 we have to pass a bond issue, we have to do it all through
7 this one way of doing it. One of the advantages of
8 charter schools is that they are free to lease facilities
9 or something like that. They don't have to pass a bond.
10 There will be this pressure on them to become more and
11 more like public schools in their financing and get
12 bonding ability and all that, but there's other ways to
13 finance education.

14 So I --

15 Q. Are you --

16 A. -- do critique the system as part of the rigid
17 inefficiency and it produces, again, maybe not -- not the
18 school that needs to be built. Say the board wants to
19 build a school and the bond issue fails. You know, so
20 they -- there may be a need for a school there that didn't
21 get addressed. But, you know, it's -- they got to wait
22 and do it again.

23 Q. Do you think it might well be the case in the
24 more efficient system that you advocate that you would
25 have more smaller schools and fewer large schools?

1 get -- that district gets money for that child, and
2 then -- you know, under the formula system. So I don't
3 call that a voucher. I just call that child-centered
4 funding.

5 Q. Using your terminology, "child-centered funding,"
6 would you be saying that you give a certain amount of
7 money to the family and they get to use it to go to school
8 wherever they want and that funding goes to that school?

9 A. I don't have a system that I'm advocating. I
10 described the continuum. If you wanted pure 100 percent
11 efficiency, then the child would not be limited by a
12 geography and funding would follow that child. By
13 "follow" in the sense of it may just be calculated at the
14 state level. The State could determine -- change the way
15 it funds education and let that money be allocated.

16 I think one of the lawyers seemed to indicate, or
17 maybe it was you asking me that should all the funding be
18 equal per child. I think that would be -- now we're
19 talking a pure system. That might require constitutional
20 amendments on property tax or something else. I'm
21 focusing on the inefficiencies of the current system.

22 Q. I'm trying to be --

23 A. I'm not advocating any particular way of fixing
24 that.

25 Q. But you are saying that certain things would have

1 to be changed in the system in order for it to meet the
2 standard of constitutional efficiency.

3 MR. DIAMOND: Object to the form.

4 Q. (BY MR. TURNER) Correct?

5 MR. DIAMOND: I'm not offering anything to
6 fix the system.

7 THE WITNESS: That's what I was getting
8 ready to say.

9 A. The way it is currently done, it is
10 constitutionally inefficient. Clearly and extremely, in
11 my opinion. How you can fix it, I have not really given
12 opinion on that. I'm not here to give an opinion on how
13 it should be fixed.

14 Q. (BY MR. TURNER) You're saying the system is
15 constitutionally inefficient because it has certain
16 features that you think are inefficient?

17 A. Yeah, many of those. It's doing a poor job. You
18 know, I mean, suddenly every child in Texas under the
19 current system started being college ready and career, I
20 would change my opinion and say I guess this is an
21 efficient system. It produces good results for every
22 child. I mean, you know, that's why I say, it -- but I
23 know from my experience that's not going to happen.

24 But in theory, if it was getting better results
25 it might be considered efficient. So the bad results, the

1 structural, one-size-fits-all, top-down political control
2 model, you know, the State could maybe change that if it
3 wanted to by creating the districts as more autonomous
4 entities and letting them compete among themselves for
5 students and not fund districts as districts but letting
6 them be the suppliers of education.

7 But then I'd said the structural problem is the
8 limit on the number. You'd have to have someone to
9 compete with them. So San Antonio Independent School
10 District -- I'm talking in pure theory of one of the ways
11 the legislature could do it. San Antonio ought to be able
12 to open a school in the Alamo Heights district and send
13 its students there or attract students from Alamo Heights.
14 That would reduce inefficiencies in the system.

15 Maybe SAISD figures out the best way to educate
16 low income Hispanic children. God knows we need somebody
17 to do that. Why not let them open up a school anywhere in
18 the state? That would promote efficiency, but that's not
19 necessarily the way I'm advocating that it be done.

20 Q. How would we know --

21 A. I don't have an advocacy position.

22 Q. How would we know, in your opinion, when the
23 system is efficient?

24 A. I think you'd have to look at the structure. Is
25 it able for competitors to come into the system. You'd

1 have look at the results, so you'd have to measure it, is
2 it likely to produce results. I think you'd have to look
3 at the structural impediments to the local educators, the
4 supplier of the product, being able to make their own
5 decisions as to what works in their community.

6 Q. In your Paragraph 23 you say here: In my
7 opinion, further evidence that the system is inherently
8 inefficient as a matter of fact is because the current
9 system is a government-controlled monopoly and monopolies
10 are inherently inefficient and run for the benefit of the
11 monopoly rather than the consumer.

12 A. Yes.

13 Q. How long do you think the system has been this
14 way?

15 A. I'm thinking back to 1954, perhaps. One of the
16 articles I wrote, somebody said: We've now achieved
17 complete centralized control.

18 And it was a gradual process until then and --

19 Q. Why do you pick 1954?

20 A. I was trying to think. One of the education
21 reformers who wanted centralized control of education said
22 that in an article or something. And --

23 Q. I take it that doesn't have any relation to Brown
24 versus Board of Education?

25 A. It may have been -- was that Gilmer -- the year

1 background, and our views are -- I mean, he may say
2 something I disagree with, but they're pretty
3 substantially in agreement, I would think.

4 Q. You said he worked for The Justice Foundation?

5 A. Yes.

6 Q. When did he do that and what was his role?

7 A. He was general counsel from 2000 to about 2010.
8 So about ten years as a full-time employee, left Trinity.
9 Before that, while he was a professor at Trinity
10 University, he sometimes volunteered with us on cases or
11 amicus briefs and things like that that we would write.

12 Q. Let me make sure I understood that. From 2000 to
13 2010, he was a full-time employee of The Justice
14 Foundation?

15 A. Yes.

16 Q. And he was a general counsel?

17 A. Yes.

18 Q. And did he do work at that time on school choice
19 issues?

20 A. Probably some, but a small amount. Some. It's
21 about 2000 we started shifting more out of education and
22 more into the pro-life work and that's mostly what he
23 worked on. But we may have done a little bit during that
24 time period. It's ten years.

25 Q. Thank you. That's all my questions.

1 A. Thank you.

2 (Break.)

3 EXAMINATION

4 BY MR. SANCHEZ:

5 Q. Mr. Parker, earlier you were talking about the
6 basis for the opinion that you're giving in this case.
7 And you pointed to a number of facts that were supported
8 by footnotes, and my able co-counsel have asked you
9 probably everything there is to ask about this.

10 At any rate, as I understood your answer to what
11 it is that you were opining on, it was that -- well, for
12 one it was based on these facts in your report, Page 10, A
13 through F, those were at least some of the facts on which
14 you made the assertion of inefficiency?

15 A. Yes. But I would say these are merely just
16 illustrative facts, not the critical facts. The
17 conclusions, for example, are important, and the
18 structure -- I'm really testifying on the totality of the
19 education system.

20 Q. Okay.

21 A. But, you know, those are some illustrative facts.

22 But like, for example, if we wanted to know what
23 the cost of remediation is this year, we ought to look at
24 this year's figures, and I don't have those available to
25 me.

1 Q. But it's these kinds of factors that make you say
2 that the system is constitutionally inefficient; is that
3 not correct?

4 A. Yes.

5 Q. And it's not efficient because it's not -- it
6 doesn't have productive results?

7 A. That is correct.

8 Q. Is another kind of inefficiency -- are you aware
9 that within the current system there are in many cases
10 large disparities between the performance of
11 African-American and Latino kids as compared to white
12 students?

13 A. Yes, I'm aware of that.

14 Q. And would you consider that to be an inefficiency
15 in the system?

16 A. No. I would consider it evidence of the
17 inefficiency in the system. That they're doing poorly
18 doesn't make the system inefficient, but the fact that
19 they're doing poorly and less well off than whites shows
20 the system is not adequately responding to their needs,
21 and part of that is because of the inefficiency in the
22 system. Not more money but that we don't have the
23 flexibility to respond to their specific needs.

24 Q. To the extent that those disparities exist for
25 English language learners and low income students, is your

1 answer the same, that it's evidence of inefficiency?

2 A. Yes. I do believe that -- that it's a failure to
3 show a general diffusion of knowledge and it is evidence
4 of the system's whole inefficiency, yes.

5 Q. You also stated earlier at one point that you
6 basically were -- when Mr. Gray was questioning you that
7 you were -- you were applying facts to the constitutional
8 standard and that's how you based your conclusion. Is
9 that more or less what you said?

10 A. Yes, that's what I'm attempting to do. Yes.

11 Q. Isn't that, in effect, the very same thing that
12 your lawyer is asking the Court to do, to make that
13 finding that the Texas school system, the way it's
14 currently structured, is constitutionally inefficient?

15 A. I'm not sure it's exactly the same. It's
16 similar. But that's what experts would do. I assume as
17 an expert I'm helping the Court make the correct decision
18 on those ultimate questions that he has to decide.

19 Q. Are you saying that the Court lacks the expertise
20 to make the decision that you're advocating based on the
21 knowledge that you've presented here that the basis for
22 your opinion?

23 MR. DIAMOND: Object to the form.

24 A. With all due respect to the judge, I don't know
25 his familiarity with the education system. So -- but I

1 level of experience, but we want to pay one of those
2 teachers more than the other teacher. Would that school
3 district be permitted to do that?

4 A. I'd have to check, actually.

5 Q. You don't know?

6 A. I don't know.

7 Q. Okay. We were talking about facilities. You
8 were talking about facilities with Mr. Turner earlier.
9 And you made the statement that charter schools would be
10 free to lease facilities and they wouldn't have to build
11 them and that -- that adds to the efficiency; is that
12 correct?

13 A. It does. It adds to the innovation of the whole
14 system, and -- I'm not saying that -- I think many of them
15 would want to build schools and that that's a good thing,
16 also. But, you know, both methods can be suitable
17 depending on the circumstances and the mission of the
18 school.

19 Q. So is it your understanding that noncharter
20 public schools are not free to lease facilities if they
21 chose?

22 A. Oh, no, they are. I thought I was -- they're
23 free to lease facilities. I think that's -- I guess
24 public schools would probably be free to lease facilities.
25 Actually, I'd have to check the regulations on that. They

1 tend to build, but I'm not sure they -- I think they could
2 probably lease. Particularly if they had a sudden
3 explosion of students or something they might lease. I'd
4 have to check to see whether that's -- I haven't looked
5 into that, but I'm --

6 He was talking about bonding as the way to do it.
7 But, no, I think charter schools are, unless I checked the
8 code and found something saying you can't lease, even a
9 public school probably could lease.

10 Q. So you don't believe there's any significance to
11 charter schools leasing their property?

12 A. No, I just cite it as one of the methods by which
13 they are flexible.

14 Q. But to follow up on that, noncharter schools can
15 be equally flexible in that way?

16 A. They could. Yeah, they could. I think. It's
17 like when I was a lawyer, I'd say, "Well, let me check.
18 I'll go look at the code, see whether there is something
19 that blocks you from doing that." That's the general
20 regulatory environment you're in if you represent a school
21 district. Sounds like a good idea. I can't think of any
22 reason not to. Let me go check.

23 Q. So you're not testifying --

24 A. And what tends to happen is there may have been
25 some school district that did it once and leased it to a

1 buddy at an outrageous inflation and cost and then they
2 passed a law saying you can't do that anymore or
3 something.

4 Q. But you don't know of any?

5 A. I don't know of any.

6 Q. So you can't actually testify to any efficiencies
7 based on leasing or ownership of property?

8 A. No.

9 Q. Are you aware that there are public noncharter
10 school districts in the state who accept students who
11 don't live within their district?

12 A. Yes. Nonpublic charter -- what kind of schools?

13 Q. Noncharter public schools in the state.

14 A. Yes, I'm aware of that.

15 Q. Who accept students who do not live within their
16 district?

17 A. Yes, some do.

18 Q. So that, in effect, is the school choice that
19 you're talking about?

20 A. Well, I wouldn't call it school choice because
21 the discretion is with the district, not the consumer.
22 It's entirely up to the local district whether they decide
23 to do that or not, and the vast bulk of them do not.

24 Q. So you would --

25 A. They take a very territorial approach.

1 Q. And then so --

2 A. But you could make --

3 Q. Let me finish, please.

4 When you're talking about school choice, then,
5 the structure that you're envisioning is one in which the
6 schools are not allowed to choose, that the choice is
7 given to the individuals?

8 A. I'm not envisioning a particular final structure.
9 That's up to the legislature and the Supreme Court as --
10 you know, as to whether they say, "This is too extreme on
11 the rigid, inflexible, inefficient side, do something to
12 increase it."

13 So I don't have anything that I'm advocating.

14 Q. I understand that. But you actually have been
15 advocating for school choice, for choice of individuals to
16 choose the school that their child attends and the
17 increased efficiency that would result from that choice.

18 A. That is --

19 MR. DIAMOND: Objection as to the form.

20 Q. (BY MS. PENN) Is that correct?

21 A. School choice is one of the ways that would
22 increase that inefficiency, yes.

23 Q. Exactly. And the school choice structure that
24 you're envisioning when you say "school choice" is one in
25 which the choice realize -- lies with the taxpayers and

CAUSE NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
FAIRNESS COALITION, ET)
AL.,)

Plaintiffs,)

VS.)

EDGEWOOD INDEPENDENT)
SCHOOL DISTRICT, ET AL.,)
(CONSOLIDATED))

TRAVIS COUNTY, TEXAS

Plaintiffs,)

VS.)

ROBERT SCOTT, IN HIS)
OFFICIAL CAPACITY AS)
COMMISSIONER OF EDUCATION,)
ET AL.,)

Defendants.)

200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF
JOSEPH "JOEY" THOMAS PATEK, III
AUGUST 8, 2012

ORAL DEPOSITION OF JOSEPH "JOEY" THOMAS PATEK, III,
produced as a witness at the instance of the Calhoun
County Plaintiffs, and duly sworn, was taken in the
above-styled and numbered cause on Wednesday, August 8,
2012, from 9:07 a.m. to 3:39 p.m., before Tamara K.
Chapman, CSR in and for the State of Texas, reported by
machine shorthand, at the offices of Haynes and Boone, 600
Congress, Suite 1300, Austin, Texas, pursuant to the Texas
Rules of Civil Procedure and the provisions stated on the
record or attached hereto.
Job No. 51422

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1 JOSEPH "JOEY" THOMAS PATEK, III,
2 having been first duly sworn, testified as follows:
3 EXAMINATION
4 BY MR. TURNER:
5 Q. Mr. Patek, morning.
6 A. Good morning.
7 Q. Would you state your full name for the record,
8 please.
9 A. Yes. Joseph Thomas Patek, III. I go by Joey.
10 Q. And where do you live, Mr. Patek?
11 A. I live in Rockport, Texas.
12 Q. Can you tell me what your current position is?
13 A. Superintendent of schools.
14 Q. And I'd like you to tell me a little bit, if you
15 could, just kind of summarize your educational background,
16 please.
17 A. Okay. Starting from high school, I guess?
18 Q. Yes.
19 A. Okay. Grad- -- 1980 graduate of Shiner High
20 School. 1984 graduate of Southwest Texas State
21 University, business degree in accounting. Worked in
22 accounting for a year, but just wanted to -- wanted to be
23 in education, went back, got certified, became a
24 teacher-coach. Did that for approximately ten years.
25 Became an assistant high school principal while at

1 Rockport back in '90 -- between '91 and '96. Then left
2 Rockport to go to Hallettsville as a junior high
3 principal. Five years of that.
4 Then became superintendent of schools in
5 Hallettsville 2001. Served in that capacity through 2007.
6 Moved to Rockport -- back to Rockport. They asked me to
7 come back as deputy superintendent, second in command.
8 The -- the reining superintendent at that time was heading
9 to -- a year from retirement. So I got there by about
10 January -- I guess it was January -- mid-January of 2008 I
11 took over the reins and been superintendent there since
12 then.
13 Q. So you've been superintendent of the Aransas
14 County ISD since 2008; is that right?
15 A. Yes, sir.
16 Q. And how -- first of all, why is it called the
17 Aransas County ISD?
18 A. Well, we are a countywide district. We are the
19 only school district in the county. And, you know, I
20 think it has to do with -- well, I've been told that it
21 has to do with -- you know, there's several communities.
22 There's Rockport. There's Fulton. There is Holiday
23 Beach, Lamar right across the bridge across the bay from
24 us. Then there's Bayside as you -- as you head towards
25 Sinton and -- and Refugio area. And that's all

1 encompassed in our school district.

2 Q. Now, going back to the summary that you gave a
3 second ago about your education and -- and career
4 experience, you said you were a teacher and a coach,
5 correct?

6 A. Correct.

7 Q. And can you tell us what subjects you taught and
8 what -- and what you coached?

9 A. I taught accounting and recordkeeping, and I
10 coached football and baseball.

11 Q. And you said you had actually been an
12 administrator in the Aransas County district before you
13 came back as superintendent?

14 A. That's correct, at the high school. Assistant
15 principal.

16 Q. How many schools are in the Aransas County school
17 district?

18 A. There are five.

19 Q. And what are those, please?

20 A. Well, we start down at the bottom. Pre-K and K
21 is called Little Bay Primary. First, second and third is
22 called Live Oak Learning Center. Fourth and fifth is
23 Fulton Learning Center. Sixth, seventh and eighth is --
24 is the Rockport-Fulton Middle School. And then the rest
25 is high school, Rockport-Fulton High School.

1 A. Yes, sir.

2 Q. And this appears to indicate that the
3 economically disadvantaged population in the district
4 today is about 65.3 percent?

5 A. That's correct.

6 Q. And is that accurate, to the best of your
7 knowledge?

8 A. That -- that is accurate.

9 Q. And it also looks like that has gone up from
10 about 48 percent in the year 2001; is that right?

11 A. That's correct.

12 Q. That change in the percentage of economically
13 disadvantaged population in the district over the last
14 ten years or so, what -- what effect would you say that
15 has had on the challenges that you face and that the
16 district faces in educating students?

17 A. Well, the economically disadvantaged students
18 need more help, need more intervention, you know, end up
19 needing more one-on-one. They're a little bit harder to
20 educate because they do not have the -- the family
21 support, parental support that their middle class peers or
22 their upper class peers, you know, have at home.

23 Q. Is that something you think the district has to
24 try to respond to, the best it can?

25 A. Yes. Yes. Yeah, we do. We account -- we note

1 Q. Now, are there different schools for different
2 areas of the district, different regions of the district?

3 A. For different regions? No, everybody, you know,
4 goes together. They go from pre-K all the way through.

5 Q. So are all five of the schools you named, they're
6 all countywide schools?

7 A. Yes, sir.

8 Q. How many students are served by the school
9 district?

10 A. Approximately 3,150.

11 Q. I'm going to hand you a document here, and we'll
12 mark this Exhibit 300.

13 (Exhibit 300 was marked.)

14 Q. (BY MR. TURNER) Mr. Patek, I've handed you
15 Exhibit 300. Can you tell us what this is, please?

16 A. Okay. This is our -- our background information
17 for our school district, starting from the year 2001 all
18 the way until 2011.

19 Q. And is this something that the district prepared
20 that shows some of the demographic information about the
21 district?

22 A. That's correct. This is -- this is prepared and
23 then shared with our school board.

24 Q. And one category here is the economically
25 disadvantaged. Do you see that?

1 that and we...

2 Q. Let me go to the next exhibit. This will be 301.

3 (Exhibit 301 was marked.)

4 Q. (BY MR. TURNER) And what is Exhibit 301,
5 please?

6 A. The annual performance report that is presented
7 to the -- our board of trustees in December. And this is
8 part of that and it's also used at the -- for the public
9 hearing held at that same time. It does include the AEIS,
10 the Academic Excellence Indicator System report.

11 Q. I want to ask you about a few of the pages in
12 this document. And, again, you said this is presented to
13 the school board. Looks like the date here was presented
14 December --

15 A. December 15th.

16 Q. December 15th of last year?

17 A. Yes, sir.

18 Q. And is this the district's and the
19 administration's effort to kind of summarize how the
20 district has been doing in various ways?

21 A. That's correct. You know, we have the AEIS
22 report, you know, that is generated, you know, from TEA
23 with PEIMS information. And we use that to help report to
24 the board how we're -- how we're progressing.

25 Q. Go ahead and flip in about -- let's go about

1 class peers, the better.

2 Q. Now, as of today, do you have funds in the budget
3 available to try to implement a full-day pre-K program?

4 A. No, I don't. Don't have the funds or the
5 facilities.

6 Q. Let me let you continue. Other than the full-day
7 pre-K, what would your other priorities be if you had
8 additional funding now?

9 A. Well, I'd like to replace a lot of the teachers
10 that I cut this past year, you know, and reduce class
11 sizes. Because in the middle school and high school, I
12 have class sizes of 35, 38. You know, when I taught, you
13 know, 30 was a big class. I can't imagine, you know,
14 teaching a class of 35, 38. You know, that's pretty
15 tough. Especially if you're doing science, science
16 lab-type work.

17 You know, our elementaries, we -- we are at the
18 point -- I didn't have to apply for a waiver for increase
19 of class sizes this year. I did the year before, but, you
20 know, we -- we were right at the numbers, so we didn't
21 have to apply for it. But I had expected to have to apply
22 for that. But all of -- all of my elementary classes are
23 basically full, you know. We may have some that are
24 maybe 21 -- 20, 21, but most of them have full 22 kids in
25 there. Because from K through 4, that's -- that's the

1 limit, 22 to 1 ratio, unless you get a class size waiver
2 from TEA. That's -- that's two. Okay.

3 The third thing that I'd like to do is I'd like
4 to improve our -- our career and technology programs. You
5 know, we have welding and we have wood construction and we
6 have culinary arts, but those are just three areas.
7 Our -- a lot of our students in our area aren't planning
8 on going to college for four years. Many of them would
9 like to go to work as soon as they leave high school. So,
10 you know, it would be great, we would like to be able to
11 offer them some opportunities to get some courses in the
12 allied health sciences. They could become certified
13 nursing assistants right out of high school.

14 Another area is cosmetology, you know, where they
15 could go to work doing the nails and -- and the hair and
16 that. You know, I mean, opportunities for kids to get
17 some gainful employment where they can make a decent
18 living right out of school. Also, you know, other things
19 where they can maybe go to a tech school for one or
20 two years and then be able to go to work after that.

21 MR. TURNER: All right. Mr. Patek, I've got
22 no more questions for you at this time. Thank you very
23 much. Why don't we take a little break.

24 (Break.)

25 EXAMINATION

1 BY MR. HINOJOSA:

2 Q. Good morning, Mr. Patek. My name is David
3 Hinojosa. I'm an attorney for the Edgewood plaintiffs,
4 which is a group of five property poor, low wealth school
5 districts in the state of Texas, as well as a few parents
6 whose children attend Pasadena and Amarillo School
7 District schools.

8 And I wanted to begin by asking you first about,
9 you know, the current tax rate that you're at at \$1.04.
10 Are you taxing at that rate -- I understand that you feel
11 that you're not fulfilling your mission completely to the
12 students in your district. But are those pennies being
13 used in an attempt to provide a basic adequate education
14 for the students in your district?

15 A. Yes, sir.

16 Q. And these other pennies that you've talked about,
17 about wanting to go to perhaps \$1.06 or above, would those
18 pennies, at least as far as taxing up to \$1.06, would
19 those also be used to help you try and provide a basic
20 adequate education to the students of your district?

21 A. Yes, sir. Those would be used so that we could
22 continue to provide the basic -- there would not be any
23 enrichment that I can see with that. We've had to cut
24 2.3 million. That would help us to replace...

25 Q. And the pennies that -- for \$1.05 and \$1.06,

1 those would not be recaptured by the State, correct, any
2 revenue?

3 A. That's correct. The way that I understand it.

4 Q. And what is your revenue per penny?

5 A. We bring in approximately 250,000 per penny.

6 Q. Do you know what your revenue per WADA is on just
7 the M&O side?

8 A. The revenue per WADA, are you talking about like
9 when we get sent the Chapter 41 letter from the State and
10 shows our -- that would show that, the revenue per WADA.

11 Q. Okay. But do you know whether or not your
12 revenue per WADA -- I saw a sheet that said that your
13 revenue per WADA was approximately \$6,700. Does that
14 sound right? And we're not talking about total revenues,
15 because I know some of the figures that you went over with
16 Mr. Turner here.

17 A. Yeah, \$6,700. You know, I haven't -- that, I
18 couldn't answer for you unless I could access --

19 Q. No, that's fine.

20 A. If you got that from PEIMS, then that would be
21 accurate.

22 Q. Okay. The -- and then are you familiar with the
23 pennies of \$1.05 and \$1.06, the golden pennies, those are
24 equalized up to -- for lower wealth districts, those are
25 equalized up to the Austin yield, which is approximately

1 \$59 or so? Are you familiar with that?

2 A. Okay. But -- yeah, but the numbers that I

3 remember in my head are like 319,000 something and then

4 476. And in the last five years since I went from a

5 smaller school district to a larger one, I'm not that

6 hands-on with the budget, because I have an assistant

7 superintendent do that. Prior to that, I was a lot more

8 hands-on with those kind of numbers, but...

9 Q. Okay. And that's what I was trying to get at, is

10 to see, you know -- and what I'm talking about is per

11 penny per hundred dollars of valuation.

12 A. Okay.

13 Q. And so an Austin might yield 590,000 but the per

14 penny on the recapture per hundred dollars of valuation

15 would be 59 --

16 A. 5,900 --

17 Q. -- dollars.

18 A. I follow you, yes, sir.

19 Q. And do you know where your district is?

20 A. Well, just recently, within the last couple of

21 weeks, we got in our Chapter 41 deal and just -- I would

22 be guessing right now without it in front of me, but --

23 Q. Does \$80 sound about right?

24 A. 80? If I was going to guess, you know, just

25 based on what it was the previous year before, I was going

1 the recapture pennies above \$1.06 and how those might

2 impact your district's ability or at least the voters'

3 willingness to try and pass a TRE. Is it your testimony

4 that the only way that your voters would pass a TRE is

5 that if recapture was eliminated for those pennies?

6 A. Well, you know, I -- from what I've been told,

7 you know, to get -- that they were going to -- I guess

8 we'd have to be in a dire, dire, dire situation for them

9 to consider to let us go to that point, because other than

10 that, the talk that I've been told that I -- in my

11 conversations with people in the community, my board's

12 conversation and our conversation together is that our

13 chances are slim to none to pass anything over \$1.06.

14 Q. And is it your position in this case that you

15 want to get rid of recapture for any pennies above the

16 \$1.04 that you're taxing at?

17 A. Well, you know, that would be nice if the State

18 could do that. I understand that, you know, the recapture

19 is necessary for the State to be able to do some funding

20 here. I guess myself and my local constituents probably

21 don't want to see us have to pay any more. We don't want

22 the State to raise it any more than what it already is.

23 Q. In the -- the fact that you pay money to the

24 State from your local taxes doesn't mean that you're

25 necessarily getting in return from the State from other

1 to say it's probably, you know, around -- in the 600,000

2 per WADA.

3 Q. Okay. All right. The I&S pennies -- well, let

4 me hand you this exhibit here.

5 (Exhibit 313 was marked.)

6 Q. (BY MR. HINOJOSA) Exhibit 313, which is copy

7 2010-'11 AEIS report from the State.

8 A. Okay.

9 Q. Do you recognize this as a true and correct copy

10 of the --

11 A. Yes.

12 Q. -- district's AEIS report?

13 A. Yes, I do.

14 Q. And if we go to Section II, Page 5, under the

15 Standardized Local Tax Base (comptroller valuation) there,

16 it has the value after exemptions of over 2.4 billion; is

17 that correct?

18 A. That would be correct.

19 Q. And the Value Per Pupil is 795,000, correct?

20 MR. TURNER: What page are you on?

21 MR. HINOJOSA: Sorry. Section II, Page 5.

22 Q. (BY MR. HINOJOSA) And the Value Per Pupil is

23 795,000, correct?

24 A. Correct.

25 Q. And then earlier I know you were talking about

1 revenues more money than what you're paying, correct? Are

2 you following me?

3 A. Rephrase that again.

4 Q. Sure. On the 2010-2011 report, Exhibit 313,

5 there is a -- in the actual revenue information,

6 2009-2010, it shows equity transfers here. And it says:

7 Excluded from revenues.

8 And the District, Per Student, it looks like

9 that's 1,658, correct?

10 A. Am I on the right page? Okay. Yes.

11 Q. All right. And the total Equity Transfer for

12 this specific year, according to these charts, was

13 5.2 million; is that correct?

14 A. That's correct.

15 Q. And if we go up to the State for the general fund

16 it shows 8.3 million that the State is providing to your

17 district, correct?

18 A. Okay. This part right here, the "By source"?

19 Yes.

20 Q. So that 8.3 million that the State's providing to

21 you is actually still more than the 5.2 million that

22 you're paying in equity?

23 A. That's correct.

24 Q. All right. And if we go up here to the Local

25 Tax, Per Student, it shows 6,777, correct?

1 A. Correct.

2 Q. And are you aware of any state standard -- well,
3 let me ask you this first.

4 Have you ever worked in a property poor school
5 district?

6 MR. TURNER: Objection, form.

7 You can go ahead and answer.

8 A. As a coach, I guess I had. I worked in
9 Schulenburg ISD and Luling ISD. And then Rockport,
10 Aransas County ISD as a coach and assistant principal.
11 When I returned, then it was a Chapter 41.

12 Q. (BY MR. HINOJOSA) Okay. And how would your --
13 well, let me ask you this. Are the Chapter 42 districts
14 that you've worked in, are you aware of them being -- are
15 their children being held to any different standards than
16 your children are being held to by the State?

17 A. Academic standards, no, all our children are held
18 to the same standards.

19 Q. And how would your operations be affected if at
20 your current M&O rate of \$1.04 you were only able to
21 generate about \$5,300 per student compared to the \$6,700
22 shown here?

23 A. We would probably not have sports, you know,
24 because we'd have to start cutting things back. Because I
25 have a certain number of kids and as far as my teacher

1 ratio goes, I don't know if I could cut in that area much
2 more than I have at this point. I've been making -- I've
3 been reducing staff, you know, somewhat for the last
4 four years. And even more this -- the biggest part was
5 this last year. Wow. You know. If that was the case,
6 you know, that would -- I would have to make some drastic
7 cuts.

8 Q. Would it just be -- I think you mentioned just
9 eliminating sports, and I don't want to go through your
10 budget, but I remember looking at extracurricular or
11 co-curricular that looked like it was only about \$300 or
12 \$400 of your budget?

13 A. It really isn't the big of an amount, that
14 function. You know, for extracurricular that would
15 include -- that's not just sports but that would be our
16 band and choir and one-act play as well.

17 Q. And how would the reduction of \$1,400
18 approximately per student --

19 A. Per student for 3,000 students?

20 Q. How would that affect the basic essential
21 programs and services that your district is able to offer
22 its students?

23 A. That would reduce it quite significantly.

24 Q. Switching over to the I&S. You had mentioned
25 that you finally passed a \$26.8 million bond. And

1 congratulations on that.

2 A. Thank you.

3 Q. The -- how many pennies are you needing to pay
4 back those bonds of 26.8 million?

5 A. Okay. We're going to need about seven to eight
6 pennies. Okay. The -- this last year, we had sold some
7 bonds in July of '11, shortly after we -- we passed it to
8 kind of get construction started. And so we had like -- I
9 think 4 cents was added to our I&S this past year. And
10 now we're going to have another 3 cents added to it this
11 year for a total of 7 with our tax rate that we'll approve
12 here in a couple of weeks.

13 Q. Okay. And the cost of each school, do you know
14 what the cost of each school is?

15 A. Yes. One -- the Live Oak Elementary is -- the
16 rough cost there is 17 million, and the -- the other one
17 is the balance. Fulton is the balance. I want to say the
18 Live Oak is actually probably 16.8.

19 Q. Okay. And are these I&S funds being used for any
20 other purposes other than to build the two schools that
21 you mentioned?

22 A. Those I&S funds are for those two schools. We
23 have a little debt remaining from the '96 bond election
24 that built the current middle school. It's still about, I
25 think, six, seven years from total payout.

1 Q. And what is the approximate size of Live Oak?

2 A. Okay. The new building's going to be 107,000
3 square feet. That's to accommodate 740 students.

4 Q. And the other school that's being built, what's
5 the size of that, approximately? Even if you can just
6 give me the student size.

7 A. Well, what -- what we're -- what we're doing
8 there, we're replacing all those portable classrooms,
9 because at the other one there's going to be a renovated
10 section, an old section that's being renovated, and then a
11 new section, putting it all together as one. Oh, man. At
12 this time, I can't tell you the -- even give you a wild
13 guess right now.

14 Q. Okay. That's fine.

15 And are you getting any state funds, like EDA
16 or --

17 A. No, we don't.

18 Q. And certainly not IFA?

19 A. No, we don't qualify for that.

20 Q. And your current I&S rate, is that reflected
21 correctly here on Exhibit 313 as .052 cents? It should be
22 essentially 5 cents?

23 A. This is from 2010-2011 school year. Okay. Wait.
24 You said the I&S is at 5 cents. It's -- I wish I had that
25 sheet of paper right here in front of me. I --

Q. Oh, that's fine. And, you know, I'm just trying to ask you what you know right now. I don't want you to have to guess or anything like that.

A. I mean, I have it. This is close. Okay. That is close. I'm -- I want to say it might be another two more pennies this current year, this '11-'12 school year, because -- again, because we sold the -- we sold, like, 16 million of -- of the 26.8 we sold in July of '11 to kind of get construction started.

Q. Uh-huh.

A. So we had to...

Q. Are you using your I&S funds, from what I understand, that some districts have decided to use their I&S funds in lieu of their M&O funds for certain costs other than, you know, direct construction?

A. No, we haven't. I've heard of districts that are moving -- moving it around, but we're not.

Q. Okay. I want to go over some student performance data here on Exhibit 313. So if you can go to Section I, Page 3.

A. Okay.

Q. Now, your goal is to provide the best education for your students and so that they can achieve, you know, whatever standards might be in front of them in -- for example, on the TAKS and all tests, correct?

A. Yes, sir.

Q. So it would be fair to look at the sum of all grades tested on the TAKS 2011 just to see how your students were performing under those measures here?

A. Sure.

Q. And your district isn't very highly populated with English language learners or LEP students, correct?

A. Right. We're 3.5 percent LEP. And that is predominantly Spanish, but there are some Vietnamese included.

Q. Okay. And if we look at these -- all test standards for sum all -- sum of all grades, it shows that in 2011 your economically disadvantaged students, only 68 percent met the minimum TAKS standard for all those grades and subjects tested, correct?

A. Yes, sir.

Q. And then it was 62 percent of LEP students?

A. Yes, sir.

Q. And then your district average was 74 percent, correct?

A. Yes, sir.

Q. And so after approximately eight years of testing under the TAKS standard, you still have one-quarter of your students failing to meet the minimum standards on all tests in all --

A. That's correct.

Q. -- grades?

And you're aware of the State having changed the standards for students to require that they graduate college and career ready; is that right?

A. That's correct.

Q. And that was, I think, in approximately 2009 or so; is that right?

A. Uh-huh. That's correct.

Q. And are you familiar with the alignment study that was done by Pearson -- and I'm not saying whether or not you saw the actual study, but there's been testimony in this case already about Pearson and the testing company aligning the TAKS met standard compared to various other indicators, such as STAAR and ACT, SAT performance and a number of other indicators. But in these studies it showed that the TAKS met standard was actually lower than even the guessing standard on the STAAR exams -- on certain STAAR exams. Are you familiar with that finding?

A. I knew they were conduct -- conducting some research on that, but, you know, basically, you know, all I've -- all I've been familiar with is that STAAR exam is more rigorous than the TAKS exam.

Q. And is it your testimony that simply, you know, even when we look at the 74 percent of students, you know,

that are meeting the minimum TAKS standard back in 2011, that those students were graduating -- that the students that did graduate and meet those standards, they were graduating college and career ready?

A. Well, we -- we did receive a goal performance acknowledgement of college ready graduates for the class of 2010, you know, so -- but we -- we know that we still have a lot of work cut out for us.

Q. All right. And we'll go to that in a little bit.

Would it be fair to look at the TAKS commended performance standard in order to see how many students are performing on a track for college readiness?

A. That would -- that would be -- that would be all right.

Q. And if we look at LEP students on all tests, what percentage of LEP students were reaching the commended level?

A. For all tests, LEP? 2 percent.

Q. And for economically disadvantaged, that was 10 percent?

A. 10 percent.

Q. And even district-wide, that's 14 percent, correct?

A. Correct.

Q. If you can now go to Section I, Page 9.

1 Actually, let's go to Page 8 first.
 2 A. Okay.
 3 Q. And on Page 8, under the college readiness
 4 indicators at the bottom --
 5 A. Uh-huh.
 6 Q. -- it has advanced course and dual enrollment
 7 completion. You're -- you're familiar with that variable?
 8 A. Yes.
 9 Q. And for 2009-2010, it showed 6.3 percent of LEP
 10 students meeting that indicator, correct?
 11 A. Correct.
 12 Q. And then district-wide, it was 22.4 percent,
 13 correct?
 14 A. That's correct.
 15 Q. And what do these numbers indicate to you as the
 16 superintendent of Aransas County ISD?
 17 A. That we still have a lot of improvement to do.
 18 Q. And is that especially in light of the standards
 19 that the State has raised for --
 20 A. Yeah, with the -- with the increased standards,
 21 you know, of excellence that are -- that are going to be
 22 demanded in the STAAR accountability system, we've got to
 23 step it up even more.
 24 Q. Okay. And if we go to the APIB results on the
 25 next page, Page 9 of Exhibit 313, we have district-wide

1 that you received goal performance acknowledgement for
 2 college ready graduates for the class of 2010; is that
 3 correct?
 4 A. Yes, sir.
 5 Q. And even though you received that acknowledgement
 6 which, you know, certainly is -- is good --
 7 A. Is good. We're still at 68 percent.
 8 Q. Well, that's 68 percent for just English language
 9 arts, right?
 10 A. Uh-huh.
 11 Q. But when we look at both subjects, just English
 12 language arts and math --
 13 A. 53.
 14 Q. -- you only had 53 percent, correct?
 15 A. Correct.
 16 Q. And that means 47 percent of your students in the
 17 district did not meet the minimum criteria for college
 18 readiness as indicated by the English language arts --
 19 A. Yes, sir.
 20 Q. And when we look at economically disadvantaged
 21 students, only 41 percent of those students met the
 22 criterion, correct?
 23 A. Yes.
 24 Q. And let me go one more step here. Going back to
 25 Exhibit 312. And Exhibit 312 has your end-of-course

1 only 20 percent of the students eligible for those APIB
 2 courses actually were tested, correct?
 3 A. Yes.
 4 Q. And the percentage of examinees, of that 20
 5 percent, you had 61 percent meeting the criteria in there,
 6 correct?
 7 A. Yes. And now, just for the record, it was 19.6
 8 on those tests. Are you -- you rounding them up, or do
 9 you have a different number?
 10 Q. Oh, I'm sorry. I was just looking of that
 11 19.6 percent who actually tested under APIB --
 12 A. Yeah.
 13 Q. -- 61.3 percent of those students met the
 14 criterion, correct?
 15 A. Right. That's correct.
 16 Q. And then if we look down to the SAT results and
 17 the percentage tested, that was 68.5 percent of the
 18 students for the class of 2010, correct?
 19 A. Yes.
 20 Q. And of that 68.5 percent district-wide, only
 21 22 percent of those students met the SAT or ACT at or
 22 above criterion, correct?
 23 A. 22.6.
 24 Q. And then if we go down to the college ready
 25 graduates -- and I believe that you had mentioned earlier

1 scores. And I know you went over some of this information
 2 with John earlier, but these are for the sum of all
 3 students; isn't that correct?
 4 A. Yes.
 5 Q. And is it safe to assume that the percentage of
 6 economically disadvantaged students meeting these same
 7 criteria across all of these different levels identified
 8 here would be lower than what is reflected here?
 9 A. Yes, I think it's safe to say that. That's --
 10 because that's what our history is showing here.
 11 Q. And, you know, we've obviously went over some --
 12 some gaps between low income and -- and even the district
 13 average, which the district average would include those
 14 low-income students, correct?
 15 A. Yes.
 16 Q. And you have -- do you acknowledge that you have
 17 an achievement gap between economically disadvantaged and
 18 noneconomically disadvantaged students?
 19 A. Yes, I do.
 20 Q. And is it your testimony that those economically
 21 disadvantaged students simply cannot meet the same
 22 standards that are applied for -- for all students?
 23 A. No, they can meet it, but they just -- they need
 24 more -- you know, more one-on-one, more intervention to
 25 get there. Because -- and there is a lot of those

1 students, Mr. Hinojosa, that -- that do quite well.

2 Q. And -- but by and large, especially when we look
3 at the college readiness indicators reflected here, those
4 students aren't performing as a group very well, correct?

5 A. As a group, no. You're correct.

6 Q. What -- do you know the property poor school
7 districts that are in your area with whom you compete
8 with?

9 A. Aransas Pass, right next door, ten miles down the
10 road. Sinton is considered property poor. You know,
11 Chapter 42. You know, what -- are you talking about the
12 whole region or -- I mean, I can --

13 Q. Not the whole region, but, you know, within the
14 region that you feel that, you know, your district might
15 compete with or see as its competitors.

16 A. There's Sinton. And then Orange Grove School
17 District.

18 Q. And is it your testimony that your -- your
19 students, because of their property wealth, deserve more
20 than the students of Aransas Pass, Sinton, Orange Grove
21 and other Chapter 42 districts?

22 MR. TURNER: Objection, form.

23 A. Okay. I think -- I don't think that we deserve
24 more. I think everybody needs to be funded fairly.

25 Q. (BY MR. HINOJOSA) You believe that all students

1 should be able to compete on a level playing field since
2 the State applies the same standards for all the students,
3 correct?

4 A. Correct.

5 MR. HINOJOSA: Pass the witness.

6 THE WITNESS: Thank you.

7 MR. FRAISSINET: Philip Fraissinet.

8 EXAMINATION

9 BY MR. FRAISSINET:

10 Q. Mr. Patek, how are you today?

11 A. I'm doing well, Philip.

12 Q. Good. My name is Philip Fraissinet. I represent
13 the Fort Bend ISD plaintiffs' group, which is a group of
14 both Chapter 42 and some Chapter 41 districts. Do you
15 understand that?

16 A. Yes, sir.

17 Q. I have only a few follow-up questions. Right now
18 I'd like to just clarify something with regard to TREs and
19 your ability to raise property taxes. Okay?

20 If I understand your testimony earlier, you raise
21 about \$250,000 per penny; is that right?

22 A. Yes, sir.

23 Q. And the first two pennies you could raise under
24 the TRE would be -- would not be recaptured; is that
25 correct?

1 A. Yes, sir.

2 Q. So you could raise about \$500,000 if you had an
3 election and that money would not be recaptured?

4 A. Yes, sir.

5 Q. You testified earlier that the level of your cuts
6 was about 2.3 million?

7 A. Yes, sir.

8 Q. Did I get that right?

9 A. Yes, sir.

10 Q. So you could raise less than a quarter of what
11 you just cut with the two golden pennies. Is that about
12 right?

13 A. Right.

14 Q. What is approximately the total amount you could
15 raise if you did theoretically go out and raise your taxes
16 all the way to \$1.17?

17 A. Approximately 2 and a half million.

18 Q. But some portion of that would be recaptured?

19 A. Yes, sir.

20 Q. Do you have an idea of what portion of that would
21 be recaptured?

22 A. Probably close to half.

23 Q. So if you did go out and ask voters to raise
24 rates all the way to the maximum, you could raise about
25 1.2 million, \$1.3 million?

1 A. Correct.

2 Q. And, again, that compares to your total cut of
3 about 2.3 million?

4 A. Yes, sir.

5 Q. So, essentially, you'd be asking the local
6 property taxpayers to increase their own property taxes
7 some way and still not even be able to make up for the
8 cuts the State has proposed; is that right?

9 A. That's right.

10 Q. If you were accessing those pennies, would you be
11 doing so in order to provide enrichment or go above and
12 beyond the requirements that the State has placed on you,
13 or would you be doing those things simply to put back in
14 place some of the -- some of the things you were doing
15 that you just cut out?

16 A. Like to put back the things that we were doing
17 that we had just cut out.

18 (Break.)

19 MR. FRAISSINET: Thank you.

20 THE WITNESS: Thank you.

21 (Exhibit 314 was marked.)

22 EXAMINATION

23 BY MS. COCHRAN-MCCALL:

24 Q. Hi, Mr. Patek. Am I pronouncing that correctly?

25 A. Yes, ma'am.

NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
FAIRNESS COALITION, et al.,)

Plaintiffs,)

v.)

EDGEWOOD INDEPENDENT SCHOOL) TRAVIS COUNTY, TEXAS
DISTRICT, et al.,)

(consolidated))

Plaintiffs,)

v.)

ROBERT SCOTT, in his official)
capacity as Commissioner of)
Education, et al.)

Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

RICHARD REEDY

Dallas, Texas

Wednesday, August 15, 2012

REDACTED

Reported by:

SUSAN S. KLINGER, RMR-CRR, CSR

JOB NO. 51423

E X H I B I T S (continued)

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| Exhibit 363 | 177 | Average class size by year |

RICHARD REEDY,
having been first duly sworn testified as follows:
EXAMINATION
BY MR. TURNER:
Q. Dr. Reedy, good morning.
A. Good morning.
Q. Would you state your full name for the record,
please.
A. Richard Elliott Reedy.
Q. And where do you live, sir?
A. I live at 8481 Edgewood Cove in Frisco, Texas.
Q. What is your current position?
A. Superintendent of Schools, Frisco Independent
School District.
Q. I would like to ask you first of all, if you can
summarize for us a little bit about your educational
background beginning with where you went to high school?
A. I went to high school in Whitesboro, Texas,
graduated 1966. Went to University of North Texas for
two years. Transferred to what was then East Texas
State University in Commerce. Graduated in 1970 with a
bachelor's degree in mathematics and English. 1973, a
master's degree in educational administration with a
minor in English. And in 1990, a doctorate of education
in educational administration.

Q. Thank you. And now I would like to ask you to do
the same if you could, please, for your, your employment
and professional experience?
A. My first job was as a teacher/coach in
Whitewright Independent School District in 1970. From
there, I went to Trenton Independent School District
from 1971 through '76 as a teacher/coach.
I came to Frisco in 1976. I was a teacher/coach
for three years. Assistant principal '79 through '80.
High school principal, '80 through '92. Assistant
superintendent, '92 through '96. And have been
superintendent in Frisco ISD from 1997 until the
present.
Q. I think I heard you say you first came to the
Frisco school district in 1976?
A. 1976, yes.
Q. So seems like you have been in Frisco over, for
over 30 years all together?
A. 36 years now.
Q. And you have been superintendent since 1997?
A. This is my 16th year.
Q. I would like to hand you a document. We've
marked it as Exhibit 323.
(Exhibit 323 marked.)
Q. And I want to talk to you a little bit about the

EXAMINATION

BY MR. HINOJOSA:

Q. Good morning, Dr. Reedy.

A. Good morning.

Q. My name is David Hinojosa. I'm an attorney with MALDEF and we represent five property poor school districts in this lawsuit as well as parents of English language learner or low income youth in Amarillo and Pasadena school districts.

I have a few questions for you. I've handed you what has been marked as Exhibit 343. And this is titled, "2010-2011 academic excellence indicator system for Frisco ISD." Do you recognize this as a true copy of the Frisco ISD 2010-2011 AEIS report?

A. The one I have says 2006.

Q. Sorry?

A. 2005-2006.

(Off the record.)

A. The answer would be then yes.

Q. Thank you. And I know you have gone over some of the performance of your students in Frisco ISD with John earlier this morning. And you know, I want to go over some other performance data here. Now, looking at Exhibit 343, it includes the performance for students on the TAKS test; correct?

A. Yes, sir.

Q. But looking at the performance of students on TAKS itself, would that -- and just looking at the met standard alone, would that reflect that those students are college ready?

A. Not necessarily.

Q. And since all students are supposed to be achieving in all subject areas, would it be appropriate to look at the all test sum of all grades tested in trying to determine how students might be performing in your district?

A. Yes.

Q. If we can go to section 1, page 4.

A. (Witness complies.)

Q. And it is your understanding that presently, you are tasked with providing at least a meaningful opportunity for all of your students to be college ready when they graduate; correct?

A. Yes, sir.

Q. And that is a new standard that has been put in place between the years 2005-2006 and today; correct?

A. Correct.

Q. And with the performance of students on the TAKS commended performance sum of all grades tested be a better indicator than the TAKS met standard in trying to

determine whether or not your students are college ready?

A. I would agree with that.

Q. So if we can look at the year 2011 data on TAKS commended performance sum of all grades tested. Going over to the LEP column which is the second to the last on the right, that shows 13 percent of the students reached the commended level performance in all tests; correct?

A. I'm trying to find that.

Q. It is on the bottom right hand.

A. Okay, yes, I have it now, okay.

Q. And then for economically disadvantaged it is 16 percent; correct?

A. Yes, sir.

Q. And then even districtwide, it was only 36 percent; correct?

A. That's correct.

Q. And is it your opinion that the -- and I'm just going to ask with respect to LEP and economically disadvantaged students right now. Is it your opinion that they simply cannot meet the standard even if you were able to provide them all the reasonable and meaningful opportunities they need to achieve the standards?

A. No, that is not my opinion. I believe that given the resources, that they can meet the standard.

Q. And would you agree that these two student groups are among your lowest performing student groups in the district on virtually all indicators?

A. LEP and economically disadvantaged?

Q. Yes.

A. Yes, along with special education.

Q. And I want to go next to some of the college readiness indicators as reported by the Texas Education Agency in this report. If you can go to section 1, page 10.

A. (Witness complies.)

Q. And let me ask you this first with respect to the TAKS scores. I'm not going to ask you anything specifically about a TAKS score. But those TAKS results that we just went over, those were after approximately eight or nine years of testing under the TAKS test; correct?

A. I think that's right. It is somewhere in there. I don't remember exactly when we moved from TAAS to TAKS, but that is close.

Q. Now, looking at the college readiness indicators here, advanced course and dual enrollment completion. First, do you see that?

| | |
|--|---|
| <p style="text-align: right;">Page 70</p> <p>1 A. Yes, I do.</p> <p>2 Q. And if we look at -- and certainly your district</p> <p>3 does offer advanced course and dual enrollment classes;</p> <p>4 is that correct?</p> <p>5 A. Both, yes.</p> <p>6 Q. And if we look at LEP students, it looks like --</p> <p>7 I'm going to use a little inverse here. But it looks</p> <p>8 like 94 percent of the students did not meet the</p> <p>9 criteria for that indicator for the 2009-2010 school</p> <p>10 year; correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And 79 percent of your students who were</p> <p>13 economically disadvantaged did not meet that indicator;</p> <p>14 correct?</p> <p>15 A. That would be correct.</p> <p>16 Q. Even when we look at your district average, it is</p> <p>17 about 67 percent who did not meet the advanced course</p> <p>18 dual enrollment completion; correct?</p> <p>19 A. That's correct.</p> <p>20 Q. If we go down to the APIB results, as far as the</p> <p>21 percentage that are eligible and tested, it looks like</p> <p>22 roughly 70 percent in the district were not tested;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And this doesn't have economically disadvantaged</p> | <p style="text-align: right;">Page 71</p> <p>1 or LEP figures, but I want to go over some by race. It</p> <p>2 is roughly 87 percent of African Americans were not</p> <p>3 tested and 76.3 percent of Hispanics and 67.6 percent of</p> <p>4 whites were not tested; correct?</p> <p>5 A. That is correct.</p> <p>6 Q. And then of the 30 percent that were tested, it</p> <p>7 shows only 77 percent of those students meeting the</p> <p>8 criteria in the district; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And then for African American, Hispanic and</p> <p>11 whites, it was 60.7 percent, 70.2 percent and 78.3</p> <p>12 percent respectively; correct?</p> <p>13 A. That's what I'm seeing, yes.</p> <p>14 Q. And once again, those are the percentages of only</p> <p>15 those who were actually tested; correct?</p> <p>16 A. That's correct.</p> <p>17 Q. If we go to the next page, section 1, page 11 of</p> <p>18 Exhibit 343.</p> <p>19 A. (Witness complies.)</p> <p>20 Q. If as the SAT, ACT results and the number</p> <p>21 tested. First, do you know whether or not your district</p> <p>22 received a grant from the state or any additional</p> <p>23 funding during the 2009 and 2010 school year to test</p> <p>24 students on the SAT or ACT?</p> <p>25 A. I do not know.</p> |
| <p style="text-align: right;">Page 72</p> <p>1 Q. Looking at the district percentage, it looks like</p> <p>2 one out of four students did not test under the SAT or</p> <p>3 ACT; correct?</p> <p>4 A. I would say that's correct, yes.</p> <p>5 Q. And then for African Americans -- well, let me go</p> <p>6 about it this way. So of that 75 percent that were</p> <p>7 tested, only 43 percent of the class of 2010 met the at</p> <p>8 or above criterion reported here; correct?</p> <p>9 A. I'm looking at that. Yes, that is true.</p> <p>10 Q. Then going to African Americans, it looks like</p> <p>11 just over three-quarters of those students were tested</p> <p>12 at 77.2 percent, but only 12.2 percent of those students</p> <p>13 met the criterion; correct?</p> <p>14 A. Correct.</p> <p>15 Q. For Hispanic, it looks like only 59.2 percent of</p> <p>16 those students tested and 31 percent of those students</p> <p>17 met the criterion; correct?</p> <p>18 A. Correct.</p> <p>19 Q. And for whites, it was 77.5 percent who tested</p> <p>20 out of the class of 2010, with only 51.7 percent of</p> <p>21 those students meeting the criterion; correct?</p> <p>22 A. That is correct.</p> <p>23 Q. Let's go over one more, the college ready</p> <p>24 graduates. And are you familiar that this particular</p> <p>25 indicator uses certain scale scores on the TAKS test in</p> | <p style="text-align: right;">Page 73</p> <p>1 order to determine the college readiness?</p> <p>2 A. I'm not that familiar with it, to tell you the</p> <p>3 truth. I don't know how they came up with those, no.</p> <p>4 Q. Okay. And I will represent to you that, you</p> <p>5 know, I mean certainly the AEIS definition and glossary</p> <p>6 defines what these indicators are. But looking at both</p> <p>7 subjects, math and English language arts. And first,</p> <p>8 there were four exams under the TAKS test for eleventh</p> <p>9 grade students; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And so the English language arts and math are</p> <p>12 only two of those four reported here; correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And so if we look the both subjects for the class</p> <p>15 of 2010, the district had 71 percent of the students</p> <p>16 meet the criterion; correct?</p> <p>17 A. I'm looking for that.</p> <p>18 Q. Sorry. We're under college ready graduates both</p> <p>19 subjects in the district column. It is the third column</p> <p>20 from the left.</p> <p>21 A. Okay. Yes, I'm with you there.</p> <p>22 Q. 71?</p> <p>23 A. Both subjects, 71 percent. I see it now, yes.</p> <p>24 Last row, I have it.</p> <p>25 Q. And white students, it was 79 percent met the</p> |

1 criterion for both subjects in the class of 2010;
 2 correct?
 3 A. Yes.
 4 Q. And for Hispanic students, more than one out of
 5 three failed to meet the criterion and more than one out
 6 of two African American students failed to meet that
 7 criteria; correct?
 8 A. That is correct.
 9 Q. And seeing that the state is tasking districts
 10 with getting students to be college ready, what do these
 11 numbers say about the challenges that the district
 12 faces?
 13 A. It says we face great challenges.
 14 Q. And also, with respect to the economically
 15 disadvantaged, looking back down here at the class of
 16 2010, it shows 50 percent of those students meeting the
 17 criterion for both subjects; correct?
 18 A. That's true.
 19 Q. And what particular challenges does, do the
 20 economically disadvantaged students bring to your
 21 district in trying to help them become college ready?
 22 A. Well, the most glaring is that in many cases, the
 23 economically disadvantaged students have not had some of
 24 the enrichment experiences outside of school that, that
 25 their peers who are more affluent have had. They just

1 haven't had the opportunity from the standpoint of
 2 travel, exposure to literature, many of the things
 3 that -- preschool education, many of the things that
 4 their more affluent peers have had.
 5 Q. I'm not going to go over these particular results
 6 that were on the district's STAAR phase-in summary
 7 report. But with respect to the LEP students and the
 8 economically disadvantaged students, there is obviously
 9 gaps between those students and the non-economically
 10 disadvantaged and the non-ELL students across the board
 11 in all subject areas; correct?
 12 A. Correct.
 13 Q. Does the district have different expectations for
 14 those groups of students?
 15 A. No.
 16 Q. And as far as you're aware, does the state have
 17 different expectations of the students as far as, as far
 18 as the STAAR is concerned?
 19 A. To my knowledge, no.
 20 Q. Is it your opinion that economically
 21 disadvantaged students and ELL students cannot acquire
 22 their knowledge through the opportunities that you're
 23 able to afford them -- let me strike that. It is
 24 getting a little convoluted.
 25 Is it your opinion that the economically

1 disadvantage and ELL students cannot achieve the
 2 recommended standards if you were able to afford them
 3 meaningful opportunities?
 4 A. It is my opinion that they can.
 5 Q. I want to go to some of the financial information
 6 about the district now. Do you know what the district's
 7 property value is per WADA?
 8 A. I think it is -- well, our property value is
 9 about 16 and a half billion, and our WADA this next year
 10 will be about 47,000. So just doing it in my head,
 11 \$330,000 per WADA, something like that.
 12 Q. And --
 13 A. That is a guess.
 14 Q. Sure. And your property values per WADA, would
 15 you say that they've gone down since the year 2005-2006?
 16 A. Yes.
 17 Q. And is the district funded at the target revenue?
 18 A. It was funded at target revenue until two years
 19 ago. The initial target revenue amount, it was funded
 20 at that, but it has dropped. It dropped last year and
 21 will drop a little more this year.
 22 Q. Okay. And is that because your district -- well,
 23 do you know why?
 24 A. Because of the gradual diminishment of the
 25 additional state aid for tax reduction.

1 Q. If we can go to section 2 of Exhibit 343.
 2 A. (Witness complies.)
 3 Q. Page 5.
 4 A. Okay.
 5 Q. Here it reports some of the tax information. Do
 6 you know what the compressed rate for your school
 7 district was?
 8 A. Yes, sir. It was \$0.88.
 9 Q. \$0.88?
 10 A. Yes, sir.
 11 Q. And so the -- since the year 2005-2006 when the
 12 compression rate went into effect, the district now
 13 raised for, approved \$0.16; is that correct?
 14 A. That's correct.
 15 Q. And for the first six pennies above \$0.88, was
 16 that, were those the golden pennies?
 17 A. My understanding is that those were the golden
 18 pennies that were not recaptured.
 19 Q. Okay. And then for the pennies between \$0.94 and
 20 \$1.00, do you know at what level those pennies were
 21 recaptured, if at all?
 22 A. It is now \$1.04. We approved up to \$1.04 the
 23 other night. My understanding is all 10 of those were
 24 recaptured. At what level, I'm not sure.
 25 Q. Okay. On Exhibit 343, section 2, page 5, under

1 the actual revenue information for 2009-2010, it has
2 here an amount titled, "Equity transfers."
3 A. I'm looking for that. I've got it, yes, sir. I
4 have it.
5 Q. And is that the recapture payment that the, that
6 the district had to pay to the state?
7 A. I would assume that that is what that is.
8 Q. Does that, does that number configure with your
9 own knowledge of what roughly the recapture payment is
10 to the state?
11 A. It would be in the range of what I would think
12 our recapture payment would be.
13 Q. And it shows here 1,331,260, which works out to
14 \$39 per student; is that correct?
15 A. That's what it shows, yes, sir.
16 Q. Are you anticipating your recapture payment going
17 up for this current school year?
18 A. I don't, I don't know for sure. It was at one
19 time, that if your tax base increased closely mirrored
20 your student enrollment increase percentage, that it
21 stayed about the same. So I'm speculating that based on
22 the percentage increase in our tax base which was about
23 5 to 7 percent, and our student enrollment which will be
24 over 7 percent, that it won't change a great deal. But
25 again, I'm just speculating.

