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SUPREME COURT OF TEXAS
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No. 14-0776

In the Supreme Court of Texas

MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION,
IN HIS OFFICIAL CAPACITY, *ET AL.*,
Appellants/Cross-Appellees,

v.

CALHOUN COUNTY INDEPENDENT SCHOOL DISTRICT, *ET AL.*,
Appellees/Cross-Appellants/Cross-Appellees,

v.

TEXAS CHARTER SCHOOLS ASSOCIATION, *ET AL.*; AND
JOYCE COLEMAN, *ET AL.*,
Appellees/Cross-Appellants,

v.

THE TEXAS TAXPAYER AND STUDENT FAIRNESS COALITION, *ET AL.*;
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, *ET AL.*; AND
FORT BEND INDEPENDENT SCHOOL DISTRICT, *ET AL.*,
Appellees/Cross-Appellees.

On Direct Appeal from the 200th Judicial District Court, Travis County

BRIEF OF APPELLANTS MICHAEL WILLIAMS, *ET AL.*

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INDEX OF ACRONYMS

ADA	Average Daily Attendance
ASATR	Additional State Aid for Tax Reduction
EDA	Existing Debt Allotment
ELL	English Language Learner
EOC	End of Course
FSP	Foundation School Program
I&S	Interest and Sinking Fund
IFA	Instructional Facilities Allotment
M&O	Maintenance and Operations
NAEP	National Assessment of Educational Progress
RPAF	Regular Program Adjustment Factor
SBOE	State Board of Education
STAAR	State of Texas Assessments of Academic Readiness
TAKS	Texas Assessment of Knowledge and Skills
TEA	Texas Education Agency
TEKS	Texas Essential Knowledge and Skills
THECB	Texas Higher Education Coordinating Board
TRE	Tax Rollback Election
WADA	Weighted Average Daily Attendance

STATEMENT OF THE CASE

Nature of the Case:	Five groups of plaintiffs and one group of intervenors—which together include school districts, parents, children, taxpayers, and associations—claim that Texas's public-education system violates the Texas Constitution. 6.CR.28-78; 7.CR.439-66, 489-565, 641-62.* They sued the Commissioner of Education, the Comptroller of Public Accounts, the State Board of Education, and the Texas Education Agency (collectively, "the State Defendants") under the Uniform Declaratory Judgments Act, seeking declaratory and injunctive relief. *Id.*
Trial Court:	200th Judicial District Court, Travis County The Honorable John K. Dietz (presiding)
Course of Proceedings:	The court consolidated the five suits, 1.CR.142-46, 340-42, and conducted a bench trial on the merits, 2.RR.1-45.RR.180. Following trial, the court granted a motion to reopen the evidence "to consider the effect of changes to the public school finance and accountability systems made by the Texas Legislature in the 83rd Regular Session." 5.CR.349-50. In accordance with that order, the court conducted a second bench trial. 54.RR.1-64.RR.91.
Trial Court Disposition:	The court rendered a final judgment, 12.CR.188-208; App'x A, and issued findings of fact and conclusions of law, 12.CR.209-591; App'x B. The court denied all pleas to the jurisdiction. 12.CR.198.

* Citations of the appellate record will appear as follows: clerk's record = "[volume number].CR.[page number]"; reporter's record = "[volume number or letter].RR.[page number]"; exhibits = "[volume number].RR(Ex. [exhibit number]).[exhibit page number]". Citations of the appendix to this brief will appear as "App'x [tab letter]".

The court declared that the public-education system violates (1) article VIII, section 1-e's prohibition against a state property tax; and (2) article VII, section 1's "adequacy," "suitability," and "financial efficiency" mandates. 12.CR.193-97.

The court further declared that the system does not violate article VIII, section 1(a)'s "equal and uniform taxation" requirement. 12.CR.197-98.

The court denied the Intervenors' claim that the system violates article VII, section 1 on "qualitative efficiency" grounds. 12.CR.198.

The court denied the Charter School Plaintiffs' claims that the system, as applied to charter schools, violates (1) article VII, section 1's "suitability" and "efficiency" requirements; and (2) article I, section 3's guaranty of "equal rights." 12.CR.198.

The court enjoined the State Defendants from funding public education "until the constitutional violations are remedied." 12.CR.199. The court stayed the injunction until July 1, 2015, "to give the Legislature a reasonable opportunity to cure the constitutional deficiencies in the finance system." 12.CR.199.

The court ordered that the ISD Plaintiffs recover their attorneys' fees and costs from the State Defendants. 12.CR.200-08. The court denied the fee requests filed by the State Defendants, Charter School Plaintiffs, and Intervenors. 12.CR.200.

The court retained "continuing jurisdiction" over the case until it determines that the State Defendants "have fully and properly complied with its judgment and orders." 12.CR.208.

ISSUES PRESENTED

1. Do Plaintiffs' and Intervenors' claims under article VII, section 1 of the Texas Constitution present non-justiciable political questions?

2. Does the relief sought by Plaintiffs and Intervenors—declarations that the public-education system is unconstitutional and injunctions halting public-education funding—sufficiently redress their alleged injuries to give them standing to sue?

3. Are Plaintiffs' challenges to the current public-education system, as amended by the Legislature in 2013 (or any later session), unripe?

4. Does sovereign immunity bar the Charter School Plaintiffs' claims to the extent that they seek to alter the terms and conditions of charters and thus constitute contract claims against the State?

5. Does the public-education system violate article VII, section 1's "adequacy" requirement?

6. Does the public-education system violate article VII, section 1's "financial efficiency" requirement?

7. Does the public-education system violate article VII, section 1's "suitability" requirement?

8. Does the public-education system impose a state property tax in violation of article VIII, section 1-e of the Texas Constitution?

9. If the Court reverses any part of the final judgment on the merits, should it also reverse and remand the judgment on the parties' attorney-fee requests?

10. Can the district court retain "continuing jurisdiction" over this case?

14-0776

In the Supreme Court of Texas

MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION,
IN HIS OFFICIAL CAPACITY, *ET AL.*,
Appellants/Cross-Appellees,

v.

CALHOUN COUNTY INDEPENDENT SCHOOL DISTRICT, *ET AL.*,
Appellees/Cross-Appellants/Cross-Appellees,

v.

TEXAS CHARTER SCHOOLS ASSOCIATION, *ET AL.*; AND
JOYCE COLEMAN, *ET AL.*,
Appellees/Cross-Appellants,

v.

THE TEXAS TAXPAYER AND STUDENT FAIRNESS COALITION, *ET AL.*;
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, *ET AL.*; AND
FORT BEND INDEPENDENT SCHOOL DISTRICT, *ET AL.*,
Appellees/Cross-Appellees.

On Direct Appeal from the 200th Judicial District Court, Travis County

BRIEF OF APPELLANTS MICHAEL WILLIAMS, *ET AL.*

TO THE HONORABLE SUPREME COURT OF TEXAS:

Once again, a small army of litigants, lawyers, experts, and interest groups is asking the courts to close Texas schools in hopes of spurring the Legislature to craft a public-education system more to their liking. Most of them want more money, many would prefer that money to be raised and distributed differently, and others seek changes to the system's operation.

While no one disputes that those sorts of policy questions ultimately must be resolved in the halls of the Capitol, this detour through the courthouse proceeds from the premise that the system is not merely unsatisfactory, but actually violates the Texas Constitution. In particular, this Court has held that the judiciary may decide whether the Legislature has fulfilled its duty under article VII, section 1 to provide for an education system that is "suitable," "efficient," and "adequate" in producing a "general diffusion of knowledge."

The Court has infused those terms with more specific meanings to guide the jurists, lawyers, and legislators who must apply them. So we now know that a "suitable" system is one structured, operated, and funded to accomplish its ends. An "efficient" system achieves results with little waste and, with respect to funding, ensures that school districts have substantially equal access to similar levels of revenue per pupil at similar levels of tax effort. "Adequacy" is a "result-oriented" standard measuring student performance.

Although those definitions implicate policy matters, the Court has attempted to avoid entangling the judiciary in that sphere by explaining that its function is to decide only *whether* the system satisfies those requirements, not *how* the Legislature should meet them. And the Court has further tried

to cabin its involvement by reviewing the Legislature's choices only under a "very deferential" standard of "arbitrariness."

Still, the Court's efforts to engender judicial restraint in this arena have not succeeded in extricating the education system from a litigation vortex. As Justice Brister warned a decade ago, "there is no end in sight."

To be sure, some blame for this situation lies with the district court, which again did not heed this Court's directives about the judiciary's limited role in assessing the system. The district court's 364-page explanation of its judgment, including a 13-page "executive summary" and over 1500 fact-findings, reads more like a special master's report than a judge's order. And its contents are the antithesis of deference. For example, in evaluating school funding following the post-2008 economic downturn, the court declared the system unconstitutional in part because the Legislature "appropriat[ed] school finance funds based upon funds that are available rather than what funds are required"—effectively faulting the Legislature for not raising taxes or drawing down the Rainy Day Fund. The court also held that the Legislature violated the Constitution by not adopting certain "best practices"—such as limited class sizes, preschool programs, and higher teacher salaries—or replacing them with reasonable, research-backed

alternatives. The combination of those sorts of holdings with the district court's injunction, which closes the public schools until the district court finds the system to be constitutional under its "continuing jurisdiction," leaves no doubt about the matter: a single trial judge is making education policy for Texas and running the school system.

Beyond this trial court's overreaching, school-finance suits still present a fundamental problem that makes litigating these issues unmanageable. The Legislature enacts laws about public education based on a variety of ever-changing political and fiscal considerations, not on the progress of a lawsuit. Since the last school-finance case, the Legislature has decided to increase the rigor of the public-school curriculum again. Implementing that curriculum change is a massive undertaking, which has taken years and continues today. That shift in what schools are teaching, in turn, has required a new testing program to assess students on what they are learning and a new accountability regime to evaluate schools on providing that instruction. This transformation of the system is in its relative infancy: the new tests were first administered in spring 2012, and the new accountability regime yielded its first results in fall 2013—all *after* these suits were filed. Indeed, after initially striking down the system, the district court felt compelled to extend the trial proceedings an

additional 18 months so that it could account for further legislative changes, including substantial increases in funding, in 2013. In short, the constantly evolving education system generally does not lend itself to the strictures of litigation, and it certainly cannot be reliably judged at this juncture.

But even if the Court were to find that disputes over the public-education system are justiciable, these recent legislative changes to the system must inform the Court's constitutional analysis and lead the Court to reverse the district court's judgment.

With respect to adequacy, the system is now in a position analogous to where it was when the Court decided the last school-finance appeal: following steady progress under the former curriculum and testing program, students are adjusting to learning new skills and adapting to a new assessment while continuing to perform well compared to their peers in other states. Because the Court previously held that those circumstances did not give rise to an adequacy violation, it should reach the same result here. The district court's contrary conclusion was based largely on its view that school *funding* is insufficient, which the Court already has rejected as an adequacy metric.

The last school-finance case also offers a favorable analogy for the system's efficiency. Under the current funding framework, the tax-rate and

revenue gaps among school districts are comparable to or smaller than those that the Court previously has found efficient. The district court disregarded that straightforward comparison, embraced inapt financial analyses, and wrongly focused on certain school-finance components rather than the system as a whole in its strained effort to manufacture an efficiency violation.

Because the system is efficiently achieving a general diffusion of knowledge, it necessarily must be suitable. The Legislature is fulfilling its constitutional duties under article VII, section 1.

Finally, the circumstances that led the Court to conclude in the last school-finance case that the system imposed a state property tax in violation of article VIII, section 1-e are no longer present. Far fewer school districts are taxing at the statutory cap on tax rates, the impact of recapturing revenue from property-wealthy districts has diminished, and no district proved that it was unable to supplement its educational programs beyond state mandates. The violations found by the district court rest mainly on its erroneous reasoning that the "true" tax-rate cap is lower than the statutory cap and that the Constitution mandates a different ratio of state to local funding.

Accordingly, if the Court reaches the merits of the claims in this case, it should render judgment for the State Defendants.

STATEMENT OF FACTS

I. PAST SCHOOL-FINANCE LITIGATION AND INTERVENING LEGISLATIVE SESSIONS

This is not the first time the Court has considered the constitutionality of Texas's public-education system. Much of the prior litigation has revolved around the State's school-finance system, which pays part of the cost of education through the imposition of local property taxes.

In the late 1980s, several school districts with lower property values brought a lawsuit claiming that the ratio of taxable property wealth between property-wealthy districts and their poorer counterparts resulted in inefficient public-school funding in violation of article VII, section 1 of the Texas Constitution (App'x C). *Edgewood ISD v. Kirby*, 777 S.W.2d 391 (Tex. 1989) ("*Edgewood I*"). The Court agreed, holding that the 700-to-1 ratio between the value of taxable property per student in the wealthiest and poorest school districts—and actual spending ranging from $19,333 to $2112 per student despite the poorer districts' substantial tax effort—was unconstitutionally inefficient. *Id.* at 392, 397.

Following *Edgewood I*, the 71st Legislature passed several statewide fund-equalizing measures, but Senate Bill 1 "le[ft] essentially intact the same funding system . . . reviewed in *Edgewood I*." *Edgewood ISD v. Kirby*, 804

S.W.2d 491, 494-95 (Tex. 1991) ("*Edgewood II*"). In its review of the ensuing lawsuit, this Court concluded that, although the new legislation somewhat reduced the disparities in wealth and spending, the State's heavy reliance on disparate local ad valorem taxes was still unconstitutionally inefficient. *Id.* at 496.

The 72nd Legislature then passed Senate Bill 351, which continued reliance on local ad valorem taxes, but created 188 county education districts ("CEDs") that were designed to levy, collect, and distribute taxes within each CED. *Carrollton-Farmers Branch ISD v. Edgewood ISD*, 826 S.W.2d 489, 498 (Tex. 1992) ("*Edgewood III*"). School districts and individual plaintiffs filed another lawsuit, this time contending that SB 351 imposed a state property tax in violation of article VIII, section 1-e of the Texas Constitution (App'x D). *Id.* at 493. The Court agreed, holding that because the CEDs' "very purpose . . . [was] to levy a uniform tax statewide," it amounted to a constitutionally-prohibited state property tax. *Id.* at 500, 503.

After voters rejected the Legislature's proposed constitutional amendment to authorize the CED plan, the 73rd Legislature passed Senate Bill 7, which left the system's basic funding structure in place but capped the taxable value of a school district's property at $280,000 per student. *Edgewood*

Indep. Sch. Dist. v. Meno, 917 S.W.2d 717, 727-28 (Tex. 1995) ("*Edgewood IV*"). The legislation further required any district with property value in excess of that cap to take one of five property-value reduction measures, which brought the property-value-per-student ratio between the wealthiest and poorest district down to 28 to 1. *Id.* at 728-30.

Once again, poorer school districts brought suit claiming that the system remained inefficient, while the wealthier districts complained of the revenue reduction caused by the property-value cap. *Id.* at 727, 735. This time, the Court rejected all of the plaintiffs' claims, concluding that the funding difference between property-poor and property-wealthy districts was constitutionally efficient, *id.* at 731, and that the Legislature made "suitable provision" for the public-school system despite the reduction to wealthy districts' coffers, *id.* at 737. The Court further held that the State's reliance on local ad valorem taxes did not, in itself, amount to a state property tax in violation of article VIII, section 1-e. *Id.* at 738.

In 2001, several property-wealthy school districts brought another lawsuit claiming that the statutory cap on school-district maintenance-and-operations ("M&O") tax rates left the districts without meaningful discretion to set tax rates in violation of article VIII, section 1-e. *W. Orange-Cove Consol.*

ISD v. Alanis, 107 S.W.3d 558, 573 (Tex. 2003) ("*WOC I*"). Two groups of property-poor school districts intervened to oppose the wealthier districts' claim that the tax cap was unconstitutional, and to separately claim that the system remained inadequate and inefficient under article VII, section 1. *Id.* at 574. The Court reversed the district court's initial dismissal of the wealthy districts' claim, holding that they could state a claim under article VIII, section 1-e by alleging that they were forced to tax at the statutory cap to provide students with a general diffusion of knowledge. *Id.* at 578-79.

After remand and a trial on all claims, the case again made its way to this Court. On the plaintiffs' adequacy claim, the Court held that the Legislature had not acted arbitrarily in structuring and funding the public-education system, notwithstanding evidence "that many schools and districts are struggling to teach an increasingly demanding curriculum to a population with a growing number of disadvantaged students, [while lacking] additional funding to meet these challenges." *Neeley v. W. Orange-Cove Consol. ISD*, 176 S.W.3d 746, 789 (Tex. 2005) ("*WOC II*"). After concluding that the adequacy standard is entirely "result-oriented," the Court credited evidence showing "that standardized test scores [had] steadily improved over time, even while tests and curriculum have been made more difficult." *Id.* at 788-89. The

Court also rejected the school districts' claims that the system was inefficient and unsuitable. *Id.* at 792, 794.

But because school districts were spending 97% of all revenue that would be available if every district taxed at the maximum, only one third of Texas districts exceeded minimum accreditation standards, and the State "recaptured" over $1 billion in revenue from 134 property-wealthy districts to distribute to other districts, the Court held that the school-finance system effectively imposed a state ad valorem property tax in violation of article VIII, section 1-e. *Id.* at 796-98.

II. THE TEXAS PUBLIC-EDUCATION SYSTEM

The general structure of the system described in *West Orange-Cove II* remains in place today, although some elements within that structure have significantly changed and continue to do so. As before, the system contains four integrated components: "a state curriculum, a standardized test to measure how well the curriculum is being taught, accreditation standards to hold schools accountable for their performance, and sanctions and remedial measures for students, schools, and districts to ensure that accreditation standards are met." *WOC II*, 176 S.W.3d at 764.

A. The State Curriculum

1. Required course offerings

School districts and open-enrollment charter schools must offer the required curriculum, which has added a few new subject areas since *West Orange-Cove II*. *Id.* at 764-65; TEX. EDUC. CODE §§ 12.111(a)(1), 28.002(a). The required foundation curriculum includes: English-language arts; mathematics; science; and social studies, which consists of Texas, United States, and world history, government, economics, and geography. TEX. EDUC. CODE § 28.002(a)(1). The required enrichment program includes: to the extent possible, languages other than English; health; physical education; fine arts; career and technology education; technology applications; religious literature; and personal financial literacy. *Id.* § 28.002(a)(2).

2. The Texas Essential Knowledge and Skills

As described in *West Orange-Cove II*, the Legislature required the State Board of Education ("SBOE"), "with the direct participation of educators, parents, business and industry representatives, and employers," to identify "the *essential knowledge and skills* of each subject of the required curriculum that all students should be able to demonstrate." *Id.* § 28.002(c) (emphasis added); *WOC II*, 176 S.W.3d at 765. The identified knowledge and skills, the

Legislature explained, should include those "necessary to read, write, compute, problem solve, think critically, apply technology, and communicate across all subject areas" and to "prepare and enable all students to continue to learn in postsecondary educational, training, or employment settings." TEX. EDUC. CODE § 28.001. Following "years of consultation and study, over a thousand public meetings, and thousands of public comments," the SBOE adopted the Texas Essential Knowledge and Skills ("TEKS") curriculum for use in the 1998-1999 school year. *WOC II*, 176 S.W.3d at 765.

3. College-and-career-readiness standards

In 2006, the Legislature adopted a new goal of "advanc[ing]" "college readiness" in the curriculum. TEX. EDUC. CODE § 28.008. To that end, the Legislature required the Commissioner of Education and the Texas Higher Education Coordinating Board ("THECB") to consult with teams of public-school educators and higher-education faculty and approve "college readiness standards and expectations that address what students must know and be able to do to succeed in entry-level courses offered at institutions of higher education." *Id.* § 28.008(b)(1). The Legislature then required the SBOE to incorporate those standards into the TEKS. *Id.* § 28.008(d); 28.RR.117.

In 2007, the Legislature required the Texas Education Agency ("TEA") to work with educators and employers to recommend revisions to the career and technical education portion of the state curriculum. Act of May 22, 2007, 80th Leg., R.S., ch. 763, § 1, 2007 Tex. Gen. Laws 1572, 1573 (formerly codified at TEX. EDUC. CODE § 28.0022) (expired Sept. 1, 2014). In turn, the SBOE was required to revise the TEKS based on those recommendations by 2009. *Id.*

As with the initial adoption of the TEKS, full incorporation of college-and-career-readiness standards into the TEKS has taken years; indeed, because the Legislature requires periodic review and revision of those standards, TEX. EDUC. CODE § 28.008(b)(6), the process continues today, 272.RR(Ex. 11243).4-5. Teachers, professors, business leaders, experts, and parents have provided input, followed by public hearings and comments. 28.RR.117-22; 272.RR(Ex. 11243).3. The TEKS revisions have occurred at all grade levels, so that the elementary grades can build a foundation for future learning that prepares students for postsecondary education and the workplace. 28.RR.121. The process also has involved the creation and distribution of professional-development and instructional materials so that teachers can implement the revised TEKS in the classroom. 28.RR.124-27, 137-48; 272.RR(Ex. 11243).7-12, 14.

Only after completing these steps does the system assess student performance on the revised TEKS in a given subject area. To illustrate the time lag, the SBOE adopted the first revised TEKS (in English-language arts) in 2008, but students were not tested in that area until May 2011. 28.RR.124-27; 272.RR(Ex. 11243).6.

4. Graduation plans

The system is currently transitioning from the framework of course requirements for graduation described in *West Orange-Cove II*. At that time, students could choose from the advanced, recommended, or minimum high-school program. *WOC II*, 176 S.W.3d at 765. That array of options remained in place through 2013, although the programs' content and conditions changed over time. *See* 63.RR.122. For example, to graduate on the recommended or "distinguished achievement" plan in 2013, a student had to complete the "4 X 4" program, which includes four years of credits in the four core areas of math, science, English language arts, and social studies. 28.RR.128-29.

In 2013, the Legislature began phasing out that graduation framework, so that only students already enrolled in grades 9-11 during the 2013-2014 school year may continue to pursue one of the old programs. TEX. EDUC. CODE

§ 28.025(h); 63.RR.123-24. Going forward, students will graduate under the new "foundation high school program." TEX. EDUC. CODE § 28.025(a).

That program generally requires all students to earn a total of 22 credits in the TEKS curriculum. *Id.* § 28.025(b-1); 63.RR.123. But a student may graduate on that basic plan only after consulting with a school counselor and obtaining parental permission. TEX. EDUC. CODE § 28.025(b); 63.RR.123. Most students also must select an "endorsement," which requires earning a total of 26 credits and completing coursework in one of five areas: (1) "STEM" (science, technology, engineering, and mathematics); (2) business and industry; (3) public services (*e.g.*, health sciences, education, and law enforcement); (4) arts and humanities; or (5) multidisciplinary studies. TEX. EDUC. CODE § 28.025(c-1); 63.RR.122, 124, 126. Starting with the 2013-2014 school year, school districts were required to offer at least the multidisciplinary endorsement, which could be accomplished through the courses they were already teaching. 63.RR.126.

B. Standardized Tests to Measure Student Achievement

In *West Orange-Cove II*, the Court described how adoption of the TEKS "required the development of a new state standardized test—the Texas Assessment of Knowledge and Skills ('TAKS')" "[t]o correspond to the

curriculum changes." 176 S.W.3d at 765. The incorporation of college-and-career-readiness standards into the TEKS likewise prompted development of a new test to replace TAKS: the State of Texas Assessments of Academic Readiness ("STAAR"). *See* TEX. EDUC. CODE § 39.023(c-4). Moreover, overall student performance on TAKS had improved to the point where some students "were coming up against the ceiling of what the test could measure," necessitating a new testing regimen. 28.RR.20.

1. The STAAR testing program

As with TAKS, TEA developed the STAAR tests in consultation with educators and testing experts. *Compare WOC II*, 176 S.W.3d at 765, *with* 27.RR.41-43. TEA specifically designed the STAAR exams "to be more rigorous than the TAKS program" and to address skills taught in the classroom at "a greater level of cognitive complexity." 27.RR.35-36; 293.RR(Ex. 11475 (Assessment Update)).2. The overall objective was to align the testing program with the updated TEKS curriculum so that students would be assessed on their progress toward postsecondary readiness from Grade 3 through high school. 27.RR.65-67; 28.RR.20-21.

TEA introduced STAAR for graduation purposes in the 2011-2012 school year, beginning with students in Grade 9. 27.RR.70; 255.RR(Ex.

10336).ix; 265.RR(Ex. 10877).1. Since then, STAAR gradually has replaced TAKS as the graduation testing requirement; the current school year (2014-2015) is the first one in which all high-school students will take it. 255.RR(Ex. 10336).ix. Initially, these students were required to pass 15 STAAR End-of-Course ("EOC") exams covering 12 courses to graduate. 27.RR.59. In 2013, however, the Legislature changed that rule so that high-school students now must pass only five STAAR EOC exams: Algebra I, Biology, English I, English II, and United States History. TEX. EDUC. CODE § 39.023(c).

Students in Grades 3-8 also began taking STAAR tests in the 2011-2012 school year. 70.RR(Ex. 39).1; 255.RR(Ex. 10336).iv; 265.RR(Ex. 10877).1. That range of exams covers the revised TEKS in the areas of reading, writing, mathematics, social studies, and science. TEX. EDUC. CODE § 39.023(a).

2. STAAR performance standards

Similar to the rollout of the TAKS, the Commissioner determined the performance standards or "cut scores" on the STAAR tests based on studies linking expected performance on STAAR to external measures of college and career readiness (*e.g.*, SAT scores); past performance on TAKS; student-motivation research; and recommendations from various public stakeholders, including teachers, professors, legislators, business and community leaders,

and parents. *Compare WOC II*, 176 S.W.3d at 766, *with* 27.RR.43-52; 301.RR(Ex. 20224).9. For each test, three performance levels were set: Level I (Unsatisfactory); Level II (Satisfactory); and Level III (Advanced). 70.RR(Ex. 41).1.

As with the TAKS, the STAAR passing scores will be increased in phases "to give teachers and students time to adjust to the new and more difficult test." *Compare WOC II*, 176 S.W.3d at 766, *with* 27.RR.18-19, 51-52; 28.RR.41-42; 70.RR(Ex. 41).1-2. TEA determined those "phase-in" scores empirically for each STAAR test based on the recommended Level II scores. *See* 27.RR.51-56, 80.

TEA originally planned to phase in the Level II standard in two incremental stages over the course of four years before the final Level II standard took effect in the 2015-2016 school year. 70.RR(Ex. 70).2. In 2013, however, TEA extended the first phase-in stage an additional year because of late reporting of 2012 performance data due to the standard-setting schedule and unavailability of released test forms—information that schools could use to adjust their teaching. 303.RR(Ex. 20250).2. In 2014, due to various changes affecting the STAAR program, including implementation of a new TEKS math curriculum, TEA proposed substantial revisions to the phase-in schedule.

Standards now will increase over three stages to the final Level II standard in the 2021-2022 school year. Texas Education Agency, *STAAR Performance Standards Maintained for 2014-2015* (Aug. 21, 2014), http://tea.texas.gov/About_TEA/News_and_Multimedia/Press_Releases/2014/STAAR_performance_standards_maintained_for_2014-2015/. This new approach "gives educators additional time to make the significant adjustments in instruction necessary to raise the level of performance of all Texas students." *Id.*

In setting STAAR performance standards, TEA must collaborate with THECB to "determine the level of performance necessary to indicate college readiness, as defined by [s]ection 39.024(a)" of the Education Code. TEX. EDUC. CODE § 39.0241(a-1). That statute defines college readiness as "the level of preparation a student must attain in English language arts and mathematics courses to enroll and succeed, without remediation, in an entry-level general education course for credit in that same content area for a baccalaureate degree or associate degree program." *Id.* § 39.024(a). TEA ultimately recommended that the final Level II standard on the Algebra II and English III EOC exams serve as this college-readiness indicator. 27.RR.96-100. In 2013, however, the Legislature eliminated the requirement

that districts administer those exams, resulting in a suspension of that college-readiness measure until the exams are given again on an optional basis beginning in spring 2016. 287.RR(Ex. 5796).17-18.

3. Other performance measures

As the Court noted in *West Orange-Cove II*, students' academic success is also measured by the National Assessment of Educational Progress tests ("NAEP"). 176 S.W.3d at 768. Under the No Child Left Behind Act, states receiving federal money for Grades 4-8 must participate in NAEP. 26.RR.25. Under NAEP, a national assessment is given every two years in math and reading to randomly selected students in Grades 4 and 8. 26.RR.26.

In addition to NAEP scores, the *West Orange-Cove II* Court cited THECB's college-readiness standards for English and math. 176 S.W.3d at 769. Those standards reflect scores on the Grade 11 exit-level TAKS tests that exempted students from taking assessments in reading, writing, and math before enrolling in college. 256.RR(Ex. 10415).35-36. Because Grade 11 students took TAKS tests through the 2012-2013 school year, 255.RR(Ex. 10336).ix, TEA reported performance on those college-readiness standards through that timeframe, 291.RR(Ex. 11373).11.

C. The Accountability Regime

With the transition from the TAKS to STAAR testing program, the Legislature also required TEA to develop a new accountability regime for rating the performance of school districts, campuses, and charter schools. TEX. EDUC. CODE §§ 39.053-.054; 30.RR.81. The TAKS-based accountability regime outlined in *West Orange-Cove II* remained in place through the 2010-2011 school year. *See WOC II*, 176 S.W.3d at 767-68; 30.RR.81. As authorized by the Legislature, TEA suspended accountability ratings for the 2011-2012 school year, 30.RR.81; TEX. EDUC. CODE § 39.116(a), and instituted the new STAAR-based accountability regime in the 2012-2013 school year, 30.RR.99.

Under the former accountability regime, ratings were based on the performance of five student groups (all students, African-American, Hispanic, white, and economically disadvantaged) on TAKS exams in five areas (English language arts, math, writing, science, and social studies), as well as 10 measures related to graduation and dropout rates. 30.RR.85-93; 272.RR(Ex. 11245).3-5; 287.RR(Ex. 5785).24. Failure to meet a target on any one of those 35 indicators resulted in a lower rating. 30.RR.93; 287.RR(Ex. 5785).24. The system assigned ratings of Academically Unacceptable, Academically Acceptable, Recognized, and Exemplary. 253.RR(Ex. 10324).1.

The new accountability regime aims to provide a "more broad[] and comprehensive picture" of a district's or campus's overall performance. 30.RR.110; 287.RR(Ex. 5785).24; 293.RR(Ex. 11480).3. To that end, ratings are based on indicators that are grouped into four performance indices:

- Index 1, Student Achievement, provides "a snapshot of performance across subjects" based on all students' STAAR results.

- Index 2, Student Progress, examines improvement on STAAR by all students, seven student groups disaggregated by race/ethnicity, English Language Learners ("ELLs"), and special-education students.

- Index 3, Closing Performance Gaps, emphasizes advanced performance on STAAR by economically disadvantaged students and the lowest-performing race/ethnicity groups at a campus or district.

- Index 4, Postsecondary Readiness, includes graduation and dropout rates and performance at the STAAR final Level II standards.

293.RR(Ex. 11480).1-6. Each index has an overall target score of performance points. 293.RR(Ex. 11480).8. As with the STAAR cut scores, TEA set the accountability targets with the input of educators, legislative representatives, business and community leaders, higher-education representatives, and parents. 293.RR(Ex. 11479); 301.RR(Ex. 20224).9.

In 2013, districts and campuses that reached the target on all indices were rated "Met Standard" (or "Met Alternative Standard" for alternative education campuses and districts). 293.RR(Ex. 11480).8. Those that did not meet one or more index targets were rated "Improvement Required." 293.RR(Ex. 11480).8. Campuses also could attain distinction designations in student progress and achievement in English and math. 293.RR(Ex. 11480).9.

Going forward, TEA plans to add indicators to the indices and raise targets, thereby increasing the accountability regime's rigor over time. *See* 287.RR(Ex. 5785).33, 55-71, 139-40, 186-87; 293.RR(Ex. 11480).5; 301.RR(Ex. 20225). That progressive approach should continue to drive further improvement in student performance. 30.RR.113. The Legislature expects that this process of periodically raising accountability standards will advance Texas toward the goal of ranking among the top 10 states in college readiness by 2020. TEX. EDUC. CODE § 39.053(f); 287.RR(Ex. 5785).79.

D. Sanctions and Remedial Measures

Performance on accountability measures factors into a school district's annual accreditation status. TEX. EDUC. CODE § 39.052(b)(1)(A). A non-

accredited district may not receive funding or hold itself out as an operating public school. *Id.* § 39.052(f).

Short of revoking a school district's accreditation, TEA may employ various interventions and sanctions to correct or punish academic or financial deficiencies. *Id.* § 39.102. Among these, TEA may implement an improvement plan; appoint a monitor, conservator, or management team for the district; or close the district and annex it to an adjoining district. *Id.* TEA also may invoke interventions and sanctions for individual campuses and charter schools that perform below acceptable standards. *Id.* §§ 39.103, .104.

III. THE TEXAS SCHOOL-FINANCE SYSTEM

Texas's system for funding public education has retained essentially the same structure found constitutional in *West Orange-Cove II* and is composed of local funds (generated by local property taxes), state funds, and federal funds. Local property taxes include both an M&O tax, which provides funding for maintenance and operations, and a separate facilities tax, referred to as I&S for "interest and sinking fund." *WOC II*, 176 S.W.3d at 758. The largest changes following *West Orange-Cove II* were the compression of local property taxes, the use of target revenue to ensure that districts were not harmed by the tax compression, and the introduction of "golden pennies."

Several years later, the recession resulted in temporary funding cuts for public education, but as the economy recovered, the 83rd Legislature was able to restore most of the State's portion of school funding.

A. The Foundation School Program

Texas school districts are funded primarily through the Foundation School Program ("FSP"). *See generally* TEX. EDUC. CODE ch. 42`. The FSP is designed to ensure that each district has adequate and substantially equalized funding. TEX. EDUC. CODE § 42.002(a). Its two tiers provide a basic level of funding by guaranteeing revenue to districts that impose a minimum tax rate, and supplemental funding by giving districts the flexibility to set higher taxes to achieve greater revenues. TEX. EDUC. CODE § 42.002(b).

1. M&O tax rates and tax rollback elections

At the time the Court decided *West Orange-Cove II*, the tax-rate cap for M&O funding was $1.50 for every $100 of property value. 176 S.W.3d at 758. In response to *West Orange-Cove II*'s holding that the school-finance system imposed a state property tax, the Legislature lowered local property taxes by "compressing" district tax rates by one third. TEX. EDUC. CODE § 42.2516(a). Thus, if a district had been taxing at the $1.50 cap, its "compressed" tax rate was $1.00. The Legislature then set a new tax-rate cap at $1.17. TEX. EDUC.

CODE § 45.003(d). A district that wishes to tax beyond $1.04, however, must hold a tax rollback election ("TRE") allowing local voters to decide whether to raise their property taxes. *See* TEX. TAX CODE § 26.08.

2. Tier I

The total amount of funds to which a school district is entitled under Tier I is the sum of its regular program allotment and a number of special allotments. TEX. EDUC. CODE §§ 42.101-.160. The regular program allotment is simply an amount per student multiplied by the number of students in a district, and special allotments are extra amounts granted for students deemed to require additional resources to educate (such as economically disadvantaged students or gifted-and-talented students).

To calculate a district's regular program allotment, TEA begins with the basic allotment due to each student. *Id.* § 42.101. From 2009 to 2013, the basic allotment was $4765. *Id.*; 276.RR(Ex. 11342).16. If a district's compressed tax rate was less than $1.00, the basic allotment was reduced by multiplying it by the ratio of the district's compressed tax rate over $1.00. TEX. EDUC. CODE § 42.101(a).

TEA then adjusts the basic allotment for several district-specific factors, including (1) the cost-of-education index, which accounts for district size,

teacher salaries in neighboring districts, and low-income students in the district, TEX. EDUC. CODE § 42.102; (2) a small- or mid-sized-district adjustment, which recognizes diseconomies of scale for smaller districts, *id.* § 42.103; and (3) a "sparsity" adjustment, which provides additional funding for districts with sparse populations, *id.* § 42.105. The result is the district's adjusted basic allotment. *Id.* § 42.101(c).

TEA multiplies a district's adjusted basic allotment by the district's average daily attendance ("ADA") to determine the district's regular program allotment. *Id.* § 42.101(c).[1] As its name implies, ADA is the average number of students in attendance per school day and is calculated by adding the number of students in attendance each day of the school year and dividing by the number of school days. *Id.* § 42.005(a)(1).

To the regular program allotment, TEA then adds various special allotments for different classifications of students with specific needs, such as bilingual students, gifted-and-talented students, economically disadvantaged students, students requiring transportation, and students in special-education

[1] Beginning in 2011-2012, the Legislature required TEA to multiply this amount by the Regular Program Adjustment Factor ("RPAF"), which initially reduced the total amount a district was due. TEX. EDUC. CODE § 42.101(c). Currently, however, the RPAF is set at 1, so it no longer has any impact on Tier I funding. 293.RR(Ex. 11489).236.

programs, among others. *See* TEX. EDUC. CODE §§ 42.151-.160. The amount of any special allotment is calculated by multiplying the district's adjusted basic allotment by the number of students eligible for the special allotment by a statutory weight. So, for example, the compensatory-education allotment for economically disadvantaged students is calculated by multiplying the adjusted basic allotment by the number of economically disadvantaged students by the statutory weight of 0.2. TEX. EDUC. CODE § 42.152(a). The total of all of the special allotments, plus the regular program allotment, is the amount of the district's Tier I funding.

A school district's Tier I funding is paid for with a combination of the district's local property-tax revenue and state funds. A district's portion of Tier I is determined by multiplying its property values for the prior year by its compressed tax rate. TEX. EDUC. CODE § 42.252. The State then pays the difference between the district's portion and the total allotment a district should receive for Tier I. 12.CR.252 (FOF 42).

3. Tier II

Tier II allows districts to obtain additional funding by adopting a tax rate somewhere between their compressed tax rate and $1.17. *See* TEX. EDUC. CODE § 42.301; *see also id.* § 45.003(d). Tier II funding is based on "weighted

average daily attendance" ("WADA") which is calculated by subtracting a few of the special allotments from the Tier I calculation and dividing by the basic allotment. *Id.* § 42.302; 62.RR.103. In short, the WADA calculation makes it seem as if a school district has more students in attendance in order to account for the needs of various students that may cost more to educate. 62.RR.103. The average ratio of WADA to ADA in the State is 1.3, although it can range from 1.1 to 1.6 among districts. 63.RR.32-33, 66.

Tier II is comprised of "golden pennies"—the first six pennies above a district's compressed tax rate—and "copper pennies"—the pennies remaining up to the statutory cap of $1.17. 119.RR(Ex. 1188).1. Golden pennies are guaranteed to yield the equivalent of the Austin Independent School District's property wealth per student, which was $59.97 per WADA as of 2010. TEX. EDUC. CODE § 42.302(a-1)(1); 119.RR(Ex. 1188).3-4. If the Legislature funds golden pennies to the Austin level (which it does), then districts that generate revenue greater than $59.97 per WADA may keep the additional revenue without being subject to recapture. TEX. EDUC. CODE § 41.093(b-1).

Copper pennies, the pennies of tax rate between the golden-penny range and the cap of $1.17 are guaranteed to yield $31.95 per WADA. TEX. EDUC.

CODE § 42.302(a-1)(2); 119.RR(Ex. 1188).4. As described below, copper pennies are subject to recapture.

4. Recapture

Recapture, a feature of the school-finance system that was first introduced after *Edgewood III*, imposes a cap on a school district's taxable property and gives the State "access to the pools of wealth concentrated in the wealthiest districts." *Edgewood IV*, 917 S.W.2d at 728, 739. It is governed by Chapter 41 of the Texas Education Code, which describes several "equalized wealth levels" that limit the amount of local property tax revenue a district may keep. The first equalized wealth level is set at $476,500 per WADA for taxes at the compressed tax rate (or Tier I). TEX. EDUC. CODE § 41.002(a)(1); 119.RR(Ex. 1188).8. Another is set at $319,500 per WADA for all taxes in the copper-penny range. TEX. EDUC. CODE § 41.002(a)(1); 119.RR(Ex. 1188).8. As mentioned above, there is currently no recapture for taxes in the golden-penny range because the State is maintaining the corresponding guaranteed yield. *See* TEX. EDUC. CODE § 41.093(b-1).

A district is considered a "Chapter 41" district if it has property wealth per WADA greater than $319,500, even if its tax rate is not high enough to reach the copper-penny level. 119.RR(Ex. 1188).7. All Chapter 41 districts

are required to elect (with voter approval) a method by which they will reduce their wealth: (1) consolidate with another district; (2) detach property from the district; (3) purchase attendance credits from the State; (4) contract to educate nonresident students from a partner district; or (5) consolidate tax bases with another district. TEX. EDUC. CODE § 41.003; 119.RR(Ex. 1188).7.

5. Facilities funding

FSP funding for facilities has remained largely unchanged since *West Orange-Cove II*, 176 S.W.3d at 763. If a school district's voters approve, the district may issue bonds to pay for facility construction and renovation, and levy an I&S tax to meet its annual debt-service requirements. 12.CR.304 (FOF 224); *see also* TEX. EDUC. CODE § 45.003. Before a district may issue bonds, it must demonstrate to the Attorney General that it can pay for those bonds, and all previously issued bonds, with a tax rate of 50 cents or less. TEX. EDUC. CODE § 45.0031(a). I&S taxes are not subject to recapture. 12.CR.304 (FOF 226).

The FSP has two programs to assist districts with lowering I&S rates. First, the Instructional Facilities Allotment ("IFA") program creates a guaranteed yield of $35 per ADA per penny of tax effort in order to help districts pay for debt associated with the purchase, construction, renovation,

and expansion of instructional facilities. TEX. EDUC. CODE §§ 46.001-.003; 119.RR(Ex. 1188).14. Eligible districts must apply for funding, and low-wealth districts are prioritized if the demand is too great. 12.CR.304-05 (FOF 227); 119.RR(Ex.1188).14. Once granted, IFA funding is available over the life of the debt. 208.RR(Ex. 6352).12. The Legislature did not appropriate any funding for new IFA grants in 2011 or 2013. 12.CR.305 (FOF 227).

The Existing Debt Allotment ("EDA") program also guarantees districts $35 per ADA for the first 29 cents of tax effort necessary to pay principal and interest on existing bonds. TEX. EDUC. CODE §§ 46.032-.034; 12.CR.305 (FOF 228); 119.RR(Ex. 1188).14. It, however, has no application process. 119.RR(Ex. 1188).14. Since *West Orange-Cove II*, the Legislature has amended the relevant statute to automatically roll forward bond eligibility. TEX. EDUC. CODE § 46.033; 208.RR(Ex. 6352).16.

6. Charter school funding

Charter schools are also funded primarily through the FSP. TEX. EDUC. CODE § 12.106; 19 TEX. ADMIN. CODE § 100.1041. Because they lack taxing authority, charter schools cannot generate local funds, so all of the FSP funding comes from the State. 12.CR.565 (FOF 1498); 119.RR(Ex. 1188).14. Under the FSP formulas, Tier I funding for open-enrollment charters is based

on the state-average adjusted allotment and Tier II funding is based on the state-average M&O tax effort. TEX. EDUC. CODE § 12.106; 12.CR.566 (FOF 1499-1501). There are also limited hold-harmless provisions available to charter schools. *See* 12.CR.566 (FOF 1502); 119.RR(Ex. 1188).14. Charter schools do not, however, receive separate facilities funding. TEX. EDUC. CODE §§ 46.012, .036; 12.CR.566 (FOF 1503). Regardless, as the district court found, the total FSP revenue per ADA in charter schools is nearly identical to that in school districts. 12.CR.566-67 (FOF 1505); 119.RR(Ex. 1188).15.

B. Changes After *West Orange-Cove II*

Following *West Orange-Cove II*, the Legislature amended the school-finance system to cure the state-property-tax violation. Act of May 15, 2006, 79th Leg., 3d C.S., ch. 5, 2006 Tex. Gen. Laws 45, 45-100. Two of the changes, compressed tax rates and golden pennies, are described above. The other major change was the concept of target revenue. TEX. EDUC. CODE § 42.2516.

By compressing tax rates, the Legislature was also reducing the revenue that could be generated by local property taxes. To account for that reduction, the Legislature created a revenue target for each school district. 119.RR(Ex. 1188).2. A district's target was determined by taking the largest of three different calculations designed to show what the district would have received

if its taxes had not been compressed. TEX. EDUC. CODE § 42.2516; *see* 119.RR(Ex. 1188).2.

If a district's Tier I funding, as calculated under the formulas described above, was less than its target revenue, the State made up the difference with what is known as Additional State Aid for Tax Reduction ("ASATR"). TEX. EDUC. CODE § 42.2516; 119.RR(Ex. 1188).2. Immediately after tax rates were compressed, almost every district in the State was funded on its target revenue amount, rather than the Tier I formulas. 276.RR(Ex. 11342).15. But that number has steadily decreased as revenues under the formulas have increased. 276.RR(Ex. 11342).15. Target revenue and ASATR are set to expire on September 1, 2017. TEX. EDUC. CODE § 42.2516; 119.RR(Ex. 1188).4

C. Economic Downturn and Budget Cuts

Beginning in 2008, the nationwide economic downturn caused multiple sources of tax revenue in Texas to underperform. 31.RR.35-37; 273.RR(Ex. 11270).9. FSP funding was not immediately affected, however, because the Appropriations Act provided that any underperformance in taxes supporting the FSP would be compensated for with general-revenue funds. 31.RR.35-36.

In 2009, the Legislature confronted the need to make significant budget cuts, as the Comptroller's estimated revenue was around $10 billion less than

the previous biennium. 31.RR.36-37; 273.RR(Ex. 11270).10. The Legislature responded in part by capitalizing on available one-time federal funding provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"). 31.RR.37. The Legislature appropriated over $5 billion in ARRA funding to public education in the 2010-2011 biennium, 31.RR.37, resulting in a slight increase in education funding, 273.RR(Ex. 11271).8. Still, the continuing financial downturn took its toll, and the Legislature asked agencies to cut their budgets and spending by 7.5% during the 2012-2013 biennium. 31.RR.38-39. The FSP, however, was specifically excluded from that request. 31.RR.38-39.

As anticipated, the Legislature was forced to make another round of budget cuts in 2011. 31.RR.39-41. Although public education could not remain immune, the Legislature continued to prioritize it by allocating 41.5% of all general revenue funds to public education. 273.RR(Ex. 11270).15. The Legislature, however, did reduce projected FSP funding to school districts by $4 billion over the biennium. 133.RR(Ex. 1701).224. It accomplished this in two ways. First, it established the RPAF, a percentage that, when multiplied by a district's adjusted basic allotment, reduced the total allotment. TEX. EDUC. CODE § 42.101(c); 133.RR(Ex. 1701).224; *see supra* n.1. The RPAF was 92.39% in fiscal year 2012, and 98% in fiscal year 2013. 119.RR(Ex. 1188).4.;

133.RR(Ex. 1701).224. Second, the Legislature reduced all districts' target revenues for fiscal year 2013 to 92.35% of the original target. 133.RR(Ex. 1701).224. This had the effect of reducing state-funded ASATR payments to districts with high targets. 133.RR(Ex. 1701).224. The Legislature also cut an additional $1.3 billion in special programs and grants related to public education that were not part of the FSP. 207.RR(Ex. 6322).47, 49.

D. Actions of the 83rd Legislature

As the economy rebounded, the 83rd Legislature restored a significant portion of the lost funds. It effectively eliminated the RPAF by setting that factor at 100%. 293.RR(Ex. 11489).236. And it added $3.4 billion in FSP formula funding and another $2.2 billion to compensate for enrollment growth. 54.RR.88; 293.RR(Ex. 11489).236. It also brought back $290 million for special programs and grants that had been cut. 54.RR.89.

The Legislature increased the revenue generated by the FSP formulas by setting the basic allotment at $4950 for the 2013-2014 school year and $5040 for the 2014-2015 school year. 56.RR.122; 289.RR(Ex. 6618).5. The first equalized wealth level was similarly increased to $495,000 per WADA in 2013-2014 and $504,000 per WADA in 2014-2015. 289.RR(Ex. 6618).5. The guaranteed yield for all golden pennies was increased to $61.86 per penny.

289.RR(Ex. 6618).5. In total, the Legislature appropriated $52.7 billion from all funds to public education, a 7.5% increase over the previous biennium. 293.RR(Ex. 11489).230.

IV. THE CURRENT SCHOOL-FINANCE LAWSUITS

The first of five lawsuits regarding the current public-education system was filed in October 2011 by the TTSFC Plaintiffs, a group comprised of the Texas Taxpayer and Student Fairness Coalition (composed of over 400 school districts), multiple individual districts, several taxpayers, and a parent. 1.CR.5-19; 12.CR.241 (FOF 2). Their live petition asked for a declaration that Texas's public-education system violates article VII, section 1 of the Texas Constitution because it is inadequate, inefficient, and unsuitable; that it violates article VIII, section 1(a) of the Texas Constitution because it imposes a tax that is unequal and not uniform; and that it violates article VIII, section 1-e of the Texas Constitution because it creates a state property tax. 7.CR.439-66. They also asked that the court enjoin the State and its officials from distributing any money under the current school-finance system and that the court require the State Defendants to determine the "true costs" of meeting the constitutional standards. 7.CR.464.

Three additional plaintiff groups filed similar suits in December 2011. 1.CR.26-104. The Calhoun County ISD Plaintiffs, composed of six school districts, alleged that the public-education system is inadequate and unsuitable, and that it imposes a state property tax. 7.CR.489-521. At the same time, however, they asserted that the system is constitutionally efficient. 7.CR.513-14. The Edgewood ISD Plaintiffs are a group of five school districts and multiple parents, individually and as next friends for their children. 6.CR.30. They claimed that the public-education system is inadequate, inefficient, and unsuitable, and that it creates a state property tax. 6.CR.28-58. In addition, they sought a declaration that "equalization provisions" like recapture and the cap on tax rates are constitutionally required. 6.CR.54-55. Finally, the Fort Bend ISD Plaintiffs, composed of eighty-two districts, asserted that the public-education system is inadequate, inefficient, and unsuitable, and that it imposes a state property tax. 7.CR.522-65. The parties and the district court referred to these three plaintiff groups and the TTSFC Plaintiffs collectively as "the ISD Plaintiffs." 12.CR.190.

In February 2012, the Intervenors, who include parents (individually and on behalf of their children), the Texas Association of Business, and non-profit corporation Texans for Real Efficiency and Equity in Education, filed a

plea in intervention. 1.CR.119-35. They brought a state-property-tax claim and a "qualitative efficiency" claim under article VII, section 1, arguing that the public-education system is not "effective or productive of results" for reasons ranging from the cap on charters to the cost-of-education index to the treatment of teachers. 6.CR.59-78. The last to file suit were the Charter School Plaintiffs, a group including parents and the Texas Charter School Association, who requested declaratory and injunctive relief that the system generally, and as applied to charter schools, violates article VII, section 1. 7.CR.641-62. They also asserted that the school-finance system violates the equal-rights provision in article I, section 3 of the Texas Constitution, due to differences in funding between charter schools and school districts, as well as the imposition of a cap on the number of charters. 7.CR.641-62.

The defendants in the various lawsuits included the Commissioner of Education in his official capacity, TEA, the Texas Comptroller of Public Accounts in his official capacity, and the SBOE (collectively, "the State Defendants"). 6.CR.28-78, 7.CR.439-66, 7.CR.489-565, 7.CR.641-62.

The parties agreed, and the district court ordered, that the cases be consolidated for purposes of discovery and trial. 1.CR.142-46; 1.CR.340-42. The parties also agreed to bifurcate the trial and consider attorneys' fees

separately. 1.CR.395-400. The State Defendants filed a plea to the jurisdiction and argued that (1) the Plaintiffs and Intervenors lacked standing because their claims were not redressable; (2) the Plaintiffs' and Intervenors' claims were barred by the political-question doctrine; (3) the Charter School Plaintiffs' claims were barred by sovereign immunity; and (4) any plaintiff suing solely as a taxpayer lacked standing. 2.CR.770-91. The court denied the plea in its final judgment. 12.CR.198.

The district court conducted a bench trial on the merits that lasted from October 2012 to February 2013. 2.RR.1-45.RR.180. Immediately following the parties' closing arguments, the court announced its ruling, finding the system inadequate, inefficient, and unsuitable in violation of article VII, section 1 of the Texas Constitution, and that it also imposed a state property tax in violation of article VIII, section 1-e of the Texas Constitution. 4.CR.98-102; 45.RR.166-80. The court rejected the equal-and-uniform claim brought by the TTSFC Plaintiffs, the qualitative-efficiency claim brought by the Intervenors, and the charter-school-specific claims brought by the Charter School Plaintiffs. 4.CR.98-102; 45.RR.166-80. The parties then submitted requests for attorneys' fees. 4.CR.296-558, 564-873, 884-1008, 1320-47.

Before the district court formalized its ruling in a judgment, the 83rd Legislature amended the public-education system. *See supra* Part III.D. Following several conferences with the parties, the court granted a motion to reopen the evidence "to consider the effect of changes to the public school finance and accountability systems made by the Texas Legislature in the 83rd Regular Session." 5.CR.349-50. Over the ensuing months, Plaintiffs and Intervenors amended their petitions (some multiple times) to account for new facts. 6.CR.28-78, 7.CR.439-66, 7.CR.489-565, 7.CR.641-62. The Intervenors, joined by the State Defendants, filed a plea to the jurisdiction, arguing that any challenge to the system as it existed before the new legislation was moot, and that any challenge to the system as amended was unripe. 6.CR.454-73; 7.CR.363-402. That plea was also denied. 12.CR.198. The court conducted a second phase of trial in January and February 2014. 54.RR.1-64.RR.91.

In August 2014, the district court rendered a final judgment, 12.CR.188-208, and issued findings of fact and conclusions of law, 12.CR.209-591. The court declared that the public-education system violates article VIII, section 1-e's prohibition against a state property tax and article VII, section 1's "adequacy," "suitability," and "financial efficiency" mandates. 12.CR.193-97.

The court further declared that the system does not violate article VIII, section 1(a)'s "equal and uniform taxation" requirement. 12.CR.197-98.

The court denied the Intervenors' claim that the system violates article VII, section 1 on "qualitative efficiency" grounds. 12.CR.198. The court denied the Charter School Plaintiffs' claims that the system, as applied to charter schools, violates article VII, section 1's "suitability" and "efficiency" requirements and article I, section 3's guaranty of "equal rights." 12.CR.198.

The court enjoined the State Defendants from funding public-school education in Texas "until the constitutional violations are remedied." 12.CR.199. The court stayed its injunction until July 1, 2015, "to give the Legislature a reasonable opportunity to cure the constitutional deficiencies in the finance system." 12.CR.199. The court further ordered that the ISD Plaintiffs recover their attorneys' fees and costs from the State Defendants. 12.CR.200-08. But the court denied the requests for attorneys' fees filed by the State Defendants, Charter School Plaintiffs, and Intervenors. 12.CR.200.

SUMMARY OF THE ARGUMENT

The district court lacked jurisdiction over portions of this lawsuit for three independent reasons. *First*, claims challenging the school system under article VII, section 1 present non-justiciable political questions. Time has

proven that there are no manageable standards for assessing the constitutionality of the system; any attempt to conduct this inquiry invariably ventures into prohibited judicial policymaking. *Second*, Plaintiffs and Intervenors lack standing because the relief they sought and obtained—an injunction defunding the schools—cannot possibly redress injuries caused by an allegedly deficient public-education system. *Third*, the case was not ripe at the time of judgment because the 83rd Legislature materially altered the school system following trial, and the relevant student-performance data was not available when the district court reopened the evidence for additional hearings. The Charter School Plaintiffs' claims are additionally barred because they seek to alter the terms and conditions of state contracts without a waiver of the State's sovereign immunity.

If the Court does not dismiss the article VII, section 1 claims for lack of jurisdiction, it should reverse the district court's judgment that the public-education system is constitutionally inadequate. Whether the system satisfies the adequacy standard depends entirely on educational "outputs"—that is, objective measures of students' performance and progress. By contrast, the district court based its judgment that the system is inadequate primarily on an "input"—funding. That improper analysis alone warrants reversal.

Moreover, an appropriately deferential, output-focused assessment of the record shows continued advancement by Texas students even as the system proceeds through a significant transition in curricular focus, the assessment program, and graduation requirements. In particular, the performance measures that the Court relied on in *West Orange-Cove II* as proof of the system's adequacy once again show that the system is achieving the required general diffusion of knowledge.

The district court also erred in concluding that the school-finance system is constitutionally inefficient. Testimony and analyses from multiple experts (including those called by the Plaintiffs) confirmed that the tax-rate and revenue gaps present in the current system are similar to or smaller than those that the Court upheld in *Edgewood IV* and *West Orange-Cove II*. The district court, however, did not credit those figures but chose to focus on hypothetical situations, unique analyses, and smaller pieces of the whole system, contrary to this Court's precedent. The district court also failed to give appropriate deference to the Legislature. When all of the evidence is put into perspective, the Court should conclude that the Legislature did not act arbitrarily in creating the current system, but structured it to remain efficient

by guaranteeing sufficient funding to property-poor districts and holding funding for property-wealthy districts in check.

Because the public-education system is efficiently accomplishing a general diffusion of knowledge, it also is *per se* suitable. Nothing about the current system's structure, operation, or funding is preventing it from achieving the Legislature's goals for Texas students.

The district court also erred in concluding that the school-finance system imposes an unconstitutional state property tax. Based on the metrics discussed in *West Orange-Cove II*, the system is better off: far fewer districts are taxing at the statutory cap ($1.17) than were taxing at the old statutory cap of $1.50, and the impact of recapture on the system and the average district subject to recapture is measurably decreased. The districts who assert that they have lost discretion to raise supplemental funds have not demonstrated an inability to provide supplementation; rather, they have wrongly presumed that adequacy requires a certain expenditure of money and that they cannot raise that presupposed amount under the current tax system. The district court erroneously reasoned that the relevant cap was $1.04 and criticized the ratio of state to local funding in the system, contrary to the Court's

pronouncements. The districts are not without meaningful discretion to raise additional funds.

If the Court reverses the judgment for the ISD Plaintiffs on any of these claims, it also should reverse the judgment on the parties' attorney-fee requests. Because the district court denied the State Defendants' fee request based on their failure to prevail on most claims at trial, any appellate ruling for the State Defendants would undercut that reasoning and require that the fee issue be revisited on remand. Likewise, the district court's unlawful and inequitable decision to grant the ISD Plaintiffs all of their fees regardless of the outcome of this appeal also would warrant reversal.

Finally, regardless of how the Court rules on the foregoing issues, the district court's retention of "continuing jurisdiction" over this lawsuit until it decides that the constitutional violations have been remedied cannot stand. After a Texas trial court's plenary power expires, it may enforce an injunction or modify an injunction upon a showing of changed circumstances, but it does not have the authority to extend its jurisdiction over a case indefinitely to monitor compliance with a judgment.

STANDARD OF REVIEW

The State Defendants' issues regarding the political-question doctrine, standing, ripeness, sovereign immunity, and continuing jurisdiction all implicate subject-matter jurisdiction. *See WOC II*, 176 S.W.3d at 772 (political question); *Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 580 (Tex. 2013) (standing); *Robinson v. Parker*, 353 S.W.3d 753, 755 (Tex. 2011) (ripeness); *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 95 (Tex. 2012) (sovereign immunity); *In re Lewin*, 149 S.W.3d 727, 741 (Tex. App.—Austin 2004, orig. proceeding) (continuing jurisdiction). Subject-matter jurisdiction presents questions of law that the Court reviews de novo. *City of Houston v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013) (per curiam).

Whether the statutes establishing the public-education system violate the Texas Constitution also are questions of law subject to de novo review. *WOC II*, 176 S.W.3d at 785. To the extent those issues turn on disputed factual matters, the Court defers to the district court's findings of fact. *Id.* "But in deciding ultimately the constitutional issues, those findings have a limited role." *Id.* Specifically, the Court "must focus on the entire record to determine whether the Legislature has exceeded constitutional limitations." *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 520 (Tex. 1995); *accord*

Barshop v. Medina Cnty. Underground Water Conservation Dist., 925 S.W.2d 618, 625 (Tex. 1996) (noting that, in reviewing a statute's constitutionality, "we focus on the entire record presented to us rather than simply relying upon the fact findings of the district court"). And even to the limited extent to which the district court's findings of fact may be relevant, the Court may review those findings for the legal sufficiency of the evidence supporting them. *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994).

The Court reviews an award of attorneys' fees under the UDJA for an abuse of discretion. *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998). A trial court abuses its discretion in making such an award when the award is not equitable or just as a matter of law. *Id.*

ARGUMENT

I. THE LAWSUITS SHOULD BE DISMISSED FOR LACK OF JURISDICTION.

A. Claims Challenging the Public-Education System Under Article VII, Section 1 of the Texas Constitution Present Non-Justiciable Political Questions.

1. Texas's public-education system has become a litigation vortex.

Just six years after the Court issued *West Orange-Cove II*, and for the fifth time since 1989, plaintiff groups have asked the judiciary to determine whether the Texas Legislature fulfilled its responsibility to support and

maintain a public-education system satisfying article VII, section 1 of the Texas Constitution.

To address that question in this case, the parties engaged in a 55-day trial, producing a 309-volume reporter's record containing testimony from nearly 100 witnesses and over 5700 admitted exhibits. 12.CR.228. Much of that evidence was ostensibly proffered to allow the district court to assess the general "reasonableness" of a statewide system consisting of over 1200 school districts and charters, over 8500 school campuses, nearly 335,000 teachers, over 5.15 million students, and roughly $53 billion in annual education expenditures. *See TEA Pocket Edition 2013-14*, http://www.tea.texas.gov/communications/pocket-edition; *see also WOC II*, 176 S.W.3d at 778 ("[T]he crux of [the constitutional inquiry under article VII, section 1] is reasonableness.").

Following three years of litigation and the entry of over 1600 findings of fact and conclusions of law, the district court determined that the Legislature had failed to fulfill its constitutional duties in various respects. *See* 12.CR.581-86 (COL 70-89). As a result, the court enjoined the State Defendants from distributing any funding for the school system, but it stayed its judgment until

July 1, 2015 "in order to give the Legislature a reasonable opportunity to cure the constitutional deficiencies" at hand. 12.CR.586 (COL 95).[2]

The litigation-legislation-litigation cycle that began over 25 years ago has no apparent end. Despite the Court's best efforts to define the contours of article VII, section 1, there is no judicially manageable mechanism for assessing the adequacy, efficiency, and suitability of Texas's public-education system as a whole. Indeed, when the Court last considered the justiciability of these issues, it rightly recognized that courts lack authority to determine "*how*" the Legislature may satisfy the broad dictates of the Constitution. *WOC II*, 176 S.W.3d at 777; *cf. id.* (noting that the judiciary's role is limited to determining "*whether*" the constitutional standards have been met). Without that specific direction, however, interested parties and lower courts lack a meaningful framework for litigating and evaluating the reasonableness of this immensely complex system. The parties are essentially guessing at what they must prove, making the litigation look more like a series of legislative hearings than a trial. *See*, *e.g.*, 12.CR.588 (COL 104) (noting that Plaintiffs "have made significant contributions to the public debate on school finance law through

[2] The district court's order was automatically stayed when the State Defendants filed their notice of appeal. *See WOC II*, 176 S.W.3d at 754 (citing TEX. CIV. PRAC. & REM. CODE § 6.001).

this lawsuit"). What's more, the reasonableness of the system is being judged in a vacuum without reference to the Legislature's competing responsibilities and other factors that remain entirely outside of its control.

At the same time, plaintiff groups have no incentive to stop challenging the system, given the millions of dollars of attorneys' fees that are typically available in these cases. *See* 12.CR.587-91 (COL 101-16). In this particular instance, the district court even attempted to preserve the fee award irrespective of the ISD Plaintiffs' success on appeal. *Id.* In essence, the State is stuck in a cycle of periodically paying private attorneys to attempt to force the Legislature to modify the public-education system.

But time has proven that there is no way for the public-education system to be judged in a court of law. Recognizing that the Court has addressed the justiciability of article VII, section 1 in the past, *see WOC II*, 176 S.W.3d at 776-81, the State Defendants respectfully request that the Court now leave the responsibility for supporting and maintaining the public-education system with the Legislature.[3]

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[3] Since *West Orange-Cove II*, at least two additional state courts have concluded that claims challenging the constitutionality of their public-education systems present non-justiciable political questions. *Neb. Coal. for Educ. Equity & Adequacy v. Heineman*, 731 N.W.2d 164, 183 (Neb. 2007); *Okla. Educ. Ass'n v. State*, 158 P.3d 1058, 1065-66 (Okla. 2007); *see also Woonsocket Sch. Comm. v. Chafee*, 89 A.3d 778, 792-94 (R.I. 2014) (reaffirming that

2. The political-question doctrine restricts courts from conducting standardless trials over matters committed to coordinate branches of government.

The political-question doctrine derives from the separation of powers. *Baker v. Carr*, 369 U.S. 186, 210-11 (1962); *WOC II*, 176 S.W.3d at 778. Although the Court questioned whether the *Baker* factors apply in Texas courts, *WOC II*, 176 S.W.3d at 778, the doctrine should have equal or greater force here, where the separation of powers is embodied in the text of the State Constitution, TEX. CONST. art. II, § 1; *see also City of Corpus Christi v. City of Ingleside*, No. 13-00088-CV, 2014 WL 7403974, at *1-*3 (Tex. App.—Corpus Christi, May 29, 2014, no pet.) (mem. op.) (applying political-question doctrine after *West Orange-Cove II*); *Spring Branch Mgmt. Dist. v. Valco Instruments Co.*, No. 01-11-00164-CV, 2012 WL 2923151, at *7 (Tex. App.—Houston [1st Dist.] July 12, 2012, no pet.) (mem. op.) (recognizing applicability of political-question doctrine).

Rather than providing a simple test, *Baker* identified six factors that a court should examine in determining whether an issue is non-justiciable:

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; [2] a lack of judicially discoverable and manageable standards for resolving it; [3] the

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challenges to the constitutionality of Rhode Island's school system present non-justiciable political questions).

> impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; [4] the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of the government; [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker, 369 U.S. at 217; *see also Zivotofsky v. Clinton*, 132 S. Ct. 1421, 1427 (2012) (focusing on first and second *Baker* factors). Generally speaking, the political-question doctrine prevents courts from undertaking constitutional analysis regarding a coordinate governmental branch's authority that would require "[a] kind of judicial adventurism" to attempt to define that authority. *NLRB v. Noel Canning*, 134 S. Ct. 2550, 2600 (2014) (Scalia, J., concurring in the judgment) ("[I]f the [Recess] Clause really did use 'Recess' in its colloquial sense, then there would be no judicially discoverable and manageable standard for resolving whether a particular break was long enough to trigger the recess-appointment power, making that a nonjusticiable political question." (internal quotation marks omitted)). Questions concerning the constitutionality of Texas's public-education system implicate all six of the *Baker* factors, which

are intertwined to varying degrees. The State will focus on the second and third factors.[4]

3. Questions under article VII, section 1 cannot be adjudicated in a manageable fashion.

There is no judicially discoverable and manageable standard for determining whether the Legislature provided an "adequate," "efficient," and "suitable" public-education system. *See WOC II*, 176 S.W.3d at 752-53 (describing the three constitutional standards embodied in article VII, section 1). Recognizing that these terms are "imprecise," the Court nonetheless concluded in *West Orange-Cove II* that the constitutional standards collapse into a "reasonableness" test. *Id.* at 778 ("The judiciary is well-accustomed to applying substantive standards the crux of which is reasonableness."); *see also id.* at 783-85 (employing an "arbitrariness" standard).

But assessing reasonableness requires identifiable standards and meaningful points of comparison to determine whether the challenged action is deviating outside of acceptable norms, *see*, *e.g.*, *Perdue v. Kenny A. ex rel.*

[4] The State Defendants maintain that article VII, section 1 provides the Legislature with exclusive authority and discretion over "support[ing]" and "maint[aining]" the public schools. TEX. CONST. art. VII, § 1. Recognizing that the Court rejected this textual argument, *WOC II*, 176 S.W.3d at 778, the State intends to focus on structural and practical realties that further demonstrate that these issues are non-justiciable.

Winn, 559 U.S. 542, 550-52 (2010); *Harris Cnty. Appraisal Dist. v. Houston 8th Wonder Prop., L.P.*, 395 S.W.3d 245, 254 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (op. on reh'g), and no such meaningful points exist. Unlike determining whether an individual defendant's conduct fell below well-recognized standards of care, there is no practicable basis to assess the "reasonableness" of a complex statewide school system. It is like asking whether the United States has maintained a reasonable military system. There are no useful points of comparison to assess whether the country structured, operated, and financed the armed forces in a reasonable fashion.

Putting aside the complexity of assessing a statewide school system, Texas's demographics make the State unique and unfit for comparison to other public educators. While Texas has been the nation's second largest state for many years, it also remained one of the fastest growing states during the past decade. 12.CR.246 (FOF 11). Unfortunately, the population of the State also grew increasingly impoverished over that period. 12.CR.246 (FOF 12). By 2012-2013, "economically disadvantaged" students (those eligible for free or discounted meals under federal programs) accounted for 60.4% of the student population. 12.CR.246 (FOF 13). At the same time, ELL students also accounted for 17.1% of the student population in Texas, giving the State the

second-largest ELL population in the country. *Id.* (FOF 15). The rapidly growing low-income and ELL student populations are more difficult and expensive to educate. 12.CR.247-48 (FOF 17, 23). Any reasonableness test would need to account for these factors—but there is no identifiable basis to do so.

In addition, the metrics the Court has prescribed for assessing the constitutionality of the school system do not lend themselves to reasonableness analysis. To take one example, constitutional "adequacy" is supposed to be a "result-oriented"-standard that is "measured in student achievement." *WOC II*, 176 S.W.3d at 788. But again, there are no identifiable standards for courts and interested parties to discern what constitutes "reasonable" student achievement.

In *West Orange-Cove II*, the Court observed that a public-education system that was limited to teaching first-grade reading would obviously be inadequate, but that the system need not teach all students nuclear biophysics to satisfy article VII, section 1. *Id.* at 778. But defining the constitutional bounds with these "extreme" examples, *id.*, has proved to be unmanageable in court. It should not take 60 days of trial and millions of pages of evidence—including expert testimony regarding multiple regressions, endogeneity, the

stochastic frontier, F statistics, dummy variables, and Hansen J statistics, *see*, *e.g.*, 12.RR.96, 131, 171; 13.RR.36-39, 67; 16.RR.119, 131—to determine whether Texas is surmounting the minimum extreme identified in *West Orange-Cove II*. The parties are obviously battling over middle ground. But just where a violation falls within that middle ground is anyone's guess.

For that reason, when confronted with claims under article VII, section 1, courts are invariably delving into "how" the constitutional standards are met—*i.e.*, the exclusive province of the Legislature. *WOC II*, 176 S.W.3d at 777. While taking pains not to compel the Legislature to establish a particular system, the district court concluded that the State's failure to comport with various "best practices" (*e.g.*, maintaining manageable class sizes, establishing quality preschool programs, and raising teacher pay)—"without replacing them with another approach that is supported by research"—was suggestive of constitutional inadequacy. 12.CR.573-74 (COL 31); *see also* 12.CR.574 (COL 32) (observing that schools may need to supply nurses, security guards, guidance counselors, paraprofessionals, libraries with electronic resources, and tutors to provide a constitutionally adequate education).

This is a far cry from concluding that the State failed to provide Texas students with rudimentary math and reading skills. At the same time, courts'

inability to dictate "how" article VII, section 1 may be satisfied results in a morass in which the Legislature is operating without useful direction, while litigants are incentivized to perpetually challenge the system to obtain changes to their liking. The end result is never-ending litigation—at taxpayers' expense—that, at most, results in periodic adjustments to the school system that may or may not respond to the court's concerns.

In *West Orange-Cove II*, the Court suggested that the sheer amount of litigation over article VII, section 1 cannot make it a political question, noting that provisions like "due course of law" and "equal protection" "have inspired far more litigation than article VII, section 1." *WOC II*, 176 S.W.3d at 779. But those provisions apply to an immeasurable array of issues, from cases involving municipal pensions, *Klumb v. Houston Mun. Emps. Pension Sys.*, No. 13-0515, 2015 WL 1276557, at *8-*12 (Tex. Mar. 20, 2015), to child-custody disputes, *In re Dean*, 393 S.W.3d 741, 747-49 (Tex. 2012), to congressional redistricting, *Perry v. Del Rio*, 67 S.W.3d 85, 93-95 (Tex. 2001). Article VII, section 1, in contrast, is generating near-continuous litigation between essentially the same parties over the same, single, discrete subject matter. And given the Court's self-professed inability to determine "how" the

constitutional standards shall be satisfied with any precision, *WOC II*, 176 S.W.3d at 777, there is no reason to believe that the litigation will ever subside.

4. Questions under article VII, section 1 necessarily require non-judicial policy determinations.

Assessing the constitutionality of the school system also requires courts to make policy determinations of a kind clearly meant for non-judicial discretion. After all, a lawsuit challenging the adequacy, efficiency, and suitability of the public-edcuation system is, at bottom, a challenge to the State's budget. And the budget is the ultimate manifestation of the Legislature's policy choices.

In making those policy choices, the Legislature is constrained by economic factors (such as the recent recession); constitutional limits on fundraising, *e.g.*, TEX. CONST. art. VIII, § 24; constitutional limits on spending, *e.g.*, *id.* art. III, § 49a; and the needs of every other agency, service, and program provided by the State. It is impossible to assess the general "reasonableness" of the public-education system without taking account of these other factors and competing interests. Although the district court attempted to substitute its budgeting judgment for that of the Legislature, *see* 12.CR.575 (COL 41) (faulting the State for establishing educational funding "based upon funds that are available rather than what funds are required"),

courts simply lack the tools to engage in this balancing exercise. That is precisely why the framers left public education in the hands of the Legislature.

Decisions concerning the structure, operation, and funding of public education are inherently policy determinations for the Legislature to make. Those decisions merit respect. They should not be second-guessed by courts that lack the means to address them. All of Plaintiffs' and Intervenors' claims under article VII, section 1 should be dismissed as non-justiciable political questions.

B. Plaintiffs and Intervenors Lack Standing to Maintain Claims Under Article VII, Section 1 Because the Relief They Sought and Obtained Does Not Redress Their Alleged Injuries.

Further illustrating that this case is unsuitable for judicial resolution, Plaintiffs and Intervenors sought, and the district court awarded, relief that actually compounds the alleged harms at issue in the hope that the drastic result will cause the Legislature to fix the problems. But the Legislature is not a party to this lawsuit, and even if it were, the district court could not compel it to enact particular laws or appropriate a specific amount of funding for public education. *See* TEX. CONST. art. II, § 1; *WOC II*, 176 S.W.3d at 753. Proper recourse for educational change lies in direct political exchange with the Legislature. *See supra* Part I.A.

The district court paid lip service to these limitations. 12.CR.568 (COL 4). The end-around constructed by Plaintiffs, Intervenors, and the court, however—an injunction defunding the public-education system—will not redress the parties' alleged injuries. Accordingly, Plaintiffs and Intervenors lack standing, and the case should have been dismissed for lack of jurisdiction.

It is axiomatic that a plaintiff must have standing to maintain a lawsuit. *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 150 (Tex. 2012) ("Standing is a constitutional prerequisite to suit."). The doctrine ensures that there is a "real controversy" between the parties that is traceable to the defendants' conduct. *Id.* at 154. The "redressability" prong of the standing test requires the plaintiff to show a "substantial likelihood that the requested relief will remedy the alleged injury in fact." *Id.* at 155-56. Accordingly, if "a plaintiff suing in a Texas court requests injunctive relief . . . but the injunction could not possibly remedy his situation, then he lacks standing to bring that claim." *Id.* at 155. Redressability poses a particular barrier to jurisdiction where the relief sought by the plaintiff requires a non-party to comply with the court's decree. *See id.*

Here, Plaintiffs and Intervenors alleged injuries deriving from the State's purportedly inadequate, inefficient, and unsuitable structure, funding,

and operation of the public-education system. *See*, *e.g.*, 6.CR.37-38, 65-73; 7.CR.445-46, 457, 459-61, 492-93, 501-03, 533, 553-54, 646-47. To remedy those alleged harms, Plaintiffs and Intervenors all asked for declaratory and injunctive relief barring the State Defendants from implementing sections of the Education Code relating to financing public education across the state. 6.CR.55-56; 6.CR.76-77; 7.CR.463-64; 7.CR.514; 7.CR.560; 7.CR.660-61. The district court gave the parties the relief they sought, enjoining the State Defendants from distributing any funds under the current school-finance system until the constitutional violations are remedied by new legislation. 12.CR.586 (COL 95).

Without legislative action, the declaratory and injunctive relief granted by the district court will not cure the harms alleged by Plaintiffs and Intervenors. It does the opposite. After all, an insufficiently and inefficiently funded school system is better than no school system at all.

Courts have repeatedly dismissed cases for lack of redressability in similar circumstances, where alleged underfunding would not be cured by enjoining the operation of the challenged law or program at issue. *See I.L. v. Alabama*, 739 F.3d 1273, 1279-81 (11th Cir. 2014) (injunction prohibiting enforcement of Alabama's tax-rate caps was not likely to redress alleged

underfunding in poor school districts); *Albanese v. FEC*, 78 F.3d 66, 68-69 (2d Cir. 1996) (per curiam) (declaration invalidating federal campaign-contribution limits would not redress plaintiffs' inability to raise sufficient funds to challenge incumbents and candidates backed by wealthy supporters); *Biszko v. RIHT Fin. Corp.*, 758 F.2d 769, 770-72 (1st Cir. 1985) (declaration invalidating law allowing New England purchasers to acquire a Rhode Island bank would return Rhode Island law to point where only in-state buyers could purchase bank, and therefore would not redress plaintiff-shareholders' claim that bank's stock price was artificially depressed); *see also ASARCO, Inc. v. Kadish*, 490 U.S. 605, 613-14 (1989) (declaration invalidating statute permitting Arizona to lease minerals and school-trust lands at flat-rate royalty would not ensure that State would ultimately use any increased funds on public education).

Recognizing that the relief requested will not actually redress the alleged problems with the public-education system, Plaintiffs, Intervenors, and the district court simply assumed that the injunction will spur the Legislature "to cure the constitutional deficiencies" at issue. 12.CR.586 (COL 95). But the Legislature might not pass legislation responding to the district

court's judgment. And even if the Legislature is able to respond, the new legislation might not serve to remedy the parties' alleged injuries.

In all events, Plaintiffs' and Intervenors' mere hope that the Legislature will act in response to the court's judgment is too speculative to establish redressability and jurisdiction. *See ASARCO*, 490 U.S. at 613-14; *I.L.*, 739 F.3d at 1279-81; *Albanese*, 78 F.3d at 69; *Biszko*, 758 F.2d at 772-73; *see also Salmon Spawning & Recovery Alliance v. Gutierrez*, 545 F.3d 1220, 1226-27 (9th Cir. 2008) (plaintiffs lacked standing to challenge validity of agency's biological opinion that was a prerequisite to the United States' entry into a treaty that was allegedly causing salmon over-harvesting, because complete relief depended on President's independent decision to withdraw from treaty); *Wilderness Soc'y v. Norton*, 434 F.3d 584, 590-91 (D.C. Cir. 2006) (claim that National Park Service failed to comply with statutory obligation to forward wilderness recommendations to President was not redressable where Congress had ultimate authority to make wilderness designation).

That the Legislature has a constitutional obligation to maintain and support the public schools does not change the redressability analysis. Courts still cannot compel the Legislature to enact particular laws. *See*, *e.g.*, *City of Corpus Christi v. City of Pleasanton*, 154 Tex. 289, 296, 276 S.W.2d 798, 803

(1955) (noting that courts could not compel the Legislature to pass conservation laws, notwithstanding its constitutional obligation to do so).

At bottom, the district court could not provide Plaintiffs and Intervenors with real relief for their alleged injuries. Destroying the current public-education system in the hope that the Legislature will create a better one is no remedy at all. Plaintiffs' and Intervenors' claims under article VII, section 1 should have been dismissed for lack of redressability.

C. Plaintiffs' Challenge to Texas's Current Public-Education System Is Unripe.

Following the initial 45-day trial between October 2012 and February 2013, but before the district court entered final judgment, the 83rd Legislature enacted a series of laws that materially altered Texas's public-education system. *See supra* Statement of Facts, Part III.D. Upon the ISD Plaintiffs' request and over the State Defendants' objection, *see* State Defendants' Petition for Writ of Mandamus at 7-13, *In re Texans for Real Efficiency & Equity in Educ.*, No. 13-0921 (Tex. Nov. 22, 2013), the district court agreed to reopen the evidence to consider the impact of the 2013 legislation. Those additional hearings were an exercise in futility, however, because there was no way to assess the constitutionality of the nascent legislation at that time. The

relevant data resulting from the changes to the school system simply was not available.

Ripeness is a jurisdictional and prudential doctrine requiring sufficient factual development of the relevant issues before the court may entertain the plaintiff's suit. *Del Rio*, 66 S.W.3d at 250. The doctrine ensures that the court's judgment is not based on uncertain or contingent events that may never occur as anticipated. *Id.*; *see also Atmos Energy Corp. v. Abbott*, 127 S.W.3d 852, 857-58 (Tex. App.—Austin 2004, no pet.) ("T[he] 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." (internal quotation marks and citation omitted)).

At the time the district court reopened the evidence in January 2014, there was insufficient factual development for the court to entertain Plaintiffs' challenge to the 2013 legislation—and thus the current system—under the governing legal standards. The Court has made clear that the adequacy of the State's public-education system must be judged according to its results: "[T]he constitutional [adequacy] standard is plainly result-oriented. It creates

no duty to fund public education at any level other than what is required to achieve a general diffusion of knowledge." *WOC II*, 176 S.W.3d at 788. The "general diffusion of knowledge," in turn, is measured with reference to student-achievement metrics. *See id.* at 788-90 (assessing student test scores, graduation rates, and college preparedness).

The record is devoid of any relevant student-performance data following implementation of the 2013 legislative changes. There are no college-readiness indicators, no STAAR test results, and no graduation rates for the 2013-2014 and 2014-2015 school years, as they did not exist at the time of trial. Hence, there is no way to assess whether the public-education system, as currently structured, is providing a "general diffusion of knowledge." Plaintiffs were forced to speculate that the additional billions of dollars in state funding, alongside altered testing requirements, *see supra* Statement of Facts, Parts II.A.3, 4, II.B.1, 2; III.D, would not affect student performance. *See Waco ISD v. Gibson*, 22 S.W.3d 849, 852 (Tex. 2000) ("[M]ere speculation" that an alleged injury will occur cannot support jurisdiction.).

Because Plaintiffs' adequacy claims are unripe, the district court also lacked jurisdiction over Plaintiffs' additional claims under article VII, section 1, and their state-property-tax claims under article VIII, section 1-e, all of

which are inextricably intertwined with the adequacy analysis. With regard to "efficiency," the constitutional standard "requires substantially equivalent access of revenue only up to a point," and "[t]hat point . . . is the achievement of an adequate school system as required by the Constitution." *WOC II*, 176 S.W.3d at 791. Accordingly, if there is insufficient data to assess the adequacy of the school system as currently structured, then the Court lacks the necessary benchmark against which efficiency must be measured. "Suitability" likewise cannot be assessed without the relevant adequacy data, as the school system is unsuitable only if its structure or operation "prevents it from efficiently accomplishing a general diffusion of knowledge." *Id.* at 793 (noting that suitability "refers specifically to the means chosen to achieve an adequate education through an efficient system.").[5] And whether the system imposes a state property tax depends on the extent to which school districts lack meaningful discretion to set their tax rates because they are directing

[5] The Charter School Plaintiffs' adequacy claims are materially indistinguishable from the ISD Plaintiffs' unripe adequacy claims. *See* 7.CR.648-49. For the reasons discussed in this section, the lack of relevant adequacy data also deprived the district court of jurisdiction over the Charter School Plaintiffs' efficiency and suitability claims, notwithstanding any difference in kind from the ISD Plaintiffs' efficiency and suitability claims. It does not matter that the Charter School Plaintiffs' claims involve structural issues that remain features of the revised public-education system because, regardless of the source of the inefficiency and unsuitability asserted by the Charter School Plaintiffs, the district court still lacked the necessary data against which to assess those claims.

their tax resources to satisfying state requirements designed to achieve a constitutionally adequate education. *Id.* at 795-96.

In short, Plaintiffs could not possibly establish a constitutional violation at the time of trial because there was insufficient factual development for the court to properly assess the public-education system based on its results. The Court should vacate the judgment because it is premised on an analysis of a version of that system that no longer exists.

II. THE CHARTER-SCHOOL PLAINTIFFS' CLAIMS ARE BARRED BY SOVEREIGN IMMUNITY TO THE EXTENT THEY SEEK TO ALTER THE TERMS AND CONDITIONS OF CHARTERS.

To the extent the Charter School Plaintiffs seek to declare the statutory cap on charter schools unconstitutional, change the funding formula for charter schools, or create an entitlement to facilities funding, *see* 7.CR.645-46, 654 (Charter School Plaintiffs' 5th Amend. Pet. ¶¶ 16-22, 50-51), their claims are barred by sovereign immunity because they amount to a suit to reform a contract with the State.

Charter schools are part of the Texas public-education system. TEX. EDUC. CODE § 12.105; *see LTTS Charter Sch., Inc. v. C2 Constr., Inc.*, 342 S.W.3d 73, 77 (Tex. 2011). They are intended to encourage academic

innovation and improve student learning in the public-education system. *See* TEX. EDUC. CODE § 12.001.

Open-enrollment charter schools operate under charters granted by the SBOE. *Id.* § 12.101.[6] They can be operated "in a facility of a commercial or nonprofit entity, an eligible entity, or a school district, including a home-rule school district," *id.*, and are considered to be "part of the public school system," *id.* § 12.105. Currently, the SBOE may grant 225 open-enrollment charters, but that number will increase annually over the next four years to 305 available charters beginning in 2019. *Id.* § 12.101(b-1), (b-2).

The legal status of open-enrollment charter schools is governed by Chapter 12, subchapter D of the Education Code. That subchapter states that the educational programs provided by open-enrollment charter schools are treated as "public schools" for purposes of the Education Code. *Id.* § 12.103. Subchapter D, then, expressly applies a series of provisions outside the

[6] "Open-enrollment" charter schools are distinct from charter schools operated directly by a school district or other educational institution. *See* TEX. EDUC. CODE § 12.002 (creating categories of charter schools). The other types of charter schools function under charters granted by a school district or the SBOE. *See id.* § 12.011 (home-rule school district charters are granted by board of the home-rule school district); *id.* § 12.052 (campus charter schools are granted by either the board of a home-rule school district or a non-home-rule school district); *id.* § 12.152 (authorizing the SBOE to create charters at public institutions of secondary education). Private institutions of secondary education and other private entities are limited to operating open-enrollment charter schools.

Education Code governing the rights of governmental entities to open-enrollment charter schools. *E.g.*, *id.* § 12.1051 (stating that Chapters 551 and 552 of the Government Code apply to open-enrollment charter schools); *id.* § 12.1052 (same for Title 6 of the Local Government Code and Subchapter J of Chapter 441 of the Government Code).

The Education Code provides that a charter school is to be treated as a "public school" for purposes of the Code. *E.g.*, *id.* § 12.103(a) (making open-enrollment charter schools subject to federal and local statutes and zoning regulations governing "schools"). It does not say that a charter school is to be treated as a "school district." Open-enrollment charter schools enjoy specific statutory rights "to the same extent as a school district," *id.* § 12.1056, but are treated as schools, *not* school districts, by the Education Code's plain text, *e.g.*, *id.* § 12.103(a) (specifying that open-enrollment charter schools are treated as "public schools" for purposes of laws other than the Education Code).[7] By

[7] The Education Code further confirms that charter schools are distinct from school districts in that charter schools do not share school districts' privileges or obligations unless those privileges or obligations are affirmatively extended to charter schools. *E.g.*, TEX. EDUC. CODE § 12.104(c) (open-enrollment charter school is entitled to the "same level of services provided to school districts"); *id.* § 12.104(d) (commissioner may allow charter schools "to voluntarily participate in any state program available to school districts"); *id.* § 12.1051(b) (an open-government law "that applies to a school district" will also apply to an open-enrollment charter school).

making open-enrollment charter schools like school districts—but not actually making them into school districts—the Legislature manifested its intent that these "schools" be treated differently from school districts. *See* Tex. Att'y Gen. Op. No. GA-0532 (2007) (distinguishing between the powers granted to schools and those granted to school districts in concluding that a charter school may not operate a police force, even though a school district may).

The Education Code further clarifies that the arrangement by which a charter school becomes entitled to funding, as a school rather than a school district, is in the form of a contract. The distribution of state money to open-enrollment charter schools is limited by the specific provisions of Subchapter D, and those limitations are memorialized in the school's "charter," which is an agreement in the form of a contract between the Commissioner of Education and the chief operating officer of the school. TEX. EDUC. CODE §§ 12.101(a), .112. Payment on a contract is a contingent expectation, not a vested interest in funds. The contingent nature of the payments is confirmed by the text of section 42.258 of the Education Code, which makes clear that the Commissioner can recoup overpayments through withholding. If the payments weren't contingent, the Commissioner would lack the power to withhold funds from future payments automatically. *Id.* § 42.258.

Sovereign immunity bars suits on contract, including suits to establish a contract's validity or require performance under it. *Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855, 858 (Tex. 2002); *W.D. Haden Co. v. Dodgen*, 158 Tex. 74, 77-82, 308 S.W.2d 838, 840-42 (1958). Because the charter schools' right to continued funding is in the form of a contract, a suit to change the amount of that funding or change the conditions under which a charter school participates in the public-education system is a suit on a contract.

The Legislature is presumed to know the common law when it enacts a statute. *E.g.*, *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990). When it determined that charter-school funding would be treated as a contract, it necessarily intended that immunity from suit apply to lawsuits to require payment under, or modify, existing charters.

To the extent that their claims amount to a suit on contract, the Charter School Plaintiffs' requested declarations must be dismissed. The Court does not have jurisdiction, without a specific waiver of immunity, to change the cap on the number of schools, to change the funding, or to expand the scope of funding agreed to under the charter schools' contracts with the State. Thus, although these plaintiffs may bring a suit challenging the constitutionality of

the system to the extent that other individuals and school districts may do so, they cannot sue to obtain a judgment that changes the terms of their contracts by which they participate in the public-education system.

This is not only a settled legal principle, it is common sense. A party entering into a contract voluntarily accepts the terms of the contract. These plaintiffs consented to participate in a system where they were funded based on a per-student average without additional facilities funding. Their lawsuit is, thus, an attempt to use the judicial process to obtain a better bargain than they agreed to in the first place. Coercing the State into providing terms better than those set out in an executed contract is a step beyond a mere suit for contract damages. All the policy rationales for immunity from suit on contracts apply doubly to a suit to obtain, and enforce, contract terms more favorable than the government initially negotiated.

III. As a Matter of Law, the District Court Erred in Declaring That Texas's Public-Education System Is Inadequate Under Article VII, Section 1 of the Texas Constitution.

If the Court does not dismiss this case for lack of subject-matter jurisdiction, it should reverse the district court's judgment and render judgment for the State Defendants on Plaintiffs' adequacy claims.

As discussed above, the Court has adopted "adequacy" as a shorthand label for what it has construed as a requirement in article VII, section 1 of the Texas Constitution that our public-education system "accomplish a general diffusion of knowledge." *WOC II*, 176 S.W.3d at 753.

The Education Code provisions that establish and implement the public-education system are presumed to satisfy that requirement. *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 55 (Tex. 2014) ("We begin, as we do with any challenge to a statute's constitutionality, by presuming that the statute is constitutional."); *see also* TEX. GOV'T CODE § 311.021 (in enacting statutes, the Legislature presumably intends to comply with the Texas Constitution). As the parties challenging the system as inadequate, Plaintiffs had the burden to overcome that presumption. *Union Carbide*, 438 S.W.3d at 55; *Gen. Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 598 (Tex. 2001).

In reviewing de novo whether Plaintiffs met their burden, the Court must uphold the public-education system as constitutionally adequate so long as it is not "arbitrary." *WOC II*, 176 S.W.3d at 784-85; *Mumme v. Marrs*, 120 Tex. 383, 396, 40 S.W.2d 31, 36 (1931). The Legislature acts arbitrarily when it enacts laws "without reference to guiding rules or principles." *WOC II*, 176 S.W.3d at 784. Accordingly, "[i]f the Legislature's choices are informed by

guiding rules and principles properly related to public education—that is, if the choices are not arbitrary—then the system does not violate [article VII, section 1]." *Id.* at 785.

The Court has described this arbitrariness standard as "very deferential" to the Legislature. *Id.* at 790. It affords the Legislature "broad discretion to make the myriad policy decisions concerning education" and "much latitude in choosing among any number of alternatives that can reasonably be considered adequate." *Id.* at 784. A "mere difference of opinion" between the courts and the Legislature on education policy will not support a judgment that the system is arbitrary. *Id.* at 785 (citations and internal quotation marks omitted).

Under this deferential test, the district court's conclusion that Texas's public-education system is inadequate and therefore unconstitutional cannot stand. Whether the system satisfies the adequacy standard depends entirely on educational "outputs"—that is, students' performance and progress. The district court strayed far from the proper analysis on many fronts, ultimately basing all of its declarations regarding the system's alleged inadequacy on an "input"—funding. An appropriately deferential, output-focused assessment of

the record shows that, to the extent courts can evaluate the current system at this stage of its implementation, the system is constitutionally adequate.

A. In a Constitutionally Adequate System, Schools Are Reasonably Able to Afford Students Access to a Quality Education and a Meaningful Opportunity to Acquire Essential Knowledge and Skills as Defined by the Legislature.

The Court has held that article VII, section 1 of the Texas Constitution requires that an "adequate" public-education system accomplish the "general diffusion of knowledge" referenced in that provision. *Id.* at 787. But generally the "Legislature is entitled to determine what public education is necessary" to achieve that general diffusion of knowledge. *Id.* at 784. The only constraint on that prerogative is that the Legislature may not set that education level so low that it defaults on its constitutional duty to make "suitable" provision for a public-education system. *Id.*; *Edgewood IV*, 917 S.W.2d at 730 n.8.

The Court has looked to sections 4.001(a) and 28.001 of the Education Code for the Legislature's description of the education needed for a general diffusion of knowledge. *WOC II*, 176 S.W.3d at 787-89. Section 4.001(a), which has not changed since *West Orange-Cove II*, identifies the system's overall mission and links it to article VII, section 1:

> The mission of the public education system of this state is to ensure that all Texas children have access to a quality education that enables them to achieve their potential and fully participate

> now and in the future in the social, economic, and educational opportunities of our state and nation. That mission is grounded on the conviction that a general diffusion of knowledge is essential for the welfare of this state and for the preservation of the liberties and rights of citizens.

TEX. EDUC. CODE § 4.001(a). And section 28.001, which has never changed, announces the Legislature's goals for the "essential knowledge and skills" that SBOE develops for the public-school curriculum:

> It is the intent of the legislature that the essential knowledge and skills developed by the State Board of Education under this subchapter shall require all students to demonstrate the knowledge and skills necessary to read, write, compute, problem solve, think critically, apply technology, and communicate across all subject areas. The essential knowledge and skills shall also prepare and enable all students to continue to learn in postsecondary educational, training, or employment settings.

Id. § 28.001.

Drawing from these two statutes, the Court held in *West Orange-Cove II* that the public-education system is accomplishing a general diffusion of knowledge, and is therefore constitutionally adequate, when school districts (and, presumably, charter schools) "are *reasonably* able" to provide their students (1) "*access* to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation"; and (2) "a *meaningful opportunity* to acquire the essential knowledge and skills reflected in

curriculum requirements such that upon graduation, students are prepared to continue to learn in postsecondary educational, training, or employment settings." 176 S.W.3d at 787 (internal quotation marks, citations, and ellipses omitted). The Court stressed the modifier "reasonably" to explain that the system "need not operate perfectly." *Id.*; *accord id.* at 784 (noting that the adequacy standard "do[es] not require perfection"). And the Court cautioned that the Education Code provisions "cannot be used to fault a public education system that is working to meet [those statutes'] stated goals merely because it has not yet succeeded in doing so." *Id.* at 789.

B. Because Constitutional Adequacy Is Measured by Educational Results, the System's Accountability Regime Presumptively Provides That Measure.

Whether the public-education system is accomplishing a general diffusion of knowledge as defined above "depends *entirely* on 'outputs'—the results of the educational process measured in student achievement." *Id.* at 788 (emphasis added) (agreeing with that description of the standard). In other words, "the constitutional standard is plainly result-oriented." *Id.*; *see also id.* at 789 (concluding that the system is constitutionally adequate based on improving test scores).

Because educational outputs provide the recognized gauge of constitutional adequacy, assessing an "input" such as the resources supplied to produce student performance and progress necessarily is *not* the proper test. Article VII, section 1 "creates no duty to fund public education at any level other than what is required to achieve a general diffusion of knowledge." *Id.* at 788. Whether the Legislature has fulfilled that duty can be determined only through objective measures of the system's outputs, because "[w]hile the end-product of public education is related to the resources available for its use, the relationship is neither simple nor direct" and "more money does not guarantee better schools or more educated students." *Id.*; *accord Horne v. Flores*, 557 U.S. 433, 464 (2009) (acknowledging the "growing consensus in education research that increased funding alone does not improve student achievement").

Likewise, article VII, section 1 does not dictate that the Legislature employ any particular educational theory or practice in accomplishing a general diffusion of knowledge. *See WOC I*, 107 S.W.3d at 563-64 (holding that "the Legislature has the sole right to decide *how* to meet the standards set by the people in article VII, section 1"). Thus, courts cannot review those sorts of non-monetary inputs either. *See WOC II*, 176 S.W.3d at 779 (noting that

"much of the design of an adequate public education system cannot be judicially prescribed"). If objective measures of student progress show that the system is achieving a general diffusion of knowledge, then the system's resources and methods are, by definition, constitutionally adequate.

The public-education system includes an accountability regime that requires schools to provide the educational access and opportunity to learn the curriculum described above and evaluates their performance in doing so. *See generally* TEX. EDUC. CODE ch. 39. For that reason, the Court presumes, "in deference to the Legislature," that districts and schools that meet satisfactory performance standards under that regime are "achiev[ing] a general diffusion of knowledge." *WOC II*, 176 S.W.3d at 787; *accord WOC I*, 107 S.W.3d at 581 (presuming that the requirements for an "accredited" education and a general diffusion of knowledge are "identical"); *Edgewood IV*, 917 S.W.2d at 730 ("The accountability regime . . . meets the Legislature's constitutional obligation to provide for a general diffusion of knowledge statewide.").

C. The District Court's Adequacy Analysis Was Flawed.

The district court made several missteps in concluding that Texas's public-education system is inadequate and therefore unconstitutional. The court erroneously held that the ISD Plaintiffs rebutted the presumption that

districts and schools meeting performance standards under the accountability regime are providing a constitutionally adequate education. And the court compounded that error by wrongly grounding its adequacy analysis in the system's inputs; indeed, each of the final judgment's declarations regarding adequacy is expressly tied to funding. To the extent the court did examine the system's results, it failed to heed this Court's directive that statutory educational goals cannot be used to fault a system working toward those goals—an especially important imperative given that Texas is in the early stages of a new testing and accountability regime. Finally, the court invented a non-cognizable constitutional violation in declaring the system inadequate "as applied" to certain student groups. For these reasons, the final judgment for Plaintiffs on their adequacy claims should be reversed.

1. The district court wrongly concluded that the ISD Plaintiffs rebutted the presumption that meeting accountability standards fulfills the constitutional adequacy requirement.

The district court determined that the ISD Plaintiffs rebutted the presumption that schools and districts that satisfy the system's accountability requirements are achieving a general diffusion of knowledge. 12.CR.273-76 (FOF 111-122). The court reached that conclusion based on four distinct criticisms of the current accountability regime: (1) two performance indices do

not measure the performance of particular disaggregated student groups; (2) the accountability system does not cover schools' and districts' ratings on community and student engagement; (3) the system is allegedly designed to ensure that most districts and schools meet the standards; and (4) the performance standards start at low levels now and will be phased in over time. 12.CR.274-76 (FOF 116-121). But those objections betray a misunderstanding of how the accountability regime works, afford no deference to the Legislature's choices, and ultimately do not overcome the presumption that a satisfactory rating reflects the achievement of a general diffusion of knowledge.[8]

a. The district court's criticism of the composition of individual performance indices was inapt.

The district court first found it significant that Index 2, "Student Progress," does not track the progress of economically disadvantaged

[8] Although included in the findings of fact, the district court's determination that the ISD Plaintiffs rebutted the presumption that meeting accountability standards achieves a general diffusion of knowledge is a legal conclusion subject to de novo review. Whether the public-education system is constitutionally adequate is a question of law. *WOC II*, 176 S.W.3d at 785. Therefore, the presumption that an education that meets accountability requirements is achieving a general diffusion of knowledge is a presumption of law, not fact. To decide whether the ISD Plaintiffs rebutted that presumption, the court certainly could have relied on sufficiently supported fact-findings about the accountability regime; but whether those facts, in light of the record as a whole, defeat that presumption also presents a question of law.

students as a disaggregated group, and that Index 3, "Closing Performance Gaps," does not measure the performance of ELL students as a disaggregated group. 12.CR.274 (FOF 116). Those myopic quibbles ignore the function of the accountability regime as a whole.

Each of the four indices serves a unique purpose, and no single index alone aims to assess a district's or a school's overall performance. 30.RR.110; 287.RR(Ex. 5785).29. Rather, by design the regime "look[s] at all four indexes together" to obtain a "more broad[] and comprehensive picture of how a school is performing." 30.RR.110. Faulting the entire accountability regime based on what one index does not measure is like giving a restaurant a bad review because the dessert menu does not contain an entree.

With that in mind, the alleged defects in the indices cited by the district court are not defects at all. TEA did not separately assess economically disadvantaged students in Index 2 because Index 3 already measures their performance as a distinct group and the advisory committees had recommended that TEA minimize redundancy among the various indices. 287.RR(Ex. 5785).156-57. Moreover, Index 2 evaluates the progress of *10* different student groups, all of which include economically disadvantaged students. 301.RR(Ex. 20225).

Index 3 specifically measures the closing of achievement gaps for three sets of students: all economically disadvantaged students and the two lowest-performing racial or ethnic groups from the prior year. 301.RR(Ex. 20225). TEA could reasonably have concluded that focusing on the performance of those particular groups, all of which may include ELL students, would reliably reflect how a school or district is closing performance gaps for *all* students. *See* 287.RR(Ex. 5785).158. And Indices 2 and 4 already assess ELL students as a disaggregated group. 301.RR(Ex. 20225).

Thus, the decision to disaggregate a particular student group in some indices and not others was not arbitrary, and those choices certainly do not undermine the accountability regime's overall efficacy.

b. Community-and-student-engagement ratings are not an indispensable component of the accountability regime.

The district court also suggested that the accountability system is somehow under-inclusive because it does not incorporate how districts rate themselves and their campuses on community and student engagement—ratings that the Education Code requires them to make based on locally determined criteria. 12.CR.275-76 (FOF 121); TEX. EDUC. CODE § 39.0545. That complaint also misses the mark.

As a threshold matter, the district court jumped the gun by criticizing the 2013 accountability regime for this alleged omission. The Legislature did not enact this rating requirement until June 2013, TEX. EDUC. CODE § 39.0545, and TEA did not adopt the rule implementing the ratings until June 2014, 19 TEX. ADMIN. CODE § 61.1023.

The court's criticism also ignored the basis of the presumption that satisfactory performance under the accountability regime achieves a general diffusion of knowledge—namely, that the regime "holds schools and districts accountable for teaching" the prescribed "education curriculum" through testing and graduation standards. *WOC II*, 176 S.W.3d at 787. Some components of the community-and-student-engagement ratings overlap with that curriculum, *e.g.*, TEX. EDUC. CODE § 39.0545(b)(1)(A), (B) (fine arts and wellness and physical education), but others do not, *e.g.*, *id.* § 39.0545(b)(1)(C), (H) (community and parental involvement and gifted-and-talented programs). Therefore, excluding those ratings from the accountability regime does not subvert its legitimacy as a proxy for adequacy because the rating components that overlap with the curriculum are already accounted for (*e.g.*, passing a fine arts class to graduate), and the non-curricular components are unrelated to a general diffusion of knowledge. Moreover, because the ratings are based on

locally determined criteria, *id.* § 39.0545(c), they would not be comparable across school districts in any event.

These ratings still have value to parents, students, and educators—for example, they are publicly reported. *Id.* § 39.0545(a). But they are not necessary to ensure that the accountability regime reflects a constitutionally adequate education.

c. TEA does not "fix" the accountability regime's results.

The district court next charged that TEA manipulates the accountability regime to "ensure" that most districts and schools pass muster, not to measure whether they are achieving a general diffusion of knowledge. 12.CR.274 (FOF 117). No evidence supports that finding.

The advisory groups that recommend targets for the performance indices do consider, among other things, how districts and schools would be expected to fare at various levels under review. 287.RR(Ex. 5785).158, 201. But TEA does not use those models to set a "goal" for the number of districts and campuses that will meet accountability standards or to achieve a particular outcome in that regard. 287.RR(Ex. 5785).200-01, 219.

More importantly, those projections are just that—projections. Because performance varies across years, TEA cannot "ensure" that targets

set for the next year will result in a certain number of districts and schools reaching a satisfactory accountability rating. *See* 287.RR(Ex. 5785).112-13.

And projections at various targets are only one consideration in the complex process of designing the accountability regime. For example, TEA set the Index 3 target higher than the advisory groups' recommendation to emphasize the importance of closing achievement gaps in the current system. 287.RR(Ex. 5785).46-47.

If anything, the advisory groups are merely considering Texas students' current level of educational achievement when setting future standards—a practice that could hardly be called arbitrary, much less an obstacle to achieving a general diffusion of knowledge. Indeed, that common practice proved effective over time, as reflected in Texas students' academic progress under the TAKS testing program. *See* 30.RR.82-99; 272.RR(Ex. 11245).2-12.

d. Using phased-in testing standards does not prevent the accountability regime from measuring a general diffusion of knowledge.

The district court also took issue with the fact that, in 2013, the accountability system did not consider whether students have reached the STAAR "Level II" final standard equated with college or career readiness. 12.CR.274-75 (FOF 118-19); TEX. EDUC. CODE § 39.116(c)(1) (requiring

reporting of this indicator but excluding it from the 2012-2013 accreditation regime). In fact, the court generally disapproved Texas's historic practice of "slowly phasing in standards" because that purportedly allows "poor performance to constitute what is 'acceptable.'" 12.CR.275 n.32. Relatedly, the court complained that the current targets for meeting standards on the applicable indices "are set too low to measure a general diffusion of knowledge." 12.CR.274 (FOF 119). As support, the court cited examples of three districts that, in its view, had performed "incredibly poor[ly]" on the STAAR exam in 2012-2013 and yet were rated "met standard." 12.CR.275 (FOF 120). Those objections lack merit.

In requiring the SBOE to incorporate college-and-career-readiness standards into the essential knowledge and skills, the Legislature envisioned a *process* for Texas students, not overnight results. The very statute that directs the inclusion of college-readiness standards and expectations in the essential knowledge and skills is captioned "*Advancement* of College Readiness in Curriculum." TEX. EDUC. CODE § 28.008 (emphasis added). And the Legislature requires the Commissioner of Education to raise student-achievement indicators in the accountability regime periodically so that Texas may attain the objective of ranking among the top ten states in college

readiness by the 2019-2020 school year. *Id.* § 39.053(f). In other words, to the extent that the introduction of college-and-career-readiness standards into the essential knowledge and skills further defines what constitutes a general diffusion of knowledge, the Legislature intended to establish a progressive, evolving metric. Phasing in and gradually increasing standards in the accountability regime are consistent with that evolution.

Indeed, phasing in testing standards is a necessary outgrowth of moving to increased curriculum demands and a more rigorous test designed to assess how students are meeting those demands. Educators require time to adapt to teaching new skills, both through professional development and in the classroom, and students need time to adjust to a new type of test. 27.RR.18-19, 51-52. Phasing in the expected standards allows those adjustments to occur. 27.RR.18-19.

Setting those phase-in standards was by no means an arbitrary process. Educators, legislative representatives, business and community leaders, representatives of higher education, and parents of Texas public-school children collaborated to recommend passing scores on the STAAR exams. 27.RR.43-51; 301.RR(Ex. 20224).9. Of those 30 recommended passing scores, TEA adjusted only five. 27.RR.50. And those passing scores in turn formed

the basis for the phase-in scores, which TEA calculated using studies linking expected performance on STAAR to external measures of college and career readiness (*e.g.*, SAT scores), past performance on the TAKS exams, and student-motivation research. 27.RR.44-45, 51-52; 28.RR.41-42.

The district court ignored these considerations and substituted its own judgment for what constituted "poor performance" on the STAAR test at this stage. 12.CR.274-75 (FOF 119-20). But testing standards cannot be evaluated in a vacuum; they must be assessed in relation to a test's difficulty. The STAAR exams "were designed to be more rigorous than the TAKS program." 27.RR.35-36; *see also* 28.RR.21. The STAAR end-of-course tests in particular "measure in much greater depth the content of any one of those courses versus what we might have measured on the exit level TAKS tests." 27.RR.35. And historically, Texas has seen that "student performance in the first year of a new [testing] program tends to be lower than it was in the last year of the previous program, and we see increases over time." 27.RR.68; *see also* 28.RR.159. Indeed, performance on TAKS increased to the point where "many students had outgrown it" in that they were "topping out on the test" and "couldn't demonstrate what they actually knew." 27.RR.37-38; *see also* 28.RR.12-13, 20, 103. Therefore, using the lower, phase-in passing scores for

the 2013 accountability regime did not reward "poor performance," as the district court suggested; rather, it reasonably factored in the historic reality of moving to a more difficult testing scheme and judged schools and districts accordingly.

The district court also disregarded the comprehensive nature of the accountability regime to manufacture its examples of purportedly poor-performing districts. For instance, the court isolated the grade levels with the lowest testing results in Kermit ISD and La Pryor ISD to call into question those districts' 2013 "met standard" ratings. 12.CR.275 (FOF 120). But the court ignored the fact that, for all grades in all subjects, those districts' students passed the phase-in standards at rates of 60% and 62% respectively, both showing improvement from 2012. 303.RR(Ex. 20247).3; 303.RR(Ex. 20248).3.

Past practice demonstrates that phasing in standards for a new assessment and accountability regime does not hinder achievement of the Legislature's goals for a general diffusion of knowledge. In *West Orange-Cove II*, the district court levied essentially the same complaint against the former accountability regime and the TAKS test. 176 S.W.3d at 787 (noting that the district court found that TAKS cut scores and passing rates were too low and

"not [set] to reliably measure achievement"). Yet the system-wide performance that the accountability regime deemed generally acceptable at that point was also held by this Court to be constitutionally adequate. *Id.* at 789-90. That judgment was borne out over the life of the TAKS, as student performance steadily increased and achievement gaps narrowed. 27.RR.19-29; 272.RR(Ex. 11241).3-18.

The current accountability regime and STAAR test are now in roughly the same stage of implementation as the former regime and TAKS test were in *West Orange-Cove II*. *See* 287.RR(Ex. 5796).22; *see also infra* Part III.D. And TEA reasonably anticpates that the TAKS pattern of improved performance should develop over time under the STAAR testing program and the new accountability regime. 27.RR.55-56. Thus, as in *West Orange-Cove II*, the district court's concerns about phasing in testing standards were overstated. The court should have deferred to the Legislature and presumed that satisfactory ratings under the accountability regime reflect a general diffusion of knowledge.

2. The district court erroneously focused on inputs in declaring the public-education system inadequate.

Having set aside the presumption that districts and schools rated satisfactory under the accountability regime are providing a general diffusion

of knowledge, the district court proceeded to conduct its own appraisal of the public-education system and declared that it fails the constitutional adequacy standard. 12.CR.195-96; *see also* 12.CR.571-75, 581-82, 586 (COL 20-35, 70-75, 89). But that declaratory relief and the related conclusions of law reflect a fundamental error in the court's analysis. The court ultimately based its judgment that the system is inadequate on what it viewed as deficiencies in educational "inputs"—chiefly, funding—rather than the educational "outputs" that are the only proper adequacy metric. *WOC II*, 176 S.W.3d at 788.

a. The district court wrongly based all of its declarations about the system's inadequacy on funding levels.

Each of the final judgment's seven declarations regarding adequacy is impermissibly predicated on funding in some respect. 12.CR.195-96. For that reason alone, the Court should reverse the judgment on the adequacy claims.

The only adequacy declaration that even mentions educational outputs is the first one, but that declaration is tainted because it asserts that the performance measures considered by the court "demonstrated that Texas public schools are not accomplishing a general diffusion of knowledge *due to inadequate funding*." 12.CR.195 (emphasis added). Adequacy of funding is not the issue. "Adequacy" refers only to whether the system is accomplishing

the "general diffusion of knowledge" described in article VII, section 1, and that is a "result-oriented" standard. *WOC II*, 176 S.W.3d at 753, 788.

Moreover, by issuing a judgment specifying that funding levels in particular are causing the system to fall short of achieving a general diffusion of knowledge, the district court failed to heed this Court's command that judges "do not prescribe *how* the [article VII, section 1] standards should be met." *Id.* at 753. If performance measures show that the system is inadequate—and they do not, *see infra* Part III.D—then the Legislature is entitled to determine the extent to which funding levels are the cause and more money is the solution. *WOC II*, 176 S.W.3d at 784 (holding that "[t]he Legislature is entitled . . . to determine the means for providing that education" necessary for a general diffusion of knowledge). Declaring the system in violation of article VII, section 1 "due to inadequate funding" thus amounts to an improper attempt by the district court to "substitute [its] policy choices for the Legislature's." *Id.* at 785. And coupling that declaration with an injunction that shuts down the schools "until [in the district court's view] the constitutional violations are remedied," 12.CR.199, is tantamount to a

directive to the Legislature to appropriate funds—a clear breach of the Texas Constitution's separation-of-powers mandate. TEX. CONST. art. II, § 1.[9]

The district court's remaining adequacy declarations suffer from the same defect because they all depend on the court's assessment of the purported "cost" of a constitutionally adequate education:

- "[T]he cost of meeting the constitutional mandate of adequacy (the 'general diffusion of knowledge') exceeds the maximum amount of funding that is available" to the ISD Plaintiffs at both the $1.04 and $1.17 M&O tax rates. 12.CR.195.

- "The current structure of the school finance system is such that districts cannot generate sufficient revenues to fund and provide an adequate education." 12.CR.196.

- "[T]he funding for economically disadvantaged and English Language Learner students is inadequate and arbitrary." 12.CR.196.

- "[C]onsidered separately, and as part of the total school finance system, facilities funding is arbitrary and inadequate in providing Texas school children with the constitutional mandate of adequacy." 12.CR.196.

[9] Indeed, the district court specifically found that the Legislature fell $6.16 billion short of funding a constitutionally adequate education each year in the 2012-2013 biennium, 12.CR.393-94 (FOF 619-20), and that an adequate education currently requires "additional spending of approximately $800 per WADA (on average) over 2014-15 levels," 12.CR.398-99 (FOF 635). Presumably, then, the court plans to monitor and assess future education appropriations under its "continuing jurisdiction" in deciding whether to lift its injunction. *See* 12.CR.208; *see also infra* Part VIII.

- "[T]he M&O and I&S funding available under the school finance system as a whole is insufficient to achieve a general diffusion of knowledge." 12.CR.196.

- "[F]unding for open-enrollment charter schools also is inadequate" because "charter schools are financed based on state averages of school district M&O funding levels." 12.CR.196.

Again, because the public-education system's achievement of a general diffusion of knowledge "depends entirely on 'outputs'—the results of the educational process measured in student achievement," *WOC II*, 176 S.W.3d at 788, these declarations that the system's *funding* is inadequate do not describe cognizable adequacy violations.

The district court apparently believed that this Court has approved some form of funding-oriented adequacy analysis based on the following language from *West Orange-Cove II*: "It would be arbitrary, for example, for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals." *Id.* at 785, *quoted in* 12.CR.195-96. But that statement does not describe an *adequacy* violation. The quote appears in Part III.A of the Court's opinion, which explains that the Legislature's satisfaction of its duties under article VII, section 1 *generally* is judged according to an "arbitrariness" standard. 176 S.W.3d at 783-85. The Court did not say,

however, that the quoted example of an arbitrary act would violate the adequacy requirement in particular. And for good reason: the Court held in the following section that constitutional adequacy is measured by educational outputs, not inputs. *Id.* at 788. If the arbitrary act is providing "insufficient means" to accomplish what the Legislature defines as a general diffusion of knowledge, that act pertains at most to the system's "suitability," not its adequacy. *Id.* at 793 (noting that "the requirement of suitability . . . refers specifically to the *means* chosen to achieve an adequate education" (emphasis added)). The district court thus misplaced reliance on the "insufficient means" language from *West Orange-Cove II* to predicate its entire adequacy judgment on funding levels.

b. The district court's conclusions of law related to adequacy also impermissibly hinge upon educational inputs.

The district court's conclusions of law related to adequacy are also wrongly based on funding. According to the court, the constitutional adequacy mandate requires the State to determine the "cost" of attaining a general diffusion of knowledge and to ensure that school districts are funded at that cost. 12.CR.573 (COL 28-30). The court then concluded that the system is inadequate because school districts cannot access that level of funding for

maintenance and operations and facilities. 12.CR.574-75 (COL 33-35). And the court extended that conclusion to charter schools solely because they "are financed based on state averages of school district M&O funding levels." 12.CR.586 (COL 89). Because funding is an input rather than an output, these conclusions do not support a judgment that the system is inadequate.

The district court's conclusions of law on adequacy also effectively constitutionalized numerous other educational inputs. For example, the court cited superintendents' and experts' opinions about various "best practices" for attaining college and career readiness, such as class sizes, preschool programs, teacher salaries, summer-school and after-school programs, and vocational and career courses. 12.CR.573 (COL 31). Although the court disclaimed any intent to order the Legislature to adopt those measures as constitutional minima, 12.CR.573 (COL 31), that restraint did not survive to the end of the sentence. In the next clause, the court decreed that the Legislature's failure to implement either those practices *or reasonable, research-supported substitutes* "could be considered arbitrary and unconstitutional." 12.CR.573-74 (COL 31). Again, that logic runs afoul of this Court's directive that judges "do not prescribe *how* the [article VII, section 1] standards should be met." *WOC II*, 176 S.W.3d at 753. It also puts the judiciary in the untenable position

of education policymaker, creating a constitutional issue regarding whether a particular educational practice is reasonable and sufficiently supported by research to replace one that the court approved. *See WOC I*, 107 S.W.3d at 582 (noting that "the courts cannot undertake to review [the Legislature's policy] choices one by one or attempt to define in detail an adequate education").

But the district court went even further, concluding that a constitutionally adequate education extends beyond those select instructional inputs to encompass almost all aspects of the public-education system. For example, the court determined that achieving a general diffusion of knowledge requires a "sufficient support network," including features like "well-maintained" facilities, nurses, security guards, guidance counselors, teachers' assistants, librarians, tutors, and transportation. 12.CR.574 (COL 32). The court also held that *every* mandate imposed on school districts by the Education Code relates to a general diffusion of knowledge. 12.CR.573 (COL 28-29). That list would include requirements such as implementing discipline-management programs, maintaining students' immunization records, and disseminating information about the health risks of steroids. TEX. EDUC. CODE §§ 37.083, 38.002, .0081; 12.CR.573 (COL 28) (including meeting the

mandates of Chapters 37-39 of the Education Code in the "cost of the general diffusion of knowledge"). That reasoning hardly can be squared with the "result-oriented" adequacy standard described by this Court. *WOC II*, 176 S.W.3d at 788. And it absurdly would require judges to decide whether a school employed enough security guards or a district's immunization recordkeeping was up to date—and as constitutional matters no less.

The district court's intrusion into the legislative and executive branches' policy-making spheres only reinforces this Court's decision that judging the public-education system's constitutional adequacy ultimately requires a "result-oriented" standard "measured in student achievement." *Id.* Because the district court's judgment that the system is inadequate is "input-oriented," rather than result-oriented, it must be reversed.

3. The district court improperly used statutory goals to fault a system working toward those goals.

To the extent the district court considered educational outputs in assessing whether the public-education system is achieving a general diffusion of knowledge, it erred nonetheless in declaring the system inadequate. The court failed to heed this Court's warning that statutory descriptions of the components of a general diffusion of knowledge "cannot be used to fault a

public education system that is working to meet their stated goals merely because it has not yet succeeded in doing so." *Id.* at 789.

As discussed above, although the Legislature's definition of a general diffusion of knowledge is informed by the incorporation of college-and-career-readiness standards into the curriculum's essential knowledge and skills, that step must be considered in the context of other legislative pronouncements about those standards. *See supra* Part III.C.1.d. Again, the Legislature intends that the public-education system "advance" college readiness in the curriculum with the long-term goal of Texas ranking among the top ten states in college readiness by 2020. TEX. EDUC. CODE §§ 28.008, 39.053(f). Other statutes also reflect the Legislature's understanding that increased college and career readiness is an objective the system must be working toward, not a threshold that should already have been cleared. *E.g.*, *id.* § 39.234(b) (permitting the top-performing school districts to use high-school allotment funds for any instructional program if "the district's measure of *progress toward college readiness* is determined [to be] exceptional" (emphasis added)).

The public-education system is still in the early stages of changes designed to achieve the Legislature's vision for Texas schoolchildren. The college-and-career-readiness standards were not fully incorporated into the

curriculum until 2010. 27.RR.13; 272.RR(Ex. 11243).6. That step, in turn, required a new assessment program—STAAR—designed to focus on college and career readiness. 27.RR.33, 36; 189.RR(Ex. 5624).25. STAAR did not begin to replace the former TAKS-based assessment program until spring 2012, 255.RR(Ex. 10400).13, which means that the first students to complete high school under the STAAR program will graduate in 2015. And under the planned phasing-in of STAAR standards, high school freshmen will not be expected to meet the final Level II standard that TEA equates with college readiness until 2021. 27.RR.55. Finally, the endorsement-based graduation plan, which aims to "maintain rigor" in the curriculum while "providing students flexibility to pursue college or career interests," 288.RR(Ex. 6532).9, was just adopted in 2013. TEX. EDUC. CODE § 28.025(b), (c-1).

The district court nonetheless criticized the public-education system's performance in large part for falling short on college-and-career-readiness metrics *now*. For example, the court determined that student performance at the STAAR Level III advanced standard should be considered in evaluating whether the system is currently achieving a general diffusion of knowledge, even though TEA has recommended that college and career readiness be equated with the STAAR Level II final standard, which students will not be

expected to meet before 2021. 12.CR.270-71 (FOF 101). Similarly, the court condemned the 2013 accountability regime because "none of the indices . . . consider[ed] whether students have reached the Level II final standard." 12.CR.274 (FOF 118). And the court specifically used those higher standards to bolster its findings that not enough students "are on track for college readiness." 12.CR.278 (FOF 133) (applying the Level III standard); *see also* 12.CR.282 (FOF 142) (finding that the percentage of students meeting the Level III standard "reflects severe college-readiness deficits"); 12.CR.288 (FOF 156(b)) (rejecting the State Defendants' analysis of testing results because it did not use the "higher standards associated with college readiness").

The district court also unreasonably emphasized short-term shifts in performance in the brief time since college-and-career-readiness standards were incorporated in the curriculum. For instance, the court bemoaned the "sobering" "results of the *initial* round of STAAR tests," 12.CR.277 (FOF 130) (emphasis added), even though historically "student performance in the first year of a new program tends to be lower than it was in the last year of the previous program, and we see increases over time," 27.RR.68. And although the court found that failure rates on STAAR end-of-course tests improved

slightly from 2012 to 2013, 12.CR.281 (FOF 140), it faulted the system for "not produc[ing] substantial progress" over the course of that single year, 12.CR.283 (FOF 145). Focusing on the same recent period, the court cited a drop in scores on two of four NAEP tests between 2011 and 2013 (scores improved on the other two), 12.CR.293 (FOF 175), and a lack of forward progress "in the transition year from TAKS (2011) to STAAR (2012)," 12.CR.296-97 (FOF 189-96).

The Legislature rightly set high goals of college and career readiness for the public-education system, but it did not expect to reach those goals only a few years after incorporating those standards into the curriculum and within two cycles of a more rigorous assessment program. As the ISD Plaintiffs' college-readiness expert conceded, "[i]t will take time." 22.RR.36. Performance measures show that the system is working to meet those objectives, as discussed below. *See infra* Part III.D. Because the district court discounted those advances and faulted the system for having not yet attained high levels of college and career readiness, its judgment that the system is inadequate should be reversed. *See WOC II*, 176 S.W.3d at 789.

4. The district court's conclusion that the system is inadequate "as applied" to certain students is not a cognizable constitutional violation.

The district court separately declared that the public-education system is "inadequate for the provision of a general diffusion of knowledge for economically disadvantaged and English Language Learner students." 12.CR.196; *see also* 12.CR.575 (COL 35) (concluding that the system is inadequate "with respect to the economically disadvantaged and ELL student populations specifically"). And, again, the court further declared that "funding for open-enrollment charter schools also is inadequate." 12.CR.196; *see also* 12.CR.580 (COL 61). Setting aside the previously discussed error in declaring "funding . . . inadequate," *see supra* Part III.C.2, these sorts of "as applied" violations of article VII, section 1 are not cognizable in any event.

With respect to the constitutional efficiency mandate, the Court has explained that "[a]rticle VII, section 1 requires '*an* efficient system of free public schools, considering the system as a whole, not a system with efficient components.'" *WOC II*, 176 S.W.3d at 790 (quoting and adding emphasis to TEX. CONST. art. VII, § 1 (footnote omitted)). There is likewise no reason to believe that the adequacy requirement may be applied to only a *part* of the system. Indeed, the constitutional text refers to a "*general* diffusion of

knowledge," TEX. CONST. art. VII, § 1 (emphasis added), not a diffusion of knowledge among specific student populations.

No one disputes that the performance of economically disadvantaged, ELL, and charter-school students may factor into whether the public-education system *as a whole* is achieving a general diffusion of knowledge. *See WOC II*, 176 S.W.3d at 789. But there cannot be distinct adequacy violations as applied to those disaggregated student groups. Those portions of the final judgment must be reversed.

D. The Record as a Whole Demonstrates That the System Is Constitutionally Adequate.

Under an appropriately deferential, results-oriented evaluation of the public-education system as a whole, the system is constitutionally adequate. Whether viewed through the prism of the accountability regime or in terms of relevant student-performance measures, the system is producing a general diffusion of knowledge. For these reasons, the Court should render judgment for the State Defendants on the adequacy claims in this case.

1. District and campus accountability ratings indicate that the system is presumptively adequate.

As discussed above, the Court presumes, "in deference to the Legislature," that districts and schools with a satisfactory rating under the

public-education system's accountability regime are "achiev[ing] a general diffusion of knowledge." *Id.* at 787; *see supra* Part III.B. In 2013, 92.8% of school districts and charters and 84.2% of individual school campuses (including charter campuses) achieved the "met standard" rating. 287.RR(Ex. 5785).74; 302.RR(Ex. 20229).1-2. In 2014, 90.2% of school districts and charters and 85.0% of individual school campuses achieved that rating. Texas Education Agency, *2014 Accountability System State Summary*, http://ritter.tea.state.tx.us/perfreport/account/2014/statesummary.html. At those levels, the Court should presume that the system as a whole is constitutionally adequate. *WOC II*, 176 S.W.3d at 787.

2. Educational outputs show continued improvement in student progress.

Even if the Court looks past the accountability ratings to other measures of student achievement, the record demonstrates continued improvement in student performance even as the public-education system proceeds through a significant transition in curricular focus, the assessment program, and graduation requirements. In particular, the performance measures that the Court cited in *West Orange-Cove II* as proof of the system's adequacy once again show that the system is achieving a general diffusion of knowledge.

a. State assessment results indicate that the system is adequate.

The primary output evidence supporting *West Orange-Cove II*'s holding that the system was adequate was improved test scores over time in the face of a more difficult curriculum and assessments. *Id.* at 789. The record on state assessments since then shows a similar pattern of improvement even as expectations of students have again increased.

At the time of trial in *West Orange-Cove II*, Texas students had completed just two years of a new assessment program—TAKS. *See id.* at 765-66 (noting that TAKS was first administered in 2003). Under the preceding assessment regime—TAAS—passing rates had increased significantly over the life of that test (1994-2002) to the point where 84%-93% of all students were successful. *Id.* at 766-67. But because of legislatively mandated increases to the curriculum's difficulty, including adoption of the TEKS, the State had to develop and implement the new, more demanding TAKS tests to correspond to those changes. *Id.* at 765. The SBOE determined passing scores with public input and phased those scores in over a three-year period. *Id.* at 766; *see also* 27.RR.17-19.

Even with that incremental approach, though, passing rates in the second year of TAKS (2004) remained "somewhat lower" than those for the

last year of TAAS (2002). *WOC II*, 176 S.W.3d at 766. For all students in all grades, passing rates ranged from 49% of 10th graders to 75% of 4th graders. *Id.* The ranges for economically disadvantaged students (32%-66%) and limited-English-proficiency students (8%-56%) were even lower. *Id.* Yet the Court acknowledged the overall improvement reflected by the assessment results in holding that the system was constitutional. *Id.* at 789-90.

That pattern has repeated itself since *West Orange-Cove II*. Over the life of the TAKS (2003-2011), student performance across all groups improved. 27.RR.19-31; 272.RR(Ex. 11241).3-18. For example, on the TAKS exit-level exams for 11th graders, the passing rates for all first-time test takers improved from 61% to 95% on language arts; from 44% to 90% on math; from 47% to 91% on science; and from 78% to 99% on social studies. 272.RR(Ex. 11241).6-7. The progression on the same tests for economically disadvantaged students was 49% to 92% on language arts; 28% to 86% on math; 29% to 86% on science; and 66% to 98% on social studies. 272.RR.(Ex. 11241).6-7. Graphs of passing rates for all TAKS tests over time show that performance gaps among different student populations narrowed. 27.RR.20-28; 272.RR(Ex. 11241).8-18. Performance on TAKS improved to the point where many

students were "topping out on the test" and "couldn't demonstrate what they actually knew." 27.RR.37-38; *see also* 28.RR.12-13, 20, 103.

As occurred during the TAAS testing program, the Legislature decided in the later years of the TAKS program to revise the curriculum again, providing for the incorporation of standards to advance college and career readiness. TEX. EDUC. CODE § 28.008; 27.RR.13; 272.RR(Ex. 11243).6. Again, that in turn prompted the development of a new, more rigorous testing regime—STAAR—to correspond to those curriculum changes. 27.RR.33-36; 28.RR.21, 135; 189.RR(Ex. 5624).25. And, as before, state education officials determined passing scores with input from educators, business leaders, and parents, and established a schedule to phase in those scores over time. 27.RR.43-52; 28.RR.41-42; 301.RR(Ex. 20224).9. That new testing program was in just its second year of implementation when the trial evidence in this case finally closed, similar to the course of proceedings in *West Orange-Cove II*. *See* 255.RR(Ex. 10400).13.

As with the transition from TAAS to TAKS, passing rates on the STAAR tests were "somewhat lower" than passing rates on the final year of TAKS. The cumulative passing rates for all students on the initial STAAR end-of-course exams (including spring, summer, and fall 2012 administrations)

ranged from 72.6% on English I Writing—which was designed to test a much broader range of writing skills than TAKS, 27.RR.40-41, 85—to 91.0% on Biology. 276.RR(Exs. 11346, 11347). Those results all reflected improvement from the initial administration of the test. 276.RR(Exs. 11346, 11347). The passing rate on English I Writing, for example, increased from 54.4% to 72.6% within that first year. 276.RR(Ex. 11346).2.

The results after the 2013 administrations showed continued progress. The Class of 2015's cumulative passing rates on the STAAR end-of-course exams ranged from 78% on English II to 96% on Biology. 303.RR(Ex. 20312).1. And 75.6% of that class had passed all EOC tests taken, while another 10.4% were only one test away from passing all tests. 303.RR(Ex. 20312).4. That figure compares favorably to performance in the second year of the TAKS program, when only 72% of 11th graders passed all exit tests needed to graduate. *WOC II*, 176 S.W.3d at 766.

Because the public-education system today is at a stage of transition to a more rigorous curriculum and assessment program comparable to where it was at the time of *West Orange-Cove II*, these encouraging and improving test results should lead the Court to the same conclusion it reached then: the system is constitutionally adequate.

b. NAEP scores indicate that the system is adequate.

The other output evidence that the Court cited in *West Orange-Cove II* to support the system's adequacy was NAEP scores, which compared Texas's strides in public education to other states. *Id.* at 789. This metric again shows that the system is achieving a general diffusion of knowledge.

On the 2011 NAEP, Texas ranked above the national average in performance by public-school students in Grades 4 and 8 in reading and math. 26.RR.37; 272.RR(Ex. 11216).7. But even that above-average ranking does not tell the whole story. Because Texas has a more diverse and challenging student population to educate, its results for disaggregated student groups provide a clearer picture of the system's progress. 26.RR.37-38. For example, the 2011 NAEP results show that Texas ranks 4th in performance among African-American students, 7th among Hispanic students, and 11th among students eligible for free or reduced lunches. 26.RR.38-41; 272.RR(Ex. 11216).9-11. And the improvement in all of those groups' performance since 2005 reveals that performance gaps are narrowing. 26.RR.43-44; 272.RR(Ex. 11216).14. When states' overall performance is adjusted for demographics, Texas ranks 16th in the nation. 120.RR(Ex. 1192).13. Certainly by these measures, Texas's public-education system should be deemed adequate.

c. Graduation rates indicate that the system is adequate.

Texas also continues to outpace the national average in high-school graduation rates, another strong indication that the system is achieving a general diffusion of knowledge. According to the U.S. Department of Education, Texas's 86% graduation rate in 2011 tied for 4th among all states. 26.RR.45-49; 272.RR(Ex. 11216).15-16. By 2013, that rate had increased to 88%, which placed Texas tied for second in the nation behind only Iowa. National Center for Education Statistics, *Public High School 4-Year Adjusted Cohort Graduation Rate (ACGR) for the United States, the 50 States and the District of Columbia: School Years 2010-11 to 2012-13*, http://nces.ed.gov/ccd/tables/ACGR_2010-11_to_2012-13.asp (prepared Jan. 2015). And following *West Orange-Cove II*, the number of students graduating on the Recommended High School Program or Distinguished Achievement Program increased from 63.7% of all students to 82.7% in 2011, with improved performance among all student groups. 255.RR(Ex. 10335).2. As with the NAEP scores, this data makes it difficult to conceive how Texas's public-education system could rank so highly in the nation and at the same time be deemed so inadequate as to violate the Texas Constitution.

d. College-readiness-related measures show that Texas is making progress toward that goal.

Finally, although post-secondary-readiness measures are still being phased in for the STAAR assessment and revised accountability regime, 287.RR(Ex. 5785).66-67, 79-80; 287.RR(Ex. 5796).19, other college-readiness indicators demonstrate that Texas has been making progress in that area.

In *West Orange-Cove II*, the Court observed that, based on the exit-level TAKS tests, the percentage of students meeting the Texas Higher Education Coordinating Board's college-readiness standards was only 28% for English and 42% for math. *WOC II*, 176 S.W.3d at 769. By 2011, those percentages had risen to 65% and 66%. 256.RR(Ex. 10415).35-36; 291.RR(Ex. 11373).11.

Research shows that participation in Advanced Placement (AP) courses in high school positively affects college enrollment and performance and career aspirations. 26.RR.50. In 2011, Texas ranked 8th nationally in AP course participation. 26.RR.49; 272.RR(Ex. 11216).18. Relatedly, participation by all student groups on the SAT and ACT college admissions tests increased between 2003 and 2011, with notable growth in participation rates by Hispanic and African-American students on both exams. 35.RR.115-23; 274.RR(Ex. 11300).3-7 (showing Hispanic student participation increasing from 30% to 45.3% on the SAT and from 21.7% to 29.2% on the ACT, and

African-American student participation increasing from 41.5% to 63% on the SAT and from 30.3% to 38% on the ACT).

Lastly, in 2012, the publication *Education Week* awarded Texas an "A-minus" on college readiness in its state report cards on education policy and performance. 271.RR(Ex. 11163).20. Overall, Texas earned a "C-plus" on this report, which placed Texas 12th among all states. 271.RR(Ex. 11163).20. While no one disputes that Texas should strive to improve upon that grade, this report at least demonstrates that the public-education system is by no means so wanting as to be declared inadequate and unconstitutional.

IV. As a Matter of Law, the District Court Erred in Declaring That Texas's Public-Education System Is Financially Inefficient Under Article VII, Section 1 of the Texas Constitution.

If the Court does not dismiss this case for lack of subject-matter jurisdiction, it also should reverse the district court's judgment and render judgment for the State Defendants on the ISD Plaintiffs' efficiency claims.

As with their adequacy claim, the ISD Plaintiffs had the burden to overcome the presumption that the system is efficient and therefore constitutional. *Union Carbide*, 438 S.W.3d at 55. And, again, the Court must uphold the system so long as it satisfies the "very deferential" "arbitrariness" standard. *WOC II*, 176 S.W.3d at 784-85, 790.

As the Edgewood ISD Plaintiffs' expert Dr. Albert Cortez cautioned, "we can use data to show whatever we want it to show if we don't have the whole picture in front of us." 23.RR.129-30. Each expert who testified about the efficiency of Texas's school-finance system started with the same fundamental elements (tax rate, ADA, WADA, property value, and revenue), but reached very different conclusions based on the type of analysis he or she performed. Rather than recognize that many of the statistical analyses demonstrate that the system is efficient and, thus, that the Legislature did not act arbitrarily, the district court focused on statistics that are irrelevant to the efficiency of the current system, averages that are inconsistent with those calculated by the majority of the experts, and arguments that have been rejected by this Court.

A. Constitutional Efficiency Requires Only Substantially Equal Access to Similar Revenues and Permits the Legislature to Recognize Differences Between Districts.

The Texas Constitution states that it is the Legislature's duty to provide an "efficient system of public free schools." TEX. CONST. art. VII, § 1. The Court has interpreted "efficient" to require "a direct and close correlation between a district's tax effort and the educational resources available to it." *Edgewood I*, 777 S.W.2d at 397. Stated differently, "districts must have

substantially equal access to similar revenues per pupil at similar levels of tax effort." *Id.*

Constitutional efficiency does not require a per capita distribution. *Id.* The Legislature is allowed to "recognize differences in area costs or in costs associated with providing an equalized educational opportunity to atypical students or disadvantaged students." *Id.* at 398. As the Court has previously noted, "great liberty of action must be accorded the legislative department" when it is "classifying subjects so heterogeneous in population, wealth, and physical features as the school districts and communities of Texas, for the purpose of equalizing the educational opportunities which these differences engender." *Mumme*, 120 Tex. at 397, 40 S.W.2d at 36. Once the Legislature creates an adequate and efficient system, local communities are permitted to supplement that system through local tax efforts. *WOC I*, 107 S.W.3d at 566; *Edgewood II*, 804 S.W.2d at 500; *Edgewood I*, 777 S.W.2d at 398.

B. Findings from All of the Experts Demonstrate That the School-Finance System Is Efficient.

The Court has not created any bright-line numerical tests to determine whether the school-finance system is efficient. Instead, it has relied on a variety of statistical analyses offered by the parties with the goal of quantifying the tax-rate and revenue gaps between property-poor and

property-wealthy districts. *See, e.g.*, *WOC II*, 176 S.W.3d at 761-62, 791-92; *Edgewood IV*, 917 S.W.2d at 730-31; *Edgewood I*, 777 S.W.2d at 392-93. In this case, the parties have attempted to replicate many of the same statistics, while offering additional analyses for the Court's consideration. Despite the experts' various opinions, the overall picture is one of a constitutionally efficient system.

1. The tax-rate and revenue gaps in the current system are similar to or smaller than those the Court has previously found constitutional.

The Court's decisions offer the Legislature some guidance when it comes to permissible tax-rate gaps. In *Edgewood I*, the tax-rate gap between the 100 poorest and the 100 wealthiest districts (approximately the top and bottom 10% of districts) was 27.5 cents. 777 S.W.2d at 393. The Court determined the system was not constitutionally efficient. *Id.* at 397. However, in *Edgewood IV*, the Court found that a tax-rate gap of 9 cents between poor and wealthy districts was constitutionally acceptable. 917 S.W.2d at 731-32. The Court did not look at tax-rate gaps when concluding that the school-finance system was efficient in *West Orange-Cove II*, 176 S.W.3d at 761-62, 792, but the evidence showed that approximately 80% of districts taxed within a 10-cent range between $1.40 and $1.50, and 20% taxed below $1.40, *id.* at 763.

The Court also frequently compares the revenue gaps between poor and wealthy districts. In *Edgewood I*, the revenue gap between the 100 poorest and 100 wealthiest districts was $4255. 777 S.W.2d at 393. The Court also noted that an average of $2000 more per year was spent on the 150,000 students in the wealthiest districts (approximately 5% of the students) than the 150,000 students in the poorest districts. *Id.* at 392-93. The Court in *Edgewood IV* did not make the same comparisons as in *Edgewood I*, but it did find that a 1.36-to-1 disparity in access to funds was acceptable. *Edgewood IV*, 917 S.W.2d at 730-31.

The Court revisited its *Edgewood IV* analysis in *West Orange-Cove II*. 176 S.W.3d at 761-62. Comparing property-poor districts that were funded at the guaranteed-yield level with property-wealthy districts that were limited by recapture, the Court found that the *Edgewood IV* gap was $584.80 per student, or 16%. *Id.* At the time of *West Orange-Cove II*, the same gap was $301.04, or 7%. *Id.* The Court also looked at districts at or above the 95 percentile level of property value per student as compared to those below the 5 percentile level and found a difference of $1678 per WADA, or 40%. *Id.* at 762. Despite these differences, the Court held that the *West Orange-Cove II* system was constitutionally efficient. *Id.* at 792.

Turning to this case, every expert, no matter the analysis used, calculated a tax-rate gap of no more than 10 cents when comparing the top and bottom 10% of districts in terms of property wealth per WADA. Further, at current tax rates, the revenue gaps are similar to or better than those in *Edgewood IV* and *West Orange-Cove II*: the revenue ratio between the top and bottom 10% of districts is less than 1.36-to-1, there is only a 32% difference in revenue between the top and bottom 5% of districts, and the revenue gaps are closing. The evidence is insufficient to show that the Legislature acted arbitrarily.

Dr. Cortez did a lengthy analysis of efficiency, but his most relevant calculations were simply to divide the districts into deciles by wealth and determine the average revenue per WADA and tax rate for each decile using current tax rates. He performed these calculations in both phases of the trial, and the results are summarized below.

	2009-2010 (Phase I)		2012-2013 (Phase II)	
Decile of Districts	Avg. Revenue per WADA	Average Tax Rate	Avg. Revenue per WADA	Average Tax Rate
1 (poorest)	$5553	$1.10	$5617	$1.11
2	$5453	$1.09	$5395	$1.09
3	$5376	$1.08	$5491	$1.09
4	$5528	$1.07	$5506	$1.09
5	$5515	$1.07	$5571	$1.08
6	$5548	$1.07	$5476	$1.08
7	$5536	$1.06	$5517	$1.06
8	$5983	$1.05	$5654	$1.05
9	$6093	$1.04	$5755	$1.05
10 (wealthiest)	$7030	$1.01	$6715	$1.01

170.RR(Ex. 4000).15; 294.RR(Ex. 20030).3.

As found by Dr. Cortez, there is currently only a 10-cent tax-rate gap, on average, between the poorest and wealthiest districts. The gap is similar in size to those upheld in *Edgewood IV*, 917 S.W.2d at 731-32, and *West Orange-Cove II*, 176 S.W.3d at 763.[10] The district court downplayed this fact by declaring that the acceptable tax-rate gap should be only 6 cents because property taxes were compressed by one-third after *West Orange-Cove II* and I&S taxes are now separate from M&O taxes. 12.CR.491 (FOF 1208). But the Court has never held that the Legislature's decision to reduce Texans' tax

[10] A 10-cent gap in tax rate amounts to $100 for every $100,000 in property value.

burden affects what gaps are permissible in an efficiency analysis. Moreover, it is not as simple as the district court made it out to be: at the time the Court approved the 9-cent gap in *Edgewood IV*, 917 S.W.2d at 731-32, the average tax rate was $1.17, not $1.50, putting today's gap on par with *Edgewood IV*. *WOC II*, 176 S.W.3d at 762 (noting that the average tax rate in *Edgewood IV* was $1.17). The current tax-rate gap does not make the system inefficient.

Dr. Cortez's findings also show that the revenue ratio between the first and tenth deciles was 1.26-to-1 in 2009-2010 and 1.20-to-1 in 2012-2013. 170.RR(Ex. 4000).15; 294.RR(Ex. 20030).3. Although the *Edgewood IV* Court did not consider a decile analysis, it compared the poorest districts (those receiving only the guaranteed yield) with the wealthiest districts (those limited by recapture) and approved of a greater disparity in access to funds (1.36-to-1). 917 S.W.2d at 730-31. Further, if the tenth decile is excluded, the tax-rate gap in 2012-2013 is reduced to 6 cents, and the remaining nine deciles are all within $360 of each other. 294.RR(Ex. 20030).3. The tenth decile contains less than 3% of the ADA in the entire state. 21.RR.70; 188.RR(Ex. 5396).22. While the Court does not need to exclude the tenth decile in order to find the system efficient, a proper perspective of the system as a whole includes the fact that a significant portion of the revenue gap is due to a group of wealthy districts

with few students. The vast majority of students are unquestionably funded efficiently, and the existence of a few districts with vast property wealth (and few students to spend it on) should not skew that result.

There are some additional points to be made using Dr. Cortez's analysis. First, the poorest decile receives more revenue per WADA than six wealthier deciles. 170.RR(Ex. 4000).15; 294.RR(Ex. 20030).3. This fact contradicts the district court's findings that property-poor districts, with more economically disadvantaged and ELL students, bear the brunt of the alleged inefficiency. 12.CR.544-47 (FOF 1393-1405). Second, by looking at the differences between 2009-2010 and 2012-2013, it is clear that the gaps are shrinking. 170.RR(Ex. 4000).15; 294.RR(Ex. 20030).3. Comparing the first and tenth deciles, which have the largest tax-rate gap, the revenue difference decreased from almost $1500 to $1100. 170.RR(Ex. 4000).15; 294.RR(Ex. 20030).3.

The analysis done by Dr. Catherine Clark, presented by the Fort Bend ISD Plaintiffs during the trial's second phase only, reveals similar revenue gaps.[11] 289.RR(Ex. 6622).3-14. Dr. Clark calculated average revenue per WADA for deciles of districts and deciles of WADA using formulas for 2010-

[11] Dr. Clark did not intend this part of her analysis to answer the constitutional efficiency question, 58.RR.53, but her results are similar to those of Dr. Cortez and confirm the State Defendants' position that the revenue gaps are not unconstitutionally large.

2011, 2012-2013, and 2014-2015. 58.RR.23-36. Her results demonstrate the same trends as Dr. Cortez—current revenue gaps of less than $1000 between the first and tenth deciles and even smaller gaps if the tenth decile is excluded. 289.RR(Ex. 6622).3-14. Her analysis also demonstrates that the revenue gaps are shrinking. 289.RR(Ex. 6622).3-14.

Dr. Wayne Pierce, presented by the TTSFC Plaintiffs, took a different approach by looking at the top and bottom percentages of districts and students, rather than deciles. 280.RR(Ex. 3540). His tax-rate gaps are similar to those found by Drs. Cortez and Clark—10 cents between the top and bottom 10% of districts sorted by wealth, and 7.9 cents between the top and bottom 10% of WADA sorted by wealth. 277.RR(Exs. 3356 & 3368).

Dr. Pierce's analysis differs in his calculation of the revenue gap because he used unweighted averages, while every other efficiency expert used weighted averages.[12] 59.RR.61; 60.RR.15. Consequently, Dr. Pierce calculated a revenue gap of $2181, when looking at the top and bottom 10% of districts by wealth, and a revenue gap of $1753 when looking at the top and bottom 10% of WADA by wealth. 277.RR(Exs. 3356 & 3368). When Dr. Lisa

[12] *See infra* Part IV.D.2, for a full discussion of weighted and unweighted averages. In short, as used in this context, weighted averages demonstrate what the average student receives, while unweighted averages look at what the average district receives per student.

Dawn-Fisher, TEA's chief school-finance officer, replicated Dr. Pierce's analysis using a weighted average, the revenue gaps shrank to $939 and $464 (or 16% and 8%), respectively. 292.RR(Exs. 11461R, 11462R); *see also WOC II*, 176 S.W.3d at 761-62 (noting that revenue gap in *Edgewood IV* was 16%). Dr. Dawn-Fisher's analysis also shows that the difference between the top and bottom 5% of WADA in the State is only $728 (or 13%), which is less than the unconstitutional $2000 difference in *Edgewood I*, 777 S.W.2d at 392-93. 292.RR(Ex. 11462R). And the difference between the top and bottom 5% of districts is only $1876, or 32%, which is less than the 40% difference approved in *West Orange-Cove II*, 176 S.W.3d at 762.

But even under Dr. Pierce's analysis, the revenue gaps do not make the system inefficient. Using his averages, the gap between the top and bottom 10% of districts is 1.38-to-1, and the gap between the top and bottom 10% of WADA is 1.31-to-1. 277.RR(Exs. 3356 & 3368). These ratios are similar to or better than the 1.36-to-1 gap upheld in *Edgewood IV*, 917 S.W.2d at 730-31.

Finally, Dr. Bruce Baker, also called by the TTSFC Plaintiffs, grouped the districts into quintiles (20%) by poverty rates within the district. 16.RR.41-44; 169.RR(Ex. 3230).8-9. The quintile of districts with the lowest poverty rates received approximately $300 more in FSP revenue (M&O and I&S) per

WADA than the quintile of districts with the highest poverty rates. 169.RR(Ex. 3230).8; *see also* 16.RR.42 (noting that the quintile with the highest poverty rates receives 94% of what the quintile with the lowest poverty rates receives). When calculated as FSP revenue per enrolled student (instead of per WADA), the trend reverses: the quintile of districts with the highest poverty rates received approximately $200 more per student than the quintile of districts with the lowest poverty rates. 169.RR(Ex. 3230).9. Although the Court has not previously considered a poverty-rate analysis, the differences between the low- and high-poverty quintiles fit comfortably within the acceptable ranges of *Edgewood IV* and *West Orange-Cove II*.

2. Comparing differences between Chapter 41 and Chapter 42 districts also demonstrates that the school-finance system is efficient.

The Court also has examined the differences between Chapter 41 and Chapter 42 school districts.[13] Currently, approximately one third of the 1024 school districts are Chapter 41 districts (those that have property wealth

[13] Because all districts receive funding through Chapter 42, some experts refer to districts that are not subject to Chapter 41 as "non-Chapter 41 districts" instead of Chapter 42 districts. 33.RR.41. For ease of understanding, this brief will refer to non-Chapter 41 districts as Chapter 42 districts.

greater than $319,500 per WADA), and two thirds are Chapter 42 districts (those with property wealth less than $319,500 per WADA). 9.RR.112.

