

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

THE TEXAS TAXPAYER & STUDENT	§	IN THE DISTRICT COURT
FAIRNESS COALITION, et al.	§	
Plaintiffs	§	
	§	
v.	§	200 th JUDICIAL DISTRICT
	§	
ROBERT SCOTT, COMMISSIONER	§	
OF EDUCATION, IN HIS OFFICIAL	§	
CAPACITY, et al.	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

**EFFICIENCY INTERVENORS' PLEA TO THE JURISDICTION
AND MOTION FOR ENTRY OF FINAL JUDGMENT**

The School District Plaintiffs sued the State alleging that, under legislation enacted by the Legislature starting in 2005 and ultimately governing the 2011-12 and 2012-13 school years: (1) there was not enough money provided for public education,¹ (2) the funds provided were not appropriately divided among school districts, and (3) the school districts did not have sufficient funds to prepare students to meet the new stringent testing and graduation requirements.² The crux of their case was the *interrelation* between the decrease in funding and increase in testing.³ During the 83rd Legislature, the legislature enacted a new statutory

¹ The centerpiece of this claim was the \$5.4 billion cut from public education in the 82nd legislative session.

² The claims here centered around the implementation of the State of Texas Assessments and Academic Readiness (STAAR) test, which the school districts claimed were more rigorous than the previous TAKS tests.

³ *See e.g.*, Ft. Bend ISD Plaintiffs' Fourth Amended Petition, ¶ 95 ("Despite unprecedented cuts in education funding, since 2005 the Legislature provided little or no relief from the accountability standards and other state mandates imposed on school districts. On the contrary, the Legislature dramatically increased both the standards that all Texas students must meet and the mandates that all Texas school districts must follow . . . *Although school districts consider these increased educational standards beneficial in many ways, their*

scheme that provides at least \$3.4 billion more for public education, changes how the funds are divided among school districts, and significantly reduces testing and graduation requirements (among other things). This legislation supersedes the statutory scheme challenged by the School District Plaintiffs, rendering moot the claims tried by the School District Plaintiffs.⁴

Months after announcing its judgment in open court, the Court recently granted the School District Plaintiffs a new trial and apparently an opportunity to now challenge the superseding statutory scheme enacted during the 83rd legislative session.⁵ But a new trial cannot cure the jurisdictional deficiencies and would be an abuse of discretion.⁶ Any challenge to the legislation governing the 2013-14 school year (which began less than a month ago) or the future 2014-15 school year is not

efforts to implement them are hampered by the State's failure to uphold its duty to adequately fund and support them.”); Texas Taxpayer & Student Fairness Coalition’s Fifth Amended Original Petition and Request for Declaratory Judgment, ¶ 59 (“At the same time [the Legislature] has required higher standards to meet the new [accountability] mandates, the 82nd Legislature underfunded the FSP by at least \$4 billion[.]”); Calhoun County ISD Plaintiffs’ First Amended Petition, ¶ 16 (“The State’s severe reductions in school funding, occurring just as it has simultaneously increased the burdens on school districts, represent a violation of the State’s constitution[.]”).

⁴ The Efficiency Intervenors challenged that the public education system is not adequate, suitable, or efficient for structural reasons separate from the Legislature’s funding of public education. The statutes challenged by the Efficiency Intervenors were not superseded during the 83rd Legislature. The Efficiency Intervenors’ claims are therefore not moot.

⁵ The Court initially announced its decision to grant a new trial decision on June 19, 2013, then announced on August 20, 2013 that it had reconsidered the decision, and finally announced on September 12, 2013 that it had reconsidered its reconsideration and would in fact be going forward with the new trial.

⁶ To argue that this Court’s order to reopen evidence is not the granting of a new trial is contrary to strong Texas Supreme Court precedent—it is not what the Court says, it is what the Court does. Regardless, “reopening” to take additional evidence, too, will amount to a waste of time, judicial resources, and taxpayer funds and would likewise be an abuse of discretion.

yet ripe.⁷ And—as some of the school districts have already informed the Court—there will not be any non-speculative, reliable evidence that could be presented at a January 2014 trial.⁸ The new trial would be a waste of time, judicial resources, and taxpayer funds (spent both by the School District Plaintiffs and the other agencies of the State that they are suing).

