

CAUSE NO. D-1-GN-11-03130

TEXAS TAXPAYER & STUDENT	§	IN THE DISTRICT COURT
FAIRNESS COALITION, <i>ET AL.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
EDGEWOOD INDEPENDENT SCHOOL	§	
DISTRICT, <i>ET AL.</i> , (consolidated)	§	
	§	
Plaintiffs	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
MICHAEL WILLIAMS, in his official	§	
capacity as Commissioner of Education,	§	
<i>ET AL.</i> ,	§	
	§	
Intervenors,	§	200TH JUDICIAL DISTRICT

EDGEWOOD PLAINTIFFS' MOTION TO EXCLUDE INTERVENORS'
NON-RETAINED EXPERT, MARK HURLEY

Edgewood I.S.D., *et al.*, (“Edgewood Plaintiffs”) object to the opinion testimony of Intervenors’ non-retained expert, Mark Hurley, because he lacks the qualifications in the area designated and his research paper, Exhibit 1, is unreliable. In support thereof, Edgewood Plaintiffs respectfully show the Court as follows:

Introduction

Joyce Coleman, *et al.*, Intervenors, filed their plea in intervention in this case arguing that Defendants have violated the "qualitative efficiency" component of article VII, section I of the Texas Constitution. *See generally* Third Am. Plea in Intervention ("Plea"). Unlike the plaintiffs in this case, Intervenors do not focus on the provision of sufficient and equitable financial resources to enable all Texas schoolchildren to receive an adequate, efficient and suitable education.¹ Instead, Intervenors seek orders from the Court requiring the State to enact

¹ Article VII, section 1 of the Texas Constitution, states in relevant part, “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

“structural” changes to the public educational system that would, in their opinion, improve education, including a financial accountability statute, Tex. Educ. Code § 39.082(a). *See* Plea ¶¶ 8, 15.

As a remedy, Intervenor request this Court to declare that the current system of public free schools violates the Education Clause of the Texas Constitution because it fails the “qualitative efficiency test.” *See id.* ¶ 24. They further seek a judgment declaring that Chapter 21 of the Texas Education Code is not efficient under article VII, sec. 1, as well as similar declaratory relief pertaining to the following sections of the Education Code: 12.101(b); 25.111-112; 12.013(b)(3)(F)-(S); 21.402; 39.082; 42.102, 29.203(1); over twenty (20) subparts of Chapter 21² and all corresponding regulations in the Texas Administrative Code. *See id.* ¶ 25. They request a permanent injunction prohibiting Defendants from giving any force and effect to Chapters 41 and 42 of the Texas Education Code. *Id.* at 17-18.

Facts

Intervenor designated Mark Hurley as a non-retained expert to testify about the "public education financial accountability." *See* Intervenor's Third Supplemental Responses to Request for Disclosure from All Parties at 15, Ex. A (excerpt). The general substance of Mr. Hurley's opinion is purportedly addressed in his paper, Exhibit 1, titled "No Financial Accountability: Why Texas K-12 public education lacks any real financial accountability and the implications for both the ongoing public school financing litigation and the future of our State." *Id.*

Mr. Hurley states in his paper that his goal "was to identify a set of quantifiable metrics that could be used in evaluating the efficiency, suitability and/or adequacy of the current system

State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”

² These include Tex. Educ. Code Ann. §§ 21.402 *et seq.*; 21.031; 21.401; 21.207, 21.209, 21.251, 21.252, 21.253, 21.254, 21.255, 21.256, 21.257, 21.258, 21.259, 21.301, 21.302, 21.304, 21.3041, and 21.307, 21.206, 21.057,

as well as any new system the Legislature might devise." Ex. 1 at 1. He requested data and information from school districts and purportedly reviewed how Texas schools spend their funds. He found that "the current system of reporting generates tremendous amounts of data and each school district is required to publish an annual financial report that has been independently audited." *Id.* at 2. Mr. Hurley concluded that because school districts did not, in his opinion, report their spending in a manner that an average citizen can understand, there is no real financial accountability for K-12 public education in Texas and that "the system produces little useful information. . ." *Id.*

Mr. Hurley was deposed on June 12, 2012 and testified to his qualifications and his methodology employed in producing his paper, Exhibit C.³

Objections to the Expert's Testimony

The Court should exclude the testimony of Intervenor's non-retained expert, Mark Hurley, on the subject of the financial accountability system of public education because: 1) Mr. Hurley is not qualified to give an expert opinion on the public education financial accountability system; and 2) Mr. Hurley's testimony is unreliable.