1 Q. When you went for your -- well, let me ask this
2 question first. Under here under the general fund, it
3 shows that the state aid, you get over 105 million; is
4 that correct?
5 A. Yes.
6 Q. And so it is safe to say that your state aid is
7 well in excess of the recapture payment that you make;
8 correct?
9 A. Yes.
10 Q. Getting back to the golden pennies, which were
11 between \$0.88 and \$0.94. Were those pennies used by the
12 district for supplementation of the district's programs
13 or would you say that they were used for the core
14 programs, you know, a basic adequate education in the
15 district?
16 MS. PENN: Objection, form.
17 A. May I answer?
18 MR. TURNER: Yes, you may answer.
19 A. I would say that they were used for our
20 day-to-day operations, that they were used in the same
21 way that any other revenues were used.
22 Q. All right.
23 A. That has been some time ago, but I'm sure that is
24 the case.
25 Q. Would you say that it is for -- and you know, if

1 you don't distinguish between the two, then certainly
2 you can tell me. But would you distinguish it between,
3 you know, supplementation versus the general core
4 program?
5 MS. PENN: Objection, form.
6 A. I would say the money would have been used for
7 the general core program.
8 Q. For any of those golden pennies, did you have to
9 have an election?
10 A. No, sir.
11 Q. For any of the pennies that you have raised up to
12 \$1.04, have you had to have an election?
13 A. No, sir.
14 Q. Your I&S rate is at \$0.42, did you say?
15 A. That's correct.
16 Q. Have all of those pennies been used for
17 facilities?
18 A. No.
19 Q. What else have you used those?
20 A. We've used debt service to pay for school buses.
21 We've used debt service to pay for technology. And as
22 spelled out in the bond referendum, the last we had for
23 renovations of existing buildings.
24 Q. Was the debt service that was used for school
25 buses, was that to replace old, decaying school buses or

1 additional new buses that you needed?
2 A. Both.
3 Q. And with respect to technology, was that to get
4 you super advanced technology in your schools or, you
5 know, how would you describe that technology?
6 A. Up-to-date with technology in other school
7 districts. I wouldn't say we were super advanced, I
8 would say we're equitable.
9 Q. And was that technology, is that technology being
10 used to offer your basic core programs?
11 A. Some of it is, yes.
12 Q. With respect to your buildings, do you know the
13 cost of any of the buildings from the last election?
14 And I'm just talking about schools.
15 A. It has been over a long period of time, but yes,
16 generally the elementary schools that house 760 have
17 been between 11 and \$13 million. The middle schools --
18 now I'm going from memory, we're building one now. Of
19 course, over the five or six years of these bond
20 proceeds, they've gone up some. But they're typically
21 25 to 27 million. And high schools are in the 70 to 85
22 million range. That is all the facilities including
23 furniture and equipment and everything that goes with
24 it.
25 Q. Do you know whether your facility costs are more

| | |
|--|---|
| <p style="text-align: right;">Page 82</p> <p>1 expensive than the surrounding districts in your area?</p> <p>2 A. We compare it, we look at it all the time, square</p> <p>3 foot cost. And it is higher than some and lower than</p> <p>4 others. In the midrange.</p> <p>5 Q. Do you know which ones it is higher than?</p> <p>6 A. I do not know. I haven't seen that chart in some</p> <p>7 time.</p> <p>8 Q. In your last bond election, how much was that</p> <p>9 for?</p> <p>10 A. \$798 million.</p> <p>11 Q. And how much, how many pennies did you have to</p> <p>12 raise to pay back the bonds?</p> <p>13 A. Well, we haven't spent all of it yet. We still</p> <p>14 have 300 million from that bond issue. But I couldn't</p> <p>15 give you an answer to that because it is a function of</p> <p>16 how much your tax base grows. And I don't remember what</p> <p>17 our rate was when we first started. It blended with an</p> <p>18 earlier bond that we had, and I cannot tell you how</p> <p>19 much, I don't know what the rate was when we started</p> <p>20 spending that money.</p> <p>21 Q. Okay.</p> <p>22 A. It has gone up.</p> <p>23 Q. Now, are the students in your district held to</p> <p>24 any higher standards by the state compared to students</p> <p>25 in other school districts?</p> | <p style="text-align: right;">Page 83</p> <p>1 A. Not to my knowledge.</p> <p>2 Q. Have you ever worked in a low wealth school</p> <p>3 district?</p> <p>4 A. Yes.</p> <p>5 Q. Do you think that those students in low wealth</p> <p>6 districts deserve less than students in the higher</p> <p>7 wealth school districts?</p> <p>8 A. Absolutely not.</p> <p>9 Q. Are you asking the courts in this case to give</p> <p>10 your students greater access to resources at similar tax</p> <p>11 efforts than the students in lower wealth school</p> <p>12 districts?</p> <p>13 A. I am not.</p> <p>14 Q. And I understand you don't consider yourself a</p> <p>15 super high wealthy school district, correct?</p> <p>16 A. There are. There are districts that have more</p> <p>17 wealth than us. We're obviously a Chapter 41 district.</p> <p>18 So on a comparative basis, our wealth per student is</p> <p>19 higher than, than most.</p> <p>20 Q. With respect to the golden pennies, do you</p> <p>21 receive the rate at the Austin rate or do you receive</p> <p>22 pennies above that, I mean revenue above that?</p> <p>23 A. I know what you are talking about, but the</p> <p>24 answer, the honest answer is I don't know.</p> <p>25 Q. So from what I recall, Austin is about \$59 per</p> |
| <p style="text-align: right;">Page 84</p> <p>1 penny per hundred dollars of valuation, but you are not</p> <p>2 sure whether or not --</p> <p>3 A. I'm not sure, no.</p> <p>4 Q. And what districts would you say that your</p> <p>5 district competes with more immediately for teachers?</p> <p>6 A. The suburban districts north of the metroplex,</p> <p>7 McKinney, Plano, Allen, Richardson, Carrollton-Farmers</p> <p>8 Branch, Lewisville.</p> <p>9 Q. Any others?</p> <p>10 A. Coppell, Denton, just about any district north of</p> <p>11 the metroplex.</p> <p>12 Q. And are you asking the courts in this lawsuit to</p> <p>13 eliminate recapture?</p> <p>14 A. No, I'm not asking the courts to eliminate</p> <p>15 recapture at all. That is a separate issue.</p> <p>16 Q. Are you asking the courts to reduce recapture in</p> <p>17 this lawsuit?</p> <p>18 A. No, not asking for anything specifically of that</p> <p>19 order.</p> <p>20 MR. HINOJOSA: Thank you very much. No</p> <p>21 further questions.</p> <p>22 A. Thank you.</p> <p>23 MR. FRAISSINET: I don't have anything.</p> <p>24 (Off the record.)</p> <p>25 EXAMINATION</p> | <p style="text-align: right;">Page 85</p> <p>1 BY MS. PENN:</p> <p>2 Q. Good morning -- or good afternoon, I should say,</p> <p>3 Dr. Reedy. My name is Amy Penn and I'm with the</p> <p>4 Attorney General's office. We met earlier off the</p> <p>5 record, correct?</p> <p>6 A. Yes.</p> <p>7 Q. I want to ask you, have you read the complaint in</p> <p>8 this action?</p> <p>9 MR. TURNER: Objection, form.</p> <p>10 A. No, I have not.</p> <p>11 Q. So you haven't, okay. I want to look first at,</p> <p>12 show you what I am marking as Exhibit 344.</p> <p>13 (Exhibit 344 marked.)</p> <p>14 Q. Do you recognize this document?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Can you identify it for us?</p> <p>17 A. It is board highlights. It is a report of, looks</p> <p>18 like our November the 14th board meeting.</p> <p>19 Q. Okay. And I would like to you look at the second</p> <p>20 page of that. Let's see, about three-quarters of the</p> <p>21 way down it talks about consideration and possible</p> <p>22 action regarding school funding litigation.</p> <p>23 A. Yes.</p> <p>24 Q. "Including but not limited to action regarding</p> <p>25 resolution to join school funding lawsuit as a plaintiff</p> |

NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT § IN THE DISTRICT COURT
FAIRNESS COALITION, §
et al., §

Plaintiffs, §

v. §

EDGEWOOD INDEPENDENT §
SCHOOL DISTRICT, et al., § TRAVIS COUNTY, TEXAS
(consolidated) §

Plaintiffs, §

v. §

ROBERT SCOTT, in his §
official capacity as §
Commissioner of Education, §
et al. §

Defendants. § 200th JUDICIAL DISTRICT

ORAL DEPOSITION OF GONZALO SALAZAR

Austin, Texas

Friday, August 31, 2012

Reported by:

MICHAEL E. MILLER, FAPR, RDR, CRR, CSR

JOB NO. 52080

DEPOSITION EXHIBITS
GONZALO SALAZAR
August 31, 2012

| NUMBER | DESCRIPTION | MARKED |
|-------------|---|--------|
| Exhibit 508 | Disc Containing Video File | 27 |
| Exhibit 509 | LFU EOC STAAR, Spring 2012 Pass Rates | 75 |
| Exhibit 510 | Curriculum Vitae | 94 |
| Exhibit 511 | Los Fresnos ISD Report | 97 |
| Exhibit 512 | 2010-11 AEIS Report for Los Fresnos ISD | 99 |
| Exhibit 513 | 2010-11 AEIS Performance Ratings | 203 |
| Exhibit 514 | 2000-2011 Los Fresnos ISD Spreadsheet | 209 |
| Exhibit 515 | Attendance 2009-2010, State Region I District & Campus Comparison | 229 |
| Exhibit 516 | TAKS - Met Standard, Sum of All Grades Tested, Reading/ELA Scores 2010-2011 | 229 |
| Exhibit 517 | TAKS Commended Performance - All Grades Tested, District Results, 2009, 2010 and 2011 Comparison | 229 |
| Exhibit 518 | 2011 Cumulative Passing Rate, Exit-Level TAKS | 229 |
| Exhibit 519 | 2011-2012 Campus Performance Objectives | 229 |
| Exhibit 520 | State Compensatory Education Information | 250 |

DEPOSITION EXHIBITS

| NUMBER | DESCRIPTION | MARKED |
|-------------|---|--------|
| Exhibit 521 | 2011-2012 Tech Prep Texas Scholars | 250 |
| Exhibit 522 | Texas High School Graduates From FY 2011 Enrolled in Texas Public or Independent Higher Education Fall 2011, Cameron County | 250 |
| Exhibit 523 | Teacher Proficiency Spreadsheet | 270 |
| Exhibit 524 | ARRA Grants with Remaining Balances by Grantee | 292 |
| Exhibit 525 | Total Federal Grant Awards and Expended Amounts, 2010-2011 | 292 |
| Exhibit 526 | Pages from 2010-2011 Official Budget | 299 |
| Exhibit 527 | 2011 Los Fresnos Property Tax Summary Worksheet | 299 |
| Exhibit 528 | 8/2/12 E-mail from David Young | 331 |
| Exhibit 529 | Photographs of HVAC Equipment | 335 |

PROCEEDINGS
(August 31, 2012 at 9:12 a.m.)
GONZALO SALAZAR,
having been duly sworn, testified as follows:

EXAMINATION

BY MS. HUNTER:

Q. Good morning. Would you please state your name for the record?

A. Yes. My name is Gonzalo Salazar.

Q. And what is your position, Mr. Salazar?

A. I serve as superintendent of schools for the Los Fresnos School District.

Q. Okay. And how long have you been superintendent there?

A. I'm on my seventh year as superintendent.

Q. And how were you employed before you were superintendent at Los Fresnos?

A. Well, before I was superintendent, I was a campus administrator. My background is mostly --

Q. In Los Fresnos?

A. At Los Fresnos.

A principal of two different elementary schools and assistant principal, when I first came to Los Fresnos, a total of 13 years ago.

Q. Okay.

A. Before that, I was an elementary 4th grade bilingual teacher in San Benito CISD.

Q. Okay. And before San Benito, what did you do?

A. Before that, I was driving a food service truck, delivering food to cafeterias in the Brownsville ISD, which is just south of where I'm employed now.

Q. So you know the system from top to bottom?

A. Yes, ma'am. Yes, ma'am.

Q. What is your education, Mr. Salazar?

A. I hold a bachelor's and a master's degree.

Master's degree from University of Texas Brownsville.

I'm home-grown. Both my degrees are from there. My

superintendent certificate's also from that same

university, and I'm currently working on my doctorate at

Pan Am in Edinburg.

Q. All right. Let's talk a little bit about

Los Fresnos.

A. Yes, ma'am.

Q. Tell the Court where it's located.

A. Los Fresnos is -- we often describe it as the heart of Cameron County. We're 20-some-odd miles north of the Mexican border and 20-some-odd miles west of South Padre Island. We're the speed trap.

Q. Pardon me?

A. We're the speed trap to South Padre Island.

1 Q. How large is the district?

2 A. We're a 5A district. We're -- geographically,
3 we encompass 541 square miles, so a big portion of
4 Cameron County is in our district. And we have an
5 enrollment of 10,350-plus students.

6 Q. Okay. And would you characterize Cameron
7 County as a poor county?

8 A. Yes, ma'am.

9 Q. Your school is a K through 12 -- pre-K through
10 12, right?

11 A. Pre-K through 12, yes.

12 Q. And what is your -- how many of your students
13 are eligible for the federal free and reduced lunch
14 program?

15 A. We're a Provision 2 school district. 77% of
16 our students are economically disadvantaged, and so as a
17 result, the Department of Agriculture allows us to have
18 universal -- what we call universal feeding, or
19 Provision 2.

20 Q. Okay. "Provision 2" means that all students
21 can have a free lunch?

22 A. That's correct.

23 Q. And do you serve anything else besides lunch?

24 A. Yes, free -- well, there's breakfast and
25 lunch. And if we extend the day, campuses can request a

1 snack at the end of the day.

2 Q. Okay. And what is the -- what percent of your
3 population is Hispanic?

4 A. 96% of our population is Hispanic.

5 Q. And of that, how many of them are EL --
6 classified as English language learner?

7 A. Okay. On our AEIS report, there's 22%. 22%
8 of our students are ELL, but that number is really
9 larger. A lot of parents deny services. There's a
10 stigma with the bilingual program. They say, "No, we're
11 here. You teach them English. We'll take care of the
12 Spanish at home."

13 And we make attempts to explain that we
14 have a transitional bilingual problem and we need to use
15 the first language as a means for the delivery of
16 comprehensible instruction. Some parents insist. So 22%
17 are identified officially on our AEIS report.

18 Q. Okay. But that's an underestimate, as far as
19 you're concerned?

20 A. Yes. Yes, it is.

21 Q. What is the revenue per WADA for your
22 district?

23 A. We're just over \$5100, and so per penny, we
24 bring in about -- a little over \$12, \$12.60 per penny,
25 per ADA.

1 Q. Okay. So for -- I'm sorry, I got distracted.
2 Okay.

3 How many people in your district are
4 unemployed? What's the unemployment rate? Are you
5 familiar with that?

6 A. Arguably, between 11 and 18%. The labor
7 market shows 11 -- 11%, but we've read reports that it's
8 really closer to 18%. So a lot of poverty in our
9 district.

10 Q. And the jobs that people have, what kind of
11 level of income are they producing in those jobs?

12 A. It's mostly in the service industry, so about
13 24,000 a year, the majority of those jobs.

14 Q. Okay.

15 A. In our area, school districts are sometimes
16 the largest employers in the area, school districts and
17 hospitals.

18 Q. Now, there is a school district near by you
19 that does a little bit better than you, and that's
20 Port Isabel; is that correct?

21 A. Yes, they're in Port Isabel, but it's the
22 Point Isabel School District; and yes, they're a
23 Chapter 41 school district. 36 of -- 32 -- 36 of the
24 37 -- maybe it's 35 of -- 34 of the 36 school districts,
25 I know there's two Chapter 41 school districts in

1 Region 1. Point Isabel is one of them, and they're just
2 miles down the road from us.

3 Q. Okay. That's Padre Island, basically?

4 A. Yeah, they have the island in their school
5 district.

6 Q. So they have the income from the hotels and
7 the businesses that are on the island?

8 A. As a result, their property values per ADA are
9 a lot higher than ours. I think they can generate with
10 one penny of taxes as much as \$158 per ADA, compared to
11 our \$12.60.

12 Q. Okay. So are you familiar with what they get
13 per WADA?

14 A. I'd have to translate that, but I don't have
15 that in front of me.

16 Q. Okay. That's fine.

17 A. But I know their revenue, target revenue, is
18 about 5400, a little over ours. But I looked at that one
19 day and I thought, "How can that be so close when their
20 property values are so much higher?" Well, they tax
21 themselves at a lot -- at a much lower rate.

22 Q. Okay. So they're taxing way below your tax
23 rate. What is your tax rate?

24 A. Our tax rate is 1.17 for M&O and \$0.02 for
25 I&S.

1 Q. And so they're taxing much lower and
2 getting approximately or just a slight bit more than
3 you're getting, right?

4 A. Yes. I think they're at \$0.96 per M&O. I'd
5 have to check what their I&S is.

6 Q. Okay. More than three-quarters of your
7 student body come from poverty. What problems do these
8 kids face, even before they get to school?

9 A. Many of our students lack some of the
10 experiences that the kids who come from nondisadvantaged
11 homes see. That wasn't a surprise to me, as a
12 superintendent, you know. When I did my undergraduate
13 studies, I learned that that would be the case.

14 Emerging -- when you -- if you know about
15 emerging literacy and how kids develop reading skills --
16 and how they acquire language is another area -- but kids
17 begin to build a schema, and they learn first from
18 experiences where they're observing, listening, then they
19 begin speaking.

20 And if they don't have someone modeling
21 reading for them -- my kids are fortunate that I model
22 reading and buy literature. It's around the house.
23 Everything from how an adult holds a newspaper and how
24 they turn a page from the top right-hand corner and
25 they're reading left to right, those are things that kids

1 from economically disadvantaged homes don't experience.
2 Other experiences that build vocabularies,
3 things that we take for granted a whole lot, like being
4 able to go on a family vacation or go bowling and
5 vocabulary like the lane, the alley, the pins. Kids from
6 economically disadvantaged homes don't come to school
7 with full readiness.

8 Q. They don't have the vocabulary because they
9 don't have some of the experience?

10 A. Yes, ma'am. When kids are building schema,
11 it's like building a brick wall, and so kids from
12 economically disadvantaged homes, there will be -- I
13 remember this from one of my courses.

14 When you're not from a disadvantaged home,
15 every brick is in place and you're building a solid
16 foundation. And as you progress through this linear
17 progression that is education, then you're building on
18 that.

19 Kids from economically disadvantaged homes
20 will have gaps and so the foundation is rather weak, and
21 that's why it's important to have programs like quality
22 pre-kindergarten programs that help fill in those gaps.

23 Q. You spoke about not having family vacations
24 and things like that. Well, what does that have to do
25 with education, taking a family vacation?

1 A. Oh, it has everything to do with it. Kids
2 will eventually be exposed to reading things that if they
3 don't have that schema, they don't fit it in. I think
4 we -- we can think back to when they're infants, you
5 know.

6 If you have a pet at home, then kids, the
7 first time they see a kids' book, they'll point and
8 they'll either say -- in the Hispanic culture, they'll
9 say "wawa" or "doggie," and then we have to explain, "No,
10 that's not a dog." But kids are familiarizing what -- if
11 it's a zebra they see on a piece of paper, they'll call
12 it a dog first because of the experience they have. It's
13 a four-legged animal with ears. You know, those are the
14 things.

15 So you can -- when they go -- if they can
16 go on a family vacation, they know Chicago's far, far
17 away from here. They've been on a tour of Michigan -- of
18 Lake Michigan. They've been on a boat. Kids have been
19 on a boat. There's just -- the experience builds
20 vocabulary. I don't know if I --

21 Q. It enables them to put a word to those
22 experiences --

23 A. Yes.

24 Q. -- and understand the words, I guess, that go
25 those experiences?

1 A. Yes. It's a lot like when we say "apple" --
2 you know, again, going back to my studies, when I say
3 "apple," most of us think of that red apple. You have
4 that red image of an apple. Or when you say "Coca-Cola,"
5 you can almost hear the "psssst," or feel the grooves on
6 the bottle, that curved bottle. You have that image of a
7 red Coke can. Those are concepts that are built through
8 experiences also.

9 And, of course, instruction is more
10 comprehensible when you don't have to stop and explain
11 that. Teachers that are teaching economically
12 disadvantaged students or even LEP students need to use a
13 sheltered English approach. That means they need to do
14 things like predict -- read a passage and predict what
15 words a child -- the kids in the classroom may not know,
16 and then cover the meaning of those words first, so that
17 when she reads the book, whether it's a big book or a
18 reading passage, to the kids, we don't -- they don't have
19 to pause and explain what a word meant. There's -- it's
20 just going to be more comprehensible.

21 Q. Right.

22 A. And the flow of the lesson will be smoother,
23 so...

24 Q. Do the students who are economically
25 disadvantaged come to school with the same vocabulary as

1 those who are not?

2 A. No, ma'am, they do not.

3 Q. How about colors, do they know their colors?

4 A. Well, they don't -- they may know their basic
5 colors, but they don't know different hues, like other
6 children might.

7 Children who have gone -- girls who have
8 gone shopping with mom and have seen different hues of
9 lipstick or nail polish will have, of course, a different
10 understanding of just the color wheel, that there's
11 different shades of pink.

12 Q. Right.

13 A. How else can I explain it? Those are...

14 Q. How about numbers, how do they know numbers?

15 A. Yeah, number concepts is something that kids
16 lack. And I'll come back to, also, phonemic awareness.
17 I see with my four-year-old, I can ask her, "How many
18 fingers do you have on your hand," and because we've
19 worked with her and had a lot of interaction, she can
20 tell you. She doesn't have to count.

21 But I've seen kids in our schools that you
22 say, "Okay. If you have five fingers and, you know,
23 you" -- or if you have five colors and you take two of
24 them and you put them behind your back and say, "How many
25 are on the table?" And they say, "Three."

1 "Well, how many of them do I have in my
2 hand?" They don't know. They have to count -- again,
3 they have to count to five, or you have to help them.

4 And kids that come from noneconomically
5 disadvantaged homes can do that with -- they can tell you
6 just without having -- they know there's five fingers in
7 your hand.

8 Q. Yeah.

9 A. So those number concepts, those very basic
10 concepts, are nonexistent.

11 Phonemic awareness, change the initial
12 sound of "hat" and put a "B" in its place, then some kids
13 have -- the kids that are school-ready can go, "B, bat,"
14 or other kids go, "B?" They don't know what you mean,
15 when you're asking them to do that.

16 And we see that a lot in the beginning of
17 the year. TPRI, which is the Texas Proficiency Reading
18 Inventory, the proficiency reading inventory, we see
19 those -- that they lack those skills. It's well
20 documented.

21 Q. Well, you started to say that because of these
22 decisions, pre-K programs are really important?

23 A. Yes.

24 Q. Why is that? What do they do?

25 A. Well, they -- in schools, we have to create

1 the experiences that kids don't have, and we have to
2 create them in a classroom and in field trips that are
3 extensions of the classroom.

4 You have to consider that in a 7-1/2-hour
5 day, kids will only be with us 1,350 hours of an entire
6 school year, of an entire year.

7 Kids in our area, some of them are
8 economically disadvantaged, and they're also LEP. And if
9 you consider how much time they're with us on a full-day,
10 then our opportunities to build those experiences that
11 they may not otherwise have, or expose them to language
12 they may not otherwise have, our opportunities are
13 limited. So we have to make the most of when we get
14 them.

15 With regard to language acquisition,
16 because that's a big part of our population, you know, I
17 remember reading studies by Krashen and Cummings that
18 tell us that a second language is acquired in four
19 phases: listening, speaking, reading and writing.

20 And kids -- there's a difference, also,
21 between basic interpersonal communication skills and the
22 Cognitive Academic Language Proficiency that is called
23 CALP. Linguists will tell you that it takes seven years
24 to acquire language, you know, and we have standards that
25 say, until recently, 3rd graders need to be reading on

1 grade level by February, you know, the first
2 administration of the 3rd grade test was in February.

3 Well, if you work backwards from what the
4 expectation is, then, yes, you need them, not just as
5 four-year-olds. It would be better if we could get them
6 as three-year-olds. It would be better we could have a
7 full-day pre-K program versus a half-day pre-K program.
8 So --

9 Q. You have a half-day right now?

10 A. We have a half-day now.

11 Q. Did you used to have a full-day?

12 A. We used to have a full-day pre-K program.

13 Q. And this is 4th grade, right?

14 A. I'm sorry?

15 Q. It's a four-year-old pre-K?

16 A. Yes, we had a full-day pre-K, and that was
17 wonderful.

18 Q. And what happened to the full-day?

19 A. We had to cut back to a half-day. We didn't
20 have the funding to sustain it. It was costing us about
21 \$450,000 -- a full-day required 14 additional teachers
22 and 14 additional paraprofessionals.

23 We have -- one of the things that we need
24 to do is reduce class sizes, so -- reduce the
25 student-teacher ratio. So we had a teacher and a

1 paraprofessional in every one of those classrooms.

2 Q. And why is it important to have a smaller
3 class size in pre-K?

4 A. It's imperative, because otherwise, you're
5 just going through the motions. We hear that from our
6 teachers now. It's important for teachers and students
7 to have the rapport and the interaction.

8 That rapport and interaction needs to be
9 quality so that the teacher can, one, create risk-free
10 environments, and two, really get down into the weeds of
11 the curriculum and understand the child and provide the
12 prescriptive instruction that that child needs, if
13 you're -- if it's going to be an effective program.

14 Q. What class size would you like to have in your
15 pre-K program?

16 A. Ideally, 15. 15 students in a pre-K class
17 would -- we'd be able to do a whole lot.

18 Q. And how many do you have now?

19 A. We have 22.

20 Q. Okay.

21 A. 22, so -- because it's a half-day program, a
22 pre-K teacher will see 22 students in the morning and 22
23 students in the afternoon.

24 When we had a full-day pre-K program, they
25 had 22 students all day long. And so, yes, that put a

1 strain on our facilities because you have to open up --
2 at the 23rd student, you have to open up another
3 classroom. There are no state requirements on -- or
4 limits to how many students you can have in a pre-K
5 class, but good pedagogy, if you're going to do the
6 program justice, the ratios are important.

7 Q. Okay. And you said that you would -- you
8 think it would be important to have a three-year-old
9 pre-K; is that right?

10 A. Yes, ma'am.

11 Q. What educational harm have your students
12 experienced by not being able to have a full-day pre-K
13 for four-year-olds?

14 MS. SANDERS: Objection, form.

15 MS. HUNTER: Don't worry about that.

16 THE WITNESS: Okay.

17 A. Our students, when you have a full-day pre-K,
18 then you have -- you have time in the school day to
19 expose them to things like computer labs.

20 One of the things that our students lack
21 when they're economically disadvantaged is that they're
22 technology-illiterate. Many of them have not -- they
23 don't have a computer at home. They've never held a
24 mouse, and so they've never sat in front of a keyboard.
25 Even the toys that we're able to get our kids that expose

1 them to age-appropriate, you know, computer and mouse,
2 they've never had those experiences.

3 So when you're dealing with a half-day
4 program, it's more difficult to give them the entire
5 curriculum and also take them to the computer lab.
6 You've got to -- something's got to give when it's a
7 half-day program.

8 We even looked at, "Okay, if they're
9 coming in half a day but five days a week, can we
10 schedule a computer lab visit on Thursday?" Well, part
11 of the curriculum is going to suffer. What part are you
12 not going to do anymore? Or if you take them to the
13 library, you can do those things, but something's got to
14 give. There are only so many hours in the day.

15 BY MS. HUNTER:

16 Q. And the fact that they can't get these other
17 things because of the half-day, does that have an effect
18 on their learning abilities in the 1st, 2nd and 3rd and
19 4th grade?

20 A. Yes. Well, all the things you set out to do.
21 Remember, I said that linguists tell us that it takes
22 seven years for kids to acquire a language. If we're
23 only doing half a day, you know, for an entire year, then
24 it's hit-and-miss, and all of the things that you wanted
25 to accomplish, the phonemic awareness, is not at the

1 level you could have had it.

2 The interpersonal communication skills,
3 the ability to -- you know, time in the day to -- even if
4 you take them on a field trip one day out of the school
5 year, that's not going to be there when it's a half-day.

6 So yes, all of those experiences that you
7 set out to create are diluted. And, of course, they're
8 not -- academically, they're not going to be where you'd
9 like them to be at the beginning of kinder or 1st grade.

10 Q. And does that affect their learning, as the
11 years go by --

12 A. Yes.

13 Q. -- or do they all just catch up on 1st grade?

14 MS. SANDERS: Objection, form.

15 A. Yes. "School readiness" means you have the
16 experiences. That means everybody's going to start the
17 race on the same line, okay? When you're economically
18 disadvantaged, you don't start where kids who have -- who
19 do not come from homes that are economically
20 disadvantaged. They don't start at the same place, so
21 already there's a learning gap.

22 And as kids progress through the continuum
23 of the educational system, the learning gap gets wider
24 and wider, unless you have interventions. So a quality
25 pre-K program on the front end really helps.

1 There's an article in today's paper. Bill
2 Hammond talks exactly about that. I thought how
3 interesting, that someone in the business world is
4 recognizing, also, that if you have a quality educational
5 program at the beginning and you build a solid
6 foundation, there's less of a need in the future for
7 remediation.

8 BY MS. HUNTER:

9 Q. Okay.

10 A. They never really do catch up. It's hard.
11 They can catch up, but it takes a lot of intervention.

12 Q. Now, you brought a video with you today; is
13 that correct?

14 A. Yes, ma'am.

15 Q. And what we'll see in the video is -- have you
16 visited the homes that are shown in the video?

17 A. Yes, I have.

18 Q. And is the video a true and accurate
19 representation of the situation that these people are in?

20 A. I even think it's airbrushed. It's not as --
21 it does paint a picture, but they're at their best here.

22 Q. Okay. So when you see them in person, it
23 looks a little bit more stark than it does on the video,
24 is that what you're saying?

25 A. It does.

1 Q. And when you are orienting your teachers to
2 your district, your new teachers, is the bus trip part of
3 what you do with them?

4 A. It's not uncommon for a principal to request a
5 bus for new teacher orientation. It's important for
6 teachers to understand where kids are coming from, and
7 the successes that we do have in our district is because
8 teachers understand the unique needs and characteristics
9 of our students.

10 They understand how much is at stake. And
11 our kids, you know, they all come with hopes and dreams,
12 and so there's not a dry eye on the bus on the way back
13 to the school during that first teacher in-service, when
14 they understand where the kids come from.

15 Q. And Mia, she's a student in the district,
16 correct?

17 A. Maria. She is.

18 Q. And she has ambitions to become a surgeon, is
19 what she said on the video; is that correct?

20 A. Yeah. If you listen to why she said, it's not
21 to live in a fancy house or to drive a fancy car. She
22 wants to be able to help others. She's seen people --
23 obviously seen people go out with -- go without medical
24 attention. She says, "I want to be able to help people
25 who can't help themselves, people who can't afford to go

1 Q. And are these children that are in the
2 video -- are they in your district?

3 A. Yes, ma'am, they are.

4 Q. And they attend your schools, and you know
5 them?

6 A. I know them.

7 MS. HUNTER: Okay. I'd like to mark this
8 as an exhibit.

9 (Salazar Deposition Exhibit 508 marked.)

10 MS. HUNTER: Okay. I'm going to play the
11 video, if I can do this right.

12 (Salazar Deposition Exhibit 508 was played
13 in the deposition room.)

14 BY MS. HUNTER:

15 Q. What percentage of your students come from the
16 type of Las Colonias poverty that we saw in the video?

17 A. Poverty is relative. Las Colonias is about 1%
18 of our population. And then there are thousands more
19 that get just above that.

20 Q. Okay. So how far do these kids go in the
21 morning for school?

22 A. They have to travel about 12 miles to school,
23 on the school bus.

24 Q. On a school bus?

25 A. Uh-huh.

1 to the doctor," you know.

2 Q. And does Mia represent the --

3 A. Her name is Maria.

4 Q. Maria. I'm sorry.

5 Does Maria represent the hopes that other
6 students in your school have?

7 A. Yes, I think every child goes to bed dreaming
8 You know, regardless of their socioeconomic standing,
9 they all have dreams, and -- but yes, they all want to
10 succeed in life.

11 Q. Education is important to them, those dreams?

12 A. It's important to them and their families.
13 It's important to all of us.

14 Q. What does it mean to a family in poverty to be
15 able to send their kids to school and get them educated?

16 MS. SANDERS: Objection, form.

17 A. It's a ticket to a better life, you know. In
18 the Hispanic culture, parents hold teachers up high on a
19 pedestal. The connotation to the word maestro, maestro
20 in Spanish is something that's deeply respected in
21 Hispanic culture. If a teacher says it, you're going to
22 do it, you know. If the teacher calls, we're going to
23 go. And we see that.

24 We see standing-room-only-type turnout
25 when we have our parental involvement meetings or

1 information meetings when we call on parents. They're
2 responsive and supportive of our efforts.

3 And I hear that from superintendents in
4 other areas of the state, where demographics begin to
5 change, and they say, "Wow, one of the things we can
6 always count on is, they're going to be there. They're
7 going to be there."

8 And I say, "Yeah, that's the way it is."
9 That's the way it is."

10 BY MS. HUNTER:

11 Q. And you testified that education is the ticket
12 out of poverty?

13 A. Uh-huh.

14 Q. How do you know that?

15 A. Well, I lived it. I am. I'm a product of the
16 problem myself. We -- I lived -- I was one of eight
17 growing up, and my father worked in the shrimp
18 industry until that went south and he was injured, and so
19 we know what it's -- I've experienced it.

20 Q. Okay. And we started talking about what kinds
21 of programs the school has to be able to offer in order
22 to meet the needs of children who come to you from
23 poverty.

24 A. Uh-huh.

25 Q. We talked about pre-K, and we talked a little

1 bit about class size. Is class size an issue, also, when
2 you get past pre-K, or is it just pre-K?

3 A. It continues to be. I know there are studies
4 that say that class size doesn't matter. Class size
5 matters. Class size matters. The interaction that a
6 teacher is able to have with students who need to develop
7 vocabulary, the interaction that -- it matters.

8 Students -- if you have lower class size
9 ratios, like in prekindergarten, kindergarten, 1st grade, the teacher
10 has a real understanding and has the time to sit at a
11 kidney table with kids, bring the ones that have certain
12 needs to the table, give others independent work and then
13 rotate the groups, and then move on to the next lesson.

14 When you're managing larger class sizes,
15 classroom management becomes more important. It's always
16 important, but it becomes exponential, a skill that a
17 teacher must have, if you're going to maximize your
18 instructional time.

19 But as you get in the upper grades, even
20 through high school, class size matters. Simply students
21 being able to get feedback after they've written an
22 essay, having them read it in class, having those
23 discussions in class, engaging all of the students in
24 your classroom, the quality of interaction is better.

25 I mean, there are studies that show the

1 smaller learning communities are more desirable and you
2 are able to accomplish more, and the high school -- there
3 was a whole study on high school redesign that talked
4 about smaller learning communities and the importance of
5 relationships that teachers can have with students that
6 is translated into the rigor, relevance and relationships
7 that we hear a lot about. And so, yeah, class size
8 matters throughout.

9 Q. And you talked a little bit about orienting
10 your teachers to the district and to the problems of the
11 kids and how important their work was. What other sort
12 of staff development do you think is important for your
13 teachers?

14 A. Okay. Under -- we just spent a week-long
15 staff development. Most of our teachers were in staff
16 development that talked about engaging the reluctant
17 learner, understanding children in poverty.

18 Dr. Ruby Payne does a fantastic job of
19 reminding teachers why -- why parents make certain
20 decisions, what generational poverty looks like and what
21 the needs are.

22 Sheltered English instruction, learning --
23 knowing how to engage students with limited English
24 proficiency, knowing how to engage students who are
25 recent immigrants in instruction where a teacher, for

1 example, is able to -- is delivering the instruction in
2 English, but holds up a book and says, "I need you to
3 open your math books to page 27," and writes that on the
4 board.

5 Immediately, that student, who doesn't
6 know a word of English, can look around and go, "Okay,
7 everybody's pulling out the book she held up, and they're
8 opening, obviously, to page 27, página veintisiete." So
9 those are the examples of staff development.

10 But also, these days, how to integrate
11 technology, how to use technology in the classroom to
12 build bridges for children, what platforms are available
13 for that level of instruction and how to teach at higher
14 levels of Bloom's Taxonomy, even when you have children
15 who have -- who lack the school readiness or are not on
16 grade level. So those are points.

17 Q. And do you have the funding that you need to
18 provide the staff development that you think is
19 necessary?

20 A. No, I don't think we have sufficient funding
21 to -- and in some areas, we have the funding to bring
22 some of the staff development, but we lack funding to get
23 the resources that we need to be able to implement some
24 of those ideas.

25 Sometimes you attend staff development

1 sessions, and it's like, "Those are great ideas." That's
2 not reality for me, you know. So being able to carry it
3 out is important.

4 Q. When I also -- I didn't ask you, when you were
5 talking about class size, whether you had the funds
6 necessary to provide the class sizes you think you need?

7 A. No, we don't.

8 Q. And you were talking a little bit about
9 technology. I wondered: What are the technology
10 capabilities in your district?

11 A. Okay. We have computer labs at our elementary
12 schools, one computer lab at every elementary school.
13 When we built the last two elementary schools, I said,
14 "Why are we going to build schools for yesterday? If
15 electronic testing is coming, let's build two computer
16 labs."

17 Not only that, but we were finding that in
18 the existing schools where we were able to build a
19 computer lab, we had to share the time that that lab is
20 available with upper grades and lower grades. And so
21 with two labs in our three newest campuses, we have the
22 lower-grade computer lab, upper-grade computer lab, you
23 have age-appropriate software in one and age-appropriate
24 software in the other.

25 But even that, I think the curriculum and

1 the expectations have surpassed what we can do in the
2 computer labs.

3 Q. How many kids can use a computer lab at one
4 time?

5 A. Oh, we build them up for up to 25 students at
6 a time.

7 Q. But would there be an advantage to having
8 project-based devices in your new schools?

9 A. Yes. Our curriculum and our expectations,
10 accountability standards have -- dictate what the level
11 of instruction should be, and we cannot -- the days where
12 we could stop instruction and go to the computer lab,
13 we're going to go conduct research in the computer lab,
14 those days are behind us.

15 Today, with the level -- the level of
16 instruction needs to be where kids can do research on
17 time, realtime. The learning has to be vivid. I'll give
18 you an example.

19 Kids -- a teacher who's covering the
20 Cold War and asks -- and is in a discussion can -- if we
21 had the platforms that I've heard talked about at the
22 state level, where we want to move away from printed
23 textbooks and we want to have a platform that is -- where
24 kids can download books or that kids could use to log
25 onto the Internet, then if you had those in the hands of

1 every child, then our teachers could say, "I want you,
2 this side of the room, to look up the Cold War from the
3 Russian perspective, and I want this side of the room to
4 look for the Western perspective. Discuss amongst your
5 groups and discuss why the Cold War lasted so long, okay?"

6 "And so, then, we're going to exchange
7 ideas, have a debate. We're going to write a critique,
8 we're going to write an analysis, and then we're going to
9 have discussions tomorrow about the same thing, about
10 this topic."

11 That can't happen when you have to, "Close
12 your books, let's get in line, and let's walk down to the
13 computer lab. I want you to research the meaning of this
14 word. I'd like you to" -- mean, kids are growing up in
15 the digital age, and that's the kind of learning that
16 needs to be taking place in our classroom, if we're going
17 to be successful.

18 Q. And do you have the funding to provide the
19 necessary individual handheld devices that you think are
20 important?

21 A. No, we don't. And it's not -- Ms. Hunter,
22 it's not only the devices or the platform, it's the
23 infrastructure that supports all of that. Through
24 E-Rate, we've been able to qualify for assistance and
25 funding, but our infrastructure there is aging as well.

1 Just the E-Rate program expects you to
2 have funding in place, and you have to budget for your
3 portion of the cost of doing certain projects. That
4 funding has to be in place so that if you get -- if you
5 get awarded, then you can move forward with the projects.

6 And so like right now, we have \$800,000
7 set aside, and we're hoping that we qualify in the next
8 wave of funding because our infrastructure is aging.

9 Q. Aging?

10 A. Yeah.

11 Q. What is a language development lab?

12 A. Language development labs are self-contained,
13 multi-age group classes where we bring recent immigrants
14 in and immerse them in English, in an effort -- in an
15 attempt to get them up to speed, just bathe them in the
16 English language, give them enough language that they
17 could take the concepts they know and transfer or be able
18 to make the connections.

19 We show them, "This is" -- "These are
20 cognates. When you hear this word in English, you know,
21 this is very similar to the word you know in Spanish that
22 means the same thing." We just help them acquire the
23 language skills that they need to go into the mainstream.

24 And then LPAC committees, the LPAC
25 committees will decide which students should enter the

1 mainstream, of course, with a bilingually certified
2 teacher. But those are the language development labs.

3 Q. And do you have language development labs?

4 A. Yes, we do.

5 Q. Do you have sufficient language development
6 labs to serve the population?

7 A. No. We have one language development lab for
8 every two campuses, so schools -- we call them sister
9 schools. If you're in the same area of the district,
10 instead of having a lab at each one of the schools and a
11 teacher at each one of those schools, we bus kids to a
12 lab until it gets to a certain level, and then if it's
13 going to be a lab, the cut-off is 10 students.

14 When we get 10 students -- when we go
15 beyond 10 students, then we have the need to open a lab.
16 And we've embedded that into our staffing formulas so
17 that we're never overstaffed.

18 Q. Okay. And when you say you bus students from
19 one school to the other, how far of a trip might that be?

20 A. Oh, that might be three miles, four miles.

21 Q. And how large are the campuses, approximately?

22 A. Our campuses are built to a capacity of 800
23 students, for 800 students.

24 Q. Okay.

25 A. Again, there's a real commitment for smaller

1 learning communities, but campuses that were built in the
2 early '80s and even in the '70s were built for a capacity
3 of 800 students, but when we open computer labs and
4 language development labs, you significantly reduce the
5 capacity of schools, with the programs that you implement
6 to improve instruction and services.

7 Q. Okay. Is it your testimony that you need more
8 language development labs?

9 A. Yes, ma'am.

10 Q. And do you have the funding for that?

11 A. No, we don't.

12 Q. Do you have reading specialists in your
13 schools?

14 A. We have reading specialists in our schools.

15 Q. What do they do?

16 A. Reading specialists take the information from
17 the TPRI and they work with -- it's a pull-out program.
18 They work with students who are behind in their
19 reading -- their development, their skills, their reading
20 skills, and even work with teachers also, they work with
21 teachers, regular classroom teachers, that tell them
22 which -- that tell them which skills certain students
23 need in their classrooms.

24 Q. What grade levels do the reading specialists
25 serve?

1 A. Early childhood, pre-K to 1st grade.

2 Q. Okay. And do you have enough reading
3 specialists to serve the needs of your population?

4 A. No, we don't. We have one for every two
5 schools, and ideally, what we need is two -- at least two
6 per campus at minimum, because there are kids that, when
7 they come in in the upper grades, they come in from other
8 districts or they come in from Mexico, then they're
9 behind in their reading skills; and ideally, we need more
10 reading specialists.

11 Q. Do you have the funding for more reading
12 specialists?

13 A. No, we don't.

14 Q. What are the -- what's the importance of
15 counselors in schools?

16 A. It's very important. Our counselors will do
17 presentations. Like your average counselor does
18 presentations on bullying and citizenship, but we have --
19 our needs are a little bit different -- well,
20 significantly different.

21 Aside from everything that your average
22 counselor does at the elementary -- I'll start at
23 elementary level. We have a high number of recent
24 immigrants coming to us from Mexico. They are coming,
25 fleeing the civil unrest that they see and the violence

1 that's created by the cartels.

2 When the students come to us, they tell us
3 stories of what they saw, what they experienced, the
4 bodies that were lying on the ground, the family members
5 that were kidnapped. And so how can we -- at times, we
6 find ourselves expecting them to learn and be able to
7 focus.

8 There are things that they need to get out
9 of their mind first, before we can address academics.
10 And there's a shortage -- there's a shortage of
11 counselors in our district.

12 We're bound by the funds that we have, and
13 then the number of FTEs per student ratios is another
14 indicator that we have to abide by, or we're looked at as
15 inefficient schools. But the truth is, we have to be
16 able to use the few resources that we have to be able to
17 meet the needs of our students.

18 At the secondary level, college readiness
19 is not something that parents are talking to our kids
20 about. A lot of times, our kids will be the first
21 members of their people to go to college. How to --
22 where to go to fill out a scholarship application, to --
23 an entrance exam, an entrance -- how to register at a
24 university.

25 If our counselors aren't constantly

1 working on putting students on career pathways, exposing
2 them to career inventories, like the ones that are
3 provided with the Kuder software, our kids will never get
4 that.

5 Our kids will never begin to build that
6 mindset of, "I need to go to -- I need to be thinking of
7 what career, I need to be thinking of what college and
8 university I'm going to go to. What AP courses, what
9 dual-enrollment programs am I going to participate in
10 that would help me move towards a career?"

11 We don't have the number of counselors
12 that -- and/or the funding to provide those counselors in
13 our schools, the number of counselors that we need.

14 The same is true for nursing. When they
15 live in poverty, they don't get the healthcare that they
16 need. We had a student at Las Yescas Elementary get --
17 you know, he reached out and burned himself with a light
18 bulb on a lamp. He came to school with that burn, and,
19 "Did you -- did your parents take you to the doctor?
20 Does mom -- is there a note? Is there an ointment that
21 you're putting on there?"

22 "No, no, no. We couldn't -- we can't
23 afford it. We're just going to let it heal on its own."

24 Well, our nurses -- there was a time when
25 we had an RN and an LVN at every campus. A lot of times,

1 our RNs get busy with tube feedings, because in most
2 every elementary school we have a special ed unit. And
3 if they're busy with a tube feeding or attending to more
4 fragile students, then the LVN was there to see the kids
5 that came to school that have the flu or they have a cold
6 and they come to school without getting medical
7 attention.

8 So they -- there are other needs. There
9 are health needs also. There are mental health and
10 physical health needs that our students in our area have
11 that you may not have in other areas of the state.

12 Q. Okay. And you don't have enough funding for
13 the number of nurses that you need?

14 A. No. No, we don't.

15 Q. What is a family engagement counselor?

16 A. Family engagement counselor is an initiative
17 that we started with the United Way. We had some funding
18 from AT&T, and we -- they visited with us and asked what
19 initiatives we would propose at the high school level as
20 part of our dropout recovery efforts.

21 We found, when we began addressing our
22 dropout rate, that students were not coming to school for
23 different reasons, okay? We found the students, surveyed
24 them and found out what is keeping you from coming to
25 school?

1 And we saw that there was a need for what
2 we call a family engagement counselor, a -- we worked
3 through communities and schools to contract a person that
4 could be a liaison with identified -- families of
5 identified students. And this liaison, we said, will
6 build relationships and have a real understanding of the
7 needs of families and earn their trust, and this
8 counselor is going to stay with this cohort until they
9 graduate from high school.

10 And with the next 9th grade cohort, we're
11 going to hire another person, again through communities
12 and schools, contracted service, so that they can build
13 the same relationships. They'll engage -- be able to
14 engage parents and build their trust and stay with that
15 cohort.

16 We were able to do that for two years and
17 saw excellent results. There's data that we can show on
18 how that worked. But to give you an example of what the
19 family engagement counselor does, an entire household,
20 all the kids of one family were not coming to school.
21 Their attendance was dropping.

22 It was winter. And when she went to visit
23 the home, learned that they weren't coming to school
24 because they couldn't take showers. The water heater
25 was -- they'd lost their water heater, and cold -- the

1 water was too frigid for them to take showers, so they
2 just wouldn't come to school.

3 And so it was the family engagement
4 counselor who went out into the community, reached out to
5 members of the Chamber of Commerce, approached us as
6 administrators, asked for contributions, and we were able
7 to come together and provide the need for that family.

8 And then someone else said, "I know a
9 plumber, and I can pay him, you know, probably a reduced
10 rate and we can go and put that water heater in."

11 And so, then, the return on that is, the
12 loyalty from the parents increases to the schools. And
13 the kids have been in school ever since, you know, and we
14 check on them, just like we do with Maria's family. One
15 of the kids in that household plays basketball. The
16 basketball coach is over there all the time, going above
17 and beyond the call of duty.

18 But these are the types of initiatives we
19 have to have in place, if we're going to see our students
20 all the way through the 12th grade.

21 Q. And that program no longer exists because of a
22 lack of funding?

23 A. No. Lack of funding. Part of the funding was
24 coming from the philanthropist or some donor that was
25 donating money to the United Way and we were splitting

1 the cost three ways. And they were asking the school
2 district to have some skin in the game, so we were able
3 to put some funding towards that. But when our shares --
4 it's being asked that we increase the share, we really
5 cannot sustain that.

6 Q. And you said that you've seen success on this.
7 Was there an improvement in your dropout rate?

8 A. Yes. It's around -- that was one of the
9 things that contributed to our dropout rate. We put
10 several initiatives in place, but right now, Los Fresnos
11 enjoys a dropout rate -- a completion rate of 97.1%.

12 We went from 88.6%, which was respectable
13 at the time, but still nowhere near where we need to be,
14 to a 97.1% because of initiatives like that and the
15 College Career & Technology Academy that we put in place
16 that allows us to bring kids back, up to the age of 25,
17 coupled with, you know, Senate Bill 1137 that gives us
18 ADA for the contact that we have -- contact hours that we
19 have with the kids, and also the optional flexible school
20 day plan that allow us to tailor our schedules to the
21 needs of the kids.

22 Q. You're talking about the academy now, right?

23 A. Yes.

24 Q. Explain a little bit more to the Court what
25 that is.

1 and then part of the day, we bus them. But we don't call
2 it a school bus, we call it a shuttle, because it's how
3 you package it. And we bus them to Texas State Technical
4 College, where they can begin working on phlebotomy or
5 auto body repair or welding, the technical courses that
6 are offered there.

7 And because of Senate Bill 1137, we're
8 able to claim ADA. The kids can sign in when they're in
9 attendance, and the optional flexible school day program
10 allows us to tailor class schedules to their needs. So
11 some kids now have jobs, because they have kids, and they
12 can only come on Tuesdays and Thursdays, because that's
13 what their work schedule allows, and so we welcome them
14 then.

15 Others can come in the evenings, and so
16 our teachers work a flexible schedule. They come in at
17 the time that our kids can come in, and we're seeing
18 really good results from that.

19 Q. That's one of the reasons the dropout rate
20 is -- has gotten less?

21 A. Yes. We've reduced the number of dropouts
22 through that and other initiatives.

23 Q. And the State does provide some funding
24 through ADA?

25 A. Well, right at the time that we were going to

1 A. Okay. One of my colleagues in the Upper
2 Valley started a College Career & Technology Academy, and
3 without shame, we go and we see what ideas are working
4 and come and implement them and make them our own. But
5 this a center where kids can come -- kids who have
6 dropped out of school, are able to come back to the
7 center.

8 In other words, they don't have to go to
9 the high school and face the kids that are going to
10 inevitably say, "You're back? I thought you were done."
11 And they have a place to come back to that is called --
12 the first word is "college," okay?

13 They can be proud that they're attending
14 the College Career & Technology Academy. They come back
15 for the purpose of completing their requirements for
16 graduation, okay?

17 But at the same time, we enroll them at
18 the Texas State Technical College in Harlingen, which
19 begins to build a bridge. They're simultaneously working
20 on completing their requirements for graduation, whether
21 it was courses or credits that you had not obtained, or
22 giving you prescriptive instructions so you can pass the
23 science test, the state science test that kept you from
24 meeting the requirements for graduation.

25 And so part of the day, they're with us,

1 implement this program, I attended a conference and TEA
2 was presenting. And they said, "We have this dropout
3 recovery pilot program grant that we're going to offer."

4 And I raised my hand and said, "We're
5 looking at a program that we're going to tailor.

6 They said, "That's exactly what we're
7 looking for."

8 And for the first two years, we got
9 \$250,000. That paid for the extra salaries, the salaries
10 of four teachers in the core areas. And when that grant
11 expired, we used our state comp monies, because these are
12 the highly at-risk -- this is a highly at-risk
13 population. We're using those funds to keep the program
14 going.

15 Q. Okay. But are those funding -- is that comp
16 ed funding -- we'll talk more about rates later. But is
17 the comp ed funding adequate to actually pay for the
18 program?

19 A. It's not. I see -- the goal was to work our
20 way out of -- and work our way out of having the need for
21 that program. When we presented it to the board of
22 trustees, one of our board members said, you know,
23 "That's great, you're going to address that on the tail
24 end, but you need to burn this candle on both ends. Why
25 are kids dropping out? If we can keep them from dropping

1 And so we put off replacing roofs; and if
2 we could patch a roof, we'd patch a roof. And if we
3 could keep an AC unit going, we would do that and work to
4 keep the chiller plant going.

5 Not only that, but the same thing applied
6 to our school buses. We tried to maximize every dollar
7 and extend the life of every piece of equipment,
8 including facilities.

9 Q. Are buses important to your district?

10 A. When you run 541 square miles, buses are very
11 important.

12 Q. And some of your programs actually require you
13 to bus kids during the course of the day, right?

14 A. Yes. Well, middle of the day, we have to run
15 another set of buses for our half-day pre-K. So yes,
16 buses are important.

17 Q. And some of your shared programs, too, require
18 buses?

19 A. Yes. Right.

20 Q. And what condition is your bus fleet in?

21 A. Well, even though we have a bus-replacement
22 plan and every year we're replacing four buses, you see
23 our buses are rusty, there's holes in our buses. Not all
24 of our buses, but we have -- I'd say a third of our buses
25 need to be replaced.

1 Q. When did Los Fresnos start cutting its budget?

2 A. We -- not this last legislative session, but
3 the one before that, we had heard that the State -- that
4 the State was able to balance the budget with -- well, it
5 was referred to as "smoke and mirrors" and accounting
6 tricks, and storms are coming, you know, dark days are
7 coming, you'd better tighten your belt now.

8 So we were coming off of our
9 construction -- major construction projects with our bond
10 issue for our instructional facilities, and then we got
11 word that we'd better tighten our belt. So we put in
12 place an informal hiring freeze and we started to work
13 by attrition to eliminate positions. But we actually get
14 word of cuts that were coming in the last legislative
15 session, not the one that -- not the last one.

16 Q. Not this most recent one, but the one before
17 that?

18 A. Yes.

19 Q. And so you began cutting, then -- you cut,
20 what? You cut some staff?

21 A. We cut some staff. We had also cut, you know,
22 pre-K to a half-day, and then we looked at, "Okay,
23 where -- what are the areas where we can cut before it
24 reaches instruction?"

25 And so we went -- we got rid of the LVNs

1 and kept only an RN at each campus. Where we had two
2 counselors, we let one go. And, again, we worked by
3 attrition. Teacher aides that allows us to lower the
4 class size ratios, you know, and instead of having a
5 certified teacher run the computer lab, we had an aide.
6 Well, we had to let those aides go and teachers had to
7 prepare their own materials before they go into the
8 computer labs.

9 We looked in the office area to see if our
10 records clerks -- you know, we had to reduce records
11 clerks as well. And then within our informal freeze, you
12 know, we added three campuses, so we added more real
13 estate and our grounds crew did not grow. It hasn't
14 grown since then.

15 So sometimes taxpayers call and say the
16 grass is a little taller than it should be, but we're
17 making ends meet. We're on a rotation, and we'll get
18 there, and eventually we do.

19 Q. Did you have to increase class size, too, at
20 that time?

21 A. Not at that time.

22 Q. Okay.

23 A. At that time, we were still able to maintain
24 class sizes. It wasn't until last year that we finally
25 filed waivers. We've never done it before.

1 Q. Okay. So you had a -- you had another set of
2 budget cut -- well, a failure to fund, I guess, during
3 this legislative session, where the Legislature didn't
4 put in as much money to school finance as was called for.
5 So did that result in budget cuts, again?

6 A. Yes.

7 MS. SANDERS: Objection, form.

8 A. We had \$6 million for the biennium in budget
9 cuts, the larger portion of the cut in the first year of
10 the biennium and less in the second year.

11 BY MS. HUNTER:

12 Q. Okay. So you lost -- Los Fresnos lost
13 \$6 million in funding?

14 A. Yes, we did.

15 Q. And did you lose any grants?

16 A. Yes, I'm counting the grants in there.

17 Q. Okay. And what kind of grants were those?

18 A. We had the pre-K grant. We had the student
19 success initiative. We saw that go by the wayside. The
20 dropout recovery or pilot reduction -- or dropout
21 reduction grant, we lost that. Those are the ones that
22 come to mind.

23 Q. Okay. And what kind of cuts did you have to
24 make in order to balance your budget after this last
25 legislative session?

1 A. We had to cut out some professional
2 development. We only kept professional development that
3 kept -- sustained professional development that allowed
4 us to comply with program requirements.

5 We cut out field trips. We cut out --
6 reduced employee travel to only what would help us comply
7 with program requirements. Our recruiting trips, we
8 weren't going to be adding additional teachers, so HR
9 didn't have to go out and recruit.

10 Athletics saw reductions also. They used
11 to travel to nondistrict competition, and we completely
12 cut that out. If you wanted to do that, you have to
13 fund-raise for that type of thing.

14 And we would have seen -- we would have
15 seen even higher class sizes, had we not had the EduJobs
16 money. But the EduJobs money filled -- and the State
17 used the money to fill some of the holes that -- but we
18 were warned, "Don't create a funding cliff with the
19 federal funds that you're going to get," so --

20 Q. So the EduJobs money is federal funding?

21 A. That's federal funding.

22 Q. And is it your testimony that that helps you
23 not to have to cut as much --

24 A. That's my testimony, yes, ma'am.

25 Q. -- in terms of staffing?

1 A. That's correct.

2 Q. Okay. But that money is not guaranteed or --
3 was that a one-time grant?

4 A. Yes, the money is not there the second year of
5 the biennium. That's why I think the bulk of the cuts
6 were in year one of the biennium. We had the EduJobs.
7 But in year two, the cut from the State was -- for
8 Los Fresnos, about \$2 million. But without -- now we
9 don't have the EduJobs funds.

10 Q. Okay. So the -- you've talked a little bit
11 about various grant programs and how they've helped you
12 initiate programs and that those grants have timelines
13 and they go away.

14 What -- is there an importance to the
15 ability to sustain programs, to have sustained ability,
16 when you're planning what to do?

17 A. A lot of times, you apply for a grant, and
18 grant writers use that's the term they use a lot,
19 "sustainability." "What about sustainability? You get
20 more points for sustainability."

21 Well, that's the reason we're going off of
22 grants. If we had the funding to do some of the
23 initiatives, then we wouldn't need the grants.

24 So it is important for long term. To
25 track the success of an initiative, you need to be able

1 to do it for more than two years. You need to be able to
2 do it definitely for more than one year. So
3 sustainability is important with any initiative you put
4 in place, because you need time to measure and evaluate
5 and modify your approach and then measure and evaluate
6 again.

7 Q. With teachers, do you have any trouble
8 recruiting teachers?

9 A. Yes. Well, like other areas of the state,
10 there's a shortage of math and science teachers. There's
11 a shortage of counselors in our area. So even to
12 replace -- right now, we still have a vacancy at an
13 elementary school for a counselor. So yes, there are
14 shortages.

15 Q. What about bilingual teachers, do you have
16 difficulty there?

17 A. Not as difficult, as our area of the state
18 produces a lot -- we have programs at the universities,
19 at both UT-Pan Am and UT Brownsville, that produce
20 candidates with that certification. But even then, all
21 of the districts in our area, because of the population
22 that we serve, we're competing for them.