The Court should dismiss the School District Plaintiffs' claims⁹ challenging the superseded legislation as moot, hold that any challenge to the superseding legislation is not yet ripe, and render a final and appealable judgment.

I.

The claims tried by the School District Plaintiffs are now moot.

The statutory scheme governing public education that was challenged by the School District Plaintiffs at trial has been amended, rendering their claims moot. “A controversy must exist between the parties at every stage of the legal proceedings, including appeal.” *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001). “If a controversy ceases to exist—the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome—the case becomes moot.” *Id.*

⁷ During the August 20, 2013 hearing, the Court recognized that the data for the initial effects of the new funding, formula and testing scheme would not be final until November 2014, and that would only be for the first year of implementation. The new trial is currently set 9 months before the final data is set to be released. The new trial would have no data from the 2013-2014 school year, and the Court rightly acknowledged the entire trial would be based on unfounded conjecture.

⁸ See The Edgewood Plaintiffs' Response Brief to Calhoun County ISD Plaintiffs, Fort Bend Plaintiffs, and TTPSFC Plaintiffs' Brief in Support of Reopening the Evidence (9/12/13).

⁹ This includes the claims of the individuals who joined in the School District Plaintiffs' claims challenging the now-superseded statutory scheme.

(internal quotations omitted). “If a case becomes moot, the parties lose standing to maintain their claims.” *Id.*

Texas courts have repeatedly held that a case becomes moot when new legislation is passed that supersedes existing legislation while a case is pending. *See, e.g., In re Gruebel*, 153 S.W.3d 686, 689 (Tex. App.—Tyler 2005, no pet.); *State v. Gibson Prods. Co.*, 699 S.W.2d 640, 641 (Tex. App.—Waco 1985, no pet.); *James v. City of Round Rock*, 630 S.W.2d 466, 468 (Tex. App.—Austin 1982, no pet.). When a new statutory scheme is enacted, facts surrounding the prior statutes are no longer material and a challenge to the prior statutes is no longer a live controversy. *See, e.g., James*, 630 S.W.2d at 468-69.

The School District Plaintiffs submitted a chart to the Court identifying thirteen bills enacted by the 83rd Legislature that change the law governing school finance and accountability. *See* Exhibit A. Those bills amend the state of the law on the three key elements of the claims litigated by the School District Plaintiffs—changing the amount of money provided to public education, changing how the funds are divided among school districts, and changing the testing and graduation requirements. Because the claims litigated by the School District Plaintiffs are now moot, the Court should render a final judgment dismissing those claims.

II.

A new trial to challenge the new statutory scheme enacted by the 83rd Legislature is inappropriate because those challenges are not yet ripe.

On June 19, 2013—months after the Court announced its judgment in open court—the Court entered an order indicating that it is “reopen[ing] the evidence”

and essentially granting a new trial, because it is “necessary to the due administration of justice.” *See* Exhibit B. The new trial is an abuse of discretion and cannot cure the jurisdictional deficiencies.

As an initial matter, the Texas Supreme Court has made clear that a trial court must state its reasons for granting a new trial, and it is an abuse of discretion to grant a new trial “in the interests of justice and fairness, without further elaboration.” *In re Columbia Medical Center of Las Colinas, Subsidiary, L.P.*, 290 S.W.3d 204, 208 (Tex. 2009). Because “in the interests of justice or fairness” “is never an independently sufficient reason for granting new trial,” the Court’s decision to grant a new trial based on similarly vague language—“due to the administration of justice”—is an abuse of discretion. *See In re United Scaffolding, Inc.*, 377 S.W.3d 685, 689-90 (Tex. 2012).

More recently, in *In re Toyota Motor Sales, U.S.A., Inc.*, the Court held that even when a trial court states an understandable, reasonably specific, legally appropriate, and facially valid reason for granting a new trial, the correctness or validity of the decision is subject to appellate review through mandamus, based on the record as a whole. __ S.W.3d __, 2013 WL 4608381, at *9-*10 (Tex. August 30, 2013) (“Having already decided that new trial orders must meet these requirements and that noncompliant orders will be subject to mandamus review, it would make little sense to conclude now that the correctness or validity of the orders’ articulated reasons cannot also be evaluated.”). Thus, even if the Court had stated a facially

valid reason for granting the new trial, the decision would still be an abuse of discretion because a new trial is not supported by the record here.