A. Qualifications

Mr. Hurley is not qualified to give an opinion on the public education financial accountability system because he does not have the education, training, specialized knowledge, skill, or experience to provide such an opinion. An expert must be qualified to give an opinion as an expert "by knowledge, skill, experience, training or education." Tex. R. Evid. 702. In deciding if an expert is qualified, trial courts must ensure that those who purport to be experts truly have expertise concerning the actual subject about which they are offering an opinion. *See*

21.355, 21.351, *et seq.*

³ Excerpts of the deposition are attached as Ex. B.

Roberts v. Williamson, 111 S.W.3d 113, 121 (Tex. 2003). Just as "every medical doctor [is not] automatically qualified to testify as an expert on every medical question" (*id.*), so too is not every financial advisor automatically qualified to testify on every financial question.

Mr. Hurley received his bachelor's degree in Engineering and his MBA. *See* Hurley Dep. 18:4-6, Ex. B. Mr. Hurley has no prior experience in the area of K-12 education.⁴ *See id.*, 93:19-94:2. He has not published in the area of K-12 financial accountability systems (*id.* at 113:17-21) nor has he taught classes on the subject. *Id.*, 92:25-93:18. Prior to drafting Exhibit 1, Mr. Hurley had never written another paper on the K-12 system. *Id.*, 107:15-18. Mr. Hurley nor any of his three-member research team has ever practiced government accounting. *Id.*, 169:11-14. Neither he nor any member of his research team has any personal background or expertise in school budgeting, funding, or accounting. *Id.*, 175:12-15; 177:3-10.

Under Rule 702, Mr. Hurley lacks the knowledge, experience, skill, training or expertise to qualify as an expert on the K-12 financial accountability system. Mr. Hurley admits openly that the conclusions he draws in his report are not based on his experience working with school district budgets, funding, finance, or accounting. *Id.*, 178:5-9. Mr. Hurley could not answer in his deposition whether he was there as an average citizen or an expert. *Id.*, 72:18-21. Despite his lack of knowledge and expertise, Mr. Hurley unabashedly opines that "[t]he thesis of the paper is that the system of reporting financial data in the state of Texas produces no useful information. Therefore, it is impossible for people who don't work in a school district to

⁴ Mr. Hurley served two years as a Schedule C political appointee at a bureau of the US Treasury. *Id.* at 19:7-9. He worked at Goldman Sachs and at Merrill Lynch, he ran worldwide marketing for their institutional money-management business. *Id.* at 19:2-3; 19:15-17. He left Merrill Lynch and started a mutual fund company, which he sold to JP Morgan. *Id.* at 19:18-21. From there, he started his present private equity business where he invests in firms that provide wealth-management advice. *Id.* at 19:24-20:8. None of these experiences concern K-12 financial accountability.

measure and understand adequacy, suitability, and efficiency of the district." *Id.*, 152:12-17.
Mr. Hurley concedes that school districts know how they are spending money. *Id.*, 164:16-24.

Mr. Hurley may have knowledge and experience in reviewing financial documents for private or publicly-owned companies, but he has no experience or expertise in reviewing K-12 financial documents and readily concedes that the two are very different. *See e.g., id.* 171:1-22 (noting that Whole Foods and school districts are "quite different" with Whole Foods' outcomes being based on the produce it produces and a school district effectively imparting knowledge).

Ultimately, Mr. Hurley's testimony as an expert in this case does not assist the Court in understanding the evidence or determining a fact in issue concerning the financial accountability system and Edgewood Plaintiffs respectfully urge the Court to strike his testimony and his paper, Exhibit 1.

B. Exclusion of Non-Expert's Testimony

Aside from a lack of qualifications, Edgewood Plaintiffs urge the Court to exclude Mr. Hurley's opinion on the financial accountability system, because it is not reliable. The fundamental requirements of reliability and relevance are applicable to all expert testimony offered under Tex. R. Evid. 702. *See Gammill v. Jack Williams Chevrolet*, 972 S.W.2d 713 (Tex. 1998). A court should consider the *Robinson* factors as well as the expert's experience, knowledge and training. *See Transcontinental Ins. v. Crump*, 330 S.W.3d 211, 215-216 (Tex. 2010). The Court must review the methodology used by a nonscientific expert in the formation of her opinion and its application to the particular matter at issue. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152-153 (1999). If an analytical gap between the data relied on by the expert and the testimony offered is too great, the testimony is unreliable. *See Gammill*, 972 S.W.2d at 727.