In *West Orange-Cove II*, the Court did an explicit comparison of Chapter 41 and 42 districts, assuming all were funded at the state average of $1.48. 176 S.W.3d at 762. Chapter 41 districts averaged $5457 per WADA, while Chapter 42 districts averaged only $4330 per WADA, for a difference of $1127 or 26%. *Id.* In *West Orange-Cove II*, the Court also performed a record review and calculated a difference of $505, or 17% gap between Chapter 41 and 42 districts in *Edgewood IV*. *Id.*

The State Defendants and Calhoun County ISD Plaintiffs presented efficiency analyses from Dr. Dawn-Fisher and Dr. James Kallison that focused on the differences between Chapter 41 and Chapter 42 districts. 119.RR(Ex. 1188).9-12; 188.RR(Ex. 5396).23-24; 293.RR(Ex. 11476).8-15. The district court disregarded that testimony because neither witness "compared the top 15% of WADA in the highest property wealth school districts versus the bottom 15% of WADA in the lowest wealth districts, or by decile." 12.CR.550 (FOF 1419-20). The district court did not explain why it wanted Drs. Dawn-Fisher and Kallison to regurgitate the analysis done by other experts. Nor did the district court explain why it was rejecting an analysis used by this

Court in *West Orange-Cove II*. The State does not contend that the Chapter 41/42 analysis is the only analysis on which the Court should rely, but it is certainly part of the whole picture and worthy of consideration, as it offers yet another comparison between poor and wealthy districts.

Dr. Kallison, presented by the Calhoun County ISD Plaintiffs during the trial's first phase only, testified that the tax-rate gap between the Chapter 41 and 42 districts during 2010-2011 was 4.6 cents. 22.RR.9. Dr. Dawn-Fisher prepared multiple charts and graphs, summarized below, comparing total FSP revenue (M&O and I&S) per WADA between Chapter 41 and 42 districts.

	2012	2013	2014	2015
Ch. 41 Avg. Rev.	$7318	$6931	$6877	$7061
Ch. 42 Avg. Rev.	$6350	$6252	$6387	$6573
Revenue Gap	$968	$679	$490	$488
Percentage Gap	13%	10%	7%	7%

293.RR(Ex. 11476).11-13; *see also* 62.RR.50; 303.RR(Ex. 20272).18-20.[14]

[14] Dr. Dawn-Fisher's trial presentation, Exhibit 11476, was admitted as a demonstrative exhibit, while the supporting data appeared in Exhibit 11470. The record mistakenly labels another exhibit as Exhibit 11470, an error the parties have agreed to correct. TEX. R. APP. P. 34.6(e)(1). Other evidence that supports Dr. Dawn-Fisher's statistics is also cited here.

All of the percentage differences are well below the 26% and 17% gaps found to be efficient in *Edgewood IV* and *West Orange-Cove II*. When the M&O revenue is considered alone, the gaps decrease to $556 in 2012, $293 in 2013, $115 in 2014, and $77 in 2015. 293.RR(Ex. 11476).14; *see also* 62.RR.51. Again, all of these gaps are well within the monetary gaps discussed and upheld in *West Orange-Cove II*. The district court erred in refusing to consider these statistics.

3. The Legislature's actions have further reduced the revenue gaps between districts.

The experts' opinions also all show that the Legislature's recent actions have made the school-finance system more efficient by closing the gaps between poor and wealthy districts. Although the system never lapsed to inefficiency in the years since *West Orange-Cove II*, the current trends show that the system now is achieving even greater efficiency.

Dr. Cortez testified that the gaps he analyzed had decreased since the 2009-2010 school year, and the differences in his calculations in the trial's two phases bear that out. 57.RR.39-40. Dr. Clark's analysis showed that the system has "leveled down" wealthy districts' average revenue per WADA while it has "leveled up" poor districts' average revenue per WADA, narrowing the gaps. 289.RR(Ex. 6622).3-14. And Dr. Pierce also testified that

the gaps he discovered in his analysis were decreased by the actions of the 83rd Legislature. 58.RR.160-64. As the district court found, the Legislative Budget Board's model 115 projected a decrease in revenue gaps between poor and wealthy districts. 12.CR.552-53; 280.RR(Ex. 3539). Finally, Dr. Dawn-Fisher's analysis shows that the gaps between Chapter 41 and 42 districts are decreasing. 293.RR(Ex. 11476).11-14; *see also* 62.RR.49; 303.RR(Ex. 20272)18-20.

* * *

The testimony of multiple experts confirms that the school-finance system is as efficient as, or more efficient than, school-finance systems that the Court has approved in the past. Given that the tax-rate and revenue gaps are within the bounds of *Edgewood IV* and *West Orange-Cove II*, the district court erred in holding that the Legislature acted arbitrarily in enacting the system in its current form.

C. The Legislature Structured the School-Finance System To Be Efficient.

That the current school-finance system is efficient should be unsurprising because it is based on the system that was determined to be efficient in *West Orange-Cove II*. As the Court has previously noted, "disparities in available revenue among the school districts are reduced in two

ways: by supplementing property-poor district tax revenues with state funds through the Foundation School Program . . . and by 'recapture.'" *WOC II*, 176 S.W.3d at 758. The current school-finance system incorporates both a guaranteed yield to ensure that property-poor districts receive sufficient funding, TEX. EDUC. CODE § 42.302, and recapture to ensure that property-wealthy districts' revenues are kept in check, *id.* § 41.002.

Because of target revenue, ASATR, and golden pennies, it is difficult to make generalizations about the school-finance system as a whole, as each individual district will have its own unique calculations. *See* 9.RR.56; *see also* 33.RR.134-35 (stating that there are thousands of components and data points that go into school-finance calculations). But there is still some work that can be done simply by looking at the law.

Under the formula system, the basic allotment for the 2014-2015 school year is $5040 per ADA, and the equalized wealth level for Tier I is $504,000. 289.RR(Ex. 6618).5. The basic allotment and first equalized wealth level have increased since trial began but have always matched each other. 289.RR(Ex. 6618).5. The district court did not find any inefficiency in the formula funding for Tier I, and the majority of districts are funded on formula. 289.RR(Ex.

6618).12. The district court, however, chose to focus on the decreasing number of districts funded, in part, by target revenue and ASATR.

Target revenue was created to ensure that districts would not lose funding as a result of tax compression following *West Orange-Cove II*. 16.RR.41 (stating that target revenue "simply holds the system at roughly its same state over those couple of years"). As the formulas and property values have increased, more districts are returning to formula funding. Dr. Dawn-Fisher's testimony showed that, after peaking at 1022 districts in 2007, the number of districts receiving ASATR funding has been reduced to 327 in 2013 and is projected to be 252 in 2015. 303.RR(Ex. 20272).26; *see also* 62.RR.57. The amount of ASATR funding has also significantly decreased, totaling only $480 million in 2014 and $380 million in 2015, 303.RR(Ex. 20272).25, which is only 1-2% of total FSP funding, 303.RR(Ex. 20272).27. An alleged inefficiency involving only 1-2% of funding cannot render the school-finance system unconstitutional.

Moving to Tier II, although criticized by the district court, 12.CR.542-43 (FOF 1387-88), golden pennies do not create constitutional inefficiency. As of 2010-2011, there were only 109 districts whose tax base was large enough to exceed the $59.97 golden-penny level. 119.RR(Ex. 1188).3. Those 109 districts

served only 5% of the State's ADA and generated revenue above the $59.97 yield of $33.9 million, which is less than 0.10% of the total revenue available in the FSP system. 32.RR.70; 119.RR(Ex. 1188).3-4.

Finally, there is no demonstrable inefficiency at the copper-penny level. The copper pennies are guaranteed at $31.95 per WADA, and the equalized wealth level is $319,500. TEX. EDUC. CODE §§ 41.002(a)(3), .302(a-1)(2). As Dr. Pierce explained, "the copper pennies, the last pennies . . . they're fairly well equalized. The recapture level is the same as the guaranteed level." 9.RR.94.

Overall, the percentage of unequalized FSP M&O revenue has decreased from 8.2% in 2006 to 3.5% in 2013. 32.RR.72; 119.RR(Ex. 1188).7. This is less than the 5% unequalized funding that was upheld in *West Orange-Cove II*. 176 S.W.3d at 791. The school-finance system operates efficiently because it was designed to do so. The district court erred in holding it unconstitutional.

D. The District Court Made Multiple Errors When Reaching Its Conclusion That the School-Finance System Is Inefficient.

To support its conclusions that the school-finance system is inefficient, the district court made multiple irrelevant findings about the system's ability to produce unnecessary revenue, focused on a single statistical analysis to the exclusion of others, and criticized pieces of the system rather than considering

its efficiency as a whole. The district court's findings are inconsistent with the Court's efficiency precedents and fail to give the appropriate amount of deference to the Legislature.

1. Because the school-finance system is adequate as is, the district court should not have hypothesized disparities at other levels of funding or higher tax rates.

The district court's overinflated view of the amount necessary to achieve a general diffusion of knowledge renders a large number of its efficiency findings irrelevant. As held by this Court, efficiency is required only "up to the legislatively defined level that achieves the constitutional mandate of a general diffusion of knowledge." *Edgewood IV*, 917 S.W.2d at 730. Because the system is adequate as it currently exists, *see supra* Part III.D, the only question is whether the system is also efficient as it currently exists.

The district court concluded that the school-finance system "fails to provide substantially equal access to revenues necessary to provide a general diffusion of knowledge at similar tax effort and instead arbitrarily funds districts at different levels below the constitutionally required level of a general diffusion of knowledge." 12.CR.585 (COL 83). At Plaintiffs' urging, the district court determined that the "constitutionally required level" of funding was somewhere between $6176 and $6818 per WADA. 12.CR.490

(FOF 1206). The district court then made multiple findings, based on testimony from various experts, about the ability or inability of districts to reach those levels of funding. 12.CR.492-503 (FOF 1212-40). Meeting those levels of funding, the district court concluded, would be impossible for some districts or result in an inefficient gap in tax rates. 12.CR.492-503 (FOF 1212-40), 584 (COL 82-83). The district court also hypothesized the revenue gaps that might exist if every district had an M&O rate of $1.17 and an I&S rate of $0.50, finding those gaps unconstitutionally large as well. 12.CR.516-29 (FOF 1285-1332).

The district court should not have hypothesized what the system might look like at higher levels of taxation because the system is adequate at current levels. In *Edgewood IV*, the plaintiffs argued that, if all of the districts taxed at their $1.50 limit, the system would be inefficient. 917 S.W.2d at 731. The Court described that argument as "premised on an erroneous view of the meaning of efficiency." *Id.* The Court emphasized that the State's duty regarding efficiency extends "*only* to the provision of funding necessary for a general diffusion of knowledge." *Id.* Because districts could attain the necessary revenue at rates between $1.22 and $1.31, the constitutional inquiry covered only that gap, not any gap that might occur at $1.50. *Id.*

Because constitutional adequacy does not require any funding beyond what is already being provided, all of the expert testimony and findings on tax rates necessary to achieve $6000 or $7000, or any other amount, is irrelevant to the constitutional question. 12.CR.492-503 (FOF 1212-40). Likewise, testimony and findings regarding the revenue generated when all districts tax at $1.17 or have a 50-cent I&S tax is irrelevant and contrary to the district court's findings that districts are unable to raise their tax rates to those levels in the first place. 12.CR.312-13 (FOF 258-62), 516-29 (FOF 1285-1332); *compare* 12.CR.507 (FOF 1252 – district court stating that "using current tax rates underestimates the *potential* disparities in the system" (emphasis added)), *with WOC II*, 176 S.W.3d at 790 ("[A]n impending constitutional violation is not an existing one."). The district court's conclusion that the amount of supplementation is so great that it destroys the efficiency of the system, 12.CR.584 (COL 82), is faulty for the same reason—the system is currently efficient.

In addition to being irrelevant, much of the testimony on which the district court relies for its estimates of efficiency at higher tax rates is demonstrably wrong. The district court references numerous charts and makes multiple findings based on Dr. Cortez's analysis involving "Adopted

Tax Rate Yields," which attempts to predict what tax rates would be necessary for districts to reach various levels of revenue using "adopted tax rate yields." 12.CR.492-99 (FOF 1211-21). But districts are not funded though "adopted tax rate yields"—they are funded by statute, which has different yields-per-penny for Tier I, golden pennies, and copper pennies.[15]

A simple example illustrates the point. If a district received $5000 per WADA at a $1.00 tax rate, its "adopted tax rate yield" is $50 per penny. Dr. Cortez's method assumes that all of that district's pennies are worth $50, even though, by law, golden and copper pennies are worth different amounts. *See* 23.RR.141-42. This method of predicting future revenue has the effect of magnifying revenue gaps. Again, suppose two Chapter 42 districts tax at their compressed rate of $1.00, but one receives $5000 per WADA and the other $6000. Those districts would be equalized at the golden and copper penny levels, meaning there would be no additional gap if the tax rates were increased to $1.17. But Dr. Cortez's method would build in a $170 gap over the

[15] To be clear, this criticism of Dr. Cortez's work concerns only his use of "tax rate yields" to predict future revenue gaps. His findings regarding existing gaps that were referenced earlier, *see supra* Part IV.B.1, are not implicated here.

next 17 pennies by assuming one district receives $50 per penny and the other $60 per penny.[16]

The district court declined to accept this criticism of Dr. Cortez's work because the State Defendants used only four examples to demonstrate Dr. Cortez's methodological errors instead of going through all 1024 districts. 12.CR.494 (FOF 1213 n.61). But no examples should have been necessary. School districts are not, and have never been, funded based on adopted tax rate yields. His methods are contrary to law and should have been rejected. The Court should not hold the system inefficient based on calculations that have no basis in reality.

2. The district court should not have ignored the other experts' conclusions in favor of Dr. Pierce's unique approach.

The district court also erred by overemphasizing Dr. Pierce's unweighted average calculations, rather than considering them as part of a larger picture. Although Dr. Pierce's testimony does not demonstrate that the

[16] A more drastic inflation of the revenue gaps would occur if the district receiving $6000 per WADA had a compressed tax rate of 94 cents and was using all six of its golden pennies to reach a $1.00 tax rate. An "adopted tax rate yield" would predict revenue of $7020 at a $1.17 tax rate (117 * $60), but the district would actually receive only $6543 ($6000 + 17 * $31.95). This method, thus, manufactures a gap of almost $500 that would not otherwise exist. Dr. Cortez was confronted with several real-world examples of this during cross-examination. 57.RR.61-64.

school-finance system is inefficient, *see supra* Part IV.B.1, his methods produce, by far, the largest revenue gaps between districts. But the Court cannot hold the system unconstitutional unless the Legislature acts arbitrarily. *WOC II*, 176 S.W.3d at 784. The existence of a reasonable disagreement between experts about the best way to average revenue per WADA is not enough to hold the system unconstitutional.

The district court included at least 18 charts and made dozens of fact findings based solely on Dr. Pierce's testimony. 12.CR.505-29 (FOF 1246-1332). But Dr. Pierce's decision to use unweighted averages, which do not take into account the size of districts when averaging revenue, makes him an outlier when compared to the rest of the efficiency experts, who all used weighted averages. *Compare* 16.RR.41-42 (Dr. Baker); 21.RR.62-63 (Dr. Kallison); 23.RR.73 (Dr. Cortez); 59.RR.164 (Dr. Clark); 62.RR.13-14, 69 (Dr. Dawn-Fisher), *with* 59.RR.61 (Dr. Pierce). As used in this analysis, an unweighted average demonstrates what the average *district* receives per student, while a weighted average demonstrates what the average *student* receives.[17] *See*

[17] To illustrate the difference, suppose there are two districts, one with 1000 students that receives $5000 per student and one with 100 students that receives $6000 per student. An unweighted average would simply add $5000 and $6000 and divide by 2 (the number of districts) to create a district average of $5500. A weighted average would combine all of the

23.RR.112-14. But the constitutional right belongs to the student, not the district. *WOC II*, 176 S.W.3d at 774 ("We agree that the provision [article VII, section 1] creates no rights in school districts."). Thus, although a district average may be relevant to the Court's analysis, a student average more directly addresses the constitutional question.

Using an unweighted average also serves to enlarge the revenue gaps. *See* 292.RR(Exs. 11461R, 11462R). This is due, in part, to a number of wealthy districts with few students that can skew the average. *See* 277.RR(Ex. 3356) (noting only 37,765 students in the wealthiest 51 districts but 243,419 students in the poorest 51 districts); *see also* 21.RR.70 (stating wealthiest decile of districts contains only 3% of students); *see also* 10.RR.86 (Dr. Pierce agreeing that smaller districts, because of diseconomies of scale, have higher costs-per-pupil than larger districts).[18]

The State Defendants demonstrated this at trial using Westhoff ISD as an example. Westhoff has only 62 students, 59.RR.121-22, but its property values have skyrocketed over the last several years, 62.RR.24-26, leading to

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revenue ($5000 * 1000 + $6000 * 100) and divide by the total number of students to create an average of $5090 per student. *See also* 292.RR(Exs. 11461R, 11462R).

[18] Dr. Dawn-Fisher also testified that the sparsity adjustment, which applies to small districts, TEX. EDUC. CODE § 42.105, can add up to $900 to a district's average. 63.RR.76.

an extraordinarily large revenue per WADA, 60.RR.19 (noting that Westhoff's revenue at its compressed tax rate is $45,178 per WADA).[19] If Westhoff and its 62 students are removed from Dr. Pierce's calculations, the $1753 (or 31%) gap between the top and bottom 10% of WADA becomes $1515 (or 27%). 277.RR(Exs. 3368, 3368-A). That a single district with 62 students can enlarge the gap by 4% shows that an unweighted average does not give an accurate picture of the school-finance system as a whole.

The State Defendants are not contending that Dr. Pierce's testimony is inadmissible, but only that it must be placed in context with all of the other testimony. In that sense, it shows only a reasonable disagreement among experts. *See* 21.RR.56 (Dr. Kallison explaining that "you don't want to let several small districts that educate a relatively few number of students disproportionately affect the results of your study"); 32.RR.56-57 (Dr. Dawn-Fisher explaining that using unweighted averages "distort[s] what the whole picture looks like"); 60.RR.15 (Dr. Pierce explaining that a weighted average "washes out a lot of districts"). Given that every other expert found smaller

[19] As explained by Dr. Dawn-Fisher, Westhoff's current revenue is due to a phenomenal growth in property values and the system's use of prior-year property values when calculating recapture. 62.RR.24-28. Once Westhoff's property-value growth slows, the system will catch up and begin recapturing the excessive amounts. 62.RR.24-28.

gaps using weighted averages, it cannot be said that the Legislature acted arbitrarily in judging the efficiency of this system.

3. The district court should have analyzed the school-finance system only as a whole, not piecemeal.

In its findings, the district court isolated various pieces of the school-finance system and found them inefficient. But "[a]rticle VII, section 1 requires 'an efficient system of free public schools,' considering the system as a whole, not a system with efficient components." *WOC II*, 176 S.W.3d at 790 (footnote omitted). Judging the system piece by piece, as the district court did, comes perilously close to "prescrib[ing] *how* the [article VII] standards should be met"—something this Court has forbidden. *WOC II*, 176 S.W.3d at 753.

The district court made multiple statements critical of target revenue and golden pennies, finding both to be inefficient methods of funding districts. 12.CR.539-43 (FOF 1378-88). As explained above, neither piece is itself unconstitutional, and both make up only a small percentage of funding as a whole. *See supra* Part IV.C. The district court also criticized the Legislature's decision to compress tax rates following *West Orange-Cove II*, 12.CR.539-42 (FOF 1378-86), and what it believed was a "leveling down" of the system,

12.CR.503-05 (FOF 1241-45). Again, though, if the system as a whole is efficient, any alleged inefficiency in one of its parts is irrelevant.

The district court separately discussed economically disadvantaged students and English-language learners, asserting that the lack of efficiency harms them the most. 12.CR.544-47 (FOF 1393-1405). But it made no specific finding of inefficiency as to that subset of students. And the district court's findings about what weights are required to adequately educate economically disadvantaged and bilingual students is an improper political question. 12.CR.545-46 (FOF 1400); *see WOC II*, 176 S.W.3d at 753. The school-finance system is constitutional as a whole, and the district court erred in addressing it piecemeal.

E. The District Court Erred in Concluding That I&S Taxes Rendered the Entire School-Finance System Inefficient.

The district court also found that I&S funding, either alone or in combination with M&O funding, was inefficient. Because M&O funding is efficient, relief can be given only if I&S funding is so inefficient that it renders the entire system inefficient. *See Edgewood IV*, 917 S.W.2d at 759 (Hecht, J. concurring in part and dissenting in part) ("Disparities in funding facilities become constitutionally significant only when they affect the efficiency of the system as a whole. The question is not whether the method of funding facilities

is inefficient, but whether that method makes the entire system inefficient."); *see also WOC II*, 176 S.W.3d at 790. But just as in *West Orange-Cove II*, the district court's findings failed to demonstrate a statewide failure of facilities funding. Regardless, the school-finance system, when considered with I&S funding, is efficient.

1. The district court's findings do not prove that districts across the State have similar facilities needs.

In *West Orange-Cove II*, some districts urged the Court to hold that the school-finance system was inefficient because the funding for facilities was inefficient. 176 S.W.3d at 792. The Court declined to do so for three reasons: (1) 25% of the districts levied no I&S taxes; (2) the plaintiffs failed to prove that the districts' facilities needs were similar; and (3) the plaintiffs failed to prove that the lack of adequate facilities prevented districts from providing a general diffusion of knowledge. *Id.* The same holds true today.

As to the first point, the district court found that 200 districts (approximately 20%) levy no I&S taxes. 12.CR.305 (FOF 230). And, because the school-finance system is adequate, *see supra* Part III.D, there can be no finding that any alleged lack of facilities prevented the provision of a general diffusion of knowledge.

In an attempt to show that districts across the State have similar funding needs, the district court cited the testimony of only seven of the more than 1000 superintendents in Texas. 12.CR.386 (FOF 588-89). None of those superintendents attempted to testify to any facilities needs beyond those of their own districts. 5.RR.193-94, 224-28 (Everman ISD); 20.RR.86-88 (Quinlan ISD); 157.RR(Ex. 3198).32-33 (Lubbock ISD); 158.RR(Ex. 3200).49, 55-56 (Bryan ISD); 161.RR(Ex. 3203).40-42 (Anton ISD); 162.RR(Ex. 3204).48 (Pflugerville ISD); 165.RR(Ex. 3207).52-53 (Los Fresnos ISD). And none of those districts had an I&S tax rate of 50 cents.[20] In fact, Anton ISD levied no I&S taxes, 161.RR(Ex. 3203).43, and Los Fresnos ISD had only a 2-cent I&S rate, 165.RR(Ex. 3207).13.

The one attempt to prove a statewide need for facilities funding was a reference to a 2006 facilities survey conducted by the Comptroller. 12.CR.385-86 (FOF 587 – citing testimony about Comptroller's survey); 109.RR(1070). The results of the survey were based on voluntary responses from 309 districts and charters. 109.RR(Ex. 1070).1. The respondents identified only 5.78% of

[20] 5.RR.195 (Everman ISD - 22.5 cents); 169.RR(Ex. 3232).1 (Quinlan ISD – 20 cents); 157.RR(Ex. 3198).281 (Lubbock ISD – 19.5 cents); 158.RR(Ex. 3200).14 (Bryan ISD – 25 cents); 161.RR(Ex. 3202).43 (Anton ISD – 0 cents); 162.RR(Ex. 3204).50 (Pflugerville ISD – 44 cents); 165.RR(Ex. 3207).13 (Los Fresnos ISD – 2 cents).

instructional facilities that were poor or in need of replacement. 109.RR(Ex. 1070).19.[21] The report includes no indication that the districts were unable to repair or replace those facilities, or that districts were unable to educate students because of these needs. 109.RR(Ex. 1070). In *Edgewood IV*, the Court rejected an argument that I&S funding was inadequate, noting that a 1992 TEA report concluded that "'more than 90% of all districts statewide received average ratings of fair or good for their rooms and building systems.'" 917 S.W.2d at 746.

Dan Casey, an expert who testified on behalf of several Plaintiffs, stated that he had not been able to identify a district that was currently unable to meet its facilities needs. 56.RR.231; *see also* 109.RR(Ex. 1070).65 (Comptroller survey finding that the permanent facility capacity of the responding districts showed they could accommodate an additional 300,000 students). He also testified that enrollment growth (which often requires additional facilities) was not uniform across the State. 10.RR.182. And Dr. Pierce admitted that his I&S analysis was not based on need, that he did not study how districts differ in terms of growth rates, that he did not determine

[21] The district court inflated that number to 40% by including facilities that were rated "fair" by their districts. *Compare* 12.CR.385 (FOF 587) *with* 109.RR(Ex. 1070).19.

any differences in costs among districts, and that he did not study any differences among the size and location of facilities within districts. *See* 10.RR.111-12. As the Court stated in *West Orange-Cove II*, "facilities needs vary widely depending on the size and location of schools, construction expenses, and other variables." 176 S.W.3d at 792. Without evidence that districts across the State have similar facilities needs, the Court cannot hold that the I&S tax renders the school-finance system inefficient.

2. The school-finance system is efficient even when I&S taxes are included in the analysis.

Setting aside the lack of evidence regarding similar facilities needs, the school-finance system is efficient even when I&S taxes are considered. Dr. Dawn-Fisher compared total FSP revenue (which includes both M&O and I&S taxes) per ADA between Chapter 41 and Chapter 42 districts, and her results are summarized below.

	2012	2013	2014	2015
Ch. 41 Avg. Rev.	$9070	$8989	$9029	$9260
Ch. 42 Avg. Rev.	$8127	$8342	$8653	$8907
Revenue Gap	$944	$648	$376	$354
Percentage Gap	10%	7%	4%	4%

293.RR(Ex. 11476).8-10; *see also* 62.RR.49; 303.RR(Ex. 20272).13, 16-17. As with M&O alone, the gaps are smaller than those found acceptable in *Edgewood IV*, 917 S.W.2d at 730-31, and *West Orange-Cove II*, 176 S.W.3d at 761-62. And, again, the gaps are decreasing.

Mr. Casey's testimony also supports a finding of efficiency. His testimony shows that fewer districts, with 57% of the students in the system, require leveling up to the guaranteed EDA level than in the past. 10.RR.167. In other words, more districts can generate revenue greater than the $35 guaranteed level. Further, as of 2011-2012, only 61 EDA-eligible districts have tax rates over the 29-cent limit. 208.RR(Ex. 6352).16. As of 2012-2013, the majority of districts have an I&S rate of less than 20 cents, and approximately 78% of districts have an I&S rate under 30 cents. 289.RR(Ex. 6621).14.

In opposition, the district court made many of the same analytical errors described above—projecting all districts at 50 cents even though the system is adequate at current tax rates, focusing solely on I&S taxes rather than the system as a whole, and using Dr. Pierce's unweighted averages to the exclusion of any other calculation. 12.CR.517-25 (FOF 1289-1310). More fundamentally, the district court failed to identify what facilities are necessary for a general diffusion of knowledge. Without that, it is impossible to conduct

an efficiency analysis. *See Edgewood IV*, 917 S.W.2d at 730 (requiring efficiency only up to the point of adequacy). The district court erred in concluding that I&S taxes make the school-finance system inefficient.

V. As a Matter of Law, the District Court Erred in Declaring That Texas's Public-Education System Is Unsuitable Under Article VII, Section 1 of the Texas Constitution.

If the Court does not dismiss this case for lack of subject-matter jurisdiction, it also should reverse the district court's judgment and render judgment for the State Defendants on the ISD Plaintiffs' suitability claims.

As with their adequacy and efficiency claims, the ISD Plaintiffs had the burden to overcome the presumption that the system is suitable and therefore constitutional. *Union Carbide*, 438 S.W.3d at 55. And, again, the Court must uphold the system so long as it satisfies the "very deferential" arbitrariness standard. *WOC II*, 176 S.W.3d at 784-85, 790.

The district court's judgment that Texas's public-education system is unsuitable must meet the same fate as the court's rulings on the other article VII, section 1 claims. Because the system is constitutionally adequate and efficient, it perforce must be suitable as well.

A. Suitability Concerns the System's Means for Efficiently Achieving an Adequate Education.

The mandate in article VII, section 1 that the Legislature "make suitable provision" for public education "refers specifically to the *means* chosen to achieve an adequate education through an efficient system." *Id.* at 793 (emphasis added). The "means chosen" encompasses the system's structure, operation, and funding. *Id.* at 753, 794.

B. Because the System Is Adequate and Efficient, It Is Necessarily Suitable.

The Court has identified only two ways in which the system's structure, operation, or funding could be so arbitrary that the system is unsuitable.

First, a constitutionally adequate and efficient system still may be unsuitable if it does not actually require school districts to provide an adequate education, because "the Legislature would have employed a means that need not achieve its end." *WOC I*, 107 S.W.3d at 584; *accord WOC II*, 176 S.W.3d at 793. That is not an issue here—the district court's suitability declarations are not premised on any failure to *require* provision of an adequate education. Nor could they be. School districts are required "to provide instruction in the essential knowledge and skills" "[a]s a condition of accreditation." TEX. EDUC.

CODE § 28.002(c). Open-enrollment charter schools also must provide that required curriculum as conditions of their charters. *Id.* § 12.111(a)(1).

Second, a suitability violation may occur if the structure or operation of the funding scheme "prevents [the system] from efficiently accomplishing a general diffusion of knowledge" such that improvement is impossible. *WOC II*, 176 S.W.3d at 794. It is that sort of violation that underlies the district court's declarations that the system is unsuitable. *E.g.*, 12.CR.194 (declaring that "multiple defects in the current design of the school finance system . . . cumulatively prevent districts from generating sufficient resources to accomplish a general diffusion of knowledge for all students"), 195 (declaring that the system is structured, operated, and funded so that it is "impossible to achieve a general diffusion of knowledge in a financially efficient manner").

As shown above, however, the system *is* constitutionally adequate and efficient. *See supra* Parts III, IV. By definition, then, the system's structure, operation, and funding cannot be preventing it from efficiently achieving a general diffusion of knowledge. For that reason, the district court's judgment declaring the system unsuitable and unconstitutional also must be reversed.

C. The District Court's Conclusion That the System Is Unsuitable "As Applied" to Certain Students Is Not a Cognizable Constitutional Violation.

The district court separately declared that the public-education system is unsuitable in that it is not structured, operated, or funded so that it can provide a general diffusion of knowledge for economically disadvantaged and ELL students in particular. 12.CR.194; *see also* 12.CR.583-84 (COL 79). But, as with the court's declaration that the system is inadequate "as applied" to those groups, a declaration that the system is unsuitable for certain students does not state a cognizable constitutional violation. *See supra* Part III.C.4. Again, the constitutional text imposes a duty to "make suitable provision" for "*an* efficient system of public free schools," TEX. CONST. art. VII, § 1 (emphasis added), not for the aspects of the system that serve specific student populations. *See WOC II*, 176 S.W.3d at 790 (holding that the efficiency requirement does not apply separately to the system's components). Because there cannot be distinct suitability violations as applied to disaggregated student groups, that part of the final judgment must be reversed.

VI. As a Matter of Law, the District Court Erred in Declaring That the School-Finance System Imposes a State Ad Valorem Property Tax in Violation of Article VIII, Section 1-e of the Texas Constitution.

If the Court does not dismiss this case for lack of jurisdiction, it also should reverse the district court's judgment and render judgment for the State Defendants on the ISD Plaintiffs' state-property-tax claims.

The Texas Constitution bars the State from imposing an ad valorem property tax. TEX. CONST. art. VIII, § 1-e. The Court has explained that "[a]n ad valorem tax is a state tax when it is imposed directly by the State or when the State so completely controls the levy, assessment and disbursement of revenue, either directly or indirectly, that the authority employed is without meaningful discretion." *Edgewood III*, 826 S.W.2d at 502.

In *West Orange-Cove II*, the Court concluded that the school-finance system violated this prohibition based on the cumulative effect of certain conditions: the system as a whole contained very little additional taxing capacity, the majority of school districts were taxing at or near the statutory cap, and the clustering of tax rates around the cap suggested that districts were unable to access additional funding for enrichment programs. 176 S.W.3d at 796-98. While the Court also has noted that a single school district could state its own constitutional claim by alleging that the system deprived it

of meaningful discretion in setting its tax rate, *WOC I*, 107 S.W.3d at 579, the Court has not yet had occasion to evaluate a single-district claim.

The current school-finance system does not suffer from the systemic lack of meaningful discretion that the Court found in *West Orange-Cove II*. The ceiling on tax rates—$1.17 for most school districts—does not meet the floor of tax effort required to provide an adequate education for the system as a whole. Only 24% of the schools are currently taxing at the maximum rate. There is $2.3 billion in potential tax income that districts are not yet accessing. And no district proved that it was required to tax at $1.17, without room for supplementation, just to meet state standards. There is no reason to impute a system-wide violation.

The district court contrived a state-property-tax violation only by treating $1.04 as the effective tax-rate cap, reasoning that the TRE requirement effectively prevented districts from raising tax rates above that amount. *See, e.g.*, 12.CR.570 (COL 16-17). That approach ignores both logic—local taxpayers' antipathy to tax increases is the *exact opposite* of a state-imposed tax rate—and constitutional text—article VIII, section 1-e's purpose is to promote local control over property taxes. The district court also erred in projecting the costs of an adequate education, rather than recognizing that

current tax rates are producing a general diffusion of knowledge. And its criticism of the ratio of state funding to local funding was rejected in *West Orange-Cove II*. The Court should reverse and render judgment for the State Defendants.

A. A State Property Tax Exists When the State Imposes Tax Rates, There Is a Systemic Lack of Meaningful Discretion to Set Tax Rates, or an Individual District Proves Its Own Lack of Meaningful Discretion.

Whether an ad valorem tax constitutes a prohibited state property tax depends on where that tax lies along a "spectrum of . . . possibilities," with taxes authorized but not required by the State at one end; and taxes that the State requires, sets the rate for, and distributes the revenue therefrom at the other. *Edgewood III*, 826 S.W.2d at 502-03. A tax's location on that spectrum turns on the extent of local control, defined as "meaningful discretion." *Id.* at 502. This test focuses specifically on local control of tax rates and revenue distribution, including the possibility that tax increases will have to be approved by local voters. *Id.* at 503 ("[I]f the State merely authorized a tax but left the decision whether to levy it entirely up to local authorities, *to be approved by the voters if necessary*, then the tax would *not* be a state tax." (emphasis added)). And, in the context of school property taxes, the Court also considers whether school districts can raise additional funds to provide

supplemental services above the state requirements designed to achieve a general diffusion of knowledge. *WOC II*, 176 S.W.3d at 797-98.

In short, the state-property-tax issue can be restated as "whether school districts have meaningful discretion to tax below maximum rates." *Id.* at 797. *Edgewood III* found that discretion wholly lacking because the system then employed state-created entities that effectively set tax rates for the school districts. 826 S.W.2d at 503 (holding that the Constitution "prohibits the State from doing indirectly through [multi-district tax-setting entities] what it cannot do directly"). In *West Orange-Cove II*, the Court again found a systemic lack of meaningful discretion, albeit for different reasons. 176 S.W.3d at 795-96. Specifically, the Court observed that school districts were spending over 97% of the revenue that would be available if they all taxed at the maximum rate, making the system "virtually indistinguishable from one in which the State simply set an ad valorem tax rate of $1.50 and redistributed the revenue to the districts." *Id.* at 796-97.

As explained below, the current system does not impose a state property tax. Only 24% of districts are taxing at the statutory cap of $1.17, which puts the system in a better place than it was when the Court found a systemic violation in *West Orange-Cove II*. *See infra* Part VI.B. And the districts

seeking to prove that they lack meaningful discretion to raise additional enrichment funding have failed to prove their case. *See infra* Part VI.C.

B. Because the System Is in a Better Posture Than It Was in *West Orange-Cove II*, This Record Cannot Trigger a Presumption That a State Property Tax Exists.

In *West Orange-Cove II*, the primary focus of the constitutional inquiry was the impact of the statutory maximum tax rate—$1.50 then and $1.17 today. In *West Orange-Cove II*, 67% of school districts were taxing at or above $1.45, which was five cents less than the maximum, and 48% of districts were taxing at the $1.50 cap. *WOC II*, 176 S.W.3d at 794. The Court also noted that the districts were spending over 97% of their total tax capacity. *Id.* at 796. And only a third of districts exceeded minimum accreditation. *Id.*

This record reflects a better situation. The evidence shows: (1) only 24.19% of districts, which collectively taught 13.3% of students in daily attendance, were taxing at the $1.17 cap; and (2) 68.56% of districts were taxing at or below $1.04, at least 13 cents under the cap. *See* 289.RR(Ex. 6618).14. Also, by the time of the trial's second phase, 95.4% of school districts were rated "met standard." 302.RR(Ex. 20229).1. And there is $2.3 billion of taxing capacity left in the system. 119.RR(Ex. 1188).18.

The state-property-tax violation in *West Orange-Cove II* also rested in part on the amount of recapture funds that were, in effect, being redirected by the State. *See WOC II*, 176 S.W.3d at 797. The Court noted that the State was recapturing $1 billion in local tax revenue from 134 districts, which was a three-fold increase since 1994. *Id.*

As with the tax-rate cap, the impact of recapture on the system and individual districts has since diminished. In 2006, the total FSP revenue in the system was $29.99 billion, while the recaptured amount was $1.299 billion, or 4.3% of total FSP revenue. 293.RR(Ex. 11476).3, 17; *see also* 303.RR(Ex. 20272).1, 5. In 2015, total FSP revenue is anticipated to be $43.97 billion, while only $1.242 billion of that, or 2.8%, will be recaptured. 293.RR(Ex. 11476).3, 17; *see also* 303.RR(Ex. 20272).1, 5. Moreover, the average amount recaptured per district has decreased from $7.5 million, *WOC II*, 176 S.W.3d at 797, to $5 million, 293.RR(Ex. 11476).17; *see also* 303.RR(Ex. 20272).5. In sum, because recapture is now a smaller part of FSP funding and its average impact on each district is less than it was in *West Orange-Cove II*, that feature of school finance does not support a systemic state-property-tax violation.

The district court erroneously relied on the testimony of Lynn Moak, an expert for several ISD Plaintiffs, to support its conclusion that the system

imposes a state property tax. Mr. Moak calculated the system's taxing capacity at two tax rates, $1.04 and $1.17, and determined that the revenue at either level was insufficient to provide an adequate education. *See* 12.CR.301-02 (FOF 214); *see also* 12.CR.302 (FOF 215) (stating that $1.04 "is the rate at which districts must be able to provide a general diffusion of knowledge"). But that approach wrongly presumes that adequacy can be measured in dollars rather than actual student performance and ignores the output evidence that the system is currently adequate. *See supra* Part III.C.2, D. To prove that the State has imposed an ad valorem property tax, a district must show that state requirements forced it to tax at or near the statutory cap to provide an adequate education while leaving no funds for enrichment. *WOC II*, 176 S.W.3d at 795-96. No school district met that burden. *See infra* Part VI.C.

The ISD Plaintiffs likewise misplaced reliance on Mr. Moak's analysis in arguing that tax-rate compression initially yielded a zone of taxing capacity to provide enrichment funding, but that the zone was later narrowed by cuts in state funding. *See, e.g.*, 7.CR.459, 498-99, 501, 543-45. Mr. Moak did not even attempt to establish a relationship between adequacy and the tax-rate cap. 7.RR.114 ("I've not specifically studied relating the funding for districts at $1.17 to the adequacy level, so I'm not sure I can answer your question.").

Significant numbers of districts are taxing at or below $1.04 but still producing an adequate education. *See* 289.RR(Ex. 6618).14; 302.RR(Ex. 20229).1; *see also supra* Part III.D. Those districts have not availed themselves of the additional revenue from a tax increase up to and including the capped $1.17 rate. Unlike in *West Orange-Cove II*, then, there is still headroom in the system for districts to obtain additional enrichment funding. Accordingly, the ISD Plaintiffs have not established a systemic violation of the prohibition on state property taxes.

C. The Record Does Not Establish That Any Individual School District Was Forced to Tax at a Particular Rate.

While a single district could, hypothetically, establish a state-property-tax violation, *WOC I*, 107 S.W.3d at 579, this record does not demonstrate that any particular district has been required to tax at the maximum rate to fulfill state education mandates. To the contrary, the district-specific evidence shows that most districts either did not seek an increase over $1.04 or moved immediately to $1.17 without considering whether state requirements could be met at a lower rate. Their motivation for doing so was their assessment of the political viability of a tax increase, not an assessment of their inability to fund what the state requires to achieve a general diffusion of knowledge.

1. The evidence regarding districts' needs to raise their tax rates was out-of-date at the time of judgment.

An initial, and pervasive, flaw in the ISD Plaintiffs' case is that many school districts linked their tax claims to the funding cuts caused by the economic downturn, but then failed to provide new evidence after the 83rd Legislature restored their funding. This case was tried in two phases in part because the 2013 changes to the system significantly increased funding levels. Of the districts attempting to establish a tax violation distinct from their adequacy claims, only two filed updated deposition testimony regarding their tax rates in the trial's second phase. *See* 280.RR(Ex. 3541) (Everman ISD); 289.RR(Ex. 6557) (Humble ISD). Thus, most of the tax-rate projections offered by the districts do not describe the state of their budgets at the time of judgment.

Recovery on a state-property-tax claim must rest on the relationship between the amount actually being taxed and the resources needed to meet the State's requirements for providing an adequate education. The school districts' complete lack of evidence regarding their present plans for changing their tax rates, given the funding increase by the 83rd Legislature, constitutes a failure of proof and forecloses recovery on their tax claims.

2. Testimony from district superintendents did not link tax rates to adequacy.

To prove a state-property-tax claim, the districts must show that they are forced to tax at or near the cap just to provide a constitutionally adequate education. *See Edgewood IV*, 917 S.W.2d at 738. In its only findings related to the intersection of adequacy and tax rates, the district court emphasized evidence regarding Humble ISD, Abilene ISD, and Weatherford ISD. 12.CR.301 (FOF 212). Those districts' superintendents, however, did nothing to tie their tax-rate increases to their ability to provide an adequate education. Rather, they described the political arguments they made in support of their TREs and their subjective assessment of the voters' preferences.

For example, Dr. Guy Sconzo of Humble ISD explained that his district had framed its TRE just in terms of losing then-current programs without distinguishing whether they were required by the State or part of local supplementation. *E.g.*, 3.RR.155-56 (stating that the district communicated that it wanted the revenue "to sustain the programs and services we have today"); *see also* 289.RR.(Ex. 6557).74 (describing the district's need for more revenue to do the things "that people expected us to"). And he conceded that at least one of the programs requiring extra funding was supplemental to state requirements. 3.RR.230 (conceding that pre-K for three-year-olds is not

required by the State);[22] *see also* 3.RR.233-34 (conceding that Humble ISD has always chosen to pay more than the minimum state teacher salary).

Dr. Heath Burns, Abilene ISD's superintendent, admitted that there was at least some funding for enrichment when his district increased its tax rate to $1.04. 208.RR(Ex. 6336).26 (describing the first four golden pennies as providing "very little enrichment"). And, contrary to the district court's suggestion, Dr. Burns did not testify that any future tax increase would go only toward providing a general diffusion of knowledge. Rather, Dr. Burns stated that, if there were a TRE, "we'd be sacrificing future discretion that we'll certainly choose to employ at some point in time." 19.RR.57-58 (noting also that he was "vehemently opposed" to taxing above $1.04 because it would "reward[] the State" for not doing its "fair share"). In short, Dr. Burns believed that the State should contribute more money to the system so that Abilene ISD does not have to give up some undefined amount of taxing discretion that he admitted the district retains. He did not say that a tax increase would be necessary to meet state standards.

[22] Mr. Moak agreed that pre-K programs are not considered necessary to provide the general diffusion of knowledge required by article VII, section 1. 7.RR.106-07.

Weatherford ISD's superintendent suggested that his district increased its rate to $1.17 to accommodate the 2011 funding cuts, 208.RR(Ex. 6337).29-30, but he later indicated that the increase was motivated by a so-called "tax swap," 208.RR(Ex. 6337).198-202. A district conducting a tax swap promises to lower I&S taxes in exchange for voter approval of an increased M&O rate. 32.RR.33-34. The district then pays its bonds with its fund balance until it must raise I&S rates again. 32.RR.33-34. Weatherford's superintendent had no personal knowledge of any particular program that the tax swap was designed to preserve. 208.RR(Ex. 6337).203.

3. Testimony from district superintendents did not establish that districts lack meaningful discretion.

The same deficiencies in proof identified above afflict all of the representative districts that the ISD Plaintiffs relied on to make their case. Those districts can be divided into three groups: (1) those that are taxing at or near $1.04, most of which never have attempted to access a tax rate between $1.04 and $1.17; (2) those that are taxing at an intermediate rate; and (3) those that used the TRE process to increase their rates directly to $1.17. As with the districts highlighted by the district court, there is no evidence that any of these districts must increase its tax rate purely to meet state requirements or has already done so for that reason.

• **Districts Taxing at $1.04**

The $1.04 districts that have not held a TRE generally stated that their choice not to propose a TRE was based on their own political calculations, not some state-imposed constraint. *E.g.*, 208.RR(Ex. 6341).6 (Corsicana ISD's superintendent testified that (1) the district took all of its golden pennies without providing any tie to adequacy; and (2) it had not sought additional TREs for political reasons).[23] Many provided testimony about the economic downturn and their continuing reluctance to hold a TRE because of anticipated voter reaction. *E.g.*, 157.RR(Ex. 3198).142-43 (Lubbock ISD's superintendent testified that the district could not pass a TRE because of the community's "economic circumstances" and its "conservative nature of voting for tax rate increases").[24] And most failed to testify about their plans following the 83rd Legislature's increase in school funding. *See supra* Part VI.C.1.

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[23] Fort Bend ISD's chief financial officer stated that the district could not increase its tax rate due to its need to issue bonds to build new facilities, and did not tie its $1.04 rate to adequacy. *See* 11.RR.64, 71. Northside ISD's former superintendent described a similar situation with regard to bonds, conceded that the district never has had an "academically unacceptable" campus, and admitted that its schools are offering enrichment programs. 25.RR.102, 131-32. Harlingen CISD's assistant superintendent for business acknowledged that a successful TRE would provide more funding, but he has declined to seek an election because of recently passed bonds. 284.RR(Ex. 4336).18-19.

[24] *See also, e.g.*, 158.RR(Ex. 3199).73-74 (Lufkin ISD); 161.RR(Ex. 3203).15, 43-45 (Anton ISD); 164.RR(Ex. 3206).37-38 (Quinlan ISD); 167.RR(Ex. 3209).252-53, 277 (Brownwood

Evidence offered by other $1.04 districts likewise failed to establish a lack of meaningful discretion. Pflugerville ISD's superintendent stated that he should not be required to hold a TRE merely because the State "is not doing their job to put enough into the system or distribute it in an equitable manner." 24.RR.196-97. And he conceded that the district was not seeking the last two golden pennies even though they would have filled the gap caused by the 2011 cuts, which were made to a system with supplementation. 25.RR.51-52. Calhoun County ISD's superintendent was one of the few to recite the legal test—that he "cannot" tax at a lower rate. 189.RR(Ex. 5618).76. But he also admitted both that the district never had been rated unacceptable, *see* 189.RR(Ex. 5618).119-20, and that it had voluntarily enacted a homestead exemption lowering its revenue to the $1.04 level, 189.RR(Ex. 5618).124-25.[25]

The district court also cited the testimony of Dr. Kallison, President of Eanes ISD's school board, for the proposition that raising taxes above $1.06

ISD); 189.RR(Ex. 5616).41-42, 54-56 (Richardson ISD); 189.RR(Ex. 5614).30-33, 45 (Aransas ISD); 189.RR(Ex. 5617).27-29, 50-52 (Frisco ISD).

[25] Waco ISD's superintendent provided no reason for the initial increase to $1.04 and, while she asserted that any future tax increases would go to meeting state requirements, 208.RR(Ex. 6335).28-29, she later conceded that the only time the district had been found academically unacceptable was ultimately related to board decisions regarding drop-out rates, *see* 208.RR(Ex. 6335).94-98. Bryan ISD's superintendent did not testify specifically about the setting of its $1.04 rate. 158.RR(Ex. 3200).14-16.

would be politically difficult. 12.CR.313 (FOF 261). While Dr. Kallison discussed his view that $1.06 is a de facto cap, he did not tie Eanes ISD's actual tax rate ($1.04) to any specific lack of enrichment. *See* 21.RR.101-05. Moreover, Dr. Kallison testified that Eanes ISD receives approximately $6830 per WADA, 21.RR.102, which exceeds the district court's estimates of the cost of an adequate education, 12.CR.490 (FOF 1206).

Only a few $1.04 districts have held a TRE and failed: Duncanville ISD, 208.RR(Ex. 6342).22-23; Lewisville ISD, 189.RR(Ex. 5615).36-37; and La Feria ISD, 15.RR.197.[26] But La Feria ISD ultimately passed a tax increase. 284.RR(Ex. 4336).18-19. And the other districts effectively conceded that they did not necessarily need the additional funding for state requirements. *See* 280.RR(Ex. 3542).135-36 (Duncanville ISD's superintendent testified that his voters did not want to pay for supplemental technology but expected the State to do so); 189.RR(Ex. 5615).89-90 (Lewisville ISD's superintendent admitted

[26] Aldine ISD is similar to these districts even though it does not tax at $1.04. Prior to tax-rate compression, Aldine ISD was taxing at $1.64 under an exception to the $1.50 cap. *See* 208.RR(Ex. 6339).216. After its rate was compressed to $1.13, it sought the full $0.13 rate increase available to it via a TRE, which failed. 208.RR(Ex. 6339).217-18. Notably, although Aldine ISD's superintendent viewed a rate increase as a "necessity," the board of trustees has not directed her to move forward with another TRE. 208.RR(Ex. 6339).219. She also conceded that there is room for a tax increase less than the full amount the district sought in the initial TRE, and that the "voters have discretion" to choose that increase. 208.RR(Ex. 6339).217, 220.

that the district's budget deficit at $1.04 was caused in part by its decision to build up capital reserves).

- **Districts Taxing Between $1.04 and $1.17**

A few districts are taxing at approximately $1.08. Each suggested that the revenue from a successful TRE held at the time of the trial's first phase still would not have compensated for the 2011 budget cuts—which means that, by the time the final judgment issued in 2014, there was no evidence regarding these districts' need for a higher tax rate or the purposes to which any additional revenue would be applied. *See supra* Part VI.C.1.

For example, Amarillo ISD has held a successful TRE to obtain all of its golden pennies, which its superintendent initially characterized as being "for basic operations." 22.RR.57. But he later clarified that any additional tax-rate increases would go to fund basic services affected by the 2011 cuts, 22.RR.60-61, an assertion that has not been updated since the 2013 funding increase. Austin ISD was taxing at $1.079, but the superintendent testified only to the perceived need to raise the tax rate to cure the 2011 cuts and opined that any raise in rates would not be discretionary. 19.RR.158, 161. Alief ISD was taxing at $1.125, but its superintendent provided no testimony about funding needs other than the alleged harm caused by the 2011 cuts. *See* 8.RR.112-29.

• **Districts Taxing at $1.17**

Most school districts taxing at $1.17 moved directly to that rate in their first TREs. 7.RR.115-16. Many of those districts did so using the tax-swap mechanism. *E.g.*, 24.RR.138 (Los Fresnos ISD); 166.RR(Ex. 3208).50-51 (Kaufman ISD); 189.RR(Ex. 5613).10-11 (Abernathy ISD); 284.RR(Ex. 4336).18-19 (La Feria ISD); *see supra* Part VI.C.2. Those swap districts categorically cannot prove a tax violation because their elections were tied to the political calculation of the tax swap, rather than any need for funds to provide a general diffusion of knowledge or local supplementation.

Other, non-swap districts offered various reasons for moving to $1.17, but none proved that it could not meet state requirements at a lower rate. For example, Van ISD went directly to $1.17 without considering a lower rate; its superintendent did not tie its rate increase to providing an adequate education; and, following the increase, its accountability rating improved from acceptable to exemplary between 2008 and 2010. *See* 159.RR(Ex. 3201).105-06. Everman ISD initially attributed its increase to $1.17 to the 2011 budget cuts, but not to a specific concern about adequacy. 160.RR(Ex. 3202).38-42, 46-48. By the trial's second phase, the increased state funding combined with Everman ISD's $1.17 rate had led to rehiring of staff and raises. *See* 280.RR(Ex.

3541).17-20. At that point, Everman ISD's superintendent contended that the district lacked the funds needed to provide an adequate education, but she erroneously defined that standard as 100% passing rate on all exams. 280.RR(Ex. 3541).28, 58.[27]

In sum, no school district actually connected a current inability to meet state requirements or provide local supplementation with a tax rate it could not change. As a result, those districts' evidence does not establish either a district-specific or systemic state-property-tax violation.

D. The District Court Made Multiple Legal and Factual Errors In Concluding That The System Imposes a State Property Tax.

Despite the lack of evidence of either a systemic or district-specific violation of article VIII, section 1-e, the district court nonetheless determined that the system imposes a state property tax. Three significant errors led the court to that incorrect result: (1) the court wrongly presumed that the tax-rate cap is $1.04 because voters must approve higher tax rates; (2) it assessed the system's taxing capacity based on presumed rather than actual expenditures; and (3) it found fault in the ratio of local property-tax revenue to state funding.

[27] Also, Edgewood ISD's superintendent testified that he would love to tax at a rate higher than $1.17, but he provided no information on how that rate would connect to adequacy. *See* 175.RR(Ex. 4224-S).198. Belton ISD's superintendent did not testify specifically about setting that district's $1.17 rate. 168.RR(Ex. 3226).148.

1. Requiring a district to ask voters to approve a tax rate above $1.04 cannot itself violate the Constitution.

Perhaps because the evidence does not show that the statutory tax-rate cap of $1.17 effects a state property tax, the district court held that school districts could establish a state-property-tax violation by proving that they must tax at a rate above $1.04. The court reasoned that requiring a school district to obtain voter approval before raising its tax rate above $1.04 causes it to lose "discretion over one-third of [its] local tax revenues." 12.CR.570 (COL 14); *see also* 12.CR.301 (FOF 213) (concluding that "a constitutionally adequate education cannot be left to the discretion of voters"); 12.CR.570 (COL 17) (finding that districts "must then overcome significant obstacles to passing a [rate increase] including the poverty of their districts"). Stated differently, the court held that putting tax rates above $1.04 in the hands of local voters means that the State has effectively set the property-tax rate.

That argument not only defies logic, but it also contravenes the Texas Constitution. The Constitution does not require that the education system be funded with state tax revenue. *Edgewood III*, 826 S.W.2d at 503. Indeed, it affirmatively contemplates the use of local ad valorem taxes to fund education. *See* TEX. CONST. art. VII, §§ 3, 3-b. Specifically:

> The Legislature shall be authorized to pass laws for the assessment and collection of taxes in all school districts . . . and the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts for the further maintenance of public free schools . . . *provided that a majority of the qualified voters of the district voting at an election to be held for that purpose shall approve the tax.*

Id. art. VII, § 3(e) (emphasis added).[28]

This provision goes hand in hand with article VIII, section 1-e's prohibition on a state property tax: tax rates are supposed to depend on local voter action. Finding a state property tax based on the necessity of a local election is a contradiction in terms. Every iteration of the Constitution's provisions governing the funding of public schools through local ad valorem taxation has included an element of voter control. This mandate to allow local control is the exact opposite of a state property tax.

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[28] This requirement of voter participation dates back to the compromise regarding education funding struck in the 1875 Convention. *See* 2 GEORGE D. BRADEN, *ET AL.*, THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS 511-12 (1977). At that time, the State's share of public-school support was funded by a poll tax, while separate school districts, where they existed, were entitled to impose an unlimited amount of property tax so long as the rate was approved by two-thirds of taxpayers. *Id.* at 512; *see City of Fort Worth v. Davis*, 57 Tex. 225, 232 (1882) (discussing former article XI, section 10 of the Texas Constitution).

2. The district court's analysis of the state-property-tax claims improperly rested on presumed per-student expenditures.

The district court further erred by accepting the ISD Plaintiffs' premise that a constitutionally adequate education can be measured in dollars and the State must design a tax-rate structure that provides school districts with that particular amount of funding. *See* 12.CR.300-14 (FOF 210-70). Again, the Court already has considered and rejected the notion that one can reliably quantify *a priori* either the cost of an adequate education or the range of meaningful discretion. *WOC II*, 176 S.W.3d at 788, 796; *see supra* Part III.B. Rather, a state-property-tax claim must rest on actual *evidence* that districts are *experiencing* little or no flexibility in setting their tax rates and supplementing education programs locally because they must provide the state-required general diffusion of knowledge while honoring the statutory tax-rate cap. *WOC II*, 176 S.W.3d at 796.

Nearly all of the expert testimony in the record regarding the state-property-tax claim related to the ISD Plaintiffs' inflated projections of student expenditures, not the actual cost of the current public-education system or the result-oriented measure of adequacy articulated in *West Orange-Cove II*. Thus, for example, Mr. Moak focused exclusively on projected dollar figures

in concluding that the system lacked sufficient taxing capacity to provide all the money he believed was necessary to provide an adequate education if all districts taxed at $1.04. *See* 54.RR.118; *see also* 289.RR(Ex. 6618).15-18 (relying on estimates of over $6500 per WADA to determine capacity).[29]

Mr. Moak's calculation of the school-finance system's taxing capacity is counterfactual. It assumes *both* that all districts must spend a projected sum certain (which is not relevant to the adequacy inquiry) *and* that they are taxing at $1.04 (which, of course, is nowhere near the maximum available tax rate). *See* 54.RR.118-19 (referencing 289.RR(Ex. 6618).15); *see also, e.g.*, 12.CR.302 (FOF 215) (analyzing the state-property-tax claim based on the "cost-of-adequacy estimates adopted by the Court"). But Mr. Moak did not analyze whether the $1.04 rate was an accurate proxy for adequacy spending and he conceded that at least some districts can provide enrichment programs while taxing at $1.04. 7.RR.126-27; *see also* 55.RR.61. He also never analyzed whether the spending of additional funds on supplementation meant that some districts could lower their tax rates below $1.04. 7.RR.126-27. In short, the evidence for the proposition that the current system has less taxing capacity

[29] Mr. Moak's capacity estimate is even less reliable because it presumes that constitutional adequacy must be achieved at the $1.04 tax rate.

now than there was when the Court found a state-property-tax violation in *West Orange-Cove II* hinges on projected costs that cannot be proven necessary for an adequate education. *See also supra* Part VI.B (explaining that there is sufficient capacity in the system not to trigger a presumed systemic violation of article VIII, section 1-e).

3. The district court's analysis of the state-property-tax claim wrongly focused on the State's relative share of education funding.

The district court also repeatedly misconstrued the scope of article VIII, section 1-e's prohibition of a state property tax, suggesting that the Constitution requires a particular ratio of state to local funding. For example, the court found that relying on increases in local property tax revenue for additional system funding was constitutionally problematic. *See* 12.CR.303 (FOF 221) ("[W]hen the State replaced some . . . funding, it relied heavily on local property taxes to fund this partial restoration."); *see also* 12.CR.235 (asserting that "the State controls the levy by using increasing property values to finance enrollment growth and (nominal) funding increases"). The district court further suggested that setting a minimum tax rate to participate in state education funding constituted an unconstitutional "floor" on tax rates, 12.CR.235, and that the districts' current tax rates (including those lower than

the actual statutory cap of $1.17) constitute state taxes because the districts cannot lower them, 12.CR.235. Those findings cannot support either a systemic or district-specific violation of article VIII, section 1-e as a matter of law because *West Orange-Cove II* forecloses the theory that the ratio of state to local funding alone can establish a state property tax.

A "decision to rely so heavily on local property taxes to fund public education does not in itself violate any provision of the Texas Constitution." *WOC II*, 176 S.W.3d at 756. Conversely, then, the Constitution does not guarantee any particular amount of state funding to school districts.

For that reason, the focus of the constitutional inquiry must be the statutory tax-rate cap. Again, a state-property-tax claim ripens when "'a cap on tax rates . . . become[s] in effect a floor as well as a ceiling.'" *Id.* at 795 (quoting *Edgewood IV*, 917 S.W.2d at 738). That is so because article VIII, section 1-e prevents the State from indirectly imposing a state property tax by effectively requiring districts to tax *at* a particular level. *Id.*

But that provision does not prevent the State from only requiring districts to tax *above* a particular level, either by relying on more revenue from local taxes or by statutorily prescribing a minimum tax rate to participate in the system. In other words, while a statutory tax-rate cap that becomes both

a ceiling and a floor is constitutionally problematic, a floor on tax rates alone is not. *See WOC II*, 176 S.W.3d at 756.

The district court apparently believed that the State should be responsible for a larger share of the cost of an adequate education. That much is clear from its dismissal of the 2013 funding increases as inconsequential merely because they derived in part from the revenue boost caused by rising property values. But whatever the policy merits of the district court's preference, the Constitution does not require that the State provide any particular level of school funding. Unless the State's education requirements effectively constrain districts to tax at a particular rate, there is no violation of article VIII, section 1-e.

E. There Cannot Be a Facilities Tax Claim Because the ISD Plaintiffs' Theory Would Render the Requirements on All Local Bonds Supported by Property Taxes Unconstitutional.

Finally, the Court should reject any claim that there is an unconstitutional state property tax with respect to facilities funding. As explained above, school districts across the State do not have similar facilities needs. *See supra* IV.E.1. Approximately 20% levy no I&S taxes, 12.CR.305 (FOF 230), and 78% have an I&S rate under 30 cents. 289.RR(Ex. 6621).14. There is no proof that the $0.50 cap has become both a ceiling and a floor.

Moreover, there is a categorical defect in the district court's findings that purportedly support its conclusion that the facilities-funding requirements violate the prohibition on a state property tax. *See* 12.CR.313-14 (FOF 263-70). The facilities-funding system is fundamentally different from the M&O system in that it does not involve systematic state expenditures. A district's authority to issue both taxes and bonds is governed by Chapter 45 of the Education Code. *See* TEX. EDUC. CODE § 11.152. Bonds can be issued for buildings, property, and buses. *See id.* § 45.001. The total tax rate to cover principal and interest on all bonds for a district is capped at $0.50. *Id.* § 45.0031(a). While the State appropriates money to supplement facilities money on a case-by-case basis, it does not systematically redistribute funds. *See* TEX. EDUC. CODE § 46.007.

The district court posited that the statutory cap on the amount of debt a school district may incur constitutes rate-setting by proxy because schools will have to tailor their bond terms to meet the cap. 12.CR.313 (FOF 264); *see* TEX. EDUC. CODE § 45.0031(a). But the Constitution *itself* places limits on the bonds that local governments can issue, which suggests that limitations on local indebtedness are not inimical to the Constitution as a general matter. *E.g.*, TEX. CONST. art. VIII, § 1-a ("The several counties . . . are authorized to levy

ad valorem taxes . . . not to exceed thirty cents (30¢) on each One Hundred Dollars ($100) valuation . . . ."). And there are statutory caps on the tax rates for other local-government construction bonds. *E.g.*, TEX. GOV'T CODE § 1301.003(c) (setting a county's maximum amount of construction bonds at 5% of its taxable value); *id.* § 1331.051 (setting a limit on total amount of bonds for certain cities at 10% of taxable property value). Each of these caps limits the amount of tax revenue local governments can raise to perform public functions. Yet, under the district court's rationale, these limits impose unconstitutional state property taxes. In short, the court's theory of facilities funding would cast doubt on the constitutionality of a number of other limits on local indebtedness.

Article VIII, section 1-e's prohibition is not limited to school finance, but applies to any property tax. TEX. CONST. art. VIII, § 1-e; *see also Tex. Mun. League Intergovernmental Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 386-87 (Tex. 2002). The State itself is not allowed to issue public debt supported by property taxes. TEX. CONST. art. III, § 49; *see Tex. Pub. Bldg. Auth. v. Mattox*, 686 S.W.2d 924, 927-28 (Tex. 1985). Cities and counties must keep their total debt burdens below a particular amount. The structure for other local construction bonds is the same as that for school districts: the

tax rate can be increased to cover a certain percentage of the appraised value of real estate, subject to the voters' choice to undertake the bonds. *See, e.g.*, *Coulson v. Harris Cnty. Mun. Utility Dist. No. 29*, 678 S.W.2d 726, 727 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.). If the financing requirements for issuing public debt constituted indirect control of the tax rate ultimately imposed, nothing would spare the capitalization requirements for public debt incurred for local improvements from constitutional attack.

There is no compelling reason for the Court to violate the doctrine of constitutional avoidance by reaching a conclusion that raises these concerns. *See Brooks v. Northglen Ass'n*, 141 S.W.3d 158, 169 (Tex. 2004). Unlike M&O revenue, the revenue from bonds is not supplemented systematically by the State, but rather is supplemented through district-specific appropriations to the IFA and EDA programs. Thus, the State provides relief from the limitation on a case-by-case basis, but systemic state expenditures do not affect the total amount of debt a district can undertake. The Court should not undermine the constitutionality of all limits on local bonding and taxing by embracing the district court's view of article VIII, section 1-e's reach.

VII. THE COURT SHOULD REVERSE THE JUDGMENT AWARDING ATTORNEYS' FEES TO THE ISD PLAINTIFFS AND DENYING THE STATE DEFENDANTS' FEE REQUEST AND REMAND THE FEE ISSUE FOR RECONSIDERATION.

If the Court reaches the merits and reverses the judgment for the ISD Plaintiffs on any of their constitutional claims, it also should reverse both the $10 million attorney-fee award to the ISD Plaintiffs and the denial of the State Defendants' fee request, and remand the fee issue for reconsideration.

Under the UDJA, a court "may award costs and reasonable and necessary attorney's fees as are equitable and just." TEX. CIV. PRAC. & REM. CODE § 37.009. The statute thus "entrusts attorney fee awards to the trial court's sound discretion, subject to the requirements that any fees awarded be reasonable and necessary, which are matters of fact, and to the additional requirements that fees be equitable and just, which are matters of law." *Bocquet*, 972 S.W.2d at 21. Whether a fee award under the UDJA is equitable and just is "a matter of fairness in light of all the circumstances." *Ridge Oil Co. v. Guinn Invs., Inc.*, 148 S.W.3d 143, 162 (Tex. 2004). A trial court abuses its discretion when it awards fees "arbitrarily, unreasonably, or without regard to guiding legal principles." *Bocquet*, 972 S.W.2d at 21.

Here, the district court rejected the State Defendants' fee request primarily because they "were predominantly non-prevailing parties" at trial.

12.CR.200. At the same time, the court held that whether the ISD Plaintiffs ultimately prevail on some, all, or none of their claims makes no difference; they receive their trial and appellate fees regardless. 12.CR.203, 205-08 (ordering that, even if the ISD Plaintiffs lose on appeal, their fee awards will stand). But if the Court reverses any part of the judgment on the merits for the ISD Plaintiffs, it should reverse the orders on the parties' fee requests and remand for further proceedings, for three reasons.

First, the district court erred in awarding the ISD Plaintiffs their appellate attorneys' fees regardless of this appeal's result. 12.CR.203, 205-08. Such an unconditional award of appellate fees improperly penalizes the losing party in the trial court just for exercising its right to appeal. *See In re Ford Motor Co.*, 988 S.W.2d 714, 721-23 (Tex. 1998). That principle applies with equal force to appellate fees under the UDJA. *See La Ventana Ranch Owners' Ass'n v. Davis*, 363 S.W.3d 632, 652 n.17 (Tex. App.—Austin 2011, pet. denied); *Sundance Minerals, L.P. v. Moore*, 354 S.W.3d 507, 515 (Tex. App.—Fort Worth 2011, pet. denied); *Gilbert v. City of El Paso*, 327 S.W.3d 332, 337 (Tex. App.—El Paso 2010, no pet.).[30] By ordering the State Defendants to pay the

[30] *See also Smith v. Reid*, No. 04-13-00550-CV, 2014 WL 7339586, at *11 (Tex. App.—San Antonio Dec. 23, 2014, no pet.) (mem. op.); *Smith v. Killion*, No. 11-11-00083-CV, 2013 WL 1859336, at *4 (Tex. App.—Eastland Apr. 30, 2013, no pet.) (mem. op.); *Goebel v. Brandley*,

ISD Plaintiffs $1.5 million in appellate fees notwithstanding what happens in this Court, the district court effectively charged the State Defendants a $1.5 million filing fee for their notice of appeal. 12.CR.203, 205-08. That error will not be harmless if the Court reverses the judgment in any respect.

Second, while a party need not prevail on the merits to obtain a fee award under the UDJA, *Barshop*, 925 S.W.2d at 637, the parties' ultimate success or failure in a UDJA suit still matters. This Court has recognized as much by reversing and remanding fee awards under the UDJA when reversing the judgment on the merits so that the trial court may reassess whether the award remains equitable and just in light of the Court's ruling. *City of Lorena v. BMTP Holdings, L.P.*, 409 S.W.3d 634, 646 (Tex. 2013); *Edwards Aquifer Auth. v. Chem. Lime, Ltd.*, 291 S.W.3d 392, 405 (Tex. 2009); *WOC II*, 176 S.W.3d at 799.[31] That disposition would be particularly

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76 S.W.3d 652, 658-59 (Tex. App.—Houston [14th Dist.] 2002, no pet.), *disapproved of on other grounds by Martin v. Amerman*, 133 S.W.3d 262, 268 (Tex. 2004).

[31] The courts of appeals take the same approach. *E.g.*, *WaiWai, LLC v. Alvarado*, No. 03-13-00540-CV, 2014 WL 6844934, at *5 (Tex. App.—Austin Nov. 26, 2014, no pet.) (mem. op.); *Wynne/Jackson Dev., L.P. v. PAC Capital Holdings, Ltd.*, No. 13-12-00449-CV, 2013 WL 2470898, at *6 (Tex. App.—Corpus Christi June 6, 2013, pet. denied) (mem. op. on reh'g); *Greater Houston Radiation Oncology, P.A. v. Sadler Clinic Ass'n, P.A.*, 384 S.W.3d 875, 897-98 (Tex. App.—Beaumont 2012, pet. denied); *Crown Pine Timber 1, L.P. v. Durrett*, No. 12-11-00281-CV, 2012 WL 1623469, at *6-*7 (Tex. App.—Tyler May 9, 2012, no pet.) (mem. op.); *Moore v. Jet Stream Invs., Ltd.*, 261 S.W.3d 412, 432 (Tex. App.—Texarkana 2008, pet. denied); *City of Houston v. Soriano*, No. 14-05-00161-CV, 2006 WL 2506388, at *6-*7 (Tex. App.—Houston [14th Dist.] Aug. 29, 2006, pet. denied) (mem. op.); *SAVA*

appropriate here, given that the district court specifically cited the State Defendants' non-prevailing status below as grounds for denying their fee request. *See Barshop*, 925 S.W.2d at 637-38 (reversing and remanding a fee award under the UDJA based on a finding that the plaintiffs had "substantially prevailed" in the trial court where the judgment for the plaintiffs was reversed on appeal).

Third, the district court's justification for awarding the ISD Plaintiffs their fees regardless of this appeal's outcome was unreasonable and should not insulate that award from reversal. If relative success in this suit is relevant to the State Defendants' fee request, as the district court concluded, there is no principled basis for finding that it is irrelevant to the ISD Plaintiffs' fee request. The court's only explanation for applying that double-standard was that the ISD Plaintiffs "have made significant contributions to the public debate on school finance law through this lawsuit," 12.CR.203, 205-08, whereas the State Defendants' contributions to that debate "were not so significant as to warrant an award of fees," 12.CR.200. But the record contains no evidence of the ISD Plaintiffs' purported contributions to any public debate. And the

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gumarska in kemijska industria d.d. v. Advanced Polymer Scis., Inc., 128 S.W.3d 304, 324 (Tex. App.—Dallas 2004, no pet.); *Ferguson v. Ferguson*, 111 S.W.3d 589, 600 (Tex. App.—Fort Worth 2003, pet. denied).

notion that the State Defendants' fee request should turn on how much they advanced a public debate while defending themselves in a lawsuit is nonsense. If anything, the district court's vision of this litigation as part of a public debate only confirms that this entire dispute belongs where debates are supposed to occur—the Texas Legislature. *See supra* Part I. Accordingly, reversal of any part of the judgment on the merits also should result in reversal of the rulings on attorneys' fees and a remand for further proceedings on the fee issue.

VIII. THE DISTRICT COURT ERRED IN PURPORTING TO RETAIN "CONTINUING JURISDICTION" OVER THIS CASE.

The final judgment states that the district court "will retain continuing jurisdiction over this matter until the Court has determined that the State Defendants have fully and properly complied with its judgment and orders." 12.CR.208. In doing so, the court suggested that it had the power to open, vacate, or modify the injunction without reservation. 12.CR.591 (COL 118) (citing *City of San Antonio v. Singleton*, 858 S.W.2d 411, 412 (Tex. 1993)). To the extent the judgment asserts a plenary right to modify the injunction in the future, the district court overstated its power under the Texas Constitution and the Texas Rules of Civil Procedure.

A court retains plenary power for 30 days after judgment. TEX. R. CIV. P. 329b(d). Any motion to modify, correct, or reform the judgment must be

filed within that plenary-power period.[32] TEX. R. CIV. P. 329b(g). A trial court has no jurisdiction to consider a request for relief after it loses plenary power. *E.g.*, *First Alief Bank v. White*, 682 S.W.2d 252, 252 (Tex. 1984) (per curiam) ("Judge White's plenary power expired . . . and he thereafter lacked jurisdiction to modify that judgment.").

The exception to the end of this plenary authority is the power to enforce the unchanged judgment. TEX. R. CIV. P. 308; *see City of Tyler v. St. Louis Sw. Ry.*, 405 S.W.2d 330, 332 (Tex. 1966). Because a permanent injunction can be enforced after plenary power expires, the court may also change the terms of the injunction if circumstances change. *E.g.*, *Singleton*, 858 S.W.2d at 412; *see City of Seagoville v. Smith*, 695 S.W.2d 288, 289 (Tex. App.—Dallas 1985, no writ) ("It is a permissible procedure for the party against whom judgment was granted to file a motion to modify or vacate the injunction due to changed circumstances in the same trial court that rendered the judgment.").

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[32] This practice differs from that permitted by the federal rules, which grant district courts broad authority to set continuing conditions and hold subsequent hearings to determine compliance. *See* FED. R. CIV. P. 60(b). A federal court's power to issue a "structural" injunction, one that contains contingent relief based on compliance with a set of goals, differs greatly from a permanent injunction under Texas law, which bars a trial court from reserving power to decide further issues after its plenary power expires—and for good reason: the Texas Constitution requires separation of powers among the departments of government. TEX. CONST. art. II, § 1; *see Brown v. Plata*, 131 S. Ct. 1910, 1953 (2011) (Scalia, J., dissenting) (explaining that the federal practice of "structural injunctions" extends the injunctive power far beyond the judiciary's traditional role).

The power to modify an injunction is limited to the scope of the court's enforcement power, as a necessary corollary to that power. No Texas court has ever asserted authority to exercise continuing jurisdiction in the manner the federal courts do, to continually monitor a situation for compliance with an injunction to meet a particular policy goal. To the extent the district court's order attempts to impose a "structural" injunction of the type entered by federal courts, the Court should reiterate that such injunctions are inconsistent with Rules 329b(d) and 308.

PRAYER

The final judgment should be reversed and the case dismissed for want of subject-matter jurisdiction. In the alternative, the final judgment should be reversed in part insofar as it grants judgment for Plaintiffs on their claims for declaratory and injunctive relief; judgment should be rendered for the State Defendants on those claims; and the judgment on the attorney-fee requests should be reversed and remanded to the district court.

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CERTIFICATE OF COMPLIANCE

According to Microsoft Word, this brief contains **39,719** words, excluding the portions of the brief exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

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APPENDIX

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B. Findings of Fact and Conclusions of Law, *Tex. Taxpayer & Student Fairness Coal. v. Williams*, No. D-1-GN-11-003130 (200th Dist. Ct. [Travis County] Aug. 28, 2014) (12.CR.209-591)

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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.;	§	IN THE DISTRICT COURT
Plaintiffs	§	
JOYCE COLEMAN, et al.;	§	
Intervenors	§	
vs.	§	TRAVIS COUNTY, TEXAS
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	§	200th JUDICIAL DISTRICT

FINAL JUDGMENT

On October 22, 2012, this consolidated case was called for trial. All parties appeared and announced that they were ready for trial, including the Texas Taxpayer and Student Fairness Coalition Plaintiffs (the "TTSFC Plaintiffs"),[1] the Calhoun County ISD Plaintiffs,[2] the Fort Bend ISD Plaintiffs,[3] the Edgewood ISD Plaintiffs,[4] the Charter School Plaintiffs,[5] the Intervenors,[6]

[1] The TTSFC Plaintiffs are those plaintiffs listed in paragraphs 2-8 of their Ninth Amended Petition filed with the Court on October 11, 2013.

[2] The Calhoun County ISD Plaintiffs are those districts listed in paragraphs 2-7 of their Third Amended Petition filed with the Court on October 11, 2013.

[3] The Fort Bend ISD Plaintiffs are those districts listed in paragraphs 2-83 of their Seventh Amended Petition filed with the Court on October 11, 2013.

and the State Defendants.[7] The case was tried to the Court over the course of forty-five trial days.

On the final day of trial, this Court orally announced its ruling on the plaintiffs' claims, finding the Texas school finance system unconstitutional in several respects. Before this Court entered its findings of fact and a final judgment, the 83rd Legislature passed several bills that potentially affected the claims in this case. On June 19, 2013, the Court granted a motion to reopen the evidence to consider the impact of the 2013 legislation, and held a ten-day evidentiary hearing beginning on January 21, 2014.

Based upon the competent evidence admitted at trial (both the main trial and upon the reopening of evidence), the arguments of counsel, and this Court's contemporaneously-entered Findings of Fact and Conclusions of Law (incorporated herein by reference),[8] the Court finds that the Texas school finance system effectively imposes a state property tax in violation of Article VIII, Section 1-e of the Texas Constitution because school districts do not have meaningful discretion over the levy, assessment, and disbursement of local property taxes. The Court further finds that the Legislature has failed to meet its constitutional duty to suitably provide for Texas public schools because the school finance system is structured, operated, and funded so that it cannot provide a constitutionally adequate education for all Texas

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[4] The Edgewood ISD Plaintiffs are those plaintiffs listed in paragraphs 2-12 of their Third Amended Petition filed with the Court on August 7, 2013.

[5] The Charter School Plaintiffs are those plaintiffs listed in paragraphs 2-7 of their Fifth Amended Original Petition and Request for Declaratory Judgment filed with the Court on November 21, 2013.

[6] The Intervenors are those parties listed in paragraph 1 of their Third Amended Plea in Intervention filed with this Court on August 7, 2013.

[7] The State Defendants are Michael Williams, in his official capacity as Texas Commissioner of Education; the Texas Education Agency; Susan Combs, in her official capacity as the Texas Comptroller of Public Accounts; and the Texas State Board of Education.

[8] The Court incorporates its Findings of Fact and Conclusions of Law in support of this Final Judgment. The Declarations, herein, summarize or restate those found in the Findings of Fact and Conclusions of Law.

schoolchildren. Further, the school finance system is constitutionally inadequate because it cannot accomplish, and has not accomplished, a general diffusion of knowledge for all students due to insufficient funding. Finally, the school finance system is financially inefficient because all Texas students do not have substantially equal access to the educational funds necessary to accomplish a general diffusion of knowledge. Consequently, the Court enjoins further funding under the system until the constitutional infirmities are corrected.

THE CONSTITUTIONAL STANDARDS

State Property Tax Prohibition.

Because the TTSFC Plaintiffs, the Calhoun County ISD Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs (collectively, the "ISD Plaintiffs") must tax at or near the maximum allowed tax rate to fund maintenance and operations for an adequate education, they contend that the State, through the school finance system, improperly controls local property taxation in violation of Article VIII, Section 1-e of the Texas Constitution: "No State ad valorem taxes shall be levied upon any property within this State." TEX. CONST. art. VIII, § 1-e. "An ad valorem tax is a state tax when it is imposed directly by the State or when the State so completely controls the levy, assessment and disbursement of revenue, either directly or indirectly, that the authority employed is without meaningful discretion." *West Orange-Cove Cons. I.S.D. v. Neeley*, 176 S.W.3d 746, 751 (Tex. 2005) ["*WOC II*"] (quoting *Carrollton-Farmers Branch I.S.D. v. Edgewood I.S.D.*, 826 S.W.2d 489, 502 (Tex. 1992)) ["*Edgewood III*"]. The evidence clearly establishes that local districts do not have meaningful discretion in the levy, assessment, and disbursement of property taxes; therefore, the Texas school finance system imposes an unconstitutional state property tax.

The Education Clause – Adequacy, Suitability, and Financial Efficiency.

Like the Texas Supreme Court, this Court measures the conduct of the Legislature by its constitutional duty:

> A general diffusion of knowledge being essential to the preservation of liberties and rights of the people, **it shall be the duty of the Legislature** of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

TEX. CONST. art. VII, § 1 (emphasis added). As applied in this case and described by the Supreme Court, the Constitution first requires the Legislature to establish a public school system that is "adequate," i.e., one that "achieve[s] '[a] **general diffusion of knowledge** . . . essential to the preservation of liberties and rights of the people.'" *WOC II*, 176 S.W.3d at 753 (quoting TEX. CONST. art. VII, § 1) (emphasis added). Second, the Legislature must make "suitable provision" to achieve the general diffusion of knowledge. That is, the Legislature must **structure, operate, and fund** the public school system "so that it can accomplish its purpose for all Texas children." *Id.* (emphasis added). Third, in funding the public school system, the Legislature must be "financially efficient." "'Children who live in poor districts and children who live in rich districts must be afforded a **substantially equal opportunity to have access to educational funds**.'" *Id.* (quoting *Edgewood I.S.D. v. Kirby*, 777 S.W.2d 391, 397 (Tex. 1989)) ["*Edgewood I*"] (emphasis added). In the context of a finance system that is heavily dependent upon property tax revenues and there exists a vast disparity in property values among the school districts, "'[t]here must be a direct and close correlation between a district's tax effort and the educational resources available to it. . . .'" *Edgewood I.S.D. v. Meno*, 917 S.W.2d 717, 729 (Tex. 1995) ["*Edgewood IV*"], (quoting *Edgewood I*, 777 S.W.2d at 397). The Texas school finance system is constitutionally inadequate, unsuitable, and financially inefficient.

STANDARD OF REVIEW

This Court is mindful that its role differs from that of the Legislature.

> [T]he Legislature has discretion under article VII, section 1 to determine how to structure and fund the public education system to achieve a general diffusion of knowledge. However . . . governmental discretion is circumscribed by the Constitution. Article VII, section 1 requires that public school finance be efficient and adequate [and suitable] to provide a general diffusion of knowledge.

WOC II, 176 S.W.3d at 775. The Legislature's "affirmative duty to establish and provide for the public free schools" is accompanied by "express constitutional mandate" by which this Court must "measure the constitutionality of the Legislature's actions." *Id.* at 776. "That provision does not allow the Legislature to structure a public school system that is inadequate, inefficient, or unsuitable, **regardless of whether it has a rational basis or even a compelling reason to do so**." *Id.* at 784 (emphasis added).

> The Legislature is entitled to determine what public education is necessary for the constitutionally required 'general diffusion of knowledge', and then to determine the means for providing that education. But the Legislature does not have free rein at either level.
>
> * * *
>
> If the Legislature's choices are informed by guiding rules and principles properly related to public education – that is, if the choices are not arbitrary – then the system does not violate the constitutional provision.

Id. at 784-85.

> In assessing challenges to the public education system under article VII, section 1, courts must not on the one hand substitute their policy choices for the Legislature's, however undesirable the latter may appear, but must on the other hand examine the Legislature's choices carefully to determine whether those choices meet the requirements of the Constitution. By steering this course, the Judiciary can assure that the people's guarantees under the Constitution are protected without straying into the prerogatives of the Legislature.

Id. at 785.

Though the Court recognizes the Legislature's discretion in crafting the public school system, "the final authority to determine adherence to the Constitution resides with the judiciary." *Id.* While the parameters are not clear, the constitutional limits are.

> [A]rticle VII, section 1 dictates what the system *cannot* be: it cannot be so inadequate that it does not provide for a general diffusion of knowledge, or so inefficient that districts which must achieve this general diffusion of knowledge do not have substantially equal access to available revenues to perform their mission, or so unsuitable that it cannot because of its structure achieve its purpose.

Id. at 783. The Court finds the Legislature has failed to meet its constitutional mandate and has acted arbitrarily in structuring and funding the Texas school finance system.

Based upon the Court's Findings of Fact and Conclusions of Law, the Court GRANTS the ISD Plaintiffs' requests for declaratory and injunctive relief and makes the following declarations.

I. <u>Declaratory relief relating to Article VIII, Section 1-e state property tax claims</u>

This Court GRANTS FINAL JUDGMENT to the ISD Plaintiffs on their requests for declaratory relief in connection with their Article VIII, Section 1-e state property tax claims. Accordingly, the Court makes the following declarations:

1. The ISD Plaintiffs have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any of the ISD Plaintiff districts could raise their M&O tax rate to the statutory maximum rate of $1.17 (and have not already done so), the districts would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes. Thus, THIS COURT DECLARES that the ISD Plaintiffs have established an Article VIII, Section 1-e violation as to their districts.

2. Because the ISD Plaintiffs collectively have also established a systemic violation, THIS COURT DECLARES that the Texas school finance system is presently in violation of Article VIII, Section 1-e of the Texas Constitution.

II. Declaratory relief relating to Article VII, Section 1 suitability claims

This Court GRANTS FINAL JUDGMENT to the ISD Plaintiffs on their requests for declaratory relief in connection with their Article VII, Section 1 suitability claims. Accordingly, the Court makes the following declarations (which summarize or restate those made in the accompanying Findings of Fact and Conclusions of Law):

1. The ISD Plaintiffs have shown that the State has made no effort to determine the costs of meeting its own standards or of bridging the performance gaps. The ISD Plaintiffs have further shown that the costs of providing a general diffusion of knowledge exceed the funding provided through the current system, and that multiple defects in the current design of the school finance system – including inadequately funded weights for economically disadvantaged and English Language Learner students – cumulatively prevent districts from generating sufficient resources to accomplish a general diffusion of knowledge for all students, and particularly with respect to the State's economically disadvantaged and English Language Learner students. Accordingly, THIS COURT DECLARES that the Texas school finance system violates the "make suitable provision" clause in Article VII, Section 1 of the Texas Constitution because the system is not "structured, operated, and funded so that it can accomplish its purpose [of providing a general diffusion of knowledge] for all Texas children." *WOC II*, 176 S.W.3d at 753.

2. The Edgewood ISD Plaintiffs have further shown that the costs of providing a general diffusion of knowledge to economically disadvantaged and English Language Learner students exceed the funding provided through the current system, due to the arbitrarily designed and insufficient weights for those students. This defect coupled with the arbitrarily designed and insufficient Foundation School Program funding made available to districts like the Edgewood ISD Plaintiffs cumulatively prevent those districts from generating sufficient resources to accomplish a general diffusion of knowledge for the State's economically disadvantaged and English Language Learner students. Accordingly, THIS COURT DECLARES that the Texas school finance system violates the "make suitable provision" clause in Article VII, Section 1 of the Texas Constitution because the system is not "structured, operated, and funded so that it can accomplish its purpose [of providing a general diffusion of knowledge] for [economically disadvantaged and English Language Learner] children." *WOC II*, 176 S.W.3d at 753.

3. THIS COURT DECLARES the State's school finance system fails to satisfy the "make suitable provision" requirement because Texas school children, particularly the economically disadvantaged and English language learners, are denied access to that education needed to participate fully in the social, economic, and educational opportunities available in Texas. Moreover, the failure of the Texas school finance system to fully pay the costs of a constitutionally adequate education, whether at the maximum tax rate available without a Tax Ratification Election ["TRE"], $1.04, or at the maximum tax rate with voter approval, $1.17, means that the structure, operation, and

funding make it impossible for Texas public schools to accomplish a general diffusion of knowledge.

4. The TTFSC Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs have shown that the Texas school finance system is structured, operated, and funded so that it cannot accomplish financial equity. Property wealthy districts are able to access substantially more funding at all levels of the system. Further, the use of two separate funding mechanisms for M&O, formula funding and target revenue, makes it impossible for the finance system to be equalized to accomplish financial efficiency. THIS COURT DECLARES that the Texas school finance system fails to satisfy the "make suitable provision" requirement because it is structured, operated, and funded so that it is impossible to achieve a general diffusion of knowledge in a financially efficient manner.

III. Declaratory relief relating to Article VII, Section 1 adequacy claims

This Court GRANTS FINAL JUDGMENT to the ISD Plaintiffs, as well as the Charter School Plaintiffs, on their requests for declaratory relief in connection with their Article VII, Section 1 adequacy claims. Accordingly, the Court makes the following declarations (which summarize or restate those made in the accompanying Findings of Fact and Conclusions of Law):

1. All performance measures considered at trial, including STAAR tests, EOC exams, SATs, the ACTs, performance gaps, graduation rates, and dropout rates among others, demonstrated that Texas public schools are not accomplishing a general diffusion of knowledge due to inadequate funding. Accordingly, THIS COURT DECLARES that the school finance system is constitutionally inadequate.

2. The ISD Plaintiffs have shown that the cost of meeting the constitutional mandate of adequacy (the "general diffusion of knowledge") exceeds the maximum amount of funding that is available to them at the $1.04 M&O tax rate (the highest rate accessible without a TRE). Accordingly, THIS COURT DECLARES the State's school finance system fails to satisfy the Article VII, Section 1 adequacy requirement as to the ISD Plaintiffs districts. The ISD Plaintiffs also have shown that the cost of meeting the constitutional mandate of adequacy exceeds the amount of funding that is or would be available to them at the maximum $1.17 M&O tax rate. Accordingly, THIS COURT DECLARES the State's school finance system fails to satisfy the Article VII, Section 1 adequacy requirement as to the ISD Plaintiffs districts.

3. Because the ISD Plaintiffs collectively have also established a systemic/statewide "adequacy" violation, THIS COURT DECLARES that the Texas school finance system is presently in violation of Article VII, Section 1 of the Texas Constitution. Stated another way, this Court finds that the Legislature violated the "arbitrary" standard described in *West Orange Cove II* by "defin[ing] the goals for accomplishing the

constitutionally required general diffusion of knowledge," and then providing "insufficient means for achieving those goals." *WOC II*, 176 S.W.3d at 785. The current structure of the school finance system is such that districts cannot generate sufficient revenues to fund and provide an adequate education.

4. The Edgewood ISD Plaintiffs, the TTSFC Plaintiffs, and the Fort Bend ISD Plaintiffs have further shown that economically disadvantaged students and English Language Learner students are not achieving a general diffusion of knowledge and that the cost of providing a general diffusion of knowledge to these students exceeds the amount of funding made available for their education under the current school finance system. The Court concludes the funding for economically disadvantaged and English Language Learner students is inadequate and arbitrary. Accordingly, THIS COURT DECLARES the current public school finance system is inadequate for the provision of a general diffusion of knowledge for economically disadvantaged and English Language Learner students under Article VII, Section 1 of the Texas Constitution.

5. The ISD Plaintiffs have further shown that the current facilities funding is constitutionally inadequate to suitably provide sufficient support for districts to maintain, build, and renovate the classrooms necessary for an adequate education. This constitutional infirmity exacerbates the problems resulting from inadequate M&O funding because many districts are forced to use those scarce funds to make up for unfunded facilities needs. Accordingly, THIS COURT DECLARES that considered separately, and as part of the total school finance system, facilities funding is arbitrary and inadequate in providing Texas school children with the constitutional mandate of adequacy.

6. The ISD Plaintiffs have shown that the M&O and I&S funding available under the school finance system as a whole is insufficient to achieve a general diffusion of knowledge. Accordingly, THIS COURT DECLARES that the school finance system is arbitrary and inadequate in violation of Article VII, Section 1 of the Texas Constitution.

7. Because the school finance system for independent school districts under the statutory formulas is constitutionally inadequate and because charter schools are financed based on state averages of school district M&O funding levels, THIS COURT DECLARES that funding for open-enrollment charter schools also is inadequate.

IV. Declaratory relief relating to Article VII, Section 1 financial efficiency (equity) claims

This Court GRANTS FINAL JUDGMENT to the TTSFC Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs on their requests for declaratory relief in connection with their Article VII, Section 1 financial efficiency or equity claims. Accordingly, the Court makes the following declarations:

1. The TTSFC, Edgewood ISD, and Fort Bend ISD Plaintiffs have shown that, in the current system, there is not a direct and close correlation between a district's tax effort and the educational resources available to it, as required under Article VII, Section 1, and, as a result, there are large gaps in funding levels and tax effort between low property wealth and high property wealth districts. Plaintiffs have shown that these gaps disadvantage the students in their districts in acquiring a general diffusion of knowledge and are incompatible with a system that requires that "children who live in poor districts and children who live in rich districts . . . be afforded a substantially equal opportunity to have access to educational funds." *WOC II*, 176 S.W.3d at 753. Instead, the system arbitrarily funds districts at different levels below the constitutionally required level of a general diffusion of knowledge. Plaintiffs have further shown that the school finance system violates the "efficiency" provisions of Article VII, Section 1 of the Texas Constitution in that a) it fails to provide substantially equal access to M&O and I&S tax revenues necessary to provide a general diffusion of knowledge at similar tax effort, and b) it permits an amount of unequal local supplementation in the system that is so great as to destroy the efficiency of the system. Plaintiffs have also shown that insofar as the State Defendants continue to rely on disparate property values and accompanying property taxes to fund public schools, equalization provisions such as equalized wealth levels, guaranteed yields, recapture and caps on maximum tax rates, remain essential for a financially efficient and equitable public school system under Article VII, Section 1 of the Texas Constitution. The State's failure to make facilities funding a statutorily permanent part of the Texas school finance system and failure to update the equalized wealth level/guaranteed yield (coupled with the lack of recapture) mean that low property wealth and high property wealth districts have vastly different access to facilities funding contributing to the inefficiency of the system as a whole.

2. THIS COURT DECLARES that the school finance system violates the "efficiency" provisions of Article VII, Section 1 of the Texas Constitution in that it fails to provide substantially equal access to revenues necessary to provide a general diffusion of knowledge at similar tax effort, and instead arbitrarily funds districts at different levels below the constitutionally required level of a general diffusion of knowledge

3. Because the TTSFC Plaintiffs, the Edgewood ISD Plaintiffs, and the Fort Bend ISD Plaintiffs collectively have established a systemic/statewide violation, THIS COURT DECLARES that the Texas school finance system is presently in violation of Article VII, Section 1 of the Texas Constitution with respect to both maintenance and operations funding and facilities funding, separately and as complementary aspects of the school finance system.

V. <u>This Court denies the TTSFC Plaintiffs' request for declaratory relief relating their Article VIII, Section 1(a) "taxpayer equity" claim.</u>

For the reasons set forth in its Findings of Fact and Conclusions of Law, this Court declines to grant the relief sought by the TTSFC Plaintiffs in connection with their Article VIII, Section 1(a) "taxpayer equity" claim. THIS COURT DECLARES that the Texas school finance

system does not violate Article VIII, Section 1(a) and GRANTS FINAL JUDGMENT to the State Defendants on this claim.

VI. <u>This Court denies all pleas to the jurisdiction.</u>

This Court finds that it has jurisdiction to rule on the merits of all claims in this case. Accordingly, THIS COURT DENIES all pending pleas to the jurisdiction.

VII. <u>This Court denies the Intervenors' request for declaratory relief relating to their Article VII, Section 1"qualitative efficiency" claim.</u>

For the reasons set forth in its Findings of Fact and Conclusions of Law, this Court declines to grant the relief requested by the Intervenors on their Article VII, Section 1 "qualitative efficiency" claim. THIS COURT DECLARES that the Intervenors failed to establish a "qualitative efficiency" violation of Article VII, Section 1 and GRANTS FINAL JUDGMENT to the State Defendants on this claim.

VIII. <u>This Court denies the Charter School Plaintiffs' request for declaratory relief relating to their claims (other than their adequacy claim).</u>

As noted in Part I above, this Court GRANTS FINAL JUDGMENT to the Charter School Plaintiffs on their Article VII, Section 1 adequacy claim as derived from the Court's ruling on the ISD Plaintiffs' adequacy claims. For the reasons set forth in its Findings of Fact and Conclusions of Law, this Court DENIES the remaining relief requested by the Charter School Plaintiffs in connection with their other claims and GRANTS FINAL JUDGMENT to the State Defendants on these claims.

IX. Injunctive relief

This Court GRANTS FINAL JUDGMENT in favor of the TTSFC Plaintiffs, Calhoun County ISD Plaintiffs, Fort Bend ISD Plaintiffs, Edgewood ISD Plaintiffs, and the Charter School Plaintiffs on their claims for injunctive relief. Accordingly, this Court:

1. ENJOINS the State Defendants from giving any force and effect to the sections of the Education Code relating to the financing of public school education (Chapters 41 and 42 and Section 12.106 of the Education Code) and from distributing any money under the current Texas school financing system until the constitutional violations are remedied. The effect of this injunction shall be stayed until July 1, 2015, in order to give the Legislature a reasonable opportunity to cure the constitutional deficiencies in the finance system before the foregoing prohibitions take effect.

2. This injunction shall in no way be construed as enjoining the State Defendants, their agents, successors, employees, attorneys, and persons acting in concert with them or under their direction, from enforcing or otherwise implementing any other provisions of the Education Code.

3. This injunction shall not bar suits for collection of delinquent taxes, penalties, and interest.

4. This injunction does not impair any lawful obligation created by the issuance or execution of any lawful agreement or evidence of indebtedness before July 1, 2015, that matures after that date and that is payable from the levy and collection of ad valorem taxes, and a school district may, before, on, and after July 1, 2015, levy, assess, and collect ad valorem taxes, at the full rate and in the full amount authorized by law necessary to pay such obligations when due and payable. A school district that, before July 1, 2015, issues bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of Education Code, or other applicable law, or enters into a lease-purchase agreement under Subchapter A, Chapter 271 of the Local Government Code, may continue, before, on, and after July 1, 2015, to receive state assistance with respect to such payments to the same extent that the district would have been entitled to receive such assistance under Chapter 42 or 46 of the Education Code, notwithstanding this injunction.

5. This injunction does not limit, modify, or eliminate the authority of a school district to issue or execute bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of the Education Code, or other applicable law, before, on, or after July 1, 2015, or to levy, assess, and collect, before, on, or after July 1, 2015, ad valorem taxes at the full rate and in the full amount authorized by Section 45.002 of the Education Code or other applicable law, necessary to pay such bonds, notes, public securities, or other evidences of indebtedness when due and payable.

6. This injunction does not limit, modify, or eliminate the authority of the commissioner of education, before, on, or after July 1, 2015, to grant assistance to a school district under Chapter 42 or 46 of the Education Code, in connection with bonds, notes, public securities, lease-purchase agreements, or evidences of indebtedness, including those described by Subchapter A, Chapter 271 of the Local Government Code.

X. Attorneys' fees and costs

In response to an agreed motion by all parties, this Court bifurcated the issue of attorneys' fees from the trial on the merits of the plaintiffs' claims in an order dated August 29, 2012. The parties agreed to try the attorneys' fees issues by submissions of expert affidavits to this Court. This Court is of the opinion that the TTSFC Plaintiffs, Calhoun County ISD Plaintiffs, Fort Bend ISD Plaintiffs, and Edgewood ISD Plaintiffs are entitled to reasonable and necessary attorneys' fees as set forth below, and that such an award of fees would be equitable and just, subject to the Court's rulings on the State's objections. The Court finds that it is equitable and just to deny the attorneys' fees requests of the State, the Intervenors, and the Charter School Plaintiffs because they were predominantly non-prevailing parties and, while they contributed to the public debate on school finance law through this lawsuit, those contributions were not so significant as to warrant an award of fees.

Following the conclusion of the initial trial on the merits, the ISD Plaintiffs each submitted their initial fee requests and affidavits to the Court in late February and early March 2013. The State then filed objections to these fee requests. In a communication to counsel in September 2013, the Court informed the parties of its tentative rulings on these objections, reducing each of the ISD Plaintiffs' Initial Fee Requests by varying amounts. In summary, given the extensive number of parties, witnesses, exhibits, and preparation necessary for the trial, the Court declined the State's invitation to rule that only one attorney could effectively represent each Plaintiffs' group each day during trial. Likewise, the Court declined the State's invitation to rule that any attorneys' fees related to the Intervenors' or the Charter School Plaintiffs' claims

were unnecessary. The Court further declined to strike fees for expert witnesses who were subsequently withdrawn when that decision had not been made when the fees were incurred. In general, the Court adjusted the attorneys' fee awards for amounts the Court has deemed inequitable or unjust to recover, such as time directed at recruiting districts, public relations, or technology training or time that is insufficiently described. The Court noted favorably the ISD Plaintiffs' efforts to submit fee requests that have been stripped of extraneous time. As a result, the adjustments by the Court were *de minimis* in comparison to the overall attorneys' fees the Court found to be equitable and just.

After the reopening of the evidence and the completion of the second phase of the trial, the ISD Plaintiffs submitted updated fee requests and supporting affidavits for time incurred from March 2013 forward. The ISD Plaintiffs did not challenge this Court's prior rulings on the State's objections, and each plaintiff group reduced their fee requests (for the initial phase of trial) to correspond with the Court's rulings. The State filed a second set of objections to the requests for the fees incurred from March 2013 forward. After careful review of the State's objections and the evidence related to attorneys' fees, the Court favorably notes the ISD Plaintiffs' effort to adjust their fees in response to the Court's previous rulings and to eliminate time the Court found objectionable. The Court again declines the State's invitation to rule that only one attorney could effectively represent each Plaintiffs' group each day during trial and that billable time be limited to actual time during trial. The associated time entries clearly indicate that the ISD Plaintiffs' attorneys were engaged in trial preparation when not in court. With respect to non-trial time, the Court declines to rule that only one attorney could effectively represent each plaintiffs' group and respectfully notes that the State was aptly and appropriately represented by a team of attorneys in all proceedings before the Court. The complexity of this

matter necessarily required team representation, and the Court overrules the State's objections on that basis. Likewise, the Court again declines the State's invitation to rule that any attorneys' fees related to the Intervenors' or the Charter School Plaintiffs' claims were unnecessary. The Court further declines to strike fees related to expert witnesses who were subsequently withdrawn when that decision had not been made when the fees were incurred.

The State also generally objects to attorney charges for travel time. The Court overrules these objections. The litigation involves districts from across the state with different interests and perspectives. It is entirely predictable and necessary that plaintiffs' counsel would be drawn from around the state. The charged travel time was not excessive and was linked to travel for litigation matters.

A. TTSFC Plaintiffs' attorneys' fees

The Court SUSTAINS the State's objections to time billed on 3/23/13, 4/5/13, 7/23/13, 7/24/13, 7/25/13, 7/26/13, and 9/27/13. The identified time entries include references to legislative matters and conferences that do not appear directly related to the litigation. Accordingly, the Court reduces the charged time by 11.3 hours and an amount of $1,977.50. Otherwise, the State's objections to TTSFC Plaintiffs' attorneys' fees are OVERRULED.

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the TTSFC Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of $1,888,705.91, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the TTSFC Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the TTSFC Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) $325,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or
- (B) (1) $325,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) $100,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the TTSFC Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

B. Calhoun County ISD Plaintiffs' attorneys' fees

The State's objections to Calhoun County ISD Plaintiffs' attorneys' fees are OVERRULED.

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the Calhoun County ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of $2,609,642.57, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the Calhoun County ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the Calhoun County ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) $500,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or
- (B) (1) $400,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) $325,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest

to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the Calhoun County ISD Plaintiffs do not prevail on one or both of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

C. Fort Bend ISD Plaintiffs' attorneys' fees

The State's objections to Fort Bend ISD Plaintiffs' attorneys' fees are OVERRULED.

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the Fort Bend ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of $1,733,676.75, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the Fort Bend ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the Fort Bend ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) $400,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is

perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

- (B) (1) $300,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) $250,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the Fort Bend ISD Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

D. Edgewood ISD Plaintiffs' attorneys' fees

The State's objections to Edgewood ISD Plaintiffs' attorneys' fees are OVERRULED.

IT IS THEREFORE ORDERED that under Section 37.009 of the Texas Civil Practice and Remedies Code, the Edgewood ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of $2,194,027.92, an amount that this Court finds to be both reasonable and necessary and equitable and just.

IT IS FURTHER ORDERED that the sum awarded to the Edgewood ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

IT IS FURTHER ORDERED that the Edgewood ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

- (A) $325,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or
- (B) (1) $325,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) $100,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

IT IS FURTHER ORDERED that if, following an appeal, the Edgewood ISD Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies

Code, because they have made significant contributions to the public debate on school finance law through this lawsuit.

XI. Continuing jurisdiction

This Court will retain continuing jurisdiction over this matter until the Court has determined that the State Defendants have fully and properly complied with its judgment and orders.

XII. Miscellaneous

IT IS FURTHER ORDERED that all costs of court expended or incurred in this cause by the TTSFC Plaintiffs, the Calhoun County ISD Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs are taxed against the State Defendants.

IT IS FURTHER ORDERED that all writs and processes for the enforcement and collection of this judgment or the costs of court may issue as necessary.

This Judgment finally disposes of all parties and all claims and is appealable. All other relief not expressly granted is denied.

SIGNED this 28th day of August, 2014.

John K. Dietz

JOHN DIETZ
Presiding Judge

B

Filed in The District Court
of Travis County, Texas
EM AUG 28 2014
At 12:47 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.	§	IN THE DISTRICT COURT
Plaintiffs,	§	
JOYCE COLEMAN, et al.,	§	
Intervenors,	§	
vs.	§	TRAVIS COUNTY, TEXAS
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.	§	200th JUDICIAL DISTRICT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimonial and documentary evidence in the record, this Court makes the following findings of fact and conclusions of law:

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Executive Summary

This Court held a forty-five day trial between October 22, 2012 and February 4, 2013, hearing from over eighty live witnesses and building a record containing over 5,000 admitted exhibits. On the final day of trial, this Court orally announced its ruling on the plaintiffs' claims, finding the Texas school finance system unconstitutional in several respects. Before this Court entered its findings of fact and a final judgment, the 83rd Legislature passed several bills that implicated the claims in this case. The Court granted a motion to reopen the evidence to consider the impact of the 2013 legislation, and held another three-week evidentiary hearing beginning on January 21, 2014. During this second phase, the Court heard from another twelve live witnesses and admitted an additional 700 exhibits.

Based on the Court's review of the relevant case law and the evidence presented during the two trial phases, this Court issues the following findings of fact and conclusions of law, which are summarized below:

A. The Legal Claims at Issue

This case involves multiple challenges to the constitutionality of the Texas school finance system and public educational system by (1) four plaintiff coalitions primarily composed of independent school districts (collectively, the "ISD Plaintiffs"), (2) a group of intervening parties referred to during the trial as the "Efficiency Intervenors" or the "Intervenors," and (3) a group of plaintiffs affiliated with the Texas Charter School Association (the "Charter School Plaintiffs").

At the heart of this dispute is the "education clause" of the Texas Constitution – Article VII, Section 1 – which provides:

> *A general diffusion of knowledge* being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and *make suitable provision* for the support and maintenance of an *efficient* system of public free schools.

Tex. Const. art. VII, § 1 (emphasis added).

From this language, four of the claims at issue in this case arise:

- Adequacy claim: The "general diffusion of knowledge" clause has been interpreted by the Texas Supreme Court as requiring the Legislature to ensure that school districts are reasonably able to provide *all* students with a meaningful opportunity to learn the essential knowledge and skills reflected in the state curriculum such that upon graduation, students are prepared to continue to learn in postsecondary educational, training, or employment settings.

- Suitability claim: The "suitable provision" clause has been interpreted by the Texas Supreme Court as requiring the school finance system to be structured, operated, and funded so it can accomplish a general diffusion of knowledge for all Texas children.

- Equity/financial efficiency claim: The "efficiency" clause has been interpreted by the Texas Supreme Court as requiring that school districts have substantially equal access to revenues necessary to provide a general diffusion of knowledge, *i.e.*, an adequate education, at similar tax effort.

- Qualitative efficiency claim: The Intervenors assert that the public education system is qualitatively inefficient because it is not productive of results with little waste.

A second constitutional provision also plays a central role in this dispute. Article VIII, Section 1-e of the Constitution provides that "[n]o State ad valorem taxes shall be levied upon any property within this State." Tex. Const. art. VIII, § 1-e. The Texas Supreme Court has held that Article VIII, Section 1-e is violated when districts lack "meaningful discretion" in setting their property tax rates for a local ad valorem tax because of state constitutional, statutory, and regulatory mandates, such that the tax becomes a *de facto* state property tax (the "state property tax claim").

With this legal background in mind, the Court provides an overview of what has occurred since the Texas Supreme Court last addressed these issues in 2005, followed by a summary of its rulings on these and the other claims at issue in this case.

B. Developments since the Texas Supreme Court's 2005 decision in *Neeley v. West Orange Cove ISD.*

When the Texas Supreme Court last addressed the constitutionality of the school finance system in 2005, it held that the system had evolved into an unconstitutional state property tax because school districts were deprived of meaningful discretion to set their local tax rates. A major factor in the Court's decision was the lack of local taxing capacity, as the majority of districts were taxing at or near the statutory cap on tax rates. While the Court was unwilling to also declare the system inadequate at that time, it hinted that Texas was on the cusp of violating the adequacy clause. It characterized the situation as an "impending constitutional violation," and stated that "it remains to be seen whether the system's predicted drift toward constitutional inadequacy will be avoided by legislative reaction to widespread calls for changes." *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 790 (Tex. 2005) ("*WOC II*").

The convergence of three major trends since 2005 has brought the school finance system back under judicial scrutiny. First, Texas's student population is growing rapidly and at the same time growing poorer and increasingly diverse – to the point where more than three in every five students qualify for free and reduced-price lunches and almost one in five are English Language Learners (*i.e.*, have limited proficiency in English). Undisputed evidence shows that these populations are significantly more expensive to educate than the non-economically disadvantaged and English-proficient student populations.

Second, to its credit, Texas has substantially raised the level of academic expectations for students and school districts, incorporating college-readiness standards into the state curriculum, increasing graduation requirements, and transitioning to a much more rigorous testing regime.

The evidence before the Court credibly demonstrates that it takes more resources to enable students to meet higher levels of performance.

The third trend – a significant decline in financial support for public education – has substantially exacerbated the challenges caused by the first two trends. Ironically, this decline was set in motion by the passage of House Bill 1 in 2006 ("HB1"), which was supposed to remedy the state property tax violation found by the Texas Supreme Court.

HB1 – which was promoted by political leaders as "the largest tax cut in Texas history" – compressed school districts' property taxes by one-third over a two-year period, resulting in the loss of over $7 billion annually in property tax revenue. To pass legal muster, these lost local revenues were supposed to be replaced with new state revenues, including a restructured business margins tax. School districts were then authorized to gradually increase their maintenance and operations tax rates to $1.04 without the need for an election, or to a rate between $1.05 and $1.17 if the rate was approved in a tax ratification election ("TRE") by the districts' voters. However, even at the time the Legislature passed HB1, it was aware that the new state revenues would not come close to replacing the lost local property tax revenues. Making the situation worse, the Legislature also greatly overestimated the amount of revenues that would be generated by the new state taxes. Consequently, the Legislature's actions left Texas with what the Comptroller called a recurring $10 billion "structural deficit" per biennium.

The State was able to avoid serious repercussions from this structural deficit during the 2009 legislative session by relying on an infusion of approximately $12 billion in federal stimulus funds. (State general revenue support for public education actually declined by about $3.2 billion for the 2010-11 biennium.) But the federal stimulus funds disappeared in 2011. Rather than take action to close the structural deficit and revise the funding system to account for changing demographics and rising academic standards, the Legislature opted to cut $5.3 billion from the public education budget. This resulted in significant harm to Texas students, as discussed below.

In 2013, the Legislature reinstated approximately $3.5 billion of the $5.3 billion it had cut from public education in 2011. Most of this new funding came from local taxpayers, as the Legislature "replaced" the general revenue funds it had cut by using increased local revenue obtained from increasing property values. Yet as noted below, even taking the Legislature's actions in 2013 into account, there still has been a significant decline in total per-student revenues for public education, on an inflation-adjusted basis, over the last decade. This decline in real, per-student education spending has been even more pronounced over the last five years – even as the economically disadvantaged and English Language Learner ("ELL") populations have continued to grow, and even as the State has begun the process of implementing the most rigorous curriculum and assessment standards in its history.

Not surprisingly, over the same period, a wide variety of measures show that: (1) the performance of economically disadvantaged students and ELL students is dismal, and the gaps between these students and their peers have grown, (2) student performance overall is flat, (3) hundreds of thousands of high school students are not on track to graduate, and (4) an

overwhelming number of Texas graduates are not on track to attend college and succeed without remediation.

C. The ISD Plaintiffs' adequacy claims

Texas's future depends heavily on whether it meets the constitutional obligation to provide a general diffusion of knowledge – such that *all* students have a meaningful opportunity to graduate college and career ready. More than 60% of Texas public school students are economically disadvantaged, more than 17% are "ELLs," and the majority (51.3%) are Hispanic. Those percentages have grown dramatically over the last decade – a trend which is almost certain to continue. According to Steve Murdock, the former state demographer and former director of the U.S. Census Bureau, if existing gaps in educational attainment and household income levels remain in place, Texas faces a stark future with declining income, higher rates of poverty, reduced consumer spending, reduced tax revenues, and higher state expenditures. However, if Texas can deliver on the constitutional promise of an adequate education and close the educational gaps described in these findings, then Texas would be far more likely to improve its long-term fiscal outlook through substantial increases in household income levels, economic growth, and state revenues. Unfortunately, in recent years, Texas has defaulted on its constitutional promise.

In the last school finance case, the Texas Supreme Court held that "[i]t would be arbitrary [and therefore unconstitutional] . . . for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals." *WOC II,* 176 S.W.3d at 785. What has happened since that decision was rendered plainly violates this arbitrariness standard.

The Texas Supreme Court instructs that to meet the constitutional mandate of adequacy, Texas school districts must reasonably be able to provide all students with a meaningful opportunity to achieve the academic standards set by the Legislature. Through significant amendments to Chapters 28 and 39 of the Texas Education Code, the Legislature has established college and career readiness as the outcome goal of the Texas educational system, and has raised the academic performance standards for Texas schools and students accordingly.

Defense and Plaintiff witnesses unanimously agreed that the incorporation of college-readiness standards into the state curriculum and the transition from the TAKS testing regime to the State of Texas Assessment of Academic Readiness ("STAAR") testing regime constitute a *dramatic increase* in the level of expectations for Texas students and school districts.

But rather than provide districts more resources to meet the higher standards, the Legislature, in the 2011 session, imposed $4 billion in cuts to the Foundation School Program ("FSP") and an additional $1.3 billion in cuts to special grant programs. Many of the grant program cuts fell most heavily on the at-risk student population. The Court notes that the level of funding Texas provided to public education was not high, by national standards, even before the 2011 reductions. Before implementation of the cuts, *Quality Counts*, an annual report prepared by *Education Week*, ranked Texas forty-ninth out of the fifty states on per-pupil

expenditures after adjusting for regional cost differences. Other evidence at trial yielded similar comparative results.

The "outputs" evidence adduced at trial showed that districts are not able to provide a general diffusion of knowledge at current funding levels. The failure rates on STAAR constitute a current crisis in the educational system. After three tries, 47% of the state's economically disadvantaged 2011-12 ninth graders, and 35% of all students from that class, still had not passed all of their ninth-grade level end-of-course ("EOC") exams required for graduation. And unlike previous results on the TAKS tests that were in place during *WOC II*, student performance on STAAR did not meaningfully improve during the second year of the tests' implementation. After the Spring 2013 administration of STAAR, 64% of economically disadvantaged ninth and tenth graders and 51% of all ninth and tenth graders (338,038 students) failed to pass at least one required EOC exam. Even after the Summer and December 2013 administrations, hundreds of thousands of students still had not passed all exams required for graduation, according to the State's own estimates. These failures have resulted in substantial remediation costs for districts. Student performance data from the STAAR exam, as well as other testing data, reveal that Texas is far from accomplishing its mission of producing college and career-ready graduates.

As large as the gap is between Texas's expectations and current levels of student achievement, the gap is even larger when considering the performance levels of economically disadvantaged and ELL student populations. For example, at the current "Level II phase-in" passing standard for the STAAR EOC exams, there was a 29% gap in the passing rate between economically disadvantaged and non-economically disadvantaged students for all tests taken after the Spring 2013 administration. The performance of economically disadvantaged students is even bleaker when judged against the "final Level II" standard that students will be measured against upon the completion of the phase-in in 2015-16. Only 13% of economically disadvantaged students could meet this final Level II standard for all tests taken during the Spring 2013 administration, compared to 36% of non-economically disadvantaged students, a 23% gap. Massive gaps also exist between ELL students and non-ELL students on every performance measure.

Despite the roll-out of tougher academic requirements and the dismal performance results, neither the Legislature nor the Texas Education Agency has made any effort to determine the costs of meeting increasing standards and providing remediation to struggling students. There is no evidence that the Legislature took those costs into consideration when making the budget cuts described above. The Education Code directs the Legislative Budget Board ("LBB") to make such a calculation and determine necessary costs per student, including the costs of the regular program, special population programs, and adjustments such as the Cost of Education Index, the guaranteed yield level for enrichment, and funding for the school facilities programs. Similar language has been in the Education Code for at least fifteen years, and yet the LBB simply has not complied with this provision, nor has the Legislature demanded compliance.

Relatedly, the special program weights and allotments in the State's statutory school funding formulas are sorely out-of-date and in need of adjustment. They do not approximate the actual cost of education. When state formula funds do not adequately compensate districts for uncontrollable costs arising from different student, district, or community characteristics,

districts must use their own funds to cover these costs (if they can), typically with funds that were supposed to be available for enrichment.

Because the funding formulas have not been updated, they are not structured or operated in such a way as to allow school districts to provide a general diffusion of knowledge. Many of the principal strategies that substantial evidence suggests districts could employ to improve student performance (especially for economically disadvantaged and ELL students) – such as (1) smaller class sizes, particularly in the early grades, (2) full-day quality pre-K programs, (3) more competitive teacher salaries to improve the hiring and retention of quality teachers, (4) instructional coaches, (5) tutors, and (6) extended day and summer school programs – cannot be implemented without additional resources. In the absence of state funds, districts have had to increase local tax rates and use revenues that are supposed to provide districts with meaningful discretion in order to provide for an adequate education – or, worse yet, to go without these programs entirely.

The evidence provided to the Court demonstrates the detrimental impact of the cuts on school districts' ability to achieve the mandates set before them. Despite enrollment growth of 44,454 in 2011-12 (excluding charter schools), districts lost approximately 12,000 teachers and 15,000 other school employees. Districts were forced to increase class sizes, eliminate tutors and other instructional specialists, eliminate full-day pre-K programs, and implement other cost-saving measures that have negatively impacted their ability to carry out their educational mission. The evidence further established that while most districts struggled as a result of the budget cuts, low property wealth districts, which tend to educate a higher percentage of economically disadvantaged students and ELLs, bore a more difficult burden because they are unable to access similar tax revenues for maintenance and operations ("M&O") or interest and sinking fund ("I&S") rates as wealthier districts. Even taxing at the highest rates possible, these low property wealth districts were unable to generate local tax revenues to replace the lost state revenues.

Taking the 2013 Legislature's partial restoration of funding into account, Texas still has experienced a significant decline in total per-student revenues for public education on an inflation-adjusted basis over the past decade. The decline has been even sharper in the last five years. In 2003-04, total per-student operating revenues for public education were approximately $7,128 in 2004 dollars. The 2008-09 school year reflected the largest per-student revenues during the last decade at $7,415 (in 2004 dollars), in part due to increases in federal funding that year. By 2014-15, on an inflation-adjusted basis, public education funding per student will have dropped to $6,816 in 2004 dollars, representing a loss of $312 per student compared to the 2004 level and a loss of $599 per student since 2009 – even though Texas's student population has become more challenging to educate and the bar for student performance has been raised substantially since that time.

This Court finds that current arbitrary and inadequate levels of funding do not allow school districts to provide a general diffusion of knowledge and thus do not satisfy the constitutional requirements of adequacy and suitability. As discussed in Part I.C.5 (FOF 603, *et seq.*) below, persuasive evidence shows that Texas cannot accomplish a general diffusion of knowledge without a substantial investment of additional resources. The Court also finds that

the constitutional requirement of adequacy, and the financial resources it necessarily entails, must be available to districts without being made subject to a vote in a special election; otherwise local taxpayers can deprive local students access to the constitutionally required level of education (a very real threat, considering that at least 128 TREs failed between 2006 and 2012). For this reason, at a minimum, the Court finds that school districts must be able to finance the cost of meeting the constitutional mandate of adequacy within the range of taxing authority not subject to a TRE, which is a $1.04 M&O tax rate under the current system.

Further, districts must be able to access sufficient facilities funding. An adequate education cannot be provided without classrooms.

In summary, the plaintiff school districts, which are representative of the system at large, lack sufficient funding at a $1.04 M&O tax rate, or even at the maximum $1.17 tax rate intended for enrichment, to reasonably provide all of their students with a meaningful opportunity to learn the Texas Essential Knowledge and Skills and graduate from high school fully prepared for post-secondary educational or employment settings. This is particularly true with respect to the growing and large numbers of economically disadvantaged and ELL students. Thus, this Court declares that the Texas school finance system is presently in violation of the "general diffusion of knowledge" clause of Article VII, Section 1 of the Texas Constitution. The Court also specifically declares that the State is in violation of this clause with respect to its economically disadvantaged and ELL student populations.

D. The ISD Plaintiffs' state property tax claim

The Court's ruling on the ISD Plaintiffs' Article VIII, Section 1-e state property tax claim rests in part on the analysis set forth above, as well as the following additional facts.

When the Legislature compressed 2005-06 tax rates by one-third (generally to $1.00) in House Bill 1 (2006) in response to *WOC II*, it was intended that districts could use the funding generated by tax rates between $1.00 and $1.17 for local supplementation and enrichment above the level of funding required for a constitutionally adequate education. However, any such meaningful discretion has disappeared in the face of increasing costs (associated with higher standards and increasing percentages of disadvantaged student populations), legislative mandates on the use of additional funds, and the $5.3 billion in budget cuts in the 2011 legislative session.

As a result, school districts are effectively out of taxing capacity. The overwhelming evidence shows that districts taxing in the $1.04 to $1.17 tier are doing so in an effort to obtain funds for an adequate education, not for local supplementation and enrichment. Nearly one-quarter of all districts are taxing at the maximum rate of $1.17. These districts have increased tax rates primarily in an attempt to keep up with state standards and requirements in the face of increasing costs. They do not have meaningful discretion to lower their tax rates.

Even if all districts increased their M&O tax rates to $1.17, the amount of revenue raised would not constitute meaningful discretion because revenue at these rates would remain insufficient even to meet the heightened adequacy standards. Superintendents from low property wealth districts that are already taxing at $1.17, established without question that they are unable

to fund an adequate education with these tax revenues. They have no discretion to reduce their tax rates, and the system as a whole does not have the taxing capacity to fund a constitutionally adequate education for all students.

In addition, the State's failure to ensure that facilities funding keeps pace with property value growth, inflation, or the growing student population, has forced districts to issue more bonds and raise I&S tax rates. In order to finance needed facilities and comply with the State's 50 cent limit on the issuance of new bonds, districts have been forced to issue debt with longer maturities and greater interest expenses. This increasingly expensive debt, combined with rising I&S tax rates due to lack of state support, has contributed to the loss of meaningful discretion over M&O tax rates.

The State also exercises impermissible control over the levy of school district taxes through the taxing structure it has established. By forcing school districts to compress their tax rates by one-third, the Legislature eliminated $14.2 billion of revenue capacity in the system per biennium. But it "replaced" this lost capacity with a franchise tax that it knew did not raise enough to make up for the lost revenue (leading to the 2011 budget cuts). It then lowered the statutory M&O tax cap from $1.50 to $1.17, thus limiting the ability of school districts to replace the lost revenue themselves. The State exercises additional control through the TRE requirement (for any tax rate above $1.04) and the significantly lower guaranteed yield and higher recapture rate that applies to the "copper-penny tier" (above $1.06) – a combination that effectively prevents many districts from taxing beyond this amount. Finally, the State controls the levy by using increasing property values to finance enrollment growth and (nominal) funding increases.

For the foregoing reasons, the Court concludes that the ISD Plaintiffs, individually and collectively, have established a violation of the prohibition on statewide ad valorem taxes. Just as the Texas Supreme Court found nine years ago, the current M&O rates effectively serve as a floor (because school districts cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because districts are either legally or practically unable to raise rates further). Further, to the extent districts could raise taxes to the statutory maximum rate of $1.17 (and have not already done so), they would still remain unable to meaningfully use those additional local tax dollars for local enrichment, as these funds are needed to replace basic adequacy funding lost due to the State's cuts. Even taxing at the $1.17 maximum, most school districts would be unable to fund even the lowest estimates of the cost of an adequate education. Because the ISD Plaintiffs collectively have established a systemic/statewide violation, this Court declares that the Texas school finance system is presently in violation of Article VIII, Section 1-e of the Texas Constitution.

E. The ISD Plaintiffs' suitability claims

The suitability clause focuses on the "means chosen to achieve an adequate education through an efficient system." *WOC II*, 176 S.W.3d 746, 793. While the Legislature has significant discretion to choose these means, the Texas Supreme Court instructs that whatever means chosen must be "structured, operated and funded so as to achieve [the] purpose" of providing a general diffusion of knowledge for *all* students. *Id.* at 753. In other words, the suitability clause would be violated if "the Legislature substantially defaulted on its

responsibility such that Texas school children were denied access to that education needed to participate fully in the social, economic, and educational opportunities available in Texas." *Id.* at 794 (citation and internal quotation marks omitted).

The student performance evidence detailed above – including the hundreds of thousands of high school students who are off-track for graduation, the low levels of college readiness, and the substantial performance gaps (especially for economically disadvantaged and ELL students) – makes it clear that the Legislature has in fact substantially defaulted on that responsibility. Rather than attempt to solve the problem, the State has buried its head in the sand, making no effort to determine the cost of providing all students with a meaningful opportunity to acquire the essential knowledge and skills reflected in the state curriculum and to graduate at a college and career-ready level.

This Court finds that the multiple defects in the current design of the school finance system cumulatively prevent districts from generating sufficient resources to accomplish a general diffusion of knowledge for all students, but particularly with respect to its economically disadvantaged and ELL student populations. Instead of increasing resources for programs targeting at-risk students, the State eliminated funding for such programs. As already discussed above, among other flaws, the State relies on outdated, arbitrary weights and allotments that do not come close to approximating the actual cost differences that they are intended to address. Some of these weights have not been updated in over twenty-five years, and were not originally based on the actual cost of education. The weights for economically disadvantaged and ELL students have not been updated since 1984, and even then were set at half the amount recommended by a School Finance Working Group composed of members of nearly every educational organization in Texas. The Cost of Education Index – which dictates the annual distribution of $2.36 billion to address variation of education costs beyond the control of school districts – has not been updated since 1990, despite the fact that this state has seen substantial demographic changes, uneven population growth, and significant changes in the cost of labor and housing since that time. As noted above, other structural flaws in the finance system relate to the combination of the TRE requirement and the significantly lower guaranteed yield and higher recapture rate of the copper-penny tier – which effectively prevent many districts from accessing funding needed for adequacy.

These structural flaws, combined with the evidence that districts across the state are not able to provide all of their students with access to a general diffusion of knowledge, demonstrate that the State has failed to structure, operate, and fund the school finance system so as to provide an adequate education to all students, including economically disadvantaged and ELL students, as required by the suitability provision.

F. The TTSFC Plaintiffs, Edgewood ISD Plaintiffs, and Fort Bend ISD Plaintiffs' financial efficiency/equity claims

The Texas Supreme Court has consistently ruled that the State's duty to provide funding up to the level of a general diffusion of knowledge comes with a responsibility to structure the system so that all school districts "have substantially equal access to funding up to that same level at similar tax effort." In spite of the Court's admonition, the school finance system

continues to treat students differently, depending on whether the students' zip code is located in a property-wealthy or a property-poor district. Although the Texas Supreme Court has never required perfect equity, the inequity has grown to the point that financial efficiency has been decimated.

Texas relies heavily on local property taxes to fund its public schools, though property values across Texas remain incredibly disparate. This decision to rely on local taxes does not by itself render the school finance system unconstitutional, but it does mean that the Legislature must take action to compensate for these disparities to ensure that all districts have sufficient funding to provide all students a meaningful opportunity to graduate career and college ready. Given the State's commitment to increasing the rigor and expectations of the Texas public education system, it is perhaps even more important now than ever before that the Legislature ensure that "[c]hildren who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds." Unfortunately, twenty-five years following the Texas Supreme Court's *Edgewood I* decision, the Legislature has once again failed to meet its constitutional duty to provide a financially efficient system by treating school children across Texas differently based upon the property wealth of the district in which they live.

The evidence overwhelmingly establishes that a number of factors – the compressed tax rate, target revenue funding, unrecaptured golden pennies and I&S pennies, and the failure to update weights and allotments to reflect a reasonable approximation of the actual cost of education – have converged in a way that substantially destroys equalization. Property-poor districts are critically deprived of the ability to access reasonably similar revenues for similar tax effort. The same holds true even after the 83rd Legislature's changes in 2013. Further, the substantial cuts to special programs for at-risk students are borne more heavily by the lower property-wealth school districts that tend to educate more at-risk students.

Ten years ago, in *WOC II*, this Court, and later the Texas Supreme Court, held that disparities between property-poor and property-wealthy districts were not so great as to run afoul of the duty to provide equal access to revenue up to the level of a general diffusion of knowledge. Since that time, the legislative changes to the structure of the system – tax compression, the target revenue system, and creation of the unrecaptured M&O "golden pennies" and I&S pennies – combined with the $5.3 billion cut to the public education system, and the dramatically increased academic standards, have caused the system to run afoul of the State's constitutional duty to provide for a general diffusion of knowledge in a financially efficient manner. The funding changes by the Legislature in 2013 slightly closed the gaps between property-poor and property-wealthy districts but not nearly enough to make the system constitutionally efficient.

While taxing substantially lower than their property-poor counterparts, property-wealthy districts often reap over $1,000 per student more than their neighboring property-poor school districts for no better reason (much less an educational reason) than the value of their property. For a district receiving just $1,000 less per WADA than a neighbor, that translates into $22,000 less for a classroom of twenty-two students or $400,000 less for a campus of 400 students. These funds could be used on a whole range of reasonable and necessary educational resources

proven to increase student performance, including: recruiting and retaining the best teachers, improving technology, reducing class sizes, upgrading the quality of pre-K programs, and offering a fuller and deeper range of accelerated and intervention programs.

The Court heard from experts on the differences in the amount of revenue available to school districts and the corresponding levels of tax effort. Using a weighted average analysis, in order for the poorest districts with 15% of WADA in the state to raise between $6,500 to $7,000 per WADA in the Foundation School Program that the experts (and this Court) estimate is necessary to achieve adequacy, in 2012-13, these districts would have to tax, on average, between $1.29 and $1.39, respectively – tax rates substantially above the $0.99 and $1.06 rates levied by the wealthiest districts with 15% of the WADA in the state to raise the same amount. In fact, the poorest districts could not reach those levels because of the $1.17 cap on M&O taxes. Even after the 2013 legislative changes, these tax gaps are expected to lower by only three or four cents in 2013-14. Because property-poor districts access far fewer dollars in the system than property-wealthy districts at $1.04, they tend to have little-to-no discretion or ability to offer an enriched program. A system in which the poorest districts can *never* raise the level of funds necessary to provide for a general diffusion of knowledge – much less do so with room for meaningful discretion over supplemental enrichment pennies – clearly does not ensure substantially equal access to adequate funding at similar tax rates.

Perhaps more disturbing, the combination of these changes results in most districts in this state being unable to access enough revenue to provide a general diffusion of knowledge – even when using the "enrichment" pennies intended for supplementation. As noted above, the Court heard from national and state experts regarding the cost of funding an adequate educational program. Just as this expert testimony revealed the Texas system to be inadequate, it also revealed it to be inequitable. Taxing at $1.04, 896 of the 1,021 school districts in Texas in 2013-14 cannot raise the revenue per student in WADA for the lowest estimate of the cost of an adequate education, unadjusted for inflation. Even if districts used all of their "enrichment pennies" by taxing at the cap of $1.17 to satisfy the constitutional mandate of a general diffusion of knowledge, at least 761 districts still could not raise the revenue per WADA of any of the three estimates. These 761 districts have no access to the level of funding necessary to achieve a general diffusion of knowledge – much less access to it at a rate similar to that of the 124 districts that can raise this amount at $1.04.[1]

Furthermore, under the target revenue system, the differences in funding levels match the definition of arbitrary. The target revenue system takes the quirks of a single year's formula results – such as a "boost" in revenue from increased property values or a "hit" from declining property values or the loss of a major taxpayer – and makes them permanent. As a result, there is often no consistent relationship between a district's wealth and/or tax effort and its target revenue. Though the State indicated during trial that target revenue was going to be phased out, the 2013 Legislature increased the factor that applies to target revenue, which over time has benefitted far more property-wealthy districts than property-poor districts. Reliance on this

[1] The ability to access sufficient funding for a general diffusion of knowledge at the $1.04 tax rate is critical to a constitutionally sound school finance system. To find otherwise would permit local taxpayers through a TRE to deprive schools of sufficient funding.

snapshot of the 2005-06 school year also affects current formula funding because each district's compressed tax rate for its share of the Basic Allotment is an individually determined two-thirds of its 2006 tax rate. If a district was not taxing at the maximum M&O rate in 2006, its current Basic Allotment is arbitrarily reduced with no relation to need or the cost of education. Finally, the use of two separate funding mechanisms, target revenue and formula funding, makes equalization across the system impossible to the detriment of all but the wealthiest of districts.

The Court also heard from superintendents in every region of the state whose districts are negatively impacted by these disparities. As the La Feria ISD Superintendent stated: "if you happen to have an island [such as South Padre Island] or you happen to be rich under the ground, or now where you have a ton of windmills in your agricultural land, you have additional resources that come your way. Those don't come to La Feria. But our kids still have to compete with [others] on the football field and at the university."

School districts across the state are, as Dr. Meria Carstarphen of Austin ISD put it, "up against the wall on the ever increasing state standards" and unable to meet them with current resources. These problems are compounded for the low-target revenue and property-poor districts across the state whose students tend to have higher, more costly, needs. It is the State's duty to provide all districts with the revenue necessary to prepare their students for college or a career – at similar tax rates and with meaningful discretion for enrichment. The evidence before this Court makes it clear that the Legislature has failed in this duty.

G. The TTSFC Plaintiffs' taxpayer equity claim

Four taxpayers in the TTSFC Plaintiff coalition brought a claim that the school finance system violates Article VIII, Section 1(a)'s requirement that taxation be "equal and uniform." They complain that taxpayers in other districts within the same county receive greater benefits in the form of revenue per WADA than they do for a similar rate of ad valorem tax effort. This claim fails as a matter of law under Article VIII, Section 1(a) because the "equal and uniform" clause requires only that taxpayers in the same taxing district (whether a state, county, or ISD) be taxed at the same rate, and does not require equal and uniform benefit from taxation. Though not a viable claim under the "equal and uniform" clause, the claim that districts do not receive substantially equal revenues at similar levels of tax effort is better stated as a financial efficiency or equity claim under the education clause.

H. The Intervenors' qualitative efficiency claims

The Intervenors posit that the Texas educational system cannot be deemed constitutionally efficient until Texas adopts several structural reforms that have yet to attract majority support in the Legislature, including, among other things, eliminating the statutory cap on charter schools; changing laws, regulations, and practices that govern teacher compensation, hiring, firing, and certification; creating greater school choice or vouchers; and modifying school district financial reporting requirements. While the Intervenors contend that they do not seek any particular remedy besides a declaration that the system is "qualitatively inefficient" and therefore unconstitutional, a cure for the constitutional deficiency they allege necessarily would require the Legislature to adopt some version of their preferred educational policy choices.

This Court finds that it has jurisdiction to rule on the Intervenors' claims. The Texas Supreme Court has emphasized that the judiciary's role is limited to ensuring that the constitutional standards are met, not prescribing *how* the standards should be met; however, if a party can show that a means chosen by the Legislature, *e.g.* the structure controlling compensation, hiring, firing, and certification of teachers as alleged here, has no rational relationship to a necessary function of the public school system, or if the Legislature provided no structure for a necessary function, a qualitative efficiency claim could be proved. Here, the Intervenors do not claim that the current structure makes it impossible for the public school system to carry out a necessary function; rather, they contend there are better ways to structure the public school system to address them.

The Court can decide whether or not the Legislature has created a system that reasonably addresses a constitutionally necessary function, but the Court cannot rule that system is unconstitutional just because there may be a "better" way of carrying out that function. A declaration that the system is unconstitutional for the reasons Intervenors urge would constitute a level of judicial interference in specific questions of education policy that past precedents do not justify or permit. The Court therefore declines to find a qualitative efficiency violation.

I. The Charter School Plaintiffs' claims

Because the ISD Plaintiffs established the inadequacy of their funding on the school funding formulas, and because charter schools are financed based on state averages of ISD funding levels, the Charter School Plaintiffs prevail on their claim that funding for open-enrollment charter schools is also inadequate.

The Charter School Plaintiffs' equal protection claim based on the differences between how charter schools and school districts are funded (particularly, in relation to facilities funding) fails as a matter of law because this choice is within the discretion of the Legislature. The Legislature has specially provided for a charter school system that is publicly funded but that operates outside the predominant school district system. Charter schools are subject to fewer regulations. Because charter schools and districts are subject to different requirements, the Legislature has a rational basis for funding them differently. Similarly, with respect to the Charter School Plaintiffs' complaint about the statutory cap on open-enrollment charters, this choice is within the Legislature's discretion, and the Legislature had a rational basis for implementing this cap – namely to ensure that TEA could handle its oversight responsibilities.

J. Relief awarded

In light of the foregoing analysis, the Court declares that the current school finance system is inadequate, unsuitable, and financially inefficient under Article VII, Section 1 of the Texas Constitution, and violates the prohibition on a state ad valorem tax contained in Article VIII, Section 1-e. The Court enjoins the State from giving any force or effect to the sections of the Education Code relating to the financing of public school education, including the financing of open enrollment charter schools, until these violations are remedied, but is staying the effect of this injunction until July 1, 2015 to give the Legislature a reasonable opportunity to cure these constitutional deficiencies. The Court also awards the ISD Plaintiffs their reasonable and

necessary attorneys' fees. The Court denies the requests of the State, the Charter School Plaintiffs, and the Intervenors for attorneys' fees.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Findings of fact

A. The parties and claims at issue

FOF 1. This case involves five separate lawsuits and an intervention raising challenges to the State's school finance system and other aspects of the educational system. The cases have been consolidated into a single proceeding.

1. The "ISD Plaintiffs"

FOF 2. The **"TTSFC Plaintiffs"** are (1) the Texas Taxpayer and Student Fairness Coalition, a Texas non-profit corporation composed of 443 school districts identified in their Ninth Amended Petition; (2) the following individually-named school districts: Alief ISD, Canutillo ISD, Elgin ISD, Greenville ISD, Hillsboro ISD, Hutto ISD, Lake Worth ISD, Little Elm ISD, Nacogdoches ISD, Paris ISD, Pflugerville ISD, Quinlan ISD, Stamford ISD, San Antonio ISD, Taylor ISD, and Van ISD; (3) taxpayers Randy Pittinger, Chip Langston, Norman Baker, Brad King; and (4) Shelby Davidson, individually and as next friend of Cortland Davidson, Carli Davidson, and Casi Davidson.

FOF 3. The **"Calhoun County ISD Plaintiffs"** are composed of Calhoun County ISD, Abernathy ISD, Aransas County ISD, Frisco ISD, Lewisville ISD, and Richardson ISD.

FOF 4. The **"Fort Bend ISD Plaintiffs"** are composed of Fort Bend ISD, Abilene ISD, Allen ISD, Amarillo ISD, Angleton ISD, Austin ISD, Balmorhea ISD, Bluff Dale ISD, Brazosport ISD, Carthage ISD, Channelview ISD, Clear Creek ISD, Cleveland ISD, College Station ISD, Coppell ISD, Crosby ISD, Cypress-Fairbanks ISD, Dallas ISD, Damon ISD, Decatur ISD, Denton ISD, East Central ISD, Edna ISD, Fort Worth ISD, Hardin-Jefferson ISD, Hays Consolidated ISD, Hempstead ISD, Highland ISD, Houston ISD, Huffman ISD, Humble ISD, Katy ISD, Keller ISD, Kenedy ISD, Kingsville ISD, Klein ISD, La Marque ISD, La Porte ISD, Lamar Consolidated ISD, Leggett ISD, McKinney ISD, Midland ISD, New Caney ISD, North East ISD, Northside ISD, Pampa ISD, Pasadena ISD, Pearland ISD, Perrin-Whitt Consolidated ISD, Pleasant Grove ISD, Rice Consolidated ISD, Rockdale ISD, Round Rock ISD, Royal ISD, Santa Fe ISD, Sheldon ISD, Spring Branch ISD, Stafford Municipal School District, Sweeny ISD, Trent ISD, Waco ISD, West Orange Cove Consolidated ISD, Woodville ISD, Albany Independent School, Beaumont ISD, Corsicana ISD, Deer Park ISD, Dumas ISD, Duncanville ISD, Ector County ISD, Galena Park ISD, Goose Creek Consolidated ISD, Graford ISD, Liberty ISD, Sharyland ISD, Schertz-Cibolo-Universal City ISD, Splendora ISD, Sudan ISD, Weatherford ISD, Pine Tree ISD, Troup ISD, and Kerrville ISD.

FOF 5. The **"Edgewood ISD Plaintiffs"** are composed of Edgewood ISD; McAllen ISD; San Benito Consolidated ISD; La Feria ISD; Harlingen Consolidated ISD; Yolanda Canales, individually and as next friend for her minor children, Ek. and Ea. Canales; Arturo Robles, individually and as next friend for his minor child, A. Robles; Araceli Vasquez, individually and as next friend for her minor children, J.L. and Al. and Ad. Vasquez; and Jessica Ramirez, individually and as next friend for her minor children, B. and G. Ramirez.

2. The Intervenors

FOF 6. The **"Intervenors"** are composed of Joyce Coleman, individually and as next friend of her minor children; Danessa Bolling, individually and as next friend of her minor child; Lee Beall and Allena Beall, individually and as next friends of their minor children; Joel Smedshammer and Andrea Smedshammer, individually and as next friends of their minor children; Darlene Menn, individually and as next friend of her minor child; Texans for Real Efficiency and Equity in Education, a non-profit Texas corporation; and the Texas Association of Business.

3. The Charter School Plaintiffs

FOF 7. The **"Charter School Plaintiffs"** are composed of Mario Flores, individually and as next friend of his minor child; Aiden Flores; Christopher Baerga, individually and as next friend of his minor child Abby Baerga; Dana Allen, individually and as next friend of her minor child Teal Evelyn Allen; Jason and Sarah Christensen, individually and as next friends of their minor children Luke and Grace Christensen; Brooks Flemister, individually and as next friend of his minor child Ulric Flemister; and the Texas Charter School Association.

4. The State Defendants

FOF 8. The **"State Defendants"** are Michael Williams, in his official capacity as Texas Commissioner of Education; the Texas Education Agency ("TEA"); Susan Combs, in her official capacity as the Texas Comptroller of Public Accounts; and the Texas State Board of Education ("SBOE").

5. The use of focus districts

FOF 9. Because of the large number of school districts in the TTSFC Plaintiff group and the Fort Bend ISD Plaintiff group, those groups agreed to present proof of their claims through the use of a smaller group of "focus" districts. This agreement was incorporated into the Agreed Scheduling Order signed by this Court on April 16, 2012.

- The TTSFC Plaintiffs designated Alief ISD, Lubbock ISD, Pflugerville ISD, Los Fresnos ISD, Lufkin ISD, Brownwood ISD, Anton ISD, Van ISD, Everman ISD, Quinlan ISD, Bryan ISD, Belton ISD, Kaufman ISD, and Hillsboro ISD as their focus districts.

- The Fort Bend ISD Plaintiffs designated Aldine ISD, Abilene ISD, Amarillo ISD, Austin ISD, Corsicana ISD, Duncanville ISD, Fort Bend ISD, Humble ISD, Northside ISD, Waco ISD, and Weatherford ISD as their focus districts.

6. The causes of action at issue

FOF 10. The ISD Plaintiffs, Charter School Plaintiffs, and Intervenors seek declarations that the Texas educational system is unconstitutional under the following theories:

- **"Adequacy" claims.** The ISD Plaintiffs assert a violation of the "general diffusion of knowledge" clause in Article VII, Section 1 of the Texas Constitution, because, as evidenced by low student achievement results, they lack the resources needed to reasonably provide all their students with a meaningful opportunity to acquire the essential knowledge and skills reflected in the state curriculum and to graduate at a college-ready and career-ready level. The Edgewood ISD Plaintiffs more specifically assert a violation of the "general diffusion of knowledge" clause in Article VII, Section 1 of the Texas Constitution because they lack the resources needed to reasonably provide English language learner ("ELL") and economically disadvantaged students with a meaningful opportunity to acquire the essential knowledge and skills reflected in the state curriculum and to graduate at a college-ready and career-ready level, as evidenced by low student achievement results of these students and large performance gaps between these populations and their peers.[2] The Charter School Plaintiffs likewise assert that the level of funding is inadequate for open-enrollment charter schools in Texas.[3]

- **"State property tax" claims.** The ISD Plaintiffs assert that the school finance system violates Article VIII, Section 1-e of the Texas Constitution, which prohibits the levy of a state ad valorem tax, because they lack meaningful discretion in setting their M&O tax rates (resulting in a *de facto* state property tax).[4]

- **"Suitability" claims.** The ISD Plaintiffs assert that the school finance system violates the "suitable provision" clause in Article VII, Section 1 of the Texas Constitution because the system is not structured, operated

[2] Findings of fact related to these claims can be found in Part I.C (FOF 210, *et seq.*) below. Conclusions of law related to these claims can be found in Parts II.A.3 (COL 20, *et seq.*) and II.B.1 (COL 70, *et seq.*) below.

[3] Findings of fact relating to this claim can be found in Part I.G (FOF 1490, *et seq.*) below. Conclusions of law related to this claim can be found in Parts II.A.8 (COL 61, *et seq.*) and II.B.7 (COL 89, *et seq.*) below.

[4] Findings of fact related to these claims can be found in Part I.C.1 (FOF 210, *et seq.*) below. Conclusions of law related to these claims can be found in Parts II.A.2 (COL 9, *et seq.*) and II.B.2 (COL 76, *et seq.*) below.

and/or funded so that it can accomplish a general diffusion of knowledge. Multiple defects in the current design of the school finance system cumulatively prevent districts from generating sufficient resources to accomplish a general diffusion of knowledge for all students, but particularly with respect to its economically disadvantaged and ELL student populations. For example, the State relies on outdated, arbitrary weights and allotments that do not reflect the actual cost of education for school districts (and in particular the cost of educating at-risk students), and the State has made no effort to determine what it costs to provide all students with a meaningful opportunity to acquire the essential knowledge and skills reflected in the state curriculum and to graduate at a college-ready and career-ready level.[5] They allege that, as a result of these structural formula deficiencies, the system is not suitably operated or funded to account for uncontrollable costs arising from different student, district or community characteristics, resulting in significant adverse impacts on student achievement. The Charter School Plaintiffs likewise assert that the level of funding is unsuitable for open-enrollment charter schools in Texas.[6]

- **"Quantitative or financial efficiency" or "equity" claims.** The TTSFC Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs assert that the school finance system violates the "efficiency" clause of Article VII, Section 1 of the Texas Constitution in that it fails to provide property-poor school districts with substantially equal access to similar revenues necessary to provide a general diffusion of knowledge at similar tax efforts.[7] The Charter School Plaintiffs also assert a violation of the efficiency clause on the theory that the school finance system fails to provide "efficient and non-arbitrary" access to revenues to open-enrollment charter schools, including funding for facilities.[8]

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[5] Findings of fact related to these claims can be found in Part I.C (FOF 210, *et seq.*) below. Conclusions of law related to these claims can be found in Parts II.A.4 (COL 36, *et seq.*) and II.B.3 (COL 78, *et seq.*) below.

[6] Findings of fact relating to this claim can be found in Part I.G (FOF 1490, *et seq.*) below. Conclusions of law related to this claim can be found in Parts II.A.8 (COL 61, *et seq.*) and II.B.7 (COL 89, *et seq.*) below.

[7] Findings of fact related to these claims can be found in Part I.D (FOF 1204, *et seq.*) below. Conclusions of law related to these claims can be found in Parts II.A.5 (COL 43, *et seq.*) and II.B.4 (COL 82, *et seq.*) below.

[8] Findings of fact relating to this claim can be found in Part I.G (FOF 1490, *et seq.*) below. Conclusions of law related to this claim can be found in Parts II.A.8 (COL 61, *et seq.*) and II.B.7 (COL 89, *et seq.*) below.

- **"Taxpayer equity" claim.** The TTSFC Plaintiffs assert that the school finance system violates Article VIII, Section 1(a)'s prohibition on taxation that is not "equal and uniform."[9]

- **"Qualitative efficiency" claims.** The Intervenors assert a "qualitative efficiency" claim that they contend is distinct from the adequacy claim or other efficiency claims. They claim that the entire system of public free schools violates the efficiency clause of Article VII, Section 1 of the Texas Constitution because it is not effective or productive of results with little waste. They contend that various statutes and regulations (including but not limited to the statutory cap on the number of charter school operators, and statutes found in Chapter 21 of the Texas Education Code governing teacher compensation, evaluation, hiring and dismissal, etc.) render the system qualitatively inefficient.[10] The Charter School Plaintiffs also contend that the statutory cap on the number of open-enrollment charter school operators violates the "efficiency" clause of Article VII, Section 1 of the Texas Constitution.[11]

- **"Equal protection" claim.** The Charter School Plaintiffs assert a violation of the Equal Protection Clause on the grounds that (1) the Legislature fails to provide charter schools with substantially equal access to revenues and funding adjustments available to independent school districts, including the omission of facilities funding; and (2) the statutory cap on the number of open-enrollment charter school operators discriminates against charters.[12]

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[9] Findings of fact related to this claim can be found in Part I.E (FOF 1459, *et seq.*) below. Conclusions of law related to this claim can be found in Parts II.A.6 (COL 56, *et seq.*) and II.B.5 (COL 85, *et seq.*) below.

[10] Findings of fact related to this claim can be found in Part I.F (FOF 1463, *et seq.*) below. Conclusions of law related to this claim can be found in Parts II.A.7 (COL 58, *et seq.*) and II.B.6 (COL 87, *et seq.*) below.

[11] Findings of fact relating to this claim can be found in Part I.G (FOF 1490, *et seq.*) below. Conclusions of law related to this claim can be found in Parts II.A.8 (COL 61, *et seq.*) and II.B.7 (COL 89, *et seq.*) below.

[12] Findings of fact relating to this claim can be found in Part I.G (FOF 1490, *et seq.*) below. Conclusions of law related to this claim can be found in Parts II.A.8 (COL 61, *et seq.*) and II.B.7 (COL 89, *et seq.*) below.

B. The state of the Texas public education system since *West Orange-Cove II*

1. The demographics of Texas schools are changing, resulting in a student population that is increasingly more costly to educate.