23 But we find that we're not only competing
24 amongst each other for the teachers, there are school --
25 other districts in the state, it's not uncommon to see a

1 billboard that says, "Alief School District now hiring
2 bilingual teachers." They come to job fairs and offer
3 them a signing bonus, or they offer them a contract on
4 the spot. So we're competing not just with --

5 Q. Not with just locals?

6 A. -- yeah, school districts in our region, but
7 throughout the state.

8 Q. Your district offers some stipends for certain
9 teachers; is that correct?

10 A. Yes, we do.

11 Q. Would you tell the Court what kind of stipends
12 you're offering?

13 A. We offer a stipend for a master's. It's a
14 little bit higher for a master's in the teaching field.
15 And for a doctorate, we offer an additional stipend. We
16 offer as much as \$4,000 stipend for math and science
17 teachers; \$1500 for bilingual, bilingual teachers. And
18 that's in effort to recruit the highest-qualified
19 teachers.

20 As a principal, I always wanted the best
21 teachers with the neediest students, and that's how I
22 built my classes and the rosters. And the same now as
23 superintendent; when you look at the big picture, you
24 need the best teachers with the neediest students.

25 Q. Okay. And is that why you made the choice to

1 to be recognized at the middle school. And it really
2 hurts when your high school, as hard as you work, you get
3 an acceptable, an acceptable rating.

4 And then when we do our annual performance
5 report to the board, we tell it all. We go to the
6 community and we show that, "Yes, we're doing well in all
7 of these areas, but the SAT performance by our students,
8 how they're performing on AP leaves a lot to be desired."
9 And we're a proud district. We take pride in our work,
10 but we have a long way to go.

11 Q. So despite the recognized rating, do you think
12 you're getting all of your kids college-ready or
13 career-ready?

14 A. No, I don't. I can tell you we're not. Those
15 ratings were achieved under TAKS. We now have the STAAR
16 and EOC. And under STAAR, we don't have the -- raw
17 scores, but EOCs for 9th grade, we went from passing
18 rates in the '90s, to 50% passing. And I'm talking where
19 we had 75% -- 75 students needing remediation, this
20 summer we had 350. And that's one -- a single grade
21 level.

22 Q. It's 9th grade?

23 A. Just 9th grade.

24 Q. So next year, it will be more grades; is that
25 correct?

1 A. Yes.

2 Q. And what do you anticipate might be the number
3 of kids that need remediation as you go on?

4 A. Well, it's going to triple, if what happened
5 in the 9th grade is any indication, and I'm talking with
6 very low standards. The State set very low standards in
7 this implementation of the EOC.

8 As they raise that -- they're going to do
9 what we did with the last state assessment. And as you
10 raise the standards and they raise the bar, we can expect
11 more students struggling. We're going to work just as
12 hard and we're going to use all the resources that we
13 have, but the numbers of students needing remediation is
14 going to be exponential.

15 The number of students needing -- that
16 cannot take electives in a class, we're concerned about
17 that, because now instead of an elective class, they're
18 going to need to be in a remedial course. And so do we
19 have enough teachers? Are our class sizes going to grow?
20 Those are concerns that we have.

21 Under the TAKS, we were spending \$450,000
22 to remediate approximately 10% of our population, because
23 students were -- I mean, we were getting 90% of our
24 students passing.

25 Well, when we go to 40 and 50% and if the

1 same -- if what we're seeing on the EOC also applies
2 to -- in January, we're going to get our scores for --
3 right now, we only have raw scores for 3rd through 8th
4 grade.

5 But we're going to see what we need -- I
6 think what we're going to see, and I'm already telling
7 our school board that what we're going to need for
8 remediation in the summer is going to triple. That 450
9 to 500,000 is not going to be enough to --

10 Q. How much did you spend this summer for
11 remediation?

12 A. We spent that same amount. We took a budget
13 amendment to the board to increase it, because we needed
14 more high school, more 9th grade teachers for the 9th
15 grade. But the other thing is, kids didn't come.

16 Out of the 350, we got 50% of them that
17 came to -- for remediation. So we have to spend some
18 resources, also, and make the parents aware. As much as
19 we had meetings and told parents, "If they don't pass,
20 we're going to need to remediate again. We're going to
21 need to remediate in the summer," they didn't come. Only
22 half of the students showed up. I guess some of them
23 said, "I'll take the class again next year."

24 So we're going to have to use more of our
25 resources to get our students where they need to be.

1 Q. As you understand the end-of-course exams
2 right now, the phase-in standard that TEA set, is that
3 equivalent to college-ready or career-ready?

4 A. I don't think that is -- that's where -- no.
5 My short answer is no. And evidenced by the fact that we
6 know that it's going to be raised. The standard was set
7 low to allow implementation, but over the course of the
8 next two years, we can anticipate -- we can fully expect
9 the State to raise that standard.

10 Q. Okay. And then I believe they show on the
11 standards of like a Level III?

12 A. Uh-huh.

13 Q. How did your kids do on the Level III?

14 A. If you don't mind, I have the information.

15 (Witness reviews document.)

16 A. On Level III, we had 17% of our students
17 passing Algebra I, and that's with a 37% passing
18 standard, mind you. That's a very low passing standard.
19 For geometry, it was 43%; we had 61% of
20 our students passing. And biology, the standard was 37%;
21 only 7% of our students passed. Now, world geo, we had
22 40 -- had a passing standard of 46%. We had 7% of our
23 students passing.

24 Writing -- reading and writing was where
25 we saw the biggest decline, and that's -- I think that's

1 true across the state. But writing had a 65% passing
2 standard; only 2% of our students were performing at
3 Level III. And reading, with 54% passing standard, only
4 8% of our students met the standard at Level III.

5 Break that down into our LEP population. I
6 got another report at the end of the week -- or earlier
7 in the week. It runs the gamut, from 21% to 87% failure
8 rates for your LEP population.

9 So what does that say about all the work
10 we've been doing and celebrating in the past with you
11 know, what our LEP students were accomplishing? And I'm
12 waiting on the breakdown now of our 9th grade by
13 economically disadvantaged, but already we can see that
14 what we were doing in the past is not going to work.

15 And we were told that by TEA, "Throw away
16 all your TAKS materials because this is a whole new
17 ballgame." So it's a whole new level of instruction
18 that --

19 BY MS. HUNTER:

20 Q. We were looking at Level III. Is that what
21 you would think at this point, from what you know, would
22 the more comparable measure of college- and career-ready?

23 A. Yes, that's what the State is referring to.
24 advanced. Formerly, that was commended. And just
25 relative to where we were in commended, we had commended

1 performance levels on some campuses of 47%, 57%.

2 That was -- you know, we thought that was
3 great. With the resources that we have and the
4 demographic that we serve, we're doing great. But it
5 is -- it is a whole new day. This a whole new test.

6 Q. What you were looking at, was that from your
7 website?

8 A. No. This is from office of academics. This
9 is a report from our department of academics. It's an
10 internal report. It's not been posted on the website
11 yet.

12 Q. Do you know what the basis of the information
13 is? Where do they get that information?

14 A. Oh. Yes, from the student reports, from the
15 individual student reports.

16 Q. Okay. And it's TEA student reports?

17 A. Yes. Yes.

18 MS. HUNTER: Let me mark that as an
19 exhibit.

20 (Salazar Deposition Exhibit 509 marked.)

21 MS. HUNTER: I'll give you a copy back
22 later.

23 THE WITNESS: Okay.

24 BY MS. HUNTER:

25 Q. Mr. Salazar, would you say that your district

1 has to teach to the test?

2 A. That term is used a lot, but the State puts
3 out what we call -- well, we have our TEKS, which is our
4 state curriculum, and that's what we follow, the Texas
5 Essential Knowledge & Skills. Those are the student
6 expectations. That's what -- the State says a student in
7 3rd grade is expected to do this, and that's great,
8 because we have parameters for what students need to
9 master at each grade level.

10 And for the state assessment, the State
11 puts out what we call blueprints. And those blueprints
12 lay out which objectives are going to be on the test and
13 which one of those objectives are going to be weighted
14 more heavily, okay?

15 And so based on those objectives, based on
16 that blueprint, we take -- we decide what learning
17 objectives need to be covered before the day of the test.
18 Failure to do that is setting kids up for failure.

19 So we develop what we call timelines or a
20 scope in sequence that will cover all of the material,
21 and not just cover it, but teach it for mastery, so that
22 kids can be successful on the state assessment, which we
23 haven't seen, but we know the blueprints say, "These are
24 the -- this is what we're going to test."

25 So Stephen Covey says we start with the

1 end of mind, and so this is the outcome we want, this is
2 the roadmap to get there.

3 And even in social gatherings, I hear,
4 "Public schools teach to the test." Well, if that's what
5 you call teach to the test, I liken that to, today's
6 Friday, the kids going to be taking to the field, playing
7 football tonight.

8 If the coach studies film and knows that
9 the opposing team is going to come in with a
10 run-and-shoot, he'd better prepare for the run-and-shoot,
11 and also expose the kids to the "I" or -- you know, so
12 that in case things change that night. But it would be
13 foolish to not prepare -- not to have a game plan for
14 what you're expecting to see that night.

15 Q. So --

16 A. It's the same thing.

17 Q. -- it's survival, basically?

18 A. Ma'am?

19 Q. It's survival?

20 A. It's survival.

21 Q. For the students and the district?

22 A. Right. Well, sure.

23 Q. Does having to follow those blueprints -- does
24 that deprive your students of any curriculum that might
25 be valuable to them?

1 provide the same experiences for our students.

2 Q. And do you have any educational reason that
3 you know of that the kids in one district should be
4 valued at a thousand dollars more per student than kids
5 in your district?

6 A. None.

7 MS. SANDERS: Objection, form.

8 A. We have one accountability system in the
9 state, one single accountability, and we're good with
10 that, because our kids need to be competing at the same
11 level.

12 But we have -- we seem to have different
13 types -- different levels of funding in different areas
14 of the state. And between Point Isabel and Iowa, the
15 14.3 -- well, between Point Isabel and Los Fresnos, the
16 14.3% mobility rate, sometimes one of my students ends up
17 over there and generates additional funding, more funding
18 than a student coming the other way. That doesn't make a
19 lick of sense. And so no, there isn't any academic
20 reason I can think of.

21 BY MS. HUNTER:

22 Q. Now, you do offer some advanced placement or
23 dual-credit courses; is that correct?

24 A. Yes, ma'am.

25 Q. How many of your students, approximately, are

1 able to participate in those programs?

2 A. I don't know.

3 Q. You don't have that figure? Okay.

4 Is it a large percentage, a small
5 percentage?

6 A. If I had to guess, I'd say a third of our
7 students.

8 Q. Okay. Do you think more of your students
9 would be able to participate in those programs if you had
10 the ability to offer courses in middle school that
11 prepared them for those programs?

12 MS. SANDERS: Objection, form.

13 A. I think we would require them to participate
14 in those programs. If we're going to be able to improve
15 our college readiness indicators, if we're going to be
16 able to expose them to the material that will be on an
17 SAT test, we need that -- those classes to begin at
18 middle school level.

19 BY MS. HUNTER:

20 Q. And at this point in time, do you have the
21 funds to do that?

22 A. No, we don't.

23 Q. I want to talk to you a little bit about
24 weights. You talked -- you mentioned them as you've gone
25 along.

1 The State does provide additional funding
2 for comp ed and LEP students; is that correct?

3 A. That's correct.

4 Q. Is that funding adequate to cover the costs of
5 the educational needs of those students?

6 A. No, it's never been adequate. In 1984, the
7 State created a system of weights, okay? Back when the
8 Legislature first put this -- and referred to it as the
9 adjusted basic allotment.

10 Recognizing that it takes more to educate
11 certain demographics than others, they put in a system of
12 weights. It was recommended at the time that -- I
13 believe it was bilingual be set at .2, and that the state
14 comp be set at .4 as a weight. Okay.

15 It was funded at half of that. And since
16 then --

17 Q. And that's back in 1984?

18 A. Back in 1984.

19 Q. Okay.

20 A. That's when it first started. That's why I
21 say it's never been funded at the level that -- it's
22 documented that what it would take is to adjust the basic
23 allotment by a weight of .2 and .4, and it's never been.

24 Q. And have there been studies since 1984 --

25 A. There have been numerous studies. In 2010,

1 26 years later, the Legislature -- a legislative
2 committee unanimously agreed, unanimously agreed, that
3 the weights needed to be adjusted; and they told a
4 special committee. They appointed a special committee to
5 look into that, and they said, "On this committee, you
6 should have superintendents."

7 The reason I'm well versed is because
8 Superintendent Danny King came back and reported at our
9 superintendent meeting what the recommendations had been
10 and what the State was considering.

11 And what they recommended, after careful
12 consideration, was that they -- was the -- I think the
13 committee was -- it was inverted, .6 -- they said state
14 comp should be at .6 and the LEP weight should be at .4,
15 okay?

16 So everyone in the subcommittee, unanimous
17 agreement that this needed to be done, and they reported
18 back to the legislative committee. And unfortunately,
19 the legislative committee, who appointed this committee,
20 didn't even consider their recommendations.

21 Q. Do you know whether those recommendations were
22 compromised, or were they what the --

23 A. It was a compromise.

24 Q. Even then, it was a compromise?

25 A. Even then, it was a compromise.

1 On the linguistic side, I talked about the
2 platforms of technology that kids need to have so that we
3 can download books.

4 When I was growing up, my teacher knew
5 that she was going to get a Gonzalo Salazar in her
6 3rd grade class. She found that out in the summer, at
7 the end of the school year. You know what she did? I
8 don't know how she funded it, but she signed us all up
9 for a Weekly Reader.

10 And in the summer, I would get a Weekly
11 Reader, and I did my darnedest to figure out those word
12 puzzles, to read about the astronaut that was on the
13 front page. And every week I looked forward to going out
14 to the mailbox and seeing what was there for me.

15 So we need to have those things available
16 for our students in the summer leading up to the next
17 grade level, you know? The technology, the platforms
18 that we could have to get on the Internet or to download
19 those books, those are important.

20 Language development labs. Strategists --
21 I haven't talked to you about that. We identified master
22 teachers in our district, and that's why we're able to
23 see success with TAKS. You find -- you find master
24 teachers in a fast-growing district, where you're hiring
25 young teachers. Those master teachers we call

1 strategists help us indoctrinate the new teachers.

2 They help break down the data, and they
3 sit alongside them during planning periods at the end of
4 the day and show how -- make sure -- make sure that, as
5 you plan lessons for the upcoming week, that you're
6 hitting on these objectives, but you want to spiral back
7 to these other objectives where your kids have not done
8 well. We need more of that.

9 And at the high school level, we need to
10 go see who's doing well, who's doing ELL well at the high
11 school level, where -- much like we did with the dropout
12 recovery, when we wanted to address that, and put
13 programs in place that help kids, pre-K through
14 12th grade.

15 Q. Okay. Now, when you talked earlier about the
16 end-of-course exams and the STAAR exams, were you meaning
17 to criticize those standards?

18 A. No. No. We -- like I said earlier, we want
19 them to be challenged. We want our kids to take
20 challenging tests. We just need the resources to get
21 them there. We know how to win in Los Fresnos. We're a
22 proud district. We will work hard.

23 We understand what's at stake, and we want
24 our kids to be college-ready. I'm not proud of having
25 only 15% of the students that do go to a two- or

1 four-year university finish. What does that -- what does
2 that say about us? We need to do a better job.

3 Q. Do your residents value education?

4 A. Absolutely. There's a sign as you come into
5 Los Fresnos, "We're a proud district and a united
6 community." As you drive through Los Fresnos, you don't
7 see a whole lot. You don't see the hidden colonias.
8 They're tucked away. And you also don't see a lot of
9 industry.

10 Schools are the pride of our community,
11 and so the expectation is constantly communicated from
12 community members to our board, and the board turns
13 around. And those are expectations that are on my
14 evaluation and, in turn, they're on principals'
15 evaluations.

16 Our teachers know what the expectation is.
17 They know that if they come into a grade level meeting,
18 then behind us on a dry-erase board it's going to be,
19 "Student Performance." Leave your inhibitions at the
20 door, because your scores are going to be put up,
21 benchmark scores are going to be behind us, and that's
22 going to be a topic on the agenda.

23 So yeah, it's important. Every
24 stakeholder knows that Los Fresnos is -- we take a lot of
25 pride.

1 Q. Do you think your students are capable of
2 college attendance?

3 A. Absolutely. Absolutely.

4 Q. Do you have the funding that's necessary to
5 prepare all your students to be college-ready or
6 career-ready?

7 A. No. No, ma'am.

8 Q. Now, do you think your recognized rating as a
9 school district is equivalent to providing an education
10 that would get your kids ready for college or career?

11 A. No. I think it speaks highly of what our
12 teachers are able to accomplish with the limited
13 resources and the time frame that we have when we do have
14 our students and the demographic that we serve.

15 Q. Now, if a "general diffusion of knowledge" is
16 defined as being college-ready or career-ready, are you
17 capable of delivering a general diffusion of knowledge to
18 all of your students?

19 A. Capable, but we need help.

20 Q. What kind of help?

21 A. Financial. We need the weights where they
22 need to be. We need to treat all students in the state
23 the same.

24 I think we need -- our students are not
25 worth any less than students in other parts of the state.

1 Q. Now, in your -- the report that you wrote for
2 this trial that's Exhibit 510, is that based on your
3 research?

4 A. It's based on the knowledge, my knowledge,
5 yes, what I've acquired over the years in my studies and
6 experience.

7 Q. In your educational experience?

8 A. That's correct.

9 Q. Your firsthand educational experience?

10 A. That's correct.

11 Q. For all the years that you've been involved in
12 education?

13 A. In education, yes.

14 Q. And the studies that you've done at University
15 of Texas at Brownsville and at UT-Pan Am; is that
16 correct?

17 A. That's correct.

18 MS. HUNTER: I pass the witness.

19 EXAMINATION

20 BY MS. BONO:

21 Q. Good morning.

22 A. Good morning.

23 Q. Mr. Salazar, we met informally off the record,
24 but my name is Marisa Bono. I'm an attorney with MALDEF,
25 and I represent a number of low-income school

1 districts -- Harlingen, San Benito, La Feria, McAllen,
2 Edgewood -- and also some parents and students who live
3 and attend school in Pasadena and Amarillo.

4 A. Good to meet you.

5 Q. Good to meet you too.

6 (Salazar Deposition Exhibit 512 marked.)

7 BY MS. BONO:

8 Q. I'm handing you what's been marked as
9 Exhibit 512. Do you recognize this exhibit as a true and
10 correct copy of the 2010-2011 AEIS report for
11 Los Fresnos?

12 A. Yes, it appears to be the '10-11 Academic
13 Excellence Indicator System report.

14 Q. And this includes reporting of the performance
15 of your students on TAKS on grades 3 through 11; is that
16 correct?

17 A. That's correct.

18 Q. And you mentioned earlier that your students'
19 performance on TAKS, especially in light of the limited
20 resources in your district, is a source of pride for your
21 district, correct?

22 A. Yes, it is.

23 Q. The TAKS doesn't test all subjects at all
24 grade levels, right?

25 A. No, it does not.

1 Q. But for the subjects that were tested, the
2 TAKS was meant to test the knowledge of the state
3 curriculum, which you referred to earlier as TAKS?

4 A. Yes, ma'am.

5 Q. Is that right?

6 A. Yes, ma'am.

7 Q. So you'd want your students to achieve TAKS
8 standards in all subjects at all grade levels; is that
9 fair?

10 A. That's the goal, yes, and to do so at an
11 exemplary level.

12 Q. So would it be appropriate to look at the sum
13 of all grades tested under the "All Tests" standards in
14 order to gauge student learning against the met standard?

15 A. Yes.

16 Q. Let's take a look at page 4 in Section I. And
17 looking at the district percentages, if we look at the --
18 what appears to be the sum of all grades tested for
19 district in 2010 and 2011, that was 83%?

20 A. I'm sorry, can you tell me what column you're
21 looking at?

22 Q. Sure. I'm looking at the TAKS met 2011
23 standard.

24 A. TAKS met 2011 standard?

25 MS. HUNTER: It's the middle.

1 MS. BONO: The middle category.

2 THE WITNESS: Yes.

3 MS. HUNTER: And we have the district
4 here.

5 THE WITNESS: Yes. Okay. We're on the
6 same page. I'm sorry.

7 MS. BONO: Good. There's a lot of -- took
8 me a while to figure these out.

9 THE WITNESS: I can't really see it.

10 MS. HUNTER: You want my glasses? Then go
11 over to "Hispanic."

12 THE WITNESS: Okay.

13 BY MS. BONO:

14 Q. We're actually looking at the district.

15 A. Okay.

16 Q. The sum of all grades tested for the district
17 in 2010 and 2011.

18 A. Correct.

19 Q. And it looks like it was 83% for both years?

20 A. Yes.

21 Q. And looking farther to the right on the same
22 page, the sum of all grades tested for LEP students in
23 2010 was 71%?

24 A. Yes.

25 Q. And 70% in 2011?

1 A. That's correct.

2 Q. So even after roughly eight years of testing,

3 about a third of your LEP students failed to meet the

4 minimum standards set by the State on all TAKS tests; is

5 that correct?

6 A. Yes.

7 Q. And it's not only your desire that all your

8 students are expected to graduate college-ready, but

9 that's the requirement for your district under state law,

10 isn't it?

11 A. That's correct.

12 Q. And you spoke about the transition to STAAR

13 earlier. Has the rigor of the testing from TAKS to STAAR

14 increased?

15 A. Yes, it has.

16 Q. How would you describe the increase?

17 A. Significant increase. There's been a

18 significant increase in the level of -- that the kids

19 have to demonstrate mastery. It's at a much higher

20 level.

21 Q. And so when you were talking earlier about the

22 State telling you your TAKS materials are no longer

23 useful, you've got to throw them out, it's not just

24 because it's a different test. It's because it's a test

25 that's substantially increased in rigor; is that fair?

1 testing standard?

2 A. I think that, to some degree, we're able to do

3 that. The best resource that we have are our teachers,

4 and when they have a better understanding of what the

5 test will look like, then we can have things like

6 teachers teaching teachers or some things we can do

7 in-house. But there's still a need for our teachers to

8 attend staff development, and we need the resources to be

9 able to do that.

10 And if we're going to have to funnel our

11 resources to remediation, and earlier I mentioned how

12 that is going to grow exponentially, that's where our

13 resources need to be. The resources left for

14 professional development are going to be quite limited.

15 Q. And are they going to be enough?

16 A. No.

17 Q. You said they're going to be unlimited. Will

18 they be enough?

19 A. No, they won't be.

20 MS. SANDERS: Objection, form. Enough

21 for?

22 BY MS. BONO:

23 Q. Enough to provide the support for your

24 teachers in order to help them transition to teaching the

25 new test?

1 A. Your entire teaching approach has to change,

2 which was what was implied. It wasn't -- yeah, we -- if

3 you continue to do things the way you've done them in the

4 past, you're not going to reach -- you're not going to

5 get the students where they need to be. You have to

6 teach at a much higher level.

7 Q. And you talked about the need for professional

8 development with your teachers, to help them learn how to

9 address some of the unique needs of the student

10 population in your district; is that right?

11 A. Yes.

12 Q. And do they also need -- do you suspect that

13 they will also need professional development in order to

14 adjust to this new testing standard?

15 A. Yes, that's -- that was true with

16 transitioning to TAKS, and that's true now. Once we

17 can -- once we have a better understanding of how things

18 are tested, then we can tailor our instruction to meet

19 that level of assessment.

20 Q. And at the current time, do you believe your

21 district has enough resources to provide your teachers

22 with the professional development that they need -- in

23 addition to the development that's needed for the needs

24 of your students, do you believe that the district can offer

25 the support your teachers need to transition to this new

1 A. Specifically, I think we're -- if we're going

2 to be limited to the degree that we may have to have a

3 teacher attend a staff development session, come back and

4 turn around that training. And the best form of staff

5 development is when they all experience the same thing.

6 come back, debrief, two people in the same room pick up

7 different things, you know, that they -- they come away

8 with different things. So it is important that we expose

9 all of the teachers to the same staff development

10 session.

11 But, again, because we're going to have to

12 funnel the funds that would go, staff development becomes

13 secondary to interventions. Kind of a conundrum because

14 those two go hand in hand.

15 Q. Sounds like you're robbing Peter to pay Paul?

16 A. Yes.

17 Q. Is it your opinion that the TAKS met standard

18 that we just discussed reflects college readiness?

19 A. No.

20 Q. Would a more accurate indicator be the

21 commended level under TAKS?

22 A. That's correct.

23 Q. Let's look farther down the page on -- still

24 on page 4. It looks like in 2010 and 2011, 16% of

25 district students reached the commended level in all

1 tests; is that right?

2 A. That's correct.

3 Q. And the percentage of LEP students in 2010
4 reaching the commended level was 11%?

5 A. That's correct.

6 Q. And it was 10% in 2011?

7 A. Yes, ma'am.

8 Q. And your lower-income kids didn't fare much
9 better in that time period. It looks like it was 13% for
10 both years?

11 A. Yes, that's right. We're stagnant.

12 Q. TEA also reports a number of indicators
13 purportedly reflecting college readiness, correct?

14 A. Correct.

15 Q. Let's turn to page 9 of Section I. I'm
16 looking at the college readiness indicators towards the
17 bottom of the page, the first category, "Advanced
18 Course/Dual-Enrollment Completion."

19 And here, it looks like TEA reports that
20 about half of the district's Hispanic students had
21 advanced course or dual-enrollment completion through
22 2010; is that correct?

23 A. That's right, 49.6.

24 Q. 49.6%?

25 A. Uh-huh.

1 Q. And only 31% of LEP students had advanced
2 coursework or dual-enrollment completion for the same
3 time period?

4 A. Yes, ma'am.

5 Q. What does the category called "AP/IB Results"
6 reflect?

7 A. That shows how many -- how many students have
8 participated in that curriculum, actually took the
9 State -- took the AP test and passed it. They look at
10 everything from participation -- how many students
11 participated and how many students fared well on the
12 test.

13 Q. So it looks like 29 -- less than 20% of your
14 Hispanic students participated in 2009 and 2010; is that
15 right?

16 A. Yes.

17 Q. And of those students, less than 12% scored at
18 or above the college-ready standard in 2009?

19 A. Yes. Those are the things I referred to
20 earlier. We need to do a better job of that.

21 Q. Let's turn the page and take a look at the
22 Texas Success Initiative, TSI.

23 A. Okay.

24 Q. About half of the district's Hispanic students
25 had advanced course or dual-enrollment completion

1 through -- excuse me. I'm repeating questions.

2 Through the year 2011, about 90% of your
3 LEP students failed to meet the minimum TSI standard for
4 language arts?

5 A. Yes.

6 Q. And approximately 70% of LEP students failed
7 to meet the standard for math?

8 A. Yes.

9 Q. Actually, I don't think that's right. I think
10 I'm looking at your lower-income students. 77% of your
11 lower-income students failed to meet the standard for
12 math?

13 MS. HUNTER: No, that's met.

14 A. That's met.

15 BY MS. BONO:

16 Q. Oh, I did have it right.

17 A. Yes.

18 MS. HUNTER: Yes.

19 MS. BONO: I apologize. I have a
20 six-month-old at home and he kept me all up night, so if
21 you'll just indulge me, I'm going to try to get through
22 these questions.

23 THE WITNESS: No problem, ma'am.

24 MS. BONO: Let me try again.

25 BY MS. BONO:

1 Q. Looking at TSI through the year 2011, about
2 90% of LEP students failed to meet the minimum TSI
3 standard for language arts; is that right?

4 A. Yes.

5 Q. And approximately 70% of LEP students failed
6 to meet the standard for math?

7 A. That's correct.

8 Q. And looking down at your SAT scores, which is
9 also an area that you expressed concern about in your
10 earlier testimony, in 2010, it looks like only 10.3% of
11 students in the district scored at or above the State's
12 criterion for the SAT/ACT in 2010?

13 A. Correct.

14 Q. Is that right?

15 A. Yes, ma'am.

16 Q. And that was down by 1% for 2009?

17 A. Yes.

18 Q. And less than 10% of Hispanic students scored
19 at or above the State's criterion in the same time
20 period?

21 A. Yes.

22 Q. And going down to the last category on
23 page 10, in 2009, only 35% of graduates in the district
24 were college-ready in both subjects?

25 A. Yes. Yes, ma'am.

Q. And only about 45% for 2010?

A. Yes, ma'am.

Q. In 2009 and 2010, less than 45% of your low-income graduates were college-ready; is that right?

A. Yes.

Q. And for those years, less than 1% of your LEP students were college-ready; is that right?

A. Yes, ma'am.

Q. And students are expected to graduate college-ready in all subjects, not just one; is that fair?

A. All subjects, that's correct.

Q. Earlier you discussed at length with Ms. Hunter the challenges that your students face because of their particular demographics and because of the high poverty and the levels of unemployment in your district.

In your opinion, are those characteristics linked with the statistics that we just discussed?

A. Yes. That's one of the factors. The other is, remember, the highly mobile population that we have. We used to get funding through Student Success Initiative. We're not going to get additional funding for that. We don't get it anymore. And all of that matters. It's all tied together.

The reason all of that matters is because

you use your resources and you bring kids in for interventions. You know, two weeks, two months down the road, they're gone, and it's a new student that you're having to provide interventions for.

It's kind of like because of the high mobility rate, it's -- you're constantly starting over with some students, and you're having to take them from where they are to where they need to be.

I'm not making excuses. I've said before that this is the -- this is one area where we really need to do better. We need to emphasize this a whole lot more.

Q. You mentioned that your mobility rate was 14%?

A. 14.3.

Q. 14.3%?

Do you know what causes the high mobility rate in your district?

A. Well, the high unemployment rate, the low socioeconomics. People move to areas where they think they can find a job. And honestly, I think they get evicted. They don't pay their rent, they've got to move to the next place, and so that hurts kids.

We have migrant students in our district, as many other districts -- as any other district does, but there's that 14.3% mobility that I think is

something -- an additional challenge we have to contend with.

Q. Earlier you mentioned, based on your studies that you've seen, that it takes approximately seven years for a student to acquire another language?

A. Yes.

Q. Has that been your experience in your years of education and in your district?

A. And in my personal experience. I was born in Mexico, came here as a Spanish-speaker. And just to put things in perspective, I didn't understand the Pledge of Allegiance until I was in middle school. As a 4th grade bilingual teacher, I couldn't relate to many of the things my students were doing.

I was teaching how-to compositions, for example, and we were -- I was listing -- it was the month of October. I brought in a pumpkin and we were going to carve a jack-o-lantern, because then I was going to ask them -- I was going to give them that experience so that then they could write a composition on how to carve a jack-o-lantern.

And so in a brown bag, I brought in all the utensils, everything they needed; a sharp knife, so I made sure they stayed back. And I said to the students, "Who knows what a -- do you know what a scoop is?"

And one of the students raised his hand and says, "I know what a scoop is."

And I said, "What is it?"

And he says -- he leans over and he does a motion as if to spit, because the Spanish word for spitting is escupir. And so here they are in 4th grade, not recent immigrants, and they're still learning the language.

Another student says to me -- you know, "Can I call my mom to bring me a change of clothes, because he pushed me and I stepped in a shark?" The Spanish word for puddle is charco, and he said, "I stepped in a shark."

We all had a little laugh about it, but we had created an environment that was risk-free and they taking -- they were beginning to take risks.

So it's been my professional experience, my personal experience, that language acquisition does come in four phases. The last one is writing, you know. So when you have to have 4th graders writing by a certain time, as a 4th grade teacher, I was -- by the month of February, they were taking the writing test.

Writing is the fourth phase of language acquisition, the most difficult one, written expression.

So all of that theory that I learned in

1 school, you know, a lot of times I questioned stuff that
2 I read, but it's true. It takes that long for a student
3 to acquire a second language.

4 Q. And you were talking earlier about the
5 importance of a student being exposed to experiences to
6 build their vocabulary. It sounds like it also applies
7 to building their vocabulary in English -- in the
8 language they're acquiring, if English is not their first
9 language, is that fair?

10 A. That's fair. That's correct.

11 Q. If you have a student -- you know, I'm
12 assuming not all of your LEP students come to you
13 4th grade, for example, and below, is that fair?

14 A. That's true, yes.

15 Q. Do you have LEP students coming to you at all
16 grade levels?

17 A. All the way through high school.

18 Q. So if it takes the student seven years to
19 acquire English, what do you do -- what can you do for a
20 student who comes in at 8th grade, for example?

21 A. Ask the State for an English test. I sit on
22 the Commissioner's Cabinet, and I asked
23 Commissioner Scott, I made him aware that, "We're hearing
24 that there's not going to be a Spanish end-of-course
25 exam, so what will we do with recent immigrant students

1 that come to us -- we're going to have recent immigrants
2 coming to us at 8th grade, 9th grade, and then they're
3 going to have to take an English end-of-course exam?"

4 And the responses that we got from his
5 staff is, "Yes, there will be no English [sic]
6 end-of-course exam test."

7 MS. HUNTER: Spanish.

8 A. I'm sorry, "There will be no Spanish version
9 of the test," which goes completely against the premise
10 of the bilingual program.

11 It says that -- Chapter 89 of the
12 education code says that the language of instruction
13 needs to be commensurate to the level of proficiency for
14 the student.

15 And so I said -- a little frustrated, I
16 said, "I don't mean to be that guy, but we're really
17 going to give -- I don't mean to argue or come across as
18 difficult, but we're really expected to give an
19 end-of-course exam to a student that I know can't pass
20 it?"

21 And the answer was, "Yes, you know.
22 You're going to have -- you're going to give them a
23 test -- you do know that you can stop the test, and you
24 do" --

25 I said, "Yes, but if we stop the test,

1 I've got a classroom full of kids, and that's going to
2 raise a red flag. And TEA is going to be in my district,
3 wanting to know why we stopped the test, why we had that
4 many -- it's going to raise a red flag."

5 "Well, there's an ELL modification of the
6 test that's coming up. You know, students are going --
7 they do get dictionaries."

8 Well, it's a -- in the STAAR at least 3rd
9 through 8th grade, you have a timed test, okay? And kids
10 get a dictionary -- remember, the example I gave of
11 sheltered English approach and how the teacher identifies
12 the words kids don't know and explains what those words
13 mean before she gets into the reading passage, so that
14 everything is more comprehensible?

15 You're going to take a reading -- you're
16 going to take, for example, a reading test. You've got a
17 Spanish-English dictionary, and you're going to have to
18 stop and look up the words you don't know to take that
19 test.

20 Well, on the electronic version of the
21 test, they're going to be able to hold a cursor over the
22 word and the definition will appear. There's going to be
23 a modified test. But what we really need is a Spanish
24 version of the EOC test so that those students who have
25 had -- because we do get some students, recent

1 immigrants, who have had an education, they need to be
2 able to demonstrate that they know -- that they've
3 mastered skills in Spanish. We do get -- we are
4 presented with different challenges because of where we
5 are geographically.

6 And I'm sure there are other areas of the
7 state that get more than just Spanish-speakers, and the
8 challenges that they -- that they have also need to be --
9 need to be looked into. But yeah, they come into -- they
10 come to us at different levels, at different grade levels
11 and with different levels of educational experience and
12 attainment.

13 BY MS. BONO:

14 Q. Do students -- do older students who are LEP
15 create any challenges for your district?

16 A. Older students who are LEP? I'm not sure I
17 understand the question. What type of --

18 Q. Well, you mentioned earlier some challenges
19 that LEP students in general create, in terms of getting
20 them English-proficient and also in getting them up to
21 the state standards?

22 A. Yes.

23 Q. Are there any additional challenges that are
24 presented by students -- by older students who are LEP?

25 A. Well, we need to provide for them the language

1 development labs. We need the ESL teachers, and there's
2 a shortage of them. Right now, we're having problems
3 filling positions for ESL teachers at the high school.

4 But for the most part, they're
5 hard-working students who want to succeed, and if they --
6 when they've come in early enough, we've even had
7 valedictorians that came to us without being able to
8 speak English, and they work hard and they can get there.

9 But I'm talking about recent immigrants
10 who have had education and then they're able to just
11 simply transfer the knowledge. That's not -- that's the
12 exception. That's not every student. That's -- that
13 would be a very exceptional student.

14 Q. You mentioned your half-day pre-K program
15 earlier. Do you provide transportation for all of the
16 participants in that?

17 A. Yes, ma'am. 96% of our students have
18 transportation -- or use transportation.

19 Q. And do you believe that transportation is
20 necessary for participation in the program?

21 A. Absolutely.

22 Q. And why is that?

23 A. Because otherwise, we might not get them
24 there. When they're low socioeconomic, economically
25 disadvantaged, parents -- I've got -- you know, I'll tell

1 you a story in a minute, but not every household has a
2 vehicle. And our attendance rates are what they are
3 because we provide -- we provide the transportation.

4 And the kids that live in rural areas,
5 some of the kids that we transport, we don't get a
6 reimbursement on because those students don't qualify.
7 So we sort of subsidize the transportation services that
8 we have in the district.

9 But, again, because we have transportation
10 and we have them there and we have them there on time.

11 Q. Is there a public transit system in
12 Los Fresnos?

13 A. We just had one. Again, we worked with United
14 Way, UTB, TSTC to establish what we call Route 45.
15 Route 45 became -- came to be because we looked at the
16 P16 initiatives that we had in place. Well, those P16
17 initiatives were great as long as the kids were in the
18 12th grade -- I'm sorry, as long as kids were in our
19 system. But after the 12th grade, kids live in very
20 rural areas. Parents don't have that transportation.

21 I was approached by our director of
22 counselors, Melissa Parker, who came to me one day and
23 said, "Sir, this child has a lot of potential" --

24 MS. SANDERS: I'm sorry, I'm going to have
25 to object. The question was just, do you need this for

1 the programs, and these long narratives are all
2 objectionable.

3 MS. BONO: You can go ahead and answer.

4 MS. HUNTER: Go ahead. Don't worry about
5 it.

6 THE WITNESS: Okay.

7 A. "Well, Dad is a custodian in our school
8 district. He rides a bike to work." How is that child
9 going to get to -- how is that child going to get to UTB
10 or TSTC in Harlingen without the transportation that was
11 offered?"

12 "Well, we can't run our buses for that."

13 Well, we were able to get stakeholders to
14 come to the table and we -- everyone contributed to the
15 initial cost of Route 45, and now we have something to
16 hang our initiatives on beyond high school.

17 BY MS. BONO:

18 Q. It sounds like you've worked hard to create
19 partnerships in your community to try to fill the gaps
20 where, perhaps, your funding has been lacking?

21 A. That's exactly what happens.

22 Q. But as per your testimony earlier, there are
23 still places where you haven't been able to fill the
24 gaps?

25 A. That's right.

1 Q. You mentioned the importance of extended-day
2 for both your low-income students and your LEP students
3 earlier?

4 A. Yes.

5 Q. What about summer school, does the district
6 offer summer school?

7 A. Yes. Mostly, we -- we focus on the required
8 remediation, the remediation required for programs.

9 Q. Is there any summer school offered that's not
10 related to remediation?

11 A. Yes.

12 Q. And who has that -- who in your district has
13 access to those programs?

14 A. Well, parents in our community were pointing
15 to the fact that we do a whole lot for our at-risk
16 students and we do a whole lot for remediation. What
17 does Los Fresnos do for the students in the summer,
18 specifically for students that need enrichment?

19 And with limited resources, we put
20 together a tech academy, a week-long tech academy that
21 our instructional technologists provide for gifted and
22 talented students who were enrolled with us in the
23 previous school year. And that -- that's what we --
24 that's what we could offer.

25 Q. How did you use your -- how did you pay for

1 the tech academy?

2 A. Local funds.

3 Q. Have any of your summer school programs,
4 either remediation or nonremediation, been affected by
5 budget cuts?

6 A. Not yet.

7 Q. You said, "Not yet." Do you...

8 A. I anticipate that with the higher number of
9 students, as evidenced by EOC failure rates, that we're
10 going to need additional funding.

11 I mentioned earlier that the amount that
12 we'll need will triple, if not quadruple, when EOC is
13 implemented, fully implemented.

14 And if we have standards being raised, the
15 way we're told they're going to be raised, we're going to
16 continue to see these type of failure rates until we can
17 get our professional development and our level of
18 instruction to the level. It's a matter of time, but
19 we're going to see that need become greater.

20 Q. Los Fresnos is a rural area?

21 A. Uh-huh.

22 Q. Are there kids in your district who have ever
23 been -- who have never been outside of the district?

24 A. Yes. There are kids that, although they live
25 a few miles from the district, for example, they've never

1 been to South Padre Island. And I've witnessed a teacher
2 in a classroom do her very best on a Saturday academy to
3 get kids to understand. She was covering the coastline.
4 She had a map of the state of Texas --

5 MS. SANDERS: I'm sorry, same objection.

6 MS. HUNTER: Go ahead.

7 A. She had a map of the state of Texas, and she
8 was asking kids -- she was covering shoreline and
9 coastline and got blank stares, and -- she had just blank
10 stares. And when she said, "Well, how many of you have
11 ever been to South Padre Island," they hadn't. Only two
12 students -- out of the 22 kids in that classroom, only
13 two students had been to South Padre Island.

14 Those are the experiences I was meant -- I
15 was saying earlier we need to create. And what was one
16 of the things I cut out? Field trips.

17 BY MS. BONO:

18 Q. You used the term "generational poverty"
19 earlier. Can you define that term?

20 A. Yes. Dr. Ruby Payne talks about generational
21 poverty being the second generation of your family who
22 lives in poverty. Sometimes we don't understand white
23 people's priorities. It seems to the average person,
24 "Well, they got their priorities all wrong. They live in
25 a trailer, but they're buying a plasma TV."

1 Dr. Payne explains that as, sometimes
2 people will do that because for the moment that they're
3 watching that flat-screen TV, that's what takes the pain
4 away. That's what makes them forget about the conditions
5 that they live in. Or if they drive a fancy car, but
6 they live in extreme poverty, for the moment that they're
7 out, away from home, that's -- that's how I could define
8 "generational poverty" and some of the characteristics of
9 generational poverty.

10 MS. BONO: That's all the questions I have
11 for you today, Mr. Salazar. I thank you for your time.
12 I pass the witness.

13 THE WITNESS: Thank you, ma'am. Thank
14 you.

15 MS. SANDERS: Should we check -- it's
16 about five minutes after 12:00.

17 MS. HUNTER: You want to take a lunch
18 break?

19 MS. SANDERS: Yeah, I think we should.

20 (Recess taken, 12:04 p.m. to 1:20 p.m.)

21 EXAMINATION

22 BY MS. SANDERS:

23 Q. Good afternoon, Mr. Salazar.

24 A. Good afternoon, ma'am.

25 Q. We have not met before today, correct?

1 A. That's correct.

2 Q. Could you tell me what you did to prepare for
3 your deposition?

4 A. Sure. Reviewed my AEIS report. I --

5 Q. I'm sorry, let's make sure we all understand.
6 AEIS, Academic --

7 A. I'm sorry.

8 Q. It's okay. I just want the record to be
9 clear.

10 A. I've got to keep that in mind. Okay. No
11 acronyms.

12 Q. No, I'm sure we'll both fall into it, but if
13 you would, spell it out.

14 A. The Academic Excellence Indicator System,
15 reviewed that. Went over documents that were submitted
16 as part of discovery, prepared my thoughts, wrote down a
17 summary.

18 Q. Is that summary what you've already produced
19 and introduced into evidence?

20 A. Yes, ma'am. Yes, ma'am.

21 Q. Okay. Go ahead.

22 A. And that pretty much captures everything.

23 Q. Okay. What did you bring with you today?
24 These are exhibits here, and then this is -- I see you
25 have some notes before you?

NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT § IN THE DISTRICT COURT
 FAIRNESS COALITION, §
 et al., §

Plaintiffs, §

v. §

EDGEWOOD INDEPENDENT §
 SCHOOL DISTRICT, et al., § TRAVIS COUNTY, TEXAS
 (consolidated) §

Plaintiffs, §

v. §

ROBERT SCOTT, in his §
 official capacity as §
 Commissioner of Education, §
 et al. §

Defendants. § 200th JUDICIAL DISTRICT

VIDEOTAPED ORAL DEPOSITION OF ROBERT SCOTT

VOLUME 1

Austin, Texas

Thursday, June 28, 2012

JOB NO. 51184

Reported by:

MICHAEL E. MILLER, FAPR, RDR, CRR, CSR

DEPOSITION EXHIBITS
ROBERT SCOTT
June 28, 2012

| NUMBER | DESCRIPTION | MARKED |
|------------|---|--------|
| Exhibit 14 | Notice of Deposition | 13 |
| Exhibit 15 | FY 2012-2013 Legislative Appropriations Request | 14 |
| Exhibit 16 | FY 2012-2013, 3.B. Rider Revisions and Additions Request | 52 |
| Exhibit 17 | 2012-13 General Appropriations Act | 52 |
| Exhibit 18 | TASA Midwinter Conference transcript of speech by Commissioner of Education Robert Scott, January 31, 2012 D-000002792 - D-000002799 | 77 |
| Exhibit 19 | TEA Academic Excellence Indicator System, 2009-09 | 174 |
| Exhibit 20 | TEA Academic Excellence Indicator System, 2010-11 | 174 |
| Exhibit 21 | NCES/IES/NAEP Average Reading Scores | 243 |
| Exhibit 22 | Average Scale Scores for Reading, Grade 4 | 245 |
| Exhibit 23 | 4/1/10 TEA Organizational Chart | 255 |
| Exhibit 24 | 6/19/12 TEA Organizational Chart | 257 |
| Exhibit 25 | Evaluation of Charter Schools, 2009-10 Executive Summary TAMU_ERC_10-003 | 281 |
| Exhibit 26 | TEA Commissioner's Rules Review 2010 | 296 |

PROCEEDINGS

(June 28, 2012 at 9:40 a.m.)

THE VIDEOGRAPHER: This is the videotaped deposition of Robert Scott in the matter of Texas Taxpayers and Student Fairness Coalition vs. Robert Scott in the District Court, Travis County, Texas, No. D-1-GN-11-003130. The deposition is being held at the office of the Attorney General at 300 West 15th Street on June 28th, 2012. The time is approximately 9:40.

And if counsel will please introduce themselves for the record, the court reporter will swear in the witness.

MR. THOMPSON: My name is David Thompson. I'm representing the Fort Bend ISD, et al., plaintiffs in this matter.

MS. HUNTER: I'm Toni Hunter, and I'm with Rick Gray, representing the Texas Taxpayers and Student Fairness Coalition.

MR. HINOJOSA: David Hinojosa with MALDEF representing plaintiffs.

MR. TURNER: John Turner of Haynes and Boone for the Calhoun County plaintiffs.

MR. GRAY: Rick Gray with the Texas Taxpayers and Student Fairness Association.

MR. DIAMOND: Chris Diamond with the intervenors; Joyce Coleman, et al., and a client representative, Kent Grusendorf.

MS. DAHLBERG: Shelley Dahlberg for the state defendants and the witness here today.

ROBERT SCOTT,
having been duly sworn, testified as follows:

EXAMINATION

BY MR. THOMPSON:

Q. Commissioner Scott, I think you and I know each other, but, for the record, I'm David Thompson. Good to have you here with us today.

First of all, have you ever had your deposition taken before?

A. Yes.

Q. How many times?

A. One other time.

Q. Okay. Which case?

A. That was a personnel matter before the agency.

Q. Okay. Have you ever testified in a court in any legal proceeding?

A. Yes.

Q. How many times?

A. Once.

Q. What case?

A. It was a divorce proceeding.

Q. Okay. And you are a licensed attorney in the state of Texas, correct?

A. I am.

Q. All right. And you understand your testimony here today is under oath, as if you were testifying in court, and, in fact, potentially could be used in court?

A. Absolutely.

Q. Okay. Just again for the record, I'm here representing today the Fort Bend ISD group of districts, which are plaintiffs in this litigation. Do you know -- have you reviewed our petition?

A. No, I have not.

Q. Okay. In preparing for your deposition here today, other than with the attorneys representing you, did you discuss your testimony or your preparation for your testimony today with anyone?

A. No.

Q. Okay. Did anyone attempt to influence your testimony or tell you what to say on any issues that might come up today?

A. No.

Q. Okay. Commissioner, how long have you been Commissioner of Education?

A. This time, five years. I was interim

1 commissioner before that twice.

2 Q. Okay. Why don't you briefly give us a -- just
3 a quick overview of your public service career?

4 A. I started working in the capitol '89-90, as a
5 Senate messenger.

6 Q. State capitol or U.S.?

7 A. Texas capitol.

8 Q. All right.

9 A. Worked for the Senate jurisprudence committee
10 under Chairman Gene Green, worked for him in his State
11 Senate office. He was elected to Congress in 1992. I
12 worked with him on Capitol Hill. Worked with him in the
13 Senate for two years, Capitol Hill, as his legislative
14 director for two years.

15 Was offered a position at the Texas
16 Education Agency in 1994. Worked at the agency in
17 various capacities from 1994 until the end of 2000. Left
18 the agency for private sector for a whole week before
19 Governor Perry's office called and asked me to serve as
20 his education policy advisor.

21 I did that for two and a half years, and
22 then was sent over, in 2003, as interim commissioner of
23 the agency. Served as chief deputy commissioner from
24 2004 to 2007, and was appointed permanently in 2007 as
25 commissioner.

1 faced at the agency and having to downsize and reduce and
2 reorganize the agency presented its challenges. I would
3 have to say that. And, you know, implementing a new
4 assessment and accountability system always has its
5 challenges.

6 Q. Is there anything, during your service as
7 commissioner, that you wish you could do over?

8 A. That I wish I could do over? I can't think of
9 anything, off the top of my head.

10 Q. Okay. I may come back to that at the end of
11 our conversation --

12 A. Okay.

13 Q. -- see where we are.

14 Commissioner, prior to the session in
15 2011, were you involved in the development and submission
16 of the legislative appropriations request for fiscal
17 years 2012-2013?

18 A. Yes, I was.

19 Q. Okay. I'm sorry, before we do that -- I've
20 got ahead of myself.

21 I'd like to introduce, just as our first
22 exhibit with this deposition -- it will be numbered as
23 Exhibit 14 overall -- simply the notice of intent to take
24 oral deposition.

25 MR. THOMPSON: Ms. Dahlberg, I think

1 Q. Very good. Thank you for your service.

2 Commissioner, you're not an educator by
3 formal training, are you?

4 A. No, sir, I'm not.

5 Q. Okay. But is it fair to say that most of your
6 public service career has been involved with education,
7 particularly public education, in some aspects?

8 A. The vast majority of my public service.

9 Q. Okay. What would you say, as we sit here
10 today, during your term as commissioner -- what are you
11 proudest of?

12 A. Proudest of, I think, the development of the
13 new accountability system, and working on that --

14 Q. Okay.

15 A. -- legislation and the development of a
16 system, as I've said, publicly, that will -- that will
17 look at what does a good career and tech program look
18 like; what does a good fine arts program look like; what
19 happens on every single other day in the life of a
20 school, besides testing day, as I've said many times
21 publicly, and things like Project Share, that help
22 illustrate that.

23 Q. Okay. What would you say are your biggest
24 challenges that you've faced as commissioner?

25 A. Certainly the budget situation that we have

1 you've a got a copy of it.

2 (Scott Deposition Exhibit 14 marked.)

3 MR. THOMPSON: I apologize, Commissioner.
4 BY MR. THOMPSON:

5 Q. Were you involved in the development of the
6 legislative appropriations request?

7 A. Yes, I was.

8 Q. Okay. And for the record, I am going to
9 shorten this and refer to it, just for our court
10 reporter, as the "LAR." Is that convenient with you?

11 A. That is consistent with our agency practice
12 and how we refer to it.

13 Q. All right. Okay. And, in fact, the LAR for
14 2012-2013, there are basically two parts to it, right?

15 A. I'm not familiar with what --

16 Q. Well, let me break it down.

17 There's a narrative overview that is sort
18 of a statement --

19 A. There's essentially a manager's statement.

20 Q. There's a manager's statement at the very
21 front. It's actually the administrator's statement --

22 A. Right.

23 Q. -- that is signed by you. And then there's
24 the actual appropriations language with suggested riders
25 that's also submitted?

1 prepare students for the next grade level and remediate
2 them, using these funds.

3 Q. Okay. Obviously, if students can't be
4 successful at one grade and progress to the next grade,
5 they're not going to eventually be college- and
6 career-ready, are they?

7 MS. DAHLBERG: Objection, form.

8 A. Certainly. And that begs the question of
9 where -- at what year you're looking at it and whether or
10 not we had implemented the college readiness track yet.
11 Certainly, this was -- this was done, initially, prior to
12 the implementation of the college readiness standards.

13 BY MR. THOMPSON:

14 Q. Okay. I would like you to now look at the
15 second paragraph from the bottom of this administrator's
16 statement here on page 3, again, page 3 of 5, the
17 paragraph that begins, "I am also requesting."

18 A. "I am also requesting full funding for two
19 critical programs that support student progress from
20 prekindergarten through grade 12.

21 "Research confirms the importance of early
22 education, particularly for young children who are
23 learning English as a second language and childhood --
24 and children from economically disadvantaged backgrounds.

25 "The prekindergarten early start grant

1 program not only provides much needed funding to ensure
2 the quality of prekindergarten programs, but
3 also leverages state dollars to serve more eligible
4 children across the state by requiring districts to
5 partner with other providers of early childhood
6 education, including Head Start and licensed child care
7 providers.

8 "Flexible funding that can be used to
9 intervene with struggling students is a high priority for
10 districts aiming to meet the State's higher education
11 goals over the next biennium. The SSI rider retains
12 funding that can be used to provide accelerated
13 instructions to students who are unlikely to achieve
14 passing standards on new, more rigorous state
15 assessments."

16 Q. Okay. So a couple of things in there. Let's
17 break it down.

18 The first part of this paragraph talks
19 about prekindergarten programs for students who are
20 learning English as a second language and students from
21 economically disadvantaged backgrounds, right?

22 A. That's correct.

23 Q. Commissioner, I think -- I think you've had a
24 fairly long involvement and have championed programs for
25 pre-K. Would you agree with that?

1 A. I have been an advocate for improving the
2 efficiency and quality of pre-K, not just pre-K fund in
3 the public schools, but all of the funds that are
4 expended by the State for early childhood education,
5 whether it's Head Start, subsidized child care or public
6 school pre-K.

7 Q. Tell us about some of the programs that you
8 particularly have championed and that TEA administers
9 relating to pre-K programs, particularly full-day pre-K
10 programs.

11 A. Well, we had the pre-K expansion grant, which
12 was a grant that districts received. Initially, it was
13 funded, I believe, at \$200 million; and it was allocated
14 to districts based on need, and the agency funded until
15 it ran out of money.

16 When I got to the agency and was examining
17 pre-K and looking at the \$3 billion-plus we spend a year
18 on subsidized child care, Head Start and pre-K, I wanted
19 to try to leverage those three pots of money to make them
20 more efficient in working together, so that public
21 schools, private sector daycares, Head Start centers
22 would have access to the same type of pre-K standards or
23 information, teacher training and materials. So we
24 created the early start initiative to achieve that goal.

25 Q. Okay. You state here that research confirms

1 the importance of early education. Do you -- were you
2 thinking of any particular research when you made that
3 statement, or are you aware of specific research on that
4 issue?

5 A. There are a number of studies on early
6 childhood education. The one that comes to mind,
7 probably the most cited, is the Perry HighScope study.
8 There has been other studies done by Susan Landry at the
9 State's center for early childhood education, so I --
10 those were probably on my mind when I made that
11 statement.

12 Q. I think there was also a study done at
13 Texas A&M University about the importance of pre-K. Are
14 you familiar with that study?

15 A. I'm vaguely, but not familiar --

16 Q. Okay.

17 A. -- to the point I could discuss it.

18 Q. Do you think that early childhood education is
19 particularly important to students who are learning
20 English as a second language and students from
21 economically disadvantaged backgrounds, as we raise
22 standards?

23 A. What we know is that if a student comes to our
24 schools early on as an English language learner, we have
25 a better chance of getting them caught up and

1 transitioned to English than if a student comes in in
2 high school. So certainly early childhood education can
3 play an important role, and the statute specifically
4 allows admission for students who are English language
5 learners.

6 Q. Okay. A student who starts first grade behind
7 struggles to catch up, doesn't he or she?

8 MS. DAHLBERG: Objection, form.

9 A. That's a broad brush. You know, certainly --

10 BY MR. THOMPSON:

11 Q. Statistically speaking?

12 A. Statistically speaking, perhaps, but, I mean,
13 this is one of the things I've learned in public
14 education is, painting with a broad brush in a system as
15 large and diverse as ours is hard to do.

16 Q. Commissioner, would you agree that, as we sit
17 here today on June 28th, 2012, and think about the school
18 year we just finished, the 2011-2012 year -- would you
19 agree that 60% of all of our students enrolled in Texas
20 public schools are now economically disadvantaged?

21 A. I can't speak to the 60% number as fact, but
22 I've traditionally used the 55 to 60 range. I don't know
23 the exact number, but I believe that is in the ballpark.

24 Q. Okay. Are you aware the percentage has been
25 increasing?

1 A. Yes, sir.

2 Q. Would it surprise you if it has now topped
3 60%?

4 A. It would not shock me, but I've usually used
5 the term "55 to 60%."

6 Q. Okay. Have you looked -- have you done even
7 an initial analysis of the passing rates of high-school
8 students on what I'm going to call the new test, again,
9 or the new system, the end-of-course tests? Have you
10 looked at the passing rates for students based on whether
11 the students are economically disadvantaged or
12 noneconomically disadvantaged?

13 A. I have looked at aggregated scores only.

14 Q. Okay. Would it surprise you to know that
15 noneconomically disadvantaged students, on this first
16 administration, a majority of those students actually met
17 the fully phased-in passing standard, not the initial
18 transitional passing standard?

19 MS. DAHLBERG: Objection, form.

20 THE WITNESS: Could you clarify and repeat
21 that? Yes...

22 BY MR. THOMPSON:

23 Q. Let's go test by test.

24 A. Okay.

25 Q. Would it surprise you, on the Algebra I

1 end-of-course exam, that a majority of noneconomically
2 disadvantaged students who took that exam met the fully
3 phased-in passing standard, not just the transitional or
4 initial passing standard?

5 MS. DAHLBERG: Objection, form.

6 A. I would say that it would actually surprise me
7 a little bit, because that standard is very high.

8 BY MR. THOMPSON:

9 Q. Would it surprise you if a majority of
10 noneconomically disadvantaged students met the fully
11 phased-in passing standard for English?

12 MS. DAHLBERG: Objection, form.

13 BY MR. THOMPSON:

14 Q. English I.

15 A. I would have to look at the data to make a --
16 to draw a conclusion from that.

17 Q. Okay.

18 A. I don't have it in front of me.

19 Q. Would it surprise you to know that the
20 differences in passing standards between economically
21 disadvantaged and noneconomically disadvantaged students
22 in all tests was between 25 and 30 percentage points?

23 MS. DAHLBERG: Objection, form.

24 A. That would not surprise me at the beginning of
25 the implementation of a new assessment system, because as

1 you set the standard for implementation, you expect that
2 passing standard gap to decrease over time, but it is
3 generally apparent in year one of implementation.

4 BY MR. THOMPSON:

5 Q. Would it surprise you -- Commissioner, you're
6 familiar with the National Assessment of Education
7 Progress, are you not?

8 A. I am.

9 Q. And for the record, we're going to refer to
10 this as -- and it's by its initials, N-A-E-P, or "NAEP."
11 Are you comfortable with that?

12 A. Absolutely.

13 Q. All right. Have you looked at the new NAEP
14 reports? I think the agency has put out several releases
15 lately around the new NAEP reports.