Mr. Hurley's deposition testimony and paper are being offered as evidence by Intervenors in support of their claim that the public education system is qualitatively inefficient. As implied in the title of his paper, "No Financial Accountability: Why Texas K-12 public education lacks any real financial accountability and the implications for both the ongoing public school financing litigation and the future of our State," and as made explicitly in its body, Intervenors want Mr. Hurley to offer an expert opinion about the financial accountability system and the financial practices of districts throughout Texas in response to State reporting requirements. In the context of this case, Mr. Hurley's opinions and methodology are not reliable based on the *Robinson* factors and his lack of experience, training and knowledge in K-12 financials.

Regarding the *Robinson* factors, Mr. Hurley's opinion does not pass muster. The factors include, but are not limited to: "1) the extent to which the theory has been or can be tested; 2) the extent to which the technique relies upon the subjective interpretation of the expert; 3) whether the theory has been subjected to peer review and/or publication; 4) the technique's potential rate of error; 5) whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community; and 6) the non-judicial uses which have been made of the theory or technique." *E.J. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 557 (Tex. 1995). First, Mr. Hurley's theory cannot be tested because he did not produce the paper for litigation and, thus, he did not retain many of his documents that formed the basis of his opinion. Mr. Hurley testified that only a box of information later turned up after a subpoena was issued but he "didn't keep a lot of the stuff" because he "never thought [he] would be sitting here with a group of attorneys deposing [him]." Ex. B, 55:23-56:7; 109:5-14. He also stated that he had requested information from about a hundred districts and received information from about one-half but he could not list the districts he received information from following his request. *Id.*,

108:5-8; 243:7-19; 244:19-22. When asked which specific districts allegedly engaged in the spending practices he represented in the report, Mr. Hurley could not identify those districts or the people he spoke to in the districts. *See, e.g., id.* at 116:7-16; 140:2-13. Consequently, Plaintiffs have not been able to test his theory or explore adequately the basis of his opinions. *See Merrell Dow Pharms. v. Havner*, 953 S.W.2d 706, 714 (Tex. 1997) ("If the foundational data underlying opinion testimony are unreliable, . . . any opinion drawn from that data is likewise unreliable.").

Second, Mr. Hurley's opinions rely on his subjective interpretation of the data and information reviewed and received. Mr. Hurley and his staff purportedly requested data and information from school districts, then digested that data from their own points of view. *See Ex. B*, 243:21-244:18; *Ex. 4*. He testified that "[b]ased on the information produced by school districts, it is our conclusion from our study that one cannot-- unless you work in the district or for the district, one cannot measure whether they're spending efficiently or inefficiently." *Ex. B*, 111:22-112:2. He concedes that his recommendations to resolve the financial accountability system are only his team's ideas and that he is certain that "a lot of people could add stuff just so it would make it better." *Ex. E*, 77:3-10.

Third, Mr. Hurley admits that he has never published any peer-reviewed article on public education or school finance (*Id.* 113:17-21) and he has not seen any similar research in the field. *Id.*, 132:16-133:3. The fourth factor, the technique's potential rate of error, is indecipherable and, likely inapplicable.

Under the fifth *Robinson* factor, the underlying theory or technique can hardly be disputed as generally accepted as valid by the relevant scientific community. In response to a question about the letter Mr. Hurley and his team sent to districts requesting information, Mr. Hurley

replied, "Yeah. It's one of the longer ones. In other words, we were so clueless when we started we sent out some longer ones." *Id.*, 244:11-15. The final factor, the non-judicial uses which have been made of the theory or technique, is likely inapplicable.

As stated in the prior section, Mr. Hurley's experience, knowledge and training in the area of K-12 financial accountability is nonexistent, and thus, his opinions are unreliable. Intervenors have failed to satisfy their burden of demonstrating Mr. Hurley's expertise and reliability. *See Whirlpool Corp. v. Camacho*, 298 S.W.3d 631, 639 (Tex. 2009) ("The proponent [of expert testimony] must satisfy its burden regardless of the quality or quantity of the opposing party's evidence on the issue and regardless of whether the opposing party attempts to conclusively prove the expert testimony is wrong."). Because Mr. Hurley's methodology and underlying data is flawed and he lacks the expertise required under Rule 702, his opinions are not reliable and will not help the Court determine important questions of law and fact in this case.