FOF 11. From 2000 to 2010, Texas's population grew by almost 21% or 4.3 million people, making it one of the fastest growing states over that period. (RR3:12-14 (referencing Ex. 3228 at 4-6).)[13]

FOF 12. The composition of Texas's population is also rapidly changing – it is becoming increasingly impoverished and Hispanic. From 1999 to 2010, the percentage of the non-Hispanic White population living in poverty grew from 7.0% to 9.3%, the percentage of the Hispanic population living in poverty grew from 18.1% to 25.6%, and the percentage of the non-Hispanic Black population living in poverty grew from 17.8% to 24.4%. (Ex. 3228 at 34.) In all three groups, median household income declined. (*Id.*) During the same decade, the state's Hispanic population grew by almost 42%, compared to 4.2% for non-Hispanic Whites. (RR3:17-19 (referencing Ex. 3228 at 14).) Even under conservative assumptions, the overall Hispanic population in Texas will surpass the non-Hispanic White population during the next ten years, and is already larger in every age group under thirty-five. (RR3:61 (referencing Ex. 3228 at 63, 67).)

FOF 13. These changes are even more pronounced in the school-age population. By 2012-13, the number of "economically disadvantaged" students (meaning they are eligible for free or reduced-price meals under the National School Lunch and Child Nutrition Program) was 3,054,743, or 60.4%, of the student population. (Ex. 4258 at 13.) This is compared to 49.2% in the 2000-01 school year. (Ex. 11123 at 10; Ex. 10415 at 16.)

FOF 14. During the 2012-13 school year, Hispanic students comprised 51.3% of all Texas public school students, and Hispanic enrollment grew by more than 50% from 2000-01 to 2012-13. (Ex. 4258 at 13.) In comparison, overall student enrollment in Texas grew by almost 25% during this same time period. (*Id.*; *see also* RR3:21 (referencing Ex. 3228 at 6 (Dr. Murdock discussing changing demographics of Texas population under the age of 18).)

FOF 15. In 2012-13, there were 863,974 limited English proficient ("LEP," also referred to as "English Language Learner," or "ELL")[14] students. This represents 17.1% of the total student population in Texas, up from 14.5% (600,922 students) in 2001-02. (Ex. 11213 at 2; Ex. 4258 at 13; *see also* (RR3:88-90 (referencing Ex. 3228 at 78-79, 90-92).) Texas has the second-largest ELL student population in the nation. (Ex. 1104, Izquierdo Report, at 3.) By 2050, it is anticipated that 1,480,000 children will need bilingual services in Texas. (RR3:76 (referencing Ex. 3228 at 78).)

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[13] The Court has cited to trial transcripts as follows: "RR(volume):(page)."

[14] An ELL student is defined in statute as "a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary class work in English." TEX. EDUC. CODE § 29.052. (Ex. 1104, Izquierdo Report, at 4; Ex. 4231 at 5.)

FOF 16. According to Steve Murdock, the former state demographer and former director of the U.S. Census Bureau, these trends in the changing school-age population are expected to continue. Total enrollment in Texas public schools is projected to grow from 4.8 million in 2010 to nearly 9.3 million in 2050. (RR3:72 (referencing Ex. 3228 at 72).) The numbers of economically disadvantaged, ELL students, and other special-need students are projected to continue to rise much faster than the rate of overall student enrollment growth. (RR3:75-76, 88-89 (referencing Ex. 3228 at 78-79, 90-92).) Hispanic enrollment in Texas public schools is projected to increase by 148% from 2010 to 2050, while non-Hispanic White enrollment is projected to decrease by 7% during that same time period. (RR3:72-73 (referencing Ex. 3228 at 72-75).) By 2050, it is estimated that Hispanics will constitute approximately 62% of the Texas population ages five to nineteen, compared to 17% for non-Hispanic Whites. (Ex. 3228 at 66.)

FOF 17. Unfortunately, the rapidly growing low-income and ELL populations are the very populations who are struggling the most academically. As discussed in Parts I.C.2.a.iii (FOF 298, *et seq.*), and I.C.2.b.iii (FOF 349, *et seq.*) below, significant performance gaps persist between economically disadvantaged and non-economically disadvantaged students and between ELL and non-ELL students on the State's assessments.

FOF 18. The future socioeconomic well-being of Texas will depend largely on how successfully Texas schools educate their growing populations of economically disadvantaged, ELL, and Hispanic students and close those performance gaps. (RR3:90-93.) Dr. Murdock established that the rapidly growing Hispanic population in Texas has lower levels of educational attainment than other students, which will negatively impact income levels and increases poverty levels for that population and for the state as a whole. (RR3:43-44 (referencing Ex. 3228 at 44), 76 (referencing Ex. 3228 at 79), 85-86; Ex. 3228 at 90-91.)

FOF 19. Based on these demographic trends, Dr. Murdock established that if existing gaps in educational attainment levels and household income remain in place between the White population and the Black and Hispanic populations, Texas' population will have substantially lower incomes (with a decline of $7,759, or 11.6% in mean annual household income from 2010 to 2050 in constant dollars) and a higher rate of poverty (increasing from 14.4% in 2010 to 17% in 2050). (RR3:89-90; Ex. 3228 at 93-94, 96.) Further, Texas will face reduced levels of consumer spending, reduced tax revenues, higher enrollment in specialized educational programs and higher state expenditures for these programs. (RR3:79-84; Ex. 3228 at 81-82, 90-97.)

FOF 20. Conversely, Dr. Murdock testified that higher levels of education lead to higher income for all racial/ethnic groups and that higher levels of education can reduce the differences in income disparities between majority and minority populations. (RR3:85-87; Ex. 3228 at 83-89.)

FOF 21. According to Dr. Murdock, if the state were able to close the gap in income levels between Black and Hispanic households and non-Hispanic White households, total state income would increase to $1.52 trillion in real dollars in 2050. (RR3:79 (referencing Ex. 3228 at 80).) This represents a $400 billion increase over the projected state income

without such closure. (RR3:80 (referencing Ex. 3228 at 80).) Closure of these income gaps would have a comparable positive effect on consumer spending and total tax revenues available to the state. (RR3:80-90 (referencing Ex. 3228 at 81, 82, 95-97).)

FOF 22. If the gap between non-Hispanic Whites and Black/Hispanic households were closed by even half, Texas would experience substantial improvements in household income levels, consumer expenditures, and state tax revenues. (Ex. 3228 at 80-82, 95-97.)

FOF 23. The rapid growth in student enrollment requires more classrooms, teachers, support personnel, equipment, books, technology, transportation and other resources needed to educate these additional students. Moreover, because economically disadvantaged, ELL, and special education populations require significantly more funds to educate, these changing demographics have resulted in significantly higher costs for school districts that are not compensated adequately through the current school finance system, because of the insufficiency of the basic formulas and weights and allotments. (*See infra* Parts I.C.2.d (FOF 456, *et seq.*) and I.C.4 (FOF 591, *et seq.*).) The inadequacies of these weights exacerbate the demographic challenge facing Texas school districts. (*See infra* Parts I.C.2.a.ii (FOF 294, *et seq.*) and I.C.2.b.ii (FOF 345, *et seq.*).)

2. The arbitrary changes to the structure of the school finance system since *WOC II* and the severe underfunding of Texas school districts have rendered the school finance system unsuitable.

a. At the time of *WOC II*, the school finance system had no significant unused taxing capacity.

FOF 24. At the time of the last Texas Supreme Court school finance decision, *Neeley v. West Orange Cove Consolidated ISD*, 176 S.W.3d 746 (Tex. 2005) ("*WOC II*"), the public school finance system relied on a two-tiered finance structure known as the Foundation School Program ("FSP"). (Ex. 6396 at 2.) Locally adopted maintenance and operations ("M&O") tax rates were generally subject to a statutory maximum of $1.50 per $100 of assessed valuation. (*Id.* at 1.) In fiscal year 2003-04, 494 out of 1,031 school districts in Texas, which educated roughly 59% of the state's public school student population, were taxing at the $1.50 cap. *WOC II*, 176 S.W.3d at 794. Furthermore, 691 districts, which educated roughly 81% of the public school student population, were taxing at or within five cents of the $1.50 cap. *Id.* This lack of local capacity to raise additional tax revenues was a major factor in the Texas Supreme Court's decision in *WOC II*, which found that the school finance system had evolved into an unconstitutional state property tax in that school districts were deprived of meaningful discretion to set their local tax rates. *Id.* at 794-98.

b. The passage of HB1 set several structural problems in motion.

FOF 25. In 2006, following the Supreme Court's decision in *WOC II*, the 79th Texas Legislature passed House Bill 1 ("HB1"). (Ex. 6393; Ex. 6396 at 1.) HB1 required school districts to reduce their M&O tax rates by one third and appropriated state funds to *partially*

replace this loss of maintenance and operations tax revenue. (Ex. 6395 at 2.) This tax "compression" was phased in during the 2006-07 school year and was fully effective in the 2007-08 school year. (*Id.*) From 2007-08 to the present, each district's "compressed tax rate" has been calculated by multiplying its 2005-06 tax rate by two-thirds. (Ex. 5653 at 12.) For districts taxing at an M&O tax rate of $1.50 in 2005-06, the compressed tax rate in the post-HB1 system is $1.00. (*Id.* at 11.)

FOF 26. In passing HB1, the Legislature aimed to cut property taxes and at least temporarily provide school districts with the constitutionally required "meaningful discretion" to tax locally for supplementation and enrichment. But the Legislature failed to ensure that the constitutional standards of adequacy, suitability, and equity were protected over the long haul. (*See infra* Parts I.C (FOF 210, *et seq.*) and I.D (FOF 1204, *et seq.*).)

FOF 27. First, for the 2006-07 school year, the Legislature replaced state funding lost through the compression of local M&O tax rates with state revenue. (RR7:17-18 (referencing Ex. 6349 at 65).) While the Legislature provided some new revenue, new state mandates limited the districts' use of this new money, thereby reducing the intended local discretion. For example, the State required districts to use a significant portion of any new money for an across-the-board net $2,000 pay increase for teachers, nurses, counselors, and librarians. (Ex. 6322, Moak Report, at 41; RR6:139-41 (referencing Ex. 6349 at 2).)

FOF 28. Second, HB1 limited districts' ability to raise their M&O taxes, by requiring districts to obtain the approval of the district's voters at a special election known as a tax ratification election ("TRE") in order to levy an M&O tax rate above $1.04. This took discretion away from local school boards. TEX. TAX CODE § 26.08(a), (n).

FOF 29. Third, HB1 established a yield structure that made it more difficult for districts to pass a TRE. The first six pennies of additional M&O taxes above the compressed rate are commonly known as "golden" pennies, because they yield higher per-penny revenues than other components of the school finance system and are not subject to the recapture requirements pertaining to property-wealthy districts. (Ex. 1188, Dawn-Fisher Report, at 1.) Beyond that, HB1 guaranteed a yield of $31.95 per weighted student for any pennies of M&O tax effort that exceeded the compressed tax rate plus six cents (commonly known as the "copper pennies"), up to a maximum M&O tax rate of $1.17. (*Id.*)

FOF 30. HB1 also created a new funding element in the FSP called Additional State Aid for Tax Reduction ("ASATR"). *See* TEX. EDUC. CODE § 42.2516. This hold harmless mechanism, commonly known as "target revenue," provided that districts would be funded at the best of three scenarios: (1) the actual M&O revenue per WADA (defined in footnote 18 below) that the district received in 2005-06; (2) the 2006-07 M&O revenue that would have existed at the 2005-06 M&O tax rate had the laws not been changed by HB1; or (3) the 2006-07 M&O revenue that would have existed had the district adopted the "effective rate," or the rate that maintains revenue per student from the preceding year. (Ex. 5653 at 106; Ex. 1328, Casey Report, at 17-18; Ex. 1188, Dawn-Fisher Report, at 2.)

FOF 31. In the first year under the "target revenue" system, 188 districts received the greatest revenue from the first scenario, 570 districts received the greatest revenue from the second scenario, and 266 districts received the greatest revenue from the third scenario. (Ex. 1328, Casey Report, at 18.) To the extent that Tier I state aid and local M&O tax collections at the compressed M&O tax rate did not provide the revenues needed to maintain these target levels, a district was eligible for ASATR funding. (*Id.*)

c. The Legislature's property tax compression under HB1 resulted in a sizable structural deficit and large demands on general revenue.

FOF 32. While one impetus behind HB1 may have been the *West Orange-Cove II* decision, the other impetus was to provide the "largest tax cut in Texas history." (*See* Ex. 5731.) Indeed, the report of the Texas Tax Reform Commission that was the genesis behind the legislation was entitled: "Tax Fairness: Property Tax Relief for Texans." (*See* Ex. 5732.)

FOF 33. For the reasons set forth below, the Comptroller has estimated that this tax cut has left the state with a recurring "structural deficit" of nearly $10 billion per biennium. (RR31:90-92.) Despite the Legislature's awareness of this structural deficit from the very outset in 2006, it has made no effort to close it.

FOF 34. The Legislative Budget Board ("LBB") estimated that HB1's compression of local M&O tax rates by one-third would reduce property tax revenue for school districts by $14.2 billion in the 2008-09 biennium. (Ex. 5657 at 194.) To *partially* replace the significant loss of local revenue associated with the property tax compression, in the same special session, the 79th Legislature created the Property Tax Relief Fund ("PTRF"), to be funded from several sources, including a restructured business margins tax (but only the portion in excess of the amount that would have been derived from the prior franchise tax) and increased cigarette and tobacco taxes. (Ex. 5592 at 8; Ex. 5657 at 194.)

FOF 35. The Legislature recognized that the new taxes would not fully replace these lost property tax revenues, and state funds would be needed from other sources – including a very temporary budget "surplus" – for this purpose. (Ex. 5658 at 2; Ex. 5592 at 8; Ex. 5732 at 17, 20.) A House Research Organization Report estimated that HB1 would cost $8.695 billion in FY 2008 (against only $4.120 billion in projected new revenues) and $10.131 billion in FY 2009 (against only $4.228 billion in new projected revenues). (*See* Ex. 5733 at 20.) Similarly, the LBB's fiscal note for HB1 projected probable revenue losses to school districts of at least $5.85 billion annually from 2008-2011. (Ex. 6395 at 1.) Exchanges between legislators, which have been marked as statements of legislative intent, make it clear that the Legislature was fully aware of this deficit. (Ex. 6520 at 323-26.)

FOF 36. Making the deficit worse, the PTRF underperformed from the beginning. While the Comptroller estimated that the new revenue sources would raise $8.3 billion in the 2008-09 biennium, the new funds were short of this amount by over $3 billion. (Ex. 5658 at 2.) The largest component of the new revenue sources – the revised business margins tax –

was estimated to produce over $6.8 billion but earned just over $3 billion. (*Id.*) The Comptroller lowered expectations for the 2010-11 biennium, estimating increased revenues at only $5.5 billion (Ex. 11301 at 5), but the PTRF earned just $4.2 billion, still over $1 billion short of the projection. (*Id.*) The Comptroller has continued to lower expectations for the PTRF, estimating just $4.5 billion in new revenues for the 2012-13 biennium. (*Id.* at 5-6.) These amounts are far short of the $14.2 billion per biennium that the LBB initially estimated would be needed to cover the loss of revenue from the property tax compression.

FOF 37. The State was able to avoid the consequences of its actions (and inaction) in the 2009 legislative session, by relying on the infusion of approximately $12 billion in federal stimulus funds. (Ex. 6322, Moak Report, at 42; RR7:192-93; RR31:37-38.) This included $5.8 billion earmarked specifically for education, while state general revenue support for public education actually declined by about $3.2 billion for the 2010-11 biennium. (Ex. 6322, Moak Report, at 42.) The State used a large portion of these federal funds to supplant state funds and again mandated across-the-board pay increases for teachers, nurses, counselors, librarians, and speech pathologists, costing school districts about one-half of the remaining one-time federal funds. (RR6:140-41; RR7:76-78.)

FOF 38. In the 82nd Legislative Session, beginning in January 2011, federal stimulus funds had disappeared. (RR31:37-38.) Rather than take action to close the structural deficit and revise the funding system to ensure that it is "structured, operated, and funded so that it can accomplish its purpose for all Texas children," *WOC II*, 176 S.W.3d at 753, the Legislature significantly cut funding for public education, as discussed further below. (*See infra* Part I.B.2.e (FOF 52, *et seq.*).)

d. The school finance system formulas established by HB1 and other legislative enactments were drafted without taking into consideration the cost of providing all students a meaningful opportunity to achieve a general diffusion of knowledge.

FOF 39. The following findings describe the school finance formulas through the 2013-14 school year, while identifying several minor changes that were implemented after the 2012-13 school year.[15] As discussed in Parts I.C.2.d.ii (FOF 466, *et seq.*), I.C.2.d.iii (FOF 480, *et seq.*) and I.C.5.a (FOF 603, *et seq.*) below, these formulas were established without taking into account the cost of providing all students a meaningful opportunity to achieve a general diffusion of knowledge.

FOF 40. **Tier I.** School districts with compressed tax rates of $1.00 were entitled to a "Basic Allotment" of $4,765 in 2012-13 and are entitled to $4,950 in 2013-14 for each student in

[15] For a more detailed explanation of the structure of the school finance system, see the Texas Association of School Boards' publication, "A Guide to Texas School Finance: January 2012," (Ex. 6321 at App. 9, Part Q), or the presentation to the Court made by expert witness Joseph Wisnoski, a former Deputy Associate Commissioner for Finance of TEA. (Exs. 5653, 5654, 6593.)

Average Daily Attendance ("ADA").[16] (Ex. 5653 at 22; Ex. 5654 at 32; Ex. 6593 at 22R.) Districts with compressed tax rates below $1.00 receive a proportionally smaller Basic Allotment (the Basic Allotment multiplied by the district's compressed tax rate, divided by $1.00). (Ex. 5653 at 23; Ex. 5654 at 32-33; RR56:122-23 (referencing Ex. 6593A at 22R-23R).) The Basic Allotment is then adjusted based on (1) how much it costs to educate students in that district, via the "Cost of Education Index" ("CEI") and (2) whether the district is small, mid-sized, or sparsely populated and therefore suffers from diseconomies of scale (the "small district adjustment," the "mid-size district adjustment," and the "sparsity adjustment").[17] *See* TEX. EDUC. CODE § 42.102-.105. These changes result in an "Adjusted Allotment." (Ex. 5653 at 22, 24-34; Ex. 5654 at 33-40.) Districts receive the Adjusted Allotment for each student in ADA that is not receiving certain special education services or career and technical education (the "Regular Program Allotment"). (Ex. 5653 at 35; Ex. 5654 at 40, 43-44.)

FOF 41. In addition, districts receive program allotments for special programs or conditions based on the number of students covered by these programs or conditions (typically calculated by the use of a "weight" multiplied by the relevant student count affected). This special program formula funding – intended to account for the varying, additional costs of educating different types of students – is provided for special education, career and technology, compensatory education, bilingual/ESL, and gifted and talented, among other categories. (Ex. 5653 at 37-56; Ex. 5654 at 44-54.) *See* TEX. EDUC. CODE § 42.151-.154, § 42.156-.159. Additional Tier I funding is provided based on the number of high school students ($275 for each student in ADA in grades nine through twelve) and to cover a portion of transportation costs. (Ex. 5653 at 57-65; Ex. 5654 at 54-57.) *See* TEX. EDUC. CODE §§ 42.155, 42.160. The Regular Program Allotment plus these additional special program funds together comprise a district's "Tier I entitlement." (Ex. 5653 at 66-73; Ex. 5654 at 57-59.)

FOF 42. A school district is responsible for funding a portion of its Tier I entitlement. The portion of the Tier I entitlement that the district is responsible for is called the local fund assignment ("LFA"). TEX. EDUC. CODE § 42.251-.252. The LFA is the amount of tax collections generated by assessing the district's compressed tax rate or a tax rate of $1.00, whichever is lower, for each $100 of property valuation, using the preceding school year's property values as determined by the uniform study of property values by the Comptroller. (Ex. 5654 at 59; Ex. 5653 at 72.) The total Tier I entitlement minus the LFA equals the state's share of the Tier I entitlement. (Ex. 5653 at 72-75; Ex. 5654 at 58-62.)

FOF 43. **Tier II.** Tier II provides a "guaranteed yield," or guaranteed level of funding, to school districts to supplement the basic funding provided by Tier I. TEX. EDUC. CODE § 42.301.

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[16] The Basic Allotment will be increased to $5,040 in 2014-15. (*See infra* FOF 66.)

[17] The CEI was last updated in 1990, the small district adjustment and sparsity adjustments have not been updated since 1984, and the mid-size adjustment has not been updated since it was added in 1995. (Ex. 1328 at 14, 16.)

The guaranteed yield ensures that school districts will generate at least a specified amount of state and local funds per student in weighted average daily attendance ("WADA") for each cent of tax effort above the compressed rate, up to $1.17.[18] (Ex. 5653 at 77; Ex. 5654 at 63.) TEX. EDUC. CODE § 42.302.

FOF 44. There are two components of Tier II. For the first six pennies of tax effort above the compressed rate, a district is entitled to a minimum of $59.97 per penny per WADA ("Tier II-A" or the "golden pennies").[19] (Ex. 5653 at 85, 88; Ex. 5654 at 63, 68-75.) For any remaining cents of tax effort above Tier II-A up to a maximum of $1.17, districts receive a guaranteed yield of $31.95 per penny per WADA ("Tier II-B" or the "copper pennies"). (Ex. 5653 at 85, 89-90; Ex. 5654 at 63, 75-77.) TEX. EDUC. CODE § 42.302. As noted above, any M&O tax effort above $1.04 requires the approval of the voters of the district in a TRE. TEX. TAX CODE § 26.08(a), (n).

FOF 45. **Wealth equalization.** A district is subject to the provisions of Chapter 41 if its property wealth per WADA exceeds certain equalized wealth levels ("EWL") set in statute. *See* TEX. EDUC. CODE § 41.002. Property-wealthy districts subject to this chapter are typically called "Chapter 41 districts," and those districts that are not are typically called "Chapter 42 districts." (*See* Ex. 5384, Kallison Equity Report, at 4.) The Education Code provides for three equalized levels of property wealth per WADA that either limit districts' access to the tax revenue generated by local M&O tax effort above the EWL, or, in the case of the Tier II-A EWL (*see supra* FOF 44), guarantee a yield up to a level for all school districts. (Ex. 1188, Dawn-Fisher Report, at 8.)

FOF 46. The first EWL was set at $476,500 per WADA in 2012-13 and is set at $495,000 per WADA in 2013-14.[20] (*Id.*; Ex. 6593 at 95R); *see also* TEX. EDUC. CODE § 41.002(a)(1). This level applies to the M&O tax pennies up to a district's compressed tax rate. (Ex. 1188, Dawn-Fisher Report, at 8.) A district with property wealth per WADA in excess of the first EWL typically will have the excess tax collections associated with these pennies recaptured unless provided otherwise by hold harmless provisions, as described in FOF 50 below. (*Id.*) Approximately 174 districts, representing 9.6% of WADA, were subject to recapture at the compressed rate in 2011-12.[21] (Ex. 5653 at 96.) The second EWL applies to the next six pennies above a district's compressed tax rate. (Ex. 1188, Dawn-Fisher Report, at 8.) For those pennies, the State currently ensures that districts will

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[18] "WADA" is defined as the number of students in weighted average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters B [Basic Entitlement] and C [Special Allotments], less any allotment to the district for transportation, any allotment under Section 42.158 or 42.160 [new Instructional Facility Allotment and High School Allotment], and 50% of the adjustment under Section 42.102 [Cost of Education Adjustment], by the basic allotment for the applicable year. *See* TEX. EDUC. CODE § 42.302.

[19] The Tier II-A guaranteed yield will be raised to $61.86 per penny in the 2014-15 school year. (*See infra* FOF 66.)

[20] The first EWL will be raised again to $504,000 in 2014-15. (*See infra* FOF 66.)

[21] For the 2011-12 school year, the first EWL was $476,500.

receive the same revenue per penny of tax effort as that generated by the Austin ISD (presently $59.97 per penny per WADA).[22] TEX. EDUC. CODE § 41.002(a)(2). (Ex. 5654 at 63; Ex. 5653 at 85.) As long as other districts are funded at the Austin yield, property-wealthy school districts that can generate per-penny revenues in excess of the Austin yield are allowed to keep the additional revenues they generate on these six pennies, without recapture. (Ex. 1188, Dawn-Fisher Report, at 8; Ex. 5653 at 95.) Since 2006, the State has funded Tier II at sufficient levels to allow Chapter 41 districts to retain all of the revenue they generate on their golden pennies of tax effort. (Ex. 1188, Dawn-Fisher Report, at 8.) In 2011-12, approximately 109 districts, with approximately 5% of the state's ADA, or approximately 250,000 students, benefited from the absence of recapture on these golden pennies because they generate local yields in excess of the guaranteed yield of $59.97. (*Id.* at 3.) The total revenue generated by these districts in excess of the guaranteed yield was approximately $33.9 million. (*Id.* at 3-4.)

FOF 47. The third EWL is set in statute at $319,500 per WADA, and it applies to any tax effort that exceeds the district's compressed rate plus six cents. (*Id.* at 8.) *See also* TEX. EDUC. CODE § 41.002(a)(3).[23] A district whose property wealth per WADA exceeds $319,500 and taxes in the "copper penny" tier will have the excess tax collections associated with this tax effort recaptured, subject to some exceptions. (Ex. 1188, Dawn-Fisher Report, at 8; Ex. 4240 at 8.) In 2011-12, approximately 115 districts enrolling 318,850 in ADA paid recapture at the $319,500 EWL. (Ex. 11451 at Tab 2012, Columns P and F.)

FOF 48. Chapter 41 districts have five options to reduce their wealth level under Section 41.003 of the Education Code, including: (1) consolidating with another district; (2) detaching property; (3) purchasing attendance credits from the state; (4) contracting to educate nonresident students from a partner district; or (5) consolidating tax bases with another school district. (Ex. 1188, Dawn-Fisher Report, at 7.) TEX. EDUC. CODE § 41.003. The vast majority of Chapter 41 districts choose option three, which requires a district to send money to the state. (Ex. 5653 at 95; Ex. 5654 at 80.) These funds are used to help finance the FSP payments that are made to property-poor districts. (Ex. 1188, Dawn-Fisher Report, at 7.)

FOF 49. Because the Texas Supreme Court has directed the trial court to consider facilities funding, together with M&O, in addressing the constitutionality of public school funding, the Court notes that the facilities funding structure effectively creates a fourth EWL of $350,000 per ADA for those districts that are successful in issuing bonds. There is no recapture of revenue generated from property values exceeding this EWL. Like the M&O weights and allotments, the Legislature has not recently updated the EWL to adjust for inflation and increased construction costs. Unlike M&O funding, however, facilities

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[22] The guaranteed level for these pennies will be raised to $61.86 for the 2014-15 school year.

[23] Due to provisions in the Education Code that allow a school district to retain the wealth level needed to maintain its 1992-93 revenue levels, as well as various "credits" associated with certain recapture arrangements, some school districts are allowed to retain a wealth level higher than the various EWLs. TEX. EDUC. CODE §§ 41.002(c), 41.098; (*see also* Ex. 6441, Wisnoski Dep., at 55, 78-79).

funding is subject to appropriation and is not a permanent part of the school funding system. Consequently, districts cannot rely on new funding to assist with construction costs.

FOF 50. **Target revenue overlay.** While the preceding findings describe how districts would be funded "on formula," 783 districts in 2011-12 were still funded based on the "target revenue" system (versus 246 on formula). (Ex. 6593 at 153R.) Districts are entitled to the target revenue amount if this amount exceeds what they would have received under Tier I of the school finance formulas described above. (*Id.* at 105; Ex. 5654 at 93-94.) The Legislature modified the target revenue calculation with the passage of House Bill 3646 ("HB3646") in 2009. (*See* Ex. 6379.) HB3646 created a new funding component, based on the revenue target, known as revenue at the compressed (tax) rate, or "RACR." The RACR amount is the sum of the state share of a district's Tier I entitlement and the revenue from the district's compressed tax rate, both as calculated under HB3646, adjusted as necessary based on certain minimum and maximum hold harmless provisions of HB3646. (*See id.*; Ex. 5653 at 109-10; Ex. 5654 at 99-101.) For school years 2009-10 and beyond, HB3646 provided that a district levying at least its compressed rate will be entitled to a RACR amount equal to at least the sum of the following: (1) the revenue per WADA the district was entitled to in 2009-2010; and (2) adjustments to reflect current year funding for certain other allotments. (Ex. 5653 at 109-10; Ex. 5654 at 99-102.) The first figure was based on the best of the three scenarios described in FOF 30 above, taking into account other legislative action in 2006, 2007, and 2009. (Ex. 5653 at 109; Ex. 5654 at 99-100.)

FOF 51. The use of target revenue as an alternate to formula funding undermines the equalization that is the basis of formula funding and unreasonably freezes district funding in time. As a result, the advantages and disadvantages in FY 2005-06 funding have been carried forward into subsequent school years, thereby magnifying the inequities.

e. By reducing public education funding by $5.3 billion, the 2011 Legislature exacerbated the funding inadequacies.

FOF 52. In 2011, faced with a perceived revenue shortfall (based on vastly understated revenue estimates from the Comptroller)[24] and a recurring structural tax revenue deficit, the Legislature made a number of changes to public education finance aimed at reducing education funding through the passage of Senate Bill 1 ("SB1"). (Ex. 6322, Moak Report, at 47; *see also* Ex. 6362, article 57.) SB1 reduced funding distributed through the FSP by approximately $4 billion for the biennium compared to what would have been provided under prior law. (Ex. 6322, Moak Report, at 47; RR6:203-04 (referencing Ex. 6349 at 38); Ex. 6362 at Article 57; Ex. 6364 at 12.)

[24] The "perceived" shortfall had two components. First, the Comptroller was forecasting a shortfall in the FY 2010–11 budget. On September 30, 2011, that budget finished with a $4+ billion surplus. Second, the Comptroller forecasted a revenue shortfall in FY 2012–13, and that budget finished with an $8+ billion surplus.

FOF 53. The mechanism for reducing FSP funding was different in the first year versus the second year of the 2012-13 biennium. (Ex. 6322, Moak Report, at 48.) In the first year of the biennium, the Legislature reduced the regular program allotment in Tier I to 92.39% of the prior-law levels. (*Id.*; RR6:203 (referencing Ex. 6349 at 44); Ex. 5653 at 147.) This was accomplished by applying an adjustment – known as the Regular Program Adjustment Factor ("RPAF") – which was set in statute for the 2011-12 and 2012-13 school years at 0.9239 and 0.98 respectively. (Ex. 6322, Moak Report, at 48; Ex. 5653 at 147.) This reduced state aid not only in Tier I, but also in Tier II and in ASATR, because reducing the regular program allotment in Tier I reduced the calculated number of students in weighted average daily attendance for all districts, which in turn affected the funding calculations for both tiers and ASATR. (Ex. 6322, Moak Report, at 48.)

FOF 54. In the second year of the 2012-13 biennium, the regular program was reduced to 98% of prior-law levels, effectively restoring part of the first-year reduction. (Ex. 6322, Moak Report, at 48; RR6:203 (referencing Ex. 6349 at 44).) The effective 2% reduction to the regular program allotment produced a state savings of $500 million in 2012-13. (Ex. 6322, Moak Report, at 48.) The remaining funding reduction in 2012-13 came from hold harmless ASATR funds. (*Id.*) Target funds were reduced to 92.35% of prior-law levels in 2012-13, which had the effect of reducing ASATR by more than 50% because more districts would be funded via higher formula funding. (*Id.*; RR6:203 (referencing Ex. 6349 at 44); Ex. 5653 at 148.)

FOF 55. As a result, the proportion of districts funded on target revenue versus formula decreased between the 2011-12 and 2012-13 biennia. In 2011-12, a total of 783 districts were funded under target revenue, while 238 districts were funded on formula. (Ex. 6618 at 12; *see also* Ex. 11476 at 19.) It is estimated that in 2012-13, 329 districts were funded under target revenue, while 692 districts were funded on formula. (Ex. 6618 at 12.)[25]

FOF 56. To "save" an additional $1.3-$1.4 billion, the 82nd Legislature also eliminated or significantly reduced funding for a number of specific educational programs – many of which were designed to help the state's highest need children and close the achievement gap. (RR6:203-07; RR32:194; Ex. 6322, Moak Report, at 47; Ex. 4000, Cortez Report, at 49-50; RR31:171-72; Ex. 10748.) These cuts included, but were not limited to:

- A reduction in funding for the Student Success Initiative ("SSI") grant program from over $300 million in the 2010-11 biennium to $41 million for the 2012-13 biennium. (Ex. 5630, Scott Dep., at 44-45; Ex. 17 at III-19.) This program, established by the Legislature in 2000, was designed to provide support for students in need of accelerated remediation to help them pass statewide

[25] The State provided slightly different estimates of the numbers of districts that were funded under target revenue versus on formula. According to the State's data, 783 districts in 2011-12 were funded under target revenue, with 241 districts funded on formula (compared to 783 and 238 above). (Ex. 11451 at Summary tab, cells H38, H254.) In 2012-13, the State's data shows 327 districts funded under target revenue, with 694 districts funded on formula (compared to 329 and 692 above). (*Id.* at Summary Tab, cells I38, I254.)

examinations, through the provision of intensive tutoring, extended day programs, and summer school programs. (Ex. 6322, Moak Report at 49; RR6:204-05; Ex. 5630, Scott Dep., at 28-29.)

- The elimination of $201 million in grants designed to assist districts with providing full-day pre-K services, a program that Former TEA Commissioner Robert Scott described as "critical" in light of the research based on the importance of early education. (Ex. 6322, Moak Report, at 49; Ex. 5630, Scott Dep., at 30-34, 42-44.)

- Sharp reductions to programs aimed at improving teacher quality. For example, District Awards for Teacher Effectiveness ("DATE") grants, which were used to support district-designed incentive pay programs, were reduced from $372.5 million in the 2010-11 biennium to $40 million for the 2012-13 biennium, despite the Commissioner's recommendation to fund the program at approximately $392.5 million. (Ex. 6322, Moak Report, at 49; RR6:205-06; Ex. 5630, Scott Dep., at 45-46; Ex. 16 at 55; Ex. 17 at 18.)

These special programs and grants were important to the Texas public education system and the cuts particularly impacted the state's highest need children. (RR6:204-07.)

FOF 57. Commissioner Scott testified that determining whether to restore money to the FSP (compared to initial proposed FSP reduction released early in the 2011 legislative session) or to the special programs described above "was akin to asking the guy on the operating table whether he wants his heart or his lungs back." (Ex. 5630, Scott Dep., at 349.) He acknowledged that with the cuts to the special programs, "the lungs never got put back." (*Id.* at 358.)

FOF 58. As a result of these special program cuts, districts were forced to use funds that otherwise could have been used for enrichment if they wanted to continue providing these important services, further reducing what minimal "meaningful discretion" they had.

FOF 59. The 2011 budget cuts have had a deleterious impact. Even though there were 44,454 more students enrolled in the non-charter public schools statewide in 2011-12 than in 2010-11, total employment declined by over 26,000 full time equivalent staff, driving staffing ratios up for teachers and non-teachers alike. (Ex. 6322, Moak Report, at 49; RR6:208 (referencing Ex. 6349 at 45).)

Number of Staff Employed by School Districts, 2010-11 and 2011-12

	2010-11	2011-12	Difference
Teachers	325,891	314,404	-11,487
Other Staff	323,809	308,913	-14,896
Students	4,799,541	4,843,995	44,454
Students per Teacher	14.7	15.4	4.76%
Students per Other Staff	14.8	15.7	6.08%

(Ex. 6322, Moak Report, at 49.)

FOF 60. Average salaries and experience levels across staff also declined. (*Id.*) Total base pay across all staff categories declined by more than $1 billion dollars between 2010-11 and 2011-12. (*Id.*)

FOF 61. The Legislature anticipated one major effect of the budget cuts when it added financial need as a basis for obtaining class size waivers in 2011. (Ex. 5630, Scott Dep., at 390.) The 2011 budget cuts forced many districts to seek waivers of the twenty-two-to-one class size requirement for grades K through four. In 2011-12, the TEA granted nearly 8,600 waivers of the State's class size requirement. (Ex. 5630, Scott Dep., at 391-92 (referencing Ex. 30 at 3).) The requests for waivers came from approximately 30% of all elementary schools in Texas and directly affected about 150,000 students. (Ex. 5630, Scott Dep., at 394-95 (referencing Ex. 31 at 1).) Many superintendents testified that they believed they had no choice but to increase class sizes, and that doing so adversely affected their ability to educate students. (*See infra* FOF 568 and FOF 574.)

FOF 62. Teacher salaries, staffing ratios, and class sizes were not the only area affected by the cuts. Many districts were forced to eliminate full-day pre-K programs which, according to national experts and superintendents, provide a key educational foundation for students, especially ELL and economically disadvantaged students. (*See infra* Parts I.C.2.c.i (FOF 384, *et seq.*) and I.C.3.b (FOF 550, *et seq.*).) Other districts maintained their full-day pre-K programs, but only at the expense of other interventions. (*See, e.g.*, RR20:138-39; Ex. 3208, Williams Dep., at 210-11; Ex. 3198, Garza Dep., at 22-23.) One superintendent testified regarding the cuts, "instead of culling out programs that are ineffective, you decide which of the effective programs you're going to cut back and streamline." (RR19:37 (referencing Ex. 6355 at 16).) More detailed findings concerning district-specific effects are provided in Part I.C.7 (FOF 680, *et seq.*) below. Each of these cuts came at the same time the State implemented a new, more rigorous assessment regime that superintendents testified will require significant additional resources for which to prepare students. (*See infra* Parts I.B.3.b (FOF 93, *et seq.*) and I.C.5.b (FOF 607, *et seq.*).)

FOF 63. Even before these cuts, a Quality Counts report (an annual report prepared by *Education Week*) ranked Texas forty-ninth among the states on per pupil expenditures after

adjusting for regional cost differences, and gave Texas an "F" on spending per pupil. (Ex. 6322, Moak Report, at 44.)

FOF 64. The Court finds that the cuts detailed above reflect a state funding system that does not provide the necessary support to achieve the State's academic standards and goals, including the goal for all students to have a meaningful opportunity to graduate college and career ready. (*See infra* Part I.B.3 (FOF 81, *et seq.*).) In short, the $5.3 billion in cuts to the FSP, Student Success Initiative, pre-K funding, and other special programs designed to overcome the challenges of increasingly demanding student populations (which resulted in larger class sizes, a less experienced teacher workforce, and less remediation for struggling students), demonstrates that the school finance system is not to designed to provide a general diffusion of knowledge to all students.

f. The 2013 legislative changes did not cure the constitutional deficiencies brought about by the structural deficit, outdated formulas, and inadequate funding.

FOF 65. Given that the prior seven years had seen (1) the creation of a substantial structural deficit in 2006 through property tax compression combined with insufficient general revenue to replace the lost funds, (2) the absence of any corrective action in the intervening years, and (3) the largest cuts to public education in Texas in decades, the 83rd Legislature did not have a very high bar to meet. Following this Court's February 4, 2013 oral ruling at the conclusion of the initial phase of trial, the 83rd Legislature reinstated $3.5 billion of the $5.3 billion of the cuts it had made to public education in the 2011 legislative session. However, most of these funds were attributable to increased local tax revenues resulting from estimates of increased property value, and only one-third came from general revenue fund appropriations. (*See infra* Part I.C.1.b.v (FOF 263, *et seq.*).)

FOF 66. While some plaintiffs' counsel called this action a "modest step in the right direction," this Court finds that the step was modest indeed – and plainly insufficient to satisfy constitutional standards. The Legislature accomplished this action by way of an appropriations bill rather than by statutory changes to the formulas, which means that the changes expire at the conclusion of the current biennium.[26] (RR63:18-20.) The four primary means by which the cuts were partially reinstated are set forth below:

a. First, the Legislature increased the Basic Allotment from $4,765 in 2012-13 to $4,950 in 2013-14 and $5,040 in 2014-15. (Ex. 6593A at 22R; RR54:103 (referencing Ex. 6618 at 5).) Correspondingly, the Tier 1 EWL was raised from $476,500 in 2012-13 to $495,000 in 2013-14, and will increase further to $504,000 in 2014-15. (*See supra* FOF 46; RR54:103 (referencing 6618 at 5).)

[26] Because these changes were made through an appropriations bill instead of through changes to the statutory formulas, the State would be required to prorate these amounts if it did not receive the amount of expected revenues necessary to pay its budgetary obligations in full and the 84th Legislature did not cover the difference through a supplemental appropriation. (RR54:96; RR55:108-09; RR63:18-20, 96-98.)

b. Second, the Legislature increased the RPAF – the formula through which it had implemented the 2011 across-the-board cuts (*see supra* FOF 53) – from 0.98 in 2012-13 to 1.0 in the 2013-14 and 2014-15 school years. (RR56:125 (referencing Ex. 6593 at 35R).) The RPAF expires on September 1, 2015.

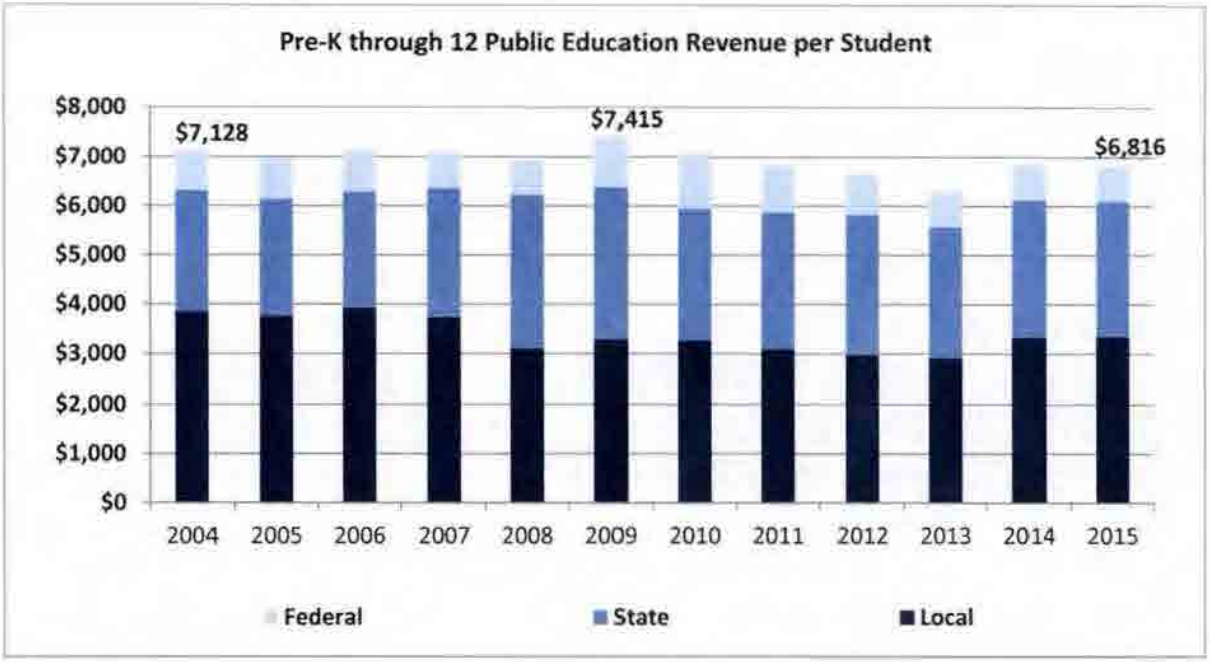
c. Third, the Tier II-A guaranteed yield will be raised from $59.97 to $61.86 per penny in the 2014-15 school year. (*See supra* FOF 44; Ex. 6593A at 77R.)

d. Fourth, the State slightly raised the "target revenue reduction factor" from 92.35% of prior-law levels in 2012-13 to 92.63% of prior law levels in 2013-14 and 2014-15, which resulted in a slight increase in the amount of ASATR that certain districts will be paid. (RR54:104 (referencing Ex. 6618 at 5).)

FOF 67. The Legislature did not update or modify any of the other formulas used in the school finance system. (RR56:124-27, 132, 148-49.) Most notably, the Legislature did not revisit any of the outdated weights used to provide additional money for economically disadvantaged and ELL students who are substantially more expensive to educate. (*Id.*; RR63:19-20.)

FOF 68. The Legislature restored only $290 million of the $1.3 billion (or 22 cents out of every dollar) that had been cut from state grant programs. (Ex. 20216-A.) Most notably, the Legislature did not restore SSI funds, which are targeted towards providing remediation to students who have failed or are in danger of failing statewide assessments. (*Id.*; *see also* RR63:111.) The Legislature also failed to restore funding for early childhood and pre-kindergarten programs, regional education service centers, and the Texas Reading, Math and Science Initiative, among other programs. (*See* RR63:108-11 (referencing Ex. 20216-A).)

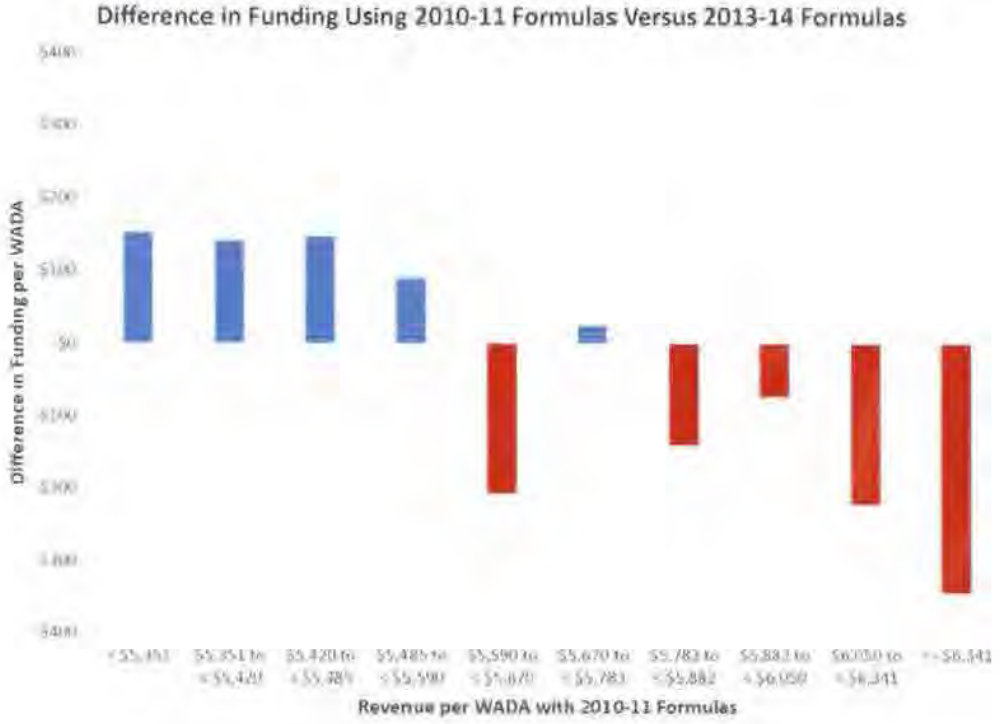
FOF 69. **The impact of the 2013 legislation in a larger context.** The actions of the 2013 Legislature did not change the fact that there has been a significant decline in total per-student operating revenues for public education on an inflation-adjusted basis over the past decade, and in particular in the last five years, even as performance standards have risen. In 2004 dollars, total per-student revenues for public education were approximately $7,128 in 2003-04. (RR54:83-85 (referencing Ex. 6618 at 7).) The 2008-09 school year reflected the largest per-student revenue during the last decade at $7,415 (in 2004 dollars), in part due to increases in federal funding that year. (RR54:84 (referencing Ex. 6618 at 7).) By 2014-15, on an inflation-adjusted basis, public education funding per student will have dropped to $6,816 in 2004 dollars, representing a loss of $312 per student compared to the 2004 level and a loss of $599 per student since 2009. (RR54:88-84 (referencing Ex. 6618 at 7).)



Source: MCA Analysis of Figure 181 from LBB Fiscal Size-Up. Adjusted for payment delays and enrollment.

(Ex. 6618 at 7.)

FOF 70. In the current school year, approximately 488 districts, with nearly half the WADA in the state, remain worse off than they were in 2010-11 before the 2011 legislative cuts. (RR54:111-12 (referencing Ex. 6618 at 10).) Those districts that come out ahead do so only marginally, as shown in the chart below.



(*See* Ex. 6618 at 9.)

FOF 71. Most fundamentally, given the levels of funding this Court has found necessary to achieve a "general diffusion of knowledge" (*see infra* Part I.C.5.f (FOF 625, *et seq.*)), the Legislature's partial restoration of the 2011 cuts did not cure the constitutional deficiencies in the school finance system, which remains inadequate, unsuitable, and financially inefficient.

g. Testimony from State witnesses does not demonstrate sufficient financial support for public education.

FOF 72. The State Defendants presented several witnesses whose testimony suggested that educational expenditures in Texas had increased in recent years, but the Court does not find that testimony to be persuasive. Upon examining this testimony, the Court finds it does not alter the essential picture of a state where operational expenditures on education have, in recent years, failed to keep pace with inflation, standards, rapid enrollment growth, and changing student demographics.

FOF 73. For example, Tom Currah, a senior advisor and data analysis director for the Texas Comptroller of Public Accounts, averred that "total expenditures" by school districts in the aggregate and per student have increased between 2000 and 2011, even when compared with inflation (measured by the Consumer Price Index ("CPI") and growth in enrollment). (RR33:170-71, 173-74 (referencing Ex. 11279 at 26-35).) Mr. Currah's presentation did not reflect the substantial budget cuts made in 2011. (RR33:170, 202-03.)

FOF 74. The "total expenditure" values presented by Mr. Currah also include, not only operational spending, but also amounts paid by districts for debt service and capital outlays. (RR33:195-96.) Both of these most often apply to spending for the building of new facilities or renovating existing facilities. These items are not measured in the basket of goods used for the CPI. (RR33:200.) Moreover, including both debt service and capital outlays in the "total expenditures" metric double-counts the amounts school districts spend to build facilities financed by debt, since the sum includes both the initial capital outlay and the eventual repayment of the debt incurred to pay for it. (RR33:188, 196-97.) The inclusion of debt service and capital outlays in total expenditures, therefore, overstates the growth in real (inflation-adjusted) educational spending over time. (RR33:187-88, 196-97.) As a result, "total expenditure" values are not relevant to the issue of spending per student.

FOF 75. Notably, the "total expenditure" metric is not the spending measure used in the State's Financial Allocation Study of Texas ("FAST"). (RR33:197.) Instead, the FAST project used only operational expenditures – a measure that does not include either capital expenditures or debt service – adjusted by a comparable wage index. (RR33:149-50, 198-99.) As the FAST study's authors appear to recognize, operating expenditures are a better measure than total expenditures of the money that can be used to deliver the educational services most directly crucial to student learning. (Ex. 965 at 44, 50 (describing the methodology for the FAST study and the use of the operating expenditures measure).)

FOF 76. Mr. Currah also failed to account for significant cost drivers in the last decade, including the growing percentage of economically disadvantaged students and the State's recent ramping up of performance expectations for both students and schools. (RR33:200-02; *see infra* Parts I.C.2.a.ii (FOF 294, *et seq.*) and I.B.3 (FOF 81, *et seq.*).)

FOF 77. The State also relied on Rob Coleman, Assistant Director of Fiscal Management for the Texas Comptroller of Public Accounts, to testify regarding the Comptroller's role in setting the biennial budget and to describe the budget patterns over the past several years. Mr. Coleman acknowledged that the Legislature cut education funding from the 2010-11 biennium to the 2012-13 biennium, but added that public education funding *by the State* (*i.e.*, not counting the funding raised by districts from the local property tax) has increased from the funding levels of the 2004-05 biennium. (Ex. 11270 at 23; RR31:47-48, 52-56.) He agreed, however, that this change in appropriations over time reflects the Legislature's shift away from reliance on local property taxes and toward greater reliance on state funds. (RR31:101-03.) This shift was necessary to make up for the $14.2 billion

in local property tax revenue losses following the tax rate compression mandated in HB1 and does not reflect an actual increase in overall education funding to districts. (RR31:91-92 (referencing Ex. 1700); Ex. 5657 at 192.)

FOF 78. The State also presented Shirley Beaulieu, the Chief Financial Officer of the TEA, who provided documentation of educational spending from all sources for each biennium from 2006-07 to 2014-15. While a focus solely on state aid to education through the FSP appears to create the impression of a slight increase in per-student spending in the 2012-13 biennium, this fails to account for the fact that approximately $3.2 billion in federal stimulus funding was used in 2010-11 to plug the gap in state FSP spending created by the structural deficit caused by the compressed tax rate. (RR31:184; RR63:105-07 (referencing Ex. 20167-A), 108 (referencing Ex. 20216-A); *see also supra* FOF 37.) Texas did not replace these federal funds after the 2010-11 biennium. (RR31:185.) Furthermore, Ms. Beaulieu's testimony regarding total education spending included: federal grant funds, which must by law be spent for specific purposes; facilities funding, which must by law be used to repay debt; and administrative funding for the Texas Education Agency. (RR63:105-06 (referencing Ex. 20167-A), 116 (referencing Ex. 20216-A).)

FOF 79. Ms. Beaulieu's presentation did not contradict the fact that in the 2012-13 biennium, the FSP was funded at approximately $4 billion less than its previous-law levels, and that the 83rd Legislature failed to fully restore those cuts in the 2014-15 biennium. (*See* RR31:134, 153-54; RR54:81, 87-88 (referencing Ex. 6618 at 3-4).) In addition, the numbers she presented for each biennium were not adjusted for inflation or enrollment growth. (RR31:179-80, 182; RR63:103-04 (referencing Ex. 20167-A), 107-08 (referencing Ex. 20216-A), 114 (referencing Ex. 10748).) When adjusted for inflation and presented on a per-student basis, educational spending from all sources (state, local, and federal) and for all purposes (including operating expenditures, capital spending, debt service, and state and federal programs and grants) was lower in the 2013-14 biennium than it was during the 2003-04, 2005-06, 2008-09, or 2010-11 biennia. (RR54:83-84 (referencing Ex. 6618 at 7).) This occurred despite having a historically high $8 billion in the rainy day fund. (RR31:26-27, 57.) After the partial restoration of the cuts, Ms. Beaulieu showed total education spending per WADA for the 2014-15 biennium that was still slightly less than in 2010-11 – even when including federal grant funds and local property tax collections, which both increased by more than 10%. (RR63:115-16; Ex. 20216-A.)

FOF 80. The State's expert, Dr. Dawn-Fisher, testified that state FSP funding has increased between 2006 and 2012, primarily due to student enrollment growth and the compression of M&O tax rates under HB1. (RR32:173-74; Ex. 1188, Dawn-Fisher Report, at 5.) Dr. Dawn-Fisher's analysis also does not account for inflation during the 2006-2012 period. (RR32:174.) Likewise, Dr. Dawn-Fisher's representation that per-WADA funding increased between FY 2011 and FY 2012 does not account for the reduction in WADA caused by the RPAF, which actually reduced funding by more than $2 billion in FY 2012. (RR32:175 (referencing Ex. 1188, Dawn-Fisher Report, at 6), at 184; *see also*

supra FOF 53.) Indeed, Dr. Dawn-Fisher admitted that the effect of the legislative changes to the FSP formulas was to reduce FSP funding by $4 billion, and agreed that, when combined with the grant cuts, school districts experienced a $5.3 billion dollar cut. (RR32:194.) Dr. Dawn-Fisher's charts in the second-phase hearing, which showed FSP revenue through fiscal year 2015, suffered from some of these same defects. (RR62:98-101.)

3. The Legislature has significantly increased academic performance requirements for Texas public schools and students.

FOF 81. Since the Supreme Court last analyzed the adequacy issue in *WOC II*, the Texas Legislature has substantially increased the academic performance requirements for Texas public schools and students. Specifically, the Legislature has incorporated college-readiness standards into the curriculum, introduced additional and more difficult assessment requirements, added coursework at the high school level, and implemented steps to increase the number and percentage of students graduating on more rigorous graduation plans. *See, e.g.*, TEX. EDUC. CODE §§ 4.001, 28.001, 28.008, 28.025. These changes, which are aimed at increasing the percentage of Texas students who are prepared to enter college or the workforce, "are the most significant changes [to public education] that we've seen in a substantial amount of time." (RR6:144-45, 155; *see also* Ex. 6322, Moak Report, at 16-20; Ex. 5624, Zyskowski Dep., at 25-27, 34-35.)

a. College and career readiness is now the operational expectation of the Texas school system.

FOF 82. The Legislature has tied the general diffusion of knowledge to the goal of preparing all Texas students to graduate from high school ready to enter college or the workforce. (*See* RR28:167-68, 177; RR5:125; Ex. 4273, Martinez Dep., at 28-29; Ex. 5785, Housson Dep., at 212; RR63:138-40.)

FOF 83. The Legislature first articulated this intent in 1995 when it adopted Section 28.001:

> It is the intent of the legislature that the essential knowledge and skills developed by the State Board of Education under this subchapter shall require *all* students to demonstrate the knowledge and skills necessary to read, write, compute, problem solve, think critically, apply technology, and communicate across all subject areas. *The essential knowledge and skills shall also prepare and enable all students to continue to learn in postsecondary educational, training, or employment settings.*

TEX. EDUC. CODE § 28.001 (emphasis added).

FOF 84. The TEA's then-Associate Commissioner for Standards and Programs, Anita Givens, acknowledged that Section 28.001 describes the purpose of the State's curriculum and that this provision reflects the Legislature's intent to ensure that all students have a

meaningful opportunity to learn the subject areas laid out in the curriculum and to be ready for post-secondary education or employment. (RR28:167-68.)

FOF 85. The Legislature also has acknowledged its duty to ensure that all Texas school children have access to an education that is adequate in the context of the competitive employment market and the changing world:

> The mission of the public education system of this state is to ensure that *all Texas children have access to a quality education* that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation. That mission is grounded on the conviction that a general diffusion of knowledge is essential for the welfare of this state and for the preservation of the liberties and rights of citizens . . . .

TEX. EDUC. CODE § 4.001 (emphasis added).

FOF 86. The Texas Supreme Court concluded that through the passage of Section 4.001, "the Legislature has expressly defined the mission of the public school system, including school districts, to accomplish a general diffusion of knowledge." *West Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558, 584 (Tex. 2003) ("*WOC I*").

FOF 87. More specifically, the mission of Texas public schools is to produce college or career-ready graduates. (RR28:177.) The Legislature has defined college readiness as "the level of preparation a student must attain in English language arts and mathematics courses to enroll and succeed, *without remediation*, in an entry-level general education course for credit in that same content area for a baccalaureate degree or associate degree . . . ." TEX. EDUC. CODE § 39.024(a) (emphasis added). To advance this mission, in 2006, the Legislature required the Commissioner of Education and the Commissioner of Higher Education to work together to establish college-readiness standards and expectations, evaluate the curriculum, and recommend how the curriculum could be aligned with those standards. Tex. EDUC. CODE § 28.008; Act of May 15, 2006, 79th Leg. 3rd C.S., ch. 5, Tex. Gen. Laws at 45 (HB1) (available at Ex. 6393). (RR28:120-21, 176-77; RR5:125-26.)

FOF 88. In 2007 and 2009, the Legislature required these same college-readiness standards to be incorporated into the State's assessment and accountability system. Act of May 29, 2007, 80th Leg., R.S., ch. 1312 (SB 1031) (available at Ex. 6388); Act of June 2, 2009, 81st Leg., R.S., ch. 895, 2009 Tex. Gen. Laws 2357 (HB3) (available at Ex. 6375). (*See also* Ex. 5624, Zyskowski Dep., at 25-26, 34-35; Ex. 5785, Housson Dep., at 33-34.) Section 39.053 of the Education Code requires the Commissioner of Education to periodically increase performance standards for students and schools until Texas (1) ranks within the top states in terms of college readiness and (2) has eliminated any "significant achievement gaps by race, ethnicity and socioeconomic status." TEX. EDUC. CODE § 39.053(f). (*See also* Ex. 6322, Moak Report, at 17-18; Ex. 10336 at ii; Ex. 5785, Housson Dep., at 33-34.)

FOF 89. To that end, in 2008, Texas adopted college and career-readiness standards ("CCRS"). (Ex. 742.) The CCRS were approved by the Texas Higher Education Coordinating Board and the Commissioner of Education and were subsequently incorporated into the Texas Essential Knowledge and Skills ("TEKS") by the SBOE. (*See* RR27:13-14; RR28:119-21; Ex. 742 at iii; Ex. 10336 at I-47 and App. B.) The curriculum is now vertically aligned so that the entire curriculum – from kindergarten all the way to high school – is designed to prepare students to meet the CCRS. (RR28:121-23.)

FOF 90. In 2013, the Legislature adopted House Bill 5 ("HB5"), which requires school high school students to select a graduation plan that puts them on the path to earning one of five endorsements – STEM (science, technology, engineering and math), multidisciplinary, public service, business and industry, or arts and humanities – upon entering ninth grade. TEX. EDUC. CODE §§ 28.025(b), (c-1). (*See* RR54:125-27; *see also infra* FOF 106.) By creating the endorsements, the Legislature hoped to "maintain rigor while providing students flexibility to pursue college or career interests." (Ex. 6532 at 4.)

FOF 91. HB5 also requires TEA to add more achievement indicators related to college and career readiness to the accountability system beginning in 2013-14, including: (a) the percentage of students completing the curriculum for the distinguished level of achievement; (b) the percentage of students completing the curriculum for an endorsement; and (c) three additional student achievement indicators, which must include either the percentage of students completing the TSI college-readiness benchmarks in reading, writing and math, or the number of students that earn at least 12-plus or 30-plus hours of post-secondary credit, an associate's degree, or an industry certification. (Ex. 20062A, Zamora Report, at 13.)

FOF 92. Monica Martinez, the current TEA Commissioner for Standards and Programs, confirmed that the 83rd Legislature did not, however, alter the mission of Texas public schools, change the definition of college readiness, order the State Board of Education to remove the college-readiness standards from the curriculum, eliminate the expectation that students would graduate from high school college and career ready, or otherwise lessen the expectations of Texas public school students.[27] (*See* Ex. 4273, Martinez Dep., at 28-34, 52-54; RR63:138-40; *see also* RR54:125-27.)

b. Between 2007 and 2013, the State introduced a substantially more challenging assessment regime.

FOF 93. As part of the move toward college readiness as the outcome standard for Texas public schools, the State is transitioning from the Texas Assessment of Knowledge and Skills ("TAKS") assessment regime to the State of Texas Assessment of Academic Readiness ("STAAR") regime. (RR27:33-34; RR28:12.)

[27] Although Bill Hammond testified on the behalf of the Texas Association of Business that HB5 retreated from the rigor and standards previously in place, the Court does not find his testimony to be persuasive. He was not proffered as an expert, and his opinions are merely conclusory.

FOF 94. Under the new STAAR system, students must pass a rigorous set of five End-of-Course ("EOC") exams to graduate from high school – Algebra I, English Language Arts I, English Language Arts II, Biology, and United States History.[28] TEX. EDUC. CODE § 39.023(c). (RR54:138-40 at 132-35 (referencing Ex. 6618 at 22).) The STAAR tests for grades three through eight and the EOC tests are aligned with the college-readiness standards. (*See* RR27:33, 36-37; RR28:20-21; Ex. 38 at 10.)

FOF 95. Plaintiff and State witnesses unanimously agree that the STAAR exams are significantly more challenging than the TAKS. (*See* RR28:21-22; RR27:35-36; Ex. 5624, Zyskowski Dep., at 36-37, 70, 106, 198-99, 248-49; Ex. 5620, Twing Dep., at 101-05, 125; Ex. 5630, Scott Dep., at 20, 39.)[29]

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[28] Initially, high school students were going to be required to pass fifteen end-of-course exams to graduate, as reflected in much of the deposition and trial testimony from the initial trial. The original list of exams included five freshman-level tests (English I Reading and English I Writing, Algebra I, Biology and World Geography), five-sophomore level tests (English II Reading and English II Writing, Geometry, Chemistry, and World History), and five junior-level tests (English III Reading and English II Writing, Algebra II, Physics, and U.S. History). (Ex. 37 at 2.) At the time of the initial phase of trial, the first cohort of students that was subject to the EOC exams had recently finished their freshman year, and thus testimony focused on the results of those five freshman-level tests. (Ex. 6322, Moak Report, at 25-26.) In 2013, through HB5, the Legislature changed the EOC testing regime by combining the reading and writing tests into one English Language Arts exam and requiring students to pass English I, English II, Algebra I, Biology, and U.S. History to graduate. (*See* RR54:138-39; Ex. 5796, Zyskowski Dep. (Vol. II), at 24; Ex. 6618 at 22; Ex. 20062A, Zamora Report, at 7; *see also* Ex. 5796, Zyskowski Dep. (Vol. II), at 24; Ex. 11482 at 2 of PDF.) Because HB5 left the freshman-level tests in place (with the exception of World Geography, which was replaced with U.S. History), the Court finds the results of these exams and the testimony regarding them remains relevant and reliable. Furthermore, the results from the 2012-13 administration of the freshman-level tests and the sophomore-level English tests (which HB5 also requires) emphasize the continued relevance of the poor first year results. (*See infra* FOF 140 – FOF 145.) The one freshman-level EOC no longer required to be administered, World Geography, also yielded the lowest remediation rates among the districts. (Ex. 20062A, Zamora Report, at 7.) While the Court understands that the elimination of the previously-anticipated sophomore and junior-level EOCs will no longer increase the magnitude of the crisis that was discussed at the initial phase of trial, the fact that this crisis was based on freshman-level tests means that the changes also do not eliminate that crisis. The fact remains that, after the second year of STAAR testing, hundreds of thousands of students were off-track for graduation because of their performance on EOC exams required by HB5, and substantial performance gaps remain for economically disadvantaged and ELL students. (*See* Ex. 6618 at 23; RR54:140-42; Ex. 20062A, Zamora Report, at 11; Ex. 11366; Ex. 20313; *see generally* Ex. 5797; RR63:80-81.)

[29] Employees of the TEA and its testing contractor, Pearson, testified that the State also conducted studies empirically linking the TAKS met standard, college ready (HERC), and commended levels to performance on STAAR. (Ex. 5624, Zyskowski Dep., at 79-81, 166-67; Ex. 5621, Gaertner Dep., at 10-11; *see also* Ex. 49; Ex. 50; Ex. 88; Ex. 91; Ex. 10937.) The results of those studies indicate that the final standards on STAAR are much more rigorous than were the final TAKS standards. (*See generally* Ex. 10937.) In fact, in certain EOC subjects, the TAKS passing rate is linked to a lower score on the STAAR-EOC exam than would be expected from random guessing on the STAAR exam. (*See id.* at 4, 7, 9, 13, and 16; *see also* Ex. 44; Ex. 57; Ex. 5624, Zyskowski Dep., at 111, 114.) The Level II final standard on STAAR is higher than the college-ready level on TAKS in both English III and Algebra II. (Ex. 10937 at 4, 7, 9; *see also* Ex. 88; Ex. 91 Ex. 5620, Twing Dep., at 124-25; Ex. 5621, Gaertner Dep., at 32-34, 62.) The overwhelming evidence belies Mr. Hammond's claim that the current STAAR regime is even *less* rigorous than TAKS. (*See* Ex. 8200, Hammond Dep., at 22-23.) The Court finds no credible basis for this opinion.

FOF 96. The Legislature required the Commissioner to establish a passing/satisfactory standard (known as "Level II") and to work with the Commissioner of Higher Education to establish an advanced/college-ready standard ("Level III") on each STAAR EOC assessment.[30] TEX. EDUC. CODE §§ 39.0241(a) (passing standard), 39.0241(a-1) (college-ready standard). (*See also* RR27:97.) The Level II standard is being phased in over four years and in two steps (a lower Level II phase-in 1 standard followed by a higher Level II phase-in 2 standard). (Ex. 41 at 2; Ex. 5796, Zyskowski Dep. (Vol. II), at 10-12 (referencing Ex. 20321).) Thus, from 2011-12 through 2014-15, students are considered to have passed their required STAAR exams when they reach the applicable phase-in Level II standard, but beginning in 2015-16, students will be required to meet the higher, final Level II standard to pass their exams.

FOF 97. Students meeting the Level II passing standard are deemed "on track" to graduate from high school, but the Legislature specifically noted that the satisfactory score requirement "does not require a student to demonstrate readiness to enroll in an institution of higher education." TEX. EDUC. CODE § 39.025(a). (*See also* Ex. 10871 at 31; RR27:109-10; RR27:114-15.)

FOF 98. The college-ready performance standards were set through a series of external validity studies designed to link performance on the STAAR EOC tests to external measures of performance on other state and national exams associated with college readiness (including the SAT, ACT, NAEP, Accuplacer, and others). (*See* Act of June 2, 2009, 81st Leg., R.S., Ch. 895, § 53, 2009 Tex. Gen. Laws 2357, 2375-2378 (HB3) (available at Ex. 6375); *see also* RR27:44-45.) These studies allowed the State to link a Level III score on Algebra II and English III to a 75% probability of a "C" or better in college courses in the same content area, compared to a 60% probability for a final Level II score. (RR27:96-99 (referencing Ex. 11241 at 27).)

FOF 99. The Level III advanced standard on STAAR was set at a level that is "higher than the commended level of performance on the TAKS examination." (*See* Ex. 5624, Zyskowski Dep., at 113; Ex. 41 at 2-3; Ex. 6322, Moak Report, at 25 and n.12; Ex. 10937.)

FOF 100. The Legislature required the Commissioner to vertically align the college-ready standard established for Algebra II and English III with the exams for lower subjects and grades. *See* TEX. EDUC. CODE. § 39.0241(a-2) (*See also* Act of June 2, 2009, 81st Leg., R.S., Ch. 895, § 53, 2009 Tex. Gen. Laws 2357, 2375-2376 (HB3) (available at Ex. 6375); RR27:33-34; RR5:124-26.) TEA's Director of Student Assessment, Dr. Gloria

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[30] The Commissioner was also initially required to establish "a minimum score within a reasonable range of" the satisfactory performance level ("Level I"). (*See* Act of June 2, 2009, 81st Leg., R.S., ch. 895, § 54, 2009 Gen. Laws 2357, 2378.) Originally, high school students did not have to pass each individual EOC, but instead had to meet a certain cumulative score across all EOCs in a subject area. The Level I standard was not considered passing or satisfactory but was the minimum score that allowed a test score to count toward a student's cumulative score in that content area. (RR27:57-58 (referencing Ex. 11241 at 27), 99; RR6:163-65; Ex. 41 at 8-9.) HB5 eliminated the cumulative score requirement and students are now required to earn a satisfactory score on each required EOC exam. TEX. EDUC. CODE § 39.025(a).

Zyskowski, testified that vertical alignment means that "there is a link between the performance standards for one year that's in grade three to the performance standard required of students in a subsequent year so that we can make statements about student performance in one year and subsequent performance and we have done that throughout the system so that ultimately we can make statements about students' post-secondary readiness." (RR27:33.)

FOF 101. TEA officials – in depositions in this case and in numerous other settings – repeatedly and consistently associated the Level III standard with being on track for college readiness. (*See, e.g.*, Ex. 5624, Zyskowski Dep., at 47-50, 54, 103-06, 180-81; Ex. 37 at 8, 11; Ex. 38 at 8; Ex. 39 at 12 (Q47); Ex. 10871 at 31, 34, 36; RR30:114-15, 129-30; *see also* Ex. 1083, Lopez Report, at 7-8; RR27:169-71; RR30:114-15, 129-30.) However, at trial, Dr. Zyskowski testified that the TEA would be recommending that the final Level II standard be associated with the "college-readiness" measure for purposes of Section 39.024 of the Texas Education Code. (RR27:97-98.) This Court finds that:

a. As discussed in FOF 96 above and as conceded by Dr. Zyskowski, the Legislature contemplated separate performance measures for "satisfactory" performance and "college-readiness" performance. (RR27:114-16.) Adopting Level II as the college-readiness measures erases any distinction between the college-ready standard and the basic standard that must be met even to graduate from high school. (RR27:113.) This contravenes the clear purpose of the statute, which directed TEA to develop one standard to measure college readiness, and another standard to serve as the basic passing standard. *See* TEX. EDUC. CODE. §§ 39.0233, 39.024, 39.025. (*See also* Act of June 2, 2009, 81st Leg., R.S., Ch. 895, § 50-55, 2009 Tex. Gen. Laws 2357, 2373 (HB3) (available at Ex. 6375).)

b. The Legislature defined "college readiness" as "the level of preparation a student must attain in English language arts and mathematics courses to enroll and succeed, *without remediation*, in an entry-level general education course for credit in that same content area for a baccalaureate degree or associate degree . . . ." *Id.* § 39.024(a) (emphasis added). The STAAR Level III advanced standard on the EOC tests reflects a 75% chance or greater of obtaining a "C" in the introductory level college course in that subject. (Ex. 5624, Zyskowski Dep., at 46, 70, 104-06, 111-14; RR27:99 (referencing Ex. 11241 at 27), 170.) In contrast, the Level II designation taken as a whole is associated with (1) a lower degree of confidence in a student's college readiness, and (2) a significant (40%) possibility that some remediation in college may still be necessary. (RR27:110-12 (referencing Ex. 10871 at 31-32, 34, 36).)

c. TEA officials have testified that they have greater confidence in the STAAR Level III standard as a proper measure of college readiness than in the previous TAKS Higher Education Readiness Component (or "HERC"). (Ex. 5624, Zyskowski Dep., at 90.)

d. For these reasons, the Court finds persuasive the conclusion of Dr. Kal Kallison, formerly the Deputy Assistant Commissioner at the Texas Higher Education Coordinating Board, that the Level III standard reflects a stronger measure of college readiness (*see* RR21:47) and therefore student performance at this standard should be considered when evaluating whether the State is achieving its own definition of a general diffusion of knowledge – to graduate college and career-ready graduates.

FOF 102. The increased rigor of the STAAR assessment system poses significant hurdles to high school graduation for many students. After the first two years of STAAR exams, hundreds of thousands of students had failed to meet even the lower, phase-in standard on at least one test. (*See* Ex. 6618 at 23; RR54:140-41; Ex. 11366; Ex. 20313; *see generally* Ex. 5797; RR63:80-81.) Performance on the STAAR retests was also worse than performance on TAKS retests. (RR6:183-84 (referencing Ex. 6349 at 30); *see also infra* FOF 138.) Waiting for school districts to make slow progress on improving the passing rates is not an option for the hundreds of thousands of ninth and tenth graders who are no longer on track to graduate because of their performance on EOC exams. (*See* Ex. 6618 at 23; RR54:140-41; *see generally* Ex. 5797; RR63:80:81.)

c. The State has substantially increased requirements for graduation.

FOF 103. The State's increasing requirements for high school graduation are linked to the Legislature's definition of general diffusion of knowledge. Students who fail to graduate from high school are, by definition, not prepared to enter post-secondary education, much less succeed without remediation. Neither are these students generally well prepared for the work force. Adults without a high school diploma are three times as likely to be unemployed as those who have earned a high school diploma. If employed, high school dropouts earn less than high-school graduates. (*See* Ex. 6330, Murdock Supp. Report, at 8-14; RR3:85-96 (referencing Ex. 3228 at 83-89); RR15:40-48; Ex. 4040, Belfield Report, at 3-5.)

FOF 104. For students entering high school between 2004-05 and 2013-14, the Legislature made the Recommended High School Program ("RHSP") the default high school program for all students. (RR28:129; Ex. 5624, Zyskowski Dep., at 41-42; RR6:152-53; RR5:127.) To graduate on the RHSP, students must complete twenty-six credits (compared to twenty-four credits prior to that time). (RR28:131, 171; RR6:151; Ex. 6349 at 5-6; Ex. 1083, Lopez Report, at 3.) This means that students must accumulate 6.5 credits every year for four years to graduate on time, assuming no need to make up courses that students did not pass. Credits must include four courses in each of the core areas of mathematics, science, social studies and language arts, as well as two years of the same foreign language. (RR6:151; Ex. 6322, Moak Report, at 18; Ex. 6349 at 5; RR28:128-29, 132.)

FOF 105. Since *WOC II*, the Legislature also established multiple barriers to prevent students from moving down to the Minimum Plan. (RR28:131; Ex. 6375 at Section 30.) Section

28.025 of the Education Code requires signatures from a parent/guardian, the student, *and* a counselor or administrator to authorize participation in the Minimum Plan. TEX. EDUC. CODE § 28.025. (RR28:131.) In addition, students must be sixteen years old, or have completed two credits in each of the four core subject areas, or have failed to be promoted to the tenth grade prior to moving down to the Minimum Plan. *See* TEX. EDUC. CODE § 28.025. (RR28:131; Ex. 6322, Moak Report, at 18.)

FOF 106. For students entering high school in the 2014-15 school year or beyond, the Legislature, through HB5, made the Foundation Program (22 credits) plus an endorsement (4 credits) the default program for a total of 26 credits, similar to the prior default Recommended High School Program which required completion of 26 credits. TEX. EDUC. CODE § 28.025. (*See also* RR55:129-30; Ex. 4273, Martinez Dep. at 55-57; Ex. 6618 at 21; RR54:131-32; Ex. 4336, Cavazos Dep., 98:13-20; RR63:140-41.) As with the RHSP before it, the Legislature established barriers to prevent students from moving down to the Foundation Plan without an endorsement. A student must be a junior or a senior, must have written parental permission, and both the student and the student's parent be advised by the school counselor of the "specific benefits of graduating from high school with one or more endorsements." TEX. EDUC. CODE § 28.025(b). A student who graduates without an endorsement is not eligible for automatic admission into a Texas public university under the Top 10% rule. (Ex. 6618 at 21; RR54:126.) To be eligible for automatic admission to a four-year institution of higher education, students must earn a distinguished level of achievement, which requires a student to earn one or more endorsements, complete Algebra II, and complete two additional elective credits. (Ex. 6618 at 21; RR54:126; Ex. 20062A, Zamora Report, at 8, 10; RR63:141.)

FOF 107. The Court finds that HB5's changes to the graduation requirements are consistent with, and do not diminish, the State's emphasis on graduating students who are post-secondary ready. (*See* Ex. 20062A, Zamora Report, at 8-9; Ex. 4336, Cavazos Dep., at 81.) School district officials testified that, in order to offer the array of endorsements contemplated by HB5 and provide students with multiple pathways to college or career readiness, school districts will need to alter which courses they offer, which they anticipate will require hiring new teachers who are certified to teach the new courses and/or provide staff development to help existing employees acquire additional certifications. (*See* Ex. 20062A, Zamora Report, at 8-9; RR55: 140-48; Ex. 6557, Sconzo Dep. (Vol. II), at 31-38; Ex. 6558, Frost Dep. (Vol. II), at 34-37; Ex. 3541, Pfeiffer Dep. (Vol. II), at 20-21, 22-24.)

FOF 108. Based on the findings above and the undisputed testimony at trial, the Court concludes that – through the introduction of the STAAR / EOC regime, and in the standard-setting process associated with the new system – the State has undertaken an effort to revise the curriculum, to better align the assessment system with this curriculum, and to empirically link levels of performance on statewide assessments to a wide range of external measures of college readiness, and significantly raise standards. These statutory changes have tremendously raised expectations for Texas school districts. The witnesses universally

agreed, without contradiction, that the changes are appropriate and necessary to accomplish the general diffusion of knowledge.

FOF 109. In light of the above, the Court finds that expectations for students and schools have been substantially heightened and that performance against these heightened standards reveals a current crisis. While HB5 reduced the number of EOC exams that students must pass, it did not eliminate the dire situation presented by hundreds of thousands of the state's 2012-13 ninth and tenth graders being off track to graduate for failure to pass still-required EOC exams. It also did nothing to reduce the costs for school districts to provide all of their students with an opportunity to achieve the standards and graduate from high school college and career-ready. (RR54:152, 157-58; Ex. 6557, Sconzo Dep. (Vol. II), at 30-42 (referencing Ex. 20256).)

FOF 110. In determining whether the State has met its constitutional obligations, the Court does not focus merely on the consequences the State may choose to impose for failing to meet the standards it has now promulgated. Instead, the Court focuses on whether students are actually meeting the standards identified as reliable indicators of college and career readiness.

d. The ISD Plaintiffs have rebutted any presumption that a "general diffusion of knowledge" is equivalent to accreditation requirements.

FOF 111. In *WOC I*, the Texas Supreme Court noted that, "The public school system the Legislature has established requires that school districts provide both an accredited education and a general diffusion of knowledge. It may well be that the requirements are identical; indeed, as in *Edgewood IV*, we presume they are, giving deference to the Legislature's choices; however, it is possible for them not to be – an accredited education may provide more than a general diffusion of knowledge, or vice versa – and because both are binding, a district may allege that taxation at a maximum rate in order to satisfy either is a state ad valorem tax." *WOC I*, 107 S.W.3d at 581 (discussing *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 755, n.10 (Tex. 1995)) ("*Edgewood IV*").

FOF 112. In this case, as in *WOC II*, the Plaintiffs have rebutted any presumption that an accredited education is equivalent to a general diffusion of knowledge.

FOF 113. The state accountability system is closely related to accreditation. School district accreditation is based in significant part on whether districts have met certain standards under the State's accountability system, including student achievement indicators. *See* TEX. EDUC. CODE § 39.052(b); 19 TEX. ADMIN. CODE § 97.1055.

FOF 114. The accountability system changed over the course of the trial, from the TAKS-based system in place through 2010-11 to the STAAR-based system, which took effect in 2012-

13.[31] The TAKS-based system was focused on whether each of five student groups had met the minimum criteria on the TAKS test, plus up to ten dropout and high school completion measures. (Ex. 20224.) If a district did not meet the minimum criteria for any one group on any one measure, it did not achieve an "Academically Acceptable" rating. (*Id.*)

FOF 115. The STAAR-based system was developed in response to House Bill 3 ("HB3"), which called for the accountability system to measure districts on closing performance gaps and post-secondary readiness. (*Id.*) Rather than requiring districts to meet minimum criteria on each individual measure, the new system has four performance indexes. (*Id.*) How the district performs on various measures for each index contributes to an overall "index score." (*Id.*) Within each index, poor performance on one measure can be counter-balanced by higher performance on another. (Ex. 5785, Housson Dep. (Vol. II), at 24.)

FOF 116. In evaluating whether the accountability system measures the general diffusion of knowledge, it is also important to look at what the accountability system does *not* measure. Index 2, which purports to measure student progress or "growth" across various student groups, does not consider the progress of economically disadvantaged students as a disaggregated group. (Ex. 5785, Housson Dep. (Vol. II), at 158.) Index 3, which purports to measure whether districts are closing performance gaps, does not look at the performance of ELL students as a disaggregated group. (Ex. 5785, Housson Dep. (Vol. II), at 159.)

FOF 117. Whether looking at the TAKS-based system or the STAAR-based system, the accountability standards are set *not* to measure whether districts are achieving a general diffusion of knowledge, but rather to ensure that most districts and campuses fall on the "academically acceptable" or "met standards" side of the line. Shannon Housson, Director of TEA's Division of Performance Reporting, confirmed that advisory committees that help TEA to establish the standards explicitly consider how many districts can achieve the standards when setting them. Mr. Housson testified, "That's exactly what they're discussing, how many schools would be impacted if the target was set at X versus Y, and that's what they had based their recommendations on to the commissioner." (Ex. 5785, Housson Dep. (Vol. II), at 48-50.)

FOF 118. Other aspects of the accountability system also confirm that it does not measure a general diffusion of knowledge. First, none of the indices used in the 2013 accountability system consider whether students have reached the Level II final standard that the State now equates with college and career readiness. (*Id.* at 118-19.)

FOF 119. Next, schools and districts must reach set targets on each of the applicable indices (*Id.* at 18), but the targets are set too low to measure a general diffusion of knowledge. For example, the student achievement index is set at 50, which means a school or district can be rated as having "met standard" if at least half its students, averaging across all grades

[31] There was no state accountability system in place for student performance in 2011-12; the ratings for 2010-11 were merely carried over to the 2011-12 school year. (RR30:123-24.)

and all subjects, pass the State's assessments. (*Id.* at 40-41.) The target for the post-secondary readiness index is set at a level that allows a school or district to have up to 25 percent of its students not graduate or achieve the recommended or advanced diploma plans and still be rated as having "met standard." (*Id.* at 45.) In addition, targets are set based on how well students are performing under the lower phase-in standards– not on how well they need to perform to be considered on track for college and career readiness. (*See id.* at 42-43.)

FOF 120. Under the STAAR-based accountability system, a district can have what can only be described as incredibly poor performance results on the STAAR exam and still achieve "met standard" on the accountability system.[32] (*See* Ex. 5793 at 22.) By way of example, in 2012-13:

- Kermit ISD had fewer than 50% of its students meet the phase-in Level II standard on ten of the seventeen STAAR 3-8 exams and less than 25% of its students meet the final Level II standard on the STAAR exams was still rated "met standard." (Ex. 5785, Housson Dep. (Vol. II), at 138-39 (referencing Ex. 20247).)

- La Pryor ISD had passing rates below 30% on every fourth grade exam and was still rated "met standard." (Ex. 5785, Housson Dep. (Vol. II), at 142 (referencing Ex. 20248).)

- 80% of Edgewood's ninth and tenth graders failed to meet the Level II phase-in standard on at least one EOC exam in the 2013 Spring administration. (Ex. 6548.) District students also showed no improvement from the first administration to 2013 in Algebra, Biology, English I Reading and Writing (Ex. 4237 at 16), and Edgewood ISD was identified as "needs improvement" in 12 of 32 "safeguards." (Ex. 5785, Housson Dep. (Vol. II), at 48-50 (referencing Ex. 20247).) Yet Edgewood was still rated "met standard." (*See also infra* Part I.C.7.d.i (FOF 1091, *et seq.*) (showing poor student performance across various metrics.)

FOF 121. Finally, the State requires much of schools and districts beyond the requirements that are measured by the accountability system. For example, HB5 now requires schools and districts to rate themselves on student and community engagement, but the result of this

[32] The State has a history of slowly phasing in standards, and thus allowing poor performance to constitute what is "acceptable," in order to ensure that most districts are accredited. For example, in 2004 under the TAKS-based accountability system, a district that had only 25% of its students pass the science exam, 35% of its students pass the mathematics exam, and 50% of its students pass social studies, writing, and reading/English language arts would have been ranked acceptable. (RR30:87 (referencing Ex. 11245 at 2).) These percentages were raised incrementally, thus ensuring that over the entire course of the TAKS-based accountability system the highest percentage of districts ever ranked "unacceptable" was 6.2% – and that number occurred in 2010-11 – the last year of the system. (RR30:87-88; Ex. 11245 at 10.)

process does not affect the State's accountability ratings. (Ex. 5785, Housson Dep. (Vol. II), at 71-72.)

FOF 122. For the reasons stated above, the Court finds that the accountability system does not measure, and accreditation is not equivalent to, a general diffusion of knowledge. The fact that a district is accredited does not answer the question of whether all students in that district have a meaningful opportunity to graduate college and career ready.

4. The historic linkage between increased standards and increased state funding is broken, contributing to the unsuitability and arbitrariness of the system.

FOF 123. In stark contrast with Texas's past approach to funding new reforms, the Legislature recently *reduced* school funding at the very time the substantial academic changes detailed above were introduced. Over the last three decades, major academic and operational reforms were ordinarily accompanied by school finance reforms that supplied new revenues to provide additional financial support for districts implementing those reforms. (Ex. 6322, Moak Report, at 40 and Figure 43.)

FOF 124. For example, in 1984, the year before large-scale graduation-related standardized testing began in Texas, the Legislature increased equalization aid. (Ex. 6349 at 33; RR6:187-88; Ex. 6322, Moak Report, at 37 and Figure 43.) Senate Bill 7 ("SB7") in 1993 both created the state accountability ratings system based on TAAS scores *and* provided substantial new money through the expansion of guaranteed yields. (Ex. 6349 at 34; RR6:188; Ex. 6322, Moak Report, at 38 and Figure 43.) In 1999, when passage of the TAAS became required for promotion in grades three, five, and eight, the Legislature also increased the basic allotment, the equalized wealth level, and the guaranteed yield, and created the SSI grant program. (Ex. 6349 at 36; RR6:189-90; Ex. 6322, Moak Report, at 39 and Figure 43.) In 2006, two years after the TAKS replaced the TAAS test (and after *WOC II*), the Legislature added revenues to the system once again. (Ex. 6349 at 37; RR6:191-92; Ex. 6322, Moak Report, at 40-41 and Figure 43; *see also supra* FOF 25 – FOF 27.)

FOF 125. The Legislature failed to provide additional financial support with the introduction of the STAAR regime. As described in Part I.B.2.e (FOF 52, *et seq.*) above, for the 2011-12 and 2012-13 school years, formula funding and interventional grant funding alike were dramatically reduced just as the new system took effect. While the 2013 Legislature partially reinstated the FSP cuts, it did not make any meaningful restoration of the grant funding, nor did it provide funding above and beyond the restoration of the cuts to assist districts with increased remediation costs or the costs of implementing HB5's graduation plan requirements. (*See supra* Part I.B.2.f (FOF 65, *et seq.*).) The Court finds that the decoupling of standards and funding is precisely the opposite of "structur[ing], operat[ing], and fund[ing]" the public school system "so that it can accomplish its purpose for all Texas children." *WOC II*, 176 S.W.3d at 753.

5. Student performance measures show that the Texas educational system has fallen short of accomplishing a general diffusion of knowledge.

a. Texas is not meeting its objectives relating to college and career readiness.

FOF 126. Statewide performance results using a variety of metrics reveal that the State is far from meeting its objectives relating to college and career readiness.

FOF 127. Dr. Kallison analyzed the results of various college-readiness measures. As set forth in more detail below, Dr. Kallison found that: (1) the STAAR exam, which is superior to TAKS as an indicator of college readiness, shows that an overwhelming number of students are not on track to attend college and succeed without remediation; (2) student performance on college-readiness measures other than the TAKS have been flat, and absolute performance on these measures is lower than on the TAKS-based indicators; and (3) overall, students showed some improvement in past years on TAKS-based measures of college readiness, but TAKS-based indicators are inferior measures of college readiness and the results are still unacceptably low. (RR21:45-46, 49-50 (referencing Ex. 5396 at 16); *see also infra* Parts I.B.5.a (FOF 126, *et seq.*).)

FOF 128. In short, an alarming percentage of Texas students graduate high school without the necessary knowledge and skills to perform well in college. (Ex. 1161, Kallison College-Readiness Report, at 15; RR21:49-51.) In addition, substantial gaps exist in college readiness between different racial/ethnic groups and students of different socioeconomic status. (Ex. 1161, Kallison College-Readiness Report, at 14; Ex. 6322, Moak Report, at 22.)

FOF 129. The consequences of having a large percentage of high school graduates who are not prepared for college are significant. The costs to remediate the tens of thousands of students who enter college every year unprepared for the coursework are substantial – for the state and the individual student. (Ex. 1161, Kallison College-Readiness Report, at 3; RR21:20-21, 36-40.) College graduation rates drop as students enter college unprepared, and workers without a college degree earn average salaries well below those with college degrees. (Ex. 1161, Kallison College-Readiness Report, at 3; RR21:20-21.)

i. STAAR results show that a significant number of Texas students are not on track to graduate college and career ready.

FOF 130. **2012 STAAR results.** The results of the initial round of STAAR tests were sobering. In 2012, Texas ninth graders took five STAAR / EOC assessments. (Ex. 6322, Moak Report, at 25-26.) The table below displays the number and percentage of students below various cut points on the Spring 2012 EOCs for the courses typically taken by ninth graders.

STAAR EOC Tests for Typical 9th Grade Courses	Number Tested	Below Passing Level II Standard (Below Graduation Standard)	Below Final Recommended Level II Standard	Below Level III
English I Reading	334,831	107,435 32%	181,814 54%	308,373 92%
English I Writing	334,951	152,270 45%	219,517 66%	324,483 97%
Algebra I	333,527	57,669 17%	203,688 61%	277,688 83%
Biology	319,022	41,406 13%	187,938 59%	290,137 91%
World Geography	320,925	62,270 19%	192,168 60%	277,745 87%
Failed at least one test (9th grade only)	351,311	185,757 53%	284,544 81%	346,784 99%

(Ex. 6322, Moak Report, at 26-27; Ex. 6321, Moak Appendices, at App. 6, Sec. 2, pts. j-n, at pg. 46 of PDF.)

FOF 131. As the table indicates, even at the initial passing standards, which were set much lower than the final standards that are expected to apply beginning in 2015-16, the following percentages of students scored *below* the passing standard in these respective subjects: 32% in reading, 45% in writing, 17% in Algebra I, 13% in Biology, and 19% in World Geography. (Ex. 6322, Moak Report, at 26.) After the initial administration of the exams, 53% of ninth-graders (representing 185,757 students) were off track to graduate from high school. (*Id.*)

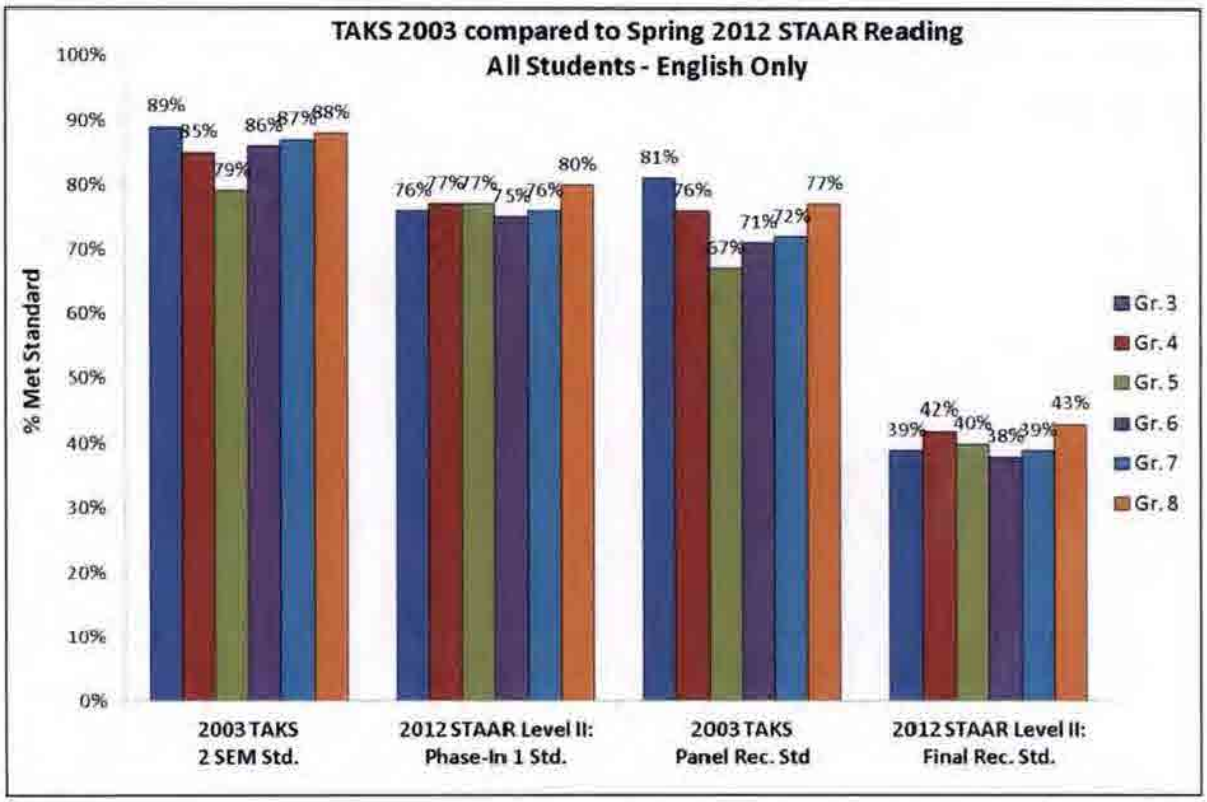
FOF 132. Looking at the Level II final standard, the picture was even worse. The table displays the percentage of students scoring below the passing standard at the final recommended performance levels, as of the Spring 2012 administration. (Ex. 6322, Moak Report, at 27.) Under these more challenging standards, more than half of students tested would have failed their first examination in each of the traditional ninth-grade subjects. (*Id.*) Approximately four-fifths of ninth graders failed to reach the Level II final standard on at least one exam. This reveals a high risk that even larger numbers of high school students will soon be off track for graduation and will require substantial levels of remediation through intensive in-classroom instruction, summer school, extended day programs, or other means. (*Id.*)

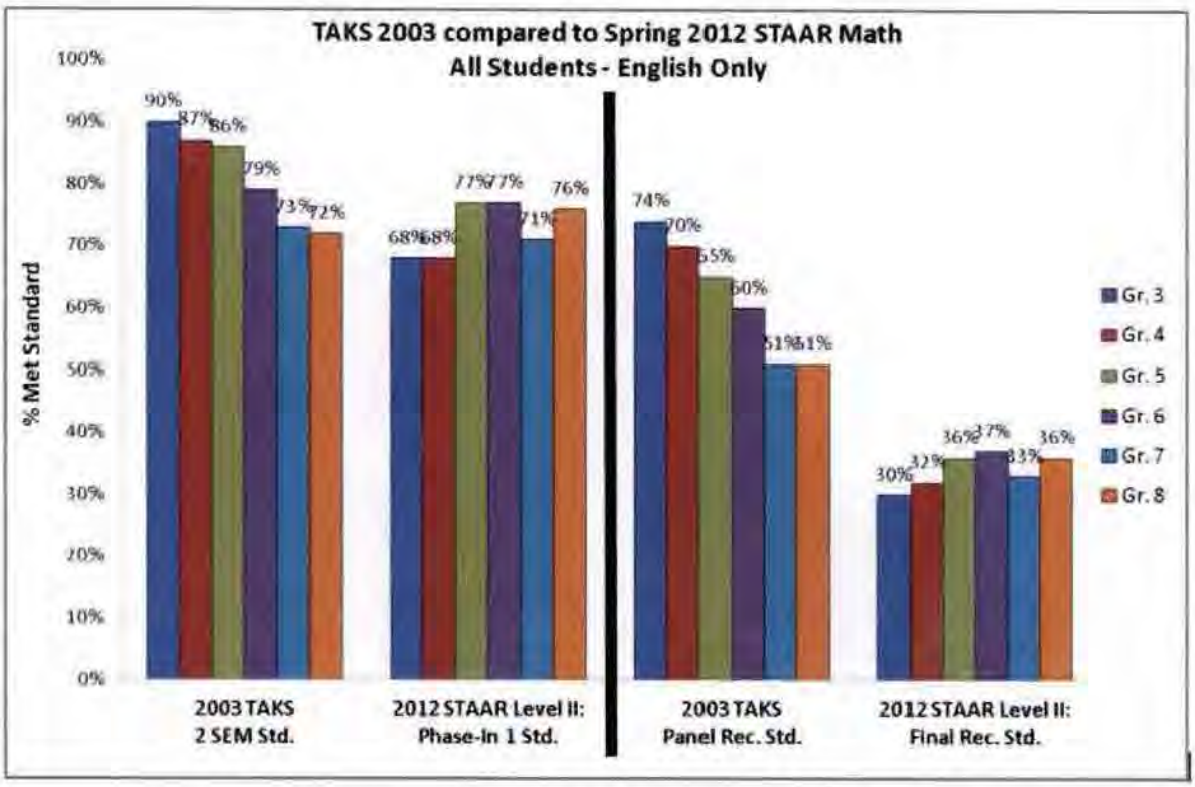
FOF 133. Finally, the percentages of students who scored below Level III, which is reflected in the last column of the table, suggest that relatively small percentages of students are on track for college readiness. (Ex. 1161, Kallison College-Readiness Report, at 12; *see supra* FOF 101.)

FOF 134. Passing percentages on the Spring 2012 STAAR EOC exams were lower than the TEA had anticipated. For example, the percentage of students who reached the Level II phase-in standard was seven percentage points lower on English I Reading than the TEA had anticipated. (Ex. 5624, Zyskowski Dep., at 94; Ex. 42, 44.) At the Level II final standard, the percentage of students who passed the exam was eight percentage points lower on English I Reading than the TEA had estimated. (Ex. 5624, Zyskowski Dep., at 94-95; Ex. 42, 44.)

FOF 135. The performance of economically disadvantaged students and ELL students on the 2012 STAAR EOCs was particularly disconcerting, with average scores lagging far behind those of their peers. (*See infra* Parts I.C.2.a.iii(a) (FOF 299, *et seq.*) and I.C.2.b.iii(b) (FOF 360, *et seq.*).)

FOF 136. Passing percentages on the Spring 2012 STAAR grades 3-8 exams also give cause for concern. While the passing rates at Level II phase-in standard for the STAAR 3-8 exams were higher than for the EOC exams, the rates were lower than the corresponding passing rates at the phase-in standard from the first year of TAKS. (Ex. 6515; Ex. 6513; Ex. 6514.) Even more troubling, the percentage of students meeting the Level II final standard was approximately half the percentage of students who met the final recommended standard on the first administration of TAKS. (Ex. 6515; Ex. 6513; Ex. 6514.)





(Ex. 6515 at 1-2.) (Sources: TEA STAAR Gr. 3-8 Statewide Summary Reports, Jan. 2013 (available at Ex. 6513); TEA TAKS Met Std. Spring 2003 to Spring 2005 (available at Ex. 6514).)

FOF 137. In the Summer of 2012, ninth-grade students who did not meet the Level II standard on any of the Spring 2012 STAAR EOC exams had the opportunity to retest. (Ex. 6324, Moak Supp. Report One, at 1.) The Summer 2012 retest passing rates (using the Level II phase-in standard) ranged from 23% for English I Writing to 48% for Biology. (*Id.*; RR6:179-80 (referencing Ex. 6349 at 29).) The passing rate was 37% for English I Reading, 31% for Algebra I, and 27% for World Geography. (Ex. 6324, Moak Supp. Report One, at 1.) After the Summer 2012 retest, at least 132,874 of the state's 2011-12 ninth graders remained off track to graduate and in need of accelerated instruction based on the English I writing examination. (*Id.*) The ISD Plaintiffs' expert, Lynn Moak, testified that he is not aware of any other time when this many students have been off track for graduation as a result of an exam. (RR6:182-83 (referencing Ex. 6349 at 29).)

FOF 138. When the results of the Spring and Summer administrations of the 2012 STAAR EOC tests are combined, only 53% of freshmen met the Level II phase-in passing standard for all tests taken. (Ex. 6324, Moak Supp. Report One, at 1.) By comparison, 75% of juniors met the passing standard for all tests taken on the TAKS exam in the first year that it was required for graduation. (Ex. 6324, Moak Supp. Report One, at 2.)

FOF 139. In December 2012, students who had still not met the Level II phase-in standard had another opportunity to retake the EOC exams. (*See* Ex. 6518; Ex. 6519.) The December retest passing rates ranged from 20% for World Geography to 37% for English I Writing. (Ex. 6519 at 2.) After three administrations, 35% of the state's 2011-12 ninth graders, and 47% of the economically disadvantaged students from that class, still had not passed all of their ninth-grade level EOC exams. (Ex. 6519 at 1.) This means that, from that class, 122,680 students still remain off track to graduate and need remediation on collectively 262,343 exams. (Ex. 6519 at 1-2.)

FOF 140. **Spring 2013 STAAR results.** In 2013, the second year under the STAAR program, student performance levels did not increase over 2012, and the substantial gaps between economically advantaged and disadvantaged students continued. (*See* RR54:140-41 (referencing Ex. 6618 at 22).) This is true both of the EOC tests administered in grades 9 and 10, and the STAAR exams in grades 3-8. When tests now required for graduation are examined between the two years, the estimated failure rates for all tests taken are 53 percent for 2012 (first time grade 9 students on five required tests) and 51 percent for 2013 (new testers only on grade 9 and grade 10 tests required for graduation).[33] (Ex. 6322, Moak Report, at 26; RR54:141-42 (referencing Ex. 6618 at 23).)

FOF 141. The following chart displays the number and percentage of students in Spring 2013 falling below the Level II phase-in standard (the passing standard in 2013) and the Level II final recommended standard on the EOC assessments required of typical ninth and tenth graders. As the data indicates, over one-third (35 percent) of ninth grade students scored below the passing standard in reading, over one-half (52 percent) in writing, 22 percent in Algebra I, and 15 percent in Biology. In tenth grade, 22 percent of the students failed English II Reading and 48 percent of the students failed English II Writing. In this analysis, the World History course, generally given in tenth grade, is used as a proxy for the required examination for U.S. History, generally given in the eleventh grade. (*See* RR54:143-44.) Thirty percent of the students failed the World History examination. Overall, 51 percent of the students taking the normal course sequence in ninth and tenth grade in Spring 2013 failed one or more tests now required for graduation under HB5. Using this data, 338,038 students were estimated to be at risk of not graduating as of Spring 2013. At the recommended level, which is the full implementation level of the test program, the risk factors increase for future classes. (RR54:145-46.) At this level, an estimated 511,704 students (76 percent) failed to achieve the recommended passing standard on one or more tests, which is the standard considered by the TEA to be the college-ready standard. (*See* RR54:142.)

[33] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

Figure A-2. The Number and Percentage of All Students Reaching Various Standards on STAAR EOC Tests (Required for Graduation) at Initial and Final Recommended Passing Standards, Spring 2013

STAAR EOC Tests for Graduation	Number Tested	Below Passing Level II Phase-in I Standard	Below Passing Level II Final Recommended Standard
English I Reading*	383,558	134,986 (35%)	216,208 (56%)
English I Writing*	404,412	211,422 (52%)	284,698 (70%)
Algebra I*	364,613	78,535 (22%)	233,143 (64%)
Biology*	358,797	52,841 (15%)	191,839 (53%)
English II – Reading*	314,314	69,489 (22%)	115,165 (37%)
English II – Writing*	315,963	150,338 (48%)	222,531 (70%)
World History (Proxy Results for U.S. History)**	308,445	93,388 (30%)	200,593 (65%)
Failed at least one test Required for Graduation^	669,246	338,038 (51%)	511,704 (76%)

*Source: Texas Education Agency (TEA) Statewide Spring 2013 STAAR Results, July 2013; Texas Education Agency includes all grades tested for the individual subject matter tests; includes "above grade-level testers". Does not include students testing with STAAR-L, Modified or Alternate versions.

^Source; MCA Analysis of the TEA confidential 2013 STAAR EOC student-level data files obtained via Litigation Discovery. Data shown in the last row of the table represent first time 9th Gr. and 10th Gr. Students only for "failed at least one test" within districts. Does not include "above grade-level testers". Does not include students testing with STAAR-L, Modified or Alternate versions.

**World History is used as a proxy for U.S. History; first year of full implementation for U.S. History is Spring 2014.

(Ex. 6618 at 23.)

FOF 142. Very low percentages of all test takers reached the Level III standard on EOC exams, as shown below, which again reflects severe college-readiness deficits.

STAAR EOC Tests for Graduation	Number tested	Below Level III
English I Reading	383,558	342,948 (89%)
English I Writing	404,412	395,530 (98%)
Algebra I	364,613	306,311 (84%)
Biology	358,797	314,333 (88%)
World Geography	366,114	311,506 (85%)

(Ex. 5707 – Ex. 5711.)

FOF 143. The pattern observed for the graduation courses is reinforced by the results for grades 3-8, as depicted in the chart below. Approximately 40 percent of the students failed the relatively low standard set for 2013. Over 1.7 million students, or almost 80%, failed to reach the higher final recommended standard in Spring 2013.

Figure A-3. Number and Percentage of All Students Reaching Standards for Grades 3-8 STAAR Tests at Initial and Recommended Passing Standards, Spring 2013.

STAAR Grade Level Tests	Number of Students Tested	Below Passing Level II Phase-in I Standard on All Tests Taken	Below Passing Level II Final Recommended Standard on All Tests Taken
Grade 3	369,630	136,311 (37%)	281,822 (76%)
Grade 4	364,898	169,203 (46%)	295,771 (81%)
Grade 5	363,246	146,297 (40%)	285,109 (78%)
Grade 6	364,854	136,230 (37%)	262,814 (72%)
Grade 7	368,161	152,913 (42%)	294,102 (80%)
Grade 8	386,197	162,496 (42%)	297,789 (77%)
Total Grades 3-8	2,216,986	903,450 (41%)	1,717,407 (77%)

Does not include "above grade-level testers". Does not include students testing with STAAR-L, Modified or Alternate versions.
Source; MCA Analysis of the TEA confidential 2013 STAAR Gr. 3 – 8 First Administration Only student-level data files obtained via Litigation Discovery.

(Ex. 6618 at 24.)

FOF 144. In summary, the Spring 2013 administration of EOC tests combined with the grades 3-8 tests indicate that over 1.2 million students failed at the phase-in 1 standard and 2.2 million students did not reach the recommended standard for full implementation of the program. (Ex. 6618 at 23-24.)

FOF 145. As shown below, the second year of administration of the STAAR exams did not produce substantial progress either in terms of overall passing rates or in terms of closing economic-based gaps.

Figure A-8. Comparison of 2012 and 2013 STAAR Results from Spring First Administration Only; Percent Passing by Economically Disadvantaged Status

STAAR Tests – Combined English and Spanish	% Passing at Level II Phase-In 1 Standard		
First Administration Only –Spring 2012 and Spring 2013	Spring 2012	Spring 2013	Difference
Grades 3 – 8 Reading Econ. Disadvantaged*	67%	66%	-1
Grades 3 – 8 Reading Non- Econ. Disadvantaged*	88%	88%	0
Grades 3 – 8 Mathematics Econ. Disadvantaged*	63%	62%	-1
Grades 3 – 8 Mathematics Non- Econ. Disadvantaged*	83%	83%	0
Grades 4 and 7 Writing Econ. Disadvantaged*	63%	61%	-2
Grades 4 and 7 Writing Non- Econ. Disadvantaged*	84%	83%	-1
Grades 5 and 8 Science Econ. Disadvantaged*	62%	65%	+3
Grades 5 and 8 Science Non- Econ. Disadvantaged*	85%	86%	+1
Grade 8 Social Studies Econ. Disadvantaged*	48%	52%	+4
Grade 8 Social Studies Non- Econ. Disadvantaged*	75%	78%	+3
*Algebra I Econ. Disadvantaged^*	72%	71%	-1
*Algebra I Non-Econ. Disadvantaged^*	85%	84%	-1
*English I Reading Econ. Disadvantaged^*	56%	59%	+3
*English I Reading Non-Econ. Disadvantaged^*	81%	83%	+2
*English I Writing Econ. Disadvantaged^*	41%	41%	0
*English I Writing Non-Econ. Disadvantaged^*	70%	70%	0
*Biology Econ. Disadvantaged^*	81%	83%	+2
*Biology Non-Econ. Disadvantaged^*	93%	94%	+1
*World Geography Econ. Disadvantaged^*	72%	72%	0
*World Geography Non-Econ. Disadvantaged^*	90%	90%	0

*Source: Texas Education Agency – Pearson Texas Assessment Management System, First Administration Only, Statewide Spring 2013 STAAR Results, August 2013. Does not include "above grade-level testers". Does not include students testing with STAAR-L, Modified or Alternate versions.

^First time 9th grade students only. MCA analysis of the TEA confidential student-level 2012 and 2013 data files via Litigation Discovery. Does not include "above grade-level testers". Does not include students testing with STAAR-L, Modified or Alternate versions.

(Ex. 6618 at 26.)

FOF 146. **2013 STAAR Retests.** After the Summer and December 2013 retests, significant numbers of students remained off track for graduation, as the State's own analyses confirm. The State prepared two separate analyses – a "cohort analysis" that is current through the Summer 2013 administration and a "class analysis" that is current through the December 2013 administration. (Ex. 5795, David Clark Dep., at 53-54; *see* Ex. 20312.)

FOF 147. The State's "cohort analysis" isolates students who took an end-of-course exam at a particular time and follows that same group of students through Summer 2013. The State's cohort analysis presents cumulative test results for a "Class of 2015 Cohort" and a "Class of 2016 Cohort." The Class of 2015 Cohort includes students who took at least one end-of-course exam as a ninth grader in Spring 2012. (Ex. 5795, David Clark Dep., at 35.) The "Class of 2016 Cohort" includes students who took their first end-of-course

exam as a ninth grader in Spring 2013, as well as accelerated students who took Algebra I as eighth graders in 2012. (*Id.* at 42-43.)

FOF 148. In contrast to the cohort analysis, which follows a group of students forward in time, the State's "class analysis" looks at students who took end-of-course exams in 2013 and then looks backward in time at their scores on prior test administrations. (*Id.* at 70-71.) The "Class of 2015" that was used in this analysis includes all students who took at least one end-of-course exam in 2013 and who had "scorable" exams in Biology, English I Reading, English I Writing, English II Reading, and English II Writing. (Ex. 20312 at 1.) The "Class of 2016" includes all students who took an end-of-course exam in 2013 and who had "scorable" exams in Algebra I, Biology, English I Reading, and English I Writing. (*Id.* at 2.)

FOF 149. The table below reflects the numbers and percentages of students who failed to pass all exams taken as of the Summer 2013 administration at the Level II phase-in standard, according to the State's cohort analysis. Roughly 139,000 students in the Class of 2015 Cohort still had not passed all exams taken after the Summer 2013 administration, despite five testing opportunities. (*See* Ex. 5796, Zyskowski Dep. (Vol. II), at 9.) Approximately 157,000 students in the Class of 2016 Cohort still had not passed all tests taken after Summer 2013, even after two testing opportunities. (*See id.*)

	Number of students having failed to pass all exams taken	Percent of students having failed to pass all exams taken
Class of 2015 Cohort	138,948	42.3
Class of 2016 Cohort	157,338	44.8

(Ex. 5797 at 4; Ex. 11366 at 18, 20, 21, 23; Ex. 5795, David Clark Dep., at 49-50, 55-57; calculated as explained in Ex. 5795, David Clark Dep., at 49-52.)

FOF 150. The State also determined the number of students who would not need to retake the English I Reading or Writing and/or the English II Reading or Writing exams by virtue of the Commissioner's "transition rule." Under this rule, a student is not required to retake a separate reading or writing exam if that student (1) achieved satisfactory performance on either the reading or writing exam for the course, (2) met at least the minimum score on the other end-of-course assessment for the course, and (3) achieved an overall scale score of 3750 or higher on reading and writing for the course. (Ex. 5795, David Clark Dep., at 78-79 (referencing Ex. 20313 at 3 of PDF).)

FOF 151. The transition rule affected tens of thousands of students. The following table shows the numbers and percentages of students in the State's cohorts who still had not passed all exams taken after Summer 2013, after the transition rule was applied.

	Number of students having failed to pass all exams taken **(with transition rule)**	Percent of students having failed to pass all exams taken **(with transition rule)**	Number not required to retest based on transition rule
Class of 2015 Cohort	116,006	35.4	22,667
Class of 2016 Cohort	142,714	40.7	14,210

(Ex. 5797 at 9; Ex. 11366 at 25, 27, 28, 30; calculated as explained in Ex. 5795, David Clark Dep., at 60-61.)

FOF 152. The State's December 2013 class analysis also shows significant numbers of students who have failed to pass all tests taken at the Level II phase-in standard before application of the Commissioner's transition rule, as reflected in the table below.

	Number of students having failed to pass all exams taken	Percent of students having failed to pass all exams taken
Class of 2015	107,090	34.6
Class of 2016	128,865	39.3

(Ex. 5797 at 11; Ex. 20312 at 4, 6, 7, 9; calculated as explained in Ex. 5795, David Clark Dep., at 92-93.)

FOF 153. Students in the Class of 2015 and Class of 2016 have now had, respectively, six and three testing opportunities to pass their end-of-course exams. (*See* Ex. 5796, Zyskowski Dep. (Vol. II), at 9.) Even after multiple testing opportunities and after application of the transition rule, nearly 183,000 students in both classes combined still have not passed all exams taken at the Level II phase-in standard, according to the State's "class analysis" reflected below. This is true only *after* more than 50,000 students in both classes combined were exempt, by virtue of the transition rule, from retaking a test they previously failed.

	Number of students having failed to pass all exams taken **(with transition rule)**	Percent of students having failed to pass all exams taken **(with transition rule)**	Number not required to retest based on transition rule
Class of 2015	75,322	24.4	31,768
Class of 2016	107,610	32.8	21,255

(Ex. 5797 at 12; Ex. 20312 at 4, 6, 7, 9; calculated as explained in Ex. 5795, David Clark Dep., at 93-94.)

FOF 154. The Court makes several findings about the State's cohort analysis (which is current through Summer 2013 and is reflected in FOF 149 and FOF 151 above) and its class analysis (which is current through December 2013 and is reflected in FOF 152 and FOF 153 above). The class analysis presents a significant limitation compared to the cohort analysis. Because of the way the classes are defined, the classes do not include students who dropped out, students who failed to advance to English II, or students who moved to the STAAR modified exam (which is the exam for special education students). (Ex. 5795, David Clark Dep., at 87-89.) This limitation does not exist in the cohort analysis, which starts with a group of students and follows those same students forward in time. Lynn Moak was the only expert in this case to analyze the cumulative passing rates for a group of students across multiple administrations of STAAR, and he applied a cohort methodology that followed a group of students forward in time. (*See, e.g.*, Ex. 6519 at pg. 1 of PDF; RR7:95, 170.) The State did not update its cohort analysis to reflect December 2013 data, but instead prepared a class analysis that was created specifically for this litigation and in connection with a press release to the public.[34] (Ex. 5795, David Clark Dep., at 24-25, 70, 72-73.) For these reasons, the Court finds that the cohort analysis presents a more credible and complete picture of student performance than the class analysis.

FOF 155. Regardless of which analysis is examined, however, the State's data confirms that, even after multiple testing opportunities, hundreds of thousands of students still have not passed all exams taken. Districts now face the enormous burden to provide accelerated instruction to hundreds of thousands of students. (*See* Ex. 5796, Zyskowski Dep., at 9.)

FOF 156. The Court also finds the following regarding the State's analyses and the expectation that districts will provide a meaningful opportunity for all students to graduate college ready.

a. First, both the cohort and class analyses examine the number of students who have failed to pass all tests *taken*, not all tests required for graduation. (Ex. 5795,

[34] The State failed to provide student-level data from the Summer and December 2013 STAAR exams to the other parties in this litigation until January 27, 2014, despite the parties' efforts to obtain this information through discovery. (*See* Ex. 20311; RR63:84.) Thus, the only cumulative analyses of data from these administrations are the analyses prepared by the State.

David Clark Dep., at 52-53, 55, 96.) Students typically take English II during their sophomore year and U.S. History during their junior year. (*See* Ex. 5796, Zyskowski Dep. (Vol. II), at 10.) As a result, the overwhelming majority of students in the Class of 2015 and Class of 2015 Cohort still need to take and pass U.S. History (about 300,000 students in the Class of 2015 and 322,000 students in the Class of 2015 Cohort). (Ex. 5795, David Clark Dep., at 40-42, 76.) Similarly, the overwhelming majority of students in the Class of 2016 and Class of 2016 Cohort still need to take and pass U.S. History and English II (about 322,000 students in the Class of 2016 and 345,000 students in the Class of 2016 Cohort). (*Id.* at 44-45, 95.) Because students generally take these exams later in their high school career, they have fewer opportunities to pass the exams before their scheduled graduation date. (*Id.* at 41.)

b. Next, the State's data reflects only performance at the lower phase-in standard. (*Id.* at 34, 93.) It does not reflect the number of students who have passed all exams taken at the Level II final standard that TEA now equates with college readiness (Ex. 5785, Housson Dep. (Vol. II), at 115-16 (referencing Ex. 20239 at 22)), or at the Level III standard that TEA previously and repeatedly associated with college readiness. (*See supra* FOF 101.) Approximately 98% of students who take an end-of-course exam during the Summer and December administrations are re-testers, or in other words, students who were unable to achieve the passing standard the first time they took the test. (Ex. 5795, David Clark Dep., at 84.) Data from the Summer and December administrations shows that very few students are able to achieve the Level II final or Level III standards, even if those students are able to meet passing standards. For example, while 45% of students achieved the passing standard in Biology during Summer 2013, only 2% of students reached the Level II final standard, and 0% reached the Level III standard. (Ex. 20242 at 1-2 of PDF.) On Algebra I, 27% of students reached the passing standard in Summer 2013, but only 1 percent reached the Level II final standard, and 0% reached Level III. (Ex. 20241 at 1-2 of PDF.) Similar trends are observed in the December 2013 test results. (*See* Ex. 20315 – Ex. 20319.) This data demonstrates that even if retesters are able to meet passing standards, they are largely unable to meet the higher standards associated with college readiness.

c. Finally, even though tens of thousands of students no longer have to retake one or more exams required for graduation by virtue of the transition rule, it does not change the fact that these students were unable to meet even the lower phase-in standard on their reading or writing exams. (Ex. 5795, David Clark Dep., at 61-62.) It follows that these students also could not meet the higher standards that are indicative of college readiness. There is no evidence that the transition rule was put in place because the initial passing standards were set too high. In fact, the TEA has emphasized that the English exams now required under HB5 will be equivalent to the prior English exams both in rigor and level of performance required for student success. (Ex. 5796, Zyskowski Dep. (Vol. II), at 24; Ex.

11482 at 2 of PDF.) The fact that students do not have to retake these exams does not mean they are now adequately prepared in these subjects.

FOF 157. In conclusion, although additional students pass the end-of-course assessments during each administration of the exam, large numbers of students still have not passed all the exams they have taken after numerous attempts. Even more students are nowhere near reaching college-readiness standards on these exams. As a result, districts must provide accelerated instruction to hundreds of thousands of students who have not met passing standards, and they must help those students who are not currently on track to being college ready to significantly improve their performance.

FOF 158. **STAAR beyond 2013.** The challenge only increases moving forward. Performance standards will increase over time according to the present schedule adopted by the Commissioner of Education. These higher levels of required performance will provide greater challenges for the public schools. The chart below displays the phase-in standards for the required performance levels on the STAAR EOC test program. Passing standards on the Algebra I examination, for example, will increase from 37 percent of items answered correctly in 2011-12 and 2012-13, to about 63 percent correct in 2015-16 and beyond.

Percentage of Total Points/Items Needed to Reach Various Performance Standards on STAAR End-of-Course Exams Required for Graduation

Subject (paper version)	2011-12 and 2012-13 Level II Phase-In 1 Standard	2015-16 and beyond Level II Final Recommended
English I Reading	54%	66%
English I Writing	63%	71%
Algebra I	37%	63%
Biology	37%	61%
English II Reading	54%	63%
English II Writing	68%	76%
World History (Proxy)	46%	62%
U.S. History	41%	65%

Source: Texas Education Agency Spring 2013 Raw Score Conversion Tables. Information subject to change for future administrations based on post-equating of live data following each administration.

(Ex. 6619.)

FOF 159. In the case of the grade 3-8 standards, significant increases are also scheduled to take place. As can be seen below, the initial passing rates were set in the 50 percent area, while the final passing rates are scheduled to increase to 70-75 percent correct.

Average Percentage of Total Points/Items Needed to Reach Various Performance Standards on STAAR Grades 3-8 Tests

STAAR Grade Level Tests	2011-12 and 2012-13 Level II Phase-In I Standard	2015-16 and beyond Level II Final Recommended
Grades 3-8 Reading	53%	75%
Grades 3-8 Mathematics	50%	74%
Grades 4 and 7 Writing	55%	71%
Grades 5 and 8 Science	55%	76%
Grade 8 Social Studies	50%	73%

Source: Texas Education Agency Spring 2013 Raw Score Conversion Tables. Information subject to change for future administrations based on post-equating of live data following each administration.

(Ex. 6619.)

ii. Significant numbers of Texas students are not meeting the State's ACT and SAT benchmarks for college readiness.

FOF 160. Texas has set its own benchmark scores on the ACT and SAT exams to determine college and career readiness. Less than 27% of the graduating class of 2010 that took either the ACT or SAT met the state's benchmarks for readiness on the composite ACT or combined reading and mathematics for SAT. (Ex. 1161, Kallison College-Readiness Report, at 13; RR21:29-31 (referencing Ex. 5396 at 11).) This percentage dropped to less than 26% for the graduating class of 2011. (Ex. 11300 at 10.) Less than 17% of all students in the class of 2010 both (1) took the ACT or SAT and (2) met the state's benchmarks on those exams. (RR21:31 (referencing Ex. 5396 at 11).) This percentage rose to just over 17% for the class of 2011. (Ex. 11300 at 10.) Only 18% of the graduating classes of 2012 and 2013 achieved the state's college and career-readiness benchmarks on the SAT exams. (Ex. 11415 at 6-7.) ACT and SAT scores of Texas high school students indicate that many of the state's graduates are not academically prepared for college. (Ex. 1161, Kallison College-Readiness Report, at 13.)

FOF 161. The ACT exam uses its own college-readiness benchmarks. (Ex. 6322, Moak Report, at 9.) Using a broad-based sample of first-year students over a wide range of higher education institutions, ACT links student performance in college courses to their high school ACT scores. (Ex. 1161, Kallison College-Readiness Report, at 10.) Using this methodology, ACT determines a benchmark score that represents the minimum score needed on an ACT subject-area test to indicate a 50% chance of obtaining a B or higher, or about a 75% chance of obtaining a C or higher in the corresponding credit-bearing college course. (Ex. 6322, Moak Report, at 9; Ex. 1161, Kallison College-Readiness Report, at 10; RR21:40-41.) Data on the percent of students meeting the college-readiness benchmarks in all four subjects show that Texas was below the national average in all years except 2010, when Texas had the same percentage as the national average. (RR21:40-41 (referencing Ex. 5396 at 13).) Only 24% of Texas ACT test

takers met the college-readiness benchmarks in all four subject areas in 2011. (Ex. 1161, Kallison College-Readiness Report, at 10, 13.)

FOF 162. Dr. Linda Roska, Director of the Division of Research and Analysis for the TEA, testified that Texas's average scores across all public and non-public school students taking the SAT continue to decline. (RR35:124-25.) Texas students averaged a combined score of 999 on the math and critical reading portions of the exam in 2007. (RR35:124-25 (referencing Ex. 11300 at 8).) That average dropped to 973 in 2012 and then increased only marginally to 976 in 2013. (RR35:124-25 (referencing Ex. 11300 at 8); Ex. 11368 at 6 of PDF.) Texas students averaged 482 on the writing portion of the SAT in 2007 but averaged only 461 in 2012 and 2013. (RR35:124-25 (referencing Ex. 11300 at 8); Ex. 11368 at 6 of PDF.)

FOF 163. The performance gap between Texas students and students nationwide has grown during this same time period. In 2007, Texas students were averaging ten points less on critical reading, eight points less on math, and twelve points less on writing than the national average. (RR35:198-200 (referencing Ex. 11300 at 8).) These gaps grew to twenty-two points on critical reading, fifteen points on math, and twenty-seven points on writing in 2012. (RR35:198-200 (referencing Ex. 11300 at 8).) Dr. Roska did not include the average scores for just Texas public school students in her direct examination presentation, which are even more disconcerting. Texas public school students averaged a combined score of only 966 on critical reading and math in 2012 – thirty points less than the national average for public school students that same year. (RR35:196-97 (referencing Ex. 5687 at 41).) Texas public school students averaged 456 on the writing portion of the SAT in 2012 – twenty-five points less than the national average. (Ex. 5687 at 41.) Similar gaps existed in 2013, as Texas students continued to lag behind the national average. (*See* Ex. 11368 at 6 of PDF.)

FOF 164. From 2006 to 2012, Texas graduates' combined scores on the reading and mathematics sections of the SAT and ACT have remained flat at best and in some instances have declined. (RR21:17, 34; Ex. 5396 at 11; Ex. 11300 at 8-9.) Dr. Roska discussed the increasing participation rates for both the SAT and ACT during her direct examination and suggested that the increased participation rates may help explain this decline in test scores. (RR35:126.) Participation rates among public school graduates did not increase significantly, however, during the 2006-10 period that Dr. Kallison examined. (Ex. 1161, Kallison College-Readiness Report, at 8.) Dr. Roska also agreed that even if participation rates were increasing, the relationship between participation and performance begins to stabilize when participation reaches between 40 and 60% of the total. (RR35:192-93.) Texas, according to Dr. Roska, saw a 62% participation rate for the SAT in 2012 and a 39% participation rate for the ACT for 2012. (Ex. 11300 at 3, 6.) Dr. Kallison expressed the opinion, which the Court finds to be credible, that if Texas students were improving in college readiness, they would have shown positive movement on the SAT and ACT exams. (RR21:35.) This did not happen.

iii. Other college-readiness measures also show that many Texas students are not graduating prepared to succeed in college without remediation.

FOF 165. Several additional measures that purport to assess college readiness are Texas Success Initiative ("TSI") test results, "College-Ready Graduates," and the Texas Success Initiative Higher Education Readiness Component ("TSI-HERC"). (Ex. 1161, Kallison College-Readiness Report, at 4-5.) Each of these measures relies to some extent on TAKS scores. (*Id.*; RR21:24, 26-27.) TSI test results reflect the number of first-year students matriculating at Texas public colleges or universities who either pass one of four TSI exams or are exempt from the exams by satisfying the College-Ready Graduates standard. (Ex. 1161, Kallison College-Readiness Report, at 4-5.) The College-Ready Graduates standard is met when a student meets state benchmarks for either (1) the exit-level TAKS, (2) the ACT, or (3) the SAT. (*Id.*; RR21:22-23.) The TSI-HERC is encompassed within the College-Ready Graduates measure and reflects those students who meet state benchmarks on the TAKS exam. (RR21:22.)

FOF 166. These metrics provide a more favorable picture of college readiness than STAAR, SAT, or ACT results, but the results remain poor and substantial evidence casts doubt on the TAKS as a reliable measure of college readiness. (Ex. 1161, Kallison College-Readiness Report, at 12-13.)

FOF 167. First, TAKS is being replaced by STAAR largely due to the limitations of TAKS as an evaluation tool. (*Id.* at 13; Ex. 3188, Baker Report, at 59.) Second, TAKS was implemented before the addition of the college and career-readiness standards to the state curriculum. (Ex. 5624, Zyskowski Dep., at 54.) The STAAR EOC exams, by contrast, are intended to assess the TEKS in the subjects tested that now include these standards. (*Id.*) The STAAR exams are intended to more accurately measure whether students are learning the required curriculum. (*Id.* at 35.) Third, STAAR, unlike TAKS, has been empirically linked to other external measures of college readiness. (*Id.* at 46, 70.) Finally, the testimony is uniformly in agreement that the STAAR exams are better than TAKS at measuring the growth of high performing students. (*Id.* at 36-37.)

FOF 168. Even if TAKS were deemed a reliable measure of college readiness, student performance on TAKS-based college-readiness indicators is still unacceptably low. (Ex. 1161, Kallison College-Readiness Report, at 5-6, 10, 13; RR21:48-49 (referencing Ex. 5396 at 9), 19-20 (referencing Ex. 5396 at 10), 27-32 (referencing Ex. 5396 at 12).) For example, in 2010, only two-thirds of students entering Texas public colleges or universities either passed one of the four TSI exams or were exempt from taking the exams in all content areas. (Ex. 1161, Kallison College-Readiness Report, at 5, 10; RR21:35-36 (referencing Ex. 5396 at 12).) The tens of thousands of students who do not meet the TSI standards are required by law to participate in remediation before they can take a college credit course in English or mathematics. (RR21:36-38.) By definition, these students are not college ready. *See* TEX. EDUC. CODE § 39.024(a).

b. Texas has not made the type of forward progress that was seen in *WOC II.*

FOF 169. When *WOC II* was decided in 2005, the Texas Supreme Court observed that "undisputed evidence is that standardized test scores have steadily improved over time, even while tests and curriculum have been made more difficult. By all admission, NAEP scores . . . show that public education in Texas has improved relative to the other states." *WOC II*, 176 S.W.3d at 789. This is no longer the case. The data described above (*see supra* FOF 145) show that STAAR scores were essentially flat from 2012 to 2013. A review of a longer time horizon through the use of NAEP and TAKS data also shows a lack of forward progress, as described below.

i. Student performance on NAEP has not shown significant or consistent gains since 2005.

FOF 170. The Court was presented with evidence of National Assessment of Educational Progress ("NAEP") scores for Texas in four separate categories: (1) reading at grade four; (2) math at grade four; (3) reading at grade eight; and (4) math at grade eight. From 2005 to 2011, Texas's scores on NAEP remained relatively flat in three of the four categories tested. (RR26:160-61, 164-72 (referencing Ex. 5678 at 11-14); Ex. 5460 at 1.)

FOF 171. On the grade four math test, Texas had made continual progress until 2005. (RR26:164-65 (referencing Ex. 5678 at 11); Ex. 5460 at 1.) From 2005 to 2011, Texas's scores on fourth grade math essentially remained flat. (RR26:165 (referencing Ex. 5678 at 11); Ex. 5460 at 1.) The percentage of students achieving the proficient score on this test also remained flat during this same period. (RR26:65-66 (referencing Ex. 5678 at 11); Ex. 5460 at 1.)

FOF 172. Similarly, on the fourth grade reading test, scores remained stagnant from 2005 to 2011, including at the proficient standard. (RR26:167-68 (referencing Ex. 5678 at 13); Ex. 5460 at 1.)

FOF 173. On eighth grade reading, Texas's scores essentially remained flat from 2005 to 2011, although the nation's scores on this exam increased somewhat during this same time. (RR26:170-71 (referencing Ex. 5678 at 14); Ex. 5460 at 1.)

FOF 174. From 2005 to 2011, Texas improved against the national average only on the eighth grade math test. (RR26:166-67 (referencing Ex. 5678 at 12); Ex. 5460 at 1.) On the other three tests, Texas's scores held close to or fallen slightly below the national average. (RR26:164-68, 170-72 (referencing Ex. 5678 at 11, 13-14); Ex. 5460 at 1.)

FOF 175. In 2013, NAEP scores still did not show any significant improvement. Texas's scores dropped on two of the exams from 2011 to 2013 and showed only modest gains on the other two exams. (*See* Ex. 11488 at 7, 17, 27, 37 of PDF.) In contrast, the national average increased on all four tests during this same period. (*See* Ex. 11488 at 2, 12, 22, 32 of PDF.)

FOF 176. In addition, significant gaps remain between Black and White students, Hispanic and White students, and students who are eligible for free and reduced-price meals and those who are not. (RR26:172-77 (referencing Ex. 5678 at 15-18) ; *see also* Ex. 11488 at 2, 12, 22, 32 of PDF.) On the fourth grade reading test, the gap increased from 2005 to 2011 between Hispanic and White students and between students who are eligible for free lunch and those who are not. (RR26:177 (referencing Ex. 5678 at 17); *see also* Ex. 11488 at 12 of PDF.) Across the remaining tests and demographic groups, the gap between demographic groups has closed minimally from 2005 to 2011 in comparison to the size of the gap that still remains. (RR26:172-77 (referencing Ex. 5678 at 15-18).)

ii. Student performance on TAKS has leveled off.

FOF 177. Texas students improved their performance in the early years of the administration of the TAKS exams. Between 2003, which was the first year of administration, and 2007, the percentage of students meeting the passing standard on all tests taken increased by twenty-three points. (Ex. 6322, Moak Report, at 21.) Between 2007 (the first assessment data available after the Legislature's response to the Supreme Court decision in *West Orange-Cove*) and 2011 (the last year that all grade levels were tested with TAKS), the percentage of students passing all tests grew by only seven points, less than two points per year. (*Id.*)

FOF 178. With respect to the percentage of students reaching the commended performance standard, score gains were less significant. Although the percentage of students reaching the commended performance standard on all tests tripled between 2003 and 2008, the percentage achieving "commended" grew by only one additional point in the final three years of test administration. (*Id.*)

FOF 179. In 2011-12, the State administered the new STAAR testing program for students enrolled in grades three through nine, but Texas public school tenth and eleventh graders continued to take TAKS since it remains the examination that these students must pass to graduate. (*Id.*) At the tenth grade level, performance was relatively flat between 2011 and 2012. (*Id.*)

FOF 180. As with STAAR, significant performance gaps existed under TAKS between economically disadvantaged versus non-economically disadvantaged students, and ELL students compared with their peers. (*See infra* Parts I.C.2.a.iii(b) (FOF 321, *et seq.*) and I.C.2.b.iii(c) (FOF 369, *et seq.*).)

(a) Flat NAEP scores call into question the extent of any progress under TAKS.

FOF 181. TAKS and NAEP were both administered in Texas between 2003 and 2011 to monitor math and reading skills of fourth and eighth graders. (Ex. 5430, Klein Report, at 1.) Two comparisons of TAKS scores to NAEP scores demonstrate that improvements on TAKS during this timeframe do not reliably show student progress. The first comparison was

conducted by Dr. Stephen Klein, and the second by the National Center for Education Statistics ("NCES").

FOF 182. To compare TAKS and NAEP scores, Dr. Klein calculated "effect sizes," which are a recognized way of putting scores from different scales on a common metric. (*Id.* at 2-3.) Dr. Klein's effect sizes calculated the difference between mean scores at two points in time (or between two groups) divided by the standard deviation of the scores among all students at time one. (*Id.* at 3.) He then compared effect sizes on NAEP and TAKS for all Texas students who took the exams, and for racial/ethnic sub-groups, to evaluate how student performance compared on the two exams from 2005 to 2011. (*Id.* at 3-7.)

FOF 183. In comparing effect sizes on NAEP and TAKS for all Texas students, Dr. Klein observed little or no gains in effect sizes on NAEP, but large gains on TAKS from 2005 to 2011. (*Id.* at 3-5.) For example, the gain in effect size in reading between 2005 and 2011 was 0.06 on NAEP but 0.73 on TAKS, which is a twelve-fold difference between exams. (*Id.* at 3.)

FOF 184. The gaps in mean scores between racial/ethnic groups were generally larger on NAEP than they were on TAKS. (*Id.* at 7.) The gaps also were generally larger between Whites and Blacks than they were between Whites and Hispanics. (*Id.*) They also were usually larger on reading than on math. (*Id.*)

FOF 185. From this data, Dr. Klein concluded that the improvements in TAKS math and reading scores between 2003 and 2011 do not generalize to NAEP. (*Id.* at 10.) His findings indicate that the gains on TAKS over the past decade should not be relied upon to reflect exactly how much improvement has actually occurred in the underlying and much broader range of knowledge and skills that standardized tests such as NAEP, TAKS, and STAAR are intended to measure. (*Id.*) The Court finds Dr. Klein's methodology and analysis on these points to be persuasive.

FOF 186. The Court also finds the NCES mapping standards reports to be instructive in evaluating TAKS scores. The NCES biennially produces mapping standards reports in which they use school level data on schools that participated in NAEP to equate the percentages of children within those schools who scored proficient on state assessments with scores on NAEP. (Ex. 5597.) The study also identifies the NAEP scale score that statistically aligns with "proficient" cut scores on state assessments. (Ex. 3188, Baker Report, at 57; *see also* Ex. 5597 at 5-6.) Further, because the data are re-evaluated every two years, NCES can determine which states have lowered or raised standards over a two-year period, relative to NAEP and relative to other states. (Ex. 3188, Baker Report, at 57; *see also* Ex. 5597 at 5.)

FOF 187. On average, the mapping standards reports find that proficiency standards on Texas's exam, the TAKS, are relatively low among states for fourth grade reading and math assessments, and very low for eighth grade assessments. (Ex. 3188, Baker Report, at 57; *see also* Ex. 5597 at 10-13.) On each test, Texas falls below average and below the

NAEP equivalent for "basic" performance. On eighth grade reading, Texas's proficiency standards are in last place. (Ex. 3188, Baker Report, at 57; Ex. 5597 at 10-13.)

FOF 188. From 2005 to 2009, Texas standards (as measured by cut scores on assessments) stayed relatively constant for fourth grade assessments – staying low among states and below basic on NAEP. (Ex. 3188, Baker Report, at 57-58; *see also* Ex. 5597 at 10, 12, 36-37.) However, at the eighth grade level, Texas standards appear to have drifted downward in rigor during the same time period. (Ex. 3188, Baker Report, at 58.) Both the reading and math assessment proficiency cut scores were associated with much lower NAEP scores in 2009 than in previous years. (*Id.*; *see also* Ex. 5597 at 36-37.) Again, Texas was at the bottom of states on the eighth grade reading proficiency cut score in 2009, while it had been somewhat higher in previous years. (Ex. 3188, Baker Report, at 58; *see also* Ex. 5597 at 36.)

(b) The data do not reliably demonstrate forward progress in the transition year from TAKS (2011) to STAAR (2012).

FOF 189. Federal law requires states to evaluate if districts are making adequate yearly progress or "AYP," based on whether a certain percentage of students (which increases each year) have passed the State's standardized assessments. (RR28:62.) The State undertook a "bridging analysis" to compare 2011 performance on TAKS to 2012 performance in grades three through eight on STAAR. (Ex. 1117; RR28:63-65.) The study was designed and carried out by Pearson, the State's testing contractor. (RR28:52.) The State's conclusion – that performance modestly improved from 2011 to 2012 – is, by the admission of the State's witness, not supported by the strictly empirical data the study generated. (RR28:86, 90-92; Ex. 60.)

FOF 190. To determine what score on STAAR was comparable to the passing score on TAKS, the bridging study used two approaches: an "empirical" analysis and an "impact" analysis. (RR28:56-57.) The empirical approach involved embedding STAAR field test items in 2011 TAKS assessments and then using those same questions on the actual 2012 STAAR assessments. (RR28:71-72.) By comparing student performance on the same reference set of embedded STAAR questions in 2011 and 2012, Texas was then able to compare 2011 performance on TAKS to 2012 performance on STAAR. (RR28:54, 71-72.) This analysis allows for the possibility that the 2011 students might be more or less prepared or proficient than the 2012 students.

FOF 191. This empirical methodology showed declines in performance for most tests and grade levels in 2012 compared to 2011. (Ex. 60; RR28:84.)

FOF 192. In the impact analysis, the bridging study identified the score point on the 2012 STAAR exams that would pass the same percentage of 2012 STAAR test takers as passed the corresponding 2011 TAKS tests. (RR28:54.) This "bridging" method therefore assumes implicitly that statewide performance on TAKS would have remained constant from 2011 to 2012. (RR28:80.) By its very nature, this method cannot be used to determine if the

2012 students performed better or worse than the 2011 students. (RR28:81-83.) As Pearson representative Dr. Laurie Davis acknowledged, the impact method will inevitably result in a showing that the passing percentage either would have remained constant or increased from 2011 to 2012. (RR28:77, 79.) This is true even if students in 2012 are less prepared or academically capable than in the previous year. (RR28:77.)

FOF 193. To obtain the final raw score on the 2012 STAAR exams that corresponded to the previous passing standard on 2011 TAKS, the bridging study identified, for each separate exam, the "midpoint" between the raw score generated by the empirical studies and that suggested by the impact method. (RR28:57, 64-65 (referencing Ex. 60).) When the midpoint was a non-integer, the final raw score was obtained by uniformly rounding down, rather than up, to the nearest integer, thus producing a lower raw score, which in turn yielded a higher passing percentage for 2012 test-takers. (RR28:64-65, 70-71.)

FOF 194. Using this method to "average out" the results of the empirical studies and to round systematically to the lower raw score yields, on the whole, higher passing percentages for 2012 than would have resulted from the use of the empirical data alone. (RR28:63-67 (referencing Ex. 60).)

FOF 195. Regardless of whether the impact method was appropriate for use in the AYP study, the State's witness, Dr. Davis, acknowledged that the impact method cannot be used to measure statewide progress. (RR28:78-79.) Because the bridging study in most grades simply reflected the impact analysis (*see* Ex. 60 at 1), this calls into question any effort to use the bridging study itself to demonstrate statewide progress from 2010-11 to 2011-12.

FOF 196. Dr. Davis confirmed that the results of the bridging analysis would have been less positive if the State had not used the impact method. (RR28:66-67.) In fact, the empirical analysis alone would have shown a decline in student performance from 2011 to 2012 in each of grades three through eight in math, and in grades five, six, and eight in reading (with grades three and seven reading showing a positive change and grade four reading showing no change). (RR28:83-90; Ex. 60.) While the differences are often slight, and while uncertainties are also inherent in the empirical methodology, the Court finds that on the whole, the bridge study cannot be relied upon to demonstrate positive academic progress in Texas third to eighth graders from 2010-11 to 2011-12.

iii. The State's evidence about NAEP scores and other student performance measures does not show any meaningful recent forward progress toward achieving a general diffusion of knowledge.

FOF 197. The State's expert, Dr. Grover Whitehurst, compared Texas's performance on various indicators to that of other states. Specifically, he looked at Texas's performance on the NAEP, its high school graduation rate, and its Advanced Placement ("AP") participation rate. The Court finds that Dr. Whitehurst's opinions on these subjects shed little light on Texas students' progress toward college and career readiness compared with other available indicators.

FOF 198. Dr. Whitehurst acknowledged that none of the three measures he considered are specific indicators of college readiness. (RR26:145-46.)

FOF 199. Dr. Whitehurst focused on NAEP scores in four separate categories: (1) reading at grade four; (2) math at grade four; (3) reading at grade eight; and (4) math at grade eight. Instead of comparing performance in each individual category, Dr. Whitehurst averaged the scores on the four tests. (RR26:36-37, 160-61.) This average shows that Texas is ranked only twenty-ninth on NAEP performance in the four areas. (RR26:37.) Dr. Whitehurst specifically did not analyze Texas's performance on NAEP relative to other states in any year other than 2011, and he did not consider how Texas's relative performance among the states may have changed over time. (RR26:160.) As noted above, Texas's performance on most of the NAEP tests has remained stagnant or has declined relative to the national average from 2005 to 2011. (*See supra* FOF 174; RR26:172 (referencing Ex. 5678 at 11-14).)

FOF 200. The State contends that Texas does better on national comparisons of NAEP scores when scores are disaggregated by racial group. While such disaggregation does appear to improve Texas's relative standing among states (but note the reservations in FOF 203 below related to exclusion rates), no evidence has been presented to the Court that the scores of any racial group have improved in any meaningful way in comparison to the national average for such groups since the 2003-05 time period.

FOF 201. Dr. Whitehurst also testified about the total gains by various subgroups in Texas since 2005, but the data demonstrate that the gains are small compared to the gaps that still remain between these groups. (RR26:175-77.) On the fourth grade reading tests, the gap has actually increased between white and Hispanic students and between economically disadvantaged and non-economically disadvantaged students. (RR26:177.)

FOF 202. Perhaps most significantly, the Court notes Texas does not set lower standards for students because of their race, poverty status, or ELL status. Texas aims for each of these students to be college and career ready, without respect to how poorly or well students in a similar demographic group perform in other states.

FOF 203. A final factor that calls into question the reliability of Dr. Whitehurst's cross-state comparisons is the issue of the differing rates at which students are excluded from NAEP testing in different states. States and school districts can exclude students from the small sample of NAEP test takers if those students have learning disabilities or are ELL. (RR26:189, 200-01 (referencing Ex. 5678 at 19-22).) The exclusion issue presents a two-fold problem. First, states are inconsistent in how they classify learning disabled and ELL students. (RR26:189-90.) Second, states and school districts are inconsistent in the rate at which they exclude these identified students from taking NAEP exams. (RR26:190-91.) On each of the four tests, in the year 2011, Texas's exclusion rate ranked among the highest in the nation. (RR26:191-92.) The National Assessment Governing Board has released a statement about the exclusion problem, stating that the difference in exclusion rates "may jeopardize the fairness and validity of state comparisons and other NAEP data trends." (RR26:197-98; Ex. 5678 at 23.) Dr.

Whitehurst's analysis did not adjust or account for the possibility that Texas's relative rankings are affected by its consistently high exclusion rates. (RR26:191.) The record is bereft of what influence the widely varying exclusion rates may have in the relative performance of states on NAEP, whether disaggregated by racial group or not. (RR26:189-98.) This deficiency calls into question the reliability of NAEP scores as indicators of the performance of Texas students as compared to students in other states.

FOF 204. Finally, Dr. Whitehurst's analysis of NAEP scores, by its nature, does not address performance by ninth through twelfth graders (or students in any grades other than four and eight) or student performance since the 2011 budget cuts. (RR26:161-62.) For each of these reasons, the Court finds that Dr. Whitehurst's analysis of NAEP data, on the whole, does not provide a reliable or convincing demonstration either of forward progress or of high educational attainment by Texas students as a whole.

FOF 205. In addition to his testimony concerning NAEP, Dr. Whitehurst provided two differing opinions about Texas's graduation rates. Relying on data from the National Center for Education Statistics, Dr. Whitehurst observed in his expert report, and testified in his deposition, that one in four Texas students fail to graduate from high school. (RR26:152, 159-60.) These rates have been the trend for a number of years and place Texas at the national average. (RR26:152, 159-60.) At trial, however, he noted that, based on data recently released by a different division in the U.S. Department of Education, Texas has a graduation rate of 86%. (RR26:155.)

FOF 206. Dr. Whitehurst candidly acknowledged to the Court that, "I'm not sure which numbers to believe." (RR26:157.) He further testified that both measures have "obvious flaws" and "I think we need to know more before we place large scale bets on particular graduation rates generated either by the new method and we knew the previous method had estimation problems." (RR26:158-59.) The Court similarly cannot determine which – if either – measure is reliable, and is therefore unable to reliably compare Texas's graduation rates to those of other states.

FOF 207. Regardless of these flaws, the Court concurs with Dr. Whitehurst's admission that Texas's graduation rates, as reflected in the NCES data, are "a disaster" and should be a focus of state policy. (RR26:160.) He aptly observed, "When students drop out of high school, their lives are literally at risk, because [of] their inability to get gainful employment. So it's a big problem." (*Id.*)

FOF 208. Dr. Whitehurst's final measure of student progress is AP participation rate. This measure does not reflect how students actually perform on the exam, but only the number of students who participate. (RR26:146.) Some states require students to take the AP exams. (RR26:147.) As a result, if AP participation rates were used to gauge college readiness, states could immediately jump to the top of the college-readiness ranking simply by requiring students to participate in the exams. (*Id.*) Notably, from 2007 to 2011, the percentage of Texas AP test takers earning a score of three or more (the score needed to qualify for college credit) declined from 47% to 45%. (Ex. 6322, Moak

Report, at 11.) Only Florida ranked lower than Texas among the ten largest states in this regard. (*Id.*)

c. Performance gaps between economically disadvantaged and non-economically disadvantaged students and ELL and non-ELL students are not closing.

FOF 209. Student performance data on STAAR, TAKS, and other measures reveal wide gaps between economically disadvantaged and non-economically disadvantaged students, and between ELL and non-ELL students. These gaps are described in detail below in Parts I.C.2.a.iii (FOF 298, *et seq.*) and I.C.2.b.iii (FOF 349, *et seq.*). The Court is persuaded that these gaps are not narrowing and will not be narrowed, much less closed, without adequate funding for economically disadvantaged and ELL students. (*See* RR18:151-53; RR4:122-23; Ex. 4000, Cortez Report, at 24-25; RR22:143-44.)

C. Findings of fact relating primarily to the state property tax, adequacy, and suitability claims

1. The State's control over local tax rates has resulted in a systemic lack of capacity to support a general diffusion of knowledge and the elimination of districts' ability to exercise meaningful discretion over their tax rates.

FOF 210. As described below, school districts have been forced in recent years to raise their M&O and I&S tax rates to compensate for state budget cuts and to meet rising state standards, exhausting the available capacity in the system. The districts' actions have been driven by increased costs associated with a "quantum leap" in educational standards (including greater remediation costs), increasing numbers of economically disadvantaged and ELL students, and passage of unfunded mandates, among other factors. Structural aspects of the system and other legislative actions, including tax compression, the tax cap, the TRE requirement, and the yield structure, also substantially contribute to the absence of any meaningful discretion in the system. In addition, looking at the particular circumstances of the thirty-six focus/plaintiff districts, the Court has found that these districts lack meaningful discretion over their tax rates (*see infra* Part I.C.7 (FOF 680, *et seq.*)), and that these districts are representative of the system as a whole (*see infra* FOF 680). For all of these reasons, discussed in greater detail below, the Court concludes that there is a systemic lack of capacity and that school districts lack meaningful discretion over their property tax rates.

a. There is a systemic lack of capacity.

i. Districts lack capacity with respect to M&O tax rates.