The Court appears to be giving the School District Plaintiffs an opportunity to attempt to “cure” the mootness of the claims they litigated at trial, by now trying to prove that the new statutory scheme enacted by the 83rd Legislature is also unconstitutional. But the new trial cannot cure jurisdictional deficiencies. Any challenge to the statutory scheme that went into effect less than a month ago and governs the 2013-14 and 2014-15 school years is not yet ripe.

Ripeness is required before the judicial branch is constitutionally empowered to resolve a dispute:

To constitute a justiciable controversy, there must exist a real and substantial controversy involving genuine conflict of tangible interests and not merely a theoretical dispute. Ripeness is “peculiarly a question of timing”—specifically, whether the facts have developed sufficiently that a plaintiff has incurred or is likely to incur a concrete injury. Ripeness is thus said to be lacking where the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.

Brantley v. Tex. Youth Comm’n, 365 S.W.3d 89, 101-02 (Tex. App.—Austin 2011, no pet.). The Texas Supreme Court has explained that “the ripeness doctrine serves to avoid premature adjudication,” thus involves both jurisdictional and prudential concerns, and focuses on “whether the case involves ‘uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.’” *Perry v. Del Rio*, 66 S.W.3d 239, 250 (Tex. 2001). “This prudential aspect of the ripeness doctrine is particularly important in cases raising constitutional issues because courts should avoid passing on the constitutionality of statutes, even where

jurisdiction arguably exists, until the issues are presented with clarity, precision and certainty, . . . in clean-cut and concrete form.” *Atmos Energy Corp. v. Abbott*, 127 S.W.3d 852, 857-58 (Tex. App.—Austin 2004, no pet.). “A court cannot pass on the constitutionality of a statute unless the facts have matured, forming the concrete basis against which the statute may be applied.” *Id.*

There cannot be any serious dispute that the facts surrounding how the School District Plaintiffs will be impacted by the recently enacted statutory scheme governing this just-started 2013-14 school year and the following 2014-15 school year have not matured sufficiently to give clarity, precision, or certainty on which to judge a constitutional challenge. While the School District Plaintiffs may speculate that the additional billions of dollars provided for public education will still not be sufficient for them to prepare students to meet the now less-strenuous testing and graduation requirements, whether that speculation will prove true remains an uncertainty that may not occur as anticipated or at all. The new statutory scheme went into effect less than a month ago. School has been in session just over a month. Thus, the facts cannot have developed sufficiently to demonstrate any concrete injury.

Indeed, as some of the School District Plaintiffs recently informed the Court, “there is no reliable or accurate data” that can be presented now (or at a trial in January 2014) to show the impact of the recently enacted legislation. The Edgewood Plaintiffs, in their recent brief arguing against a new trial, reminded the Court: “After receiving evidence and argument for the reliability of school finance data

during the trial in this case, the Court determined that reliable data needed to answer the serious questions of the financial efficiency of the Texas school finance system would be data available on November 1, 2012 for the 2011-12 school year.”¹⁰ Trial started on October 22, 2012 and the parties initially submitted the “near final” data released at the end of September 2012. The Court opted instead for the final November 2, 2012 data, requiring that *during trial* the data was to be analyzed by experts, the results of that analysis shared by supplemental expert reports, and the new data presented as testimony. The Court clearly recognized the importance of the most up-to-date data. The proposed new trial will have *no data* (neither preliminary, near final, or final) for the 2013-14 school year. Any “evidence” about the 2013-14 school year (or the later 2014-15 school year) would be speculative, unreliable, and ultimately ineffective to “cure” the fact that the claims litigated at trial by the School District Plaintiffs are now moot.