Prayer

For these reasons, Edgewood Plaintiffs ask the Court to exclude the testimony and report of Mr. Hurley and for all other relief so entitled.

MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.

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CERTIFICATE OF CONFERENCE

I certify that on January 22, 2013, I conferred with attorney of record for Intervenor, Chris Diamond, about this motion and he informed me that Intervenor was opposed to it.

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

CERTIFICATE OF SERVICE

I certify that on January 23, 2013, I served the foregoing document via electronic service to the parties listed below:

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Unofficial copy Travis Co. District Clerk Veranda L. Price

TEXAS TAXPAYER & STUDENT	§	IN THE DISTRICT COURT
FAIRNESS COALITION, <i>ET AL.</i> ,	§	
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Plaintiffs,	§	
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EDGEWOOD INDEPENDENT SCHOOL	§	
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v.	§	TRAVIS COUNTY, TEXAS
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MICHAEL WILLIAMS, in his official	§	
capacity as Commissioner of Education,	§	
, <i>ET AL.</i> ,	§	
	§	
Intervenors,	§	200TH JUDICIAL DISTRICT

**PROPOSED ORDER ON EDGEWOOD PLAINTIFFS' MOTION TO EXCLUDE
INTERVENORS' NON-RETAINED EXPERT, MARK HURLEY**

After considering the arguments and pleadings related to the Motion to Exclude Intervenors' Non-Retained Expert, Mark Hurley, filed by Edgewood I.S.D., et al., Plaintiffs, the Court finds that the motion is meritorious and that Mark Hurley's qualifications and testimony are not reliable. Therefore, the Court GRANTS said motion and orders that Exhibit 1 titled "No Financial Accountability: Why Texas K-12 public education lacks any real financial accountability and the implications for both the ongoing public school financing litigation and the future of our State," and any testimony of Mark Hurley offered in this case be removed from the record in this case.

SIGNED this the _____ day of _____ 2013.

Judge Presiding

Exhibit

A

Unofficial copy Travis Co. District Clerk Velda L. Price

Telephone No.: 713-682-9888

Subject Matter: See publications and bibliography

General Substance: See attached publications and bibliography which are incorporated herein by reference.

Documents: Non-retained expert

C.V./Bibliography: See attached

Deposition dates: previously presented for deposition

Name: Joe Bast

Address: One South Wacker Drive #2740, Chicago, IL 60606

Telephone No.: 312-377-4000

Subject Matter: See attached publications

General Substance: See attached publications and bibliography which are incorporated herein by reference.

Documents: Non-retained expert

C.V./Bibliography: See attached

Deposition dates: previously provided

Name: Mark Hurley

Address: See deposition testimony

Telephone No.: See deposition testimony

Subject Matter: Public education financial accountability

General Substance: Mr. Hurley's report has already been produced

Documents: See documents attached as exhibits to Mr. Hurley's deposition and documents produced in response to my subpoena *duces tecum*. Mr. Hurley is reportedly continuing his analysis of the financial accountability system as it applies to public schools in Texas and may offer opinions on that at the time of trial.

C.V./Bibliography: None

Deposition dates: Deposition already taken.

Name: Bill Hammond

Address: c/o attorney for Texas Association of Business, J. Christopher Diamond

Telephone No.: c/o attorney for Texas Association of Business, J. Christopher Diamond

Subject Matter: Education reform issues, the effects of inefficiency in the system of public free schools on the business community

General Substance: The current system of public free schools is inefficient and not preparing students for college or careers. Because of that, colleges have to spend money teaching students again what they are supposed to learn in public free schools according to the Texas Essential Knowledge and Skills (TEKS) education standards. That lack of preparation also hurts the Texas workforce and Texas employers, who often have a difficult time finding people with the skills and qualifications to fill open positions.

Deposition dates: Confer with the undersigned counsel for available dates for this non-retained expert/party representative witness.

Name: Justice Craig Enoch, ret.

Address: 600 Congress, Suite 2800, Austin, Texas 78701

- j. In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical bills and records.**

RESPONSE: Not applicable.