16 A. Absolutely. And I -- yeah, I look at each
17 NAEP release, but I don't have them in front of me today.

18 Q. Okay. And the NAEP reports that are now
19 coming out are actually from the 2011 administration,
20 correct?

21 A. I believe that's correct, yeah.

22 Q. Right. Because NAEP is only administered
23 every other year, right?

24 A. Right. And it's a sample. It's not -- it's a
25 statistical sampling of students.

1 programs for English language students?

2 A. Uh-huh.

3 Q. And Mr. Thompson asked you a question, and you
4 were unable to answer whether or not children who come
5 out of poorer districts are more likely to have the need
6 for the prekindergarten programs.

7 A. I'm not sure that's exactly the way he asked
8 the question.

9 Q. Okay. Well, let me ask you that question --

10 A. Okay.

11 Q. -- that way.

12 A. Okay.

13 Q. Do you think that the kids who come -- who are
14 in poor districts with a high percentage of ESL students
15 are going to have the need for the prekindergarten
16 programs more than students in rich districts?

17 A. Well, I mean, by the nature --

18 MS. DAHLBERG: Objection, form.

19 A. -- of poverty itself. I mean, it's the
20 poverty status of the student that drives eligibility or
21 whether they're an English language learner.

22 So if you're saying that if there are high
23 numbers of those students, would you see a higher need?

24 Yes. If there are higher concentrations, then certainly
25 the eligibility would be higher for that type of program

1 in that type of district.

2 BY MS. HUNTER:

3 Q. All right. So it would be true, then, that
4 the failure to fully fund that program, to fund a
5 full-day kindergarten program, would impact those
6 districts that are -- have a greater concentration of
7 poor kids --

8 A. I was speaking to the state pre-K program
9 under the Foundation School Program. The full-day pre-K
10 program, I'm not aware of any studies that show the
11 absolute effectiveness of full day versus pre-K. I'd
12 have to do that research.

13 Q. I'm not -- I don't -- I'm not asking you about
14 effectiveness. I'm asking you: If the funding is not
15 given for the full-day kindergarten, doesn't that impact
16 a district that has a higher concentration of ESL
17 students or poor kids more than it does a district that
18 doesn't have a high concentration?

19 MS. DAHLBERG: Objection, form.

20 A. Okay. This is going to take a second to
21 clarify. When the grant was originally created, as I
22 said earlier, it was funded based on an eligibility
23 criteria, and the agency funded until it ran out of
24 money.

25 One of the things I changed was I changed

1 the eligibility criteria to do exactly that, to look at
2 districts that had high numbers of economically
3 disadvantaged students.

4 So using that grant criteria, if you take
5 away that funding, you might disproportionately impact
6 because I changed the criteria. The old criteria was, if
7 you were on the list last year, you were on the list this
8 year. And so that created an arbitrary use of those
9 funds in some -- well, it -- it created a use of those
10 funds that was static, so that everybody who was on the
11 list the year before got funded the year after.

12 We changed that to change up the
13 eligibility criteria based on demographic change, and I
14 think that's what --

15 BY MS. HUNTER:

16 Q. Yeah. Well, that's fine. You changed that
17 formula based on demographics because you thought that
18 was a better way to meet the needs of the kids of Texas,
19 right?

20 A. We thought it was a better way to be fair in
21 the distribution of limited state resources and not just
22 provide the same funds to the same districts year after
23 year after year.

24 For instance, El Paso had grown and had
25 not been traditionally part of that, but expressed a

1 desire to be part of that program. So as we changed that
2 up and gave criteria award points for districts that had
3 capacity and need, they may have been funded. I don't
4 remember if they were exactly funded, but I remember that
5 was one of the examples.

6 Q. Yeah, well, that's easy, then.

7 My question is: Under the new eligibility
8 requirements, isn't it true that the failure to fund the
9 pre-K programs impacts the districts who have more
10 Comp Ed kids, more ESL kids, greater than it does those
11 districts that don't?

12 MS. DAHLBERG: Objection, form.

13 BY MS. HUNTER:

14 Q. They have the greater need, right, and they're
15 not the ones receiving the funds?

16 MS. DAHLBERG: Objection, form.

17 A. Because you're talking about a limited state
18 pool, you're talking about a limited number of school
19 districts. There may be districts out there that look
20 just like them that never got the money.

21 BY MS. HUNTER:

22 Q. I don't care. I'm asking a very simple
23 question.

24 If your criteria gave money to those
25 districts that had a higher concentration of ESL and a

1 Q. But what about the actual delivery, the amount
2 of preparation that's delivered to the district, do you
3 think it's as good or --

4 A. I would say that there probably is not as much
5 in-person professional development provided for by the
6 agency through the regional service centers. That was
7 the traditional delivery model, and we are moving towards
8 a delivery model that's far more online.

9 Q. Okay. And how much are you aware -- or have
10 you investigated how much it will cost local districts to
11 do the remedial summer schools?

12 A. That would depend on how many kids failed in
13 any particular school district.

14 Q. I just asked you: Have you been investigating
15 that at all?

16 A. I've been looking at the numbers, but I
17 haven't been able to quantify a dollar amount.

18 Q. Okay. And is there a particular funding
19 available to school districts to provide those services?

20 A. Not that I'm aware of. I mean, they charge --
21 they can charge fees or tuition for summer school
22 programs.

23 MS. HUNTER: I'll pass the witness.

24 (Discussion off the record.)

25 ///

EXAMINATION

1 BY MR. HINOJOSA:

2 Q. Good afternoon, Commissioner Scott. My name
3 is David Hinojosa. I think we met earlier, and probably
4 previous --

5 A. Yes, sir.

6 Q. -- to this.

7 I represent a number of school districts,
8 low-wealth school districts -- Edgewood, McAllen,
9 San Benito, La Feria, Harlingen -- as well as parents of
10 low-income and English language learner students; and
11 those parents, their children are attending and/or live
12 in Pasadena and Amarillo school districts. And I'm going
13 to have some questions here for you.

14 Would you agree that a healthy democracy
15 depends on an educated citizenry?

16 MS. DAHLBERG: Objection, form.

17 A. Would I agree that a healthy democracy depends
18 on an educated citizenry? Are you speaking to the Texas
19 constitution, or just in general?

20 BY MR. HINOJOSA:

21 Q. No, I'm just speaking -- and these
22 questions are --

23 A. I think -- I think the goal --

24 MR. HINOJOSA: Hold on, because I think

1 we're speaking over.

2 THE WITNESS: Oh, I'm sorry.

3 MR. HINOJOSA: And if you can just, you
4 know, answer the questions in your capacity as, you know,
5 Commissioner of Education.

6 BY MR. HINOJOSA:

7 Q. So my question is: Would you agree, just
8 simply, with the notion that a healthy democracy depends
9 on educated citizens?

10 MS. DAHLBERG: Objection, form.

11 A. Absolutely that is an essential component.
12 Let me clarify. Much of what -- when people say, "What
13 do we want of our public schools," you ask different
14 people, you get different answers.

15 If you ask the business community, they
16 will say -- there's an IBM study years ago -- that, "We
17 want people who can communicate, work as a team and
18 problem-solve."

19 If you ask parents, they want broad
20 educational opportunities, like you're talking about, but
21 they also want wonderful social and career and tech and
22 fine arts programs.

23 If you went back to the framers of the
24 constitution, who wrote, "The general diffusion of
25 knowledge is essential to the preservation of liberty,"

1 it might be more closely to what you're saying there, but
2 they were looking for people who could debate the issues
3 of the day, serve on a jury and vote an informed ballot.

4 So as we move through Texas history, I
5 think the answer to your question changes a bit over
6 time, depending on the times that we're in and who you
7 ask.

8 BY MR. HINOJOSA:

9 Q. But you would agree that a healthy democracy
10 depends on educated citizens, correct?

11 A. I believe that education is a cornerstone of a
12 healthy society.

13 Q. And you mentioned, you know, what your
14 understanding is of what the business interest is. Are
15 you saying that businesses -- that it's your impression
16 that businesses would not agree that a healthy democracy
17 depends on educated citizens?

18 A. I can't speak to what they would say in
19 response to that question.

20 Q. Okay.

21 A. I was simply reporting my understanding of a
22 study that business -- what business leaders wanted.

23 Q. Okay. Would you agree that education operates
24 as one of the greatest equalizers in our democracy?

25 MS. DAHLBERG: Objection, form.

1 MR. HINOJOSA: Yes or no.

2 A. Yes.

3 BY MR. HINOJOSA:

4 Q. And would you agree that equipping persons,
5 such as those born into poverty or underprivileged
6 segments of our society, with a quality education would
7 at least allow them the opportunity to compete --

8 MS. DAHLBERG: Objection --

9 BY MR. HINOJOSA:

10 Q. -- on a level playing field with persons born
11 into wealth and privilege?

12 MS. DAHLBERG: Objection, form.

13 A. The point you make about opportunity is very
14 well taken. It is the opportunity, not the guarantee of
15 success.

16 BY MR. HINOJOSA:

17 Q. Exactly. But you would agree with that
18 statement that I just said?

19 A. I would agree that education provides
20 opportunity for children.

21 Q. Okay. But my question is -- and, you know, I
22 understand that sometimes you'll rephrase questions.

23 A. Okay.

24 Q. But if you can answer yes or no, then we can
25 just fly through this and hopefully get through. And

1 certainly if there's some clarification that you need,
2 I'll be more than happy to clarify it.

3 A. Okay.

4 Q. But if you can answer yes or no -- because it
5 sounds like you could have answered that question yes or
6 no.

7 So the question now is: Do you believe
8 that equipping persons, such as those born into poverty
9 or underprivileged segments of our society, with a
10 quality education allows them the opportunity to compete
11 on a level playing field with persons born into wealth
12 and privilege?

13 MS. DAHLBERG: Objection, form.

14 A. It is a fact-based question. And as a person
15 who was born into poverty myself, it took determination
16 on the part of my parents and myself for me to achieve my
17 goals; and I use that as an example when I talk to people
18 about personal success.

19 I say if you go to the University of Texas
20 and take these courses and drop out and start a computer
21 company, you're not necessarily going to become Michael
22 De'l. There are a whole bunch of other factors, you
23 know, personal drive, circumstances beyond your control,
24 lots of different things that -- but you're right. I
25 mean, I will agree with you that it can provide a student

1 an opportunity. As I said --

2 BY MR. HINOJOSA:

3 Q. Yes, and that's all I'm asking --

4 A. Okay.

5 Q. -- is whether or not it can provide students
6 an opportunity.

7 A. Yes. I just wanted to make sure that I'm not
8 saying it guarantees. But it can.

9 Q. Okay. And would you agree that being educated
10 soundly is important for all students, so that they can
11 understand, for example, laws, no matter where they may
12 be employed, such as in the workplace, describing civil
13 rights laws, minimum wage an hour laws, unemployment
14 benefits?

15 A. Could you clarify?

16 MS. DAHLBERG: Objection, form.

17 A. When you say that they should be informed
18 about laws -- I mean, certainly the ability to read and
19 understand general instructions and laws, I think so.
20 But do they need to be educated to the extent that all of
21 us are educated in the law? I'm not -- I don't think
22 you're saying that.

23 BY MR. HINOJOSA:

24 Q. No, no. And my question is simply that, you
25 know, as far as when it comes to the quality of education

1 and what some of the outcomes might be, one of those
2 important outcomes is that students are educated so they
3 can understand, for example, laws in the workplace?

4 A. I think understanding laws in the workplace
5 and understanding standards of behavior and conduct, not
6 just in the law, but in societal expectations, I think
7 that's part of the role of our public schools too.

8 Q. What do you mean by that?

9 A. Just the -- you know, the general golden rule,
10 do unto others as you would have them do unto you, and in
11 school, treating people with respect and courtesy, not
12 discriminating against somebody.

13 Those are the things, I think, that we try
14 to, you know, impart in our students as part, not just of
15 the curriculum, but the school environment and community.

16 Q. Okay. You're aware that -- I think you might
17 have spoken a little bit with David, Mr. Thompson,
18 earlier about the changes in the student demographics
19 over the years in the state of Texas, correct?

20 A. Uh-huh.

21 Q. Yes?

22 A. Yes.

23 Q. And that includes a growth in the number and
24 percentages of economically disadvantaged and ELL
25 students in the state of Texas, correct?

1 A. Yes.

2 Q. And you believe that those changes in
3 demographics bring challenges to school districts in the
4 state of Texas, correct?

5 MS. DAHLBERG: Objection, form.

6 A. Yes.

7 BY MR. HINOJOSA:

8 Q. And I'm going to show you -- are you aware now
9 that a majority, and I just mean in -- that more Hispanic
10 students are graduating in the state of Texas than white
11 students?

12 MS. DAHLBERG: Objection, form.

13 A. I -- what data are you pointing to? Is that a
14 TEA document?

15 BY MR. HINOJOSA:

16 Q. I'm just asking if you're generally familiar
17 with that fact.

18 A. Generally familiar, yeah.

19 Q. I'm going to show you -- I'll mark this as
20 Exhibit 19.

21 (Scott Deposition Exhibit 19 marked.)

22 (Scott Deposition Exhibit 20 marked.)

23 BY MR. HINOJOSA:

24 Q. So I want to go to the demographic section of
25 Exhibit 19 first, and that's Section II, page 1, in the

1 right-hand corner?

2 A. Section II -- okay. Section II, page 1. Got
3 it.

4 Q. All right. And let me just get clear. You
5 recognize Exhibit 19 as a true copy of the 2008-2009
6 state performance report --

7 A. Yes.

8 Q. -- under TEA's academic excellence indicators?

9 A. Looks like our AEIS report.

10 Q. All right. And looking at Section II, page 1,
11 what is the percentage of economically disadvantaged
12 students that's listed there?

13 A. 56.7%.

14 Q. And there's 16.9% of LEP students; is that
15 correct?

16 A. That's correct.

17 Q. And during my questioning today, I might
18 interchange ELL and LEP, "ELL" meaning English language
19 learner. You understand that those are interchangeable
20 terms?

21 A. I understand that they might be used in a
22 similar context, yes.

23 Q. Okay. And the total students, up at the top
24 where, is 4,728,204; is that correct?

25 A. That's correct.

1 Q. And then if we go down by ethnicity, where it
2 talks about the total graduates class of 2008, it shows
3 37.5% of that class was Hispanic; is that correct?

4 A. That's the number -- yeah, 37.5%.

5 Q. And whites is 44.8%, correct?

6 A. That's correct.

7 Q. Now, if we can go to Exhibit 20. And
8 Exhibit 20, you recognize this as a true copy of the
9 2010-2011 state profile report under the AEIS?

10 A. Uh-huh.

11 Q. Yes?

12 A. Yes. Sorry.

13 Q. Sorry.

14 And for economically disadvantaged,
15 there's 59.2%, correct?

16 A. That's correct.

17 Q. And then there is also -- if you look at total
18 students, there's now a growth from 2008-2009 to this
19 2010-2011 school year of up to 4,912,385, correct?

20 A. Yes.

21 Q. Do you know whether or not we presently have
22 over 5 million students in the public schools or that
23 we're projected to enroll that many?

24 A. We should be right around that number right
25 now.

1 Q. Okay.

2 A. Given the enrollment growth, we should be.

3 Q. Are you aware of any decline in the growth
4 rate in Texas public schools?

5 A. You know, for years, we were growing about
6 90,000. I think it's tapered off to about 80,000.

7 Q. Okay. And then looking at Exhibit 20 again,
8 the LEP students it shows at 16.9%; is that correct?

9 A. That's correct.

10 Q. And then when we look down at the total
11 graduates -- well, let me ask you a question.

12 At the at-risk students, it shows 46.3%.
13 With almost one-half of the students identified as
14 at-risk, does that give you any concerns, as the
15 Commissioner of the State of Texas?

16 MS. DAHLBERG: Objection, form.

17 A. Well, I mean, certainly if you're having 50%
18 of your at-risk students graduate, that's something we
19 want to be looking at and constantly working towards
20 improving.

21 BY MR. HINOJOSA:

22 Q. And what has the agency done specifically to
23 address those concerns?

24 MS. DAHLBERG: Objection, form.

25 A. Well, beginning in 2002, we embarked on the

1 creation of the Texas High School project, which was
2 designed to focus on high-school design with the purpose
3 of improving our graduation rates among all of our
4 students. We created the STEM academies, the early
5 college high schools, different design models and
6 intervention strategies for high schools, especially.

7 More recently, there's been a focus on
8 middle school; and some of the allowable uses of that
9 \$17 million and the \$20 million I said earlier are to
10 focus on the middle grades.

11 So certainly as we look through -- if you
12 look at the amount of money we're spending and you look
13 at where you can -- where we think you can do the most
14 bang for the buck, you're spending it in early childhood
15 education. If you look at where you're spending it where
16 you think the most need, the crisis is, you're spending
17 it in your high schools and making sure that you graduate
18 your students.

19 I mean, that was basically a conclusion
20 that we came to in 2002. You know, where you need the
21 most, if you want to improve your graduation rates, you
22 should be looking at middle and high school. If you want
23 to improve long-term outcomes, early childhood and early
24 grades.

25 BY MR. HINOJOSA:

1 Q. And as far as the total graduates in the class
2 of 2010, here it shows now that Hispanics are at 42.6%
3 compared to the approximate 38% in 2008-2009; is that
4 correct?

5 A. I'm sorry, which one are you looking at?
6 42.6% Anglo, is that what you're --

7 Q. No. 42.6% of Hispanics now.

8 A. Hispanics. Yes, I see that.

9 Q. For the class of 2010 graduates, correct?

10 A. That's correct.

11 Q. We'll just set those to the side for a little
12 bit.

13 A. We're done with these for a while?

14 Q. I'm sorry?

15 A. You said we're done with these for a bit?

16 Q. Yeah, for a bit.

17 The TAKS and STAAR testing requirements
18 apply to all students in Texas public schools in which
19 the grades that those exams are given --

20 A. Yeah.

21 Q. -- correct?

22 A. All students, unless they're exempted under
23 specific instances for special education purposes.

24 Q. Okay. And/or possibly English language
25 learner students?

1 A. And/or English language learner. There's
2 also -- I don't know that it's an exemption from testing
3 but there's accommodations in the accountability system
4 for recently unschooled immigrants. There were some
5 situations in San Antonio where you had students coming
6 in from Africa that didn't speak language, and I think
7 the Legislature wanted to give some accommodation there.

8 Q. All right. And -- but other than that, these
9 standards, these testing standards, apply to all
10 students, regardless of whether they live in a
11 property-rich or property-poor school district, correct?

12 A. The goal of the curriculum standards is that
13 it should apply to all students and the curriculum and
14 assessment standards should apply to all students; and
15 that one standard is set, not different standards for
16 different types of kids.

17 Q. All right. And I just want to get something
18 clear on the record. So with the exception of those
19 categories of students that you mentioned earlier, the
20 TAKS and STAAR testing requirements apply to all
21 students, regardless of whether they live in a
22 property-rich or property-poor district, correct?

23 A. Correct.

24 Q. And the testing standards apply to all
25 students, with the exceptions that you noted, regardless

1 of how much revenue their district is able to generate
2 from state, local and federal, correct?

3 A. That's correct.

4 Q. And the -- is it your understanding that the
5 use of TAKS and STAAR exams measure the extent to which a
6 student has learned and is able to apply the defined
7 knowledge and skills at each tested grade level?

8 A. I'm sorry, could you rephrase that?

9 Q. Sure.

10 Does TEA use standardized tests, namely
11 the TAKS and STAAR exams, to measure the extent to which
12 a student has learned and is able to apply the defined
13 knowledge and skills at each tested grade level?

14 A. What we use it for is the establishment of the
15 accountability system and the rating of school districts.

16 I mean, the purpose of the test is to give
17 a barometer or an indicator of how well the student has
18 absorbed the curriculum material. It is one indicator
19 that we use, yes.

20 Q. Okay. So it does measure the extent to which
21 a student has learned and is able to apply the knowledge
22 and skills at a given grade level?

23 A. I would say that that's true, but there are
24 also those that believe that some students just are
25 inherently bad test-takers and it might not be a true

1 reflection. So I think that it might be a judgment call
2 in some cases.

3 Q. Has TEA done any research in order to
4 determine who are these bad test-takers?

5 A. Not to my knowledge.

6 Q. Has TEA suggested any exemptions for bad
7 test-takers from the STAAR or TAKS test?

8 A. Not necessarily bad test-takers. What we've
9 done in the creation of Senate Bill 1557 is we created,
10 potentially, a pilot for 20 school districts to look
11 beyond what our current accountability system looks like
12 and maybe look to a sampling-type technique, where not
13 every student would be tested, but we might do a
14 sampling, like the National Assessment of Education
15 Progress.

16 So we're already starting to look for
17 what's coming next; not that this system is going to be
18 static forever, but that there may be some better way to
19 do this. So that's what we're doing.

20 Q. All right. Would you agree that increasing
21 the rigor of statewide testing will place higher demands
22 on professional and curriculum development for teachers,
23 support staff and administrators?

24 MS. DAHLBERG: Objection, form.

25 A. As I said, in the future, I think that as the

1 standards increase, yes, there will be more demands on
2 the -- on the districts, and there will be -- and the
3 system will adjust to it.

4 BY MR. HINOJOSA:

5 Q. But hasn't the system already begun to change
6 with the implementation of STAAR this year?

7 A. That's why it's so important to understand the
8 phase-in of the system. When we set the initial
9 standard, we talk about meeting the students where they
10 are, and not setting a demoralizing standard.

11 If you saw what happened very recently in
12 Florida, you see where they set a standard that was far
13 higher than the system would bear, and the outrage at a
14 20% passing rate caused there to be an emergency meeting
15 of the state board of education in the middle of the
16 night and they changed their cut score. Horrible
17 situation.

18 What I try to do is meet the kids where
19 they are today, and then gradually raise that over time,
20 so that you're not hitting the system with an unrealistic
21 expectation in year one.

22 Q. But do you have any evidence that increasing
23 the rigor of statewide testing today -- well, let me back
24 up and ask you this question first.

25 How would you compare the phase-in

1 requirements under STAAR to the TAKS test at the same
2 grade level?

3 A. This is how we did it under TAKS. We had --

4 Q. I mean, is it more -- what I'm trying to get
5 at is, and I don't mean to interrupt, but I'm just trying
6 to get at, you know, the TAKS passing standard is set
7 here (indicating)?

8 A. (Nods head.)

9 Q. Now, all of a sudden, we have STAAR, the
10 implementation -- the phase-in?

11 A. Uh-huh.

12 Q. Does that sit above or below the current --
13 the old TAKS standard?

14 A. There was two different ways to look at it. I
15 mean, what we did with the TAKS standard -- in both
16 cases, we had a panel recommendation. And when I say
17 "panel recommendation," I mean a group of teachers,
18 educators, experts in testing that -- they gave us a
19 recommendation on where they thought the kids should
20 ultimately be.

21 And the wonderful thing about teachers is
22 that when you get them together, they have such high
23 aspirational goals for our kids, they usually set a
24 pretty high bar.

25 And so for TAKS, we saw that, and we said,

1 "Okay. We're going to go one standard error below, two
2 standard error below or three standard error."

3 Ultimately, the state board and we determined that two
4 standard error below is where we started. So we phased
5 in two standard error of measurements; the next year, one
6 standard error; and then finally phased into the panel
7 recommendation.

8 Under STAAR, we're starting off with the
9 preliminary scores that we set. The panel recommendation
10 is four years out. This panel -- this initial
11 recommendation stays in effect for two years, and then it
12 ratchets it up midpoint, and then it takes in effect --
13 stays in effect for two years, and then we reach the
14 panel recommendation. So it's a little longer for the
15 implementation of STAAR than it was for TAKS.

16 Q. Yeah, and, I'm sorry, I think that you're not
17 understanding my question.

18 So in the 2011 school year, you didn't
19 have STAAR, right?

20 A. Right.

21 Q. You just had TAKS. So, for example, you have
22 3rd-grade reading --

23 A. Uh-huh.

24 Q. -- TAKS.

25 Now, you have 3rd-grade reading STAAR.

1 A. Oh, okay. I think I see where you're going.
 2 Q. So how does the standard for the 2012 school
 3 year compare -- regardless if it's a phase-in standard,
 4 how does that compare to last year's TAKS standard?

5 A. Not knowable yet because we haven't set the
 6 passing standard. However, when we set the passing
 7 standard for STAAR, we will publish TAKS equivalency
 8 scores. So you will be able to see here's what you made
 9 on the STAAR, here's what you would have made on the
 10 TAKS, at the same level.

11 So we are already anticipating that and
 12 working on publishing that. But since we haven't set the
 13 passing standard, we can't do that in 3 through 8 yet.
 14 We can't do that in end-of-course because we don't have
 15 anything to compare it to because it's brand-new.

16 Q. Okay. All right. So -- all right. We'll go
 17 on.

18 Let me get back to this question: Is it
 19 your testimony that the implementation of the phase-in
 20 standards under STAAR has not placed any higher demands
 21 on professional and curriculum development for teachers,
 22 support staff and administrators?

23 A. I can't speak to every school district in the
 24 state of Texas.

25 MS. DAHLBERG: Objection, form.

1 A. I think -- you have to remember we passed the
 2 bill for implementation of end-of-course exams, I think
 3 over five years ago, so we've had five years of knowledge
 4 and preparation out in school districts that this was
 5 coming.

6 Many school districts used their stimulus
 7 funds from last time, because it was an allowable use, to
 8 prepare their teachers for this. They've used, in the
 9 past, the Texas High School Project, the Student Success
 10 Initiative.

11 All of those grant programs that we've had
 12 in the past, they have used those to help prepare them
 13 for the implementation of end-of-course exams. There may
 14 be districts out there that didn't.

15 BY MR. HINOJOSA.

16 Q. So which districts are you aware of that --
 17 where the new STAAR testing has not placed higher demands
 18 on professional and curriculum development for teachers,
 19 support staff and administrators?

20 A. I can't speak to the realities in any
 21 district. I think you would need to talk to the
 22 superintendents and ask them that type of question.

23 Q. Okay. Would you agree that increasing the
 24 rigor of statewide testing will require an expansion of
 25 remedial and accelerated programs for students that fail

1 to meet the standards?

2 MS. DAHLBERG: Objection, form.

3 A. This is an expansion of the question that I
 4 answered this morning. As I said, the Student Success
 5 Initiative envisions interventions for students in grades
 6 5 and 8, and that those funds appropriated were intended
 7 for that purpose.

8 The Legislature has yet to have a
 9 discussion about the impact of the new end-of-course
 10 exams in high school, and I believe the Legislature
 11 should have that discussion next session.

12 BY MR. HINOJOSA:

13 Q. But do you believe, as commissioner, that the
 14 increase of statewide testing will require an expansion
 15 of remedial and accelerated programs? If you don't have
 16 an opinion on it, then you can tell me you don't have an
 17 opinion, but if you can answer that yes or no?

18 A. I have an opinion, in that the point of
 19 setting the passing standard is to minimize that; and so
 20 as you phase it in over time, you want to minimize the
 21 disruption and allow the system to transition there.

22 So that's why you -- that's the whole
 23 point of phasing it in, is to minimize that impact that
 24 you're talking about.

25 So, yes, there could be, theoretically,

1 but what we try to do is minimize that impact.

2 Q. I think you mentioned before, in one of the
 3 articles, that you expected that the percentages of
 4 students meeting even the phase-in requirements would be
 5 quite low. Is that -- does that sound accurate?

6 A. I expected the performance of students meeting
 7 the minimum -- the first-year requirement, or the final
 8 requirement?

9 Q. The first-year requirement.

10 A. You know, I expected them -- you know, based
 11 on previous experience in the implementation of TAKS and
 12 TAAS, you know, I expected, you know, the same type of
 13 headlines I saw back in the '90s and early 2000s, where
 14 the headline said about one in five students failed this
 15 test or that test, or in one year, one in six or one in
 16 ten. I expected about the same type of transition.

17 Q. So are you aware that 87% of the students
 18 across the state of Texas met the phase-in requirement
 19 for the biology test?

20 A. I believe that's correct.

21 MS. DAHLBERG: Objection, form.

22 BY MR. HINOJOSA:

23 Q. Did that shock you?

24 A. It was a bit higher than I thought it would
 25 be.

1 Q. A bit higher?

2 A. Yes.

3 Q. What did you expect it to be?

4 A. I expected pass -- as I said, I expected the

5 passing rates to be somewhere in the one in five, one in

6 four ratio for the first round of implementations, based

7 on previous history and based on the field test data that

8 we had.

9 What we didn't have is we had unmotivated

10 data, and so we had to guess, or essentially make a

11 guess, at what we anticipated the change would be from an

12 unmotivated test that the student really didn't have to

13 care to a test that had high stakes that they had to care

14 about.

15 Q. Are you aware of any TAKS test in the high

16 schools where 87% of all students are meeting that

17 standard?

18 A. I can tell you that the results that we're

19 seeing on the --

20 Q. Just if you're aware of that.

21 A. Well, I can just -- I can tell you that -- you

22 asked about TAKS.

23 Q. Yeah. I'm asking about, you know, the current

24 TAKS, because TAKS is still in place today, correct?

25 A. Yes.

1 Q. Are you aware of any 9th-grade test under TAKS

2 for last year where students -- where 87% of the students

3 passed the test?

4 A. Off the top of my head, no. But what I know

5 is that when you implemented TAKS, you saw beginning

6 scores that were lower, and then every year, they

7 steadily went up. Same thing under TAAS. Same thing --

8 you know, that is the expectation that you have when you

9 create a new assessment system.

10 Q. So is it your testimony that you would expect

11 the phase-in passage rates to be similar as the phase-in

12 passage rates under TAKS -- the phase-in passage rates

13 for STAAR as the phase-in passage rates under TAKS?

14 A. Yes. If you look at the data, you will see

15 comparable scores in the beginning years of TAKS and

16 TAAS, maybe not exactly, but in the same ballpark.

17 Q. All right.

18 A. And then those scores improve over time.

19 THE VIDEOGRAPHER: You have five minutes

20 on the tape.

21 MR. HINOJOSA: Okay. We can maybe take a

22 break. Do you want to take a break?

23 THE WITNESS: If you want to go five more

24 minutes, that would be -- if you want to just run out the

25 tape, and we can go from there.

1 MR. HINOJOSA: All right.

2 THE WITNESS: Give him a chance to...

3 MS. DAHLBERG: Reload?

4 THE WITNESS: Yeah.

5 BY MR. HINOJOSA:

6 Q. Would you agree, yes or no, if you can --

7 would you agree that high-quality preschool programs for

8 ELL and low-income students can help better prepare those

9 students to master the state performance standards and

10 achieve their full potential?

11 MS. DAHLBERG: Objection, form.

12 A. I would ask you to clarify one word, "master."

13 I think "achieve" might be a word. "Mastery" is a term

14 of art, and I don't know how you're using that.

15 BY MR. HINOJOSA:

16 Q. So under this -- under the state standards,

17 are you aware whether or not a proficiency level would

18 indicate mastery?

19 A. What we do is -- I'm sorry, are you finished

20 with the question?

21 Q. No. That's it.

22 A. Okay. What we do is, we set different scores.

23 One is the cut score for passing; and then you have

24 commended performance, which is a higher -- you know,

25 which would, I think, be more closely associated with the

1 term you used, "master."

2 So I don't know that those terms are

3 interchangeable, but I would point you to that data to

4 look at for the higher level of performance, that

5 commended performance.

6 One of the components of the new

7 accountability system is in order to become recognized or

8 exemplary, our state's highest ratings, you will have to

9 have at least 15% of your students commended for

10 recognized, and 25% of your students commended for

11 exemplary.

12 Q. Would you agree that the -- that high-quality

13 preschool programs can help reduce the achievement gap

14 between ELL students and non-ELL students?

15 MS. DAHLBERG: Objection, form.

16 A. I would say on the whole, I agree with your

17 point that it can.

18 BY MR. HINOJOSA:

19 Q. All right.

20 A. Again, it's a broad-brush question. It

21 depends on the quality. One of my -- one of the reasons

22 I was so passionate about early childhood education is

23 that I would go into a pre-K environment and I would see

24 a Head Start center that was a cinderblock wall and there

25 was no artwork, and so -- or they had a sand and water

1 table and that was all they had for the students to do,
2 or they were setting the students in front of a
3 television. And that was not, to me, a quality pre-K
4 program.

5 Quality pre-K programs need to ensure that
6 when the student leaves and goes to kindergarten, they at
7 least know their letters, their numbers, their colors,
8 their shapes and how to write their own name.

9 I've spent ten years of my life
10 passionately working to make sure that that minimum
11 standard, along with our state pre-K standards, are known
12 and adopted by anybody receiving public funds for pre-K.

13 Q. Are you aware of any study by the State
14 gauging the quality of preschool programs in Texas public
15 schools?

16 A. You referenced the Texas A&M study, I'm not
17 familiar with. I referenced the longtime -- the
18 longitudinal study, Perry HighScope, that's fairly well
19 known. There has been research done by the Texas
20 State -- the Texas Center for Early Childhood Education,
21 Dr. Susan Landry. I don't have those research studies on
22 me, but you could easily find them.

23 MR. HINOJOSA: We can go off now.

24 THE VIDEOGRAPHER: We'll end Tape 3.
25 Going to go off at 2:21.

1 (Recess taken, 2:21 p.m. to 2:35 p.m.)

2 THE VIDEOGRAPHER: We're back on the
3 record. This is the beginning of Tape 4. The time is
4 2:35.

5 THE REPORTER: We're on.

6 MR. HINOJOSA: We're ready. All right.
7 Back on the record.

8 BY MR. HINOJOSA:

9 Q. Do you believe, as Commissioner of Education,
10 that all children can succeed in school, if given quality
11 opportunities to learn?

12 MS. DAHLBERG: Objection, form.

13 A. Yes, I believe that with the proper parent
14 support, proper community expectations, but a lot of that
15 function is dependent on the culture on a campus and in a
16 community.

17 BY MR. HINOJOSA:

18 Q. All right. And do you believe that if
19 provided sound, effective educational programs, that ELL
20 students can perform on par with non-ELL students?

21 MS. DAHLBERG: Objection, form.

22 A. Yes, I believe the data will bear that out.

23 BY MR. HINOJOSA:

24 Q. And do you believe that if provided sound,
25 effective educational programs, that low-income students

1 can perform on par with non-low-income students?

2 MS. DAHLBERG: Objection, form.

3 A. Yes.

4 BY MR. HINOJOSA:

5 Q. And you're aware of achievement gaps that,
6 although having narrowed in Texas, still persist,
7 correct?

8 A. At the beginning of an assessment program --

9 MS. DAHLBERG: Objection, form.

10 A. -- like STAAR or TAKS, that achievement gap
11 exists and then narrows over time.

12 BY MR. HINOJOSA:

13 Q. All right. And are you aware that the
14 achievement gaps among groups such as English language
15 learners and non-English language learners and
16 economically disadvantaged and noneconomically
17 disadvantaged students still reach the double-digit
18 numbers for TAKS testing?

19 MS. DAHLBERG: Objection, form.

20 A. As I said, in the beginning of the system,
21 you'll see those numbers, and then as the system matures,
22 those numbers will shrink.

23 BY MR. HINOJOSA:

24 Q. But my question is if you are aware --

25 A. Yes, I'm aware.

1 Q. -- whether or not the gaps between the student
2 groups that I've mentioned, ELL and non-ELL and
3 economically disadvantaged and noneconomically
4 disadvantaged, still register in the double digits.

5 MS. DAHLBERG: Objection, form.

6 A. Anecdotally, I believe that may be the case,
7 but I don't have data in front of me right now to verify
8 that.

9 BY MR. HINOJOSA:

10 Q. All right. Is that not something that you've
11 paid attention to, as commissioner?

12 A. We always look at -- no, we always look at the
13 achievement gap. But, as I said, that number changes
14 over time.

15 Q. And part of the reason for that number
16 changing over time is also because many teachers end up
17 teaching to the test; isn't that correct?

18 A. I think that's a broad-brush statement. You
19 know, what I've been trying to repeat over and over is,
20 it's about teaching the curriculum, not teaching to the
21 test.

22 Q. But my question is: Are you aware of the
23 achievement gap closing on TAKS testing in the state of
24 Texas being, in part, a product of teachers teaching to
25 the test?

A. No, I think that's a gross generalization about the impact of instructional practice versus the campuses that I think are going overboard on teaching to the test and drill.

Q. Do you have any evidence that the gap on TAKS testing in the state of Texas has narrowed, but is not a product of teachers teaching to the test?

A. I don't have any evidence to that. I've never seen a study.

Q. Do you believe that the achievement gaps between student groups based on race, socioeconomic status and proficiency in English language can be narrowed with the implementation of sound, effective educational programs?

MS. DAHLBERG: Objection, form.

A. Yes.

BY MR. HINOJOSA:

Q. Texas has a statute regulating class size for grades K through 4; is that correct?

A. That's correct.

Q. And that the ratio or the class size cap is 22 to 1?

A. That's correct.

Q. And are you generally familiar with the research on class size?

A. Generally familiar, yes.

Q. And you're familiar with the research on class size showing that reduced class size can have positive effects on reducing the achievement gap between low-income and at-risk students?

MS. DAHLBERG: Objection, form.

A. Again, that's -- I mean, there are studies out there on class size. There are also studies on class size in countries like Singapore that have larger class sizes where the student performance exceeds our performance with smaller class sizes.

So I think the research -- there's research on both sides of that issue.

BY MR. HINOJOSA:

Q. Have you, as commissioner, recommended that class sizes be increased in the state of Texas?

A. No, I have not recommended that class sizes be increased.

Q. Are you familiar with the testimony trying to increase the cap during the 2011 session?

MS. DAHLBERG: Objection, form.

A. Am I aware of the legislation trying to -- I believe there was a bill or an amendment out there that would have allowed districts to increase, but I'm not familiar with exactly which one.

BY MR. HINOJOSA:

Q. Do you know whether or not the Texas Education Agency supported legislation -- and I'm not saying necessarily lobbied for.

A. Yeah, we would be prohibited from lobbying.

Q. Yeah. But testified favorably for a statute that would increase class size in Texas?

A. We always testify neutrally on bills and are there as resource witnesses only.

Q. Are you aware of any testimony that the Texas Education Agency provided that reflected class size should be increased in the state of Texas?

A. Not that I'm aware of.

Q. Are you familiar with the increase in class size waivers in the state of Texas?

A. Yes, I am.

Q. Do you know how much they rose during this past year, when the budgets were cut?

MS. DAHLBERG: Objection, form.

A. Are you speaking in terms of districts or classrooms?

BY MR. HINOJOSA:

Q. Districts and classrooms.

MS. DAHLBERG: Objection, form.

A. They rose significantly.

BY MR. HINOJOSA:

Q. Did that draw any concern for you, as commissioner of the state of Texas?

A. It raised some concern that we had received such a number, but, to me, it was local districts responding to their budgets and according to their ability as school -- locally elected school boards.

Q. Do you believe that the State of Texas should provide unequal educational opportunities, depending on the ZIP code that a student lives in?

A. No.

MS. DAHLBERG: Objection, form.

BY MR. HINOJOSA:

Q. And you stated that you live here in Austin; is that correct?

A. I do.

Q. And I think I read somewhere that you said that you were able to kind of pick and choose where you wanted to live, and one of the considerations that you took into account was the quality of the schools where you were going to move to; is that correct?

A. Absolutely. In hunting for a house, I would absolutely look at the quality of the schools.

Q. And you recognize, also, that other people who might not be as well set as you are financially don't

1 necessarily have those options, correct?

2 A. I certainly understand that not everybody is
3 as well off as everybody else and might not have that
4 same opportunity, yes.

5 Q. And that's a concern of yours as to -- in
6 other words, you know, you have a concern about that
7 because those student -- those parents might not be able
8 to access the schools that they really want, as opposed
9 to the ones that they end up with, correct?

10 A. As I have said in the past publicly, I believe
11 the kids on the east side of Austin deserve the same
12 opportunities as the kids on the west side of Austin.

13 Q. And when it comes to wealth levels in school
14 districts, you're aware that there's a disparity in the
15 revenue that districts are able to reap, both from local
16 revenue and state revenue, correct?

17 MS. DAHLBERG: Objection, form.

18 A. There is a difference in the amount of funds
19 that districts may receive, based on the formulas and
20 based on their tax effort locally. There is also a
21 significant difference on how those districts then choose
22 to allocate those resources within their district, but
23 that's their choice.

24 BY MR. HINOJOSA:

25 Q. And do you -- are you a proponent for

1 providing more revenue for students based on the ZIP code
2 that they live in?

3 MS. DAHLBERG: Objection, form.

4 A. I don't think that that is a criteria that we
5 would establish in the formulas, nor do I know that it
6 would make sense in terms of a formula structure, so no.

7 BY MR. HINOJOSA:

8 Q. Well, you're aware that property values might
9 differ from ZIP code to ZIP code, correct?

10 A. That's correct.

11 Q. And even in the Panhandle, you can have
12 neighboring districts where property values shoot through
13 the roof per WADA versus a neighboring district, correct?

14 A. That's correct.

15 Q. And those kind of examples even exist in
16 Central Texas, West Texas, East Texas and South Texas,
17 correct?

18 A. That's correct.

19 Q. And as a result of these disparities, those
20 wealthier districts are able to access more dollars just
21 from the formulas, correct?

22 MS. DAHLBERG: Objection, form.

23 A. When you say "wealthier districts," you mean
24 wealthier in terms of the income of the people in the
25 neighborhood, or in terms of property value?

1 BY MR. HINOJOSA:

2 Q. Thank you for the clarification. It's the
3 wealth of the property.

4 A. The wealth of the property. And that is why
5 the Legislature, in the past, has created a guaranteed
6 yield system, so that districts with lower property value
7 can generate more than -- at some similar amount to those
8 who have higher wealth, and hence the creation of Robin
9 Hood that cut off a certain top wealth of student and
10 then reapportioned that.

11 Q. Is there any educational reason that you can
12 think of why Edgewood, for example, in San Antonio, would
13 access less than -- or at least \$800 less per child than
14 Alamo Heights through the state formulas?

15 A. You know, I don't know that this is an
16 educational reason, but I think at the end of the
17 Edgewood III case, Tom Luce had an argument that you
18 wanted some districts that were your leaders that you
19 could see an aspirational goal, and that everybody could
20 strive to achieve that at some point.

21 So that was a philosophy that you wanted
22 some people, you know, to achieve, so that we all had a
23 goal to reach.

24 Q. Do you agree with that philosophy, that
25 some --

1 A. I understand where he was coming from --

2 Q. Hold on.

3 A. -- but it's not --
4 I'm sorry.

5 Q. Do you agree with that philosophy, that some
6 districts should be presented with more resources than
7 other districts?

8 A. I can't say I agree with that philosophy.

9 MS. DAHLBERG: Objection, form.

10 A. What I would say is that the world we live in
11 is filled with inequities and we have to understand that
12 and try to overcome them.

13 BY MR. HINOJOSA:

14 Q. And isn't the opportunities that present
15 themselves through education one of the potential
16 equalizers?

17 A. Sure. And you have to remember, though,
18 you're spending \$50 billion, more or less, in large part,
19 many of the big policy mechanisms to overcome the effects
20 of poverty in a trillion-dollar economy.

21 Q. And do you think that those inequities are
22 being overcome currently in the state of Texas?

23 A. In many cases, yes. In some cases -- I can't
24 answer all, but I look at overall performance trends and
25 are we where we need to be? No. But are we making

1 progress? Yes.

2 Q. Have you looked at the difference in
3 achievement levels between property-rich and
4 property-poor school districts in the state of Texas?

5 A. I have not looked at --

6 MS. DAHLBERG: Objection, form.

7 A. -- data recently, no.

8 BY MR. HINOJOSA:

9 Q. Well, when was the last time, if you recall,
10 that you looked at data?

11 A. During the legislative sessions on school
12 finance, I was looking at it pretty regularly. And then
13 during any given legislation where there was legislation
14 related to that, I would look at it.

15 Q. And what do you recall seeing in the
16 achievement levels between property-rich and
17 property-poor school districts?

18 A. I don't recall seeing anything that was
19 absolutely conclusive in every case. Yes, in some cases,
20 the trends were the wealthier districts had kids that
21 come to school prepared and that the not-so-wealthy
22 districts had kids that were, in essence, economically
23 disadvantaged, higher levels of English language learners
24 and a more challenging population.

25 But I also see instances where I see

1 phenomenal results in those districts with challenging
2 populations.

3 Q. In property-poor school districts?

4 A. Yes.

5 Q. And how would you define "phenomenal results"?

6 A. Well, I also look at -- okay. I'll give you
7 an example of a charter school. IDEA Prep Academy in
8 Donna, Texas is a wonderful charter school where you
9 have -- I went down there and toured it, and I saw some
10 phenomenal results. I saw kids who were children of
11 migrant farm workers all with full-ride scholarships to
12 college.

13 Q. How many students was that? Three?

14 A. There was three that I spoke with, but I know
15 that they have a very high, if not 100%, college
16 acceptance rate.

17 Q. And college acceptance rate would include
18 community college; is that correct?

19 A. That's true for my kids' high school as well.

20 Q. And are you aware of any concerns about
21 charter schools, such as IDEA, creaming --

22 A. I've heard that, but I --

23 Q. Hold on real quick, because I want to make
24 sure I get this on the record.

25 A. I'm sorry.

1 Q. Are you aware of concerns about charter
2 schools, such as IDEA, creaming the better-performing
3 students from the base school district or surrounding
4 school districts?

5 A. I am aware of those type of allegations, yes.

6 Q. And has TEA done anything to investigate
7 whether or not that's true?

8 A. We regularly monitor all public schools,
9 including charter schools.

10 Q. So is your answer yes, that you have
11 investigated whether or not --

12 A. If there is a -- I'm sorry. Go ahead.

13 Q. -- whether or not IDEA has creamed
14 better-performing students from other school districts?

15 A. I'm not aware of any specific complaint of
16 that nature.

17 Q. So you have not investigated?

18 A. I'm not aware of -- they may have. I'm just
19 not aware of it.

20 Q. All right. Fair.

21 Do you agree that the State of Texas
22 should value certain students more than other students
23 because of where they live and where they have to attend
24 school?

25 MS. DAHLBERG: Objection, form.

1 A. I don't know quite how to even respond to that
2 question. I mean, it's, I think, offensive to the very
3 nature of what we expect our public schools to do. No,
4 we shouldn't value students more than others. We want to
5 value all students.

6 BY MR. HINOJOSA:

7 Q. Do you think that providing, for example,
8 Alamo Heights, just through the formulas -- well, let me
9 back up.

10 You understand that the formulas are
11 created by the State, correct?

12 A. They're created by the Legislature, yes.

13 Q. And the Legislature can tweak them however
14 they care to, of course, you know, subject to being
15 challenged in courts --

16 A. Certainly.

17 Q. -- correct?

18 A. Yes.

19 Q. And so -- and the state -- the Texas
20 Legislature has chosen to rely on property values, to a
21 large extent, in funding school districts, correct?

22 A. That is the basis of our -- we don't have an
23 income tax, if that's what you mean.

24 Q. And the -- looking at Alamo Heights and
25 Edgewood, as an example -- you're familiar with those

1 districts, correct?

2 A. I am.

3 Q. And wouldn't you agree that by providing in
4 the formulas that the Legislature itself has created, the
5 State is sending a message that the -- that the students
6 in Alamo Heights, because they receive more resources per
7 WADA, per penny of tax effort, than Edgewood, that the
8 State values those students more?

9 MS. DAHLBERG: Objection, form.

10 A. I can't speak -- I can't speak to the intent
11 of the Legislature in drafting formulas. As you know,
12 that is a very complex and complicated process.

13 BY MR. HINOJOSA:

14 Q. Well, do you think that the children of
15 Alamo Heights should be provided more educational
16 resources than the students of Edgewood at the same given
17 tax rate?

18 MS. DAHLBERG: Objection, form.

19 A. Again --

20 BY MR. HINOJOSA:

21 Q. Yes or no?

22 A. Again, a lot of it is a function of local
23 priorities. How they set their budget is a local issue.

24 Q. Well, you know, it's set because of the Texas
25 Legislature and the school finance formulas, correct?

1 A. Uh-huh. Yes.

2 Q. Are you aware that the Edgewood community has
3 decided to tax at the maximum rate for maintenance and
4 operations at \$1.17?

5 MS. DAHLBERG: Objection, form.

6 A. I'm not aware of Edgewood's tax rate.

7 BY MR. HINOJOSA:

8 Q. Well, if their -- you've talked about, you
9 know, local school boards having this ability to set
10 their own tax rates and govern their operations, correct?

11 A. Yes.

12 Q. And the limitations are the school finance
13 formulas, correct?

14 A. That is a function of the legislative -- the
15 Legislature creating the school finance formulas.

16 Q. And so do you agree, as the commissioner of
17 the state of Texas, that the students in Alamo Heights
18 should be able to access more dollars per student than
19 the students of Edgewood?

20 MS. DAHLBERG: Objection, form.

21 A. I can't second-guess the Legislature in the
22 creation of the formulas. I don't know what their intent
23 was.

24 BY MR. HINOJOSA:

25 Q. I'm not asking for their intent. I'm asking

1 you, as commissioner, whether or not you agree that the
2 Alamo Heights of the world, those kids should still
3 access more dollars than the kids of Edgewood, even when
4 the kids of Edgewood's parents have decided to tax at
5 higher rates?

6 MS. DAHLBERG: Objection, form.

7 A. You know, I can't formulate an opinion on that
8 without, you know, knowing what the circumstances are in
9 those districts personally. You're asking me in the
10 abstract to make an apples-and-oranges comparison.

11 You know, is your sense of fairness -- you
12 know, is it -- does it seem unfair? Well, yeah, kind of
13 unfair, but you don't know what the circumstances are
14 there, and you don't know why the formulas drive it that
15 way, or what federal funds the kids of Edgewood might get
16 on top of their state funds that might be able to provide
17 them supplemental resources as well.

18 BY MR. HINOJOSA:

19 Q. And you're aware that federal funds are not
20 supposed to be used to supplant state funds, correct?

21 MS. DAHLBERG: Objection, form.

22 A. Generally speaking, that is a requirement of
23 federal law. However, when you look at the stimulus
24 money, the billions of dollars, that was the point. I
25 mean, they wanted you to supplant.

1 BY MR. HINOJOSA:

2 Q. And you are also aware that federal funds
3 fluctuate, correct, from year to year?

4 A. Federal funds fluctuated recently with the
5 stimulus. Depending on if it's a category -- categorical
6 grant program, those fluctuate more greatly. Title I and
7 IDEA, the two largest programs, the child school lunch
8 program, those have been fairly consistent.

9 Q. But overall, federal funds fluctuate, correct?
10 I mean, there's no set amount?

11 MS. DAHLBERG: Objection, form.

12 A. There's no set amount, yeah. It depends, I
13 mean, because Congress can appropriate.

14 BY MR. HINOJOSA:

15 Q. And federal funds also come with federal
16 regulations, correct?

17 A. That's correct.

18 Q. You're aware of the equalization provisions in
19 the school of funding -- not as far as the specifics of
20 them, but just generally speaking?

21 A. Generally speaking, yes.

22 Q. And so that would include the Foundation
23 School Program, the statewide tax cap and recapture,
24 correct?

25 A. Yes.

MS. DAHLBERG: Objection, form.

BY MR. HINOJOSA:

Q. And those are, in essence, intended to maintain equalized funding across all school districts in Texas, correct? Is that your understanding?

MS. DAHLBERG: Objection, form.

A. My understanding is that the Legislature created those in order to distribute the funds within the scope of the constitution and their ability to pass a bill.

BY MR. HINOJOSA:

Q. And you're familiar with the tax cap, correct?

A. Yes.

Q. And you recognize that part of its role, the tax cap's role, is to keep all school districts within a somewhat equalized system?

MS. DAHLBERG: Objection, form.

A. That the role of the tax cap is to keep some -- I don't understand. Can you elaborate on that question?

BY MR. HINOJOSA:

Q. Sure.

That if you simply lifted the cap, the \$1.17 cap --

A. Right.

Q. -- for example, which is for most school districts, correct, the cap on M&O?

A. Uh-huh.

Q. Yes?

A. Yes. Maintenance and operations, you're right. I'm sorry. M&O.

Q. Yes.

And you agree that removing the statewide tax cap for maintenance and operations standing alone, without any equalization provision, would increase the revenue disparity between property-wealthy and property-poor districts, correct?

MS. DAHLBERG: Objection, form.

A. Well, depending on the way in which you created the discretion to raise that tax. If you vested the discretionary authority with the board or whether you vest it with the voters, you might have different outcomes, so --

BY MR. HINOJOSA:

Q. Well, regardless of whose authority it is to, you know, raise taxes above, if you do not equalize revenue in the formulas for pennies above \$1.17 and you were just to lift the cap so that districts would just be able to rely on their own local revenue, that would increase the disparities between the --

A. I see what --

(Simultaneous discussion interrupted by the reporter.)

THE REPORTER: "Increase the disparities between the?"

BY MR. HINOJOSA:

Q. -- property-rich and property-poor school districts, correct?

A. Yeah, I understand what you're saying now.

MS. DAHLBERG: Objection, form.

BY MR. HINOJOSA:

Q. Is that correct? Yes?

A. I understand what you're saying -- yeah, I -- yes, I understand what you're saying.

Q. Okay. But you agree, correct?

A. You know, not being an expert in the formulas, I would have to defer to Lisa Dawn-Fisher and the other experts that can give you the exact impact of that type of adjustment.

Q. Yeah, and I'm not asking the exact impact.

All I'm trying -- you know, it seems like a no-brainer to me, but would you agree that just removing the \$1.17 cap on maintenance and operation, without equalizing the revenue as it is done for the pennies below that --

A. Oh, okay.

Q. -- would increase the disparity in revenue between property-rich and property-poor school districts?

MS. DAHLBERG: Objection, form.

A. Yes, I understand. Yeah, I agree that could happen.

BY MR. HINOJOSA:

Q. Okay.

A. Yeah.

Q. Okay. Thank you.

A. Sorry, I didn't quite -- it took that last round before I quite understood it.

Q. Can you agree that as the school finance system is currently constructed and reliant on local property taxes, the equalization provisions, such as recapture, are necessary to ensure that school districts are afforded substantial equal access to similar revenue for people at similar tax effort?

MS. DAHLBERG: Objection, form.

A. I mean, recapture is a method of finance. I mean, I can't say that the Legislature couldn't come up with another method of finance to supply that, so recapture is simply one method of finance in the Foundation School Program.

BY MR. HINOJOSA:

Q. All right. Have you ever fielded any

1 complaints about the unfairness of the school finance
2 system?

3 A. Have I ever -- can you be more specific?

4 Q. Yeah.

5 Have you ever heard of any complaints
6 about the unfairness of the -- the inequity of the school
7 finance system?

8 A. You mean from other than around the table,
9 or -- you mean general public or litigation?

10 Q. Yeah, in general public.

11 A. Sure. I mean, I've heard people, I mean, talk
12 about the school finance system.

13 Q. And what is your response to these complaints
14 about the inequity in the school finance system?

15 A. You know, I -- most recently with respect to
16 the budget that was passed last time, I say the economy
17 was impacted nationwide. It was impacted in Texas. The
18 Legislature had a certain amount of money it could
19 appropriate, and it appropriated the funds that it had.

20 And, as I said, I testified that the
21 amount of funding that they gave us for our system
22 allowed it to continue as-is, and that's my response to
23 that type of inquiry.

24 Q. Are you familiar with the golden pennies?

25 A. Yeah, I don't exactly understand how they all

1 work, but I'm familiar with the term.

2 Q. Well, are you familiar with the -- these --
3 what are referred to as the golden pennies, that there is
4 no recapture from school districts --

5 A. I've heard that, yeah.

6 Q. -- with the wealth level per WADA above that
7 of Austin ISD?

8 MS. DAHLBERG: Objection, form.

9 A. Yeah, I vaguely recall that. I'm not exactly
10 certain. I would have to defer to someone like Lisa
11 Dawn-Fisher on staff.

12 BY MR. HINOJOSA:

13 Q. So do you have an opinion as to whether or not
14 there's some educational justification for allowing
15 students in some school districts with wealth levels
16 above Austin ISD to access more dollars for those golden
17 pennies than students in other school districts?

18 MS. DAHLBERG: Objection, form.

19 A. I have no opinion on any educational
20 justification for that.

21 BY MR. HINOJOSA:

22 Q. Okay. Are you familiar with the term "local
23 control"?

24 A. Yes, I am.

25 Q. And what is your understanding of that term?

1 A. The term "local control" has traditionally
2 meant that the decisions made about children should be
3 made closest to those children, preferably either by
4 parents or locally elected school boards.

5 Q. Why do you say -- distinguish the difference
6 between parents and school boards?

7 A. It is illustrative. Chapter 26 of the
8 education code deals with the rights and duties -- or the
9 right of parents with respect to public schools.
10 Certainly the other aspects of the code envision elected
11 school board action, but it also could be administrators
12 and teachers as well.

13 Q. And as part of local control, do you think
14 that districts being able to offer a local homestead
15 exemption is included within local control?

16 A. If it's according to the laws of the State of
17 Texas, I believe it is.

18 Q. And do you also recognize the ability for tax
19 abatements as a part of local control?

20 A. That would be a function of the statute that
21 the Legislature creates.

22 Q. Are you familiar with the term "local
23 enrichment"?

24 A. Moderately familiar, not intimately familiar.

25 Q. What is your understanding of local

1 enrichment?

2 MS. DAHLBERG: Objection, form.

3 A. Local enrichment being over and above what the
4 State provides the ability of a local district to access
5 revenue to provide additional resources for its schools.

6 BY MR. HINOJOSA:

7 Q. Does TEA or does yourself have a method of
8 determining what is local enrichment versus what is part
9 of a basic education?

10 A. I don't -- I'd have to defer to the school
11 finance experts on staff on that.

12 Q. Are you aware of any study or analysis by TEA
13 that's tried to determine what's local enrichment versus
14 what's part of a basic education?

15 A. Yeah, you know, given my knowledge of school
16 finance formulas predates the issuance of revenue
17 targets, I don't know that my answers would be responsive
18 to that line of questioning.

19 Q. Are you aware of -- and just generally
20 speaking -- of the Supreme Court's opinion on local
21 enrichment not being required to be equalized 100%?

22 A. I'm somewhat aware of that.

23 Q. Are you aware of any requirement that the
24 Texas Legislature has to unequalize local enrichment?

25 MS. DAHLBERG: Objection, form.

A. Has to unequalize?

BY MR. HINOJOSA:

Q. (Nods head.)

A. I'm not aware of any requirement that they have to unequalize anything.

Q. Are you aware that among the costs that districts incur include -- and if you can just answer yes or no, I'll list a number of items here.

Cost for transportation?

A. Do you mean it's a cost that the formulas pay for, or a cost that districts incur themselves?

Q. That the districts incur, whether --

A. Whether it's covered in the formula or not?

Q. That's correct.

A. Yes, the districts incur that cost.

Q. Librarians?

A. Yes, districts can incur that cost.

Q. Counselors?

A. They can incur that cost.

Q. Safety?

A. They can incur that cost.

Q. Administrators?

A. They can incur that cost as well.

Q. Utilities?

A. Yes, they can.

Q. Insurance?

A. Yes, they can.

Q. Food services?

A. Yes, they can.

Q. And with respect to those that I just mentioned there -- transportation, librarians, counsellors, safety, administration, utilities, insurance and food services -- I hear you saying yes, they "can" incur, but are you saying that any of those are not required to be incurred by --

A. No. I'm saying the extent to which they incur them would be largely locally driven, depending on the size of their student body and their -- and the locally elected school board's priorities.

Q. And do you have any opinion as to whether any of those items should not be incurred by districts locally?

A. I have no other opinion on that.

Q. All right. Let me continue on other costs that districts incur would include extracurricular and co-curricular activities?

A. Yes.

Q. Custodial?

A. Yes, they can.

Q. Building maintenance?

A. Yes.

Q. Classroom teachers?

A. Yes.

Q. Materials?

A. When you say "materials" --

Q. Educational materials?

A. Educational materials, books? Do you mean the books paid for by the State instructional materials allotment, or locally?