While the new trial is being pitched by the School District Plaintiffs as a one- or two-week “evidentiary hearing,” in reality, it is a new trial, with a new scheduling order including a designation of fact witness deadline (now numbering greater than 60), designation of experts deadline, discovery deadline, pleading deadline, exhibits, and so on. It is a new trial—a first-bite at a second apple—not an evidentiary hearing. It will be a significant waste of time, judicial resources, and taxpayer funds (spent both by the School District Plaintiffs and the other agencies

¹⁰ See The Edgewood Plaintiffs’ Response Brief to Calhoun County ISD Plaintiffs, Fort Bend Plaintiffs, and TTPSFC Plaintiffs’ Brief in Support of Reopening the Evidence (9/12/13), pp. 5-6.

of the State that they are suing) to require the parties to expend months conducting additional discovery, spend extensive funds to re-hire expert witness, and incur the expense and lost time for an estimated 60+ fact and expert witnesses to participate in a weeks-long new trial on claims that are not yet ripe and could not be reliably proven. Additionally, the scope of this new trial remains vague and open-ended, even as the parties will be designating experts in the next few weeks. It is no surprise that neither the Court nor the School District Plaintiffs can adequately define the scope of this new trial. Because ordering the new trial would be an abuse of discretion, the Court should vacate its June 19, 2013 order and promptly render a final judgment.

III

The School District Plaintiffs lack standing to challenge the constitutionality of the public school system.

Additionally or alternatively, the Court should conclude that the School District Plaintiffs do not have standing to challenge the constitutionality of the public school system under article VII of the Texas Constitution. The Texas Supreme Court's decision in *Neeley v. West Orange-Cove Consolidated Independent School District* has resulted in one agency of State government perpetually suing other agencies of State government for additional funds, furthering the inefficiency of an already inefficient school system. 176 S.W.3d 746, 772-76 (Tex. 2005) (*West Orange-Cove II*). Whether the public school system is meeting the constitutional mandate to suitably, efficiently, and adequately provide for a general diffusion of knowledge can be—and was in this case—adequately challenged by the students,

parents, and members of the “community at large” that the Court in *West Orange Cove II* acknowledged are the beneficiaries of the guarantee of public free schools. *Id.* at 774. The Court’s decision that school districts likewise have standing because “the Legislature has required school districts to achieve the goal of a general diffusion of knowledge” is not a constitutionally sound principle. The bedrock constitutional principle is that agencies of State government do not have constitutional rights. Furthermore, the record in the case is replete with examples of how the School District Plaintiffs’ positions are contrary to Texas school children’s constitutional rights. Granting standing to State agencies to litigate State funding under any “constitutional” right should be reconsidered.

PRAYER

The Efficiency Intervenors respectfully request that the Court dismiss the claims litigated by the School District Plaintiffs’ as moot, hold that there is no ripe controversy for trial in January 2014, and promptly render a final and appealable judgment. Additionally or alternatively, the Efficiency Intervenors request that the Court dismiss the claims litigated by the School District Plaintiffs for lack of standing and render a final and appealable judgment so the Efficiency Intervenors’ claims, which are not moot, can be brought up on appeal.

Respectfully submitted,

By: /s/ Craig T. Enoch

J. Christopher Diamond
Texas Bar No. 00792459
THE DIAMOND LAW FIRM, P.C.
17484 Northwest Freeway, Ste 150
Houston, Texas 77040
713-983-8990
832-201-9262 fax

Craig T. Enoch
Texas Bar No. 00000026
Melissa A. Lorber
Texas Bar No. 24032969
Amy Leila Saberian
Texas Bar No. 24041842
ENOCH KEVER PLLC
600 Congress, Suite 2800
Austin, Texas 78701
512-615-1200
512-615-1198 fax

***ATTORNEYS FOR THE
EFFICIENCY INTERVENORS***

CERTIFICATE OF SERVICE

I hereby certify that, on September 27, 2013 a true and correct copy of the above has been served on the following *via ProDoc eFile* and on all counsel by email, per the agreement of the parties:

Attorneys for Plaintiffs:

Richard E. Gray, III.
Toni Hunter
Gray & Becker, P.C.
900 West Ave.
Austin, Texas 78701
512-482-0924 (fax)

Attorneys for Plaintiffs:

David G. Hinojosa
Marisa Bono
Mexican American Legal Defense
and Education Fund, Inc.
110 Broadway, Suite 300
San Antonio, Texas 78205
210-224-5382 (fax)