- k. In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party;**

RESPONSE: Not applicable.

- l. The name, address, and telephone number of any person who may be designated as a responsible third party.**

RESPONSE: None at this time.

Respectfully submitted,

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INTERVENORS

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I hereby certify that, on the 24th day of September 2012 a true and correct copy of the above and foregoing has been served via email pursuant to agreement of the parties and in compliance with Texas Rule of Civil Procedure:

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Exhibit B

Unofficial copy Travis Co. District Clerk Velda L. Price

Videotaped Deposition of Mark P. Hurley

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NO. D-1-GN-11-003130

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

ORAL AND VIDEOTAPED DEPOSITION OF

MARK P. HURLEY

JUNE 12, 2012

ORAL AND VIDEOTAPED DEPOSITION OF MARK P. HURLEY,
produced as a witness at the instance of the Efficiency
Intervenors, and duly sworn, was taken in the
above-styled and numbered cause on June 12, 2012, from
9:11 a.m. to 3:40 p.m., before April C. Presley, CSR in
and for the State of Texas, reported by machine
shorthand at the law offices of Fiduciary Network, 5400
LBJ Freeway, Suite 910, Dallas, Texas, pursuant to the
Texas Rules of Civil Procedure.

Liberty Litigation Support
Phone: 713-581-8227 Fax: 713-533-8997

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Mr. Lynn M. Moak
Dr. Lisa Dawn-Fisher
Mr. Keith Weeks, Videographer

Videotaped Deposition of Mark P. Hurley

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REQUESTED DOCUMENTS/INFORMATION

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1 P R O C E E D I N G S

2 THE REPORTER: Just by the Rules today?

3 MR. DIAMOND: By the Rules.

4 MR. GRAY: Yeah.

5 MR. DIAMOND: Yes.

6 THE VIDEOGRAPHER: The videotape is
7 rolling. We're on the record at 9:11 a.m. This is the
8 beginning of Tape Number 1.

9 MARK P. HURLEY,
10 having been first duly sworn, testified as follows:

11 EXAMINATION

12 BY MR. DIAMOND:

13 Q. Please state your name for the record.

14 A. Mark Hurley

15 Q. Have you given a deposition before?

16 A. Yes.

17 Q. So you understand -- I'm going to put a couple
18 of understandings on the record; that way we just kind
19 of have them here. You understand you just gave an oath
20 to tell the truth?

21 A. Yes.

22 Q. And you understand, even though we're in your
23 office, it's exactly as though we're in front of a judge
24 or a jury?

25 A. Yes.

1 A. Sure.

2 Q. -- just from the standpoint of -- since you've
3 done this report and put it out, I want to find out what
4 your expertise is. Where did you go to college?

5 A. Undergraduate, West Point, and then my graduate
6 work, I got my MBA at Stanford.

7 Q. What did you study at West Point?

8 A. Technically, an engineering degree.

9 Q. Okay.

10 A. But there weren't a lot of electives when I was
11 there --

12 Q. Right.

13 A. -- so --

14 Q. And -- and --

15 A. They're not that interested in what you want to
16 do.

17 Q. Yeah.

18 A. They -- it's a program you sign up for.

19 Q. Yeah.

20 A. It's changed a lot, in fairness to the school.
21 They've kind of been dragged out of the 1920s since I
22 left.

23 Q. And what -- just give me a real quick thumb --
24 I don't want the whole resume. But what did you do
25 after that or --

1 A. I did five and a half years as an Army officer.
2 After graduate school, which was Stanford, I worked for
3 Goldman Sachs, back when I was respectable, is -- I tell
4 people. It was a very different firm then. It was a
5 partnership, and it was a fundamentally different
6 business.

7 I then served two years as a Schedule C
8 political appointee at a bureau of the US Treasury
9 during the savings-and-loan cleanup.

10 Q. Okay.

11 A. And my title was Director of Resolutions. My
12 job was to help advise one of the members of the FDIC
13 board, RTC board, on -- to clean up the mess there. And
14 then I returned back to Goldman, was there for a while,
15 then left to go to Merrill Lynch. At Merrill, I ran
16 worldwide marketing for their institutional
17 money-management business for a while.

18 Then I left there to start my first
19 company. It was called Undiscovered Managers, a
20 mutual-fund company. I sold that business in 2004 to JP
21 Morgan, retired for about ten days -- my wife decided
22 that was quite long enough -- and then started this
23 business.