FOF 211. The 79th Texas Legislature enacted HB1 in 2006 after the Texas Supreme Court's *WOC II* decision. As described more fully in Part I.B.2.b (FOF 25, *et seq.*) above, HB1 ostensibly was to provide districts with the ability to provide local enrichment over and

above the state's basic requirements and to shift more responsibility for education funding to the State, lessening the reliance on local property tax revenue. In exchange for districts compressing their tax rates, the State was to replace those lost tax revenues with state funds. However, the Legislature was fully aware at the time it passed HB1 that the new state revenue sources would not generate nearly enough funds to make up for the property tax revenues lost from the tax compression, a decision that ultimately resulted in the substantial 2011 budget cuts. (*See supra* FOF 35.)

FOF 212. Originally, the post-HB1 system was meant to allow districts to provide the state's basic program at districts' compressed M&O tax rates – generally $1.00 for most districts. (Ex. 5630, Scott Dep., at 341, 343-45.) This provided districts with the ability to enrich up to the new statutory M&O tax rate cap of $1.17, with the first four cents available without an election and the remaining eleven cents available only after approval by voters through a TRE. (*Id.* at 339-41, 343-45.) However, the original purpose to provide for local enrichment, as required by *WOC II*, has been lost as a result of increasing costs, more state mandates, higher state performance standards, and severe cuts in state funding. (*See infra* Part I.C.1.b (FOF 233, *et seq.*).) As a result, districts have relied on pennies above their compressed rates (and in many instances, above $1.04 and up to $1.17) to fund the state's basic program, instead of funding local enrichment. (*See, e.g.*, RR3:155; Ex. 6336, Burns Dep., at 26; Ex. 6337, Hanks Dep., at 29-30; RR12:23; *see also generally infra* Part I.C.7 (FOF 680, *et seq.*) and FOF 214 – FOF 223.)

FOF 213. Despite this Court's conclusion that a constitutionally adequate education cannot be left to the discretion of voters to pass a TRE (*see* COL 33; RR15:52), the cost pressures described above and in Part I.C.1.b.i (FOF 233, *et seq.*) below have resulted in a dramatic increase in the number of districts taxing at the statutory $1.17 cap – nearly a quarter of Texas school districts with more than 600,000 in ADA taxed at $1.17 in 2012. Over 90% of districts, with almost 4.2 million in ADA, tax at or above $1.04, which is the maximum rate level permitted without holding a TRE.

Figure F-17. M&O Tax Rates for Texas School Districts 2007-08 and 2012-13

M&O Tax Rate	# Districts 2007-08	% Districts	2007-08 ADA	% ADA	# Districts 2012-13	% Districts	2012-13 ADA	% ADA
<$1.00	98	9.55	165,709	3.92	54	5.29	80,452	1.78
$1.00 to <$1.04	108	10.53	994,860	23.52	39	3.82	292,556	6.46
$1.04	699	68.13	2,680,939	63.38	607	59.45	3,046,938	67.29
$1.04 to <$1.17	24	2.34	217,130	5.13	74	7.25	505,855	11.17
$1.17 and Above	97	9.49	171,294	4.05	247	24.19	602,429	13.30
Total	1,026	100	4,229,933	100	1,021	100	4,528,231	100

Source: Moak, Casey & Associates data files (original source data from the State Comptroller of Public Accounts Self-Report Property Value File and TEA reports of student counts by district)

(RR54:117 (referencing Ex. 6618 at 14).)

FOF 214. Mr. Moak calculated the total revenue capacity in the school finance system as $37.3 billion in 2013-14, an analysis which assumes that all districts taxed at the maximum $1.17 tax rate. (RR54:118-19 (referencing Ex. 6618 at 15).) He also calculated that if all

districts taxed at the maximum $1.04 rate accessible without a TRE, the system would generate $34.4 billion in 2013-14. (RR54:118-19 (referencing Ex. 6618 at 15).)

FOF 215. Mr. Moak demonstrated that cost-of-adequacy estimates adopted by the Court (*see infra* Part I.C.5.f (FOF 625, *et seq.*)) exceed the available revenue capacity in the school finance system, leaving districts without any meaningful discretion to provide enrichment. (RR54:118-20 (referencing Ex. 6618 at 15).) At the $1.04 tax rate, which is the rate at which districts must be able to provide a general diffusion of knowledge, the current Foundation Program raises, on average, about $750 less per WADA in 2013-14 than even the lowest of the three cost-of-adequacy estimates this Court has considered. (*See infra* FOF 632.) Even at the maximum $1.17 tax rate, the Foundation Program raises on average about $250 less per WADA in 2013-14 than the lowest of the three adequacy estimates. (*See id.*)

FOF 216. Dr. Catherine Clark's analysis also demonstrates that districts are forced to tax above $1.04 in order to provide a general diffusion of knowledge. Dr. Clark used $6,818 – the amount of money the Texas Supreme Court found necessary to achieve a general diffusion of knowledge in *Edgewood IV*, adjusted for inflation and put in terms of 2013-14 dollars – as a proxy for the cost of adequacy. (*See* RR58:46-47 (referencing Ex. 6622 at 19); *see also infra* Part I.C.5.e (FOF 625, *et seq.*) and FOF 632.) Dr. Clark determined that only 98 districts, enrolling a mere 108,293 WADA, could raise $6,818 in revenue per WADA with an M&O tax rate of $1.04 or less. (Ex. 6622 at 19.) The remaining 923 districts, enrolling 5.9 million in WADA, are forced to tax above the rate allowable without a TRE. (*Id.*; RR58:48.) Even more troubling, her analysis demonstrates that even if these districts were able to successfully hold a TRE and raise their tax rate to the $1.17 statutory cap, 875 of them (with 5.8 million in WADA) still could not raise $6,818 per WADA. (RR58:48; Ex. 6622 at 19.) In other words, districts are being forced to raise their taxes above $1.04 and yet the vast majority of districts, educating the vast majority of students, still cannot raise the amount of money the Supreme Court determined was necessary to achieve a general diffusion of knowledge under less rigorous academic standards. (Ex. 6622 at 19; *see also supra* Part I.B.3 (FOF 81, *et seq.*).)

FOF 217. Next school year, as inflation increases, the amount of money necessary to provide an adequate education will also increase, and the problem facing districts will worsen. In 2014-15, only 92 districts, enrolling less than 98,000 WADA, will be able to raise $6,955 per WADA at $1.04 or less. (Ex. 6622 at 20; RR58:49.) The remaining 929 districts, enrolling almost 6 million in WADA, would need to tax above $1.04 to generate this amount. (Ex. 6622 at 20; RR58:49.) Even taxing at the $1.17 cap, only 133 districts could raise this estimate of adequacy. (Ex. 6622 at 20; RR58:49-50.) This means that 888 districts, with 5.87 million in WADA could not raise the inflation-adjusted *Edgewood IV* estimate of adequacy in 2014-15 even if they taxed at the maximum $1.17 rate. (Ex. 6622 at 20; RR58:49-50.)

FOF 218. Furthermore, looking at the lowest adequacy estimate before this Court – Dr. Odden's $6,176 estimate for the 2010-11 school year *prior to adjustment for inflation* – the State's

expert, Dr. Lisa Dawn-Fisher, acknowledged that only 124 districts, with approximately 144,000 in ADA, can raise that amount at $1.04 tax rate or less, and that the other 896 districts, which educate more than 4.6 million in ADA, cannot do so. (RR63:45-47 (referencing Ex. 11440).)[35] Even if every district in the state were able to successfully pass a TRE and raise their rates to the $1.17 cap, only 259 districts, educating 908,000 in ADA, could raise $6,176, and the remaining 761 districts, educating almost 3.9 million in ADA, could not raise this lower estimate of the cost to achieve a general diffusion of knowledge. (RR63:48-50 (referencing Ex. 11440).)

FOF 219. Furthermore, the amount of capacity to enrich the State's "basic program" – which neither this Court nor any expert who testified before it equates to a "general diffusion of knowledge" (*see* RR54:118-20; RR7:177-78) – is substantially less today than it was when HB1 was enacted in 2006, even without considering the higher performance standards set by the State. (*Compare* Ex. 6618 at 15 *with* Ex. 6322, Moak Report, at 51.)

FOF 220. Mr. Moak explained that HB1 funded the basic program at the level of the districts' compressed tax rates, and therefore the system as enacted provided the possibility of enrichment funding equal to 12.5% of total revenue (that is, the revenue districts could raise above their compressed level). (Ex. 6322, Moak Report, at 51.) However, because of increasing costs and state requirements, districts have been forced to increase tax rates primarily to fund the basic program, rather than to provide enrichment. (*Id.* at 52.) Although the State provided some additional funding from 2006 to 2010, the State controlled how this funding was used in that (1) much of the funding simply offset the reduction in revenue caused by the State's decision to compress local tax rates and (2) the State required districts to fund mandatory teacher pay raises. (*Id.*; RR7:17-23, 32-34 (referencing Ex. 6349 at 65).) For example, the state mandated teacher salary increases costing $802 million in 2006-07, $140 million in 2007-08 and 2008-09, and $616 million in 2009-10 and 2010-11, thus controlling how those additional formula funds were spent. (RR7:33-34 (referencing Ex. 6349 at 65).) When the State cut funding in 2011, it did *not* pass a salary decrease, even though it effectively eliminated all of the increased funding that had been provided from 2006 through 2010 that was not associated with replacing the dollars lost to the property tax compression. (Ex. 6322, Moak Report, at 52; RR7:23-25 (referencing Ex. 6349 at 65).)

FOF 221. When the State cut education funding in 2011, it shifted the burden of funding the basic program more heavily to local districts. Then, in 2013, when the State replaced some of the FSP funding, it relied heavily on local property taxes to fund this partial restoration. (*See* RR54:151-52 (referencing Ex. 6618 at 28).) Of the $5.6 billion increase in FSP funding associated with formula increases and enrollment growth, only about one-third, or $1.63 billion, was provided through increased general revenue fund appropriations.

[35] Exhibit 11440 is the State's original set of interrogatory answers. Exhibit 5746 is the State's amended interrogatory answers. The numbers described in this finding are the same whether looking at Exhibit 11440 or Exhibit 5746. Exhibit 11447 is a second amended version of the State's interrogatory answers containing updated information for 2015 only.

(RR54:93-95 (referencing Ex. 6618 at 4).) The remainder was directly associated with estimates of increased property value. (RR54:94-97.)

FOF 222. In light of these developments, Mr. Moak compared the funding levels available at the $1.04 tax rates in 2010-11 (before the legislative cuts), which he called "basic program" level funding, and compared these funding levels to the total revenue capacity in the system. (RR54:118-19 (referencing Ex. 6618 at 15).) He demonstrated that the effective level of "enrichment" available (above what he called the "basic program") was well below the 12.5% level available at compressed rates under HB1. (*Compare* Ex. 6618 at 15 *with* Ex. 6322, Moak Report, at 51.) Considering Dr. Clark's and Dr. Dawn-Fisher's testimony regarding the inability of districts to raise the amount necessary for a general diffusion of knowledge at $1.04 – or even $1.17 – the Court finds that the amount available for meaningful enrichment is even less than the number cited by Mr. Moak. (*See supra* FOF 216 – FOF 218.)

FOF 223. Under these analyses by Dr. Clark and Mr. Moak, which the Court finds credible, the Court finds that the current finance system no longer provides districts with the amount of "meaningful discretion" to provide local enrichment required by the Supreme Court in *WOC II*.

ii. Districts lack capacity with respect to I&S tax rates.

FOF 224. School districts pay for new facility construction and renovation of current facilities by issuing voter-approved bonds and levying interest and sinking fund ("I&S") taxes to meet their annual debt service requirements. (Ex. 6318 at App. E, Part 14, p. 20; RR10:164-68; RR11:65-66, 73-77.)

FOF 225. Following the *Edgewood IV* decision, the State took a number of steps to address the Supreme Court's warning that "the lack of a separate facilities component has the potential of rendering the school finance system unconstitutional in its entirety in the very near future." *Edgewood IV*, 917 S.W.2d at 746. The structure of the current state facilities funding program was initiated in 1997 with the creation of the Instructional Facilities Allotment ("IFA"). (Ex. 1328, Casey Report, at 21.)

FOF 226. Like the State's M&O funding, the IFA operates on a guaranteed yield system, but without recapture. (*Id.* at 21-22.) Eligible school districts initially received the equivalent of a tax yield guarantee of $28 per penny per ADA to assist in meeting a district's debt service needs. (*Id.*) In 1999, the yield was increased to $35 per penny per ADA, and has not increased since then. (RR10:166-67 (referencing Ex. 6352 at 12); RR56:173-74 (referencing Ex. 6621 at 9).)

FOF 227. Unlike the State's M&O funding, districts are not actually guaranteed funding based solely on having a tax yield that is less than the guaranteed yield. (Ex. 1328, Casey Report, at 22.) The IFA system requires districts to submit an application that details the proposed bond schedule and the educational facilities to be constructed. (*Id.*) In the event of a greater demand for IFA funds than the appropriation would support, districts

are ranked on the basis of their state property wealth per ADA – from lowest to highest – with the lowest-ranking districts the first to qualify for these funds. (*Id.*) Therefore, the number of districts whose applications are granted varies by the amount of the Legislative appropriation for new IFA awards. (*Id.*) The Legislature did not appropriate any money for new IFA awards during the 2011 or 2013 sessions. (RR56:174 (referencing Ex. 6621 at 8).)

FOF 228. While the IFA helps districts that seek to enter into new debt, the Existing Debt Allotment ("EDA") seeks to help districts pay back already existing debt. (Ex. 1328, Casey Report, at 23.) When the EDA was enacted in 1999, districts were guaranteed a yield of $35 per student for each cent of tax effort, equivalent. As enacted, only twelve cents of I&S tax effort were eligible for EDA state support. (*Id.*) This cap was raised to twenty-nine cents in 2001. (*Id.* at 23; RR10:172.) The $35 yield per student per cent of tax effort has not been increased since 1999. (Ex. 1328, Casey Report, at 23; Ex. 6352 at 12; RR32:198; RR56:173-74 (referencing Ex. 6621 at 9).)

FOF 229. At the time the EDA program was initiated, 896 school districts enrolling 91.2% of all Texas schoolchildren were eligible for state support under either the EDA or IFA programs. (Ex. 1328, Casey Report, at 23.) For the 2013-14 school year, fewer than 56% of all Texas students attended school in districts that were eligible for EDA or IFA support. (Ex. 6621 at 9-10; *see also* RR56:174-75; RR10:168; Ex. 6352 at 12; RR32:198.) If the EDA and IFA yields had been pegged to the 91.2 percentile of wealth, it would have a yield of $62.71 per penny today. (RR10:173; *see also* RR56:230-31.) If the $35 yield had simply been adjusted for inflation over the last decade, the yield today would be $54.77, with 84.8 percent of Texas students attending school in eligible districts. (RR10:174; *see also* RR56:230-31.)

FOF 230. Because state aid for facilities has not kept pace with property value growth or the growing student population, districts have been forced to raise I&S rates to keep pace with facility needs. (*See* RR10:171-77, 180-83; Ex. 6352 at 17, 20-21; RR32:198-99; RR56:176-79; *see also infra* Parts I.C.1.a.ii (FOF 224, *et seq.*) and I.C.1.b.iv (FOF 263, *et seq.*).) Over the course of the last decade, more districts issued debt to finance their facility needs. The number of districts without an I&S tax levy decreased from 369 districts in 1999-2000 to 200 districts for the 2012-13 school year. The number of districts with I&S tax levies at or above 30 cents increased from 34 districts in 1999-2000 to 225 districts in the 2012-13 school year. (RR56:179-80 (referencing Ex. 6621 at 14).) In the 2011-12 school year, 810 Texas public school districts levied I&S taxes to service $62.6 billion in outstanding school district debt (including both principal and interest). (*See* Ex. 1328, Casey Report, at 21; Ex. 6352 at 20-21; RR10:180.) The following table shows the count of school districts by I&S tax rate grouping from the 1999-2000 school year through the 2012-13 school year:

I&S Tax Rate	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
> $0.50	1	0	1	0	0	0	0	0	0	0	1	3	6	6
$0.50	0	1	1	1	0	1	1	0	1	5	12	19	24	27
$0.40<$0.50	6	7	3	5	4	7	7	14	47	62	61	61	65	61
$0.30<$0.40	27	30	32	32	41	43	52	63	101	108	115	129	127	131
$0.20<$0.30	104	103	108	132	142	168	149	152	168	187	190	186	187	195
$0.10<$0.20	253	271	288	306	292	276	267	276	274	249	252	242	238	230
$0.00<$0.10	261	257	264	243	242	232	258	250	195	183	172	169	162	171
$0.00	369	352	324	302	300	294	287	266	235	227	218	212	212	200
Total	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021	1,021

(Ex. 6621 at 14.)

FOF 231. From the 2007-08 to the 2011-12 school year, the Texas public school system grew by 330,306 students. (Ex. 1328, Casey Report, at 21.) More than 90% of this enrollment growth has occurred in approximately 100 school districts. (*Id.*; RR10:177.) Northside ISD, one of these "fast-growth" districts, has built and opened thirty-seven new schools in the last ten years. (RR25:84-85, 55-89.) A demographic study in Los Fresnos, another fast-growth district, found that the district would have to build one school each year for the next twenty-five years. (RR24:139.) While student population growth does result in some property value growth, officials from fast-growth districts testified that the property value growth is not enough to cover the costs of new facilities construction for these districts. (*See* RR11:61; RR24:212.) Some fast-growth districts have even been forced to pledge to use M&O tax revenue to pay back bonds, in order to meet the 50 cent debt test (required to obtain Attorney General approval to issue bonds). (*See infra* I.C.1.b.iv; RR10:189-90.)

FOF 232. The Court finds that these "fast-growth" districts are required to build more facilities, which means issuing more bonds and increasing their I&S tax rates more quickly. (RR10:177, 182; Ex. 6352 at 22-25; RR56:180-82 (referencing Ex. 6621 at 15).) As the Chief Financial Officer of Fort Bend ISD testified, when a district is forced to increase its I&S rate to make its bond payments, it is necessarily harder for that district to also raise its M&O rate because "it's just one tax bill to [the district's] constituents." (RR11:84-85.) Similarly, several superintendents testified that their districts' need to regularly seek voter approval for bond issuances to keep up with student growth (and the resulting increase in I&S tax rates) makes it difficult, if not impossible, to hold a successful TRE. (*See, e.g.*, RR22:57; RR19:85-86; RR25:102; Ex. 4336, Cavazos Dep., at 18:-19.) For the reasons articulated by these witnesses, the Court finds that rising I&S rates have contributed to the loss of meaningful discretion over M&O tax rates for many fast-growth school districts.

b. The State controls the levy of school district property taxes.

i. The State controls the levy of school district property taxes as a result of cost drivers and budget cuts.

(a) Standards have continued to increase since *WOC II*.

FOF 233. While college and career readiness was nominally the goal at the time of *WOC II*, in the years since that time, the Legislature has required TEA and the SBOE to hold districts responsible for meeting that goal. (*See supra* Part I.B.3.a (FOF 82, *et seq.*).) Specifically, the State adopted specific college and career-readiness expectations and standards and incorporated them into the TEKS, from high school all the way down to kindergarten. (*Id.*; RR28:120-23, 176-77; RR5:125-26.) *See also* TEX. EDUC. CODE §§ 28.001, 28.008.

FOF 234. Further, beginning with the 2011-12 school year, the State implemented the STAAR testing system, the first state test designed to assess students' preparedness for college and career. (*See supra* Part I.B.3.b (FOF 93, *et seq.*).) State witnesses uniformly testified that the STAAR exams are significantly more rigorous than the prior TAKS exams. (*Id.*; RR28:21-22; RR27:35-36; Ex. 5624, Zyskowski Dep., at 36-37, 70, 106, 198-99, 248-49; Ex. 5620, Twing Dep., at 101-05, 125; Ex. 5630, Scott Dep., at 39.)

FOF 235. In the 2012-13 school year, the State implemented a new accountability system that requires districts to be measured by their success at closing performance gaps and student performance growth. (*See supra* FOF 115.) Beginning with the 2013-14 school year, HB5 requires the accountability system to incorporate additional achievement indicators designed to measure districts based on the number and percentage of students who are graduating from high school college ready. (*See supra* FOF 91.)

FOF 236. Beginning with the freshman class of 2007-08, high school students are required to complete twenty-six credits in order to graduate from high school on the default plan (whether the recommended plan or the foundation plan with an endorsement), compared to the twenty-two credits required for the default minimum graduation plan at the time of *WOC II*. (*See supra* Part I.B.3.c (FOF 103, *et seq.*); *see* Ex. 6618 at 21; Ex. 4336, Cavazos Dep., at 98:13-20.) In addition, beginning with the 2014-15 school year, entering high school students will be required to select one of five endorsement areas to pursue. (Ex. 6618 at 21; *see also supra* FOF 90 and FOF 106.)

FOF 237. As Lynn Moak observed, these changes collectively "represent a quantum leap in standards for public education, and [were] driven by concerns that the previous system was not preparing students for the 21st century higher education and workforce systems." (Ex. 6322, Moak Report, at 66.)

FOF 238. The State – or, at least, the State's witnesses – have acknowledged that as standards increase, costs increase. (RR29:105-07; Ex. 5630, Scott Dep., at 91-92; RR26:67.)

Similarly, an expert analysis performed for the Legislature and proffered by the State in the *WOC II* litigation found "a fundamental economic relationship among input prices, educational outcomes, and cost in Texas public schools. Other things being equal, the analyses suggest that it costs more to produce higher levels of educational outcomes." (Ex. 5676 at 1.)

FOF 239. Contrary to the State's contention during the second phase of the trial, standards and costs continue to rise under HB5. Dr. Roberto Zamora examined the impact of HB5 on school district costs, paying particular attention to changes in graduation requirements, assessment requirements, and the accountability system standards.[36] (*See generally*, Ex. 20062A, Zamora Report, at 107-14, 116-17.)

FOF 240. Changes in curriculum, assessment, and accountability created by HB5 will not save school districts money and if anything, they will create additional potential costs for districts. (RR55:157.) For example, all school districts are still required to offer Algebra II at every high school. (RR54:132; RR55:142; RR63:124, 141.) Districts must partner with at least one institution of higher education to develop and provide college preparatory courses in English Language Arts and Math on campus, as opposed to doing so through distance learning or online. (Ex. 20062A, Zamora Report, at 9; RR55:147-48.) HB5 will also require at least some districts to hire additional counselors, including bilingual counselors or translators, to meet with each and every ninth grader and his or her parent to create a personal graduation plan, and mandates that counselors counsel all students about the importance of post-secondary education. (Ex. 20062A, Zamora Report, at 10; RR55:149-50; Ex. 4336, Cavazos Dep., at 89-90.) New accountability requirements related to student and community engagement mandate that each district report to TEA and make available a self-evaluation related to community engagement, requiring those districts that do not have such a system in place to develop and implement one. (Ex. 20062A, Zamora Report, at 13; RR55:156-57.)

FOF 241. Taking into consideration current student performance – particularly that of economically disadvantaged and ELL students – Dr. Zamora concluded that fully and properly implementing HB5 will require districts to: (1) add more rigorous coursework (and potentially add new teachers to teach the new coursework); (2) design additional curriculum, instruction, and assessment interventions for low-performing students; and (3) develop, implement, and evaluate indicators to measure community and student engagement. (Ex. 20062A, Zamora Report, at 8-14.)

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[36] The Court finds Dr. Zamora qualified to testify on these issues, based on his more than forty years' experience in public education at the school district, regional, and state levels, including service as a principal, an assistant superintendent and superintendent, as well as his service for the State as the Executive Assistant to the Associate Commissioners for School Accreditation and Program Evaluation, Executive Assistant to the Commissioner of Education, and the Executive Director of the Region One Education Service Center in Edinburg, Texas. (*See* Ex. 20062A, Zamora Report, at 1; Ex. 20074; RR55:115-18.)

FOF 242. The testimony of school district officials during the second-phase of the trial confirmed his analysis. (*See* Ex. 6557, Sconzo Dep. (Vol. II), at 22-42 (referencing Ex. 20256); Ex. 6558, Frost Dep. (Vol. II), at 32-39; Ex. 4336, Cavazos Dep., at 84-90, 93; RR55:115-16; Ex. 4337 at 11.) None of the State's witnesses could identify any cost savings for school districts resulting from the enactment of HB5. (*See, e.g.*, RR63:119-20.)

FOF 243. Dr. Zamora's ultimate conclusion is that the changes enacted by the 83rd Legislature cannot be expected to reduce costs for school districts or alleviate the challenges many public school students and school districts face. (RR55:157-59; *see also* Ex. 20256.)

FOF 244. Because the State has not tied funding levels to these increased academic standards (*see, e.g.*, *supra* Part I.B.4 (FOF 123, *et seq.*) and *infra* Part I.C.5.a (FOF 603, *et seq.*)), the cost of implementing them – including providing remediation for the hundreds of thousands of high school students who are off-track for graduation – has fallen on school districts and local taxpayers. (*See* Ex. 6618 at 23; RR54:144; Ex. 11366; Ex. 20313; *see generally* Ex. 5797; RR63: 80-81, 104, 111.)

(b) The growing economically disadvantaged and ELL populations and inadequate weights have reduced meaningful discretion.

FOF 245. At the same time standards have risen, the state's student population has become more costly to educate. At the time of *WOC II*, 52.7% of the state's students were economically disadvantaged. By the 2012-13 school year, that percentage had grown to more than 60%. (*See* Ex. 11123 at 10; Ex. 4258 at 13.) The percentage of students who are economically disadvantaged is higher in the lower grades, indicating that the trend of a poorer student population is likely to continue. (*See* Ex. 11123 at 20; *see also* Ex. 3228 at 78; *see also supra* FOF 16.) Over that same time period, the percentage of the population with limited English proficiency grew from 14% to 17% and is also expected to continue to grow. (*See* Ex. 11123 at 10; Ex.4258 at 13; Ex. 3228 at 78; *see also supra* FOF 16.)

FOF 246. The State's financing system explicitly recognizes, and defense witnesses acknowledge, that economically disadvantaged students and ELL students are more difficult and more expensive to educate. (*See* RR29:105-07; Ex. 5630, Scott Dep., at 91-92; RR26:67; *see also infra* FOF 467 and FOF 497.) This fact is reflected in large and persistent performance gaps, including the fact that, after three administrations of the first round of EOC exams, 47% of economically disadvantaged students still had not passed at least one examination and were off-track for graduation. (*See supra* FOF 139 and *infra* Parts I.C.2.a.iii (FOF 298, *et seq.*) and I.C.2.b.iii (FOF 349, *et seq.*).) Yet, despite the fact that school districts are now judged on their success in achieving student growth and closing those performance gaps, the funding weights for economically disadvantaged and ELL students have not been adjusted since 1984. (*See* Ex. 6322, Moak Report, at 58.) The evidence regarding the performance gaps for economically disadvantaged and ELL students and the substantial and increasing costs of quality programs aimed at closing that gap (discussed in detail below in Parts I.C.2.c (FOF 379, *et seq.*) and I.C.2.d.ii (FOF 466,

et seq.) – I.C.2.d.iii (FOF 480, *et seq.*)) makes it clear that the weights are underfunded. As a result, the cost of educating these students and closing the performance gaps has likewise fallen on school districts and local taxpayers.

(c) Budget cuts have forced districts to cut necessary programs, resources, and personnel.

FOF 247. As a result of the state-level FSP budget cuts in 2011, which were only partially replaced in 2013, as well as the unrestored cuts to grant programs, Texas school districts were required to make significant budget cuts. This Court already has described the deleterious impact of those cuts above in Part I.B.2.e (FOF 52, *et seq.*) and further describes their impact on a district-by-district basis in Part I.C.7 (FOF 680, *et seq.*) below.

FOF 248. While superintendents uniformly testified that districts attempted to minimize the impact of the budget cuts on the classroom, the magnitude of the cuts made it impossible to completely protect the classroom and core instructional programs from the cuts. As detailed below, many districts were forced to eliminate full-day pre-K programs, despite the importance of such programs, particularly for ELL and economically disadvantaged students. (*See infra* Parts I.C.2.c.i (FOF 384, *et seq.*) and I.C.3.b (FOF 550, *et seq.*).) Districts were forced to make personnel cuts, including teachers and instructional support personnel, such as teacher aides, counselors, and librarians. (*See supra* FOF 59 – FOF 64.) Each of these cuts came at the same time the State implemented a new, more rigorous assessment regime that superintendents testified will require significant additional resources to prepare students. (*See supra* Part I.B.3.b (FOF 93, *et seq.*).)

ii. The State controls the levy through tax compression and the tax cap.

FOF 249. In response to *WOC II*'s ruling that the $1.50 cap on property taxes had become a floor and constituted a *de facto* statewide property tax, the 79th Texas Legislature passed HB1 and HB3. (Ex. 6393; Ex. 6524.) However, while this legislation temporarily provided districts with additional taxing capacity, it ultimately resulted in a greater level of state control of school district property taxes. This result was anticipated by the 2006 Legislature, which was at least as motivated by a desire to provide a large property tax reduction as it was with providing school districts with control over local property tax rates. (Ex. 6396 at 1, 4-6; Ex. 6520; *see also supra* Part I.B.2.c (FOF 32, *et seq.*).)

FOF 250. In HB1, the Legislature forced school districts to "compress" property tax rates by one-third over the course of two years. The compressed rate serves as the State-established "floor" for school district taxes, because a district is required to tax at the compressed rate in order to receive the full Basic Allotment. TEX. EDUC. CODE § 42.252. In other words, districts that had lost meaningful discretion at the time of *WOC II* and had been forced to tax at the $1.50 cap are now required to tax at $1.00 just to receive the Basic Allotment.

FOF 251. The compression of local property taxes dramatically reduced the capacity of the overall school finance system to generate revenue needed to educate a growing population of students to higher state standards. The LBB estimated that the compression of local M&O tax rates by one-third would reduce property tax revenue for school districts by $14.2 billion in the 2008-09 biennium. (Ex. 5657 at 194.)

FOF 252. At the same time, the Legislature lowered the statutory cap on property taxes to $1.17, thus limiting the range of taxing "discretion" available to school districts to seventeen cents. The Legislature's intent in compressing taxes and lowering the cap on property taxes was to provide property tax relief and limit the discretion of local school districts to raise taxes above the compressed floor – as tax increases at the local level were seen by the Legislature to reduce the size of the tax break it sought to give local taxpayers. (*See* Ex. 6396 at 4-6; Ex. 6520 (floor debate); *see also supra* Part I.B.2.c (FOF 32, *et seq.*).)

iii. The State controls the levy through the combination of the TRE requirement and the yield structure.

FOF 253. The Legislature further limited school district discretion by imposing the TRE requirement. As indicated above, districts cannot increase M&O tax rates above $1.04 without obtaining approval from their voters through a TRE. (*See supra* FOF 28.) For districts that were compressed down to $1.00, they could only access four additional pennies without an election. The TRE requirement is unique to school districts; no other local taxing unit is subject to this requirement when setting its tax rate. (*See* Ex. 20107, Clark Report, at 1.)

FOF 254. The explicit purpose of the TRE requirement is to make it harder for school districts to raise tax rates above $1.04 – and thus to limit a school district's discretion over its tax rate. (Ex. 6396 at 5 ("Without adjusting the rollback rate to reflect the reduction in school M&O tax rates, any property tax relief could quickly evaporate as school boards increased local property taxes year after year.").)

FOF 255. As detailed above, the school finance system contains three-different yield levels. Tier I, for the compressed tax rate ($1.00 for most districts), has a guaranteed yield of $47.65 and a corresponding equalized wealth level of $476,500 per WADA. (*See supra* FOF 40, FOF 42, and FOF 46.) Tier II-A (the first six pennies of tax effort above the compressed tax rate) has a higher guaranteed yield of $59.97 and no recapture, and are thus known as the "golden" pennies. (*See supra* FOF 44 and FOF 46.) Tier II-B (the pennies accessing beyond six cents above the compressed rate, up to the tax cap of $1.17) are known as "copper pennies" because they carry a much lower guaranteed yield of $31.95 and a corresponding equalized wealth level of $319,500. (*See supra* FOF 44 and FOF 47.)

FOF 256. While the golden pennies incentivize districts to raise their tax rates as high as allowed without a TRE ($1.04) and have ensured that the vast majority of districts did just that (*see* RR54:116-17; Ex. 6618 at 14), the low yield of the copper pennies has kept districts from being able to access the full-range of taxing authority available to them beyond the

level that triggers a TRE – even when doing so is necessary to raise the resources required to achieve a general diffusion of knowledge. (Ex. 6618 at 14.)

FOF 257. Chapter 42 districts are particularly constrained by the yield structure, as many high-funded districts can raise more at an M&O tax rate of $1.04, without the need for a TRE, than lower-funded districts can raise at a rate of $1.17. (Ex. 3187, Pierce Report, at 14; Ex. 3226, Kincannon Dep., at 148; Ex. 3198, Garza Dep., at 30-32.) The lower yield of Chapter 42 districts means they are "capped out" by the TRE at a lower revenue level, thus reducing their discretion that much sooner.

FOF 258. Exacerbating the problem, Chapter 42 districts must then overcome significant obstacles to pass a TRE. Numerous Chapter 42 superintendents credibly testified that their districts would have difficulty passing a TRE because of the poverty of their districts and the low yield the copper pennies receive. (Ex. 3198, Garza Dep., at 30-32; Ex. 3204, Dupre, Dep., at 46-47; RR20:127; Ex. 3201, Witte Dep., at 19-21; Ex. 3202, Pfeiffer Dep., at 35-42, 46-48; RR15:197-99.) Some Chapter 42 districts were able to pass TREs only by simultaneously lowering their I&S rates, so that voters' overall tax rates remained flat. (RR5:187-96; RR6:28; RR24:138-39.) These districts must pay their debt service from surplus, and will likely have to raise their I&S rate in short order. (RR5:187-96; RR6:28; RR24:140-41.)

FOF 259. Chapter 41 districts also face great difficulty in accessing the "copper penny" tier of funding because of the combination of the TRE requirement and the Tier II-B funding structure. If a Chapter 41 district wishes to increase its M&O tax rate above $1.04 and above the level of the golden pennies, it must ask voters to approve a tax increase in which part of the revenue collected will be recaptured and sent back to the state for other districts (*i.e.*, revenues in excess of $31.95 per penny of tax effort are subject to recapture). (*See supra* FOF 44 and FOF 47.) Not only are copper pennies recaptured, but they are recaptured at the lowest equalized wealth level of $319,500 per WADA rather than the Tier I level of $476,500 per WADA. (Ex. 5384, Kallison Equity Report, at 7; RR21:87-88; *see also supra* FOF 46 and FOF 47.) Therefore, any Chapter 41 taxing more than six pennies above the compressed rate would be subject to recapture at a rate greater than the recapture rate under Tier I, making the passage of a TRE politically challenging. (Ex. 5384, Kallison Equity Report, at 7; RR21:86-88; *see also infra* FOF 844, FOF 863, FOF 877, and FOF 909.) These requirements effectively have denied many Chapter 41 districts meaningful discretion to set their M&O tax rates.

FOF 260. The evidence showed that relatively few Chapter 41 districts have successfully obtained voter approval through a TRE to tax into the copper penny tier. (Ex. 5384, Kallison Equity Report, at 7; RR21:89-91 (referencing Ex. 5396 at 31).) In 2011-12, only 10.8% of Chapter 41 districts taxed at more than $1.06 (the level at which it is assured that a district is both taxing in the copper penny tier and has conducted a successful TRE). (RR21:89-90 (referencing Ex. 5396 at 31).) The percentage is even lower for districts with wealth per WADA above $599,700; only 3 of 113 such districts (or 2.65%) taxed above $1.06 for the 2011-12 period. (RR21:90 (referencing Ex. 5396 at 31).)

FOF 261. As an example of this predicament for Chapter 41 districts, Dr. Kallison, who is the president of the Eanes ISD school board, testified that Eanes ISD is capped at an M&O tax rate of $1.06 for all practical purposes. (RR21:88-89.) To raise Eanes ISD's tax rate above $1.06, voters would have to approve a tax that would return seventy percent of the additional revenue to the state. (RR21:88.) Dr. Kallison testified that passing such a tax is not politically viable. (*Id.*)

FOF 262. The Court finds that the lower yield/higher recapture rate of the copper pennies and the TRE requirement are major contributors to the elimination of school districts' meaningful discretion to set their M&O tax rates.

iv. The State controls the levy of I&S taxes through the 50 cent debt test, which acts as a *de facto* cap on I&S tax rates.

FOF 263. Whether or not they receive EDA or IFA funding, before a school district may issue a bond, it is required to demonstrate to the Attorney General that the district has the ability to meet its principal and interest payments on bonds[37] from an I&S tax rate that does not exceed 50 cents per $100 of taxable value. *See* TEX. EDUC. CODE § 45.0031. (*See also* Ex. 1328, Casey Report, at 26-27; RR10:187-90.)

FOF 264. The decline in EDA and IFA funding detailed above in Part I.C.1.a.ii (FOF 224, *et seq.*) has forced districts to increase their local I&S rates. (RR32:198-99 (referencing Ex. 6352 at 20).) In the 1999-2000 school year (the first year of full implementation of the EDA) only thirty-four school districts had I&S rates of 30 cents or higher. (RR56:177 (referencing Ex. 6621 at 13).) At the time of *WOC II*, forty-five school districts had I&S rates of 30 cents or higher. (Ex. 6621 at 14.) By 2012-13, 225 school districts had I&S rates above 30. (*Id.*; *cf.* RR32:198-99 (referencing Ex. 6352 at 20); *see also supra* Part I.C.1.a.ii (FOF 224, *et seq.*).) As districts raise their tax rates closer to the 50 cent level, they may be forced to either forgo issuing voter-approved debt or to issue bonds with longer maturities to meet the 50 cent debt test. (*Id.*; Ex. 6352 at 28-29; RR10:191-92; RR11:80-83 (referencing Ex. 665 at 12, 14-15); Ex. 6621 at 16.) Longer maturities result in local school districts and taxpayers paying tens to hundreds of millions in additional interest costs. (Ex. 1328, Casey Report, at 26-27; Ex. 6352 at 30; RR11:84 (referencing Ex. 665 at 14-15).)

FOF 265. Fast-growing school districts are particularly hard hit by the combination of the stagnant $35 yield and the requirements of the 50 cent test. (RR56:180-81, 206, 237; Ex. 6621 at 15-16; Ex. 6352 at 26-27.) Fast-growth districts have greater facilities needs because they must build facilities just to keep up with enrollment growth. (*See, e.g.*, RR3:132 (Humble ISD added 900-1,000 students – the size of a typical middle school – per year since *WOC II* trial); RR11:60 (Fort Bend ISD had to build twenty schools over the past ten years due to enrollment growth); RR25:84-85 (Northside has grown by 25,000

[37] Excluding those bonds approved by voters on or before April 1, 1991 and issued prior to September 1, 1992.

students since *WOC II* and had to build and open 37 schools from 2002 to 2012 to keep pace with enrollment growth).) For the 2011-12 school year, fast-growth school districts have an average I&S tax rate of $0.333 per $100, compared with $0.223 for districts that are not fast growth. (Ex. 1328, Casey Report, at 26.)

FOF 266. The Court finds that the 50 cent debt test functions as a *de facto* cap on I&S tax rates, and that as districts are forced to tax at or near that cap in order to meet their facilities needs, fast-growth districts have lost discretion over their I&S tax rates. Furthermore, because the same taxpayers are responsible for both I&S and M&O property taxes, increasing pressure on I&S taxes necessarily causes increasing pressure on M&O taxes, contributing to the violation of the constitutional prohibition against a statewide property tax.

v. The State controls the levy by using local property value increases to finance enrollment growth and funding increases.

FOF 267. The local property tax provides 55 percent of total FSP revenue. The State generally counts on increased revenue through growth in the property tax base to at least cover the cost of increased enrollment growth. In 2013, additional property tax revenue not only funded the cost of enrollment growth, but provided substantial funding for improvements made in the 2013 legislative session. (RR54:87-102 (referencing Ex. 6618 at 4).)

FOF 268. Of the $5.7 billion increase associated with formula increases ($3.5 billion) and enrollment growth ($2.2 billion) in 2013, only about one-third, or $1.9 billion, was provided through increased general revenue fund appropriations. The remainder was directly associated with estimates of increased property value, which averaged about four percent of value growth per year. These increases provided the opportunity for additional revenue growth without increased state appropriations. (*Id.*)

FOF 269. As a result of the reliance on local property value growth to fund the FSP formula increases and enrollment growth, the percent of FSP funding provided by the State has steadily decreased from its high of 50% in 2008 (just after tax compression) to 45% today. (RR54:98-99.)

FOF 270. Similarly, the State has relied on local property value growth and rising local I&S tax rates to fund facilities, rather than adjusting the yield for IFA and EDA programs. As a result, the state share of facilities funding decreased from 35% in 2001-02 school year to a mere 11% in the 2012-13 school year. (Ex. 6621 at 11.)

2. Economically disadvantaged students and ELL students are being denied access to reasonable and meaningful opportunities to acquire a general diffusion of knowledge.

FOF 271. The State did not accept the Supreme Court's invitation in *WOC II* to provide "increased funding, improved efficiencies, or better methods of education" so that all students would have reasonable and meaningful opportunities to acquire a general diffusion of

knowledge. *WOC II*, 176 S.W.3d at 790. Instead, the Legislature chose not to fund economically disadvantaged and ELL students at the level needed to provide reasonable access to essential educational opportunities (*see infra* Part I.C.2.d (FOF 456, *et seq.*)), and indeed the system is so designed that it cannot accomplish a general diffusion of knowledge for those students (*see infra* Parts I.C.2.c (FOF 379, *et seq.*) and I.C.2.e (FOF 520, *et seq.*)).

FOF 272. As a result, under nearly every student performance metric, economically disadvantaged and ELL students chronically underperform. This is especially evident when comparing their performance to their non-economically disadvantaged and non-ELL classmates. In many cases, the achievement gaps have worsened since *WOC II*, at the same time the bar has been raised by the State. Those students, taken on average and as a whole, are not achieving the standards established by the State – much less their full potential. Many do not even graduate high school, and a large number of those who do are not graduating college and career ready. (*See id.*)

FOF 273. If these rapidly growing populations are to meet the State's heightened academic expectations, Texas must adequately address the obstacles these student populations face – including poor nutrition, lower parental resources and involvement, challenging home environments, high mobility rates, fewer "out of school" educational opportunities, and additional language barrier-related challenges for ELL students. (*See infra* FOF 276 and Part I.C.2.b.i (FOF 333, *et seq.*).) The unrefuted record demonstrates that these students can overcome these obstacles to learning and achieving in the classroom *if* presented with the kinds of quality programs and interventions discussed below. (*See infra* Part I.C.2.c (FOF 379, *et seq.*).)

FOF 274. These interventions and programs are not cost-free, however. The record overwhelmingly establishes, and the Texas Supreme Court has acknowledged, that these students are more expensive to educate. (*See infra* Parts I.C.2.c (FOF 379, *et seq.*) and I.C.2.d.ii - I.C.2.d.iii (FOF 466, *et seq.*).) *See also WOC II*, 176 S.W.3d at 788, 796.

FOF 275. School districts have been unable to keep up with the demands of these growing, high-need student populations because of the State's failure to structure the public school system in a way that is responsive to actual student needs. For example, instead of increasing support and programs for economically disadvantaged students, the State eliminated almost $1.3 billion for programs and initiatives meant to address the educational needs of students who are most at risk, such as quality early childhood programs, extended learning time (*e.g.*, tutoring and summer school), and smaller class sizes. (*See infra* Part I.C.2.d.i (FOF 456, *et seq.*).) At the same time, property tax compression left school districts without the ability to raise funds locally to fill the funding gaps left by the State. (*Id.*) The State still uses arbitrary, outdated weights in the funding formulas that have no real connection to actual student need or program costs. (*See infra* Parts I.C.2.d.ii – I.C.2.d.iii (FOF 466, *et seq.*).) The rapid growth of these student populations, combined with (1) the drastic reduction of programs meant to support them, (2) the districts' inability to fill the holes left by the State's cuts (*see supra* Part I.C.2.d.i (FOF 456, *et seq.*)) and (3) the arbitrary and insufficient weights for

compensatory and bilingual education, prevent the most at-risk students from getting the resources they need to stay in school and become college and career ready. The public education system has reached the point where significant improvement for these groups is impossible without adequate and suitable funding.

a. The growing population of economically disadvantaged students faces significant educational challenges.

FOF 276. The population of economically disadvantaged students has grown substantially over the past decade and accounts for the vast majority of student growth in Texas public schools, a trend that is expected to continue. (*See supra* Parts I.B.1 (FOF 11, *et seq.*) and I.C.2.a.ii (FOF 294, *et seq.*).) An increasing number of students in an increasing number of districts are impoverished and face obstacles to educational attainment, such as language deficits, greater mobility, less familial and social capital, and higher rates of abuse and neglect. (*See infra* Part I.C.2.a.i (FOF 277, *et seq.*).) The growth in the number and percentages of economically disadvantaged students magnifies the challenges for school districts, which must give them reasonable opportunities to meet the unprecedented rigor of the State's higher standards and expectations. (*See infra* Part I.C.2.a.iii (FOF 298, *et seq.*).)

i. Economically disadvantaged students face myriad obstacles to educational attainment.

FOF 277. Superintendents and experts testified about the many challenges facing economically disadvantaged students. Dr. Clive Belfield is a Professor of Economics at the City University of New York and has extensively studied economics in education. He testified that low-income students in Texas often lack the financial, family, and social capital needed to access educational opportunities, and the testimony of many superintendents in this case supports his findings. (RR15:18-24.) Low income students tend to come from one-parent families, leading to lower parental resources, such as fewer or weaker parent-child interactions related to language and literacy, less of a "school-like" home, and increased conflicts in the home. This lack of resources undermines and delays educational development. (RR15:18-24; RR4:72-73; RR22:155-58; Ex. 4224-S, Cervantes Dep., at 17; RR17:239-40; RR14:126; Ex. 3207, Salazar Dep., at 14-21.)

FOF 278. At-risk[38] and economically disadvantaged students are among the most challenging students to educate. They often start school with smaller vocabularies and without the same context for learning as students who are not at-risk and not economically disadvantaged. (*See, e.g.*, RR19:18-19; RR5:172-75, 182-83; RR20:100; Ex. 3202, Pfeifer Dep., at 15-17.) For example, Dr. Pfeifer testified that economically

[38] An "at-risk" student is one who meets one or more of thirteen criteria – such as failing the STAAR exam, failing two or more secondary level foundation curriculum courses, having limited English proficiency, or being homeless – that the Legislature has determined increases the chances that a student will drop out of school. TEX. EDUC. CODE § 29.081(d). A significant majority of at-risk students are economically disadvantaged.

disadvantaged students do not often hear adult language and enriched vocabulary in the home, and typically only have a vocabulary of approximately 500 words by age three. (Ex. 3202, Pfeifer Dep., at 15-17.) Non-economically disadvantaged students have vocabularies of approximately 5,000 words by the same age. (*Id.*; *see also* Ex. 3206, French Dep., at 12-13 (Quinlan ISD superintendent noting that economically disadvantaged students have limited vocabulary because of limited interaction and communication with adults).)

FOF 279. Economically disadvantaged students often enter school without knowing the alphabet or basic life skills, such as how to walk in a line or hang clothes on a hanger. (RR20:77; Ex. 3206, French Dep., at 12; RR19:78-79.) Dr. Gonzalo Salazar, the superintendent of Los Fresnos ISD, testified that students who have not been exposed to reading in the home often do not know how to turn the page of a book, or understand that one should read from left to right. (Ex. 3207, Salazar Dep., at 14-15.)

FOF 280. Low-income families also have less access to important and necessary "out-of-school" educational opportunities, such as preschool programs, summer school, tutoring, after-school programs, and educational amenities like museum trips. (RR18:12-13; RR4:73-74, 86; Ex. 3207, Salazar Dep., at 14-21; Ex. 1102 at 23-25; RR19:18-20.) Dr. Pfeifer testified that because of the lack of educational opportunities outside of the home, four-year-old economically disadvantaged students begin preschool years behind their peers, have not formed the ability to follow instructions, are unable to communicate effectively with adults, and often do not even know their basic colors, numbers, and animals. (RR5:172-73, 181.) Some have never even been outside a several-block radius of their homes. (*Id.*) Dr. Salazar explained that the lack of educational amenities like museum trips and even family vacations creates a disadvantage for learning vocabulary. (Ex. 3207, Salazar Dep., at 15-17.)

FOF 281. Low-income students often attend schools that have fewer learning resources, such as quality teachers, suitable facilities, libraries, and counseling. (*See generally* RR18:29-34; RR4:81; Ex. 4224-S, Cervantes Dep., at 30; RR22:155-57, 160, 162-64; Ex. 4237 at 11; Ex. 3207, Salazar Dep., at 53-54, 147-49, 283-85; RR5:244-45; RR20:78, 105-06; Ex. 1102 at 24.) Dr. Salazar elaborated that economically disadvantaged students are "technology-illiterate" because they often do not have computers at home, and may not even understand the function or purpose of a keyboard or mouse. (RR24:23-24.) Dr. Pfeifer testified that there is only one computer lab for 1,340 high school students in Everman, and a majority of these students do not have access to computers at home because of their economic status. (RR6:31-32.)

FOF 282. Due to employment circumstances and lower educational attainment, low-income parents are less likely to be involved with their children's school and schoolwork. (RR4:70-71; Ex. 4224-S, Cervantes Dep., at 173; RR17:239-40, 250-51; Ex. 6341, Frost Dep. (Vol. I) at 14-15).) The students themselves often have to work after school and on weekends just to help the family earn the money needed to meet basic needs such as rent or food. (Ex. 6341, Frost Dep. (Vol. I) at 35.) In Quinlan ISD, 69% of men in the district do not

have high school degrees and at best can only provide limited academic support to their children. (RR20:73-74.)

FOF 283. Low-income parents are also less likely to be able to transport their children to school, making low income students more likely to rely on school-provided transportation, which, in turn, potentially limits opportunities to participate in after-hours tutoring and summer school learning programs. (RR20:33-34; *see also* Ex. 4040, Belfield Report, at 5-6; RR15:19; RR4:77-78.) Mr. Limon, the former superintendent of San Benito CISD, testified that the students who do not have access to transportation often do not receive much-needed tutoring. (RR4:77.)

FOF 284. Low-income students also tend to have higher mobility rates, which interrupts their schooling and inhibits their educational attainment. (RR19:150-51; RR4:72; Ex. 4224-S, Cervantes Dep., at 196; RR22:140-42.) For example, attendance data from Austin ISD reveals that students who are residentially mobile are twice as likely to miss more than 10% of the school year. (RR19:153; Ex. 6356 at 8; *see also* Ex. 6335, Cain Dep., at 18-24.) In Alief ISD, economically disadvantaged students often move as much as two or three times a school year, forcing these more mobile students to refamiliarize themselves with new teachers and concepts multiple times a year and disrupting the students' learning time. (RR8:100-01.) In Edgewood ISD, the mobility rate is approximately 20%, and students frequently have to move in and out of the district during the same year due to housing evictions. (RR22:140.)

FOF 285. Dr. Cervantes, the superintendent of Edgewood ISD testified that higher mobility rates also make it difficult for district administrators to identify where mobile students are in their academic achievement and to assess their corresponding educational needs. (RR22:141.) Increased professional development is needed to help teachers and administrators differentiate student needs and address the challenges presented by mobility. (RR19:153; Ex. 6356 at 8; *see also* Ex. 6335, Cain Dep., at 18-24.)

FOF 286. Economically disadvantaged students have higher rates of homelessness, and often live in homes with only one caregiver. (*See, e.g.*, Ex. 3206, French Dep., at 12; Ex. 6356 at 6 (almost 2,000 homeless students in Austin ISD).) As explained by Dr. French, a caregiver is not always a parent, and instead may be a more far-removed relative or friend. (*See, e.g.*, Ex. 3206, French Dep., at 12.) Various superintendents such as Dr. French, Dr. Salazar, and Dr. Cervantes testified that physical and emotional abuse and incarceration often occur in low-income households. (*See, e.g.*, Ex. 3206, French Dep., at 12; RR24:126; RR22:138.) Economically disadvantaged students also often start school without coping skills or basic socialization and conflict resolution skills. (Ex. 3206, French Dep., at 61; RR19:18-19, 78-79.)

FOF 287. At least 100,000 economically disadvantaged students in some of the rural parts of Texas near the U.S.-Mexico border come from colonias, or rural subdivisions, which are characterized by poor housing and inadequate physical infrastructure such as the lack of paved roads, heat, electricity and potable water. (Ex. 3207, Salazar Dep., at 27; Ex. 508; RR24:118-123; RR4:61-62.) Dr. Salazar testified that in Los Fresnos, many children live

in those conditions, and thousands live in standards barely above that. (Ex. 3207, Salazar Dep., at 27.)

FOF 288. The Alief ISD and Abilene ISD superintendents testified that certain economically disadvantaged students, specifically refugees from war torn countries, come to class without basic skills necessary for succeeding in school – such as knowing how to sit at a desk or how to hold a pencil or turn work in on time. (RR8:98-99; RR19:41-44.) They may also suffer from the trauma of having experienced civil unrest, similar to the students from Mexico in Los Fresnos ISD, who observed and experienced violence and kidnappings in their home countries. (RR24:126-27.) School districts must address the trauma these students have suffered in order to help them focus on their studies. (*Id.*; Ex. 4224-L, Chambers Dep., at 83-84.)

FOF 289. Economically disadvantaged students receive poorer nutrition. As described by Dr. French of Quinlan ISD, they often do not eat outside of school hours. (RR20:36; Ex. 6341, Frost Dep. (Vol. I), at 14-15.) For example, many students in La Feria also go the weekends with barely anything to eat and churches have adopted schools to help feed the children. (RR18:35.) Economically disadvantaged students are also less likely to have access to health insurance. Nutritional deficits and lack of access to health care often lead to hunger and poor health, affecting students' ability to learn in school. (RR22:139; RR4:70; RR14:126; Ex. 3207, Salazar Dep., at 42; RR18:34-35; RR24:32.)

FOF 290. In short, because of the social and familial obstacles they face, low-income students generally start school less prepared, and over time, fall further behind without intervention, creating greater challenges for their schools. (*See, e.g.*, RR11:178-79; RR4:72-73, 94-95, 175-76; Ex. 4224-S, Cervantes Dep., at 176-77; RR22:153-54; RR19:18-20.)

FOF 291. As students progress through school, and achievement gaps widen between economically disadvantaged students and their more affluent peers, the economically disadvantaged student can become "an unwilling learner" – "a disenfranchised, disconnected student" who is difficult to engage in the learning process and more likely to drop out of school. (RR19:23-24.)

FOF 292. For each student who fails to graduate, the State of Texas and its taxpayers can expect to bear the brunt of the failure. Dr. Belfield estimated the loss to state revenues to be between $139,000 and $158,000 for each high school dropout. (*See generally* RR15:7-102; Ex. 4040, Belfield Report, at 8-9.) He also described the social and economic impacts of uneducated students, such as their increased reliance on welfare, higher crime and incarceration rates, and higher likelihood of requiring costly remediation should they ever make it to college. (Ex. 4040, Belfield Report, at 3-5.)

FOF 293. The obstacles facing economically disadvantaged students and their schools, while daunting, can be overcome. Former Commissioner Scott acknowledged that the achievement gaps between economically disadvantaged students (and ELL students) and non-economically disadvantaged students (and non-ELL students) can be narrowed with

the implementation of sound, effective educational programs, such as high quality early childhood programs, smaller class sizes, qualified, extended learning time, and well trained teachers, as described in Part I.C.2.c (FOF 379, *et seq.*) below. (Ex. 4243 at 6.) However, the current school finance system is not designed, structured, or funded to provide those opportunities to economically disadvantaged students.

ii. The economically disadvantaged population has grown since *WOC II*, and the concentration of disadvantaged students in certain districts exacerbates the challenges in these districts.

FOF 294. In the 2012-13 school year, there were 3,054,741 economically disadvantaged students enrolled in Texas public schools, comprising 60.4% of the total student population. (Ex. 4258 at 13.) Over the last ten years, the population of low income students in Texas public schools has grown by over 800,000 students, an increase of nearly 10 percentage points of the total student population. (*Compare id. with* Ex. 1087 at 6; *see also WOC II*, 176 S.W.3d at 755 (noting just over one-half of the Texas public school population was economically disadvantaged).)

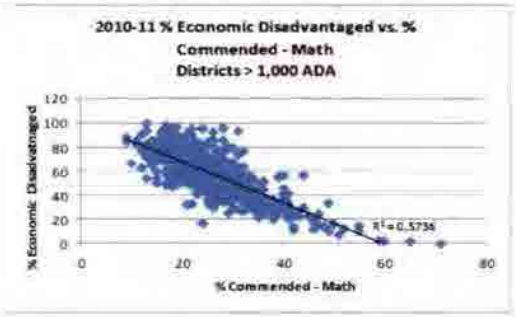
FOF 295. The challenges created by the poorly structured, operated, and funded school finance system and the educational barriers facing economically disadvantaged students are even greater in school districts that enroll higher concentrations of low income students. Mr. Moak analyzed the relationship between the performance of districts and the percent of economically disadvantaged students. (RR54:147-48 (referencing Ex. 6618 at 27); Ex. 6620.) He found that as the percentage of economically disadvantaged students in a district increases, the percentage of students passing the STAAR EOC and STAAR 3-8 exams decreases. Notably, the pattern of lower performance appears for both the economically disadvantaged and non-economically disadvantaged student populations in schools with higher percentages of economically disadvantaged students.

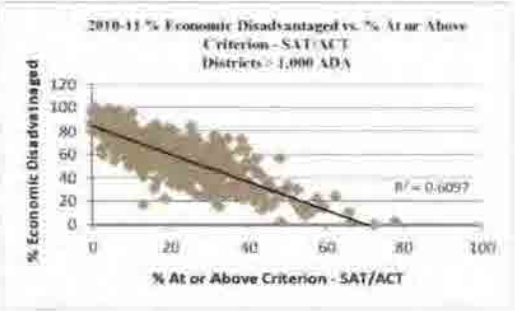
STAAR EOC Spring 2013		Graduation Tests at Level II Phase-In I Standard - Students			Graduation Tests at Level II Final Recommended Standard		
Economic Disadvantaged	# Districts	ECON DIS % Met Level 2 at Phase-in I	NON-ECON DIS % Met Level 2 at Phase-in I	ALL STUD % Met Level 2 at Phase-in I	ECON DIS % Met Level 2 on ALL EOCs Taken, at Lvl II FINAL Recommend	NON-ECON DIS % Met Level 2 at FINAL Recommend	ALL STUD % Met Level 2 FINAL Recommend
Under 30%	77	49.6%	77.2%	71.7%	21.4%	49.0%	43.5%
30% to less than 50%	243	41.0%	66.9%	57.5%	15.1%	36.8%	29.0%
50% to less than 70%	449	35.9%	60.1%	47.2%	12.2%	30.4%	20.7%
70% to less than 90%	273	33.9%	54.1%	38.9%	11.8%	26.5%	15.4%
90% and Over	61	31.3%	47.7%	32.2%	11.7%	22.6%	12.4%
Unknown	8	32.3%	52.9%	40.6%	26.8%	31.2%	28.6%
Grand Total	1,111	36.1%	65.0%	49.5%	12.9%	35.9%	**23.5%**

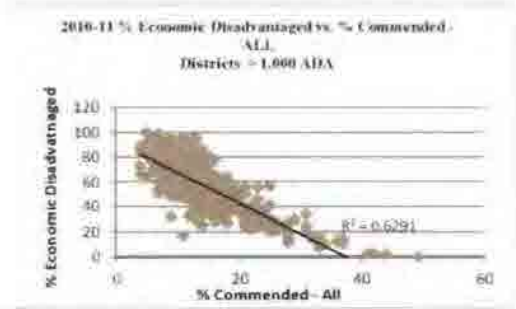
STAAR 3-8 Spring 2013		Grade 3-8 Tests at Level II Phase-In I Standard			Grade 3-8 Tests at Level II Final Recommended Standard		
Economic Disadvantaged	# Districts	ECON DIS % Met Level 2 at Phase-in I	NON-ECON DIS % Met Level 2 at Phase-in I	ALL STUD % Met Level II Phase-In I Standard	ECON DIS % Met Lvl II FINAL Recommend	NON-ECON DIS % Met Lvl II FINAL Recommend	ALL STUD % Met Level II Final Recommend
Under 30%	93	56.6%	84.0%	77.9%	17.3%	46.8%	40.3%
30% to less than 50%	257	53.0%	78.2%	67.7%	14.7%	37.9%	28.3%
50% to less than 70%	467	48.0%	72.2%	57.3%	12.5%	32.6%	20.2%
70% to less than 90%	291	46.3%	67.2%	50.2%	12.1%	28.8%	15.2%
90% and Over	81	42.6%	59.7%	43.5%	10.8%	23.3%	11.5%
Unknown	12	29.7%	58.0%	48.0%	6.2%	25.3%	18.6%
Grand Total	1,201	47.9%	76.2%	**59.3%**	12.7%	**37.2%**	**22.5%**

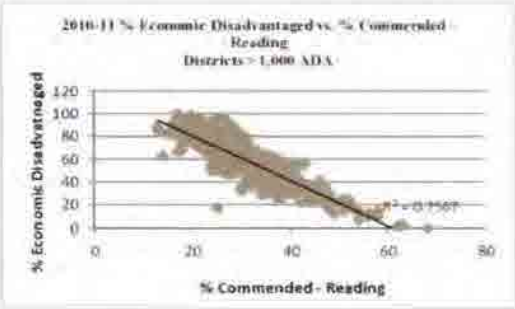
(Ex. 6620.)

FOF 296. Mr. Moak also found a strong negative correlation between the percentage of the students who are economically disadvantaged in a district and that district's SAT and ACT scores and performance at the commended level on TAKS exams. (Ex. 6322, Moak Report, at 60; RR6:222-25 (referencing Ex. 6349 at 49).) In other words, as the percentage of economically disadvantaged students increases in districts with more than 1,000 ADA, performance decreases. (Ex. 6322, Moak Report, at 59.)









(Ex. 6349 at 49.)

FOF 297. The State's expert, Dr. Podgursky, also acknowledged that the concentration of economically disadvantaged students within a district can have a significant negative impact on student learning. (RR29:105-07; *see also infra* FOF 642.)

iii. Substantial and persistent performance gaps and low overall academic performance demonstrate that economically disadvantaged students are not acquiring a general diffusion of knowledge.

FOF 298. The Texas Supreme Court in *WOC II* acknowledged wide performance gaps among student groups based on race and economic status. *WOC II*, 176 S.W.3d at 789. Today, nearly a decade later, these gaps have persisted and even increased (as the State raised the bar for students but failed to maintain and improve the State's funding structure). The result is that these children are being denied reasonable access and opportunity to a quality education.

(a) College readiness and STAAR

FOF 299. **STAAR.** As stated earlier, Texas holds all of its students (with few exceptions, such as certain special education students) to the same, rigorous academic and graduation standards. (*See supra* Part I.B.3 (FOF 81).) Yet, since the implementation of STAAR, the State has not provided funding sufficient to meet the needs of economically disadvantaged students. Instead, the State has drastically reduced essential compensatory

education programs for these students, while eliminating district capacity to make up the difference. (*See supra* Part I.C.1 (FOF 210, *et seq.*) and *infra* Part I.C.2.d.i (FOF 456, *et seq.*).) As a result of the unsuitable school finance system, the latest output data on the performance of economically disadvantaged students on the STAAR assessments shows that they are largely not meeting the minimum state standards (both as a disaggregated group and in comparison to non-economically disadvantaged students). (*Compare* Ex. 6322, Moak Report, at 29-30; Ex. 6324, Moak Supp. Report One, at 4; Ex. 6519 at 1 *with* Ex. 6618 at 25-26; Ex. 6620; Ex. 4528.)

FOF 300. Even at the lower Level II phase-in 1 standard (*see supra* FOF 96), for example, large achievement gaps exist between economically disadvantaged students and their non-economically disadvantaged peers on the Spring 2013 STAAR EOCs. The following chart shows the percentage of students who *failed to meet* this lower phase-in standard on the Spring 2013 EOCs.

STAAR EOC Test Participants Achieving:	% of Students scoring below Level II Phase-in 1 Standard
Eng. I Reading Econ. Disadvantaged*	46%
Eng. I Reading Non-econ. Disadvantaged*	20%
Eng. I Writing Econ. Disadvantaged*	65%
Eng. I Writing Non-econ. Disadvantaged*	35%
Biology Econ. Disadvantaged*	21%
Biology Non-econ. Disadvantaged*	7%
Algebra I Econ. Disadvantaged*	29%
Algebra I Non-econ. Disadvantaged*	13%
Eng. II Reading Econ. Disadvantaged*	31%
Eng. II Reading Non-econ. Disadvantaged*	12%
Eng. II Writing Econ. Disadvantaged*	61%
Eng. II Writing Non-econ. Disadvantaged*	33%
World History (Proxy) Econ. Disadvantaged*	41%
World History (Proxy) Non-econ. Disadvantaged*	19%
All Tests Taken. Econ. Disadvantaged – Graduation Tests Only^	64%
All Tests Taken. Non-econ. Disadvantaged – Graduation Tests Only^	35%

(Ex. 6618 at 25.) This chart reveals achievement gaps ranging from fourteen to thirty percentage points.

FOF 301. The gap between economically disadvantaged and non-economically disadvantaged students in these subjects actually *widened* from the 2012 school year to the 2013 school year on a number of the exams:

- English I Reading: Increased from 23 to 26 percentage points;
- English I Writing: Increased from 28 to 30 percentage points;
- Algebra I: Increased from 13 to 16 percentage points;
- U.S. History: Increased from 14 to 18 percentage points;

- World Geography: Increased from 16 to 21 percentage points;
- Biology: Increased from 11 to 14 percentage points.

(For English I Reading, *compare* Ex. 4114 *with* Ex. 4259 at 110; for English I Writing, *compare* Ex. 4115 at 1 *with* Ex. 4259 at 112; for Algebra I, *compare* Ex. 4131, Algebra I at 1 *with* Ex. 4259 at 104; for U.S. History, *compare* Ex. 4135 *with* Ex. 4259 at 124; for World Geography, *compare* Ex. 4135 *with* Ex. 4259 at 122; for Biology, *compare* Ex. 4133 *with* Ex. 429 at 107.)

FOF 302. The performance in the chart above also reveals startlingly low academic achievement by economically disadvantaged students as a group, with only one out of three economically disadvantaged students reaching the lower Level II phase-in standard for English I Writing; only one out of two economically disadvantaged students reaching the same standard in English I Reading; and one out of every three economically disadvantaged students achieving the Level II phase-in standard on all tests. (Ex. 6618 at 25.)

FOF 303. Moreover, the State's own analyses of the STAAR 2013 Summer and December retests show that economically disadvantaged students are struggling mightily even after the opportunity to retest.

FOF 304. Hundreds of thousands of economically disadvantaged students have failed multiple re-tests and remain off-track for graduation. Economically disadvantaged re-testers have fared worse than re-testers as a whole. The table below reflects the numbers and percentages of economically disadvantaged students who failed to pass all exams taken as of the Summer 2013 administration at the Level II phase-in standard, according to the State's cohort analysis. (*See supra* FOF 146 – FOF 147 for an explanation of the State's "cohort analysis.") Roughly 94,822 students in the Class of 2015 Cohort still had not passed all required exams taken after the Summer 2013 administration, despite five testing opportunities. (*See* Ex. 5796, Zyskowski Dep. (Vol. II), at 9.) Approximately 113,865 economically disadvantaged students in the Class of 2016 Cohort still had not passed all tests taken after Summer 2013, even after two testing opportunities. (*See id.*)

	Number of ED students having failed to pass all exams taken	Percent of ED students having failed to pass all exams taken	Percent of all students having failed to pass all exams taken
Class of 2015 Cohort	94,822	55.6	42.3
Class of 2016 Cohort	113,865	58.6	44.8

(Ex. 5797 at 4; Ex. 11366 at 18, 20, 21, 23; calculated as explained on separate cohort charts in Ex. 5795, David Clark Dep., at 107-08, 109-10.) The percentage of economically disadvantaged students who failed to pass all exams taken was greater than

the percentage of "all students" re-testers who failed to pass all exams taken. (*See id.*) (The "all students" cohort includes economically disadvantaged students).

FOF 305. The State responded to these dismal results, not by providing a suitable education system, but instead by creating a "transition rule" which had the effect of allowing certain students to forgo a reading or writing retest even if they failed the test itself. Consequently, thousands of economically disadvantaged students who failed to achieve the lower Level II phase-in 1 standard on English I Reading or Writing and/or the English II Reading or Writing tests did not have to retake the exams. (*See supra* FOF 150 for further explanation of the State's transition rule.) The following table shows the numbers and percentages of economically disadvantaged students in the State's cohorts who still had not passed all exams taken after Summer 2013, even after the transition rule was applied.

	Number of ED students having failed to pass all exams taken **(with transition rule)**	Percent of ED students having failed to pass all exams taken **(with transition rule)**	Number of ED students not required to retest based on transition rule
Class of 2015 Cohort	81,496	48	13,159
Class of 2016 Cohort	104,973	54.7	8,624

(Ex. 5797 at 9; Ex. 11366 at 20, 23, 27, 30; calculated as explained in Ex. 5795, David Clark Dep., at 60-61, 108-09.) When comparing these figures with the table in FOF 151 above, economically disadvantaged students again failed to pass all exams at much higher rates than all students.

FOF 306. The State's December 2013 class analysis also reveals significant numbers of economically disadvantaged students who have failed to pass all tests taken at the easier Level II phase-in standard before application of the Commissioner's transition rule, as reflected in the table below. (*See supra* FOF 146 and FOF 148 for explanation of "class analysis.")

	Number of ED students having failed to pass all exams taken	Percent of ED students having failed to pass all exams taken
Class of 2015	73,824	46.4
Class of 2016	93,616	51.6

(Ex. 5797 at 11; Ex. 20312 at 4, 6, 7, 9; calculated as explained in Ex. 5795, David Clark Dep., at 92-93, 112.) Again, the percentage of economically disadvantaged students who

failed to pass all tests taken at the Level II phase-in standard was higher – in this case, over ten percent higher – than the percentage of all students who failed to meet the same standard. (*See supra* FOF 152.)

FOF 307. Students in the Class of 2015 and Class of 2016 have now had, respectively, six and three testing opportunities to pass their end-of-course exams. (*See* Ex. 5796, Zyskowski Dep. (Vol. II), at 9.) Even after multiple testing opportunities and after application of the transition rule, nearly 135,000 economically disadvantaged students in both classes combined still have not passed all exams taken at the lower Level II phase-in standard, according to the State's "class analysis" reflected below. This is true *after* more than 32,000 economically disadvantaged students in both classes combined were exempted, by virtue of the transition rule, from retaking a test they previously failed.

	Number of ED students having failed to pass all exams taken **(with transition rule)**	Percent of ED students having failed to pass all exams taken **(with transition rule)**	Number of ED students not required to retest based on transition rule
Class of 2015	54,755	34.4	19,069
Class of 2016	80,192	44.2	13,424

(Ex. 5797 at 12; Ex. 20312 at 4, 6, 7, 9; calculated as explained in Ex. 5795, David Clark Dep., at 93-94, 111-12.)

FOF 308. Regardless of which analysis is examined, the State's data confirms that, even after multiple testing opportunities, hundreds of thousands of economically disadvantaged students still have not passed all exams taken, their performance is not appreciably improving, and they are not on track to graduate or become college and career ready. (*See supra* FOF 294.) The percentage of economically disadvantaged students who have failed to pass all exams taken is higher than the percentage of all students who have failed to pass all exams taken, after the transition rule is applied.

FOF 309. Districts now face the enormous burden of providing accelerated instruction to each of these hundreds of thousands of students. (*See* Ex. 5796, Zyskowski Dep., at 9.) In the 2015 and 2016 classes, schools are required to provide remediation to each of the nearly 135,000 economically disadvantaged students. This does not include remediation that must be provided to students who are also failing a course. (*See infra* FOF 420.) This burden will only increase given that the current passing standard is much lower than the final standard set to apply starting in the 2015-16 school year. (*See supra* FOF 96.) The final STAAR standards are substantially more rigorous than the TAKS final standards. (*See supra* footnote 29 (page 41).) As noted above, student performance on STAAR retests has been much worse than student performance on TAKS retests. (*See supra* FOF 102.)

FOF 310. The rate at which economically disadvantaged students still have not passed all required exams taken is directly relevant to the question of whether these students will graduate college or career ready for the reasons set forth in Parts I.B.3.a (FOF 82, *et seq.*) through I.B.3.c (FOF 103, *et seq.*) above. Under any analysis, hundreds of thousands of economically disadvantaged students still have not passed all required exams taken after numerous attempts and are nowhere near reaching college readiness on those exams. Although tens of thousands of economically disadvantaged students were not required to retest under the transition rules, they still were not able to meet the lower phase-in standard on their reading and writing exams and are not college ready. (*See* Ex. 5795, David Clark Dep., at 61-62.)

FOF 311. The Court acknowledges that the State is free to phase in its standards of proficiency. When evaluating the percentages of students reaching proficiency at the various standards, however, the number and percentage of questions students need to answer correctly in order to meet the standards are low, particularly at the Level II phase-in standards. For example, as shown below, for the Algebra I and Biology Level II phase-in 1 standard, students need only answer 20 out of 54 questions correctly, or 37%.

		Phase-in 1, Lvl 2		Final Lvl 2		Final Level III	
Test	Items Tested	Raw Score	% Correct	Raw Score	% Correct	Raw Score	% Correct
Eng I Read	56	30	54%	36	64%	46	82%
Eng II Read	56	27	48%	33	59%	45	80%
Eng I Write	62	40	65%	45	73%	57	92%
Eng II Write	62	38	61%	43	69%	55	89%
Algebra I	54	20	37%	34	63%	42	78%
Biology	54	20	37%	33	61%	45	83%
U.S. History	68	28	41%	44	65%	55	81%

(Excerpted Summary of Spring 2012 STAAR EOC Raw Score Performance Standards*, Ex. 44 at 9-10.) The fact that hundreds of thousands of economically disadvantaged students still have not passed all of the exams taken (even after multiple testing opportunities) is especially dismal given the relatively low number of questions students must answer correctly to "pass" any given subject. (*See supra* FOF 303 – FOF 308.)

FOF 312. As the State acknowledges, the STAAR exams are used to measure college readiness and mastery of the TEKS curriculum. (*See supra* Part I.B.3.b (FOF 93, *et seq.*); *see also* Ex. 44 at 9-10.) Accordingly, a review of performance data and achievement gaps under the final Level II and Level III standards is also in order.

FOF 313. The performance of economically disadvantaged students is even bleaker when judging against the Level II final standard, which is higher than the Level II phase-in standard. (*See supra* FOF 96 for a discussion of the final versus phase-in standards.) On all of the

EOC exams tested in the Spring of 2013 for graduation purposes, only 13% of economically disadvantaged students achieved the Level II final standard compared to 36% of non-economically disadvantaged students, a gap of 23 percentage points. (Ex. 6536 at 14.)

FOF 314. Below is a summary of the percentage of students *failing to meet* the Level II final standard for economically disadvantaged and non-economically disadvantaged students by test for the Spring of 2013:

STAAR EOC Test Participants Achieving:	% of Students Scoring Below Level II Final Recommended Standard
Eng. I Reading Econ. Disadvantaged*	70%
Eng. I Reading Non-econ. Disadvantaged*	39%
Eng. I Writing Econ. Disadvantaged*	82%
Eng. I Writing Non-econ. Disadvantaged*	54%
Biology Econ. Disadvantaged*	67%
Biology Non-econ. Disadvantaged*	37%
Algebra I Econ. Disadvantaged*	75%
Algebra I Non-econ. Disadvantaged*	50%
Eng. II Reading Econ. Disadvantaged*	49%
Eng. II Reading Non-econ. Disadvantaged*	23%
Eng. II Writing Econ. Disadvantaged*	82%
Eng. II Writing Non-econ. Disadvantaged*	58%
World History (Proxy) Econ. Disadvantaged*	77%
World History (Proxy) Non-econ. Disadvantaged*	52%
All Tests Taken. Econ. Disadvantaged – Graduation Tests Only^	87%
All Tests Taken. Non-econ. Disadvantaged – Graduation Tests Only^	64%

(*Id.*)

FOF 315. The stark achievement gaps between economically disadvantaged and non-economically disadvantaged students are also observed at the higher Level III standard, which the Court finds most reflective of college readiness. (*Id.*; *see also supra* FOF 108) In the Spring 2013 administration, only 4% of economically disadvantaged students passed English I Reading and only 1% passed English Writing at Level III. (Ex. 4259 at 110, 112.) On the other hand, non-economically disadvantaged students passed these subjects at rates at least four times higher at Level III. (*Id.*) On Algebra I, only 8% of economically disadvantaged students passed, compared to 26% of non-economically disadvantaged students. (*Id.* at 104.)

FOF 316. Similar performance gaps exist on the STAAR 3-8 exams, and the second year administration of the STAAR exams did not produce significant progress closing those gaps, as shown in the chart below.

Figure A-8. Comparison of 2012 and 2013 STAAR Results from Spring First Administration Only; Percent Passing by Economically Disadvantaged Status

STAAR Tests – Combined English and Spanish	% Passing at Level II Phase-In 1 Standard		
First Administration Only –Spring 2012 and Spring 2013	Spring 2012	Spring 2013	Difference
Grades 3 – 8 Reading Econ. Disadvantaged*	67%	66%	-1
Grades 3 – 8 Reading Non- Econ. Disadvantaged*	88%	88%	0
Grades 3 – 8 Mathematics Econ. Disadvantaged*	63%	62%	-1
Grades 3 – 8 Mathematics Non- Econ. Disadvantaged*	83%	83%	0
Grades 4 and 7 Writing Econ. Disadvantaged*	63%	61%	-2
Grades 4 and 7 Writing Non- Econ. Disadvantaged*	84%	83%	-1
Grades 5 and 8 Science Econ. Disadvantaged*	62%	65%	+3
Grades 5 and 8 Science Non- Econ. Disadvantaged*	85%	86%	+1
Grade 8 Social Studies Econ. Disadvantaged*	48%	52%	+4
Grade 8 Social Studies Non- Econ. Disadvantaged*	75%	78%	+3
*Algebra I Econ. Disadvantaged^*	72%	71%	-1
*Algebra I Non-Econ. Disadvantaged^*	85%	84%	-1
*English I Reading Econ. Disadvantaged^*	56%	59%	+3
*English I Reading Non-Econ. Disadvantaged^*	81%	83%	+2
*English I Writing Econ. Disadvantaged^*	41%	41%	0
*English I Writing Non-Econ. Disadvantaged^*	70%	70%	0
*Biology Econ. Disadvantaged^*	81%	83%	+2
*Biology Non-Econ. Disadvantaged^*	93%	94%	+1
*World Geography Econ. Disadvantaged^*	72%	72%	0
*World Geography Non-Econ. Disadvantaged^*	90%	90%	0

*Source: Texas Education Agency – Pearson Texas Assessment Management System, First Administration Only, Statewide Spring 2013 STAAR Results, August 2013. Does not include "above grade-level testers". Does not include students testing with STAAR-L, Modified or Alternate versions.

^First time 9th grade students only. MCA analysis of the TEA confidential student-level 2012 and 2013 data files via Litigation Discovery. Does not include "above grade-level testers". Does not include students testing with STAAR-L, Modified or Alternate versions.

(Ex. 6618 at 26.)

FOF 317. **AEIS/TAPR college-ready indicators.** College-Ready Graduate rates (as reported by TEA and discussed previously in FOF 165 above) for economically disadvantaged students also remain low. For the Class of 2012, only 44% of economically disadvantaged eleventh graders reached the College-Ready Graduates standard in both TAKS subjects (English Language Arts and Mathematics). At the same time, 57% of all students met the standard in grade eleven in both subjects. (Ex. 4258 at 11.) For the Class of 2011, the gap between the economically disadvantaged and "all students" groups was similar. (*Id.*)

FOF 318. The all-student group includes both economically disadvantaged and ELL students; therefore, the performance gaps between the "non-economically disadvantaged students" and "economically disadvantaged students," or between "non-ELL students" and "ELL students" would be much larger than these findings demonstrate using data from the "all students" group.

FOF 319. Economically disadvantaged students fared just as poorly on other student performance measures. In 2012, only one out of every six (16.1%) economically disadvantaged students tested under the AP/IB program, and of those students tested, only one out of three (33%) achieved the college-ready criterion established by TEA. (*Id.*) Stated another way, approximately 5% of all economically disadvantaged students were identified as "college ready" under the AP/IB indicator. This compares to 21.9% of all students who tested under the AP/IB program and 50.8% of all students reaching the college-ready level on those exams. (*Id.*)

FOF 320. For the Class of 2012, only 55.9% of economically disadvantaged students took the SAT or ACT college entrance exams, compared to 66.9% of all students. (*Id.*) Of those tested, 9.2% of economically disadvantaged students met the college-ready criterion set by TEA, compared to 24.9% of all students tested. (*Id.*) The State's assertion that SAT and ACT scores are expected to drop because more minority and low-income students are testing under these exams is irrelevant to the question of whether all students are accessing a general diffusion of knowledge as mandated by the constitution.

(b) TAKS

FOF 321. **TAKS met standard.** The "all tests" indicator in the State's AEIS reports reflects how students are performing in all subjects tested on TAKS at each grade level. (*See, e.g.*, Ex. 3207, Salazar Dep., at 100.) As noted above, TAKS has been phased out and replaced by STAAR. Nevertheless, the final years' results on TAKS do not show a system in which economically disadvantaged students have "topped out" or even made significant forward progress; rather, it evidences stagnant scores reflecting the unmet educational needs of the economically disadvantaged population.

FOF 322. By 2011, the overall performance of economically disadvantaged students remained dismal, with one out of every three students failing to achieve the low "met standard" on all TAKS tests taken. Between 2009 and 2011, the achievement gaps between economically disadvantaged and non-economically disadvantaged students remained substantial, at eighteen percentage points.

TAKS- All Tests Taken- Met Standard	2009	2011
Non-Econ Disad.	82%	86%
Econ Disad.	63%	68%
Gap	19%	18%

(*See* Ex. 6322, Moak Report, at 23.)

FOF 323. Even after eight years of teaching to the TAKS tests, the achievement gap closed only six percentage points – an average of less than 1% per year. (*Id.*) After ten years of testing under TAKS, economically disadvantaged students still passed at significantly lower percentages than their peers. For example, as shown in this chart, in 2012, 54% of economically disadvantaged 10th graders passed all tests taken compared to 75% of their non-economically disadvantaged peers – a 20-point difference.

Figure 23. Percentage of 10th and 11th Grade Students Reaching the Passing and Commended Standards 2011 and 2012 for All TAKS Tests Taken

	Grade 10				Grade 11			
All Tests Taken	**2011 Pass**	**2012 Pass**	**2011 Com-mended.**	**2012 Com-mended**	**2011 Pass**	**2012 Pass.**	**2011 Com-mended**	**2012 Com-mended**
All Students	65%	64%	6%	7%	84%	86%	10%	13%
Economically Disadvantaged	54%	54%	2%	3%	77%	80%	4%	6%
Not Economically Disadvantaged	76%	75%	9%	11%	91%	92%	15%	19%
Gap	22 pts.	21 pts.	7 pts.	8 pts.	14 pts.	12 pts.	11 pts.	13 pts.

Source: TEA Statewide Summary Reports

(Ex. 6322, Moak Report, at 22.)

FOF 324. Similarly, this chart that in 2012, there is a 19-point gap between economically disadvantaged students who passed math and non-economically disadvantaged students who reached the same level on the 9th Grade TAKS.

Figure 38. Comparison of 2011 9th Grade TAKS Results to 2012 9th Grade STAAR EOC Test Results, by Student Economically Disadvantaged Status

Student Group	Math Proficiency Level	2011 9th Grade TAKS Math Proficiency Level	2012 9th Grade STAAR Algebra I EOC Proficiency for Level Two at Phase-In Level 1 Standard	2012 9th Grade STAAR Algebra I EOC Proficiency for Level Two at Final Recommended Standard
All Students	Passed	70%	77%	26%
	Failed	30%	23%	74%
Economically Disadvantaged Students	Passed	62%	72%	20%
	Failed	38%	28%	80%
Non-Economically Disadvantaged Students	Passed	81%	85%	35%
	Failed	19%	15%	65%
Student Group	**Reading Proficiency Level**	**2011 9th Grade TAKS Reading Proficiency Level**	**2012 9th Grade STAAR English I Reading EOC Proficiency for Level Two at Phase-In Level 1 Standard**	**2012 9th Grade STAAR English I Reading EOC Proficiency for Level Two at Final Recommended Standard**
All Students	Passed	89%	68%	46%
	Failed	11%	32%	54%
Economically Disadvantaged Students	Passed	84%	56%	33%
	Failed	16%	44%	67%
Economically Disadvantaged Students	Passed	94%	81%	61%
	Failed	6%	19%	39%

Source: MCA analysis of 2011 TAKS data from TEA Statewide Summary Report; 2012 STAAR from TEA Confidential Student Data Files received via Litigation Discovery.

(Ex. 6322, Moak Report, at 33; *see also, e.g.*, Ex. 4232 at 7-8 (showing a 24-point gap between economically disadvantaged students and all students in La Feria ISD); RR18:66-70; Ex. 4237 at 12-14 (showing a 20-point gap between TAKS college ready economically disadvantaged students in Edgewood ISD and all students statewide); RR22:131-34.)

FOF 325. These gaps between economically disadvantaged and non-economically disadvantaged students remain considerable and generally did not decline over the last three years of TAKS testing. (*See generally* Ex. 20.) By the last full year of TAKS implementation, an eighteen-point gap remained between economically disadvantaged and non-economically disadvantaged students' TAKS passing rates across all tests for grades three through eleven. (*See* Ex. 6322, Moak Report, at 22.)

FOF 326. **TAKS commended standard.** The results at the TAKS commended level were even worse. The gap between economically disadvantaged and non-economically disadvantaged students on all tests for all grades nearly tripled from five percentage points in 2003 to thirteen points in 2012.

All Tests Taken	2003	2005	2007	2009	2011
All Students - Commended	5%	10%	12%	16%	16%
Economically Disadvantaged	2%	5%	7%	9%	10%
Non-Economically Disadvantaged	7%	15%	18%	23%	24%
Gap	5 points	10 points	11 points	14 points	14 points

(Ex. 6322 at 23.)

FOF 327. Economically disadvantaged students continued to lag behind non-economically disadvantaged students on the Spring 2013 TAKS Grade 11 Exit Exam in all subjects, particularly at the commended level. (*See* 2013 TAKS Summary Report, Group Performance, Grade 11, at 2, available at http://www.tea.state.tx.us/student.assessment/taks/rpt/sum/yr13.)

2013 Subject Tested	% ED Students Commended	% Non-ED Students Commended
English Language Arts	16	33
Mathematics	16	34
Science	12	29

(*Id.*)

(c) Retention

FOF 328. Economically disadvantaged students also continued to be retained in their grade level (*i.e.*, held back a grade) at higher rates than non-economically disadvantaged students according to the latest data reported by the TEA. (Ex. 4268 at 28-35.) This was true for all grade levels, K-12. (*Id.*) For the 2011-12 school year, in secondary schools, economically disadvantaged students were retained at even higher rates, with 6.2% of economically disadvantaged students retained in grades 7-12 – more than twice the rate of non-economically disadvantaged students. (*Id.*)

(d) Drop-out and graduation rates

FOF 329. **Dropout data.** For students in the Class of 2012 cohort, over a four-year period, nearly one out of twelve economically disadvantaged students (7.8%) dropped out of school and nearly one out of six (15%) failed to graduate within four years. (Ex. 4258 at 10.) The graduation and dropout gaps between economically disadvantaged students and all students slightly *increased* from the Class of 2011. (*Id.*)

FOF 330. In sum, economically disadvantaged students struggle to achieve academically, as evident from several measures noted above. The outcomes are only worsening as the State has raised the rigor of the standards but has not provided schools with the resources needed to educate those students. Not surprising, similar low achievement results among economically disadvantaged students across the same academic indicia are found in each of the plaintiff school districts. (*See generally infra* Part I.C.7 (FOF 680, *et seq.*); *see also, e.g.* Ex. 20254 (Edgewood ISD); Ex. 4326 (La Feria ISD); Ex. 4316 (San Benito CISD); Ex. 4302 (McAllen ISD); Ex. 5708 (Calhoun County ISD); Ex. 6561 (Abilene ISD); Ex. 6567 (Amarillo ISD); Ex. 6582 (Humble ISD); Ex. 6570 (Austin ISD).)

FOF 331. Critically, the record reflects that achievement gaps as identified above are not insurmountable and that the situation can be improved with sound, effective educational programs. (Ex. 4243 at 6; *see also infra* Part I.C.2.c (FOF 379, *et seq.*).)

b. The growing population of ELL students faces unique educational challenges.

FOF 332. ELL students, also identified as students of limited English proficiency or LEP, are defined as "a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary classwork in English." TEX. EDUC. CODE § 29.052. In the 2012-13 school year, more than one out of every six Texas public school children was identified as an ELL student, comprising 863,974 total students. (Ex. 4258.)

i. ELL students face myriad obstacles to educational attainment that are distinct from poverty-related educational needs.

FOF 333. Children from homes where English is not spoken well are more likely to be of lower socio-economic status than children in the general population. (RR14:126-27 (referencing Ex. 4231 at 4); Ex. 1104, Izquierdo Report, at 3.) Thus, these students suffer from many of the obstacles cited above. (*See supra* Part I.C.2.a.i (FOF 277, *et seq.*).)

FOF 334. Although many ELL students have poverty-related needs, their language-related educational needs pose additional unique challenges. (RR34:173; RR17:152.) ELL students may have basic interpersonal communication skills, but they may not have those skills in the English language, and they lack the cognitive academic language that is needed for school readiness. (RR24:116-17.)

FOF 335. The challenges ELL students face in Texas public schools, and in turn the school districts that educate them, cannot be overstated.

FOF 336. Schools often have to help ELL students through anxiety issues resulting from the lack of self-assurance when learning around other students who possess the language skills they lack. (*Id.*) For example, when they arrive at school, ELL students often are afraid to raise their hand and ask questions in larger group settings. (RR22:156.)

FOF 337. ELLs come to school with a wide range of characteristics and abilities related to their proficiency in English and their native language and related to their general educational background and content knowledge. Some ELL students were born in the United States, others are immigrants who have been in the United States for several years, and others have just arrived in the country. (RR15:169-71.) ELL students who arrive in the United States with limited literacy in their native language and an interrupted school experience need much higher levels of support than those who possess strong native-language literacy skills. (RR14:127 (referencing Ex. 4230 at 7).)

FOF 338. Parents of ELL children not only often have low educational backgrounds tied to their economic status, but they also tend to have language barriers themselves. (RR4:86.) Parents of ELL children often do not feel as though they belong in the schools, further increasing the educational challenges for school district personnel in educating their children. (*Id.*)

FOF 339. Some schools have experienced a significant influx of refugee students. These students – who are often ELLs – typically have no formal schooling and have experienced severe emotional and psychological trauma, which provides a barrier to education if it is not addressed. (RR19:42-45; Ex. 6343, Schroder Dep., at 14, 117-18.) Abilene ISD, for example, serves over 300 refugee students from Africa who speak thirty-five different languages. (RR19:42.) Amarillo ISD enrolls students from Vietnam, Burma, and Somalia, many of whom are not literate in their native languages. (RR22:120-23.) The refugee students often need help in understanding the American public school system and simple cultural norms such as appropriate hygiene, dress, and language. (RR19:43; RR22:122-23.) Dr. H.D. Chambers, the Alief ISD Superintendent, testified that certain refugees from war-torn countries come to class not knowing how to sit at a desk or hold a pencil. (RR8:98-99.)

FOF 340. Despite these added challenges, ELL students are expected to meet the same college and career-readiness standards as non-ELLs. (Ex. 1104, Izquierdo Report, at 15-16.)

FOF 341. Yet, as discussed in more detail below, the resources made available by the State for ELL students fall far short of the additional costs incurred by school districts in order to provide reasonable opportunities for all ELL students to achieve the state standards and achieve their full potential. (RR18:9-13, 47-48; RR22:145; Ex. 4224-S, Cervantes Dep., at 198; RR4:89-91; Ex. 4000, Cortez Report, at 33; RR8:101-04, 130-31; Ex. 3207, Salazar Dep., at 33-34, 38-39, 44-45, 57-58, 84-85, 103-04, 110-11; Ex. 4224-P, Kincannon Dep., at 20-21; Ex. 4224-G, Wallis Dep., at 73, 87-89; *see also infra* Part I.C.2.d.iii (FOF 480, *et seq.*).)

FOF 342. The rigor, depth and level of cognitive complexity of the new STAAR assessments present a challenge for students of all backgrounds, but especially for ELL students. (RR14:142 (referencing Ex. 4231 at 23); Ex. 1104, Izquierdo Report, at 3.)

FOF 343. ELL students in the upper-elementary and middle school grades often face the challenge of learning core content with specialized vocabulary and basic English at the same time.

(RR14:145-48; Ex. 1104, Izquierdo Report, at 23.) ELL students who have been receiving services for over five years, also called long-term ELLs, are at great risk of dropping out and require intensive levels of attention. (RR14:25-26.)

FOF 344. Like economically disadvantaged students, these students are capable of performing far better, but they, too, lack the necessary quality programs and interventions to help them achieve their full potential and to meet the State's standards. As shown below, the performance of ELL students is far below acceptable levels and demonstrates the failure of the school finance system to enable school districts to provide the opportunities ELL students need to acquire English proficiency and the essential knowledge and skills set forth in the State's curriculum.

ii. The growing ELL population and the increasing diversity of home languages spoken has magnified the challenges facing school districts.

FOF 345. The population of ELL students in Texas public schools continues to rise. (*See supra* FOF 15 – FOF 16.) The 863,974 ELL students in 2012-13 represented an increase of over 25,000 students from the prior year alone. (*Compare* Ex. 4258 *with* Ex. 11213 at 2.) Looking back just ten years to the 2002-03 school year, Texas schools have experienced an increase of over 230,000 ELL students. (*See* Ex. 1087 at 6 (noting 630,148 ELL students).)

FOF 346. While the majority of ELL students (90%) speak Spanish as their native language, over 120 other languages are spoken in Texas public schools. (Ex. 1104, Izquierdo Report, at 5.) The increasing numbers of ELL students, coupled with the expanding number of native languages spoken by the students, brings even greater challenges for school districts. (RR4:225.)

FOF 347. School districts across Texas have experienced growth in their ELL populations and an increase in the number of languages spoken by these students. Today, one in every four students in Richardson ISD is identified as an ELL student. (RR4:224-25.) Since 2002-03, Austin ISD has experienced a growth of 8,000 ELL students, and its ELL population currently speaks sixty-four different languages. (RR19:145-48.) In some parts of Texas, close to one hundred languages are spoken in a single district. For example, in the Dallas area, ninety-three languages and dialects are spoken in Richardson ISD. (RR4:212.) In the Houston area, Alief ISD's ELL students speak eighty-two different languages. (RR8:96.) In west Texas, Abilene serves ELL students speaking thirty-five languages. (RR19:41-42.) In the panhandle, Amarillo ISD's ELL students speak over forty different languages. (RR22:121.)

FOF 348. The increasing diversity of the ELL population requires additional programming and resources. (*See* RR19:148.) For example, districts are required to provide each of these students with certain services in their home language. (*See infra* Part I.C.2.d.iii(a) (FOF 480, *et seq.*).) TEA, however, does not provide districts with TAKS or STAAR-based resources in the multitude of languages spoken by the state's students. (RR19:42-45.)

iii. Substantial and persistent performance gaps and low overall academic performance demonstrate that ELL students are not acquiring a general diffusion of knowledge.

(a) TELPAS

FOF 349. ELL student performance is measured based on students' academic content knowledge (in the same manner as non-ELL students, through measures such as STAAR assessments) and on their English proficiency. Texas has adopted the Texas English Language Proficiency Assessment System ("TELPAS") to measure the English proficiency of its ELL students. (Ex. 1104, Izquierdo Report, at 13-14.) TELPAS scores are reported at "beginning," "intermediate," "advanced" and "advanced high" levels of proficiency. The State's expectation is that ELL students will advance at least one level for each year of bilingual or ESL instruction. (*Id.* at 13; RR35:105-06.) Only at the advanced high level are students presumed to be able to pass TAKS standards, although advanced high level students may still need additional interventions to pass TAKS. (Ex. 4054 at 28; Ex. 4224-T, Givens Dep., at 148-50.)

FOF 350. Although the State had aligned the proficiency levels on the TELPAS with the old "met standard" on TAKS, the State has not aligned the TELPAS levels with the new, higher STAAR standards. (RR35:87-89; Ex. 4224-T, Givens Dep., at 142.) Therefore, unlike in years past, the State has no method to determine how ELL students may perform on the STAAR based on their performance on the TELPAS. (*Id.*)

FOF 351. TELPAS results are reported by the number of years ELL students at each grade have been in U.S. schools, beginning with year-one "immigrants" up to ELL students who have been in U.S. schools for six or more years. (Ex. 4180 at 27, 29.) The use of the term "immigrants" in the TELPAS report, however, is misleading because TEA does not collect data on the immigration status of students. (RR35:69-71.) Furthermore, TEA does not include the grade "kindergarten" or "pre-K" under its calculations of years in U.S. schools. (*Id.* at 89-91.) For example, first grade students reported as being in their first or second semester in U.S. schools may very well be in their second or third or even fourth year in U.S. schools because TEA did not count kindergarten or pre-K. (*Id.*) Consequently, the TELPAS reports likely undercount students in each category identified by the number of years in U.S. schools. (*Id.*)

FOF 352. TELPAS measures the English proficiency of "current ELLs," *i.e.*, students who are in the process of becoming proficient in English with the expectation that they will attain English proficiency within four to five years. However, the TELPAS results show that a significant number of ELL students are not making progress in learning English. For grades three through twelve, 34% of ELL students in grades three through twelve (approximately 134,000 students) failed to progress even one level in learning English during 2012-13. (*Id.*) The rates of failure to progress were highest at the high school level where 33-41% of ELL students did not progress even one level in English during the year. (*Id.* at 20, 22, 24, 26.)

FOF 353. Significant and growing numbers of ELL students are "long-term ELLs," or are still classified as ELL after six or more years in U.S. schools. (Ex. 11010, Ayala Report, at 29.) In 2012, 126,375 ELL students in grades three through twelve had been in U.S. schools for six or more years. (Ex. 4189, at 30.) By the following year, that number had increased to 137,918. (Ex. 4262.) These long-term ELL students constituted nearly one out of every three (31%) ELLs in grades three through twelve. (*Id.*)

FOF 354. According to 2012 TELPAS data, progress in learning English lags for these long-term ELLs: 36% in grades three through twelve failed to progress even one level in their English proficiency, with over 40% in grades ten through twelve showing no progress. (Ex. 4180 at 22, 24, 26, 30.) In 2013, that percentage rose to 41% making no progress. (Ex. 4262.)

FOF 355. While it may be expected that students who are identified as "current ELLs" will not perform as well as other former ELL students who mastered English and exited the bilingual/ESL program, the high number of students who are not making progress in learning English, who are not achieving the advanced high level needed to pass even the less challenging TAKS met standard, and who are still in the bilingual/ESL program after six or more years, all tell a story of an unsuitable system that is producing insufficient results. (*See generally* Ex. 4180.)

FOF 356. ELL students are also struggling to attain the advanced high level, which would indicate likely success on the TAKS tests. According to the Spring 2012 TELPAS Statewide Summary Report for all ELL students in grades three through twelve, nearly one-half (49%) failed to reach the advanced high level of English proficiency. (Ex. 4180 at 30.) That percentage was virtually the same the following year at 47%. (Ex. 4262.)

FOF 357. According to the Spring 2012 TELPAS Statewide Summary Report, between 65-73% of ELL students in grades nine through twelve were not at the advanced high level of proficiency in writing, an area of particular concern given the new STAAR tests' emphasis on writing at the secondary level. (*Id.* at 19, 21, 23, 29.) There was no improvement during the Spring 2013 administration, where between 64-72% of ELL students in grades nine through twelve were not at the advanced high level of proficiency in writing at the secondary level. (Ex. 4262.)

FOF 358. These results are not attributable to a "new immigrant" population weighing down the scores. First, as mentioned previously, TEA does not collect information on the immigration status of students and therefore, TEA has no valid basis to conclude that poor ELL student performance is attributable to the influx of new immigrants. Even if one was to assume that students identified on the TELPAS as entering their first or second semester in grades three through twelve were "new immigrants," only a small percentage of ELL students would be considered "new immigrants." In 2012, for example, only 18,445, or 4%, of the 422,302 ELL students in grades three through twelve who were assessed in Listening on TELPAS were reported as new immigrants in their first or second semester in U.S. schools. (Ex. 4180 at 19, 21, 23, 25, 29.) The

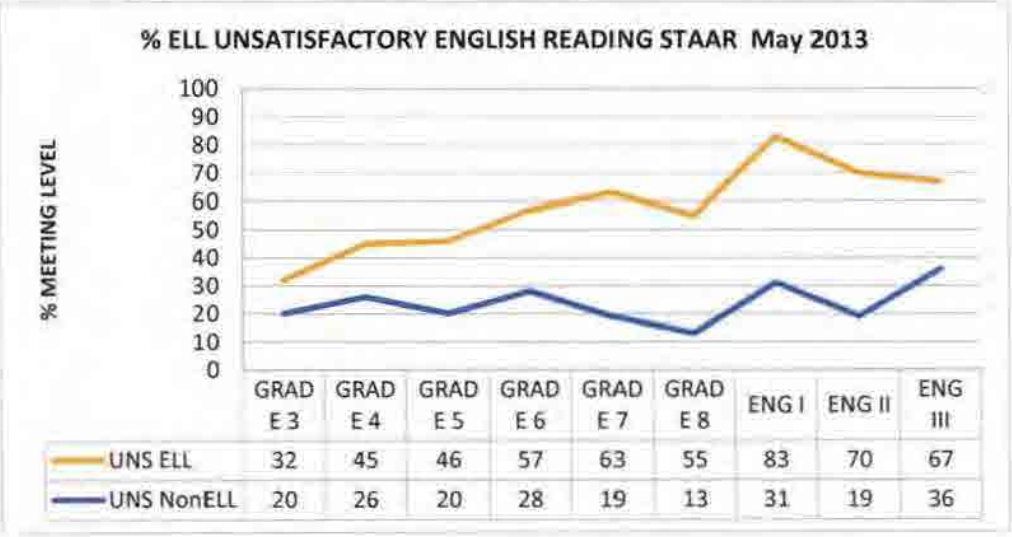
percentage of "new immigrant" ELLs identified in the 2013 TELPAS was 4.5%. (Ex. 4262.)

FOF 359. As detailed further below, ELL students are not progressing in their English proficiency, not because of a lack of effort or because the obstacles are insurmountable, but largely because of the lack of resources necessary to provide essential, quality language programs and services. These basic resources include the lack of certified and trained bilingual teachers, quality prekindergarten programs, extended day and tutorial programs, summer school programs, books and materials, smaller class sizes, and smaller learning communities needed to help students become proficient in English. (*See infra* Part I.C.2.c (FOF 379, *et seq.*).)

(b) STAAR and college readiness

FOF 360. It is undisputed that, given the appropriate resources and opportunities in the classroom, ELL student performance can improve significantly and the achievement gaps between ELL and non-ELL can substantially close. (*See, e.g.*, RR18:55, RR22:148-49, RR15:168-169.) However, the results of ELL students on the STAAR and other college-ready indicators, like the TELPAS results, reflect a system grossly underserving ELL students, depriving them of the opportunity to achieve their full potential and meet the state standards.

FOF 361. **STAAR.** On the Spring 2013 STAAR English Reading assessment, ELL students failed to achieve satisfactory scores at far greater rates than their non-ELL peers, with one out of every three third-grade ELL students failing to reach the lower Level II phase-in standard and nearly four out of every five ninth-grade ELL students failing to achieve the same standard on the English end-of-course exams.



	GRADE 3	GRADE 4	GRADE 5	GRADE 6	GRADE 7	GRADE 8	ENG I	ENG II	ENG III
UNS ELL	32	45	46	57	63	55	83	70	67
UNS NonELL	20	26	20	28	19	13	31	19	36

(Ex. 20062-A at 19.)

FOF 362. On the Spring 2013 STAAR EOC assessments required for graduation, current ELLs continued to lag far behind non-ELL students. As noted in the chart immediately above, only 17% of ELL students met the satisfactory standard on the English I Reading EOC exam. Statewide, ELLs and non-ELLs failed to reach the lower Level II phase-in standard at the following rates:

2013 EOC	% ELL Students Unsatisfactory	% Non-ELL Students Unsatisfactory
English I Writing	91%	48%
Algebra I	49%	20%
Biology	45%	12%

(Ex. 4259 at 107, 110, and 112.)

FOF 363. Results on the Spring 2012 STAAR exams were similar, although ELL results were even worse in 2013. (*Compare id. with* RR14:29-30 (referencing Ex. 4230 at 8); Ex 1085, Pompa Report, at 3.)

2012 EOC	% ELL Students Unsatisfactory	% Non-ELL Students Unsatisfactory
English I Reading	82%	28%
English I Writing	92%	41%
Algebra I	40%	16%
Biology	42%	11%

(Ex. 4114 at 1; Ex. 4115 at 1; Ex. 4131 at 1, 3; Ex. 4133 at 1.)

FOF 364. Although the State debated whether ELL students may be expected to perform as well as non-ELL students, Susie Coultress, the TEA State Director for Bilingual/ESL, Title III and Migrant Education, testified that the performance of ELL students on the 2012 STAAR exam was "dismal" and much lower than what it should be. (RR34:185-86; Ex. 4233-B, Coultress Dep., at 178.)

FOF 365. For ELL students who were eligible to take the 2013 STAAR-L assessments (which are computer-based linguistically accommodated alternatives to the STAAR assessment taken by some ELL students) in Biology and Algebra I, the results were even worse and did not improve from the 2012 STAAR-L assessments.

STAAR EOC	% ELL Students Unsatisfactory (2013)	% ELL Students Unsatisfactory (2012)
Algebra I	61%	54%
Biology	60%	60%

(Ex. 4259 at 125, 128; Ex. 4132 at 1; Ex. 4134 at 1-3.)

FOF 366. All of these STAAR passing rates are for the current lower "phase in" standard. This standard will be raised in the next couple of years. (Ex. 1085, Pompa Report, at 3; Ex. 4132 at 1, 3; Ex. 4134 at 1-3.)

FOF 367. **AEIS college-ready indicators.** ELL students also showed significant, chronic gaps on various AEIS indicators. In 2010-11, "all students" were more than twice as likely (30.3%) to complete advanced course/dual enrollment classes compared to ELL students (14.1%). Although 24% of all students in 2011 were tested in the AP/IB program, there were so few ELL students that the state report indicated "n/a" for ELL students. For the Class of 2011, approximately one out of every six ELL students was identified as a "College-Ready Graduate" using the TAKS-performance standard, compared to 52% of all students. (Ex. 4258 at 11.)

FOF 368. In most of the Plaintiff districts, fewer than 1% of ELL students in the Class of 2010 were considered College-Ready Graduates in both English Language Arts and Mathematics. (*See, e.g.*, RR22:132 (Edgewood ISD); Ex. 512, at Sec. I, p. 10 (Los Fresnos ISD); Ex. 925-W, at Sec. I (Richardson ISD); Ex. 543, at Sec. I, p. 10 (Abilene ISD).) Even in those Plaintiff districts where more than 1% of ELL students were considered College-Ready Graduates in both subjects, ELL students fared quite poorly, with all students being between five to nearly ten times more likely than ELL students to graduate as College-Ready Graduates using the TAKS performance standard. (*See, e.g.*, Ex. 589 at Sec. I, p. 11 (McAllen ISD, 11% of ELL vs. 51% of all students); Ex. 252, at Sec. I, p. 10 (Pflugerville ISD: 8% of ELL students vs. 55% of all students); Ex. 474, at Sec. I, p. 11 (Humble ISD: 10% of ELL students vs. 55% of all students); Ex. 667, at Sec. I, p. 11 (Fort Bend ISD: 7% of ELL students vs. 65% of all students); Ex. 1723, at Sec. I, p. 11 (Austin ISD, 7% of ELL students vs. 53% of all students).)

(c) TAKS

FOF 369. **TAKS met standard.** The outputs for the final two years of TAKS testing also demonstrated unacceptably low passage rates and large performance gaps. In 2011-12, only 24% of ELL tenth graders and 41% of ELL eleventh graders reached the TAKS met standard on all tests. (Ex. 11213.)

FOF 370. On the Spring 2013 TAKS Exit tests, ELL students in both grades 11 and 12 struggled to achieve the minimum "met standard" on all tests taken. Consequently, thousands of ELL students in Texas face the prospect of not graduating.

TAKS Exit Level All-Tests (2013)	% ELL Students Met Standard	% Non-ELL Students Met Standard
Grade 11	44%	88%
Grade 12	24%	41%

(*See* 2013 TEA TAKS Summary Report, "Grade 11 Primary" and "Exit Level Retest – Grade 12 (March 2013)," available at http://www.tea.state.tx.us/student.assessment/taks/rpt/sum/yr13/.)

FOF 371. **TAKS commended standard.** In 2010-11, only 7% of ELL students at all grades tested passed all tests at the commended performance standard, compared to 16% of all students who passed the same commended standard. (Ex. 1085, Pompa Report, at 3; Ex. 20.) The following year fewer than 1% of ELL tenth and eleventh grade students attained the commended level on All Tests taken, compared to 10% of non-ELL students. (Ex. 11213.)

(d) Retention

FOF 372. ELL students were also retained in their grades at much higher rates than non-ELLs. (Ex. 1085, Pompa Report, at 3-4; Ex. 4268.)

FOF 373. For the year 2010-11, ELL students in grades 7-12 were retained at a rate 244% greater than non-ELL students. (RR14:30-32 (referencing Ex. 4230 at 9); Ex. 1085, Pompa Report, at 3-4; Ex. 4268.) There has been little improvement in retention rates for ELL students since 2006-07. (Ex. 4152 at 41.)

(e) Dropouts and graduation rates

FOF 374. Similarly, ELL students continue to drop out of school at significantly higher rates and graduate at much lower rates than non-ELL students. For the Class of 2012, ELL students in bilingual or ESL programs were more than three times as likely to drop out of school compared to the student population as a whole. (Ex. 4269 at 73.) ELL students

also graduated at far lower rates, with only 61.6% graduating in 2012 compared to 87.7% for all students. (*Id.*)

FOF 375. These data also show little to no progress in closing the gaps between ELL students and the all-student category. Virtually all of the superintendents who testified in this case testified of similar difficulties in closing the achievement gaps between ELL and non-ELL students. However, all unequivocally agreed that ELL students can achieve on par with non-ELL students if provided the necessary resources and opportunities. (RR3:49-50; RR5:175; RR19:141-42, 145, 149; RR22:66-67; RR25:91-92; Ex. 5617, Reedy Dep., at 68-69; Ex. 3207, Salazar Dep., at 93, 100; *see also* RR15:113, 116-17, 169.) As Dr. Pfeifer testified, "When they [ELL students] have the resources, when I can put the additional help in front of them, . . . they thrive. They can learn. They are so smart. It's a matter of putting the academic pieces in front of them so they have access to it." (RR5:175.)

(f) The State's ELL expert witness was not qualified under *Daubert* standards.

FOF 376. Ms. Laura Ayala, the former director of ELL assessment, testified for the State Defendants regarding ELL student outcomes on state assessments and how the State tracks ELL student performance. While the witness clearly has served TEA ably, she does not have the qualifications to offer opinions about the drivers of ELL student performance, other than to report publicly available data on scores. She was not presented as an expert witness, nor would she qualify to be one under *Daubert* standards. The witness had no formal education in bilingual or ESL education. She has not published any peer-reviewed articles on ELL assessments or the performance of ELL students, and had not previously performed an analysis of ELL student performance similar to the one performed in this case. (RR35:64-66.)

FOF 377. This Court also questions the reliability of the State's methodology. Its witness acknowledged errors in the data (for example, the inclusion of students identified as "former ELLs" who, in all likelihood, were "never ELLs") and admitted that these errors would impact her analysis, although she was unsure to what degree. She also acknowledged the concept of under-identifying ELL students (whereby schools may not have identified students as ELL, but should have) but the State did not account for the effect that such under-identification would have on its analysis. The State's retention-rate data also did not include the lowest grade levels, where there is significant grade retention. (RR35:76-80, 89-90, 97-98.)

FOF 378. The State's TAKS data included only limited subject areas and excluded dropout rates, graduation rates, college-readiness indicators and the recent STAAR results. The analysis of ELL performance on TAKS did not control for the number of years students were in the ELL program or the knowledge of the English language that the various students brought with them into school. These factors likely would affect the performance of the former ELL student cohort. (RR35:66-67, 68-75.)

c. Economically disadvantaged and ELL students do not have access to the intervention strategies necessary to provide them with a meaningful opportunity to achieve a general diffusion of knowledge.

FOF 379. The poor performance of economically disadvantaged and ELL students, the substantial achievement gaps, and the troubling dropout and graduation rates noted above are not inevitable. Supported by a strong research base and expert testimony, superintendents from across the State testified that these students' chances of success can be significantly improved with appropriate intervention and support programs, including access to quality pre-K programs, smaller class sizes in the lower grade levels, quality tutoring programs, and parent engagement programs, among others. (*See, e.g., infra* Parts I.C.2.c.i – I.C.2.c.iv (FOF 384, *et seq.*); RR4:73-80; RR20:78, 105-06; RR19:64-65; *see generally* Ex. 1101, Belfield Report.)

FOF 380. The Court credits the extensive superintendent testimony that such services can be effective with their economically disadvantaged and ELL student populations, can reduce the dropout rate, and are necessary for districts to meet the needs of these students. (*See, e.g.* RR19:28-29 (referencing Ex. 6335 at 6).)

FOF 381. Similarly, superintendents testified about the unique educational needs of ELL students. These needs include qualified, experienced teachers, quality professional development for ELL teachers, high-quality preschool and extended instructional time for ELLs in addition to the regular instructional day, quality parental programs to foster parental engagement for ELLs, bilingual paraprofessionals to assist bilingual/ELL classrooms, and supports for ELL newcomers who have very unique needs. (*See, e.g.*, Ex. 4237 at 9; RR18:15-37; RR4:89, 91-94.)

FOF 382. Expert witnesses, including Ms. Pompa (who served as an expert witness in *WOC II* and *U.S. v. Texas*, No. 6:71-CV-5281 (E.D. Tex. 2010)) and Dr. Izquierdo, confirmed this superintendent testimony. (Ex. 1084; Ex. 1103.) Ms. Pompa and Dr. Izquierdo discussed research that establishes that these are essential elements of a quality bilingual/ESL education that ELL students need in order to achieve the more rigorous standards established by the State and to achieve their full potential. (RR14:12-21, 123-227.) The Court finds the testimony of Ms. Pompa and Dr. Izquierdo related to bilingual/ESL programs and ELL students to be credible and their opinions to be reliable. As Dr. Belfield explained, sound research also confirms that programs such as tutoring, summer school, parental outreach, and the creation of small learning communities in high school increase the high school graduation rate for economically disadvantaged students. (*See, e.g.*, Ex. 1101, Belfield Report, at 11-14; RR4:73-76; RR15:24; RR4:73-80.)

FOF 383. The interventions referenced by these superintendents and experts (and described in greater detail below (*see infra* Parts I.C.2.c.i – I.C.2.c.iv (FOF 384, *et seq.*), are not part of a "wish list"; rather, they are necessary interventions, without which these populations cannot achieve a general diffusion of knowledge. However, instead of bolstering support to help implement the necessary programs and interventions for economically

disadvantaged and ELL students, the State chose to cut funding for those programs, forcing districts to reduce, and in many cases eliminate, the support so desperately needed by their at-risk students.

i. Economically disadvantaged and ELL students do not have access to high-quality pre-kindergarten programs to help them overcome the educational obstacles they face.

FOF 384. Access to quality preschool programs is critical for the success of economically disadvantaged and ELL students. (Ex. 1074 at 2-3; Ex. 15; Ex. 5630, Scott Dep., at 30-32, 42-44; RR11:186-88; Ex. 4224-S, Cervantes Dep., at 186; Ex. 1074, Barnett Report, at 14-15.) Superintendents, expert witnesses, and even the former Commissioner of Education all convincingly testified that these programs have been shown to increase test scores and graduation rates, and to reduce grade retention, behavioral problems, delinquency, and crime for ELL and economically disadvantaged students. (RR11:140; Ex. 1074 at 2-3; *see also, e.g.*, RR19:185; Ex. 5613, Youngblood Dep., at 23-24; RR5:172; RR8:103-04; RR20:50-56, 74-75; RR24:115-17, 195-96; Ex. 3208, Williams Dep., at 210-11.) The benefits of quality pre-K programs for all students are discussed in greater detail in Part I.C.3.b (FOF 550, *et seq.*) below.

FOF 385. It is well established that low-income and ELL students begin school far behind their non-disadvantaged peers, in part because these students often do not receive basic educational experiences at home. (Ex. 1074 at 14; RR4:72-73; RR5:172-73; RR8:103-04; RR20:74-75; Ex. 3208, Williams Dep., at 210.) Many superintendents in this case emphasized that pre-K programs, particularly full-day pre-K, are necessary to address those deficits. (RR5:172; RR8:103-04; RR20:55-56, 74-75; Ex. 3208, Williams Dep., at 210; RR22:154-56; RR37:207-08.) They also emphasized that access to preschool for three-year olds is important to compensate for life experiences that low-income children do not have in the home but need in order to be school ready. (*See, e.g.*, RR3:142-43.)

FOF 386. Fresno ISD Superintendent Dr. Salazar testified that the more educational experiences schools are able to offer at-risk students at the beginning of their academic years, the less remediation is needed in later years. (RR24:117-18.) The learning gap is smallest when children are in preschool, but without quality early childhood programs, the gaps continue to widen as students move through the "continuum of the school system" and fall farther behind their peers. (RR24:177-18; RR5:174; *cf.* RR19:23-24 and FOF 291 *supra*.)

FOF 387. Full-day pre-K is especially important for low-income families, because some children in low-income working families are unable to participate in half-day programs when their families cannot manage the multiple arrangements required to accommodate parents' work schedules. Instead these children are likely to attend poor quality child care, which does little to enhance, and may hinder, their development. (Ex. 1074, Barnett Report, at 11.) Superintendents agreed that a full-day program is needed to close the achievement gap for economically disadvantaged and ELL students. (RR5:43.)

FOF 388. Expert testimony and research confirm the benefits of high quality pre-K for economically disadvantaged and ELL students. Dr. Steven Barnett, Director of the National Institute for Early Education Research, testified regarding the research base associated with the impact of quality preschool education. When children begin kindergarten, the achievement gap between low-income and ELL students and non-disadvantaged students is approximately one standard deviation. (RR11:143.) Research shows that disadvantaged children are often as much as eighteen months behind their peers in language development when they enter kindergarten. (RR11:141-42.) High-quality prekindergarten programs are a particularly important means to improve the developmental and educational outcomes for low-income and ELL students and to close the achievement gap. (RR11:141-43; Ex. 1074 at 3.) Such programs have been shown to improve cognitive development by half of a standard deviation – enough to cut in half the school readiness gap for children living in poverty. (Ex. 1074 at 2-3.)

FOF 389. A study of New Jersey's high-quality Abbott preschool program indicates that the achievement gap between disadvantaged and non-disadvantaged students closed by at least one-quarter in one year, and by 40% in two years of preschool through second grade. (Ex. 1074, Barnett Report, at 5-6.) Long-term gains from the most intensive preschool programs can close the achievement gap by as much as one-half for children living in poverty. (*Id.* at 3; RR11:139-40; *see also* Ex. 3201, Witte Dep., at 24-26.)

FOF 390. Dr. Barnett testified that intensive, quality programs, like the kind discussed here, are essential to achieve the types of results reflected in the research and help at-risk children avoid the cycle of failure. (RR11:146-47; Ex. 1074 at 4-5, 17.) To be effective, early childhood education programs require well educated teachers and trained specialists to support, monitor, and coach teaching practices.

FOF 391. Early intervention is also especially important for ELL students, because that is when they have the greatest capacity to acquire new language and literacy skills. (RR11:141-43; Ex. 1074 at 12-13.)

FOF 392. Ordinary day care and even Head Start Programs do not provide the large, long-term substantive gains in cognitive and social development that high-quality pre-K programs do. (RR11:148-50; Ex. 1074, Barnett Report, at 5.) Effective preschool programs are part of the public school system and have more highly-educated, better-paid teachers than Head Start and child care. (RR11:149; Ex. 1074, Barnett Report at 8.)

FOF 393. Former Commissioner Robert Scott reinforced expert opinions about the importance of quality, full-day pre-K programs for economically disadvantaged and ELL students, testifying that they were "critical programs that support student progress from pre-K through grade 12." (Ex. 5630, Scott Dep., at 31-32, 43; Ex. 15.) No State witness could credibly dispute testimony regarding the deficiencies in Texas's pre-K programming, or testify whether the amount allotted to districts is sufficient to provide an adequate pre-K program. (RR34:84-85, 88-89.)

FOF 394. Intervenors' expert Dr. Eric Hanushek agreed that high-quality pre-K programs can provide low-income and ELL students an important educational jump start. (RR37:208.) Gina Day, the State's Director of Early Childhood Education, also agreed that high quality preschool programs help prepare ELL and low-income students to meet state standards. (RR34:84-85.)

FOF 395. Despite the near-unanimous support for quality pre-K programming, the Legislature not only failed to make the necessary investments in these programs over the years, but it has eliminated millions of dollars for those programs. (Ex. 1074, Barnett Report, at 14; RR11:184-85; RR34:13.)

FOF 396. Even though the State seemingly acknowledges the importance of pre-K for at-risk students by limiting its half-day pre-K funding to economically disadvantaged and ELL children, among others, it does not provide sufficient funding for quality pre-K for all economically disadvantaged and ELL children. (RR34:12-13, 93; RR11:186-87; Ex. 1074, Barnett Report, at 15; *see also infra* Part I.C.3.b (FOF 550, *et seq.*).) Even before the state budget cuts, in 2010-11, state funding per child already had fallen to $3,761 per child, less than the inflation-adjusted funding in any of the three prior years. In 2010-11, Texas provided state funding to serve only 52% of the state's four-year-olds and 6% of its three-year-olds. (RR11:184.)

FOF 397. Texas also has retreated from its previous commitment to fund a full-day program. (Ex. 1074, Barnett Report, at 14; RR11:184-85.) In 2011, the Pre-Kindergarten Early Start Grant, which had provided approximately $100 million annually, was discontinued (and was not fully restored in 2013). (RR34:27-28, 92; RR63:108-10 (referencing Ex. 20216-A); *see also infra* I.C.2.d.i; Ex. 20216-A at lines 80-82, 112.) Today, Texas funds only half-day pre-K as part of public education despite the rising academic challenges. (Ex. 1074, Barnett Report, at 14.)

FOF 398. Because funding was already limited even before the cuts, the 2011 budget cuts hit early childhood programs, and the students they serve, hard. In Aldine ISD, in order to maintain its commitment to provide full-day pre-K for its poorest students, the district had to raise the pre-K class-size to 24:1. (Ex. 6339, Bamberg Dep., at 61-62; Ex. 364 at 5.) Many districts were forced to reduce their full-day programs to half-day programs to avoid other harmful cuts, even though such programs are critical in closing achievement gaps and improving performance among economically disadvantaged children. (*See, e.g.*, RR5:43; RR22:154-56; Ex. 3201, Witte Dep., at 24-25; Ex. 5613, Youngblood Dep., at 23, 54-55; RR8:121-28, 131; Ex. 6341, Frost Dep., at 23-26 (referencing Ex. 368 at 9).) Van ISD, for example, was forced to reduce its full-day program to half-day in order to avoid cutting teacher positions in the district. (Ex. 3201, Witte Dep., at 24-25.) The Superintendent of Alief ISD testified that restoring full day pre-K would be the district's first priority if it had adequate funds. (RR8:121-28, 131.)

FOF 399. Many other districts could not afford full-day pre-K even before the budget cuts. For example, Dr. Pfeifer testified that Everman ISD could not afford full-day pre-K because

it does not have sufficient classroom space or funds to hire additional teachers. (RR5:175-76.)

FOF 400. The budget cuts forced districts to reduce access to pre-K for economically disadvantaged and ELL students in ways other than the reduction to half-day pre-K. For example, Edgewood ISD, which is over 90% economically disadvantaged, now has a waiting list of 165 students for full-day pre-K and lacks the approximately $1.2 million dollars required to provide those seats. (Ex. 4237 at 11; RR22:152-53.) Alief ISD similarly has a wait list of qualified students. (RR8:103-04, 124.) Still other districts, such Humble ISD and Weatherford ISD, had to eliminate their preschool program for eligible three-year olds. (RR4:13-14; Ex. 6337, Hanks Dep., at 35-38.)

FOF 401. The budget cuts and overall inadequate funding have also negatively impacted the pre-K programs that still exist. Many pre-K programs now have higher class sizes than recommended, and a lack of resources to recruit and retain high quality teachers, and provide quality professional development, continual monitoring, and high quality materials. (*See, e.g.*, RR4:73-74; Ex. 4237 at 9, 11; RR22:154-56; Ex. 1074, Barnett Report, at 10; RR11:161-62; RR8:103-04, 121-28.) In Everman ISD, for example, the class-size ratio went from 18:1 to 22:1 because the district had to cut classroom aides as a result of budget cuts. (RR5:185.) Adequately funding these essential elements of pre-K programs would help to increase student achievement, especially for low-income and ELL students. (*See, e.g.*, RR4:73-74; Ex. 4237 at 9, 11; RR22:154-56.)

ii. Economically disadvantaged and ELL students do not have access to smaller class sizes and the individualized attention necessary to acquire a general diffusion of knowledge.

FOF 402. Smaller class sizes have been shown to produce significant benefits in student achievement, and are particularly important for closing the achievement gap for economically disadvantaged and ELL students. (*See, e.g.*, Ex. 1101, Belfield Report, at 11-14; RR4:73-74.) Small class sizes increase student attentiveness and allow teachers to better tailor their lessons toward their students' specific needs, which improves student learning. (RR22:209-17; RR15:123-128.)

FOF 403. The well-known Tennessee's Student Teacher Achievement Ratio ("STAR") experiment – discussed in greater detail in Part I.C.3.c (FOF 562, *et seq.*) below – is a large scale, randomized trial involving class size reduction in kindergarten through third grade. (Ex. 5520, Odden Report, at 4; RR17:197-98.) In this experiment, students and teachers in seventy-nine Tennessee elementary schools were randomly assigned to small or regular-sized classes from 1985 to 1989. (Ex. 1079, Schanzenbach Report, at 2.) Because the STAR experiment employed random assignment, any differences in outcomes can be attributed with great confidence to being assigned to a smaller class size. (*Id.*)

FOF 404. The STAR experiment found that small classes in lower grades led to improved student performance for all students, but that the impact of small class size was greatest for

students from low-income and minority backgrounds.[39] (Ex. 5520, Odden Report, at 4; Ex. 1079, Schanzenbach Report, at 2.) Research also has shown that students who attend smaller class sizes at the elementary level graduate high school at higher rates than those assigned to larger classes, but the effects on minority and low-income children are even greater. (Ex. 1101, Belfield Report, at 11; RR15:33.)

FOF 405. Even at the secondary level, smaller class sizes in high school are needed for economically disadvantaged and ELL students to get the students the essential individualized instruction and to help build the students' self-esteem. (RR22:158-159.) As Edgewood ISD Superintendent Jose Cervantes testified, in a regular classroom, "you have your special ed students, you have your bilingual students, you have your economically disadvantaged students, you have your dropouts that came back, you have your pregnancy – your pregnant students in there, and to try addressing 28 [students] is almost impossible." (RR22:160-61.)

FOF 406. Experts for both the State Defendants and Intervenors agreed that class size has beneficial impacts on student learning for high need students such as economically disadvantaged and ELL students. (RR37:163-64; RR26:81.)

FOF 407. Superintendents and teachers confirmed that small class sizes are particularly important for economically disadvantaged and ELL students, as well as special education and elementary school children, because these students need more one-on-one attention than other students. (*See, e.g.*, RR4:258-60; Ex. 5618, Wiggins Dep., at 53-55; Ex. 5614, Patek Dep., at 33-37; Ex. 5613, Youngblood Dep., at 17-22, 34-35; RR4:73-74; RR19:50-52.) As San Benito CISD teacher Krishtel Aguilar-Diaz testified, having a smaller class size and a teacher's aide improves student engagement and accountability and allows students to benefit from more tailored lessons, individualized instruction, and additional monitoring, which is especially important when working with students with varying academic and linguistic levels. (*See, e.g.*, RR22:209-17.) Richardson ISD Superintendent Dr. Kay Waggoner testified that economically disadvantaged students enter classrooms far behind in school readiness and that "there's a great deal of remediation [] and effort and strategies that goes into ensuring that all of our [students] are successful." (RR4:259.) She explained that smaller class sizes not only help to close achievement gaps but also promote student engagement, which is negatively impacted when you have more students in the classroom. (*Id.*)

FOF 408. The State's own law governing its "Optional Extended Year Program" also acknowledges the importance of class size reduction for struggling students. TEX. EDUC. CODE § 29.082. Under this statute, for students enrolled in an extended year program in grades K-11 and identified as not likely to be promoted to the next grade level for the succeeding year or students in grade 12 who are not likely to graduate before the

[39] Additional benefits of smaller class sizes for all students, and the research supporting such benefits, are discussed in greater detail in Part I.C.3.c (FOF 562, *et seq.*) below.

beginning of the succeeding, "[a] school district may not enroll more than 16 students in a class . . . ." *Id.*

FOF 409. Rather than invest in class size reductions, Texas has taken the opposite tack. As a result of the 2011 budget cuts, 30% of elementary schools across the state were forced to seek class size waivers from the State's 22:1 mandate in kindergarten through grade four. (Ex. 5630, Scott Dep., at 394-95 (referencing Ex. 31 at 1).) In 2011-12, the TEA granted nearly 8,600 waivers. (Ex. 5630, Scott Dep., at 391-92 (referencing Ex. 30 at 3).) Many districts with high percentages of economically disadvantaged and ELL students were forced to seek large numbers of class size waivers. For example, Abilene ISD went from one discretionary class size waiver to over 100 forced waivers due to inadequate funding. (RR19:50 (adding that class sizes are "significantly too high" in grade 5 also); *see also* RR8:125-26, Ex. 6339, Bamberg Dep., at 61-62; Ex. 364 at 5.) Edgewood ISD, one of the poorest districts in the state, submitted 36 waivers. (RR22:158-59.) San Benito ISD requested approximately 35 class size waivers. (RR4:83.) Van ISD was forced to cut twenty-two teachers and raise its class sizes from 22 to 24 students in grades K-4, from 24 to 28 students in grades 5 and 6, and to 30 students in grades 7-12. (Ex. 3201, White Dep., at 23-24.) Richardson ISD, with an increasing ELL and economically disadvantaged student population, requested 291 waivers. (RR5:32-34.) In Alief ISD, pre-K class sizes for four year olds were increased to twenty-two, a choice the superintendent deemed "harmful" to these students. (RR8:123-25.) Alief ISD also had to seek waivers in grades K-4 and increased class sizes for all other grades. (RR8:125-26.)

FOF 410. Dr. Zamora recognized that class size reduction is a crucial strategy (in a broader comprehensive plan) to help low-income and ELL students "attain the learning expectations set by the state." (Ex. 20062A, Zamora Report, at 25.) His study showed that the additional funds provided by the State under the compensatory and bilingual education weights would not cover the cost of reducing class sizes to the numbers necessary to improve student learning and close the achievement gaps under the prevailing research. (*Id.* at 25-31.)

FOF 411. The Court concludes that smaller class sizes are one important strategy for closing the achievement gap and getting low-income and ELL students on track to graduate college and career ready. Instead of providing resources to lower class sizes, however, the State decided to do the opposite. (*See infra* Part I.C.3.c.ii (FOF 572, *et seq.*).)

iii. Economically disadvantaged and ELL students require other educational programs and additional forms of support to acquire a general diffusion of knowledge.

FOF 412. Superintendents and experts alike testified that other high quality interventions are essential to both increase the academic performance of economically disadvantaged students and close the achievement gap. (*See infra* Parts I.C.2.c.iii(a) – I.C.2.c.iii(f) (FOF 414, *et seq.*).)

FOF 413. Trained teachers, extended learning time, small learning communities, counseling, dropout prevention programs, and parent engagement programs were all seen as necessary elements of a basic, adequate education for ELL and economically disadvantaged students.

(a) Trained teachers

FOF 414. Higher salaries can help schools recruit and retain teachers in high need settings. (Ex. 1122, Vigdor Report, at 21-26; Ex. 3188, Baker Report, at 105.) The types of students a district serves may influence the desirability of working in a district, and as a result, districts that serve students who present extra challenges will have to pay more to attract and retain high quality teachers. (Ex. 1122, Vigdor Report, at 21-26; Ex. 3188, Baker Report, at 10.) Schools serving predominantly low income and minority populations must pay a higher price to recruit and retain comparable numbers of teachers with comparable qualifications. (Ex. 1122, Vigdor Report, at 21-26; Ex. 3188, Baker Report, at 10, 49-50.) Many superintendents from such districts testified that they lose large numbers of teachers after the first or second year to neighboring districts that have the funding to pay higher salaries and that have an easier population of students to teach. (Ex. 3203, Knight Dep., at 24-25; RR20:83-85; RR24:205-06; Ex. 3200, Wallis Dep., at 32-36; Ex. 3199, R. Knight Dep., at 27-31; Ex. 3198, Garza Dep., at 49-51; Ex. 3204, Dupre Dep., at 31.)

FOF 415. More than half of Texas's ELL students are educated through bilingual programs. Effective bilingual programs require teachers who are highly competent in the subject matter they teach and are knowledgeable about bilingual children's language development. (Ex. 1085, Pompa Report, at 9.) Moreover, because ELLs (particularly those in secondary school) are often placed in regular classrooms, all teachers must possess the knowledge and skills to deliver instruction targeted at supporting the linguistic and academic achievement of ELLs. (Ex. 4233-B, Coultress Dep., at 107; Ex. 4224-T, Givens Dep., at 146-47.)

FOF 416. High-quality professional development significantly aids in effectively instructing ELL students. Professional development allows teachers to (1) update their subject knowledge, (2) learn new teaching techniques, and (3) share expertise among teachers.

FOF 417. Coaches and mentor teachers provide important training and feedback to teachers who instruct ELL students. Coaching and mentoring each require additional time and resources. (Ex. 1085, Pompa Report, at 13; Ex. 1104, Izquierdo Expert Report, at 17-18; RR18:33.)

FOF 418. Districts expressed the need for professional development and training to properly implement second language acquisition and ESL/Sheltered Instruction Observation Protocol ("SIOP") strategies. (Ex. 1345 at 3, 6; RR22:148-50 (Edgewood ISD).)

FOF 419. Despite the importance of qualified, experienced teachers in high need settings, the State's budget cuts further limited districts' abilities to recruit and retain teachers, and

even forced some districts to significantly reduce their teaching staff. For example, Dr. Chambers of Alief ISD testified that the district had to reduce its teaching staff by 100. (RR8:121.) Mr. Witte, the superintendent of Van ISD, testified that the district had to reduce its teaching staff by 14%, or 22 teachers. (Ex. 3201, Witte Dep., at 22.)

(b) Extended learning time

FOF 420. Texas school districts also need funding for summer school and after-school and extended-day programs to remediate economically disadvantaged students who have fallen behind in course work or failed the STAAR exam(s). (RR19:122-24, 153-54, 175-76; RR20:77-79; Ex. 3198, Garza Dep., at 13-14; Ex. 3206, French Dep., at 35, 58-59, 63-65; Ex. 6337, Hanks Dep., at 67.)

FOF 421. The Humble ISD Superintendent, Dr. Sconzo, explained that economically disadvantaged students do not receive reinforcement of instruction at home, and need additional tutoring opportunities outside of normal school hours and other extended learning opportunities to succeed. (RR3:143.)

FOF 422. Because the State substantially reduced SSI funding (and did not restore such funds in 2013), many school districts were forced to reduce or eliminate such programs. (Ex. 6342, Ray Dep., at 28-29; Ex. 6334, Sconzo Dep., 227-28; Ex. 6337, Hanks Dep., at 252-53; RR63:109-10 (referencing Ex. 20216-A).) Mr. Limon testified that as a result of the budget cuts his district was forced to make, approximately 10% of the students in San Benito CISD (who are predominantly economically disadvantaged) do not have access to the tutoring services they need to get them up to speed and reinforce the concepts they are learning in the classroom. (RR4:75-77.) Similarly, approximately 500 students need additional support through summer school but do not have access because the district lacks the funds to provide sufficient summer programs. (*Id.* at 78-79.) Edgewood ISD, which is approximately 98% economically disadvantaged, had to eliminate one of its summer school programs, and reduce the summer school week from five days to four. (RR22:143.) When Alief ISD lost its SSI funds, it had to reduce its after-school programs by 60-70%. This eliminated additional support for students who were struggling in various subjects, which was designed to prevent them from falling further behind. (Ex. 4224-L, Chambers Dep., at 33-34.) Likewise, Abilene ISD was forced to eliminate its Extended School Program, which provided students with individualized attention and targeted remediation needs. (RR19:26-30 (referencing Ex. 6355 at 4-6), 38-39 (referencing Ex. 6355 at 9), 30-33 (referencing Ex. 6355 at 7).)

FOF 423. Other school districts have temporarily funded such programs with federal or private grant money, but once the grants expire, they will be unable to maintain the programs without increased state aid. (RR19:30-32; Ex. 6341, Frost Dep., at 41-42.)

FOF 424. Additional time, in the form of tutoring sessions, after-school programs, and summer school with trained staff, are beneficial to supplement the existing instructional time for ELL students. These beneficial interventions require additional resources that often are not available. (Ex. 1104, Izquierdo Report, at 22; RR34:172-74; RR18:31-34, 79-80;

RR4:85-86, 89-90; Ex. 4237 at 8-9; RR22:142-43; Ex. 4224-L, Chambers Dep., at 16-17, 19; Ex. 3198, Garza Dep., at 118; RR24:146-49.) To the extent these schools offer any extended learning programs, many students are prevented from participating, because the schools do not have the resources to provide transportation to and from the programs. (*See, e.g.*, Ex. 1345, Izquierdo Site Visits Report, at 4-5, 7-8; RR15:175; RR4:75-79; RR18:34-41.)

FOF 425. ELLs who come to school with the highest risk factors (particularly those who come to the United States in later grades and those with interrupted schooling in their native country) (*see supra* Part I.C.2.b.i (FOF 333, *et seq.*)) require extended time for learning. Adding more weeks to the school year or more hours to the school day can capture this essential time English learners need to learn complex content and academic English language skills. (Ex. 1085, Pompa Report, at 13.)

FOF 426. Special programs that develop college and career readiness for ELL students, such as the Quality Teaching for English Learners ("QTEL") program in Austin, have demonstrated success. This program was funded through an $8.4 million grant from a private foundation. (*Id.* at 7; RR19:197-99.)

(c) Small learning communities and other interventions

FOF 427. Small learning communities in high school create needed personalization and monitoring, which low-income students may not otherwise receive at home. (RR15:37-38; RR19:27-28.) Technology and instructional software programs and alternative high schools are important tools to meet the individualized needs of at-risk students. (RR19:26-29 (referencing Ex. 6355 at 4-6); RR20:80-81, 100; RR18:154-55.)

FOF 428. Dr. Sconzo explained that smaller environments are necessary to provide the type of attention and individualization that economically disadvantaged students do not receive at home but are necessary to prepare them academically. (RR3:142-43.)

FOF 429. Districts also need tutors, academic coaches, reading specialists, and instructional aides to help students who are falling behind. (*See, e.g.*, RR24:135; Ex. 5616, Waggoner Dep., at 12-13; Ex. 5615, Waddell Dep., at 62-64.) These types of educational support personnel can provide individualized attention to struggling and at-risk students, which helps students engage in the learning process and enables them to understand difficult concepts and catch up with their peers. (RR25:89-91, 108-11; Ex. 6345, Folks Dep., at 35-36; Ex. 6341, Frost Dep., at 25-28; Ex. 6335, Cain Dep., at 90-91; Ex. 6344, Carstarphen Dep., at 19-20, 83-85; Ex. 6343, Schroder Dep., at 17.)

FOF 430. As described by Dr. Chambers, economically disadvantaged students often need social support in smaller settings, not just academic support, to be academically successful. (RR8:104.) The Superintendent of San Benito ISD, Mr. Limon, testified that one-on-one support allows teachers to better individualize their methods to focus on an individual student's specific needs, and the one-on-one attention prevents struggling students from

giving up by lending much needed confidence. (RR4:75-76.) Similarly, Dr. Cervantes of Edgewood ISD noted that, because of their personal experiences, economically disadvantaged students often lack self-esteem which can be remediated and overcome with more individualized attention. (RR11:156-57.)

FOF 431. The state budget cuts forced many districts to drastically reduce the size of their educational support staff. (*See* RR25:106-08; Ex. 6345, Folks Dep., at 35-36; Ex. 6341, Frost Dep., at 25-28; Ex. 6336, Burns Dep., at 35-36; RR19:48-50, 162; Ex. 6334, Sconzo Dep., at 48-49.) For example, of the approximately 100 teachers Alief ISD had to cut, many were response-to-intervention teachers, who spent a majority of time working with economically disadvantaged and other at-risk students. (RR8:28, 121-22.) Approximately 65% of the students in Alief ISD were no longer able to benefit from those programs following the budget cuts. (Ex. 4224-L, Chambers Dep., at 35-36.)

FOF 432. Alief ISD also had to cut approximately 61 teaching aides and paraprofessionals, who were used to create smaller group settings for at-risk students. (RR8:28, 122.) Van ISD cut 14% of its teaching staff, or 22 teachers, and approximately 14 aides. (Ex. 3201, Witte Dep., at 22.) Van ISD's aide ratio went from almost one per classroom to one for every two classrooms. These cuts in Van ISD increased class sizes and prevented the differentiation of teaching instruction for at-risk students. (*Id.* at 23-24.) Many school districts are unable to provide the support and individualized attention that at-risk students need because they lack sufficient funding. (*See, e.g.*, Ex. 6341, Frost Dep., at 39; Ex. 6335, Cain Dep., at 90-91.)

(d) Counseling

FOF 433. ELL and economically disadvantaged students both need quality counseling services. For example, for economically disadvantaged students who have experienced physical abuse in their own homes or civil unrest in their native countries, Dr. Salazar explained that counselors are necessary to help students cope with their trauma before they "can focus on reading and math." (RR24:126-27.)

FOF 434. Dr. Salazar also explained that most economically disadvantaged students come from families without college graduates, and do not have anyone to explain what postsecondary opportunities are available. (*Id.*) Counselors provide that awareness to keep students focused on long-term goals and prevent them from dropping out. (*Id.*)

FOF 435. Counselors are also necessary to help schools identify and address any other difficult family circumstances inhibiting students' performance and school attendance. For example, during an unexpected freeze in Los Fresnos ISD, family engagement counselors investigated the reason for a sudden drop in attendance, and discovered that students were not coming to school because they did not have working water heaters at home. (*Id.*) Counselors then worked to find product and service donations to secure heat for the families and the continued attendance of the students. (*Id.*) Due to budget cuts, however, the district had to eliminate family engagement counselors. (RR24:133.)

FOF 436. Counselors help determine which ELL students require more specialized services and provide long-term ELLs with the intensive language and academic supports they need to graduate college ready. Bilingual counselors help address the needs of ELL students and their parents. (Ex. 1085, Pompa Report, at 12; RR24:126-29, 132-34.)

FOF 437. Counseling services and ongoing training for counselors in the area of ELL schooling, however, are absent or lacking in many districts due to lack of funding. (*See, e.g.*, Ex. 1345, Izquierdo Site Visits Report, at 4, 7.)

FOF 438. Student-to-counselor ratios in many districts across the state have been increasing since 2009. (*See infra* FOF 579.) In Los Fresnos ISD, the district had to cut back from 2 counselors at each elementary school to 1, making the student-to-counselor ratio as high as 800 to 1. (RR24:133.) Edgewood ISD, which is over 95% economically disadvantaged, also had to cut counselors at the high school level. (RR22:156.)

FOF 439. The reduced counseling services particularly impact economically disadvantaged students, who are more likely to face difficult family circumstances inhibiting their performance, are less likely to have parents with an active interest in their educational trajectory, and are more likely to need help from outside the family in applying for colleges and financial aid. (Ex. 1122, Vigdor Report, at 29; Ex. 3207, Salazar Dep., at 40-45; RR24:126-27.)

(e) Drop-out prevention

FOF 440. Dropout prevention programs for ELL students have been shown to be effective and are necessary to address the high dropout rate of ELL students in Texas (RR14:69-70 (referencing Ex. 4230 at 29); Ex. 1085, Pompa Report, at 13), but these programs, like other interventions, require additional funding. These programs have been reported to cost in the range of $1,200 to $1,400 per student. (Ex. 4231 at 13.) Despite the need for such programs, many districts do not have the funds to establish or sustain effective dropout prevention programs. (*See, e.g.*, RR18:52-53.)

FOF 441. Superintendents testified that budget cuts forced them to cut back on drop-out prevention efforts. Edgewood ISD, for example, had to eliminate all of its campus interventionists, whose role was to reach out to at-risk students, and provide support to keep them in school. (RR22:151-52; Ex. 4237 at 7.)

(f) Parent engagement

FOF 442. Schools with a high percentage of economically disadvantaged students need outreach programs and parent liaisons to involve families in the education of their children. (RR20:75, 79-80; RR24:127-29.)

FOF 443. In addition, parental involvement in ELL students' learning is important to the students' success, but engaging parents of ELLs in their children's education can be challenging for schools. Although parents of ELLs generally support their children's education, they

may not understand the U.S. school system. Furthermore, parents with limited English language skills often hesitate to communicate with teachers and administrators at schools in which no one speaks their language. Similarly, teachers and administrators may have no familiarity with the language, culture, and values of ELL students' families, and therefore often cannot effectively involve the parents. Effective parent engagement requires resources which are not currently available. (RR14:73-75 (referencing Ex. 4230 at 32, 33); Ex. 1085, Pompa Report, at 14; Ex. 4231, Pompa Report, at 30; RR4:86; Ex. 3206, French Dep., at 86-87; Ex. 3198, Garza Dep., at 119-21; RR24:127-29, 133-34.)

FOF 444. To encourage effective parental engagement, districts require additional parent liaisons and parent programs to create awareness of current policies, conduct home visits and outreach, and foster parental support of student educational progress. (*See, e.g.*, Ex. 1345, Izquierdo Site Visits Report, at 4, 7; RR22:152; RR14:155-56.)

FOF 445. Los Fresnos ISD utilized family engagement counselors funded by grants as part of its dropout recovery efforts at the high school level beginning in ninth grade. These counselors acted as liaisons with identified families. They developed a relationship with a family and understood its needs. Los Fresnos ISD had this program for two years and saw excellent results, but the program had to be discontinued for lack of funding. (RR24:127-29.)

iv. ELL students require additional forms of support to address their unique challenges.

FOF 446. ELL students have other unique needs. In addition to the interventions discussed above, appropriate and effective programs for ELL students also require at a minimum: (1) high-quality instructional materials and technologies; (2) adequately trained teachers and administrators who have access to ongoing, high-quality professional development; (3) extended time to learn, such as additional tutoring and high-quality after-school and summer school programs; (4) support services including counseling, dropout prevention, and programs for ELL students with disabilities; (5) high-quality pre-school programs geared toward ELLs; (6) curriculum aligned with state standards; and (7) parent engagement programs. (Ex. 4230 at 11; RR14:36, 133-34 (referencing Ex. 4231 at 12); Ex. 1104, Izquierdo Report, at 8-10, 18-20, 22-24; RR15:144-45, 172-73; RR34:163-64; Ex. 4233-B, Coultress Dep., at 84-86, 106-08, 110, 181-82; Ex. 4224-P, Kincannon Dep., at 20-21.) These elements do not stand in isolation but, instead, are part of a comprehensive program to help ELL students succeed in the classroom and later on in life. (Ex. 4230 at 11; RR14:36, 133-34 (referencing Ex. 4231 at 12); Ex. 1104, Izquierdo Report, at 16; RR15:144-45, 172-73; RR34:163-64; Ex. 4233-B, Coultress Dep., at 84-86, 106-08, 110, 181-82; Ex. 4224-P, Kincannon Dep., at 20-21.)

FOF 447. Dr. Izquierdo conducted qualitative research interviews of seven to eight hours each in five of the Edgewood school districts to determine the extent to which the districts had in place all of the elements of an adequate bilingual program. (RR14:123-25,150; Ex. 1345, Ex. 4231 at 28.) Dr. Izquierdo's investigative research and the testimony from the Edgewood districts and other Plaintiff districts showed that the districts were not able to

implement many of the basic components of a quality bilingual program at an adequate level and these districts are struggling to meet the needs of ELLs.

FOF 448. The deficiencies included: (1) a lack of quality ongoing professional development; (2) a lack of materials such as incomplete sets of textbooks and technologies for ELLs; (3) a lack of resources needed to provide high quality preschool and extended instructional time for ELLs in addition to the regular instructional day; (4) a lack of quality parental programs for parents of ELLs; (5) a lack of bilingual paraprofessionals adequately assigned to bilingual/ELL classrooms; (6) a lack of bilingual/ELL teachers to support ELL newcomers who have very unique needs; and (7) the use/misuse of bilingual teachers in combined classrooms of regular English speaking students and ELLs who need instruction in their first language, thus creating a very difficult instructional and management situation for the teacher. (*See, e.g.*, RR14:151-56 (referencing Ex. 4231 at 30); Ex. 1345, Izquierdo Site Visits Report, at 2; *see also* Ex. 4224-S, Cervantes Dep., at 184-85; RR18:15-34; RR4:89-90, 95; *see also infra* Part I.C.7.d (FOF 1091, *et seq.*).)

FOF 449. Two of these interventions for ELL students – materials and technology, and proper support for ELLs with disabilities – are discussed in greater detail below.

(a) Sufficient materials and technology.

FOF 450. High-quality materials in both English and the students' native language are essential to the academic success of ELLs and are often the key link between the student and the curriculum. (RR5:178-79.) For ELLs, these materials bridge the gap between languages and help them understand complex ideas. Important materials for ELLs include (1) visuals to learn new vocabulary, (2) bilingual dictionaries or picture dictionaries for younger students, and (3) leveled readers, charts, instructional games, and interactive digital technology. The lack of adequate instructional materials can have a devastating impact on ELL student achievement. (RR14:49-56 (referencing Ex. 4230 at 18); Ex. 1085, Pompa Report, at 7-8; RR18:12-13, 18-19, 21-26, 28.)

FOF 451. ELL student learning is greatly aided when libraries are equipped with books in the ELL students' home languages. Curriculum materials in these same languages are often necessary so that parents can provide additional support in the home language. (Ex. 1104, Izquierdo Report, at 23-24.)