Attorney for Defendants:

Shelley N. Dahlberg
James "Beau" Eccles
Erika Kane
Texas Attorney General's Office
P.O. Box 12548, Capitol Station
Austin, Texas 78711

Attorneys for Plaintiffs:

J. David Thompson, III
Philip Fraissinet
Thompson & Horton LLP
3200 Phoenix Tower, Suite 2000
Houston, Texas 77027
713-583-9668 (fax)

Attorneys for Plaintiffs:

Mark R. Trachtenberg
Haynes and Boone, LLP
1221 McKinney St., Suite 2100
Houston, Texas 77010
713-547-2600 (fax)

Attorneys for Plaintiffs:

Robert Schulman
Schulman, Lopez & Hoffer
517 Soledad St.
San Antonio, Texas 78205-1508

/s/ Craig T. Enoch

Craig T. Enoch

Unofficial copy Travis Co. District Clerk Velva L. Price

From: Holly McIntush
To: "Carol.Jenson@co.travis.tx.us"; "John.Dietz@co.travis.tx.us"; "johndietz@mac.com";
"Stacey.Rosen@co.travis.tx.us"; "Elizabeth.Medina (Elizabeth.Medina@co.travis.tx.us)"
Cc: David Thompson; Philip Fraissinet; Shellee Rodriguez; "shelley.dahlberg@texasattorneygeneral.gov";
"beau.eccles@texasattorneygeneral.gov"; "nichole.bunker-henderson@texasattorneygeneral.gov";
"mark.trachtenberg@haynesboone.com"; "john.turner@haynesboone.com"; "Lora.Faruque@haynesboone.com";
"dhinojosa@maldef.org"; "rlr24@comcast.net"; "jpina@maldef.org"; "rick.gray@graybecker.com";
"toni.hunter@graybecker.com"; "buckwood@raywoodlaw.com"; "dray@raywoodlaw.com";
"Richard.GrayIV@graybecker.com"; "Susan.Jennings@graybecker.com"; "cbeyer@raywoodlaw.com";
"christopherdiamond@yahoo.com"; Craig Enoch; Melissa Lorber; "cwooten@raywoodlaw.com";
"mbono@maldef.org"; "ihoffer@slh-law.com"; "rschulman@slh-law.com"; "rcoutoe@maldef.org";
"cpacheco@slh-law.com"; "Ischwartz@slh-law.com"; "Bonnie.Chester@texasattorneygeneral.gov"; "Sylvia
Hernandez (Sylvia.Hernandez@texasattorneygeneral.gov)"
Subject: SFL - legislation spreadsheet
Date: Wednesday, July 17, 2013 5:11:15 PM
Attachments: SFL legislation spreadsheet - ISD plaintiffs, Charters, and Intervenors.XLSX

Judge Dietz and Ms. Jenson,

Attached please find a spreadsheet summarizing major education legislation, which the Court requested. This document is being submitted on behalf of the ISD Plaintiffs, the Charter School Plaintiffs, and the Intervenors. The State filed a separate advisory regarding legislation earlier today.

Thank you,
Holly

Holly G. McIntush | Associate | Thompson & Horton LLP
400 West 15th St, Suite 1430 | Austin, Texas | 78701
O: 512.615.2351 | M: 512.217.0735 | F: 512.682.8860
hmcintush@thompsonhorton.com | www.thompsonhorton.com

MAJOR LEGISLATION*

Bill Number
SB1

Summary

General Appropriations Act: SB 1 contains \$94.61 billion in general revenue appropriations for the 2014-15 biennium. SB 1 and HB 1025 contain the funding elements for the Foundation School Program. These two bills together increase the FSP formulas by \$3.4 billion. Due to local property value growth, however, the state was able to fund the \$3.4 billion FSP formula increase and student enrollment growth of 85,000 students per year for approximately \$2 billion in state general revenue. In addition, SB 1 also funds the Instructional Materials Allotment (\$419.3 million/year), the Student Success Initiative (\$25.25 million/year), and additional supplemental funding for pre-kindergarten (\$15 million/year), which represents a \$700 million increase over last biennium. SB 1 also provides an \$330 million in one-time funds in 2014-15 to offset the newly required 1.5% district contribution to TRS (see SB1458).