24 Q. What does this business do?

25 A. We do financial services, private equity, with

1 Q. And then what was any other communication after
2 that?

3 A. You called me and said you wanted to meet.

4 Q. Okay. Have we spoken since then?

5 A. No. You sent me a subpoena.

6 Q. Did you know anything about our lawsuit or ever
7 know my name or of me prior to this?

8 A. No. What happened was, a gentleman you were
9 working with, a former state senator, had called me when
10 he heard about the study and asked to see a copy of it.
11 And, in fact, when he called me, I called all the
12 various people around this table -- because I never want
13 to be associated with any party; we're independent --
14 and just said, "Look, we're putting this paper out."
15 And some of you guys called me back, and some of you
16 didn't.

17 Q. Right.

18 A. I talked to you.

19 Q. In fact, when we met, when I asked you if you
20 had any documentation to review, you said you didn't
21 have any.

22 A. No.

23 Q. And then I think I've later learned that there
24 may have been a box of stuff somewhere. So I don't even
25 have --

1 A. Yeah. We got subpoenaed to -- stuff -- and we
2 produced what we --

3 Q. Okay.

4 A. I mean, we didn't keep a lot of the stuff.

5 Q. Right.

6 A. I never thought I would be sitting here with a
7 group of attorneys deposing me.

8 Q. Right.

9 A. That was never really in the cards.

10 Q. But I just want to make sure that -- there was
11 kind of an implication that you're my witness or
12 something --

13 A. No.

14 Q. Okay.

15 A. No.

16 Q. Okay. Turn with me to -- I want to kind of
17 follow your report here just so we can --

18 A. Sure.

19 Q. Page 9 of your report --

20 A. Yeah.

21 Q. Look at the -- there's a section there talking
22 about the primary target audiences in the -- in the
23 middle kind of three. Just kind of review that real
24 quick and --

25 A. Yeah. I just -- I quoted right out of the --

1 A. And -- and what we were trying to do is sort of
2 -- think of this -- again, the pyramid that's set up now
3 is you have this aggregation at the top that tells you
4 absolutely nothing, no supporting schedules. And then
5 you have a general ledger where they collect all this
6 data and has a set of codes that don't allow you to link
7 up exactly what you're spending above.

8 Q. Okay. Now, in this list, say, for instance,
9 you brought up CDW Government for \$3300. It would have
10 had a function code and an object code --

11 A. Uh-huh.

12 Q. -- and that's it.

13 A. Right. And the codes themselves -- the top
14 code is too broad, and the bottom code is too narrow.

15 Q. Okay.

16 A. And so you wind up with no useful information
17 between the two.

18 Q. Okay. Are you here -- this is kind of a
19 bizarre question. Are you here as an average citizen,
20 or are you here as an expert?

21 A. I don't know.

22 Q. What's your goal in this? Was your goal --

23 A. My -- look, we have 5 million kids in the state
24 that go to public schools. The future of this state
25 depends on how good an education they get. I'm just

1 expenditures.

2 A. Right.

3 Q. What do you mean by that?

4 A. Well, we give an example of this in here.

5 Like -- oh, geez, Louise. And, again, I want to

6 emphasize here for the record that we don't claim to

7 have, you know, the only best solution. This is our

8 ideas. I'm sure that, if people want to solve this,

9 there's a lot of people who could add stuff just so it

10 would make it better.

11 Q. Okay.

12 A. But, like, for example, we would say -- major

13 spending categories, instead of saying "instruction,"

14 you have "compensation expenses" or --

15 Q. Where are you referring to?

16 A. Page 24.

17 Q. Of Exhibit 1?

18 A. Of Exhibit 1.

19 Q. Okay.

20 A. That's right. You know, you would -- you know,

21 teacher, administrator, staff professional development

22 expenditures. What are you spending on helping develop

23 these people? And then -- these are the general major

24 spending categories. And then for each of these major

25 spending categories you have a supporting schedule that

1 Q. Do you know approximately? Like, is it more
2 than 10,000 a year?

3 A. I really have no idea.

4 Q. That's fine.

5 A. Sorry. You can call them, and she'll give you
6 a schedule.

7 Q. Do you have any background in education?

8 A. I mean, I went to public schools.

9 Q. Well, other than -- you know, since you
10 graduated --

11 A. No.

12 Q. -- from public schools. Where did you graduate
13 from?

14 A. Undergraduate was -- from high school?

15 Q. Yes.

16 A. Air Academy High School in Colorado Springs.

17 Q. Air Academy?

18 A. Yeah. It's a high school that was on the Air
19 Force Academy itself. It was part of a private -- a
20 public school district for -- where students from --
21 both dependents and nondependents attended. School
22 District 20, if I recall. And -- but it was called Air
23 Academy, because it was located on the grounds of the
24 Air Force Academy where my father worked.