Q. Supplementary materials?

A. They can certainly -- yes, they can certainly incur that as well.

Q. Textbooks?

A. Well, again, you have an instructional materials allotment that provides them state funding for that, but they can certainly also spend local funds on that as well.

Q. Do you know whether or not there's a cost study reflecting whether the textbook allocation is sufficient to meet the cost of textbooks for school districts in Texas?

A. I'm not aware of such a study.

Q. Another cost that districts incur is technology, correct?

A. Yes.

Q. And are any of those items that I just mentioned -- extracurricular activities, custodial, building maintenance, classroom teachers, materials, technology and textbooks -- are any of those, in your opinion, not necessary for school districts to provide an education in Texas?

MS. DAHLBERG: Objection, form.

A. Well, necessary for the district to pay for in some cases. For instance, if you have a cooperative, you know, you might have -- like in the Dallas schools, you have a county tax structure that might provide the transportation.

So I'm not sure -- I'm not sure exactly how Dallas ISD pays for that, but there might be unique circumstances where they might not have to incur some of those because of local situations. But generally speaking, those are normal-course-of-business operating expenses.

BY MR. HINOJOSA:

Q. How would you describe the performance of students in Texas, the academic performance of students in Texas?

A. Do you mean that in the context of historically, or where we are right now?

Q. No, where we are right now.

1 A. You know, where we set the passing standard, I
2 was, I think, pleasantly surprised that we were -- we did
3 as well as we did in certain subjects. I was concerned,
4 particularly, about 9th-grade writing, so I would say I
5 have mixed feelings.

6 As you said earlier, with the biology and
7 the algebra results, I was pleasantly surprised. I was
8 concerned about the writing scores, and I think it tends
9 to show that we need to get more information out to
10 school districts about teaching writing.

11 Q. And algebra and biology with those test
12 scores, are you concerned that perhaps the cut score for
13 the phase-in requirement was maybe too low?

14 A. No.

15 Q. Why don't you have any concern about that?

16 A. I don't think it was a function of the cut
17 score so much it was a lack of understanding as to what
18 the new test was, and I think that will quickly remedy
19 itself.

20 Q. No, I'm talking about in biology --

21 A. Oh, in biology. I thought you were talking
22 about writing.

23 Q. -- and algebra.

24 A. I thought you were talking about writing.

25 In biology, you know, I think it -- you

1 know, the agency made its, you know, best analysis of
2 where the students were and what a motivated test would
3 do. And I think that, yes, little surprised it was a
4 little higher than I thought, but as we raise that
5 standard, it's still going to be an increase in the rigor
6 and challenging.

7 Q. Are you aware that the science test under TAKS
8 has always been where students perform the worst,
9 compared to the other subjects tested?

10 MS. DAHLBERG: Objection, form.

11 A. I recall that when we originally started
12 implementing science, it was among the poorest-performing
13 subject areas because it hadn't been taught before and I
14 think that there was a lack of emphasis on it because it
15 hadn't been required.

16 BY MR. HINOJOSA:

17 Q. You mean science hadn't been taught before in
18 schools?

19 A. No, it wasn't tested before.

20 Q. All right. But where we sit today in the TAKS
21 scores, are you familiar with whether or not the science
22 test scores -- for example, on the 2010-2011
23 administration -- are among the lowest in the subject
24 areas?

25 A. I don't have that -- which page are you

1 looking at? Which exhibit and which page?

2 Q. Sure. The Section I, page 5 of Exhibit 20.
3 And this is, just to simplify things, on the TAKS met
4 2011 standard for sum of all grades tested.

5 A. So if you look, you're comparing the science
6 standards at 2011 at 83% versus writing at 92, math at
7 84. So a one-point difference between science and math
8 in 2011, and about an eight- or nine-point difference
9 between reading and writing? Is that what you're
10 pointing to?

11 Q. Yes.

12 A. Yes, I see that.

13 Q. And are you aware of any year where the
14 science test scores exceeded the other subject areas?

15 A. I'm not aware of that, no.

16 Q. And when we look at the TAKS commended
17 performance on Exhibit 20, this same page?

18 A. Yes.

19 Q. You have -- if we look at economically
20 disadvantaged students, we only have essentially one out
21 of four students meeting the commended performance; is
22 that correct?

23 A. Well, yeah, on the whole. You've got one in
24 four and one in five in some cases.

25 Q. All right. And that's --

1 A. And then social studies -- are you looking for
2 science only?

3 Q. Well, I was actually looking at reading.

4 A. Oh, okay. Reading.

5 Q. Sorry.

6 A. Sorry, you changed the subject.

7 Q. It's 23 --

8 A. Yeah, I see that, 23 and 22%.

9 Q. And that's for the 2010-2011 school years,
10 correct?

11 A. Yes.

12 Q. And then if we go down to the "All Tests" --
13 because you, as commissioner, want to see the performance
14 of students, not just on individual subjects, but also on
15 all tests, correct?

16 A. That's correct.

17 Q. And does it concern you that only 9% of the
18 economically disadvantaged students in the state of
19 Texas, after eight years of testing, were able to perform
20 on the commended level?

21 A. It would not concern me, if it was a function
22 of a Simpson's paradox.

23 Q. What do you mean by that?

24 A. A Simpson's paradox is a statistical anomaly.
25 When you disaggregate data, you might have your

1 African-American and Hispanic students at the top of the
2 country on NAEP, but when you aggregate the data in a
3 state like Texas, with large numbers of economically
4 disadvantaged and English language learners, it skews
5 your average downward.

6 So if you go want to Google-search it,
7 there's much more succinct definitions than that, but
8 it's a statistical anomaly that causes that type of
9 aberration.

10 Q. But do you only have -- you know, do you know
11 how many of these students were economically
12 disadvantaged that were being tested?

13 A. I don't see that from this. I think that's a
14 great point, to look at SAT, if you want to do that
15 research, because I have looked at that in other states
16 that do not test anywhere near the number of minority
17 students and economically disadvantaged students as we
18 do.

19 Q. So do you have the testing results for
20 students by economically disadvantaged who are taking the
21 SAT?

22 A. I believe we do.

23 MR. HINOJOSA: Maybe we can get that
24 produced. I was told that you-all did not have that
25 data, but it might actually be out there. I'm not saying

1 that it's not --

2 MS. DAHLBERG: Okay. We can talk about
3 it.

4 THE WITNESS: I could have seen -- I know
5 I have seen it before. I don't know if it's in the care,
6 custody or control of TEA, so let me talk to them about
7 that.

8 MR. HINOJOSA: All right.

9 BY MR. HINOJOSA:

10 Q. But what's your opinion that only one out of
11 11 students who are economically disadvantaged are
12 performing at the commended level on the TAKS?

13 A. Again, it tends to show worse than it is, but
14 when you disaggregate, you want to continue to look at
15 that disaggregated data. Yes, does it show where we want
16 to be? No. Sure we want to see improvement.

17 But I also look at the disaggregated data
18 to make sure we're not skewing any particular subgroup
19 and not paying attention to our economically
20 disadvantaged students, our Hispanic students and our
21 African-American students.

22 Q. So is this representative of possibly the
23 State not paying attention to economically disadvantaged
24 students, because only one out of 11 is meeting the
25 commended level?

1 MS. DAHLBERG: Objection, form.

2 A. I can't make that distinction. You were
3 talking about the all tests number, or were you talking
4 about economically?

5 BY MR. HINOJOSA:

6 Q. Yes, the all tests?

7 A. For economically disadvantaged. Oh, no.
8 Okay. I thought you were looking at all tests for all
9 subjects. That's where the Simpson's paradox comes in,
10 not because of economically disadvantaged, so --

11 Q. No, it's all tests, economically
12 disadvantaged, where you actually disaggregate the data?

13 A. Yeah. Okay. It is understood that question in
14 looking at the data.

15 I mean, of course. I mean, yes, that
16 causes me some concern.

17 Q. And what is your opinion about the performance
18 of economically disadvantaged on the TAKS commended
19 performance level for all tests?

20 A. That it's not where we need to be, but that we
21 can still improve.

22 Q. How about for the LEP students at 7% on all
23 tests for 2011?

24 MS. DAHLBERG: Objection, form.

25 A. Again, not where we want to be, but we still

1 have room to improve.

2 THE WITNESS: Can I take a break? My
3 head's wandering. Can we take a quick break?

4 MR. HINOJOSA: You want to take a break?

5 THE WITNESS: Yeah.

6 THE VIDEOGRAPHER: Okay. We'll go off the
7 record at 3:18.

8 (Recess taken, 3:18 p.m. to 3:28 p.m.)

9 THE VIDEOGRAPHER: We're back on the
10 record. It's 3:28.

11 BY MR. HINOJOSA:

12 Q. Commissioner, I think earlier you had
13 testified that the -- you believed the State has
14 satisfied its duty of providing a general diffusion of
15 knowledge; is that correct?

16 A. I believe that the current system provides a
17 general diffusion of knowledge, yes.

18 Q. All right. And you believe that the State is
19 providing sufficient resources for school districts to
20 carry out a general diffusion of knowledge?

21 MS. DAHLBERG: Objection, form.

22 A. At the present time, yes.

23 BY MR. HINOJOSA:

24 Q. And what is the basis for your determination
25 of that? What sort of measures have you looked at in

1 order to form that opinion?

2 A. Looking at historical appropriations levels,
3 historical spending levels and historical student
4 performance levels.

5 Q. And when you say "historical spending levels,"
6 what do you mean?

7 A. Previous appropriations bills, previous
8 Foundation School Program amounts.

9 Q. And so how do you arrive at the conclusion
10 that it's -- the State is satisfied in its duty to
11 provide an adequate education by looking at the
12 historical spending levels?

13 A. All I can look at is my professional opinion
14 and my knowledge of the system over a two-decade career.

15 Q. And so -- but what, if you can explain to me
16 what your opinion is on the historical spending levels?

17 A. That historically spending has gone up faster
18 than enrollment growth, and that this year, yes, there
19 were cuts made, but those cuts were not so severe as to
20 limit the ability of the system to continue to function
21 as it needs to today.

22 Q. And did you perform any analysis, or anybody
23 at TEA or outside of TEA, that helped lead you to that
24 conclusion?

25 A. Not from anybody outside TEA. I'm relying on

1 my own professional judgment.

2 Q. All right. And when you say spending has gone
3 up, are you talking about spending per student?

4 A. I'm talking about spending per student
5 historically and overall expenditures. If you go back
6 and look from previous biennia, traditionally, spending
7 has gone up.

8 Q. And is that even including a cost of living
9 adjustment or rate of inflation adjustment?

10 A. I don't know that we have adjusted the cost of
11 education index lately, no.

12 Q. Does that include a rate of inflation?

13 A. We discussed having an inflating factor --
14 inflater factor in the formulas. I don't know that we
15 ever included an inflation factor in the formulas.

16 Q. But what I'm asking is: When you say that you
17 looked at historical spending levels and spending per
18 student going up, did you also analyze the inflation
19 rate?

20 A. Yes, I have seen studies that show that
21 spending in public education has outpaced both enrollment
22 growth and inflation.

23 Q. Which studies are these?

24 A. There have been studies published by various
25 groups. I can't, off the top --

1 Q. The Public Policy Foundation, is that one?

2 A. I don't know that that was one of them, but I
3 remember seeing the studies.

4 Q. Can you identify any of those studies here, as
5 we sit here today?

6 A. No. As I said, this is historical.

7 Q. And one of the other measures you said you
8 looked at was historical student performance; is that
9 right?

10 A. Yes.

11 Q. And what did you look at as far as historical
12 student performance?

13 A. The trends and growth of student performance
14 from one testing system to another.

15 Q. Is that just the TAKS test?

16 A. TAAS -- well, we started with TABS, then we
17 went to TEAMS, then we went to TAAS and TAKS. But TAAS
18 and TAKS would be the two most relevant.

19 Q. And did you look at the commended level of
20 performance on TAKS for students?

21 A. I don't know that I would specifically look at
22 the commended level of performance only. That would be
23 one factor that I might have looked at, but I don't know
24 if that was a sole determinant of my decision, no.

25 Q. Did you look at the performance of

1 disaggregated groups on TAKS?

2 A. I looked at historical performance of all
3 groups.

4 Q. So what student performance rate for
5 economically disadvantaged students, for example, on the
6 TAKS indicates that the State has satisfied its duty of
7 providing an adequate education?

8 MS. DAHLBERG: Objection, form.

9 A. In all groups over time, when we see the
10 implementation of an assessment system, we see that
11 improvement occur over time; and that's what I was
12 looking at.

13 BY MR. HINOJOSA:

14 Q. So is it just simple improvement by a student
15 group that gives you the indication that -- or is there a
16 specific point, for example, 80% passing a given test?

17 A. No. It is improvement over time by every
18 group, even though we're raising standards throughout
19 that entire time.

20 Q. So is it your testimony that even if one out
21 of five -- one out of four ELL students is not meeting
22 the standard on a given TAKS test, that that would still
23 indicate to you that the State is satisfying its duty of
24 providing an adequate education?

25 A. What I said was, I was looking at trend lines

1 over time, not a one-time snapshot.

2 Q. So it doesn't matter what the endpoint is for
3 any given disaggregated group, so long as you simply have
4 improvement for that student group, that would satisfy
5 you?

6 MS. DAHLBERG: Objection, form.

7 A. That was -- all I said was, I was looking at
8 trends over time and funding over time.

9 BY MR. HINOJOSA:

10 Q. And you understand that, for example, you can
11 have an increase over time from, perhaps, you know, 6% on
12 the commended level for a disaggregated group, all the
13 way up to 9%, you know, five years later?

14 A. And those -- yes. Yes. And those numbers can
15 change, depending on where you set the passing standard
16 and how quickly you raise that standard over time.

17 Q. And when's the last time that you're aware of
18 that the State raised the standard in TAKS?

19 A. We raise the standard every year.

20 Q. Every single year?

21 A. Well, when you say "standard," you mean for
22 passing, or you mean for accountability purposes?

23 There's two different things here.

24 Q. For passing.

25 A. For passing, you set the standard -- as I

1 mentioned earlier, we set the panel recommendation two
2 standard error for TAKS, then we raised it to one panel,
3 and then it stayed there.

4 Q. And it's been there since when?

5 A. Since the -- this would be 2005-2006,
6 somewhere around there.

7 Q. And the State has minimum passing scores for
8 the end-of-course exams, correct?

9 A. I'm sorry, the State has minimum passing
10 standards for end-of-course exams? Yes.

11 Q. All right. So, for example, in biology, a
12 student's going to have to meet a given scale score, and
13 if they don't, then they're going to have to retake it
14 until they meet that scale score, or they will not
15 graduate, correct?

16 A. That's correct.

17 MS. DAHLBERG: Objection, form.

18 BY MR. HINOJOSA:

19 Q. And eventually, that's going to be part of the
20 system for all 16 end-of-course exams, once they're
21 phased in?

22 A. Did you say 16 or 15?

23 Q. I'm sorry, whatever number there are. Is
24 there 15 or 16?

25 A. Well, some people say 12 and some people say

1 15, because reading and writing is two different
2 distinctions.

3 Q. Okay. So -- but eventually for all the
4 end-of-course exams that the State is going to phase in
5 and implement, there's going to be minimum scores that
6 students will have to meet?

7 A. Yes.

8 Q. And that's -- that's an increase from the four
9 prior high-school exit exams under TAKS, correct?

10 MS. DAHLBERG: Objection, form.

11 A. There was a 9 through 11 testing system. I
12 don't know what you mean "four." I don't understand
13 what you mean by four high school.

14 BY MR. HINOJOSA:

15 Q. Yeah. For individual students, the high
16 stakes is, you have to pass each 11th-grade TAKS exam,
17 correct?

18 A. You have to pass the exit-level exam.

19 Q. In order to graduate, correct?

20 A. Right. Right.

21 Q. So that four has increased to now --

22 A. Four subject areas on one test, is what you're
23 saying. Okay.

24 Q. Yeah. Four subject areas, and there's four
25 tests, right? One test for each subject --

1 A. Four -- well, yeah.

2 Q. -- under the TAKS?

3 A. Well, what we've done is gone to end-of-course
4 exams now, where they're discrete tests, rather than one
5 exit-level assessment, that have the four sections.

6 Q. Yeah. And so what I'm trying to just get
7 clear on the record is that the four -- the previous four
8 exit exams required of students to graduate in the state
9 of Texas under TAKS is now going to eventually increase
10 to 12 or --

11 A. Yes, I think the more appropriate -- I'm
12 sorry, but I think the more appropriate term, four
13 subjects, four subject areas: English language arts,
14 math and science, social studies. That's what you're
15 talking about?

16 Q. Yes.

17 A. Okay.

18 Q. Did you -- did you look at advanced-course or
19 dual-enrollment completion in arriving at your conclusion
20 that the State's fulfilling its duty to provide an
21 adequate education?

22 A. I regularly look at that type of number.

23 Q. No, but did you look at that? Because your
24 opinion is that the State is satisfying its duty of an
25 adequate education, correct?

MS. DAHLBERG: Objection, form.

A. As I said, my general knowledge of the system over time and spending over time is how I drew that conclusion, based on my professional judgment. I can't say that I looked specifically at that only, or that specific factor, in determining that final decision. I used my knowledge of the system.

BY MR. HINOJOSA:

Q. Okay. And so I'm trying to, I guess, get into your mind, so I can figure out all the different factors that you looked at.

A. Uh-huh.

Q. So I know that you mentioned you looked at TAKS. What other student performance measures did you look at?

A. Again, I relied on my knowledge of student performance over time on all things -- on NAEP, on SAT, on ACT. All of the inputs that I know that we look at at the agency, those are things that I'm aware of over time, and our student performance over time, and knowledge of the school finance system over time.

And it was my comfort level to say, "Yes, I believe the system can continue as-is, in my professional judgment."

Q. So what's your opinion about students'

performance on the NAEP in Texas?

A. Again, if you look at our disaggregated data, our students, African-American, Hispanic students are at the top of the country. Our Anglo students on science, or Hispanic students in math and African-American students in math, top of the country. And, as I mentioned earlier, that when you aggregate all that stuff, you sometimes get anomalies.

Q. 4th and 8th grade, are you talking about?

A. Yes.

Q. Did you look at the performance of economically disadvantaged students on the 2011 reading grade 4 NAEP test in arriving at your conclusion?

A. As I said, I relied on general historical knowledge of all of these things. I can't say I specifically looked at one as a sole determinant to make the decision.

(Scott Deposition Exhibit 21 marked.)

BY MR. HINOJOSA:

Q. I've handed you what's been marked as Exhibit 21, and this is the National Center for Educational Statistics, Institute of Educational Sciences, NAEP, report for grade 4 average reading scale score. And it shows both those eligible for the free and reduced price lunch program and not eligible.

Are you familiar with this type of exhibit?

A. Generally speaking, I'm familiar with NAEP comparisons like this, yes.

Q. Okay. And if you go down to the number 37, you'll find "Texas" there?

A. Uh-huh.

Q. You see that?

A. Yes.

Q. And under "Texas," if you look at the 2011 scale score for those eligible, which is the sixth column from the left, that scale score is 209 for those eligible, correct?

A. Yes, I see that number.

Q. And then you have the not eligible, and that's 234, correct?

A. I see that, yes.

Q. And so is this huge gap between -- well, would you recognize this gap as being pretty significant between eligible and noneligible students?

MS. DAHLBERG: Objection, form.

A. It is -- it is somewhat consistent that I see across the states.

BY MR. HINOJOSA:

Q. Well, but do you still, in your own opinion,

recognize this as a significant gap?

A. It is a gap.

Q. You would not see this as a significant gap?

A. Well, certainly it's a relevant gap, yes, a significant gap.

Q. All right. And so is this the type of information that you relied upon in determining that, when you looked at NAEP scores, the State was satisfying its duty of an adequate education?

MS. DAHLBERG: Objection, form.

A. As I said, I wasn't relying on any specific dataset; my general historical knowledge.

BY MR. HINOJOSA:

Q. Well, do you have the general historical knowledge of economically disadvantaged students performing on the 4th-grade NAEP test?

A. Not with me.

MS. DAHLBERG: Objection, form.

MR. HINOJOSA: I'm going to hand you Exhibit 22.

(Scott Deposition Exhibit 22 marked.)

BY MR. HINOJOSA:

Q. I'm handing you what's been marked as Exhibit 22, and this is the average scale scores for reading, grade 4, by status as English language learner,

1 both the year and the jurisdiction for 2011 and 2009.

2 Are you familiar with this data as well?

3 A. I'm not as familiar with this particular
4 format.

5 Q. Did you look at the performance of ELL
6 students on the NAEP when you reached your conclusion on
7 determining that the State satisfied its duty of
8 providing an adequate education?

9 A. Again, I cannot testify to a specific document
10 that I looked at. I was relying on general historical
11 knowledge.

12 Q. And as part of your general historical
13 knowledge, is the performance of ELL students on the NAEP
14 part of that?

15 A. It could be. What I was looking at was TAKS
16 and TAAS and other commonly reported scores, including
17 aggregate NAEP scores, not necessarily disaggregated NAEP
18 scores to this level.

19 Q. So that's for the average Texan, then, Texas
20 student?

21 A. No. Looking for including subgroups, just
22 historically, but I can't say I looked at this specific
23 document, because I didn't.

24 Q. Yeah, and I'm not asking you if you looked at
25 this specific document.

1 What I'm asking you is whether or not you
2 looked at the performance of ELL students on the NAEP
3 test?

4 A. I've looked at that before; therefore, that
5 would be part of my reference, mentally, of historical
6 knowledge.

7 Q. Okay. So how would you say that ELL students
8 in Texas are performing on the NAEP?

9 A. Based on this, or based on --

10 Q. No, just based on your own historical
11 knowledge.

12 A. Well, I mean, are we where we absolutely want
13 to be? No. Are we making improvement? Yes.

14 Q. What kind of improvement have we made?

15 A. I can't give you a specific right now because
16 I don't have that data in front of me.

17 Q. And looking at this between -- at Exhibit 22,
18 if you look at Texas in the year 2011, it looks like the
19 ELL average scale score was 197?

20 A. Uh-huh.

21 Q. And that's compared to the non-ELL score of
22 223. You see that?

23 A. Yes.

24 Q. And is that indicative of the narrowing of the
25 achievement gap that you've mentioned?

1 MS. DAHLBERG: Objection, form.

2 A. I don't see -- again, there's not a comparison
3 to be made. This is one year.

4 BY MR. HINOJOSA:

5 Q. So when you've spoken of the narrowing of the
6 achievement gap today, you're not necessarily referencing
7 the performance --

8 A. Not necessarily this piece of paper, no.

9 Q. But you're not necessarily referencing the
10 performance of ELL students versus non-ELL students on
11 the NAEP test, correct?

12 A. On this particular assessment, no. As I said,
13 I didn't -- I can't say I spoke to one particular
14 assessment.

15 Q. Okay. And if you look at the 2009 on the
16 third page of Exhibit 22, the ELL score there for Texas
17 is 197, is that correct?

18 A. Where are you looking?

19 Q. On the third page, for Texas.

20 A. Is 197, yes.

21 Q. And that's the same as in 2011, correct?

22 A. In 2011, yes, 197.

23 Q. Okay. Did you look at -- in looking at
24 student performance historically, are there any other
25 measures that you looked at?

1 A. Not that I can recall specifically. As I
2 said, it was general.

3 Q. Are you aware of the percentage of
4 college-ready graduates, as determined under the TAKS for
5 English language arts and mathematics on the performance
6 of economically disadvantaged students?

7 A. In what year? I don't --

8 Q. I'm just asking if you're generally familiar.

9 A. Generally familiar with the performance of?

10 Q. Economically disadvantaged students.

11 A. Yes. It is lower than the average, but
12 trending upward.

13 Q. Do you know -- would it surprise you that less
14 than -- or just over half of the students in the class of
15 2010 on the English language arts TAKS test for
16 economically disadvantaged met the standard there?

17 MS. DAHLBERG: Objection, form.

18 A. I -- I don't understand. Would it surprise
19 me?

20 BY MR. HINOJOSA:

21 Q. Yes.

22 A. It wouldn't surprise me. It would be data
23 that you have that I don't.

24 Q. So looking at Exhibit 20, Section I, page 13?

25 A. Exhibit which one? Exhibit 20?

Q. I'm sorry, it's the AEIS report for 2010-2011.

A. Okay. Which page?

Q. Section I, page 13.

A. Section I, page 13.

Q. Yeah.

A. Which results?

Q. Yeah. And we're going to look at college-ready graduates at both subjects, English language arts and math, at the very bottom?

A. Okay.

Q. And for the class of 2010 on both subjects, it looks like 62% of the economically disadvantaged students did not meet the standard, correct?

A. Where are you finding that number?

Q. Well, it says 38% met the standard, which means that 62% did not meet the standard?

A. Okay. I see it, yes.

Q. All right. And 5% of LEP students met the standard, correct?

A. Right.

Q. So are those numbers indicative of the State providing an adequate education in the state of Texas?

A. Again --

MS. DAHLBERG: Objection, form.

A. -- I can't state a specific document like

this. I was relying on general trends over time.

BY MR. HINOJOSA:

Q. So do you have an opinion as to whether or not those numbers are indicative of the State providing an adequate education?

MS. DAHLBERG: Objection, form.

A. Again, you're looking at one specific set of numbers in one specific year and trying to draw a conclusion about a multiyear, multidecade system of accountability and appropriations. I don't think you can -- I can't draw that type of conclusion based on this one set of data.

BY MR. HINOJOSA:

Q. Do those numbers disappoint you, as the commissioner?

A. Well, sure, they cause me a desire for improvement. They cause me a sense of urgency in terms of, you know, wanting to see student improvement.

But, again, I don't want to use that sense of urgency to set a passing standard that's so high and say, "This is where I want everybody to be today," that I devalue the system. I want to raise that standard incrementally over time.

Q. So, then, the students who are meeting the lower standards under today's testing might not graduate

college-ready, correct?

A. I'm sorry.

MS. DAHLBERG: Objection, form.

A. Could you --

BY MR. HINOJOSA:

Q. The students who are going through the system right now, as the standards are being phased in, but they're meeting only the lower standards, they might not graduate college-ready, correct?

MS. DAHLBERG: Objection, form.

A. They might. They might not. It just depends on the student. It depends on the school they're in.

BY MR. HINOJOSA:

Q. And you won't be able to look at solely the lower standard that they achieve in order to determine that they are college-ready, correct?

A. I won't be able to look --

MS. DAHLBERG: Objection, form.

A. Could you rephrase that?

BY MR. HINOJOSA:

Q. Sure.

You can't look just -- let me rephrase this.

Because the standard is a phase-in standard --

A. Uh-huh.

Q. -- which is lower than the standard that the State eventually wants to rely upon --

A. Uh-huh.

Q. -- for college readiness, right?

A. Right.

Q. The current standards that students are meeting, you can't necessarily look at the percentage of students meeting that lower standard and determine whether or not they're college-ready, correct?

MS. DAHLBERG: Objection, form.

A. When you set the standard for college readiness, it's different than the standard for passing. So yes, we can look at the students today and determine which ones are on the trajectory for college readiness.

BY MR. HINOJOSA:

Q. But not just solely looking at what percentage of students met the lower standard?

A. I think you're confusing two issues.

MS. DAHLBERG: Objection, form.

A. One is a passing standard, and one is a college readiness standard. I don't know -- we did report both numbers. We reported how many students would have -- how many students passed at the current standard and how many students would have passed at the ultimate

1 passing standard in four years.

2 So districts are aware of both of those
3 numbers, and they're aware of where those students are on
4 the trajectory towards college readiness.

5 BY MR. HINOJOSA:

6 Q. Yeah, and so what I'm saying is: Just looking
7 solely at the percentage of students meeting the lower
8 standard, you cannot determine --

9 A. That all of them will -- I'm sorry.

10 Q. -- that those student -- that all of those
11 students will graduate college-ready?

12 A. No, you can't. You can't say all of them
13 will.

14 Q. Okay.

15 A. But you can tell which ones are on the
16 trajectory.

17 Q. Fair enough. All right.

18 A. Okay.

19 Q. Now, what kind of cuts did the agency itself
20 incur?

21 A. It was on the range of 35 to 40%.

22 Q. And during your tenure as the Commissioner of
23 the state -- of the Texas Education Agency, or the state
24 of Texas, sorry -- Commissioner of Education in the state
25 of Texas --

1 A. Uh-huh.

2 Q. -- did you ever have any positions filled that
3 were unnecessary?

4 A. Under my tenure? I do not believe so.

5 Q. All right. I'm going to hand you what we're
6 going to mark as Exhibit 23.

7 (Scott Deposition Exhibit 23 marked.)

8 BY MR. HINOJOSA:

9 Q. Do you recognize Exhibit 23 as being a copy of
10 the organizational chart for the Texas Education Agency
11 on April 1st, 2010?

12 A. I do.

13 Q. And so is it your opinion that all of these
14 positions that were filled --

15 MS. DAHLBERG: David, I need -- well, I
16 don't have a copy.

17 THE WITNESS: Oh.

18 MS. DAHLBERG: Let me just briefly look at
19 it.

20 THE WITNESS: Okay.

21 MR. HINOJOSA: There should be two, right?

22 MR. DIAMOND: Oh, I'm sorry. I thought it
23 was a two-page. Sorry about that.

24 BY MR. HINOJOSA:

25 Q. So were any of these positions on Exhibit 23

1 unnecessary?

2 A. All of positions that were filled at that time
3 were appropriate -- were paid for with the appropriations
4 the agency received, and all of those individuals had
5 work to do.

6 Q. And were they necessary for the agency to
7 carry out its duties?

8 A. They were necessary for the agency to
9 create -- to carry out its duties that it was able to
10 carry out at that time.

11 Some of those duties were mandated by
12 federal law. Some were mandated by state law. Some, the
13 agency had created along the way itself, as nice-to-have
14 things that we try to do for school districts.

15 Q. And how has your agency's responsibilities or
16 duties reduced since April 1st of 2010 to the present
17 day?

18 A. I wouldn't say that, on the whole -- the
19 Legislature reduced -- they reduced our appropriation.
20 We reduced function. So we examined functions and said,
21 "Is it duplicative? Could it be consolidated? Is the
22 position required by law, either federal law or state
23 law?" And if the answer was no, we examined that
24 position to see if it could be combined or consolidated.

25 So, you know, while the duties that the

1 Legislature have given us are still there, there are
2 things, also, that we did that weren't required:
3 creation of calendars, for school districts to know
4 what -- the testing calendars; holiday calendars;
5 different things like that; pocket edition, which is not
6 required by law, but is a neat tool for people who are
7 ed- -- in education to have a quick grasp of information.

8 Those are the types of functions that may
9 have gone away.

10 Q. Was there any decrease in the monitoring
11 functions of the Texas Education Agency?

12 MS. DAHLBERG: Objection, form.

13 A. I don't know that there was a decrease in the
14 legislative requirements to monitor. We might be
15 monitoring in different ways.

16 (Scott Deposition Exhibit 24 marked.)

17 BY MR. HINOJOSA:

18 Q. I've handed you what's been marked as
19 Exhibit 24. Do you recognize Exhibit 24 as the TEA
20 organizational chart effective as of June 19, 2012?

21 A. I do.

22 Q. And if you compare this to Exhibit 23, there's
23 quite a number of reductions here, correct?

24 A. Yes.

25 Q. And what kind of reductions has the agency

1 incurred since April of 2010?

2 MS. DAHLBERG: Objection, form.

3 A. As I mentioned this morning, through
4 attrition, retirement and reductions in force, some 500
5 positions.

6 BY MR. HINOJOSA:

7 Q. And what was the overall budget loss to the
8 agency?

9 A. I'd say that it was roughly 40% or -- I'd have
10 to get a dollar figure for you or talk to my CEO.

11 Q. And what percentage does the State rely on as
12 far as federal funding?

13 A. Used to be about 50/50. I don't know today
14 what it is, based on the new budget.

15 Q. Do you know whether it exceeds 50% now?

16 A. I don't think so, but I'd have to check.

17 Q. And the loss of position -- did you eliminate
18 any positions?

19 A. Yes.

20 MS. DAHLBERG: Objection, form.

21 BY MR. HINOJOSA:

22 Q. Did you eliminate those positions because it
23 was necessary for you to carry out your duties?

24 A. I'm sorry, I can't speak to the exact reason
25 why a position was eliminated. It might have been

1 because it was duplicative of another position. It might
2 be simply because of the budget situation that we had.

3 Those decisions were made on a
4 case-by-case basis in consultation with their division
5 directors and performance evaluations.

6 Q. So those decisions weren't necessarily made to
7 enhance TEA's ability to perform its duties, correct?

8 A. Those decisions were made as the result of an
9 analysis of agency operations and budget.

10 Q. Were they made to enhance the operations of
11 the agency?

12 A. In some cases, I believe they can enhance the
13 operation. In some cases they were a response to an
14 analysis of the function, a consolidation of the
15 function, or the appropriations that were provided to us.

16 Q. And what examples that you can give of those
17 that were made to enhance the operations?

18 A. Let me give you a historical example. When I
19 got to the agency, there were multiple divisions that did
20 monitoring. And you might have three or four different
21 monitoring teams on a school campus and they weren't in
22 the same division and weren't talking.

23 Consolidating that function allowed a
24 reduction in staff size with more communication among the
25 different types of monitoring teams; state, federal,

1 special ed, that type of thing.

2 Q. Any others?

3 A. I'd have to get back with you on that, but
4 that's just one example, off the top of my head.

5 Q. Has the State analyzed whether or not any
6 reductions in its monitoring have actually helped it
7 increase its operations?

8 A. I can't speak to that.

9 Q. The -- let me switch subjects here. Do you
10 have an opinion about the performance of charter schools
11 versus traditional public schools?

12 A. Honestly, that is a case-by-case basis. Are
13 you talking on the whole, or are you talking --

14 Q. Yeah, on the whole, would you -- well, let me
15 ask it this way.

16 Would you agree that charter schools are
17 as successful and as unsuccessful as traditional public
18 schools?

19 A. I think that's a determination that can't be
20 made on the whole. Would I say there are really great
21 charter schools out there that are serving our kids well?

22 Absolutely. Would I say there are charter schools out
23 there that are not serving children well? Absolutely.

24 Again, it's a case-by-case basis.

25 Q. And would you say the same thing about public

1 schools?

2 A. Absolutely.

3 Q. All right. And are you aware that there's a
4 higher percentage of charters that are rated academically
5 unacceptable compared to traditional public schools?

6 A. I am aware of that concern.

7 Q. Do you have any opinion about the efficiency
8 of charter schools versus traditional public schools?

9 MS. DAHLBERG: Objection, form.

10 A. Again, it's a case-by-case basis. You know,
11 charter schools operate without the benefit of a tax base
12 and facilities funding, so there's an argument that
13 there's a lot of efficiency going on there, but a lot of
14 inequity going on there as well. So that's going to be a
15 separate issue, I think.

16 BY MR. HINOJOSA:

17 Q. And you would also -- you're also aware that
18 charters are able to lobby for private monies as well,
19 correct?

20 A. So can school districts.

21 MS. DAHLBERG: Objection, form.

22 BY MR. HINOJOSA:

23 Q. And do you know how much -- what percentage of
24 charter funding is as a result of private funds --

25 A. No, I don't.

1 A. A recognized or exemplary charter school.

2 Q. Do you have any opinion as to whether or not
3 the statutory cap on the number of charters breeds
4 inefficiency in the system of public schools?

5 MS. DAHLBERG: Objection, form.

6 A. I can speak to that in terms of the public
7 school system or the agency. How would you like me to
8 address it?

9 BY MR. HINOJOSA:

10 Q. Both ways, then.

11 A. From the agency's perspective, adding a
12 charter is like adding another school district. It adds
13 duties to the agency.

14 From the public school perspective, adding
15 a charter school might increase efficiency, if it's a
16 good charter school. It might decrease efficiency, if
17 it's not a good school.

18 So I'm in favor of more high-performing
19 charter schools. My duty is to seek to shut down
20 poor-performing charter schools or charter schools that
21 are harming children.

22 THE VIDEOGRAPHER: Three minutes.

23 BY MR. HINOJOSA:

24 Q. I've mentioned to you earlier that there's
25 districts that we represent. Those are Edgewood,

1 McAllen, La Feria, San Benito, Harlingen, also where
2 parents from Amarillo and Pasadena, that their children
3 attend where they live in.

4 A. Uh-huh.

5 Q. Can you tell me anything about whether any of
6 these districts that I've just mentioned have sufficient
7 funds to provide an adequate education for all of their
8 students?

9 MS. DAHLBERG: Objection, form.

10 A. I don't have specific data in front of me, so
11 I couldn't speak to that question. All I can say is, on
12 the whole, I testified that the system, on the whole,
13 should be able to continue as-is. I can't speak to a
14 specific district.

15 BY MR. HINOJOSA:

16 Q. All right. And do you know the overall level
17 of state funding received by the Edgewood districts?

18 MS. DAHLBERG: Objection, form.

19 A. You mean Edgewood ISD?

20 BY MR. HINOJOSA:

21 Q. Yeah, the ones that I just mentioned. I'll
22 just refer --

23 A. No, I don't know the overall funding for those
24 districts, off the top of my head.

25 Q. Do you know the level of funding the State's

1 provided to these districts for low-income students or
2 ELL students?

3 A. I don't have that data in front of me.

4 Q. Do you know the facility needs of these
5 districts?

6 A. I don't know if we've done a facilities study
7 in quite a while. I don't know if they have either, so
8 no.

9 Q. Do you know the communities' desires in the
10 Edgewood districts with --

11 A. No, I don't.

12 Q. Do you know whether or not they're able to
13 exercise meaningful local control over their operations?

14 A. You have to distinguish that between whether
15 you believe meaningful discretion resides in the school
16 board or the voters.

17 Q. Well, do you have an opinion as to whether or
18 not those school districts have the right to exercise
19 meaningful local control over their operations?

20 A. My opinion is, the Legislature has instilled
21 that into the voters and that the voters do have that
22 right.

23 Q. Even those voters that have elected to cap at
24 the \$1.17 and can cap no higher?

25 MS. DAHLBERG: Objection, form.

1 A. Even those who have exercised their right to
2 go to the maximum level.

3 BY MR. HINOJOSA:

4 Q. But you're not familiar with the budget
5 decisions of the Edgewood school districts, correct?

6 A. No.

7 Q. You're not familiar with the types of ELL
8 programs that they're able or not able to offer, correct?

9 A. I'm not advised.

10 Q. You're not familiar with the types of
11 compensatory programs the districts can or cannot offer,
12 correct?

13 A. I'm not advised.

14 Q. Can you cite any misallocations of funding by
15 these school districts?

16 A. Not off the top of my head. I'd have to do
17 research.

18 Q. All right. So you haven't done that at this
19 moment, correct?

20 A. No, I haven't. No.

21 MR. HINOJOSA: Okay.

22 THE VIDEOGRAPHER: We need to change.
23 We're out of tape.

24 MR. HINOJOSA: I'll pass the witness.

25 Thank you.

1 NO. D-1-GN-11-003130
2 TEXAS TAXPAYERS & STUDENT § IN THE DISTRICT COURT
3 FAIRNESS COALITION, §
4 et al., §
5 §
6 Plaintiffs, §
7 §
8 v. §
9 §
10 § TRAVIS COUNTY, TEXAS
11 §
12 ROBERT SCOTT, in his §
13 official capacity as §
14 Commissioner of Education, §
15 et al. §
16 §
17 Defendants. §
18 §
19 §
20 §
21 §
22 §
23 §
24 §
25 § 200th JUDICIAL DISTRICT

VIDEOTAPED ORAL DEPOSITION OF ROBERT SCOTT
VOLUME 2
Austin, Texas
Friday, June 29, 2012

Reported by:
MICHAEL E. MILLER, FAPR, RDR, CRR, CSR
JOB NO. 51236

1 A. That's a provocative question, in that --
2 this. We have the standards in place. We have our
3 college and career readiness standards. We've
4 incorporated them in our state content standards, and we
5 expect them to be taught, and we expect districts to
6 focus on that curriculum.

7 Now, we won't implement the full range of
8 the test program for several years. But the expectation
9 is, for the past five years, we've been providing
10 resources, training, information about the college
11 readiness standards and the curriculum, and that's where
12 districts should be focusing now.

13 Q. Okay. But right at this point in time,
14 they're not being held accountable to that standard?

15 A. For the full range of the standard, but we do
16 have the expectations in place.

17 Q. Okay. And, in fact, as you indicated, there's
18 going to be an additional funding required in the future
19 to be able to meet that standard that STAAR is testing
20 on, so that funding is not in place right now; is that
21 correct?

22 MS. DAHLBERG: Objection, form.

23 A. As I said, additional resources may be needed
24 in the future. I was not concluding it was just based on
25 the test. We've talked about enrollment growth. We've

1 talked about inflation.

2 There are a number of things the
3 Legislature is going to have to consider in the future
4 when deciding how much money to appropriate for schools.

5 BY MS. HUNTER:

6 Q. Okay. And was the Exhibit 32, the FAST study
7 by Susan Combs -- that came out before the last
8 legislative session; is that correct?

9 A. It looks -- for 2010? I don't know if there's
10 a date on here.

11 Q. December.

12 A. December 8th, 2010, yes.

13 Q. So were those recommendations that she made
14 debated by the last Legislature?

15 MS. DAHLBERG: Objection, form.

16 A. You'd have to talk to the Legislature. I
17 wasn't over there for the full time, as some House
18 members will repeatedly point out.

19 BY MS. HUNTER:

20 Q. All right. From your knowledge as the
21 commissioner of TEA, were any of those recommendations
22 implemented by the Texas Legislature?

23 A. Not to my knowledge.

24 Q. Okay. So they considered it, you don't know
25 how -- whether they did or not, but they had it in front

1 of them. They did not pass legislation to implement any
2 of those suggestions; is that correct?

3 MS. DAHLBERG: Objection, form.

4 A. Not to my knowledge.

5 MS. HUNTER: Okay. I will pass the
6 witness.

7 EXAMINATION

8 BY MR. HINOJOSA:

9 Q. Following those lines, you don't know whether
10 the Legislature actually considered any of the cost
11 studies in determining the formulas or target revenue,
12 correct?

13 A. You'd have to talk to the Legislature.

14 Q. And do you know whether -- and it's correct
15 because the new standards and testing have come about
16 after those formulas were determined, they didn't take
17 any increased costs, as a result of any standards or the
18 new testing system, into consideration?

19 MS. DAHLBERG: Objection, form.

20 A. I don't believe the Legislature was in a
21 position to do that during the last legislative session.

22 BY MR. HINOJOSA:

23 Q. All right. And are you aware of any studies
24 of the cost for the implementation of the new curriculum
25 standards and testing system?

1 A. None -- do you mean for ours, or aware of any,
2 ever, for any school district or state?

3 Q. No, any for this state.

4 A. For us, no.

5 Q. All right. And do you know of any cost that
6 would be incurred under common core, but not the state of
7 Texas?

8 A. That's a great question. There was just a
9 study done showing that the implementation of common core
10 would bear a significant cost to many states. They did
11 not factor in the cost of technology, which I found
12 surprising; but to give you an example, a state like
13 Florida, cost to implement the common core was
14 \$800 million.

15 Q. All right. And so similarly for Texas, is
16 there such a study?

17 A. I have --

18 MS. DAHLBERG: Objection, form.

19 A. I have not done a study, but I did a
20 calculation, based on my knowledge of cost of textbooks,
21 professional development and implementation of that, and
22 I estimated probably somewhere between 2-1/2 to
23 \$3 billion.

24 BY MR. HINOJOSA:

25 Q. Okay. And is that in hard format?

1 A. I believe the agency has published that
2 number. I know I've testified in front of committees to
3 that effect, so it is probably in the record somewhere.

4 Q. Does that include district cost as well?

5 A. No. Some of the -- the difference between 2.5
6 and 5 billion may factor in some district costs, but I
7 believe district costs would far exceed \$3 billion.

8 Q. Okay. And do you -- you talked earlier about
9 the nonrenewals. Do you know what percentage of
10 nonrenewals are not appealed?

11 A. No, I don't, off the top of my head. No.

12 Q. And with TFA, are you aware of some of the
13 retention issues of Teach for America --

14 MS. DAHLBERG: Objection, form.

15 A. I'm aware of the claim that they don't stay
16 long. However, my response to that is, I look at people
17 like Chris Barbic and Mike Feinberg, who founded KIPP and
18 YES, and I see them moving into leadership positions.
19 The superintendent of Leander is a TFA alumni. I have
20 staff who are TFA alumni.

21 So whether they're in the classroom or
22 whether they're continuing to provide support and
23 encouragement and benefit to our school system are two
24 different things.

25 BY MR. HINOJOSA:

1 Q. But you are aware of the retention issue
2 within classrooms --

3 A. Sure.

4 Q. -- of TFA?

5 A. Yeah.

6 Q. All right. And then with respect to the
7 charter school process, I think you mentioned there being
8 difficulty in trying to close charter schools?

9 A. Yes.

10 Q. And is that a result of the laws and the
11 regulations that are in place, in part?

12 MS. DAHLBERG: Objection, form.

13 A. I think it's -- I think it's a result of, you
14 know, the property interest that a charterholder retains
15 in the charter and Court's being reluctant to see that
16 property interest taken away without due process --
17 BY MR. HINOJOSA:

18 Q. And is --

19 A. -- and the litigation process itself.

20 Q. And, of course, the charter schools are in
21 favor of -- or is it your understanding that the charter
22 schools are in favor of protecting that interest?

23 MS. DAHLBERG: Objection, form.

24 A. They -- I think on the whole, they'd prefer it
25 remain a charter and not a license.

1 BY MR. HINOJOSA:

2 Q. And because?

3 A. Because a license is easier to revoke than a
4 contract.

5 Q. And even those low-performing charters?

6 MS. DAHLBERG: Objection.

7 BY MR. HINOJOSA:

8 Q. Well, both low-performing and high-performing
9 charters would be opposed to such a move, right?

10 MS. DAHLBERG: Objection, form.

11 A. I can't speak to their particular mindset, but
12 I would say that I -- I don't have any reason to disagree
13 with that statement.

14 MR. HINOJOSA: All right. Pass the
15 witness. Thank you.

16 MR. TURNER: I've just got a couple of
17 last questions.

18 MS. DAHLBERG: Go fast.

19 EXAMINATION

20 BY MR. TURNER:

21 Q. Commissioner, with respect to charter schools,
22 have you reviewed the most recent lawsuit that's been
23 filed by a Charter School Association --

24 A. We have not been noticed with that suit yet.

25 Q. Okay. I was wondering if you knew what

1 position the charter schools had taken in that new
2 lawsuit regarding the adequacy of overall funding in the
3 state?

4 A. I can speak to a conversation I had with David
5 Dunn, the executive director of their association, the
6 day before the suit was filed, and I can tell you what he
7 told me. But I haven't read the suit.

8 Q. What's your general understanding of the
9 charter schools' position on overall funding in the state
10 for education?

11 A. Well, he told me there would be two issues.
12 One issue would be that the cap was -- the cap was
13 inefficient and caused inefficiency, and the second issue
14 would be facilities funding is inefficient.

15 Q. Do you have an understanding of their position
16 on funding for traditional school districts as well?

17 A. No.

18 Q. Now, charter schools do not receive local
19 property tax revenue, correct?

20 A. Correct.

21 Q. They're funded entirely out of the State's
22 general funding for education?

23 A. And whatever else they can raise.

24 Q. And whatever else they can raise.

25 Other things being equal, then, if you

NO. D-1-GN-11-0031130

TEXAS TAXPAYER & STUDENT,) IN THE DISTRICT COURT

FAIRNESS COALITION, et al.,)

Plaintiffs)

VS.) TRAVIS COUNTY, TEXAS

EDGEWOOD INDEPENDENT SCHOOL)

DISTRICT, et al.,)

(Consolidated),)

Defendants)

VS.)

ROBERT SCOTT, in his official)

capacity as Commissioner of)

Education, et al.)

Defendants) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

STEPHEN WADDELL

SEPTEMBER 18, 2012

REPORTED BY: KATHRYN R. BAKER, RPR, CSR #6955

JOB 52735

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REQUESTED DOCUMENTS/INFORMATION (NONE)

CERTIFIED QUESTIONS (NONE)

PROCEEDINGS

THE REPORTER: Any agreements?

MR. TURNER: We're -- no. Under the Rules, and I don't think there's anything special to say.

STEPHEN WADDELL, having been first duly sworn, testified as follows:

EXAMINATION

BY MR. TURNER:

Q. Dr. Waddell, good morning.

A. Good morning.

Q. Would you state your full name for the record, please.

A. Stephen F. Waddell.

Q. And tell us your current position.

A. I'm the superintendent of the Lewisville Independent School District.

Q. I'd like to start by asking you, if you could, to summarize for us your educational background, beginning with your high school and any degrees you have.

A. Okay. I went to two high schools; started out at Tular Joint Union High School in California, and I went there for my freshman and sophomore years. And then I moved to southern Idaho, and graduated from Declo High School, a small school on the Snake River.

Went to undergraduate; I was at North Texas

State University. I graduated with a BA in history and philosophy, and then studied there for a master's degree in history and philosophy. I got my master's in education administration from Stephen F. Austin, and my doctorate in education administration from the University of North Texas.

Q. Thank you. I'd like to ask you to do the same thing, please, with respect to your employment and professional background.

A. Okay. I began teaching at Splendora High School in Southeast Texas in the piney woods, and was an English and history teacher there; and then became a counselor of the high school. Was an assistant principal at Lancaster Junior High in Dallas County, and then became an elementary principal, and then a high school principal in Lancaster.

My first superintendency was Sunray ISD in the Panhandle of Texas, and then superintendent at Tulos-Midway ISD in Corpus Christi, and then superintendent of the Birdville Independent School District in Tarrant County, and now superintendent of Lewisville.

Q. How long have you been the superintendent at Lewisville?

A. I went there March 1, 2011.

Q. You mentioned, I think, it was three other districts where you have been a superintendent?

A. Yes.

Q. How many years altogether now have you been a superintendent in Texas public schools?

A. I think 17.

Q. Let me ask you some questions now about Lewisville ISD.

First of all, approximately how many students are enrolled in Lewisville schools?

A. A little over 52,000.

Q. How many schools are in the district?

A. 63.

Q. How many of those are high schools?

A. Five; and then we have one alternative high school.

Q. Can you give me a sense of how much the district has been growing, in terms of student population, in recent years?

A. The growth slowed some following the recession of 2008, but we added around 700 kids last year. This year, it's still early, but we're about 1,000 over last year's enrollment.

Q. Let's turn now just to some funding issues related to the district.

Have you and your staff from your office helped to prepare some slides that help show certain financial data for Lewisville?

A. Yes, we did.

Q. I'm going to go ahead and hand you Exhibit 751, the first one.

(Exhibit 751 marked.)

Q. (BY MR. TURNER) This slide is entitled, Revenues by Fund Type, Lewisville ISD Official Budget, Fiscal Year 2012 and '13.

Does this slide summarize the budget that has been adopted by the Lewisville ISD School Board for the current fiscal year?

A. Yes, it does.

Q. And you mentioned people from your staff helping to prepare this.

Who, in particular, has worked on these numbers?

A. Teresa Maniscalco, under my supervision.

Q. And what is her position?

A. She's the director of finance.

Q. And did she get the information here from the official budget documents for the district?

A. Yes, she did.

Q. And this shows that in the current budget year,

if you include operating fund, child nutrition fund, and debt service fund, the total estimated revenues for the district are about \$489-million; is that correct?

A. It is.

(Exhibit 752 marked.)

Q. (BY MR. TURNER) 752.

Exhibit 752 has the same information as 751, but there's a new category here called, Additional Funds.

Do you see that?

A. I do.

Q. And in the note below, it says: In this presentation, additional funds refers to funding that is available to the district but is not required as a part of its adopted budget. A majority of this amount consists of federal funding for specific programs, such as IDEA, Title I and Title II(a).

Do you see that?

A. Yes, I do.

Q. And of that 15-million, have you, in fact, reviewed to determine whether the majority of that is those federal programs, such as IDEA, Title I, Title II?

A. That's correct.

Q. And so if you add that in, it brings the total estimated revenues for the district for the current fiscal

year to a little over \$500-million, correct?

A. Yes.

(Exhibit 753 marked.)

Q. (BY MR. TURNER) 753.

Exhibit 753 is a breakdown of the revenues, by source, between local, state, federal, and then the additional funds.

Does this chart accurately show a breakdown of the source of the revenues for the district?

A. Yes, it does.

Q. And does it show that about 71 percent of the funding for the district is provided from local revenue, and approximately 23 percent from the State?

A. That's correct.

(Exhibit 754 marked.)

Q. (BY MR. TURNER) 754.

I'm handing you now a chart that breaks down the appropriations from the operating fund for the district for the current fiscal year.

Is this information accurate, according to the official budget for this year?

A. Yes, it is.

Q. And does this show that 84 percent of the district's operating fund appropriations are for payroll?

A. It does.

1 getting better. And then a new test would come along, and
2 the difficulties would begin again.

3 The difference between those other
4 experiences and now is -- I equate it to the high jump.
5 Every time they say, jump two feet, we jump that; jump
6 four feet, we jump that; jump six feet, we jump that.
7 Well, then what about jumping eight feet? But the
8 difference is, this time, we've had our feet tied
9 together. That's representative of the -- we're given
10 these very stringent new standards, and, at the same time,
11 had a significant reduction in resources to meet them.

12 That's the difference between the past. So
13 it's like, okay, jump this higher bar, but tie your legs
14 together before you leap.

15 Q. All right. That's all I have for now. Thank
16 you, Dr. Waddell.

17 MR. TURNER: I'll pass the witness.

18 Would you like to take a short break, or do
19 you want to keep going?

20 THE WITNESS: I'm doing fine.

21 MR. TURNER: Okay.

22 THE WITNESS: We've met before, haven't we?

23 MR. FIGUEROA: Probably.

24 THE WITNESS: I mean, I know we have; I
25 just can't remember where. But you appear familiar to me.

1 (Examination was concluded and Examination
2 began at 10:07 a.m.)

3 EXAMINATION

4 BY MR. FIGUEROA:

5 Q. Can you hear me from here? Is that fine?

6 Let me introduce myself; my name is
7 Luis Figueroa. I represent a number of the low-wealth
8 districts, Edgewood, McAllen, San Bonito, La Feria, and
9 Harlingen, as well as some parents of low income and
10 English language learners, or what we call ELL students,
11 who attend in Pasadena or Amajillo school districts.

12 We're going to continue with the same rules
13 of the road. If you have any questions about what I'm
14 asking, please feel free ask for clarification.

15 A. Okay.

16 Q. And if you need a break, just feel free to let
17 me know. And if you could give verbal answers so the
18 court reporter can get it down, I'd appreciate that.

19 A. Sure.

20 Q. Does that sound good?

21 A. Great.

22 Q. All right. I was going to start with some
23 demographic information, and I'm going to hand you
24 the 2005-2006 Academic Excellence Indicator System.

25 MR. FIGUEROA: I'll have that marked as

1 Exhibit 772.

2 (Exhibit 772 marked.)

3 Q. (BY MR. FIGUEROA) Are you familiar with the
4 Academic Excellence Indicator System, AEIS?

5 A. I am.

6 Q. If you could turn to page -- Section 2, page 1,
7 which is the student information section?

8 A. (Witness complies.)

9 Q. Could you tell me the percentage of students who
10 qualified for free and reduced lunches in your district in
11 the 2005-2006 school year?

12 A. It looks like 20.2 percent.

13 Q. Great. And beneath that, the limited English
14 proficient?

15 A. 10.5 percent.

16 Q. And your Latino or Hispanic distribution?

17 A. 11.2 percent.

18 Q. And above that, in the ethnic distribution for
19 total students, for Hispanic, what does it say?

20 A. 18.1 percent.

21 Q. 18.1?

22 A. Yeah. I was looking at graduates; I apologize.

23 Q. Thank you.

24 And does all that information seem accurate
25 to you, based on your knowledge of the district?

1 A. Yes.

2 Q. And now we're going to switch to the 2010-2011,
3 and have this marked as 772 -- 773; I'm sorry.

4 (Exhibit 773 marked.)

5 Q. (BY MR. FIGUEROA) If we could go to that same
6 section, Section 2, page 1, in the back?

7 A. (Witness complies.)

8 Q. The percentage of economically disadvantaged for
9 the school district for 2010-2011?

10 A. 26.7 percent.

11 Q. And the limited English proficiency?

12 A. It is 12.8 percent.

13 Q. And the total student population for Hispanic?

14 A. 25.1 percent.

15 Q. Now, going back to the economically
16 disadvantaged, it looks like you've gone from 20.2 in
17 '05-'06 to 26.7; does that sound right?

18 A. That's correct.

19 Q. Has that growth been steady; has it just been
20 the past couple of years? Can you describe the growth?

21 A. I think it's been steady, and it's continuing.

22 Q. And the percentage of students who are English
23 language learners, has that increased, as well, over the
24 past five years?

25 A. Yes, it has.

1 Q. Has that been -- can you describe the growth for
2 that, as well?

3 A. That growth is continuing.

4 Q. Okay. And for Hispanics, would you say that
5 growth has been steady, as well?

6 A. Yes, it has.

7 Q. If we could go to the -- to the -- that same
8 report, go to Section 1, page 4?

9 A. (Witness complies.)

10 Q. Now, you recognize this as a true copy of the
11 2010-2011 AEIS report for Lewisville ISD, right?

12 A. Yes.

13 Q. And it includes the reporting of the performance
14 of your students on the TAKS for grades 3 through 11?

15 A. Yes.

16 Q. And the TAKS test did not test all subjects at
17 all grade levels; is that correct?

18 A. That's correct.

19 Q. For the subjects that weren't tested, the TAKS
20 was meant to test the knowledge of the state curriculum
21 referred to as TEKS; is that correct?

22 A. Yes, that's correct.

23 Q. So if you wanted to have your students achieve
24 the TAKS standards in all subjects -- I'm sorry; your goal
25 would be to have your students achieve the TAKS standards

1 in all subjects at all grade levels, right?

2 A. Yes.

3 Q. So would it be appropriate to look at the sum of
4 all grades tested under all test standards in order to
5 gauge student learning against the Met Standard?

6 A. That would be appropriate.

7 Q. So looking at this exhibit, turning to Section
8 1, page 4, it appears that the sum of all grades tested
9 for the district in 2010 was 88 percent?

10 A. Correct.

11 Q. And the same for 2011, 88 percent?

12 A. Yes.

13 Q. And the sum of all grades tested for low-income
14 students in 2010 was 74 percent?

15 A. That's correct.

16 Q. And 74 percent in 2011?

17 A. Yes.

18 Q. And the sum of all grades tested for LEP
19 students in 2010 was 61 percent?

20 A. Yes.

21 Q. And 60 percent in 2011?

22 A. That's correct.

23 Q. So is it fair to say, after roughly eight years
24 of testing, 40 percent of the LEP students failed to meet
25 the minimum standard set by the State on all TAKS tests?

1 A. Yes.

2 Q. Now, under your current understanding of state
3 law, students are expected to graduate college-ready?

4 A. That's correct.

5 Q. And I think you talked a little bit about this
6 earlier, but can you describe in more detail the rigor of
7 testing from TAKS to STAAR --

8 A. It's much more -- I'm sorry.

9 Q. -- and whether or not it's become more rigorous?

10 A. It's much more rigorous.

11 Q. Are you familiar with the Bridge study,
12 conducted by Pearson, where the rigor of the TAKS test was
13 compared to the rigor of the STAAR?

14 A. Yes.

15 Q. Could you describe what that study found?

16 A. I believe that it found that it was a more
17 rigorous test.

18 Q. Okay. Do the TAKS Met Standards reflect
19 college-readiness?

20 A. I don't know if the minimum standards do.

21 Q. Would it probably be a more accurate indicator
22 for the commended level under TAKS to meet
23 college-readiness?

24 A. Yes.

25 Q. So going over -- looking at, again, Section 1,

1 page 4, it looks like in 2010, a quarter of the district
2 students reached the commended level in all tests; is that
3 correct?