Effective Date(s)
2013-14

HB1025

Supplemental Appropriations Bill: In total, HB 1025 appropriates over \$1.01 billion from general revenue related funds and \$3.93 billion from the Economic Stabilization Fund (Rainy Day Fund), including a \$201.7 million to increase the basic allotment in the Foundation School Program. The bill also uses \$1.75 billion from the Rainy Day Fund to reverse the FSP payment delay.

Payment delay effective immediately, rest effective 2013-14

HB10

Supplemental Appropriations Bill: In total, HB 10 appropriates \$4.83 billion from general revenue related funds, including \$630 million to TEA for the purpose of providing for the FSP (settle-up and costs associated with recapture). In the final version of HB 10, \$1.75 billion was appropriated to reverse the FSP payment delay from general revenue related funds. However, this provision was later repealed in HB 1025 at the end of the session and the payment delay reversal is now funded from the Rainy Day Fund.

Immediately

SB758

August Payment Delay: Statutory authority to reverse the August payment delay (appropriated in HB1025).

Immediately

SB1658

Recapture: Allows a district to exchange any state aid it is due for any recapture amount owed. Current law limits this exchange to just the Additional State Aid for Tax Reduction (ASATAR). Allows districts to continue trading recapture against state aid past September 1, 2017(the previous expiration date of this provision).

Immediately

SB1458

TRS Contributions: Beginning in the 2014-15 school year, school districts not contributing to Social Security will contribute 1.5% to the TRS pension fund. SB1 provides \$330 million in the 2014-15 school year that is intended to offset this amount for that school year. The legislature stated its intent that this be one-time transition aid and that districts will be responsible for this contribution amount after the 2014-15 school year.

Sept. 1, 2014

HB5

Graduation Requirements: The bill creates a single "foundation" diploma that requires completion of at least 22 credits by all students, comprising 17 required and 5 elective credits. Foundation requirements include: 4 credits in English, 3 in math, 3 in science, 3 in social studies, 2 LOTE credits, 1 PE, 1 fine arts, and 5 elective credits. All students must have personal graduation plans (PGPs) beginning with high school. Students completing the foundation program can also earn one of five endorsements, each of which requires 4 math credits total, 4 science credits total, and 2 additional elective credits for a total of 26 credits to graduate. Endorsements are available in business/industry, STEM, public services, arts/humanities, and multidisciplinary studies. The distinguished achievement level can be earned on top of any endorsement by completing all foundation and endorsement-specific credit requirements and including Algebra II among the 4 math credits. Performance acknowledgements are available to put on diplomas and transcripts for outstanding performance in certain areas. Eligibility for general admission to Texas public 4-year institutions of higher education and for financial aid is tied to completion of the foundation plan. Automatic admission under top ten percent requires the distinguished level of achievement. Students are to be counseled annually about postsecondary education and financial aid requirements. Current eighth- through tenth-grade students may "opt in" to the new diploma plan in 2014-15 or remain on their current plans. The foundation diploma also may serve as a "safety net" for students in 2013-14 who cannot otherwise graduate on time on their chosen program of study.