FOF 452. In Texas, the majority of ELL children are also low-income and are thus less likely than other students to have computer and Internet access at home, making access at school even more important. Many schools do not have sufficient computers for ELL students, despite persuasive evidence that computer technologies, such as language recognition and response programs and interactive software, enhance ELL student learning. (Ex. 1085, Pompa Report, at 8; Ex. 1104, Izquierdo Report, at 24; RR15:157; RR18:11-12; RR14:38-39.)

FOF 453. Due to limited funding, some districts are unable to afford the ESL curriculum, and not all classrooms have textbooks in both English and Spanish, which are needed to

effectively implement state-mandated programs. (*See, e.g.*, Ex. 1345, Izquierdo Site Visits Report, at 3-9.) It can be even more difficult to find materials for ELL students whose home language is not Spanish. (Ex. 6336, Burns Dep., at 51-52; RR19:44.)

FOF 454. Dr. Izquierdo's analysis and the testimony of superintendents reveal serious deficiencies in the materials and technologies needed to serve ELL students in the Plaintiff districts. (*See, e.g.*, RR14:157-58 (referencing Ex. 4231 at 31); Ex. 1345, Izquierdo Site Visits Report, at 3-4; Ex. 4224-S, Cervantes Dep., at 185; RR14:162-63 (referencing Ex. 4231 at 37-38).)

(b) Proper support for ELL students with disabilities.

FOF 455. ELL students who also need special education face particular challenges. These students' need for special education often is not identified because it is confused with the need for language acquisition. Those students are therefore often not referred for special education services. When the need is identified, these students sometimes lose time participating in ESL instruction in order to participate in special education services. Districts must therefore recruit highly trained teams of special educators and ELL educators who can assess a special needs student's eligibility for bilingual or ESL services. (RR14:76-78 (referencing Ex. 4230 at 34, 35); Ex. 1085, Pompa Report, at 13-14; Ex. 4233-B, Coultress Dep., at 166-67.)

d. The arbitrary structure and funding of the school finance system prevent economically disadvantaged and ELL students from accessing the educational opportunities needed to accomplish a general diffusion of knowledge.

i. Harmful state budget cuts could not be remediated by local districts as a result of tax compression and the lack of tax capacity.

FOF 456. Even though the numbers of economically disadvantaged and ELL students were growing significantly at the same time the State increased academic standards, the State did not offer corresponding resources for those children to succeed.

FOF 457. Instead of ensuring that the increasing needs of those student populations were met, the 82nd Legislature reduced FSP funding by $4 billion and cut an additional $1.3 billion from a number of specifically targeted programs meant to support economically disadvantaged and ELL students. (*See supra* Part I.B.2.e (FOF 52, *et seq.*); Ex. 16 at 30; Ex. 5630, Scott Dep., at 46, 70; RR6:205-06; Ex. 16 at 55; Ex. 17 at 18.) These included programs such as SSI for remedial instruction, full-day prekindergarten, teacher merit incentives, extended learning programs, and teacher training. These cuts are described in more detail below:

- A drastic reduction in the SSI grant program, which allowed districts to provide intensive tutoring, extended day programs, and summer school programs for at-risk students who were struggling on statewide examinations. This program was cut from over $300 million in the 2010-11 biennium to $41 million for the 2012-13 biennium. (Ex. 5630, Scott Dep., at 28-29, 44-45; Ex. 17 at III-19; RR6:204-05; Ex. 6322, Moak Report, at 49.)

- A $19 million cut from the Limited English Proficient Student Success Initiative & Special Projects. (Ex. 10748.)

- The elimination of $201 million in grants designed to assist districts with providing full-day pre-K services to approximately 56,000 at-risk students, since only a half-day program is funded by the FSP. (Ex. 6322, Moak Report, at 49; Ex. 5630, Scott Dep., at 30-34, 42-44.) This cut represented a complete elimination of state funding for full-day pre-K. (Ex. 5630, Scott Dep., at 42.)

- A reduction from $21 million in each year of the 2010-11 biennium to $12.5 million in each year of the current biennium to funding for Regional Service Centers, which provide professional development to teachers. (RR28:193-94; RR31:170.)

- Elimination of the FSP-Extended Year Programs (previously $30.6 million), which provided support for students who were not meeting the state content standards and were at-risk of not being promoted. (Ex. 4000, Cortez Report, at 49-50; RR31:171-72; Ex. 10748.)

- Elimination of the Teacher Mentor Program (previously $20 million) for teachers with less than two years of experience. (Ex. 4000, Cortez Report, at 49-50; RR31:171-72; Ex. 10748.)

- A $14.6 million cut to the Texas Advanced Placement Incentive, which provided subsidies for test fees for low-income students. (Ex. 4000, Cortez Report, at 49-50; RR31:171-72; Ex. 10748.)

- Elimination of the Reading, Math, and Science Initiative (previously $25 million), which funded diagnostic testing and research-based training and materials and was targeted at districts with lower student performance. (Ex. 4000, Cortez Report, at 49-50; RR31:171-72; Ex. 10748.)

- A reduction of $110 million in funding for instructional materials. (Ex. 4000, Cortez Report, at 49-50; RR31:171-72; Ex. 10748.)

- Elimination of the Center for Improvement of Districts and Schools (previously $4 million). (Ex. 4000, Cortez Report, at 49-50; RR31:171-72; Ex. 10748.)

FOF 458. The State never undertook any significant review to determine the actual impact of these cuts on the state's highest need children. (RR6:204-08.) The Legislature had the opportunity to restore the cuts to these programs in the 2013 legislative session, but instead left most of these cuts intact. (*See supra* FOF 68.)

FOF 459. As described throughout these findings, the budget cuts significantly harmed at-risk students, requiring districts to eliminate full-day pre-K programs or otherwise reduce the quality of the pre-K programs offered to economically disadvantaged and ELL students; increase class sizes; lay off necessary teachers; and eliminate summer school, tutoring, and other extended learning opportunities that low-income and ELL students so desperately needed. (*See supra* Part I.B.2.e (FOF 52, *et seq.*); *see infra* Part II.C.7 (FOF 680, *et seq.*).)

FOF 460. Everman ISD, for example, is almost 90% economically disadvantaged, and experienced a 20% increase in its low-income student population between 2005 and 2010. Yet the district still received cuts of over $2 million in 2011, forcing the district to eliminate over 40 employees. (RR5:192-93.) Edgewood ISD, which is over 95% economically disadvantaged, suffered cuts of over $4.1 million, forcing the district to eliminate campus interventionists who worked with at-risk students and to reduce its summer school program. (RR22:142.)

FOF 461. As one superintendent testified, "instead of culling out programs that are ineffective, you decide which of the effective programs you're going to cut back and streamline." (RR19:37 (referencing Ex. 6355 at 16).) Ultimately, the State's funding scheme forced school districts into "robbing Peter to pay Paul." (RR19:184; *see also* RR20:138-39; Ex. 3208, Williams Dep., at 210-11; Ex. 3198, Garza Dep., at 22-23.)

FOF 462. Many school districts across Texas do not have the taxing capacity under the current finance system to overcome these budget cuts. The lack of capacity results from a confluence of systemic factors previously discussed, including the State's compression of tax rates, the lowering of the statutory cap on property taxes to $1.17, the requirement of a TRE to raise taxes above $1.04, and the failure to adjust upward the overall revenue available in the system. (*See supra* Part I.C.1 (FOF 210, *et seq.*).)

FOF 463. Plaintiff school districts like Edgewood ISD, Everman ISD, San Benito CISD and Van ISD and others – which have significant at-risk student populations – are already at the $1.17 M&O cap and have no means to fill the substantial void, leaving hundreds of thousands of economically disadvantaged and ELL students without the resources they need to overcome their educational obstacles. (Ex. 3201, Witte Dep., at 19; RR6 188-90.)

FOF 464. Statewide, in 2012-13, almost one in every four school districts taxed at or near the $1.17 tax cap, an increase of over 150% from the 2007-08 school year. (*See supra* FOF 213.) Over 90% of districts, with almost 4.2 million in ADA, tax at or above $1.04. (RR54:116-17 (referencing Ex. 6618 at 14).) Even if every district in the state passed a TRE to tax at the $1.17 cap, only about one-quarter of those districts (which collectively educate approximately one-fifth of the state's ADA) could raise the estimated cost of an adequate education at $6,176, leaving the remaining 769 districts and their 3.9 million in ADA without the resources necessary to achieve a general diffusion of knowledge. (RR63:45-58 (referencing Ex. 11440).)

FOF 465. Even districts that recently raised taxes through the passage of a TRE felt the brunt of the cuts. Alief ISD, for example, had just held a TRE in 2008 to raise its M&O tax rate by eight and a half cents producing approximately $8.5 million for the district each year. (RR8:111-12.) However, the district incurred a $22 million reduction as a result of the statewide budget cuts over the biennium, essentially neutralizing the district's TRE. (*Id.*) Humble ISD also lost more from the state budget cuts than it gained from its 2008 TRE. (RR3:169-70 (referencing Ex. 6346 at 10).)

ii. The arbitrary and outdated compensatory education weight does not deliver sufficient funding for economically disadvantaged students.

FOF 466. The costs of providing the effective interventions described further above (*see supra* Part I.C.2.c (FOF 379, *et seq.*)) and other educational resources for low-income students are substantial. (RR4:73-80; Ex. 4237 at 11; Ex. 1101, Belfield Report, at 13.) As shown below, the compensatory education weight has never been properly tied to the higher, increasing costs of educating economically disadvantaged students. (*See infra* FOF 467 – FOF 478.) As a result, the costs of funding programs necessary for economically disadvantaged students to acquire a general diffusion of knowledge far exceed the compensatory education allotment.

FOF 467. The FSP provides a compensatory education weight of 0.2, or 20%, of the adjusted basic allotment for students who are eligible for free or reduced-price lunches. (Ex. 1328, Casey Report, at 15; TEX. EDUC. CODE § 42.152(a), (b).) Compensatory education funds are intended to support supplemental programs and services designed to eliminate (not simply reduce) any disparity in student performance on the state's standardized tests and to eliminate disparities in high school completion rates.

FOF 468. The compensatory education weight has not been modified since 1984. (RR6:214-15, 217-18 (referencing Ex. 6349 at 48).) At that time, the School Finance Working Group, consisting of members of virtually every educational organization in Texas, recommended a weight for compensatory education of at least 0.4 in order to provide economically disadvantaged students with a minimum accredited education. (RR23:80-81.) Without any sound educational reason, the 0.4 recommendation was cut in half by the Legislature to 0.2. (Ex. 1328, Casey Report, at 15.)

FOF 469. At the time it was enacted, the setting of the compensatory education weight was driven by resources available, rather than an assessment of the additional costs associated with educating economically disadvantaged students. (Ex. 5653 at 45-46; Ex. 6322, Moak Report, at 58; Ex. 1123, Cortez Report, at 36.) Since it was last adjusted, the compensatory education weight has not kept pace with changes such as student demographics, higher performance standards, and differences in financial resources facing schools. (Ex. 1328 at 1; *see also supra* Part I.B.2.d (FOF 39, *et seq.*) and *infra* Part I.C.4 (FOF 591, *et seq.*) for further discussion on weights.)

FOF 470. Lynn Moak testified that his review of the research based on weights for economically disadvantaged students (both that which he conducted at the time the weight was enacted and his more recent research), combined with the significant achievement gap between economically disadvantaged and non-disadvantaged students, convinced him that the compensatory education weight should be at least doubled. (RR6:219-26 (referencing Ex. 6349 at 48-51).) Similarly, Dr. Albert Cortez who has performed research in the field for over four decades (*see* Ex. 1123, Cortex Report, at 2-3), surveyed recent research in Texas and across the country and determined that the weight should be at least at the rate of 0.4 as recommended in 1984. (Ex. 1123, Cortez Report, at 36.) Dr. Bruce Baker cites evidence that the cost to educate low-income children is 50% to 100% higher than the cost to educate the average child. (Ex. 3188, Baker Report, at 28-29; RR16:34-35.) The Court finds this testimony credible and, coupled with the extensive testimony from superintendents on the challenges they face educating economically disadvantaged students to today's academic standards, determines that the compensatory education weight is inadequate.

FOF 471. Several superintendents testified regarding the costs of educating economically disadvantaged and at-risk students and that the compensatory education weight does not fully cover these additional costs. (*See, e.g.*, RR19:144-45.) As described above, districts do not have sufficient resources to meet the needs of economically disadvantaged students and provide them with the quality of education necessary to meet state standards. The increasing numbers of economically disadvantaged students, the introduction of more rigorous standards, and the expansion of achievement gaps in the STAAR regime magnify the harm to students and districts arising from the inadequate compensatory education weight.

FOF 472. In 2009-10, a Joint Select Committee on Public School Finance Weights, Allotments, and Adjustments was appointed by the Legislature and composed of fifteen legislators and other public members. While the Committee did not issue a final report, the Committee issued a "Stakeholder Group" report which recommended an increase in the compensatory education weight from 0.2 to 0.4. This recommendation was not acted upon. (Ex. 1328, Casey Report, at 11-12.)

FOF 473. Because the amount of funding has not been adjusted at least periodically to ensure that it is well aligned with state academic expectations, the State in effect is underfunding programs designed to support students most in need of additional academic support. The 0.2 weight bears no relationship to the standards imposed today on students and school

districts. (Ex. 6322, Moak Report, at 58-60; RR18:77-78; RR22:151-59; RR32:23 (Dr. Dawn-Fisher testifying that adequacy is not part of the policy discussion).)

FOF 474. The recent budget cuts – including over one billion dollars that supported programs targeting economically disadvantaged students, such as intensive tutoring, extended day programs, summer school programs, and full-day preschool programs – were largely unrestored and have only exacerbated the problem by forcing school districts to reduce or eliminate programs serving economically disadvantaged students at a time when a new, more rigorous testing and curriculum program is being implemented. (*See generally infra* Part I.C.7 (FOF 680, *et seq.*) and *supra* Part I.C.2.c (FOF 379, *et seq.*); Ex. 6322, Moak Report, at 49; RR6:204-05; Ex. 5630, Scott Dep., at 28-29; RR6:205; Ex. 6322, Moak Report, at 49; Ex. 5630, Scott Dep., at 30-34, 42-44.)

FOF 475. The Court finds that, by providing insufficient funds for economically disadvantaged students and cutting the very funds aimed at providing remediation for struggling students, the Legislature crippled the ability of all affected school districts to provide their economically disadvantaged students with a general diffusion of knowledge. This is especially true for those with higher concentrations of economically disadvantaged students. And although the program cuts heavily impacted school districts across all wealth levels (such as urban districts that are classified as property wealthy but have large populations of low-income students), an analysis of the special program cuts by property wealth showed that the districts in the lowest wealth decile lost an average of $253 per WADA and accounted for 13% of all special program cuts, showing economically disadvantaged students living in the poorest districts bore a heavy burden resulting from the elimination of necessary support programs and interventions. (Ex. 4000 at 2, 48.)

FOF 476. Furthermore, while the statutory school finance formulas reflect the Legislature's acknowledgement that economically disadvantaged students cost more to educate, the result of the funding system does not actually send more dollars to districts with higher concentrations of economically disadvantaged students. Mr. Moak analyzed the relationship between 2010-11 FSP revenue per ADA and per WADA and the percent of the district's students who are classified as economically disadvantaged for districts with more than 1,000 ADA. (Ex. 6322, Moak Report, at 59.) As the percentage of economically disadvantaged students increases, the FSP revenue decreases:

% Economically Disadvantaged	ADA	WADA	FSP Revenue	Revenue per ADA	Revenue per WADA
Under 10%	30,219	34,415	$225,853,345	$7,474	$6,563
10% to under 30%	570,856	697,294	$4,244,405,813	$7,435	$6,087
30% to under 50%	808,325	1,020,791	$5,892,091,212	$7,289	$5,772
50% to under 70%	1,276,001	1,698,012	$9,635,063,254	$7,551	$5,674
70% to under 90%	1,298,873	1,793,660	$10,022,020,910	$7,716	$5,587
90% and over	221,735	316,250	$1,755,071,075	$7,915	$5,550
Grand Total	**4,206,008**	**5,560,423**	**$31,774,505,609**	**$7,555**	**$5,714**

(*Id.*)

FOF 477. Not surprisingly, from 2009-10 to 2012-13, the number of compensatory education teachers dropped from 11,450, or 3.9% of teachers, to 9,490 teachers, or 2.9% of teachers. During this period, the economically disadvantaged student population grew from 2,848,067, or 59.0% of student enrollment, to 3,054,741, or 60.4% of student enrollment. In other words, there were nearly 2,000 fewer compensatory education teachers to serve an additional 207,000 economically disadvantaged students. (Ex. 10795, Section II at 1 and Ex. 4258 at 13, 17.)

FOF 478. The legislative changes to funding enacted by the 83rd Legislature did not change the compensatory education weight. (*See generally* Ex. 20062A, Zamora Report at 16; RR56:127.)

FOF 479. The temporary increase to the basic allotment for the 2013-14 school year yields only minimal increases for economically disadvantaged students. For example, using the average basic allotment, districts could expect to receive approximately $46 more per economically disadvantaged student compared to the 2012-13 school year. (Ex. 11470 at Tab "formula history"; *see also* Ex. 20062A, Zamora Report, at 16 (calculating increases ranging from $34 to $41 for the Edgewood districts).) This small increase in funding for some of the state's most needy students falls woefully short of providing the educational opportunities essential to the success of economically disadvantaged students and remains arbitrary and unsuitable. (*See generally* Ex. 20062A, Zamora Report, at 5-32; RR55:157-68; RR56:56-72; RR56:112-115; Ex. 4337 at 7; Ex. 4336 at 43:19-49:22, 53:12-61:25.)

iii. The arbitrary and outdated bilingual weight does not deliver adequate funding for ELL students.

(a) Significant, yet essential, state mandates related to language programs for ELL students place heavy burdens on school districts.

FOF 480. Through statutory and regulatory mandates governing bilingual and ESL programs, Texas has recognized the important role that quality, effective, and comprehensive language programs serve in allowing ELL students to learn, progress, and succeed in public schools. The Legislature has declared that every ELL student is entitled to a full opportunity to become competent in English through bilingual and special language programs that emphasize mastery of English, mathematics, science and social studies, as well as the opportunity to participate fairly in school. TEX. EDUC. CODE § 29.051; *see also* 19 TEX. ADMIN. CODE § 89.1201.

FOF 481. The Legislature has further recognized that compliance with the bilingual/ESL statute (Chapter B, Subchapter 29 of the Education Code) is "an imperative public necessity." TEX. EDUC. CODE § 29.062(a).

FOF 482. These significant policy interests of the State impose significant additional costs on school districts. Some of these mandates are set forth in greater detail below. As the succeeding section lays out, schools lack sufficient resources to meet the State's mandates and the basic educational needs of ELL students, including the recruitment and retention of certified bilingual and ESL teachers, and provision of quality prekindergarten programs and appropriate books and materials, among other things. (*See infra* Parts I.C.2.d.iii(b) – I.C.2.d.iii(c) (FOF 496, *et seq.*).)

FOF 483. **Program requirements.** Each district with an enrollment of twenty or more ELL students in the same grade level from kindergarten through twelfth grade is required to offer bilingual education in kindergarten through elementary grades; either bilingual education, ESL, or another transitional language instruction program in post-elementary grades through grade eight; and ESL in grades nine through twelve. TEX. EDUC. CODE § 29.053(d); 19 TEX. ADMIN. CODE §§ 89.1225(e), 89.1210.

FOF 484. Bilingual and ESL programs are full-time programs of instruction designed to ensure that ELL students have a full opportunity to master the essential knowledge and skills of the required curriculum. 19 TEX. ADMIN. CODE § 89.1210(a)-(b).

FOF 485. The SBOE adopted the English language proficiency standards ("ELPS") in 2007, which are the English language acquisition standards that must be implemented for ELL students in conjunction with the state curriculum. *Id.* § 74.4. (Ex. 1104, Izquierdo Report, at 11.)

FOF 486. Bilingual education programs must address the affective, linguistic, and cognitive needs of ELL students. These needs include, but are not limited to, instruction addressing the

student's cultural heritage as well as the history and culture of the United States; listening, speaking, reading and writing in the home language and in English; instruction structured to ensure mastery of required essential knowledge and higher-order thinking skills in all subjects. 19 TEX. ADMIN. CODE § 89.1210(c).

FOF 487. ESL programs are an integral part of the regular educational program and provide instruction in English in language arts, mathematics, science, and social studies using second language methods to ensure that students master the required essential knowledge and skills and higher-order thinking skills. ESL programs also must address the affective and linguistic needs of students. At the high school level students receive sheltered instruction, or the teaching method for delivering the content standards necessary for language acquisition, in all content areas. *Id.* § 89.1210(f)-(g). (RR14:157-58.)

FOF 488. Although the State does not require native language instruction for every district, it recognizes that "public school classes in which instruction is given only in English are often inadequate for the education of those [ELL] students." TEX. EDUC. CODE § 29.051. Dual language programs show particular promise in helping raise ELL student achievement, and TEA has pointed to such programs as examples of "best practices." However, these programs entail additional costs to school districts, which can be a barrier to their implementation. (RR14:128-32 (referencing Ex. 4231 at 8-11); Ex. 1104, Izquierdo Report, at 6-7; RR18:8-9; Ex. 4233-A, Carstarphen Dep., at 89-91; Ex. 3206, French Dep., at 84; Ex. 3198, Garza Dep., at 95-96.)

FOF 489. **Other requirements.** In those districts where ELL services are required, schools are required to meet a number of other requirements related to ELL education. For all students entering public school in Texas, schools must conduct home language surveys in both English and the home language to determine the language normally used in the student's home. TEX. EDUC. CODE § 29.056(1).

FOF 490. If students are identified as possible ELL students, districts must administer English and primary-language oral and written proficiency tests by professionals or paraprofessionals with the language skills and training required by the test publishers. *Id.* § 29.056(1)((a)-(b).

FOF 491. School districts must then form a language proficiency assessment committee ("LPAC") to determine the language proficiency level of each potential ELL student, designate his or her level of academic achievement, classify such students and recommend their exit from a bilingual or ESL program when appropriate, and monitor the academic progress of any exited students for the first two years after program exit. 19 TEX. ADMIN. CODE § 89.1220(e)-(g), (k). LPACs must include a professional bilingual educator, a professional transitional language educator, a parent of an ELL student, and a campus administrator. TEX. EDUC. CODE § 29.063(a)-(b). School districts are required to establish and operate a sufficient number of LPACs to enable them to discharge their duties within twenty school days of the enrollment of ELL students. 19 TEX. ADMIN. CODE § 89.1220(e).

FOF 492. Texas also requires teachers in bilingual or ESL programs to be certified in bilingual education or ESL. TEX. EDUC. CODE § 29.061. If a district obtains a waiver of this requirement, it must use at least 10% of its bilingual education allotment to fund a training program for its teachers. 19 TEX. ADMIN. CODE § 89.1207(a)(1)(D), (b)(1)(E).

FOF 493. Additionally, each school district that is required to offer a bilingual education program must offer an eight-week summer preschool program for children eligible for admission to kindergarten or first grade at the beginning of the next school year. The preschool program must include 120 hours of intensive bilingual education or special language program and a student/teacher ratio of 18:1 or lower. TEX. EDUC. CODE § 29.060; 19 TEX. ADMIN. CODE § 89.1250.

FOF 494. School districts must also implement assessment procedures that differentiate between language proficiency and special education needs. 19 TEX. ADMIN. CODE § 89.1230.

FOF 495. School districts with bilingual education or ESL programs must conduct regular assessments to determine the program impact and student outcomes, and prepare annual reports detailing the progress of the ELL students. Each school principal at a campus with a program must develop, review, and revise the campus improvement plan annually. 19 TEX. ADMIN. CODE § 89.1265.

(b) The additional costs of funding programs necessary for ELL students to acquire a general diffusion of knowledge far exceed the funding generated by the Bilingual/ESL allotment.

FOF 496. Despite the substantial programming and services that districts must provide for ELL students, the funds provided by the State to defray those expenditures have never been designed, structured, or funded to cover the actual costs and are unrelated to actual student need.

FOF 497. **Background on the bilingual weight.** The State recognizes that school districts incur additional costs above the regular program in educating ELL students and provides funds to school districts to help meet the extra costs of programs for ELL students. *See* TEX. EDUC. CODE § 29.051. For each student in average daily attendance in a bilingual education or special language program, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 (commonly known as the "bilingual weight"). TEX. EDUC. CODE § 42.153(a).

FOF 498. The 0.1 bilingual weight was first enacted by the Legislature in 1984 and, like the compensatory education weight, has never been adjusted. (Ex. 6322, Moak Report, at 58; RR6:215.) The current 0.1 bilingual weight was also never based on actual studies of the cost to educate bilingual students. (Ex. 6322, Moak Report, at 58.) In fact, it ignores studies indicating that a significantly higher weight was necessary.

FOF 499. The 1984 school finance working group discussed above also recommended an add-on weight of 0.4, or 40 percent, based on the actual costs of providing programs for ELL students. (RR23:80-81; Ex. 4000, Cortez Report, at 12, 30.) The 2009-10 Legislative Stakeholder Group, also referenced above, recommended that the bilingual weight be increased from 0.1 to 0.6. Neither recommendation was acted upon. (Ex. 1328, Casey Report, at 11-12.)

FOF 500. School districts cannot implement adequate programs for ELL students with the funding generated by the adjusted basic allotment multiplied by the 0.1 weight. (*See, e.g.*, Ex. 4000, Cortez Report, at 30-33; RR10:127-28; RR6:215, 217-19; Ex. 6322, Moak Report, at 58; RR18:77-78; Ex. 4224-S, Cervantes Dep., at 198; Ex. 3205, Chambers Dep., at 61-62; Ex. 3204, Dupre Dep., at 118; Ex. 3198, Garza Dep., at 116-24; RR24:141-42, 149-50, 167-69; RR20:55.) The lack of adequate resources makes it difficult for many school districts – including low and moderate-wealth school districts – to hire specialized teachers, provide the necessary supplementary materials, conduct required assessments, and comply with state mandates. (Ex. 4000, Cortez Report, at 33.)

FOF 501. After discussing the many challenges facing ELL students, Lubbock ISD Superintendent Dr. Karen Garza stated: "given our current circumstances, what we're currently provided is sorely inadequate to meet the challenges of our diverse population that we were just discussing, both our at-risk students, our economically disadvantaged students, and then our students who do not speak English. Our current funding system is sorely inadequate to meet those needs and I think it's going to be exacerbated, significantly so, with this new testing program from the State of Texas and the new graduation requirements." (Ex. 3198, Garza Dep., at 123-24.)

FOF 502. Numerous superintendents testified to the outstanding basic educational needs of ELL students that they are unable to meet because of the inadequate bilingual allotment. For example, sheltered instruction and specialized teams of four or five teachers to help serve the ELL students of La Feria ISD would cost an additional $250,000 above the current costs. (RR18:55.) In San Benito CISD, the bilingual allotment does not cover the additional costs for essential ELL programs and services such as extra tutoring, reducing class sizes, ESL curriculum, professional development training on the English language proficiency standards, hiring back teacher aides, and hiring additional teachers so the district can have separate bilingual classrooms to appropriately serve its ELL students. (RR4:88-94.) Without these necessary educational opportunities, the district does not expect to get the ELL students up to grade level, much less to help them achieve college and career readiness. (RR4:95.) Likewise, in Harlingen CISD, teachers are required to serve ELL students in mixed classrooms, which adversely affects student learning. (RR15:121-22.) Teachers also lack in their classrooms necessary ESL support textbooks, phonetics and reading activities, workbooks, and teacher aides. (RR15:129-31; 158-59.) The current bilingual allotment does not cover necessary programs for ELL students in Los Fresnos ISD, such as extended day programs for language development and college preparatory academies, reading specialists, and adequate language labs. (RR24:134-35,

146-47.) In Edgewood ISD, the bilingual allotment only covered about one-fifth of the district's expenditures on ELL programs. (RR22:145-46.)

FOF 503. Summer school not only helps those students struggling on standardized tests and failing classes, but it also provides a continuum for ELL students trying to achieve throughout the year and expands and reinforces those skills. (RR15:172-73; Ex. 3198, Garza Dep., at 118-119.) However, the bilingual allotment does not cover those expenses for La Feria ISD and cuts to summer school funding have drastically reduced or eliminated summer school for ELL students. (RR18:31-32.)

FOF 504. As described in more detail in Part I.C.7.d (FOF 1091, *et seq.*) below, inadequate funding has led to deficiencies in teaching quality for ELL students caused by the lack of quality training and professional development for teachers and lack of sufficient program monitoring, among other things. (*See, e.g.*, RR14:157-58, 160-63, 165-66 (referencing Ex. 4231 at 31, 34-39); Ex. 1345, Izquierdo Site Visits Report, at 3-4, 7-9; RR15:121,138-39,173-74; RR18:17-18, 28.) The deficiencies, in turn, lead to "limited" and "weak" student learning and academic achievement for ELL students, preventing their progress both linguistically and academically. (RR14:166.)

FOF 505. Austin ISD received a grant from a private foundation for necessary ELL professional development training in the amount of $8,474,994. (Ex. 4041.) The district is not expected to fully sustain the program with the current level of ELL funding. (RR19:197-200.)

FOF 506. School finance experts have conducted studies in several states of the incremental costs of providing bilingual programs. (RR23:82-86.) These studies show that Texas's funding of bilingual education falls significantly short. For example, a 2011 Colorado study by nationally known experts found that add-on resources would require a weight of between 0.47 for an ELL student in a large school district to 0.564 per ELL student in a small or rural district, compared to the average student. (RR23:84-86; Ex. 4000, Cortez Report, at 31-32.) A 2005 Arizona study conducted by the National Conference of State Legislatures found that the incremental costs of ELL student education ranged from $1,026 to $2,571 per student depending on the student's grade level. (Ex. 4000, Cortez Report, at 31.)

FOF 507. The bilingual weight in Texas is not only insufficient for all grade levels but also fails to account at all for the difference in costs to educate bilingual students at different grade levels. (RR24:171-73.) As Los Fresnos ISD Superintendent Gonzalo Salazar testified, districts are further burdened by the inadequate bilingual weight in the higher grades, where the subject matter is more difficult, and yet districts receive less total funding from the weight because fewer students are identified as ELL. (RR24:171-73.)

FOF 508. Moreover, the weight of 0.1 is substantially below many other states. (Ex. 6322, Moak Report, at 58, 61-62.) A 2008 national study of sixteen states that have bilingual add-on weights found Texas to be at the lowest end of what states have found necessary for ELL

students, a range that can run up to two times the cost of non-disadvantaged students. (RR6:218-20; Ex. 6322, Moak Report, at 58.)

FOF 509. The 0.1 weight also bears no relationship to the standards imposed today on students and school districts. The weight pre-dated the successive eras of higher educational standards and assessments such as TEAMS, TAAS, TAKS, and now STAAR. (Ex. 4000, Cortez Report, at 30; *see also* RR18:77-78; RR4:114-23 (stating resources were not sufficient under TAKS and comparing results to increased rigor under STAAR).)

FOF 510. Districts' actual expenditures on ELL programs also confirm the inadequacy of the bilingual weight. (*See, e.g.*, RR18:10-11; Ex. 10644 (the State allocated approximately $400 additional dollars for each ELL student enrolled in La Feria ISD, but the district's expenditures amounted to approximately $1,446 per ELL student); Ex. 10633; Ex. 4237 at 8 (the State allocated approximately $430 for each ELL student enrolled in Edgewood ISD, but the district spent $2,843 per ELL student, or nearly six times the bilingual allotment).) Many school districts' bilingual expenditures per student far exceeded the bilingual allotment, including: Abilene ISD's expenditures at $2,130 per ELL student, Alief ISD at $2,545, Amarillo ISD at $2,496, Calhoun County ISD at $2,653, Lewisville ISD at $1,315, and Lubbock at $1,304. (Ex. 10615; Ex. 10619; Ex. 10621; Ex. 10629; Ex. 10645; Ex. 10648.) These expenditures above the allotment include those elements necessary to support quality bilingual programs, including stipends for bilingual and ESL certified teachers to help with their retention, professional development, teacher and instructional aides, tutoring, and extended-day programming. (*See, e.g.*, RR18:9-13, 49; RR22:145-46, 148.)

FOF 511. The bilingual allotment, even when combined with general revenue dollars for expenditures, falls far short of that needed to provide ELL students access to reasonable opportunities these students require to acquire a general diffusion of knowledge as established by the State. (RR22:145-46, 148.)

FOF 512. The legislative changes to funding enacted by the 83rd Legislature did not change the bilingual weight, which remains at 0.1. (Ex. 20062A, Zamora Report, at 16; RR56:128.) The temporary increase to the basic allotment for the 2013-14 school year yields only minimal increases for ELL students. For example, using the average basic allotment as represented by Dr. Dawn-Fisher of the TEA, districts could expect to receive approximately $23 more per ELL student compared to the 2012-13 school year. (Ex. 11470 at Tab "formula history.") This small increase in funding for some of the state's most needy students falls woefully short of being adequate and remains arbitrary and unsuitable. (RR55:157-68; RR56:56-72; RR56:112-15; Ex. 4337 at 7; Ex. 4336 at 43:19-49:22, 53:12-61:25.)

FOF 513. **Decline in budget and expenditures for ELL programs.** Despite the growth of the ELL student population in recent years, the amounts of both budgeted and actual funds dedicated to bilingual/ESL programming have declined. In the three school years from 2009-10 to 2011-12, the amount budgeted for bilingual/ESL dropped from 4.34% of all program expenditures (or approximately $1,493 per ELL student using the number of

ELL students reported in the 2009-10 State AEIS Report (Ex. 10795)) to 3.45% of all program expenditures (or approximately $1,133 per ELL student using the 2011-12 State AEIS Report (Ex. 11213)) – which represents a 24.5% drop over this period. (Ex. 4074.) This amounted to a roughly $270 million drop – from $1,219,062,042 to $949,388,965 at the same time that the statewide ELL population *increased* by roughly 22,000 students. (RR14:19 (referencing Ex. 4230 at 4); Ex. 4074; *compare* Ex. 10795 at Sec. II, p. 1 *with* Ex. 11213 at 2.) Actual financial data showed similar declines. (Ex. 4073; *see also* RR14:15; Ex. 4230 at 4.) For 2011-2012, TEA reported that actual expenditures for bilingual education dropped to $917,244,578, or 3.45% of actual expenditures for that year. (*See* TEA, 2011-2012 Actual Financial data, available at http://ritter.tea.state.tx.us/cgi/sas/broker?_service=marykay&_program=sfadhoc.actual_report_2012.sas&_service=appserv&_debug=0&who_box=&who_list=_STATE.)

FOF 514. From 2002-03 to 2011-12, budgeted expenditures for bilingual/ESL instruction fell from 4.5% to 3.45% of all funds expenditures, even though the ELL student population grew from 14.9% to 17% of the total student population during that same period. (RR14:19 (referencing Ex. 4230 at 4); Ex. 1087 at Sec. II at 1; Ex. 11213 at 2.) In 2012-13, budgeted expenditures for bilingual education further dropped to 3.39% of program expenditures or $ 192 per student. (*See* TEA, 2012-2013 Budgeted Financial Data, available at http://ritter.tea.state.tx.us/cgi/sas/broker?_service=marykay&_program=sfadhoc.budget_report_2013.sas&_service=appserv&_debug=0&who_box=&who_list=_STATE.)

FOF 515. The budgeted and actual expenditures far exceed the amounts allocated to districts for bilingual education under the FSP. For example, when adding up the "Total FSP Bilingual Funding" for the 1,024 districts for the 2010-11 school year (Ex. 4226, Column U), the amount was a mere $369,953,277, compared to $1,150,211,353 in actual expenditures. (Ex. 4073 at 6.)

(c) Districts must use a significant amount of their bilingual allotment to cover the cost of recruiting and retaining qualified bilingual/ESL teachers.

FOF 516. Many school districts across Texas compete to recruit and retain qualified bilingual/ESL teachers by paying significant stipends to certified teachers, which in turn, uses up significant portions of the bilingual allotment. (*See, e.g.*, RR18:13; RR22:145-47; Ex. 4237 at 8; RR19:146-47.) According to TEA, Texas faced a shortage of bilingual and ESL teachers in the 2012-13 school year and faces a similar shortage in the 2013-14 school year. (Ex. 1085 at 8; Ex. 4274.) As stated earlier, the number of ELL students grew by over 230,000 students over the past ten years to 863,974 students in 2012-13. (*See supra* FOF 15.) But while ELLs now make up a greater percentage of the student population than in years past (17.1% in 2012-13 compared to 14.9% in 2002-03), bilingual/ESL teachers make up a smaller percentage of the total teacher population (8.1% in 2002-03 compared to 5.3% in 2012-13). (RR14:21; Ex. 4219; Ex. 1087 at Sec. II, p. 1; Ex. 4258 at 13, 17.)

FOF 517. TEA also reported that in 2010, many bilingual/ESL teachers were teaching with out-of-field credentials – 20% in early childhood education/kindergarten, 10% in elementary school, 37% in middle school, and 85% in high school. (RR14:21-23 (referencing Ex. 1085, Pompa Report, at 8); RR34:164.) Despite the importance of quality, trained teachers for ELL students, because of the shortage of certified bilingual and ESL teachers in Texas, some districts must seek waivers from TEA, leaving uncertified teachers to teach ELL students in bilingual or ESL classes. (RR34:165-66; RR6:32-33.) TEA reported that in 2011-12, 16.3% of bilingual/ESL teachers were teaching with out-of-field credentials in early childhood/kindergarten, 11.8% in elementary school, 28.2% in middle school and 92% in secondary grades 9-12. (*See* www.tea.state.tx.us/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=25769804697&libID=25769804697)

FOF 518. Districts also have responded to the teacher shortage by paying stipends in an effort to recruit trained and certified bilingual education and ESL teachers. (RR18:13; RR22:145-47; Ex. 4237 at 8.) In 2011-12, approximately 40% of school districts pay a bilingual stipend, according to a survey by the Texas Association of School Boards. (RR14:21-23 (referencing Ex. 4230 at 5 and TASB survey); Ex. 4219; RR6:103; Ex. 4224-P, Kincannon Dep., at 22.) Paying stipends to recruit and retain certified instructions requires additional resources. (Ex. 1085, Pompa Report, at 8 (according to a Texas Association of School Boards survey, in 2011-12, the average stipend for bilingual education teachers was $2,483 and $1,191 for ESL teachers).) In 2012-13, TASB found that 74% of school districts pay shortage stipends and that the average bilingual stipend had risen to $2,495. (*See* 2013-13, TASB/TASA Teacher Report available at http://www.tasb.org/services/hr_services/salary_surveys/documents/tchr_highlights_landing.pdf)

FOF 519. Based on the most recent research and the testimony and evidence before the Court, the Court finds that the current bilingual weight is not designed, structured, or funded to accomplish a general diffusion of knowledge for ELL students. (RR23:85; Ex. 4000, Cortez Report, at 33; RR6:218-20.)

e. Economically disadvantaged and ELL students are being denied a meaningful opportunity to achieve a general diffusion of knowledge, which renders the system unconstitutional.

FOF 520. Based on the output data described above in Parts I.C.2.a.iii (FOF 298, *et seq.*) and I.C.2.b.iii (FOF 349, *et seq.*), the Court finds that economically disadvantaged and ELL students are not achieving a general diffusion of knowledge. The inability of districts to offer the necessary interventions (*see supra* Part I.C.2.c (FOF 379, *et seq.*)) to help these populations overcome the educational obstacles they face (*see supra* Parts I.C.2.a.i (FOF 277, *et seq.*) and I.C.2.b.i (FOF 333, *et seq.*)) means that school districts are not able to provide these students with a meaningful opportunity to achieve a general diffusion of knowledge. Therefore, the Court finds that the education system is constitutionally inadequate as to economically disadvantaged and ELL students.

FOF 521. The Court further finds that the size of the economically disadvantaged population – 60% and growing (*see supra* FOF 13) – is so great that their failure to achieve a general diffusion of knowledge renders the entire system constitutionally inadequate. This finding is bolstered by the performance data for "all students" (detailed in Part I.B.5 above (FOF 126, *et seq.*)), which reveals that hundreds of thousands of Texas high school students are off-track for graduation (*see supra* FOF 146 – FOF 157), and that more than half of all students failed to achieve the final Level II score on all but one STAAR exam in Spring 2013. (*See supra* FOF 141 (STAAR EOC) and FOF 143 (STAAR 3-8).)

3. If *all* Texas students are to have a reasonable and meaningful opportunity to acquire a general diffusion of knowledge, Texas schools must be given adequate and suitable funding to hire a quality workforce and implement quality programs.

FOF 522. The performance data detailed above in Part I.B.5 (FOF 126, *et seq.*) demonstrates that Texas is far from meeting the legislatively defined standard for a general diffusion of knowledge: providing all students with a meaningful opportunity to graduate college and career ready. In both 2012 and 2013, less than half of high school students achieved the lower phase-in Level II standard on all tests taken. (Ex. 6322, Moak Report, at 26; RR54:141-42 (referencing Ex. 6618 at 23); *see also supra* FOF 140.) In Spring 2013, only 24% of all high school students achieved the final Level II standard (TEA's current definition of college ready) on all tests taken. (Ex. 6618 at 23; *see also* FOF 141.) The percentage of ninth grade students achieving Level III, which is the level that was empirically linked to external measures of college readiness, ranges from a low of 2% on English I Writing to a "high" of 16% on Algebra I in 2013. (Ex. 5707 – Ex. 5711; *see also supra* FOF 142.)

FOF 523. To close the gap between Texas's standards and student performance, school districts must hire and maintain a quality workforce, including both teachers and educational support staff, such as counselors and librarians; however, superintendents uniformly testified that they lack the resources to hire the personnel needed to achieve the necessary progress. (*See infra* Parts I.C.3.a (FOF 526, *et seq.*) and I.C.3.d (FOF 575, *et seq.*).)

FOF 524. School districts also must be able to provide additional quality programs and interventions. Superintendent and expert testimony establishes that quality, full-day pre-K and reduced class sizes are among the most effective tools, yet districts currently lack the necessary funding to provide them. (*See infra* Parts I.C.3.b (FOF 550, *et seq.*) and I.C.3.c (FOF 562, *et seq.*).)

FOF 525. Finally, school districts must meet the demands of a growing student population by building new facilities and repairing or replacing aging facilities. (*See infra* Part I.C.3.e (FOF 585, *et seq.*).)

a. Districts lack the necessary resources to replace, hire, and retain the quality teachers necessary to provide a general diffusion of knowledge.

i. Texas must hire substantially more teachers to account for student growth and to replace those near retirement.

FOF 526. Texas employed the equivalent of 335,000 full-time teachers in its public schools, including charter schools, in 2011. (Ex. 1122, Vigdor Report, at 2.) Texas must fill 40,000 net teaching positions every year simply to replace the teachers leaving the workforce and to keep up with population growth. Over the last twelve years, 10% of teachers on average have left the workforce annually. (RR23:182-83; Ex. 1122, Vigdor Report, at 2.)

FOF 527. The challenge of teacher recruitment in Texas is exacerbated by the aging of the teacher workforce. Estimates from the Census Bureau indicate that the median age for primary and secondary schoolteachers in Texas increased from thirty-five to forty-two between 1980 and 2010. (Ex. 1122, Vigdor Report, at 2.) The percentage of teachers over fifty-five – and therefore at high risk of retirement over the coming decade – has doubled since 1990, to the point where they represent nearly 20% of the workforce – a proportion not seen in more than a generation. (*Id.*; RR23:183-84; Ex. 5412 at 4-5.)

FOF 528. Texas simply does not train enough new teachers to keep up with this demand. Indeed, in only one year has the production of newly certified teachers from in-state preparation programs exceeded 27,000 individuals, and historically many of those obtaining certification never choose to enter the teaching profession. Texas must "import" thousands of teachers each year. (Ex. 1122, Vigdor Report, at 3; RR23:184-85; Ex. 5412 at 6-7.) As the state's population continues to grow, and as its sizable cohort of baby boom-era teachers retire over the next decade, its need to import teachers from outside of Texas – and to compete with other states for teaching talent – will only increase. (Ex. 5412 at 6-8.)

ii. Texas faces significant challenges in ensuring the quality of its teacher labor force.

FOF 529. Texas also needs to ensure that its teaching labor force is high quality. The consensus view among education policy researchers and superintendents alike is that teacher quality is a key determinant of student achievement. (RR23:209-10; Ex. 1122, Vigdor Report, at 18; Ex. 3188, Baker Report, at 103; *see also, e.g.*, RR3:143; RR4:80-81; RR8:46; RR25:122-23.) Yet, the evidence supports the conclusion that the absolute level of teacher quality in Texas has declined over time. (Ex. 1122, Vigdor Report, at 1.)

FOF 530. According to the research base, two credentials are strongly associated with improvements in student performance: teacher experience and certification in the field in which the teacher is teaching. (RR23:193; Ex. 1122, Vigdor Report, at 6-7.)

FOF 531. Novice teachers have been found to be less effective than more experienced teachers. (Ex. 1122, Vigdor Report, at 6; RR23:193-94.) A substantial body of literature has found that concentrations of novice teachers can have significant negative effects on student outcomes. (Ex. 3188, Baker Report, at 111.) Teachers' competence increases rapidly within the first few years on the job, and their effectiveness continues to grow over time (albeit at a slower pace). (Ex. 1122, Vigdor Report, at 18-20; RR23:194 (referencing Ex. 5412 at 17-18).) Yet Texas schools are increasingly hiring novice teachers to fill the large number of vacancies that must be filled each year. (Ex. 1122, Vigdor Report, at 7; RR23:199.) The reliance on novice teachers is concentrated in districts that face persistently high turnover rates. In such districts, it is common for over 20% of the workforce to consist of beginning teachers. (RR23:200-01 (referencing Ex. 5412 at 21-22).) A teacher in a high poverty district is 26% more likely to be a novice teacher than a teacher in a low poverty district. (Ex. 3188, Baker Report, at 111.) Reliance on large numbers of inexperienced teachers is likely to negatively affect the average quality of teachers in Texas and to adversely affect student outcomes. (Ex. 1122, Vigdor Report, at 8; RR23:193-97 (referencing Ex. 5412 at 18); Ex. 3188, Baker Report, at 111.)

FOF 532. Teacher quality is also correlated with in-field certification, and students perform more poorly in a subject when their teachers lack certification in the subject matter. (Ex. 1122, Vigdor Report, at 6-7.) Yet schools are increasingly relying upon teachers who lack traditional certification and/or certification in the subject matter they teach. (*Id.* at 10.)

FOF 533. **Alternative certification programs.** A generation ago, about 80% of teachers in Texas possessed traditional certification, meaning that they had progressed through a traditional teacher education program as a postsecondary student. Today, that proportion stands at 45%. (*Id.*; RR23:204 (referencing Ex. 5412 at 25-26).) As traditional certification has waned, so-called "alternative" certification, a route pursued by less than 1% of teachers in the late 1980s, is now the route of choice for more than a quarter of the state's teachers. (Ex. 1122, Vigdor Report, at 10.) In some recent years, alternatively certified teachers have accounted for more than 40% of new entrants into the profession. (*Id.*; RR23:205 (referencing Ex. 5412 at 27).) Alternative certifications may be obtained from a range of public entities (school districts, community colleges, regional service centers, etc.) or private entities. (RR23:203, 205.)

FOF 534. To a large extent, Texas has relied on private alternative certification programs ("ACPs") to meet the immense need for new teachers created by turnover within the profession and population growth. (Ex. 1122, Vigdor Report, at 11; RR23:205-06.) Private ACPs, in turn, meet this demand in part by circumventing certification requirements that would ordinarily apply to traditionally certified teachers. (Ex. 1122, Vigdor Report, at 11.)

FOF 535. Teachers must pass a state certification exam to be fully certified as a teacher in Texas. (Ex. 1122, Vigdor Report, at 12.) The State's certification tests measure content knowledge in the subject a candidate intends to teach. (Ex. 1122, Vigdor Report, at 12.) Results on these tests raise doubt about the level of knowledge of teachers coming through the private ACPs in the areas they teach. (RR23:207 (referencing Ex. 5412 at 28).) Based on 2002-07 data, the odds of failing a Texas teacher certification test are

25% to 90% higher, depending on subject matter, for teachers trained in private ACPs, relative to teachers with traditional university-based training. (Ex. 1122, Vigdor Report, at 13; RR23:205-07 (referencing Ex. 5412 at 29).) On the elementary-level generalist certification exam, which is the most commonly taken exam, the odds of failure are as much as 90% higher for teachers trained by a private ACP. (Ex. 1122, Vigdor Report, at 12.)

FOF 536. Teachers pursuing alternative certification are often working in the classroom while in the process of being certified. (RR23:207-08.) This means that a large number of the teachers encountering difficulty in demonstrating a minimum level of content knowledge on the certification exam are actually responsible for educating students. (Ex. 1122, Vigdor Report, at 12.)

FOF 537. In part because of their difficulties in obtaining full certification, teachers trained in private ACPs have higher turnover rates than their traditionally-certified counterparts. (Ex. 1122, Vigdor Report, at 13; RR23:208 (referencing Ex. 5412 at 30).) Turnover causes a loss of institutional memory about specific students, state mandates, and similar issues. (Ex. 1122, Vigdor Report, at 8.)

FOF 538. **Certification in field.** Studies show that students fare more poorly in a subject when their teacher lacks certification in field. (*Id.* at 6-7.) In Texas and nationwide, teacher shortages are acute in certain subject areas, which has caused schools to rely more heavily on less-qualified candidates in these fields. (*Id.* at 14.)

FOF 539. Math and science teachers, for example, frequently possess credentials that are in demand in the private sector, and consequently have options to leave the profession at various points in their career. (*Id.*) This competition for skilled teachers forces the state to rely on less qualified candidates in these fields. (*Id.*) In 2011, 70% or fewer of Texas's high school science, high school computer science, middle school science, middle school English, and middle school computer science teachers were fully certified in their respective grades and subjects. (*Id.* at 15; RR23:202 (referencing Ex. 5412 at 23).) In the course of normal progress through middle school and high school, the average Texas public school student can expect to spend two years instructed by science teachers who lack certification to teach the subject, and an additional one or two years taught by a similarly uncertified math teacher. (Ex. 1122, Vigdor Report, at 14-15.)

FOF 540. In addition, the percentage of high school teachers in Texas with an undergraduate major in their main assignment area decreased from 77.8% in 2003-04 to 71.9% in 2007-08. (*Id.* at 15; RR23:202-03.) Texas's ranking by this measure decreased from forty-fourth to forty-sixth over the four-year time period. (Ex. 1122, Vigdor Report, at 15.)

iii. Teacher salaries affect the ability of districts to hire and retain quality teachers, which impacts student performance.

FOF 541. Economist Jacob Vigdor testified, based on experimental and quasi-experimental research that he and other researchers have performed, that higher salaries help schools attract and retain better quality teachers. (RR23:212-13 (referencing Ex. 5412 at 34).) This in turn results in improved student achievement. (RR23:212-13 (referencing Ex. 5412 at 34).) For example, evidence suggests that increasing teacher pay can lead to higher graduation rates. (RR15:30.)

FOF 542. Dr. Baker corroborated Dr. Vigdor's analysis, testifying that teacher salaries affect the quality of entrants to the teaching profession and impact how long teachers remain in the profession and where they choose to work. (Ex. 3188, Baker Report, at 102-05; RR16:82-83, 151-52.)

FOF 543. Superintendent testimony also confirms Dr. Baker's and Dr. Vigdor's conclusions that compensation affects the quality of teachers a school can hire and retain. (*See, e.g.*, RR3:143-44; RR19:125-26; RR4:253-54.) Numerous superintendents emphasized that districts compete with each other to hire new teachers and that salary plays an important role in teachers' decisions about where to work. (RR4:253-54; RR41:66; Ex. 3198, Garza Dep., at 49-50.) Even higher wealth districts have lost teachers to neighboring districts because their district's salaries are not competitive. (*See, e.g.*, RR20:84; RR4:254-55.) Numerous superintendents testified that they believe their ability to recruit and retain teachers will be adversely affected if they are forced to continue to reduce or freeze teacher salaries. (RR4:253-55; Ex. 5617, Reedy Dep., at 49; Ex. 5614, Patek Dep., at 42.)

iv. Texas teacher salaries are not competitive.

FOF 544. Despite the importance of salaries to attracting and retaining quality teachers, Texas teacher salaries have declined significantly relative to the national average teacher salary. (Ex. 1122, Vigdor Report, at 4.) Twenty years ago, Texas teacher salaries were close to the national average, but today, age-adjusted salaries paid to teachers in Texas lag 7% to 10% below the national average. (*Id.*; RR23:185-86 (referencing Ex. 5412 at 10).) A State expert, Dr. Podgursky, conceded that it was appropriate to compare salaries across states on an age-adjusted basis (RR30:8), because it allows for a better measurement of a teacher's earning potential by eliminating any distortions caused by each state's differing distributions of teachers across experience levels. (RR23:186-87.)

FOF 545. The most recent data from the NCES shows that the average teacher salary in Texas was $47,311 in 2009-10 dollars, well below the national average of $54,965 and lower than thirty-two other states. (RR23:192 (referencing Ex. 5412 at 15).) This data also shows that Texas is falling behind other states, including neighboring states.

FOF 546. Since 1999-2000, Texas was one of only fifteen states where teacher salaries failed to keep pace with inflation. (RR23:192 (referencing Ex. 5412 at 15).) Since 1999-2000, forty-one states increased salaries at a faster rate than Texas. (RR23:192 (referencing Ex. 5412 at 15).) And Texas's four neighboring states posted much stronger inflation-adjusted growth in salaries than Texas, with Oklahoma at 20%, Louisiana at 14.8%, New Mexico at 10.4%, and Arkansas at 9.4%, with Texas bringing up the rear at -1.6%. (RR23:192-93 (referencing Ex. 5412 at 15).) Moreover, average Texas teacher salaries have fallen behind those of other states that are expected to be Texas's main source of competition for new teachers in the coming decade, including Arizona, Colorado, Florida, Georgia, Nevada, New Mexico, Utah, and Wyoming. (Ex. 1122, Vigdor Report, at 5; RR23:191 (referencing Ex. 5412 at 14).)

FOF 547. Texas teacher wages are also low when compared to non-teachers with similar education levels who work similar amounts of time. (RR16:151-53; Ex. 3188, Baker Report, at 105-08.) In fact, teachers in Texas earn a weekly wage that is less than 70% of the wage of their similarly educated peers. (Ex. 3188, Baker Report, at 105; Ex. 1122, Vigdor Report, at 4.) Texas teacher wages fall into the bottom ten states in terms of their relative competitiveness with other career opportunities for individuals at the same education level. (Ex. 3188, Baker Report, at 105.) Teacher wages in Texas are particularly low in metropolitan areas like Houston, Dallas, and Austin, when compared to non-teacher wages in Texas for individuals working the same number of hours and weeks per year, and at the same age and education level. (*Id.* at 107.) It is reasonable to assume from this data that the quality of applicants to the teaching profession is lower than it would be if wages were more competitive. (*Id.* at 105.)

FOF 548. It is also important to consider how teacher salaries have declined over time in assessing the competiveness of teacher salaries compared to other fields. Over the past fifty years, opportunities for women in highly paid occupations – from medicine and law to engineering and business – have expanded tremendously. (Ex. 1122, Vigdor Report, at 16-17; RR24:27.) Elementary and secondary teaching, once one of the primary options available to highly educated women, is now only one of many such options. (Ex. 1122, Vigdor Report, at 16-17; RR24:27.) The decline in teacher salaries relative to other professions makes it much more difficult to attract teachers. (Ex. 1122, Vigdor Report, at 4, 16-17; RR23:187-88.) Evidence also supports the view that the declining relative attractiveness of teaching to women – evident not just in Texas, but throughout the country – has led highly qualified candidates to choose other professions. (Ex. 1122, Vigdor Report, at 17; RR23:189-90.)

FOF 549. Dr. Vigdor opined that: (1) at the salaries currently in place, there is an insufficient number of well qualified teachers willing to work in Texas public schools; (2) Texas schools have had to compromise their standards for teacher quality; and (3) higher teacher salaries are needed to address these concerns. (RR23:180-81; RR24:43-44; Ex. 1122, Vigdor Report, at 13, 18.)

b. Districts need funding for quality pre-K programming.

FOF 550. High-quality pre-K programs can significantly improve student performance and behavior and help districts achieve a general diffusion of knowledge, but Texas is not making the necessary investments on this front.

FOF 551. Dr. Steven Barnett, Director of the National Institute for Early Education Research, testified regarding the research base associated with the impact of quality preschool education. High-quality preschool education has been shown to increase both test scores and graduation rates, and to reduce grade retention, behavioral problems, delinquency, and crime. (RR11:140.) In addition, the evidence indicates that starting earlier produces greater long-term gains; two years beginning at age three produces better results than one year beginning at age four, and starting prior to age three may produce even better results. (Ex. 1074, Barnett Report, at 9; RR11:175-76.)

FOF 552. Research shows that the pre-K programs with the largest and longest-lasting effects are more educationally intensive and expensive. (RR11:139-41; Ex. 1074, Barnett Report, at 8.) The preschool programs identified as more effective have been part of the public education system and have had more highly-educated, better-paid teachers than Head Start and childcare. (RR11:149; Ex. 1074, Barnett Report, at 8.) Neither ordinary childcare nor Headstart programs are sufficient substitutes because they do not provide the large, long-term substantive gains in cognitive and social development that have been achieved with high quality pre-K programs. (RR11:148-50; Ex. 1074, Barnett Report, at 5.)

FOF 553. Dr. Barnett's opinions about the importance of quality, full-day pre-K programs were bolstered by the testimony of former Commissioner Robert Scott. Mr. Scott has long championed improvement in the quality of pre-K programs and funding for full-day pre-K programs. (Ex. 5630, Scott Dep., at 31-32, 43.) He advocated for the state grant that provided funding for full-day pre-K in many districts. (*Id.* at 32, 43.) According to Mr. Scott, this grant was a "critical program[] that support[s] student progress from pre-K through grade 12." (Ex. 15.)

FOF 554. Superintendents from across the state echoed the testimony of Dr. Barnett and Mr. Scott regarding the importance of a quality pre-K program, emphasizing the significant impact the program made in their districts before it was eliminated as a result of budget cuts. (*See, e.g.*, RR19:185; Ex. 5613, Youngblood Dep., at 23-24; RR5:172; RR8:103-04; RR20:50-56, 74-75; RR24:115-17, 195-96; Ex. 3208, Williams Dep., at 210-11.)

FOF 555. Dr. Barnett noted a number of weaknesses in Texas's State-funded pre-K program, including the fact that the State places no limits on maximum class size or child-staff ratio in pre-K. (RR11:186; Ex. 1074, Barnett Report, at 15.) Texas is one of only three states that has no such limits. (Ex. 1074, Barnett Report, at 15.) In addition, assistant teachers in Texas are not required to have an education beyond a high school diploma so they are not required to have the specialized preparation that would enable them to be effective teaching partners. (*Id.*; RR11:187.)

FOF 556. No state with a pre-K program has less state-level capacity (in terms of absolute numbers of staff) to monitor and oversee pre-K than does Texas – even states as small as Delaware. (Ex. 1074, Barnett Report, at 15; RR11:173-74.) Texas is currently without any statewide system to evaluate the quality of public preschool programs and determine what percentage of students exit the public preschool system kindergarten-ready. (RR34:61-63, 71.) In fact, the State only gathers information on approximately 30% of public preschool programs statewide. (RR34:66.) TEA does not collect data on what percentage of three and four-year olds in the state are preschool eligible, or what percentage of ELL and economically disadvantaged students in the state actually have access to preschool. (RR34:72-73.) Lack of state capacity for monitoring and oversight precludes a continuous improvement process that would ensure that programs actually use resources effectively and provide a high quality education. (Ex. 1074, Barnett Report, 14-16.)

FOF 557. Although the State contends that there are twenty integration specialists that provide services for pre-K programs statewide, those individuals admittedly do not assess the effectiveness of state preschool programs. (RR34:56.) Moreover, the TEA's Director of Early Childhood Education, Gina Day, admitted that Texas has never gauged the effectiveness of any services provided by those specialists. (*Id.*)

FOF 558. As noted in Part I.B.2.e (FOF 52, *et seq.*) above, Texas previously funded full-day pre-k programs, but currently funds only half-day pre-K, and only children who meet certain criteria are eligible for state-level pre-K funding. (Ex. 1074, Barnett Report, at 14; RR11:184-85; RR34:13.)

FOF 559. Rather than provide resources to expand pre-K programs, Texas has significantly cut funding for these programs, which are critical for the academic success of at-risk students. (Ex. 5630, Scott Dep., at 30-32, 42-44; RR11:186-88; Ex. 4224-S, Cervantes Dep., at 186; Ex. 1074, Barnett Report, at 14-15.) In the 2010-11 school year, Texas provided state funding to serve only 52% of the state's four-year-olds and 6% of its three-year-olds. (RR11:184.) In 2010-11, prior to the budget cuts, state funding per child already had fallen to $3,761 per child, which is lower than in any of the three prior years, adjusting for inflation. The low levels of available funding negatively affect the quality of teachers schools are able to recruit and retain, as well as materials and other essential elements of a high quality pre-K program. (Ex. 1074, Barnett Report, at 10; RR11:161-62.)

FOF 560. No State witness was able to credibly dispute this testimony about the deficiencies in Texas's pre-K programming. Ms. Day admitted that she did not know whether the amount the State allots to districts is sufficient to provide an adequate preschool program. (RR34:84-85, 88-89.)

FOF 561. This Court is persuaded by Dr. Barnett's testimony that Texas's current pre-K programs are not producing the outcomes proven possible with intensive, high quality preschool education. (RR11:190-91.)

c. Districts need funding to keep class sizes manageable.

i. Smaller class sizes improve learning for all students.

FOF 562. Research and evidence from both the State and the plaintiff school districts show that the effect of lower class sizes on student achievement in the elementary grades is significant. Statutory limits on class size demonstrate the Legislature's recognition of the same.

FOF 563. Extensive research on class size shows that reducing classes to approximately fifteen students in kindergarten through grade three has significant positive effects on graduation rates and student achievement in math and reading. (Ex. 5520, Odden Report, at 4; Ex. 1101, Belfield Report, at 11-14; RR4:73-74.) Small class sizes result in higher achievement because they provide higher levels of student engagement, increased time on task, and the ability for high quality teachers to better tailor their instruction to students in the class. (Ex. 1079, Schanzenbach Report, at 4.)

FOF 564. As described earlier, the Tennessee's STAR experiment is a well-known, large scale, randomized trial involving class size reduction. (Ex. 5520, Odden Report, at 4.) This study showed that students assigned to classes of approximately fifteen students achieved at a significantly higher level than those assigned to classes of approximately twenty-two students. (Ex. 5520, Odden Report, at 4.) According to one credible interpretation of the STAR results, the study indicated that elementary students randomly assigned to small classes out-performed their classmates who were assigned to regular classes by about 0.22 standard deviations after four years. (RR26:112-13.)

FOF 565. The State's expert, Dr. Russ Whitehurst, agreed that the STAR experiment is the most influential and credible study of class size reduction to date. (RR26:112.) He identified a number of studies related to class size reduction and agreed that STAR is the strongest study in terms of its ability to show causation. (RR26:76-77.)

FOF 566. The STAR study involved class size reductions in kindergarten through third grade. (RR17:197-98.) In the opinions of Dr. Odden and Dr. Schanzenbach, the study is consistent with a finding that, other things being equal, smaller class sizes in these grades lead to improvements in student performance. (Ex. 1079, Schanzenbach Report, at 2-3; Ex. 5520, Odden Report, at 4.) In an article published by the Brookings Institution, Dr. Whitehurst agreed that the weight of the high-quality research literature supports the view that class size reductions in these grades are associated with improved performance. (Ex. 1195 at 1; RR26:76, 118, 122-27; Ex. 5678 at pp. 6-8 of PDF).) In addition, later studies utilizing the data gathered during the STAR study indicate that the experiment showed positive long-term impacts for exposure to small class sizes for more than two years, with the greatest impacts for students who spent the most time in smaller classrooms. (RR17:199-200; RR13:122.)

FOF 567. Longitudinal research also shows impacts on college attendance fifteen years later for students who participated in the study. (RR26:77.) Dr. Whitehurst agreed that the proposition that significant class size reductions can have meaningful long-term effects

on student achievement is broadly consistent with the body of the most credible research on the subject. (RR26:112, 118; *see also* Ex. 1195.)

FOF 568. Superintendents and teachers at Texas schools confirmed their belief that small class sizes improve learning because they allow teachers to provide individualized instruction to students, reduce disruptive behavioral problems, and devote more time to involving parents in their child's education. (*See, e.g.*, Ex. 5618, Wiggins Dep., at 53-55; Ex. 5617, Reedy Dep., at 34, 42; Ex. 3198, Garza Dep., at 45-48.) Superintendents also uniformly pointed out that AEIS data on class size averages across all classes – including those that must be kept small such as special education classes and behavioral programs – and therefore reports a lower number than one would see when walking into a typical regular program class. (*See, e.g.*, Ex.6337, Hanks Dep., at 232-33; Ex. 6339, Bamberg Dep., at 179-81; Ex. 6341, Frost Dep., at 84, 170-71; RR18:198-99; RR25:38-39.) This limits the usefulness of the AEIS data.

FOF 569. While most of the evidence on class size reduction is based on studies of early grades, there is evidence that smaller class sizes in eighth grade also positively impact test scores and measures of student engagement. (Ex. 1079, Schanzenbach Report, at 4.) In any event, the ISD Plaintiffs' expert, Dr. Odden, calculated the cost of adequacy based on class sizes of fifteen only in kindergarten through third grade and larger class sizes of twenty-five in grades four through twelve. (Ex. 5520, Odden Report, at 4.)

FOF 570. Dr. Diane Schanzenbach testified that she believes the effects of class size are linear. In other words, the benefits of small class sizes do not occur only when class sizes are reduced to around fifteen. (Ex. 1079, Schanzenbach Report, at 5.) In her view, the benefits also occur when class sizes decrease from sizes such as twenty-four or twenty-five to twenty-one or twenty-two. (*Id.*)

FOF 571. The Court finds that the credible evidence establishes that decreasing class size promotes learning for all students and is an effective strategy for achieving a general diffusion of knowledge.

ii. Districts have been forced to seek class size waivers in record numbers.

FOF 572. Texas has a maximum class size of twenty-two in kindergarten through fourth grade, with some exceptions. (Ex. 1079, Schanzenbach Report, at 6.) If a class becomes larger than twenty-two, the district must apply to the TEA for an exception, or a "waiver." (*Id.*) In 2011-12, the number of class size waivers requested in Texas spiked. (*Id.* at 7.) Typically, between 90 and 150 districts request waivers, but in 2011-12, more than 280 districts requested waivers. (*Id.*) Over 60% of these districts cited financial hardship as the reason for the waiver request. (*Id.*) Statewide, over 1,700 schools had at least one classroom waiver request, and the TEA granted approximately 8,600 class-size waivers in 2011-12. (*Id.*; Ex. 5630, Scott Dep., at 391-92 (referencing Ex. 30 at 3).)

FOF 573. In 2011-12, schools with class size waivers had higher percentages of ELL or bilingual students than schools without class size waivers. (Ex. 1079, Schanzenbach Report, at 7 (schools were on average 61% economically disadvantaged, 24% ELL, and 23% bilingual).)

FOF 574. Many superintendents testified that, even though their students learn better in smaller classes, their districts were forced to seek significantly more class size waivers than ever before as a result of the State's budget cuts. (*See, e.g.*, RR4:257-59; RR3:171-72; Ex. 5617, Reedy Dep., at 40-42; RR6:30; Ex. 3200, Wallis Dep., at 23-24; Ex. 3198, Garza Dep., at 45-47; RR20:78-79; RR4:83-84.) Class size waivers continue to be necessary for many school districts in the 2013-14 school year. (*See e.g.*, *infra* FOF 1104, FOF 1160, and FOF 1179.)

d. Districts lack the funding necessary to provide a support network for learning.

FOF 575. Districts also need funding to provide a variety of programs and supports that are either statutorily required or are necessary to support a general diffusion of knowledge.

FOF 576. In addition to the curriculum tested by the STAAR regime, the State requires districts to provide a full complement of courses that are not tested, including music, art, and physical education, each of which are included in the required enrichment curriculum set forth in Chapter 28 of the Education Code and in Title 19, Chapter 74, of the Administrative Code. The 83rd Legislature made only one change to the required curriculum, adding a separate requirement for a personal financial literacy course. (Ex. 4273, Martinez Dep., at 51:21-52:3.)

FOF 577. School districts must also provide educational support systems to support the general diffusion of knowledge – including counselors, librarians, school nurses, tutors, principals, assistant principals, and central administrators. (RR17:91-92, 94, 100; Ex. 5520, Odden Report, at 6, 8, 10, 14; RR7:49-51 (referencing Ex. 6349 at 77); Ex. 3207, Salazar Dep., at 40-45.) These support staff positions are critical to helping schools meet the statutory and constitutional requirements of a general diffusion of knowledge. (RR19:49-50.)

FOF 578. School districts must also provide professional development and planning and collaboration time to enable teachers to teach the TEKS and provide for a general diffusion of knowledge. (RR6:150; RR20:85; Ex. 3198, Garza Dep., at 17-18.) Anita Givens, who previously oversaw TEA's professional development efforts, testified that continual professional development is important, particularly in light of the state's changing curriculum. (RR28:194.) She sought an additional $24 to $36 million to be included in the agency's budget request for the 2014-15 biennium to help cover the cost of state-developed professional development. (*Id.*) Her efforts were unsuccessful. (RR28:195.)

FOF 579. Counselors play critical roles in (1) identifying and intervening with high risk-children and lining up resources to help these students overcome challenges they face at home or in their neighborhoods, and (2) helping older children identify and choose among their post-secondary options. (RR23:218; RR24:126; Ex. 3206, French Dep., at 60-62.) Various studies associate a lower ratio of students to counselors with better student outcomes. (RR23:218; Ex. 1122, Vigdor Report, at 28.) While a consensus of organizations recommends a maximum student-counselor ratio of 250:1, in 2012, more than 90% of Texas schools had ratios greater than 350:1 and two-thirds of schools had ratios greater than 500:1. (RR23:219-20 (referencing Ex. 5412 at 38).) TEA data shows that counselors can provide only thirty-nine minutes of individual planning time for each student *per year* at a 500:1 ratio, and only fifty-six minutes at a 350:1 ratio. (RR23:219 (referencing Ex. 5412 at 37).) As a result of HB5, the need for counselors has increased, with schools required to have a counselor or administrator meet with each and every entering high school student and their parent or guardian to discuss their personal graduation plan and endorsement options, and counsel all students on the benefits of endorsements and the importance of post-secondary education. (*See* Ex. 20062-A, Zamora Report, at 10.)

FOF 580. The TEA, along with the Texas State Library, produced a report in December 2008 (the "TEA Library Report") which found that school libraries are critical for student achievement, have an important role in teaching, are leading the way for technology use in schools, and inspire literacy (Ex. 744; RR28:181-82), but they must be staffed by qualified librarians to have these positive effects. (Ex. 744.) The TEA Library Report called for increases in state funding (for facilities, staffing, current materials, and technology) to enable the public school library programs to meet their educational goals. (Ex. 744 at 2, 10, 14, 16-17.) Former TEA Associate Commissioner Anita Givens participated in the preparation of the report and agreed with the conclusions and recommendations of the report. (RR28:180-81.) In the five years since the report issued, however, the Legislature has never provided the specific funding for libraries that was called for in the report. (RR28:182.) To the contrary, the percentage of elementary schools with full-time librarians has declined significantly between 2010 and 2012. (RR23:221 (referencing Ex. 5412 at 39).) The Court relies on the findings of the report.

FOF 581. Abilene ISD's superintendent, Dr. Heath Burns, explained that librarians are certified teachers whose literacy expertise can be used to improve teacher and staff development and to foster a love of reading in students. (RR19:48-49.) He described the loss of twelve librarians in his district as one of the significant "casualties" of the 2011 budget cuts. (RR19:48.)

FOF 582. School districts must also incur costs for operational support systems, such as transportation, plant facilities and upkeep, utilities, insurance premiums, and groundskeeping. (RR6:149-50; RR7:49-51 (referencing Ex. 6349 at 77); Ex. 5520, Odden Report, at 14.) Transportation is necessary to encourage student attendance, to prevent dropouts, and to support participation in after-school tutoring and summer school opportunities. (RR6:149; *see also* Ex. 5613, Youngblood Dep., at 88-89.) Transportation

costs are particularly high for large, geographically disperse districts. (*See, e.g.*, RR24:124-25.) These costs are not only necessary, but superintendents testified that they are also increasing. (*See, e.g.*, Ex. 5618, Wiggins Dep., at 35-36; Ex. 3200, Wallis Dep., at 310; Ex. 3227, Gilcrease Dep., at 150-51.)

FOF 583. Research shows that improved support networks – including better facilities and school leadership and the presence of educational aides – help schools to recruit and retain higher quality teachers. (Ex. 1122, Vigdor Report, at 25, 28, 30-31.) As discussed above, teacher quality affects student performance. (*See supra* FOF 529.)

FOF 584. Districts must also provide co-curricular and extra-curricular programs that: (1) help keep many students in school that might otherwise drop out; (2) teach students valuable social skills, including leadership and how to work as part as of a team (a skill that is critical in the labor market); (3) ensure that students have access to a well-rounded education; and (4) help students gain admission into and succeed in college. (*See, e.g.*, Ex. 3199, R. Knight Dep., at 38-39.) Superintendents testified that extracurriculars, athletics, and the arts are "high motivators" for students to come to school, to stay engaged in school, and to keep their grades up so they can participate in these activities. (RR3:196-97; RR8:137-39.) Other superintendents similarly testified that athletic programs prevent students from dropping out and motivate students to perform better academically so they can participate in athletic programs. (*See, e.g.*, Ex. 5617, Reedy Dep., at 116; RR4:104-05, 261-62; RR3:196-97.) Athletic programs also foster important skills such as leadership and teamwork. (RR4:261-62.)

e. Districts lack the funding necessary to provide adequate educational facilities.

FOF 585. As the Texas Supreme Court has noted, "An efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place. These components of an efficient system – instruction and facilities – are inseparable." *Edgewood IV*, 917 S.W.2d at 726. Accordingly, the Court finds that adequate school facilities are necessary to the functioning of the Texas public school system. To provide an adequate education, districts must have adequate facilities, which requires access to sufficient funds to build new facilities and maintain and renovate current ones.

FOF 586. The conditions that must be addressed when considering whether a building is adequate or inadequate include health and safety, age of the building, human comfort, indoor air quality, lighting, acoustical control, and secondary science laboratories. (Ex. 3231 at 37-42; Ex. 3198, Garza Dep., at 35-36; RR18:164-77.)

FOF 587. The Texas Comptroller released a report in 2006 studying school facilities. According to the Comptroller's report, roughly 40% of the high schools were considered in the categories of fair, poor, or needs replacing, with the average age of these facilities being 34.5 years old. (Ex. 3231 at 6; RR18:162-87.) Districts with an economically disadvantaged rate of less than 20% reported the highest percent of facilities in good or

excellent condition, whereas districts with an economically disadvantaged rate of 80% or higher reported the lowest percentage of facilities in good or excellent condition. (Ex. 3231 at 6; RR18:164-77.)

FOF 588. Superintendents from across the state testified about aging facilities that the district cannot afford to repair or replace. (Ex. 3200, Wallis Dep., at 49 and 56; Ex. 3203, Knight Dep., at 40-42; RR5:193-94, 224-28; RR20:86-88; Ex. 3198, Garza Dep., at 32-33.) These older facilities cost more to maintain and operate. (Ex. 3200, Wallis Dep., at 49 and 56.) Superintendents testified about having to educate students in buildings with damaged roofs and foundations with structural problems. (Ex. 3204, Dupre Dep., at 48-51; Ex. 3207, Salazar Dep., at 52-53; RR5:225-27; RR20:86-88; Ex. 3206, French Dep., at 52-53.) Oftentimes, unmaintained buildings can pose a safety hazard. (Ex. 3203, Knight Dep., at 40-42; Ex. 3200, Wallis Dep., at 49, 56.)

FOF 589. Other superintendents testified that the district cannot afford to construct buildings to keep pace with student growth. (RR5:193-94, 224-28.) As a result, campuses become overcrowded, with classes being held in auditoriums, libraries, and other common spaces instead of traditional classrooms. (RR5:193-94, 224-28.) These overcrowded campuses do not have sufficient restrooms or cafeteria space. (RR5:193-94, 224-28.) Other campuses do not have sufficient science facilities, which prevent districts from offering advanced science courses or meeting the requirements of TEKS. (RR5:225, 227; RR20:87-88; Ex. 3206, French Dep., at 18, 52-53.)

FOF 590. In light of the above findings—along with the Court's findings regarding the Legislature's failure to appropriate sufficient funds and increase the guaranteed yield for facilities funding to keep pace with inflation, construction costs, and fast growth (*see supra* Parts I.C.1.a.ii (FOF 224, *et seq.*) and I.C.1.b.iv (FOF 263, *et seq.*)) – this Court finds that overall funding for facilities is insufficient, and, in particular, that the guaranteed yield for facilities is inadequate. The insufficient funding for facilities has contributed to the inadequacy of the system as a whole.

4. Outdated formulas contribute to inadequate and unsuitable funding because they do not reflect the increasing costs of education and were largely unsupported by research even when they were established.

FOF 591. The Texas school funding formulas are designed to accommodate differences in cost due to factors beyond the control of local school districts. By statute, Texas school funding formulas address these factors: (1) costs arising from differing student characteristics, including the greater expense of educating economically disadvantaged, bilingual, and special needs students; (2) costs attributable to various programmatic variables, including career and technology programs; and (3) costs relating to certain uncontrollable school or community characteristics, such as competitive salary differentials, transportation costs, and district size and sparsity. (Ex. 6322, Moak Report, at 55, 61.) When the factors were established, they bore some relationship to the actual cost differences. The same cannot be said today.

FOF 592. Most of these adjustments are out-of-date and lack a research base. (*Id.* at 56; Ex. 1328, Casey Report, at 15-17.) Because these adjustments do not reflect the true costs to districts arising from the differing student, programmatic, and community characteristics or variables, they contribute significantly to the inadequacy and unsuitability of the school funding system. (RR24:148-49.)

FOF 593. As discussed below, the State has failed to meet its obligation under Section 42.007 of the Education Code to update these adjustments. (*See infra* Part I.C.5.a (FOF 603, *et seq.*).) The Court finds that the mechanism of Section 42.007 would, if enforced, help ensure that the school finance formulas were structured and funded so as to provide districts with adequate funding to enable school districts to provide a general diffusion of knowledge. The State's failure to comply with its own statutory requirements has contributed to the inadequacy and unsuitability of the system.

a. Student and programmatic weights

FOF 594. The compensatory education and bilingual weights affect a significant portion of Texas's student population, but the State has failed to update these weights in recent decades. (*See supra* Parts I.C.2.d.ii (FOF 466, *et seq.*) and I.C.2.d.iii (FOF 480, *et seq.*).) As discussed above, these outdated weights contribute to the inadequacy and unsuitability of the system.

FOF 595. Other student and programmatic weights are also out of date and contribute to the inadequacy and unsuitability of the system. For example, the special education allotments (which have not been modified since 1993) and the allotment for high school students (established in 2006) have not been studied to determine the actual cost of educating these students. (Ex. 6322, Moak Report, at 61-62; Ex. 1328, Casey Report, at 15-17 RR6:216-17.) Several superintendents and the only school district CFO to testify testified that special education costs in their districts are increasing and are a significant cost driver. (RR3:146-49; RR4:13-18; RR4:192-93; Ex. 6338, Hoke Dep., at 62-66 (referencing Ex. 664 at 25-26); RR24:132; RR25:158-60, 163-65.)

FOF 596. The career and technology weight, which is comparable to the funding structure first adopted in 1984, is intended to serve as a substantial financial incentive for districts to offer quality vocational programs. (Ex. 1328, Casey Report, at 16; Ex. 6322, Moak Report, at 62; RR6:216.) The overall effective weight of 0.35 (or 35% additional funding) also has not been examined in terms of actual costs or performance criteria in recent years. (Ex. 6322, Moak Report, at 62; Ex. 1328, Casey Report, at 16.)

b. Cost of Education Index

FOF 597. The Cost of Education Index ("CEI") is an adjustment designed to reflect the variation in known resource costs and costs of education beyond the control of school districts. (Ex. 6322, Moak Report, at 56-57; RR6:211-12.) The CEI is based on five school district characteristics that were measured in 1989-90 – district size, type, percentage of low income students, average beginning teacher salary in surrounding districts, and location

in a county with a population less than 40,000. (Ex. 6322, Moak Report, at 56; Ex. 5653 at 24.) These measures have become outdated as populations have shifted, the cost of housing has increased, and student populations have changed. (Ex. 6322, Moak Report, at 56; RR6:209-11; Ex. 3188, Baker Report, at 4, 27; RR16:26-29.)

FOF 598. The CEI has not been updated since 1990, which means that the annual distribution of approximately $2.36 billion rests on teacher compensation patterns and school district characteristics dating from 1989-90. (Ex. 6322, Moak Report, at 56; Ex. 1328, Casey Report, at 8, 16; RR6:209-12.) Mr. Moak testified that an updated index should provide approximately $1 billion more to school districts. (RR6:212-14 (referencing Ex. 6349 at 51).) Although the Legislature has twice commissioned updates (completed in 2000 and 2004), neither has been acted upon. (Ex. 1328, Casey Report, at 10-11.) Both studies concluded that costs had changed significantly since the 1990 index was adopted and recommended that the index be replaced. (*Id.*)

FOF 599. The second study was conducted by Lori Taylor of Texas A&M University at the request of the Joint Select Committee on Public School Finance. Dr. Taylor observed that Texas school districts are facing substantial and uncontrollable differences in labor costs that vary by over 30% from district to district, and that the geographic pattern of cost has shifted. (Ex. 6322, Moak Report, at 56-57.) She concluded that the existing CEI is badly outdated, and that a new index that is "accurately reflecting uncontrollable variations in the cost of education requires adoption of a new CEI." (*Id.* at 57.) The Legislature has ignored this recommendation. The Legislature's failure to update the CEI has particularly harmed central city and suburban school districts. (*Id.*)

c. District size and sparsity adjustments

FOF 600. Texas has long recognized the need to provide funding differentials to small and/or sparsely populated districts to account for diseconomies of scale and other unique costs these districts face. (*Id.* at 61.) The current system recognizes several types of districts, including districts with 1,600 to 5,000 students, districts with fewer than 1,600 students but more than 300 square miles, districts with fewer than 1,600 students but less than 300 square miles, and districts with fewer than 130 students. (*Id.*; Ex. 1328, Casey Report, at 14.) The adjustment for district size has not been updated since 1995, except for the addition of a mid-sized district adjustment. (Ex. 1328, Casey Report, at 16; RR6:226-28.) The sparsity adjustment has not been changed since 1984. (Ex. 1328, Casey Report, at 16.) Several factors suggest that the formulas are in need of modification under the current performance-oriented system. (Ex. 6322, Moak Report, at 61.) These factors include a lack of evidence that the 300 square mile variation is based on current cost differentials and the failure to adjust formulas for modifications in curriculum standards. (*Id.*)

d. Transportation allotment

FOF 601. The transportation allotment recognizes a legitimate cost variation in transportation costs among districts, but only finances a small portion of the actual cost. (*Id.*; RR6:217.) As

a result, districts are forced to fund this expense through the collective use of over $900 million in funds intended for other programs in Tier I and II. (Ex. 6322, Moak Report, at 61; RR6:217; *see, e.g.*, RR12:17.)

FOF 602. The Court finds that these outdated formulas are not designed, structured, or funded so as to enable school districts to achieve a general diffusion of knowledge and therefore contribute to the inadequacy and unsuitability of the system.

5. The ISD Plaintiffs have demonstrated that the cost of providing an adequate education exceeds the available funding under the current school finance system as a result of the State's failure to suitably provide for the Texas public school system.

a. Despite statutory mandates, the State has made no attempt in the last decade to calculate the cost of adequacy or the costs of meeting its own performance standards.

FOF 603. The State Defendants have not attempted to calculate the cost of adequacy in this case. In fact, the State of Texas (including the Legislature and TEA) has not conducted a study of the cost of an adequate education since 2003. (RR17:37; RR32:196, 202-05; RR56:170-72; Ex. 6621 at 4.) Moreover, the State's witnesses acknowledge that the State has made no effort to determine the cost of meeting the State's new and higher standards or the costs of HB5's changes to the graduation, assessment, or accountability requirements. (RR32:75-76, 132-33, 196, 202-05; RR33:26-27, 138-41; RR27:134-35, 147-48; RR28:172-74, 185-86; RR31:168-69, 174-75; RR34:85, 190-91; RR62:105-06; RR63:119-20, 136; Ex. 4273, Martinez Dep., at 40-41, 43-44, 53-54, 60, 73, 85-87, 102.) Further, TEA's CFO testified that the State does not attempt to factor increased costs to districts into TEA's biennial legislative appropriations request ("LAR") for the FSP, although the State does consider the cost to TEA of administering the laws and incorporates those estimates into TEA's LAR. (RR31:168-69.) The CFO further testified that none of the 2014-15 appropriated amounts for the FSP program, IFA and EDA programs, or the grant programs were based on any study or analysis of school district needs. (RR63:104-06.)

FOF 604. Section 42.007 of the Education Code creates a mechanism for keeping the important funding elements of the FSP up-to-date and consistent with the State's academic goals, as well as changing local demographic and financial conditions. (Ex. 1328, Casey Report, at 4-5.) Under this section, the LBB is directed to adopt rules that provide for "the calculation for each year of a biennium of the qualified funding elements" – including the cost per student for the regular program, as well as special population programs, and adjustments such as the CEI, the guaranteed yield level for enrichment, and funding for the school facilities programs – that are "necessary to achieve the state policy under Section 42.001." (*Id.* at 4; RR10:152-54 (referencing Ex. 6352 at 7-8).) *See also* TEX. EDUC. CODE § 42.001(a) ("It is the policy of this state that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in

the public school system shall have access to programs and services that are appropriate to the student's educational needs . . . .").

FOF 605. Daniel Casey (a former head of the Legislative Education Board, which is the former agency responsible for conducting such studies) testified that the LBB has failed to fulfill its statutory obligation to adopt rules and conduct studies regarding the cost of the State's requirements and goals. (RR10:154-55 (referencing Ex. 6352 at 9); RR56:170 (referencing Ex. 6621 at 4).) Mr. Casey further testified that, when the State has conducted studies, it has rarely taken action on them. (RR10:154-55 (referencing Ex. 6352 at 9); *see also* Ex. 1328, Casey Report, at 6-12.) Mr. Casey also testified that the House of Representatives added provisions to the 2013 appropriations bill that called for the studies required by Section 42.007 of the Texas Education Code, as well as more detailed studies of the weights and other cost-adjustments. (RR56:170-72; Ex. 6621 at 4-5.) However, these school finance study riders were removed in conference committee, despite the fact that the State was criticized during the first phase of the trial for its failure to study the cost of adequacy or the cost of meeting its own standards. (RR56:171-72; Ex. 6550; Ex. 6621 at 4-5.)

FOF 606. As discussed in greater detail in Parts I.C.2.d.ii (FOF 466, *et seq.*), I.C.2.d.iii (FOF 480, *et seq.*), and I.C.4 (FOF 591, *et seq.*) above, most of the "qualified funding elements" that should have been studied under this statutory requirement are out-of-date and lack a research base. (*See also* Ex. 6322, Moak Report, at 56-62.) Because these adjustments do not reflect the true costs to districts arising from the differing student, programmatic, and community characteristics or variables, they contribute significantly to the inadequacy and unsuitability of the school funding system. The Legislature's failure to enact formulas and allotments that bear some factual relationship to the costs of education is a structural defect in the school finance system that makes it impossible to accomplish a general diffusion of knowledge.

b. Superintendent testimony establishes that school districts lack sufficient funding to meet state standards.

FOF 607. Superintendents uniformly testified that their districts do not have sufficient funding to provide a general diffusion of knowledge. (*See generally infra* Part I.C.7 (FOF 680, *et seq.*).) As Austin ISD's superintendent testified, "we are up against the wall on the ever increasing state standards and there's an expectation that we deliver on all of that in short order . . . so it is unreasonable, in our minds, to believe that for any reason whatsoever, we would be able to do all of those things that are starting with the base required by the State with the resources we have today." (RR19:255; *see also* RR5:33; Ex. 3206, French Dep., at 37-38; Ex. 3226, Kincannon Dep., at 27, 142-43.)

FOF 608. Districts' needs are particularly acute in light of the transition to the STAAR assessment system. When the State implemented new assessment regimes in the past, it provided additional resources to help students meet the new standards. (*See supra* Part I.B.4 (FOF 123, *et seq.*).) The additional resources that were available to school districts under prior assessment transitions, such as the transition from TAAS to TAKS, are not available for

the current transition from TAKS to STAAR. (Ex. 6322, Moak Report, at 35.) All witnesses who addressed the subject uniformly testified that the STAAR exam is far more rigorous than TAKS, and superintendents testified uniformly that districts will need additional resources to prepare students to pass the exams. (*See, e.g.,* Ex. 5618, Wiggins Dep., at 58-60; Ex. 5617, Reedy Dep., at 59; Ex. 5615, Waddell Dep., at 45-46; Ex. 5614, Patek Dep., at 53-56, 55-56; Ex. 5613, Youngblood Dep., at 164-65; *see also* Ex. 6322, Moak Report, at 30.) The evidence leaves little doubt that inadequate funding for these kinds of interventions will impair districts' ability to effectively prepare students to pass the STAAR exam or achieve the level of performance that reflects the Legislature's standard for the general diffusion of knowledge. Further, when all funds must go to accomplishing an adequate education, districts are stripped of their discretion to provide enrichment. (Ex. 6322, Moak Report, at 30, 35; Ex. 5617, Reedy Dep., at 62.)

FOF 609. Superintendents uniformly testified that the HB5's changes to the graduation requirements and EOC testing regime did not result in significant cost savings for districts. (*See* Ex. 6557, Sconzo Dep. (Vol. II), at 30-42 (referencing Ex. 20256) (estimating costs of implementing HB5 graduation plans), 49-59 (referencing Ex. 20255) (comparing remediation costs under HB5 to remediation costs under TAKS); Ex. 6558, Frost Dep. (Vol. II), at 29-32, 35-37, 39-40; Ex. 4336, Cavazos Dep., at 94:12-14, 98:1-12.)

c. The "evidence-based" model presented to the Court credibly estimates adequacy costs substantially in excess of current spending levels.

FOF 610. Allan Odden, of the University of Wisconsin at Madison, estimated the cost of adequate school funding levels for Texas school districts using a cost estimate model known as the "evidence-based" approach. (*See generally* Ex. 5520, Odden Report, at 1.) Dr. Odden's education, training, and experience are summarized in his curriculum vitae. (*See* Ex. 1300.) In collaboration with Lawrence Picus of the University of Southern California, Dr. Odden has previously performed cost estimates in other states at the request of state legislative or governors' commissions and state education agencies. (RR17:41-44 (referencing Ex. 5665 at 3).) In several of these states, their estimates have been adopted as the basis for state school finance systems. (RR17:44 (referencing Ex. 5665 at 5).) The Court finds that Dr. Odden is qualified to opine on the cost of adequate education based on his knowledge, skill, experience, training, and education.

FOF 611. Dr. Odden applied the model to estimate the per-pupil cost of an adequate education for each school district in Texas and for the state as a whole. (Ex. 5520, Odden Report, at 1.) Dr. Odden estimated the level of funding that is necessary to meet the Texas constitutional requirements for education, which in the present context requires both meeting applicable statutory requirements and providing a system in which students are placed on a trajectory of significant positive improvement in core academic subjects. (*Id.*) His estimates do not include any amount that is used for enrichment purposes. (*Id.*)

FOF 612. The evidence-based approach uses current research findings to specify the resources needed in prototypical elementary, middle, and high schools. (*Id.* at 2.) That research includes experimental design studies, other peer reviewed publications, and analysis of best practices from schools and districts that have significantly improved student performance over a four to six-year time period. (*Id.*) The approach also relies on professional standards, as well as Texas legal requirements, for elements such as guidance counselors and nurses, as well as maintenance, custodial, and groundskeeper personnel. (*Id.*)

FOF 613. To estimate the cost of the evidence-based model for each district, which is then aggregated to a total state cost, Dr. Odden followed these steps:

- Described in detail a prototypical school district designed for high student performance, including resources at each school (elementary, middle, and high schools, separately) (*see id.* at 4-26);
- Estimated the core per-pupil resources needed for each prototypical school;
- Determined the additional per-pupil resources necessary to meet the needs of special needs students (economically disadvantaged, bilingual/ESL, special education, and career and technical education);
- Computed the per-pupil costs of the central office and maintenance and operations;
- Determined the per-pupil costs of a comprehensive pre-K program, serving the same number of pre-K students currently served in Texas pre-K; and
- Estimated the additional costs required due to the diseconomies of small school districts.

(*Id.* at 2.)

FOF 614. These per pupil cost estimates are then applied to the ADA of each district such that a total estimated cost per ADA – based on the characteristics of the students in that district – can be determined for each school district in the state. (*Id.* at 3.) This figure is then adjusted by a Cost of Education Index that accounts for differences in the cost of providing educational services in different regions of Texas. (*Id.* at 2; *see also supra* 4.b.)

FOF 615. Some of the key strategies recommended by Dr. Odden's evidence-based approach include (1) core teachers for class sizes of fifteen in kindergarten through third grade and of twenty-five in grades four through twelve, (2) full-day kindergarten, (3) specialist teachers at 20% of core teachers at elementary and middle schools and 33% at high

school, and (4) instructional coaches to provide professional development, including classroom observation and feedback for teachers. (Ex. 5520, Odden Report, at 4-6.) Dr. Odden's evidence-based model provides additional resources, including tutors and summer school, which are targeted toward struggling students. (*Id.* at 10-11.) These strategies are supported by the evidence as "best practices" and are credible factors for determining the cost of education. Dr. Odden testified that Texas is unlikely to substantially improve student performance without implementing the core interventions recommended by his evidence-based model. (RR17:147.)

FOF 616. The benefits of Dr. Odden's strategies are supported by a substantial body of credible research, including randomized trials and meta-analyses (which determine average effect sizes across a large number of studies). (RR17:67-78; Ex. 5520, Odden Report, at 4-6, 20.)

FOF 617. For example, the Tennessee STAR study, which is a large-scale randomized trial, supports Dr. Odden's recommendation to reduce class sizes at the elementary level. (RR17:76-77; Ex. 5520, Odden Report, at 4; *see also supra* FOF 564 – FOF 567.) Randomized trials also support Dr. Odden's recommendations for full-day kindergarten (which Texas has partially funded through grants in the past), instructional coaches, tutors, summer school, and pre-K. (RR17:76-77, 86-87.) Dr. Odden reasonably determined that the strategies included in his model are likely to result in substantial increases in student outcomes.

FOF 618. The Court finds that Dr. Odden's model is conservative in several respects. For example, Dr. Odden based his calculation of teacher salaries on average salaries in Texas (RR17:100-02), despite evidence from Dr. Vigdor and others that salaries in Texas have not kept pace with overall wage levels in the economy, or even with salaries in surrounding states. (*See supra* Part I.C.3.a (FOF 526, *et seq.*).) He also did not assume any expansion over current levels in the population served by pre-K. (RR17:87.) And he assumed core class sizes of twenty-five students in grades four through twelve – a number that many have criticized as being too high. (RR17:84-85.) His model also does not reflect all of the costs needed to provide ELL students with a basic, adequate education, including the costs of stipends that are needed to recruit and retain certified bilingual/ESL instructors, textbooks in two languages, materials and professional development geared toward the language programs, and tutoring and remediation costs to address ELL needs.

FOF 619. Dr. Odden's model yielded an estimate of $43,016,784,418 for necessary educational spending in Texas in 2010-11. (RR17:120 (referencing Ex. 5665 at 23).) This calculation excludes the costs for special education for children with severe and profound disabilities, as well as the costs of transportation, food services, and security. (RR17:108, 120-21.) To make an apples-to-apples comparison of Dr. Odden's estimate of adequate spending to the total operating expenditures in 2010-11, Lynn Moak added in the excluded costs of transportation, food services, and security. (Ex. 6325, Moak Supp. Report Three, at 1; RR17:137.) He determined that Dr. Odden's adequacy calculation needs to be increased by $3,749,767,519 to account for these excluded costs. (Ex. 6325,

Moak Supp. Report Three, at 1.) Adding these costs to Dr. Odden's calculation produces an adjusted adequacy estimate of $46,766,551,937. (RR17:137-39; RR54:120-21 (referencing Ex. 6618 at 17).) This adjusted adequacy estimate is $3.66 billion more than the amount spent on education in Texas in 2010-11 – before the 2011 budget cuts. (RR17:139; Ex. 6618 at 17.) Adding the $2.5 billion in budget cuts to this adjusted adequacy calculation indicates that Texas schools were underfunded by approximately $6.16 billion annually in the 2012-13 biennium. (RR17:140-41.) This amount does not include the additional funding required to provide districts with meaningful local enrichment opportunities. (RR17:141.) Incorporating Mr. Moak's estimate of the amount of dollars that would ordinarily be considered "enrichment" in an adequately funded system, Texas schools were underfunded in the 2012-13 biennium by $7.76 billion. (RR17:141-42.)

FOF 620. The Court finds Dr. Odden's conclusion to be a reasonable estimate of the cost of an adequate education in Texas.

d. Lynn Moak's expert testimony supports a finding that school funding is currently inadequate.

FOF 621. Lynn Moak testified that he believes Texas cannot close the educational gap or achieve college and career readiness without additional funding. (RR6:241-42.) He explained that approximately $1,000 of additional funding per weighted student above 2010-11 spending levels is necessary to correct outdated weights and adjustments and to allow schools to meet increased state standards. (RR6:241-43; Ex. 6325, Moak Supp. Report Three, at 1.) This Court finds Mr. Moak's estimate to be a reasonable approximation of the level of resources necessary for Texas students to meet these heightened requirements. (*See* RR6:242-43.)

e. Updated calculations of previous costs estimates for educational adequacy demonstrate that the current system falls short.

FOF 622. Nearly twenty years ago – at a time when Texas school districts faced very different student populations and outcome standards, the Texas Supreme Court noted, "[b]ased on the evidence at trial, the district court found that meeting the accreditation standards, which is the legislatively defined level of efficiency that achieves a general diffusion of knowledge, requires about $3,500 per weighted student." *Edgewood IV*, 917 S.W.2d at 755, n.10. Applying the average rate of growth of education costs from the NCES Education Comparable Wage Index for Texas, Dr. Baker determined that this $3,500 figure is equivalent to $6,576 in 2011. (RR16:23-26 (referencing Ex. 3230 at 5); Ex. 3189-B.) The evidence showed that only 130 out of 1,024 school districts could generate $6,576 in M&O revenue by taxing at $1.04 or less in 2011-12. (RR9:159-60 (referencing Ex. 3098).) Only 233 districts could raise this amount by taxing at $1.17 or less. (RR9:123-24 (referencing Ex. 3098).)

FOF 623. Although Dr. Baker's $6,576 per-WADA calculation (using old law WADA without the RPAF that effectively reduced WADA in the 2012-13 biennium) accounts for inflation through 2011, it does not account for the increased costs districts face as a result of the State's heightened expectations. (Ex. 3188, Baker Report, at 25.) Yet, the costs to provide a general diffusion of knowledge have increased since *Edgewood IV*. (RR9:123-24; *see also supra* Parts I.B.1 (FOF 11, *et seq.*) and I.B.3 (FOF 81, *et seq.*).) In addition, this analysis assumes that districts could fund an adequate education using revenue from Tier I and Tier II, but revenue from Tier II was intended solely to provide local enrichment. (Ex. 5630, Scott Dep., at 341, 343; *see also supra* FOF 40 – FOF 44.) As a result, even if districts could raise their M&O tax rates to $1.17, less than one-quarter of districts in 2011-12 could obtain enough revenue to generate the inflation-adjusted per WADA revenue that was necessary to provide an adequate education in 1994, much less to generate enough revenue to provide an adequate education under today's heightened standards or to provide local enrichment.

FOF 624. The Court recognizes that the $3,500 per student cost of adequacy found in *Edgewood IV* is a rough approximation and outdated, but this finding and the analysis above further support Dr. Odden's opinion, Mr. Moak's opinion, and the testimony of every superintendent to address the subject before the Court that current school funding is inadequate.

f. The State has failed to assess the cost of suitably providing for its own standards and did not present evidence to controvert the school districts' proof that they lack adequate funding to provide a general diffusion of knowledge.

FOF 625. The State has a responsibility under Article VII, Section 1 to make a reasonable effort to determine what it will cost to suitably provide for its own standards and meet its own definition of general diffusion of knowledge. The State effectively has recognized and accepted this constitutional responsibility by enacting Section 42.007 of the Texas Education Code, which requires rule making and the conduct of specific studies on a biennial basis to determine the cost of meeting state performance requirements. (*See supra* FOF 604.)

FOF 626. The State has failed to perform this constitutional and statutory responsibility for the past decade. (*See supra* Part I.C.5.a (FOF 603, *et seq.*).) In particular, there is no evidence that the State made any effort in 2011 to determine the cost of its own performance requirements, or what effect the $5.3 billion in cuts, including implementation of the RPAF, would have on the ability of schools and students to meet the higher performance standards that the State began to implement in the 2011-12 school year. (*See, e.g.*, RR32:201-04, 130-31, 196; RR33:27, 189-191; RR27:134-35; RR28:172-74, 184-86; RR31:168-71; RR34:89, 195-96.) It likewise failed to evaluate the costs of implementing HB5 or to base its appropriations for the 2014-15 biennium on any analysis of school district needs. (RR63:104-06, 119, 136; RR62:105-06; Ex. 4273, Martinez Dep., at 40-41, 43-44, 53-54, 60, 73, 85-87, 102.)

FOF 627. While the State has failed to fulfill its constitutional and statutory responsibility to determine the cost of its own performance standards, the plaintiffs have submitted extensive evidence relating to these costs in the form of testimony from superintendents and experts. (*See supra* Parts I.C.5.b – I.C.5.e (FOF 607, *et seq.*).) To determine if the current system has sufficient funding to meet current performance standards, the Court must consider this evidence.

FOF 628. At least five significant considerations drive the Court's assessment of the level of funding required to accomplish the constitutionally-mandated general diffusion of knowledge. These are: (1) the well-documented increase in performance standards for students and districts described in Part I.B.3 (FOF 81, *et seq.*) above; (2) the cost estimates provided by experts during the trial; (3) the amount of spending the courts have found necessary to achieve the general diffusion of knowledge in the past; (4) the effects of recent budget cuts on school districts, as established principally in the testimony of superintendents; and (5) the amount of local taxing discretion that the system must provide to avoid violating the prohibition against a state property tax.

FOF 629. The table below summarizes the cost estimates provided by plaintiffs' experts Allen Odden and Lynn Moak, compared to actual levels of operating expenditures in the 2010-11 school year. The 2010-11 expenditures in this table include federal funding and state special grant program funding. Mr. Moak stated generally that his estimate represented an increase of $1,000 per WADA over 2010-11 funding levels. Mr. Moak also adjusted Dr. Odden's original adequacy estimate to account for expenditures on food, transportation, and security, which were not included in Dr. Odden's original model. It is therefore reasonable to compare Dr. Odden's estimates (with Mr. Moak's adjustment) to 2010-11 "all funds" operating expenditures, which include these categories.

Adequacy Cost Estimates

	Total	Per 2010-11 ADA	Per 2010-11 WADA	Differential Between Actual and Estimates per 2010-11 ADA	Differential Between Actual and Estimates per 2010-11 WADA
2010-11 Actual Operating Expenditures (All Funds)	$43,110,208,183	$9,712	$7,241	—	—
Odden Estimate with Moak Adjustment	$46,766,551,937	$10,536	$7,855	$824	$614
Moak Estimate ($1,000 per WADA increase)	$49,065,900,357	$11,054	$8,241	$1,342	$1,000

Ex. 6618 at 17 (citing Ex. 6326 (2010-11 actual operating expenditures); RR17:137-39 (Odden estimate); RR6:241-43 (Moak estimate); Ex. 11323 (ADA and WADA; uses 2011 spreadsheet with ADA and WADA for ISDs only (cells F-1225 and I-1225)).)

FOF 630. The following table summarizes the inflation-adjusted cost of achieving the general diffusion of knowledge provided by the Supreme Court in *Edgewood IV*, as calculated by

Dr. Baker, compared to actual levels of FSP funding in the 2010-11 school year. The updated *Edgewood IV* calculation is best compared to 2010-11 FSP funding, as the original $3,500 per WADA identified in *Edgewood IV* referred to the formula system and not to funding sources outside the FSP.

Updated *Edgewood IV* Calculation

	Total in Billions	Per 2010-11 ADA	Per 2010-11 WADA	Differential Between Actual and Updated *E4* per 2010-11 ADA	Differential Between Actual and Updated *E4* per 2010-11 WADA
2010-11 Actual FSP M&O Revenue (net of recapture)	$33.112	$7,460	$5,562	—	—
Updated *Edgewood IV* Calculation	$39.153	$8,821	$6,576	$1,361	$1,014

Ex. 6618 at 18 (citing Ex. 11323 (2010-11 actual FSP M&O revenue; uses 2011 spreadsheet with total M&O revenue for ISDs only (cell CD-1225)); RR16:23-26 (referencing Ex. 3230 at 5) (*Edgewood IV* calculation); Ex. 11323 (ADA and WADA; uses 2011 spreadsheet with ADA and WADA for ISDs only (cells F-1225 and I-1225)).)

FOF 631. While Dr. Odden's estimate compares to "all funds" operating expenditures, and the updated *Edgewood IV* calculation compares to FSP funding, the amounts by which the various estimates find the current system to be underfunded fall within a relatively consistent range. The next table below provides the per-WADA FSP spending that would result from each expert's proposed addition of funds.

Required FSP Spending Under Adequacy Cost Estimates

	Additional Spending Needed per 2010-11 WADA	Total FSP Spending Needed per 2010-11 WADA
Odden Estimates with Moak Adjustment	$614	$6,176
Moak Estimate ($1,000 per WADA increase)	$1,000	$6,562
Updated *Edgewood IV* Calculation	$1,014	$6,576
Foundation Program Cost Estimate for 2010-11	$0	$5,562

Ex. 6618 at 18 (citing RR17:137-39 (Odden estimate); RR6:241-43 (Moak estimate); RR16:23-26 (referencing Ex. 3230 at 5) (*Edgewood IV* calculation); Ex. 11323 (2010-11 actual FSP M&O revenue; uses 2011 spreadsheet with total M&O revenue for ISDs only (cell CD-1225)); Ex. 11323 (ADA and WADA; uses 2011 spreadsheet with ADA and WADA for ISDs only (cells F-1225 and I-1225).)

FOF 632. The 2010-11 cost estimates require adjustment for inflation since the original year. Based on the state and local price deflator used by the Legislative Budget Board and Mr. Moak's estimates for the 2013-14 and 2014-15 school years, an overall adjustment factor of 3.69 percent for 2013-14 and 5.77 percent for 2014-15 is required. (RR54:124-25 (referencing Ex. 6618 at 19).) The results are shown below.

Estimate	2010-11 Estimate Per WADA	Adjusted Estimate for 2013-14 per WADA	Adjusted Estimate for 2014-15 per WADA
Odden Estimates with Moak Adjustment	$6,176	$6,404	$6,532
Moak Estimate ($1,000 per WADA increase)	$6,562	$6,804	$6,941
Updated *Edgewood IV* Calculation (Baker)	$6,576	$6,818	$6,955
Foundation Program Cost Estimate for Indicated Years at $1.04 Tax Rate	$5,702	$5,658	$5,743
Foundation Program Cost Estimate for Indicated Years at $1.17 Tax Rate	$6,183	$6,143	$6,232
Foundation Program Cost Estimate for Indicated Years at 2012 Tax Rate	$5,778	$5,737	$5,832

(Ex. 6618 at 19.)

FOF 633. At $1.04 tax rate (which is the most prevalent rate and the rate at which districts must be able to provide a general diffusion of knowledge) the current Foundation Program raises about $800 less per WADA in 2014-15 than even the lowest of the three adequacy estimates. (*Id.*) Even at $1.17, an adequacy level which would leave no room for enrichment, the lowest of the adequacy estimates is $300 more than what the current Foundation program supports on average in 2014-15. (*Id.*)

FOF 634. The Court acknowledges the difficulty of selecting any single number to represent the cost of educational adequacy in Texas, but the Court does not agree with the State's position that there are no judicially manageable approaches to estimating a reasonable range of costs consistent with the State's performance expectations. The Court finds that the analyses of Dr. Odden and Mr. Moak and the updated *Edgewood IV* calculation provided by Dr. Baker provide reasonable, credible, and relatively consistent estimates of the cost of achieving the general diffusion of knowledge. As noted previously, Dr. Odden's calculations are conservative in many respects. (*See supra* FOF 618.) The *Edgewood IV* calculation represents an amount acknowledged by the Supreme Court as necessary to satisfy constitutional requirements under much less rigorous 1994 standards. The Court also notes that the adequacy estimates are very near the $6,474 average per WADA spending level of districts that achieved exemplary status under the prior standards. (*See infra* FOF 644.) In the Court's view, there can be little doubt that a comparable amount of funding, properly adjusted for inflation, is minimally necessary to meet significantly more rigorous standards today. (*See* RR9:123-24.)

FOF 635. For these reasons, the Court finds that achieving a level of funding adequate to meet the State's performance standards requires, at a minimum, the $6,404 per WADA in FSP funding dollars that was estimated by Dr. Odden and adjusted by Mr. Moak (and put in 2013-14 dollars), which is the lowest supplied to the Court. Dr. Odden's estimate, as adjusted by Mr. Moak, would require on average an additional $614 per WADA above 2010-11 all funds spending levels, even before adjusting for inflation. (*See* RR54:123-24

(referencing Ex. 6618 at 18).) If one assumes that adequacy must be met at $1.04 (as discussed below), this would result in additional spending of approximately $800 per WADA (on average) over 2014-15 levels.

FOF 636. The Court does not find any of the proposed methods of estimating the cost of education to be definitive, but they do provide a credible range that definitively establishes that the State has failed to make suitable provision of funds for an adequate education.

FOF 637. HB1 was designed with the intent that districts be able to provide an adequate education by taxing at no higher than $1.00, as evidenced by testimony from Robert Scott and the structure of the system implemented by HB1. (Ex. 5630, Scott Dep., at 339-41, 343-45.) Tier I was intended to provide funding necessary to meet basic program requirements – in other words, the performance expectations implicit in the Constitution and in statute. (*Id.* at 341, 343-45.) For most school districts, Tier I applies to funding up to $1.00 of M&O tax effort. (*Id.* at 339-40.) Tier II was intended to provide meaningful local enrichment discretion above this level. (*Id.* at 341, 343-45.)

FOF 638. The Court finds that, at a very minimum, all districts must be able to provide a general diffusion of knowledge under the current statutory structure by taxing at $1.04. This is the level beyond which a TRE is required and a level that still leaves thirteen cents for enrichment at the voters' discretion. The Court agrees with the ISD Plaintiffs that the question of whether to achieve adequate funding cannot be made subject to a vote. Requiring districts to tax above $1.04 to achieve adequacy would leave districts with insufficient local discretion to tax for enrichment purposes, considering the current yield per penny in that tier.

FOF 639. The Court emphasizes that in the discussion of funding in this section, the Court is focusing on overall levels of funding in the system, not funding levels for specific districts. Findings related to the distribution of funding between districts are discussed separately in Part I.D (FOF 1204, *et seq.*) below pertaining to the financial efficiency claims. Similarly, the Court addresses findings relating to the outdated weights and formula adjustments separately in Parts I.C.2.d.ii (FOF 466, *et seq.*), I.C.2.d.iii (FOF 480, *et seq.*), and I.C.4 (FOF 591, *et seq.*) above.

FOF 640. There is no evidence from the State of the cost of an adequate education. The only evidence is the three credible estimates offered by the ISD Plaintiffs that the cost of an adequate education is greater than what most districts can raise at an M&O tax rate of $1.04. Only 259 of the 1021 districts have the capacity to raise Dr. Odden's $6,176 estimate for the 2010-11 school year – the lowest estimate of the cost of an adequate education *prior to adjusting for inflation*. The Court finds that the State's failure to calculate the cost of providing a general diffusion of knowledge, and the systematic underfunding of districts at levels well below any credible estimate of the cost of providing an adequate education, reflect a system that is arbitrary and decidedly *not* structured, operated, or funded so as to achieve its purpose thereby violating the suitability clause of Article VII, Section 1.

6. The State's arguments do not disprove the ISD Plaintiffs' claims.

a. The evidence shows that money, if spent well, improves educational outcomes.

i. Both the State and the Texas Supreme Court have recognized a relationship between funding and student performance.

FOF 641. The State previously has acknowledged a positive relationship between money and student performance. In the *West Orange-Cove* litigation, the State proffered a cost function study whose authors stated, "[t]here appears to be a fundamental economic relationship among input prices, educational outcomes, and cost in Texas public schools. Other things being equal, the analyses suggest that it costs more to produce higher levels of educational outcomes." (Ex. 5676 at 1.)

FOF 642. In the current litigation, while the State has appeared at times to question the relationship between money and student performance, the State's witnesses have continued to acknowledge that funding is a crucial element in achieving positive student performance. The State's expert, Dr. Michael Podgursky, testified that: (1) resources are required to provide a quality education to students; (2) poverty has a significant impact on learning, and low-income students are more costly to educate; and (3) additional resources may be required as the State increases its expectations for students. (RR29:105-07.) The former Commissioner of Education, Robert Scott, recognized that additional resources will be needed to meet the challenges faced during the implementation of the STAAR/EOC regime. (Ex. 5630, Scott Dep., at 91-92.) In addition, the State's expert, Dr. Whitehurst, testified, "[i]f you want to close gaps, you need to provide services to the children who need those services." (RR26:67.) Logic dictates that resources are necessary to provide services. (*See supra* FOF 394, FOF 553; *see infra* FOF 653.)

FOF 643. The Texas Supreme Court has also recognized the linkage between money well spent and student performance. *See, e.g.*, *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 393 (Tex. 1989) ("The amount of money spent on a student's education has a real and meaningful impact on the educational opportunity offered that student.") ("*Edgewood I*"); *WOC II*, 176 S.W.3d at 788 ("While the end-product of public education is related to the resources available for its use, the relationship is neither simple nor direct; public education can and often does improve with greater resources, just as it struggles when resources are withheld, but more money does not guarantee better schools or more educated students.").

FOF 644. The Supreme Court's statements comport with common sense and some of the most basic data about the Texas school finance system. Districts with higher revenue per WADA perform better across many different performance measures, including (1) districts' accountability ratings for 2011, (2) the percent of students scoring at the commended level on TAKS reading tests, mathematics tests, and all tests, (3) the percent of students scoring at or above the criterion level set by the TEA on college entrance examinations

(ACT/SAT), and (4) the percent of students passing five STAAR exams at the Level II, Phase I standard. (Ex. 6322, Moak Report, at 63; RR6:232-43 (referencing Ex. 6349 at 59).) The table below reflects several of these indicators as examples of this pattern.

Performance Measure	Current Law				
	# Districts	# ADA	# WADA	WADA Ratio	Revenue per WADA
District Rating					
Unacceptable	15	35,360	51,067	1.4442	$5,495
Acceptable	271	2,509,239	3,367,847	1.3422	$5,645
Recognized	182	1,582,587	2,050,021	1.2954	$5,801
Exemplary	10	78,823	91,488	1.1607	$6,474
% Commended - Math					
< 20%	97	353,153	500,365	1.4169	$5,596
20% to < 30%	257	2,296,522	3,111,911	1.3551	$5,593
30% to < 40%	83	966,646	1,229,553	1.2720	$5,835
40% and Greater	41	589,687	718,594	1.2186	$6,115
% Satisfactory on 2012 STAAR five tests					
<= 40%	198	1,740,074	2,399,798	1.3791	$5,592
41% to 52%	133	1,023,584	1,361,689	1.3303	$5,693
53% to 64%	102	988,226	1,250,037	1.2649	$5,757
65% and Greater	45	454,125	548,898	1.2087	$6,207
STATE TOTALS	478	4,206,008	5,560,423	1.3220	$5,714

(Ex. 6322, Moak Report, at 63.)

FOF 645. Moreover, a substantial body of credible research – including the use of randomized experiments – confirms the effectiveness of educational strategies such as reduced class sizes, instructional coaches, full-day pre-K, tutoring, summer school, and competitive teacher salaries. (RR17:76-77; Ex. 3188, Baker Report, at 15-19; RR16:15-17; RR23:103-04; *see supra* Part I.C.3 (FOF 522, *et seq.*).) Each of these strategies costs money.

FOF 646. Research shows not only that "money spent well matters," but also that productive investment in education "easily repays the initial outlay." (Ex. 4040, Belfield Report, at 2; *see generally id.* at 3-16; RR15:41-42.) Compared to high school graduates, dropouts are less likely to be employed, are less productive workers when they are employed, are more likely to commit crimes, and are more likely to require greater health care costs and welfare benefits. (*See* RR15:44-52; Ex. 4040, Belfield Report, at 3-5.) Other research studies, using a variety of methodological approaches, empirically establish a causal link between education levels and these outcomes. (RR15:50-52, 48-49; Ex. 4040, Belfield Report, at 5; RR16:14-17; Ex. 3189-E.)

FOF 647. Economist Clive Belfield examined the cost-benefit ratio of several types of interventions aimed at increasing the high school graduation rate, and found that "[a]veraging across all interventions, the benefits to the taxpayer were 3.05 times the cost of the interventions."

(Ex. 4040, Belfield Report, at 13 and Table 2; RR15:46-47.) The Court finds Dr. Belfield's testimony in this case to be credible and reliable.

ii. The State's and Intervenors' expert testimony does not demonstrate that funding does not matter or that funding cuts do not harm student performance.

FOF 648. The State and Intervenors offered "cross-sectional" and "time-series" evidence purporting to question the relationship between funding and student achievement. Cross-sectional evidence examines data from schools or districts at a single point in time. (RR24:31-32; RR29:114.) Time-series evidence examines data at varying points in time. (RR24:24.) The Court is not persuaded by either category of evidence presented.

FOF 649. **Cross-sectional evidence.** Both the State's expert, Dr. Podgursky, and the Intervenors' expert, Dr. Hanushek, presented numerous charts and graphs purporting to illustrate the absence of a relationship between spending and student performance by comparing districts that use differing amounts of resources in a common time period. (Ex. 1128, Podgursky Supp. Report, at 7-35, 83-178; Ex. 11244 at 2-7; RR29:114-17; Ex. 1001, Hanushek Report, at 6-14; Ex. 8001, Hanushek Supp. Report, at 26-32.) Dr. Podgursky acknowledged that he could not determine whether spending has a causal impact on performance based on his analysis. (RR29-133.)

FOF 650. Both Dr. Podgursky's and Dr. Hanushek's analyses fail to account adequately for the complex and multi-faceted variables that impact student performance. Dr. Podgursky acknowledged that a whole host of student and school characteristics impact student learning, such as economic disadvantage, proficiency in English, need for special education services, and racial or ethnic background. (RR29:105-06.) Importantly, he also agreed that the concentration of these characteristics within a school or school district can have a significant impact on student learning. (RR29:106-07.) Yet Dr. Podgursky's and Dr. Hanushek's plots and graphs each fail to consider any concentration-related variables and do not include or account for any variables other than the straightforward demographic statistics captured in the TEA databases. (RR29:124-26.) Plaintiffs' witness Dr. Jacob Vigdor credibly explained how this failure can bias both Dr. Podgursky and Dr. Hanushek's statistical analyses. (RR24:34-36.)

FOF 651. Further, all of Dr. Hanushek's analyses and most of Dr. Podgursky's analyses involved only a single year of spending and performance data – commonly referred to as a "snapshot" or "cross section." (RR29:104-05.) Dr. Podgursky agreed that a "value-added" approach (one that considers changes in student test scores and spending over a number of years) is a superior and more reliable way to determine whether there is a causal relationship between resources and outcomes. (RR29:116.) Both Dr. Podgursky and Dr. Hanushek agreed that their analyses cannot answer the question of what effect increases or decreases in spending will have on student performance. (RR29:132-33; RR37:157.)

FOF 652. **Time-series evidence.** Dr. Hanushek also provided charts showing increases in national per student educational expenditures from 1960 to 2009, juxtaposed with relatively flat NAEP scores from 1971 to 2008, purporting to show that increases in expenditures have not resulted in student performance gains. This Court does not find Dr. Hanushek's evidence persuasive for the following reasons:

a. First, Dr. Hanushek acknowledged that, as a consequence of federal and state legislation, a significant portion of the spending increases related to increase in the costs of special education and the numbers of special education students in the system. (RR37:133.) Specifically, Dr. Hanushek's own previous research demonstrated that about one-third of the decline in pupil-teacher ratio and 18% of the spending increases that occurred in the 1980s were attributable to the rise in special education costs. (RR37:135, 184-85.) And while the absence of clear data prevented precise calculations for the 1970s, Dr. Hanushek acknowledged that the growth in special education expenditures in that decade was even larger. (RR37:185.)

b. Second, Dr. Hanushek implicitly assumes that adjustment for inflation is the only correction necessary for changes over time in prices of the resources schools purchase, but he admitted that the price of one of the most important components of education – the cost of college-educated female labor – has risen much faster than the average rate of inflation from 1960 to today because of the decline of gender discrimination and the opening up of opportunities for women in other fields and industries. (RR24:26-27; RR37:143-47; *see also supra* FOF 547 – FOF 549.)

c. Third, Dr. Hanushek presented NAEP scores only for seventeen-year-olds (RR24:27-28, 67; RR37:149), but the NAEP program can only test students who appear in schools. (RR24:27-28, 67; Ex. 5412 at 47-48; Ex. 5400, Vigdor Supp. Report, at 1.) Because of changes in compulsory schooling laws, more seventeen-year-olds – and particularly, more seventeen-year-olds with a limited attachment to school – are tested now relative to a generation ago. (RR24:27-28, 67; Ex. 5412 at 47-48; Ex. 5400, Vigdor Supp. Report, at 1.) As of 1980, twelve states had compulsory schooling until age seventeen or higher. (RR24:27-28, 67; Ex. 5412 at 47-48; Ex. 5400, Vigdor Supp. Report, at 1.) In 2009, there were twenty-nine states with such laws. (RR24:27-28, 67; Ex. 5412 at 47-48; Ex. 5400, Vigdor Supp. Report, at 1.) Comparisons of test outcomes for students at a younger age show much more substantial improvements since the 1980s. (RR24:28; RR37:149-50; Ex. 5412 at 48.)

d. Fourth, Dr. Hanushek made no effort to control for the changing ethnic and economic composition of the student population over the last four decades. (RR37:151-53.)

e. Fifth, Dr. Hanushek looked only at national data and made no effort to analyze spending or achievement patterns in Texas. (RR37:148.)

FOF 653. A number of State and Intervenor experts have acknowledged that increased funding can have a positive impact in the right circumstances, although they are unable to identify those circumstances precisely. (RR37:38, 208; RR29:105-07; Ex. 5630, Scott Dep., at 91-92; *see also supra* FOF 394 and FOF 642.) It is telling, moreover, that both Dr. Hanushek and Dr. Podgursky believe that additional funding should be provided for low-income students on the ground that bringing such students (compared to other students) to satisfactory performance levels is more costly than it is for other students. (RR37:198; RR29:107.) If levels of funding and student performance were truly unrelated, it would be difficult to justify this opinion.

FOF 654. The Court also notes that State witnesses and Intervenor experts laud Texas's system of accountability and the decision-making abilities of local school districts. (*See, e.g.*, RR37:122-23; RR30:82-101.) Having found no credible evidence of large inefficiencies in Texas schools (*see infra* Part I.C.6.b (FOF 655, *et seq.*)), and having heard many superintendents testify concerning specific efforts needed to improve performance on STAAR exams, the Court is persuaded that school districts are incentivized to use additional funding in ways that are productive of better academic performance. Whether to further constrain districts' use of funds, or whether instead to trust that local districts know best how to use the money they receive, is a question that must be left to the Legislature. The Court's function is merely to ensure that resources are adequate to allow school districts to fulfill the State's constitutional mission.

b. There is no credible evidence that the ISD Plaintiffs are systemically misallocating the resources they have now.

i. The State's contention that districts' budgets reflect meaningful discretion is no different than that rejected by the Supreme Court in *WOC II*.

FOF 655. The State and Intervenors failed to demonstrate significant or systemic wasteful spending by Texas school districts sufficient to refute the showing of the need for additional resources to meet the State's higher performance standards. (*See supra* Parts I.C.2.d (FOF 456, *et seq.*) and I.C.5 (FOF 603, *et seq.*).) The State and Intervenors also have failed to demonstrate inefficient or inequitable allocation of resources by school district plaintiffs.

FOF 656. The State's Financial Integrity Rating System of Texas ("FIRST") is designed to ensure that school districts and open-enrollment charter schools are held accountable for the quality of their financial management practices and achieve improved performance in the management of their financial resources. 19 TEX. ADMIN. CODE § 109.1001. The system is designed to encourage Texas public schools to manage their financial resources better in order to provide the maximum allocation possible for direct instructional purposes. *Id.* Each of the TTSFC Plaintiffs' focus districts, Fort Bend ISD Plaintiffs' focus districts, and Calhoun County ISD Plaintiffs received a "Superior Achievement" FIRST rating (the

highest possible rating) in 2012-13, the most recent year for which a rating is available.[40] (Ex. 11359.)

FOF 657. The Court also finds that the districts' fund balances do not provide a source of meaningful discretion. Fund balances are used for cash flow purposes. (RR3:177-80 (referencing Ex. 6346 at 12); RR19:240-41; Ex. 6338, Hoke Dep., at 44-46 (referencing Ex. 664 at 16); RR22:89, 97-98; Ex. 5614, Patek Dep., at 50-52; Ex. 5616, Waggoner Dep., at 52; Ex. 5613, Youngblood Dep., at 48-49; Ex. 5618, Wiggins Dep., at 67-68.) Revenue from the state and local taxpayers do not come in at regular intervals, and therefore, many districts must use their fund balances to cover the shortfall in months where expenses exceed revenues. (RR19:240-41; Ex. 6338, Hoke Dep., at 44-46 (referencing Ex. 664 at 16); Ex. 6335, Cain Dep., at 31-32; Ex. 6343, Schroder Dep., at 50-51; RR5:200-01; Ex. 3201, Witte Dep., at 26-27.) Chapter 41 districts receive most of their revenue in December and January when taxes are paid, and fund balances are necessary to sustain these districts through months of negative cash flow. (*See, e.g.*, RR5:35; Ex. 5614, Patek Dep., at 50-51; Ex. 5618, Wiggins Dep., at 67.)

FOF 658. While some districts have used their fund balance to cover a deficit budget as a result of the cuts, such procedures are not a solution to school district funding cuts. (RR22:97-98 (referencing Ex. 6358 at 12); RR19:253-55.) Districts rely on their fund balances to cover unexpected one-time costs. (*See, e.g.*, Ex. 6338, Hoke Dep., at 45-46; RR22:88-89.) For example, some districts use their fund balances to cover the deductible on their property insurance in case of a catastrophic loss or to insulate against fluctuating local property values and tax revenues. (Ex. 5618, Wiggins Dep., at 67-68; Ex. 5614, Patek Dep., at 50-51; Ex. 5613, Youngblood Dep., at 48-49.)

FOF 659. The Government Financial Officers Association recommends that school districts maintain three months' worth of operating expenditures in their fund balances. (Ex. 6338, Hoke Dep., at 45-46.) Bond rating agencies look at fund balances when establishing a district's bond rating. (*Id.* at 46; RR5:35.) Under FIRST, a district loses points for reducing its fund balance by more than 20% and gains points for increasing its fund balance. 19 TEX. ADMIN. CODE §109.1002(g).

FOF 660. As a result of the foregoing, school districts cannot and should not be expected to spend down their fund balances entirely to negate the impact of funding cuts. (Ex. 5616, Waggoner Dep., at 51-52; Ex. 5618, Wiggins Dep., at 68; Ex. 5614, Patek Dep., at 50-51; Ex. 6338, Hoke Dep., at 44-46.)

ii. There is no persuasive evidence that districts are systematically misallocating resources among their campuses.

FOF 661. Dozens of school superintendents and other school district officials testified live at trial or provided testimony by deposition admitted into evidence. The State questioned many

[40] The record does not contain FIRST ratings for the Edgewood ISD Plaintiffs.

of these superintendents regarding different levels of per student funding allegedly allocated to campuses within the same school district.

FOF 662. Broadly speaking, the testimony of these superintendents consistently demonstrated that school districts do not allocate specific dollar amounts on a per-pupil basis to individual campuses as part of the budgeting process. (RR4:28-29; RR20:14; RR20:15, 20-21; RR25:165-67; RR5:231-38; Ex. 6337, Hanks Dep., at 280; Ex. 6338, Hoke Dep., at 172-73.) Rather, school districts generally allocate staffing levels to individual campuses based on the enrollment level of each campus, special programs housed at some campuses, and level of need of the students at each campus as reflected by demographic information such as level of economic disadvantage, percentage of special education, percentage of ELL students, and other criteria. (RR4:28-29; RR20:14; RR24:199-200; RR20:15, 20-21; RR25:165-67; RR5:231-38; RR19:110-11; RR4:193; Ex. 6337, Hanks Dep., at 279-85.) Because the vast majority of costs in a district or at a campus are due to personnel and salary, these staffing allocations drive the per pupil cost and may result in different expenditures per student at different campuses. These practices result in a reasonable allocation of resources at the local level and support the need for local discretion for how money is spent to best promote the general diffusion of knowledge.

FOF 663. Dr. Podgursky's analyses using campus level spending data to show intra-district misallocation of resources is flawed because he fails to control for variables that explain much of the differences in per pupil spending at the school level. For example, Dr. Podgursky acknowledged that some campuses house special programs, such as special education programs (often serving the most severely disabled students), refugee and homeless student programs, and discipline programs that result in higher spending levels at those schools. (RR29:135-36.) Dr. Podgursky also agreed that size differences between campuses could explain some of the per student spending level differences in those campuses. (RR29:129.) Dr. Podgursky did not attempt to investigate or control for these or any other variables that tend to explain spending differences at the campus level. (RR29:130.)

iii. There is no persuasive evidence that districts could substantially improve performance at current resource levels by adopting a merit pay compensation scheme.

FOF 664. The Intervenors and the State have argued that school districts could boost performance by abandoning the traditional teacher salary schedule in favor of merit pay. Indeed, when asked to name concrete examples of inefficient spending, the Intervenors' expert, Dr. Hanushek, could identify only the teacher compensation system. (RR37:129-30, 196-97.)

FOF 665. Under some versions of merit pay, including that advocated by Dr. Hanushek, a component of teacher compensation would be tied to the test scores of students, typically on a "value added" basis. (RR37:114, 175-76.)

FOF 666. As even Dr. Hanushek conceded, however, there is no strong empirical evidence that merit pay for teachers improves student performance. (RR37:176-80, 182-83; *see also*

RR24:11, 15.) Dr. Hanushek also acknowledged that there was little empirical evidence about how to structure any merit pay system or what the effects may be. (RR37:183.) Indeed, recent studies suggest that performance pay may have little impact in educational settings. (RR17:133-34; RR37:176-80.) Dr. Hanushek also noted that a merit pay system would likely require considerably higher salaries for many teachers and "might well" require more money than the present salary system. (RR37:201-02.)

FOF 667. Several superintendents testified that an individualized pay-for-performance scheme could negatively impact teacher collaboration and morale, particularly where there is a limited amount of money available to pay for the merit-based compensation. (RR41:67-72; RR24:11-13; RR6:46-47.) Dr. Hanushek agreed that a merit pay scheme raises valid concerns about destructive competition among teachers. (RR37:242.) The vast majority of Texas school districts do not have the capability to design and implement a complex pay-for-performance compensation system without state guidance and leadership. (RR24:16.) Dr. Hanushek acknowledged the implementation difficulties associated with a merit pay regime (RR37:180-83, 212-22, 242-43), and admitted that he had never personally assisted a state or school district with the design of such a system. (RR37:243.)

FOF 668. In answer to an interrogatory, the State acknowledged that its only effort to encourage or promote a merit-based compensation system over the last decade was through the DATE Grants, which provided bonuses for teachers and principals who improved student performance. (Ex. 5649 at 15.) However, the Legislature dramatically reduced funding for the DATE program in 2011. (*See supra* FOF 56.)

FOF 669. A district that implemented such a compensation scheme in isolation, and without significantly higher salaries, would likely lose many of its experienced teachers to its neighboring districts. (RR24:16-17.)

FOF 670. In addition, measuring the performance of teachers via test scores requires standardized tests, and the majority of teachers teach classes in which standardized tests are not administered. (RR24:17-19; Ex. 5400, Vigdor Supp. Report, at 5; RR41:71-72.)

FOF 671. Further, teacher value-added cannot be observed until after a teacher has taught. Research suggests that at least three years' worth of data must be used to overcome statistical unreliability. (RR24:18-19; Ex. 5400, Vigdor Supp. Report, at 5.) Thus, a district could not reliably calculate "value added" for novice teachers or teachers not in the state for the prior three years. (RR24:18-19.)

FOF 672. In short, even the advocates of teacher merit pay concede that it is a proposal that currently lacks an empirical research base and that it might cost more money than the present system. Many superintendents and teachers believe such a system would be unworkable and counterproductive. While the State is free to pursue such proposals through legislative change if it so desires, this Court cannot conclude that the unwillingness, to date, of either the State or school districts to commit to a large-scale transition to a merit pay system is a significant source of inefficiency in the public

schools. The current stepladder system for teacher compensation reflects a policy decision by the Legislature and does not render the system qualitatively inefficient.

iv. There is no persuasive evidence that districts could substantially improve performance at current resource levels solely by firing the allegedly "lowest-performing" teachers.

FOF 673. The Intervenors, through their expert Dr. Hanushek, have argued that student performance could be improved at little cost simply by removing the worst-performing 5 to 8% of teachers and replacing them with "average" teachers, *i.e.*, teachers drawn randomly from the distribution of teacher quality. While the parties appear to agree that ineffective teachers should either be improved through professional development or removed from the classroom, the weight of the evidence does not suggest that Dr. Hanushek's proposal can be straightforwardly implemented or that it would replace the need for other improvements and interventions.

FOF 674. To the extent the proposal would depend to any significant degree upon standardized test results (which Dr. Hanushek advocates), several problems present themselves. First, districts cannot calculate value-added for: (1) teachers whose students do not take standardized tests; (2) novice teachers or teachers for which the districts have insufficient number of years of data; or (3) teachers who teach subjects not aligned with the prior year subject in the same field. (RR24:18; *see also supra* FOF 671 – FOF 672.) Dr. Hanushek conceded that districts might be able to generate value-added scores for only about 20% to 25% of their teacher workforce. (RR37:182.)

FOF 675. Second, the proposal would require the recruitment of at least 15,000 additional teachers, a large expansion that might well require the State to relax its already diminishing standards or offer salary increases substantial enough to attract more promising candidates into the profession. (RR24:22.)

FOF 676. Third, the proposal would make the teaching profession riskier, other things being equal, and therefore might discourage many qualified candidates from entering the field. (RR24:11-12.)

FOF 677. Fourth, the proposal necessarily would heighten competition among teachers in public schools – in the form of competition to avoid being fired. (RR24:23-24; Ex. 5400, Vigdor Supp. Report, at 6.) Teachers who do not wish to lose their jobs might reasonably have new incentives to avoid sharing information with their colleagues, or to lobby administrators for assignments to easier-to-teach students. Such a degree of competition could, again, be harmful to the education process. (RR24:23-24.)

FOF 678. Fifth, Dr. Hanushek's proposal is entirely theoretical. He did not point to a single district or state that has implemented the proposal and therefore could not say whether his predictions of the positive impact of such a proposal have been validated by actual evidence.

FOF 679. The Court cannot conclude that a failure to implement this specific proposal is a significant source of inefficiency in public schools..

7. The district-specific evidence shows that the ISD Plaintiff focus districts do not have access to sufficient funding to provide an adequate education and lack meaningful discretion to set their M&O tax rates.

FOF 680. The "focus"/plaintiff districts discussed below: (1) hail from nearly every geographic region of the state (Ex. 6349 at 71); (2) include both property-wealthy and property-poor districts; (3) include urban, suburban, and rural districts; and (4) include fast-growing districts, stable districts, and districts in which the student population is declining. (*See generally infra* Part I.C.7 (FOF 680, *et seq.*).) Moreover, when these districts are aggregated together, they are very close to the state averages in many key statistics, including wealth per WADA, average M&O rate, revenue available in Tier I, percentage of ASATR, and percent of students who are economically disadvantaged. (Ex. 6349 at 76; RR7:49.) These thirty-six districts also have approximately 737,856 students in ADA, which represents 16.5% of the total statewide ADA. (Ex. 6349 at 76 (20,496 average ADA for focus districts times thirty-six districts; 4,369 statewide average ADA times 1,024 total districts.) For these reasons, this Court concludes that these thirty-six districts are sufficiently representative of the system as a whole to provide meaningful evidence as to the effect of the system structure on districts' discretion over tax rates.

FOF 681. The findings set forth in this Part are derived primarily from testimony from school district officials proffered during the initial trial, in which they described the circumstances in their districts through the 2012-13 school year. While these findings do not reflect the 2013 legislation (except where otherwise indicated), the Court is confident that the findings accurately depict the challenges that these districts face today, given the magnitude of these challenges and the relatively modest impact of the 2013 legislation.

a. Fort Bend ISD Plaintiff focus districts

i. Abilene ISD

FOF 682. Abilene ISD is a Chapter 42 district located in Taylor County in west Texas, approximately 150 miles west of Fort Worth. (Ex. 11323.) Surrounded by smaller rural towns and school districts, Abilene serves as an urban center for that region of west Texas. (Ex. 6336, Burns Dep., at 10-11.)

FOF 683. Abilene ISD has slightly more than 17,000 students. (RR19:17; Ex. 6355 at 3.) Historically, Abilene ISD's enrollment has fluctuated significantly, with enrollment growth and decline triggered by variations in the local economy. (Ex. 6336, Burns Dep., at 11-12 (referencing Ex. 539 at 2).)

FOF 684. Abilene ISD has a student population that is at least 65% economically disadvantaged. (RR19:17; Ex. 6355 at 3.) Even at Abilene's "most affluent" campus, almost 40% of its

students are on free and reduced lunch. (Ex. 6336, Burns Dep., at 16; Ex. 539 at 46.) The economically disadvantaged population is likely even larger than the official count represents, as students often fail to self-identify in middle school and high school. (RR19:17.) The large economically disadvantaged population "come[s] to school without the same context, without the same background and foundation that their more affluent counterparts come to school with," making it "a challenging population to reach and to teach." (RR19:18.)

FOF 685. Abilene has steadily growing minority populations, and in 2011-12 was 12% Black, 40% Hispanic, and 6% "other" – a group that included 277 refugee students speaking thirty-six different languages. (Ex. 6355 at 10; Ex. 6336, Burns Dep., at 17-18 (referencing Ex. 539 at 7).) This refugee student population makes up about half of the district's ELL population and faces unique challenges above and beyond those of Abilene ISD's other economically disadvantaged and ELL students. (RR19:41-42 (referencing Ex. 6355 at 10); Ex. 539 at 7.)

FOF 686. Over the course of the 2011-12 to 2012-13 biennium, Abilene ISD suffered a budget cut of $8.1 million in its FSP funds, or $162 per WADA. (RR19:103, 127 (referencing Ex. 6355 at 14).) In addition, Abilene suffered an additional $2.6 million in cuts to its grant programs, many of which were aimed at closing the achievement gap and improving the performance of at-risk students. (Ex. 6355 at 15.) While Abilene ISD worked hard to insulate its student population from the impact of these cuts, they were just too large to be able to do so entirely. (Ex. 6336, Burns Dep., at 37-38.) Even with an infusion of federal money, Abilene had to cut approximately 125 teaching positions and thirty-six teacher's aides. (Ex. 6366, Burns Dep., at 35-36; Ex. 539 at 20-23; RR19:50-51, 60.) As a result of the cuts, "Abilene ISD has been compelled to cut programs and weed down programs that have been proven to be successful in closing gap and growing students." (RR19:60-61.) Also a result of the cuts, Abilene went from seeking five class-size waivers in one grade at one exemplary-rated campus, to having to seek 102 class-size waivers at sixteen campuses, and was no longer able to confine the waivers to its highest performing campuses. (RR19:50 (referencing Ex. 6355 at 12); Ex. 6336, Burns Dep., at 38-40; Ex. 539 at 25-27.)

FOF 687. If Abilene ISD's funding was increased, it would use the additional funds to restore programs aimed at its at-risk and disadvantaged populations, such as the Woodson Center for Excellence (its alternative high school for at-risk students) and its Extended School Program (which provides students with individualized attention and targeted remediation), and AVID (a program aimed at creating first generation college students.) (RR19:26-30 (referencing Ex. 6355 at 4-6), 38-39 (referencing Ex. 6355 at 9), 30-33 (referencing Ex. 6355 at 7).) It would also invest more in innovative elementary-level curriculum programs such as Reasoning Mind, a program proven to help prepare students for Algebra, and Read 180, which helps struggling readers. (RR19:33-37 (referencing Ex. 6355 at 8).) In addition, Abilene would restore some of its personnel cuts, hire additional translators to serve its refugee population and return to its former practice of

strategically requesting class size waivers at only its highest-performing campuses. (RR19:44-47 (referencing Ex. 6355 at 10), 50-51 (referencing Ex. 6355 at 12).)

FOF 688. At the time of the *WOC II* decision in 2005, Abilene ISD was taxing at the then maximum M&O tax rate of $1.50. (RR19:56; Ex. 539 at 12.) Abilene ISD is a formula-funded district. (RR19:56.) Tax compression pushed Abilene ISD's tax rate down to $1.00, but the district immediately had to raise its current rate of $1.04 in order to provide an adequate education. (Ex. 6336, Burns Dep., at 26.) Abilene ISD cannot increase its tax rate further without holding a TRE; but, because Abilene has several impending facilities needs, it cannot hold a TRE without jeopardizing the chances of being able to pass a bond election. (*Id.* at 122-23.) Currently, any revenue raised from such an election would go toward a general diffusion of knowledge only, and not towards enrichment. (RR19:58-59.)

FOF 689. While Abilene ISD was able to use targeted interventions to make some improvement in the percentage of students achieving the met-standard score on TAKS, there remained a troubling and persistent achievement gap and the district never had more than 23% of its students reach the commended level for any grade or subject level. (Ex. 6336, Burns Dep., at 45-49 (referencing Ex. 539 at 33-35).)

FOF 690. After the first administration of the STAAR-EOC exams, 567 (53%) of Abilene ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 21.) Two hundred and seventy-seven students failed multiple tests. (Ex. 539 at 45.) Looking at the Level II final standard, only 33% of Abilene ISD students reached the standard in Algebra I, 37% in Biology, 35% in English I Writing, and 42% in English I Reading. (*Id.* at 36.) After the summer retest, 513 students had failed 1,164 tests and were off track for graduation and required remediation. (Ex. 6324, Moak Supp. Report One, at 21, 41.)

FOF 691. Abilene ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 1,115 (55.1%) of Abilene ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5.[41] (Ex. 6548 at 7.) Six-hundred and thirty-six students failed multiple tests. (*Id.*) As in the first year, the results at the final Level II standard reveal how significantly district performance must improve: just 32% met the final Level II standard in Algebra 1, 45% in Biology, 41% in English I Reading, 27% in English I Writing, 24% in English II Writing, and 34% in World History. (Ex. 6560-A at 40-44.) Only 19.7% of Abilene's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 5.)

FOF 692. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Abilene ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The

[41] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

ii. Aldine ISD

FOF 693. Aldine ISD is a Chapter 42 district that covers approximately 110 square miles of northern Harris County. (Ex. 6339, Bamberg Dep., at 12; Ex. 11323.) It is primarily urban in nature, with almost 85% of its students classified as economically disadvantaged. (Ex. 6339, Bamberg Dep., at 11; Ex. 364 at 1, 2.)

FOF 694. In 2011-2012 Aldine ISD enrolled 65,613 students, making it the twelfth largest school district in Texas. (Ex. 6339, Bamberg Dep., at 12; Ex. 364 at 1.) From 2007 through 2012 the district's enrollment increased by about 11.5%, or just over 1,300 students per year, on average. (Ex. 6339, Bamberg Dep., at 16; Ex. 364 at 1.) The district educates these students at seventy-five different campuses. (Ex. 6339, Bamberg Dep., at 12.)

FOF 695. Aldine ISD's student body is almost 85% economically disadvantaged, up from 72% in 2000 and 38% in 1990. (*Id.* at 13; Ex. 364 at 1-2.) The district's students also have a very high mobility rate – almost 25% of Aldine students district-wide change campuses or move in or out of the district during any particular school year. (Ex. 6339, Bamberg Dep., at 23.) At some campuses, the mobility rate is as high as 35%. (*Id.*)

FOF 696. The high poverty level and mobility rate have had a significant impact on the services Aldine ISD must provide in order provide a quality education to its students. (*Id.* at 22.) Many of Aldine's students lack the background experiences, resources at homes such as books and technology, and stable family environment to give them a realistic opportunity to be successful at school, unless the district can provide resources to address those deficiencies. (*Id.* at 43-44.)

FOF 697. Aldine ISD has also experienced a dramatic change in student ethnicity over that last two decades. In 1990, Aldine ISD had a majority white student population, a Hispanic population of less than 10%, and an African American population of approximately 35%. (Ex. 6339, Bamberg Dep., at 20; Ex. 364 at 1.) In 2011, the Hispanic student population had grown to almost 70%, while the White student population had fallen to 2.2% and the African American population declined to 25.8%. (Ex. 6339, Bamberg Dep., at 13, 20; Ex. 364 at 1.)

FOF 698. Along with these changes has come a dramatic increase in the number of ELL students served by Aldine ISD such that today, more than 31% of Aldine ISD students have limited proficiency in English. (Ex. 6339, Bamberg Dep., at 31; Ex. 364 at 2.) This has created further need for resources to properly serve these students. At the lower grade levels at many elementary schools, more than one-half of the programs offered are bilingual programs. (Ex. 6339, Bamberg Dep., at 33-34.) The district has struggled to obtain and provide the specialized teachers, materials, training, and curriculum necessary to serve these students. (*Id.*)

FOF 699. Prior to tax rate compression, Aldine ISD had an M&O tax rate of $1.64. (*Id.* at 46; Ex. 364 at 3.) Aldine was one of a few school districts that had the ability to levy an M&O tax rate that exceeded the $1.50 cap then in effect. (Ex. 6339, Bamberg Dep., at 46-47.) Despite taxing higher than the $1.50 cap, after tax compression Aldine ISD received a target revenue funding level that was lower than state average. (*Id.* at 48-49.) Because of its lower than average funding level, Aldine ISD held a TRE in 2010, but it was unsuccessful. (*Id.* at 50-52.) As such, Aldine has been locked into a static, and then reduced funding level. (*Id.*)

FOF 700. Aldine ISD's expenditures have been decreasing since 2008-09. (*Id.* at 53; Ex. 364 at 3.) The biggest decreases came after reductions in state formula funding of $14 million in 2011-12 and $8 million in 2012-13, in addition to the elimination of or reduction in state grant funds of more than $25 million for the current legislative biennium. (Ex. 6339, Bamberg Dep., at 55-59; Ex. 364 at 4.) These cuts have negatively impacted programs that are aimed at helping Aldine ISD's most needy students. For example, in order to continue to provide full-day pre-K for Aldine's poorest students, the district has had to increase class sizes in a manner that is not in the best interest of those students. (Ex. 6339, Bamberg Dep., at 61-62; Ex. 364 at 5.) The district also increased class sizes at all other grade levels, eliminated performance pay incentives for teachers, eliminated magnet programs, and made other reductions that have negatively impacted the district's ability to provide all of its students an opportunity to graduate college or career ready. (Ex. 6339, Bamberg Dep., at 61-70; Ex. 364 at 4-5.)

FOF 701. While the district had been making progress on the met standard level of the TAKS exam, this is not a strong indication of how well prepared Aldine ISD students were under the new college and career-ready standards. (Ex. 6339, Bamberg Dep., at 71-72.) The percentage of the district's students meeting the commended level (a better indication of college or career ready) remained troublingly low, with only 10% of Aldine ISD students meeting that standard on all tests. (*Id.* at 72-73; Ex. 366 at 4.)

FOF 702. After the first administration of the STAAR-EOC exams, 2,747 (65%) of Aldine ISD's ninth graders failed to achieve the Level II phase-in standard on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 13.) Looking at the Level II final standard, only 35% of Aldine ISD students reached the standard in Algebra I, 31% in Biology, 20% in English I Writing and 34% in English I Reading. (Ex. 364 at 5.) After the July retests, Aldine ISD still had 2,537 ninth graders, 60% of the class of 2015, who failed 5,458 tests and were off track for graduation. (Ex. 6324, Moak Supp. Report One, at 13, 32.)

FOF 703. Aldine ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, at the lower phase-in 1 standard, 5,136 (64.8%) of Aldine ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams required for graduation under HB5.[42] (Ex. 6548 at 5.) 2,914 students failed

[42] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

multiple tests. (*Id.*) As in the first year, the results at the final Level II standard reveal how significantly district performance must improve: just 28% met the final Level II standard in Algebra 1, 40% in Biology, 30% in English I Reading, 15% in English I Writing, 15% in English II Writing, and 27% in World History. (Ex. 6563-A at 41-45.) Only 11.7% of Aldine's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 3.)

FOF 704. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Aldine ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iii. Amarillo ISD

FOF 705. Amarillo ISD is a seventy square mile Chapter 42 district that covers portions of Randall and Potter Counties in the Texas Panhandle. (Ex. 11323.)

FOF 706. The district enrolls approximately 33,000 students and has experienced moderate but steady enrollment growth since 2007-08. (Ex. 6358 at 2.) Over that same time period, the district's Hispanic population has grown to 14,476 or 44.7%, while its African-American and non-Hispanic White populations have decreased. (*Id.*; Ex. 6343, Schroder Dep., at 12-13 (referencing Ex. 919-S at 1).) Almost 67% of the Amarillo ISD student population is economically disadvantaged. (Ex. 6358 at 2.)

FOF 707. Amarillo ISD had 4,611 ELL students in 2011-12. Within that population, the number and percentage of students speaking languages other than Spanish has almost tripled, going from 586 (18.8% of the ELL population) in 2006-07 to 1,695 (36.8% of the ELL population) in 2011-12. (*Id.*) This growth is largely due to the placement of refugee populations in Amarillo by the State Department. (Ex. 6343, Schroder Dep., at 13-14.) These refugee students often un-schooled and not literate in their own language. (*Id.* at 15-17.) The growth in this population and in other economically disadvantaged and ELL populations have caused increased financial pressure on the district. (*Id.*)

FOF 708. Amarillo ISD was steadily reducing its budget for several years prior to the state funding cuts. (Ex. 6358 at 9.) After the state funding cuts, the district reduced its budget by another $6.3 million. (*Id.*; Ex. 6343, Schroder Dep., at 38-39 (referencing Ex. 919-S at 10-11).) To do so, the district reduced its administrative and educational support staff; reduced health insurance contribution by 10%, shifting costs to its employees; reduced each campus's budget 5%, resulting in cuts to instructional materials, professional development, and field trips. (Ex. 6343, Schroder Dep., at 40-41 (referencing Ex.919-S at 11).) In 2012-13, the district eliminated its art program at elementary schools, and operated at half-staffing levels for nurses, counselors, and librarians. (Ex. 6343, Schroder Dep., at 46.)