4 A. Yes.

5 Q. Okay. And that number slightly increased for
6 2011?

7 A. Right.

8 Q. What was the percentage of Hispanic students, in
9 2010, reaching the commended level?

10 A. 2010?

11 Q. Yes, in 2010.

12 A. 13 percent.

13 Q. And in 2011?

14 A. 14 percent.

15 Q. And 11 percent of low-income students made it to
16 the commended level in 2010 and 2011?

17 A. Yes.

18 Q. And for ELL students, that number was 6 percent
19 in 2010 and 2011?

20 A. Yes.

21 Q. So it's your understanding that around 95
22 percent of the ELL students did not meet the TAKS
23 commended level that reflects college-readiness?

24 A. Right.

25 Q. We're going to move on to the college-readiness

standards, which is on page 10 -- Section I, page 10.

Can you give me your understanding of what these indicators tell us?

A. I think they're telling us the percentages of students who might be college-ready and how they've achieved, in terms of these various indicators that are listed here.

Q. They purportedly reflect college-readiness standards, right?

A. Yes, sir.

Q. And they are reflected on this page, page 10, Section I, in this report, right?

A. That's right.

Q. And turning to that page, it appears that 20 percent of the district's Hispanic students had advanced course or dual enrollment completion for 2010; is that correct?

A. Yes.

Q. So that means that about 80 percent did not complete an advance course or complete a dual enrollment course between the '08 and 2010 school years?

A. That's correct.

Q. For the white student, there's about 30 percent?

A. Yes.

Q. And looking at the TSI numbers for the year

2011 -- let's step back a little bit.

Can you describe for us what TSI means?

A. It's a calculation on readiness for higher ed.

Q. Now, looking at the TSI initiative for the year 2011, 66 percent of students met the minimum TSI standard for language arts?

A. That's correct.

Q. But only 20 percent of LEP students met the TSI standards for language arts in 2011?

A. Yes.

Q. And less than half of the English language learners in math?

A. That's correct.

Q. Taking a look at the ACT and SAT scores on the next page, do you see that on page 11?

A. I do.

Q. In 2010, more than 65 percent of Hispanic students failed to score at or above the State's criteria for the ACT and SAT in 2009 and 2010?

A. Right.

Q. And going down to the last category on page 10, in 2010, 73 percent of the graduates in the district were college-ready in both subjects in 2010?

A. Yes.

Q. In 2010, 50 percent of your low-income students

were college-ready in both subjects; is that right?

A. That's correct.

Q. And 88 percent of LEP students failed to meet the college-ready standard, in 2010, in both subjects?

A. Yes.

Q. Now, students are expected to graduate college-ready in all subjects, not just in one; is that correct?

A. That's correct.

Q. So what is your opinion on your district's overall performance under the college-readiness criteria we just went over?

A. I think there's a need for a lot of improvement.

Q. Would you say that there's certainly a need for more improvement for the English language and economically disadvantaged?

A. Yes, I would.

Q. Now, earlier, we talked a little bit about the population of low-income students in your district.

Has that student population created any challenges for your district?

A. Yes.

(Mr. Thompson enters the deposition.)

Q. (BY MR. FIGUEROA) Can you describe some of those challenges?

A. Well, I think they come to school -- they begin school with greater needs; they have fewer experiences; their language development is lesser. We, in our LEP population -- I don't know the exact number, but we have over 60 languages in our district. So, you know, combined with problems of -- you're mentioning economically disadvantaged. A lot of these kids who are LEP are also economically disadvantaged. So it creates quite a bit of strain on the organization.

Q. Let's start with low-income students.

Specifically on the low-income students, what are some of the challenges that those students face?

A. Well, they have thousands of fewer words in their vocabulary when they begin school; I think that's one of the biggest challenges. So you have kindergartners in the same classroom, and you have a group whose vocabulary development is much less than the others; and that's the building block for learning. They've had very little exposure to readiness experiences for reading and writing. They're dealing with other issues of poverty that they're having to contend with. And oftentimes there's high mobility rates, so they're moving from school to school, district to district. And if they speak a different language, then they're contending with that. So they face significant issues when they come to school.

1 Q. And what is your district doing to try to meet
2 those challenges?

3 A. Train as many people as we can in ESL, and teach
4 them about how to deal with children in poverty. This
5 year, we began two-way dual language programs, and we've
6 extensively implemented that. So -- and there's more, but
7 I feel like we've done a lot. And we've had to react
8 pretty quickly to changes in our demographics there, have
9 really been over the last few years. So the district has
10 had to make very quick changes. But the biggest change
11 we've made this year, as far as LEP students, is the dual
12 language; that's primary, that's Hispanic-speaking kids.

13 Q. We will get to LEP students.

14 A. Okay.

15 Q. So let's talk a little bit about the
16 economically disadvantaged.

17 What additional support for those students
18 would you like to provide?

19 A. Well, we need to make sure that they -- I think
20 -- let me mention a thing that we've done this year that I
21 think is significant, and, partly, it goes in line with
22 being efficient with our resources.

23 We changed our staffing allocation models
24 to use something we call the student demographic index;
25 it's like weighting formulas. And so looking at the

1 demographics of campuses, we give them more resources than
2 we do others.

3 Q. Are there some programs that you would like to
4 implement, if you could?

5 A. Well, I mentioned one that we've tailed back on,
6 the reading recovery; I think that's a successful one. We
7 look at programs like that that have a proven difference.
8 I think it -- maybe it's not a program, but I think
9 something that's significant is, in the trying and having
10 to raise student class sizes, is it changes the way
11 instruction takes place in the classroom. And we believe
12 that by providing what we consider to be more engaging
13 lessons, more hands-on kinds of things for kids, that they
14 benefit from that, and they prefer it. But the larger the
15 class size becomes, the more difficult it is to use that
16 kind of strategy.

17 So I think of all the things we could do,
18 it wouldn't be programmatic; it would be changing the
19 nature of the classrooms where the kids and teachers can
20 interact more and are more project-based, more hands-on,
21 more applications. So I think the ever-increasing class
22 sizes impact that sort of thing.

23 I think the worst thing for low-economic
24 kids is they're not given enriched instruction, and
25 they're put into more rote kinds of work to prepare

1 themselves, for example, for the tests.

2 Q. What, to you, is the biggest obstacle preventing
3 you from being able to implement those enrichment
4 programs, those hands-on lessons, and those reading
5 recovery programs?

6 A. Well, part of it is getting our staff trained so
7 they can make that kind of shift. I think there's a trend
8 to go that direction, not just in our district, but in
9 many. But it's not something you can just say to
10 teachers, go do that. So getting them trained so they
11 have the knowledge and understanding, technology is a part
12 of that. Providing technology resources for kids and
13 teachers that facilitates that -- what goes on in the
14 classroom, that kind of learning is another part of it.
15 And then on the flip side is the growing size of the
16 classroom, the student/teacher ratios.

17 Q. Would you say that resources are a part of all
18 of those things that you just mentioned?

19 A. Yeah, they're a part of all of that.

20 Q. If you had the resources, would you be able to
21 implement these changes that you just described?

22 A. Yes.

23 Q. Now, you talked a little bit about the budget
24 cuts earlier.

25 Can you describe how some of those budget

1 cuts will affect low-income students?

2 A. Well, it affects all of our students, so it's
3 going to affect them. But, I think, if you look at why do
4 we do the SDI, we feel like -- you know, in our district,
5 we believe that those kids who are more at risk, we need
6 to be directing more of our resources to them.

7 Q. Now, let's switch gears a little bit to the
8 English language learner.

9 And maybe I asked you this, but could you
10 describe, again: Has the student population for English
11 language learners created challenges for your district?

12 A. Of course.

13 Q. And can you describe some of those challenges?

14 A. I think the most obvious one is when you have
15 students in your class and they speak languages that you
16 don't have anybody in your district that speaks that
17 language, that's going to be a challenge. I would take
18 volunteers from this room or anybody out on the street and
19 say, let me just go put you in a classroom with 20 Chin
20 kids from West Burma, and you get to teach them. Or maybe
21 even more extreme, you know, a class of 22 kids, with 22
22 different languages spoken in there, and you get to teach
23 them how to read, and you get to teach them math, and do
24 it on grade level. I think you might find that to be a
25 bit of a challenge.

1 Q. What is your district doing to try to meet those
2 challenges?

3 A. Well, as I mentioned earlier, you know, we're
4 training all of our teachers to get them ESL-endorsed, and
5 we are -- in Spanish speaking, most of our -- even though
6 we have a lot of languages, the majority of our LEP kids
7 are Spanish-speaking kids. So we've converted all of our
8 bilingual programs over to two-way dual language. And
9 what's more is, we've actually been -- we've implemented
10 one in a non-bilingual campus this year, and brought kids
11 to there. And our hope is to expand that, or it's not
12 just -- our goal is to have a bilingual population.

13 So I think that's beneficial for all of our
14 kids, for the LEP kids, as well as kids that are not LEP.
15 So that's the thing -- so that's what we've really
16 concentrated on this last year: getting teachers that
17 understand kids of different languages and cultures;
18 making sure they're well trained in that; that our
19 principals understand providing a lot of -- as much
20 support as we can from the central office to those
21 campuses.

22 Q. And is that two-way dual language program a more
23 expensive program?

24 A. Yes, it is.

25 Q. Did you-all use technology resources in order to

1 meet the needs of those non-Spanish LEP students?

2 A. We do. We'd like to expand that. I think
3 there's been evidence that technology, particularly things
4 like iTouches and iPods work really well with limited
5 English-proficient kids; they can take those devices home
6 and continue to experience what they were given in the
7 classroom.

8 So I have a strong belief in technology.
9 It's not the end of everything, but, nonetheless, it's --
10 it provides a -- it's becoming a huge force in terms of
11 providing access to learning for people.

12 Q. Does your district want to provide additional
13 support for the English language students?

14 A. Yes.

15 Q. And why would you feel that you would want to
16 provide that additional support; what would that achieve?

17 A. I think it would give our kids and our teachers
18 advantages to become proficient and to learn more rapidly
19 and more deeply.

20 Q. And why isn't the district providing these
21 additional resources, such as expanding dual language and
22 other technological --

23 A. Well, we are, but we're limited in the degree
24 that we can do that, and it's primarily due to having the
25 resources to do that.

1 Q. So if you had the resources, you would be able
2 to implement the changes that you feel are necessary?

3 A. I believe so. Without them, we can't.

4 Q. Now, we were discussing earlier some of these
5 changes that you've implemented to provide additional
6 support for low-income children.

7 Do you believe those programs would help
8 close the gaps that we've discussed?

9 A. I do.

10 Q. And if you were able to implement additional
11 support for English language learner students, do you
12 believe those programs would help close the gaps that we
13 discussed?

14 A. I do.

15 Q. Now, we just went over some of the gaps on
16 student performance for ELL and low-income students.

17 Is it your belief that ELL students cannot
18 achieve the standards set by the State?

19 A. No, I don't believe that.

20 Q. What about low-income students, are they capable
21 of achieving State standards?

22 A. I believe all children are.

23 Q. And the reason that they are not -- let me say
24 this: What is necessary in order to get those standards
25 up to the standards set by the State?

1 A. Well, that's a complicated question. But what's
2 necessary is that people believe they can learn; as you
3 were just asking me, they have to have that belief. You
4 have to look at best practices and the things that work.
5 You have to put the kids in engaging learning
6 opportunities where they see purpose and they see hope and
7 they see evidence of success where they keep persevering.
8 You have to keep looking at what you're doing for them and
9 assessing whether it's working or not, and keep looking
10 for better ways to do it and implement those things. You
11 need to have classrooms where they have a chance to learn.

12 And so you need to have resources available
13 to them, both in the classroom and in support of that
14 classroom, in order to accomplish that. It's a big task,
15 and it's not an easy one, and there's not just one remedy
16 for the problem.

17 Q. So you believe those students could perform if
18 given meaningful opportunities?

19 A. Absolutely.

20 Q. Now, Lewisville ISD is a property-wealthy school
21 district; is that correct?

22 A. Yes.

23 Q. Have you ever worked in a property-poor or
24 low-wealth school district?

25 A. I have.

Q. Which school districts have you worked?

A. Birdville was; and Sunray was a gap district, but it was, you know, on the edge. It was not property-wealthy, but it was close. Birdville was a property-poor district with low-target revenue.

Q. And where was that school district?

A. Birdville ISD in Tarrant County.

Q. Now, were those students in Birdville ISD, were they held to any higher standards by the State, compared to the students in Lewisville ISD?

A. They were held to the same standards.

Q. In fact, all students across the state are held to the same standards; is that right?

A. It is right.

Q. Now, we looked at some of your financial data earlier in Exhibits 758 through 760, so I'm not going to re-ask you all of that information.

But I was wondering if you know your yield per penny for \$100 of valuation?

A. 2.2-million.

Q. Now, how would your operations be affected at your current M&O tax rate if you received \$1,000 less per WADA?

A. It would be an adverse impact.

Q. Would achievement be affected?

A. Perhaps. We would try to keep that from happening, so I can't say that it would. You know, we're devoted to not having that happen, but it would make it more difficult.

Q. What is your compressed rate?

A. It's right at \$1.

Q. Has your district approved pennies above the compressed rate?

A. We're at \$1.04.

Q. And some of that revenue raised from those four pennies are recaptured by the State?

A. No, we've don't have a w recapture.

Q. Now, you also receive comp ed and other monies from the State?

A. Yes.

Q. I believe on page 5 of the AEIS report, it says that you receive \$24-million from the State.

Does that sound accurate?

A. I'm sure it is.

Q. What are the surrounding districts in your area?

A. The surrounding districts?

Q. Yes.

A. We're surrounded by Denton, Frisco, Coppell, Grapevine, Argyle; and I don't think Northwest touches our boundary. I think those are the districts that -- Lake

Dallas.

Q. Would you say the cost of living in your district is similar to the districts in your area?

A. Yes.

Q. Would you say the cost of building a school would be similar?

A. Yes.

Q. Do you know what your current INS rate is?

A. I think it's 38 cents; it's close.

Q. Do you know how much you were able to generate with your INS rate?

A. For that whole 38 cent's, it's 2.2-million times that, so whatever that is. I could get out my calculator and figure it out.

Q. Okay.

A. I don't know off the top of my head.

Q. No problem. Thank you.

Do you have any outstanding construction or facility needs?

A. Yes.

Q. Can you describe some of those needs?

A. We are working through -- well, did you say "needs"?

Q. Yes.

A. You said "facility needs"?

Q. Yes.

A. We are finishing up a bond that was passed in 2008, so we have about \$160-million left in that. And we also did a facilities assessment, using a committee of citizens, as well as our architects and staff members. I just reported that out to the Board. That assessment identified about \$460- or \$470-million in needs.

Q. Now, do you use your INS rates for uses other than construction?

A. No.

Q. And which other districts do you compete with for personnel?

A. All of the districts in the Metroplex.

Q. Now, just to be clear, are you asking the Court in this lawsuit for the State to eliminate recapture?

A. No.

Q. Or to reduce recapture?

A. No.

Q. Those are all of the questions I have. Thank you for your time.

A. Thank you. You're welcome.

MR. TURNER: Let's take a little break.

MS. PENN: Yeah.

(Examination was concluded.)

(Recess in the proceedings from 10:39 to

NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT § IN THE DISTRICT COURT
FAIRNESS COALITION, §
et al., §

Plaintiffs, §

v. §

EDGEWOOD INDEPENDENT §
SCHOOL DISTRICT, et al., § TRAVIS COUNTY, TEXAS
(consolidated) §

Plaintiffs, §

v. §

ROBERT SCOTT, in his §
official capacity as §
Commissioner of Education, §
et al. §

Defendants. § 200th JUDICIAL DISTRICT

OPAL DEPOSITION OF THOMAS A. WALLIS, PH.D.

Austin, Texas

Wednesday, August 1, 2012

Reported by:

MICHAEL E. MILLER, FAPR, RDR, CRR, CSR

JOB NO. 51377

DEPOSITION EXHIBITS
THOMAS A. WALLIS, Ph.D.
August 1, 2012

| NUMBER | DESCRIPTION | MARKED |
|-------------|---|--------|
| Exhibit 130 | 2010-11 Bryan ISD Budget Reduction Plan | 18 |
| Exhibit 131 | 2010-11 AEIS Report for Bryan ISD | 73 |
| Exhibit 132 | Bryan High School Norseman Article | 90 |
| Exhibit 133 | Bryan ISD Superintendent's Office Webpage | 93 |
| Exhibit 134 | Bryan ISD Curriculum & Instruction Webpage | 95 |
| Exhibit 135 | Bryan ISD District Programs Webpage | 98 |
| Exhibit 136 | "Bryan ISD Names Two Principals," Press Release | 109 |
| Exhibit 137 | 2008-09 AEIS Report for Mary Branch Elementary | 114 |
| Exhibit 138 | 2010-11 AEIS Report for Fannin Elementary | 119 |
| Exhibit 139 | 2010-11 AEIS Report for Sam Houston Elementary | 121 |
| Exhibit 140 | 2010-11 AEIS Report for Ben Milam Elementary | 126 |
| Exhibit 141 | 2010-11 AEIS Report for Neal Elementary | 130 |
| Exhibit 142 | Bryan ISD Teachers and Nonadministrative Professional Salary Schedule 2012-13 | 146 |

DEPOSITION EXHIBITS

| NUMBER | DESCRIPTION | MARKED |
|-------------|--|--------|
| Exhibit 143 | Texas Education Code 21.402 | 147 |
| Exhibit 144 | 2010-11 AEIS Report for Mary Branch Elementary | 159 |
| Exhibit 145 | 2010-11 AEIS Report for Johnson Elementary | 161 |
| Exhibit 146 | 2010-11 AEIS Report for Bonham Elementary | 162 |
| Exhibit 147 | 2010-11 AEIS Report for Anson Jones Elementary | 166 |
| Exhibit 148 | May 2012 "The Administrator" Newsletter | 179 |
| Exhibit 149 | Region 6 DMAC Mini-Academy Webpage | 181 |
| Exhibit 150 | Bryan ISD Job Openings Webpage | 197 |
| Exhibit 151 | Texas Education Code 21.251 | 212 |
| Exhibit 152 | TEA Wealthier WADA Spreadsheet | 233 |
| Exhibit 153 | Bryan ISD Frequently Asked Questions | 233 |
| Exhibit 154 | Bryan ISD Tax Election Polling Locations Webpage | 239 |
| Exhibit 155 | ARRA Grants with Remaining Balances by Grantee | 243 |
| Exhibit 156 | 2004-05 AEIS Report for Bryan ISD | 253 |
| Exhibit 157 | 2005-06 AEIS Report for Bryan ISD | 253 |
| Exhibit 158 | 2006-07 AEIS Report for Bryan ISD | 253 |

DEPOSITION EXHIBITS

| NUMBER | DESCRIPTION | MARKED |
|-------------|---|--------|
| Exhibit 159 | 2007-08 AEIS Report for Bryan ISD | 253 |
| Exhibit 160 | 2008-09 AEIS Report for Bryan ISD | 253 |
| Exhibit 161 | 2009-10 AEIS Report for Bryan ISD | 253 |
| Exhibit 162 | 2010-11 AEIS Report for Bryan ISD | 253 |
| Exhibit 163 | Spring 2012 STAAR Results for Bryan ISD | 361 |

PROCEEDINGS

(August 1, 2012 at 8:56 a.m.)

THOMAS A. WALLIS, Ph.D.,

having been duly sworn, testified as follows:

EXAMINATION

BY MR. GRAY:

Q. Would you state your name, please, sir.

A. Thomas A. Wallis, W-A-L-L-I-S.

Q. And, Mr. Wallis, will you tell us your -- what do you do?

A. I'm the superintendent of Bryan Independent School District.

Q. And give me, briefly, your educational background that qualifies you to be the superintendent of Bryan.

A. I have my doctorate from Stephen F. Austin State University, my master's from Texas A&M University-Commerce; got to throw that in there, got to put the dash in there for Commerce. And then my master's -- or my bachelor's from Angelo State.

I've been a superintendent at Palestine Independent School District for three years prior to Bryan. And then I was high school principal for five years in Mabank ISD at Mabank High School; assistant principal for, I guess, nine years in Mesquite and

1 community in a year through the educational foundation.

2 So their computers and their technology is
3 up to date because there was one elementary school that
4 needed a computer lab in one of their new schools and the
5 schools didn't pay for it, so the PTO got together and
6 raised over -- what I was told, over \$200,000 to put a
7 computer lab in the school.

8 So their things, their labs, their
9 technology, they have the money and the resources. And
10 if the school can't afford it, then the community will
11 step up and do that for them. When you're in a
12 property-poor school district, those things don't take
13 place.

14 Q. So are you in a situation where a -- not
15 necessarily all the time, but a large portion of the
16 time, the property-wealthy district raises more per WADA
17 than the property-poor districts, or they have more tax
18 resources that way, and then they tend to have a greater
19 affluent parent population that's able to make further
20 donations?

21 A. Correct.

22 Q. So that the disadvantage the poor district has
23 with a lot of poverty population is further -- is even
24 further exacerbated?

25 A. Correct. If I was superintendent of a

1 property-wealthy district, I could put my resources into
2 a classroom and have my pre-K classes or have more
3 instructional aides or have teacher-student ratios lower
4 and if I knew my community, if I went and asked, would
5 support and pay for a computer lab.

6 Q. Short of additional educational resources for
7 Bryan and short of significant additional educational
8 dollars and resources for Bryan, will Bryan ever be able
9 to meet the college-ready and career-ready standard
10 imposed by the State, in your judgment?

11 A. No.

12 MS. HALPERN: Object to the form.

13 MR. GRAY: Thank you, sir. I've got no
14 further questions.

15 THE WITNESS: Yes, sir.

16 MR. GRAY: But you're not over with.

17 MS. HALPERN: Why don't we take a break.

18 (Recess taken, 10:20 a.m. to 10:33 a.m.)

19 EXAMINATION

20 BY MR. HINOJOSA:

21 Q. Dr. Wallis, my name is David Hinojosa. I'm an
22 attorney with the Mexican-American Legal Defense and
23 Education Fund, MALDEF, and we represent five
24 property-poor school districts in this case -- Edgewood,
25 San Benito, La Feria, Harlingen, McAllen -- as well as

1 parents of low-income and English language learner
2 children.

3 A. Did you say Harlingen?

4 Q. Harlingen, yes.

5 I just have a few questions here today for
6 you. First off, some of the cuts that you mentioned
7 earlier, did you and the board decide on those cuts for
8 the purpose of getting rid of unnecessary programs or
9 services?

10 A. No, sir.

11 Q. Did that improve the efficiency of your
12 operations as a district?

13 A. No, sir.

14 Q. Were those cuts made to help you improve the
15 educational opportunities provided to your students to
16 help them achieve the state standards and their full
17 potential?

18 A. No, sir.

19 Q. Earlier you were testifying about the
20 challenges brought by English language learner and
21 economically disadvantaged students that you serve in
22 your district.

23 Is it your testimony that these students
24 just can't succeed, even if they were provided the
25 reasonable opportunities to do so?

1 A. No. They can succeed.

2 Q. And are you, as a district, able to provide
3 English language learner and economically disadvantaged
4 students the reasonable opportunities they need to
5 achieve the state standards and their full potential?

6 A. No.

7 (Wallis Deposition Exhibit 131 marked.)

8 BY MR. HINOJOSA:

9 Q. I want to go over some information. I've
10 handed you what's been marked as Exhibit 131, which is
11 the 2010-2011 Academic Excellence Indicator System report
12 for Bryan ISD.

13 Do you recognize Exhibit 131 as a true
14 copy of this document?

15 A. Yes, sir.

16 Q. And this would be the last AEIS report
17 produced by the Texas Education Agency, or at least the
18 most current, correct?

19 A. Correct, yes, sir.

20 Q. I want to go to Section I, page 4. And the
21 information reported on here as far as the student
22 performance in this section, that's based on the old TAKS
23 test, correct?

24 A. Yes, sir.

25 Q. And are you familiar with the alignment study

1 that was conducted between the TAKS and the STAAR tests?

2 A. No.

3 Q. Well, I'll represent to you that on the record

4 in this case thus far, the TAKS met standard on many of

5 the tests that were administered is actually below the

6 STAAR guessing standard.

7 A. Okay.

8 Q. Do you understand?

9 A. I do.

10 Q. And are you familiar with that?

11 A. You said a study, though. You talked about a

12 study earlier, though.

13 Q. Yeah. And I'm just wondering if you're

14 generally familiar with the fact that the increase in the

15 rigor of STAAR is so much that the guessing standard on

16 some of the tests is actually higher --

17 A. Oh. Higher.

18 Q. -- than the old TAKS met standard?

19 MS. HALPERN: Object to the form.

20 A. Yes, sir.

21 BY MR. HINOJOSA:

22 Q. And you understand that your job as a

23 superintendent and in preparing the students to be ready

24 to graduate, goes beyond just the TAKS tests, correct?

25 A. Yes, sir.

1 A. 57%.

2 Q. And for economically disadvantaged students?

3 A. 64%.

4 Q. And do these numbers here represent some of

5 the challenges under the old TAKS system that you were

6 talking about earlier today?

7 A. Yes, sir.

8 Q. But even the students who are meeting these

9 minimum standards on the TAKS tests, is it your testimony

10 that those students would be college-ready?

11 A. No, it's not. They're not college-ready. The

12 minimum standard is much lower than even 70% in some

13 cases. So just because they've met the minimum standard

14 doesn't mean they have mastered the content or the

15 subject that was taught.

16 Q. Okay. Now, let's go to the "TAKS Commended

17 Performance," and I think you had mentioned that earlier?

18 A. Yes, sir.

19 Q. We're going to look at the same columns for

20 some ease here. So if we look at the "All Tests" for the

21 district, what percentage of your students met the

22 commended performance for all tests?

23 A. That's the 13%.

24 Q. All right. And how about for LEP students,

25 what percentage?

1 Q. But looking at the TAKS tests that are

2 administered, is it important to look at how students are

3 performing on all of the tests altogether?

4 A. Yes, sir.

5 Q. All right. So let's go to the "TAKS Met 2011

6 Standard (Sum of All Grades Tested)."

7 A. Okay.

8 Q. And under the "All Tests," which is the last

9 row in this section, what percentage of the district was

10 meeting the minimum TAKS standard for all tests?

11 A. 13%.

12 Q. I think I'm -- you're on the commended

13 performance right now, so let's go above that.

14 A. I'm sorry. I'm sorry. So we're up here?

15 Q. Yes.

16 A. Okay. All tests, district would be 71%.

17 Q. So 29% of your students failed to meet the

18 minimum TAKS met standard in the district, correct?

19 A. Yes, sir.

20 Q. And then if we go to the far right column --

21 well, two columns from the far right, that's LEP

22 students?

23 A. Yes, sir.

24 Q. And what percentage met the minimum TAKS

25 standard for all tests?

1 A. 8%.

2 Q. And economically disadvantaged?

3 A. 7%.

4 Q. And what do these outcomes represent?

5 A. Well, what it represents to me is that 92% of

6 my LEP students and 93% of my economically disadvantaged

7 students are performing poorly, because the commended

8 level is the area that we look at for more college

9 readiness.

10 So that tells me that my LEP, my

11 economically disadvantaged, and for that fact, my entire

12 district at 87% of my students, are not performing at the

13 level that we would consider ready for college.

14 Q. And if we go to what the Texas Education

15 Agency reports here as the college readiness indicators,

16 we're going to go to Section I, page 10. Are you

17 familiar with these college readiness indicators, such as

18 advanced course/dual enrollment completion, the AP/IB

19 results?

20 A. Yes, sir.

21 Q. And this is just based on TEA's representation

22 that these are college readiness indicators, okay?

23 A. Yes, sir.

24 Q. So looking at the advanced course/dual

25 enrollment completion, what percentage of Bryan ISD

1 students have taken an advanced course or dual-enrollment
2 course in the year 2009-2010?

3 A. 23.6.

4 Q. And then that's 17.1% for economically
5 disadvantaged and only 3.6% for LEP students?

6 A. That's correct, yes, sir.

7 Q. And is this -- are these numbers -- well, tell
8 me: Are they something that you would expect from Bryan
9 ISD, if it was fulfilling its role to provide the
10 educational needs for students?

11 A. No. Every column that we've looked at and
12 every column on this sheet needs to be higher. Every one
13 of them.

14 Q. And how much of this, with respect to the
15 advanced course/dual enrollment completion rate, is a
16 product of the resources that the district has?

17 A. Well, I think this goes back to what I
18 testified earlier. When you have students that take the
19 AP exam and they can't afford to pay for it, then we have
20 to pay for it, or somebody else has to pay for it.

21 So I think that what this goes back into,
22 when you look at best practices, I would say that you're
23 looking at hands-on activities. I would say that you're
24 looking at technology, research-based.

25 When you look at these classes of advanced

1 courses and dual enrollment, you're talking about
2 students that, if you're from a family of poverty,
3 college isn't a dream of yours. It's to graduate high
4 school and get a job.

5 I'll give you an example of what I
6 testified earlier. At Rockwall, 82%, at that time, of
7 stay-at-home mothers had a degree. I don't think 82% of
8 my community in Bryan has a degree. So I think this is a
9 cultural and environmental shift that school districts
10 across Texas are going to have to address, but we can't
11 address it with the amount of funds that we have
12 currently.

13 Q. And how does the funds affect the -- even the
14 course offerings, the district's ability to even offer
15 the advanced courses and dual enrollment in the AP
16 course?

17 A. Yes, sir. That goes back even to what I
18 testified earlier. When you compare Bryan to College
19 Station, the number of opportunities and the number of
20 courses that they offer at the advanced level, we don't
21 have.

22 So what we really rely upon is the test --
23 the test where they come in, our ELL students, and try to
24 CLEP out of the Spanish. We hope they can CLEP out of
25 that.

1 But we don't offer the same amount of
2 courses, which if I had those courses, some of those
3 students that are economically disadvantaged, LEP
4 students, African-Americans, Hispanic, any of them, there
5 may be an interest in there that is their interest that
6 we don't offer but another school district does offer.

7 Q. And when you say "CLEP out," just to clarify
8 on the record, what do you mean?

9 A. Where they don't have to take the class. If
10 they score at a proficient level or a high level on an
11 exam, they get high school credit for that. They would
12 get the credit.

13 Q. Okay. Now, if we can look next at the AP/IB
14 results on Exhibit 131 for the year 2010 on the number --
15 the percentage of students tested, reported here, is what
16 for the district?

17 A. It's 21.5%.

18 Q. And I don't believe the information is
19 reported on the economically disadvantaged or LEP
20 students.

21 A. Correct.

22 Q. But looking at the racial differences here
23 between the African-American and Hispanic community and
24 the white community, can you just state what these
25 percentages are here?

1 A. Yes, sir. The African-Americans were at 12.1,
2 the Hispanics were at 12.6, and the Anglo was at 36.7.

3 Q. Would you call this a pretty significant gap
4 between African-American, Hispanics, as opposed to
5 whites?

6 A. Yes, sir.

7 Q. And even when you look at the whites, you have
8 over 60% of your students not testing in AP/IB, correct?

9 A. That's correct.

10 Q. And then if we look at the examinees meeting
11 at or above the criterion, what percentage of the 21.5%
12 students who were tested -- what percentage of those
13 students met the criterion?

14 A. 53.1.

15 Q. And for African-American, Hispanic and white
16 students?

17 A. African-American was 26.3, Hispanic was 46.1,
18 and Anglo was 60.2.

19 Q. And do you have an idea of what percentage of
20 the Hispanics have achieved the AP/IB results tested here
21 through the Spanish test alone?

22 A. I do not know that. I can get it for you, but
23 I don't know it today.

24 Q. That's okay.

25 Let's go to Section I, page 11 of

Exhibit 131. I want to look at the SAT results and the number tested in the class of 2010. It looks like the district was 47%; is that correct?

A. That's correct, yes, sir.

Q. And then for African-American, it was 57%; Hispanic, 37%; and whites, 52.3%, correct?

A. Yes, sir.

Q. And is it an important step to have students tested on the SAT and ACT results?

A. Yes, it is to me. It is to our district.

Q. And is it the goal of the district to just simply increase the number and percentages of the overall students as well as the disaggregated student groups, or is it even more important to have those students actually perform well on those exams?

A. Well, we want -- we'd like to have our cake and eat it too. We'd like to have more of our students take the test and more of our students perform well. But you have some variables in here as to why these numbers are low, both the AP/IB and the SAT/ACT. You have variables that make up this number.

Q. And there's been an increase in the number, it looks like, between 2009 and 2010. Aside from white students, actually, it looked like it dipped 1.3% in the percentage tested.

But do you know if the district has received any funding specifically for the SAT or ACT to help cover the cost?

A. Not that I'm aware of. At that point, I wasn't in the district, so...

Q. Okay.

A. Now, if you'd like for me to talk about where we -- where I was currently, we had money set aside through high school allotment money that has been cut, so we didn't do that. So as far as Bryan goes, I can't really answer that question, if there were funds set aside for that.

Q. Now, of the students who actually did decide to test, which is 47% of the district, how many met the at-or-above criterion for the class of 2010?

A. 26.8.

Q. And for the African-American, Hispanic and white student groups, respectively?

A. 8.2, 18.4 and 41.4.

Q. And then when we look at the college-ready graduates as reported here under TEA, are you familiar that the college-ready graduate indicator here reflects certain scale scores?

A. Yes, sir.

Q. And looking at just the -- both subjects for

the class of 2010, what percentage of the district's students met that minimum criteria?

A. 50%.

Q. And so one-half of your students failed to meet the minimum college-ready criteria, as determined by the Texas Education Agency for both subjects, correct?

A. That's correct.

Q. And for economically disadvantaged and LEP students, what percentages met the minimum college-ready criteria for both subjects?

A. 1% met LEP, and 35% economic disadvantaged.

Q. And you're familiar with the State having adopted the career and college readiness standard a few years ago, correct?

A. Correct, yes, sir.

Q. Do you recall the exact year that that occurred?

A. It was four years ago, I believe, wasn't it? Was it four years ago? The exact date, I really can't tell you. I'm going back a few years.

Q. And so the college and career readiness standard has been put in place. It's not something new this year, correct?

A. No. No, sir.

Q. And so based on these college-ready

indicators, some of the performance that we just went over, how would you describe your district's performance in meeting those indicators?

A. Unacceptable.

Q. And what is the link between these outcomes and the level of resources that your district is able to access under the public educational system, if any?

A. What is the link?

Q. The link.

A. Yes. At this point, when you look at this, number one, you're looking at the amount of money that a student, in my opinion, has; the family background, what's the family background? What is the economic background of the family? What is the -- what's the educational background of the family?

You've got: What are we doing as a district to -- what are we doing to recruit more students to take these tests? What are we doing to encourage these students to take these tests? What are we doing to talk to these parents?

Is that what you're asking? Am I understanding that correctly? Am I answering your question correctly, or am I not? I want to make sure I understood your question correctly.

Q. Yeah, I'm not sure. Perhaps.

1 What I'm trying to get at is: Has the
2 level of resources that your district has accessed --

3 A. Oh.

4 Q. -- impacted these results?

5 A. Yes, I understand that.

6 Yes, because we don't have the monies to
7 go out and have these one-on-one conversations. We don't
8 have the resources in the counseling center. We don't
9 have the resources in our administration. We don't have
10 the time for our teachers to go out and make home visits
11 that we once had before the budget cuts.

12 So in terms of financing, we don't have
13 the people and the resources that we once had, before we
14 were cut, to go out and make the home visits and to visit
15 and to encourage and to counsel.

16 Q. And how about the quality of the English
17 language learner services and the compensatory education
18 programs, such as intervention for economically
19 disadvantaged students, how has that been affected?

20 A. It's gone down. We don't have the level. We
21 don't have the number of people. For an example, the way
22 teachers are set up today, many of them want to -- it's
23 pretty much expected -- "If I'm going to do tutorials and
24 I'm going to offer tutorials, I'm going to offer
25 interventions, then how am I compensated? Because my

1 counterparts at different districts offer" -- and I
2 testified earlier, they offer incentives. They offer
3 monetary packages for those students and pay teachers
4 extra stipends, if you will, to tutor on Saturdays, to
5 tutor after school, whereas we do the best we can, but
6 those resources aren't available anymore.

7 So our best teachers will stay, but they
8 get burned out, and then where do they go? They go to my
9 counterpart across the street.

10 And so with the lack of funding now, we
11 can't offer a person a stipend, a little extra, to help
12 our kiddos. And then, of course just our resources in
13 general, books, technologies, iPads, those things we
14 don't -- we don't have them that we had previously.

15 One of the things that we asked our
16 teachers and our administration to go back and do, if
17 they had additional monies as other districts, one was to
18 get additional resources for our LEP students, our ELL
19 students. They're not up to date. They're not as
20 current.

21 Our teachers all need to be trained in
22 bilingual education, because we would love to pay for it
23 because we need more bilingual teachers in our district.
24 We don't have them. We're five short currently, as we
25 speak today.

1 We need to train more students to be
2 bilingual. If we're 52% Hispanic, then we have to be
3 able to meet that need. And the only way we're going to
4 be able to meet that need is to hire, whereas if you're
5 bilingual, the corporate America is going to pay you a
6 whole lot more money if you're bilingual. And so we
7 struggle with that.

8 So we have to be able to pay those people
9 to come in, and we just don't have the money anymore.

10 Q. And these items that you just mentioned here,
11 are they part of a wish list, or are they part of a
12 necessary program just to simply present students the
13 reasonable opportunity to achieve the standards?

14 A. No, it's not a wish list. It's a necessity.
15 When kids come to us behind, when kids come to us and
16 they can't speak English, they can't read English, then
17 we have to give them those interventions. And a one-hour
18 block of reading, that's not enough time.

19 I challenge anybody in this room to go
20 learn Russian in one year, studying it one hour a day. I
21 betcha you can't do it. So my point is, these kiddos
22 need more time than their one-hour or two-hour block to
23 learn the content area, because then you've got lunch and
24 you've got your specialty classes, you've got your music
25 and those things. So these students and these

1 teachers -- it's not a wish list, it's a necessity.

2 MR. HINOJOSA: Thank you, Mr. Wallis. I
3 pass the witness.

4 MS. HALPERN: Why don't we take a
5 five-minute break so we can move over.

6 (Recess taken, 10:58 a.m. to 11:01 a.m.)

EXAMINATION

8 BY MS. HALPERN:

9 Q. Superintendent Wallis, how did you come to
10 Bryan ISD?

11 A. I was recruited.

12 Q. All right. What is your understanding of what
13 happened to Superintendent Mike Cargill, your
14 predecessor?

15 A. He retired.

16 Q. Do you know whether that was a voluntary
17 choice on his part or not?

18 A. Didn't ask.

19 Q. All right. Were you excited about coming to
20 Bryan?

21 A. Initially, no, because I was happy where I was
22 at. But then absolutely. The answer is yes.

23 Q. Okay. And, in fact, you got a sizable salary
24 increase to come to Bryan?

25 A. Define "sizable."

NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
FAIRNESS COALITION, et al.,)

Plaintiffs,)

v.)

EDGEWOOD INDEPENDENT SCHOOL) TRAVIS COUNTY, TEXAS
DISTRICT, et al.,)
(consolidated))

Plaintiffs,)

v.)

ROBERT SCOTT, in his official)
capacity as Commissioner of)
Education, et al.)

Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

WILLIAM WIGGINS

Austin, Texas

September 12, 2012

Reported by:

SUSAN S. KLINGER, RMR-CRR, CSR

JOB NO. 52734

EXHIBITS (continued)

| No. | Page | Description |
|-------------|------|---------------------------------|
| Exhibit 718 | 79 | AEIS 2010-'11 report |
| Exhibit 719 | 118 | AEIS 2005-'06 report |
| Exhibit 720 | 118 | AEIS 2006-'07 report |
| Exhibit 721 | 118 | AEIS 2007-'08 report |
| Exhibit 722 | 118 | AEIS 2008-'09 report |
| Exhibit 723 | 118 | AEIS 2009-'10 report |
| Exhibit 724 | 120 | AEIS 2010-'11 Point Comfort |
| Exhibit 725 | 121 | AEIS 2010-'11 Seadrift |
| Exhibit 726 | 121 | AEIS 2010-'11 Port O'Connor |
| Exhibit 727 | 121 | AEIS 2010-'11 Jackson/Roosevelt |
| Exhibit 728 | 121 | AEIS 2010-'11 Travis Middle |
| Exhibit 729 | 121 | AEIS 2010-'11 Calhoun HS |
| Exhibit 730 | 121 | AEIS 2010-'11 Hope HS |
| Exhibit 731 | 143 | CCISD Teacher Salaries, '11-'12 |
| Exhibit 732 | 143 | CCISD Teacher Salaries, '12-'13 |
| Exhibit 733 | 165 | TAKS Met Standards, '06-'11 |
| Exhibit 734 | 168 | STAAR Summary Report |

WILLIAM WIGGINS,

having been first duly sworn testified as follows:

EXAMINATION

BY MR. TURNER:

Q. Mr. Wiggins, good morning.

A. Good morning.

Q. Would you state your name for the record, please?

A. My formal name is William H. Wiggins the Third, and everyone calls me Billy.

Q. Where do you live?

A. I live in Port Lavaca, Texas.

Q. What is your current position?

A. Superintendent of schools for the Calhoun County Independent School District.

Q. I would like to start by asking you to tell us a little about your educational background, beginning with where you went to high school and any other degrees you have?

A. Well, obviously it has been quite some time since I went to high school, but I graduated from Clear Lake High School in 1973. I was actually an athlete through high school and was fortunate enough to play college baseball at San Jacinto Junior College for two years, and then on to Lamar University where I got my bachelor's degree. Then actually I got into teaching

and coaching, and received my master's from Texas Southern University in Houston and then my superintendent's certification from Stephen F. Austin in Nacogdoches.

Q. Thank you. Let me ask you if you could do the same thing for us, please, with respect to your work experience and employment?

A. Okay. I started out as a teacher coach. Was a teacher/coach for 13 years in three districts, five in one, seven in the next. And one year kind of had thoughts about moving into administration, so only stayed one year. I don't know if the places are important. Started off at Santa Fe Independent School District in Galveston County, and then moved over to La Porte High School. Was there seven years.

And then a good friend of mine asked me to join him at Pearland High School for one year, and so I did for one year and then moved into administration. I got an assistant principal job at Lumberton High School in Lumberton, Texas for one month, and then I became the high school principal there and I was there three years. A neighboring district recruited me away from Lumberton to Hardin Jefferson. Was the high school principal there for four years -- I guess five years, excuse me, and then two years assistant superintendent.

And then moved to my first superintendency, which was James Bowie Simms in northeast Texas. Was there three years and left and went to Port Aransas ISD in south Texas. Was there five years. Went to Salado here north of Austin. Was here three years. And then when I had the opportunity to move back to the saltwater, moved to Calhoun County. And I've been there since, my first day was January 2011.

Q. Thank you. I appreciate that summary, and that is a lengthy career in our educational system. Let me ask you with respect to places where you have been a superintendent, you are now superintendent at Calhoun County, how many of the previous systems were you also superintendent?

A. I was -- this is, I'm beginning my 13th year as superintendent, 36 in education. I was at Simms three years, Port Aransas five, Salado about two and a half and then Calhoun County a year and a half and starting --

Q. Were you superintendent at all of those places?

A. Yes.

Q. Let me ask you a little bit about the Calhoun County ISD. First of all, what geographic area does it cover?

A. We actually cover all of Calhoun County. It is,

1 A. No, they don't surprise me.
 2 Q. Is that about what you would have expected?
 3 A. Yes.
 4 Q. If we go to the second question, it now asks,
 5 next asks people if they would go to \$1.13. And at this
 6 13, 13 percent say for, 77 percent against, and the rest
 7 undecided; correct?
 8 A. Yes.
 9 MS. COLMENERO: Objection, form.
 10 MR. TURNER: What is the objection?
 11 MS. COLMENERO: I don't think there has been
 12 a proper foundation that has been laid, and it is
 13 calling for speculation as well.
 14 Q. Let's go to the next, next question. And you can
 15 see that the results here, Mr. Wiggins, say that this
 16 time, if people who are asked the question are told
 17 about the recapture percentage, that 51 percent of the
 18 revenues up to the -- raised by the \$1.13 increase would
 19 be recaptured and then asked whether they support it,
 20 the percentage supporting it goes actually down from 13
 21 percent to 9 percent. Do you see that?
 22 A. Yes.
 23 MS. COLMENERO: Same objection.
 24 Q. Then the next question says if the state law was
 25 changed and the Calhoun County's district could keep 100

1 swing from the early percentage where only 28 percent
 2 said they would support it when first asked?
 3 MS. COLMENERO: Same objection.
 4 A. Yes.
 5 Q. Again, based on your knowledge of the district,
 6 would that result surprise you if that were the case?
 7 MS. COLMENERO: Objection, form.
 8 A. No.
 9 Q. Now, is there any way that you know of,
 10 Mr. Wiggins, for you to raise any additional revenues in
 11 your district right now, short of the state being
 12 willing to provide additional funding?
 13 A. No.
 14 Q. Do you feel that you have any meaningful
 15 realistic ability to tax less than the \$1.04 M&O rate
 16 where you are now?
 17 A. No, we certainly cannot tax less than \$1.04, and
 18 we are capped at \$1.04 without voter referendum. And I
 19 do not believe we have any, any chance of passing a
 20 voter referendum or TRE.
 21 Q. For that reason, would you say that the \$1.04 is
 22 for your district, certainly an effective floor and a
 23 ceiling for where you have to tax?
 24 A. Yes.
 25 MR. TURNER: Mr. Wiggins, I have no more

1 percent of that additional 2.9 million, would you vote
 2 for going from \$1.04 to \$1.13, or against or undecided.
 3 And the percentage goes from 9 percent in the previous
 4 question up to 30 percent. Do you see that?
 5 A. Uh-huh, yes.
 6 Q. So that indicates, according to this poll anyway,
 7 something like a 20 point swing based on the, whether
 8 you do or do not have recapture. Do you see that?
 9 A. Yes.
 10 MS. COLMENERO: Objection, form.
 11 Q. Would that result surprise you, based on your
 12 knowledge of the district?
 13 MS. COLMENERO: Objection, form.
 14 A. No.
 15 Q. Is that about what you would expect?
 16 A. Yes.
 17 Q. And then the final question goes back to the
 18 \$1.07 level. This indicates that ultimately when all
 19 the different results of this poll are tabulated up,
 20 that in the end, 57 percent of voters ended up saying
 21 they would be willing to support going to \$1.07 if there
 22 were no recapture, and 35 opposed. Do you see that?
 23 MS. COLMENERO: Objection, form.
 24 A. Yes.
 25 Q. So again, would that suggest a pretty significant

1 questions. I will pass the witness.
 2 (Recess, 10:38 to 10:46 a.m.)
 3 EXAMINATION
 4 BY MR. FIGUEROA:
 5 Q. Thank you. I'm Luis Figueroa. I represent a
 6 number of the low wealth districts including Edgewood,
 7 McAllen, San Bonita, La Feria and Harlingen, as well as
 8 some parents of low income and English language learner
 9 students who attend in Pasadena and Amarillo school
 10 districts. Thank you for your time. We will have the
 11 same process as you went through with your attorney. If
 12 you have any questions, feel free to ask me if my
 13 question is unclear. If you need a break, please let me
 14 know. And if you could please give a verbal answer to
 15 my questions, so we can get it on the record. Does that
 16 sound good to you?
 17 A. Yes.
 18 Q. All right. I wanted to start off with the
 19 exhibit you already have in front of you, 691, which is
 20 the AEIS reports showing your demographics. It's the
 21 first one your attorney handed to you.
 22 A. Well, I have tended to mix them up obviously.
 23 There it is. I've got it.
 24 Q. Great. So I just wanted to take a look at some
 25 of the demographics. Back in 2006-2007, which is the

1 first page of that exhibit, it says your economically
2 disadvantaged was at 56.2; is that right?

3 A. Yes.

4 Q. And then going to the second to last page, which
5 shows the district profile for 2010-2011. Do you see
6 that?

7 A. I'm there.

8 Q. And it says that your economically disadvantaged
9 is at 63.8 currently?

10 A. Yes, sir.

11 Q. How would you describe the growth of the
12 economically disadvantaged in your district? Was it
13 incremental, exponential?

14 A. I think probably incremental over time.
15 Obviously I can only speak from looking at the AEIS
16 reports as well. Just since that time, looking at
17 '11-'12 and '12-'13, we have had small increments of
18 increase.

19 Q. And going back to the first page of the, of that
20 same exhibit, you see your limited English proficient
21 seeing, your LEP or what we call English language
22 learners, that was at 7.3 percent, is that right?

23 A. Yes, sir.

24 Q. And then again, going to the second to the last
25 page, looking at the LEP proficient for 2010-2011, it

1 shows that it was at 9.8 percent; is that correct?

2 A. Yes, sir.

3 Q. And how would you describe the growth of the LEP
4 population?

5 A. You know, again, slight increases with the
6 exception of the Burmese kids that I mentioned earlier,
7 was quite a cluster of kids that came in at one time.
8 But other than that, very incremental over time.

9 Q. Incremental over time. And how would you
10 describe the growth for Hispanics in your school
11 district?

12 A. Once again, it is a growing population. Not
13 exponentially, but incrementally.

14 Q. I'm going to move over to some of the performance
15 levels and hand you an exhibit that has been previously
16 marked as Exhibit 718.

17 (Exhibit 713 marked.)

18 Q. This is not the same one that they introduced.
19 This one has the performance levels on it. Do you
20 recognize it as a true and correct copy of the 2010-2011
21 AEIS report for Calhoun County ISD?

22 A. Yes, I do.

23 Q. And it includes the reporting of the performance
24 of your students on the TAKS for grades 3 through 11; is
25 that correct?

1 A. Yes.

2 Q. And the TAKS test does not test all subjects at
3 all grade levels; correct?

4 A. It does not.

5 Q. It does not; correct?

6 A. Correct.

7 Q. And for the subjects that were tested, the TAKS
8 was meant to test the knowledge of the state curriculum
9 or the TEKS; is that correct?

10 A. Yes.

11 Q. Now, if you were evaluating your students, you
12 would want to examine the TAKS standards in all subjects
13 at all grade levels, wouldn't that be a fair assessment?

14 A. Yes.

15 Q. So if we could look at the -- so it would be
16 appropriate in that case to look at the sum of all
17 grades tested under the all test standards, to gauge the
18 student learning against the met standard; is that
19 right?

20 A. Yes.

21 Q. Okay. So looking at Section 1, page 3. It
22 appears that the sum of all grades tested for the
23 district in 2010 was 78 percent. Do you, do you see
24 that at the bottom of the page?

25 A. Yes, for 2010.

1 Q. For 2010. And for 2011, it was 80 percent?

2 A. Yes.

3 Q. And the sum for all grades tested for the low
4 income students in 2010, was 72 percent?

5 A. Yes.

6 Q. And in 2011, it was 74 percent?

7 A. Yes.

8 Q. And the sum of all grades tested for the ELL or
9 LEP students in 2010, was 67 percent?

10 A. Yes.

11 Q. And 60 percent in 2011?

12 A. Yes.

13 Q. Okay. So after roughly eight years of testing,
14 40 percent of your LEP students failed to meet the
15 minimum standard by the state in all TAKS tests; is that
16 correct?

17 A. Yes.

18 Q. Okay. Now, is it your understanding under
19 current law, that students are expected to graduate as
20 college ready?

21 A. Under current law, yes.

22 Q. And you talked a little bit about the testing and
23 the rigor of the testing. Is it your opinion that the
24 rigor of testing from TAKS to STAAR has increased?

25 A. Yes.

Q. Okay. And how would you describe that increased rigor?

A. Once again, depth and complexity of student understanding would be the, primarily what the difference is in STAAR. I mean, there are some obvious differences in number of questions answered, time frames given the test, those kinds of things. However, the level of understanding and actual student learning is the difference for me.

Q. Are you familiar with the Bridge study conducted by Pearson, where the rigor of the TAKS test was compared to the rigor of STAAR?

A. I'm familiar with it.

Q. And are you familiar that the study revealed that when comparing the rigor of certain tests, the TAKS met standard was near or below the guessing standard under STAAR?

A. I'm not familiar with that, no.

Q. Would it surprise you?

A. I'm not sure that I'm surprised or believe it is true. I have no real understanding. I would have to think about that.

Q. No problem. It is your opinion that the TAKS met standard results reflect college readiness?

A. My understanding was that that was what the state

was requiring us for college readiness at that time, so yes.

Q. But would you say a more accurate indicator would be the commended level under TAKS?

A. Yes.

Q. So going over the commended results for groups in overall students, looking at Section 1, page 4 of that same exhibit. It looks like in 2010, 13 percent of district students reached the commended level in all tests; is that correct?

A. Yes.

Q. For 2011, that was 16 percent?

A. Yes.

Q. For Hispanics in 2011, that was 10 percent?

A. Yes.

Q. And for economically disadvantaged, that was 10 percent?

A. Yes.

Q. For the LEP students, it was less than 10 percent?

A. 8 percent.

Q. 3 percent. So around 90 percent of the LEP and/or ELL students didn't make the TAKS commended performance standard?

A. Yes.

Q. If we could go to the college ready indicators which is on Section 1, page 8. Could you provide your understanding of what the college ready indicators are?

A. It has to do with recommended high school plan, distinguished achievement plan, the number of kids enrolled in advanced and dual enrollment, AP and IB results, is what it was during the TAKS time.

Q. Now, TEA reports a number of indicators purportedly reflecting college readiness; correct, and that is what we're looking at, right?

A. Yes.

Q. Turning to, turning to that page, it says that about 20 percent of the district's Hispanic students had advanced course or dual enrollment completion through 2010; is that right?

A. Yes.

Q. And for Anglo students, that was about 30 percent?

A. I'm looking at 26.3; is that correct?

Q. I was looking at 30.

A. I'm sorry, that is the state. We're looking at 30.5, yes, you're correct. I'm sorry.

Q. No problem. There is a lot of numbers on this chart, so I appreciate you taking your time on it.

Looking at the Texas Success Initiative for the year

2011, 66 percent of the students met the minimum TSI standard for language arts; is that right?

A. Yes.

Q. And what is your understanding of the Texas Success Initiative?

A. Just a higher readiness component.

Q. And looking at the Texas Success Initiative for the year 2011 -- I'm sorry, I think I already asked you that. 66 of the students met the minimum TSI standard for language arts; correct?

A. Yes, sir.

Q. But less than 1 percent of the LEP, of the LEP students met the TSI standard for language arts?

A. Yes.

Q. And then taking a look at the ACT/SAT scores, in 2010, is it correct to say that more than 90 percent of Hispanic students scored at or above the state's criterion for the SAT/ACT in 2009 and 2010?

A. Okay, would you repeat that to me one more time?

Q. Sure thing. In 2010, more than 90 percent of Hispanic students failed to score at or above the state's criterion for the SAT/ACT?

A. That's correct.

Q. Okay.

A. 9.4.

Q. Thank you. And then going down to the last category on the page. In 2010, only 40 percent of the graduates in the district were college ready in both subjects -- sorry, I meant to say -- let me repeat that.

Going down to the last category on the page in 2010, only 47 percent of the graduates in the district were college ready in both subjects?

A. Yes.

Q. In 2009 and 2010, less than 40 percent of your low income student were college ready in both subjects; is that right?

A. Yes.

Q. Now, we see a star for the LEP students that were college ready for that period of time. Does that star mean that the number was too low for the TEA to report?

A. Yes.

Q. Students are expected to graduate college ready in all subjects, not just one; right?

A. That's correct.

Q. Okay. So what is your opinion on how your district's students are performing under the college readiness criteria we just went over?

A. According to the TAKS criteria, we certainly have a lot of improvement to do. We have looked at those numbers and are not satisfied with them at all, so we do

have a lot of work to do.

Q. Now, earlier we talked about some of the low income students in your district. Has that student population created some challenges for your district?

A. Yes.

Q. And could you go over some examples of some of the challenges and what are the obstacles you have to overcome to be able to get those students college ready?

A. Knowledge entering into school. Sometimes home life itself. Obviously not being able to afford the resources that some of the other students might have entering into and all the way through the grade levels.

Q. Working parents, would that be another obstacle sometimes of parents not being able to attend all events?

A. Possibly. I would say that most of our population have two working parents.

Q. What is your district doing, if anything, to try to meet those challenges?

A. We are, we hold accountability meetings every six weeks with every principal. We take a look at every population. We take a look at almost every individual student in the district. And try very hard to design plans for that campus and those students and those populations that will help them be successful. Whether

it be remediation, tutorial, teacher resources, those kind of things.

Q. Are there specific programs that you have wanted to implement or have implemented to address these students?

A. We have some specific programs. I am -- I don't have them committed to memory. We do have some programs that are specific to our economic disadvantaged and also our bilingual ESL and LEP kids. We do have a campus that is designed for bilingual students, which we have K through 5 bilingual. So yes, we have some programs that are designed for those.

Q. Does the district want to provide additional support for those students?

A. Yes.

Q. Why, why would you want to provide additional support for those students?

A. Because we want them to meet the standards of college readiness or career readiness when they graduate. We want them to be able to accomplish what every kid has the ability to do.

Q. What is the major obstacle in preventing you from implementing additional programming for those students?

A. Right now, it is finances.

Q. If you had the resources, would you provide them?

A. Everything that we felt was necessary, yes.

Q. Have there been some programs that you have had to cut? You covered some of this in your previous testimony. Were some of those programs that you talked about or some of the services that you discussed earlier, would they have an impact on low income kids?

A. I think yes, they would, because there were some low income kids enrolled in some of those courses. The other thing that we have done, our bilingual programs as I mentioned at the campus K-5, we have actually moved more so toward a dual language program where we put English speaking kids in with other language kids.

Q. You talked about having to cut some of the online remediation technology tools, having to cut some of the teacher programs. Were some of those aimed at helping low income students?

A. Yes, helping all students, including low income students.

Q. Now, we're going to switch gears a little bit to English language learners. You talked a little bit about that right now when you were talking about low income. But can you talk a little bit about the challenges of educating the English language learner population?

A. We were at, although we were exemplary in '11 --

1 we were recognized '10-'11, exemplary '09-'10. We were
2 at stage 4 of AYP, and also had a TEA audit in my first
3 month of employment for our bilingual ESL program.

4 Q. And what is your district doing to meet those
5 challenges?

6 A. We have completely, based on the audit findings,
7 we were doing a lot of things correctly, but we have
8 certainly upped our monitoring. We have made sure that
9 those students are receiving the -- or taking the tests,
10 doing everything that the audit asked us to do.

11 Q. Was the -- do you have a copy of the audit?

12 A. No, I do not.

13 Q. Okay. Would that be something that is accessible
14 that you could provide?

15 A. I don't see a problem with that.

16 Q. Okay.

17 MR. FIGUEROA: I would like to go ahead and
18 request that, if at all possible.

19 MR. TURNER: We can talk about it.

20 MR. FIGUEROA: Sounds good.

21 Q. Would you like to provide additional support for
22 the English language learners?

23 A. Yes.

24 Q. If you could, if you had the resources, what
25 additional programs would you be interested in providing

1 for English language learners?

2 A. Well, I think first of all, I would like to again
3 make sure that our teacher-student ratios are low, so
4 that we can differentiate instruction so that we can use
5 some of the strategies that help those ESL learners. As
6 far as programs, you know, I think what I'd more like to
7 do is have people working with them than necessarily
8 programs, but I do think that we need additional
9 resources to help them.

10 Q. Do you believe that if you are able to implement
11 these programs and these resources that you discussed,
12 that they would have an impact on closing the gaps,
13 achievement gaps?

14 A. I certainly hope so.

15 Q. And would that be for English language learners
16 as well as for economically disadvantaged?

17 A. Yes.

18 Q. Now, discussing the standards for English
19 language learners, do you believe that the English
20 language learners can achieve the standards set by the
21 states?