2014-15, with transition period from 2014-15 to 2018

<p>Standardized Testing: Districts must give, and students must take, end-of-course tests in Algebra I, English I and II (with reading and writing integrated into a single test for each), Biology and US History. Each of the five tests must be passed for graduation. The bill eliminates the "15% requirement," cumulative score requirements, "standalone" EOC test requirements for graduation and required retesting. The commissioner is to provide a conversion of EOC scale scores to a 0-100 scale. Districts may opt to assess all students enrolled in English III and Algebra II courses with diagnostic (of postsecondary readiness) end-of-course tests. TEA is to release test questions and answer keys by 2015-16 according to a schedule in the bill that reflects active test usage. Districts may administer no more than 2 benchmark tests for any specified state assessment. Districts are prohibited from administering any benchmarks for the English III and Algebra II postsecondary readiness tests.</p>	<p>2013-14, except TEA not required to adopt or develop Algebra II and English III district-option tests until 2015-16</p>
<p>Remediation: Districts cannot charge for providing accelerated instruction (AI) to students who have failed state tests, and AI must be provided prior to the next administration of the test. Comp Ed funds may be used to support AI in grades 3-12; the funds for AI must be budgeted first, before any other budgeting of comp ed funds, can take place. Districts must evaluate effectiveness of AI programs and hold a hearing about the results. Students may not miss more than 10% of instructional days of a class for remedial tutoring without written parental consent.</p>	<p>2013-14</p>
<p>Accountability Ratings: By August 8 each year, three accountability ratings are to be publicly released: the state's academic accountability ratings of districts, charters and schools; the state's financial accountability ratings of districts and charters; and each district is to release its self-rating and the rating assigned to each of its campuses on community and student engagement. Distinction designations for outstanding performance also are to be released by TEA on August 8 annually. By 2016-17, district academic accountability ratings are to use letter grades of A, B, C (each considered acceptable), or D or F (each considered unacceptable). Campus ratings, and all community and student engagement ratings, are identified in the bill as exemplary, recognized, acceptable or unacceptable. Financial accountability ratings are to include consideration of future financial solvency and use rating labels determined by the commissioner. Academic accountability indicators are to include those in current law plus percent earning endorsements, percent earning distinguished level of achievement, AND at least three additional indicators that must include either TSI performance on the THECB college readiness tests or a set of four indicators that include percentages earning associates degrees or certifications. In determining ratings the commissioner is to give greatest weight to non-STAAR-based indicators, to the extent possible.</p>	<p>2013-14, except: letter-grade rating system takes effect 2016-17, future financial solvency, certain new reporting indicators, and special accreditation investigation triggers take effect 2014-15</p>
<p>STAAR 3-8 testing: If granted a waiver by the federal government, the structure of the STAAR 3-8 testing system would change. All students would be tested in reading and mathematics in grades 3, 5, and 8; in writing in grades 4 and 7; in science in grades 5 and 8, and in social studies in grade 8. As part of the new structure, a new scoring concept would be introduced, called the Minimum Satisfactory Adjusted Score (the MSAS). The MSAS would be the sum of the passing cut score plus the minimum number of points above that cut score that is predictive within a 3 percent margin of error that a student would pass a subsequent year's test in the same subject. Students in grades 4, 6, and 7 would be assessed if, in prior year, the students did not perform at or above the MSAS. Districts are given the ability to "opt in" to universal testing of 4th, 6th and 7th graders, but the scores cannot be used for accountability or any other provision.</p>	<p>2013-14 or 2014-15 contingent on federal waiver ; expires Sept. 1, 2017.</p>

SB2

Open-Enrollment Charters: HB2 increases the cap on charter schools, currently at 215, by 15 each year for six years, beginning Sept. 2014, up to a total of 305 in Sept 2019. There can be an unlimited number of charters that serve at least 50% students with disabilities. The bill transfers the authority to grant charters from the SBOE to TEA; the commissioner must notify the SBOE that s/he plans to grant a charter, and the SBOE has 90 days to hold a vote against granting the charter. The commissioner must give priority to applicants who propose to open a charter in the attendance zone of an academically unacceptable campus. No charter holder may hold more than one charter. The bill requires the commissioner to establish a three-tiered renewal process for charters based on performance: expedited (full renewal based on high performance); discretionary (renewal of charter that does not meet expedited renewal terms, but has shown academic growth), and; nonrenewal (do not meet standards for 3 years on academic or financial ratings). School districts must give a charter school the opportunity to make an offer to buy or lease a school district facility that is listed for purchase or lease.

District Charters: School districts may grant a district charter to one or more campuses, serving no more than 15% of the district's student enrollment. School districts must consider, and publicly vote on, a petition signed by the majority of parents and teachers at a campus to have that campus be given a district charter. The school district must enter into a performance contract based on academic goals with the principal or operating officer of any district charter, and the charter will automatically expire if the academic goals are not met within 10 years.

HB1751

Educator Excellence Innovation Program: Creates a fund and a mechanism for the TEA to award educator excellence innovation grants to districts that submit teacher appraisal plans. It also provides for open-ended waivers from the program.