FOF 709. At the same time, Amarillo's required, "fixed" costs – for things such as utilities and health insurance, and workers compensation insurance – are rising. (RR22:59

(referencing Ex. 6358 at 11).) Thus, despite the budget reductions, Amarillo ISD operated on a deficit budget in 2012-13, and predicted that it would need to do so for the next biennium. (RR22:59-60 (referencing Ex. 6358 at 12).) The district does not have room in its projected budget to hire additional teachers even as its enrollment is projected to increase. (Ex. 6343, Schroder Dep., at 53.)

FOF 710. Prior to tax compression, Amarillo ISD was taxing at the $1.50 cap. (Ex. 6358 at 6.) Upon being compressed to $1.00, Amarillo ISD immediately accessed its first four "golden pennies." (*Id.*) The next year, Amarillo ISD held a tax ratification election to raise its rate to $1.08. (RR22:56-57 (referencing Ex. 6358 at 6).) Therefore, Amarillo ISD has no more "golden pennies" available to it. The money raised from the TRE went for basic operations. (RR22:56-57.) Because Amarillo ISD has facilities needs that require a bond issuance, it cannot at this time pursue another TRE. If it were to do so and raise its tax rate to the $1.17 cap, the resulting additional state and local revenue would almost cover the lost revenue due to state funding cuts, and would not be enough to cover the district's projected deficit over the upcoming biennium. (RR22:57-58, 60-61.) Indeed, it would take two of those nine cents to simply cover the district's increased health insurance costs. (Ex. 6343, Schroder Dep., at 45 (referencing Ex. 919-S at 12).)

FOF 711. After the first administration of the STAAR-EOC exams, 1,288 (60%) of Amarillo ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (RR22:115-16 (referencing Ex. 6358 at 18).) Of those, 595 three or more exams. (RR22:115-16 (referencing Ex. 6358 at 18).) Looking at the Level II final standard, only 39% of Amarillo ISD students reached the standard in Algebra I, 36% in Biology, 39% in English I reading, and 29% in English I Reading. (Ex. 6358 at 13-17.) For each of these tests, the achievement gap between white students and economically disadvantaged students was significantly greater at the final level. (*Id.*)

FOF 712. After the summer retest, 1,152 students (52%) from the Class of 2015 failed 2,376 tests are still off track for graduation and require remediation. (Ex. 6324, Moak Supp. Report One, at 19, 39.) Projecting forward, after the December retests and the May 2013 tests for the class of 2016 Amarillo ISD expects to be remediating students for 4,202 freshman level EOC tests – without taking into consideration additional remediation that the class of 2015 will need for its sophomore level EOC tests. (RR22:64-65 (referencing Ex. 6358 at 19).)

FOF 713. Amarillo ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, at the lower phase-in 1 standard, 2,277 (55.8%) of Amarillo ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams required for graduation under HB5.[43] (Ex. 6548 at 5.) 1,257 students failed multiple tests. (*Id.*) As in the first year, the results at the final Level II standard reveal how significantly district performance must improve: just 38% met the

[43] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

final Level II standard in Algebra 1, 43% in Biology, 39% in English I Reading, 22% in English I Writing, 25% in English II Writing, and 36% in World History. (Ex. 6566-A at 42-46.) Only 19.3% of Amarillo's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 3.)

FOF 714. Superintendent Rod Schroder's analysis of remediation needs found that, in order to fund remediation programs for these students, Amarillo ISD needs an additional $1,200 per student in need of remediation. (RR22:65.) To improve its programs and avoid future remediation, Amarillo ISD needs an additional $1,000 per student across the board. (*Id.*)

FOF 715. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Amarillo ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iv. Austin ISD

FOF 716. Austin ISD is a Chapter 41 district that serves the city of Austin, as well as certain unincorporated areas of Travis County. (Ex. 11323.) The district operated 124 schools, including eighty-one elementary schools, eighteen middle schools, and sixteen high schools, in 2011-12.

FOF 717. In 2011-12, Austin ISD enrolled 86,124 students, and grew by approximately 8,000 students over the past decade. (RR19:138 (referencing Ex. 6356 at 2).) Because population growth is not uniform across the city, the district faces challenges in terms of over-crowding in certain schools, as well as pockets of disadvantage. (RR19:138-39.)

FOF 718. Austin ISD is a diverse district, with a majority Hispanic population. Its Hispanic population grew from 51.5% in 2003 to 60.55% in 2012. (RR19:139-40.) Over that same time period, the non-Hispanic White population decreased from 31.2% to 24.5% and the African-American population decreased from 14.4% to 9.1%. (*Id.*)

FOF 719. Concurrent with the Hispanic population growth, the population of ELL students has grown from 16,191 (20.7%) in 2003 to 24,000 (27.9%) in 2012. (RR19:145-46 (referencing Ex. 6356 at 5).) While the majority of the ELL population is Spanish-speaking, Austin ISD students speak sixty-four languages. (RR19:147.) This population of students often enters Austin ISD and the Texas public school system at higher grades, and without the same preparation to meet the high standards of the Texas public school system as the students who have grown up in the system. (RR19:140-41, 148.) Sometimes, the students have previously undiagnosed educational needs and challenges that the district must assess and address. (RR19:146-47.) Austin's biggest challenge in educating its ELL population is recruiting, training, and compensating qualified bilingual teachers. (*Id.*)

FOF 720. As the Austin ISD population has grown more diverse, it has also become more impoverished. As of 2012, Austin ISD had 55,318 students (64.2%) classified as

economically disadvantaged, up from 41,397 (53%) in 2003. (RR19:142-43; Ex. 6356 at 4).) This economically disadvantaged student population tends to be more mobile – moving both within and between districts (RR19:144, 149-51, (referencing Ex. 6356 at 7-8).) Austin ISD students who are residentially mobile are twice as likely to miss more than 10% of the school year, and students who move campuses are three times as likely to miss more than 10% of the school year. (RR19:153.) As a result, the district must spend more money on transportation, remediation, and other support services for these students – expenses which are not accounted for under the current school finance system. (RR19:153-54.) Economically disadvantaged students often come to school with unmet basic needs, requiring the district to provide what superintendent Dr. Meria Carstarphen described as "wrap-around services." (RR19:144.) Included in this economically disadvantaged population are 1,975 homeless students. (Ex. 6356 at 6.) The district's homeless population has needs above and beyond those of the rest of the economically disadvantaged population, which are not taken into account in the State's funding system. (RR19:150.)

FOF 721. As Austin ISD's student population was becoming poorer, more diverse, and more challenging and expensive to educate, it lost $35.6 million in state funds during the 2011-12 school year, and an additional $25.1 million the next year, for a total of $60.7 million over the biennium. (RR19:160-61 (referencing Ex. 6356 at 12).) As a result of the first year's cuts, its inflation adjusted expenditures per student decreased $400 compared to the 2009-10 school year, and were roughly equivalent to what they were during the 2002-03 school year. (RR19:155-56 (referencing Ex. 6356 at 9).) In addition to the state cuts, Austin ISD lost more than $60 million in Federal ARRA funding. (Ex. 6356 at 12.) Furthermore, as ASATR funding is phased out, Austin ISD will lose an additional $150 million. (*Id.*)

FOF 722. As a result of stagnant and then decreasing state revenues, Austin ISD experienced three-years of budget cuts and austerity planning. (*Id.* at 16.) As part of this process, Austin ISD cut $66 million from the budget and eliminated eighteen central office positions in 2009-10 and another 117 central office positions in 2010-11. (*Id.* at 17.) The district also restructured its employee health insurance program and did what it could to reduce operational costs such as electricity costs. (RR19:170.) While the district took these measures first to postpone impacting classrooms "for as long as possible," it eventually had to; in 2011-12 it implemented a reduction in force that cut 1,153 positions in 2011-12. (*Id.* (referencing Ex. 6356 at 17).) In Fall of 2010, Austin ISD requested class size waivers at just two campuses; in the Fall of 2011, as a result of the state budget cuts and the reduction in force, it had to request waivers at sixteen campuses. (Ex. 6103.)

FOF 723. At the time of *WOC II*, Austin ISD was taxing at the $1.50 cap. (Ex. 6356 at 11.) In 2007-08, when its compressed rate under HB1 was $1.00, it immediately accessed the first four golden pennies. (RR19:158 (referencing Ex. 6356 at 11).) Austin ISD then held a TRE and raised its rate to $1.079 starting with the 2008-09 school year. (RR19:158 (referencing Ex. 6356 at 11).)

FOF 724. In 2011-12, $135.2 million of Austin ISD's local tax revenue (or almost 20%) was recaptured. (RR19:163 (referencing Ex. 6356 at 13).) The "copper pennies" above $1.06 are recaptured at nearly 45%. (Ex. 6356 at 13.) While the district is considering holding another TRE, Dr. Carstarphen testified that as a growing district, Austin ISD must frequently go to the voters to pass a bond election and that this, combined with the higher recapture rate on the additional pennies factor into the district's calculation of whether the district's taxpayers will support a TRE. (RR19:159-60.) If the district were to hold a TRE and raise its rate to the $1.17 cap, it would not generate enough additional revenue to make up for the district's $60M state funding cut. (RR19:161.)

FOF 725. In addition, Austin ISD is one of fewer than forty-eight districts that is locked into contributing to the Social Security system. (RR19:165-66 (referencing Ex. 6356 at 15).) This costs the district approximately $33 million a year, or $380 per student – an expense which is completely unaccounted for in the State's funding system. (RR19:166 referencing Ex. 6356 at 15).) In fact, because of recapture, in order to make its $33 million in Social Security payments, the district must raise $45 million in local tax revenue. (RR19:166.)

FOF 726. After the first administration of the STAAR-EOC exams, 2,689 (52%) of Austin ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 22.) Looking at the Level II final standard, only 42% of Austin ISD students reached the standard in Algebra I, 41% in Biology, 50% in English I Reading, and 37% in English I Writing. (Ex. 6356 at 21.)

FOF 727. Comparing the economically disadvantaged students to the non-economically disadvantaged students reveals a large and troubling achievement gap. At the initial phase-in standard, the gap between the percentage of economically disadvantaged students achieving the phase-in standard and the percentage of non-economically disadvantaged students achieving the phase-in standard ranged from eighteen points in Algebra I to thirty-six points in English I Writing. (*Id.* at 23-27.) The gaps grow at the higher final standard. Only 25% of economically disadvantaged students met the final standard on Algebra I, compared to 64% of non-economically disadvantaged students. (*Id.* at 23.) On the Biology EOC, only 20% of economically disadvantaged students achieved the final standard compared to 66% of non-economically disadvantaged students. (*Id.* at 24.) Turning to English I, only 18% of economically disadvantaged students achieved the final standard in Writing and 31% in reading, compared to 64% and 74% respectively for non-economically disadvantaged students. (*Id.* at 26-27.)

FOF 728. After the July 2012 retests, Austin ISD still had 2,454 ninth graders, 47% of the class of 2015, who failed 5,633 tests and are off track for graduation. (Ex. 6324, Moak Supp. Report One, at 22, 41.)

FOF 729. Austin ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, at the lower phase-in 1 standard, 4,756 (48.1%) of Austin ISD's 9th and 10th graders failed at least one of the STAAR-

EOC exams required for graduation under HB5.[44] (Ex. 6548 at 5.) 2,781 students failed multiple tests. (*Id.*) As in the first year, the results at the final Level II standard reveal how significantly district performance must improve: just 41% met the final Level II standard in Algebra 1, 50% in Biology, 47% in English I Reading, 33% in English I Writing, 5% in English II Writing, and 41% in World History. (Ex. 6569-A at 43-47.) Only 28.9% of Austin's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 3.)

FOF 730. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Austin ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

v. Corsicana ISD

FOF 731. Corsicana ISD is a Chapter 42 district located about fifty miles south of Dallas in Corsicana, the county seat of Navarro County. (Ex. 11323.) Corsicana is a small, mostly low income community. (Ex. 6341, Frost Dep., at 11.) The district is the largest employer in the county. (*Id.* at 14.)

FOF 732. In 2013-14, Corsicana ISD enrolled 5,996 students. (Ex. 20001 at 2.) The district grows, on average, by about sixty students a year, but because it serves a small community, its enrollment can be strongly impacted by the closing of just one business. (Ex. 6341, Frost Dep., at 11-13 (referencing Ex. 368 at 2).)

FOF 733. Corsicana ISD's student body is approximately 75% economically disadvantaged, up from 57% in 2006-07. (Ex. 6341, Frost Dep., at 13-14 (referencing Ex. 368 at 3); Ex. 20001 at 3.) Because the community is so impoverished, the district often has to help the students with basic needs, such as food and clothing. (Ex. 6341, Frost Dep., at 15-16.)

FOF 734. Like Texas, Corsicana is majority-minority – approximately 48% Hispanic, 29% Anglo, and 18% African-American – with a steadily growing Hispanic population and a steadily shrinking Anglo population. (Ex. 20001 at 3.) About 18% of the student body is classified as ELL. (Ex. 368 at 4.)

FOF 735. In 2011-12, Corsicana ISD's budget was cut by over $2 million dollars, from $38.6 million to $36.4 million – or by about $450 per student. (*Id.* at 8-9.) In order to absorb the cuts, Corsicana had to cut twenty-two elementary teachers and fourteen secondary teachers – resulting in larger class sizes across the board – plus eight aides, and several other support staff. (Ex. 6341, Frost Dep., at 25, 27 (referencing Ex. 368 at 9).) The cuts inevitably also touched the district's most needy and challenging populations – including cutting its pre-K program from full day to half day, reduction in teachers for disciplinary alternative program and the credit recovery program for the students it serves, larger

[44] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

caseloads for teachers working with students with disabilities, and elimination of a position aimed at assisting the district's low-income students in obtaining college scholarships and other financial aid. (Ex. 6341, Frost Dep., at 23-26 (referencing Ex. 368 at 9).)

FOF 736. Prior to tax compression, Corsicana ISD was taxing at $1.41. (Ex. 368 at 6.) Its compressed rate was $0.98, but Corsicana immediately accessed all six golden pennies in and has been taxing at $1.04 since the 2007-08 school year. (Ex. 6341, Frost Dep., at 19 (referencing Ex. 368 at 6).) Corsicana is cannot raise its tax rate further without a TRE. (Ex. 6341, Frost Dep., at 6.) Corsicana is "out" of golden pennies, so therefore any additional taxes it did raise through a TRE would only raise the lower, "copper yield." (*Id.* at 19-20.) Further, Corsicana's I&S rate is already at 24.3 cents and it has several aging buildings – including ones built in 1923 and 1924 – that need updated wirings to support today's educational technology. (*Id.* at 20-21.) The combination of the lower yield, the higher I&S tax rate, the pending facility needs, and the poverty of the district's community has prevented the district from holding a TRE. (*Id.* at 19-20, 174-75.)

FOF 737. While the district had been making progress on the met standard level of the TAKS exam, much like the rest of the state, the district's scores were flat or declining in the last two years. (Ex. 6341, Frost Dep., at 28-29 (referencing Ex. 368 at 10-11).) Further, the percentage of the district's students meeting the commended level remained troublingly low, especially for the 75% of the students who are economically disadvantaged and the district's African-American population. (Ex. 368 at 12-14.)

FOF 738. After the first administration of the STAAR-EOC exams, 255 (68%) of Corsicana ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 18.) Looking at the Level II final standard, only 20% of Corsicana ISD students reached the standard in Algebra I, 21% in Biology, 28% in World Geography, 38% in English I Writing and 40% in English I Reading. (Ex. 368 at 15-20.) The results at the Level II final standard are even more disturbing for the district's economically disadvantaged students, only 11% of whom that standard in Algebra I, 17% in Biology, 21%, and 35% in English I Writing and English I Reading. (Ex. 6341, Frost Dep., at 29-31 (referencing Ex. 361 at 15-20).)

FOF 739. After the July retests, Corsicana ISD still had 215 ninth graders, 57% of the class of 2015, who failed 517 tests and were off track for graduation. (Ex. 6324, Moak Supp. Report One, at 18, 38.) Superintendent Dr. Diane Frost described that the challenge that these numbers represent is "not a hill or a bump in the road, it's a mountain that as a district we're going to have to climb." (Ex. 6341, Frost Dep., at 34.) The district was able to offer summer school remediation in 2012 only because of non-recurring federal funds and needs more resources for extended day programs and summer school and other remediation and intervention efforts. (*Id.* at 34-35, 39-43.)

FOF 740. Corsicana ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, at the lower phase-in 1 standard, 440 (59.3%) of Corsicana ISD's 9th and 10th graders failed at least one of the

STAAR-EOC exams required for graduation under HB5.[45] (Ex. 6548 at 11.) Two hundred seventy-six students failed multiple tests. (*Id.*) As in the first year, the results at the final Level II standard reveal how significantly district performance must improve: just 28% met the final Level II standard in Algebra 1, 40% in Biology, 34% in English I Reading, 26% in English I Writing, 49% in English II Reading, 16% in English II Writing, and 20% in World History. (Ex. 6572-A at 40-44.) Only 14.4% of Corsicana's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 9.)

FOF 741. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Corsicana ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

vi. Duncanville ISD

FOF 742. Duncanville ISD is a Chapter 42, "mid-urban" district, approximately 56% of which is in southern Dallas and 44% of which is in the City of Duncanville. (Ex. 6342, Ray Dep., at 9-10; Ex. 11323.)

FOF 743. Duncanville is a steadily growing district, and has gained 3,000 students since 2006-07. (Ex. 1703 at 2.) Duncanville enrolls slightly more than 13,300 students in nine elementary schools, three intermediate schools, three middle schools, one traditional comprehensive middle school, and two alternative schools. (*Id.*; Ex. 6342, Ray Dep., at 3.)

FOF 744. The demographics of the Duncanville ISD student body have changed drastically over the past twenty-five years, going from 25.9% minority in the 1988-89 school year to 92.96% minority in 2011-12. (Ex. 1703 at 4.) It is currently about 48% Hispanic, 42% African-American, and 7% non-Hispanic White. (*Id.* at 6; Ex. 6342, Ray Dep., at 9-10.) Approximately 13% of the district's population is ELL, many of whom are first generation Americans. (Ex. 6342, Ray Dep., at 14 (referencing Ex. 1703 at 5).)

FOF 745. The district has also become poorer, and is now 75% economically disadvantaged. (Ex. 6342, Ray Dep., at 10, 12-13 (referencing Ex. 1703 at 3).) To meet the challenges of educating this population of students, the district needs quality pre-K programs, smaller class sizes, one-on one tutoring, after-school and extended day programs, and summer school. (Ex. 6342, Ray Dep., at 13-14, 28-29.) The challenges – and the need for intervention services – are even greater for the economically disadvantaged students whose first language is not English. (*Id.* at 15-16.)

FOF 746. Despite the challenges facing its students, the expectation of Duncanville ISD for *all* of its students to be prepared for college or career by becoming "21st Century Learners" –

[45] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

citizens who are "not just competent academically in the hard subjects, but also has skills beyond that in the leadership, communication, technological fluency, [and] multi-fluencies in other . . . cultures [and] languages." (Ex. 6342, Rey Dep., at 16-18, 41-42 (referencing Ex. 23-25).)

FOF 747. Duncanville ISD's budget was cut by almost $5 million in 2011-12, and by "only" $1.1 million in 2012-13. (Ex. 6342, Ray Dep., at 25-26.) Because the district had several campuses that were overcrowded or needed remodeling, the district withdrew $2 million from its fund balance to make ends meet in 2011-12 and adopted a deficit budget in 2012-13. (*Id.* at 24-25 (referencing Ex. 1703 at 9-10), 59-60.) Despite withdrawing this money, in order to deal with the budget cuts the district had to implement a salary freeze, make significant personnel cuts – including administrative, teaching, and support staff – reduce the number of days on its staff contracts, increase the number of class-size waivers, reduce stipends for extra assignments taken on by teachers, and adjust its busing schedule (and school start times, accordingly). (Ex. 6342, Ray Dep., at 26-28 (referencing Ex. 1703 at 11).) The district also had to reduce its remedial summer school program to just the grades five and eight – the grades for at which students must pass the standardized test to be promoted to the next grade – thus reducing the amount of quality of intervention the district can provide students who are falling behind and at-risk of failing. (Ex. 6342, Ray Dep., at 28-30 (referencing Ex. 1703 at 12).)

FOF 748. Prior to tax compression, Duncanville ISD was taxing at the $1.50 cap for M&O. (Ex. 6342, Ray Dep., at 20 (referencing Ex. 1703 at 8).) Despite that, its target revenue was well below the state average; therefore, after compression, the district immediately accessed the first four golden pennies and raised its rate to $1.04, where it remains today. (Ex. 6342, Ray Dep., at 20-21.) The district held an unsuccessful TRE in 2008 – just a few weeks after an explosion in gas prices. (*Id.* at 22-23.)

FOF 749. The district's I&S tax rate is at 39 cents, making it one of 225 districts in the state that levies an I&S tax above 30 cents. (*Id.* at 36; Ex. 6621 at 13.) The district's last successful bond election was in 2001, and it has several unmet facility needs, including twelve schools that are at or over capacity, and five science labs and 115 elementary classes that do not meet the minimum TEA square footage requirement. (Ex. 6342, Ray Dep., at 37-39 (referencing Ex. 1703 at 13).) The school board is discussing its need for a TRE to address unmet operational needs *and* a bond election to address unmet facilities needs, but must weigh the needs against each other because "[m]ost taxpayers look at the entire school tax rate, the M&O plus I&S as one number." (Ex. 6342, Ray Dep., at 39-40.)

FOF 750. After the first administration of the STAAR-EOC exams, 662 (62%) of Duncanville ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 9.) Looking at the Level II final standard, only 33.4% of Duncanville ISD ninth graders reached the standard in Algebra I, 56.1% in Biology, 45.7% in English I Writing and 59.4% in English I Reading. (Ex. 1703 at 15-22.) After the July retests, Duncanville ISD still had 579 ninth graders, 54%

of the class of 2015, who failed 1,355 tests and were off track for graduation. (Ex. 6324, Moak Supp. Report One, at 9, 29.)

FOF 751. The results are worse for the 75% of the population who is economically disadvantaged, and Duncanville ISD Superintendent Dr. Alfred Ray testified that it was going to take additional resources directed at targeted interventions to improve these scores. (Ex. 6342, Ray Dep., at 53.) With current resources, Dr. Ray testified, "We may be able to provide better test scores for some kids for a short period of time, but if you want that to be all kids and sustain it, not with the current resources – I don't think that could happen." (*Id.* at 59.)

FOF 752. Duncanville ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, at the lower phase-in 1 standard, 1348 (64.9%) of Duncanville ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams required for graduation under HB5.[46] (Ex. 6548 at 7.) Seven-hundred eighty-one students failed multiple tests. (*Id.*) As in the first year, the results at the final Level II standard reveal how significantly district performance must improve: just 21% met the final Level II standard in Algebra 1, 31% in Biology, 32% in English I Reading, 18% in English I Writing, 22% in English II Writing, and 41% in World History. (Ex. 6575-A at 40-44.) Only 11.2% of Duncanville's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 5.)

FOF 753. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Duncanville ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

vii. Fort Bend ISD

FOF 754. Fort Bend ISD is a Chapter 42 district that covers almost 200 square miles and includes most of Sugar Land and portions of southwest Houston, Missouri City, Pearland, Mission Bend, southwest Houston, and unincorporated areas of Fort Bend County. (Ex. 11323.) It is a growing, residential community. Seventy-eight percent of the district's property wealth is residential. (RR11:63 (referencing Ex. 6353 at 6).)

FOF 755. It has approximately 69,500 students, an increase of 10,200 students since 2003. (Ex. 6353 at 3.) Fort Bend ISD grew by almost 1,000 students per year between 2003 and 2009, before the economic downturn slowed development in the area. (RR11:59 (referencing Ex. 6353 at 3).) The district built twenty schools over the past ten years, including thirteen elementary schools, three high schools, three middle schools, and an alternative school. (RR11:60.) Fort Bend's Chief Financial Officer, Dr. Tracy Hoke, testified that growth is projected to pick back up as housing developments are completed. (Ex. 6338, Hoke Dep., at 17-18.)

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[46] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

FOF 756. Fort Bend ISD is a diverse district, with 29.5% African-American students, 26.2% Hispanic students, 21.7% Asian/Pacific Islander students, and 19.5% non-Hispanic White students. (Ex. 6353 at 4.) The district has pockets of wealth and pockets of poverty, with the average home value in Fort Bend ISD neighborhoods ranging from $68,750 in Arcola Heights to $794,551 in Sweetwater. (RR11:63 (referencing Ex. 6353 at 5).) Twenty-four percent of Fort Bend ISD residents lack basic literacy skills, and 36% of its households speak a language other than English. (RR11:58 (referencing Ex. 6353 at 2); Ex. 664 at 6.)

FOF 757. In 2011-12, Fort Bend ISD enrolled 26,267 economically disadvantaged students and 516 homeless students. (Ex. 664 at 5, 8.) That same year, 9,669 of Fort Bend ISDs students were classified as ELL. (*Id.* at 6.) District students speak 100 different languages and dialects. (RR11:58.) The district has taken many steps to meet the resulting need for bilingual teachers, including having its regular education teachers get certified in ESL and even recruiting teachers from overseas and sponsoring them for VISAs, but has still not been able to fill all of its openings for bilingual teachers. (Ex. 6338, Hoke Dep., at 25-27.)

FOF 758. The student population of Fort Bend ISD is extremely mobile. On any given day of the school year, the district population has a turnover of 300 students. (*Id.* at 19-20.) At some campuses, the population shifts by up to 25% each year. (*Id.* at 20.) The student turnover rate makes it hard for the district to assess and meet the students' needs. (*Id.*)

FOF 759. Fort Bend ISD was forced to cut its budget by $23 million in 2010-11, in order to make up for a budget deficit and to find room in the budget to open three new schools. (*Id.* at 49-50.) Then, in 2011-12, the district lost another $22 million because of the state budget cuts. (*Id.* at 51.)

FOF 760. Because 87% of the district's budget is in salaries and benefits – including the seven legislatively-mandated salary and benefit increases since 1999 – the district could not absorb the cuts without making personnel cuts. (*Id.* at 39-41 (referencing Ex. 664 at 13-14).) The majority of the districts personnel cuts implemented in Summer 2010 were campus administrators, paraprofessionals and other support staff, "helping teachers," and secondary teachers. (Ex. 6338, Hoke Dep., at 50-53 (referencing Ex. 664 at 19), 59-61; Ex. 664 at 21-23.) The district was able to implement the cuts so as to maintain its teacher-to-student ratios at the elementary level and in secondary math and science classes. (Ex. 6338, Hoke Dep., at 52-53.) The next year, the district was forced to cut even more secondary teachers and to raise its elementary school class size to 24:1. (*Id.* at 53-54.) The district filed more than 100 class size waivers as a result. (*Id.* at 54.)

FOF 761. Special education has been a cost-driver for Fort Bend ISD. While the number of special education students in the district is declining, the severity of disability and cost of serving the students has been increasing. (*Id.* at 65-71; Ex. 664 at 26-32.) Special education expenditures regularly outpace the amount of money the district receives for those services. (Ex. 6338, Hoke Dep., at 64-65; Ex. 664 at 25.)

FOF 762. Projecting forward, Fort Bend ISD does not have room in its budget to increase its staffing to keep pace with enrollment growth, to cover rising health care costs, or to pay for salary increases. (Ex. 6338, Hoke Dep., at 71-73 (referencing Ex. 664 at 33).) Fort Bend ISD's teacher salaries are lower than those of its surrounding districts, and the district regularly has a hard time filling math, science, bilingual, and special education positions. (Ex. 6338, Hoke Dep., at 73-74.)

FOF 763. The escalating pressure on the district's operating budget has forced the district to issue bonds to pay for its technology and maintenance needs. (RR11:70-71 (referencing Ex. 6353, at 13); Ex. 6338, Hoke Dep., at 74-76.)

FOF 764. At the time of *WOC II*, and up until tax compression, Fort Bend ISD was taxing at the $1.50 cap. (RR11:64; Ex. 6353 at 8.) The district accessed the first four "golden pennies" in 2008. (Ex. 6353 at 8.) Fort Bend cannot raise its M&O tax rate any further without holding a TRE. The district has not held a TRE because enrollment grown in the district and the resulting facilities needs (and the maintenance and technology needs discussed *supra*) has forced the district to steadily raise its I&S tax rate, which has increased by eleven cents since 2006. (Ex. 6338, Hoke Dep., at 35-38 (referencing Ex. 664 at 10); Ex. 6353 at 8.) The district has additional bond needs that will cause it to issue more bonds in the near future, and its I&S rate will continue to increase as a result. (RR11:71 (referencing Ex. 6353 at 13).)

FOF 765. After the first administration of the STAAR-EOC exams, 2,360 (41%) of Fort Bend ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 11.) Of those, 1,198 students did not even achieve the minimum score necessary to have their English I Writing score count towards their cumulative score. (Ex. 664 at 36.) Looking at the Level II final standard, only 49% of Fort Bend ISD students reached the standard in Algebra I. Only 29% of economically disadvantaged students and 24% of ELL students reached that benchmark, compared to 60% of non-economically disadvantaged students. (*Id.* at 37.) A similar pattern exists for each of the other subject areas, with non-economically disadvantaged students persistently achieving the Level II final standard at approximately twice the rate of economically disadvantaged students. (*Id.* at 37-41.) After the summer retest, 2,165 (38%) of Fort Bend ISD's Class of 2015 still needed remediation on 4,321 tests and were off-track for graduation. (Ex. 6324, Moak Supp. Report One, at 11, 31.)

FOF 766. Fort Bend ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, at the lower phase-in 1 standard, 4,239 (39.4%) of Fort Bend ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams required for graduation under HB5.[47] (Ex. 6548 at 5.) One thousand two hundred twenty-three students failed multiple tests. (*Id.*) As in the first year, the results at the final Level II standard reveal how significantly district

[47] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

performance must improve: only 34% of Fort Bend's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 3.)

FOF 767. Under the last five years of the TAKS system, Fort Bend ISD never had more than 1,571 test failures. (Ex. 664 at 42.) The state financing system does not provide funding for the increased remediation efforts and Fort Bend ISD does not have capacity in its budget to pay for such unprecedented levels of remediation. (Ex. 6338, Hoke. Dep., at 72, 93-94 (referencing Ex. 664 at 43).)

FOF 768. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Fort Bend ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

viii. Humble ISD

FOF 769. Humble ISD is a Chapter 42 district located in northeast Harris County and includes the City of Humble and a portion of the City of Houston. (RR3:122; Ex. 11323.) The district has approximately 37,000 students and is considered a fast-growing school district. (RR3:122.) Humble ISD has added about 900 to 1,000 students (about the size of a typical middle school) per year since the *WOC* trial. (RR3:132 (referencing Ex. 6346 at 2).) This continued growth has increased costs each year for the district, just to provide the same level of services. The growth in the number of students requires more teachers, equipment, books and technology, and facilities – sometimes necessitating the construction of new schools. (RR3:132, 137-39, 168.) Since 2004, Humble ISD has opened seven new elementary schools, one new middle school, and three new high schools. (RR3:137.) Voters in Humble ISD have approved three separate bond programs since 2002 to construct these schools.

FOF 770. Humble ISD, once considered an outer-ring suburban district, has continued to become much more diverse, with increasing urban characteristics. At the time of the *WOC* trial, Humble ISD's student population was 35% minority and 21% low income. (RR3:140 (referencing Ex. 6346 at 3).) In the 2010-2011 school year, for the first time, the minority student population exceeded 50% of the total student population in the district. (RR3:140 (referencing Ex. 6346 at 3).) Moreover, since 2006-07, the economically disadvantaged student population has increased by 36%, and these students now make up more than one-third of the student population in the district. (RR3:141 (referencing Ex. 6346 at 4).)

FOF 771. At the time of the *WOC II* decision in 2005, Humble ISD was taxing at the then maximum M&O tax rate of $1.50. (RR3:150 (referencing Ex. 6346 at 6).) After HB1, Humble ISD's tax rate was compressed to $1.33. (Ex. 6347 at 6.) Despite taxing at the maximum rate prior to compression, Humble ISD's target revenue was set at $5,400 per WADA, which was below average for the state and below that of several districts in its area. (Ex. 6334, Sconzo Dep., at 30-35; RR3:151-52.) In order to keep up with the costs of growth and competition in the area, Humble ISD Superintendent Dr. Guy Sconzo

testified that the district had no choice but to immediately access the four "golden pennies," resulting in a tax rate of $1.37 in 2006-07. Humble ISD's tax rate was further compressed to $1.04 in 2007-08. (RR3:151.)

FOF 772. In 2008, Humble ISD held a TRE seeking voter approval to tax at the new maximum tax rate of $1.17. (RR3:154-55.) Superintendent Sconzo testified that the district had no choice but to seek to tax at the maximum rate in order to keep up with growth, rising costs, and increased state requirements. (RR3:155-56; 166-67.)

FOF 773. By accessing the seventeen cents above its compressed M&O rate of $1.00 between 2006-07 and 2008-09, Humble ISD was able to generate additional revenue during this time period. (RR3:162 (referencing Ex. 6346 at 7).) Despite these increased revenues, however, because of increased costs and growth, the district was nonetheless forced to begin making cuts during the 2007-08 ($6.01 million), 2008-09 ($8.76 million), and 2009-10 ($4.3 million) school years. (RR3:167-69 (referencing Ex. 6346 at 9).) Finally, in 2011-2012, Humble ISD was forced to make budgetary cuts of $24.20 million in response to the 2011 legislative cuts of more than $5 billion statewide. (RR3:169-70.) This single year of cuts exceeded the $17.9 million raised by Humble ISD through its 2008 TRE. (RR3:169-70 (referencing Ex. 6346 at 10).)

FOF 774. Because Humble ISD had already been making cuts prior to 2011-12, the district could not absorb the $24.2 million in cuts without impacting classrooms and students. (RR3:170-75.) This included the reduction of more than 170 teachers and resulted in increased class sizes in the district, as well as other reductions that impacted the quality of education the district could provide its students. (*Id.*)

FOF 775. During the years that Humble ISD was able to increase expenditures per student (through 2009-10), it also experienced increases in the performance of its students on the TAKS basic proficiency standard (*i.e.* passing). (RR3:179-80 (referencing Ex. 6346 at 13-16).) However, student performance on passing TAKS leveled off just as the district's funding levels declined. (RR3:179-80 (referencing Ex. 6346 at 13-16).) More concerning, the district's performance on reaching the TAKS commended standard, already at a much lower level than its performance on the proficiency standard, has also leveled off. (RR3:180-83 (referencing Ex. 6346 at 14-16).) In 2011, only 38% of Humble ISD's students met the commended standard on the ELA/Reading exam, while only 32% met that standard on the Math exam. (Ex. 6346 at 15.) Moreover, although only 45% of Humble ISD's non-economically disadvantaged students scored at the commended level on the ELA/Reading exam, about one-half that percentage, or 23% of the district's economically disadvantaged students met the standard. (*Id.*) Likewise, only 19% of Humble ISD's economically disadvantaged students met the commended level on the Math test, while 36% of its non-economically disadvantaged students scored at that level. (*Id.*)

FOF 776. The results from the first year of the new EOC exams, designed to more accurately reflect college and career readiness, reveal a crisis consistent with that demonstrated by the district's TAKS commended scores. Even at the initial lower phase-in standard, more

than 1,144 Humble ISD students (out of 2,755 students who tested) failed a total of 2,159 tests on the first EOC administration. (*Id.* at 24.)

FOF 777. Unfortunately, the first round of remediation efforts and first retest opportunity in July barely made a dent in the number of students who now are not on-track toward graduation. After the July retest opportunity, 1,050 students have still failed 1,930 tests. (*Id.* at 25.) Thus, the first round of remediation and retesting has reduced the number of students who are "off track" by less than 10%. (*Id.*) The district must continue to provide remediation to all these students to ensure they pass all of these tests, and must also prepare them for an additional ten EOC exams that they and all other students must pass prior to graduation. (RR3:190-95.) As Dr. Sconzo testified, there is no additional funding available for such remediation efforts. (RR3:195-99.)

FOF 778. Humble ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, at the lower phase-in 1 standard, 2,164 (39.8%) of Humble ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams required for graduation under HB5.[48] (Ex. 6548 at 5.) Nine-hundred ninety-one students failed multiple tests. (*Id.*) As in the first year, the results at the final Level II standard reveal how significantly district performance must improve: just 45% met the final Level II standard in Algebra 1, 39% in English I Writing, 38% in English II Writing, and 47% in World History. (Ex. 6581-A at 43-47.) Only 32.1% of Humble's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 9.)

FOF 779. This level of crisis is unlike anything experienced by Humble ISD or its students in prior testing programs, including the TAKS test. (RR3:124-127 (referencing Ex. 6346 at 26).) Since 2008, Humble ISD has never had more than 527 students fail more than 900 exit level exams, and the district typically experienced success rates on retests of about 50%. (Ex. 6346 at 26.)

FOF 780. Dr. Sconzo testified that without required resources to provide effective remediation, more individualized instruction, more tutoring, more instructional time, and other support for these students, there is little hope that they will be able to achieve the standards that now confront all Texas students. (RR3:124-27, 190-99.)

FOF 781. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Humble ISD lacks sufficient funds to provide a general diffusion of knowledge to its students at its current $1.17 M&O tax rate. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

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[48] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

ix. Northside ISD

FOF 782. Northside ISD is a Chapter 42 district located in northwest San Antonio in Bexar County, and extends out to Bandera and Medina Counties. (RR25:84-85; Ex. 11323.) It covers 354 square miles, and includes urban, suburban, and rural areas. (RR25:84-85.)

FOF 783. Northside ISD is the fourth largest district in the state, enrolling almost 100,000 students. (Ex. 6438 at 2; Ex. 6345, Folks Dep., at 8-9.) Northside ISD has grown by 25,000 students since *WOC II* and is considered a fast-growth district. (Ex. 6438 at 2; 1RR25:84-85; Ex. 6345, Folks Dep., at 10-11.) As a result of that growth, Northside ISD had to build and open thirty-seven schools from 2002 to 2012, and has had to pass a bond issue approximately every three years. (RR25:84-85, 88-89.) Approximately 60% of the area within Northside's geographic boundaries is developed, leaving room for significant additional growth. (RR25:85.)

FOF 784. As the population of Northside ISD has grown, it has also become more challenging to educate. (RR25:89-91.) Northside's economically disadvantaged population has grown from 38,091 (46.1%) in 2006-07 to 52,438 (53.4%) in 2011-12. (Ex. 6438 at 3.) The ELL population in Northside ISD, while small, is growing. (*Id.* at 4.) In order to properly serve its changing population of students, Northside ISD has needed to provide additional professional development and technology, and concentrate more teachers and tutors on the campuses with higher percentages of economically disadvantaged students. (RR25:89-92; Ex. 6345, Folks Dep., at 13-15.)

FOF 785. At the same time that Northside ISD's student population was becoming more challenging and expensive to educate, Northside's revenue was being held to basically its 2006 levels via the target revenue system. (RR25:98.) Northside ISD's revenue was then cut by approximately $38 million in 2011-12 and by $47 million in the second year – or an average of $42.5 million a year. (RR25:103; Ex. 6345, Folks Dep., at 32.) Even before the cuts, Northside ISD was a four-star district under the Comptroller's FAST analysis, having scored in the highest percentile in terms of academic progress with average spending levels. (Ex. 8073.)

FOF 786. As a result of these cuts, Northside ISD cut each campus's supply budget by 5%, cut each departmental budget by 5%, cut twenty counselors and reduced central office staff by forty-five positions, cut fifty computer instructional technologists, ninety-nine library assistants, and eighteen athletic coaches in an attempt to minimize the number of classroom teachers that were cut. (RR25:105-08; Ex. 6345, Folks Dep., at 34.) However, Northside ISD was still forced to cut 238 teaching positions – eighty-eight elementary teachers, eighty-six middle school teachers, and sixty-four high school teachers. (Ex. 6345, Folks Dep., at 34.) At the same time, Northside grew by more than 2,500 students. (RR25:111 (referencing Ex. 6438 at 8).)

FOF 787. As a result of the budget and personnel cuts, the district had to increase class sizes and ask for waivers from the 22:1 ratio – a practice it had previously been able to avoid. (RR25:111-12; Ex. 6345, Folks Dep., at 35.) The district also was unable to put extra

teachers and academic coaches into classrooms to act as an academic coach for struggling learners and at-risk students – the very practices that had led to the district's academic success with its low-income and other challenging student populations. (RR25:108, 109-11; Ex. 6345, Folks Dep., at 35-36.)

FOF 788. Prior to tax compression, Northside ISD was taxing at the $1.50 cap. (RR25:94 (referencing Ex. 6438 at 5).) The district accessed the first four "golden pennies" in 2008-09. (RR25:94 (referencing Ex. 6438 at 5).) Northside cannot raise its M&O tax rate any further without holding a TRE. The district has not held a TRE because enrollment grown in the district and the continuing bond and facilities needs that result. (RR25:102.) The facilities needs, combined with the loss of state facilities aid, has forced the district to steadily raise its I&S tax rate, which has increased by ten cents since 2008-09. (RR25:94 (referencing Ex. 6438 at 5).)

FOF 789. After the first administration of the STAAR-EOC exams, 3,124 (44%) of Northside ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 6.) Looking at the Level II final standard, only 47% of Northside ISD students reached the standard in Algebra I. (Ex. 6438 at 11.) Only 35% of economically disadvantaged students and 17% of at-risk students reached that benchmark. (*Id.*) In Biology and English I Writing, only 40% of Northside ISD students reached the Level II final standard. (*Id.* at 12, 14.)

FOF 790. After the summer retest, 2,552 (36%) students in Northside ISD's Class of 2015 were off track for graduation and still needed remediation on 4,916 tests (Ex. 6324, Moak Supp. Report One, at 6, 26.) Under the last seven years of the TAKS system, Northside ISD never had more than 985 students fail 1,600 tests. (Ex. 6438 at 16.)

FOF 791. Northside ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, at the lower phase-in 1 standard, 6,002 (43.8%) of Northside ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams required for graduation under HB5.[49] (Ex. 6548 at 5.) Two thousand eight hundred forty-five students failed multiple tests. (*Id.*) As in the first year, the results at the final Level II standard reveal how significantly district performance must improve: just 41% met the final Level II standard in Algebra 1, 54% in English I Reading, 35% in English I Writing and English II Writing, and 46% in World History. (Ex. 6572-A at 41-45.) Only 27.7% of Northside's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 3.)

FOF 792. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Northside ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

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[49] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

x. Waco ISD

FOF 793. Waco ISD is a Chapter 42 district located in central Texas and serves the city of Waco, the county seat of McLennan County. (Ex. 11323.) Waco maintains a steady enrollment of around 15,300 students. (Ex. 6335, Cain Dep., at 12-13 (referencing Ex. 530 at 2).)

FOF 794. Waco ISD's student population is almost 88% economically disadvantaged and 89% minority. (Ex. 6335, Cain Dep., at 13-16 (referencing Ex. 530 at 3-4).) The district's Hispanic population is growing, while its non-Hispanic White and African American populations are declining. (Ex. 6335, Cain Dep., at 17-18 (referencing Ex. 530 at 5).) The percentage of students who are ELL is increasing slowly but steadily, up three percentage points in five years to 17.2%. (Ex. 530 at 5.)

FOF 795. Approximately 30% of Waco ISD's student population is mobile – that is, during the school year, the student moves in and out of the district and/or between attendance zones within the district. (Ex. 6335, Cain Dep., at 18-19 (referencing Ex. 530 at 5).) This population of students is often also living in poverty and, as Waco's superintendent, Dr. Bonny Cain aptly observed, "When you're worried about where your next meal's coming from, are you going to go home and all your stuff's been moved, are you going to go home and all your stuff's been taken, you're not as able to focus on learning as you are whenever your life is very stable and you're confident that you're going to get that next meal." (Ex. 6335, Cain Dep., at 21.) The "only ticket out" of the cycle of poverty for these students is public education, yet the instability of the student's residency translates into instability in their education and lower attendance rates, making it that much harder for the district to intervene in order to reach a struggling student. (*Id.* at 18-24 (referencing Ex. 530 at 6).) Lower attendance rates lead to lower levels of state funding for the district, since FSP funding is based on average daily attendance, further inhibiting the district's ability to reach these students and give them a meaningful opportunity to graduate college or career ready. (Ex. 6335, Cain Dep., at 24.)

FOF 796. Despite an infusion of federal stimulus funds in 2009-10 and 2010-11, Waco ISD has had to steadily decrease its current services budget since the 2009-10 school year. (*Id.* at 33-34 (referencing Ex. 530 at 11).) The district lost $3 million in state funds in 2011-12 and $3.4 million 2012-13. (Ex. 6335, Cain Dep., at 29-30.) This translated into $230 less per ADA. (*Id.* at 32 (referencing Ex. 530 at 10).) Even before the cuts, Waco had a below state average target revenue, and at the same time that its revenue was declining, Waco ISD's needs were increasing due to rising state standards. (Ex. 6335, Cain Dep., at 33, 38-39.)

FOF 797. To absorb the cuts, Waco ISD has had to correspondingly steadily reduce its number of teachers. (*Id.* at 47 (referencing Ex. 530 at 14).) In response to the 2011-12 cuts, the district reduced its contribution to employee health insurance, cut stipends for extra duties, cut classroom supplies and materials, postponed vehicle replacements, and reduced travel budgets, and consolidated eight campuses in 2011-12 – all in an attempt to minimize the number of teacher layoffs. (Ex. 6335, Cain Dep., at 35-36 (referencing Ex. 530 at 12), 41-46.) However, in the end, the district still had to make $1.8 million in staff

reductions, cutting fifty teachers, eleven custodial staff, four central office staff, four campus administrators, two librarians, and one maintenance staff. (Ex. 6335, Cain Dep., at 36-38 (referencing Ex. 530 at 12-13).)

FOF 798. As a result of the teaching staff cuts, Waco ISD class-sizes rose, thus reducing the amount of individualized attention and communication with parents – strategies that are especially important for the districts largely impoverished student population. (Ex. 6335, Cain Dep., at 47-49.)

FOF 799. Prior to tax compression, Waco was taxing at $1.45. (*Id.* at 27 (referencing Ex. 530 at 8).) Upon compression, Waco immediately accessed all six golden pennies and has been taxing at $1.04 since the 2007-08. (Ex. 6335, Cain Dep., at 27 (referencing Ex. 530 at 8).) Waco cannot raise its tax rate further without a TRE. (Ex. 6335, Cain Dep., at 27-28.) Any money raised from one would be used to help a district that is struggling to meet state standards, and not for enrichment. (*Id.* at 28-29.)

FOF 800. After the first administration of the STAAR-EOC exams, 753 (78%) of Waco ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 17.) On no test did more than 68% of the ninth graders meet the Level I phase-in. (Ex. 530 at 18-20, 22-23.) Looking at the Level II final standard, only the highest score was 23% of all ninth graders meeting Level II final on English I Reading. (*Id.* at 19.) In the other subjects, 11.47% met Level II final in English I Writing, 6.83% in Algebra I, and 12.44% in Biology. (*Id.* at 18, 20, 22-23.) After the summer 2012 retest, 724 (75%) students in Waco ISD's Class of 2015 were off track for graduation and still needed remediation on 1,900 tests. (Ex. 6324, Moak Supp. Report One, at 17, 37.)

FOF 801. Waco ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, at the lower phase-in 1 standard, 1,286 (76.5%) of Waco ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams required for graduation under HB5.[50] (Ex. 6548 at 7.) Eight hundred ninety-nine students failed multiple tests. (*Id.*) As in the first year, the results at the final Level II standard reveal how significantly district performance must improve: just 11% met the final Level II standard in Algebra 1, 17% in Biology, 20% in English I Reading, 9% in English I Writing, 38% in English II Reading, 11% in English II Writing, and 24% in World History. (Ex. 6587-A at 41-45.) Only 7.1% of Waco's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 9.)

FOF 802. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Waco ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

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[50] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

xi. Weatherford ISD

FOF 803. Weatherford ISD is a Chapter 41 district that covers more than 200 square miles of Parker County, just west of the Dallas-Fort Worth Metroplex. (Ex. 6337, Hanks Dep., at 11-12; Ex. 641 at 2; Ex. 11323.)

FOF 804. In 2011-2012 Weatherford ISD enrolled 7,608 students. (Ex. 641 at 3.) From 2006-07 through 2011-12 the district's enrollment increased by about 5%. (Ex. 6337, Hanks Dep., at 12-13; Ex. 641 at 3.) Over the last decade, the rate of growth in student enrollment has been higher than 10%. (Ex. 6337, Hanks Dep., at 13.)

FOF 805. As has happened throughout Texas, Weatherford ISD has seen significant change in the ethnic and economic background of its students. Minority students now make up more than 27% of the student population. (*Id.* at 15; Ex. 641 at 4, 7.) In addition, economically disadvantaged students now make up almost 45% of the total student body – an increase of more than 20%, or almost 900 students, since 2006. (Ex. 6337, Hanks Dep., at 15-16, 25; Ex. 641 at 5.)

FOF 806. Because economically disadvantaged students often come to school without the experiences and family support structure of more advantaged peers, Weatherford ISD has seen an increase in the need for resources to help these students be successful at school. This includes, for example, the need for more individualized teaching, which requires smaller class sizes and more teachers and paraprofessionals. (Ex. 6337, Hanks Dep., at 16-18.)

FOF 807. Weatherford is classified as a property-wealthy district that is subject to recapture payments to the state. (*Id.* at 31.) For the last couple of years, Weatherford has made annual recapture payments of between $500,000 and $600,000. (*Id.*) Despite its status as a property-wealthy district, Weatherford ISD's target revenue level after tax rate compression was close to the state average and lower than the target revenue level of many of its peer districts. (*Id.* at 31-32.)

FOF 808. Prior to tax rate compression, Weatherford ISD had an M&O tax rate of $1.50, the maximum rate allowed by law at the time. (*Id.* at 27; Ex. 641 at 8.) In 2010, the district held a successful TRE to increase its M&O rate to the $1.17 cap. (Ex. 6337, Hanks Dep., at 29; Ex. 641 at 8.) The TRE was necessary because of a reduction in state funding and because the district had been forced to use money from its fund balance for construction projects and some operating expenses. (Ex. 6337, Hanks Dep., at 29.) Prior to the TRE, the district had less than two weeks operating expenses in its fund balance. (*Id.* at 29-30.) The TRE raised about $4 million in annual revenue – approximately the same amount as the state funding cut experienced by Weatherford ISD for each year of the current biennium. (*Id.*) As a "property-wealthy" district, most of Weatherford ISD's revenue is generated locally, so it no longer has any ability to increase revenue through its local M&O tax. (*Id.* at 47-48.)

FOF 809. Weatherford ISD's per pupil expenditures have been decreasing since 2008-09. (*Id.* at 34; Ex. 641 at 10.) Since 2003, Weatherford ISD has had an increase in student enrollment of 10.9%, yet has decreased personnel by 1.65% because of these reductions. (Ex. 6337, Hanks Dep., at 48; Ex. 641 at 12.)

FOF 810. Because the reduced spending has required the reduction of personnel, the district has had to eliminate its pre-K program for three-year-olds and increase class sizes at all grade levels, including elementary school, and for programs such as bilingual classes. (Ex. 6337, Hanks Dep., at 35-38.) The district has also had to eliminate several teacher aide positions as well as teacher coaches. (*Id.* at 38-39, 43.) It has had to increase the number of classes taught by teachers and as a result eliminate collaboration time during which teachers used to plan with and learn from one another. (*Id.* at 40-41.) The district has also eliminated ESL teachers who were specifically assigned to provide services to ESL students only; now the homeroom teacher must instruct both ESL and non-ESL students in the general classroom. (*Id.* at 44.) These changes have negatively impacted the ability of teachers in Weatherford ISD to provide support for students, particularly for those who are economically disadvantaged or not proficient in English. (*Id.* at 37-39, 41, 43-45.)

FOF 811. While the district had been making progress on the met standard level of the TAKS exam, this is not a strong indication of how well-prepared Weatherford ISD students were under the new college and career-ready standards. (*Id.* at 54.) The percentage of the district's students meeting the commended level (a better indication of college or career ready) remained troublingly low, with only 18% of Weatherford ISD students meeting that standard on all tests. (Ex. 643 at 4.)

FOF 812. After the first administration of the STAAR-EOC exams, 286 (48%) of Weatherford ISD's ninth graders failed to achieve the Level II phase-in standard on at least one of the STAAR EOC exams. (Ex. 6324, Moak Supp. Report One, at 19.) Looking at the Level II final standard, only 30% of Weatherford ISD students reached the standard in Algebra I, 51% in Biology, 35% in English I Writing and 47% in English I Reading. (Ex. 641 at 23.) The results at the Level II final standard are even more disturbing for the district's economically disadvantaged students, only 18% of whom met that standard in Algebra I, 35% in Biology, 22% in English I Writing, and 33% in English I Reading. (*Id.*)

FOF 813. After the July 2012 retests, Weatherford ISD still had 256 ninth graders, 43% of the class of 2015, who failed 542 tests and were off track for graduation. (Ex. 6324, Moak Supp. Report One, at 19, 38.)

FOF 814. Weatherford ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, at the lower phase-in 1 standard, 467 (43.4%) of Weatherford ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams required for graduation under HB5.[51] (Ex. 6548 at 9.) Two hundred sixty-one students failed multiple tests. (*Id.*) As in the first year, the results at

[51] This analysis uses passing rates on sophomore-level World History as a proxy for junior-level United States History.

the final Level II standard reveal how significantly district performance must improve: just 29% met the final Level II standard in Algebra 1, 51% in English I Reading, 36% in English I Writing, 37% in English II Writing, and 41% in World History. (Ex. 6572-A at 32-36.) Only 28.1% of Weatherford's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 7.)

FOF 815. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Weatherford ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

b. Calhoun County ISD Plaintiff districts

i. Richardson ISD

FOF 816. Richardson ISD is a Chapter 41 district that is located primarily in Dallas, but the district also covers portions of the cities of Richardson and Garland. (RR4:210-11 (referencing Ex. 5343 at 2); Ex. 11323 (2012 spreadsheet).)

FOF 817. Richardson ISD serves approximately 38,000 students. (RR4:212.) The district has rapidly grown in recent years, adding about 1,000 new students in both 2011-12 and 2012-13. (Ex. 5616, Waggoner Dep., at 9; Ex. 892-W at p. 2 of PDF.)

FOF 818. Hispanic students represent the largest ethnic group in Richardson ISD, comprising about 39% of the district's student population. (Ex. 5616, Waggoner Dep., at 10-11 (referencing Ex. 892-W at 2).) African American students comprise 23% of the student population, and White students comprise only 28%. (Ex. 5616, Waggoner Dep., at 11 (referencing Ex. 892-W at 2).)

FOF 819. The percentage of economically disadvantaged students in Richardson ISD has steadily increased over time. (RR4:222-23 (referencing Ex. 5343 at 14).) From 2004-05 to 2011-12, the district's economically disadvantaged student population increased from 45% to 57%. (RR4:222-23 (referencing Ex. 5343 at 14).)

FOF 820. The percentage of ELL students in Richardson ISD has also grown each year from 2004-05 to 2011-12. (RR4:224-25 (referencing Ex. 5343 at 16.).) In 2011-12, almost one-fourth of Richardson ISD's student population was ELL. (RR4:224-25 (referencing Ex. 5343 at 16.).) Ninety-three languages and dialects are spoken in Richardson ISD. (RR4:212.)

FOF 821. From 2010-11 to 2011-12, Richardson ISD's budgeted operating fund revenues dropped from $255.7 million to $246.5 million. (Ex. 5616, Waggoner Dep., at 23 (referencing Ex. 901-W).) Richardson ISD also lost funding from other federal, state, and local grant programs outside the operating fund. (Ex. 5616, Waggoner Dep., at 24 (referencing Ex. 901-W).) For example, in 2011-12, the State eliminated the district's SSI grants and

reduced Richardson ISD's DATE grants by $1.7 million from the previous year. (Ex. 5616, Waggoner Dep., at 50-51 (referencing Ex. 917-W).)

FOF 822. Richardson ISD's budgeted operating fund revenues per ADA and operating fund revenues per WADA were lower in 2011-12 and 2012-13 than in any of the five preceding years, even before adjusting for inflation. (RR5:15-16 (referencing Ex. 5343 at 36).)

FOF 823. Adjusting for inflation, Richardson ISD's operating fund revenues per ADA dropped from $7,438 in 2006-07 to $6,110 in 2012-13. (RR5:17-18 (referencing Ex. 5343 at 37).) The district's inflation-adjusted operating fund revenues per WADA decreased during this same time period from $5,661 to $4,632. (RR5:17-18 (referencing Ex. 5343 at 37).)

FOF 824. Similar to its revenues, Richardson ISD's budgeted Operating Fund appropriations per ADA and per WADA were lower in 2011-12 and 2012-13 than in any year from 2006-07 through 2010-11, even without adjusting for inflation. (Ex. 5616, Waggoner Dep., at 30 (referencing Ex. 909-W).)

FOF 825. State funding to Richardson ISD decreased by a total of $21.7 million in 2011-12 and 2012-13 compared to what would have been received under previous law. (RR4:247.)

FOF 826. In 2011-12, Richardson ISD slashed $5.6 million from its budget in response to the State's budget cuts. (Ex. 5616, Waggoner Dep., at 35 (referencing Ex. 914-W).) Richardson ISD reduced expenditures associated with Saturday school, professional development, and secondary summer school. (Ex. 5616, Waggoner Dep., at 37-38.) The district also reduced its number of instructional specialists, who offer remediation in reading and math. (*Id.* at 38.) Each department was also required to reduce its budget. (*Id.* at 38-39.) Richardson ISD's superintendent, Dr. Kay Waggoner, testified that these cuts adversely affected the district's ability to provide quality instruction. (*Id.* at 37-39.)

FOF 827. In 2011-12, Richardson ISD froze the salaries of every employee in the district and reduced starting salaries for teachers. (RR4:252.) The district kept its total number of teachers flat in 2011-12, and added only twenty-four teaching positions in 2012-13, even though the student population grew by 1,000 during each of these two years. (RR4:255-56.)

FOF 828. The cuts described above occurred at the same time that Richardson ISD was facing rapid student growth, increasing percentages of economically disadvantaged and ELL student populations, and the first administration of the STAAR exam under high stakes conditions. (Ex. 5616, Waggoner Dep., at 28-29.)

FOF 829. Because the district did not hire new teachers to keep up with enrollment growth, average class sizes increased at both the elementary and secondary levels. (RR4:256.) In 2011-12, Richardson ISD requested 268 class size waivers, and in 2012-13 it requested 291 class size waivers – significantly more than it had requested at any time during the past decade. (RR4:257-58 (referencing Ex. 5343 at 34).) The overwhelming majority of the

district's class size waivers were for financial hardship. (RR4:258.) Dr. Waggoner testified that she believes the district had no realistic alternative than to request these class size waivers. (RR4:261.)

FOF 830. According to Dr. Waggoner's testimony, possible uses of additional funds would be to hire more teachers, reduce class sizes, provide cost of living salary adjustments for teachers and staff, implement a full-day pre-K program to address the needs of low-income and ELL students, offer additional remediation and interventions to address deficiencies in student performance, add support programs at early ages for students, and use funds to target the career and college-readiness standards. (Ex. 5616, Waggoner Dep., at 63-65; RR4:232-34; RR5:30-33, 42-43.)

FOF 831. Richardson ISD's M&O tax rate is currently $1.04. (Ex. 5616, Waggoner Dep., at 52.) If Richardson ISD raised its M&O tax rate to $1.06, the additional two pennies would not be subject to recapture, but would raise only $3 million in revenue, compared to the $21.7 million that the district lost in state funding. (*Id.* at 53.) Any additional taxation above $1.06 would be subject to recapture at a 20% rate. (*Id.* at 52, 56.) Dr. Waggoner testified that she believes the voters of Richardson ISD are unlikely to approve a TRE to increase the M&O tax rate in the near future. (*Id.* at 52, 53-54, 56; RR5:36-38.) Even if voters were to approve an increase to $1.17, the additional revenue generated would barely be sufficient to restore the district to its pre-budget cut levels. (RR5:41-42.)

FOF 832. After the first administration of the STAAR exam, 47% of Richardson ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (RR4:237; Ex. 6324, Moak Supp. Report One, at 9.) Scores were particularly low on the English I Writing and English I Reading EOCs. Only 40% of ninth-graders achieved the Level II final standard on English I Writing, and only 52% did so on English I Reading. (RR4:231-32 (referencing Ex. 5343 at 24.).) Only 5% of students achieved Level III on English I Writing and 10% did so on English I Reading. (RR4:235 (referencing Ex. 5343 at 25).) After the 2012 summer retake, 37% of ninth graders – which represents 966 students – still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (RR4:237-38; Ex. 6324, Moak Supp. Report One, at 9.)

FOF 833. Richardson ISD students did not fare better on the STAAR EOC exams in 2013. (*Compare* Ex. 5301 *with* Ex. 5718.) In fact, a lower percentage of students achieved the Level II final standard on Algebra I, English I Writing, and World Geography in Spring 2013 compared to Spring 2012. (*Compare* Ex. 5301 at pgs. 24, 29-30 of PDF *with* Ex. 5724 at pgs. 42, 45-46 of PDF.)

FOF 834. Richardson faces greater challenges today than it has in the past – including the more rigorous STAAR EOC assessment system – even as its financial resources are diminishing. (RR4:221-28.) Richardson ISD has been required to increase class sizes, and consequently to seek class size waivers. (*See supra* FOF 829.) It must attempt to prepare students to pass the more rigorous STAAR program. During this time, the district's economically disadvantaged and ELL student populations have been growing.

(Ex. 5616, Waggoner Dep., at 45.) Richardson ISD has no immediate means to generate significant additional revenue to meet these challenges.

FOF 835. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Richardson ISD lacks sufficient funds to provide a general diffusion of knowledge to its students at its current $1.04 M&O tax rate and would remain inadequately funded even if it raised its tax rate to $1.17. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

ii. Calhoun County ISD

FOF 836. Calhoun County ISD is a chapter 41 district located along the coast of the Gulf of Mexico, just east of Victoria. (Ex. 11323 (2012 spreadsheet); RR12:10-11.) Calhoun County ISD's classification as a Chapter 41 district results from the industrial facilities in the district, and not from residential property values. (RR12:12.) In other words, the district is "industry rich," but "rooftop poor." (*Id.*)

FOF 837. Calhoun County ISD currently serves about 4,250 students. (RR12:12-13.) Sixty percent of Calhoun County ISD's student population is Hispanic. (RR12:13 (referencing Ex. 5143 at 4).)

FOF 838. The percentage of economically disadvantaged students in Calhoun County ISD increased from 56% in 2006-07 to 64% in 2010-11, and has increased further since then. (Ex. 5618, Wiggins Dep., at 13 (referencing Ex. 692).)

FOF 839. Calhoun County ISD's budgeted operating fund revenues decreased from $33.1 million in 2010-11 to $32.4 million in 2012-13. When other federal, state, and local grants are included, the district's total available revenues dropped even further. (Ex. 5618, Wiggins Dep., at 27-28 (referencing Ex. 703).) Calhoun County ISD's budgeted operating fund revenues per ADA and per WADA have decreased continually from 2009-10 to 2012-13. (Ex. 5618, Wiggins Dep., at 27 (referencing Ex. 702).)

FOF 840. Adjusting for inflation, Calhoun County ISD's budgeted operating fund revenues per WADA have decreased every year since 2006-07, with the exception of 2007-08. (Ex. 5618, Wiggins Dep., at 28-30; (referencing Ex. 704).) In 2006-07, the district's inflation-adjusted operating fund revenues per WADA were $6,062, compared to $5,554 in 2011-12 and $5,380 in 2012-13. (Ex. 5618, Wiggins Dep., at 28 (referencing Ex. 704).)

FOF 841. State funding to Calhoun County ISD decreased approximately $4 million in 2011-12 compared to what would have been received under previous law. (Ex. 5618, Wiggins Dep., at 24.) In addition, the district received State Fiscal Stabilization Funds in 2009-10 and 2010-11, and ARRA stimulus funds in 2009-10, but did not receive these funds in later years. (*Id.* at 22-24.) The district was able to partially offset this lost revenue through increased local revenues, but was still required to cut about $2 million from its budget from 2010-11 to 2011-12. (*Id.* at 24-25.)

FOF 842. Calhoun County ISD achieved $2 million in budget cuts from 2010-11 to 2011-12 by, among other things: (1) closing an elementary school, which caused student-teacher ratios at other elementary schools to increase, (2) eliminating various programs at the high school level, including career training programs such as auto tech and cosmetology, (3) eliminating a middle school remediation program, (4) eliminating a junior high band program, and (5) eliminating twenty-five auxiliary positions. (*Id.* at 43-48 (referencing Ex. 712); RR12:13-15.) Calhoun County ISD also effectively froze salaries in 2011-12 and 2012-13. (Ex. 5618, Wiggins Dep., at 50-51.) Calhoun County ISD's superintendent, William Wiggins, testified that these cuts negatively impacted the district's ability to educate its students. (*Id.* at 48-49.)

FOF 843. Calhoun County ISD also reduced its number of teachers by about twenty-four from 2010-11 to 2012-13, which caused class sizes to increase. (*Id.* at 51-52 (referencing Ex. 713).) As of the time of Mr. Wiggins's deposition, the district anticipated needing class size waivers for its elementary schools in 2012-13. (Ex. 5618, Wiggins Dep., at 53.)

FOF 844. Calhoun County ISD's M&O tax rate is $1.04. (*Id.* at 68.) If Calhoun County ISD raised its M&O tax rate above $1.04, it would owe approximately half of the additional revenue to the state in the form of recapture. (RR12:20 (referencing Ex. 5143 at 7).) For example, if the district raised its M&O tax rate to $1.17, it would retain an additional $2.2 million in revenue, but would owe an additional $1.9 million to the state in recapture. (RR12:20 (referencing Ex. 5143 at 7).) Mr. Wiggins testified that he believes it would be impossible to pass a TRE, in large part because of the additional recapture that would be owed. (Ex. 5618, Wiggins Dep., at 68-73; RR12:21-22.)

FOF 845. Mr. Wiggins testified that Calhoun County ISD has no means to obtain additional revenue, except through additional state funding. (Ex. 5618, Wiggins Dep., 76.) The district's M&O tax rate of $1.04 is currently both a floor and a ceiling, in that the district cannot lower its M&O tax rates, but also cannot pass a TRE to raise the tax rate. (RR12:23.)

FOF 846. After the first administration of the STAAR exam, forty-seven percent of Calhoun County ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 7.) Only 48% of students achieved the Level II final standard on English I Reading, 41% did so on English I Writing, and 47% did so on World Geography. (RR12:24 (referencing Ex. 5143 at 9).) Only 7% met the Level III standard on English I Reading and 4% achieved Level III on English I Writing. (RR12:24 (referencing Ex. 5143 at 10).) After the 2012 summer retake, 40% of ninth graders still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 847. Student performance on STAAR significantly decreased from Spring 2012 to Spring 2013 in Calhoun County ISD. During this period, the percentage of students reaching the Level II final standard decreased on all five of the exams required for graduation (with World Geography as a proxy for U.S. History). (*Compare* Ex. 714 at pgs. 1-5 of PDF *with* Ex. 5715 at pgs. 39-43 of PDF.) For example, the percentage of students achieving

the Level II final standard dropped by eleven percentage points on English I Reading and by eleven percentage points on English I Writing from Spring 2012 to Spring 2013. (*Compare* Ex. 714 at pgs. 3, 5 of PDF *with* Ex. 5715 at pg. 41-42 of PDF.)

FOF 848. Calhoun County ISD's passing rates on the Spring 2012 STAAR EOC exams at the Level II final standard are significantly lower than the district's passing rates have historically been on TAKS. (Ex. 5618, Wiggins Dep., at 57, 66-67.)

FOF 849. Like other districts, Calhoun County ISD's funding decreased at the same time the State imposed the more rigorous STAAR examinations. (*Id.* at 60-61.) Mr. Wiggins testified that additional funding is essential for Calhoun County ISD to reach the new expectations of the STAAR system. (*Id.* at 67.) Calhoun County ISD will require significantly more resources to train teachers and administrators so they can prepare students for the STAAR EOC exams. (*Id.* at 59-60; RR12:28-29.) The district also requires resources to remediate students who fail the exams. (Ex. 5618, Wiggins Dep., at 65.) During the Summer of 2012, the district provided a STAAR remediation program for sixty students, which it was required to fund from its local budget. (*Id.* at 61-62.)

FOF 850. In addition to preparing students for STAAR, the district faces a number of other significant challenges. During the 2007 school year, approximately 100 Burmese refugees moved into Calhoun County ISD. (*Id.* at 32-33.) These students did not speak any English, and required significant additional resources to educate. (*Id.* at 32-34.) Many Burmese refugee students remain in the district and still present a great challenge to educate. (*Id.* at 34.)

FOF 851. Other challenges arise as a result of Calhoun County ISD's location along the coast. Because of its location, the district must pay for windstorm and flood insurance, which raises its insurance costs above those of similarly sized districts. (RR12:16-17.) The district's costs to maintain buildings are also higher as a result of its coastal climate. (RR12:17.) The State does not provide any additional assistance to the district to help with these costs. (RR12:17-18.)

FOF 852. Calhoun County ISD covers more than 1,000 square miles and is one of the largest districts in Texas geographically. (RR12:11.) As a result, its transportation costs are higher than those of other districts. (RR12:17.) The district spends approximately $2 million per year on transportation, but receives only $300,000 from the state to assist with transportation costs. (*Id.*)

FOF 853. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Calhoun County ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iii. Lewisville ISD

FOF 854. Lewisville ISD is a Chapter 41 district located in a suburb of Dallas. (Ex. 5615, Waddell Dep., at 69; Ex. 11323 (2012 spreadsheet).) There are sixty-three schools in Lewisville ISD. (Ex. 5615, Waddell Dep., at 10.)

FOF 855. Lewisville ISD currently educates approximately 52,000 students. (*Id.*) Lewisville ISD's student population has grown at a rapid rate. The district's student population increased by about 700 in 2011-12 and by 1,000 in 2012-13. (*Id.*)

FOF 856. Lewisville ISD's budgeted operating fund revenues decreased by approximately $20 million from 2010-11 to 2011-12, and by an additional $3 million in 2012-13. (Ex. 5615, Waddell Dep., at 15-16 (referencing Ex. 756).) This represents nearly a 6% decrease from 2010-11 to 2012-13. The percent decrease in Lewisville ISD's operating fund revenues, combined with its revenues from federal, state, and local grants, was even greater. (Ex. 5615, Waddell Dep., at 16 (referencing Ex. 757).)

FOF 857. Lewisville ISD's budgeted operating fund revenues per ADA and per WADA sharply declined in 2011-12, and then further declined in 2012-13. (Ex. 759.) The same per-ADA and per-WADA trends result when federal, state, and local grants are added to the district's budgeted operating fund revenues. (Ex. 5615, Waddell Dep., at 19 (referencing Ex. 760).)

FOF 858. Adjusting for inflation, Lewisville ISD's operating fund revenues per ADA and per WADA are lower in 2011-12 and 2012-13 than in any year from 2006-07 through 2010-11. (Ex. 5615, Waddell Dep., at 20 (referencing Ex. 761).) The district's inflation-adjusted budgeted operating fund revenues per ADA were $7,187 in 2006-07; $6,808 in 2011-12; and $6,585 in 2012-13. (Ex. 761.) Lewisville ISD's budgeted per-ADA and per-WADA revenues from the operating fund – combined with other federal, state, and local grants – show a similar pattern. (Ex. 5615, Waddell Dep., at 22 (referencing Ex. 763).)

FOF 859. Similarly, the district's inflation-adjusted, budgeted operating fund appropriations are lower in 2011-12 and 2012-13 on a per-ADA and per-WADA basis than in any of the preceding five years. (Ex. 5615, Waddell Dep., at 23 (referencing Ex. 765).)

FOF 860. Lewisville ISD reduced its general operating budget by about $18 million from 2010-11 to 2011-12. (Ex. 5615, Waddell Dep., at 27-28 (referencing Ex. 768 at 1).) Among other things, Lewisville ISD (1) reduced its number of teachers by about sixty at the same time its ADA increased by nearly 350, (2) provided an incentive for teachers to retire or resign, (3) increased class sizes to an average of twenty-two students in kindergarten through fourth grade, which required the district to obtain twenty-seven class size waivers, and (4) cut support services such as a reading recovery program that provided reading intervention for early childhood. (Ex. 5615, Waddell Dep., at 24-25 (referencing Ex. 767), 31-34.) The district's superintendent, Dr. Stephen Waddell, testified that Lewisville ISD had no realistic choice but to make these cuts, and that they have

negatively affected teaching and learning in the district. (Ex. 5615, Waddell Dep., at 31, 34-35.)

FOF 861. Lewisville ISD has budgeted a deficit for the last several years. (*Id.* at 37.) In 2012-13, the district budgeted a $22 million deficit, despite having cut $18 million from its budget the previous year. (*Id.* at 37-38.)

FOF 862. Lewisville ISD pays its teachers the salaries that are necessary to be competitive with other districts in the area. (*Id.* at 151.)

FOF 863. Lewisville ISD's M&O tax rate is $1.04. (*Id.* at 35.) The district held a TRE in September 2010 in an effort to raise the M&O tax rate from $1.04 to $1.06. (*Id.* at 36-37.) The TRE failed by a margin of two-to-one. (*Id.* (referencing Ex. 769).) Considering the widespread opposition to this TRE, the district cannot expect to raise its M&O tax rate above $1.04 at any time in the near future. (Ex. 5615, Waddell Dep., at 36-37, 81.)

FOF 864. One-third of Lewisville ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam after the first administration of the exams. (Ex. 6324, Moak Supp. Report One, at 9.) Passage rates at the Level II final standard ranged from 53% to 64% on each of the EOC exams on the first administration. (Ex. 770 at 25, 27, 29-31.) Only 12% of students met the Level III standard on English I Reading and 6% of students did so on English I Writing. (*Id.* at 9, 15.) After the second administration of the exam, 30% of ninth graders still had not passed at least one EOC exam at the initial phase-in standard. (Ex. 6324, Moak Supp. Report One, at 9.)

FOF 865. Lewisville ISD students made little, if any, progress on the STAAR exams in 2013 compared to 2012. A lower percentage of students achieved the Level II final standard on Algebra I and English I Writing in Spring 2013 than in Spring 2012. (*Compare* Ex. 770 at pgs. 25, 30 of PDF *with* Ex. 5717 at pgs. 43, 46 of PDF.) The percentage of students reaching this level on the other exams required for graduation (with World Geography as a proxy for U.S. History) did not improve in any meaningful way from Spring 2012 to Spring 2013. In Spring 2013, only about two-thirds of students reached the Level II final standard on the remaining three exams required for graduation. (*Compare* Ex. 770 at pgs. 27, 29, 31 of PDF *with* Ex. 5717 at pgs. 44-47 of PDF.)

FOF 866. Lewisville ISD students' passing rates on the STAAR EOC exams at the Level II final standard in the Spring of 2012 are lower than they have been on the TAKS exam in recent years. (Ex. 5615, Waddell Dep., at 44.)

FOF 867. Dr. Waddell testified that Lewisville ISD's costs will significantly increase under the new STAAR regime. (*Id.* at 46-47.) The district anticipates that the number of students in summer school will double as a result of STAAR, and its costs to remediate students who fail to meet the necessary standards on the STAAR exams will also double. (*Id.* at 47-48.) These costs are in addition to the costs needed to improve regular classroom education designed to help students pass the exams in the first place. (*Id.* at 48.) Dr.

Waddell testified that the State is now requiring more of students, teachers, and administrators than before, and the resources provided to Lewisville ISD have not kept pace with these increased demands. (*Id.* at 49-50.)

FOF 868. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Lewisville ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iv. Aransas County ISD

FOF 869. Aransas County ISD is a Chapter 41 district located along the Gulf of Mexico, near Corpus Christi. (Ex. 11323 (2012 spreadsheet); Ex. 5669 at 24.) There are five campuses in Aransas County ISD. (Ex. 5614, Patek Dep., at 10.)

FOF 870. Aransas County ISD currently educates about 3,150 students. (*Id.* at 11.) The population of economically disadvantaged students in Aransas County ISD has grown from approximately 48% in 2001 to about 65% in 2011. (*Id.* at 11-12 (referencing Ex. 300).)

FOF 871. Aransas County ISD's budgeted operating fund revenues have decreased more than $800,000, or nearly 3%, from 2006-07 to 2012-13, before adjusting for inflation. (Ex. 304.)

FOF 872. The district's budgeted operating fund revenues per ADA are approximately the same in 2012-13 as they were in 2006-07, even without accounting for inflation. (Ex. 306.) Adjusting for inflation, the district's budgeted operating fund revenues per ADA have decreased from $9,669 in 2006-07, to $8,662 in 2011-12, and to $8,511 in 2012-13. (Ex. 307.) The district suffered this loss at the same time the percentage of economically disadvantaged students in the district was growing. (Ex. 5614, Patek Dep., at 26-27.)

FOF 873. In 2011-12, Aransas County ISD was required to cut $2.3 million from its operating fund budget as a result of the State's budget cuts. (*Id.* at 28-30.) Among other things, the district (1) cut various teaching positions, (2) discontinued extended class periods for middle school Math and English-Language Arts students, (3) discontinued its middle school intervention program, and (4) cut teaching and aide positions in its special education inclusion program. (*Id.* at 31-39 (referencing Ex. 309).) In addition to these cuts, Aransas County ISD also cut campus and department operating budgets by at least 15% and froze salaries and wages for all employees. (Ex. 5614, Patek Dep., at 31-32 (referencing Ex. 309), 37-38.)

FOF 874. As a result of these cuts, Aransas County ISD reduced its full time equivalent count by a total of twenty-five. (Ex. 5614, Patek Dep., at 39.) Aransas County ISD's elementary school classes are all at or near the limit of twenty-two students. (*Id.* at 58-59.) Some of Aransas County ISD's middle school and high school classes have up to thirty-eight students. (*Id.* at 58.)

FOF 875. Aransas County ISD pays its teachers salaries that are often lower than – but at most competitive with – surrounding districts and districts with which it competes for teachers. (*Id.* at 41-42.)

FOF 876. According to Mr. Patek, potential uses of additional funds, if they were available, would include replacing previously cut teacher positions, instituting a full-day pre-K program, and applying funds toward career and technology programs to help students prepare for employment immediately after high school. (*Id.* at 56, 58-59.)

FOF 877. Aransas County ISD is unable to raise additional revenue without a TRE. (*Id.* at 44.) Aransas County ISD's M&O tax rate is currently $1.04. (*Id.*) Mr. Patek testified that voters would be unlikely to approve an M&O tax rate above $1.04, because approximately 50% of the additional revenue would be subject to recapture. (Ex. 5614, Patek Dep., at 45, 198-99.) As a practical matter, Aransas County ISD cannot raise its M&O tax rate above $1.04 to generate additional local revenue. (Ex. 5614, Patek Dep., at 50.)

FOF 878. Even if Aransas County ISD could raise its M&O tax rate to $1.17, it would only generate approximately $1.2 to $1.3 million in revenues, compared to the $2.3 million it was required to cut from its budget. (*Id.* at 80–81.) As a result, if Aransas County ISD could raise its M&O tax rate to $1.17, the additional revenue would not be used to provide local enrichment, but would only be used to restore some of the items previously cut from its budget. (*Id.* at 81.)

FOF 879. From the 2006-07 to 2010-11 school years, performance on the TAKS exam by Aransas County ISD students has, at best, remained stagnant. (*Id.* at 1317 (referencing Ex. 301, Ex. 302).) Moreover, the ratings of Aransas County ISD's schools have declined in recent years. In the last year that a rating was given, the district's ratings declined from two exemplary and two recognized campus ratings to two recognized and two acceptable campus ratings. (Ex. 5614, Patek Dep., at 17.) For the last couple of years, Aransas County ISD has failed to meet the adequate yearly progress required by the No Child Left Behind Act. (*Id.* at 20.) Considering the district's performance on TAKS and the AYP, Mr. Patek testified that student performance improved somewhat from 2007 through 2010, but then started to decline, particularly in reading and writing. (*Id.* at 20-21.)

FOF 880. After the first administration of the STAAR exam, 61% of Aransas County ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 5.) Only 12% of Aransas County ISD's ninth graders met the Algebra I Level II final standard. (Ex. 5614, Patek Dep., at 54-55 (referencing Ex. 312).) Only 0.4% of ninth graders (*i.e.*, one student) met the Level III standard for English I Writing and 3% did so for English I Reading. (Ex. 5614, Patek Dep., at 54-55.) After the summer retake, 48% of ninth graders still had not passed at least one EOC exam at the initial phase-in standard and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 5.)

FOF 881. Performance on STAAR remained unacceptably low in 2013. Only about one-quarter of students reached the Level II final standard on Algebra I and English I Writing, just over one-third reached this level on World Geography, and only about one-half of students reached this level on English I Reading and Biology. (Ex. 5714 at pgs. 30-34 of PDF.)

FOF 882. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Aransas County ISD lacks sufficient funds to provide a general diffusion of knowledge to its students at its current $1.04 M&O tax rate or at the statutory maximum of $1.17. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

v. Abernathy ISD

FOF 883. Abernathy ISD is located eighteen miles north of Lubbock. (Ex. 5613, Youngblood Dep., at 8.) Abernathy ISD became a Chapter 41 district in 2009. (*Id.* at 7-8; Ex. 11323 (2012 spreadsheet).)

FOF 884. There are three campuses in Abernathy ISD – one elementary school, one middle school, and one high school. (Ex. 5613, Youngblood Dep., at 9.)

FOF 885. Abernathy ISD educates approximately 750 students. (*Id.*) About 60% of Abernathy ISD's students are economically disadvantaged, 57% are Hispanic, and 40% are at-risk. (*Id.* at 9-10.) The percentage of economically disadvantaged and Hispanic students in Abernathy ISD has increased over time. (*Id.* at 10; Ex. 5669 at 18.)

FOF 886. Adjusted for inflation, Abernathy ISD's budgeted operating fund revenues per ADA dropped from $9,704 in 2010-11 to $9,216 in 2011-12, which represents about a 5% decrease. (Ex. 877.) Its inflation-adjusted budgeted operating fund revenues per WADA fell from $6,161 in 2010-11 to $5,894 in 2011-12, which represents a 4.3% reduction. (Ex. 5613, Youngblood Dep., at 41-42 (referencing Ex. 877).) The decrease in funding is even greater when operating fund revenues are considered together with other federal, state, and local grants. (Ex. 5613, Youngblood Dep., at 43 (referencing Ex. 878).)

FOF 887. Abernathy ISD responded to the State's 2011 budget cuts by, among other things, (1) reducing its full-day pre-K program to a half-day program, (2) cutting about $400,000 in capital outlay expenses, (3) not replacing an elementary teacher and a fine arts teacher, and (4) cutting central administration. (Ex. 5613, Youngblood Dep., at 23, 54-55.)

FOF 888. Abernathy ISD's superintendent, Mr. Youngblood, testified that if Abernathy ISD were forced to make additional cuts, it would be required to cut staff and elementary teachers, which would impair the district's ability to prepare students for middle school and high school. (*Id.* at 55-56.)

FOF 889. Abernathy ISD staffs its schools and central office leanly. One employee of Abernathy ISD serves as the curriculum director, district testing coordinator, and head of the GT program, ESL program, dual college credit program, and high school summer school

program. (*Id.* at 15-16 (referencing Ex. 871).) Another individual currently functions as secretary to the superintendent, federal programs clerk, and PEIMS coordinator. (Ex. 5613, Youngblood Dep., at 14.) When this individual planned to retire at the end of 2012, the district planned to spread her duties among current employees, instead of hiring a new employee to fulfill her responsibilities. (*Id.* at 14-15.) Abernathy ISD's elementary school assistant principal also serves as the cafeteria manager, custodian supervisor, and federal programs coordinator. (*Id.* at 21.)

FOF 890. Abernathy ISD pays its teachers only $2,000 above the state minimum salary. (*Id.* at 19.) This salary is significantly lower than the salary paid in nearby Lubbock and is on target with the salaries paid by other districts of similar size to Abernathy ISD. (*Id.*)

FOF 891. Potential uses of additional funding, according to Mr. Youngblood, include reinstating the district's full-day pre-K program, which primarily serves low socioeconomic, special education, ELL, and migrant students; and hiring a math specialist at the middle school, which recently failed to meet AYP based on its math scores. (*Id.* at 23, 56-57.)

FOF 892. In the Fall of 2005, Abernathy ISD passed a TRE to rate its M&O tax rate to $1.17. (*Id.* at 10-11.) When the voters of Abernathy ISD approved the TRE, the district was not yet paying recapture. (*Id.* at 12.) In 2012-13, approximately one-third of Abernathy ISD's tax revenue from $1.04 to $1.17 will be recaptured by the State. (*Id.*)

FOF 893. After the budget cuts, the district attempted to balance its budget in a way that would not require it to use the full $1.17 of taxation, but it was unable to do so. (*Id.* at 12-13.)

FOF 894. After the first administration of STAAR, 47% of Abernathy ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 12.) At the Level II final recommended standard, only 22% of students passed World Geography and 41% passed English I Writing and Biology. (Ex. 881 at 12-13, 15-16.) Only 4% of students met the Level III standard for Biology, 6% did so on English I Writing, and no students met the standard on World Geography. (*Id.* at 4, 8, 10.) After the summer retake, 44% of ninth graders still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 12.)

FOF 895. Abernathy ISD students continued to struggle on the STAAR exams in 2013. The percentage of students reaching the Level II final standard on English I Writing dropped by a remarkable twenty-two percentage points from Spring 2012 to Spring 2013 (with only 19% of students reaching this level in Spring 2013 compared to 41% percent during the previous year). (*Compare* Ex. 881 at pg. 15 of PDF *with* Ex. 5713 at pg. 32 of PDF.) The percentage of students reaching the Level II final standard dropped by twelve percentage points on English I Reading during this time period. (*Compare* Ex. 881 at pg. 14 of PDF *with* Ex. 5713 at pg. 31 of PDF.)

FOF 896. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Abernathy ISD lacks sufficient funds to provide a general diffusion of knowledge to its students.

The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

vi. Frisco ISD

FOF 897. Frisco ISD is a chapter 41 district located in a northern suburb of Dallas. (Ex. 11323 (2012 spreadsheet); RR41:60-61.)

FOF 898. Over the past twenty years, Frisco ISD has been the fastest growing school district in the nation on a percentage basis. (RR41:61-62.) Frisco ISD's ADA and WADA have nearly doubled from 2006-07 to 2012-13. (Ex. 5617, Reedy Dep., at 21 (referencing Ex. 332).) In 2011-12, Frisco ISD served more than 40,000 students. (RR41:61 at 51 (referencing Ex. 323 at 1).) Frisco ISD's enrollment increased by nearly 3,000 students in 2012-13. (*Id.* at 52.)

FOF 899. About 9% of Frisco ISD's students are special education students. (Ex. 5617, Reedy Dep., at 10 (referencing Ex. 323 at 1).) Frisco ISD serves students who speak fifty-nine different languages. (RR41:61 at 51 (referencing Ex. 323 at 1).)

FOF 900. Frisco ISD's revenues have not kept pace with its rapid growth. The district's budgeted operating fund revenues per ADA decreased from $8,120 in 2010-11 to $7,708 in 2011-12 and $7,856 in 2012-13. (Ex. 5617, Reedy Dep., at 22 (referencing Ex. 333).) During these same years, Frisco ISD's budgeted operating fund revenues per WADA decreased from $7,048 to $6,682 and $6,742, respectively. (Ex. 5617, Reedy Dep., at 22-23 (referencing Ex. 333).)

FOF 901. Adjusted for inflation, Frisco ISD's budgeted operating fund revenues per ADA and per WADA decreased slightly from 2006-07 to 2010-11. (Ex. 5617, Reedy Dep., at 26 (referencing Ex. 335).) Thereafter, its inflation-adjusted, budgeted operating fund revenues per ADA dropped from $7,507 in 2010-11, to $6,908 in 2011-12, to $6,901 in 2012-13. (Ex. 5617, Reedy Dep., at 26-27 (referencing Ex. 335).) The inflation-adjusted budgeted operating fund revenues per WADA dropped from $6,516 in 2010-11, to $5,988 in 2011-12, and finally to $5,923 in 2012-13. (Ex. 5617, Reedy Dep., at 26-27 (referencing Ex. 335).)

FOF 902. Frisco ISD's budgeted operating fund revenues, together with revenues from federal, state, and local grants, were lower on a per-WADA basis in 2011-12 and 2012-13 than in any of the preceding five years. (Ex. 5617, Reedy Dep., at 24 (referencing Ex. 334).) On a per-ADA basis, the same category of funds was lower in 2011-12 and 2012-13 than in any year since 2007-08. (Ex. 334.)

FOF 903. In 2011-12, Frisco ISD received approximately $14 million less in funding than it would have under previous law. (Ex. 5617, Reedy Dep., at 27-28 (referencing Ex. 336).) In 2012-13, Frisco ISD received $17.4 million less than it would have under previous law. (Ex. 5617, Reedy Dep., at 28-29 (referencing Ex. 336).)

FOF 904. In 2011-12, Frisco ISD reduced its budgeted expenditures by approximately $6 million by not hiring new personnel that it normally would have hired based on student growth. (Ex. 5617, Reedy Dep., at 34.) The district ordinarily would have added about 200 teachers to keep up with student growth, but it only added sixty to eighty new teachers. (*Id.* at 32-33.) As a result, class sizes have increased. (*Id.* at 34, 37-39, 40-42.)

FOF 905. From 2010-11 to 2011-12, Frisco ISD's average class size for kindergarten to fourth grade increased by 1.1 students, middle school class sizes increased by 0.5 students, and high school class sizes increased an average of almost five students. (*Id.* at 37-38 (referencing Ex. 339).) Frisco ISD requested class size waivers for 110 classrooms in 2011-12. (Ex. 5617, Reedy Dep., at 40-41 (referencing Ex. 340).) The district's superintendent, Dr. Richard Reedy, testified that Frisco ISD had no real choice but to increase class sizes and seek class size waivers. (Ex. 5617, Reedy Dep., at 39, 41.) The district sought its class size waivers as a result of financial hardship. (*Id.* at 41 (referencing Ex. 340).)

FOF 906. In addition to the personnel costs of $6 million that caused the district to increase class sizes, Frisco ISD reduced its budget by another $8 million in 2011-12 by, among other things (1) reducing enhancement funds for after-school tutoring and related costs by 50%, (2) reducing the per pupil allotment for materials and supplies, (3) suspending the purchase of new library books, (4) suspending the use of substitutes for absences due to school business, (5) reducing custodial contracted services, (6) initiating triple routing for buses, and (7) suspending its 401(a) matching recruiting/retention incentive plan. (Ex. 5617, Reedy Dep., at 29-30 (referencing Ex. 337).) Dr. Reedy testified that these cuts will detrimentally affect the operations of Frisco ISD. (Ex. 5617, Reedy Dep., at 31.)

FOF 907. Frisco ISD also froze salaries for teachers and other personnel in 2011-12. (*Id.* at 33.) The district pays its teachers mid-range salaries in comparison to other school districts in the Dallas/Fort Worth area. (*Id.* at 48-49.) Dr. Reedy testified that Frisco ISD must pay the salaries that it currently pays to remain competitive in the region. (*Id.* at 49.)

FOF 908. Frisco ISD raised its M&O tax rate from $1.00 to $1.04 for the 2012-13 year. (*Id.* at 11.) Despite raising its tax rate, Frisco ISD's total operating fund budget increased only 6.7% from the previous year, while its student population increased 7.3%. (Ex. 5617, Reedy Dep., at 45 (referencing Ex. 336).)

FOF 909. Each penny of tax effort above $1.04 would be subject to recapture at a rate of approximately 10%. (Ex. 5617, Reedy Dep., at 50.) Dr. Reedy testified that it would be "difficult" and a "tough sell" to get voters to approve an increase in M&O taxes above $1.04, especially considering that the additional pennies of taxation would be subject to recapture. (*Id.* at 50-53.)

FOF 910. Frisco ISD receives a substantial portion of its funding in the form of ASATR. (*Id.* at 54.) If the State reduces or eliminates ASATR and no additional funding is offered in its place, Frisco ISD will have no way to compensate for the loss of funding. (*Id.* at 54-55.)

FOF 911. Frisco ISD's revenues per student have decreased at the same time the State introduced the STAAR EOC accountability standard. (*Id.* at 55.)

FOF 912. After the first administration of the STAAR exam, approximately one-fourth of Frisco ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 8.) Only 63% of students met the Level II final standard for English I Writing. (Ex. 5151 at 26.) Only 17% of students met the Level III English I Reading standard and 6% met the English I Writing standard. (*Id.* at 9, 13.)

FOF 913. Student performance did not improve significantly on STAAR from 2012 to 2013, and performance remained low. (*Compare* Ex. 5151 *with* Ex. 5716.)

FOF 914. Frisco ISD's passing rates on the STAAR EOC exam at the Level II final standard are considerably lower than the district's passage rates have historically been on the TAKS exam. (Ex. 5617, Reedy Dep., at 59-60.)

FOF 915. Frisco ISD's unique challenges include its rapid rate of growth over the past twenty years, which has created particular challenges in educating students. (*Id.* at 13-14; *see supra* FOF 898.) One challenge involves providing sufficient facilities and programs to the growing student population. (Ex. 5617, Reedy Dep., at 13-14.) In addition, students who move into Frisco ISD from outside Texas are unfamiliar with the State's standardized tests and require remediation efforts to be successful. (*Id.* at 14.) Frisco ISD's rapidly growing student population has required the district to hire a large number of first-year teachers. (*Id.* at 14-15.) Providing professional development to each of the new teachers is a significant challenge. (*Id.*) Frisco ISD must now help its fast-growing student body to meet the new demands set out by the state with less funding than it has had in the past.

FOF 916. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Frisco ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

c. TTSFC Plaintiff focus districts

i. Alief ISD

FOF 917. Alief ISD is a property-poor Chapter 42 district located in the western portion of Harris County. Alief ISD currently educates about 46,000 students on forty-nine campuses. (RR8:94; Ex. 11323; Ex. 3205, Chambers Dep., at 110.)

FOF 918. Eighty-three percent of Alief's students are economically disadvantaged. A little over 36% of the students are ELL. The district is 50% Hispanic and 32% African American. There is about 40% mobility within the student body in a year. In 2011-12 the student body spoke eighty-two languages as their primary language. The district has a large

number of Burmese refugee students who, in addition to learning English, must learn cultural skills. Alief ISD has changed in the last twenty years from a suburban district to an urban district with a highly mobile population. (RR8:94-96.)

FOF 919. In 2010-11, Alief ISD received a "gold circle" recognition from the Comptroller for transparency, effectiveness, and efficiency. (RR8:96.)

FOF 920. Alief was forced to make $22 million in budget cuts because of the Legislature's failure to fund the public school system to previous levels in 2011. They achieved these cuts by eliminating 100 teachers including "response to intervention" teachers. Alief also eliminated sixty paraprofessionals, made across-the-board cuts to instructional materials and supplies, and cut technology expenditures. The budget cuts forced Alief to raise its class sizes in pre-K and only offer a half-day program. Alief also increased class size in grades five through twelve. (RR8:121-28.)

FOF 921. Alief ISD's superintendent testified that if Alief had additional funds, his priorities would include a full-day pre-K, more and more meaningful career work force development, and more teachers to reduce class sizes. (RR8:131-32.)

FOF 922. Alief ISD's M&O tax rate is $1.125. If the district held a TRE to raise its tax rate to the maximum $1.17, that would only raise $4.5 million. There is nothing Alief ISD can do to make up for the Legislature's failure to fully fund education. (Ex. 3229 at 1; RR8:112, 121, 129.)

FOF 923. After the first administration of the STAAR exam, 59% of Alief ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 13.) Scores were particularly low on the Algebra, Biology, English I Writing, and World Geography EOCs. At the Level II final standard, only 33% of students passed Algebra, only 37% passed Biology, only 27% passed English I Writing, and only 34% passed World Geography. (*Id.*) At Level III, only 10% of students passed Algebra, 5% passed Biology, 6% passed English I Reading, 1% passed English I Writing, and 8% passed World Geography. (Ex. 439 at 1.) After the summer retake, 53% of ninth graders – which represents 1599 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 13.)

FOF 924. Over 900 ninth graders in Alief ISD had to retake one of the end of course exams after the Spring administration in 2012. The district has students who are in sophomore level courses who must still pass freshman tests. There has to be a cumulative score to graduate which means those ninth graders are already off track to graduate. This failure rate puts more pressure on Alief ISD's resources because it requires Alief ISD to offer remediation classes while still offering the regular curriculum. (RR8:117-20.)

FOF 925. Alief ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 3,087 (55.4%) of Alief ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 5.) One-thousand six-hundred

and sixty-six students failed multiple tests. (*Id.*) Only 19.6% of Alief's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 3.)

FOF 926. In 2008, according to the State's AEIS Report, 44% of Alief's students were college ready in Math, 48% were college ready in English Language Arts, and 32% were college ready in both subjects. In 2009, 53% of Alief's students were college ready in Math, 59% were college ready in English Language Arts, and 40% were college ready in both subjects. In 2010, 61% of Alief's students were college ready in Math, 56% were college ready in English Language Arts, and 43% were college ready in both subjects. (Ex. 451; Ex. 458.)

FOF 927. Because of a lack of funding, Alief cannot offer all the courses for the distinguished curriculum, or offer innovative programs. (Ex. 3205, Chambers Dep., at 57.)

FOF 928. During 2010-11 and 2011-12, Alief studied how students who participated in co-curricular and extra-curricular activities performed on TAKS tests. Those students that participated did three percentage points to seven percentage points better than those who did not. The graduation rate for these students was also several percentage points higher than those who did not participate. These programs keep children in school and keep them engaged in school. Alief ISD spends about 1% of its budget on extra-curricular and co-curricular activities. (RR8:137-39.)

FOF 929. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Alief ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

ii. Lubbock ISD

FOF 930. Lubbock ISD is a property-poor Chapter 42 district in the panhandle of west Texas. Lubbock ISD educates 29,000 students on fifty-two campuses. (Ex. 3198, Garza Dep., at 10; Ex. 11323.)

FOF 931. Sixty-five percent of Lubbock ISD's students live in poverty, 55% are Hispanic, 13% are African American, and 12% are special education students. (Ex. 3198, Garza Dep., at 10.)

FOF 932. Lubbock ISD's budget for 2012-13 is $186 million, only slightly higher than its 2007-08 budget of $185 million, despite the fact that in that timeframe it grew by 800 students and state standards became more rigorous. (*Id.* at 53.)

FOF 933. As a result of the State's budget cuts, Lubbock ISD closed or consolidated eleven schools in the last three years. The district eliminated eighty-five positions in its central office, fourteen of which were in core curriculum areas. Lubbock's superintendent, Karen Garza, testified that every one of these people provided meaningful resources to students and losing them decreased Lubbock's ability to educate its students. Additionally,

Lubbock ISD eliminated 424 campus positions, 189 of which were classroom teachers. The majority of the other positions were classroom aide positions. (*Id.* at 39, 41-44.)

FOF 934. Because of budget cuts Lubbock ISD asked for forty-seven class size waivers in 2010-11 and twenty-one waivers in 2011-12. Some of Lubbock ISD's kindergarten through fourth grade classes have twenty-five students in them. Elementary grades above grade four routinely have twenty-five students in them while the goal for middle school and high school classes is twenty-seven students. (*Id.* at 46-47.)

FOF 935. Lubbock ISD's superintendent testified that if Lubbock ISD had an additional $3,000 per WADA it would expand its career technology programs to include pathways in logistics and healthcare, which would lead to jobs in the area, and ensure that more of its students are in advanced programming and dual credit courses. Additionally, Lubbock ISD would lower its class sizes, and make teacher salaries more competitive to attract quality teachers. It would provide more interventions and classroom support for students having difficulty learning. (*Id.* at 77-79.)

FOF 936. Lubbock ISD's M&O tax rate is $1.04. The district has not pursued a TRE because of the poverty of its population. (*Id.* at 29-30.) The success of a TRE is doubtful because its voters are aware that even if Lubbock ISD taxed at $1.17, it could not raise what its neighbors, Friendship ISD and Lubbock-Cooper ISD, raise at $1.04. (*Id.* at 29-32.)

FOF 937. After the first administration of the STAAR exam, 56% of Lubbock ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 17.) Scores were particularly low on the Algebra, Biology, English I Writing, and World Geography EOCs. At the Level II final standard, only 26% of students passed Algebra, only 35% passed Biology, only 33% passed English I Writing, and only 38% passed World Geography. (Ex. 439 at 1.) At Level III, only 12% of students passed Algebra, 7% passed Biology, 10% passed English I Reading, 3% passed English I Writing, and 14% passed World Geography. (*Id.* at 1.) After the summer retake, 47% of ninth graders – which represents 952 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 17.)

FOF 938. Lubbock's ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 2001 (53.9%) of Lubbock ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 5.) One-thousand one-hundred and eighty-one students failed multiple tests. (*Id.*) Only 20.6% of Lubbock's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 3.)

FOF 939. In 2008, according to the State's AEIS Report, 54% of Lubbock's students were college ready in Math, 58% were college ready in English Language Arts, and 41% were college ready in both subjects. In 2009, 55% of Lubbock's students were college ready in Math, 59% were college ready in English Language Arts, and 43% were college ready in both

subjects. In 2010, 58% of Lubbock's students were college ready in Math, 59% were college ready in English Language Arts, and 45% were college ready in both subjects. (Ex. 94; Ex. 101.)

FOF 940. In the Fall of 2009, Lubbock ISD commissioned a comprehensive facilities study of every building in the district. The study found that Lubbock ISD had over $150 million of infrastructure needs in terms of capital improvements and deferred maintenance. Lubbock, after a bond election in 2010, was able to address $44.5 million of those needs, but has over $100 million of unmet needs. This district lacks the funding to deal with these problems. (Ex. 3198, Garza Dep., at 32-33.)

FOF 941. Lubbock ISD has to compete with districts that have up-to-date technology and, in many cases, one-on-one technology. Lubbock ISD cannot afford one-on-one technology and does not have the money to keep its computers in its labs updated. Computers are important to allow teachers to differentiate learning based upon individual student needs. Lubbock ISD students are unable to compete with students from other districts because of the inadequacy of Lubbock's technology. (*Id.* at 36-38.)

FOF 942. Lubbock ISD offers career tech programs, but it needs to expand those programs to include pathways in logistics, health careers, and pre-engineering. Lubbock ISD does not have sufficient funds to meet these needs. (*Id.* at 59-62.)

FOF 943. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Lubbock ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iii. Pflugerville ISD

FOF 944. Pflugerville ISD is a property-poor Chapter 42 district located in Central Texas, northeast of Austin. Pflugerville ISD serves over 21,000 students. (RR24:186; Ex. 11323; Ex. 3238; Ex. 3204, Dupre Dep., at 13.)

FOF 945. About 52% of the students at Pflugerville ISD are eligible for the federal free and reduced lunch program. Forty-three percent of the students are Hispanic, of which 18% are ELL. Pflugerville ISD's student population is 20% African American and 10% Asian. Students at Pflugerville ISD speak over sixty-five different languages. The student population has changed dramatically in the last twenty years. (Ex. 3238; RR24:186, 189.)

FOF 946. Pflugerville ISD has been cutting its budget since 2007 because of the inadequacy of state funding. After the budget cuts of the 82nd Legislature, Pflugerville ISD had to cut an additional $8.5 million from its budget. It eliminated twenty-five high school teachers and twenty-five middle school teachers. It cut twenty-two positions from its administration and support staff. As a result of these staff reductions, Pflugerville ISD increased its class sizes. At the middle school level, Pflugerville ISD had to reduce its

school day from seven periods to six periods and end school one hour earlier. Pflugerville ISD was also forced to cut its transportation budget. (RR24:190-95.)

FOF 947. Because of the lack of funding in 2011-12, Pflugerville ISD cut instructional technology support. The primary responsibility of this type of support was to work with teachers in classrooms to ensure that they were incorporating technology based tools in the delivery of instruction. (RR24:201-02.)

FOF 948. Pflugerville ISD's M&O tax rate is $1.04. It would have a difficult time raising that rate because of poverty in the district, the rates in neighboring districts and pressure from the business community to keep rates low to attract business. (Ex. 3238; RR24:196-97; Ex. 3204, Dupre Dep., at 46-47.)

FOF 949. Pflugerville ISD's I&S rate is 44 cents. Its last bond election was in 2007. With that money the district built a middle school and several elementary schools. It also upgraded technology, replaced HVAC systems, and fixed roofs. The new buildings were necessary because of growth and some of them opened at capacity. Pflugerville has deferred maintenance on HVAC systems and has leaking roofs. Because of growth it will have another bond election in 2013. (Ex. 3204, Dupre Dep., at 48-51.)

FOF 950. After the first administration of the STAAR exam, 48% of Pflugerville ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 22.) At Level III, only 21% of students passed Algebra, 9% passed Biology, 12% passed English I Reading, 5% passed English I Writing, and 17% passed World Geography. (Ex. 3204 at 1.) After the summer retake, 36% of ninth graders – which represents 601 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 22.)

FOF 951. Approximately 800 students failed one or more EOC exams in the Spring of 2012 requiring Pflugerville ISD to find roughly $800,000 in its budget for remediation which substantially changed its usual summer school program. (RR24:198-99.)

FOF 952. Pflugerville ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 1,503 (46.4%) of Pflugerville ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 7.) Eight-hundred and twenty-nine students failed multiple tests. (*Id.*) Only 26.3% of Pflugerville's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 5.)

FOF 953. In 2008, according to the State's AEIS Report, 66% of Pflugerville's students were college ready in Math, 66% were college ready in English Language Arts, and 51% were college ready in both subjects. In 2009, 64% of Pflugerville's students were college ready in Math, 58% were college ready in English Language Arts, and 47% were college ready in both subjects. In 2010, 69% of Pflugerville's students were college ready in Math,

67% were college ready in English Language Arts, and 55% were college ready in both subjects. (Ex. 3238 at 2.)

FOF 954. The shortening of the middle school day in Pflugerville ISD meant the elimination of the period used by teachers for meeting and collaborating and discussing trends in student performance and behaviors to decide on appropriate interventions. (RR24:192; Ex. 3204, Dupre Dep., at 17.)

FOF 955. Reducing the number of class periods in Pflugerville ISD impacted students who needed to be in full-time intervention classes because those students did not get to participate in any elective classes or activities. (RR24:192-93.)

FOF 956. Pflugerville ISD is a growing district having added nine campuses in the last ten years. Beyond the need for facilities, this growth is challenging because it requires more teachers and more materials and supplies. (RR24:186, 189.)

FOF 957. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Pflugerville ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iv. Los Fresnos ISD

FOF 958. Los Fresnos ISD is a property-poor Chapter 42 district located in Cameron County about twenty miles north of the Mexican border. Los Fresnos ISD educates 9,502 students. (RR24:112-13; Ex. 11323; Ex. 3237 at 1.)

FOF 959. Seventy-seven percent of Los Fresnos ISD's student population is economically disadvantaged ranging from the stark poverty of La Colonias to those just at the poverty level. Ninety-six percent of the student population is Hispanic, of which 22% are ELL. (RR24:113, 124.)

FOF 960. When the 82nd Legislature failed to fully fund the public school system Los Fresnos lost $6,000,000 over the biennium. Included in that loss was grant money for pre-K, the Student Success Initiative, and the pilot program to reduce the number of dropouts. (Ex. 3207, Salazar Dep., at 57.)

FOF 961. Los Fresnos ISD has been in a continuous state of budget cutting since 2008 because of low target revenue funding. The district put in a hiring freeze and cut staff through attrition. The district cut pre-K to half day; cut LVN's and reduced the number of counselors; and cut teacher aides and replaced the certified teachers in their computer labs with aides. The district also cut clerical staff. (RR24:117, 131-36.)

FOF 962. Los Fresnos ISD's M&O tax rate is $1.17. (RR24:138.)

FOF 963. After the first administration of the STAAR exam, 57% of Los Fresnos ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex.

6324, Moak Supp. Report One, at 7.) Scores were particularly low on the Biology, English I Writing, and World Geography EOCs. At the Level II final standard, only 36% passed Biology, only 33% passed English I Writing, and only 34% passed World Geography. (Ex. 3207 at 1.) At Level III, only 28% of students passed Algebra, 7% passed Biology, 7% passed English I Reading, 2% passed English I Writing, and 7% passed World Geography. (*Id.* at 1.) After the summer retake, 52% of ninth graders – which represents 364 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 964. Los Fresnos ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 660 (48.4%) of Los Fresnos ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 9.) Three-hundred and seventy-nine students failed multiple tests. (*Id.*) Only 25.8% of Los Fresnos 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 7.)

FOF 965. In 2008, according to the State's AEIS Report, 61% of Los Fresnos' students were college ready in Math, 41% were college ready in English Language Arts, and 36% were college ready in both subjects. In 2009, 58% of Los Fresnos' students were college ready in Math, 47% were college ready in English Language Arts, and 35% were college ready in both subjects. In 2010, 72% of Los Fresnos' students were college ready in Math, 52% were college ready in English Language Arts, and 45% were college ready in both subjects. (Ex. 1025; Ex. 10254.)

FOF 966. Los Fresnos ISD does not have the funds necessary to keep up with their maintenance needs. Los Fresnos has facilities with roof and HVAC issues, for which the maintenance has to be deferred because of a lack of funding. (Ex. 3207, Salazar Dep., at 52-53.)

FOF 967. Counselors are important in schools. Aside from everything counselors do in other schools, the counselors in Los Fresnos have to help students through the emotional violence they have seen and experienced in Mexico. They cannot deal with academics without dealing with these issues. Students from economically disadvantaged homes need a lot of counseling to envision the possibility of college or career and to negotiate towards those goals. There is a shortage of counselors in Los Fresnos ISD because of a lack of funds. (RR24:126-33.)

FOF 968. Los Fresnos ISD utilized family engagement counselors funded by grants as part of its dropout recovery efforts at the high school level beginning in ninth grade. These counselors were liaisons with identified families. They developed a relationship with a family and understood its needs. Los Fresnos ISD had this program for two years and saw excellent results. It had to be discontinued for lack of funding. (RR24:127-29.)

FOF 969. Los Fresnos ISD has a College and Career Technology Academy where dropouts can return to school without stigma. These students are exposed to classes at Texas State Technical College in Harlingen to build a bridge between high school and college. The first two years of this program were funded by TEA grants, which have been

discontinued. Los Fresnos ISD is currently funding this program with its state Compensatory Education funds, which are insufficient for the program's needs. The higher standards imposed by STAAR will increase the dropout rate exponentially, increasing the need for this program. (RR24:129-31.)

FOF 970. Los Fresnos ISD cannot afford the number of nurses they need for their schools. (RR24:131-32.)

FOF 971. Los Fresnos ISD encompasses 540 square miles. The district has ninety-one buses, fifteen of which are older than eleven years old with 200,000 miles on them, and fifteen non-operational buses. (RR24:124-25.)

FOF 972. Los Fresnos ISD has some computer labs which can be used by twenty-five students at a time. This is not adequate computer technology to keep up with curriculum needs and experiences for functioning in today's world. They do not have the funding to provide necessary technology or the infra-structure to support it. The population of students at Los Fresnos ISD does not have access to computers at home. (Ex. 3207, Salazar Dep., at 34-37.)

FOF 973. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Los Fresnos ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

v. Lufkin ISD

FOF 974. Lufkin ISD is a property-poor Chapter 42 district in Angelina County about 100 miles north of Houston. Lufkin ISD educates over 7,800 students. (Ex. 3199, R. Knight Dep., at 9-10; Ex. 11323.)

FOF 975. Seventy-five percent of Lufkin ISD's student population qualifies for federal free and reduced lunches. Thirty percent of the students at Lufkin ISD are Hispanic and 30% are African American. There are 583 students in ESL and about 1,200 bilingual education students. (Ex. 3199, R. Knight Dep., at 9-10.)

FOF 976. As a result of the budget cuts, Lufkin ISD increased class size, reduced staff, eliminated or cut back programs like art, German, French and debate. Lufkin offered early resignation incentives for staff even though it resulted in the loss of years of valuable teaching experience. Lufkin ISD currently only hires novice teachers. Lufkin ISD has also deferred maintenance including HVAC and roofing repairs. Lufkin ISD froze all salaries. Even with these budget cuts the district is running a budget deficit. (*Id.* at 14-16, 21, 25 and 31.)

FOF 977. Lufkin ISD's M&O tax rate is $1.04. (*Id.* at 10.)

FOF 978. After the first administration of the STAAR exam, 56% of Lufkin ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 5.) Scores were particularly low on the English I Writing, and World Geography EOCs. At the Level II final standard, only 32% passed English I Writing, and only 19% passed World Geography. (Ex. 110 at 1.) At Level III, only 24% of students passed Algebra, 20% passed Biology, 10% passed English I Reading, 1% passed English I Writing, and 6% passed World Geography. (*Id.*) After the summer retake, 42% of ninth graders – which represents 226 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 5.)

FOF 979. Lufkin ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 520 (50.6%) of Lufkin ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 9.) Two-hundred and sixty-seven students failed multiple tests. (*Id.*) Only 26.5% of Lufkin's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 7.)

FOF 980. In 2008, according to the State's AEIS Report, 60% of Lufkin's students were college ready in Math, 55% were college ready in English Language Arts, and 43% were college ready in both subjects. In 2009, 60% of Lufkin's students were college ready in Math, 56% were college ready in English Language Arts, and 45% were college ready in both subjects. In 2010, 62% of Lufkin's students were college ready in Math, 58% were college ready in English Language Arts, and 50% were college ready in both subjects. (Ex. 109; Ex. 111.)

FOF 981. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Lufkin ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

vi. Brownwood ISD

FOF 982. Brownwood ISD is a property-poor Chapter 42 district located in the western part of the Hill Country. Brownwood ISD has an ADA of approximately 3,300 students. (RR18:145; Ex. 11323.)

FOF 983. Sixty-six percent of Brownwood ISD's student population is economically disadvantaged with one campus at a 90% level. (RR18:146-47; Ex. 3231.)

FOF 984. Brownwood ISD began making budget cuts before the 82nd Legislature's failure to fully fund the public school system. For the 2010-11 and 2011-12 fiscal years it made 10% across the board budget cuts throughout the district. That meant eliminating teaching positions and administrative staff. The district also cut the number of teacher aides. The district deferred maintenance including delaying HVAC repairs. (Ex. 3209, Blincoe Dep., at 252.)

FOF 985. In order to keep some classes small at the high school, Brownwood ISD put up to forty students in its speech classes, its language classes and its health classes (which are not areas tested on the standardized tests.) The district did this to keep some of their other class sizes smaller. They had to make this choice because of limited resources. (RR18:198-99.)

FOF 986. Brownwood ISD's M&O tax rate is $1.04. (Ex. 3231.)

FOF 987. After the first administration of the STAAR exam, 64% of Brownwood ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 7.) Scores were particularly low on the Algebra, Biology, English I Reading, English I Writing, and World Geography EOCs. At the Level II final standard, only 24% of students passed Algebra, only 23% passed Biology, only 39% passed English I Reading, only 28% passed English I Writing, and only 23% passed World Geography. (*Id.*) At Level III, only 8% of students passed Algebra, 4% passed Biology, 4% passed English I Reading, 1% passed English I Writing, and 6% passed World Geography. (Ex. 1061 at 1.) After the summer retake, 61% of ninth graders – which represents 159 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 988. Brownwood ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 224 (50.8%) of Brownwood ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 15.) One-hundred and forty-five students failed multiple tests. (*Id.*) Only 16.6% of Brownwood's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 13.)

FOF 989. In 2008, according to the State's AEIS Report, 60% of Brownwood's students were college ready in Math, 47% were college ready in English Language Arts, and 34% were college ready in both subjects. In 2009, 70% of Brownwood's students were college ready in Math, 61% were college ready in English Language Arts, and 51% were college ready in both subjects. In 2010, 75% of Brownwood's students were college ready in Math, 74% were college ready in English Language Arts, and 63% were college ready in both subjects. (Ex. 1047, 1048.)

FOF 990. Brownwood ISD has been aggressive in providing technology to its students through grant programs. Brownwood ISD does not have sufficient funding to continue its investment in technology. (RR18:154-58.)

FOF 991. Brownwood ISD needs career courses in digital media, digital art creation, and it needs to strengthen its auto technology, building trades and ag-science courses. Brownwood ISD does not have sufficient funds to meet these needs. These career pathways would lead to jobs in the community. (RR18:195-196.)

FOF 992. Only about 50% of the students from Brownwood ISD go on to a two year or four year college, and many of them have to take remedial classes as freshman. In 2010 only about 20% of the Brownwood students who took the SAT/ACT exams scored at or above criteria. (Ex. 3209, Blincoe Dep., at 241.)

FOF 993. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Brownwood ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

vii. Anton ISD

FOF 994. Anton ISD is located twenty miles northwest of Lubbock. Anton currently educates 250 students. (Ex. 3203, J. Knight Dep., at 10-11, 46-49.)

FOF 995. Approximately 86% of Anton ISD's students qualify for the federal free and reduced lunch programs. (*Id.* at 11.)

FOF 996. As a result of the State's budget cuts, Anton's budget was cut by $130,000. Anton ISD cut five staff members and seven teachers, going from fifty-two to thirty-nine employees, merged maintenance and transportation, merged educational positions, and merged bus routes. It had to reduce their nurse to three days a week. It lost technology and their TAKS coordinator. It had to raise their class sizes and lost aides. Salaries have been frozen for two years, and the district already had the lowest salaries in their region. (*Id.* at 15-21.)

FOF 997. Anton ISD's superintendent testified that if the district had $2,000 more per WADA the district could hire reading interventionists to assist its economically disadvantaged students and hire more aides to enable the district to have small group instruction. (*Id.* at 54-55.)

FOF 998. Anton ISD's M&O tax rate is $1.17. (*Id.* at 11-12.)

FOF 999. After the first administration of the STAAR exam, 47% of Anton ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 14.) Scores were particularly low on the Algebra, Biology, English I Writing, and World Geography EOCs. At the Level II final standard, only 15% of students passed Algebra, only 17% passed Biology, only 38% passed English I Writing, and only 15% passed World Geography. (Ex. 7586 at 1.) At Level III, 0% of students passed Algebra, 0% passed Biology, 0% passed English I Reading, 0% passed English I Writing, and 0% passed World Geography. (*Id.*) After the summer retake, 20% of ninth graders – which represents three students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 14.)

FOF 1000. Anton ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 20 (66.7%) of Anton ISD's 9th and

10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 43.) Nine students failed multiple tests. (*Id.*) Only 6.7% of Anton's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 41.)

FOF 1001. In 2008, according to the State's AEIS Report, 50% of Anton's students were college ready in Math, 40% were college ready in English Language Arts, and 25% were college ready in both subjects. In 2009, 38% of Anton's students were college ready in Math, 54% were college ready in English Language Arts, and 31% were college ready in both subjects. In 2010, 67% of Anton's students were college ready in Math, 67% were college ready in English Language Arts, and 42% were college ready in both subjects. (Ex. 237, 238.)

FOF 1002. Anton ISD does not have the funds to offer its students the courses necessary for the Distinguished Curriculum degree. (Ex. 3203, Knight Dep., at 46.)

FOF 1003. The elementary campus in Anton ISD was built in the 1940s and is in disrepair and the classroom facilities are poor. In 2010-11, Anton ISD's elementary school was cited for safety issues because it had doors that would not shut. The elementary school in Anton ISD needs new flooring and asbestos removal. The high school was built in the 1970s and needs repairs. Anton ISD does not have the funds to make these repairs. (*Id.* at 40-42.)

FOF 1004. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Anton ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

viii. Van ISD

FOF 1005. Van ISD is a property-poor Chapter 42 district located in east Texas about one hour east of Dallas. Van ISD educates approximately 2,300 students. (Ex. 3201, Witte Dep., at 18; Ex. 11323.)

FOF 1006. Seventeen percent of Van ISD's student population is Hispanic and 3% are African American. (Ex. 3201, Witte Dep., at 18.)

FOF 1007. State funding to Van ISD decreased by $1.4 million in 2011-12. (*Id.*)

FOF 1008. As a result of the State's budget cuts, Van ISD was forced to cut three administrative positions and 22% of the administrative staff. Superintendent Witte reduced his paid days by ten and reduced administrative staff paid days by six. All salaries were frozen. Van ISD also cut twenty-nine staff including twenty-two teachers. Van ISD increased class sizes and ended its full-day pre-K program. (*Id.* at 21-25.)

FOF 1009. The cuts that Van ISD was forced to make negatively affected its ability to give differentiated instruction in the classroom. (*Id.* at 24.)

FOF 1010. Van ISD's superintendent testified that if the district had $2,000 more per WADA it would reduce the student to teacher ratio in all classes and particularly try to keep the student-teacher ratio at 15:1 in pre-K to fourth grade. It would reinstitute full-day pre-K, and it would add aides on a ratio of one per classroom. The district would make salaries more competitive. The district would add the infrastructure for a broader use of technology. It would strengthen its career/technology program. (*Id.* at 39-42.)

FOF 1011. Van ISD's M&O rate is $1.17. (Ex. 3006.)

FOF 1012. Superintendent Witte testified that, because, since 2008, Van ISD taxed at the statutory maximum, it had no means to generate additional revenue in response to the State's 2011 budget cuts. As a result, Van ISD had no choice but to reduce staff, raise class sizes, and cut pre-K to half-day programs. (Ex. 3201, Witte Dep., at 19-27.)

FOF 1013. After the first administration of the STAAR exam, 52% of Van ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 23.) Scores were particularly low on the Algebra, Biology, English I Writing, and World Geography EOCs. At the Level II final standard, only 39% of students passed Algebra, only 31% passed Biology, only 35% passed English I Writing, and only 27% passed World Geography. (Ex. 194 at 1.) At Level III, only 14% of students passed Algebra, 1% passed Biology, 8% passed English I Reading, 0% passed English I Writing, and 0% passed World Geography. (*Id.*) After the summer retake, 41% of ninth graders – which represents seventy-two students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 23.)

FOF 1014. Van ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 169 (48%) of Van ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 17.) Ninety-two students failed multiple tests. (*Id.*) Only 26.4% of Van's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 15.)

FOF 1015. In 2008, according to the State's AEIS Report, 56% of Van's students were college ready in Math, 63% were college ready in English Language Arts, and 42% were college ready in both subjects. In 2009, 54% of Van's students were college ready in Math, 65% were college ready in English Language Arts, and 40% were college ready in both subjects. In 2010, 72% of Van's students were college ready in Math, 74% were college ready in English Language Arts, and 62% were college ready in both subjects. (Ex. 165; Ex. 181; Ex. 195.)

FOF 1016. Because of a lack of funding, Van ISD cannot offer all of the courses set forth in the Education Code for the distinguished graduation program. It is unable to offer advanced courses for pre-AP or AP classes. (Ex. 3201, Witte Dep., at 51 and 58.)

FOF 1017. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Van ISD lacks sufficient funding to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment to its students.

ix. Everman ISD

FOF 1018. Everman ISD is a property-poor Chapter 42 district in the southwest corner of Tarrant County. Everman ISD educates 5,400 students. (RR5:167-68; Ex. 11323.)

FOF 1019. Since 2005, Everman ISD's poverty rate has climbed from 60% to 88.5%. 51.6% percent of Everman ISD's students are Hispanic and 40.5% are African-American. (Ex. 3541, Pfeifer Dep. (Vol. II), at 9.)

FOF 1020. In 2005, Everman was in the lowest quartile of wealth and their revenue was frozen at a target revenue of $4,634, which necessitated budget cuts in 2005. The district cut teachers and paraprofessionals and increased class size; it deferred maintenance; it cut coaching stipends, reduced all employee sick leave by three days, and gave no raises. Everman ISD ended its optional homestead exemption. Everman ISD cut administrative positions, cut substitute days, and eliminated capital purchases, travel and conference fees. Everman ISD reduced its bus routes. It replaced registered nurses and librarians with paraprofessionals. (RR5:168-69, 184-86; Ex.3202, Pfeiffer Dep., at 37-41.)

FOF 1021. As a result of the 2011 budget cuts, Everman ISD's funding was cut by $2.1 million. The district was forced to declare financial exigency and terminated forty-one employees, obtained class size waivers and increased the class sizes in grades K through four to twenty-four to one. Class sizes in higher grades also went up. (RR 5:184-86, Ex. 3202, Pfeifer Dep., at 37-42.) Everman ISD's class sizes are still large and were not able to be reduced as a result of the new appropriations by the 83rd Legislature. (Ex. 3541, Pfeifer Dep. (Vol. II), at 18.)

FOF 1022. Everman ISD's superintendent testified that if the district had $3,000 more per student it would hire more teachers to get class sizes lower so that ELS students and economically disadvantaged students could get more individualized attention. It would enrich its curriculum including adding AP preparation classes and more AP classes. The district would make repairs to its roofs and its HVAC systems and make sure its buildings were safe. Everman ISD would wire its classrooms for technology and buy more computers. It would go to full-day pre-K and add more summer school classes. (RR 6:33, Ex. 3202, Pfeifer Dep., at 87-89.)

FOF 1023. Everman ISD increased its M&O tax rate to $1.17 in 2012, and this additional tax effort did not make up for the $2.1 million shortfall in state funding. (Ex. 3202, Pfeiffer Dep.,

at 38-42, 46-48.) Everman ISD's M&O tax rate remains at $1.17 today. (Ex. 3541, Pfeifer Dep. (Vol. II), at 6.)

FOF 1024. After the first administration of the STAAR exam, 72% of Everman ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 21.) Scores were particularly low on the Algebra, Biology, English I Reading, English I Writing, and World Geography EOCs. At the Level II final standard, only 28% of students passed Algebra, only 19% passed Biology, only 27% passed English I Reading, only 19% passed English I Writing, and only 23% passed World Geography. (Ex. 3221, 3222 at 1.) At Level III, only 8% of students passed Algebra, 1% passed Biology, 3% passed English I Reading, 0% passed English I Writing, and 6% passed World Geography. (Ex. 3221; Ex. 3222 at 1.) After the summer retake, 60% of ninth graders – which represents 217 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 21.)

FOF 1025. Three hundred and seven ninth graders at Everman took the EOC exams in 2012 and 208 of them had to attend summer school remediation classes. In order to fund the remediation, Everman ISD had to defer maintenance. (Ex. 3202, Pfeifer Dep., at 81.)

FOF 1026. Everman ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 432 (65.6%) of Everman ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 11.) Two-hundred and fifty-five students failed multiple tests. (*Id.*) Only 12.3% of Everman's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 9.)

FOF 1027. In 2008, according to the State's AEIS Report, 42% of Everman's students were college ready in Math, 47% were college ready in English Language Arts, and 30% were college ready in both subjects. In 2009, 37% of Everman's students were college ready in Math, 39% were college ready in English Language Arts, and 20% were college ready in both subjects. In 2010, 56% of Everman's students were college ready in Math, 50% were college ready in English Language Arts, and 35% were college ready in both subjects. (Ex. 205; Ex. 206; Ex. 207.)

FOF 1028. Everman ISD has insufficient facilities for full-day pre-K, although it is desperately needed. Everman ISD is a property-poor/fast growing district. Even if there were sufficient facilities, Everman does not have funds to hire and retain the necessary pre-K teachers, especially bilingual teachers. (RR5:175-76.)

FOF 1029. Everman ISD has grown by about 100 students from the 2012-13 to the 2014-15 school year and the overwhelming majority of the growth was in pre-kindergarten and kindergarten. (Ex. 3541, Pfeifer Dep. (Vol. II), at 9.)

FOF 1030. Everman ISD is intersected by I-20 and I-35. The district runs about forty buses which are essential to getting the district's students to school. Many of Everman ISD's buses

are old, some as old as twenty years old. The cost to maintain them is high, but Everman ISD does not have the funds to replace them. Everman ISD tried to outsource its transportation needs, but four contractors refused to bid because of the age of Everman ISD's fleet. (RR5:167-68, 221-23.)

FOF 1031. In Everman ISD, the oldest operating campus is Hommel Elementary, which is over-crowded. It does not have a sufficient number of restrooms, and the cafeteria is insufficient for the number of students. It is estimated that it would take $13 million to rehabilitate Hommel Elementary, which the district does not have. The next oldest school is Bishop Elementary, built in 1955. At Bishop, the ground floats and so the floor floats requiring the district to use mud jacking under the building to compensate. Nonetheless, the cafeteria is sinking. The district cannot afford to repair Bishop. One of Everman ISD's junior highs was built in 1962 for 400 students, with no windows (to conserve energy.) It now houses 800 children. The high school was built in 1961. It is fifty years old. E Ray Elementary was built in 1961. It, too, is fifty years old. These campuses are beyond the architect's statement of capacity; these campuses cannot hold any more children, and Everman cannot afford to repair or replace them. (RR5:193-94, 223-28.)

FOF 1032. Roofing issues are the major deferred maintenance issue for Everman ISD. Everman cannot afford to fix them. HVAC units must be replaced and plumbing is also a major issue on the Everman ISD campuses and the district has insufficient funds to correct those problems. It does not have the science labs to meet the STAAR requirements or offer advanced science courses. (RR5:225-28.)

FOF 1033. Everman cannot raise sufficient funds to address its current facility needs. Everman does not have sufficient science classrooms to meet its students' needs. Consequently, it impossible for Everman to offer AP Chemistry, AP Physics or Physics 2. (RR5:225, 227.)

FOF 1034. The Everman community passed a bond in May 2013, which raised Everman's I&S tax rate to 22.5 cents. The bond authorized $40 million in bond sales, $30.5 million of which have been sold. Even with the passing of the bond, Everman will not come close to addressing all of its facility needs. (Ex. 3541, Pfeifer Dep. (Vol. II), at 7-8.)

FOF 1035. Everman ISD continues to feel the effects of the State's failure to fund the Instructional Facilities Allotment, which was a funding stream Everman was previously able to take advantage of. (*Id.* at 8.)

FOF 1036. Everman's Career and Technology Programs are inadequate. The district offers an outdated home economics course, and a business class which teaches keyboarding, office procedure, and accounting. It is trying to start a computer animated career course, and they offer automotive technology through Tarrant County community college. It needs more of these types of programs, but its funding is inadequate to do more. (RR6:28-30; Ex.3202, Pfeifer Dep., at 70-75.)

FOF 1037. The funding provided by the 83rd Legislature is insufficient to allow Everman to provide the programs it needs to meet the challenges of educating its students. (Ex. 3541, Pfeifer Dep. (Vol. II), at 24.)

FOF 1038. Everman is not capable of offering the courses necessary to give students the flexibility and different graduation paths envisioned by HB5. Everman does not have STEM classes or the advanced science classes, Everman does not have any of the business and industry trade classes, Everman does not have the hospitality programs. At best, Everman could offer the Multidisciplinary pathway. Even with the funding provided by the 83rd Legislature, Everman is not able to offer advanced programs, more languages, summer school for people who want to accelerate, or technology. (Ex. 3541, Pfeifer Dep. (Vol. II), at 23-24.)

FOF 1039. Even with the new funding appropriated by the 83rd Legislature, Everman, at the maximum $1.17 rate, cannot raise the amounts dictated by any of the cost-of-adequacy estimates discussed in Part I.C.5 (FOF 603, *et seq.*) above. (*Id.* at 31-32.)

FOF 1040. The funding Everman ISD is supposed to receive as a result of the 83rd Legislature's appropriations does not make up for the cuts Everman had to make in 2010 and 2011 nor for the low target revenue Everman has experienced since 2008. (*Id.* at 13.)

FOF 1041. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Everman ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

x. Quinlan ISD

FOF 1042. Quinlan ISD is a property-poor Chapter 42 district in Hunt County, outside of Dallas. Quinlan ISD educates 2,500 students. (RR20:71; Ex. 11323.)

FOF 1043. Seventy percent of Quinlan ISD's students participate in the federal free and reduced lunch program, but that percentage is an underestimate of the number of students who are economically disadvantaged. (RR20:71.)

FOF 1044. As a result of the State's budget cuts, Quinlan ISD was forced to cut 41% of its Administrative staff which includes assistant principals, counselors, nurses, and librarians. The district also cut 18% of its teaching staff and 14% of its auxiliary staff. (RR20:76.)

FOF 1045. Quinlan ISD's superintendent testified that he estimated that the district needs $9,400 per student to provide a general diffusion of knowledge to the students who are served by Quinlan ISD. If he had this additional revenue the district would extend the instructional day. It would increase its programs for at-risk students and have all-day three-year-old and four-year-old pre-K. It would reduce class size particularly in the early grades for reading comprehension. It would raise teacher salaries to retain teachers. It would

employ a mentor coach at each grade level to monitor student attendance, discipline, and academics. It would have a counselor, a vocational counselor, and a social worker at every campus. It would improve its science courses, expand reading courses, make technology available to students and expand its vocational programs. The district would have nurses and librarians at all campuses. It would replace its aging bus fleet to serve the 150 square miles encompassed by the district. Quinlan ISD would add depth and breadth to its course offerings including more AP classes, dual credit courses, and college-readiness classes. The district would make its facilities safer, repair roofs, HVAC systems, eliminate asbestos in its buildings, and equip its classrooms for a modern education. (RR20:105-06, Ex. 3206, French Dep., at 59-69.)

FOF 1046. Quinlan ISD's M&O tax rate is $1.04. The district is not able to raise that rate because of the poverty of its population. The tax delinquency rate has been rising, and Quinlan ISD's superintendent testified that it would be counter-productive to foreclose on any more houses. (Ex. 3206, French Dep., at 22; RR20:100-01.)

FOF 1047. After the first administration of the STAAR exam, 58% of Quinlan ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 15.) Scores were particularly low on the Algebra, Biology, English I Reading, English I Writing, and World Geography EOCs. At the Level II final standard, only 25% of students passed Algebra, only 22% passed Biology, only 30% passed English I Reading, only 18% English I Writing, and only 24% passed World Geography. (Ex. 469 at 1.) At Level III, only 4% of students passed Algebra, 3% passed Biology, 3% passed English I Reading, 1% passed English I Writing, and 5% passed World Geography. (*Id.*) After the summer retake, 52% of ninth graders – which represents 104 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 15.)

FOF 1048. Sixty percent of the 200 ninth graders who took the STAAR exam this year in Quinlan ISD required remediation. (Ex. 3206, French Dep., at 53.)

FOF 1049. Quinlan ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 226 (60.1%) of Quinlan ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 17.) One-hundred and twenty-five students failed multiple tests. (*Id.*) Only 11.7% of Quinlan's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 15.)

FOF 1050. In 2008, according to the State's AEIS Report, 41% of Quinlan's students were college ready in Math, 54% were college ready in English Language Arts, and 28% were college ready in both subjects. In 2009, 49% of Quinlan's students were college ready in Math, 54% were college ready in English Language Arts, and 34% were college ready in both subjects. In 2010, 49% of Quinlan's students were college ready in Math, 54% were college ready in English Language Arts, and 30% were college ready in both subjects. (Ex. 451, 458.)

FOF 1051. Quinlan ISD is forced to have paraprofessionals teaching certain classes at the middle school because it cannot hire certified teachers at the salary it can afford to offer. The superintendent of Quinlan ISD testified that if Quinlan ISD paid teachers in conformity to the state's minimum salary schedule, some of his teachers would qualify for food stamps. (RR20:82-83, 127.)

FOF 1052. Quinlan ISD has serious facility and maintenance issues. The high school has structural problems requiring about $10 million in repairs. The elementary schools have roof leaks and the HVAC routinely fails. Quinlan ISD does not have sufficient funds to make the necessary repairs and renovations. (RR20:86-87.)

FOF 1053. The limited number of science labs and their poor condition in Quinlan ISD's middle schools pose safety issues for the students. The equipment is limited antiquated and inadequate. Because of gas leaks, the district cannot use Bunsen burners for experiments. They have not had the funds to repair these leaks. These problems make it impossible to cover all the TEKS in middle school in the way they are supposed to be taught. Quinlan does not have sufficient funds to make the necessary repairs. (RR20:87-88; Ex. 3206, French Dep., at 52-53.)

FOF 1054. Superintendent French testified that Quinlan ISD was forced to reduce its pre-K programs to half day because of budget cuts, but re-instituted full-day pre-K in 2012 because there was a noticeable drop in preparedness of this group of students. (RR20:76-77.)

FOF 1055. Quinlan ISD only has computers in one lab on each campus. These labs have twenty to twenty-five computers for all children on the campuses with 600 students, and those computers are five to six years old. A lack of funding prevents Quinlan from having more and better technology. Children in Quinlan usually do not have technology available at home. (RR20: 80-82; Ex. 3206, French Dep., at 56-58.)

FOF 1056. Quinlan ISD is able to offer business information management, a small cosmetology program and a small automotive tech program. The district cannot afford the necessary equipment for an effective cosmetology or automotive tech program. Quinlan ISD was forced to cut its culinary arts program because it could not afford the necessary equipment. Quinlan needs a pre-nursing program, computer programming programs, and a pre-engineering program, but it does not have sufficient funds to offer these programs. These programs would prepare students for jobs that exist in the area. (RR20:94-95; Ex.3206, French Dep., at 39-42.)

FOF 1057. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Quinlan ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

xi. Bryan ISD

FOF 1058. Bryan ISD is a property-poor Chapter 42 district in central Texas adjacent to College Station. Bryan ISD currently educates 16,000 students on twenty-three campuses. (Ex. 3200, Wallis Dep., at 10, 32, 206; Ex. 11323.)

FOF 1059. Seventy-eight percent of the students in Bryan ISD are economically disadvantaged. The student body is 52% Hispanic and 24% African American. (Ex. 3200, Wallis Dep., at 10.)

FOF 1060. Even prior to the 2010 budget cuts, Bryan ISD did not have the resources to prepare a majority of its students to graduate college ready. Now they have to meet more rigorous standards and their funding was cut by $6 million by the 82nd Legislature. (*Id.* at 14-15.)

FOF 1061. As a result of the State's budget cuts, Bryan ISD cut $4.5 million from its budget in 2011-12, but still had a $1.5 million deficit. To make these cuts Bryan ISD reduced the district healthcare insurance premium by $15 per employee, reduced the district contribution to the workman's compensation risk pool, and reduced administrative professional services by reducing special education district-level positions. It eliminated two professional technology positions and eliminated a dropout prevention specialist. It eliminated five special education teachers, an assistant principal, and an assistant band director. The custodial staff was reduced by approximately twenty. It eliminated three additional instructional aides and eliminated a life skills teacher. It eliminated stipends for bilingual education teachers, eliminated the tuition reimbursement program for its employees, and eliminated transfers between its middle schools and high schools. It reduced bus routes. It eliminated two middle school interventionists. It reduced the number of permanent substitute teachers. These cuts impacted negatively the education of students in Bryan ISD. (Ex. 3200, Wallis Dep., at 16-17, 19, 21.)

FOF 1062. Because of budget cuts some classes at Bryan ISD's high schools will have thirty-five to forty students in them. Bryan ISD received class size waivers for its elementary schools. Bryan ISD could not continue its one computer to one student ratio in its middle schools because of a lack of funding. Those computers allowed students to use the INQUIRE and Odyssey programs for research and presentations. (*Id.* at 23-25.)

FOF 1063. Bryan ISD's M&O tax rate is $1.04. (*Id.* at 14.)

FOF 1064. After the first administration of the STAAR exam, 63% of Bryan ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 7.) Scores were particularly low on the Algebra, English I Reading, English I Writing, and World Geography EOCs. At the Level II final standard, only 33% of students passed Algebra, only 38% passed English I Reading, only 25% passed English I Writing, and only 35% passed World Geography. (Ex. 163 at 1.) At Level III, only 15% of students passed Algebra, 9% passed Biology, 6% passed English I Reading, 1% passed English I Writing, and 12% passed World Geography. (*Id.*) After the summer retake, 57% of ninth graders – which represents 628 students – still had not passed at

least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 1065. About 50% of Bryan's ninth graders had to take remediation. The State did not provide any funding for this remediation. Bryan ISD cannot accomplish the college-ready mandate under the existing funding structure even if it raises its tax rate to $1.17. (Ex. 3200, Wallis Dep., at 56-58.)

FOF 1066. Bryan ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 1017 (55.9%) of Bryan ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 7.) Five-hundred and ninety-three students failed multiple tests. (*Id.*) Only 21.3% of Bryan's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 5.)

FOF 1067. In 2008, according to the State's AEIS Report, 56% of Bryan ISD's students were college ready in Math, 57% were college ready in English Language Arts, and 41% were college ready in both subjects. In 2009, 62% of Bryan's students were college ready in Math, 59% were college ready in English Language Arts, and 47% were college ready in both subjects. In 2010, 64% of Bryan ISD's students were college ready in Math, 61% were college ready in English Language Arts, and 50% were college ready in both subjects. (Ex. 161, 162.)

FOF 1068. Eighty-seven percent of all students at Bryan ISD, 92% of ELL students, and 93% of economically disadvantaged students are not performing well enough to meet the college-ready standards. (Ex. 3200, Wallis Dep., at 76-77.)

FOF 1069. Bryan ISD does not have the funding to provide the variety of courses necessary to get its high school students ready for the distinguished curriculum. (*Id.* at 33, 41)

FOF 1070. One-third of Bryan ISD's school buildings are over fifty years old. The district's science labs are outdated and ill-equipped. Bryan high school has approximately 226 doors that open to the outside and ninety that open to the outside at one of the middle schools. This is a safety concern. There are plumbing issues on some campuses. Bryan ISD can only afford to make superficial fixes. There are portable buildings on many campuses which have been used for many years. The portables are not well insulated and in 2012-13, an entire campus will be housed in portable buildings because Bryan cannot afford to fix the buildings on this campus. (*Id.* at 49, 56.)

FOF 1071. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Bryan ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

xii. Belton ISD

FOF 1072. Belton ISD is a property-poor Chapter 42 district located between Austin and Waco in central Texas. Belton ISD currently educates 9,800 students. It is a fast growing district. (Ex. 3226, Kincannon Dep., at 9-10; Ex. 609 at 12.)

FOF 1073. Over 30% of Belton ISD's students are Hispanic, and its African American population is close to 7%. Forty-eight percent of its students are economically disadvantaged. (Ex. 3226, Kincannon Dep., at 12-13; Ex. 609.)

FOF 1074. The superintendent of Belton ISD testified that the district does not have sufficient resources to provide the programs and services needed to give its students an opportunity to achieve the college-ready standard. It needs more resources to help children achieve higher levels in the elementary grades. It needs early childhood intervention, and remediation all through the lower grades and middle school. At the high school level, it needs to help students who still are not at grade level. It needs additional teaching staff and additional professional development to provide quality trained staff at every grade level so that it catches up students before they get to high school. (Ex. 3226, Kincannon Dep., at 27 and 142.)

FOF 1075. Belton ISD's M&O tax rate is $1.17. (Ex. 3006.)

FOF 1076. After the first administration of the STAAR exam, 39% of Belton ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 5.) At Level III, only 23% of students passed Algebra, 17% passed Biology, 13% passed English I Reading, 4% passed English I Writing, and 19% passed World Geography. (Ex. 7613 at 1.) After the summer retake, 37% of ninth graders – which represents 250 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 5.)

FOF 1077. Belton ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 697 (48%) of Belton ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 9.) Three-hundred and forty-nine students failed multiple tests. (*Id.*) Only 27.4% of Belton's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 7.)

FOF 1078. In 2008, according to the State's AEIS Report, 58% of Belton ISD's students were college ready in Math, 59% were college ready in English Language Arts, and 45% were college ready in both subjects. In 2009, 60% of Belton ISD's students were college ready in Math, 65% were college ready in English Language Arts, and 49% were college ready in both subjects. In 2010, 64% of Belton ISD's students were college ready in Math, 66% were college ready in English Language Arts, and 52% were college ready in both subjects. (Ex. 609, 614.)

FOF 1079. Belton ISD has to buy its buses on a lease-purchase arrangement because it cannot afford to buy them outright. (Ex. 3226, Kincannon Dep., at 58-59.)

FOF 1080. Belton ISD had a bond election in May of 2012 and raised $60 million which it used to build three new schools for the district, two elementary schools and a middle school, to address the growth of the school district which has been 40% over a ten-year period. (Ex. 3226, Kincannon Dep., at 59-61.)

FOF 1081. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Belton ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

xiii. Kaufman ISD

FOF 1082. Kaufman ISD is a property-poor Chapter 42 district located about thirty miles east of Dallas. Kaufman ISD educates 3,500 students. (Ex. 563, 574 and 11323.)

FOF 1083. Sixty-three percent of Kaufman ISD's students qualify for the free and reduced lunch program. Forty percent of Kaufman ISD's students are Hispanic and about 7% of its students are African American. (Ex. 3208, Williams Dep., at 25-26.)

FOF 1084. Kaufman ISD's M&O tax rate is $1.17. (*Id.* at 68.)

FOF 1085. After the first administration of the STAAR exam, 61% of Kaufman ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 15.) Scores were particularly low on the Algebra, Biology, English I Reading, English I Writing, and World Geography EOCs. At the Level II final standard, only 25% of students passed Algebra, only 32% passed Biology, only 32% passed English I Reading, only 29% passed English I Writing, and only 37% passed World Geography. (Ex. 3208 at 1.) At Level III, only 8% of students passed Algebra, 2% passed Biology, 3% passed English I Reading, 2% passed English I Writing, and 9% passed World Geography. (*Id.*) After the summer retake, 54% of ninth graders – which represents 141 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 15.)

FOF 1086. Kaufman ISD's student performance did not show the necessary improvement in the second year of the STAAR-EOC exams. In Spring of 2013, 284 (16%) of Kaufman ISD's 9th and 10th graders failed at least one of the STAAR-EOC exams at the lower phase-in 1 standard required for graduation under HB5. (Ex. 6548 at 13.) One-hundred and seventy-nine students failed multiple tests. (*Id.*) Only 16.6% of Kaufman's 9th and 10th graders achieved the final level II standard on all graduation exams. (Ex. 6547 at 11.)

FOF 1087. In 2008, according to the State's AEIS Report, 66% of Kaufman's students were college ready in Math, 60% were college ready in English Language Arts, and 50% were college

ready in both subjects. In 2009, 61% of Kaufman's students were college ready in Math, 67% were college ready in English Language Arts, and 50% were college ready in both subjects. In 2010, 59% of Kaufman's students were college ready in Math, 74% were college ready in English Language Arts, and 52% were college ready in both subjects. (Ex. 563, 564.)

FOF 1088. Kaufman ISD is only able to offer one foreign language, Spanish, because of a lack of funding. (Ex. 3208, Williams Dep., at 187-188.)

FOF 1089. Employers in Kaufman County are telling Kaufman ISD that graduates are not college or career ready. (*Id.* at 190-91.)

FOF 1090. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Kaufman ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

d. Edgewood ISD Plaintiff districts

i. Edgewood ISD

FOF 1091. Edgewood ISD is an urban, property-poor Chapter 42 school district located in San Antonio, Texas. (RR22:129; Ex. 4235.)

FOF 1092. In 2012-13, Edgewood ISD educated 11,931 students. (Ex. 20254 at 15.) Of these students, 98.3% were Hispanic, 1% African-American, and 0.5% White. (*Id.*)

FOF 1093. In 2012-13, 95.7% of Edgewood ISD's students were economically disadvantaged – a 3% increase from the previous year, and far in excess of the state average. (Ex. 4237 at 4; Ex. 20254 at 15.) More than 17.4% of Edgewood ISD's students (or approximately 2,199 students) were ELL in the same school year. (*Id.*)

FOF 1094. As an urban district, Edgewood ISD has a high student mobility rate of approximately 24.5%. (RR22:140; Ex. 865 at Sec. II.) The student mobility rate is based on the number of times students enroll in or leave a school during the school year. A high mobility rate involves substantial disruption to the normal educational process, because teachers must interrupt their planned curriculum to assess and adjust to the turnover in the student population. This, in turn, has an overall negative effect on general student performance, creating additional challenges for Edgewood ISD. (RR22:138-40; Ex. 4224-S, Cervantes Dep., at 196; Ex. 840 – Ex. 856 (all at Sec. II).)

FOF 1095. In FY2013, the property value per WADA in Edgewood ISD was $60,631, an approximate $2,100 decrease from the previous year. (*Compare* Ex. 20038, Cortez

Master workfile, *with* Ex. 4235.) The revenue per WADA in FY 2013 was $5,825, a minimal increase from $5,809 the previous year. (*Compare* Ex. 20038 *with* Ex. 4235.)[52]

FOF 1096. Edgewood ISD has an M&O tax rate of $1.17, and has been at the $1.17 cap for six years. (Ex. 826 – Ex. 828; Ex. 4224-S, Cervantes Dep., at 198.) Edgewood ISD has no means of raising its M&O tax rate and no means to raise additional revenue to finance its maintenance and operations. (Ex. 4224-S, Cervantes Dep., at 198.)

FOF 1097. Edgewood ISD also has an I&S tax rate of 25 cents. (Ex. 828.)

FOF 1098. As stated earlier, no party demonstrated that the school districts were inefficiently or inequitably allocating their resources. (*See supra* Part I.C.6.b (FOF 655, *et seq.*).) The State recognized the district with a "Superior Achievement" rating under FIRST for the 2012-13 school year. (Ex. 11359.) Budgets provided by Edgewood ISD reflect that the district continues to allocate efficiently its resources in the same manner as prior years examined during trial. (Ex. 4237; Ex. 4278 – Ex. 4280.) In 2011-12, for example, 77% of the district's budget was expended on payroll and salaries, 19% was spent on operating expenditures, and 4% was expended on capital assets. (Ex. 4237 at 5-6.)

FOF 1099. For the 2013-14 school year, this pattern remains similar when considering district budget allocations. The district budgeted 79.8% of its general fund for salaries, 19.8% for operating expenditures, and .3% for capital projects. (Ex. 4278 at 7.)

FOF 1100. As a result of the 82nd Legislature's budget cuts, Edgewood ISD had to eliminate all campus interventionists and reduce its summer school opportunities by half, which hindered its effort to prevent dropouts and bring low-income students up to grade level. (Ex. 4237 at 7; RR22:154-62.) The district requires extended learning time with low-income students to provide the level of intensity required to get those students up to grade level. (RR22:160-61; Ex. 4237 at 11.)

FOF 1101. Also due to lack of funding, bilingual teachers in Edgewood must teach both English-speaking children and ELLs in the same classroom, which is not an adequate learning environment for both the ELL and non-ELL students. Because of this exceptionally challenging environment, ELL teachers, including special education teachers, require higher quality ESL professional development which includes Structured Immersion Observation Protocol ("SIOP") strategies that can help ELL students succeed and become academically proficient in the English language. However, there is no funding for this training. Full-day paraprofessionals are also needed, but lacking, in kindergarten classrooms to meet the needs of the high populations of ELL and low-income students in those classes. (RR14:157-58 (referencing Ex. 4231 at 31); Ex. 1345, Izquierdo Site Visits Report, at 3-4; RR22:149-50.)

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[52] Unless otherwise noted, the data cited for Edgewood Plaintiffs is the latest, but not yet final, 2012-2013 data produced by TEA.

FOF 1102. The district was left with substantial needs that it cannot meet, such as quality professional development, extended learning time, high quality tutoring, family liaisons, and smaller learning communities for its low-income and ELL students. (Ex. 4237 at 9, 11; RR22:150-62 (district superintendent approximating the costs to implement and expand programs needed to provide reasonable opportunities to all students); Ex. 4224-S, Cervantes Dep., at 153-54.)