22 A. Yes, I believe all kids can achieve the
23 standards, given the right situation and the right
24 amount of time.

25 Q. And the same would be true for low income

1 students?

2 A. Yes.

3 Q. And you believe those students can perform if
4 given a meaningful opportunity?

5 A. Yes.

6 Q. Now, previously you mentioned you worked in a
7 property poor or a low property school district before?

8 A. I did.

9 Q. And which ones were those again?

10 A. That was James Bowie Simms.

11 Q. So that was the one district that was property
12 poor?

13 A. It is actually Simms ISD in northeast Texas,
14 Region 8.

15 Q. Got it. And were those students in that district
16 held to any higher standards by the state, compared to
17 the students in the high wealth districts that you
18 worked at?

19 A. No.

20 Q. Do you know the, the value per WADA for Calhoun
21 ISD?

22 MR. TURNER: Objection, form.

23 A. I know approximately.

24 Q. What would that be?

25 A. Somewhere around 5,600 approximately.

1 Q. And the yield per penny, per hundred dollars of
2 valuation?

3 A. I'm not familiar with that number.

4 Q. How would your operations be affected if at your
5 current M&O tax rate, you received \$1,000 less per WADA?

6 A. Well, it is -- we are already struggling. So I
7 can tell you that it would cause even greater
8 challenges.

9 Q. Would you have to make additional cuts?

10 A. Yes.

11 Q. Would achievement be affected and ability to
12 present meaningful students be affected?

13 A. Yes.

14 Q. I think you mentioned this earlier, but what is
15 your compressed rate?

16 A. Our compressed rate at, in 2006 was .9472.

17 Q. And I think you also talked about this. How many
18 pennies has your district approved above the compressed
19 rate?

20 A. We approved the six golden pennies that were
21 available to us, and three and a half of the copper
22 pennies.

23 Q. Okay.

24 A. To maximize at \$1.04 without voter referendum.

25 Q. Are those golden pennies used for your basic

1 education?

2 A. Yes.

3 Q. Is any of the revenue raised from those first six
4 pennies recaptured by the state?

5 A. No.

6 Q. You also receive comp ed and other moneys from
7 the state; right?

8 A. Yes.

9 Q. It appears from the AEIS report that you received
10 around \$9 million from the state. Is that, does that
11 sound right to you?

12 A. It has been significantly reduced over the last
13 couple of years, but I'm not sure which one you are
14 referring to.

15 Q. Section 2, page 5. It says in the chart, actual
16 revenue information and it says by source, and then it
17 has the column for state. Do you see that?

18 A. Uh-huh.

19 Q. And so does that represents the, does that
20 represent the amount of money you received from the
21 state there?

22 A. I suppose so, based on what it says.

23 Q. Okay. And it is about 9.2 million; is that
24 correct?

25 A. Yes.

1 Q. What are the surrounding districts in your area?

2 A. What, the names?

3 Q. The surrounding school districts.

4 A. Victoria ISD, Palacios ISD, Edna ISD,
5 Bloomington. Victoria is the largest in our, in our
6 same UIL district. Bay City is some 45 miles away from
7 us, and Aransas county, Rockport is some 45 the other
8 direction.

9 Q. Are those Chapter 41 or Chapter 42 school
10 districts?

11 A. I think Aransas County is 41. Palacios may be
12 41. I'm not sure, Bay City I think is 42. Victoria is
13 42. I'm just not real sure.

14 Q. For the non-property wealthy districts, would you
15 say their costs of living is similar to the districts in
16 your area?

17 A. You know, I honestly, I honestly don't know. I
18 have not spent enough time in each one of those areas to
19 be able to make that comparison. I honestly don't know.

20 Q. In terms of maybe building a school or building a
21 building, would you say it would be comparable?

22 A. Yes.

23 Q. Okay. Do you use your I&S rates for uses other
24 than construction?

25 A. No.

1 Q. And you mentioned, I think you said that you had
2 some outstanding construction facility needs?

3 A. Outstanding construction facilities, you mean --
4 would clarify for me?

5 Q. Sure, absolutely. I mean do you have some needs
6 to be able to either build new buildings or do more
7 construction on the current buildings you have?

8 A. Yes, we do.

9 Q. What districts do you compete with for personnel?

10 A. Victoria ISD is the biggest one. Palacios is
11 fairly close to us. Of course Edna, Bloomington,
12 Yoakum, Industrial, they're all in our area. But
13 Victoria, I would say, is probably the largest that we
14 compete with.

15 Q. You compete with them for teachers as well?

16 A. Yes, we do.

17 Q. Just to clarify, and I believe you answered this.
18 You are not asking the courts in this lawsuit for the
19 state to eliminate recapture?

20 A. No, I'm not.

21 Q. And you are not asking to reduce recapture?

22 A. No. I will say it would be nice, but I'm not
23 asking that.

24 Q. And are you asking the courts to give your
25 students greater access to resources at a similar tax

1 rate?

2 A. To a greater amount, no.

3 Q. If we could turn to Exhibit 717, which was the
4 polling numbers from the Mason-Dixon that was looked at
5 earlier.

6 A. I just mixed them up even further.

7 Q. It is going to be a bigger stack. There we go.
8 So you are looking at Exhibit 717 now?

9 A. I am.

10 Q. Was that a poll of likely voters or registered
11 voters?

12 A. Registered voters, from my understanding.

13 Q. Do you know what your turnout rate was for
14 Calhoun ISD in your last election?

15 A. No, sir.

16 Q. Would you say it was less than 15 percent?

17 A. I don't know that I would speculate at all. We
18 have had two board elections. We have had no elections.

19 Q. Would you say that the typical school district
20 election in Calhoun has a much smaller turnout than the
21 presidential election?

22 A. I have no way of knowing that, I'm sorry.

23 Q. No problem. You mentioned that there is a 20
24 point swing on the results based on whether the question
25 was with or without recapture; is that right?

1 A. Yes.

2 Q. Now, it was also found that even with the 20
3 point swing, your, your registered voter polls showed
4 that they would still not be in support of an increase
5 in tax; is that right?

6 A. With recapture?

7 Q. With recapture?

8 A. Yes, sir.

9 Q. And without recapture?

10 A. Without recapture, it went to 57 for and 35
11 against.

12 Q. Okay. Which, how would you describe the
13 community in that district, would you say it is more
14 conservative than not?

15 A. Yes, frugal.

16 Q. Frugal?

17 A. Frugal is a good term to describe my community.

18 Q. That would be across the board, not just on
19 education?

20 A. Across the board.

21 MR. FIGUEROA: Those were the questions I
22 had. Thank you very much.

23 THE WITNESS: You are very welcome.

24 EXAMINATION

25 BY MS. HUNTER:

1 Q. Superintendent, my name is Toni Hunter and I
2 represent the Texas Taxpayer and Student Fairness
3 Coalition. Do you understand that?

4 A. Yes, ma'am.

5 Q. We represent about 420 low wealth and mid wealth
6 school districts. Many of them are small. I would just
7 like to ask you a few questions.

8 In Exhibit 693, I just want to clarify for the
9 record. What is the child nutrition fund?

10 A. Food services, those types.

11 Q. Okay. And why is that listed separately from
12 your operating budget?

13 A. That is just the way that it is funded through
14 the state. It is a separate fund.

15 Q. Okay. Does it get federal funding?

16 A. I think partially, but that is a speculation on
17 my part. I think that is accurate.

18 Q. Okay. In charts, in exhibits numbers 704 and --
19 704 I think it was. Are you aware of what rate of
20 inflation your business person used in figuring out
21 this, these numbers?

22 A. I am not aware of the actual rate, just that they
23 used the Consumer Price Index to do so.

24 Q. Okay. Are you aware of literature that indicates
25 that the rate of inflation in education may be higher

1 than the consumer price index indicates?

2 A. I've heard that, I'm not aware of the actual
3 data.

4 Q. Okay. If it were higher, then the inflation rate
5 would cut further into your expenditures, would it not?

6 A. Yes, ma'am.

7 Q. And you received money through the weighted
8 system that the Texas has for comp ed, is that correct?

9 A. Yes, ma'am.

10 Q. And that is designed to help you educate the
11 economically disadvantaged; is that correct?

12 A. Yes, ma'am.

13 Q. Does the amount of money that you receive from
14 the state for comp ed equal or approximate in any way
15 the amount of money that you have to spend to educate
16 the comp ed people?

17 A. My answer, my truthful answer of what I want to
18 say is no, however, I don't have any accurate numbers in
19 my mind to be able to reflect that with actual data or,
20 you know. But every year, we are looking at our comp
21 money and the numbers have actually gone down. And so
22 we are struggling and more or less pulling from local
23 funds trying to make it work. So my initial answer
24 would be, you know, that we need more.

25 Q. As an educator and as a consumer, is it true --

1 and according to your chart it is true that your costs
2 have risen significantly since 1994?

3 A. Yes.

4 Q. And if the weights had not been adjusted since
5 then, is it logical to assume that they don't meet the
6 costs?

7 MS. COLMENERO: Objection, form.

8 A. I don't know the answer to that.

9 Q. And I would ask you the same questions about the
10 English language learners. The money you get through
11 the weights, is that enough money to provide programs
12 you need to provide for the --

13 MS. COLMENERO: Same objection.

14 A. Once again, we are struggling. We are struggling
15 and so we need more money. And whether or not it is a,
16 a weight issue or not, I'm just not sure but we need
17 more money.

18 Q. Okay. And I, I didn't understand your testimony.
19 Is this district rated exemplary or recognized?

20 A. For '09-'10, we were exemplary. For '10-'11, we
21 were recognized.

22 Q. Okay. And the attorney from MALDEF went over the
23 various college ready indicators and how your kids did
24 on commended and TAKS and this Texas Success Initiative
25 and your ACT/SAT scores. Given those numbers, would you

NO. D-1-GN-11-003130

TEXAS TAXPAYER & STUDENT) IN THE DISTRICT COURT
FAIRNESS COALITION, et al.,)

Plaintiffs,)

v.)

EDGEWOOD INDEPENDENT SCHOOL) TRAVIS COUNTY, TEXAS
DISTRICT, et al.,)
(consolidated))

Plaintiffs,)

v.)

ROBERT SCOTT, in his official)
capacity as Commissioner of)
Education, et al.)

Defendants.) 200TH JUDICIAL DISTRICT

ORAL DEPOSITION OF

JODDIE WITTE

Austin, Texas

Tuesday, August 7, 2012

Reported by:

SUSAN S. KLINGER, RMR-CRR, CSR

JOB NO. 51379

E X H I B I T S (continued)

| No. | Page | Description |
|-------------|------|--|
| Exhibit 172 | 93 | 2008-09 Staff salaries |
| Exhibit 173 | 96 | "District Honors Witte at Reception" |
| Exhibit 174 | 97 | District improvement plan |
| Exhibit 175 | 100 | Press Release, Homestead |
| Exhibit 176 | 115 | 2009-10 Superintendent salaries |
| Exhibit 177 | 115 | 2010-11 Superintendent salaries |
| Exhibit 178 | 116 | 2011-12 Superintendent salaries |
| Exhibit 179 | 121 | 2011-12 Superintendent salaries |
| Exhibit 180 | 122 | Superintendent salaries PEIMS |
| Exhibit 181 | 132 | TEA, 2011 accountability rating |
| Exhibit 182 | 132 | 2010/11 Student/Central Administration Ratio |
| Exhibit 183 | 135 | TEA, 2011 accountability rating |
| Exhibit 184 | 136 | 2010/11 Student/Central Administration Ratio |
| Exhibit 185 | 140 | TEA, 2010 accountability rating |
| Exhibit 186 | 142 | VAN, Comparison of Salaries to State average |
| Exhibit 187 | 150 | Board meeting minutes, 2/20/12 |
| Exhibit 188 | 156 | Van financial report, 2011 |
| Exhibit 189 | 168 | 2010-11 Actual Financial Data |

JODDIE WITTE,
having been first duly sworn testified as follows:

EXAMINATION

BY MR. GRAY:

Q. Would you state your full name please, Mr. Witte?

A. Joddie Witte.

Q. And Mr. Witte, will you -- you are the recently retired superintendent for Van Independent School District, correct?

A. Yes, sir.

Q. Will you tell the court your educational background that qualified you to be a superintendent in a public school in Texas?

A. Well, it goes back several years. I, of course, got my bachelor's degree and went into the teaching field. I coached about seven years, taught science back then, and got my master's degree. Spent a little over 10 years at the Texas Education Agency in Austin. Participated in numerous kinds of workshops around the state, the accreditation visits, normal kind of things that TEA people are involved in. I later went to, and got my master's degree.

From that, I got my superintendent certification at Southwest Texas State University in San Marcos. And following my stint at TEA, I became -- went to Hays

E X H I B I T S (continued)

| No. | Page | Description |
|-------------|------|--|
| Exhibit 190 | 172 | Van comparison of financial Statements |
| Exhibit 191 | 190 | Van Teacher Salary schedule |
| Exhibit 192 | 192 | 2011-12 Minimum Salary Schedule |
| Exhibit 193 | 192 | 2012-13 Minimum Salary Schedule |
| Exhibit 194 | 210 | Algebra 1 readiness report |
| Exhibit 195 | 218 | 2008-09 accountability rating |
| Exhibit 196 | 219 | 2008 accountability rating |
| Exhibit 197 | 221 | Van Average Class size by year |

Consolidated School District right down I-35, and actually became the first business manager in the school district and opened up their first business office. And then later, became superintendent at Hays Consolidated.

So all of that kind of put together gave me a background to, I think to be very comfortable and successful as a superintendent of schools.

Q. If you will, tell us a little more about what your role was at TEA during the 10 years you were with the Texas Education Agency?

A. I was in the division of curriculum development. I had the distinct pleasure, I guess, to work under three commissioners while I was at TEA. And the first was Dr. Edgar. Very interesting individual and, of course, one of the top commissioners that we have ever had. He came -- he was the superintendent. And when he was hired, he and Dr. Brown from El Paso had interviewed with the state board. And both of them, the state board asked them during the interview if we don't hire you, who would you recommend. And they recommended each other. I thought that was kind of unique.

But it was a great experience to work under Dr. Edgar. And then I got to work under Harlan Ford, who came from Sul Ross State. He was president out there. And then Dorothy Davidson, who was in the division of

1 curriculum development. So I, I got really a
2 broad-based kind of experience there at TEA for 10 years
3 working in curriculum development developing a, you
4 know, units of instruction that were used in Texas
5 schools.

6 Q. Now, when was it that you first went to Hays
7 Consolidated as their business manager?

8 A. 1981.

9 Q. And when was it that you became superintendent of
10 Hays Consolidated?

11 A. 1989.

12 Q. And how long were you at Hays Consolidated as
13 their superintendent?

14 A. Through 1997. That was at Hays Consolidated,
15 business manager/superintendent combination of about 18
16 years.

17 Q. And what happened in 1997?

18 A. 1997 is when I retired. I had a goal to retire
19 at 61 actually, and they asked me to stay on one
20 additional year. We had had a huge bond issue that
21 year. I believe it was a \$49 million bond issue. And
22 so they wanted me to, if I would stay another year and
23 break ground for -- we were going to build three new
24 middle schools. One in Kyle, one in Buda, one in
25 Wimberly. And so I did. I stayed through that process.

1 Q. Tell me who, what other districts have you served
2 as the superintendent of?

3 A. In fact, the first one was Burkeville. And that
4 happened while I was at Port Arthur. I got a call from
5 the professor at Lamar University, I can't think of his
6 name right now, in charge of the education department
7 there. And he had called me and had actually asked me
8 previously if I would be interested in serving as an
9 interim superintendent in the event that something came
10 up.

11 And I told him well, if something comes up, give
12 me a call and he did. And so that was like on a Monday,
13 the first day I got there. And the -- he was conducting
14 the superintendent search at Burkeville. So Burkeville
15 had asked him to get three people to be interviewed for
16 an interim, and I agreed to go. And, and it was Tuesday
17 night. It was on a Tuesday night.

18 And on Wednesday morning, they called me and
19 they, they said well, we would like for you to come and
20 be our interim. That was in May. I believe it was May
21 of that year. And of course they, you know, closing
22 school and developing a budget for the upcoming school
23 year was the big task that summer.

24 Q. How long did you serve as the interim
25 superintendent in Burkeville?

1 And, and then after I left, I stayed with the district a
2 short period of time and chaired a site selection
3 committee for -- they were going to build five
4 elementary schools.

5 Q. Now, did you -- when you finally retired from
6 Hays Consolidated, did you stay retired and stay out of
7 the school business?

8 A. No, I, I did work for TASB as a field rep and
9 just things that came along. One was that Port Arthur
10 ISD had approached TASB if they had anyone that could
11 evaluate their transportation program and make a
12 recommendation. They had had the state -- I'm not sure
13 the office, whether it was state controller's office.
14 Back then, the state would go out and, and do studies of
15 school districts. And they had done one at Port Arthur.
16 So I was a follow-up to that study.

17 And actually, I spent a week there analyzing
18 their transportation program and then had a major
19 conference at the end of that week. And my findings
20 were very similar to the state, except they were more
21 specific.

22 Q. After you retired from Hays, did you end up
23 serving as a superintendent and/or an interim
24 superintendent at a number of other school districts?

25 A. Yes, I did.

1 A. Four months.

2 Q. And that was roughly what time frame, what year
3 and what months roughly?

4 A. That was 1999. May, I think it was May of 1999.
5 I had spent one year at TASB prior to that as a field
6 rep.

7 Q. After your tenure as interim superintendent at
8 Burkeville, did you serve as an interim
9 superintendent -- where did you next serve as interim
10 superintendent?

11 A. The next location was, let's see Burkeville, I
12 went to Castleberry in Fort Worth. Castleberry was a 4A
13 school district right in the -- it's surrounded by Fort
14 Worth school district.

15 Q. And were you serving as interim or superintendent
16 of Castleberry?

17 A. Yes.

18 Q. And for how long?

19 A. Interim superintendent for six months.

20 Q. And after you served as interim at Castleberry,
21 where did you next serve as interim?

22 A. I went to Westhoff, a very interesting school
23 district. Westhoff is a very small school, 62 students,
24 five and a half teachers, one bus driver, one custodian
25 and one food service lady. Westhoff was an exemplary

1 school.

2 Q. Where -- how long did you serve as the
3 superintendent at Westhoff?

4 A. Five months.

5 Q. And where is Westhoff?

6 A. Westhoff is on Highway 287 out of Cuero towards
7 San Antonio.

8 Q. And --

9 A. Very, very excellent, excellent little school
10 district.

11 Q. After you served as the interim superintendent at
12 Westhoff, where did you next serve?

13 A. I finished up at Westhoff the end of May. We
14 conducted graduation.

15 Q. May of what year, by the way?

16 A. That was 2002. And I drove from Westhoff to
17 Longview. I had interviewed at Longview. They had
18 interviewed three people there for an interim. So I go
19 from a, from a Westhoff Pre-K-8 to a Longview with 1,300
20 employees and about a \$54 million budget and 8,300.

21 Q. And how long were you superintendent of Longview?

22 A. Eight months. Longview had very serious
23 financial problems when I went there.

24 Q. And after your tenure as interim superintendent
25 at Longview, where did you next serve?

1 A. I went to Comfort. Comfort is on Interstate 10
2 between Boerne and Kerrville, a 2A school district, and
3 I was there for about six months.

4 Q. And after Comfort, where did you serve as the
5 interim superintendent?

6 A. I went to Hawkins. Hawkins, a very comfortable
7 school district financially, good fund balance, very low
8 expectations for their kids.

9 Q. How long were you at Hawkins?

10 A. I was there five months.

11 Q. And after you served as interim superintendent at
12 Hawkins, where did you next serve as interim
13 superintendent?

14 A. I went to Van in December of '03. Had the unique
15 experience of serving as an interim superintendent at
16 Van in December of '03 and finishing up at Hawkins in
17 December of '03. I had conducted a superintendent
18 search for Hawkins and the superintendent was going to
19 report in January.

20 Q. So you were --

21 A. I believe it was seven, if I didn't miss one.

22 Q. Van I count as eight. Now, you went to Van in
23 December of '03. Were you at Van all the way from
24 December of '03 up until this past month when you
25 retired?

1 A. Yes, sir.

2 Q. And you started at Van at the interim and then
3 they ended up deciding to hire you as the permanent?

4 A. Permanent.

5 Q. So by my count, you have been at, the
6 superintendent at eight different school districts,
7 Hays, Burkeville, Castleberry, Westhoff, Longview,
8 Comfort, Hawkins and Van; is that correct?

9 A. That's correct. It is eight with Hays, right.

10 Q. Now, of these eight, were some what you what
11 consider property poor, were some considered property
12 wealthy, were some larger and some smaller? Give us a
13 flavor of the universe of districts that you have been
14 the superintendent in?

15 A. Okay. Well, ranged, every UIL class that we
16 had, Pre-K-8 school district with 62 kids, each teacher
17 taught two sections. The kindergarten, Pre-K Kinder,
18 grades one and two, and so forth. And I was in a 1A
19 school, 2A, 3A, 4A, 5A school district during that time.
20 Out of those seven school districts that I served as an
21 interim, two of them were, I think you would consider
22 property wealthy, Hawkins and Longview. And I did
23 notice, you know, some significant differences in those
24 two schools as compared to the other five who probably
25 were more -- had a low property value.

1 Q. It looks to me like you have been a
2 superintendent in, serving in one or another Texas
3 public school from roughly 1989 through your retirement
4 in July of 2012?

5 A. That's correct, yes.

6 Q. So you got a 20 plus year career as a
7 superintendent here in Texas?

8 A. That's right. I think it is 23 to be exact, I
9 believe.

10 Q. And if we were to ask you what is your, how many
11 total years in education, public education in Texas do
12 you have under your belt from the time you were a
13 teacher forward, how many years would that be?

14 A. I started, my first year was 1958, '59 school
15 year. So a total of 53 years.

16 Q. So for better or for worse, you got a lot of
17 teaching, coaching, being a superintendent experience?

18 A. Yes, sir.

19 Q. And that has been in schools, large schools,
20 small schools, rich schools, poor schools; it has been
21 in the whole array of Texas schools?

22 A. Yes, it has.

23 Q. Now, tell me a little bit about Van as of the
24 most recent school year when you retired. Give me some
25 basic statistics. How big is Van, what is its percent

1 Q. One last question. The state requires all
2 districts to offer the minimum, the recommended and the
3 distinguished graduation program; correct?

4 A. Uh-huh.

5 Q. You are nodding your head, but you have got to
6 say yes or no.

7 A. No. Yes, they do require it, but we cannot meet
8 it at the level that we need to.

9 Q. Does Van have the capability of offering all of
10 the course offerings that are set forth in the education
11 code for the distinguished graduation program?

12 A. We do not.

13 Q. Can you come even close to doing that?

14 A. No, it requires some advanced classes and we just
15 don't have the funds and the staff to do that.

16 Q. Are those the types of -- those types of courses
17 are those courses that your wealthier counterparts can
18 and, in fact, do offer?

19 A. Yes, pre-AP and AP classes, we're just unable to
20 offer those. And I do see those offered in other
21 districts.

22 Q. And you don't begrudge the fact that other
23 districts have the economic capability of offering those
24 programs, you just think the students in Van --

25 A. No.

1 Q. -- should have those same opportunities; correct?

2 A. Absolutely. And to add to that, I think our
3 taxpayers would enjoy the opportunity to be taxed at the
4 same rate on a \$100,000 house. They're paying more in
5 Van to raise less money. And that is, that is hard for
6 people to understand.

7 MR. GRAY: Thank you, sir. I have got no
8 further questions.

9 A. Good.

10 (Off the record.)

11 EXAMINATION

12 BY MS. BONO:

13 Q. Good morning. We met informally off the record,
14 but my name is Marisa Bono. I'm an attorney with
15 MALDEF, the Mexican American Legal Defense and
16 Educational Fund, and we represent a number of low
17 wealth districts in this case. Lasara, San Benito,
18 Harlingen, Edinburg and McAllen --

19 A. Okay.

20 Q. -- as well as parents of low income and English
21 language learner students who attend school in Pasadena
22 and Amarillo. Mr. Gray was very thorough with you this
23 morning. But I would like to delve a little further
24 into some of your testimony about those student
25 populations, your low income students and your ELL

1 students.

2 A. Okay.

3 Q. I understand that -- well, you mentioned that a
4 substantial number of your students in Van are low
5 income; is that correct?

6 A. That's right.

7 Q. About what percentage are low income currently?

8 A. 51 percent.

9 Q. And let's say over the past five years, has that
10 population increased?

11 A. Yes, it has.

12 Q. And how would you describe that growth?

13 A. I would say it is approximately from 45 to 51
14 percent in the last five years.

15 Q. So about 6 percent?

16 A. Yes.

17 Q. And in addition to that, as you just discussed
18 with Mr. Gray, your -- it sounds like you are projecting
19 that that population is going to grow more quickly into
20 the future?

21 A. We are.

22 Q. What about your ELL students. What percentage of
23 your students are ELL currently in Van?

24 A. About 4 percent, very low.

25 Q. And that population over the past five years, has

1 that maintained stable or has it increased?

2 A. Fairly stable. And that is an interesting trend
3 to look at. I was surprised to see that it was stable.
4 But we're not able to provide what we need, what those
5 students need, which would be, would require additional
6 teachers and additional aides.

7 Q. And you kind of inferred that earlier, but I
8 would like to talk a little bit more about that. It
9 seems like you suggested that there is some challenges
10 that are presented by ELL students to the district
11 educating those students?

12 A. Yes.

13 Q. Can you describe -- can you describe some of
14 those challenges for the district?

15 A. Well, our classes are too large. So we're not
16 able to provide more of the one-on-one instruction,
17 we're not able to provide differentiated instruction,
18 because we don't have adequate aides for that purpose.
19 And those students need the additional help, need the
20 additional support, need the additional technology in
21 order to be more effective. And we, we just can't
22 afford those, to address those areas at a level that we,
23 we really need to, to meet their needs.

24 Q. And you talked a little bit earlier about
25 teaching staff. And in your experience in Van ISD, do

1 your teaching staff have any special or need any special
2 certifications or requirements in order to address the
3 needs of the ELL students?

4 A. We, we do provide teacher training for our staff.
5 We provide, we have our staff go through ESL
6 certification. But we do not -- we're just not able to
7 find the bilingual teachers who are fluent. They're
8 just not available.

9 Q. And by not available, do you mean not available
10 in the area of the state where Van is located or --

11 A. We, we have to struggle to try to find -- we find
12 one every once in a while throughout the years, but we
13 need more teachers than just one or two. We need
14 additional teachers. And we simply have not gotten the
15 applications from teachers that have that certification.

16 Q. And the lack of applications in your district
17 for -- well, first of all, would you -- are you saying
18 that you don't have enough certified teachers for ELL
19 students in your district?

20 A. No, we have enough certified, but I think there
21 is a difference between certified and qualified.

22 Q. Okay.

23 A. And I don't believe we have enough qualified.
24 And even if they were available, we don't have the money
25 or the funds to hire, to try to reduce our

1 student-teacher ratio or to provide additional aides.

2 Q. You mentioned earlier that there was a salary
3 freeze. Do you believe that that has affected the
4 district's ability to attract qualified teachers for ELL
5 students?

6 A. I think certainly it will, yes.

7 Q. What about your low income population. What
8 types of challenges, if any, has that student population
9 presented for the district?

10 A. Again, with 51 percent lower socioeconomic, in
11 order to be more effective with those students, we would
12 need to lower our class sizes. We able to provide more
13 technology. Neither of which that we are, have the
14 financial capability to do. We just, we just have to
15 operate at the minimum cost because of the lack of funds
16 to meet those needs better.

17 Q. Why is the smaller class size important for
18 addressing the needs of low income students?

19 A. The low income students need the additional help.
20 They need the one-on-one. And research shows that when
21 you have less than 15, as I had mentioned earlier, then
22 those students are going to not only improve and achieve
23 higher at that level that they're at, that will continue
24 throughout their high school, through their high school
25 career, and allow them to graduate and not be a dropout.

1 Q. Has it also been your experience in education and
2 as a superintendent, that low income students who have
3 that higher level of attention have performed better?

4 A. Yes, absolutely, research shows that.

5 Q. You mentioned earlier the importance of
6 differentiated classroom instruction for low income
7 students. Can you describe a little bit more why that
8 is important for, for low income kids?

9 A. Well, your low income students also have
10 different levels. So if you have the aide in the
11 classroom, then you're able to address those different
12 levels more adequately. And we just don't have the
13 aides to go around to cover that.

14 Q. By different levels, do you mean they're not at
15 grade level with their peers?

16 A. Yes.

17 Q. And they might be a year or perhaps more behind
18 their peers?

19 A. Yes. Their basic skills in reading, math and
20 writing.

21 Q. And so they need that additional instruction,
22 perhaps separate from that that their peers are
23 receiving, in order to get up to speed with the rest of
24 their classmates?

25 A. They need the additional help that can be given

1 through differentiated instruction in the classroom and
2 accelerated instruction in the summer. And we're
3 just -- we're not able to provide that in the summer,
4 also.

5 Q. Has Van ISD ever provided summer school, other
6 than remediation for STAAR?

7 A. Yes, we have. And now, we had a grant program,
8 under the state grant programs to provide summer school,
9 and that was cut.

10 Q. And when was that cut?

11 A. It was cut last year when the state cut the
12 one -- we were cut 1.3 million in basic funding from the
13 state plus, about \$100,000 in grants, which included the
14 funds that we used. Those grant funds is what we used
15 for summer school for the elementary grades.

16 Q. And so the summer school was available for the
17 elementary grades?

18 A. Yes. And now we, we provided but we're having to
19 pay for it locally.

20 Q. How were you able to make up that difference when
21 the grant was cut?

22 A. Well, it is a mandate and so we provided, we just
23 find a way to get the cost. Now, that means that we're
24 going to have less money to provide those aides under
25 the regular school year or less money for regular

1 classroom instruction. It is going to -- it has to come
2 from somewhere, because we're not getting the additional
3 money from the state or through additional ADA, we don't
4 have any growth.

5 Q. If summer school benefits low income students and
6 helps them to get up to speed with their classmates to
7 the extent that they're behind, why doesn't the district
8 offer summer school in other grades besides elementary?

9 A. We offer some at the secondary level, but it is
10 on a tuition basis. But at the elementary level, it is
11 so important that we keep those students up to grade
12 level and that when they exited 3rd grade, they're on
13 the 3rd grade reading level. And you have to have
14 additional instructional support and technology support
15 and the supplies that the teachers need to do that, and
16 we simply do not have it to meet the level that, that
17 those students need.

18 Q. What about interventions, like, extended school
19 day, does the district offer anything like that for the
20 benefit of its low income students?

21 A. We have tried that, and it is very difficult
22 because parents have to come in and pick up -- we're
23 very rural, spread out school district. And they just
24 don't, the parents just don't have the capability to
25 come pick their students up.

1 Q. And does the district have the ability to provide
2 transportation for those students?

3 A. Well, the state underfunds transportation as it
4 is. That would be additional cost to us, and we simply
5 don't have the funds to do that.

6 Q. You have mentioned increasing teacher salary,
7 decreasing class size, summer school, competitive
8 salaries. Maybe I just already mentioned that one. Are
9 there -- are there any other programs or changes that
10 the district would make if it had additional funds, that
11 would benefit low income or ELL students that you didn't
12 already discuss with Mr. Gray?

13 A. Well, we would certainly lower our class sizes if
14 we had the additional funds to hire the additional
15 teachers and the aide. That would help tremendously
16 with the ESL students. And we would certainly try to
17 make a more concerted effort to see if we can find
18 bilingual teachers. They're very difficult to find.
19 We've been fortunate to have the minimum, which is one.
20 And one of those didn't work out. She didn't understand
21 that when school started at 8:00, you couldn't come at
22 8:00. That kind of thing. So we had a bad experience
23 there. But all we have been able to do is the minimum
24 that the state requires. We have not been able to go
25 beyond that. And the minimum is not good enough.

1 Q. You were discussing achievement gaps with
2 Mr. Gray, and I would like to take a look at the
3 district's AEIS reports for 2010, 2011.

4 (Exhibit 165 marked.)

5 Q. I'm handing you what has been marked as 165. Do
6 you recognize this document?

7 A. Yes.

8 Q. Can you identify it for me, please?

9 A. It is the AEIS report for Van ISD, 2011
10 accountability rating.

11 Q. And as superintendent or now former
12 superintendent of Van ISD you are familiar with this
13 report in relation to Van ISD?

14 A. Yes.

15 Q. And you are familiar with how students at Van ISD
16 performed on the various tests reflected in this report?

17 A. Yes.

18 Q. How they fared on the college readiness
19 indicators?

20 A. Yes.

21 Q. Can you turn to page 3 for me, please.

22 A. Page 2.

23 Q. 3.

24 MR. GRAY: You mean the numbered page 3 on
25 the top?

1 MS. BONO: Yes, that's correct.

2 Q. And if you take a look at the TAKS -- there is a
3 subject heading in the middle of the page that says,
4 "TAKS met 2011 standard (sum of all grades tested)."

5 A. Uh-huh.

6 Q. Can you explain to the court what this section
7 reflects?

8 A. Well, it reflects the district, state and region
9 scores for the various populations in Van ISD such as
10 the Afro American, Hispanic, white and the special ed,
11 economically disadvantaged, LEP and at risk.

12 Q. And can you tell me how the district fared on
13 average in 2010 in the "all tests" category?

14 A. How what now?

15 Q. How the district fared, what the district average
16 percentage was?

17 A. The district average percentage in each of those
18 areas?

19 Q. In all tests, which is the last category?

20 A. All --

21 Q. Uh-huh.

22 A. All tests, 81 percent.

23 Q. For Hispanic students, it was 77 percent; is that
24 correct?

25 A. That is correct.

1 Q. For white students, it was 84 percent?

2 A. That's correct.

3 Q. For economically disadvantaged or low income

4 students, it was 75 percent?

5 A. That's correct.

6 Q. And for ELL or here it is LEP students, it was 58

7 percent?

8 A. That's right.

9 Q. And if we look at the next section, "TAKS

10 commended performance, (sum of all grades tested)," what

11 does this section reflect to your -- to your

12 understanding?

13 A. You said for the commended?

14 Q. Yes, tax commended performance, what is that --

15 what kind of information does that section reflect?

16 A. It reflects the percentage of the students who

17 scored commended, which means that they missed three or

18 less questions.

19 Q. And district wide in the "all tests" category --

20 A. Yes.

21 Q. -- the last row there, what was the percentage

22 for the district in 2010?

23 A. For the district in 2010, was 15 percent.

24 Q. And for white students, it was 17 percent?

25 A. That's correct.

1 Q. And for 2009, it was 60.5 percent?

2 A. That's correct.

3 Q. You were discussing -- and we can put this

4 exhibit aside. I think I'm done with it for now.

5 A. Okay.

6 Q. Earlier you were talking about the performance of

7 Van students on the STAAR test with Mr. Gray. And you

8 said that you -- you talked about the performance of the

9 175 students who were able to take the test --

10 A. Yes.

11 Q. -- in its first round. Do you have any

12 recollection of how low income students performed on

13 that test?

14 A. No, I don't.

15 Q. Okay.

16 A. I can get that.

17 Q. I can tell you I looked for it online, but I

18 guess Van hasn't released it.

19 A. Those are fresh off the printer.

20 MR. GRAY: Don't write on that. I think

21 that is the one that was marked.

22 MS. BONO: We don't want to write on that

23 one.

24 (Off the record.)

25 Q. You also discussed earlier your experience in

1 Q. For Hispanic students, it was 7 percent?

2 A. 5 percent.

3 Q. 7?

4 A. 7, two or more races, a 7. Let's see, the

5 Hispanic was 7, that's correct.

6 Q. And for the ELL students, it was less than 1

7 percent?

8 A. That is correct.

9 Q. If you could turn now to page 8. I'm looking at

10 the AP/IB results under the college readiness

11 indicators.

12 A. Okay, AP.

13 Q. This one right here.

14 A. Yes, yes.

15 Q. What percentage of your students -- looking at

16 the information reflected here, are taking AP/IB

17 results -- AP/IB exams, excuse me, in 2010?

18 A. You are talking about the 2.1 percent?

19 Q. Yes.

20 A. Those tested, you have 2.1.

21 Q. Out of those students, looking in that section,

22 how many have scored at 3 or above?

23 A. This right there?

24 Q. Uh-huh.

25 A. 66.7 percent.

1 property wealthy districts and some of the

2 characteristics those districts had in comparison to

3 some of the low wealth districts where you have served

4 as superintendent. You talked about higher teacher

5 salaries, more advanced technology programs and

6 resources for students. You talked about additional

7 classroom resources and supplies.

8 In your opinion, based on your experience, are

9 those items just luxuries or additional amenities that

10 higher wealth districts are able to provide for their

11 students, or are they actually necessary for the

12 academic performance, for increasing the academic

13 performance?

14 A. They're absolutely necessary for performance, and

15 I think the research shows that, also.

16 Q. And you have referred often to the Tennessee

17 study during the course of your deposition today. I'm

18 assuming you are referring to the Tennessee Star study?

19 A. Yes.

20 Q. You also talked a little bit about the weights

21 for ELL students, the state weights for ELL students and

22 you described them as being token?

23 A. That's right.

24 Q. Or not nearly sufficient for the expense to

25 educate their students. Can you give some examples of

1 how, in your experience, you found that those students
2 are much more costly to educate?

3 A. Absolutely it does. You have to have smaller
4 classes. You cannot put 22 of those students in a class
5 and expect them to be able to get the instruction that
6 they need, as compared to some of the other students.
7 So it does take smaller classes, it takes additional
8 aides, which -- and when you have smaller classes, it
9 takes additional teachers. So that is where your cost
10 is. And then, and then you can continue with that, more
11 supplies, more technology for those students. The
12 technology part of it is important because student
13 retention increases with the use of technology, as they
14 use their essentials of learning.

15 Q. And is that because students are more engaged in
16 the classroom?

17 A. That's right, absolutely.

18 Q. In conversations I have had with superintendents
19 from other smaller, more rural school districts, they've
20 talked about challenges they've encountered with
21 economies of scale so to speak, where they have so few
22 ELL students that the challenges of educating those
23 students is more difficult. For example, if you only
24 have one ELL student in a classroom, you can't hire a
25 teacher just for that one student.

1 A. No.

2 Q. Have you experienced any similar sort of
3 economies of scale type challenges?

4 A. We had one year where I think we had one about
5 six, seven years ago, and but that number has increased
6 over time. And it is -- they're exactly right. That is
7 very difficult.

8 Q. The ELL students in your district are held up to
9 the same standards of accountability as the other
10 students; correct?

11 A. They are.

12 Q. And the district is held accountable for
13 educating those students; correct?

14 A. That's correct.

15 Q. Would -- is it your opinion that ELL students are
16 incapable of performing up to par with their classmates?

17 A. No, that is not. If you provide the adequate
18 instruction and you have the supplies that the teacher
19 needs and you have a qualified teacher, they are going
20 to perform. --

21 Q. And --

22 -- at a higher level.

23 Q. And is that based on your experience as well?

24 A. Yes, yes, it is.

25 Q. And what about low income students. Is it your

1 testimony that low income students are incapable of
2 performing up to par with non low income students?

3 A. They can perform at a higher level, provided the
4 quality type instruction and also being in classes where
5 your class sizes are smaller and having the additional
6 aides for differentiated instruction. All of those
7 things, those kids can perform.

8 So they shouldn't be left behind to finally drop
9 out of the system. And that is what is going to happen
10 with our current system, if we don't -- if the
11 legislature does not do something to increase funding
12 where you have got discretionary money to do those kind
13 of things and review the weights and increase these
14 weights, so that the funding is there to support those
15 areas.

16 MS. BONC. Thank you for your time today. I
17 have no further questions and I pass the witness.

18 EXAMINATION

19 BY MS. McINTUSH:

20 Q. Hi, Mr. Witte. I think we also met previously.
21 My name is Holly McIntush and I work at Thompson and
22 Horton and we represent the Fort Bend group of 83 school
23 districts.

24 A. Okay, good.

25 Q. And I just actually have a brief question I

1 wanted to ask you about something you testified about
2 when Marisa was asking you questions. You mentioned
3 that in your opinion, there is a difference between a
4 certified teacher and a qualified teacher. And I was
5 wondering first of all, I'm wondering if what you mean
6 by that is that not all certified teachers are qualified
7 teachers --

8 A. Well --

9 Q. -- or quality?

10 A. A more highly, maybe a better term is highly
11 qualified teacher, as opposed to a certified teacher.

12 Q. In your experience, are highly qualified teachers
13 generally also certified?

14 A. Yes.

15 Q. So I guess what I'm wondering is what you mean,
16 that certification is necessary to be highly qualified
17 but not necessarily sufficient?

18 A. Well, obviously we all at some time or another,
19 if you have 100 teachers, not 100 of them are going to
20 be top --

21 Q. Right.

22 A. -- what you would consider highly qualified. So
23 maybe that was a little loose term. But you know, the
24 highly qualified teacher --

25 Q. Right.

1 NO. D-1-GN-11-003130

2 TEXAS TAXPAYERS & STUDENT § IN THE DISTRICT COURT

3 FAIRNESS COALITION, et al. §

4 §

5 Plaintiffs, §

6 v. §

7 §

8 EDGEWOOD INDEPENDENT §

9 SCHOOL DISTRICT, et al. §

10 (consolidated) §

11 § OF TRAVIS COUNTY, TEXAS

12 Plaintiffs, §

13 v. §

14 §

15 ROBERT SCOTT, in his §

16 official capacity as §

17 Commissioner of Education, §

18 et al. §

19 §

20 Defendants. § 200TH JUDICIAL DISTRICT

21 ORAL DEPOSITION OF GLORIA ZYSKOWSKI

22 Austin, Texas

23 Tuesday, July 10, 2012

24 Reported by:

25 MICHEAL A. JOHNSON, CRR

JOB NO. 51468

PROCEEDINGS

GLORIA ZYSKOWSKI

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. TURNER:

Q. Ms. Zyskowski, good morning.

A. Good morning.

Q. My name is John Turner, and I'm a lawyer for one of the groups of plaintiff school districts in this lawsuit. I'll refer to it as the Calhoun County plaintiffs, and I'm going to be asking you some questions today. And I first just want to ask you, have you ever had a deposition taken before?

A. No, I have not.

Q. Okay. So let me just go over a few ground rules, if I can. I'll be asking you questions today, and all I want you to do is just give me your truthful answers the best you can. If I ask you any questions that you don't understand today, please let me know and I'll do my best to clarify or rephrase the questions.

We have a court reporter here today who's transcribing this, and do you understand that my questions and the other lawyers' questions and your answers are being recorded and might be shown or read to the judge in this case?

A. Yes.

Q. Since we do have a court reporter here and he's transcribing everything we say, it's best if you try to wait until I finish my question before you start your answer and at the same time I'll do my best to wait until you've finished with your answers before I go on to the next question. Is that all right with you?

A. Yes.

Q. And last, we'll probably take at least one break during the morning and assuming we go past lunch, we'll take a lunch break, but if at any other time you'd like to take a short break, feel free just to let me know and we can always do that at your convenience.

A. Okay.

Q. Now, Ms. Zyskowski, you have been chosen today to offer testimony on behalf of the Texas Education Agency. Do you understand that?

A. Yes.

Q. I'm going to hand you the deposition notice that we've provided that has led to you being here this morning.

(Deposition Exhibit 34 marked.)

Q. (BY MR. TURNER) We've marked this as Exhibit 34, and I take it, Ms. Zyskowski, you've probably seen this deposition notice?

A. Yes, I have.

Q. This notice lists a number of different subjects or topics for questioning, and I understand that you have been selected by the TEA to offer testimony on certain of these topics, correct?

A. Yes.

Q. And if you turn here to page 5, as the areas of examination begin here, my understanding is that you will be offering testimony on topics 1, 2, skipping to page 8, 4 (i)?

A. Yes.

Q. Then on page 9 topics 7, 8, 9, 10 and 11. Is that your understanding?

A. Yes.

Q. Now, I understand that you will not be offering testimony on topics 12 to 14, correct?

A. Correct.

Q. And that someone else will be addressing topics 3 and 4 other than 4(i) and topics 5 and 6. Is that your understanding as well?

A. Yes.

Q. Now, with respect to the topics you will be -- you have been designated to address, do you understand, Ms. Zyskowski, that you're giving testimony on behalf of the agency and not necessarily in your personal

capacity?

A. Yes, I do.

Q. And so you are the person the agency decided either was knowledgeable to speak on these questions or could be prepared to speak on these questions on behalf of the agency?

A. Yes.

Q. What have you done before today to prepare to offer testimony on these topics?

A. I have -- I've looked at this document that -- the deposition, and I have looked at the exhibits that are attached to it to prepare for this.

Q. Now, other than having conversations with your attorneys, have you had conversations with anyone else either at the TEA or elsewhere to try to help prepare to speak on these topics?

A. I have had conversations with members of my staff who were involved with the original preparation of the exhibit documents.

Q. Who are those staff members you spoke to?

A. I spoke with Julie Guthrie, who is the director of the math and science assessments in the student assessment division.

Q. Anybody else?

A. Mariana Vassileba, who is the director of

1 analysis and reporting for the student assessment
2 division.

3 Q. Could you spell her name, please.

4 A. First name M-a-r-i-a-n-a and V-a-s-s-i-l-e-b-a.

5 Q. That's a B, like boy, Bassileba?

6 A. V, as in Victor.

7 Q. Oh, V, as in Victor. Vassileba?

8 A. Uh-huh.

9 Q. Anyone else you spoke to?

10 A. No.

11 Q. Have you reviewed any documents to try to
12 prepare to testify on these topics?

13 A. I have reviewed these documents and I have
14 reviewed several of the tables that were provided that
15 were requested through discovery.

16 Q. Do you remember which ones those were?

17 A. Primarily it was the color charts that
18 designate where the cut scores on the assessments were
19 set.

20 Q. Have you reviewed any other documents to
21 prepare for the deposition, to your memory?

22 A. No.

23 Q. I want to ask you just some questions about
24 your career and your background. And why don't we
25 start, if we could, just with your educational

1 background and if you could just summarize that, please,
2 for me in a few sentences or so.

3 A. I have a teaching certificate. I have a
4 bachelor's degree in English language arts and earth
5 science, a master's degree in comparative education, and
6 I have a Ph.D. in educational research and measurement.

7 Q. Can you tell me at what institutions you
8 received all those degrees?

9 A. University of Toledo.

10 Q. All of them?

11 A. Uh-huh.

12 Q. So you received your bachelor's, master's and
13 Ph.D. all from the University of Toledo?

14 A. Yes.

15 Q. Can you tell me, again, the Ph.D. was in what?

16 A. Educational research and measurement.

17 Q. You also said you have a teaching certificate?

18 A. I do.

19 Q. And did you receive that one from -- at Toledo
20 also?

21 A. -- I hold -- I still hold a valid teaching
22 certificate from the state of New South Wales in
23 Australia, and my Ohio teaching certificate has expired.

24 Q. All right. Thank you. So now I'd like to ask
25 if you could do the same thing for your work experience

1 and career, just kind of summarizing for me different
2 positions you've held and permanent employment.

3 A. I have -- other than my five-plus years
4 teaching, I have worked for Title I technical assistance
5 center here in Texas, in Austin, for approximately six
6 years. I worked with the Dallas Independent School
7 District in their systemwide testing office. I worked
8 for NCS as part of the Texas assessment contract in
9 Austin for, again, six-and-a-half years.

10 I worked for the Austin Independent School
11 District for ten years. And for five of that -- five of
12 those years, I was the testing director for the
13 systemwide testing division.

14 And then I have worked for the past seven years
15 with the Texas Education Agency. And for five of those
16 years I have been the director of the student assessment
17 division.

18 Q. All right. Thank you for that summary. Let me
19 go back through it and just ask a couple more questions.
20 You said you spent five -- over five years teaching; is
21 that right?

22 A. That's correct.

23 Q. Where did you teach?

24 A. I taught in New South Wales in Australia and I
25 taught in Ohio, in Toledo.

1 Q. All right. What subjects did you teach and
2 grade levels?

3 A. I taught high school English. I taught
4 Australian history at high school. And in Ohio then
5 when I returned to the states, I taught middle school
6 science.

7 Q. All right. And when you were a Title I
8 technical -- you worked at the Title I technical
9 assistance center. Where was that?

10 A. It was located here in Austin, and we worked
11 out of a five-state region. We were -- the company had
12 a federal contract.

13 Q. Okay. And you said the last seven years you've
14 been at the TEA and five -- I take it the last five
15 years you've been the director of the student assessment
16 division, correct?

17 A. Correct, uh-huh.

18 Q. And so if you can help orient me within the
19 TEA, to whom would you report directly?

20 A. I report to Criss Cloudt, the associate
21 commissioner for accountability and assessment.

22 Q. And looking at it the other way, who reports to
23 you directly?

24 A. Directly, there are six directors within the
25 student assessment division and they are my direct

1 reports.

2 Q. Can you tell me the names of those people and
3 what their positions are?

4 A. There is Julie Guthrie, the -- as I mentioned,
5 the director of the mathematics and science assessments;
6 Mariana Vassileba is the director of analysis and
7 reporting; Victoria Young is the director of the English
8 language arts and social studies assessments; Cari
9 Weiland is the director of special ed assessments; and
10 Laura Ayala is the director of the English language
11 learner assessments.

12 Q. English language learner assessments?

13 A. Uh-huh.

14 Q. And you said Mariana Vassileba --

15 A. Vassileba, analysis and reporting.

16 Q. Analysis and reporting?

17 A. Uh-huh.

18 Q. How would you describe, generally speaking,
19 your duties and responsibilities in your position as the
20 director of student assessment?

21 A. I'm responsible for the oversight of the
22 assessment program, manage the assessment contract with
23 Pearson and am responsible for ensuring that the
24 assessment program meets all of its requirements.

25 Q. Now, this may be a broad question, but could

1 you try to just summarize, best you can, the role that
2 Pearson plays in the assessment -- development of the
3 assessment system and kind of the role that TEA plays.
4 How are the duties divided between the two?

5 A. Well, Pearson is the -- is the vendor that has
6 the -- that has the contract for the student assessment
7 program. TEA is responsible for the oversight of that
8 contract and TEA is responsible for establishing all the
9 policies that govern the activities of the assessment
10 program.

11 Pearson works under the direction of student
12 assessment and works very closely with us. They are
13 responsible for development of items. They're
14 responsible for the actual test booklet production.
15 They're responsible for distribution to school
16 districts. They do the scoring and the reporting for
17 the student for the state assessment program. And then
18 there are various supporting activities that are part of
19 our contract with them that they are responsible for
20 under TEA.

21 Q. Are the policy decisions relating to the
22 assessment program ultimately made by TEA rather than
23 Pearson?

24 A. Yes, all policy decisions are made by TEA.

25 Q. Does Pearson have employees that work full time

1 on the Texas assessment program?

2 A. Yes, they do.

3 Q. How many employees would you say Pearson has
4 that play that role?

5 A. Full-time employees, I -- I'm not sure how many
6 of their employees are 100 percent on the Texas project.
7 The Pearson office in Austin has perhaps 150 employees.
8 Of that number I don't know how many are 100 percent on
9 the Texas program.

10 Q. Would you say that a fair number of those, if
11 not 100 percent, spend a good bit of their time --

12 A. Perhaps half of those, but I would have to
13 verify that against an organizational chart of
14 Pearson's.

15 Q. And within the TEA -- how many employees within
16 TEA work in the assessment area, the assessment
17 division?

18 A. The assessment division has 84 employees.

19 Q. And would you say that those 84 employees all
20 report directly or indirectly to you?

21 A. Yes.

22 Q. I'm going to ask some general questions to try
23 to establish our -- our terms before I get into some
24 more detail here in the deposition. And first I want to
25 talk about the state's curriculum for public education.

1 You're familiar with the state's curriculum, correct?

2 A. Yes, I am.

3 Q. Can you, in just a general way, summarize for
4 me where the state's curriculum requirements are set
5 forth or explained.

6 A. I guess I need a clarification. Where they're
7 set forth, where -- I'm not sure what you mean by that.

8 Q. Where are they described or elaborated?

9 A. Well, the state's curriculum is available -- I
10 mean, it's available to the public on our -- on the
11 website. I have to say that student assessment is not
12 directly involved in the establishment of the state
13 curriculum, so I'm not sure that I can answer that.

14 Q. Well, just in a general sense, the state's
15 curriculum is partly defined by statute, correct,
16 curriculum requirements?

17 A. Yes.

18 MS. BUNKER-HENDERSON: Objection, form.

19 Q. (BY MR. TURNER) And there are elaborations to
20 the state curriculum that are promulgated by the state
21 board of education; is that correct?

22 MS. BUNKER-HENDERSON: Objection, form.

23 A. The state board of education has the authority
24 to -- they approve the state curriculum.

25 Q. (BY MR. TURNER) And Chapter 28 of the

1 A. Whatever standard is in place when the student
2 first takes those courses will stay with the student.

3 Q. And what's the most high-stakes test you have
4 ever taken personally?

5 MS. BUNKER-HENDERSON: Objection, form.

6 A. The Miller's Analogy Test.

7 Q. (BY MR. THOMPSON) Did you take -- and what was
8 it used for? What was the Miller's Analogy test used
9 for?

10 A. In my case entrance to graduate school.

11 Q. Okay. Was this a test that everything depended
12 on? If you didn't do well on it, you might not be
13 admitted to grad school?

14 A. I honestly don't remember. I mean, I know it
15 was a factor that was considered. I had to take it. I
16 don't remember what the consequences would have been.

17 Q. Did you take the GRE?

18 A. No.

19 Q. Okay. Did you study for the Miller's Analogy
20 test or did you just go in and wing it?

21 MS. BUNKER-HENDERSON: Objection, form.

22 A. I don't remember. I might -- I don't remember.

23 Q. (BY MR. THOMPSON) Are you familiar with the
24 concept that making a large number of tests high-stakes,
25 high-consequence exams may actually have the unintended

1 effect of narrowing the curriculum? Have you heard that
2 discussion?

3 A. Of narrowing the curriculum?

4 Q. Correct. Is there a natural tendency to focus
5 more on the high-stakes subjects and less on other
6 subjects that are also required to be taught in Texas?

7 A. I have heard that. I've heard that discussion,
8 yes.

9 Q. Do you agree with it from your viewpoint and
10 assessment?

11 A. It's certainly been the experience that what is
12 tested is typically taught.

13 MR. THOMPSON: I appreciate your testimony
14 today and thank you very much. I'm going to pass the
15 witness.

16 EXAMINATION

17 BY MR. HINOJOSA:

18 Q. Good afternoon.

19 MR. THOMPSON: Let's move just so -- I'll
20 move so you can --

21 MR. HINOJOSA: May make her speak louder
22 maybe.

23 MS. BUNKER-HENDERSON: Probably not though.

24 Q. (BY MR. HINOJOSA) Good afternoon,
25 Dr. Zyskowski. My name is David Hinojosa, and I

1 represent Edgewood Independent School District and four
2 other property-poor school districts in the state of
3 Texas and we also represent parents of low income and
4 English language learners in this case.

5 As it currently sits, students who pass TAKS --
6 or who are meeting the standards, the minimum standard
7 under TAKS, they are not necessarily college ready,
8 correct?

9 A. We don't have that designation tied to TAKS.
10 That's not how the tests were developed.

11 Q. And how about for students who meet commended
12 performance levels on the TAKS test, are those -- are
13 they -- those students who meet the commended
14 performance level considered, in the eyes of TEA, to be
15 college ready?

16 A. Again, that's not specifically how the tests
17 were designed. Certainly the THEA cut on the
18 end-of-course assessments is below the commended cut.
19 And so if you achieve the commended performance, you
20 have performed higher than the THEA cut on the tests.

21 Q. And the commended performance on TAKS, how does
22 that compare to the final Level III performance under
23 STAAR?

24 A. In -- I believe in all cases when we did the
25 studies that commended performance on STAAR -- on TAKS

1 generally maps above Level II but below Level III on
2 STAAR.

3 Q. And students who simply are graduating today on
4 the recommended high school program are not, just
5 because they graduated on the RHSP, considered college
6 ready, correct?

7 A. Well, students who graduated on the recommended
8 program and assuming they're in the top 10 percent of
9 their class have automatic admission to Texas colleges
10 and universities.

11 Q. But simply because they are admitted --
12 automatically admitted under a state statute doesn't
13 necessarily mean that they are college ready, correct?

14 MS. BUNKER-HENDERSON: Objection, form.

15 A. It doesn't necessarily mean that, no.

16 Q. (BY MR. HINOJOSA) And, you know, let me just
17 clarify this. So students who graduate in the top
18 10 percent of their class might still need remediation
19 in college, correct, which would -- under the definition
20 of the state mean that they are not college ready,
21 correct?

22 MS. BUNKER-HENDERSON: Objection, form.

23 A. It's possible.

24 Q. (BY MR. HINOJOSA) And so let me go back to my
25 other question because I think you kind of rephrased it.

1 But students who are -- simply graduate under the
2 recommended high school program are not necessarily
3 college ready just because they graduate in that
4 program, correct?

5 A. Not necessarily.

6 Q. All right. So we couldn't look at, for
7 example, the AEIS report and look at the percentage of
8 students graduating under the recommended high school
9 program and assume that those students are college
10 ready, correct?

11 A. Depending on what your definition of college
12 ready is, I don't know that you can draw that
13 conclusion.

14 Q. And we're -- when I'm talking about college
15 ready, I'm just talking about the state's definition for
16 college ready. Okay. Is that fair?

17 A. Uh-huh.

18 Q. And you're familiar with the other
19 college-readiness indicators in the AEIS reports such as
20 at or above the criterion on the ACT and SAT?

21 A. Yes.

22 Q. And why does the state -- well, let me ask you
23 this first. Do you disagree on the criterion that the
24 college board has set for the SAT and ACT on determining
25 college readiness?

1 MS. BUNKER-HENDERSON: Objection, form.

2 A. I don't -- I don't agree or disagree with the
3 standard they have set.

4 Q. (BY MR. HINOJOSA) Do you have an opinion on
5 whether or not the standard -- and I'll show you this
6 right quick. This is Exhibit 20. It's been admitted
7 previously. I'll let your counsel look at this real
8 quick too.

9 MR. HINOJOSA: You can ignore the writing.
10 That was from the last deposition.

11 Q. (BY MR. HINOJOSA) So we're looking at page 13
12 of Exhibit 20, and this has the --

13 MS. BUNKER-HENDERSON: To clarify, this is
14 Exhibit 20 from Commissioner Scott's deposition?

15 MR. HINOJOSA: Yes.

16 Q. (BY MR. HINOJOSA) And in this report on
17 page 13 it has at or above criterion percentages for
18 both the class of 2010 and 2009, correct?

19 A. Yes.

20 Q. And so does the state have an opinion on
21 whether or not this information reported here is
22 inaccurate as far as being reported as a
23 college-readiness indicator?

24 MS. BUNKER-HENDERSON: Objection, form.

25 A. It is an indicator that is used in the state

1 accountability system for that purpose.

2 Q. (BY MR. HINOJOSA) Okay. And is that -- is
3 this criterion for ACT and SAT considered too high of a
4 level for college readiness?

5 MS. BUNKER-HENDERSON: Objection, form.

6 A. I don't know that I would say that it's too
7 high. I don't -- no.

8 Q. (BY MR. HINOJOSA) Well, do you have an opinion
9 as -- as to whether it's too high or too low or just
10 right?

11 A. My experience with SAT or ACT performance more
12 relates to the studies that we conducted for STAAR
13 standard setting. And certainly those were indicators
14 that we used to help establish where the neighborhood
15 should be set. So we had some confidence that those
16 were appropriate indicators. They are commonly used
17 indicators of college readiness.

18 Q. Were the standards set by the state for the
19 final phase-in Level III higher or lower than the ACT
20 and SAT at or above criterion?

21 A. For final Level III?

22 Q. Yes. Final Level III under STAAR.

23 A. I'd have to go back and look at each one of the
24 individual tests, but I think in general they were set
25 above.