2014-15

HB1926

Virtual School Network: Governs student access to electronic learning options by allowing districts great latitude in denying requests of students to access the program. No recourse is provided to students who are denied access to electronic learning options. The also makes provision for determining the eligibility to act as a course provider and requirements for course listing and numbering.

2013-14

HB2012

Professional Salaries: Gathering and analysis of professional employee salary information, including an analysis of cost-of-living salary comparability in regions around the state. It provides for a teaching and learning conditions survey. It also provides for educator preparation programs.

Effective immediately.

SB376

Free Breakfast Program: Requires the provision of free breakfast to all children in a school if at least 30% of the students in the district or open-enrollment charter school are eligible students under the free or reduced breakfast program.

2014-15

LEGISLATION THAT DID NOT PASS**

Bill Number	Summary	Effective Date(s)
SB1575/ HB3497	Taxpayer Savings Grant: These bills did not pass. The fiscal note found, among other things, that the bill, "As introduced [would have had] a negative impact of (\$275,266,257) through the biennium ending August 31, 2015. However, starting with fiscal year 2016, there are significant ongoing savings to General Revenue exceeding the cost for the 2014-15 biennium."	N/A

* This list is provided on behalf of the four ISD Plaintiff groups, the Charter School Plaintiffs, and the Intervenor. The State will be submitting its list separately. The Edgewood Plaintiffs maintain that they are entitled to declaratory judgment based on the present system and the present trial record. Without waiving such argument, Edgewood Plaintiffs concur with the bill list.

**This section is included at the request of the Intervenor. The ISD Plaintiffs do not agree that legislation that did not pass is a changed circumstance that has a material impact on the issues before the Court.

Unofficial copy Travis Co. District Clerk Velda L. Price

Exhibit B

COPY

Filed in The District Court
of Travis County, Texas

EM JUN 19 2013

At 10:05 p.m.
Amalia Rodriguez-Mendoza, Clerk

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

THE TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, et al;
CALHOUN COUNTY ISD, et al;
EDGEWOOD ISD, et al;
FORT BEND ISD, et al.,
TEXAS CHARTER SCHOOL
ASSOCIATION, et al.

Plaintiffs,

JOYCE COLEMAN, et al.,

Intervenors,

vs.

MICHAEL WILLIAMS, COMMISSIONER
OF EDUCATION, IN HIS OFFICIAL
CAPACITY; SUSAN COMBS,
TEXAS COMPTROLLER OF PUBLIC
ACCOUNTS, IN HER OFFICIAL
CAPACITY; TEXAS STATE BOARD
OF EDUCATION,

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

250th JUDICIAL DISTRICT

ORDER ON MOTION TO REOPEN EVIDENCE

On June 19, 2013, the Court heard the Motion to Reopen Evidence of Calhoun County ISD, *et al.*, to consider the effect of changes to the public school finance and accountability systems made by the Texas Legislature in the 83rd Regular Session. The Court finds that additional testimony is necessary to the due administration of justice as permitted under TRCP 270, GRANTS the motion and ORDERS the following:

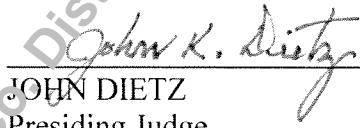
1. By July 17, 2013, the parties jointly shall submit to the Court a spreadsheet identifying all changes to the law affecting school finance and accountability (including assessment and curriculum requirements) that will be at issue in subsequent proceedings in this case. The spreadsheet shall identify the bill number (or rider number), statutory section affected, old statutory language, new

statutory language, and the nature of the change. The chart should be grouped by topic: funding – Foundation School Program (funding formulas and target revenue), facilities, grants and other special programs, charter school funding, other; accountability (including assessment and curriculum requirements); and taxation – M&O and I&S.

2. The parties shall submit to the Court a Scheduling Order addressing deadlines for filing amended or supplemental pleadings to govern the additional trial days, responsive pleadings, discovery, designations of experts, and any other matters the parties agree are pertinent. The parties shall consult with the 250th Court Operations Officer to schedule a 3 hour status conference for August or September 2013.
3. This matter is set for trial on January 6, 2014, in the 250th District Court.

All relief not granted, herein, is DENIED.

SIGNED this 19th day of June, 2013.



JOHN DIETZ
Presiding Judge