FOF 1103. The additional funds resulting from SB1 and HB1025 were not sufficient to meet Edgewood's remaining bilingual or compensatory education needs. (*Compare* Ex. 4237 at 8-11, *with* 4280.) For example, the additional $497,364 Edgewood was able to generate for compensatory education from 2011-12 to 2013-14 as a result of new legislation is nowhere near the $2 million plus in additional compensatory educational needs identified by Edgewood's superintendent. (*Compare* Ex. 4237 at 10-11, *with* 4280.) Similarly, the additional $36,936 the district generated from 2011-12 to 2013-14 for Bilingual / ESL does not even cover the cost of adequate professional development for ELL teachers in the district, much less the additional expenditures Edgewood's superintendent identified as necessary to meet the needs of its ELL students. (*Compare* Ex. 4237 at 8-9, *with* 4280.)

FOF 1104. Overwhelming class sizes also remain an issue for Edgewood ISD, and the district submitted 16 waiver applications for the 2013-14 school year. (Ex. 4281.) Edgewood also maintains both eligible and non-eligible three and four-year olds on its preschool waitlists. (Ex. 4285.)

FOF 1105. The inability to provide the necessary opportunities in the classroom has led to poor student performance in Edgewood ISD. After the Spring 2013 administration of the STAAR exam, 50% of Edgewood ISD's students failed to meet the Level II phase-in standard on Algebra, 40% failed to meet the standard in Biology, 60% failed to meet the standard in English 1 Reading, and 80% failed to meet the standard in English 1 Writing. (Ex. 4282 at 40-44.)

FOF 1106. Edgewood ISD students showed no improvement over time in these subject areas, and in fact, the percentage failing increased in every area. (*See* Ex. 4237 at 16, showing that in the first administration of the 2012-13 STAAR exam, 42% failed to meet the Level II phase-in standard on Algebra, 32% failed in Biology, 53% failed in English 1 Reading, and 72% failed in English 1 Writing.)

FOF 1107. In addition, after the Spring 2013 administration, a total of 80% of Edgewood ISD's ninth and tenth graders had failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6548.)

FOF 1108. Results were even more dismal at the Level II final standard for the same Spring 2013 Administration. Only 9% of Edgewood students passed Algebra I at the Level II final standard, 14% passed Biology, 19% passed English I Reading, and 8% passed English I Writing. (Ex. 4282 at 40-44.)

FOF 1109. Finally, in 2013 at the Level III advanced standard, no student met the standard in English I Writing, and not more than 2% met the standard in Algebra, Biology, English I or Reading. (Ex. 4282 at 1, 4, 7, 9, and 20.) This performance was stagnant from the previous year, when no student met the standard in English I Writing, and not more than 3% met the standard in Algebra, Biology, or English I Reading. (Ex. 4237 at 20.)

FOF 1110. Edgewood students who failed the test did not fare much better on the retake. After the 2012 summer retake, for example, 73% of ninth graders still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 6.)

FOF 1111. Edgewood ISD graduates also struggled considerably in being college ready. In 2012, only 38% of Edgewood's students were considered College-Ready Graduates in both subjects. (Ex. 828 at 11; Ex. 4237 at 14.)

FOF 1112. Whereas 24.9% of students statewide met the State's benchmarks under the SAT/ACT college-readiness indicator[53] in the 2012-13 school year (Ex. 20254 at 13-14), only 2.3% in Edgewood ISD reached this level, a decrease from 3.8% the previous year. (*Compare* Ex. 828 at Sec. I, p. 11, *with* Ex. 20254 at 13-14.)

FOF 1113. Out of almost 12,000 enrolled students, only 328 participated in AP exams in 2013. (Ex. 4238.) Only 15.9% of the AP students from John F. Kennedy High School, and 10.1% of AP students from Memorial High School scored a 3 or higher, compared to 50.5% statewide. (*Id.*)

FOF 1114. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Edgewood ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

ii. San Benito CISD

FOF 1115. San Benito CISD is a rural property-poor Chapter 42 district located in the Rio Grande Valley. (RR4:95.)

FOF 1116. In FY2013, the property value per WADA in San Benito CISD was $57,919, a decrease from $59,758 the previous year. (*Compare* Ex. 20038 *with* Ex. 4235.) Its revenue per WADA increased only $50 during the same time period, from $5,842 to $5,890. (*Compare* Ex. 20038 *with* Ex. 4235.)

FOF 1117. San Benito CISD has an M&O tax rate of $1.17. (Ex. 4235.) San Benito CISD's I&S tax rate is 13.49 cents. (*Id.*) San Benito CISD has no means of raising its M&O tax rate and

[53] Under the previous accountability rating system, a student could be considered college ready if he or she met or exceeded the college-ready criteria on the SAT or ACT. (Ex. 10324 at 56.)

no means to raise additional revenue to finance its maintenance and operations. (RR4:95.)

FOF 1118. The State recognized the district with a "Superior Achievement" rating under FIRST for the 2012-13 school year. (Ex. 11359.) Like Edgewood ISD, budgets provided by San Benito CISD reflect that the district continues to allocate its resources efficiently and in the same manner as prior years examined in this case. (Ex. 4227; Ex. 4312; Ex. 4313.) In 2009-2010, for example, 74% of the district's budget was expended on payroll and salaries, 23% on operating expenditures, and 3% on capital outlay and debt services. (Ex. 4227 at 6.)

FOF 1119. For the 2013-14 school year, this pattern remains similar when considering district budget allocations. The district budgeted 78.4% of its general fund for salaries, approximately 20.6% for operating expenditures, and less than 1% for capital outlay and debt service. (Ex. 4313 at 15.)

FOF 1120. In the 2012-13 school year, San Benito CISD educated approximately 11,160 students. (Ex. 4316 at 14.) Of these students, 99.3% were minority students, including 0.1% African American, 99.0% Hispanic, and 0.8% White. (*Id.*) In addition, 83.9% were economically disadvantaged and 23.2% were ELL, slight increases from the previous year. (*Compare id. with* Ex. 805 at Sec. II, p.1.)

FOF 1121. San Benito CISD lost approximately $6 million as a result of the 82nd Legislature's statewide budget cuts. (RR4:100.) To absorb the loss, the district eliminated thirty-six paraprofessional positions, causing the district to increase its student-teacher ratios. (RR4:103.) San Benito had to draw from its general fund solely to prevent further cuts to the classroom and is prevented from providing enrichment or lowering its tax rate. (RR4:101-02.)

FOF 1122. San Benito CISD's superintendent explained that due to the budget cuts, his district lacks funding to offer necessary interventions and services such as providing after-school tutorials, student transportation for extended day programs, retaining highly qualified teachers, or lowering class ratios. (RR4:76-79 (for example, the district is unable to provide tutoring to at least 10% of its economically disadvantaged students who are below grade level or to assist those who are struggling to keep up, and at least 500 to 600 students require summer school that the district is unable to provide).)

FOF 1123. Due to limited funding, the district was unable to afford the ESL curriculum, not all classrooms have textbooks, and all have technology needs for ELL students. (RR14:162-63 (referencing Ex. 4231 at 37-38); Ex. 1345, Izquierdo Site Visits Report, at 7-8; RR4:92; RR22:222-23.) Teachers are also forced to teach in "mixed classrooms," making it exceptionally challenging to implement fully the district's transitional late-exit bilingual program, and still have available adequate professional development and ELL specialists to support them. The district is unable to compensate teachers for staying after school for trainings and meetings. As a result of this lack in support, program monitoring, and program implementation, program effectiveness suffers. (RR14:162-63

(referencing Ex. 4231 at 37-38); Ex. 1345, Izquierdo Site Visits Report, at 7-8; RR4:89-90.))

FOF 1124. San Benito lacks funding to provide important interventions for its students needed for an adequate education, including extended learning time, high quality tutoring, summer school, and smaller learning communities for its low-income and ELL students. (RR4:73-83.)

FOF 1125. The inability to provide the necessary opportunities in the classroom has led to poor student performance in San Benito CISD. After the Spring 2013 administration of the STAAR exam, 24% of San Benito's students failed to meet the Level II phase-in standard for Algebra, 22% failed Biology, 53% failed English 1 Reading, and 64% failed English 1 Writing. (Ex. 4315 at 38-42.) In all of these subject areas, San Benito fared worse in the 2013 administration of the STAAR exam than it did on the first administration. (*Compare id. with* Ex. 4227 at 10, showing that in the first administration, 18% of San Benito's students failed Algebra I, 16% failed Biology, 44% failed English 1 Reading, and 52% failed English 1 Writing.)

FOF 1126. In the 2013 Spring administration, 86% percent of ELL students in San Benito were unable to meet the phase-in standard for English I Writing and 82% of ELL students failed to meet the phase-in standard for English I Reading. (Ex. 4316 at 4-5.)

FOF 1127. In 2012, only 1 out of 2 San Benito students were considered College-Ready Graduates in both subjects. (Ex. 4316 at 12-13.)

FOF 1128. In 2012-2013, students in San Benito CISD reached the State's standard under the SAT/ACT AEIS college-readiness indicator at rates under one-third of the state average (6.8% in San Benito CISD compared to 24.9% statewide). (Ex. 4316 at 13.) The district percentage decreased by 3 percentage points from 9% the previous year. (Ex. 805 at Sec. I, p. 11.)

FOF 1129. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that San Benito CISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iii. La Feria ISD

FOF 1130. La Feria ISD is a rural property-poor Chapter 42 district situated in the Rio Grande Valley in South Texas. (Ex. 4235.)

FOF 1131. In FY2013, the property value per WADA in La Feria ISD was $72,914, and its revenue per WADA was $5,246, a decrease from $5,559 the previous year. (*Compare* Ex. 20038 *with* Ex. 4235.)

FOF 1132. In 2011-12, La Feria ISD had an M&O tax rate of $1.04 and an I&S tax rate of 29.6 cents. (Ex. 4235.) La Feria ISD sought a TRE at least twice in recent years to increase its M&O rate above $1.04, but those elections were unsuccessful due to economic difficulties and unemployment in the community. (RR15:197.) In 2013, on its third try, La Feria finally passed a TRE to swap I&S pennies for M&O pennies and is now at the $1.17 M&O cap. (Ex. 4336, Cavazos Dep., at 18-19.)

FOF 1133. The State recognized the district with a "Superior Achievement" rating under FIRST for the 2012-13 school year. (Ex. 11359.) Like Edgewood ISD, budgets provided by La Feria ISD reflect that the district continues to allocate its resources efficiently and in the same manner as prior years examined in this case. (Ex. 4231; Ex. 4232.) In 2011-12, for example, 81% of the district's budget was expended on payroll and salaries, 19% was spent on operating expenditures, and 1% was expended on capital assets. (Ex. 4232 at 5.)

FOF 1134. La Feria ISD educated approximately 3,679 students in 2012-13, an increase of over one hundred from the previous year. (*Compare* Ex. 4232 at 2 *with* Ex. 4326 at 14.) In 2012-13, Hispanic students comprised 96.2% of the total student population, African-American students comprised 0.1%, and White students comprised 3.2%. (*Id.*)

FOF 1135. In addition, 82% of La Feria students were economically disadvantaged in 2012-13 and 13.9% were ELL. (Ex. 4326 at 12.)

FOF 1136. As a result of budget cuts, La Feria ISD was forced to eliminate teaching positions, reduce summer school availability, and reduce overtime, among other measures. As a result of the cuts, the district had to increase student-teacher ratios in the classroom. (RR18:32-34, 48-49.) These cuts further limited the district's ability to provide an adequate education for its low-income and ELL students. (Ex. 4232 at 6.)

FOF 1137. La Feria's superintendent testified that the district lacks funding to provide necessary interventions for an adequate education, including quality professional development, extended learning time, high quality tutoring, ESL curriculum, textbooks and technologies needed to serve all ELL students, and smaller learning communities for its low-income and ELL students. (RR15:208-09; RR18:10-40; RR14:162-63 (referencing Ex. 4231 at 37-38); Ex. 1345, Izquierdo Site Visits Report, at 7-8; RR4:92; RR22:222-23.)

FOF 1138. There are mixed classrooms in La Feria ISD as well. Specifically, professional development is limited in grades seven through eight, even though teachers have expressed the need for quality professional development to meet the challenge of managing both groups and both curriculum requirements simultaneously. Many of La Feria's secondary school teachers have not received adequate training for ELPS/SIOP for supporting ELLs or are not certified in ESL. (RR14:165-166 (referencing Ex. 4231 at 39); Ex. 1345, Izquierdo Site Visits Report, at 8-9; RR18:17-18, 28.) The district is unable to afford ESL curriculum; teachers are constantly having to translate their own materials and assessments; and not all classrooms have basic textbooks, technologies, and materials such as bilingual and pictures dictionaries, readers, and instructional games

needed to serve all ELL students. (RR14:162-63 (referencing Ex. 4231 at 37-38); RR4:92; RR22:222-23; RR14:165-166 (referencing Ex. 4231 at 39); Ex. 1345, Izquierdo Site Visits Report, at 7-9; RR18:17-18, 28.)

FOF 1139. The inability to provide the necessary opportunities in the classroom has led to poor student performance in La Feria ISD. After the spring 2013 administration of the STAAR exam, 28% of La Feria's students failed to meet the Level II phase-in standard in Algebra, 22% failed Biology, 40% failed English I Reading, and 59% failed English I Writing. (Ex. 4324 at 34-38.)

FOF 1140. For the same year, 33% of La Feria's economically disadvantaged students failed to meet the phase-in standard for Algebra I, 24% failed Biology, 41% failed English I Reading, and 62% failed English I Writing. One hundred percent of ELL students failed English I Reading and Writing. (Ex. 4324 at 34-38 and Ex. 4326 at 2-3.)

FOF 1141. At the Level II final recommended standard, only 23% of students passed Algebra I, 25% passed Biology, 35% passed English I Reading, and 23% passed English I Writing. (Ex. 4324 at 34-38.)

FOF 1142. Finally, only 2% of tested students in La Feria were able to meet the Level III advanced standard in Biology, and no student met the standard in English I Writing. (Ex. 4324 at 4, 8, and 15.)

FOF 1143. After the summer retake, 63% of La Feria ISD's ninth graders still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 1144. In 2012, on TAKS less than half of La Feria's students were college ready in both subjects. (Ex. 4326 at 10.)

FOF 1145. In 2012, 7.2% of La Feria ISD's students reached the state's criterion under the SAT/ACT college-readiness indicator, compared to 24.9% of students statewide. (Ex. 4326 at 11.) This represented a decrease of over two percentage points for La Feria ISD from the previous year. (Ex. 4015 at Sec. I, p. 11.)

FOF 1146. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that La Feria ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iv. McAllen ISD

FOF 1147. McAllen ISD is a property-poor Chapter 42 district located in the Rio Grande Valley in South Texas.

FOF 1148. In FY2013, the property value per WADA in McAllen ISD was $189,762, a decrease from $202,868 the previous year. (*Compare* Ex. 20038 *with* Ex. 4235.) Its revenue per

WADA was $5,422, a decrease from $5,777 the previous year. (*Compare* Ex. 20038 *with* Ex. 4235.)

FOF 1149. McAllen ISD is taxing at an M&O rate of $1.165, just a half-cent under the statutory maximum. (Ex. 11333 – 2012 Tab. column V.) Its I&S rate is 12.50 cents. (Ex. 4297 at 2.)

FOF 1150. Of 24,815 total enrolled students in the 2012-13 school year, 64.9% of McAllen ISD's students were economically disadvantaged and 27.4% were ELL. (Ex. 4302 at 13.) Over the years, the trend in McAllen ISD has been a steady decline in the number of African-American and White students and a steady increase in the number of Hispanic students. (*Id.*)

FOF 1151. The State recognized the district with a "Superior Achievement" rating under FIRST for the 2012-13 school year. (Ex. 11359.) Like Edgewood ISD, budgets provided by McAllen ISD reflect that the district continues to allocate its resources efficiently and in the same manner as prior years examined in this case. (Ex. 4238 at 5, Ex. 4309, Ex. 4296, Ex. 4297.) In 2010-11, for example, 84.5% of the district's budget was expended on payroll and salaries, 14.3% was spent on operating expenditures, and 1.3% was expended on capital assets. (Ex. 4238 at 5.)

FOF 1152. For the 2013-14 school year, this pattern remains similar when considering district budget allocations. The district budgeted 79.3% of its general fund for payroll costs, 14.75% for operating expenditures, and 5.52% for capital projects. (Ex. 4297 at 19.)

FOF 1153. As a result of the budget cuts, McAllen ISD had to close a school, consolidate buildings, and reduce health benefits for teachers, in addition to making other cuts. (Ex. 4233-E., Ponce Dep., at 194-96.) The district also has $160 million in unmet facility needs. (*Id.* at 199-200.)

FOF 1154. McAllen ISD's superintendent testified that the district lacks funding to provide necessary interventions for an adequate education, including smaller learning communities and class sizes for its low-income and ELL students. (*Id.*)

FOF 1155. There are also insufficient funds to provide adequate technologies, textbooks, and translator/interpreter services to develop comprehensible materials for students and parents. (RR14:160-61 (referencing Ex. 4231 at 34-36); Ex. 1345, Izquierdo Site Visits Report, at 5-7.)

FOF 1156. In 2010-11, McAllen had approximately 7,000 ELL students and more than 300 bilingual/ESL teachers. ELL teachers are assigned to several schools or classrooms and consequently do not have sufficient time to work effectively with ELL students. Additional middle school teachers are also needed for newcomer students who enter secondary schooling with academic gaps in their home language and require specialized support that they cannot and do not receive in a regular class. (RR14:160-61 (referencing Ex. 4231 at 34-36); Ex. 1345 at 5-7.)

FOF 1157. The special education department in McAllen does not have sufficient assessments in Spanish and other languages to appropriately evaluate ELL students with disabilities, and the district needs additional funds for properly trained ELL special education teachers to deliver instruction utilizing second language acquisition and SIOP strategies. (Ex. 1345 at 5-7.)

FOF 1158. Additional properly-trained personnel are needed in McAllen to review and evaluate ELL transcripts in order to provide credit for students to meet graduation requirements and place students in the appropriate courses. Professional development for teachers and school administrators is limited due to lack of funding, and program monitoring and implementation suffer as a result. (RR14:160-61 (referencing Ex. 4231 at 34-36); Ex. 1345 at 5-7.)

FOF 1159. The additional funds resulting from SB1 and HB1025 were not sufficient to meet McAllen's remaining bilingual or compensatory education needs. (Ex. 4255.) For example, McAllen did not have sufficient state compensatory funds to allocate in 2013-14 what it expended in 2012-13 for extended year summer school and dropout recovery and prevention programs, and counseling and guidance. (Ex. 4255 at 2.) Despite the need for additional adequate technologies, and textbooks for ELL students as described above, McAllen had to reduce its budget for supplies and materials for bilingual education by half. (Ex. 4255.) The district also had to reduce supplemental positions and materials for its K-1 Summer School Bilingual Program. (*See id.*) The district still does not have sufficient funds for needed bilingual counselors, coaches, bilingual special education teachers. (*See id.*)

FOF 1160. Overwhelming class sizes also remain an issue for McAllen, and the district submitted 29 waiver applications for the 2013-14 school year. (Ex. 4298.) The district was not able to reduce class size for ELL students. (Ex. 4255.)

FOF 1161. The inability to provide the necessary opportunities in the classroom has led to poor student performance in the McAllen ISD. In 2010-11, looking at all tests and all grades, nearly half of McAllen's ELL students failed to meet the TAKS met standard and 94% failed to reach the TAKS commended standard. (RR25:185-87, 190.)

FOF 1162. In the 2011-12 school year, across all tests and grades, 68% of McAllen's ELL students failed to meet the TAKS met standard, an approximate 20-point increase from the previous year. (*Compare* Ex. 4305 at Sec. I, p. 3 *with* RR25:185-87, 190.) Ninety-nine percent (99%) failed to reach the TAKS commended standard, a five percentage point increase from the previous year. (*Compare* Ex. 4305 at 3, *with* RR25:185-87, 190.)

FOF 1163. For 2012-13, 49% of students in McAllen did not meet the Level II phase-in standard in English I Writing, 32% failed to meet this standard in English I Reading, 18% in Biology, and 21% in Algebra I. (Ex. 4302 at 2-3.)

FOF 1164. Results were even worse at the Level III advanced standard. Only 10% of McAllen's students were able to meet the Level III advanced standard in Biology, 10% in English I

Reading, and 2% in English I Writing; 6% of economically disadvantaged students met that standard in English I Reading, 1% in English I Writing, and 4% in Biology. (Ex. 4299 at 72, 75, 77.)

FOF 1165. In 2012, 49% of grade 12 economically disadvantaged students in McAllen were not College-Ready Graduates in both subjects, representing an 8 percentage point decline from the previous year. (Ex. 4238 at 9; Ex. 589 at 11; Ex. 4302 at 11.) Ninety-eight percent of McAllen's ELL students were not college ready in both subjects, an increase from 90% the previous year. (Ex. 4238 at 9; Ex. 589 at 11; Ex. 4302 at 11.)

FOF 1166. While 24.9% of students statewide scored at or above the state's criterion under the SAT/ACT college-readiness indicator (Ex. 4302 at 12), only 18.5% of students did so in McAllen ISD. (*Id.*)

FOF 1167. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds McAllen ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

v. Harlingen CISD

FOF 1168. Harlingen CISD is a property-poor Chapter 42 district located in the Rio Grande Valley in South Texas.

FOF 1169. In FY2013, the property value per WADA in Harlingen ISD was $130,875, a decline from $136,166 the previous year. (*Compare* Ex. 20038 *with* Ex. 235.) Its revenue per WADA was $5,458, a slight increase from $5,404 the previous year. (*Compare* 20038 *with* Ex. 4235.)

FOF 1170. Harlingen CISD has an M&O tax rate of $1.04. (*Id.*) It has an I&S tax rate of 17.9 cents. (*Id.*) Harlingen CISD is taxing at $1.04 but it is not able to raise its taxes above $1.04 because of the high I&S rate and therefore, TREs have not been sought. (Ex. 4233-D, Flores Dep., at 156-57 (explaining that the community just passed a bond election); Ex. 11333 – 2012 Tab, Column V; Ex. 4336, Cavazos Dep., at 18, 19:1-20.)

FOF 1171. In 2011-12, Harlingen CISD educated 18,464 students (Ex. 4293 at 6.) Of these students, 0.5% were African American, 90.6% were Hispanic, and 7.9% were White. (*Id.*)

FOF 1172. In 2011-12, economically disadvantaged students comprised 77.5% of the total student population in Harlingen CISD, and 13.5% of the district's students were LEP. (Ex. 4293 at 6.) Harlingen CISD's total student enrollment and economically disadvantaged and LEP student enrollment have increased over time. (Ex. 4336, Cavazos Dep., at 12.)

FOF 1173. The State recognized the district with a "Superior Achievement" rating under FIRST for the 2012-13 school year. (Ex. 11359.) Like Edgewood ISD, budgets provided by Harlingen CISD and testimony provided by Mr. Julio Cavazos reflect that the district

continues to allocate its resources efficiently and in the same manner as prior years examined in this case. (Ex 4239 at 5; Ex. 4289; Ex. 4336, Cavazos Dep., at 28-31.) In 2010-11, for example, 83.25% of the district's budget was expended on payroll and salaries, 14.21% was spent on operating expenditures, and 2.54% was expended on capital outlay and debt service. (Ex. 4238 at 5.)

FOF 1174. For the 2013-14 school year, this pattern remains similar when considering district budget allocations. The district budgeted 83.77% of its general fund for payroll costs, 14.58% for operating expenditures, and 1.64% for capital outlay and debt service. (Ex. 20149 at 6.)

FOF 1175. Moreover, Harlingen CISD lacks funding to provide necessary interventions for an adequate education, including quality professional development, smaller class sizes, extended learning time, sufficient services for parental involvement, increased technologies, and specialized learning communities for its low-income and ELL students. (Ex. 4233-D, Flores Dep., at 54, 83-84, 86-91, 157, 164, 212-220; RR14:158-60 (referencing Ex. 4231 at 32-33); Ex. 1345, Izquierdo Site Visits Report, at 4-5.)

FOF 1176. Teaching quality in the elementary bilingual/ESL program implementation for ELLs is weak due to a lack of funds for the quality ongoing professional development, program specialists, and coaches, needed to support teachers and principals. There are mixed classrooms in elementary grades, adding to the difficulties already faced by the teachers. (RR15:121, 138-139, 173.) High school ELLs have an English for Speakers of Other Languages ("ESOL")/English Language Arts teacher for part of the day; the rest of the day, ELL students have core content teachers who do not have a strong preparation in SIOP. Currently, ELL students use English or poorly translated versions of the CSCOPE curriculum, which are insufficient for their needs, and translators are needed to develop the state-required common unit assessments for the required curriculum in Spanish. (RR14:158-160 (referencing Ex. 4231 at 32-33); Ex. 1345, Izquierdo Site Visits Report, at 4-5; Ex. 4233-D, Flores Dep., at 54, 83-84, 86-91, 157, 164, 212-20.)

FOF 1177. In addition, there are no funds to support paraprofessionals to become teachers or to support training for teachers to receive their bilingual/ESL endorsement. (RR14:158-160 (referencing Ex. 4231 at 32-33); Ex. 1345, Izquierdo Site Visits Report, at 4-5; Ex. 4233-D, Flores Dep., at 54, 83-84, 219-20; RR15:128-29, 130, 140, 145.)

FOF 1178. Similarly, the additional $36,936 the district generated from 2011-12 to 2013-14 for Bilingual / ESL does not even cover the cost of adequate professional development for ELL teachers in the district, much less the additional expenditures Harlingen's superintendent identified as necessary to meet the needs of its ELL students. (*Compare* Ex. 4237 at 8-9, *with* 4280.)

FOF 1179. Overwhelming class sizes also remain an issue for Harlingen. The district was not able to refill all of the 22 teaching positions it had to eliminate in 2010-11 as a result of budget cuts, and as a result, the district submitted 16 waiver applications for the 2013-14 school year. (Ex. 4281; Ex. 4336, Cavazos Dep., at 49:15-50:10.)

FOF 1180. The inability to provide the necessary opportunities in the classroom has led to poor student performance in the Harlingen CISD and has prevented the district from providing a general diffusion of knowledge. (*See* Ex. 4336, Cavazos Dep., at 21:15-18.)

FOF 1181. After the first administration of the STAAR exam, 63% of Harlingen ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 1182. For 2012-13, 37% of students in Harlingen CISD did not meet the level II phase-in standard in Algebra; 25% failed to meet this standard Biology; 39% failed to do so in English I Reading; and 52% failed to do so in English I Writing. (Ex. 4288 at 2-3.)

FOF 1183. In 2012-13, almost 60% of Harlingen's economically disadvantaged students did not pass the English I Writing test at the phase-in standard, compared to 52% of students who failed districtwide. (*Id.* at 3.) In English I Reading, 82% of ELL students and 46% of economically disadvantaged students failed compared with 39% of all students in the district. (*Id.* at 2.) In Algebra I, only 23% of ELL students passed at the phase-in Level II standard or above, compared with 63% of students districtwide; 58% of economically disadvantaged students passed that test. (*Id.*)

FOF 1184. No economically disadvantaged student in Harlingen was able to meet the Level III standard in English I Writing. (Ex. 20156, STAAR Summary Report, Spring 2013, Harlingen CISD, at 9.) Only 3% of economically disadvantaged students were able to meet the Level III advanced standard in Biology, compared with 12% of non-economically disadvantaged students. (*Id.* at 4.) In addition, only 7% of economically disadvantaged students met that standard in Algebra I, and 5% in English I Reading. (*Id.* at 20, 1, and 7).

FOF 1185. No ELL student in the Harlingen CISD Class of 2012 or Class of 2011 was considered a College-Ready Graduate in both English and Mathematics (Ex. 4288 at 11.) In the Class of 2012, only 39% of economically disadvantaged students were considered College-Ready Graduates in both English and Mathematics, compared with 47% of all students. (*Id.*) In addition, only 5.6% of economically disadvantaged students scored at or above the state's criterion for college readiness in the SAT/ACT, compared to 12.5% of all students districtwide and 24.9% of all students statewide. (*Id.* at 12.) These performance rates did not increase significantly from the prior year's performance. (*Id.*) In 2012-13, only 153 out of 733 students tested in Harlingen CISD scored at the college ready level on the SAT. (Ex. 4336, Cavazos Dep., at 78-79.)

FOF 1186. From 2009 to 2011, Harlingen CISD students have scored below the State and regional means on both the SAT and the ACT. (Ex. 4336, Cavazos Dep., at 77-78.)

FOF 1187. In light of the findings above and in Parts I.B.1 to I.C.6, this Court finds that Harlingen CISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

vi. Impact of 2013 legislation on Edgewood ISD Plaintiff districts

FOF 1188. The additional funding provided through the increase in appropriations by the 83rd Legislature for the Edgewood Plaintiff districts does not render moot their adequacy, suitability, or state property tax claims and requests for relief. As discussed earlier (*see supra* Part I.B.2.f (FOF 65, *et seq.*)), the weights for ELL and economically disadvantaged remain unchanged and provide little additional money for ELL and economically disadvantaged students. For the property-poor Edgewood Districts, they are projected to receive between $17 and $21 more per ELL ADA in 2013-14 compared to the 2010-11 school year. (Ex. 20062A, Zamora Report, at 15.)

Bilingual Education/ESL Allocations Per District
Summary of Finances

	2010-11	2013-14	LPE ADA BE/ESL
Edgewood	$527	$548	1,848
Harlingen	$522	$542	2,290
La Feria	$500	$517	421
McAllen	$534	$555	6,262
San Benito	$518	$538	2,108
State	$524	$545	

FOF 1189. The same rings true for the compensatory education weight. The Edgewood Districts are projected to receive between $34 and $41 more per economically disadvantaged ADA in 2013-14 compared to the 2010-11 school year. (Ex. 20062A, Zamora Report, at 15.)

Compensatory Education Allocations for Each District
Summary of Finances

	2010-2011	2013-2014	2013-2014 LPE ADA SCE
Edgewood	1,054	1,095	10,506
Harlingen	1,043	1,084	15,655
La Feria	1,000	1,034	3,377
McAllen	1,068	1,109	17,550
San Benito	1,035	1,076	10,234
State	1,055	1,096	

FOF 1190. Not surprisingly, the lack of adequate funding, even after the changes enacted by the 83rd Legislature, has continued to limit the districts' ability to implement best practices essential to increase student performance of and provide an adequate education to its low-income and ELL students and substantial challenges remain for the Edgewood Districts

in providing a basic, quality education to their most needy students in the 2013-14 school year. (Ex. 20062A, Zamora Report at 21-22.)

FOF 1191. The needs identified in the 2013-14 school year were consistent with those necessary best practices and interventions identified previously in this trial. (*See supra* I.C.2.c.) Edgewood ISD, for example has shifted classroom space (including the loss of libraries, science labs and conference rooms) to accommodate more pre-K students but still finds itself unable to provide all of their pre-K students with access to quality pre-K programs. (Ex. 20062A, Zamora Report, at 21.)

FOF 1192. The additional funds resulting from SB1 and HB1025 also were not sufficient to meet Harlingen's remaining bilingual or compensatory education needs. (*See generally* Ex. 4256 and Ex. 20149 at 9; *see also* Ex. 4336, Cavazos Dep., at 24-25.) At a minimum, the additional funds did not restore the $5.3 million budget cut in 2010-11 or even allow the district to keep up with area inflation of approximately 5%. (Ex. 4336, Cavazos Dep., at 14:8-17:20, 18:3-19:7, 44-45, 53:7-11; Ex. 4337 at 4; Ex. 20150.)

FOF 1193. During the same time period, due to sequestration, the district's federal funding decreased by approximately $1 million, forcing the district to cut back on needed services such as summer school, tutoring, and extended learning time for at risk students. (Ex. 4336, Cavazos Dep., at 26-27, 60-61.)

FOF 1194. As a result, the district still has areas of substantial need in its compensatory education programs notwithstanding the supplemental funding, such as additional teachers to provide needed extended day programs and to reduce class size, the reinstatement of tutoring for at-risk students that was eliminated when SSI funding was cut, extending preschool, quality, ongoing professional development for serving students who are at risk, and the offering of dropout prevention measures. (Ex. 20062A, Zamora Report, at 21; Ex. 20149 at 9; Ex. 4336, Cavazos Dep., at 43:19-49:22, 53:12-61:25; Ex. 4337 at 7; RR56:57-72, 113-16; Ex. 4337 at 7.) Despite the district's need for paraprofessionals for its ELL students, the district still has not been able to hire a single paraprofessional. (Ex. 4256.)

FOF 1195. La Feria ISD identified unmet needs for bilingual students in summer programs, instructional coaches, updated technology, quality professional development and quality instructional resources. (Ex. 20062A, Zamora Report, at 21.) McAllen ISD noted the continuing need to employ and retain highly qualified bilingual teachers, offer quality extended day opportunities for bilingual students, and reduce class sizes. (Ex. 20062A, Zamora Report, at 22.)

FOF 1196. The additional funds resulting from SB1 and HB1025 similarly were not sufficient to meet San Benito's remaining bilingual or compensatory education needs. For example, overwhelming class sizes remain an issue for San Benito, and the district submitted 18 waiver applications for the 2013-14 school year. (Ex. 4314.)

FOF 1197. An analysis of class size reduction in San Benito CISD provides an example of how inadequate the funds for ELL and economically disadvantaged students remain. Assuming San Benito CISD used all of its bilingual and compensatory education funds to reduce class size to 17:1 in grades K-5 with a deduction for indirect costs, five of the district's eleven elementary schools would not have sufficient funds to reduce their class size. (Ex. 20062A, Zamora Report, at 29-31.) Of course, meeting the basic educational needs of ELL and economically disadvantaged students means employing a comprehensive approach of best practices and interventions. (Ex. 20062A, Zamora Report, at 31.) Under the current school finance system, school districts like San Benito would not be able to employ a single approach—class size reduction—much less other necessary programs such as quality pre-K and quality extended day programs. (Ex. 20062A, Zamora Report, at 31.)

FOF 1198. San Benito CISD identified deficiencies in their ability to offer competitive bilingual stipends for all bilingual teachers at the elementary level, to employ clerks to help with the state-mandated Language Proficiency Assessment Committee (LPAC) documentation and other state record-keeping demands of the bilingual/ESL program, to provide quality staff development in differentiated instruction specific to English Language Learners, and to hire instructional coaches. (Ex. 20062A, Zamora Report, at 22.)

FOF 1199. The evidence demonstrates conclusively that the limited increased funding provided by SB1 and HB1025 for the Edgewood Districts falls far short of providing the necessary resources to implement best practices and provide reasonable, effective learning opportunities for ELL and economically disadvantaged students. (Ex. 20062A, Zamora Report, at 31.)

FOF 1200. Likewise, additional M&O funding for the Edgewood Districts provided through the temporary appropriations for the 2013-14 school year did not inject significant funds in those districts needed to resolve the unconstitutional deficiencies. (Ex. 20062A, Zamora Report, at 5-6, 15-32.) Among the poorest districts in the State, the limited, temporary additional funding does not provide those districts with meaningful discretion in setting their tax rates and it does not provide them with the adequate funds necessary to provide their students, especially their ELL and economically disadvantaged students, with the opportunities those students need to acquire a general diffusion of knowledge. (*Id.*)

FOF 1201. Comparing the M&O revenue per WADA received in 2010-11 to the M&O revenue projected in 2013-14, two of the five low-wealth Edgewood plaintiff districts continue to receive less revenue per WADA in the 2013-14 school year, compared to the 2010-11 school year without any adjustment for inflation. (*See* Ex. 20062A, Zamora Report, at 6.) McAllen ISD is expected to receive $96 less per WADA and La Feria ISD is expected to receive $109 less per WADA. (*Id.*) The other three districts are expected to receive relatively minor increases in funding per WADA: Edgewood ISD ($221 more per WADA); San Benito ISD ($162 more per WADA); and Harlingen CISD ($204 more per WADA). (*See id.*)

FOF 1202. HB5 did nothing to cut costs for the Edgewood Districts. For example, districts will have to expend funds to expand offerings to prevent the loss of students to neighboring districts with wider course offerings and endorsements. (Ex. 4336, Cavazos Dep., at 80, 84-86; *see also* FOF 107 for other examples of how endorsement requirements affect districts.) In addition, as stated in FOF 240, districts must partner with at least one institution of higher education to provide certain courses on campus. (Ex. 20062A, Zamora Report, at 9; RR55:138-39.) Districts who currently offer such programs will have a competitive advantage over those with more limited resources, who must expend resources to comply with that requirement. (*Id.*)

FOF 1203. Moreover, Harlingen CISD does not have sufficient funds to meet the additional costs of HB5, including hiring additional counselors and translators to meet the personal graduation plan requirements, providing additional infrastructure to provide statutory computer programming classes, and paying teachers to provide accelerated instruction for STAAR retesters. (Ex. 4336, Cavazos Dep., at 98:1-12; Ex. 20149 at 14; Ex. 4336, Cavazos Dep., at 84:15-89:22; 90:13-21; 93:2-21; Ex. 4337 at 11.) At a minimum Harlingen CISD would have to double its counseling staff, in order to meet the personal graduation plan requirements of HB5, not including any translation or bilingual services required to communicate meaningfully with ELL students and their parents. (Ex. 4336, Cavazos Dep., at 89-90.)

D. Findings of fact relating primarily to TTSFC, Edgewood, and Fort Bend ISD Plaintiffs' financial efficiency claims[54]

1. The Legislature has structured the school finance system so that it denies most districts the funding necessary to achieve a general diffusion of knowledge.

FOF 1204. The school finance system allows some districts to raise the revenue necessary to achieve a general diffusion of knowledge while most cannot do so at similar tax rates if at all; therefore, the system does not provide "'substantially equal access to funding up to the legislatively defined level that achieves the constitutional mandate of a general diffusion

[54] The findings of fact in this section address financial efficiency with respect to districts' ability to access revenue to fund the cost of an adequate education, i.e., the general diffusion of knowledge. These findings of fact demonstrate that the system as structured makes it impossible for all districts to access adequate funding with the tax caps, meaning that most districts do not have substantially equal access to funding necessary to provide a general diffusion of knowledge. The findings of fact next address the tax rate gaps and revenue gaps associated with CTR, M&O, I&S, M&O plus I&S, and maximum tax rates and the effect of changes to education appropriations by the 83rd Legislature on those gaps. These findings of fact demonstrate unconstitutional differences in the tax rates necessary to access funds, differences in revenues available at similar tax rates, and the significantly detrimental effect of these differences on property poor districts. As described below, the evidence establishes that property poor districts tax higher, receive less revenue for their tax effort, and suffer a classroom funding disadvantage when compared to their wealthier counterparts. These findings of fact establish that the Texas school finance system is unconstitutional in that there is not a direct and close relationship between a district's tax effort and its access to educational funds. Finally, the financial efficiency findings of fact address evidence of the impact of the system on individual districts, students, and families.

of knowledge,'" *WOC I*, 107 S.W.3d at 571 (quoting *Edgewood IV*, 917 S.W.2d. at 730-31), and is unconstitutionally inefficient.

FOF 1205. The Court heard from three experts who conducted analyses of the ability of the plaintiff school districts to raise the money necessary to achieve a general diffusion of knowledge at similar tax rates. Dr. Wayne Pierce, Dr. Albert Cortez, and Dr. Catherine Clark used different methodologies, but all reach the same conclusion: the structure of the current system does not meet the Supreme Court's mandate to provide "'substantially equal access to funding up to the legislatively defined level that achieves the constitutional mandate of a general diffusion of knowledge'" because most districts are unable to access the estimated cost of an adequate education. *WOC I*, 107 S.W.3d at 571 (quoting *Edgewood IV*, 917 S.W.2d. at 730-31). The testimony of these witnesses addresses whether school districts "have substantially equal access to similar revenues per pupil at similar levels of tax effort." *Id.* at 730-31.

FOF 1206. As noted in Part I.C.5.f (FOF 625, *et seq.*) above, the Court was informed by three estimates of adequacy, which indicated that districts need a range of between $6,404 and $6,818 per WADA, in FSP funding in 2013-14 ($6,176 – $6,576 in 2010-11 dollars) in order to provide a general diffusion of knowledge. (*See* FOF 632; *see also* FOF 629 – FOF 631.) All three estimates reveal the system to be significantly underfunded and inadequate as a whole. (*See* FOF 632.) As supported by the testimony of the financial efficiency experts, all three estimates also reveal the system to be inefficient and inequitable. The financial efficiency analyses performed in this case established that substantial gaps exist in tax rates, in yields per penny of tax effort, and in revenue generated. The analyses demonstrate conclusively that property-poor school districts do not have substantially equal access to those revenues at similar tax effort. (*See infra* Parts I.D.1.b.i-I.D.1.b.iii (FOF 1223, *et seq.*).)

FOF 1207. This gross inequity in the system led parents, taxpayers, and approximately one-half of the school districts across Texas to challenge the financial inefficiency of the current school finance system. This is a substantial increase from the *West Orange-Cove* litigation in 2004-05. These include the TTSFC plaintiff group, the Fort Bend ISD plaintiff group, and the Edgewood plaintiff group. These districts also enroll well over one-half of the Texas public school student population. (*See supra* FOF 2, FOF 4, and FOF 5.)

a. Property-poor districts cannot raise the revenue necessary for a general diffusion of knowledge at similar tax rates to the property-wealthy school districts or at any legal rate.

FOF 1208. In 1995, the Texas Supreme Court determined that a nine cent difference in tax rates between property-wealthy and property-poor districts to raise the M&O *and* I&S funds necessary to provide an adequate education was not so significant as to violate the

efficiency requirement of Article VII, Section 1. *Edgewood IV*, 917 S.W.2d at 731.[55] Because the Supreme Court's determination was based on a system with a cap of $1.50 and was prior to the Legislature's compression of tax rates in 2006 (*see supra* FOF 24), under the current compressed system, the "permissible" nine cent difference for M&O and facilities funding in 2005 is more comparable to a proportional six cent difference[56] on the M&O tax gap alone under the current $1.17 cap on M&O taxes. The evidence described below establishes that the tax and revenue gaps under the current system greatly exceed that permitted under *Edgewood IV*.

i. The gap in tax rates between property-wealthy and property-poor districts necessary to achieve a general diffusion of knowledge has grown substantially since *Edgewood IV*.

(a) Dr. Albert Cortez's weighted average analyses demonstrate that the poorest districts enrolling 15% of the WADA in the state must tax at substantially higher rates (most beyond the legal limit) than the wealthiest districts enrolling 15% of the WADA to generate the revenue necessary for a general diffusion of knowledge.[57]

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[55] At the time of *Edgewood IV*, the formula funding included both maintenance and operations and facilities funding; today, facilities are funded largely through I&S for which there is no recapture. The disparity in taxes and access to revenue between property-wealthy and property-poor districts is even greater if I&S is included. (RR23:94; *see* Ex. 3187, Pierce Report, at 13-14; *see also infra* Parts I.D.3.d (FOF 1289, *et seq.*), I.D.3.e (FOF 1301, *et seq.*), I.D.3.f.iii (FOF 1325, *et seq.*), and I.D.3.f.iv (FOF 1328, *et seq.*).)

[56] At the time of Edgewood IV, under Senate Bill 7, "[t]he State [met] its constitutional duty to provide a general diffusion of knowledge through funding provided by Tiers 1 and 2" *and* provided facilities funding all within the tax cap of $1.50. *Edgewood IV*, 917 S.W.2d at 730-31. Under House Bill 1, the State "compressed" tax rates by one-third – to $1 in most cases. (*See* Ex. 6395 at 2; FOF 25). The stated legislative intent was to provide a general diffusion of knowledge through Tier I funding provided at the compressed tax rate. (Ex. 5630, Scott Dep., at 341, 343-45.) Because the tax rate at which districts should be able to access a general diffusion of knowledge has been reduced by one-third, from $1.50 to $1.00, and because facilities funding is now provided outside of Tiers I and II, the Court finds that the allowable tax difference should also be reduced by at least one-third – or from 9 cents to 6 cents.

[57] The Court notes that the findings regarding the analyses performed by Dr. Cortez for the 2011-12 school year are based on corrected data provided by TEA in January 2013, after the cross-examination of Dr. Dawn-Fisher revealed that the State's original data set contained errors. Dr. Cortez had used the State's data in order to prevent the State from questioning the reliability of his data. The Court finds that the supplemental analysis performed by Dr. Cortez, however, is consistent with his findings and opinions elicited in his testimony in this case. (*See generally*, Ex. 4251, Cortez 2nd Supp. Report, at 14-16.) Therefore, although the final numbers changed slightly between his initial report (Ex 4225, Cortez Supp. Report) and his final report (Ex. 4251, Cortez 2nd Supp. Report), they do not substantively change his opinions reflecting the inequity in the system (indeed, many of the gaps *increased* between property-wealthy and property-poor districts from his prior analysis).

FOF 1209. Dr. Cortez performed a series of "weighted average" analyses of the funding disparities between school districts in Texas using finalized school finance data from TEA for the school years 2009-10, 2010-11, and 2011-12, and using near-final data for 2012-13.[58] (*See generally* Ex. 4000, Cortez Report; Ex. 4225, Cortez Supp. Report; Ex. 4251, Cortez 2nd Supp. Report; Ex. 20030, Cortez October 2013 Report.) The "weighted" approach is computed by grouping districts by percentile or decile, summing up the numerator variable (for example, property values) for each decile group and then dividing that total by another variable totaled among the grouping (for example, WADA), and then reporting the weighted average (wealth per WADA in this example) for each grouping. (RR23:34-36.)

FOF 1210. Using this approach, Dr. Cortez performed the same analysis as the Supreme Court in *Edgewood IV* by comparing the average tax rates needed to raise the revenue estimated to be the cost of a general diffusion of knowledge of the wealthiest districts that collectively enroll 15% of the statewide WADA ("Top 15%") to the average tax rates for the poorest districts that enroll 15% of the WADA ("Bottom 15%"). Dr. Cortez conducted these comparisons using yields based on both the revenue generated at the adopted M&O tax rates and that generated at the maximum $1.17 tax rates. (*See generally* Ex. 4000, Cortez Report; Ex. 4225, Cortez Supp. Report; Ex. 4251, Cortez 2nd Supp. Report.) Under each of the methods employed by Dr. Cortez, the gap between the tax rate that the poorest and wealthiest 15% would need to raise the revenue necessary to achieve a general diffusion of knowledge is substantially greater than both the nine cent gap in *Edgewood IV* and the adjusted five-to-six cent gap that is more comparable today – increasing up to three and four times the *Edgewood IV* gap. (*See infra* FOF 1211 – FOF 1213.) Furthermore, under each analysis, the Bottom 15% of WADA would have to tax above the legal maximum of $1.17 to generate estimated revenue necessary to provide a general diffusion of knowledge. (*Id.*)

FOF 1211. **Analysis comparing the Top 15% and Bottom 15% using district yields at adopted M&O tax rates:** Using 2011-12 yields at adopted tax rates, the Bottom 15% of districts must tax at rates between *30 and 35 cents higher* than the Top 15% of districts in order to generate revenue amounts near the estimates of adequacy provided in this case.[59] (*See* Ex. 4251, Cortez 2nd Supp. Report, at 12.) In each case, the rate the Bottom 15% would have to tax is above the legal limit of $1.17.

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[58] Both the State's and Calhoun County's equity experts incorrectly criticized Dr. Cortez for failing to analyze the financial efficiency system through a "weighted analysis," though he did in fact do so. (RR21:70.)

[59] The $6,000 figure is approximately the average FSP spending needed per 2010-11 WADA under the adequacy estimate provided by Mr. Odden, The $6,500 figure is close to both the $6,576 per 2010-11 WADA adequacy estimate based on the *Edgewood IV* calculation and the $6,562 per 2010-11 WADA adequacy figure based on the testimony of Mr. Moak. The $7,000 figure is close to the *Edgewood IV* and Moak estimates per 2011-12 WADA.

Table 9: 2011-12 Tax Efforts Necessary to Generate Certain Revenue Levels per WADA at 2011 Adopted Tax Rate Yields, by Lowest and Highest Wealth Districts with 15 Percent of State WADA			
School District Grouping	**Group Average Tax to Yield $6,000**	**Group Average Tax to Yield $6,500**	**Group Average Tax to Yield $7,000**
Poorest Districts with 15% of WADA	$1.18	$1.28	$1.38
Wealthiest Districts with 15% of WADA	$0.88	$0.96	$1.03
Gap	**$0.30**	**$0.32**	**$0.35**

(*Id.* at 13, Table 9 (excerpted))

FOF 1212. **Reopening of the Evidence and 2012-13 Near-Final Data:** Following the reopening of the evidence, Dr. Cortez updated his analysis of the Top and Bottom 15% of WADA using near-final data for the 2012-13 school year and measured the impact of the 2013 legislative changes to funding.[60] (Ex. 20030, Cortez October 2013 Report.) In one part of his analysis, Dr. Cortez analyzed the school finance data for the 2012-13 school year using the same weighted approach described above. (*Id.* at 16.) Based on the 2012-13 school year, substantial gaps remained between the Top and Bottom 15% at adopted tax rates, ranging between *28 and 33 cents*:

Table 10: 2012-13 Tax Efforts Necessary to Generate Certain Revenue Levels per WADA at FY 2013 Adopted Tax Rate Yields, by Lowest and Highest Wealth Districts with 15 Percent of State WADA			
School District Grouping	**Group Average Tax to Get Yield $6,000**	**Group Average Tax to Get Yield $6,500**	**Group Average Tax to Get Yield $7,000**
Poorest Districts with 15% of WADA	$1.19	$1.29	$1.39
Wealthiest Districts with 15% of WADA	$0.91	$0.99	$1.06
Gap	**$0.28**	**$0.30**	**$0.33**

(*Id.* at 17 (excerpted).) Here again, in each case, the rate the Bottom 15% would have to tax is above the legal limit of $1.17. Even at levels below the various adequacy

[60] In forming its findings and conclusions on the financial efficiency of the system, the Court does not rely on the $1.17 analysis performed for the 2012-13 school year and the related $1.17 analysis on the 83rd Legislature's changes as applied to the 2012-13 data in Exhibits 20037, 20038 and Tables 3, 5, 7, 9, 11, and 13 in Exhibit 20030 due to data and computation issues.

estimates, the tax gaps are substantial. At $5,000, the Top 15% have a 23 cent tax advantage (76 cents v. 99 cents); at $5,500, the Top 15% have a 26 cent tax advantage ($0.83 v. $1.09). (*Id.* at 17.)

FOF 1213. **The Impact of 83rd Legislature's Changes:** Dr. Cortez also applied the revised legislative formulas for the 2013-14 school year to the near-final 2012-13 school district data. (*Id.* at 1.) This procedure allows the court to measure the effects of the legislative changes and avoids concerns about the accuracy of revenue projections for the 2013-14 school year, as described previously in this case. (*Id.*) Applying the 2013 legislative changes for the 2013-14 school year to the 2012-13 school finance data, the gaps in tax rates needed to generate the levels of revenue necessary for a general diffusion of knowledge between the Bottom and Top 15% reduced marginally but remained substantial:[61]

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[61] In the supplemental hearing, the State averred on cross examination of Dr. Cortez that using yields at adopted tax rates would somehow not provide the court with accurate data reflecting the amount of M&O taxes needed to generate various levels of revenue to provide a general diffusion of knowledge. The Court finds such evidence and argument unavailing. First, as Dr. Cortez testified without contradiction from any other expert, using yields at adopted tax rates is a common and fair method for determining the tax rates needed to generate various levels of funding. (RR57:16-17, 57-58, 146-47.) Second, Defendants presented demonstrative evidence only of four school districts whose yields differed at various tax rates, but there was no expert testimony detailing how those rates were calculated and whether they were accurate. (*See, e.g., id.* at 53.) Third, the State implied that using actual tax rates needed to generate various levels of revenue would alter the gaps between the top and bottom 15% WADA districts or the top and bottom deciles found by Dr. Cortez. However, no such evidence was presented. The demonstrative evidence of four districts' yields out of 1,021 districts analyzed does not provide evidence sufficient to rebut the expert analysis of Dr. Cortez. As Dr. Cortez testified, a district's yield at its adopted tax rate may go up or down with a raise or decrease in taxes, and thus, the adopted tax rate provides the Court with a reasonable approximation of the yield that can be used to determine the tax rate needed to generate revenue necessary to offer a general diffusion of knowledge. (RR57:74-76, 77-78.) Defendants and Calhoun County presented the Court with no valid, reliable analysis showing otherwise. Fourth, the State seemingly criticized Dr. Cortez for using yields at adopted tax rates, referring to such as an "apples-to-oranges" comparison because adopted tax rates differ among school districts and that he should have, instead, used yields generated at the same rate of taxes. (RR57:56.) But as Dr. Cortez explained, the "apples" are the average adopted tax rates for each decile of school districts. (RR57:57.) The reality of the Texas school finance system is that school districts across Texas adopt different tax rates and yield different revenue at those rates. School districts adopt M&O tax rates to generate revenue to attempt to provide a general diffusion of knowledge and to meet the needs of their community – given the constraints in the system such as accompanying I&S tax rates and the ability to afford higher taxes. (*See supra* Part I.C.1 (FOF 210, *et seq.*).) It is unrefuted in this case that, for example, the school districts in the wealthiest decile on average have much higher yields at compressed tax rates and at the golden pennies and, thus, do not have to adopt tax rates at the higher rates with lower yields like the districts in the lowest decile. (*See generally*, Ex. 20030, Ex. 20038, Ex. 4340.) **Using yields at the same tax rate would skew the analysis and would not provide the Court with useful information in determining whether property-poor school districts have substantially equal access to similar revenue necessary to provide a general diffusion of knowledge as tax efforts similar to property-wealthy districts. Target revenue has further complicated matters because the courts cannot simply look at formula funding in order to determine the yields for all school districts as in years past.**

Finally, even when using the State's and Calhoun County's own evidence of the yields for various groupings of decile at similar tax rates, the results continued to show large disparities in revenues generated

Table 12: Tax Effort Necessary to Generate Certain Revenue Levels per WADA at FY 2013 Adopted Tax Rate Yields, Using 2012-13 Data and Applying 83rd Legislature Formulae Levels, by Lowest and Highest Wealth Districts with 15 Percent of State WADA			
School District Grouping	**Group Average Tax to Yield $6,000**	**Group Average Tax to Yield $6,500**	**Group Average Tax to Yield $7,000**
Poorest Districts with 15% of WADA	$1.16	$1.25	$1.35
Wealthiest Districts with 15% of WADA	$0.91	$0.98	$1.06
Gap	**$0.25**	**$0.27**	**$0.29**

(*Id.* at 19 (excerpted).) For all but the lowest estimate, the rate the Bottom 15% would have to tax is above the legal limit of $1.17. At $5,000, the Top 15% enjoy a 20 cent tax advantage (76 cents v. 96 cents); at $5,500, the Top 15% have a 23 cent tax advantage ($0.83 v. $1.06). (*Id.*)

FOF 1214. TEA also produced projected school finance figures for the 2013-14 school year. (Ex. 20037, A. Cortez Hybrid Spreadsheet.) These figures were not based on near-final data due to the many unstable variables (such as enrollment, tax collections, etc.) that are likely to change between October 2013 (when the data was produced) and the fall of 2014 when TEA will have near-final data for the school year. (RR57:10-11, 38-39, 43; *see also* Ex. 20030 at 21.) Although Dr. Cortez expressed serious reservations regarding the 2013-14 TEA data, the data nevertheless reveal continuing, substantial gaps in the ability to generate the various levels of revenue between the Top 15% and the Bottom 15%, ranging between an 18 cent and 25 cent tax advantage for the Top 15%:

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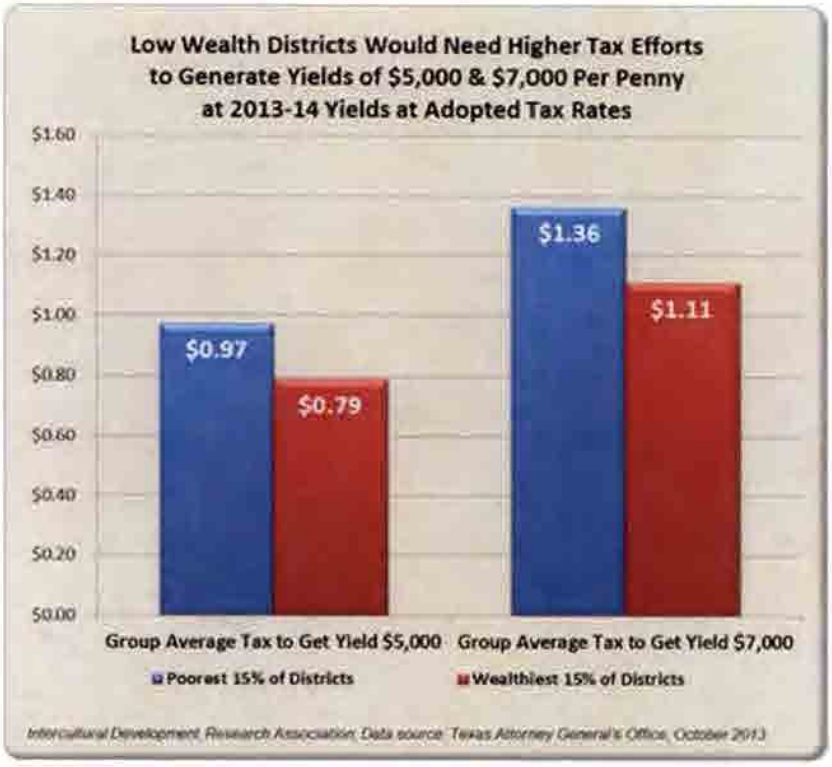
and in yields per penny at each tax rates. (*See infra* Section 1.D.9.c (citing Ex. 3441, Affidavit of A. Cortez.) The State's additional criticism of averaging tax rates among the groupings of districts, whether by WADA or deciles of property wealth, was also meritless as the State's own expert witness, Dr. Dawn-Fisher, agreed that such averaging was reliable and that "weighting" taxes "wouldn't be an accurate reflection of what's actually happening in the state in terms of tax rates." (RR62:157-59, 145-46.)



(*Id.* at 24.)

FOF 1215. Although the gaps noted above reduced slightly by 1 to 4 cents after the 2013 legislation, they remain at least twice the size of the gap allowed by the Texas Supreme Court in *Edgewood IV* and three-to-four times the size of the adjusted gap. (FOF 1212.)

(b) When comparing tax rates of districts by deciles of property wealth, Dr. Albert Cortez's analysis further demonstrates that the poorest decile of districts must tax at substantially higher rates than the wealthiest decile of districts to generate the revenue necessary for a general diffusion of knowledge.

FOF 1216. **Analysis comparing the top and bottom deciles of property wealth per WADA using district yields at adopted M&O rates:** Dr. Cortez also performed his weighted analysis described above when comparing school districts by decile of property wealth per WADA. According to Mr. Wisnoski, former TEA Deputy Associate Commissioner for School Finance, the decile analysis is the same type of analysis utilized by TEA for a

number of years.[62] (*Compare* Ex. 4240 at 2, 9 and Ex. 6441, Wisnoski Dep., at 119-20 *with* Ex. 5653 at 152.)

FOF 1217. A significant equity gap is found when analyzing the level of M&O tax effort required by each weighted decile of school districts to generate revenue to meet the various estimates of adequacy using districts' yields at their 2011-12 and 2012-13 adopted tax rates. (RR23:47-49, 53-54; Ex. 20030 at 9-10.) Here again, the Court notes that under each estimate of adequacy, the poorest decile of districts could not reach the necessary level of funding because to do so would require taxing above the $1.17 cap, nor could any of the other districts in the bottom three deciles. (Ex. 4251, Cortez 2nd Supp. Report, at 6; Ex. 20030 at 10.) For the 2011-12 school year, the wealthiest decile's tax advantage over the poorest decile ranged from 29 cents to 42 cents:

Table 5: Tax Efforts Necessary to Generate Certain Revenue Levels per WADA at $1.17 Tax Rate Yields, by School District Deciles, Using 2011-12 Data

School District Grouping	Group Average Tax to Get Yield $6,000	Group Average Tax to Get Yield $6,500	Group Average Tax to Get Yield $7,000
Poorest Decile	$1.20	$1.30	$1.41
2nd 10% of Districts	$1.21	$1.31	$1.41
9th 10% of Districts	$1.03	$1.11	$1.20
Wealthiest Decile	$0.85	$0.924	$0.99
Gap	**$0.35**	**$0.38**	**$0.42**

(Ex. 4251 at 7 (excerpted).) Even for revenue amounts below the adequacy estimates, the tax rates gaps remained substantial, showing the wealthiest decile taxing 29 cents *less* for $5,000 and 32 cents *less* for $5,500 compared to the poorest decile. (*See id.*)

FOF 1218. **Impact of 83rd Legislature's Changes:** In the supplemental hearing, Dr. Cortez engaged in the same analysis of 2012-13 data and of the 2013 legislative changes as applied to the 2012-13 data. Both analyses show stark, continuing tax advantages for the wealthiest decile. (Ex. 20030 at 9-10, 13.) For the 2012-13 school year, the data show the following equity gaps:

[62] Mr. Wisnoski disaggregated school districts by wealth in a similar manner when presenting the Court with an overview of the Texas school finance system in this case (though this analysis was not an equity analysis).

Table 6: Tax Efforts Necessary to Generate Certain Revenue Levels per WADA at FY 2013 Adopted Tax Rate Yields, Using 2012-13 Data			
School District Grouping	**Group Average Tax to Get Yield $6,000**	**Group Average Tax to Get Yield $6,500**	**Group Average Tax to Get Yield $7,000**
Poorest Decile	$1.19	$1.29	$1.39
2nd 10% of Districts	$1.19	$1.29	$1.39
9th 10% of Districts	$1.03	$1.11	$1.20
Wealthiest Decile	$0.82	$0.89	$0.96
Gap	**$0.37**	**$0.40**	**$0.43**

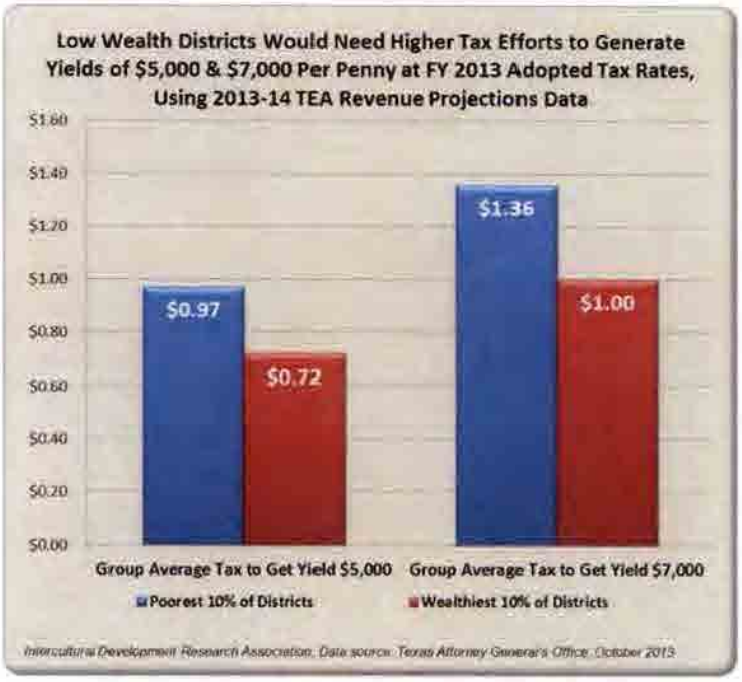
(*Id.* at 10, Table 6 (excerpted).) Like the prior analysis, for revenue amounts below the adequacy estimates, the tax rates gaps remained substantial, showing the wealthiest decile taxing 32 cents *less* for $5,000 and 35 cents *less* for $5,500 compared to the poorest decile. (*See id.*)

FOF 1219. When applying the 2013 legislative changes for the 2013-14 school year to the 2012-13 data, minimal changes resulted:

Table 8: Tax Effort Necessary to Generate Certain Revenue Levels per WADA at FY 2013 Adopted Tax Rate Yields, Using 2012-13 Data and Applying 83rd Legislature Formulae Levels			
School District Grouping	**Group Average Tax to Get Yield $6,000**	**Group Average Tax to Get Yield $6,500**	**Group Average Tax to Get Yield $7,000**
Poorest Decile	$1.16	$1.26	$1.35
2nd 10% of Districts	$1.16	$1.25	$1.35
9th 10% of Districts	$1.02	$1.11	$1.19
Wealthiest Decile	$.82	$0.89	$0.96
Gap	**$0.34**	**$0.37**	**$0.39**

(*Id.* at 13, Table 8 (excerpted).) For the revenue amounts below estimated amounts of the cost of an adequate education, the wealthiest decile taxed substantially less than the poorest decile, taxing 29 cents *less* at $5,000 and 31 cents *less* at $5,500. (*See id.*) Comparing Table 6 in FOF 1222, the tax rate gap accounting for the 83rd Legislature's appropriations closed the tax gap only **3 cents** to produce $6,000 and $6,500 in M&O revenue and 4 cents to produce $7,000.

FOF 1220. Even when using the State's estimated data for the 2013-14 school year, the districts in the wealthiest decile are able to tax between *25 cents and 36 cents less* than the districts in the poorest decile to raise the same amount of revenue.



(*Id.* at 22.)

FOF 1221. Based on Dr. Cortez's comprehensive analysis, the Court finds unconstitutionally substantial gaps in tax rates necessary to provide a general diffusion of knowledge exist between low property wealth and high property wealth school districts.

b. Only the wealthiest 259 districts are able to access the lowest estimate of revenue necessary to provide a general diffusion of knowledge within allowable tax rates.

FOF 1222. Analyses by Dr. Wayne Pierce and Dr. Catherine Clark reveal that only the wealthiest districts are able to generate enough revenue to achieve adequacy within the current structure of the school finance system, while poor districts, even when taxing much higher, cannot. *Cf. Edgewood I*, 777 S.W.2d at 397 (concluding that the system was neither "financially efficient nor efficient" in the sense of providing the resources necessary for a "general diffusion of knowledge," and "therefore it violates *article VII, section I of the Texas Constitution*." (emphasis added)). An analysis of the ability of school districts to reach these adequacy estimates makes it clear that the current school finance system fails to provide all districts with substantially equal access to the revenue needed to achieve a general diffusion of knowledge.

i. School districts cannot raise the inflation-adjusted *Edgewood IV* adequacy estimate at similar levels of tax effort.

FOF 1223. One of the adequacy estimates on which this Court relies is based on the Texas Supreme Court's opinion in *Edgewood IV*. There, the Court stated, in footnote 10: "Based on the evidence at trial, the district court found that meeting the accreditation standards, which is the legislatively defined level of efficiency that achieves a general diffusion of knowledge, requires about $3,500 per weighted student." *Edgewood IV*, 917 S.W.2d at 755 n.10. (*See also* RR9:122.) As described in FOF 632 above, when adjusted for inflation, this number is equivalent to $6,576 in 2010-11, $6,818 in 13-14 and $6,955 in 2014-15, and is a reasonable, credible and conservative estimate of the cost of achieving a general diffusion of knowledge (under the prior standards). (*See* RR54:123-25 (referencing Ex. 6618 at 18-19); RR9:122-23; RR16:23-26.)

FOF 1224. Dr. Wayne Pierce analyzed how many districts could access $6,576 – the *Edgewood IV* calculation adjusted to 2010-11 dollars. He determined that as of 2011-12, only 130 districts taxing up to $1.04 in M&O could raise $6,576 in revenue per WADA (using the 2010-11 definition of WADA). (RR9:159-60.) This means that in 2011-12, 894 districts could not, without a TRE, raise the inflation adjusted revenue amount that the Supreme Court determined necessary to achieve a general diffusion of knowledge under the prior academic standards. (*Id.*) As discussed herein, a system that allows local taxpayers to preclude a district from accessing sufficient funds for a general diffusion of knowledge is structurally unconstitutional.

FOF 1225. As of 2011-12, only 233 districts taxing up to the $1.17 cap in M&O could raise $6,576 in revenue per WADA (using the 2010-11 definition of WADA).) (Ex. 3094; Ex. 3095; Ex. 3096; Ex. 3097; Ex. 3098; RR9:124-29.) This means that 791 districts could not raise the inflation adjusted revenue amount that the Supreme Court determined necessary to achieve a general diffusion of knowledge under the prior academic standards while taxing within legal limits ($1.17 or below). (Ex. 3094; Ex. 3095; Ex. 3096; Ex. 3097; Ex. 3098.)[63]

FOF 1226. The actions of the 83rd Legislature did not change these outcomes. It is projected that, in 2013-14, only 119 districts taxing at $1.04 or less will be able reach the level of $6,576 and only 202 districts taxing at $1.17 or less will be able to reach that same the level of $6,576. (Ex. 3524 at 1; Ex. 3525 at 1; Ex. 3526 at 1; Ex. 3527 at 1.)

FOF 1227. Dr. Catherine Clark of the Texas Association of School Boards performed a similar analysis to determine how many districts could raise $6,818 – the number from *Edgewood IV* inflation-adjusted to 2013-14 dollars. (*See* Ex. 6618 at 19; *see also supra* FOF 632.) Under the 2013-14 formulas, 924 districts, enrolling 5.9 million students in weighted average daily attendance ("WADA"), could not raise $6,818 at a tax rate of

[63] The listing of those districts that could reach $6,576 at $1.17 or less and those that could not reach $6,576 within the legal limits is in Exhibit 3098. (RR9:123-24; Ex. 3098 at 1.)

$1.04. (RR58:48 (referencing Ex. 6622 at 19).) Furthermore, 875 districts, with 5.8 million in WADA, could not raise $6,818 in revenue per WADA even if taxing at the $1.17 cap. (*Id.*) In comparison, 81 school districts can raise this revenue amount at a tax rate of just $1.00. (Ex. 6622 at 19.) This means that the vast majority of students live in districts that cannot raise the inflation-adjusted revenue amount that the Supreme Court determined necessary to achieve a general diffusion of knowledge under the prior academic standards at any permissible tax rate – much less within similar levels of tax effort to those districts that can raise this level at a tax rate seventeen cents below the cap. (RR58:48 (referencing Ex. 6622 at 19).)

FOF 1228. In 2014-15 dollars, the *Edgewood IV* number becomes an estimated $6,955. (*See* Ex. 6618 at 19; *see also supra* FOF 632.) Under the 2014-15 formulas, 929 districts, with almost 6 million in WADA cannot raise $6,955 in revenue per WADA with $1.04 M&O tax rate. (RR58:49 (referencing Ex. 6622 at 20).) Furthermore 888 districts, with almost 5.9 million in WADA, cannot raise $6,955 even if taxing at the $1.17 cap. (RR58:49-50 (referencing Ex. 6622 at 20).) In comparison, 87 districts can raise this revenue amount at a tax rate of just $1.00. (Ex. 6622 at 20.) In other words, in the next school year, the vast majority of students will still be living in districts that **cannot** raise the inflation-adjusted revenue amount that the Supreme Court determined necessary to achieve a general diffusion of knowledge under the prior academic standards **at any permissible tax rate** – and certainly cannot raise it at a level of tax effort similar to the $1.00 tax rate at which the wealthiest districts will be able raise this amount. (RR58:49-50 (referencing Ex. 6622 at 20).)

ii. Only 124 of 1,020 school districts can raise Dr. Odden's estimated adequacy amount without a TRE.

FOF 1229. Dr. Odden used an evidence-based approach to determine the cost of providing the appropriate interventions to meet the State's standards. (*See supra* Part I.C.5.c (FOF 610, *et seq.*).) His estimate, prior to adjusting for inflation, indicates that districts need, on average, $6,176 per WADA in 2010-11, or, once adjusted for inflation, $6,404 per WADA, in 2013-14 and $6,532 in 2014-15. (*See supra* FOF 632)

FOF 1230. Even when looking at the lower 2011 adequacy figure of $6,176, and using the State's own data, and incorporating the 2013 legislative changes to funding formulas, the Court finds that, as of FY14, only 124 districts are projected to reach $6,176 in M&O revenue when taxing at $1.04 or less and only 259 districts are projected to reach the same figure when taxing at 1.17 or less. (RR63:46-50 (referencing Ex. 11440).)

FOF 1231. Using the inflation adjusted number, according to the State's own data, as of 2013-14, 99 districts, taxing at $1.04 in M&O, could raise $6,404 per WADA. (Ex. 11440 at Tab 2014, Column P.) This means that 1,128 districts in the state cannot raise the Odden estimate of the average revenue necessary to achieve a general diffusion of knowledge without a TRE.[64] Only 165 districts, taxing at the $1.17 cap, could raise $6,404 per

[64] The State's data includes charter schools, which makes the total number of districts larger.

WADA. (Ex. 11440 at Tab "2014," Column T.) This means that 1,062 districts cannot raise the Odden estimate of average revenue necessary to achieve a general diffusion of knowledge because to do so would require exceeding legal limits.

iii. The vast majority of school districts cannot raise Mr. Moak's estimated adequacy amount at similar levels of tax effort.

FOF 1232. Mr. Lynn Moak testified that districts need, on average, $1,000 more per WADA than they received in 2010-11, which translates to $6,562 per WADA in 2010-11, or, once adjusted for inflation, $6,804 per WADA in 2013-14, and $6,941 per WADA in 2014-15. (*See supra* Part I.C.5.d (FOF 621) and FOF 632.)

FOF 1233. Using the lower 2010-11 adequacy figure of $6,562, the Court finds that, as of 2013-14, only 119 districts can reach $6,562 in M&O revenue when taxing at $1.04 or less and only 208 districts can reach $6,562 when taxing at 1.17 or less. (Ex. 3532 at 1; Ex. 3534 at 1.)

iv. School districts cannot raise the average revenue of districts rated "Acceptable" in 2010-11 with similar levels of tax effort.

FOF 1234. In 2010-11, the average revenue of districts rated "Acceptable" under the prior, less rigorous accountability system, was $5,645. (RR58:41-43; *see also supra* Part I.B.3 (FOF 81, *et seq.*) (describing increased academic standards).)

FOF 1235. In 2013-14, *after* the actions of the 2013 legislature to "restore" the funding cuts, 607 districts, educating almost 4.2 million students, cannot raise $5,645 by taxing at $1.04. (RR58:44 (referencing Ex. 6622 at 18.) Forty-two districts could **not** raise this amount even by taxing at the $1.17 cap. (*Id.*) In comparison, 260 districts can raise this amount at a tax rate of just $1.00. (Ex. 6622 at 18.)

FOF 1236. The forty-two districts which cannot raise the amount of money necessary to provide an accredited education under the *prior* standards within permissible tax rates and the 607 districts that cannot do so without a TRE do not have substantially equal access to this level of funding at similar tax rates to those districts that can raise this amount at $1.00.

v. School districts cannot raise the 2012-13 statewide average revenue per WADA without a TRE.

FOF 1237. The average revenue per WADA in the 2012-13 school year was $5,511 per WADA. (RR58:37-38 (referencing Ex. 6622 at 17).) This number is approximately $1,000 per WADA less than all of the inflation-adjusted estimates of adequacy presented to the court. (*See supra* Part I.C.5.e (FOF 622, *et seq.*).)

FOF 1238. Yet in 2013-14, *after* the actions of the 2013 legislature, 404 districts, enrolling 1.9 million in WADA, could not raise $5,511 taxing at $1.04. (RR58:40 (referencing Ex. 6622 at 17).) Furthermore, eighteen districts could not raise $5,511 per WADA even if taxing at the $1.17 cap. (*Id.*) In comparison, 322 districts could raise this amount at the $1.00 maximum Tier I tax rate. (Ex. 6622 at 17.)

FOF 1239. The eighteen districts which cannot reach this funding level within legally permissible tax rates and the 404 districts that cannot do so without a TRE do not have substantially equal access to this level of funding at similar tax rates as those districts that can raise this amount at $1.00.

FOF 1240. Based on the above findings, the Court concludes that most students live in school districts that cannot reach the level of funding necessary to achieve a general diffusion of knowledge within legally permissible tax rates, and that this means these students do not have substantially equal access to this funding level at similar levels of tax effort as constitutionally required.

c. The effect of the legislative changes in 2011 and 2013 combine to "level-down" the system rather than "level up" all districts to the level necessary to achieve a general diffusion of knowledge.

FOF 1241. The findings above indicate that the State has far to go in meeting its obligation to provide all districts access to the revenue levels necessary to achieve a general diffusion of knowledge at similar tax rates. But Dr. Clark's analysis of the formula changes made by the legislature in 2011 and 2013 reveal that, rather than making progress toward that goal, the changes resulted in "leveling down" funding for Texas public school districts, in contravention of the Supreme Court's instruction. (*See* Ex.6622 at 2-15.)[65] *Edgewood IV*, 917 S.W.2d at 730.

FOF 1242. As a result of the 2011 legislative changes, all districts' resources across all wealth levels were reduced in the 2012-13 school year, at the same time that performance standards for students, schools, and districts were increased. (RR58:23-26 (referencing Ex. 6622 at 3-4).)[66]

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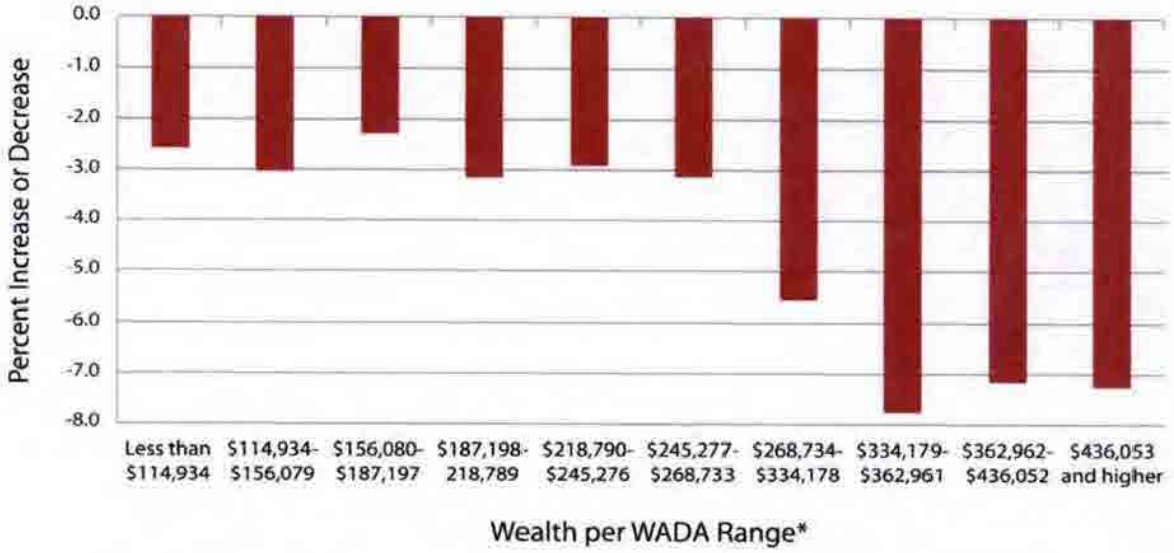
[65] Dr. Clark's analysis of whether the system results in leveling up or leveling down looks at revenue at adopted tax rates and is not intended to be an analysis of whether districts have substantially equal access to similar revenue at similar tax effort. (*See* RR58:53.) Because this analysis was not intended as such by the expert, the Court does not rely upon it in order to answer that question.

[66] Dr. Clark performed her analysis of leveling down first by grouping districts into wealth deciles that had equal numbers of WADA in each decile and then by grouping districts into deciles that had equal numbers of districts in each decile. (*See* RR58:31-32.) Both analyses result in the same conclusion, that the State has leveled down funding at the same time it is raising standards. (*Compare* Ex. 6622 at 3-8 *with id.* at 9-14.)

Chart 1.1
Change in Revenue per WADA, 2010–11 to 2012–13

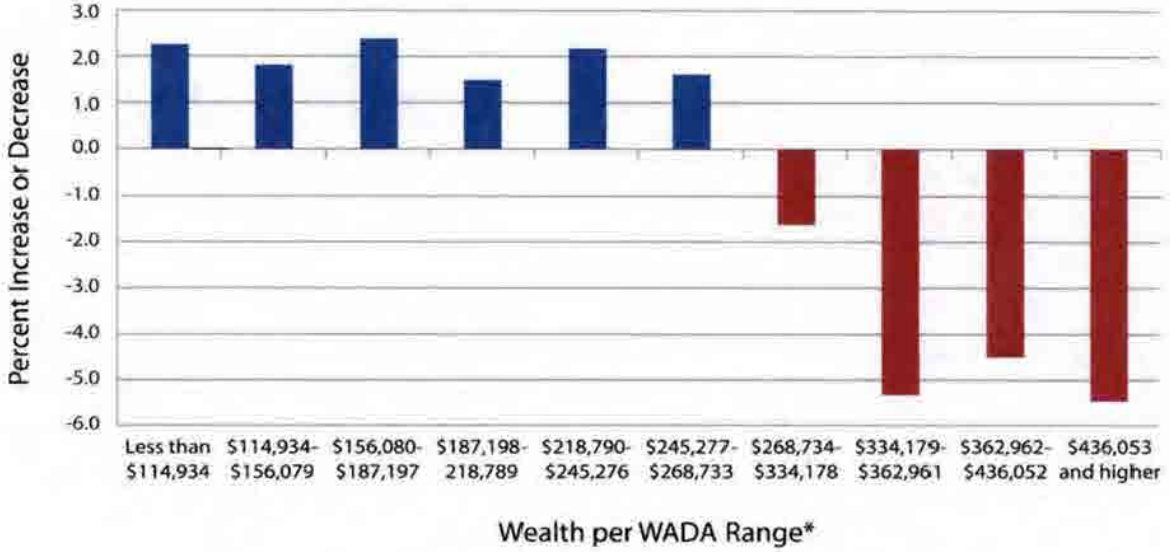


*2012–13 Wealth per WADA with 2010–11 formulas

(Ex. 6622 at 8.)

FOF 1243. When taking into consideration the 2013 legislative changes, and comparing 2013-14 funding levels to pre-cut 2010-11 funding levels, the decreases in funding for school districts in the top four wealth deciles were greater than the slight increase in funding for the bottom six wealth deciles. (*Id.* at 5-6.)

Chart 1.2
Change in Revenue per WADA, 2010–11 to 2013–14



*2012–13 Wealth per WADA with 2010–11 formulas

(*Id.* at 6.)

FOF 1244. On a system-wide basis, the losses outweighed the gains, with statewide average spending in 2013-14 being $42 per WADA less than in 2010-11. (RR58:27 (referencing Ex. 6622 at 5).) Furthermore, the average wealth district in the state is in decile 7, a decile that loses $94 per WADA in 2013-14 compared to 2010-11. (RR58:27.) The Court is not indicating that the property-poor school districts were accessing greater funds than the wealthier districts after this leveling down. Dr. Clark's analysis showed that even with the 2013 legislative changes enacted, the lowest wealth decile of districts is projected to receive over $900 less per WADA in 2013-14 and $800 less per WADA in 2014-15. (Ex. 6622 at 11, 13.)

FOF 1245. Perhaps most importantly, this leveling down was done in the absence of any study or attempt by the Legislature to determine how much it costs districts to achieve a general diffusion of knowledge or whether school districts' were able to achieve a general diffusion of knowledge before or after the leveling down. (*See* RR58:25-26, 54; *supra* Parts I.C.5.a (FOF 603, *et seq.*) and I.C.5.f (FOF 625, *et seq.*).)

2. Unconstitutional tax rate gaps exist between property-poor and property-wealthy districts.

FOF 1246. In addition to the analyses above regarding the gap in tax rates necessary to achieve a general diffusion of knowledge, Dr. Pierce performed a series of "simple average" analyses of the funding disparities between school districts in Texas.[67] (RR9:33-35.) For each analysis, he began by sorting the districts by property wealth per WADA. He then grouped the districts into percentiles. In some analyses, he calculated the percentiles by district (e.g. out of 1,024, the "top 10%" would be the 102 wealthiest districts in 2011-12 and out of 1,021, the "top 10%" would be the 102 wealthiest districts in 2012-13), in others he calculated the percentiles by WADA (e.g., out of 1,024 districts with a statewide WADA of 5,670,091 in 2011-12, the top 10% would be the 181 wealthiest districts that collectively enroll 10% (570,686) of the statewide WADA and out of 1,021 districts with a statewide WADA of 5,984,196 in 2012-13, the top 10% would be the 178 wealthiest districts that collectively enroll 10% (592,783) of the statewide WADA). Dr. Pierce then calculated the average tax rate the bottom ten, fifteen, twenty, and twenty-five percent of districts would have to levy in order to receive the same average revenue as the top ten, fifteen, twenty, and twenty-five percent during the 2011-12 school year. The simple average was calculated by summing the applicable variable (e.g. tax rate) and dividing by number of districts in the percentile (to get average tax rate in this example). He performed this analysis looking at M&O rates, at I&S rates, and at Total (M&O plus I&S) Rates.

[67] The State criticized Dr. Pierce for using simple averages; however, the State chooses to fund on a district basis rather than per capita, and Dr. Pierce's analysis is relevant and explains the reality of the differences among school districts and reflects the manner of funding chosen by the Legislature. (RR32:45-46.) Further, the Court notes that the State uses simple averages in determining the basic allotment for funding charter schools. (RR33:10-11.)

FOF 1247. In these findings and the Pierce analysis:

a. Tax rate gap means the amount which property-poor districts tax in excess of what their wealthier counterparts tax in each given percentile comparison.

b. Revenue gap means the difference in the amount of revenue that the property-poor districts receive at their higher tax rates compared to what their wealthier counterparts receive at their lower tax rates.

c. Classroom funding disadvantage means the amount of additional funding the property-poor school districts would receive, per classroom of 22 in Average Daily Attendance (ADA), if they were funded at the same levels as their wealthier counterparts.[68]

d. Yield gap means the amount of additional funds that the wealthier districts can raise, per penny of tax effort, compared to their property-poor counterparts.

FOF 1248. As detailed below in FOF 1249 and FOF 1250, the bottom percentiles would have to tax between 46 and 66 cents higher than the top percentiles to receive the same M&O revenue as the top percentiles received during the 2011-12 school year.[69] Under each of these calculations, the property-poor districts can never obtain the revenue that the property-wealthy receive, because the property-poor districts would have to tax higher than the $1.17 cap for M&O.

FOF 1249. **M&O Tax Rates to match revenue of top 10% by percentiles of districts:** In order for the 10% of districts with the lowest property wealth to receive the same M&O revenue per WADA as the 10% of districts with the highest property wealth ($7,998 per WADA), the bottom 10% of districts would have to tax, on average, 66 cents higher than the top 10% average tax rate of $1.004, or at a tax rate of $1.664. (Ex. 3010 at 1; Ex. 3011 at 1.) Comparing the bottom 15% of districts to the top 15%, the bottom 15% of districts would have to tax, on average, 54 cents higher than the top 15% average tax rate of $1.021, or at a tax rate of $1.561 in order to receive the same revenue. (Ex. 3010 at 1; Ex. 3011 at 1; RR9:53.)

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[68] The Court finds the comparison of revenue differences by classroom to be relevant to the constitutional analysis because that is the method chosen by the Legislature for providing education to Texas schoolchildren. The classroom funding disadvantage was calculated by first, assuming a 95% attendance rate, a typical elementary classroom of 22 students has 20.9 students in average daily attendance (ADA). [Multiply 22 x 0.95.] Second, divide each district's WADA (i.e., *weighted* ADA) count by its ADA to determine its WADA-to-ADA ratio. Third, multiply the average WADA:ADA ratio for the low-funded group by 20.9 ADA to determine the WADA count for an average classroom in that group. Finally, multiply this WADA count by the per-WADA funding gap to determine the classroom disadvantage between the low and high-funded districts.

[69] At the time of the initial phase of this trial, the 2011-12 data that is the basis of the following findings was the most current finalized data available. Although the 83rd Legislature made changes to elements of the system by appropriation, the structure of the school finance system was not changed so the 2011-12 data remains relevant to the determinative issues in this case.

FOF 1250. **M&O Tax Rates to match revenue of top 10% by percentiles of WADA:** In order for the districts with the lowest property wealth enrolling 10% of the WADA to receive the same revenue per WADA as the districts with the highest property wealth enrolling 10% of the WADA, the bottom 10% of districts would have to tax, on average, 48 cents higher than the top 10% average tax rate of $1.025, or at an M&O tax rate of $1.505. (Ex. 3025 at 1; Ex. 3026 at 1.) Comparing the bottom 15% of districts to the top 15%, the bottom 15% would have to tax, on average, 46 cents higher than the top 15% average tax rate of $1.025, or at a tax rate of $1.485 in order to receive the same revenue. (*Id.*)

FOF 1251. This same pattern of property-poor districts having to tax at a higher tax rate in order to receive, or attempt to receive,[70] the same revenue per WADA as their wealthier counterparts is evident when comparing M&O tax rates and M&O revenue in the top and bottom 10, 15, 20, and 25 % of districts. (Ex. 3011 at 1; Ex. 3026 at 1.)

FOF 1252. Because wealthy districts are able to receive more revenue at lower tax rates resulting in lower average tax rates, using current tax rates underestimates the potential disparities in the system. In order to determine how much disparity there is in the system as a whole, and whether the amount of supplementation has become so great as to destroy the efficiency of the entire system, Dr. Pierce performed the same analysis using the maximum M&O revenue available to the top and bottom percentiles at the $1.17 cap. As detailed below in FOF 1253 and FOF 1254, the bottom percentiles would have to tax between 57 cents and a $1.02 higher than the $1.17 M&O tax cap to receive the same M&O revenue as the top percentiles during the 2011-12 school year, **even taking into account recapture**. Under each of these calculations, the property-poor districts can never obtain the revenue that the property-wealthy districts receive, because the property-poor districts would have to tax higher than the $1.17 cap for M&O.

FOF 1253. **Maximum M&O Revenue per WADA (at $1.17) by percentiles of districts:** In order for the 10% of districts with the lowest M&O revenue per WADA at $1.17 to receive the same M&O revenue per WADA that the 10% of districts with the highest M&O revenue per WADA at $1.17 can raise at $1.17, the bottom 10% would have to tax, on average, $1.02 higher than the top 10%, or at the rate of $2.19. (Ex. 3069 at 1.) In order for the bottom 15% of districts to receive the same M&O revenue per WADA that the top 15% can raise at $1.17, the bottom 15% would have to tax, on average, 78 cents higher than the top 15%, or at the rate of $1.95. (*Id.*)

FOF 1254. **Maximum M&O Revenue per WADA (at $1.17) by percentiles of WADA:** In order for the districts with the lowest M&O revenue per WADA at $1.17 enrolling 10% of the WADA to receive the same M&O revenue per WADA that the districts with the highest M&O revenue per WADA at $1.17 enrolling 10% of the WADA can raise at $1.17, the bottom 10% would have to tax, on average, 66 cents higher than the top 10%, or at the rate of $1.83. (Ex. 3075 at 1.) In order for the bottom 15% of districts to receive the

[70] Most property-poor districts can never receive the same revenue as their wealthier counterparts because to do so they would have to tax at rates above the legal limit.

same M&O revenue per WADA that the top 15% can raise at $1.17, the bottom 15% would have to tax, on average, 57 cents higher than the top 15%, or at the rate of $1.74. (*Id.* at 1.)

FOF 1255. Under the school finance system, property poor districts would have to tax at a significantly higher M&O rate to receive the same revenue per WADA their wealthier counterparts would receive at the maximum M&O rate of $1.17. This pattern is evident at each level of comparison when considering M&O tax rates and M&O revenue in the top and bottom 10, 15, 20, and 25 percent of districts. (Ex. 3069 at 1; Ex. 3075 at 1.) As demonstrated above, districts in the bottom 10 and 15% of property wealth cannot access the same M&O revenues as the top 10 and 15% currently receive or would receive if taxing at the maximum $1.17 M&O rate because to do so would require them to levy an M&O tax far in excess of the tax cap.

FOF 1256. Because not all districts have an I&S tax rate, Dr. Pierce also performed the same type of analyses of M&O revenue capacity using just those districts that levied I&S taxes (I&S Districts) during the 2011-12 school year and calculated the revenue and tax rate gaps between the top and bottom percentiles in the same fashion. (RR9:71-72; Ex. 3187, Pierce Report, at 13.) Under this way of analyzing the data, as detailed below in FOF 1257, the bottom percentiles would have to tax 47 to 49 cents higher and, once again, could not raise the amount the top percentiles receive without violating the $1.17 cap.

FOF 1257. **Maximum M&O Revenue (at $1.17) for I&S Districts by percentiles of WADA:** In order for the districts with the lowest property wealth enrolling 10% of the WADA to receive the same M&O revenue per WADA as the districts with the highest property wealth enrolling 10% of the WADA (top 10%), the bottom 10% would have to tax, on average, 49 cents higher than the top 10%, or at a tax rate of $1.513. (Ex. 3033 at 1.) Comparing the bottom 15% to the top 15%, the bottom 15% would have to tax, on average, 47 cents higher than the top 15%, or at a tax rate of $1.493. (*Id.*)

3. Unconstitutional revenue gaps exist between property-poor and property-wealthy districts.[71]

FOF 1258. In addition to calculating the M&O tax rate property poor districts would have to levy to access the same revenue as the top 10 and 15% at current levels and at $1.17, Dr. Pierce and Dr. Cortez also conducted analyses of the funding gaps between property-poor and property-wealthy districts. Although the two experts used slightly different methodologies, both the "weighted" average analysis by Dr. Cortez and the "simple"

[71]The majority of the following analyses use school finance data through the 2012-13 school year, because the data for the 2013-14 school year will not be finalized until the spring of 2015, and is therefore still preliminary and subject to change. (*See, e.g.*, RR57:11-13; *see also* RR23:33-34, 104 (discussing concerns with prior years' analysis in the first phase of the trial) RR9:51-52; Ex. 4240 at 3-4 (same).) Using the 2012-13 adjusted data as a base year, and applying the 83rd Legislature's formula changes for the 2013-14 school year, is a reliable method to help the Court isolate the effects of the formula changes on the equity of the system, without the "noise" created by preliminary data projections. (*See* RR57:12-14.)

average analysis by Dr. Pierce reveal great revenue disparities among the wealthiest and poorest percentiles. (*See generally* Ex. 4000, Cortez Report; Ex. 4225, Cortez Supp. Report; Ex. 4251, Cortez 2nd Supp. Report; Ex. 20030; Ex. 3187, Pierce Report; Ex. 3540, Suppl. Pierce Corrected Report.)

FOF 1259. The comparison of districts by decile (which amounts to approximately 100 districts in each grouping) is similar to the analysis of the 100 wealthiest and 100 poorest districts relied upon by the Court in *Edgewood I*. *See Edgewood I*, 777 S.W.2d at 392-93. The decile comparison also is similar to the comparison in *Edgewood IV*, analyzing tax efforts needed to raise the amount needed for an adequate education between the three highest wealth groups of districts (totaling 15% of WADA) and the three lowest wealth groups of districts (totaling 15% of WADA). *See Edgewood IV*, 917 S.W.2d at 731 & n.12.

FOF 1260. Whether the Court considers the gap in adopted tax rates (ATR), that is the gap in tax rates needed to generate the revenue necessary for a general diffusion of knowledge (above), or the gap in revenue between the highest property wealth districts and the lowest property wealth districts with 5, 10, 15, or 20% of the WADA, each gap has increased dramatically since the *WOC II* decision. (*See generally* Ex. 3100-3117; Ex. 4000, Cortez Report, at 15-23; Ex. 4225, Cortez Supp. Report; Ex. 4251, Cortez 2nd Supp. Report (showing similar gaps for years 2009-10 thru 2011-12); Ex. 20030, Cortez Supp. Report; Ex. 3187 Pierce Report, Ex. 3540, Suppl. Pierce Corrected Report.) Correspondingly, the average classroom funding disadvantage that the lowest property-wealth districts experience has increased during the same time period (aside from slight decreases resulting from the 2013 legislation). (Ex. 3106; Ex. 3111; Ex. 3114; Ex. 3117.)

a. Despite taxing at higher rates, property-poor school districts receive substantially less M&O revenue per WADA than their property-wealthy counterparts.

FOF 1261. The funding gaps are larger now than they were immediately following *WOC II*. Between 2005-06 and 2011-12, using the simple average analysis, the funding gap between the top and bottom decile of districts increased by $890 per student (from $1,868), despite the bottom decile having, on average, a 15.6 cent higher tax rate. (Ex. 3187, Pierce Report, at 11.) This represents an increase of nearly 50% in the gap that existed in 2005-06. (*Id.*)

FOF 1262. Even if the disequalizing impact of Tier II is left out, the disparities in Tier I – the level intended to produce funding for the general diffusion of knowledge – is still substantial. (*See infra* Part I.D.3.b (FOF 1272, *et seq.*).) According to preliminary 2011-12 district data from TEA, compressed tax rates (CTR) for districts at or below the 15th percentile of wealth average are 1.3 cents higher than the compressed rates for districts at or above the 85th percentile of wealth. (*Id.* at 9.) Even though the tax gaps are not as great when considering only Tier 1, these lower wealth districts still tax higher and have a Tier I funding level that is about $1,667 per student below the Tier I funding level provided for districts in the higher wealth/higher funded districts. (*Id.*)

FOF 1263. **Target Revenue gaps between wealthiest and poorest districts:** An even more drastic funding gap is shown when sorting the same data set by target revenue funding levels. When comparing groups of districts with 15% of the WADA, the average compressed tax rates for districts in the group with the lowest target revenues is higher than the compressed tax rates for districts with the highest target revenues, yet the average Tier I funding level is about $1,900 per student *below* that for the average district in the lower taxing, higher funded group. (*Id.*) This Tier I funding gap, *even at this fundamental instructional program level*, amounts to more than $40,000 less funding in a typical elementary classroom of 22 children in the lower funded districts. (*Id.*)

FOF 1264. **ATR Revenue gaps between wealthiest and poorest deciles:** The Court also received expert testimony on the differences in revenue generated at adopted tax rates among the ten weighted deciles of districts grouped by property wealth for the school years 2010-11, 2011-12, 2012-13, and the legislative changes for the 2013-14 school year applied to the 2012-13 data. The same weighted methodology described above for Dr. Cortez applied in these analyses. Each analysis demonstrates that the students in the wealthiest decile of districts continue to access substantially greater revenues than students in the poorest decile of districts, despite the poorest decile of districts taxing their residents at substantially higher rates.

FOF 1265. For the 2011-12 school year, the wealthiest decile of school districts generated *$1,443 more per WADA* than the poorest decile at average adopted tax rates.[72] This significant gap exists despite the poorest decile of districts taxing their residents *11 cents higher* than the wealthiest decile. (Ex. 4251, Cortez 2nd Supp. Report, at 2. Even when examining districts at the sixth poorest percentile of districts, those districts generated $1,560 less than the wealthiest decile at $5,537 per WADA, despite taxing *7 cents higher* ($1.07) than the wealthiest decile. (Ex. 4251, Cortez 2nd Supp. Report, at 3.)

Table 2: Average Revenue per WADA in 2011-12 Continues to Show a Large Gap Between Poorest and Wealthiest Deciles of School Districts

School District Groupings	Group Property Wealth per WADA	Group Average Revenue per WADA at 2011 Adopted Tax Rates	Group Average 2011 M&O Tax Rates
	2011-12	2011-12	2011-12
Poorest Decile	$76,068	$5,654	$1.11
Wealthiest Decile	$1,086,471	$7,097	$1.00
Gap		$1,443	$0.11

[72] Analyzing differences in revenue between property-wealthy and property-poor districts at existing, adopted tax rates and maximum tax rates is appropriate because the Court has determined that under the current system, all plaintiff districts are not able to provide a general diffusion of knowledge. *Compare Edgewood IV*, 917 S.W.2d at 730-31.

(Ex. 4251, Cortez 2nd Supp. Report, at 2 (Excerpted).)

FOF 1266. If all school districts taxed at the maximum rate of $1.17, the gap per WADA would grow to $1,839 per WADA between the wealthiest and poorest deciles of districts. (*Id.* at 4-5.)[73]

FOF 1267. **Impact of 83rd Legislature's Changes.** In the supplemental hearing, Dr. Cortez engaged in the same analysis of 2012-13 data and of the 2013 legislative changes as applied to the 2012-13 data for the 2013-14 school year. Like the aforementioned analysis of the top and bottom 15% of WADA, both revenue gap analyses showed stark, continuing tax and revenue advantages for the wealthiest decile. (Ex. 20030 at 3-4, 7.) For the 2012-13 school year, the data showed the following equity gaps, including a gap of $1,098 between the wealthiest and poorest decile, despite the poorest decile taxing *10 cents higher*:

Table 2: Average Revenue per WADA in 2012-13 Continues to Show a Large Gap Between Poorest and Wealthiest Deciles of School Districts

School District Groupings	Number of Districts per Group	Group Property Wealth per WADA	Group Average Revenue per WADA at FY 2013 Adopted Tax Rates	Group Average 2013 M&O Tax Rates
Poorest Decile	102	$73,140	$5,617	$1.11
Wealthiest Decile	103	$936,070	$6,715	$1.01

(Ex. 20030 at 3 (excerpted).)

FOF 1268. Even when examining districts at the sixth poorest percentile of districts, those districts generated $1,239 less per WADA than the wealthiest decile, despite taxing *7 cents higher* than the wealthiest decile. (*Id.*)

FOF 1269. The 2013 legislative changes reduced, but did not materially change, the substantial revenue gaps between the poorest and wealthiest districts at average adopted tax rates. (Ex. 20030, Cortez Suppl. Hr'g Report, at 7.) When applying the 2013-14 legislative

[73] Similarly substantial disparities were found in the 2010-11 school year. The gap between the poorest and the wealthiest decile of school districts was $1,431 at adopted tax rates for that school year, despite the poorest decile taxing at an average of $1.11 (generating $5,654 per WADA) and the wealthiest taxing at $1.00 (generating $7,085 per WADA). Even when examining districts at the sixth poorest decile of districts, those districts generated $1,552 less than the wealthiest decile, despite taxing seven cents higher ($1.07). (Ex. 4225, Cortez Supp. Report, at 3.) If all school districts taxed at the maximum rate of $1.17, the gap per WADA would grow to $1,785 per WADA between the wealthiest and poorest decile of districts. (*Id.* at 4.)

changes to the 2012-13 data, and comparing the revenue available to school districts by weighted decile groupings at adopted tax rates, the gap between the poorest and the wealthiest decile of school districts was cut by only $147 per WADA, despite the poorest decile of districts taxing their residents *11 cents higher*. (*Id.*)

Table 4: Comparison of Change in Average Revenue per WADA in 2012-13 at FY 2013 Adopted Tax Rates

School District Groupings	Number of Districts per Group	Group Average Revenue per WADA at FY 2013 Adopted Tax Rates	Change in Revenue per WADA Attributable to Formulae Modifications	Group Average Revenue per WADA at FY 2013 Adopted Tax Rates, Applying 83rd Legislature Formulae Levels
Poorest Decile	102	$5,617	$186	$5,803
Wealthiest Decile	103	$6,715	$39	$6,754
Gap		$1,098	$147	$951

(*Id.* (excerpted).)

FOF 1270. Although the 83rd Legislature did slightly improve the relative position of the poorest districts with respect to the wealthiest, the minor reduction in the revenue gap did not sufficiently close the gap to achieve financial efficiency. These analyses, separately and together with the other efficiency analysis offered by Plaintiffs, critically show that the State has retreated from the Texas Supreme Court's mandate requiring that "[c]hildren who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds."

FOF 1271. The Court finds that the Texas school finance system was not financially efficient at the conclusion of the first phase of this trial, that the system is not financially efficient at the conclusion of the second phase of this trial, and the actions of the 83rd Legislature did nothing to cure this unconstitutional inefficiency.

b. Analysis of the "gaps" in Tier I reveal that school districts do not have substantially equal access to similar revenue at similar tax effort in the basic tier, which is supposed to provide a general diffusion of knowledge.

FOF 1272. According to Defendants, Tier I is intended to cover the cost of a basic, adequate education.[74] (*See supra* FOF 212; Ex. 5630, Scott Dep., at 341, 343-45; TEX. EDUC.

[74] Total M&O revenue includes Tier I and Tier II. Tier I (or basic education funding) is provided by a district's CTR which is determined on a district by district basis with a maximum of $1.00. Tier II is intended to provide enrichment funding through golden pennies (Level 1) or copper pennies (Level 2). Golden pennies (which are equalized at the highest rate of the entire funding scheme) are the first 6 cents above a district's CTR. Pennies above a district's CTR plus 6 cents up to the cap of $1.17 are copper

CODE § 42.301.) Although the evidence demonstrates that Tier I, for most districts, does not cover the cost of an adequate education, an examination of the inequities at the Tier I (Compressed Tax Rate) level is essential in any analysis of school finance efficiency because the Texas Supreme Court has made it clear that there must be similar revenue for similar tax effort throughout the basic tier (Tier I). *Edgewood IV*, 917 S.W.2d at 730-732.

FOF 1273. The most basic element of all equity analysis is the funding each district would receive, and at what tax rate, if they were to adopt, as their M&O tax rate, their Compressed Tax Rate ("CTR"). The analyses detailed below, using 2012-2013 data with 2013-2014 legislative parameters applied, show that the school districts in the wealthiest percentiles (as measured by percentile of WADA and percentile of districts) have much higher yields per penny of tax effort at lower compressed tax rates than districts in the poorest percentiles. Consequently, the wealthier districts are able to access Tier I revenues at substantially lower tax rates than the property-poor districts, which is inconsistent with the Texas Supreme Court's financial efficiency standard. (Ex. 3300 – 3305.)

FOF 1274. Substantial gaps in CTR yield per penny of tax effort, revenue per WADA, and classroom funding exist when sorting all districts by CTR yield and grouping by percentiles of districts FY14(13). These gaps persist despite "equalization" measures of the basic allotment and recapture. Even with recapture at this basic level, property wealthy districts retain both a tax rate and revenue advantage.

CTR BY DISTRICTS	CTR Gap	CTR Yield per Penny Gap	Revenue per WADA Gap	Classroom Disadvantage
Top & Bottom 10% by CTR Yield	4.5 ¢	$37.53	$3,257	$115,482
Top & Bottom 15% by CTR Yield	4.1 ¢	$28.70	$2,463	$87,364
Top & Bottom 20% by CTR Yield	3.8 ¢	$23.46	$1,993	$70,390

(Ex. 3300 at 1; Ex. 3302 at 1; Ex. 3304 at 1.)

pennies. A tax ratification election (TRE) is required for a district to levy a tax above $1.04. Depending on a district's CTR, a district with a low CTR may be able to access all of its golden pennies without a TRE – a structural advantage not shared by districts with a CTR at or near the $1.00 cap.

FOF 1275. Substantial Gaps in CTR yield per penny of tax effort, revenue per WADA, and classroom funding exist when sorting all districts by CTR yield and grouping by WADA.

CTR BY WADA	CTR Gap	CTR Yield per Penny Gap	Revenue per WADA Gap	Classroom Disadvantage
Top & Bottom 10% by CTR Yield	3.3 ¢	$19.63	$1,666	$58,740
Top & Bottom 15% by CTR Yield	3.0 ¢	$17.43	$1,481	$51,866
Top & Bottom 20% by CTR Yield	2.5 ¢	$15.66	$1,338	$46,405

(Ex. 3301 at 1; Ex. 3303 at 1; Ex. 3305 at 1.)

FOF 1276. This same pattern (where property-poor districts have a higher CTR, receive a lesser yield and lesser revenue at their CTR, and suffer a significant classroom disadvantage as compared to their wealthier counterparts) is evident when comparing districts' CTR, CTR yield, and revenue received at their CTR in the top and bottom 5 % of districts all the way up to the top and bottom 50 % of districts. (Ex. 3300 – 3307.)

c. Dr. Wayne Pierce's simple average analyses demonstrate that unconstitutionally large gaps in total M&O (Tiers I &II) revenue persist despite higher tax rates.

FOF 1277. To demonstrate the total M&O (Tiers I &II) revenue and tax rate gaps among districts, Dr. Pierce, in FOF 1278 through FOF 1284, sorted all districts by property wealth and grouped them by percentiles of districts or WADA. He then compared the M&O tax rates and revenue by percentile. Dr. Pierce also compared M&O tax rates and revenues by districts and WADA after sorting districts by yield per penny of tax effort per WADA. The following summary tables use data from the 2012-2013 school year, which was the most recent data at the time of the reopening of the evidence.

FOF 1278. Under these analyses, property-poor districts in the bottom percentiles receive between $1,522 and $3,585 less in total M&O revenue per WADA (or between $51,835 and $124,776 less per classroom of twenty-two students) than the property-wealthy districts in the top percentiles, despite levying M&O taxes at rates between 7.1 cents and 15.3 cents *higher* than the property-wealthy districts. Furthermore, each and every analysis reveals that the districts in the bottom percentiles do not receive revenue sufficient to fund a general diffusion of knowledge, as estimated above in Part I.C.5.f (FOF 625, *et seq.*).

FOF 1279. **M&O ATR (Adopted Tax Rate) and Revenue Gaps (Tiers I & II) by Percentile of Districts.** Districts were ordered by property wealth and assigned to resulting percentiles with roughly 100 districts per decile (10% of 1021 districts). Table data is based upon average adopted tax rates (ATR) for each decile—sorted by M&O rates and by yield per M&O revenue per penny for all districts and for I&S districts only.

Percentiles of Districts by Wealth	M&O Tax Gap 10%	M&O Revenue Gap 10%	Classroom Gap 10%		M&O Tax Gap 15%	M&O Revenue Gap 15%	Classroom Gap 15%
M&O ATR All Districts	10.0 ¢	$2,337	$80,919		8.2 ¢	$2,124	$73,028
M&O ATR I&S Districts	10.3 ¢	$2,299	$79,608		8.7 ¢	$1,859	$63,906
M&O Yield Per Penny All Districts	14.6 ¢	$3,585	$124,776		13.0 ¢	$2,683	$91,641
M&O Yield Per Penny I&S Districts	15.3 ¢	$3,211	$111,758		13.5 ¢	$2,411	$82,345

(Ex. 3308 at 1; Ex. 3309 at 1; Ex. 3314 at 1; Ex. 3315 at 1;Ex. 3332 at 1; Ex. 3333 at 1; Ex. 3338 at 1; and Ex. 3339 at 1.)

FOF 1280. **M&O ATR and Revenue Gaps (Tiers I & II) by Percentile of WADA.** Districts are ordered by property wealth and assigned to deciles of roughly equal groups of WADA. Table data is based upon adopted tax rates—sorted by M&O rates and by yield per M&O penny. The table reflects gaps in M&O tax rates among districts by percentile of all districts and for I&S districts by WADA rather than by a set number of districts.

Percentiles of WADA by Wealth	M&O Tax Gap 10%	M&O Revenue Gap 10%	Classroom Gap 10%		M&O Tax Gap 15%	M&O Revenue Gap 15%	Classroom Gap 15%
M&O ATR All Districts	7.9 ¢	$1,902	$65,276		7.1 ¢	$1,837	$62,719
M&O ATR I&S Districts	8.2 ¢	$1,663	$57,069		7.5 ¢	$1,597	$54,537
M&O Yield All Districts	10.9 ¢	$1,908	$66,048		9.0 ¢	$1,658	$56,486
M&O Yield I&S Districts	11.6 ¢	$1,735	$60,072		9.5 ¢	$1,522	$51,835

(Ex. 3320 at 1; Ex. 3321 at 1; Ex. 3326 at 1; Ex. 3327 at 1; Ex. 3344 at 1; Ex. 3345 at 1; Ex. 3350 at 1; Ex. 3351 at 1.)

FOF 1281. At each level of analysis, from the top and bottom 5% to 50%, a comparison of total M&O tax effort and revenue by percentile of districts establishes that property poor districts tax higher and receive less M&O revenue than their wealthier counterparts and suffer a significant classroom funding disadvantage. (Ex. 3308 at 1; Ex. 3309 at 1; Ex. 3320 at 1; Ex. 3321 at 1.)

FOF 1282. The evidence establishes that property poor districts with the lowest yield per penny of M&O tax rate tax higher, receive less M&O revenue, and suffer a significant classroom funding disadvantage when compared to property wealthy districts at all levels of comparison from the top and bottom 5% to 50% of districts. (Ex. 3332 at 1; Ex. 3333 at 1; Ex. 3344 at 1; Ex. 3345 at 1.)

FOF 1283. **M&O ATR and Revenue Gaps (Tiers I & II) (I&S Districts).** Comparing only I&S districts, the evidence establishes that property poor districts tax higher, receive less M&O revenue for tax effort, and suffer a significant classroom funding disadvantage at every level of comparison from the top and bottom 5% to 50% of districts. (Ex. 3314 at 1; Ex. 3315 at 1; Ex. 3326 at 1; Ex. 3327 at 1.)

FOF 1284. **M&O Yield and Revenue Gaps (Tiers I & II).** The evidence establishes that I&S districts with the lowest yield per penny of M&O tax effort per WADA tax higher, receive less M&O revenue, and suffer more significant classroom funding disadvantage than I&S districts with a higher M&O yield. This pattern repeats at each level of comparison from the top and bottom 5% and 10% of districts. (Ex. 3338 at 1; Ex. 3339 at 1; Ex. 3350 at 1; Ex. 3351 at 1.)

FOF 1285. The gap in revenue available to the districts at the M&O tax cap of $1.17 is even greater – between $2,190 and $4,653. Under each of these calculations, the revenue gap is substantially greater than that which existed at the time of *Edgewood IV* and represents a significantly higher proportion of the cost of an adequate education. *Edgewood IV*, 917 S.W.2d at 731. (Ex. 3452 at 1; Ex. 3453 at 1; Ex. 3458 at 1; Ex. 3459 at 1.)

FOF 1286. **Maximum M&O Revenue per WADA (at $1.17) by percentile of Districts**

MAX M&O BY DISTRICTS	M&O Tax Gap	M&O Revenue Gap	Classroom Gap
Top & Bottom 10% by Wealth	0.0 ¢	$4,653	$169,945
Top & Bottom 15% by Wealth	0.0 ¢	$3,547	$127,699

(Ex. 3452 at 1; Ex. 3453 at 1.)

FOF 1287. **Maximum M&O Revenue per WADA (at $1.17), by percentile of WADA**

MAX M&O BY WADA	M&O Tax Gap	M&O Revenue Gap	Classroom Gap
Top & Bottom 10% by Wealth	0.0 ¢	$2,565	$90,374
Top & Bottom 15% by Wealth	0.0 ¢	$2,190	$75,519

(Ex. 3458 at 1; Ex. 3459 at 1.)

FOF 1288. The evidence establishes that M&O revenue gaps and classroom funding disadvantages persist even at the maximum M&O tax rate of $1.17. Whether analyzed by percentile of districts or WADA and by wealth, WADA, and yield, Dr. Pierce's analysis repeatedly established that property poor districts tax higher, receive less revenue for their tax effort, and suffer a significant classroom funding disadvantage whether compared at adopted tax rate or at the maximum M&O tax rate at all levels of comparison from the top and bottom 5% to 50% of districts. (Ex. 3452 at 1; Ex. 3453 at 1; Ex. 3458 at 1; Ex. 3459 at 1.)

d. Property-poor districts levy higher I&S taxes, yet raise less revenue for facilities.

FOF 1289. Using the same process of sorting by wealth per WADA and grouping into percentiles of districts or WADA detailed in FOF 1246 above, Dr. Pierce calculated the average tax rate the bottom 10 and 15 % of districts would have to levy in order to receive the same average I&S revenue as the top 10 and 15 percent. (RR9:101-03.) As detailed below, the bottom percentiles would have to tax between 74 and 86 cents higher than the top percentiles to receive the same I&S revenue that the top percentiles receive, and between $2.78 and $6.01 higher to receive the same maximum I&S revenue that the top percentiles could raise at the 50 cent limit during the 2011-12 school year. Under each of these calculations, the property-poor districts can never obtain the revenue that the property-wealthy districts receive, because the property-poor districts would have to exceed the de facto 50 cent cap for I&S created by the 50 cent debt test. (*See supra* Part I.C.1.b.iv (FOF 263, *et seq.*).) Because there is no recapture of I&S revenues, property wealthy districts receive the full benefit of their wealth for every I&S penny of tax effort which creates the gross disparity in access to these revenues. Further, when funded, the relatively low guaranteed yield of $35 per student per penny of tax effort does little to reduce that gross disparity. Neither the 82nd nor the 83rd Legislature funded new I&S dollars exacerbating the disparities – again to the disadvantage of property poor districts.

a. **I&S Tax Rate and Revenue by percentiles of WADA:** In order for the districts with the lowest property wealth enrolling 10% of the WADA to receive the same I&S revenue per WADA as the districts with the highest property wealth enrolling 10% of the WADA (top 10%), the bottom 10% would have to tax for I&S, on average, 86 cents higher than the top 10%, or at a tax rate of $1.049. (Ex. 3036 at 1.) In order for the bottom 15% of districts to receive the same I&S revenue per WADA as the top 15%, the bottom 15% would have to tax, on average, 74 cents higher than the top 15%, or at a tax rate of 92.9 cents. (*Id.*)

b. **Maximum I&S Revenue (50 cents) by percentiles of districts:** In order for the 10% of districts with the lowest I&S revenue per WADA at 50 cents to receive the same I&S revenue per WADA that the 10% of districts with the highest I&S revenue per WADA at 50 cents can raise, the bottom 10% would have to tax, on average, $6.01 higher than the top 10%, or at the rate of $6.51. (Ex. 3072 at 1.) In order for the bottom 15% of districts to receive the same I&S revenue per WADA that the top 15% can raise at 50 cents , the bottom 15% would have to tax, on average, $4.13 higher than the top 15%, or at the rate of $4.63. (*Id.*)

c. **Maximum I&S Revenue (50 cents) by percentiles of WADA:** In order for the districts with the lowest I&S revenue per WADA at 50 cents enrolling 10% of the WADA to receive the same I&S revenue per WADA that the districts with the highest I&S revenue per WADA at 50 cents enrolling 10% of the WADA can raise at 50 cents, the bottom 10% would have to tax, on average, $2.97 higher than the top 10%, or at a rate of $3.47. (Ex. 3078 at 1.) In order for the bottom 15% of districts to receive the same I&S revenue per WADA that the top 15% can raise at 50 cents, the bottom 15% would have to tax, on average, $2.78 higher than the top 15%, or at a rate of $3.28. (*Id.*)

FOF 1290. This pattern of property-poor districts having to tax at substantially higher tax rates in order to receive the same I&S revenue per WADA as their wealthier counterparts is evident when comparing I&S tax rates and I&S revenue in the top and bottom 10, 15, 20, and 25 % of districts. (Ex. 3036 at 1; Ex. 3072 at 1; Ex. 3078 at 1.)

FOF 1291. Using the same process of sorting districts by wealth per WADA or yield per WADA, and grouping into percentiles of districts or WADA as described in FOF 1246, Dr. Pierce analyzed the facilities revenue available to the top and bottom 10 and 15 % of I&S districts during the 2012-2013 school year via I&S revenues. Under these analyses, property-poor I&S districts in the bottom percentiles receive up to $1,582 less in I&S revenue per WADA (or up to $54,771 per classroom of twenty-two students) than the property-wealthy districts in the top percentiles, despite levying I&S taxes at rates up to 4.6 *more* than the property-wealthy districts.

FOF 1292. **I&S Tax and Revenue Gaps by Percentile of Districts**

Percentiles of Districts by Wealth	I&S Tax Gap 10%	I&S Revenue Gap 10%	Classroom Gap 10%		I&S Tax Gap 15%	I&S Revenue Gap 15%	Classroom Gap 15%
I&S ATR All Districts	2.6 ¢	$1,397	$48,373		1.4 ¢	$1,112	$38,226
I&S ATR I&S Districts	4.3 ¢	$1,582	$54,771		2.2 ¢	$1,349	$46,390
I&S Yield Per Penny All Districts	2.4 ¢	$1,239	$43,141		2.1 ¢	$996	$34,035
I&S Yield Per Penny I&S Districts	4.6 ¢	$1,479	$51,495		3.6 ¢	$1,184	$40,455

(Ex. 3310 at 1; Ex. 3311 at 1; Ex. 3316 at 1; Ex. 3317 at 1; Ex. 3334 at 1; Ex. 3335 at 1; Ex. 3340 at 1; Ex. 3341 at 1.)

FOF 1293. **I&S Tax and Revenue Gaps by Percentile of WADA**

Percentiles of Districts by Wealth	I&S Tax Gap 10%	I&S Revenue Gap 10%	Classroom Gap 10%		I&S Tax Gap 15%	I&S Revenue Gap 15%	Classroom Gap 15%
I&S ATR All Districts	1.2 ¢	$1,023	$35,104		0.4 ¢	$1,015	$34,667
I&S ATR I&S Districts	2.0 ¢	$1,219	$41,851		1.5 ¢	$1,182	$40,343
I&S Yield Per Penny All Districts	0.9 ¢	$764	$26,468		1.2 ¢	$669	$22,783
I&S Yield Per Penny I&S Districts	2.1 ¢	$921	$31,890		1.9 ¢	$816	$27,810

(Ex. 3322 at 1; Ex. 3323 at 1; Ex. 3328 at 1; Ex. 3329 at 1; Ex. 3346 at 1; Ex. 3347 at 1; 3352 at 1; 3353 at 1.)

FOF 1294. Dr. Pierce's analysis establishes that property poor districts levy higher I&S taxes, receive less revenue, and suffer significant classroom funding disadvantage at every level when compared with their property wealthy counterparts. (Ex. 3310 at 1; Ex. 3311 at 1; Ex. 3322 at 1; Ex. 3323 at 1.)

FOF 1295. The gap in revenue available to the districts at theI&S limit (50 cents) is once again even greater – up to $6,118 per WADA.

FOF 1296. **Maximum I&S Revenue per WADA (at 50 cents) by percentile of Districts**

MAX I&S BY DISTRICTS	I&S Tax Gap	I&S Revenue Gap	Classroom Gap
Top & Bottom 10% by Wealth	0.0 ¢	$6,118	$223,443
Top & Bottom 15% by Wealth	0.0 ¢	$4,630	$166,698

(Ex. 3454 at 1; Ex. 3455 at 1)

FOF 1297. **Maximum I&S Revenue per WADA at (50 cents) by percentile of WADA**

MAX I&S BY WADA	I&S Tax Gap	I&S Revenue Gap	Classroom Gap
Top & Bottom 10% by Wealth	0.0 ¢	$3,340	$117, 701
Top & Bottom 15% by Wealth	0.0 ¢	$2,847	$98,158

(Ex. 3460 at 1; Ex. 3461 at 1.)

FOF 1298. Although adopted I&S tax rate differences are smaller than M&O tax gaps, the evidence established the same pattern where property poor districts tax higher for I&S revenue, receive less I&S revenue for that effort, and suffer a classroom funding disadvantage at all levels from the top and bottom 5% to 50% of districts. The greatest differences are seen in I&S funding or facilities funding capacity. Because I&S revenues are not recaptured, property wealthy districts receive the full tax revenue benefit of their greater property wealth. Property poor districts are further disadvantaged by the low equalization of I&S revenues – assuming that the Legislature appropriates the necessary funds for equalization. (Ex. 3454 at 1; Ex. 3455 at 1; Ex. 3460 at 1; Ex. 3461 at 1.)

FOF 1299. Because of the substantial gaps in I&S revenue per WADA per penny of tax effort, property-wealthy districts such as Eanes ISD also have the unique ability to use bond money (generated from I&S taxes not subject to recapture) to pay for certain expenses that might otherwise be funded from M&O money. (RR21:111; Ex. 5617, Reedy Dep., at 80; RR9:78-81.) Property-wealthy districts use bond funds, for example, to purchase and pay for computers, technology, buses, and other items that facilitate the education of their students (including the basic, adequate education) and thus have more funds to pay for operating expenses, including teacher salaries.[75] (RR21:11.) There is no yield benefit to using I&S tax revenue for M&O purposes for lower wealth districts because, for these

[75] This use of I&S revenues for M&O expenses can be viewed in two equally compelling ways: 1) as a result, property wealthy districts have additional unrecaptured "M&O" funding capacity that is not available to property poor districts further undermining financial efficiency; 2) this use of I&S revenues for M&O expenses indicated that those districts are out of discretion over M&O taxes and must resort to I&S revenues to fund a general diffusion of knowledge. The first affects financial efficiency of the system. The second implicates a state property tax violation.

districts, $35 per ADA raises less than $31.95 per WADA. (Ex. 3187, Pierce Report, at 14.) Yet some property-poor districts are still forced to do so because of increasing pressures on M&O revenues. (*See, e.g.*, RR11:68-71, 84-85.)

FOF 1300. Disparate access to I&S funds affects more than just a district's ability to fund facilities. Schools housed in older facilities are significantly less likely to recruit experienced or National Board certified teachers to fill vacancies – holding salaries and student characteristics constant. (Ex. 1122, Vigdor Report, at 23-24.) Teachers working in older buildings are also more likely to quit in order to take a job in another nearby school district. (*Id.*) According to a recent Texas Comptroller report, the state's poorest students are concentrated in the oldest facilities. (Ex. 1070 at 5.) The Texas Comptroller found in 2006 that schools with economically disadvantaged student rates above 80% are on average forty-one years old, and have the lowest proportion of "good" or "excellent" facility ratings from administrators. (*Id.*) Schools serving high proportions of Hispanic students also tend to be older. (RR18:165, 178-79.)

e. Property-poor districts levy higher Total (M&O plus I&S) taxes, yet raise less total revenue.

FOF 1301. Using the same process of sorting districts by wealth per WADA, and grouping into percentiles of districts or WADA as described in FOF 1246 above, Dr. Pierce also calculated the average total tax rate (combined M&O plus I&S) the bottom 10 and 15 % of districts would have to levy in order to receive the same total revenue per WADA that the top 10 and 15 % receive, or could receive at the maximum rates. As detailed below, the bottom percentiles would have to tax between $1.21 and $1.96 higher than the top percentiles to receive the same total revenue as the top percentiles currently receive, and between $3.25 and $6.65 higher than the top percentiles to receive the revenue the top percentiles could receive at the maximum allowable total tax rate ($1.67) during the 2011-12 school year. Under each of these calculations, the property-poor districts can never obtain the revenue that the property-wealthy receive, because to do so would require, on average, a total tax in excess of the combined legal limit ($1.67).

a. **Total (M&O plus I&S) tax rates and revenues (I&S districts) by percentiles of districts:** In order for the 10% of districts with the lowest property wealth to receive the same total revenue per WADA as the 10% of districts with the highest property wealth (top 10%), the bottom 10% would have tax, on average, $1.96 higher than the top 10%, or at a tax rate of $3.123. (Ex. 3021 at 1; Ex. 3022 at 1.) Comparing the bottom 15% of districts to the top 15%, the bottom 15% of districts would have to tax, on average, $1.51 higher than the top 15%, or at a tax rate of $2.709. (*Id.*; RR9:86.)

b. **Total (M&O plus I&S) tax rates and revenues (I&S districts) by percentiles of WADA:** In order for the districts with the lowest property wealth enrolling 10% of the WADA to receive the same total revenue per WADA as the districts with the highest property wealth enrolling 10% of the WADA (top 10%), the bottom 10% would have to tax, on average, $1.36 higher than the top 10%, or at a

tax rate of $2.571. (Ex. 3038 at 1; Ex. 3039 at 1.) Comparing the bottom 15% of districts to the top 15%, the bottom 15% would have to tax, on average, $1.21 higher than the top 15%, or at a tax rate of $2.423. (*Id.*)

c. **Total Maximum Revenue per WADA (at $1.67) by percentiles of districts:** In order for the 10% of districts with the lowest revenue per WADA at $1.67 to receive the same total revenue per WADA that the 10% of districts with the highest revenue per WADA at $1.67 can raise at $1.67, the bottom 10% would have to tax, on average, $6.65 higher than the top 10%, or at a rate of $8.32. (Ex. 3081 at 1.) In order for the bottom 15% of districts to receive the same total revenue per WADA that the top 15% can raise at $1.67, the bottom 15% would have to tax, on average, $4.69 higher than the top 15%, or at a rate of $6.36. (*Id.*)

d. **Total Maximum Revenue (at $1.67) by percentiles of WADA:** In order for the districts with the lowest revenue per WADA at $1.67 enrolling 10% of the WADA to receive the same total revenue per WADA that the districts with the highest revenue per WADA at $1.67 enrolling 10% of the WADA can raise at $1.67, the bottom 10% would have to tax, on average, $3.71 higher than the top 10%, or at a rate of $5.38. (Ex. 3085 at 1.) In order for the bottom 15% of districts to receive the same total revenue per WADA that the top 15% can raise at $1.67, the bottom 15% would have to tax, on average, $3.25 higher than the top 15%, or a rate of $4.92. (*Id.*)

FOF 1302. This same pattern of property-poor districts having to tax at a higher tax rate in order to receive, or attempt to receive the same total revenue per WADA as their wealthier counterparts is evident when comparing total M&O plus I&S tax rates and M&O plus I&S revenue in the top and bottom 10, 15, 20, and 25 % of districts. (Ex. 3022 at 1; Ex. 3039 at 1; Ex. 3081 at 1; Ex. 3085 at 1.) Using the same process of sorting districts by wealth per WADA or yield per WADA, and grouping into percentiles of districts or WADA as described in FOF 1246, Dr. Pierce analyzed the total combined M&O plus I&S revenue available to the top and bottom 10 and 15 % of districts during the 2012-2013 school year. Under these analyses, property-poor districts in the bottom percentiles receive up to $4,690 less in total revenue per WADA (or up to $163,254 per classroom of twenty-two students) than the property-wealthy districts in the top percentiles, despite levying total taxes at rates up to 17.1 cents *more* than the property-wealthy districts. (*See infra* FOF 1303 – FOF 1306.) The gap in revenue available to the districts at the maximum total rate ($1.67) is once again even greater – up to $11,253 per WADA. (*See infra* FOF 1307 – FOF 1310.)

FOF 1303. **M&O+I&S Tax Rate and Revenue Gaps (at ATR) by Percentile of Districts**

Percentiles of Districts by Wealth	M&O+I&S Tax Gap 10%	M&O+I&S Revenue Gap 10%	Classroom Gap 10%		M&O+I&S Tax Gap 15%	M&O+I&S Revenue Gap 15%	Classroom Gap 15%
M&O+I&S ATR All Districts	12.6 ¢	$3,734	$129,291		9.6 ¢	$3,236	$111,254
M&O+I&S ATR I&S Districts	14.6 ¢	$3,881	$134,380		10.9 ¢	$3,208	$110,296
M&O+I&S Yield Per Penny All Districts	17.1 ¢	$4,824	$167,918		15.1 ¢	$3,679	$125,676
M&O+I&S Yield Per Penny I&S Districts	19.9 ¢	$4,690	$163,254		17.1 ¢	$3,595	$122,800

(Ex. 3312 at 1; Ex. 3313 at 1; Ex. 3318 at 1; Ex. 3319 at 1; Ex. 3336 at 1; Ex. 3337 at 1; Ex. 3342 at 1; Ex. 3343 at 1.)

FOF 1304. **M&O+I&S Tax Rate and Revenue Gaps (ATR) by Percentile of WADA**

Percentiles of Districts by Wealth	M&O+I&S Tax Gap 10%	M&O+I&S Revenue Gap 10%	Classroom Gap 10%		M&O+I&S Tax Gap 15%	M&O+I&S Revenue Gap 15%	Classroom Gap 15%
M&O+I&S ATR All Districts	9.0 ¢	$2,925	$100,381		7.5 ¢	$2,852	$97,385
M&O+I&S ATR I&S Districts	10,2 ¢	$2,882	$98,920		9.0 ¢	$2,779	$94,880
M&O+I&S Yield Per Penny All Districts	11.8 ¢	$2,672	$92,515		10.2 ¢	$2,327	$79,269
M&O+I&S Yield Per Penny I&S Districts	13.8 ¢	$2,656	$91,962		11.4 ¢	$2,338	$79,646

(Ex. 3324 at 1; Ex. 3325 at 1; Ex. 3330 at 1; Ex. 3331 at 1; Ex. 3348 at 1; Ex. 3349 at 1; Ex. 3354 at 1; Ex. 3355 at 1.)

FOF 1305. When viewed by total M&O plus I&S tax rates and revenue, the evidence established that property poor districts tax more, receive less total revenue, and suffer a significant classroom total funding disadvantage at all levels from top and bottom 5% to 50% of districts. (Ex. 3342 at 1; Ex. 3343 at 1; Ex. 3354 at 1; Ex. 3355 at 1.)

FOF 1306. The disparities in total M&S plus I&S revenue capacity are most apparent when comparing districts' access to revenue at the maximum rates.

FOF 1307. **Maximum M&O+I&S Revenue per WADA (at $1.67), by percentile of Districts**

MAX M&O+I&S BY DISTRICTS	I&S Tax Gap	I&S Revenue Gap	Classroom Gap
Top & Bottom 10% by Wealth	0.0 ¢	$11,253	$434,537
Top & Bottom 15% by Wealth	0.0 ¢	$8,532	$317,382

(Ex. 3468 at 1; Ex. 3469 at 1)

FOF 1308. **Maximum M&O+I&S Revenue per WADA (at $1.67), by percentile of WADA**

MAX M&O+I&S BY WADA	I&S Tax Gap	I&S Revenue Gap	Classroom Gap
Top & Bottom 10% by Wealth	0.0 ¢	$7,033	$250, 146
Top & Bottom 15% by Wealth	0.0 ¢	$6,344	$223,752

(Ex. 3474 at 1; Ex. 3475 at 1.)

FOF 1309. Considering the findings above, the evidence clearly established that the tax rate and revenue gaps under the current system greatly exceed those found in *Edgewood IV* and compel the conclusion that there is not a direct and close correlation between a district's tax effort and the educational resources available to it.

FOF 1310. The ample evidence clearly establishes that, under any credible analysis, the Texas school finance system was not financially efficient at the conclusion of the first phase of this trial and is not financially efficient at the conclusion of the second phase of this trial because there is not a direct and close correlation between tax effort and educational funds and districts do not have substantially equal access to funds to support a constitutionally adequate education. The actions of the 83rd Legislature did nothing to cure this unconstitutional inefficiency.

f. Dr. Pierce's analysis also shows that even after the actions of the 83rd Legislature, the State has failed to provide districts with substantially equal access to funding that is required by the Constitution in order to achieve a general diffusion of knowledge.

FOF 1311. The actions of the 83rd legislature did nothing to cure the structural defects that cause unconstitutional disparities in M&O revenues which remain among districts.

FOF 1312. The actions of the 83rd Legislature did not significantly close M&O tax rate, M&O revenue, and M&O yield gaps; therefore, the Legislature made little to no progress in making the school finance system more efficient. (RR58:165-166.)

i. Unconstitutional disparities in M&O revenues remain between districts after changes by the 83rd Legislature.

FOF 1313. **Total M&O Funding (Tiers I & II) Current and Projected by percentile of Districts under 83rd Legislature's Changes**

M&O BY DISTRICTS	M&O Tax Gap	M&O Revenue Gap	Classroom Gap
FY2012	7.9 ¢	$1,954	$65,484
FY2013	8.2 ¢	$2,124	$73,028
FY2014 (Projected)	¢	$1,978	$69,033
FY2015 (Projected)	¢	$1,915	$66,833

(Ex. 3010 at 1; Ex. 3012 at 1; Ex. 3308 at 1; Ex. 3309 at 1; Ex. 3356 at 1; Ex. 3357 at 1; Ex. 3404 at 1; Ex. 3405 at 1.)

FOF 1314. **Total M&O Funding (Tiers I & II) Current and Projected by percentile of WADA under 83rd Legislature's Changes.**

M&O BY WADA	M&O Tax Gap	M&O Revenue Gap	Classroom Gap
FY2012	7.1 ¢	$1,686	$55,785
FY2013	7.1 ¢	$1,837	$62,719
FY2014 (Projected)	¢	$1,695	$58,775
FY2015 (Projected)	¢	$1,635	$56,646

(Ex. 3025 at 1; Ex. 3027 at 1; Ex. 3320 at 1; Ex. 3321 at 1; Ex. 3368 at 1; Ex. 3369 at 1; Ex. 3416 at 1; Ex. 3417 at 1.)

FOF 1315. **Total M&O Funding (Tiers I & II) Current and Projected Yield by percentile of Districts under 83rd Legislature's Changes**

M&O BY YIELD	M&O Yield Gap	M&O Revenue Gap	Classroom Gap
FY2012	$28.00	$2,129	$70,399
FY2013	$33.38	$2,683	$91,641
FY2014 (Projected)	$32.42	$2,570	$89,403
FY2015 (Projected)	$32.12	$2,545	$90,723

(Ex. 3042 at 1; Ex. 3043 at 1; Ex. 3332 at 1; Ex. 3333 at 1; Ex. 3380 at 1; Ex. 3381 at 1; Ex. 3428 at 1; Ex. 3429 at 1.)

FOF 1316. **Maximum M&O Funding (Tiers I & II at $1.17) Current and Projected by percentile of Districts under 83rd Legislature's Changes**

M&O BY MAX RATE	M&O Tax Gap	M&O Revenue Gap	Classroom Gap
FY2012	0.0 ¢	$2,790	$95,678
FY2013	0.0 ¢	$3,547	$127,699
FY2014 (Projected)	0.0 ¢	$3,436	$128,675
FY2015 (Projected)	0.0 ¢	$3,411	$127,079

(Ex. 3068 at 1; Ex. 3070 at 1; Ex. 3452 at 1; Ex. 3453 at 1; Ex. 3476 at 1; Ex. 3477 at 1; Ex. 3500 at 1; Ex. 3501 at 1.)

FOF 1317. Under the changes by the 83rd Legislature, property poor districts continue to tax higher, receive less revenue and suffer significant classroom funding disadvantage. The 83rd Legislature's changes did little to close the gaps in M&O tax rates and revenues, and those changes by appropriation did nothing to alter the unconstitutional structure of the

system. The school finance system in its current form perpetuates financial inefficiency. (Ex. 3010; Ex. 3012; Ex. 3308; Ex. 3309; Ex. 3356; Ex. 3357; Ex. 3404; Ex. 3405; Ex. 3025; Ex. 3027; Ex. 3320; Ex. 3321; Ex. 3368; Ex. 3369; Ex. 3416; Ex. 3417; Ex. 3042; Ex. 3043; Ex. 3332; Ex. 3333; Ex. 3380; Ex. 3381; Ex. 3428; Ex. 3429; Ex. 3068; Ex. 3070; Ex. 3452; Ex. 3453; Ex. 3476; Ex. 3477; Ex. 3500; Ex. 3501.)

FOF 1318. The M&O gaps, as shown above, understate what is really going on in the system because wealthy districts continue to have the ability to use I&S funds for M&O purposes, which their less wealthy counterparts do not have the ability to do. This difference in access to funds for M&O expenses exacerbates the structural inefficiency reflected in tax and revenue gaps stated above.

ii. Unconstitutional disparities in I&S revenues persist among districts after changes by the 83rd Legislature.

FOF 1319. The legislature did nothing to change facilities funding and the disparities between districts based on wealth continue to remain problematic, particularly in light of the Legislature's failure to fund I&S equalization for a second biennium. When analyzing I&S tax rates and I&S revenue and sorting all districts by wealth and grouping those districts by percentiles of districts, comparing the top and bottom 15% of districts by wealth, the tax rate gap in FY12 was 1.3 cents and by FY 13 had grown to 1.4 cents. The revenue gap in FY12 was $865 and by FY13 had grown to $1,112 and is projected for FY14 and FY15 to be $1,094 and $1,094, respectively. The classroom funding disadvantage in FY12 was $28,985, by FY13 had grown to $38,226 and is projected to be in FY14 and FY15 $38,197 and $38,195, respectively. (Ex. 3013 at 1; Ex. 3014 at 1; Ex. 3310 at 1; Ex. 3311 at 1; Ex. 3358 at 1; Ex. 3359 at 1; Ex. 3406 at 1; Ex. 3407 at 1.)

FOF 1320. When analyzing I&S revenue and sorting all districts by wealth and grouping those districts by percentiles of WADA, comparing the top and bottom 15% of districts by wealth, the revenue gap in FY12 was $770 and by FY13 had grown to $1,015 and is projected for FY14 and FY15 to be $999 and $999, respectively. The classroom funding disadvantage in FY12 was $25,476, by FY13 had grown to $34,667 and is projected to be in FY14 and FY15 $34,636 and $34,634, respectively. (Ex. 3028 at 1; Ex. 3029 at 1; Ex. 3322 at 1; Ex. 3323 at 1; Ex. 3370 at 1; Ex. 3371 at 1; Ex. 3418 at 1; Ex. 3419 at 1.)

FOF 1321. When analyzing I&S tax rates, I&S revenue, and I&S yield per penny and sorting all districts by yield and grouping those districts by percentiles of districts, when comparing the top and bottom 15% of districts by wealth, the tax rate gap in FY12 was $0.00 but by FY13 had grown to 2.1 cents. The revenue gap in FY12 was $796 and by FY 13 had grown to $996 and is projected for FY14 and FY15 to be $969 and $976, respectively. The yield gap in FY12 was $52.10 and by FY13 had grown to $83.69 and is projected for FY14 and FY15 to be $81.69 and $81.86, respectively. The classroom funding disadvantage in FY12 was $26,325, by FY13 had grown to $34,035 and is projected to be in FY14 and FY15 $33,722 and $34,783, respectively. (Ex. 3044 at 1; Ex. 3045 at 1; Ex. 3334 at 1; Ex. 3335 at 1; Ex. 3382 at 1; Ex. 3383 at 1; Ex. 3430 at 1; Ex. 3431 at 1.)

FOF 1322. When analyzing I&S revenue and I&S yield per penny and sorting all districts by yield and grouping those districts by percentiles of WADA, when comparing the top and bottom 15% of districts by wealth, the revenue gap in FY12 was $642 and by FY 13 had grown to $669 and is projected for FY14 and FY15 to be $671 and $642, respectively. The yield gap in FY12 was $36.75 and by FY13 had grown to $50.66 and is projected for FY14 and FY15 to be $50.87 and $48.77, respectively. The classroom funding disadvantage in FY12 was $21,087, by FY13 had grown to $22,783 and is projected to be in FY14 and FY15 $23,666 and $22,626, respectively. (Ex. 3057 at 1; Ex. 3058 at 1; Ex. 3346 at 1; Ex. 3347 at 1; Ex. 3394 at 1; Ex. 3395 at 1; Ex. 3442 at 1; Ex. 3443 at 1.)

FOF 1323. This same pattern (the property-poor districts receive less I&S revenue, receive a smaller yield per penny of tax effort, and suffer under a significant classroom funding disadvantage as compared to their wealthier counterparts) is evident when comparing I&S revenue and I&S yield in the top and bottom 5 % of districts all the way up to the top and bottom 50 % of districts. (Ex. 3013; Ex. 3014; Ex. 3310; Ex. 3311; Ex. 3358; Ex. 3359; Ex. 3406; Ex. 3407; Ex. 3028; Ex. 3029; Ex. 3322; Ex. 3323; Ex. 3370; Ex. 3371; Ex. 3418; Ex. 3419; Ex. 3044; Ex. 3045; Ex. 3334; Ex. 3335; Ex. 3382; Ex. 3383; Ex. 3430; Ex. 3431; Ex. 3057; Ex. 3058; Ex. 3346; Ex. 3347; Ex. 3394; Ex. 3395; Ex. 3442; Ex. 3443.)

FOF 1324. The actions of the 83rd Legislature did not significantly close the I&S revenue gaps or the I&S yield gaps, therefore making little to no progress in making the school finance system more efficient.

iii. Unconstitutional disparities in total revenue (M&O plus I&S) remain between districts following changes by the 83rd Legislature.

FOF 1325. When analyzing M&O plus I&S revenue and sorting all districts by wealth and grouping those districts by percentiles of districts, comparing the top and bottom 15% of districts by wealth, the revenue gap in FY12 was $2,819 and by FY13 had grown to $3,236 and is projected for FY14 and FY15 to be $3,072 and $3,009, respectively. The classroom funding disadvantage in FY12 was $94,469, by FY13 had grown to $111,254 and is projected to be in FY14 and FY15 $107,230 and $105,028, respectively. (Ex. 3015 at 1; Ex. 3016 at 1; Ex. 3312 at 1; Ex. 3313 at 1; Ex. 3360 at 1; Ex. 3361 at 1; Ex. 3408 at 1; Ex. 3409 at 1.)

FOF 1326. When analyzing M&O plus I&S revenue and sorting all districts by wealth and grouping those districts by percentiles of WADA, when comparing the top and bottom 15% of districts by wealth, the revenue gap in FY12 was $2,456 and by FY13 had grown to $2,852 and is projected for FY14 and FY15 to be $2,695 and $2,634, respectively. The classroom funding disadvantage in FY12 was $81,260, by FY13 had grown to $97,385 and is projected to be in FY14 and FY15 $93,391 and $91,281, respectively. (Ex. 3030 at 1; Ex. 3031 at 1; Ex. 3324 at 1; Ex. 3325 at 1; Ex. 3372 at 1; Ex. 3373 at 1; Ex. 3420 at 1; Ex. 3421 at 1.)

FOF 1327. This same pattern (where property-poor districts receive less total revenue and suffer a significant classroom funding disadvantage as compared to their wealthier counterparts) is evident when comparing total revenue in the top and bottom 5 % of districts all the way up to the top and bottom 50 % of districts. (Ex. 3015; Ex. 3016; Ex. 3312; Ex. 3313; Ex. 3360; Ex. 3361; Ex. 3408; Ex. 3409; Ex. 3030; Ex. 3031; Ex. 3324; Ex. 3325; Ex. 3372; Ex. 3373; Ex. 3420; Ex. 3421.)

iv. Unconstitutional disparities in revenue districts receive at $1.67 (Max M&O plus I&S) remain between districts.

FOF 1328. When analyzing maximum total revenue (M&O plus I&S) with all districts taxing at the maximum allowed $1.67 and sorting all districts by wealth and grouping those districts by percentiles of districts, when comparing the top and bottom 15% of districts by wealth, the revenue gap in FY12 was $7,511 and by FY13 had grown to $8,532 and is projected for FY14 and FY15 to be $8,318 and $8,277, respectively. The classroom funding disadvantage in FY12 was $289,970, by FY13 had grown to $317,382 and is projected to be in FY14 and FY15 $313,748 and $312,045, respectively. (Ex. 3080 at 1; Ex. 3082 at 1; Ex. 3468 at 1; Ex. 3469 at 1; Ex. 3492 at 1; Ex. 3493 at 1; Ex. 3516 at 1; Ex. 3517 at 1.)

FOF 1329. This same pattern (where property-poor districts receive less total revenue and suffer a significant classroom funding disadvantage as compared to their wealthier counterparts) is evident when comparing total revenue, with all districts taxing at $1.67, in the top and bottom 5 % of districts all the way up to the top and bottom 50 % of districts. (Ex. 3080, 3082; Ex. 3468; Ex. 3469; Ex. 3492; Ex. 3493; Ex. 3516; Ex. 3517.)

FOF 1330. When analyzing the maximum total revenue (M&O plus I&S) a district could raise, it is clear that the actions of the 83rd Legislature did not significantly close the total inefficiency built in to the system. Therefore, the Legislature made little to no progress in structuring the school finance system to be more efficient.

FOF 1331. The tax rate gap and the revenue gap between wealthy and non-wealthy districts both increased from FY12 to FY13. The actions of the 83rd Legislature will affect FY14 and FY15, but those actions did not, in any form or fashion, significantly change the existing revenue gaps between wealthy and non-wealthy districts as was found by this Court using FY12 data and is shown existing today using FY13 data.

FOF 1332. The actions of the 83rd Legislature did not cure the unconstitutional infirmities previously found by this Court. There continues to be too much unequalized revenue in the system such that the system is unconstitutionally inefficient. After the actions of the 83rd Legislature, all districts continue to be unable to provide a general diffusion of knowledge to their students at similar tax effort.

g. The disparities identified by Plaintiffs' experts can be seen in regions throughout the state.

FOF 1333. In virtually every county in Texas where there is more than one district, there are meaningful and substantial differences in tax rates and the amount of revenue received between the districts and these disparities remain even after the actions of the 83rd Legislature. (RR9:32-33; RR9:130-37; Ex. 3009 at 1; RR63:53-67; Ex. 3542.)

FOF 1334. In virtually every county in Texas where there is more than one district, the situation exists where property-poor districts tax at the same or higher rates than their wealthier neighbors, yet receive substantially less revenue per WADA. This remains true even after the actions of the 83rd Legislature. (Ex. 3009 at 1; RR9:32-33; RR63:53-67; Ex. 3542.)

FOF 1335. The differences in tax rates and revenue received between property-poor districts and their property-wealthy counterparts, referenced in the previous two findings, are differences which are built in to the system and are simply what the system allows. (RR63:53-67; Ex. 3542.)

i. Testimony by superintendents revealed large disparities in M&O revenue that leave property-poor districts unable to provide a general diffusion of knowledge, much less enrichment.

FOF 1336. Testimony from Plaintiffs districts' superintendents and taxpayers make it clear to this Court that the disparities in tax rates and revenues identified by the experts' statewide analyses can be seen in districts throughout the state. This evidence includes, but is not limited to, the testimony examples detailed below:

FOF 1337. Pflugerville ISD Superintendent Charles Dupre testified regarding the disparities in funding levels within Travis and Williamson Counties, which show revenue differences of up to $1,417 at similar tax rates:

	M&O Tax Rate	M&O Revenue per WADA	Difference
Pflugerville	1.04	5,506	
Hutto	1.04	5,821	+ 315
Manor	1.04	6,079	+ 573
Round Rock	1.04	6,251	+ 745
Marble Falls	1.04	6,307	+ 801
Dripping Springs	1.04	6,319	+ 813
Leander	1.04	6,358	+ 852
Georgetown	1.04	6,418	+ 912
Lake Travis	1.04	6,518	+ 1,012
Austin	1.079	6,531	+ 1,025
Lago Vista	1.04	6,710	+ 1,204
Eanes	1.04	6,834	+ 1,328
Jarrel	1.04	6,923	+ 1,417

(Ex. 3238 at 7.)

FOF 1338. Abilene ISD superintendent Dr. Heath Burns testified that Abilene ISD has a tax rate of $1.04 – the maximum amount Abilene can tax without a TRE. In the 2011-12 school year, the first $1.00 of Abilene ISD's M&O tax rate generated $5,015 per WADA compared to Lewisville ISD's revenue per WADA of $5,849 at the same rate. (*See* RR19:57-58 (referencing Ex. 6355 at 13).) Dr. Burns testified that the additional revenue could have a tremendous positive impact in his district; however, in order to raise the $5,849 per WADA available to Lewisville ISD, Abilene would have to tax at a rate of $1.20 (59.97 * 6 cents + 31.95 * 14 cents)[76] – twenty cents higher than Lewisville taxes, and higher than the legal limit. This calculation, based on the amount of revenue the districts have under the current system, shows a disparity significantly greater than that allowed by the Supreme Court in *Edgewood IV*. *See Edgewood IV*, 917 S.W.2d at 731. Importantly, *both* districts' revenue amounts are less than any of the estimates of adequacy provided in this case. (*See supra* Part I.C.5.f (FOF 625, *et seq.*).)