1 Q. What was set above?

2 A. Level III would have been set above that
3 indicator.

4 Q. So whatever the criterion set for SAT, the
5 criterion set for Level III final phase-in would have
6 been higher?

7 A. Yes.

8 Q. And how about the college-readiness
9 indicator -- let me show you this again on page 13 of
10 the Exhibit 20. There's an indicator there reported
11 that's titled college-ready graduates. And that's for
12 performance on TAKS; is that correct?

13 A. I believe that's what that means.

14 Q. Are you familiar with that specific indicator
15 there?

16 A. I believe -- no. I believe this refers to the
17 students who meet the THEA cut on those assessments on
18 TAKS.

19 Q. Okay. And that THEA cut was also represented
20 in the scale scores that you were going over when it
21 compared, for example, guessing and SAT at a certain
22 percentage and so forth, correct?

23 A. Yes.

24 MS. BUNKER-HENDERSON: Objection, form.

25 Q. (BY MR. HINOJOSA) Under the current STAAR

1 report, the students that have met the phase-in I
2 minimum score are not college ready, correct?

3 MS. BUNKER-HENDERSON: Objection, form.

4 A. They have not met the college-ready standard
5 that was established on the -- on the assessments.

6 Q. (BY MR. HINOJOSA) And in the phase-in I
7 Level II standard, would students be considered to be
8 college ready?

9 A. It is possible that they are college ready.
10 They have not met the college-readiness indicator on the
11 assessments.

12 Q. Okay. So -- and what do you mean by that?

13 A. Well, college readiness in terms of how it's
14 viewed for the assessment program -- and I think in
15 general -- it's not a yes/no indicator. Either you are
16 or you aren't. When we designed the assessment program,
17 it was designed around how -- a likelihood of being
18 college ready. The higher your score is on the
19 assessment, the more likely it is that you are ready for
20 college work.

21 It's not to say that if you don't achieve that
22 score on the assessment that you aren't college ready.
23 There's certainly far more factors that go into
24 determining college readiness than your score on an
25 assessment. All we would say is that the student did

1 not achieve the college-readiness standard. I wouldn't
2 say the student is not college ready.

3 Q. But there's -- but you will say that there is a
4 likelihood of whether or not they are college ready
5 because that is factored into your decision on setting
6 the standard, correct?

7 A. I would say that the higher their score on the
8 assessment, yes, the more -- more likely they are to be
9 prepared for college-level work.

10 Q. In setting the performance standards, and I'm
11 referring to Exhibit 43 right now, did you take into
12 account the performance of ELL students?

13 A. Yes, they were included in the population of
14 students on whom the standards were set.

15 Q. But as a disaggregated group, did you take into
16 account the performance of ELL students?

17 MS. BUNKER-HENDERSON: Objection, form.

18 A. We did look at impact data for those students,
19 yes.

20 Q. (BY MR. HINOJOSA) So tell me how you
21 considered the performance of ELL students as a
22 disaggregated group in setting the performance standards
23 for STAAR.

24 A. When the policy committee was making a
25 recommendation about the neighborhoods -- and these

1 number lines that are provided in what was labeled
2 Exhibit 45 were based on all students, but we also
3 presented the policy committees with information on
4 various disaggregated student groups. We did the same
5 with the educator committees when they came in to make a
6 recommendation on where the specific cut should be set.
7 We provided them data on how various disaggregated
8 groups, ELLs being one of them, would perform at the
9 standard that they were recommending.

10 Q. Do you know whether or not that disaggregated
11 data was actually considered by the committee in setting
12 the standard?

13 A. I can't speak to what they -- how they used
14 that information in their deliberation.

15 Q. And the same questions with respect to
16 low-income students, did you take into account the
17 performance of low-income students as a disaggregated --
18 when I say low income, I mean economically disadvantaged
19 students. Did you take their performance into account
20 in establishing the performance standards in Exhibit 43?

21 A. We did provide impact data for that group of
22 students as well to the committees.

23 Q. All right. But do you know whether or not they
24 considered the performance of economically disadvantaged
25 students as a disaggregated group in making the

1 recommendations of performance standards which were
2 subsequently adopted?

3 A. I can't speak directly to that. I wasn't in
4 the discussions.

5 Q. Did you take into account, in setting the
6 performance standards for STAAR, the resources that were
7 needed to achieve the performance standards by ELL
8 students?

9 A. The educator committees, when they came in to
10 make their recommendations, we did specifically have
11 representatives for the ELL population, teachers for
12 those groups of students as we did for other groups of
13 students as well, representative group of educators. In
14 their deliberations we asked them to consider whether
15 they would expect that students would have mastered
16 particular curriculum at the time the assessments were
17 administered and that was what they were supposed to use
18 when they made a decision about where the recommend --
19 where the standard should be set on the test.

20 Q. So is it your testimony that the committee did
21 take into account the resources needed by ELL students
22 to achieve the standards?

23 MS. BUNKER-HENDERSON: Objection, form.

24 Q. (BY MR. HINOJOSA) I understand -- and let me
25 get this straight. You know, I understand you're saying

1 that they took into account perhaps whether or not they
2 might meet the standards, but I'm -- my question is more
3 specifically about the resources, the access to
4 educational resources they would need to achieve the
5 standards.

6 MS. BUNKER-HENDERSON: Objection, form.

7 A. The only way that I feel I can answer that
8 question is to say that we make a concerted effort to
9 ensure that the educators who are on these committees
10 represent all areas of the state, represent different
11 student groups across the state. And so in that sense
12 they are mindful of the resources that they have
13 available to them when they are making their
14 recommendations to us. So that's how -- the only way I
15 would be able to answer that.

16 Q. (BY MR. HINOJOSA) Let's turn to -- I don't
17 know what this page is. Exhibit 44.

18 A. Okay. I have that.

19 Q. And we're going to look at the end of course
20 Level II, satisfactory academic performance phase-in
21 summary report, 2012 statewide results.

22 And if we look at English I writing just for
23 the phase-in standard, what percent made -- met the
24 Level II, satisfactory standard?

25 A. The phase-in standard?

1 Q. Phase-in standard, yes.

2 A. For which group of students?

3 Q. For LEP students.

4 A. 8 percent.

5 Q. And is a 92 percent failure rate -- failure to
6 meet the phase-in standards, is that exemplary of LEP
7 students having access to the resources they needed to
8 achieve the standard?

9 MS. BUNKER-HENDERSON: Objection, form.

10 A. I wouldn't -- I wouldn't be able to respond to
11 the reasons why the performance was what it was.

12 Q. (BY MR. HINOJOSA) Tell me -- the performance
13 of LEP students on the STAAR, did TEA try and predict
14 the performance of LEP students as a disaggregated
15 group?

16 A. In terms of the -- of our adjusted impact data?

17 Q. Yes.

18 A. We looked at the adjusted impact data at the
19 all students level.

20 Q. So you did not look at how LEP students might
21 perform on the STAAR when setting the test as a
22 disaggregated group?

23 A. No, we did provide that data to the educator
24 committees when they came in, as well as to the policy
25 committee.

1 Q. So there's data on how you estimated that LEP
2 students would perform on the STAAR?

3 A. Yes, we have -- there would have been those
4 disaggregated groups.

5 Q. Have you produced that information to your
6 lawyers?

7 A. I would assume so. They were provided in the
8 notebooks that we used with the policy committees.

9 Q. Were these performance levels of LEP students
10 on the 2012 end-of-course STAAR exams, did they fall in
11 line with what TEA had predicted?

12 A. I would have to go back and see what the
13 numbers were that we had predicted. I don't know the
14 specific answer to that.

15 Q. Do you know whether or not TEA had predicted
16 the performance of economically disadvantaged on the
17 various end-of-course exams of STAAR on the 2012?

18 A. Those -- those data would have been presented
19 to the policy committees I believe.

20 Q. Do you know, as we sit here today, whether or
21 not economically disadvantaged students as a
22 disaggregated group met or exceeded the predicted
23 performance of economically disadvantaged students on
24 any of the end-of-course exams tested in 2012?

25 A. I don't know that.

1 Q. Do you know what the level of resources that
2 were identified by the committee needed for ELL students
3 or economically disadvantaged students to achieve the
4 standards set by the state?

5 MS. BUNKER-HENDERSON: Objection, form.

6 Q. (BY MR. HINOJOSA) And I'm talking about the
7 performance standards on the STAAR.

8 A. What resources --

9 Q. Yes.

10 A. -- were necessary? No, I don't know.

11 Q. Did the state take into account the access to
12 resources by students in low property wealth school
13 districts needed to achieve the standards set in place
14 by the state with respect to the STAAR performance?

15 MS. BUNKER-HENDERSON: Objection, form.

16 A. Again, given the representative nature of the
17 committees that were called in to make the
18 recommendations, then teachers, educators in those
19 districts would have been part of the standard-setting
20 process.

21 MR. HINOJOSA: I'm going to object as
22 nonresponsive.

23 Q. (BY MR. HINOJOSA) And if you don't know or if
24 you're not sure, you can certainly say that. But what I
25 want to know is whether or not TEA in setting the

1 performance standards for the 2012 end-of-course exams
2 took into account the level of resources available to
3 students in property-poor school districts.

4 MS. BUNKER-HENDERSON: Objection, form.

5 A. I don't know.

6 Q. (BY MR. HINOJOSA) Earlier when we were talking
7 about the standards with Mr. Turner and the different
8 measures, you had mentioned -- he had went over some
9 questions with you regarding the guessing indicator.
10 And I wasn't quite clear because you seemed to say,
11 well, maybe the TAKS met standard, for example, on the
12 English III reading was not necessarily less than
13 guessing on the STAAR. You know, if I've misrepresented
14 your testimony, then please correct me. I'm just trying
15 to figure out, for example, on Exhibit 44 on page 12,
16 the TAKS met standard on the English III reading STAAR
17 test is 7 -- has a raw score of 7 and a scale score of
18 1443 and that is below the guessing standard under
19 STAAR, correct?

20 A. Yes. Shows the -- yes.

21 Q. And so I think you kind of mentioned some other
22 analysis that was done by TEA, or perhaps not. We can
23 certainly clarify right now, but I'm just trying to
24 figure out whether or not that is accurate -- was
25 accurately reported to the house committee on public

1 education on June 19, 2012.

2 A. Yes, to my knowledge, this is -- this is an
3 accurate representation of the results of the studies
4 that were conducted.

5 Q. Okay. A lot of the documents that have been
6 presented here to you I believe that your division has
7 developed, and I'm talking about, for example, Exhibits
8 35 and 36. Let's go with Exhibit 35 first.

9 Are you familiar with any inaccurate statements
10 and/or misrepresentations made in Exhibit 35?

11 A. No, I'm not.

12 Q. And in Exhibit 35, going to the second page, it
13 talks about the difference between the eligible content
14 standards from TEKS and it shows a 70 percent and
15 30 percent split there. That's under the old TEKS
16 before the college readiness standards were put in
17 place, is that correct?

18 A. No. This was based on the curriculum that
19 was -- the curriculum standards in place in 2010, and at
20 that -- by that time the college- and career-readiness
21 standards had been incorporated into the curriculum
22 standards.

23 Q. Can you explain the difference between --
24 between these two?

25 A. The eligible --

1 MS. BUNKER-HENDERSON: Objection, form.

2 A. Between the eligible content standards and the
3 assessment blueprint?

4 Q. (BY MR. HINOJOSA) Yes.

5 A. The eligible content standards goes back to the
6 discussion from earlier today about the distinction made
7 in the curriculum standards between what we consider
8 readiness standards and what we consider to be
9 supporting standards.

10 Readiness standards are those identified by
11 educators as essential for success in the current grade
12 or course. And the readiness standards -- the way the
13 educators identify the readiness and supporting
14 standards in the curriculum, it came out on average that
15 approximately 30 percent of the curriculum standards
16 were identified by Texas educators as readiness and
17 about 70 percent of them were identified as supporting.

18 We -- in the design of the STAAR assessments,
19 we did put an emphasis on the readiness standards so
20 that we could measure them in greater depth. And so the
21 readiness standards on the state assessments make up
22 approximately 65 percent of the content of the tests and
23 supporting makes up 35 percent, in general.

24 Q. I hand you what we're going to mark as
25 Exhibit 52?

1 (Deposition Exhibit 53 marked.)

2 Q. (BY MR. HINOJOSA) Do you know who Victoria
3 Young is?

4 A. Yes, I do.

5 Q. And is she the director of reading, writing and
6 social studies assessment for TEA?

7 A. Yes.

8 Q. And are you familiar with Exhibit 52?

9 MR. GRAY: I had it as 53.

10 MR. TURNER: I had it as 52 as well.

11 MS. BUNKER-HENDERSON: I have it as 53.

12 MR. TURNER: Do you?

13 MR. HINOJOSA: We can go off the record.

14 (Recess Taken From 4:12 p.m. To 4:28 p.m.)

15 MR. HINOJOSA: So I just want to do a
16 little housecleaning thing. The document that was
17 previously presented to the deponent by Mr. David
18 Thompson entitled "Study Profile: STAAR English III
19 Writing - ACT English" is Exhibit 52.

20 The current document that I just presented to
21 the witness titled "State of Texas Assessments of
22 Academic Readiness, An Overview of the Program" is
23 Exhibit 53.

24 Q. (BY MR. HINOJOSA) So on Exhibit 53, you said
25 you recognize this as a true and correct copy of the

1 document, "State of Texas Assessments of Academic
2 Readiness, An Overview of the Program"?

3 A. Yes, I do.

4 Q. And are there any inaccuracies or
5 misrepresentations noted here?

6 A. Well, I'm not familiar with all of the content
7 of this presentation, so I'd have to go through it to be
8 able to say that.

9 Q. Let's go to the third page of this document.

10 The policy definition of Level III, advanced academic
11 performance, it has a -- some criteria set there,
12 performance in this category indicates that students,
13 one, are well prepared for the next grade or course,
14 two, demonstrate the ability to think critically, three,
15 demonstrate the ability to apply the assessed knowledge
16 and skills in varied contexts, both familiar and
17 unfamiliar, four, have a high likelihood of success in
18 next grade or course with little or no academic
19 intervention; is that correct?

20 A. That's correct.

21 Q. And is that accurate?

22 A. Yes, that is the operational definition we
23 used.

24 Q. And the operational definition for Level II,
25 satisfactory performance, I won't read through all of

1 that on Exhibit 53, but does that also accurately
2 reflect the definition?

3 A. Yes, it does.

4 Q. And at the -- the last part of the definition
5 there, it says, may need short-term, targeted academic
6 intervention; is that correct?

7 A. Yes.

8 Q. And is that the final Level II, satisfactory
9 performance?

10 A. Yes, the definitions were set in reference to
11 the final.

12 Q. And that's for all end-of-course exams,
13 correct?

14 A. Yes.

15 Q. And these definitions in Exhibit 53, these
16 policy definitions for the various performance levels,
17 they apply to all of the end-of-course exams, correct?

18 A. They do, yes.

19 Q. Now, let's go to the next page. Well, let's
20 stay there right quick. On that -- part of the
21 definition it says, may need short-term, targeted
22 academic intervention. Why did the Texas Education
23 Agency include that as part of the definition?

24 A. It was to make the distinction between the
25 satisfactory and the advanced cut levels, that there may

1 be some skills assessed by the -- by the tests that the
2 students might need to have just a little more
3 intervention with to be able to be successful in the
4 next course.

5 Q. And what is this type of academic intervention
6 that you're speaking of? What are -- you -- now, what
7 could be examples of that?

8 A. It could be something as simple as a refresher
9 on definitions. It could mean, for example, on the
10 writing tests, students needed to work a little bit more
11 on characterization. I mean, it could be something
12 very -- it would generally be something very specific.

13 Q. Is it something that would possibly require
14 before or after school programs?

15 MS. BUNKER-HENDERSON: Objection, form.
16 A. I mean, it's possible that schools could choose
17 to provide the intervention that way.

18 Q. (BY MR. HINOJOSA) And is there any specific
19 targeted academic intervention as far as short term for
20 Level II performance that you're aware of that TEA has
21 directed?

22 A. No.

23 Q. Going to the next page of Exhibit 53, there's a
24 policy definition of Level I, unsatisfactory academic
25 performance. And can you tell me whether or not that is

1 an accurate policy definition.

2 A. Yes, that is what we used.

3 Q. And the second bullet there, it says, do not
4 demonstrate a sufficient understanding of the assessed
5 knowledge and skills. What is meant by a sufficient
6 understanding?

7 A. That they have not -- students who achieve this
8 level do not demonstrate that they have enough of the
9 content to be successful in the next grade or course.

10 Q. So is that then tied into the third bullet
11 there?

12 A. Yes.

13 Q. Put that away. I hand you what we're going to
14 mark as Exhibit 54.

15 (Deposition Exhibit 54 marked.)

16 MR. THOMPSON: Do you have any more? Is
17 this all you have?

18 MR. HINOJOSA: Yes. Sorry.

19 Q. (BY MR. HINOJOSA) Do you recognize what
20 Exhibit 54 is?

21 A. Yes, I do.

22 Q. And what is Exhibit 54?

23 A. Exhibit 54 is a PowerPoint presentation that I
24 made in conjunction with Criss Cloudt at the Texas
25 assessment conference in December 2010.

1 Q. And did you make any misrepresentations or put
2 any inaccurate information in Exhibit 54?

3 A. Again, I would have to refresh my memory, but
4 everything that's in here, this was developed in
5 December 2010. Certainly there were policy decisions
6 that were made subsequent to this that might be
7 different than what was stated here. I would have to
8 look through each particular slide.

9 Q. But do you recall any representations that were
10 made in Exhibit 54 that were inaccurate or misleading?

11 A. I -- no, not at the time this was put together.

12 Q. Okay. I just want to clarify something. On
13 the English I and English II and English III test, I
14 know we said earlier that there's both a writing test
15 and a reading test, is that correct?

16 A. That's correct.

17 Q. And is there a minimum score requirement for,
18 for example, the English I reading test as opposed to
19 the English I writing test or is the minimum score a
20 cumulative score of those two tests?

21 A. Students have to achieve the minimum score on
22 both English I reading, English I writing. The -- and
23 then students are only required to retake the portion on
24 which they are not successful.

25 Q. So if they don't achieve, for example, the

1 English I writing minimum score, then they'll have to
2 retake the English I writing, correct?

3 A. Correct.

4 Q. And is there a cumulative score requirement for
5 reading as opposed to writing, or is the cumulative
6 score a result of both English I reading and writing?

7 A. The cumulative score for the Englishes is the
8 six tests taken together, English I, II and III reading,
9 English I, II and III writing.

10 Q. If you go to page 3 of Exhibit 54, in the lower
11 left-hand box, which I guess is slide 11, titled "STAAR
12 End-of-Course High School Assessments" -- do you see
13 that?

14 A. Yes.

15 Q. -- there's a statement there that says,
16 "Student is not required to retake course if he or she
17 received credit for the course as a condition of
18 retaking assessment."

19 Correct.

20 A. Correct.

21 Q. And what is meant by that statement?

22 A. It means that students can receive credit for
23 the course separately from whether they pass the
24 assessment. Passing the assessment is not a condition
25 for receiving credit for the course.

1 Q. And the -- these end-of-course exams, although
2 it was opted out by the commissioner this year, they
3 will account for 15 percent of a student's final grade
4 in that end-of-course class, correct?

5 MS. BUNKER-HENDERSON: Objection, form.

6 A. That is a statutory requirement.

7 Q. (BY MR. HINOJOSA) So in slide 12 there you
8 say, "Student's score on assessment must be worth 15% of
9 the student's final grade for that course."

10 Correct?

11 A. Correct.

12 Q. And do you know how that score is supposed to
13 be converted from either a raw or scale score under
14 STAAR into a score for a -- you know, to account for a
15 certain percentage of a course?

16 A. No, that is a -- that's a local determination
17 in terms of how they want to incorporate that score.

18 Q. So looking at Exhibit 54, then it's possible
19 that a school district could have a raw score of 8 on
20 the English III reading and account that for a grade of
21 100 percent in determining a course grade?

22 MS. BUNKER-HENDERSON: Objection, form.

23 A. There's -- it's up to -- it's a local decision
24 how they want to incorporate this -- the score.

25 Q. (BY MR. HINOJOSA) So is there a requirement

1 that the minimum score -- minimum scale score required
2 by TEA under STAAR would have to be met in order for it
3 to count as 15 percent of the grade?

4 MS. BUNKER-HENDERSON: Objection, form.

5 A. No. The student score -- whatever the student
6 scores on the assessment is supposed to count for
7 15 percent of the final grade.

8 Q. (BY MR. HINOJOSA) And going back to Exhibit 54
9 in slide 11, it says the "School district shall provide
10 accelerated instruction to each student who fails to
11 perform satisfactorily on assessment."

12 Is that correct?

13 A. Yes.

14 Q. And satisfactorily on assessment, what does
15 that mean?

16 A. It means the student achieved Level II or
17 passed the test.

18 Q. Does that even -- a Level II phase-in 1, is
19 that as it sits right now?

20 A. That would be -- yes, that is the passing
21 standard currently on the test.

22 Q. And the inclusion of the STAAR end-of-course
23 assessment into a student's final grade for that course,
24 that's the first time that's ever been written into law
25 in Texas, correct?

1 A. To my knowledge, yes.
 2 Q. I hand you what we're going to mark as
 3 Exhibit 55.
 4 (Deposition Exhibit 55 marked.)
 5 Q. (BY MR. HINOJOSA) So I've handed you what's
 6 been marked as Exhibit 55. This is titled Chapter 3,
 7 the College- and Career-Readiness Component, of the
 8 STAAR end-of-course program. And do you recognize this
 9 document?
 10 A. Yes, I do.
 11 Q. Do you know what this is Chapter 3 of?
 12 A. It is -- I think technically it's half of the
 13 chapter because it looks like every other page is
 14 missing. But it is from the House Bill 3 transition
 15 plan. And my copy I only have --
 16 Q. Oh, no. Well, let's go to the first page,
 17 which is I-47.
 18 A. Uh-huh.
 19 Q. In the middle there it says -- there's a
 20 statement that begins "It should be noted, however, that
 21 the college" -- "that the measurement of college
 22 readiness through the Algebra II and English III
 23 assessments will be only one piece of information that
 24 students, parents, and schools will have in making
 25 readiness determinations."

1 Is that correct?
 2 A. Yes.
 3 Q. And then skipping a sentence, it says,
 4 "Students will need to continue to acquire content
 5 knowledge and perform at a high level in these courses
 6 to fully prepare for postsecondary activities."
 7 Correct?
 8 A. Yes.
 9 Q. And so what is meant by these statements here
 10 on Exhibit 55 that we just read into the record?
 11 A. It goes back again to previous testimony, that
 12 the STAAR assessments provide only -- performance on the
 13 STAAR assessments provide only one piece of information
 14 about a student's relative readiness for college; that
 15 the score on the assessment is one indicator, but
 16 there's a whole host of other things that students need
 17 to do that would also contribute to likelihood of
 18 success in college. And I think specifically here we
 19 were also referring to the fact that these are courses
 20 students take and they're typically in their 11th grade
 21 year. They have another year of high school yet in
 22 which they would be taking higher level courses that
 23 would continue to prepare them for college work.
 24 Q. So extra curriculum and co-curriculum
 25 activities could also help prepare students for being

1 college ready, correct?
 2 A. It's possible.
 3 Q. And AP and IB courses also could help prepare
 4 students to be college ready, correct?
 5 MS. BUNKER-HENDERSON: Objection, form.
 6 A. Yes.
 7 Q. (BY MR. HINOJOSA) And when you say that you'd
 8 have to take into account other measures as well, would
 9 you also have to look at their performance on other
 10 subjects beyond just Algebra II and English III such as,
 11 for example, science courses and history courses?
 12 A. Yes.
 13 Q. I'll represent to you on page I-48, which you
 14 do not have -- and I'll come and show you because I do
 15 have it here -- the highlighted sentence in the third
 16 paragraph states, "The items require complex cognitive
 17 processing and focus on cognitive strategies that a" --
 18 not too good at reading sideways.
 19 A. That's okay.
 20 Q. -- "that a student should master to be
 21 postsecondary ready. Students may be required to solve
 22 a broad array of problems, draw complex inferences,
 23 analyze and evaluate information, think critically,
 24 interpret results, support logical arguments with
 25 evidence, support a position based on evidence in

1 specific material he or she has read and write clearly
 2 and effectively."
 3 Is that correct?
 4 A. Yes.
 5 Q. And is that an accurate statement as far as the
 6 college- and career-readiness standards?
 7 A. Yes.
 8 Q. And I think earlier you said that there was a
 9 goal that all students be prepared to enter college or
 10 be college ready upon graduation; is that correct?
 11 A. I don't remember that specific, all students
 12 had to be college and career ready.
 13 Q. Is it your testimony that it's actually an
 14 expectation that students should be prepared to be
 15 college ready when they graduate regardless of whether
 16 or not they decide to go to college?
 17 MS. BUNKER-HENDERSON: Objection, form.
 18 A. It's a goal of the education system that
 19 students be prepared for postsecondary.
 20 Q. (BY MR. HINOJOSA) And I hear that you're
 21 saying a goal, but what I'm asking is whether or not
 22 it's an expectation of the Texas Education Agency that
 23 students be college ready upon graduation from high
 24 school.
 25 A. I'm trying to make the distinction.

1 Q. Well, let me ask you first because I want to
2 make sure the record's clear on this. Do you understand
3 the difference between a goal and an expectation in
4 education?

5 MS. BUNKER-HENDERSON: Objection, form.

6 A. There's probably multiple ways to make that
7 definition. I don't -- to make that distinction. So
8 I'm not sure I can state that it's an expectation of the
9 assessment program that all students be college and
10 career ready.

11 Q. (BY MR. HINOJOSA) And that includes ELL
12 students and at-risk students and low-income students,
13 correct?

14 A. Those -- yes, those students are contained in
15 all students.

16 Q. And those students aren't held to any lower
17 expectations when the standards are set, correct?

18 A. That's correct.

19 Q. They all have to meet the same standards?

20 A. That's correct.

21 Q. On page I-47, Exhibit 55, in the second
22 paragraph, the second-to-last sentence, it says,
23 "Nationally recognized college-readiness experts
24 provided guidance during the development of the plan."

25 Which nationally recognized college-readiness

1 experts provided this guidance?

2 A. Again, I would have to go back to look at the
3 exact membership of those committees that we brought in
4 in the very early development stages for the STAAR
5 program. I know that Dr. Wayne Camara with the college
6 board was one of the members of that committee.

7 Q. And just if you can remember or recall the name
8 of any other nationally recognized experts.

9 A. Robert Linquanti was also a member of that
10 committee and has provided us with that -- with guidance
11 in that.

12 Q. Anybody else?

13 A. I would have to refresh my memory for the other
14 members of the committee.

15 Q. Looking back at Exhibit 36, it's a comparison
16 of assessment attributes from TAKS to STAAR. Are you
17 aware of any inaccurate statements here or any
18 misrepresentations?

19 A. I have to find it. Here it is. No, I'm not
20 aware of any inaccurate statements in that exhibit.

21 Q. And the third page here, it talks about
22 assessments for English language learners at grades 3
23 through 8 and high school. Was the STAAR offered in all
24 subjects in Spanish for grades 3 through 5?

25 A. Yes, it is.

1 Q. And for grades 6 through 12, is the STAAR
2 offered in Spanish?

3 A. No, it is not.

4 Q. Why is the STAAR not offered in Spanish for
5 grades 6 through 12?

6 A. Well, statute requires us to offer it only at
7 grades 3 through 5. And so it has only been developed
8 for grades 3 through 5.

9 Q. Does the statute disallow or prohibit TEA from
10 developing the STAAR in Spanish for grades 6 through 12?

11 A. I have to look at the exact wording of the
12 statute. I know that there is some indication that we
13 are required to assess students in English, but again,
14 I'd have to look at the exact wording.

15 Q. That's fair. On the third page where it says
16 assessments for ELLs at grades 3 through 8 and high
17 school -- and I recognize this document is dated
18 September 2010, but it states there that -- on the
19 second bullet point on the right-hand column, it says,
20 "State exemption policies and linguistically
21 accommodated assessment methods for immigrant ELLs are
22 under review, with the goal of expanding valid and
23 reliable linguistic accommodation methods and including
24 more recent immigrant ELLs in the state assessment
25 system."

1 Are you familiar with this particular practice
2 here?

3 A. Yes, I am.

4 Q. And has the state expanded valid and reliable
5 linguistic accommodation methods for ELL students?

6 A. We are continuing to -- we do have a form of
7 the assessments, STAAR L, that incorporates some
8 linguistic accommodations for the students who qualify
9 for it. And that program will be fully implemented in
10 the '12-'13 school year.

11 Q. And how will that differ from the standard
12 assessment?

13 A. On the linguistically accommodated forms of the
14 test, they are designed so that -- they're online
15 assessments and students can get simplified language,
16 they can get terms clarified through the online system
17 to help them access the actual content that's being
18 assessed.

19 Q. And how is the Texas Education Agency
20 determining the validity and reliability of these
21 accommodation methods?

22 A. We are -- again, we have -- we have various ELL
23 focus groups, we have national experts in ELL assessment
24 who review the methods that we are going to be using
25 Our ELL focus groups here in the state also review the

1 accommodations that are being provided to let us know
2 the reliability -- I'm sorry, the validity of those
3 particular accommodations. We -- as the program is
4 continued to be implemented, we will do reliability
5 studies on -- on the assessments to -- to ensure that
6 they are, in fact, providing us reliable and valid
7 information about the students.

8 Q. So is there an actual study validating the
9 accommodations and/or the reliability that we can look
10 at?

11 A. Right now not yet for STAAR. As I said, this
12 new system, this online provision of the linguistically
13 accommodated form of STAAR is still being developed and
14 will first be administered in spring of 2013 in its
15 online form. And as we are doing the development, we
16 are conducting those studies, but I don't believe they
17 are yet -- I have not yet seen results of those studies.

18 Q. Let me hand you what we're going to mark as
19 Exhibit 56.

20 (Deposition Exhibit 56 marked.)

21 Q. (BY MR. HINOJOSA) Exhibit 56 might be a couple
22 of different documents and I wonder if it's complete.
23 Let me -- because the one I have is double-sided.

24 A. No, I think I have that.

25 Q. Let me mark this one for you, then.

1 A. Yes.

2 Q. And do you know how the committee actually
3 considered these studies?

4 A. I know that we presented the findings of these
5 studies. What particular weight they gave to any one, I
6 couldn't say.

7 Q. And who would be the best person on the
8 committee to ask about what they considered or did not
9 consider in making their recommendations?

10 MS. BUNKER-HENDERSON: Objection, form.

11 A. I don't know who would be the best person to
12 ask, but any member of the committee would be better
13 qualified than I would to tell you what they considered
14 in making their determinations.

15 Q. (BY MR. HINOJOSA) In looking on the study
16 profile, STAAR III reading, SAT critical reading, do you
17 see that as part of Exhibit 56?

18 A. Yes, uh-huh.

19 Q. The -- how was the correlation between STAAR
20 and the SAT made?

21 A. For the exact methodology, I couldn't -- I
22 can't respond to that. That would be a question for Jon
23 Twing.

24 Q. Okay. Do you know, was there a certain
25 correlation that TEA was aiming for between the SAT and

1 MR. HINOJOSA: I'm going to switch this
2 out.

3 Q. (BY MR. HINOJOSA) So Exhibit 56, do you
4 recognize what this document is?

5 A. Yes, I've seen these pages before.

6 Q. So the first one is the STAAR end-of-course
7 standard setting policy committee, external validity
8 study, summary of study quality, correct?

9 A. Yes.

10 Q. And this is a true copy of that document,
11 correct?

12 A. Yes.

13 Q. The -- what do the blackened-in stars represent
14 as opposed to the stars that have no color in them?

15 A. This was designed to help the policy committee
16 members make a determination of which of these studies
17 we felt had the strongest statistical backing to it. So
18 we -- we classified each one of the studies on various
19 dimensions, such as the motivation of the students who
20 participated who took the tests, the representativeness
21 of the sample of students who were involved in the
22 study. So it was a way to classify. And I believe
23 there's a legend that is provided that explains the
24 difference in one versus five stars.

25 Q. Okay. And that would be on page 3 of 3?

1 STAAR in order to consider it as valid and useful?

2 A. We had no expectation prior to the studies
3 being conducted of what the correlation would be. You
4 can see according to the legend how we classified
5 different -- size of different correlation in terms of
6 whether we felt that it was a strong correlation or not.

7 Q. And so which of these studies on Exhibit 56 --
8 or maybe you can just say how many stars you would
9 consider in order for the study to be strong as you just
10 described.

11 A. Well, the strong correlations, according to the
12 legend, we defined as five stars.

13 Q. So in the far right column where it says
14 content overlap, the "strong" also refers to the
15 correlation?

16 A. It refers to the percent of content overlap
17 there was. It doesn't specifically refer to the
18 correlation. It refers to a percent of content.

19 Q. And in this data linking the STAAR and the SAT
20 critical reading and mathematics, there's a
21 disaggregated column here for economically
22 disadvantaged; is that correct?

23 A. I'm sorry?

24 Q. You see that?

25 A. SAT writing?

Q. Yeah. So, for example --

A. Yes.

Q. -- if we look at SAT critical reading under demographic characteristics, it has economically disadvantaged; is that correct?

A. Yes.

Q. And it doesn't -- this analysis here actually links the entire group as opposed to disaggregated groups, correct?

A. That's correct.

Q. And if I'm reading this correctly, it looks like where there was a correlation between the STAAR English III and SAT critical reading, that number was 6702 with an average English III score between 33 and 56; is that correct?

A. What that number, 6778, refers to, is that that's number of students for whom we had both an English III score and an SAT score.

Q. Okay. And do you know what the reason would be why there would be so many students without an SAT score but with an English III score -- I mean -- yeah, without -- with an English score but not an SAT score?

A. Well, part of that is the fact that for our total population of students who took SAT for whom we had a score, there were over 300,000 students. We only

had in our sample for English III 30,000 students. And so we had -- we were not able to match -- and the students who take the -- for whom we have SAT scores might not have been enrolled in an English III course at the time we did the study.

Q. Okay. I hand you what we're going to mark as Exhibit 57.

(Deposition Exhibit 57 marked.)

Q. (BY MR. HINOJOSA) This document is titled "STAAR EOC Performance Standards, 2012 Scale Score Tables (March 9th, 2012 Version)."

Do you recognize Exhibit 57?

A. I've seen these tables before, yes.

Q. And is this a true and correct copy of the STAAR end-of-course performance standards as of the March 9th, 2012, date?

A. I don't -- I don't recognize the top two pages. I'm not sure -- I don't believe this came from the student assessment website.

Q. Well, I'll represent to you that this was produced by the defendants and that's why there's a --

A. Oh, okay.

Q. -- a number -- a Bates label here of D-00095074 on the first page.

A. Okay.

Q. Do you have any reason to dispute the accuracy of this document?

A. Well, I haven't -- I haven't reviewed all of the document so I couldn't say.

Q. Well, you said that you can't -- that you weren't necessarily familiar with the first two pages, but the tables you're familiar with, correct?

A. They look like our tables, yes.

Q. Well, is there any reason why you think that they're not your tables?

A. Not in particular -- no. But I can't say for sure that everything on here came right from our tables because we didn't produce this.

Q. Do you know whether or not your division provided them to your lawyer so they can provide them to us?

A. If this is a copy of what we provided, then, yes, I can say that these are the same tables.

Q. And have you produced any inaccurate information on the TEA website in the student assessment division concerning the presentation of data such as these scale scores?

MS. BUNKER-HENDERSON: Objection, form.

A. Not to my knowledge.

Q. (BY MR. HINOJOSA) Last exhibit.

(Deposition Exhibit 58 marked.)

Q. (BY MR. HINOJOSA) This is Exhibit 58. Do you recognize what Exhibit 58 is?

A. Yes.

Q. What is Exhibit 58?

A. Exhibit 58 appears to be examples that student assessment has used to show the changes in items on the state assessments from TABS to TAAS to TAKS to STAAR.

Q. And is Exhibit 58 representative of those changes such as, you know, the cognitive complexity that we spoke of earlier?

A. Yes.

Q. Any of the other -- were any of the other documents that were presented here today to you for which your student assessment division was responsible for, do they contain any inaccurate representations or any misleading misrepresentations that you're aware of?

A. None that I'm aware of.

MR. HINOJOSA: Thank you very much. Pass the witness.

EXAMINATION

BY MR. GRAY:

Q. Doctor, my name is Rick Gray. Good afternoon.

A. Good after -- good evening.

Q. Good evening. The good news is I'm going to be

1 brief. Just some clarification things.

2 As I understand it, the new standard is college
3 and/or career readiness, correct?

4 A. Yes.

5 Q. And what that is meaning is college being a
6 four-year college and career readiness meaning a
7 two-year Associate's degree and some career program?

8 MS. BUNKER-HENDERSON: Objection, form.

9 A. No. The definition that we used of college
10 readiness is preparedness for a two-year or a four-year
11 college.

12 Q. (BY MR. GRAY) Is the definition of career
13 readiness the same as college readiness is what I'm
14 trying to understand?

15 A. No, they're -- there would be a distinction.

16 Q. What is the distinction?

17 A. Well, we are -- we are required by legislation
18 to establish a relationship between performance on STAAR
19 and performance in certification programs for various
20 careers outside of college, a general work force
21 readiness, military readiness. We are -- we are on
22 track to perform those studies. We can't yet make those
23 statements because those studies have not yet been done.
24 Right now all we have done so far is to establish the
25 more college, two- and four-year college-readiness

1 component.

2 Q. And that is only established as to Algebra II
3 and English III writing, correct?

4 A. English III reading, English III writing and
5 Algebra II.

6 Q. Okay. So I think this was established earlier,
7 the TAKS, the old testing, was not key to or tied to a
8 college-readiness or a career-readiness standard, you
9 can't point to a certain number and say this person is
10 or is not college or career ready?

11 A. No.

12 Q. Correct?

13 A. Correct.

14 Q. STAAR, however, is intended to be able to do
15 that and, as of now at least, it is only capable or --
16 people -- the state's only capable of pointing to the
17 scores on Algebra II, English III reading and writing --

18 A. Yes.

19 Q. -- as far as determination of college or career
20 readiness?

21 A. As defined by -- with the definition that we
22 used for the STAAR program, meaning success defined by a
23 grade of at least a C in an entry-level college course
24 within that content area.

25 Q. In the scoring under STAAR for career and/or

1 college readiness is -- would be Level III scoring on
2 Algebra II and English III reading and writing?

3 A. That's designated as the specific
4 college-readiness indicator, but, again, going -- just
5 because a student does not score at Level III, that does
6 not mean the student is not college and career ready.

7 Graduation under the recommended plan which
8 gives students entry into college only requires that the
9 student achieve Level II. Again, we look at the college
10 readiness more of a continuum: the higher the score is,
11 the better prepared you would be. Not achieving that
12 score doesn't mean you're not college ready.

13 Q. I think we've established through
14 Mr. Hinojosa's question earlier that Level II is an
15 indication of the need -- possible need for some
16 remediation prior to being college ready. Level III was
17 an indication, at least I understood, of being ready for
18 college -- college readiness without remediation. Am I
19 misunderstanding the -- your testimony?

20 A. No, that's just one aspect of the operational
21 definition.

22 Q. Okay. Now, the -- am I correct in
23 understanding that the STAAR test and the end-of-course
24 exams associated with the various STAAR tests in your
25 opinion is a more rigorous test than TAKS?

1 A. That's correct, it is.

2 Q. Substantially more rigorous?

3 A. I believe it's a more rigorous test, yes.

4 Q. Two, am I correct in understanding that the
5 state's adoption of the appropriate standard for public
6 education being college and/or career readiness is a
7 more aggressive standard for what is expected of public
8 school -- public schools than what has previously been
9 adopted as the state's requirements?

10 MS. BUNKER-HENDERSON: Objection, form.

11 A. It is a higher standard for the students to
12 obtain, yes.

13 Q. (BY MR. GRAY) So I mean there's no doubt in
14 your mind that the new standard puts a higher burden or
15 a higher benchmark, so to speak, for students to obtain
16 and for the educators to help them get to that point?

17 MS. BUNKER-HENDERSON: Objection, form.

18 A. Perform -- yes, performance on the assessments
19 does require a greater level of mastery of the content.

20 Q. (BY MR. GRAY) And to have a greater level of
21 the mastery of the content, that requires a greater
22 workload, so to speak, on both the students and the
23 teacher, correct?

24 MS. BUNKER-HENDERSON: Objection, form.

25 A. I wouldn't say -- not necessarily. I wouldn't

1 draw that conclusion.

2 Q. (BY MR. GRAY) Okay. Now, if you will, look at
3 Exhibit 44.

4 A. Okay.

5 Q. And as I understand it you are one of the
6 authors of this exhibit.

7 A. Yes.

8 Q. And specifically turn to the tables dealing
9 with the 2012 statewide results and they first begin on
10 page 5 and they run through 5, 6 and 7 and 8, I believe,
11 of that report.

12 A. Yes.

13 Q. First, the -- I see that we have the -- on
14 page 5 the Level II standards of both phase-in and
15 recommended for a number of topics, the same on page 6,
16 the same on page 7; and then on page 8 is the only area
17 that I saw any reference to Level III results.

18 Are there Level III results for any courses
19 other than those listed on page 8, being English I
20 writing, English I reading, Algebra I, biology and world
21 geography?

22 A. Yes, there are.

23 Q. Where would the -- where would they be and
24 why -- and are they in this report, I just missed them,
25 or were they excluded from this report and why?

1 A. Well, what you have here is the press release
2 that was put out by the Texas Education Agency when we
3 had the results of the assessment. And we didn't
4 include -- we -- we had -- wanted to focus only on those
5 courses that students were taking for -- that were
6 high-stakes administrations that students were taking
7 for graduation purposes. So we only recorded all of the
8 results for those courses that were the ones taken by
9 the ninth grade students.

10 We also provided information on the other
11 end-of-course assessments but only at Level II. It was
12 I think just a space consideration. There was no other
13 reason we didn't provide it.

14 Q. Do you know, has the agency produced the
15 results for Level III for all of the courses in the
16 discovery? I have simply not seen it. I'm not saying
17 you haven't done it, I just haven't seen it. Do you
18 know, has that been produced?

19 A. I believe we've provided the complete data
20 files, so they would have that information indicated in
21 them as well.

22 Q. Do you -- look on page 8 with me. The highest
23 Level III for all students was 17 percent in Algebra I
24 and it goes to -- from a high of 17 percent in Algebra I
25 to a low of only 3 percent of the students were

1 Level III and English I writing.

2 This kind of range, is it also true for the
3 other Level III results for the -- those courses that
4 are not in this report? For example, English II
5 writing, English II reading, geometry, chemistry, world
6 history -- I'm sorry. English III writing, English III
7 reading, Algebra II, physics and US history, were those
8 same results from a high of maybe 17 percent to a low of
9 maybe 3 percent being Level III, is that a consistent
10 range throughout all the courses?

11 MS. BUNKER-HENDERSON: Objection, form.

12 A. I can't address the range. I don't remember
13 the numbers. I do remember that the trend was that the
14 numbers tended to be lowest for the English courses.

15 Q. (BY MR. GRAY) Okay. And help me a little bit.
16 Turn to page 7. And I want to focus on the English III
17 reading, English III writing and Algebra II, which I
18 understand to be those tests that are indicative of
19 college readiness and/or career readiness under the
20 statute.

21 Am I reading it correctly to say that of those
22 students taking English III writing, 38 percent met the
23 phase-in standard?

24 A. Yes.

25 Q. And does that conversely mean that 62 percent

1 did not meet the standard?

2 A. Yes.

3 Q. And as to the recommended standard, that is
4 post phase-in, am I reading it correctly to say that
5 18 percent met the recommended standard and 82 percent
6 did not meet the recommended standard?

7 A. Of the students who took the test, yes.

8 Q. Students who took the test.

9 A. Uh-huh.

10 Q. And am I understanding that these -- within
11 this -- I'm looking at the 18 percent that met the
12 recommended standard. Within that subgroup, some of
13 those conceivably could be Level III, correct?

14 A. Yes.

15 Q. But we know for a certain -- certainty that
16 those that aren't in this 18 percent are not in the
17 Level III category as well?

18 A. Correct.

19 Q. So we know, for example, in English III that at
20 least 82 percent of those taking it would not have met
21 the Level III standard for English III writing; is that
22 correct?

23 A. Yes.

24 Q. And likewise if I go over to English III
25 reading, am I correct in understanding that only

31 percent of the students taking it passed or reached the Level II standard for English reading?

A. The recommended standard.

Q. The recommended standard?

A. Uh-huh.

Q. Which means that -- and we know that not all 31 percent of those were Level III, but we know that there's certainly no more than -- so as to -- am I correct in then understanding as to English III reading at least 69 percent of the students who took it would not have reached the Level III level?

A. Yes.

Q. And we know in all probability a substantially higher figure than 69 percent would not have been Level III?

A. Most likely, yes.

Q. And likely -- and likewise, on the same, when I go over to Algebra II with 29 percent hitting the recommended standard, that's meaning that at least 71 percent of those students taking it did not meet the Level III standard for college readiness?

A. Yes.

Q. Correct?

A. Yes.

Q. And if I drop down further and look at the

categories of either economically disadvantaged or limited English proficient, and I'll start with the limited English, with the -- only the 3 percent meeting the recommended standard under English III writing, does that mean that at least 97 percent of the limited English proficient were deemed not to be -- not to meet the Level III college-ready standard?

A. Yes.

Q. And if I carry that over to English III reading and the limited English proficient, they're only -- only 9 percent hit the satisfactory standard. Does that mean that 91 percent of the limited English proficient did not reach the Level III college-ready standard?

A. Most likely, yes.

Q. And, in fact, most likely the number is substantially greater than 91 percent not meeting that standard, but we know at least 91 percent of those did not meet the college-ready standard?

A. Yes.

Q. And likewise, if I go over to Algebra II on limited English and you see where only 10 percent meet the standard?

A. Yes.

Q. And again, that's meaning that at least 90 percent, in all probability a good bit higher than

90 percent of those students -- of the limited English proficient students were not reaching Level III or the college-readiness standard?

A. Yes.

Q. Correct?

A. Uh-huh.

Q. Looking at the results of all of the charts on page -- starting on page 5 and running all the way through 8, do these results tell you -- tell the state that there is a lot of work that has to be done to have our students meet the standards the state has adopted and what is required upon them to graduate and what is required upon educators to teach them?

MS. BUNKER-HENDERSON: Objection, form.

A. I think the results that we have the most confidence in would be the ones that are reported on page 5. This is the ones that were taken -- the tests were taken under high-stakes situations for the students. And, yes, we would say that with the scores on the tests that we have -- that the -- the passing rates on some of the tests were not as high as we would hope that they would be.

Q. (BY MR. GRAY) I mean, when you have -- for example, under English I writing for limited English proficient, that only 8 percent of those students are

hitting the satisfactory phase-in number, that's a pretty bleak picture, isn't it?

MS. BUNKER-HENDERSON: Objection, form.

A. It certainly -- it's a low pass rate, yes.

Q. (BY MR. GRAY) I mean, it translates into a 92 percent failure rate, doesn't it?

A. Yes.

Q. And if you -- and that's on the phase-in standard. If I look at that same group under the recommended standard, my failure rate goes from 92 percent to 97 percent, correct?

A. Yes.

Q. And if you are having a 90 percent or greater failure rate in English I writing, until you can turn that around, you're not going to do very well on English II writing, are you?

A. Certainly will be more difficult for you with English II, yes, if you have not yet mastered English I.

Q. And if you can't master English I, you're never going to master English III and be college ready, are you?

MS. BUNKER-HENDERSON: Objection, form.

A. It's certainly more difficult -- much more difficult for you if you've not yet mastered English I.

Q. (BY MR. GRAY) And when we look at the -- if I

1 get away just from the LEP students, or limited English
2 students, and look at all the students, am I correct in
3 understanding that as the English I writing, 45 percent
4 of all students, whether they be Anglo or
5 African-American or Hispanic, rich, poor or whatever,
6 45 percent of the students flunked the phase-in level?

7 A. 45 percent did not pass the English I writing
8 test, that's correct.

9 Q. And if I took that into the final standard, the
10 recommended standard, that would show that 66 percent
11 did not pass using your language, correct?

12 A. Correct.

13 Q. And if I go over to Algebra II -- or Algebra I
14 and look at the recommended standard, the post phase-in
15 standard, am I correct in saying that 61 percent of
16 those students -- of all students who took Algebra I
17 STAAR could not have met the post phase-in standard?

18 A. That's correct.

19 Q. And then if I look to all of the other subject
20 matters, I'm not going to belabor this, but they're
21 all -- the numbers by and large are not something
22 that -- whether it be a public school superintendent or
23 whether it be a -- a professional from the Texas
24 Education Agency, these are not numbers that the State
25 of Texas should be proud of, are they?

1 MS. BUNKER-HENDERSON: Objection, form.

2 A. These numbers are lower than we would certainly
3 hope they would be.

4 Q. (BY MR. GRAY) They're lower than what y'all
5 projected and they're lower than -- well, when you've
6 got -- 45 of your students aren't passing the phase-in
7 standard of English I, this is not a good report card,
8 correct?

9 MS. BUNKER-HENDERSON: Objection, form.

10 A. The pass rates are lower than we had projected
11 they would be for English I.

12 Q. (BY MR. GRAY) Which shows that everybody, the
13 students, the educators, the superintendents, the
14 professionals at TEA, everybody's got a lot of work to
15 do to meet the standards that are necessary to survive
16 in the modern day world we live in, correct?

17 MS. BUNKER-HENDERSON: Objection, form.

18 A. That -- again, they're lower than we would --
19 we had projected they would be and that we would want
20 them to be.

21 Q. (BY MR. GRAY) You want better numbers, and
22 better numbers are going to take more work on everybody
23 that's involved in the education community, correct?

24 A. There -- yes, there is some work to do.

25 MR. GRAY: Thank you, ma'am.

1 (Recess Taken From 5:36 p.m. To 5:43 p.m.)

2 EXAMINATION

3 BY MR. DIAMOND:

4 Q. My name is Chris Diamond and I'm representing
5 the intervenors in this case. There are five families
6 in the state, Texas Association of Business and then a
7 nonprofit organization claiming that the system is
8 qualitatively inefficient. And so I've just got a few
9 questions for you for our case.

10 There's been a lot of talk about studies and
11 data that either TEA or Pearson has done for TEA,
12 correct?

13 A. Yes.

14 Q. Is there any other group doing research for TEA
15 with these numbers that we've talked about today?

16 A. Not that I'm aware of.

17 Q. Okay. And I know there may be some research
18 group or something, but anything that y'all have
19 commissioned.

20 A. Uh-huh.

21 Q. Do you know of any studies done by either TEA
22 or Pearson that are linking student performance to
23 teachers?

24 A. No.

25 Q. Is that something that TEA could provide data

1 for?

2 A. I know that PEIMS has recently begun collecting
3 information that links teachers to students. And so now
4 that that information is available, it will be possible
5 to do that kind of linking.

6 Q. In other words, just so we're clear on the
7 record, you would be able to link a particular teacher
8 with a particular student and that score?

9 A. Yes.

10 Q. Okay. Is that something -- well, if you were
11 to do that, then you could follow a student, say through
12 the third through 8th grade tests and see how the
13 student does, but also see how and measure the
14 performance of the teachers, correct?

15 A. It's possible. It would be possible.

16 Q. Okay. Is that something that we -- we've
17 talked about some policy committees and different
18 committees and meetings. Has anything like that been
19 discussed?

20 A. Linking teacher performance -- teachers to
21 student performance?

22 Q. Yes.

23 A. Not specifically, no.

24 Q. Okay. When you say not specifically, is it
25 generally discussed or do you recall?

1 per student, what we're spending per student to educate
2 them, do you take into any account of the magnitude of
3 the testing or the direction or how you -- whatever you
4 do with it and decide whether or not the cost of it is
5 going to be worth the benefit of it?

6 MS. BUNKER-HENDERSON: Objection, form.

7 A. We don't do that kind of analysis in our
8 division.

9 Q. (BY MR. DIAMOND) Do you know of a division
10 that would do that analysis on student assessment?

11 A. I don't know of any, no.

12 Q. Have you in your -- since you've been at TEA
13 since 2005, have you seen anything regarding student
14 assessment where a cost-benefit analysis had been done
15 on a particular testing program or protocol?

16 A. No.

17 Q. Do you know of any studies that are linking
18 funding to student performance?

19 A. I'm not personally aware of that, no.

20 Q. Are there any studies linking particular ISD
21 performance or comparisons between ISDs?

22 MS. BUNKER-HENDERSON: Objection, form.

23 A. I'm not aware of those.

24 Q. (BY MR. DIAMOND) So do y'all -- do you have
25 studies or do you have an ongoing -- within the 80-plus

1 employees that you have under you, are they doing any
2 kind of studies looking at particular ISDs and comparing
3 them to other ISDs for testing?

4 A. No, we do not.

5 Q. Do you know if Pearson does that?

6 A. Not as part of our assessment contract.

7 Q. Okay. This may have been covered earlier. I
8 just want to follow up on this. You had mentioned there
9 are 84 people working under you; is that correct?

10 A. Uh-huh. Yes.

11 Q. And then Pearson does the contracted portion of
12 administering the testing process.

13 A. Uh-huh.

14 Q. What is the work product of the 84 people in
15 your division? What -- aside from what Pearson does?

16 A. Well, we're responsible -- my staff is --
17 actually builds the test, and so my staff selects the
18 items that will -- that go on the test. So we do that.

19 We're responsible for all the supporting
20 documentation, so the various manuals and things that
21 are associated with the assessment program.

22 Q. Okay. Anything else?

23 A. We have a division -- we have a group within
24 the division that is also responsible for monitoring
25 testing irregularities. So, you know, we look at -- we

1 look at that. And then -- and then we have the -- one
2 team that also is responsible for the quality control of
3 all the reports.

4 Q. Meaning the reports that --

5 A. Meaning the scores.

6 Q. Okay.

7 MR. DIAMOND: I believe those are all the
8 questions I have for you. I pass the witness.

9 MR. TURNER: I have nothing further.

10 MR. HINOJOSA: I have a couple of questions
11 right quick.

12 FURTHER EXAMINATION

13 BY MR. HINOJOSA:

14 Q. On Exhibit 44 on page 9, it's the assessment
15 and accountability --

16 A. Okay. Page 9?

17 Q. Yes. It's the spring 2012 STAAR end-of-course
18 raw score performance standards.

19 A. Yes.

20 Q. For the phase-in I minimum it has in the first
21 column there titled phase-in I minimum, percent correct,
22 it has 48 percent for English I reading and a number of
23 other percentages there. And that correlates to, you
24 know, the raw score as a percentage of the items tested,
25 correct?

1 A. Yes.

2 Q. And that same applies for the rest of the raw
3 scores and the correct percentages on this page,
4 correct?

5 A. Yes.

6 Q. If you look at the percentage correct on
7 English I reading for the phase-in I minimum, it's less
8 than 50 percent, right?

9 A. 50 percent -- it's -- yes, 48 percent.

10 Q. And are you familiar with the general scale
11 score or grades that most school districts implement
12 where 70 percent is a minimum passing score in order to
13 get credit in a course?

14 MS. BUNKER-HENDERSON: Objection, form.

15 A. Yes, I'm aware of that.

16 Q. (BY MR. DIAMOND) All right. Even when we go
17 to the final recommended minimum score -- now, once
18 again, the final recommended minimum score, that's just
19 as far as whether or not it counts toward a cumulative
20 score; is that correct?

21 A. The minimum, yes.

22 Q. And then when we look at the final -- well,
23 when we look at the phase-in I Level II score, that's
24 actually less than the final recommended minimum score,
25 correct?

1 A. For English I reading?
 2 Q. Yes.
 3 A. Yes.
 4 Q. And for all subjects that same -- that also
 5 applies where the final recommended minimum percentage
 6 correct is higher than the phase-in 1 Level II, correct?
 7 A. Final recommended minimum is higher than --
 8 yes, that's correct.
 9 Q. And even when we look at the final recommended
 10 Level II percentage correct, the highest there is
 11 English I writing at 73 percent, correct?
 12 A. Yes.
 13 Q. And then for English III reading it says
 14 50 percent, correct?
 15 A. Yes.
 16 Q. Do you know what accounts for the huge
 17 differences in the percentage of the raw scores as part
 18 of the items tested between the tests?
 19 MS. BUNKER-HENDERSON: Objection, form.
 20 Q. (BY MR. HINOJOSA) Do you understand my
 21 question?
 22 A. Yes, I think.
 23 Q. So my question -- let me clean it up.
 24 A. Okay.
 25 Q. It simply is, why is there such a huge

1 percentage between -- percentage difference between, for
 2 example, the English III reading raw score versus the
 3 English I writing?
 4 A. English III reading and English I writing. The
 5 final recommended standards, again, just going back to
 6 how they were set, that we looked at the various studies
 7 that were done to show relationships between performance
 8 on STAAR and some of these external measures and then we
 9 also brought in the educators to look at the items on
 10 the test and give us an indication of how many -- what
 11 percentage of those items student's needed to answer
 12 correctly in order to reach those various levels. And
 13 so they were -- these percentages are based on a
 14 combination of where the studies led us and where the
 15 educator committee made their recommendations.
 16 Q. Couldn't TEA also have just simply made the
 17 tests so that 70 percent of the correct items -- that
 18 the raw scores accounted for 70 percent of the correct
 19 items for each test?
 20 A. We -- we could have built the test that way,
 21 but that's not where the data would have indicated that
 22 the standard should be set.
 23 Q. Well, I mean, because the -- on these tests
 24 different questions are weighted differently; isn't that
 25 correct?

1 A. That's only true for the reading and writing
 2 tests where -- again, this is not -- the reading and
 3 writing, this is not actually 64 percent of the items on
 4 the test. It's 64 percent of the possible points on the
 5 test with the understanding that, as we explained in the
 6 footnote at the bottom, on reading, the two short answer
 7 items are worth 34 percent of the total test points, and
 8 on writing, the two essays are worth 52 percent of the
 9 total test points. And so for those tests it is true
 10 that some of the items are weighted more. All the
 11 others are -- they're all weighted equally.
 12 Q. Has TEA looked into the possible effect on
 13 students taking a test where it is so difficult that
 14 even if they -- that they can miss 37 percent of the
 15 questions on a given test and barely be able to achieve
 16 the passing standard?
 17 MS. BUNKER-HENDERSON: Objection, form.
 18 A. I'm not aware of any specific studies like
 19 that.
 20 Q. (BY MR. HINOJOSA) Are you aware of any
 21 considerations that TEA paid to students in, you know,
 22 determining how to set the test but -- so that it might
 23 not necessarily, quote/unquote, intimidate the students
 24 but still get them to meet a certain standard that would
 25 meet the purposes of the law?

1 MS. BUNKER-HENDERSON: Objection, form.
 2 A. I'm not aware of any studies we did along those
 3 lines.
 4 Q. (BY MR. HINOJOSA) Are you aware of any
 5 considerations that TEA paid to them?
 6 MS. BUNKER-HENDERSON: Objection, form.
 7 A. I'm not aware of any.
 8 MR. HINOJOSA: All right. That's it.
 9 Thank you.
 10 MR. DIAMOND: Got one question if nobody
 11 else has anything.
 12 FURTHER EXAMINATION
 13 BY MR. DIAMOND:
 14 Q. Is there any indication that relative student
 15 performance was any better or worse this year than the
 16 prior year under the old tests?
 17 A. The results of the bridge studies that had been
 18 talked about earlier today which linked performance on
 19 STAAR and how students would have performed if TAKS were
 20 still being administered, based on the results of those
 21 bridge studies, we found that in most cases performance
 22 increased slightly. If we were still administering
 23 TAKS, performance would have increased slightly on most
 24 of the tests, either increased slightly or stayed the
 25 same.