25 Q. And have you ever been a teacher?

1 A. I have taught classes, you know, as a guest
2 lecturer, but in terms of teaching full-time, no.

3 Q. Okay. Where have you taught classes?

4 A. The University of North Texas has had me as a
5 guest lecturer. I've also been asked to speak at -- I
6 publish a great deal of information looking at the
7 economics of giving financial advice. So I -- I, as
8 part of my job, do a fair amount of public speaking.

9 Q. And what topics did you provide -- or did you
10 lecture on?

11 A. It's -- it's all related to the economics of
12 providing financial advice, and then what does that
13 imply for how this business that these people are in is
14 going to evolve over time.

15 I also have written -- following the
16 money-management business, which is different than the
17 wealth-management business I did extensively when I was
18 at Goldman.

19 Q. Have you ever worked as an administrator or
20 held any other position in a K-through-12 school?

21 A. No, I have not.

22 Q. Have you ever held a position in a university
23 or college?

24 A. No.

25 Q. Have you ever been elected or selected as a

1 school-board member?

2 A. No.

3 Q. Have you ever held any professional position in
4 the field of education?

5 A. No.

6 Q. Getting to your paper, which has been submitted
7 as Exhibit 1, you mentioned earlier that you couldn't
8 have imagined being called here as a witness in this
9 case. Is that correct?

10 A. When we started the project, we never thought
11 we'd wind up at this, no.

12 Q. Well, when you finished the project, were you
13 thinking that you might be called?

14 A. Well, we've been called by these guys
15 (indicating). And so we thought -- you know, we didn't
16 know what was going to happen, whether I would be a
17 witness or not or maybe somebody was just going to take
18 the paper and use it for some purpose. But that wasn't
19 the intent of drafting the paper.

20 Q. When -- when were you contacted by them?

21 A. A couple weeks before it officially launched or
22 something like that.

23 Q. And at that time did you already have the
24 heading for your paper?

25 A. No. The heading came out right before we

1 adequate system was. We attempted --

2 Q. Okay.

3 A. -- to address what was -- whether you could
4 perform any sort of quantifiable metrics. And we
5 concluded you couldn't.

6 Q. And you don't know what the cost of an adequate
7 education is, correct?

8 A. No one does.

9 Q. Well, you don't know, correct?

10 A. I would -- I would suggest, the conclusion of
11 our study was that the information produced precludes
12 figuring that out.

13 Q. Okay.

14 A. Or lack of information produced.

15 Q. Have you ever written another paper like this?

16 A. You mean on a Texas K-through-12 system or --

17 Q. Yes.

18 A. No.

19 Q. Go on to Page 2 --

20 A. Sure.

21 Q. -- of your report.

22 A. Sure.

23 Q. Let me -- let me backtrack a little bit. I
24 think earlier you testified that you had sent a request
25 to a hundred districts.

1 A. Or we had gotten information from a hundred
2 districts. I don't -- I don't know the exact number we
3 eventually sent things out, because we did them sort of
4 piecemeal over time, over, like, two years.

5 Q. Do you have a list of those districts?

6 A. No. We threw -- we kept throwing away stuff as
7 we didn't get stuff. We took one form letter, and we'd
8 just change it and resend it out.

9 Q. And do you have all the information that -- the
10 districts that did provide information to you?

11 A. No, we don't. We have some. Again, because
12 the focus of the paper was not that information. The
13 focus of the paper was the rules by which people report
14 information. That's sort of the data we kept. And we
15 have -- you know, we have a whole manual. And the stuff
16 that was still left we kept in some boxes. I think I
17 told your assistant this.

18 Q. And the -- the -- the information that -- that
19 you've kept and maintained that you've used to produce
20 this study, have you produced all that information -- I
21 believe it was to the Fort Bend group?