FOF 1339. According to former Northside ISD (Bexar County) Superintendent Dr. John Folks, Texas has an inequitable school finance system and children in the property-poor school districts suffer as a result. (RR25:99-100, 125-28; *see also* RR16:51-52.) Northside ISD is a Chapter 42 mid-wealth school district, with a wealth level of $288,349 per WADA in 2011-12. (Ex. 4252.) For 2011-12, Northside ISD taxed at $1.04 and generated $5,671 per WADA, which is less than any of the adequacy estimates. (*Id.*) Neighboring Alamo Heights ISD (with property values of $980,903 per WADA) taxed at $1.04 and generated about $1,000 more for $6,666 per WADA, even after paying recapture. (*Id.*)

[76] This calculation assumes that the "copper penny" yield continues beyond the current statutory $1.17 cap.

FOF 1340. Anton ISD taxes at $1.17 and receives $5,278 per WADA. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per WADA. Anton's tax rate is 14.9 cents higher, but Anton receives $2,257 less in revenue. (Ex. 3006; Ex. 3010.) Mr. Jim Knight, the superintendent of Anton ISD (a property-poor non-recapture district), is a former assistant superintendent of a property-wealthy school district, Canadian ISD. Canadian ISD generates approximately $2,000 per WADA more than Anton ISD, despite taxing twenty-three cents lower. Mr. Knight testified about the remarkable differences between the educational opportunities he was able to afford for students in a property-wealthy district compared to a property-poor district. These opportunities made a difference in the outcomes of students and the overall teaching environment in the schools. (Ex. 3203, J. Knight Dep., at 26-32.) For example, Anton ISD does not have the funds to offer its students the courses necessary for the distinguished curriculum degree. (*Id.* at 46.) The district also does not have adequate funding to compete for qualified teachers. (*Id.* at 24-25.)

FOF 1341. Superintendent Roy Knight worked in a property-wealthy district, Hallsville ISD, before becoming superintendent of Lufkin ISD. The major differences between the districts were that Hallsville was able to provide up-to-date technology for its district, keep class sizes smaller, and have continuous professional development training. Hallsville ISD brought in experts on brain development and assisted teachers with instructional techniques. Test scores were higher as a result. Hallsville is about 100 miles from Lufkin and is a similar community. Hallsville's poverty level is not as high and they have the benefit of oil and gas activity in their district. They have about $6,512 per WADA compared to $5,290 per WADA at the same $1.04 tax rate as Lufkin. (Ex. 3199, R. Knight Dep., at 42-45.)

FOF 1342. Alief ISD taxes at $1.125 and receives $5,683 per WADA. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per WADA. Alief's tax rate is 10.4 cents higher, but Alief receives $1,852 less in revenue. (Ex. 3006; Ex. 3010.) Even before Alief was forced to make $22 million in budget cuts because of target revenue funding, it lacked the resources to offer a full curriculum and prepare its students to be college and career ready. (RR8:121.) H.D. Chambers, the Superintendent of Alief, who previously served as the superintendent of Stafford MSD, testified that, because of higher target revenue, Stafford MSD was able to offer, for example, a full blown science, technology, engineering, and mathematics (STEM) program for a large percentage of its students. (Ex. 3205, Chambers Dep., at 37-38.)

FOF 1343. Belton ISD taxes at $1.17 and receives $5,946 per WADA. The wealthiest 15% of districts, on average, tax at $1.021 and receive $7,535 per WADA. Belton's tax rate is 14.9 cents higher, and Belton receives $1,589 less in revenue. (Ex. 3006; Ex. 3010.) Superintendent Kincannon testified that the distribution of funds to Belton ISD is not fair. Surrounding districts are all taxing at $1.04 and getting more revenue per WADA than Belton ISD, which taxes at the maximum, $1.17. (Ex. 3226, Kincannon Dep., at 148.)

FOF 1344. Brownwood ISD taxes at $1.04 and receives $5,490 per WADA. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per

WADA. Brownwood's tax rate is 1.9 cents higher, but Brownwood receives $2,045 less in revenue. (Ex. 3006; Ex. 3010.)

FOF 1345. Bryan ISD taxes at $1.04 and receives $5,536 per WADA. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per WADA. Bryan's tax rate is 1.9 cents higher, and Bryan receives $1,999 less in revenue. (Ex. 3006; Ex. 3010.) Bryan ISD does not have the financial resources to exercise discretion in the curriculum it offers. It can barely meet state mandates. (Ex. 3200, Wallis Dep., at 63-64.) The district does not have the funding to provide the variety of courses necessary to get its high school students ready for the distinguished curriculum. (*Id.* at 33, 41, 40-43.)

FOF 1346. Edgewood ISD taxes at the maximum $1.17 M&O rate and receives $5,825 per WADA compared to cross-town wealthy school district, Alamo Heights ISD, which receives $6,348 per WADA while taxing at $1.04. (Ex. 20038.) Edgewood ISD, which has a very challenging student population, has many needs previously identified in these findings. Edgewood ISD still needs to replace additional school buildings but it does not have the capacity to fund the construction without additional IFA funds and those funds are not presently available. (Ex. 4224-S, Cervantes Dep., at 73, 200; *see also supra* Part I.C.7.d.i (FOF 1091, *et seq.*).)

FOF 1347. Everman ISD taxes at $1.17 and receives $5,629 per WADA. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per WADA. Everman's tax rate is 14.9 cents higher, and Everman receives $1,906 less in revenue. (Ex. 3006; Ex. 3010.)

FOF 1348. Because of its lower yield, Everman ISD cannot raise the $6,576, which is the *Edgewood IV* calculation adjusted for inflation, at a tax rate of $1.17, and it costs more for Everman ISD to educate its students in 2012 than it did in 1993 because of the higher standards that have been adopted. (RR12:201.) Everman ISD does not have discretion to spend its funds on anything not required by state mandates and standards. (RR5:196-99.)

FOF 1349. Looking at I&S on the basis of yield per penny, Everman receives $26.41 per I&S penny, while neighboring districts Carroll and Eagle Mountain-Saginaw receive $69.60 and $29.36, respectively. (Ex. 3541, Pfeifer Dep. (Vol. II), at 26.)

FOF 1350. If Everman ISD was receiving the yield on their I&S pennies that Carroll is receiving on theirs, Everman ISD would receive approximately three times more I&S revenue. (*Id.*)

FOF 1351. Van ISD taxes at $1.17 and receives $5,731 per WADA. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per WADA. Van's tax rate is 14.9 cents higher, and Van receives $1,804 less in revenue. (Ex. 3006; Ex. 3010.) Van ISD is already at the $1.17 tax cap and does not have the ability to raise more money. It cannot prepare children to be college or career ready with existing funding. (Ex. 3201, Witte Dep., at 33.)

FOF 1352. Kaufman ISD taxes at $1.17 and receives $5,814 per WADA. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per WADA. Kaufman's tax rate is 14.9 cents higher, and Kaufman receives $1,721 less in revenue. (Ex. 3006; Ex. 3010.)

FOF 1353. Los Fresnos ISD taxes at $1.17 and receives $5,910 per WADA. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per WADA. Los Fresnos's tax rate is 14.9 cents higher, and Los Fresnos receives $1,625 less in revenue. (Ex. 3006; Ex. 3010.)

FOF 1354. Lubbock ISD taxes at $1.04 and receives $5,310 per WADA. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per WADA. Lubbock's tax rate is 1.9 cents higher, and Lubbock receives $2,225 less in revenue. (Ex. 3006; Ex. 3010.) Even though Lubbock ISD's M&O tax rate is $1.04, it has not pursued a TRE because of the poverty of its population. The success of a TRE is doubtful because its voters are aware that even if Lubbock ISD taxed at $1.17 it could not raise what its neighbors, Friendship ISD and Lubbock-Cooper ISD, raise at $1.04. (Ex. 3198, Garza Dep., at 30-32.) There is no educationally sound policy reason why students in Friendship ISD or Lubbock-Cooper ISD need more funding to educate their students than Lubbock ISD. The number of students living in poverty is higher in Lubbock ISD than in Friendship ISD or Lubbock-Cooper ISD. Lubbock ISD is funded at levels lower than Friendship ISD or Lubbock-Cooper ISD. (*Id.* at 31-32.)

FOF 1355. Lufkin taxes at $1.04 and receives $5,290 per WADA. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per WADA. Lufkin's tax rate is 1.9 cents higher, and Lufkin receives $2,245 less in revenue. (Ex. 3006; Ex. 3010.)

FOF 1356. Pflugerville ISD taxes at $1.04 and receives $5,506 per WADA. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per WADA. Pflugerville's tax rate is 1.9 cents higher, and Pflugerville receives $2,029 less in revenue. (Ex. 3006; Ex. 3010.)

FOF 1357. Quinlan ISD taxes at $1.04 and receives $5,326 per WADA, an amount less than all of the adequacy estimates. The 15% of districts with the highest property wealth, on average, tax at $1.021 and receive $7,535 per WADA. Quinlan ISD's tax rate is 1.9 cents higher, and Quinlan ISD receives $2,209 less in revenue. (Ex. 3006; Ex. 3010.) Nearby property-wealthy Rockwall ISD, at the same tax rate, gets $6,385 per WADA. (RR24:89.) Quinlan ISD lost forty to forty-five teachers in 2011-12, most of who left because they could get better salaries in nearby districts. Quinlan is the de facto teacher training ground for Rockwell ISD. The lack of continuity hurts the education of students in Quinlan. (RR20:84-85.)

ii. Testimony by taxpayer plaintiffs demonstrated large disparities in M&O revenue between neighboring districts across the state, despite higher tax rates.

FOF 1358. In many cases, taxpayers in two districts within the same county pay taxes according to the same adopted tax rate on property of essentially the same value. However, the resulting revenue the State's funding scheme provides to educate the children who happen to live in those districts is drastically different. In other instances, not only is the revenue provided by the State drastically different, but the tax rates charged the property owners – and the resulting taxes paid on the similarly valued property – are also different, to the distinct disadvantage of the those owning property in the lower funded district. (RR9:129-134, Ex. 3128 – Ex. 3186.)

FOF 1359. In the 2011-2012 school year, a Pflugerville ISD taxpayers' home was valued by the Travis County Appraisal District ("TCAD") at $165,328. The homeowner paid school taxes at an adopted M&O rate of $1.04 on a taxable value of $150,328, after the homestead exemption was applied. In Eanes ISD, another homeowner whose home was valued by the TCAD at $165,231, paid school taxes at an adopted M&O rate of $1.04 on a taxable value of $150,231 after his homestead exemption was applied. The homeowner in Pflugerville, on property within the same county and appraised by the same appraisal district, paid about the same in taxes to support the maintenance and operations of the local school district as their counterpart with property in Eanes ISD. But, because of the gross inequities inherent in Texas's current school funding scheme, the taxpayers' children in Pflugerville ISD had access to over $1,300 *less* per weighted student than those in Eanes ISD. At Eanes ISD's funding level, a classroom of twenty-two children in Pflugerville would have over $30,000 in additional funding. (RR9:135-136; Ex. 3172 at 1; Ex. 3187, Pierce Report, at 17.)

FOF 1360. In Irving ISD in 2011-2012, a homeowner had his homestead valued at $164,760 by the Dallas County Appraisal District ("DCAD"). His taxable value, after homestead exemptions were applied, was $149,760 and the maintenance and operations tax rate was set at $1.04 per $100 valuation. In Highland Park ISD ("HPISD"), the DCAD appraised another homeowner's homestead at $164,750. After his homestead exemptions were applied, which included additional local option exemptions, the taxable value of that property was set at $116,800 and M&O taxes for the school district were assessed at a rate of $1.027. The homeowner in Irving ISD paid taxes on a similarly valued property at a similar tax rate, and on a larger taxable value, but while he paid more in taxes on property of almost identical market value, the state funding system provided only $5,308 per weighted student for Irving ISD and $6,923 per weighted student for HPISD. If a classroom of twenty-two children in Irving was funded at the HPISD level, its funding level would be more than $40,000 higher. (Ex. 3187, Pierce Report, at 17.)

FOF 1361. Located in Nacogdoches County in East Texas, Cushing ISD and Central Heights ISD are neighboring districts sharing a common boundary. In 2011-2012, a homeowner in Central Heights ISD had his home appraised at $215,320 and after exemptions were applied (including a local option homestead exemption), paid school district M&O taxes

at a rate of $1.04 on a taxable value of $157,260. In Cushing ISD, a homeowner with similarly valued property ($215,160 and $157,130 after exemptions) had school property taxes assessed at the same $1.04 rate. In this case, even though the tax effort of the two property owners was almost identical, the state funding system provided Central Heights ISD with about $2,400 *less* per weighted student than it did Cushing ISD. At this 45% higher funding level, Central Heights would have an additional $65,000 in funding for every twenty-two children. (*Id.* at 17-18.)

FOF 1362. River Road ISD and Bushland ISD are neighboring school districts located just north of Amarillo, in Potter County. In 2011-2012, after exemptions, a homeowner in River Road ISD had a taxable valuation of $195,448. A homeowner in Bushland ISD had a taxable valuation of $195,446 on his home. Both districts assessed M&O tax rates of $1.04 per $100 valuation so the difference in required tax effort for each homeowner would have been insignificant. However, in 2011-2012 the state funding system generated over $1,300 *less* per weighted student for River Road ISD than it did for Bushland ISD. (*Id.* at 18.)

FOF 1363. In 2011-2012, a homeowner in Laredo ISD had a taxable value of $109,662 on his home. In the same county, a homeowner in Webb CISD had a taxable value of $109,530 assigned to his home. The homeowner in Laredo ISD paid school property taxes for M&O at an assessed rate of $1.04 per $100 of valuation. The homeowner in Webb CISD paid school property taxes for M&O at an assessed rate of $0.8033 per $100 of valuation. Even though the value of the properties was essentially equal, the homeowner in Laredo paid 30% more in school property taxes. The state funding system provides Laredo ISD with $5,530 per weighted student, yet each weighted student in Webb CISD was funded at $12,398, well over twice the funding level provided per weighted student for Laredo ISD. (*Id.*)

FOF 1364. Randy Pittinger is a homeowner and taxpayer in Belton ISD. (RR8:66-70.) He is a private social worker and has been a hospital administrator. He has three children who graduated from the Belton ISD several years ago. (*Id.*) He is on the school board. His M&O taxes are $1.17. His house is valued at $316,493. (*Id.*) The $1.17 tax rate generates $5,946 per WADA for Belton ISD. (*Id.*) A taxpayer in a house of similar value in Salado ISD, which is also in Bell County, is taxed at $1.04 for M&O and receives $5,941 in revenue per WADA. (*Id.*) A taxpayer who lives in a house of similar value to Mr. Pittinger's in the nearby Georgetown ISD is taxed at $1.04 and receives $6,418 in revenue per WADA. (*Id.*)

FOF 1365. Brad King is a homeowner and taxpayer in Bryan ISD. (RR8:26-31.) He is an engineer. (*Id.*) His house is valued at $230,050. (*Id.*) His M&O taxes are $1.04. (*Id.*) The tax rate generates $5,536 per WADA for the Bryan ISD. A taxpayer in the College Station ISD adjoining Bryan ISD, who lives in a house of similar value, pays an M&O tax of $1.00 and College Station ISD receives $6,339 per WADA.

FOF 1366. Chip Langston is a homeowner and taxpayer in Kaufman ISD. (RR8:9-14.) He is a CPA. (*Id.*) He has one daughter who graduated from Kaufman ISD several years ago.

(*Id.*) He is on the school board. (*Id.*) His house is valued at $230,060. (*Id.*) His M&O taxes are $1.17. (*Id.*) This tax rate generates $5,814 per WADA for Kaufman ISD. (*Id.*) A taxpayer who lives eight miles away in Forney ISD, who has a house of similar value, pays $1.04 in M&O taxes. (*Id.*) Forney ISD receives $5,741 per WADA. (*Id.*) An additional taxpayer who lives in nearby Sunnyvale ISD, in a house of similar value, pays $1.02 in M&O taxes and Sunnyvale ISD receives $6,651 per WADA.

FOF 1367. Norman Baker is a homeowner and taxpayer in Hillsboro ISD. (RR8:53-57.) He is a production supervisor at Anheuser-Busch. (*Id.*) He has two sons who have graduated from Hillsboro ISD and a daughter who is still attending school. (*Id.*) He is on the Hillsboro ISD school board. (*Id.*) His house is valued at $41,630. (*Id.*) His M&O taxes are $1.15. (*Id.*) This tax rate generates $4,915 per WADA for Hillsboro ISD. (*Id.*) A taxpayer who lives in nearby Glen Rose ISD in a house of similar value pays $0.825 in M&O taxes. (*Id.*) Glen Rose ISD receives $8,945 per WADA – or 45% more funding per WADA for 32.5 pennies less in tax rate or $88,660 for a classroom of 22 students.

FOF 1368. These findings are not dependent on factors such as geographic locations, size, or population, but they occur in counties located all across the state and in counties of all sizes of population, both rural and urban. (Ex. 3187, Pierce Report, at 18.) These violations of substantially equal access to similar revenue for similar tax effort are not bound to just one area of the state or just one size of district or county. (*Id.*) Rather, they occur in all areas of the state and in all kinds of districts affecting hundreds of thousands of students, and the financial and economic impact is substantial and compelling. (*Id.*)

h. The disparities in funding and educational opportunities between property-poor and property-wealthy school districts is further evidenced by the experiences of Texas families.

FOF 1369. The effects of inadequate and inequitable resources for property-poor districts are not only shown in the data analysis at the district and school levels, but are also evidenced by educational experiences of the parents and students. Edgewood Plaintiff parent Yolanda Canales testified about the inequalities in educational opportunities her children experienced in a property-poor district, Pasadena ISD, compared to when they attended schools in a property-wealthy district, Clear Creek ISD. (RR17:236-254.) In the 2012-13 school year, she had two children on the free and reduced-price lunch program attending Pasadena ISD schools. (RR17:237.)

FOF 1370. Ms. Canales initially had three children attending public schools in property-poor Pasadena ISD. (RR17:236-54.) When her family's income increased, her family purchased a home in nearby property-wealthy Clear Creek ISD in order to have access to better schools. (RR17:241-54.) Ms. Canales immediately noticed the differences, such as better quality teachers, additional educational resources and programs, more extracurricular activities, and smaller class sizes. (*Id.*) When her children fell behind in school, the Clear Creek schools offered lots of tutoring. (*Id.*)

FOF 1371. Ms. Canales would have preferred keeping her children in the wealthy district of Clear Creek ISD but after getting a divorce and the crash of the real estate market (Ms. Canales was a real estate agent), she was forced to move back to Pasadena ISD schools in 2008 with her children in a single-wide mobile home. (*Id.* at 236-39.) Her children's quality of education suffered as a result. (*Id.*)

FOF 1372. Ms. Canales's eldest daughter graduated in 2010 on the minimum high school program and passed the TAKS test. She now struggles with coursework at the community college. (RR17: 243-45.) Ms. Canales's daughter in grade twelve has also struggled, despite passing the TAKS tests. (RR17:246-49.) She has taken coursework through the credit-recovery program, PLATO. (*Id.*) That program is not monitored full-time with a teacher and essentially allows students to recover credits without fully understanding the material. (*Id.*) Ms. Canales must also pay for her daughter's night school with her very limited income. (*Id.*)

FOF 1373. Ms. Canales also spoke of the differences in basic science activities. For example, at Clear Creek, her eldest daughter dissected animals but at Pasadena, her younger daughter has not had any science experiments. (RR17:236-49.) As another example, her daughter attending high school in Pasadena schools does not bring home books because they do not have enough books for the students. Sometimes substitutes are not available in the classrooms, and the students are left unattended. (*Id.*)

FOF 1374. Ms. Canales's youngest child attends half-day pre-K in Pasadena ISD. The program, which runs for only three hours, does not offer enough time for learning in that small window. (RR17:249-51.) The teacher appears overwhelmed and does not have enough assistance. (*Id.*) The classroom is also overcrowded and lacks supplies. (*Id.*) In fact, the teacher has to purchase some of her supplies. (*Id.*)

FOF 1375. Ms. Canales joined this lawsuit because she is very concerned about her children's education after she, herself, struggled and obtained only a GED. (RR17:237-54.) Ms. Canales has also seen her older children struggle with being college ready and wants to ensure better opportunities for her youngest child. (*Id.*) She is aware of the differences in tax rates and funding between her district and other surrounding property-wealthy districts. (*Id.*) She has seen and experienced the variation in resources and education between property-poor and property-wealthy school districts. When asked what she wants out of this lawsuit, Ms. Canales responded that she "just want[s] fairness; equal opportunities for my children as well, regardless of the neighborhood we live in." (RR17:252-54.)

4. The Structure of the system makes equalization impossible.

a. Gross disparities in property values still exist among school districts across Texas.

FOF 1376. Texas continues to rely substantially on local property taxes to fund its public schools, though property values across Texas remain incredibly disparate. Property wealth

variation alone explains about half of the variation in M&O revenues per WADA. (Ex. 3188, Baker Report, at 39.) Based on funding levels for the 2012-13 school year, property values per WADA range from $22,218 (lowest) in Boles ISD to $7,341,341 (highest) in Kenedy Countywide ISD. (Ex. 4252.) Even after the wealth equalization efforts described in FOF 45 – FOF 49 above, these disparities result in wide gaps in revenue per WADA. For its 740 WADA, Boles ISD receives $5,648 per WADA while taxing at the maximum $1.17 M&O rate; in contrast, for its 145 WADA, Kennedy Countywide ISD receives $11,216 per WADA while taxing at a $1.00 M&O tax rate – nearly twice that of Boles ISD. (Ex. 4252.) The vast majority of these differences cannot be explained away by local tax effort or any educational-related factors such as type of students served, small-size adjustments or transportation as adjustments for weighted students, school size, and transportation are all incorporated into the revenue per WADA figures. (*See, e.g.*, RR23:105-06, 151, 160; RR57:15-18, 45-47.)

FOF 1377. These disparities can be seen in various regions throughout Texas and have much more to do with what is above and below the ground than with educational need. For example, Lufkin ISD is surrounded by, but not in, oil and gas shale areas. (Ex. 3199, R. Knight Dep., at 39-40, 41-42.) Lufkin ISD generated $5,299 per WADA in 2012-13, but a 30-minute bus ride from Lufkin takes you to property-wealthy districts like Chireno ISD and Garrison ISD that have over $6,500 per WADA, and Carthage ISD that has $6,700 per WADA. (Ex. 3006; Ex. 3199 at 40.) As La Feria ISD Superintendent Dr. Nabor Cortez testified, the property-poor districts in the Valley all wished they had their own little island like property-wealthy Point Isabel ISD: "We all would love to have an island in our district, but we don't. We don't. We are poor and we are without our island." (RR18:86-87.) Point Isabel ISD, which encompasses Padre Island, taxes at $0.98 and raises over $300 more per WADA than its neighbor, Los Fresnos ISD which, taxes *nineteen cents higher* at $1.17. (*See* Ex. 3207, Salazar Dep., at 12-14; Ex. 3006.)

b. The basic structure established in 2006 – and still in place today – over time collectively increased the disparities in revenues available to property-wealthy versus property-poor districts to unconstitutional levels.

FOF 1378. The stark inequities in the resources and educational opportunities the State makes available for students in property-poor and property-wealthy districts discussed above did not occur by accident but result from systemic defects. At the time of *WOC II*, the then-existing school finance formulas emanated from the same formulas adopted by the Legislature in 1993 and found constitutional in 1995. *See WOC II*, 176 S.W.3d at 783-84, 791-92. However, following the 2005 *WOC II* decision, the State made at least three significant changes under HB1 that, collectively, increased the inequities to heights not seen since before 1993: the compression of M&O tax rates by one-third; the reliance on a new hold-harmless provision commonly known as "target revenue" in lieu of formula funding to fund the majority of school districts; and the introduction of unrecaptured revenue generated from the "golden pennies." (RR23:24-31.) These inequities caused by the structure of M&O funding are exacerbated by I&S funding that is unrecaptured and

available only by appropriation. That some districts are able to use I&S funds for expenses that were traditionally paid with M&O funds only increases the disparity.

i. The compression of tax rates arbitrarily reduces districts' taxing capacity to support basic adequate education and allows property-wealthy school districts to access greater revenue at lower tax rates.

FOF 1379. As noted above, the post-*WOC II* legislation "compressed" districts tax rates by one-third of their 2005 rate. (*See supra* FOF 26 – FOF 27 and FOF 40.) A district that had been taxing at the $1.50 cap currently receives a basic allotment based on a $1 compressed rate. (*Id.*) However, a district with a tax rate below a dollar receives a basic allotment based on a lower compressed rate – for example, if a district had been taxing at $1.45, its compressed rate would be $0.9666. (*Id.*) While the basic allotment could be correspondingly lower if the districts were receiving the same formula funding in 2005, the lower compressed rate also means that the district can access its "golden pennies" at a lower tax rate. (*See supra* FOF 40 and FOF 44) And because the golden pennies are worth more than Tier I pennies (*compare* FOF 40 and FOF 46 *with* FOF 44 and FOF 46), the additional money gained from the two extra pennies (available without a TRE) can be significantly greater than that potentially lost by the lower compression percentage. In other words, a district with a CTR of $0.9666 "loses" 3.34 pennies of Tier I taxing capacity but "gains" access to two additional golden pennies that are not subject to a TRE.[77] For the wealthiest districts, the gain from the two golden pennies can outstrip the "lost" Tier I funding. For most districts, however, the loss of Tier I pennies due to tax compression is just that – a loss of taxing capacity to support the basic, adequate education, as well as a reduction in their basic allotment. For a district with a CTR of $0.9666, the $4,765 basic allotment is reduced to $4,606 – a calculation based not on need but arbitrarily determined by a district's tax rate in a single year. The lost Tier I capacity is replaced with copper pennies -- the lowest level of equalization at $31.95. Because each district's CTR is arbitrarily determined by its 2005 tax rate, each district has a different CTR, different Tier I taxing capacity, different basic allotment (the starting point for all funding), different access to golden pennies, and different yields at the same tax rates when copper pennies are substituted for Tier I. Because of the defects and others (such as insufficient funding described above), Tier I cannot be equalized. The system is further structurally deficient because there are two Tier I funding mechanisms – formula funding and target revenue – with no equalization possible across the entire system.

[77] Because the requirement for a TRE is pegged to the $1.04 tax rate (not the compressed rate plus four cents), such a district could access all six golden pennies without a TRE. TEX. TAX CODE § 26.08(a), (n). (*See also supra* FOF 28, FOF 253.) Because wealthy districts were more likely to have a tax rate below $1.50, they are more likely to benefit from the tax compression scheme – and many do. (*See* RR57:42-43; Ex. 11323; Ex. 3187, Pierce Report, at 8-9; *see also infra* Part I.D.4.b.i (FOF 1378, *et seq.*).)

FOF 1380. As described earlier, "target revenue" is a hold harmless system that guarantees that a district receives, for its compressed rate, the revenue it would have received in 2005-06 or 2006-07, under the old formulas, if that amount is greater than that it receives under the new tiered system. (Ex. 1328, Casey Report, at 17.) Under the old formulas that form the basis of target revenue, a district might receive a "boost" in per student revenue from increased local property values in one year, that would be balanced out by a reduction in revenue the next year (Ex. 1328, Casey Report, at 18); however, the target revenue system takes the quirks of a single year's formula results and makes them permanent, and as a result, there is no consistent relationship between a district's property wealth and/or tax effort and its target revenue. (*Id.*; RR23:28-30.) The effect of vastly different target revenues despite the same tax rate and similar property values applies to low-wealth districts, as well as some property-wealthy districts. (RR23:29-30; Ex. 4000, Cortez Report, at 10.)

FOF 1381. Target revenue has increased the tax rate gaps and revenue gaps among districts. (Ex. 3187, Pierce Report, at 9.) Indeed, a former cap of $350 on revenue gains resulting from compressed rates was eliminated in 2009. (Ex. 1188, Dawn-Fisher Report, at 2.) The average compressed tax rates for districts with the lowest target revenues is higher than the compressed tax rates for districts with the highest target revenues. (Ex. 3187, Pierce Report, at 9.) The average Tier I funding level for those districts with the lowest target revenue is about $1,900 per student *below* the Tier I funding level provided for the average district in the lower taxing, higher funded group. (*Id.*) This Tier I funding gap, *even at this basic instructional program level*, results in more than $40,000 less in funding for a typical elementary classroom of 22 children in the lower funded districts. (*Id.*)

FOF 1382. "Target revenue" was intended to be temporary but has already been extended through at least 2017. (RR23:74-75; RR10:76, 202.) It is part of a long legislative tradition of "temporary" hold harmless provisions. In *Edgewood IV*, plaintiffs complained that the wealth hold harmless (which essentially has the same effect as target revenue) then in existence had a de-equalizing effect on the school finance system; but the Supreme Court analyzed the school finance system assuming the hold harmless was no longer in existence since by law (at the time of the Court's opinion *Edgewood IV*) the hold harmless was set to expire and be of no force and effect by 1996. (Ex. 3118 – Ex. 3122.) After the Supreme Court rendered its decision in *Edgewood IV*, the Legislature first extended the wealth hold harmless until the end of the 1997-1998 school year, then extended it until the end of the 1999-2000 school year, and finally made it permanent; and it lives on today through the target revenue system. (Ex. 3118 – Ex. 3125.)

FOF 1383. During the testimony in the first phase of this trial, the State represented that target revenue was to be phased out in its entirety. (RR32:65-66.) The Court finds that the actions of the 83rd Legislature in increasing the target revenue adjustment factor from .9235 to .9263 were inconsistent with the representations made by the State during the first phase of this trial, and in fact the actions of the 83rd Legislature increased the amount some districts received through target revenue, meaning that districts benefitting

from target revenue would get an additional boost. (Ex. 3540 at 4.) This action, combined with the Legislature's previous patterns of turning hold harmless provisions into permanent features, gives the Court no confidence that the target revenue system will in fact be repealed in 2017 and it certainly does nothing to fix the outstanding constitutional violations in the present year. The Court takes the system as it exists today.

FOF 1384. In addition, the number of school districts benefiting from hold-harmless provisions has grown substantially from 34 property-wealthy school districts under the old school finance system in 2003-04 (*see WOC II,* at 761) to an estimated 236 property-wealthy districts for the 2013-14 school year. (Ex. 11470 at "ASATR funding tally" tab.) This is an increase of nearly 700 percent over the last ten years.

FOF 1385. And while target revenue was never intended to benefit primarily property-wealthy school districts (RR58:55), the vast majority of school districts benefitting from target revenue in recent years have been Chapter 41 districts. In 2007, 159 of the 1,022 school districts (or 15.6%) funded on target revenue were Chapter 41 districts. For the 2013-14 school year, 236 of the 305 school districts (or 77.4%) funded on target revenue are Chapter 41 districts. (Ex. 11470 at "ASATR Funding tally" tab.) And those 236 Chapter 41 districts receive 91% of the total ASATR funding today, compared to just 21% in 2007. (*See id.* at "Summary Tab.")

FOF 1386. Furthermore, the need to fully fund the school finance formulas to adequate and financially efficient levels for all districts remains the core obstacle in providing a constitutionally efficient system. Simply repealing the target revenue hold harmless for all school districts without a corresponding increase in formula funding would simply further "level down" the revenue of the districts, especially for those districts that require target revenue to provide a general diffusion of knowledge. (*See also supra* Part I.D.1.c (FOF 1241, *et seq.*).) Such action on its own would do nothing to *level up* the revenue of districts on formula funding to the level of a general diffusion of knowledge – a "solution" that the Supreme Court has previously said would do nothing to cure an unconstitutional inefficiency. *WOC I*, 107 S.W.3d at 571 (quoting *Edgewood IV*, 917 S.W.2d at 729-30). In other words, simply repealing the target revenue aspect of school finance for all school districts might reduce the disparity in funding (which is needed), but it would not cure the other constitutional infirmities.

ii. The introduction of unrecaptured "golden pennies" into M&O taxes further increases the tax and revenue gaps in the ability of school districts to provide a general diffusion of knowledge.

FOF 1387. Under "Tier II-A" or the "golden pennies," school districts are guaranteed up to the greater of Austin ISD's property wealth per WADA, or $59.97 per WADA,[78] for the first

[78]By appropriation, the guaranteed yield is $4,950 in 2013-14 and $5,040 in 2014-15. (Ex. 6593A at 22R; RR54:103 (referencing Ex. 6618 at 5).).

six pennies above the compressed tax rate. (*See supra* FOF 44.) School districts with wealth levels exceeding these amounts are allowed to keep all of their revenue. (*See supra* FOF 46.) This is the first time since before Senate Bill 7 was enacted in 1993 that the Legislature has allowed property-wealthy school districts to generate unequalized revenue from M&O pennies. (RR23:27.)

FOF 1388. Although the golden pennies were intended to supplement a basic adequate education, the more rigorous standards and expectations for all students and school districts, coupled with rising costs and the recent budget cuts, have forced school districts to use revenue generated from those pennies for a basic, adequate education. (RR15:196-97, 199-209; RR3:154-56; RR19:158; 256-57; *see also supra* Part I.C.1 (FOF 210, *et seq.*) and Part I.D.1.b (FOF 1222, *et seq.*).) This was confirmed by even the property-wealthy school districts that generate substantially greater funds at those levels of tax effort compared to property-poor school districts. (Ex. 4224-M, Reedy Dep., at 79-80; Ex. 4224-I, Patek Dep., at 60; Ex. 4224-R, Wiggins Dep., at 93-94.) Because the "golden pennies" are necessary for a general diffusion of knowledge, it is appropriate to consider the revenue generated from the golden pennies for purposes of determining whether the system is financially efficient. (*See supra* I.D.1.b (page 272); RR23:105-08.)

iii. The use of I&S revenues for traditionally M&O expenses increases the inefficiency of the system because property-wealthy districts have access to unrecaptured and unequalized funds not available to property-poor districts.

FOF 1389. Because the system does not provide sufficient M&O funds under Tier I and Tier II to support a basic education, some districts have been compelled to use I&S revenues to finance M&O expenses such as buses and technology. (Ex. 3187, Pierce Report, at 13.)

FOF 1390. Because I&S revenues are not subject to recapture, property-wealthy districts receive the full benefit of their enhanced property values for every penny of I&S tax effort.(RR58:112, 138-139; Ex. 3187, Pierce Report, at 5.)

FOF 1391. The failure to fund the IFA in the last two biennia has a disparate effect on property-poor districts that are limited to the actual revenue from the district's property value – assuming the districts have the financial wherewithal to issue bonds in the first place. (Ex. 3187, Pierce Report, at 14.)

iv. The 2013 legislation did not make any structural changes to the system nor cure the constitutional inequities.

FOF 1392. The changes enacted by the 83rd Legislature did not eliminate the constitutional deficiencies in the system. First, the legislative changes to funding under SB1 and HB1025 were not permanent changes made to the school finance system, but merely changed the funding appropriated in the 2013-14 and 2014-15 school years, which by

their very nature will expire at the end of the biennium. (RR58:102-03.) Second, and perhaps most importantly, the temporary changes in funding did not resolve the substantial gap in funding and tax rates between property-poor and property-wealthy school districts. Although the revenue gap was reduced slightly from the temporary appropriations, property-poor school districts still do not have substantially equal access to revenues necessary to provide a general diffusion of knowledge at similar tax efforts. (*See supra* Part I.D.1.b (FOF 1222, *et seq.*).) Third, many of the structural causes of the inequities remain largely unchanged in the system, such as the unrecaptured golden and I&S pennies and hold-harmless measures. (*Id.*; RR23:24-26; RR32:138-39; RR57:10-11; Ex. 3540, Suppl. Expert Report of Pierce, at 3-5.) In addition, the Legislature failed to make any changes to the weights, which continue, on average, to more heavily impact lower wealth districts. (RR57:42-43; *see also infra* Part I.D.5.b (FOF 1399, *et seq.*).) Nor did the legislature make any attempt to study the cost of meeting its standards or to ensure that it was leveling up funding for the poorest school districts to that standard. (*See supra* Parts I.C.5.a (FOF 603, *et seq.*), I.C.5.f (FOF 625, *et seq.*), and I.D.1.c (FOF 1241, *et seq.*).)

5. The system has a disparate impact on property-poor districts and those districts with large populations of economically disadvantaged and ELL students.

a. The disparities result in the districts with the most challenging student populations receiving the least amount of funds.

FOF 1393. The State has long recognized the importance of educating more-challenging student populations, such as ELL and economically disadvantaged students. Former Commissioner Scott testified that equipping underprivileged children with a quality education allows them the opportunity to compete on a level playing field with children born into wealth and privilege. (Ex. 4243, Scott Dep., at 2-3.) For this reason, students are held to the same standard by the State regardless of whether they attend a property-poor or high property-wealth or low-funded or high-funded district, and regardless of the student's race, ethnicity, or socio-economic status. (*See, e.g., id.* at 11; *supra* Part I.B.3 (FOF 81, *et seq.*)

FOF 1394. In order to meet the promise of education identified by Mr. Scott, schools facing concentrated poverty, homelessness and transience need to provide not only comparable numbers of similarly qualified staff, but more of them in order to offer interventions designed to level the playing field for these children when compared with their more advantaged counterparts in other districts. (*See supra* Part I.C.2.c (FOF 379, *et seq.*).) Schools in neighborhoods with concentrated poverty need to offer high quality early childhood programming, smaller class sizes in the early grades, and extended learning time and/or small group tutoring. (*Id.*)

FOF 1395. When districts serving high-need and underperforming populations are faced with resource constraints, they are forced to divert resources from enrichment programs and advanced curriculum programs targeted at raising progress towards minimum standards

in core content areas. Such choices deprive advanced and underperforming students in these districts of important, necessary opportunities. If high-need districts are afforded sufficient resources, they can both target necessary resources toward remedial and basic programming and continue to offer challenging, broad and enriched curricula, which affects access to and potential success in college and beyond. (*Id.* at 60, 112-14.)

FOF 1396. Ignoring differences in costs when providing financial inputs to schools leads to disparity among children in the ability to attain, and ultimately in the attainment itself, of equitable educational outcomes. (RR16:16-17, 57.)

FOF 1397. As described earlier, the formulas the State uses to account for these differences are outdated and underfunded. (*See supra* Part I.C.2.d (FOF 456, *et seq.*).) The FSP funds Texas school districts as if their costs vary only by about 15% from lowest to highest cost/needs. (Ex. 3188, Baker Report, at 6.) By contrast, cost models estimated by Dr. Baker indicate that costs vary closer to 150%. (*Id.*) As a result, FSP substantially under-adjusts funding for the highest need/cost districts, most of which serve high concentrations of children in poverty and ELL children. (*Id.*) The under-weighting of the compensatory education and ELL programs has a great impact on the districts serving these populations, which happen to be mostly property-poor districts. (Ex. 3187, Pierce Report, at 15; Ex. 4000, Cortez Report, at 36-38; *see also infra* Part I.D.5.b (FOF 1399, *et seq.*).)

FOF 1398. Compounding matters, numerous studies have documented that wealthier school districts have an easier time recruiting highly qualified, experienced teachers. (Ex. 1122, Vigdor Report, at 3.) Teachers will sometimes accept a reduction in pay in order to take a job in a school serving fewer disadvantaged children. (*Id.*) While wealthier districts may also face a challenge due to the shortage of highly qualified teachers in the Texas labor pool, the districts serving the state's poorest children even more rarely have the option of hiring a teacher who has gained significant experience elsewhere. (*Id.*) The Edgewood ISD districts and the TTSFC focus districts exemplify many of the challenging attributes that Dr. Vigdor described in his report and are negatively impacted not only by their access to fewer dollars but also by the demographics of their student population and communities. (RR15:194-95; Ex. 4224-S, Cervantes Dep., at 172-73, 176-77; RR4:61-63; RR20:83-85; RR24:205; Ex. 3198, Garza Dep., at 49-50; Ex. 3200, Wallis Dep., at 32, 36.)

b. The inadequacy of the weights imposes a disproportionate burden on property-poor districts.

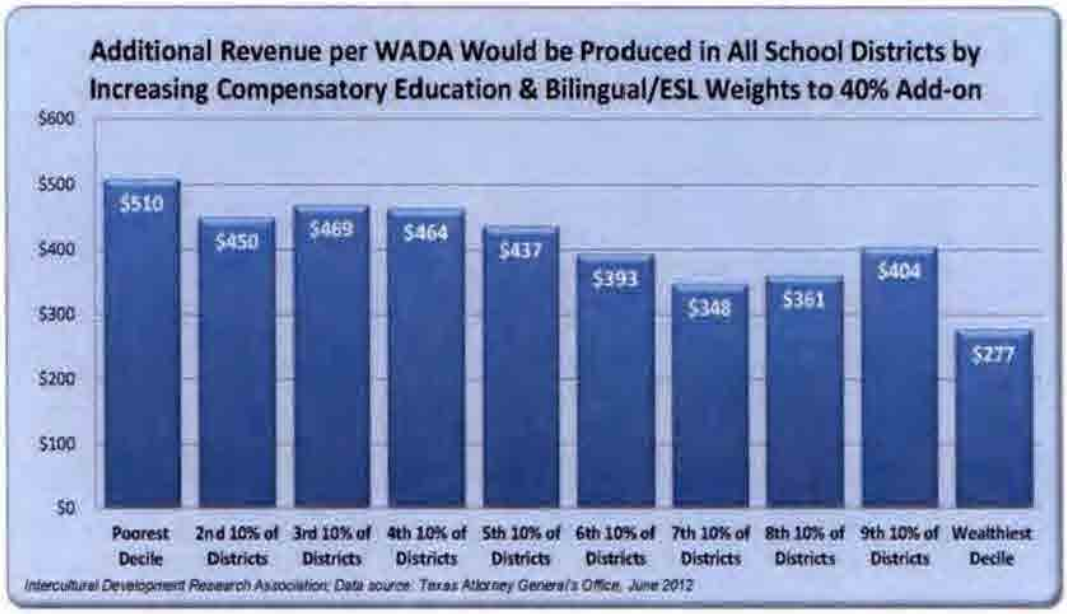
FOF 1399. The arbitrary and inadequate weights described above in Parts I.C.2.d.ii (FOF 466, *et seq.*) and I.C.2.d.iii (FOF 480, *et seq.*) also tend to negatively impact the lowest wealth districts greater than the highest wealth districts. (Ex. 4000, Cortez Report, at 36-40.)

FOF 1400. As stated previously, research has shown that a weight of ".4" for both the bilingual and compensatory education allotments is necessary to provide reasonable opportunities for those students to acquire a general diffusion of knowledge. (*Id.* at 33, 36-40.) Further, the evidence in this case reveals that there is a "concentration effect" that results in lower

student performance in districts with higher percentages of economically disadvantages students that is not taken into consideration by the current weights. (*See supra* Part I.C.2.a.ii (FOF 294, *et seq.*).)

FOF 1401. In the absence of that funding being made available through the FSP, property-poor districts are substantially less able to generate those revenues based on their existing yields. (Ex. 4000, Cortez Report, at 39-40.) The lowest wealth decile would need to tax at $.95 per $100 of property value to generate the needed revenue for their ELL and economically disadvantaged students, compared to 3 cents in the highest wealth decile. (*Id.*)

FOF 1402. Property-poor districts would also benefit more greatly from an increase of the bilingual and compensatory education weights from their current arbitrary weights to weights that reflect sound research. (*Id.* at 36-38.) In an analysis of the impact of increasing the funding weights for bilingual/ESL and compensatory education programs to a research-based weight of ".4," the lowest wealth decile of districts would gain an average of $510 per WADA compared to $277 per WADA for the highest wealth districts. (*Id.*)



Id. at 37.

FOF 1403. It should be noted, however, that while such an increase would help serve those students appropriately, the gross inequities in the system between property-wealthy and property-poor districts would not be addressed solely by increasing the weights. (*Id.* at 38.)

c. The State's special program cuts also bear a disproportionate burden on property-poor districts.

FOF 1404. While all school districts suffered from the special program cuts identified above in FOF 56 – FOF 58, the state's lowest property wealth districts experienced on average larger cuts per student than other school districts. (*Id.* at 1.)

FOF 1405. In an analysis of the special program cuts by decile sub-grouped by property wealth per WADA, the lowest wealth districts lost an average of $253 per WADA and accounted for 13% of special program cuts suffered by all public school districts. (*Id.* at 48.) In contrast, the state's highest property wealth school districts experienced the lowest cuts per student in all sub-groups at only $21 per student and accounted for a mere 1% of all special program cuts. (*Id.*) The $200 disparity in lost revenue reflected in special program cuts further exacerbate funding inequities between the state's lowest and highest wealth districts. (*Id.*)

6. Student performance reflects the failure of the system to efficiently fund the general diffusion of knowledge.

FOF 1406. The revenue disparities between the high and low-funded districts, identified in the prior findings, have the effect of denying meaningful educational opportunities to students attending the lower funded districts, taking the form of larger student-to-teacher ratios, larger class sizes, lack of teacher aids, and the lack of many other educational resources. (RR9:65-67; RR9:65-69, Ex. 3010 – Ex. 3086.)

FOF 1407. The differences in revenue have an impact on educational outcomes, which are the end-result of the myriad inputs to the educational process, with one important factor being equitable funding available to support local educational program efforts. (Ex. 4000, Cortez Report, at 24.) While funding may not be the sole predictor of educational success, it does impact school district access to other critical ingredients in the educational success matrix, including strong leadership at the district and campus levels and quality teaching that can be enhanced by resources allocated for professional development, as well as parent engagement programs and targeting of resources for students with special needs. (*Id.* at 24-25.)

FOF 1408. Districts that have more revenue, on average, have higher completion rates, lower teacher turnover, higher teacher base salaries, lower student-to-teacher ratios, and lower dropout rates than those districts with less revenue. (Ex. 3088; Ex. 3092; RR9:113-15, 118-19.)

FOF 1409. When posed with the question of how their district's educational programs would be affected if they were to receive $1,000 less per WADA than they currently receive (meaning they would have to operate with budgets similar to those in which property-poor districts must operate at, but with much higher tax rates), the property-wealthy districts responded that the quality of their educational programs would be devastated and their achievement and ability to present meaningful opportunities to their students would be negatively impacted. (*See, e.g.*, Ex. 5618, Wiggins Dep., at 92.) It therefore follows

that the property-poor districts are already suffering from those devastating effects, as they so testified.

FOF 1410. The testimony of superintendents throughout the state bears out the negative impact of disparate funding. The Everman ISD superintendent testified that the district cannot provide the basic program, much less enrichment, and cannot compete with other districts for career pathways, on advanced science offerings, or with courses for a distinguished diploma; as a result, Everman students are at the bottom of the college applicant pool because the district cannot afford a richer curriculum. (RR5:192, 196-200.)

FOF 1411. Correspondingly, superintendents throughout the state also testified regarding the services they could provide and the improvements they could make if they were given the same funding as their property-wealthy counterparts. Dr. Folks testified, for example, that if Northside ISD in San Antonio was leveled up to the revenues available to nearby Alamo Heights ISD, it would have a tremendous positive impact on student achievement, especially given the increased standards. (RR25:103-05.)

FOF 1412. The disparities in revenue can be seen at the local level. A school district receiving $1,500 less per WADA, in a classroom of twenty students, would receive $30,000 less than a wealthier district. At the school level, a property-poor school district would receive approximately $300,000 less than a wealthy district at a school of 200 students. And at a district level of 2,000 students, the property-poor district would receive $3,000,000 less. (RR23:59-60; *see also* RR9:64 (explaining that a difference of $1,954 per WADA would mean that a lower wealth district among the 15% poorest by WADA would have access to $65,484 less per classroom of twenty-two students than a district among the 15% wealthiest by WADA).) These funds could be used on a whole range of reasonable and necessary educational opportunities to increase student performance and provide an adequate education including, but not limited to: recruiting and retaining the qualified and competent teachers, improving technology, reducing class sizes, upgrading the quality of pre-K programs, and offering a fuller and deeper range of accelerated and intervention programs. (*See generally* RR15:18; RR4:73-74.)

FOF 1413. The differences in revenue also do not limit themselves to the extreme gaps in excess of $1,000 per WADA. As many school officials testified, a difference of a few hundred dollars per student can make the difference in preserving necessary educational programs to provide an adequate education. (*See, e.g.*, RR18:200-204 (explaining reductions in educational program resulting from $1.4 million budget cut for 2011-12 school year) ; *see also* RR5:56 (Richardson ISD superintendent stating that $300 would impact her property-wealthy district).) This is especially true today, when the stakes have been raised for both students and school districts. (*Id.*)

FOF 1414. As resources are increasingly targeted toward passing the State's standardized tests, from which individual, school and district accountability is measured, resources are often diverted from the curriculum opportunities that provide for children exceeding bare minimum standards tied to subjects tested to be truly college ready, including access to

both intermediate level and advanced math and science courses at the secondary level. (Ex. 3188, Baker Report, at 60.)

7. Response to Defense.

a. The effect of recapture has diminished since *WOC II.*

FOF 1415. Because the State continues to rely on property taxes, which are based on incredibly disparate property values across the state (*see, e.g.*, Ex. 20030 at 2), to fund a substantial portion of the school finance system, recapture remains an essential piece of the current school finance system to attempt to reach a financially efficient system. (*See WOC II*, 176 S.W.2d at 798.)

FOF 1416. As recognized in *WOC II*, recapture had doubled over the prior ten years and nearly tripled dating twelve years back from the 2004-05 school year. (*See id.* at 760.) In contrast, since *WOC II*, the amount of recapture actually fell from 2005-06 when it was $1.298 billion to approximately $1.086 billion in 2011-12. (Ex. 11470 at "Summary Tab.") The amount of recapture today also constitutes a smaller percentage of the total FSP revenue available in the system. (*See id.* (showing total FSP in 2006 at $29.990 billion compared to $38.996 billion in 2012).)

FOF 1417. Furthermore, although the number of districts actually paying recapture has increased from 142 in 2005-06 to 222 districts in 2011-12, the percentage of districts identified as "Chapter 41" that *actually pay* recapture has declined from 142 out of 152 (92%) in FY 2006 to 222 out of 305 (73%).[79] (Ex. 11470.) This reduction is largely a result of the target revenue system, which allows districts to offset their ASATR payment against recapture amounts due. (Ex. 6441 at 98-99; *see also* TEX. EDUC. CODE § 42.2516(f).) In addition, school districts with property values per WADA in excess of the equalized wealth levels of $476,500 and $319,500 continue to have available a number of credits that reduce the amount of recapture. (Ex. 6441 at 78-79.) Moreover, because the number of districts paying recapture has increased, but the amount of recapture paid has fallen, Chapter 41 districts are paying per capita less recapture today than they were six years ago. (RR32:166-68.)

FOF 1418. These numbers are not projected to change course significantly in 2013-14. (Ex. 11470 at "Summary Tab," FY 2014.)

[79] For example, Richardson ISD is identified as a Chapter 41 district, but has not paid any recapture for three years. (RR5:58-59.)

b. Contrary expert analysis presented by the State and Calhoun County ISD Plaintiffs is not persuasive.

FOF 1419. The State Defendants and the Calhoun County ISD Plaintiffs presented witnesses on financial efficiency,[80] but neither compared the top 15% of WADA in the highest property wealth school districts versus the bottom 15% of WADA in the lowest wealth districts, or by decile, and neither analyzed whether property-poor school districts had substantially equal access to similar revenue at similar tax efforts as property-wealthy school districts – unlike the expert reports and analyses produced by Drs. Pierce and Cortez discussed above. These basic, essential omissions and methodological errors prohibit this Court from relying on those analyses in order to determine whether the State has satisfied its mandate of ensuring: "[c]hildren who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds."

FOF 1420. Both experts combined school districts into one of only two groups ("Chapter 41" and "non-Chapter 41" districts). (Ex. 4384, Kallison Equity Report, at 4-6; Ex. 1188, Dawn-Fisher Report, at 9-12.) Prior Supreme Court analyses of the gaps have never focused on this distinction. *See, e.g., Edgewood I*, 777 S.W.2d at 393 (examining 100 poorest and wealthiest districts); *Edgewood IV*, 917 S.W.2d at 131-32 (analyzing 15% of WADA in poorest and wealthiest districts). Such an analysis does not allow the Court to examine the inequities between school districts in order to answer the question of whether school districts with varying degrees of wealth have substantially equal access to similar revenue at similar tax effort. (*See, e.g.*, RR57:40-41 (explaining the clustering effect on the equity analysis).) Furthermore, both experts defined "Chapter 41" school districts as school districts with property values per WADA greater than $319,500, even though few districts and even fewer pennies are subject to recapture at that lower level. (*See supra* FOF 47.) Finally, such a comparison is not appropriate to analyze whether the equity gap has increased or decreased, because it does not compare an equal number of districts or equal number of WADA. For example, the State compared the 152 districts that had Chapter 41 status in 2006 with all of the remaining districts and then compared the 302 districts that had Chapter 41 status in 2012 with all of the remaining districts. (RR33:41-50.) The Court finds that such analysis masks the advantages built into the system for the school districts in the wealthiest tier and that the comparison of school districts by decile and/or by 15% of WADA is more relevant, accurate, and enlightening with respect to the issues in this case.[81]

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[80] The Court notes that Calhoun County ISD expert Dr. James Kallison had not previously analyzed the financial efficiency of the Texas public school finance system, nor had he ever published any scholarly work in this field. (RR21:164-65.)

[81] While the Court does not accept the State's analysis of Chapter 41 versus Non-Chapter 41 districts as being appropriate in determining the constitutionality of the school finance system, Dr. Dawn-Fisher's latest analysis showed the total tax rate gap (M&O and I&S) between Ch. 41 districts and non-Ch.41 districts having grown more than three-fold: from 2.23 cents in 2006 to 6.88 cents in 2013. (Ex. 11470; RR63:24.)

FOF 1421. Nevertheless, performing the same analysis by Dr. Dawn-Fisher demonstrates that the Texas school finance system is less equitable today than it was in 2006. For example, when comparing districts actually paying recapture against those districts not paying recapture, the FSP gap reported by Dr. Dawn-Fisher increases significantly from $900 per WADA in 2006 to over $1,400 per WADA in 2013, the last year with accurate and reliable data. (Ex. 11470 at "Summary Tab.")

FOF 1422. Most importantly, the State did not analyze the tax rates necessary for the district groups to generate a general diffusion of knowledge or any other specific amount of revenue. Despite this omission, the State's limited analysis of tax rates demonstrated incredible inequities in the system. The State's Exhibit 11323, on the tab entitled "yields," shows that there are 250 districts in Texas that tax at $1.17 and raise, on average, $5,897.02 per WADA. (RR33:29; Ex. 11323 at "yields" tab.) The same exhibit, on the tab entitled "yields," shows that there are fifty districts in Texas that tax, on average, at $0.90 and raise, on average, $6,029.13 per WADA. (Ex. 11323 at "yields" tab.) The 250 districts that are taxing at $1.17 can never obtain the revenue that the fifty districts taxing, on average, at $0.90 can get at $0.90. (RR33:30; Ex. 11323 at "yields" tab.)

FOF 1423. The dramatic effect of revenue gaps between property-poor and property-wealthy districts can be seen when comparing tax rates needed by property-poor districts to help them close the revenue gap. As Dr. Dawn-Fisher acknowledged, for a school district taxing at $1.10 but generating $607 less than a property-wealthy district taxing at the same rate, the property-poor district would need to raise its revenue almost nineteen cents at the copper penny yield – which would be impossible given the $1.17 cap on M&O taxes. (RR62:160-61.)

FOF 1424. The Court finds unavailing the State Defendants' unfounded suggestion that small property-wealthy districts with less than 1,000 ADA cause the brunt of the inequities in the system, and notes that, neither Dr. Kallison nor Dr. Dawn-Fisher presented such an analysis in their reports. (*See generally* Ex. 1161, Kallison College Readiness Report; Ex. 1188, Dawn-Fisher Report.) First, as stated previously, the revenue per WADA figures relied on by this Court have already included in them school district size adjustments. (*See supra* FOF 1376.) Furthermore, cross-examination of Dr. Kallison on the inequities between similarly-sized school districts below 1,000 ADA revealed great differences among similarly-sized property-wealthy and property-poor districts, thus showing that the impact of small, property-wealthy districts would be offset by the poverty of small, property-poor districts. Comparing the 111 recapture districts with less than 1,000 ADA and the 111 lowest wealth districts with less than 1,000 ADA, both weighted and simple analysis showed substantial gaps in revenue at adopted M&O tax rates and in yield-per-penny differences, favoring property-wealthy school districts. (RR21:173-84.)[82]

[82] Dr. Kallison was not presented as an expert by the Calhoun County ISD Plaintiffs in the second phase of the trial.

FOF 1425. To conclude, although the omissions and methods of the State Defendants and Calhoun County ISD Plaintiffs detailed above tend to mask the disparities among and between school districts based on property wealth, their data also show substantial gaps between property-wealthy and property-poor districts.

c. The State's own underlying evidence in the second phase of trial further proves that the system remains constitutionally inefficient following the 83rd Legislature's changes.

i. The Legislative Budget Board's projections in Model 115 based on the 83rd Legislature's changes to funding demonstrate continued inequities in the system between property-poor and property-wealthy districts.

FOF 1426. The projected effects of the actions of the 83rd Legislature can also be found in LBB Model 115, which shows a very minimal closing of the revenue gap between wealthy and non-wealthy districts. (Ex. 3539.) While Model 115 is not a proper or reliable measure of whether property-poor and property-wealthy school districts have substantially equal access to similar revenues at similar tax effort to provide a general diffusion of knowledge for some of the same defects discussed above in this subsection (such as including all "recapture" districts in one group). Model 115 does show projections that the gaps are expected to close minimally in FY 14 and FY 15. *Id.*

FOF 1427. The LBB, via Model 115 (*See* Ex. 3539), modeled the projected effect of the actions of the 83rd Legislature, in part, by analyzing the extent to which the revenue gap would be closed via the legislature's actions. Model 115 showed, when comparing the poorest districts (those with property values under $100,000 per WADA) with the wealthiest districts (districts subject to current law recapture) in FY14, the poorest districts are projected to receive $267 more per WADA than that received in FY 2013 and their wealthier counterparts are projected to receive $125 dollars more, for a revenue gap closure projected at only $142. (Ex. 3539 at 1.)

FOF 1428. Model 115 showed, in FY14, when analyzing the next set of districts via wealth, the property-poor group (those with property values between $100,000 -- $149,999 per WADA) is projected to receive $263 more per WADA and their wealthier counterparts (those with property values between $319,500 -- $476,500 per WADA) are projected to receive $171 more per WADA, for a revenue gap closure of only $92. (Ex. 3539 at 1.)

FOF 1429. Model 115 showed, in FY14, when analyzing the next set of districts via wealth, the property-poor group (those with wealth levels between $150,000 -- $199,999 per WADA) received $264 more per WADA and their wealthier counterparts (those with wealth levels between $200,000 -- $319,499 per WADA) are projected to receive $265 more per WADA for a revenue gap *increase* of $1. (Ex. 3539 at 1.)

FOF 1430. Model 115 showed, in FY15, when comparing the poorest districts (those with a wealth level below $100,000 per WADA) with the wealthiest districts (Districts Subject to

Current Law Recapture) that the poorest districts received $359 dollars more and their wealthier counterparts received $138 dollars more for a revenue gap closure of $221. (Ex. 3539 at 1.)

FOF 1431. Model 115 showed, in FY15, when analyzing the next set of districts via wealth that the property-poor group (those with wealth levels between $100,000 -- $149,999 per WADA) received $353 dollars more and their wealthier counterparts (those with wealth levels between $319,500 -- $476,500 per WADA) received $217 dollars more for a revenue gap closure of $136. (Ex. 3539 at 1.)

FOF 1432. Model 115 showed, in FY15, when analyzing the next set of districts via wealth that the property-poor group (those with wealth levels between $150,000 -- $199,999 per WADA) received $355 dollars more and their wealthier counterparts (those with wealth levels between $200,000 -- $319,499 per WADA) received $355 dollars to keep the revenue gap in its current place. (Ex. 3539 at 1.)

FOF 1433. It is evident from the State's own model that the actions of the 83rd Legislature did not, and will not, significantly close the substantial revenue gaps nor make the system financially efficient or equitable. (Ex. 3539 at 1.)

FOF 1434. To the extent there has been any closure of the gap, it is minimal, as shown by LBB Model 115. (Ex. 3539.)

FOF 1435. To the extent there has been any closing of the revenue gap, the wealthy districts, looking at the top and bottom 15 percent, could reopen the entire gap with approximately one penny of additional I&S tax. (Ex. 3540 at 78.)

ii. The State's expert Dr. Lisa Dawn-Fisher's testimony on cross-examination confirms that the State has failed to provide districts with substantially equal access to revenue necessary for a general diffusion of knowledge and that the system is inequitable.

FOF 1436. Dr. Dawn-Fisher admitted that she was not analyzing whether property-poor school districts had substantially equal access to similar revenue in order to provide a general diffusion of knowledge at similar tax rates as property-wealthy school districts. (RR62:113-114.) Nevertheless, her testimony reveals continuing inequities in spite of the temporary changes to funding enacted by the 83rd Legislature.

FOF 1437. Looking at the State's Ex. 11461, the wealthiest 10 % of districts contain 141,583 students, tax at a rate of $1.006, and receive $6,742 per WADA, while the poorest 25 % of districts contain 802,426 students, tax at a rate of $1.096, and receive $5,690 per WADA. The result leaves the property-poor districts taxing nine cents higher and receiving $1,052 per WADA less using a weighted average approach. (Ex. 11461; RR63:33-35.)

FOF 1438. The gap of $1,052 found in the prior finding translates into a classroom funding disadvantage of more than $30,000 for the property-poor districts. (RR63:35.)

FOF 1439. No matter how you look at the system, Ch. 41 districts versus non-Ch. 41 districts or the 10 % wealthiest districts versus the 10 % poorest districts, you will see the trend has been, and continues to be, that the poor districts tax at higher rates than their wealthier counterparts yet receive less money. (RR63:36-37.)

FOF 1440. According to the State's data, if the State took all of the M&O revenue ($35,213,290,189) that all of the ISD's (excluding charters) have in Texas and divided it by all of the WADA (6,171,438) ISD's (excluding charters) have in order to get a system wide weighted average revenue per WADA, the average would be $5,706. (Ex. 11470; Ex. 11440; RR63:28-29.)

FOF 1441. There are only 257 districts (excluding charters), educating 923,980 students, in Texas that can raise $5,706 if they were to tax at $1.04 in 2014. (Ex. 11440; RR63:51-52.)

FOF 1442. There are 763 districts (excluding charters), educating 3,684,150, in Texas that cannot raise $5,706 if they were to tax at $1.04 in 2014. (Ex. 11440; .)

FOF 1443. There are 612 districts out of 1227 (including charters), educating 1,468,010 students, in Texas that cannot even raise $5,500 if they were to tax at $1.04 in 2014. (Ex. 11440; RR63:41-42.)

FOF 1444. There are only 124 districts (including charters), educating 144,186 students, in Texas that can raise $6,176 if they were to tax at $1.04 in 2014. (Ex. 11440; RR63:46-47.)

FOF 1445. There are 1,103 districts (including charters), educating 4,652,248 students, in Texas that cannot raise $6,176 if they were to tax at $1.04 in 2014. (Ex. 11440; RR63:46-47.)

FOF 1446. There are only 259 districts (including charters), educating 908,000 students, in Texas that can raise $6,176 if they were to tax at $1.17 in 2014. (Ex. 11440; RR63:49-50.)

FOF 1447. There are 968 districts (including charters), educating 3,888,434 students, in Texas that cannot raise $6,176 if they were to tax at $1.17 in 2014. (Ex. 11440;.)

iii. State data presented by the State and Calhoun County during the second phase of the trial for the 2013-14 school year show property-poor districts yielding substantially less revenue at similar tax effort.

FOF 1448. The State and Calhoun County also presented evidence of school districts' revenue at varying levels of tax rates for the 2013-14 school year. (Ex. 5746.) Although the Court finds the method in which the data was computed questionable,[83] the data show that

[83] Dr. Dawn-Fisher, who did not produce Exhibit 5746 as part of her expert analysis in this case, did not conduct the analysis used to produce Exhibit 5746 and could not recall what changes were made to the

school districts do not have substantially equal access to similar revenue when applying the same tax rates. (Ex. 4340; Ex. 4341.) When comparing the revenue available to school districts by weighted decile groupings at a tax rate of $1.00, the poorest decile of districts are able to generate only $5,360 per WADA compared to the wealthiest decile generating $6,291 per WADA, which results in a *$931 advantage* for the students in the wealthiest decile of districts. (Ex. 4341 at 3.) The difference in yield per penny of tax effort is $9.32, significantly greater than the $2 difference noted in *Edgewood IV*. *Compare id. with Edgewood IV*, 917 S.W.2d at 757-58.

FOF 1449. When comparing the revenue available to school districts by weighted decile groupings at a tax rate of $1.04, the tax and yield gaps grow between the poorest and wealthiest decile. At $1.04, the poorest decile of districts are able to generate only $5,570 per WADA compared to the wealthiest decile generating $6,619 per WADA, which results in a *$1,049 advantage* for the students in the wealthiest decile of districts. (Ex. 4341 at 3.) The difference in yield per penny of tax effort grows to $10.08.

FOF 1450. When comparing the revenue available to school districts by weighted decile groupings at a tax rate of $1.17, the poorest decile of districts are able to generate only $6,020 per WADA compared to the wealthiest decile generating $7,110, which results in a *$1,090 advantage* for the students in the wealthiest decile of districts. (Ex. 4341 at 4.) The difference in yield per penny of tax effort is $9.32, which remains significantly greater than the $2 difference in yields noted in *Edgewood IV*. The following chart summarizes this data:

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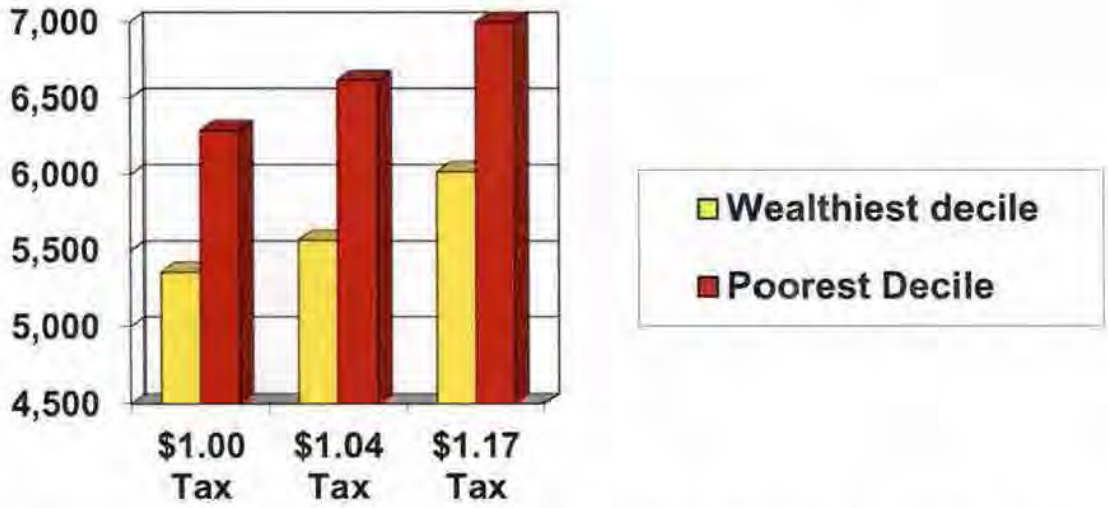
calculations in order to correct the data from prior versions. (RR62:163-167 (referenced wrongly at times as "Exhibit 5647" in cross of Dawn-Fisher but clarified the next day as Exhibit 5746. (RR63:73-74.) According to Dr. Dawn-Fisher, for districts needing to tax six cents above their compressed rate, they should have received about $31.95 per penny of tax effort, the copper penny yield. The exception may be certain hold-harmless districts but Dr. Dawn-Fisher was not sure. (*Id.* at 156-58.) However, a quick analysis shows districts not appearing to yield $31.95 per penny. For example, according to Ex. 5746, Edcouch Elsa ISD was projected to receive $5631 per WADA at its adopted tax rate of $1.04 (Ex. 5746 at "2014 tab.") and should have received $415.25 for the thirteen copper pennies above that rate. (RR62:168-170.) Instead, the State's calculations show that district receiving $5,970 at $1.17, a difference of $339, or a yield of $26.07 for the remaining thirteen copper pennies. (Ex. 5746 at "FY 2014 tab.") Calculations for other districts revealed similar results, drawing into question the reliability of the calculations. (*See id.*)



FOF 1451. Calhoun County ISD plaintiffs' position that the Court should treat the districts in the wealthiest decile apart from the other districts in the system finds no merit in past holdings in the Supreme Court of Texas and such practice would impede this Court's duty to determine whether all school districts have substantially equal access to similar revenue needed to provide a general diffusion of knowledge at similar tax effort. *Edgewood I*, 804 S.W.2d 491, 498-499 (Tex. 1991); *see also id.* at 500 (Gonzalez, J. concurring).

8. Equity should be a guiding principle of the school finance system.

FOF 1452. The findings shown above demonstrate an arbitrary, irrational and inequitable system that treats students in school districts differently based on where they live and go to school. No witness testified that such inequities in resources and revenues further any educational interest.

FOF 1453. Former TEA Commissioner Scott, testifying at the time as the then-current Commissioner, testified that Texas should not provide unequal educational opportunities depending on where a student lives and disagreed with the philosophy that some districts should have access to more resources than other districts. In response to a question of whether the State of Texas should value certain students more than other students because of where they live and attend school, he testified that it was "offensive to the very nature of what we expect our public schools to do. No, we shouldn't value students more than others." (Ex. 4243, Scott Dep., at 8-9.)

FOF 1454. The property-wealthy school districts also acknowledged the importance of equity and fairness for all Texas schoolchildren, especially because all children are held to the same, more rigorous and increasing standards. (*See generally supra* Part I.B.3 (FOF 81, *et seq.*).) Many of the superintendents for Chapter 41 districts acknowledged that they are not asking this Court to eliminate recapture or to reduce recapture or to provide their students with greater access to resources than lower wealth districts taxing at similar

effort. (RR5:62; Ex. 5618, Wiggins Dep., at 96-97.) Dr. Kallison, a school board member in property-wealthy Eanes ISD, agreed, testifying that equity was critically important to any school finance system. (RR21:94.)

FOF 1455. Equitable funding helps level the playing field for all schools and ensures that all districts have access to equitable resources and are thus equally investing in providing a high quality education for all students. The existing inequitable system instead pits school districts with vastly different resources against each other and encourages competition that is vastly inequitable. (Ex. 4000, Cortez Report, at 25.)

FOF 1456. Eight years ago, our highest state court held that "especially in this Information Age, education as a fundamental basis for our future has grown by orders of magnitude." *WOC II*, 176 S.W.3d at 799. Since that time, the increase in rigor in Texas's curriculum, accountability, and testing standards, as well as competition for higher education readiness and entry for all students, has resulted in an even more heightened need for a financially efficient system to ensure that *every* Texas child, no matter where they attend school, has access to the reasonable and necessary opportunities to reach their full potential and contribute to the great future of Texas.

FOF 1457. In light of the preceding findings, collectively and severally, the Court finds that the disparity in funding (where property-poor districts tax high and receive less) has the effect of denying reasonable and meaningful educational opportunities to the students attending the lower funded districts and denying to those students a general diffusion of knowledge as required by the state constitution. Based on these findings, the findings in Part I.C.5 (FOF 603, *et seq.*) and the additional testimony of the superintendents set out in Part I.C.7 (FOF 680, *et seq.*), the Court further finds that the Texas school finance system fails to provide districts with substantially equal access to funding up to the level necessary to provide a general diffusion of knowledge at similar tax effort. Further, this denial of equal access to the funding necessary to provide a general diffusion of knowledge must be addressed without delay.

FOF 1458. Even if a higher court finds the Texas school finance system provides districts with substantially equal access to funding up to the level necessary to provide a general diffusion of knowledge, the amount of unequal local supplementation in the system is so great that it, in effect, destroys the efficiency of the entire system. *See WOC II*, 176 S.W.3d at 792.

E. Findings relating to the TTSFC Plaintiffs' taxpayer equity claim

FOF 1459. Plaintiff Joseph Langston, who resides in Kaufman ISD, pays property taxes at the same rate as other taxpayers in Kaufman ISD. (RR8:22.)

FOF 1460. Plaintiff Brad King, who resides in Bryan ISD, pays property taxes at the same rate as other taxpayers in Bryan ISD. (RR8:46.)

FOF 1461. Plaintiff Norman Ray Baker, who resides in Hillsboro ISD, pays property taxes at the same rate as other taxpayers in Hillsboro ISD. (RR8:64.)

FOF 1462. Plaintiff Randy Pittinger, who resides in Belton ISD, pays property taxes at the same rate as other taxpayers in Belton ISD. (RR8:83-84.)

F. Findings relating to Intervenors' qualitative efficiency claim

FOF 1463. The Intervenors posit that the Texas educational system cannot be deemed constitutionally efficient until Texas adopts several structural reforms that have yet to attract majority support in the Legislature, including, among other things, eliminating the statutory cap on charter schools; changing laws, regulations and practices that govern teacher compensation, hiring, firing, and certification; creating greater school choice or vouchers; and modifying school district financial reporting requirements. While Intervenors contend that they do not seek any particular remedy besides a declaration that the system is "qualitatively inefficient" and therefore unconstitutional, a cure for the constitutional deficiency they allege necessarily would require the Legislature to adopt some version of their preferred educational policy choices. Their claims fail on both factual and legal grounds as described below and *infra* Parts II.A.7 (COL 58, *et seq.*) and II.B.6 (COL 87, *et seq.*).

1. The Legislature to date has rejected most of the Intervenors' proposed policy changes.

FOF 1464. Nearly every one of the Intervenors' complaints about the current educational system and their suggested reforms have been made the subject of proposed legislation in past legislative sessions, but none of these proposals has yet attracted majority support. *See, e.g.*, H.B. 1087, 82nd Leg. Reg. Sess. (Tex. 2011) (removing cap on charters); H.B. 17, 82nd Leg. 1st Called Spec. Sess. (Tex. 2011) (repealing teacher salary schedule); H.B. 1587, 82nd Leg. Reg. Sess. (Tex. 2011) (establishing rules regarding teacher evaluations based on performance); H.B. 33, 82nd Leg. 1st Called Spec. Sess. (Tex. 2011) (establishing school voucher program); S.B. 1575, 83rd Leg. Reg. Sess. (Tex. 2013) (establishing school voucher program); H.B. 1589, 82nd Leg. Reg. Sess. (Tex. 2011) (creating a new Center for Financial Accountability and Productivity in Education, to annually evaluate and rank each district, charter, and campus on productivity).

FOF 1465. The Legislature has the right to determine the "'methods, restrictions, and regulations'" of the educational system. *Edgewood IV*, 917 S.W.2d at 736 (quoting *Mumme v. Marrs*, 40 S.W.2d 31, 36 (Tex. 1931)). The Texas Supreme Court has stated unequivocally that, in discharging its review of article VII claims, it will "not dictate to the Legislature how to discharge its duty. . . . [nor will it] judge the wisdom of the policy choices of the Legislature, or . . . impose a different policy of our own choosing." *WOC I*, 107 S.W.3d at 564 n.12 (citation and internal quotation marks omitted). The evidence does not establish a constitutional violation.

2. The Intervenors have failed to prove that the system is qualitatively inefficient.

FOF 1466. The Intervenors failed to prove that the Texas educational system is inefficient, having defined "efficiency" as productive of results with little waste. Just as the Court's constitutional review of suitability, adequacy, and financial efficiency is essentially a pass or fail review, so goes the Court's review of qualitative efficiency. The Court does not ask if there is a better way. The Court only looks at what structure is in place or what is absent and determines whether it is arbitrary. The Intervenors' challenges reflect their view of a better, more efficient public school system; however, the Court cannot say that the system is unconstitutional.

FOF 1467. One of the Intervenors' key experts, Dr. Paul Hill, defined efficiency as "the ratio of inputs to outputs" (RR36:43), but conceded that he had neither reviewed the inputs (the level of funding) or the outputs (the student performance results) of the Texas educational system. (RR36:170-73, 194-95.)

FOF 1468. Another Intervenor expert, Dr. Eric Hanushek, in forming his opinion that the Texas school finance system was inefficient, did not visit any Texas school districts, speak to any Texas administrators or faculty, examine any school district budget or financial statement, attempt to quantify the amount of money spent inefficiently, or make any attempt to quantify the costs of various educational inputs. (RR37:128-29, 196-97, 199-201.) The only example of inefficiency he could provide was the way teachers are compensated in Texas (RR37:129, 197), but Dr. Hanushek (1) conceded that there was no solid evidence that a merit pay system would have a positive impact on student achievement (RR37:176-83), (2) conceded that a merit pay system might be more expensive than the status quo (RR37:202), (3) acknowledged that he had never personally assisted a state or school district with the design of a merit pay system or recommended any specific design (RR37:243), (4) acknowledged, but never offered any credible solutions to, the implementation difficulties associated with a merit pay regime, (RR37:180-83, 211-14, 216-19, 242-43; *see also supra* Part I.C.6.b.iii (FOF 664, *et seq.*)), and (5) acknowledged that a merit pay scheme raises valid concerns about destructive competition among teachers. (RR37:242.)

FOF 1469. Dr. Hanushek likewise showed scatterplots of districts based on one year of spending and performance data, in an effort to show that some districts were spending their money much more efficiently than others, but Dr. Hanushek made no effort to identify those "efficient" districts or to determine why they were shown to be more efficient. (RR37:159-60.) Both the "efficient" and "inefficient" districts in these scatterplots utilize the traditional salary schedule (RR24:15) – the only example that Dr. Hanushek could give of an "inefficient" practice. (RR37:196-97.)

FOF 1470. None of the Intervenor experts identified a measure by which the efficiency of the Texas educational system could be rated, either on an absolute or relative basis. Dr. Hill conceded that there was no generally accepted measure of efficiency in the scientific community, and he made no attempt to calculate one for Texas. (RR36:108, 176-77.)

One of the State's primary experts, Dr. Michael Podgursky, agreed that it is impossible to calculate the "frontier relationship" between inputs and outputs, *i.e.*, the most efficient way to raise student achievement. (RR30:61-62.) Dr. Hill further testified that even if Texas were the most efficient educational system in the country, he would still testify that it was inefficient because of the structural features of the system identified in his report. (RR36:196.)

FOF 1471. Dr. Vigdor also rebutted Dr. Hanushek's argument that "if resources are not used to achieve the maximum possible student outcomes, it is not possible to describe the student outcomes that will result from added funding." (Ex. 1001 at 3.) Dr. Vigdor explained that: (1) the production frontier cannot be observed in reality, and that it is impossible to verify whether the resources devoted to schools have been used in the most efficient manner possible; (2) the argument that the level of inefficiency in public schools exceeds that to be expected by virtue of its status as a human organization is a presumption rather than a fact; (3) the production frontier is also a moving target; many factors might raise the location of the frontier upward or downward; and (4) the only measurable, verifiable element represented in Dr. Hanushek's frontier analysis is the quantity of resources (encompassing financial resources, physical resources, and human resources), which substantial evidence indicates has declined in recent years. (RR24:39-41 (referencing Ex. 5412 at 52-53).)

3. The evidence relating to the statutory cap on charter schools does not support a claim for qualitative inefficiency.

FOF 1472. One of the Intervenors' and Charter School Plaintiffs' primary complaints is that the statutory cap on open-enrollment charters (which, at the time of the first phase of trial, limited the number of charters that can be awarded to 215) is inefficient and leads to "unmet demand," as evidenced by the thousands of students currently on charter school waiting lists. However, the statutory cap has not even been reached (209 charters had been awarded at the time of the first phase of trial and the commissioner and SBOE approved three more charters in November 2013 to begin operating in the 2013-14 school year), and any of the existing charter school operators are free to open additional campuses to meet this additional demand. (RR41:25; RR61:143.) The Intervenors' expert, Dr. Paul Hill, could not explain why the statutory cap acted as an impediment to meeting this additional demand. (RR36:144-48.) In fact, Dr. Hill testified that, given the large numbers of low-performing charter schools, Texas may have been too lenient in awarding charters. (RR36:145.)

FOF 1473. Former Commissioner Robert Scott also testified that it is reasonable to have a statutory cap in place is because there is a relationship between the number of charters in existence and the resources available at the TEA to review and monitor existing charters and review new applications, particularly in light of recent budget cuts at the agency. (Ex. 5630, Scott Dep., at 108-10.) In Mr. Scott's words, "when you create a charter, it's like creating a whole new school district" and "it adds that level of workload to the agency." (*Id.* at 110.) Mr. Scott stated a rational basis for maintaining a cap.

FOF 1474. The Court further notes that legislation was passed during the 2013 legislative session that increased the cap on charter schools to 225 charters beginning September 1, 2014 and by fifteen each year thereafter until September 1, 2019, when the statutory cap would stand at 305 charters. *See, e.g.*, Act of May 27, 2013, 83rd Leg., R.S., S.B.2 § 9 (codified at TEX. EDUC. CODE § 12.101(b-1 and b-2).

4. The evidence relating to the teacher compensation system does not support a claim for qualitative inefficiency.

FOF 1475. The Intervenors' arguments regarding teacher merit pay reforms are addressed in Part I.C.6.b.iii (FOF 664, *et seq.*) and in FOF 1468 above.

5. The evidence relating to the Chapter 21 statutes and regulations does not support a claim for qualitative inefficiency.

FOF 1476. The Intervenors offered no persuasive evidence to support their argument that eliminating many of the statutes contained in Chapter 21 of the Texas Education Code governing teacher employment (and the related regulations) would result in substantial gains in student performance. Whether to modify or eliminate these statutes and regulations is a legislative policy choice and is not a question of constitutional dimension.

FOF 1477. Superintendents credibly testified that Chapter 21 does not create any significant inefficiencies for school districts. (*See, e.g.*, RR6:43-45; RR41:75-79.) Low-performing teachers often agree to resign instead of pursuing the full Chapter 21 procedures. (RR4:216-19; RR41:75-78; RR39:162-63.) When Chapter 21 procedures are pursued, they do not prevent school districts from removing low-performing teachers. (*See, e.g.*, RR41:75-79; RR6:43-45.) Superintendent testimony also showed that Chapter 21's minimum contract period does not cause problems for districts, but, in fact, protects them by ensuring that teachers do not leave before the end of a school year. (RR41:78-79.) The Court finds that Chapter 21 regulations do not create any significant inefficiencies in the system.

FOF 1478. The Intervenors proffered the testimony of Robyn Wolters, director of human resources for Irving ISD, to show that invoking the Chapter 21 non-renewal procedure is an expensive, time-consuming process. Much of her testimony about the costs of Chapter 21 non-renewal and termination procedures was based on hearsay. (RR39:157-59, 169-70.) Further, she only had personal knowledge of HR practices at Irving ISD and could not speak to the practices of the 1,023 other school districts in Texas. (RR39:164-66.) Ms. Wolters recognized that the Chapter 21 procedures were designed to protect teachers' due process rights so that they are not subject to arbitrary adverse employment decisions, and that such rights are important. (RR39:166-67.) Finally, Ms. Wolters could not provide any specifics about the cost of compliance with Chapter 21 procedures, either in terms of staff time or money. (RR39:169-70.)

FOF 1479. To the extent the Intervenors or the State Defendants challenge the ISD Plaintiffs' adequacy claims on the theory that removal of the Chapter 21 regulations would result in

performance gains without the need for additional resources, the Court points out that the ISD Plaintiffs must operate within the current statutory framework, and have no burden to disprove what might happen in a hypothetical world with a different statutory framework.

6. The evidence relating to school choice proposals, including vouchers, does not support a claim for qualitative inefficiency.

FOF 1480. The Intervenors offered no persuasive evidence to support their argument that increasing school choice, through a voucher program or otherwise, could act as a substitute for additional funding to the existing system, or would significantly boost student achievement at little cost. Whether to adopt greater school choice is a legislative policy choice, not a question of constitutional dimension. The Legislature is the proper forum for such a debate, and to date, the Legislature has repeatedly rejected school choice proposals. Even in the most recent legislative session, the Legislature considered and rejected two school choice bills. S.B. 1575, 83rd Leg. Reg. Sess. (Tex. 2013); H.B. 3497, 83rd Leg. Reg. Sess. (Tex. 2013).

FOF 1481. To the extent the Intervenors challenge the ISD Plaintiffs' adequacy claims on the theory that greater school choice would result in performance gains without the need for additional resources, the Court points out that the ISD Plaintiffs must operate within the current statutory framework, and have no burden to disprove what might happen in a hypothetical world with a different statutory framework

FOF 1482. Dr. Vigdor opined that basic economics suggests that introducing school choice would increase, not decrease, districts' collective wage bill. (Ex. 5400, Vigdor Supp. Report, at 9-10.) Those school districts that are presumed to have power over consumers in the market for education also possess a comparable degree of power over teachers in the labor market. Compared to a competitive labor market – in this context, one where many small education providers compete to hire teachers – entities with some degree of market power in labor markets can hire fewer workers and pay them less. (RR24:38-39.) Introducing competition into the market place, Dr. Vigdor stated, leads to increases in teacher compensation and expanded hiring of teachers. (Ex. 5400, Vigdor Supp. Report, at 9-10; RR24:36-38.)

FOF 1483. Mr. Joseph Bast, president and CEO of the Heartland Institute, testified for the Intervenors regarding the Texas Taxpayers' Savings Grant Program ("TTSGP"), a school voucher bill that failed in the 82nd Legislative Session. (Ex. 8068 at 1.) As a threshold matter, this Court finds that Mr. Bast is not a credible witness and that he did not offer reliable opinions in this matter. While Mr. Bast described himself as an economist, he holds neither undergraduate nor graduate degrees in economics, and the highest level of education he completed was high school. (RR39:73.) Mr. Bast testified that he is 100% committed to the long-term goal of getting government out of the business of educating its own voting citizens. (RR39:126.) Further, his use of inflammatory and irresponsible language regarding global warming (Ex. 5688; Ex. 1246; Ex. 1247), and his admission

that the long term goal of his advocacy of vouchers is to dismantle the "socialist" public education system (RR39:127) further undermine his credibility with the Court.

FOF 1484. The proposed bill Mr. Bast discussed would have offered tuition grants to students upon entering private kindergarten or transferring from public to private schools equal to the amount of tuition at their private school, or 60% of the state average per-pupil maintenance and operations expenditure, whichever is less. (Ex. 1241 at 1.) Mr. Bast's analysis ignored significant considerations related to the purported cost savings from the TTSGP, making his opinions unreliable. For example, Mr. Bast estimated the amount of the TTSGP grants and supposed savings by using per-pupil maintenance and operating expenditure figures from the 2009-2010 Pocket Edition, which included both federal funds and state funds targeted for low-income students, at-risk students, and ELL students. (RR39:101-08.) Under Mr. Bast's calculations, students transferring to private schools would receive vouchers based on these compensatory spending programs, regardless of whether the students receiving the voucher fit any of these categories. (RR39:105-07.) In addition, Mr. Bast predicted that between 314,000 and 382,000 students would take advantage of the TTSGP in the second year of the program (RR39:32), and that the TTSGP would save the State approximately $2 billion over two years. (RR39:33.) However, the TEA estimated that only 22,000 to 45,000 students would participate in the TTSGP, a fraction of what Mr. Bast estimated. (Ex. 8146 at 2.) In calculating the projected cost savings from the TTSGP, Mr. Bast also did not account for students who already transfer from public to private schools each year without receiving tuition assistance (RR39:117-18), nor did he account for students who start kindergarten in Texas private schools each year without receiving tuition vouchers. (RR39:119-20.) Mr. Bast agreed that the State would not achieve any savings by subsidizing these private school students who would have attended private schools even without receiving the TTSGP. (*Id.*)

FOF 1485. The LBB found that the TTSGP would actually cost the State money for the first two years it operated (RR39:97-99), and no government entity agreed with Mr. Bast's conclusion that the grant program would save the State $1 billion annually. (RR39:98-101.) For each of these reasons, the Court rejects Mr. Bast's conclusions about the supposed costs savings that would have resulted from the TTSGP.

7. The evidence relating to districts' financial reporting requirements does not support a claim for qualitative inefficiency.

FOF 1486. The Intervenors offered the testimony of Dr. Hill and Dallas businessman Mark Hurley to support their contention that Texas does not keep sufficient data to determine whether its educational dollars were being spent efficiently. This testimony was unpersuasive.

FOF 1487. When formulating his opinion in this case, Dr. Hill was unaware of the extensive data available in the Academic Excellence Indicator System ("AEIS"). (RR36:125, 159.) When presented with the data currently available in the AEIS system, Dr. Hill agreed that superintendents could perform financial analyses calculating the per pupil spending at different schools, but that the data set could not attach spending to individuals students.

(RR36:159-61.) Dr. Hill presented no analysis of the costs of creating the data set he envisioned, and could not compare the costs of that data set with what Texas currently spends on educational cost data. (RR36:162-65.)

FOF 1488. While Mr. Hurley has a background in finances in publicly-owned and private companies, he admits that he has no background, experience, or knowledge of the operation of public schools in Texas, nor in school district or governmental budgeting or accounting. (Ex. 8145, Hurley Dep., at 93-94, 175, 177.) Mr. Hurley acknowledged that, in forming his opinions, he did not review the "oceans of data" available through the AEIS system (*Id.* at 160-62), nor did he review the materials that board members have available to them when approving the budget. (*Id.* at 166.) He also admitted that his opinions were limited to the materials he reviewed, which were primarily the school districts' Comprehensive Annual Financial Reports. (*Id.* at 156-57, 164, 165.) Mr. Hurley further testified that the schedules he proposed in his report were mere examples, and that his proposals might not work for all districts and could and should be revised and improved by people with more knowledge of school district operations. (*Id.* at 169, 175, 178, 191, 197-99.)

8. The evidence relating to other state mandates does not support a claim for qualitative inefficiency.

FOF 1489. Dr. Hill testified about state mandates that he claims break the link between expenditures and educational outcomes, including mandates related to teacher pay, school staffing, and school administrative organization, among others (Ex. 1341, Hill Report, at 4-5), but Dr. Hill's discussion of mandates in his expert report was drawn from his national research and he made no effort to determine which of these mandates applied in Texas. (RR36:179.) Many did not. (RR36:127-30, 179-83.) Nor did Dr. Hill offer any empirical or research evidence – beyond his own assertions – that removing any of the mandates that were applicable in Texas would lead to significant cost savings for districts or improvements in student performance. Dr. Hill also agreed that virtually all of the mandates he discussed could be removed with legislative action and that such legislative action had not yet attracted majority support. (RR36:193-94.)

G. Findings relating to the Charter School Plaintiffs' claims

1. Background on Texas charter schools

FOF 1490. A charter is "an opportunity for a group of educators . . . to come together and provide innovative learning possibilities for students." (RR41:13). The purposes of a charter are to, among other things, "increase the choice of learning opportunities within the public school system" and "encourage different and innovative learning methods." TEX. EDUC. CODE § 12.001. (*See also* RR41:11.) They serve as an alternative to traditional school districts for families and students. (RR42:114-15.)

FOF 1491. There are three classes of charters under Chapter 12 of the Education Code. *See* TEX. EDUC. CODE § 12.002. These are: (1) home-rule school district charters that are operated

by school districts, *see id.* § 12.011-.030; (2) campus or campus program charters that a school district board of trustees may grant to parents and teachers for a campus or program on a campus, *see id.* § 12.051-.065; and (3) open-enrollment charters granted by the SBOE, *see id.* §12.101-.135. The remaining findings in this section address open-enrollment charters.

FOF 1492. Most open-enrollment charter schools in Texas are operated by non-profit corporations. (RR41:5.)

FOF 1493. A charter is a contract between the State Board of Education and a charter school applicant. (RR41:13-15, 21-22; Ex. 9043.) Each charter contract is for a five-year term, after which time the charter is up for renewal. If the charter is renewed, its term is ten years. (RR41:21-22.) The charter incorporates the charter applicant's application, and together the two constitute the full terms of the contract. (RR41:13-14; Ex. 9043.)

FOF 1494. Once a charter is awarded, TEA treats the charter school in a manner similar to the way it treats a traditional public school. The charter school interacts with TEA's curriculum, performance-based monitoring, and monitoring and interventions departments, and with TEA's financial review division. (RR41:27; *see* RR41:26 (TEA considers a charter holder as a district.)

FOF 1495. According to Robert Scott, former Commissioner of Education, "when you create a charter, it's like creating a whole new school district" and "it adds that level of workload to the agency." (Ex. 5630, Scott Dep., at 110.)

FOF 1496. Charter schools and school districts are similar in many ways. For instance, both entities are subject to financial accountability requirements, have access to the Teacher Retirement System, and must satisfy state curriculum and graduation requirements. (Ex. 9048 at 22.)

FOF 1497. Charter schools and school districts, despite their similarities, are quite different. Charter schools have much more flexibility in personnel matters, including that charter school teachers are employees "at will," there is no minimum salary scale for teachers, and charter schools are only partially subject to the disciplinary and placement procedures contained in Chapter 37 of the Texas Education Code. (Ex. 9048 at 23; RR42:80-83.) Moreover, a teacher in a charter school is required to have only a high school diploma, and is not required to be certified. TEX. EDUC. CODE § 12.129. (RR42:117.)

2. Tier I and Tier II funding for open-enrollment charter schools is based on statewide averages for district-level adjustments and individualized adjustments for student-level weights.

FOF 1498. Charter schools are also funded differently than school districts. Charter schools, unlike school districts, lack taxing authority. TEX. EDUC. CODE § 12.102(4). Accordingly, charter schools are fully state funded. The State provides charter schools Tier I funding based on student attendance and student population characteristics. The State also

provides charter schools with Tier II funding, which is based on the statewide average of school district tax effort in Tier II. Some charter schools receive ASATR if necessary to meet their revenue target per WADA. (Ex. 1188, Dawn-Fisher Report, at 14.) *See generally* TEX. EDUC. CODE § 12.106.

FOF 1499. Tier I funding for public school districts is based on each individual district's adjusted allotment, which is a function of and is adjusted according to that district's M&O tax rate, size, sparsity, and the CEI. Open-enrollment charter schools receive the same Tier I "special allotments" for students allocated to school districts (*e.g.*, compensatory education, bilingual education, etc.). *See* TEX. EDUC. CODE §§12.106(a-1), 42.151-42.154. However, unlike school districts, each charter school's adjusted allotment is not adjusted for a charter's specific size, sparsity, or CEI. TEX. EDUC. CODE §§12.106(a-1), 42.102-42.105. Instead, one adjusted allotment number is applied to all charter schools so that they receive a statewide average of all the CEI, sparsity, and size adjustments received by all Texas school districts within their adjusted allotment. (RR42:104-05.)

FOF 1500. Tier I funding for open-enrollment charter schools is calculated through weighted funding elements. The basic allotment, the statewide average adjusted basic allotment, and the statewide average adjusted allotment are then incorporated into the same funding formulas applicable to independent school districts, using the charter school's student counts for the student-level special allotments. (Ex. 6441, Wisnoski Dep., at 9, 11 (referencing Ex. 5653 at 140-45, Ex. 5654 at 127-31).)

FOF 1501. Open-enrollment charter schools receive Tier II funding calculated using average school district M&O tax effort in Tier II. (RR42:105; Ex. 6441, Wisnoski Dep., at 9, 11 (referencing Ex. 5653 at 140-45, Ex. 5654 at 127-31).)

FOF 1502. The target revenue amount for open enrollment charter schools is set at the level of funding under formulas in effect for charter school funding in year 2008–09 and using 2009–10 funding per WADA.

FOF 1503. Charter schools are not eligible for separate facilities funding under either the Instructional Facilities Allotment or the Existing Debt Allotment. (Ex. 1188, Dawn-Fisher Report, at 15.)

FOF 1504. Charter applicants are aware of the funding they will receive from the State when they enter into the charter contract. (RR43:166.)

FOF 1505. Although charter schools do not receive specifically earmarked facilities funding, the total funding they receive under the Foundation School Program per ADA is nearly identical to that available to school districts. (Ex. 1188, Dawn Fisher Report at 15.) When considering General Fund revenue per ADA, charter schools fare better than school districts. By Fiscal Year 2012, charter schools received $1,283 per ADA more than school districts. This funding difference exceeds the maximum amount of revenue available to school districts through the EDA program. This is similarly true when looking at All Funds revenue. Charters accordingly have access to revenue in excess of

what is available to school districts, and that revenue is available to meet charter schools' facilities needs. (*Id.* at 16-17.)

FOF 1506. In 2013, charters in Texas were capped at 215. As noted above, the 2013 Legislature increased the statutory cap to gradually reach 305. (*See supra* FOF 1474.) The charter cap has been reached only once since the creation of charter schools in Texas. (RR41:24.) A charter holder may open more than one campus under the charter. There are currently over 500 charter campuses in Texas. (RR41:25.)

FOF 1507. Even with the cap in place, charter schools have experienced exponential growth in Texas since 1996. (RR41:27-28 (referencing Ex. 11332 at 11).)

FOF 1508. Although the majority of charter schools were either "recognized" or "academically acceptable" under the state's prior accountability system, charter schools were more than twice as likely as school districts to be ranked as either "exemplary" or "academically unacceptable." (Ex. 11332 at 13.) Specifically, in 2010-2011, 8.5% of charter schools were exemplary compared to 4.4% of school districts. Likewise, 17.6% of charter schools were academically unacceptable, whereas only 4.9% of districts have that designation. *Id.*

II. Conclusions of law

A. The constitutional parameters and application of factual findings

COL 1. Article VII, Section 1 of the Texas Constitution – the "education" clause – provides: "A general diffusion of knowledge being essential to the preservation of liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Tex. Const. art. VII, § 1. According to the Texas Supreme Court, Article VII, Section 1 obligates the Legislature to meet three standards in providing for a public school system. First, the education provided must be adequate, *i.e.*, the public school system must accomplish "that general diffusion of knowledge . . . essential to the preservation of the liberties and rights of the people," and "must reflect changing times, needs, and public expectations." *WOC I*, 107 S.W.3d at 563, 572 (citing Tex. Const. art. VII, § 1); *see also WOC II*, 176 S.W.3d at 753. Second, the means adopted must be "suitable," *i.e.*, the "public school system [must] be structured, operated, and funded so that it can accomplish its purpose for all Texas children." *WOC II*, 176 S.W.3d at 753. Third, the system itself must be both qualitatively and quantitatively "efficient." *Id.* at 752-53. The primary focus of most of the constitutional challenges in this case is funding as it relates to providing a general diffusion of knowledge for all students: 1) is there enough; and 2) is everyone paying and receiving their fair shares. The State's constitutional duty to make suitable provision for an adequate, equitable public school system extends to all Texas school children. The benefits of such a system inure to the entire state and are necessary to guarantee a bright future for us all. This core value has been part of this state from its beginning and perhaps has never been more important than today.

COL 2. The Legislature must satisfy these obligations without relying on constitutionally-prohibited state ad valorem taxes. *See* Tex. Const. art. VIII, § 1-e ("No State ad valorem taxes shall be levied upon any property within this State."). An "ad valorem tax is a state tax when it is imposed directly by the State or when the State so completely controls the levy, assessment and disbursement of revenue, either directly or indirectly, that the authority employed is without *meaningful discretion*. The determining factor is the extent of the State's control over the taxation process." *WOC I*, 107 S.W.3d at 578 (emphasis added) (citation and internal quotation marks omitted).

COL 3. Put another way, the Texas Constitution requires a public school finance system that is structured, operated, and funded (*i.e.*, is suitable) in a manner that (1) provides all districts access to funds sufficient to provide a general diffusion of knowledge, *i.e.*, a constitutionally adequate education (Article VII, Section 1), to all of its students, (2) provides, within an equalized system, substantially equal access to similar levels of revenue at similar tax rates, and (3) leaves districts with "meaningful discretion" to raise their tax rates in order to provide local enrichment programs to their students, if they so choose. (Article VIII, Section 1-e.)

1. The role of the judiciary and the "arbitrary" standard of review

COL 4. "The judiciary's role, though important, is limited to ensuring that the constitutional standards are met." *WOC II*, 176 S.W.3d at 753. It is not to "prescribe *how* the standards should be met." *Id.* "[M]uch of the design of an adequate public education system cannot be judicially prescribed." *Id.* at 779. The Legislature necessarily has "much latitude in choosing among any number of alternatives that can reasonably be considered adequate, efficient, and suitable. These standards do not require perfection, but neither are they lax. They may be satisfied in many different ways, but they must be satisfied." *Id.* at 784.

COL 5. "Article VII, Section 1 allows the Legislature a large measure of discretion on two levels. The Legislature is entitled to determine what public education is necessary for the constitutionally required 'general diffusion of knowledge', and then to determine the means for providing that education; [however,] the Legislature does not have free rein at either level." *Id.* For example, the Legislature may not "'define what constitutes a general diffusion of knowledge so low as to avoid its obligation to make suitable provision imposed by article VII, Section 1.'" *Id.* (quoting *WOC I*, 107 S.W.3d at 571). Additionally, while the Legislature "'certainly has broad discretion to make the myriad policy decisions concerning education,'" its choices must be informed by "guiding rules and principles properly related to public education," *i.e.*, they must not be arbitrary. *Id.* at 784-85.

COL 6. "It would be arbitrary, for example, for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals." *Id.* at 785.

COL 7. "'[A] mere difference of opinion [between judges and legislators], where reasonable minds could differ, is not a sufficient basis for striking down legislation as arbitrary or unreasonable.'" *Id.* (alteration in original) (quoting *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 520 (Tex. 1995)).

COL 8. However, "[f]or article VII, Section 1, as for other provisions, '[t]he final authority to determine adherence to the Constitution resides with the Judiciary.'" *Id.* (quoting *WOC I*, 107 S.W.3d at 563 (citing *Marbury v. Madison*, 5 U.S. 137, 176-78 (1803) and *Love v. Wilcox*, 28 S.W.2d 515, 520 (Tex. 1930))).

2. "Meaningful discretion"/state property tax

COL 9. A district must have "meaningful discretion" in setting its property tax rates for a local ad valorem tax to remain constitutional under Article VIII, Section 1-e of the Texas Constitution. *WOC II*, 176 S.W.3d at 795-96.

COL 10. A district need not show that it is forced absolutely to the limit of the M&O tax cap to demonstrate that it lacks meaningful discretion. *WOC II*, 176 S.W.3d at 795-96. Given that the State "leaves largely to school districts the decisions on how best to expend education funds to achieve" adequacy, it is impossible to trace the impact of the adequacy requirement on each dollar spent for programs and teacher salaries. *Id.* at 796. "Recognizing these realities," the Supreme Court instructs that "State influence on district taxing and spending cannot be measured exactly but must be gauged along a spectrum of possibilities." *Id.*

COL 11. The opportunity for "local supplementation is made a core component of the system structure, necessitated by the basic philosophy of the virtue of local control. The State cannot provide for local supplementation, pressure most of the districts by increasing accreditation standards in an environment of increasing costs to tax at maximum rates in order to afford any supplementation at all, and then argue that it is not controlling local tax rates." *Id.* at 797.

COL 12. In discussing possible remedial legislation in *WOC II*, the Supreme Court warned that "a cap to which districts are inexorably forced by educational requirements and economic necessities, as they have been under SB7, will in short order violate the prohibition of a state property tax." *Id.* at 798. The evidence in this case convincingly established that Texas school districts have reached this point. The system is structured such that it is effectively impossible for districts to provide local enrichment because all funds that are available must be used to provide the basic, adequate education.

COL 13. At the time of *WOC II*, the Court found that the State's control of "$1 billion in local tax revenues recaptured from 134 districts [representing 12% of total enrollment]," was "a significant factor in considering whether local taxes have become a state property tax," particularly considering that the "number of districts and amount of revenue subject to recapture ha[d] almost tripled since 1994." *Id.* at 797. Those numbers have climbed, and

by the 2014-15 school year, it is estimated that $1.24 billion will be recaptured from 246 (of the 356) Chapter 41 districts. (Ex. 11470 ("Summary" tab, cells K42-44).)

COL 14. By imposing the compressed tax rate on districts, the State increased its control over public school finance. Districts lost discretion over one-third of their local tax revenues, and now their funding is dependent upon the Legislature's appropriation of state funds to replace the lost revenues.

COL 15. The plaintiff districts taxing at or near $1.17 have shown that they lack meaningful discretion in setting the M&O tax rates, because they cannot raise their rates beyond $1.17 and cannot materially lower their rates without further compromising their ability to provide their students with a constitutionally adequate education.

COL 16. For Chapter 41 districts, any funds generated by an increase of more than six cents above their compressed rate are subject to partial recapture by the State under statutory formulas. Chapter 41 districts that wish to tax more than six cents above the compressed rate, and above $1.04, are therefore forced to ask their voters to approve a tax increase in which a significant portion of the revenues raised could not be used locally and would instead be recaptured by the State. As reflected in Part I.C.1.b.iii (FOF 253, *et seq.*) above, as a practical consequence of the TRE requirement, the additional revenues that could be generated by setting the M&O tax rate between $1.06 and $1.17 are unavailable to many Chapter 41 districts, and thus do not constitute "meaningful discretion" for these districts.

COL 17. Chapter 42 districts are particularly constrained by the yield structure as well. The lower yield of Chapter 42 districts at $1.04 means they are "capped out" by the TRE at a lower revenue level, thus reducing their discretion that much sooner. Exacerbating the problem, Chapter 42 districts must then overcome significant obstacles to passing a TRE, including the poverty of their districts, the low yield of the copper pennies, and the high I&S tax rates many also pay for debt service. (*See supra* FOF 257 – FOF 258.)

COL 18. Even if all districts could obtain taxpayer approval to tax at the maximum M&O tax rate of $1.17, the tax revenues generated would be insufficient to fund an adequate education for most districts and would not provide local discretion for enrichment.[84]

COL 19. For the reasons stated in Part I.C.1 (FOF 210, *et seq.*) above, this Court concludes that the lack of meaningful discretion in the school finance system is systemic, compromising the districts' ability to provide local enrichment programming and to exercise meaningful discretion over the setting of their local M&O tax rates. The result is a state property tax in violation of Article VIII, Section 1-e.

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[84] The Court does not find that **all** districts are unable to provide an adequate education under the current system. Some property-wealthy districts are not forced to tax at the maximum rate and are able to generate sufficient funds for a basic education **and** for local enrichment. Those districts are a comparative few and do not save the school finance system from its unconstitutional structure.

3. Adequacy/general diffusion of knowledge

COL 20. "Under article VII, Section 1 of the Constitution of 1876, the accomplishment of 'a general diffusion of knowledge' is the standard by which the adequacy of the public education system is to be judged." *Id.* at 787 (quoting Tex. Const. art. VII, § 1). This Court also takes heed of the Texas Supreme Court's instruction that the "general diffusion of knowledge" standard is not a static concept. Rather, the standard must take into account "'changing times, needs, and public expectations.'" *WOC I*, 107 S.W.3d at 572 (quoting *Edgewood IV*, 917 S.W.2d at 732 n.14). These changes generally increase the level of skill and knowledge students must possess. (RR28:175-76.)

COL 21. In *WOC II*, the Texas Supreme Court adopted this Court's previous definition of constitutional adequacy, with one modification, as set forth below:

> To fulfill the constitutional obligation to provide a general diffusion of knowledge, districts must provide "*all Texas children* . . . *access* to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation." TEX. EDUC. CODE § 4.001(a) (emphasis added). Districts satisfy this constitutional obligation when they [are reasonably able to] provide all of their students with a *meaningful opportunity* to acquire the essential knowledge and skills reflected in . . . curriculum requirements . . . such that upon graduation, students are prepared to "continue to learn in postsecondary educational, training, or employment settings." TEX. EDUC. CODE § 28.001 (emphasis added).

WOC II, 176 S.W.3d at 787 (quoting this Court's conclusions of law in *West Orange-Cove*).

COL 22. The Texas Supreme Court found it appropriate to "draw from statutory language the Legislature's understanding of a general diffusion of knowledge." *Id.* at 788. For example, with respect to Section 4.001 of the Education Code, it found that the "Legislature has expressly linked the stated mission of public education [– to ensure that all Texas children have access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation –] to the constitutional standard." *Id.*

COL 23. In addition, the Supreme Court found that the Legislature, in Section 28.001, "labeled specific knowledge and skills 'essential,' just as a general diffusion of knowledge is." *Id.* at 789. This provision states:

> It is the *intent* of the legislature that the *essential* knowledge and skills developed by the State Board of Education under this subchapter shall require *all students* to demonstrate the knowledge and skills necessary to read, write, compute, problem solve, think

> critically, apply technology, and communicate across *all* subject areas. The essential knowledge and skills shall also prepare and enable all students to continue to learn in *postsecondary educational, training, or employment settings.*

TEX. EDUC. CODE § 28.001 (emphasis added). These essential knowledge and skills are embodied in the TEKS, the curriculum adopted by the SBOE. *See* TEX. EDUC. CODE § 28.002 and 19 TEX. ADMIN. CODE §§ 74, 110-128.

COL 24. The Supreme Court then made the important observation that:

> These clear, affirmative statements cannot be dismissed as merely hopeful rhetoric; rather, the Legislature must be presumed to have chosen its words deliberately. Nor can these words be read to describe a public education system that the Legislature believes would not only meet but exceed constitutional requirements. The specific reference to the constitutional standard in section 4.001(a) and the repeated use of the word "essential" in section 28.001 does not allow it. To avoid improper policy-making of its own, the district court properly looked to legislative policy statements.

WOC II, 176 S.W.3d at 789.

COL 25. With "changing times, needs and public expectations" in mind, the Legislature, after *WOC II*, set "college and career readiness" as the outcome goal of the Texas educational system through significant amendments to Chapters 28 and 39 of the Texas Education Code. (*See supra* Part I.B.3.a (FOF 82, *et seq.*).) As in *WOC II*, this Court looks to those legislative policies and choices to inform the definition of "general diffusion of knowledge."

COL 26. The Legislature has defined college readiness as the level of preparation a student must attain in English language arts and mathematics to enroll and succeed, without remediation, in an entry-level college course in those subject areas. *See* TEX. EDUC. CODE § 39.024(a). The State has adopted the STAAR / EOC regime as a means to measure how well Texas students are acquiring and mastering the TEKS and are progressing toward the objective of college and career readiness. (*See supra* Part I.B.3.b (FOF 93, *et seq.*).)

COL 27. In addition to amending the accountability and accreditation system for school districts, the legislative changes since *WOC II* established an elaborate set of requirements that affect individual students – requirements that determine whether students are able to be promoted or graduate. (*See supra* Parts I.B.3.b – I.B.3.c (FOF 93, *et seq.*).) This new element of the accountability system is a critical component of the legislatively-defined general diffusion of knowledge. Just as the Legislature may not "'define what constitutes a general diffusion of knowledge so low as to avoid its obligation to make suitable provision'" for the public school system, *see WOC I*, 107 S.W.3d at 571, it may not set accreditation requirements for school districts so low as to create the appearance that

districts are meeting those requirements, while tens of thousands of students are not able to be promoted or graduate because they do not meet the State's performance standards.

COL 28. Any effort to assess the cost of the general diffusion of knowledge must take into account the fact that districts are bound by law to teach the full array of the TEKS, including both the required and enrichment curriculums. They must also offer a variety of programs and services described in Chapters 28-34 and 37-39 of the Texas Education Code, and abide by associated regulations implementing these and other mandates. These chapters contain numerous mandates for the provision of services to students. Among these mandates is the Legislature's longstanding requirement that "a school district may not enroll more than 22 students in a kindergarten, first, second, third, or fourth grade class," unless the Commissioner grants an exemption. TEX. EDUC. CODE § 25.112(a), (d).

COL 29. It follows that the Legislature must ensure that districts have resources sufficient to provide all schoolchildren a meaningful opportunity to be college or career ready upon graduation from high school, to provide all schoolchildren a meaningful opportunity to acquire and master the TEKS as measured by the State's assessment system, and to meet the mandates of the Education Code. *See WOC II*, 176 S.W.3d at 785 ("It would be arbitrary, for example, for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals.").

COL 30. Part of the duty to ensure that districts have sufficient resources is a duty to make a reasonable effort to determine what it will cost to adequately provide for its own standards and meet its own definition of a general diffusion of knowledge. The State effectively has recognized and accepted this constitutional responsibility by enacting Section 42.007 of the Texas Education Code, which requires rule making and the conduct of specific studies on a biennial basis to determine the cost of meeting state performance requirements. (*See supra* Part I.C.5.a (FOF 603, *et seq.*).) As urged by the Intervenors, this is a necessary aspect of making suitable provision for public education and being productive of results without waste.

COL 31. Measures that superintendents and other experts have identified as best practices to attain the legislatively mandated outcome objective of college and career readiness include, among other things, (a) manageable class sizes, particularly for economically disadvantaged and ELL populations, (b) preschool programs of sufficient quality to provide a "head start" to special needs students, (c) remedial and literacy programs to help ELL, economically disadvantaged, and other special needs students, including summer school and after school programs, (d) salaries that can attract and retain sufficient numbers of qualified teachers, and (e) vocational and career courses to give those students that cannot attend college an opportunity to succeed in post-secondary employment settings. (*See generally supra* Parts I.C.2.c (FOF 379, *et seq.*) and I.C.2.e (FOF 520, *et seq.*).) The Court identifies these practices as examples of ways to accomplish the general diffusion of knowledge, not to order the Legislature to adopt these practices as *per se* constitutional; however, where research supports a practice as effective, an approach that undermines those practices, without replacing them with

another approach that is supported by research as reasonable, could be considered arbitrary and unconstitutional.

COL 32. This Court rejects the notion that the general diffusion of knowledge requires expenditures only in the instructional program described in statute and that other expenditures are merely "extraneous." A district cannot provide a constitutionally adequate education without a sufficient support network, which may include, among other things, (a) adequate and well-maintained facilities, (b) nurses to keep students healthy, (c) security guards in certain schools to keep students safe, (d) guidance counselors to help students with course selection and with planning for college and careers, (e) paraprofessionals to provide vital assistance to teachers, (f) libraries with both print and electronic resources and librarians to assist students and teachers in using these resources, (g) tutors to help struggling students, and (h) transportation. (*See supra* Part I.C.3.d (FOF 575, *et seq.*).) In some districts, the general diffusion of knowledge may additionally require programs designed to keep students in school until graduation.

COL 33. The Texas Supreme Court found that the constitutional right of adequacy extends to all schoolchildren. *See WOC II*, 176 S.W.3d at 774. These schoolchildren (and the general public) will be irreparably harmed if they are denied access to an adequate education. (*See supra* Part I.B.1 (FOF 11, *et seq.*).) Furthermore, these constitutional rights cannot be made subject to a vote. For this reason, at a minimum, school districts must be able to finance the cost of meeting the constitutional mandate of adequacy within the range of taxing authority not subject to the tax rate elections. In the current system, that level is an M&O tax rate of $1.04 or below. *See WOC I*, 107 S.W.3d at 580 ("A public school system dependent on local districts free to choose not to provide an adequate education would in no way be suitable."), at 584 ("As we have explained, the Legislature has chosen to make suitable provision for a general diffusion of knowledge by using school districts, and therefore the State cannot be heard to argue that school districts are free to choose not to achieve that goal.") The State must fulfill its obligation to provide additional state funds to replace the local tax revenue that was lost when the Legislature imposed the compressed tax rate. The evidence established that a majority of districts would be unable to access sufficient tax revenues to accomplish the general diffusion of knowledge even at the maximum M&O tax rate of $1.17; therefore, the school finance system is structured so that it is impossible for districts to access adequate funds to provide the basic, required level of education.

COL 34. An adequate system must also include sufficient funding for facilities. *Edgewood IV*, 917 S.W.2d at 746. (*See supra* FOF 585.) The Legislature's failure to adjust the facilities guaranteed yield to account for inflation and increases in construction costs from the $35 established in 1999, failure to make facilities funding a permanent part of the school finance system, and failure to equalize funding by either substantially increasing the guaranteed yield or requiring recapture renders facilities funding constitutionally inadequate and financially inefficient.

COL 35. Because of the fact findings in Part I.C (FOF 210, *et seq.*) above, this Court concludes that the Texas school finance system is presently in violation of the "general diffusion of

knowledge" clause of Article VII, Section 1 of the Texas Constitution because the Legislature "define[d] the goals for accomplishing the constitutionally required general diffusion of knowledge," and then provided "insufficient means for achieving those goals." *WOC II*, 176 S.W.3d at 785. This Court further concludes that the system is currently in violation of this same clause with respect to the economically disadvantaged and ELL student populations specifically.

4. Suitability

COL 36. "Suitability" under Article VII, Section 1 "refers specifically to the means chosen to achieve an adequate education through an efficient system." *Id.* at 793. "'[S]uitable provision' requires that the public school system be structured, operated, and funded so that it can accomplish its purpose for all Texas children." *Id.* at 753.

COL 37. As the Supreme Court noted, "if the funding system were efficient so that districts had substantially equal access to it, and the education system was adequate to provide for a general diffusion of knowledge, but districts were not actually required to provide an adequate education, 'the Legislature's use of districts to discharge its constitutional duty would not be suitable, since the Legislature would have employed a means that need not achieve its end.'" *Id.* at 793 (quoting *WOC I*, 107 S.W.3d at 584).

COL 38. The Supreme Court also held that the "suitable provision" clause would be violated if "the Legislature substantially defaulted on its responsibility such that Texas school children were denied access to that education needed to participate fully in the social, economic, and educational opportunities available in Texas." *Id.* at 794 (citation and internal quotation marks omitted).

COL 39. The "suitable provision" clause is likewise violated by the Legislature substantially defaulting on its responsibility such that Texas school children are denied access to a meaningful opportunity to meet the rigorous new accountability standards and obtain a high school diploma, a prerequisite to succeeding in college or the workforce.

COL 40. The "suitable provision" clause is also violated by the Legislature defaulting on its responsibility to make a reasonable effort to determine what it will cost to adequately and suitably provide for its own standards so that it can ensure that the system is in fact "structured, operated, and funded so that it can accomplish its purpose for all Texas children." (*See supra* Part I.C.5.a (FOF 603, *et seq.*).)

COL 41. The State has failed to make suitable provision for free public schools as a result of multiple defects in the current design of the school finance system that cumulatively prevent districts from generating sufficient resources to accomplish a general diffusion of knowledge. For example, the State is relying on outdated, arbitrary weights and allotments that do not reflect the actual cost of education to determine funding levels for districts, and it further cut that funding by appropriating school finance funds based upon funds that are available rather than what funds are required.

COL 42. Because the school finance system bears no relationship to the actual cost of providing access to a constitutionally adequate education, the school finance system as a whole is arbitrary and, therefore, fails to make suitable provision.

5. Financial or quantitative efficiency

COL 43. "The legislature is duty-bound to provide for an efficient system of education, and only if the legislature fulfills that duty can we launch this great state into a strong economic future with educational opportunity *for all*." *Edgewood I*, 777 S.W.2d at 399 (emphasis added). Financial efficiency requires that "districts [] have substantially equal access to similar revenues per pupil at similar levels of tax effort" up to the level of adequacy. *WOC II*, 176 S.W.3d at 790.

COL 44. The Legislature has chosen to rely heavily on local property taxes, which remain largely disparate across Texas, to discharge its duty to provide for an efficient system of public education. (*See supra* FOF 40 – FOF 47; Part I.D.4.a (FOF 1376, *et seq.*) The Legislature's decision to rely so heavily on local property taxes to fund public education does not in itself violate any provision of the Texas Constitution, but in the context of a proliferation of local districts enormously different in size and wealth, it is difficult (though certainly possible) to make the result efficient – meaning "effective or productive of results and connot[ing] the use of resources so as to produce results with little waste" – as required by article VII, Section 1 of the Constitution. *WOC II*, 176 S.W.3d at 757.

COL 45. "A system that operates with an excess of resources in some locales and a dearth in others is inefficient." *Id.* at 756-57 (citing *Edgewood I*, 777 S.W.2d at 397; *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491, 496 (Tex. 1991) ("*Edgewood II*"); and *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489, 497 (Tex. 1992) ("*Edgewood III*")). Therefore, the system must compensate for disparities in the amount of property value per student, so that property owners in property-poor districts are not burdened with much heavier tax rates than property owners in property-wealthy districts in order to generate substantially the same revenue per student for public education. *See id.* at 757. In other words, the Legislature must ensure that the funding system it develops provides access to those funds necessary to provide an adequate education at a substantially similar tax rate. *See id.* at 757, 790. So long as the Legislature continues to rely on local property taxes as the primary basis for funding the school finance system, the equalization provisions built into the public school finance system, including the cap on maintenance and operation tax rates and the recapture provisions, remain essential to providing that equal access. *See id.* at 798.

COL 46. However, the guarantee of substantially equal access to similar revenue at similar tax effort cannot be achieved solely through the tax cap and recapture, because such a system would "'level-down' the quality of our public school system, a consequence which is universally regarded as undesirable from an educational perspective." *Edgewood IV*, 917 S.W.2d at 730. To the contrary, the constitutional guarantee of an efficient system of public schools requires the State to level districts "*up to* the legislatively defined level

that achieves the constitutional mandate of a general diffusion of knowledge." *WOC I*, 107 S.W.3d at 571 (quoting *Edgewood IV*, 917 S.W.2d at 730) (emphasis added).

COL 47. Just as the State cannot artificially lower the standard of a general diffusion of knowledge in order to lower its funding obligation under the adequacy standard (*see WOC II*, 176 S.W.3d at 784), the State cannot level down to a funding level insufficient to provide for a general diffusion of knowledge. *See WOC I*, 107 S.W.3d at 571 (citing *Edgewood IV*, 917 S.W.2d at 729-30).

COL 48. The Legislature's decision on how to level up cannot be arbitrary – it must be "informed by guiding rules and principles properly related to public education." *WOC II*, 176 S.W.3d at 784-85. A funding system that locks in the quirks of funding from a single year, and funds districts at different levels that are not connected to the district's tax effort, or its educational needs, is not so informed. (*See supra* Part I.D.4.b.i (FOF 1379, *et seq.*).) Accordingly, the Court concludes that the Tier I funding provisions, CTR and target revenue, are arbitrary and unconstitutional.

COL 49. Because "'[a]n efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place,'" the system must be analyzed as a whole, taking into consideration both the instruction and facilities components. *WOC II*, 173 S.W.3d at 790 (quoting *Edgewood IV*, 917 S.W.2d at 726). The current structure for facilities funding violates the constitutional requirement that districts have substantially similar access to revenues for similar tax effort. The relatively low guaranteed yield coupled with the lack of recapture means that property-wealthy districts can far outstrip low wealth districts in access to funds for facilities necessary for a general diffusion of knowledge. Further, unlike formula funding for M&O expenses, facilities funding for eligible lower wealth school districts is not a permanent part of the school finance structure and is subject to appropriations. As a result, the Legislature can arbitrarily choose not to fund facilities to the same level as it has in the two most recent biennia, requiring districts to use already limited M&O funds for facility needs. The structural inequity in the current system is arbitrary and does not provide substantially equal access to similar revenues at similar tax rates. Further, the failure to update the guaranteed yield to a level that bears a relationship to the cost of maintaining, constructing, and renovating facilities is arbitrary and an unconstitutional failure to make suitable provision.

COL 50. As long as the Legislature maintains an efficient system up to the level of adequacy in compliance with Article VII, Section 1, it may authorize local school districts to supplement their educational resources from local funds. *See Edgewood IV*, 917 S.W.2d at 732. Even then, "the amount of 'supplementation' in the system cannot become so great that it, in effect, destroys the efficiency of the entire system. The danger is that what the Legislature today considers to be 'supplementation' may tomorrow become necessary to satisfy the constitutional mandate for a general diffusion of knowledge. Supplementation must be just that: additional revenue not required for an education that is constitutionally adequate." *WOC II*, 176 S.W.3d at 792.

COL 51. Furthermore, the Supreme Court has clearly found that *all* districts must have "meaningful discretion" for enrichment purposes (*see supra* Part II.A.2 (COL 9, *et seq.*)), and the disparities in local property wealth (*see supra* Part I.D.4.a (FOF 1376, *et seq.*)) make it clear that, in order for this discretion to be truly meaningful for all districts, at least some portion of this additional "enrichment" revenue must be substantially equalized.

COL 52. Having determined how the Legislature has defined adequacy/a general diffusion of knowledge, and how much it costs districts to provide for it, it is this Court's role to determine whether school districts have substantially equal access to funding up to that level. The Texas Supreme Court has determined that the primary standard for evaluating substantially equal access is the differences in tax rates needed to fund an adequate education. *See Edgewood IV*, 917 S.W.2d at 731. In other words, even if every district in the state is reaching adequacy, if the gaps in tax rates necessary to do so are too great, the system is unconstitutionally inefficient. *Id.*

COL 53. Based on the findings adopted herein (*see* Part I.D (FOF 1204, *et seq.*)), the Court concludes that the Texas school finance system is not financially efficient and fails to provide districts with substantially equal access to funding up to the level necessary to provide a general diffusion of knowledge at similar tax efforts and, as such, violates Article VII, Section 1 of the Texas Constitution. The State Defendants are not ensuring an efficient system of public schools where "[c]hildren who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds." *WOC II*, 176 S.W.3d at 753 (citing *Edgewood I*, 777 S.W.2d at 397).

COL 54. The Court further concludes that the facts in this case show that property-poor districts have far less access to the educational funds they need to achieve their full potential and meet the standards set by the State, and, therefore, the current school finance system is not efficient in the sense of producing results for the provision of a general diffusion of knowledge under Article VII, Section 1 of the Texas Constitution. *See id.* at 757; *Edgewood I*, 777 S.W.2d at 395.

COL 55. The Supreme Court has not defined what amount of unequalized revenue above the level of a general diffusion of knowledge will cause the system to become inefficient. Based on the findings above, *see supra* Part I.D (FOF 1204, *et seq.*), which show substantial disparities in the system as a whole, this Court concludes that the current level of unequalized revenue in the system exceeds what can be tolerated to avoid destroying the efficiency of the entire system. *See WOC II*, 176 S.W.3d at 798.

6. Taxpayer equity

COL 56. The taxpayer equity claim brought by Plaintiffs Langston, King, Baker, and Pittinger rests on Article VIII, § 1(a) of the Texas Constitution, which provides that "[t]axation shall be equal and uniform." "Taxes are said . . . to be 'equal and uniform,' when no person nor class of persons *in the taxing district*, whether a state, county, or other

municipal corporation, is taxed at a different rate than are other persons *in the same district* upon the same value or the same thing, and where the objects of taxation are the same by whomsoever owned, or whatever they be." *Norris v. City of Waco*, 57 Tex. 635, 641 (Tex. 1882) (emphasis added). Thus, "[t]he mandate that all taxes be equal and uniform requires only that all persons falling within the same class be taxed alike." *Grocers Supply Co., Inc. v. Sharp*, 978 S.W.2d 638, 645 (Tex. App.—Austin 1998, pet. denied); *see generally Spring Indep. Sch. Dist. v. Harris County Appraisal Dist.*, 889 S.W.2d 562, 564-65 (Tex. App.—Houston [14th Dist.] 1994, *rev'd on other grounds by Enron Corp. v. Spring Indep. Sch. Dist.*, 922 S.W.2d 931 (Tex. 1996) ("From its earliest decisions, Texas courts have held that taxation is 'equal and uniform' when no person or class of persons in the same territory is taxed at a higher rate than other persons on the same property in the same district. Uniformity and equality means taxation based solely on the property's value and not other factors." (citations omitted)).

COL 57. There was no evidence that taxpayers within the same taxing district, here school districts, paid a different rate of taxes; therefore, there was no violation of Article VIII, Section 1(a).

7. Qualitative efficiency

COL 58. The qualitative component of the efficiency clause is "simply shorthand for the requirement that public education accomplish a general diffusion of knowledge." *WOC II*, 176 S.W.3d at 753. Qualitative efficiency requires the school finance system to provide the resources necessary for school districts to provide a general diffusion of knowledge to every child. *See Edgewood IV*, 917 S.W.2d at 736. The Texas Supreme Court has stated that "efficiency" in the context of the Education Clause includes the common meaning that the public schools should be productive of results without waste.

COL 59. The Court finds that it has jurisdiction to determine the merits of the Intervenors' claims. The Texas Supreme Court has emphasized that "[t]he judiciary's role, though important, is limited to ensuring that the constitutional standards are met." *WOC II*, 176 S.W.3d at 753. It is not to "prescribe *how* the standards should be met." *Id.* "[M]uch of the design of an adequate public education system cannot be judicially prescribed." *Id.* at 779. The Legislature has the right to determine the "'methods, restrictions, and regulation'" of the educational system. *Edgewood IV*, 917 S.W.2d at 736 (quoting *Mumme v. Marrs*, 40 S.W.2d 31, 36 (Tex. 1931)). The Texas Supreme Court has stated unequivocally that, in discharging its review of article VII claims, it will "not dictate to the Legislature how to discharge its duty . . . [nor will it] judge the wisdom of the policy choices of the Legislature, or . . . impose a different policy of our own choosing." *Id.* at 726. This standard, however, does not preclude the Court from determining whether the Legislature has acted arbitrarily in structuring different aspects of the public school system, *e.g.* the method of paying teachers, contract requirements, and review of employment disputes, or the method for reviewing districts' financial accountability. If the method chosen for an appropriate purpose is totally ineffective or arbitrary, the Court could find that the structure violated the qualitative efficiency requirement. The Intervenors have failed to establish such a violation in this case.

COL 60. The Intervenors' arguments all take issue with policy choices of the Legislature, including, but not limited to, the Legislature's choices: (1) to impose a cap on the number of charter schools operators so that the TEA can effectively supervise these operators; (2) to adopt statutes and regulations that attempt to strike a balance between the need to protect the due process rights of teachers with the need of districts to terminate ineffective teachers; (3) to adopt teacher certification rules that ensure that students have access to teachers who are properly trained and certified; (4) to create a financial accountability system run by the TEA according to governmental accounting standards; (5) to permit regulations that restrict the use of Home-Rule School District Charters and the Public Education Grant Program; and (6) not to provide vouchers to subsidize private schools. While Intervenors contend that they do not seek any particular remedy besides a declaration of unconstitutionality, their claims necessarily involve challenging the constitutionality of the statutes and regulations to which they object. Based upon the evidence as noted in the Court's findings of fact, the Court cannot find that the Legislature acted arbitrarily with respect to the Intervenors' claims.

8. Charter School Plaintiffs' claims

a. The Charter School Plaintiffs' adequacy claim

COL 61. Because the ISD Plaintiffs established the inadequacy of their funding under the school funding formulas (*see supra* Part I.C.2 (FOF 271, *et seq.*), and because charter schools are financed based on state averages of ISD funding levels (*see supra* FOF 1498 - FOF 1502), the Charter School Plaintiffs prevail on their claim that funding for open-enrollment charter schools is also inadequate under Article VII, Section 1.

b. The Charter School Plaintiffs' claims arising out of differential funding with ISDs, including facilities funding

COL 62. The charter-school system was created by statute and is not required by the Texas Constitution. TEX. EDUC. CODE § 12.001 *et seq.*; *LTTS Charter Sch., Inc. v. C2 Constr., Inc.*, 342 S.W.3d 73, 81, (Tex. 2011) (stating "The wellspring of open-enrollment charter schools' existence and legitimacy is the Education Code"). The Legislature established charter schools to "(1) improve student learning; (2) increase the choice of learning opportunities within the public school system; (3) create professional opportunities that will attract new teachers to the public school system; (4) establish a new form of accountability for public schools; and (5) encourage different and innovative learning methods." TEX. EDUC. CODE § 12.001.

COL 63. A charter for an open-enrollment charter school is in the form of a contract signed by the chair of the State Board of Education and the chief operating officer for the school. TEX. EDUC. CODE § 12.112. Each charter must comply with § 12.111 of the Texas Education Code. TEX. EDUC. CODE § 12.113.

COL 64. For the fiscal year ending August 31, 2014, the Commissioner may not grant more than a total of 215 charters. (RR61:121); TEX. EDUC. CODE § 12.101 (b-1). Between September

1, 2014 and September 1, 2018, the total number of charters that may be granted will increase from 215 to 270. TEX. EDUC. CODE § 12.101(b-1). "Beginning on September 1, 2019, the total numbers of charters for open-enrollment charter schools that may be granted is 305 charters." *Id.* (b-1).

COL 65. The Charter School Plaintiffs contend that Section 12.106 of the Texas Education Code, which sets out the manner in which charter schools are funded, violates Article I, Section 3 of the Texas Constitution, because unlike the school districts, charter schools are not eligible for separate facilities funding. The Court presumes that Section 12.106 is constitutional and defers to the Legislature's determinations of a statute's wisdom or expediency. *Enron Corp. v. Spring Indep. Sch. Dist.*, 922 S.W.2d 931, 934 (Tex. 1996).

COL 66. The Equal Protection Clause directs governmental actors to treat all similarly situated persons alike. *Sanders v. Palunsky*, 36 S.W.3d 222, 224–25 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)). Where neither a suspect classification nor a fundamental right is involved, the challenged law survives constitutional scrutiny if it is rationally related to a legitimate governmental purpose. *See Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 457–58 (1988).

COL 67. The Legislature, in its discretion, created charter schools to serve as an alternative form of education in Texas, and in doing so, has relaxed applicable personnel requirements, subjects them to different levels of oversight and regulation, and allows them more flexibility in delivering curriculum to their students. These differences serve as a rational basis for the Legislature's policy choice to fund charter schools differently than it funds school districts.

c. The Article VII, Section 1 claim challenging the statutory cap on open-enrollment charters

COL 68. At the present time, the SBOE may not grant more than 215 charters for an open-enrollment charter school. TEX. EDUC. CODE § 12.101(b).

COL 69. The Texas Legislature did not act arbitrarily in limiting the number of charter schools to 215, in gradually increasing that limit over the next few years to 305, or in choosing to fund charter schools differently from traditional public school districts.

B. Declaratory relief

1. Adequacy claims (ISD Plaintiffs)

COL 70. The ISD Plaintiffs have shown that the cost of meeting the constitutional mandate of adequacy (the "general diffusion of knowledge") exceeds the maximum amount of funding that is available to them at the $1.04 M&O tax rate (the highest rate accessible without a TRE). Accordingly, this Court declares the State's school finance system fails to satisfy the Article VII, Section 1 adequacy requirement as to the ISD Plaintiffs

districts. The ISD Plaintiffs also have shown that the cost of meeting the constitutional mandate of adequacy exceeds the amount of funding that is or would be available to them at the maximum $1.17 M&O tax rate. Accordingly, this Court declares the State's school finance system fails to satisfy the Article VII, Section 1 adequacy requirement as to the ISD Plaintiffs' districts.

COL 71. All performance measures considered at trial, including STAAR tests, EOC exams, SATs, the ACTs, performance gaps, graduation rates, and dropout rates among others, demonstrated that Texas public schools are not accomplishing a general diffusion of knowledge due to inadequate funding. Accordingly, this Court declares that the school finance system is constitutionally inadequate.

COL 72. Because the ISD Plaintiffs collectively have also established a systemic/statewide "adequacy" violation, this Court declares that the Texas school finance system is presently in violation of Article VII, Section 1 of the Texas Constitution. Stated another way, this Court finds that the Legislature violated the "arbitrary" standard described in *WOC II* by "defin[ing] the goals for accomplishing the constitutionally required general diffusion of knowledge," and then providing "insufficient means for achieving those goals." *WOC II*, 176 S.W.3d at 785. The current structure of the school finance system is such that districts cannot generate sufficient revenues to fund and provide an adequate education.

COL 73. The Edgewood ISD Plaintiffs, the TTSFC Plaintiffs, and the Fort Bend ISD Plaintiffs have further shown that economically disadvantaged students and ELL students are not achieving a general diffusion of knowledge and that the cost of providing a general diffusion of knowledge to these students exceeds the amount of funding made available for their education under the current school finance system. The Court concludes the funding for economically disadvantaged and ELL students is inadequate and arbitrary. Accordingly, this Court declares that the current public school finance system is inadequate for the provision of a general diffusion of knowledge for economically disadvantaged and ELL students under Article VII, Section 1 of the Texas Constitution.

COL 74. The ISD Plaintiffs have further shown that the current facilities funding is constitutionally inadequate to suitably provide sufficient support for districts to maintain, build, and renovate the classrooms necessary for an adequate education. This constitutional infirmity exacerbates the problems resulting from inadequate M&O funding because many districts are forced to use those scarce funds to make up for unfunded facilities needs. Accordingly, this Court declares that considered separately and as part of the total school finance system, facilities funding is arbitrary and inadequate in providing Texas school children with the constitutional mandate of adequacy.

COL 75. The ISD Plaintiffs have shown that the M&O and I&S funding available under the school finance system as a whole is insufficient to achieve a general diffusion of knowledge. Accordingly, this Court declares that the school finance system is arbitrary and inadequate in violation of Article VII, Section 1 of the Texas Constitution

2. State property tax claims (ISD Plaintiffs)

COL 76. The ISD Plaintiffs have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any of the ISD Plaintiff districts could raise their M&O tax rate to the statutory maximum rate of $1.17 (and have not already done so), the districts would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes. Thus, this Court declares that the ISD Plaintiffs have established an Article VIII, Section 1-e violation as to their districts.

COL 77. Because the ISD Plaintiffs collectively have also established a systemic violation, this Court declares that the Texas school finance system is presently in violation of Article VIII, Section 1-e of the Texas Constitution.

3. Suitability claims (ISD Plaintiffs)

COL 78. The ISD Plaintiffs have shown that the State has made no effort to determine the costs of meeting its own standards or of bridging the performance gaps. The ISD Plaintiffs have further shown that the costs of providing a general diffusion of knowledge exceed the funding provided through the current system, and that multiple defects in the current design of the school finance system – including inadequately funded weights for economically disadvantaged and ELL students – cumulatively prevent districts from generating sufficient resources to accomplish a general diffusion of knowledge for all students, and particularly with respect to the State's economically disadvantaged and ELL students. Accordingly, this Court declares that the Texas school finance system violates the "make suitable provision" clause in Article VII, Section 1 of the Texas Constitution because the system is not "structured, operated, and funded so that it can accomplish its purpose [of providing a general diffusion of knowledge] for all Texas children." *WOC II*, 176 S.W.3d at 753.

COL 79. The Edgewood ISD Plaintiffs have further shown that the costs of providing a general diffusion of knowledge to economically disadvantaged and ELL students exceed the funding provided through the current system, due to the arbitrarily designed and insufficient weights for those students. This defect coupled with the arbitrarily designed and insufficient Foundation School Program funding made available to districts like the Edgewood ISD Plaintiffs cumulatively prevent those districts from generating sufficient resources to accomplish a general diffusion of knowledge for the State's economically disadvantaged and ELL students. Because a majority of Texas schoolchildren are economically disadvantaged, this defect strikes the core of the school finance system. Accordingly, this Court declares that the Texas school finance system violates the "make suitable provision" clause in Article VII, Section 1 of the Texas Constitution because the system is not "structured, operated, and funded so that it can accomplish its purpose [of

providing a general diffusion of knowledge] for [economically disadvantaged and ELL] children." *WOC II*, 176 S.W.3d at 753.

COL 80. This Court declares that the State's school finance system fails to satisfy the "make suitable provision" requirement because Texas school children, particularly the economically disadvantaged and English language learners, are denied access to that education needed to participate fully in the social, economic, and educational opportunities available in Texas. Moreover, the failure of the Texas school finance system to fully pay the costs of a constitutionally adequate education, whether at the maximum tax rate available without a TRE, $1.04, or at the maximum tax rate with voter approval, $1.17, means that the structure, operation, and funding make it impossible for Texas public schools to accomplish a general diffusion of knowledge.

COL 81. The TTFSC Plaintiffs, Edgewood ISD Plaintiffs, and the Fort Bend ISD Plaintiffs, have shown that the Texas school finance system is structured, operated, and funded so that it cannot accomplish financial equity. Property wealthy districts are able to access substantially more funding at all levels of the system. Further, the use of two separate funding mechanisms for M&O, formula funding and target revenue, makes it impossible for the finance system to be equalized to accomplish financial efficiency. This Court declares that the Texas school finance system fails to satisfy the "make suitable provision" requirement because it is structured, operated, and funded so that it is impossible to achieve a general diffusion of knowledge in a financially efficient manner.

4. Financial efficiency claims (TTSFC Plaintiffs, Edgewood ISD Plaintiffs, and Fort Bend ISD Plaintiffs)

COL 82. The TTSFC Plaintiffs, Edgewood ISD Plaintiffs, and Fort Bend ISD Plaintiffs have shown that, in the current system, there is not a direct and close correlation between a district's tax effort and the educational resources available to it, as required under Article VII, Section 1, and, as a result, there are large gaps in funding levels and tax effort between low property wealth and high property wealth districts. Plaintiffs have shown that these gaps disadvantage the students in their districts in acquiring a general diffusion of knowledge and are incompatible with a system that requires that "children who live in poor districts and children who live in rich districts . . . be afforded a substantially equal opportunity to have access to educational funds." *WOC II*, 176 S.W.3d at 753. Instead, the system arbitrarily funds districts at different levels below the constitutionally required level of a general diffusion of knowledge. Plaintiffs have further shown that the school finance system violates the "efficiency" provisions of Article VII, Section I of the Texas Constitution in that a) it fails to provide substantially equal access to M&O and I&S tax revenues necessary to provide a general diffusion of knowledge at similar tax effort, and b) it permits an amount of unequal local supplementation in the system that is so great as to destroy the efficiency of the system. Plaintiffs have also shown that insofar as the State Defendants continue to rely on disparate property values and accompanying property taxes to fund public schools, equalization provisions such as equalized wealth levels, guaranteed yields, recapture, and caps on maximum tax rates, remain essential for a financially efficient and equitable public school system under Article VII, Section 1 of

the Texas Constitution. The State's failure to make facilities funding a statutorily permanent part of the Texas school finance system and failure to update the equalized wealth level/guaranteed yield (coupled with the lack of recapture) mean that low property wealth and high property wealth districts have vastly different access to facilities funding contributing to the inefficiency of the system as a whole.

COL 83. This Court declares that the school finance system violates the "efficiency" provisions of Article VII, Section 1 of the Texas Constitution in that it fails to provide substantially equal access to revenues necessary to provide a general diffusion of knowledge at similar tax effort, and instead arbitrarily funds districts at different levels below the constitutionally required level of a general diffusion of knowledge.

COL 84. Because the TTSFC Plaintiffs, the Edgewood ISD Plaintiffs, and Fort Bend ISD Plaintiffs collectively have established a systemic/statewide violation, this Court declares that the Texas school finance system is presently in violation of Article VII, Section 1 of the Texas Constitution with respect to both maintenance and operations funding and facilities funding, separately and as complementary aspects of the school finance system.

5. Taxpayer equity claim (TTSFC Plaintiffs)

COL 85. Because (1) the TTSFC Plaintiffs have not complained of nor shown any impermissible variation in the rate of assessment of M&O taxes or I&S taxes on similar property values within a single school district; and (2) differences in benefits received from otherwise equitable and uniform property tax assessments does not render the system unequal or not uniform, the TTSFC Plaintiffs have failed to demonstrate that the current school finance system violates Article VIII, Section 1(a) of the Texas Constitution.

COL 86. The Court hereby denies the TTSFC Plaintiffs' claim for declaratory judgment that the school finance system imposes a tax that is unequal and not uniform in violation of Article VIII, Section 1(a) of the Texas Constitution.

6. Qualitative efficiency claim (Intervenors)

COL 87. The Intervenors' request for declaratory judgment that the school finance system violates the "qualitative efficiency" clause of art. VII, § 1 of the Texas Constitution fails because the Intervenors have not established that the Legislature acted arbitrarily with respect to funding charter schools, the regulation of teacher compensation, hiring, firing and certification, the school financial reporting requirements, or the statutory cap on charter schools. (*See supra* Parts I.F.3 – I.F.8 (FOF 1463, *et seq.*).)

COL 88. The Court denies the Intervenors' request for declaratory judgment that these measures violate the qualitative efficiency requirement of the Education Clause.

7. Charter School Plaintiffs' claims

COL 89. Because the school finance system for independent school districts under the statutory formulas is constitutionally inadequate and because charter schools are financed based on state averages of school district M&O funding levels, this Court declares that funding for open-enrollment charter schools also is inadequate.

COL 90. The Charter School Plaintiffs have not proved a violation of Article I, Section 3, because the Legislature had a rational basis for limiting the number of charter schools and funding them differently from traditional public school districts.

COL 91. In addition, neither the cap on the number of charter schools nor the alternative funding method for charter schools renders the school finance system inefficient or unconstitutional under Article VII, Section 1.

COL 92. Accordingly, the Court denies the Charter School Plaintiffs' request for declaratory judgment that the school finance system violates the efficiency provisions of Article VII, Section 1 of the Texas Constitution by failing to provide separate facilities funding to charter schools.

COL 93. The Court denies the Charter School Plaintiffs' request for declaratory judgment that the school finance system violates the equal protection provisions of Article I, Section 3 of the Texas Constitution.

COL 94. The Court denies the Charter School Plaintiffs' request for declaratory judgment that the limitation on the number of open-enrollment charter schools violates Article VII, Section 1 of the Texas Constitution.

C. Other relief

1. Injunctive relief

COL 95. In addition to the declaratory relief described above, this Court hereby enjoins the State Defendants from giving any force and effect to the sections of the Education Code relating to the financing of public school education (Chapters 41 and 42 and Section 12.106 of the Education Code) and from distributing any money under the current Texas school financing system until the constitutional violations are remedied. The effect of this injunction shall be stayed until July 1, 2015 in order to give the Legislature a reasonable opportunity to cure the constitutional deficiencies in the finance system before the foregoing prohibitions take effect.

COL 96. This injunction shall in no way be construed as enjoining the State Defendants, their agents, successors, employees, attorneys, and persons acting in concert with them or under their direction, from enforcing or otherwise implementing any other provisions of the Education Code.

COL 97. This injunction shall not bar suits for collection of delinquent taxes, penalties, and interest.

COL 98. This injunction does not impair any lawful obligation created by the issuance or execution of any lawful agreement or evidence of indebtedness before July 1, 2015, that matures after that date and that is payable from the levy and collection of ad valorem taxes, and a school district may, before, on, and after July 1, 2015, levy, assess, and collect ad valorem taxes, at the full rate and in the full amount authorized by law necessary to pay such obligations when due and payable. A school district that, before July 1, 2015, issues bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of Education Code, or other applicable law, or enters into a lease-purchase agreement under Subchapter A, Chapter 271 of the Local Government Code, may continue, before, on, and after July 1, 2015, to receive state assistance with respect to such payments to the same extent that the district would have been entitled to receive such assistance under Chapter 42 or 46 of the Education Code, notwithstanding this injunction.

COL 99. This injunction does not limit, modify, or eliminate the authority of a school district to issue or execute bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of the Education Code, or other applicable law, before, on, or after July 1, 2015, or to levy, assess, and collect, before, on, or after July 1, 2015, ad valorem taxes at the full rate and in the full amount authorized by Section 45.002 of the Education Code or other applicable law, necessary to pay such bonds, notes, public securities, or other evidences of indebtedness when due and payable.

COL 100. This injunction does not limit, modify, or eliminate the authority of the commissioner of education, before, on, or after July 1, 2015, to grant assistance to a school district under Chapter 42 or 46 of the Education Code, in connection with bonds, notes, public securities, lease-purchase agreements, or evidences of indebtedness, including those described by Subchapter A, Chapter 271 of the Local Government Code.

2. Attorneys' fees[85]

a. TTSFC Plaintiffs

COL 101. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the TTSFC Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of $1,888,705.91, an amount that this Court finds to be both reasonable and necessary and equitable and just.

COL 102. The sum awarded to the TTSFC Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

[85] The Court's rulings on State Defendants' objections to the ISD Plaintiffs' attorneys' fees are addressed in the Final Judgment. The amounts stated in these conclusions of law reflect the Court's rulings.

COL 103. The TTSFC Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

a. $325,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

b. (1) $325,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) $100,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

COL 104. If, following an appeal, the TTSFC Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit. *See Scottsdale Ins. v. Travis*, 68 S.W.3d 72, 77 (Tex. App.—Dallas 2001, pet. denied) ("Under the [UDJA], attorney's fees may be awarded to the non-prevailing party.").

b. Calhoun County ISD Plaintiffs

COL 105. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the Calhoun County ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of $2,609,642.57, an amount that this Court finds to be both reasonable and necessary and equitable and just.

COL 106. The sum awarded to the Calhoun County ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

COL 107. The Calhoun County ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

a. $500,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is

perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

b. (1) $400,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) $325,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

COL 108. If, following an appeal, the Calhoun County ISD Plaintiffs do not prevail on one or both of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit. *See Scottsdale Ins.*, 68 S.W.3d at 77 ("Under the [UDJA], attorney's fees may be awarded to the non-prevailing party.")

c. Fort Bend ISD Plaintiffs

COL 109. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the Fort Bend ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of $1,733,676.75, an amount that this Court finds to be both reasonable and necessary and equitable and just.

COL 110. The sum awarded to the Fort Bend ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

COL 111. The Fort Bend ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

a. $400,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

b. (1) $300,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) $250,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said

amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

COL 112. If, following an appeal, the Fort Bend ISD Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit. *See Scottsdale Ins.*, 68 S.W.3d at 77 ("Under the [UDJA], attorney's fees may be awarded to the non-prevailing party.")

d. Edgewood ISD Plaintiffs

COL 113. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the Edgewood ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of $2,194,027.92, an amount that this Court finds to be both reasonable and necessary and equitable and just.

COL 114. The sum awarded to the Edgewood ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

COL 115. The Edgewood ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

a. $325,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

b. (1) $325,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) $100,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

COL 116. If, following an appeal, the Edgewood ISD Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they

have made significant contributions to the public debate on school finance law through this lawsuit. *See Scottsdale Ins.*, 68 S.W.3d at 77 ("Under the [UDJA], attorney's fees may be awarded to the non-prevailing party.")

e. The State Defendants, Intervenors, and Charter School Plaintiffs.

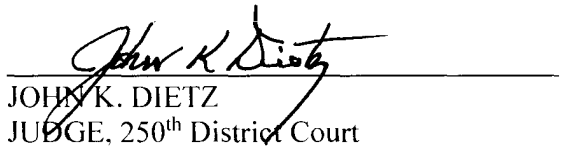
COL 117. The Court finds that it is equitable and just to deny the attorneys' fees requests of the State, the Intervenors, and the Charter School Plaintiffs because they were predominantly non-prevailing parties and, while they contributed to the public debate on school finance law through this lawsuit, those contributions were not so significant as to warrant an award of fees.

3. Continuing jurisdiction

COL 118. This Court will retain continuing jurisdiction over this matter until the Court has determined that the State Defendants have fully and properly complied with its judgment and orders. *City of San Antonio v. Singleton*, 858 S.W.2d 411, 412 (Tex. 1993) ("A trial court generally retains jurisdiction to review, open, vacate or modify a permanent injunction upon a showing of changed conditions.")

All relief not granted herein is DENIED.

SIGNED this 28th day of August, 2014.



JOHN K. DIETZ
JUDGE, 250th District Court
Travis County, Texas

C

Effective:[See Text Amendments]

Vernon's Texas Statutes and Codes Annotated Currentness
Constitution of the State of Texas 1876 (Refs & Annos)
Article VII. Education
The Public Free Schools
§ 1. Support and maintenance of system of public free schools

Sec. 1. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Current through the end of the 2013 Third Called Session of the 83rd Legislature

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Effective: November 26, 2001

Vernon's Texas Statutes and Codes Annotated Currentness
Constitution of the State of Texas 1876 (Refs & Annos)
Article VIII. Taxation and Revenue
§ 1-e. Abolition of ad valorem property taxes

Sec. 1-e. No State ad valorem taxes shall be levied upon any property within this State.

CREDIT(S)

Adopted Nov. 5, 1968. Amended Nov. 2, 1982; Nov. 6, 2001, eff. Nov. 26, 2001.

Current through the end of the 2013 Third Called Session of the 83rd Legislature

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