22 A. Yeah, whatever we have. We're going -- Holly
23 sent me an e-mail, when I get back from Europe. And
24 we're going to -- asked me to check a couple other
25 things. And we're going to see who is named there. But

1 that's all we found, yeah. It's -- it's basically
2 print-offs of general ledgers, some check registers, and
3 a bunch of annual reports that we printed off from web
4 sites and from the TEA's database as well as the FARG.

5 Q. Can you tell me here today whether or not any
6 of the districts whose financial information you
7 reviewed included that of the Edgewood districts?

8 A. I don't know. None of those names sounded
9 familiar. Okay? But then again, you know, it's two
10 years ago, and I'm over 50. There's a lot of districts.
11 I mean, we're -- you'd go through a bunch, and then --
12 okay. And then get rid of them. My wife made me clean
13 out my guest house, which is where we kept most of the
14 stuff.

15 Q. Well, let me go back to -- to -- because I
16 think your prior testimony -- and, you know -- I
17 understand, you know, some things might be estimations.
18 But we're --

19 A. Sure.

20 Q. You know, it's critical that we get as accurate
21 of a record here as possible.

22 A. Sure.

23 Q. And I believe that you told Mr. Diamond earlier
24 that you had requested information from a hundred dist
25 -- that you had approached about a hundred districts --

1 A. No one outside the district can answer that
2 question.

3 Q. All right. And -- well, I'll let that stand.
4 And you can't say whether or not districts are spending
5 inefficiently, correct?

6 A. The -- to answer your question, the system
7 produces no useful information, so no one can measure
8 whether they're efficient or inefficient --

9 Q. Then --

10 A. -- outside of the district.

11 Q. -- it's "yes"?

12 A. The answer is, no one can tell. I -- I -- I
13 think that may be "yes," but I'm not sure. Yes. Yes,
14 no one can measure --

15 Q. And --

16 A. -- whether it's efficient or inefficient.

17 Q. And just to be clear, because I'm asking you
18 under oath what you know --

19 A. Sure.

20 Q. I'm not -- I don't suspect that you could
21 actually state what other people know.

22 A. Sure. Let me amend what I said, then. Based
23 on the information produced by school districts, it is
24 our conclusion from our study that one cannot -- unless
25 you work in the district or for the district, one cannot

1 measure whether they're spending efficiently or
2 inefficiently.

3 Q. Okay. Did you review the macro-economic
4 studies that were conducted in the West Orange-Cove
5 case?

6 A. They were scintillating. Yes.

7 Q. Yes? And are you familiar with the methodology
8 that was employed in those cases?

9 A. Yes.

10 Q. And -- and that included the report of Lori
11 Taylor?

12 A. Yes.

13 Q. And what were the problems with -- if any, that
14 you noted with the Lori Taylor study?

15 A. Well, it comes down to your assumptions with
16 regards to how you evaluate and compare various
17 districts. And hers -- the study that was done relied
18 on an econometric model that attempted to draw some
19 correlations at a very, very high level across
20 districts, which ignored, at least -- again, this is my
21 personal view -- the similar -- you know, the
22 dissimilarities between districts and underlying
23 students.

24 It's an attempt to sort of take a -- you
25 see this in investing sometimes. These guys come up

1 with these quantitative models that attempt to define
2 everything. But it comes down to whether you're willing
3 to agree with the basic assumptions as to the
4 distributions underlying the probabilities involved.

5 And what they try to do is use -- again,
6 it's either, like, nine or twelve variables and come up
7 with some way to attempt to measure this stuff. But it
8 -- it fundamentally ignores what -- you know, how the
9 district is actually spending its money, what the
10 district's students' profile looks like, and what
11 they're trying to produce as an output.

12 Q. And have you published on the topic of
13 econometric models --

14 A. No.

15 Q. -- in public schools?

16 A. Have not.

17 Q. Have you ever published any peer-reviewed
18 article on public education?

19 A. No.

20 Q. How about school finance and --

21 A. No.

22 Q. Earlier, in your definition of efficiency, you
23 also mentioned "with as little waste as possible." How
24 would you describe what waste is?

25 A. Spending more money to do something than you

1 Anybody can get general ledgers. The question is, how
2 do you go from this massive amalgamation of data into
3 useful information?

4 Q. Yeah. My question more fits in line -- so
5 let's go to Page 15 of your report.

6 A. Sure. Got it.

7 Q. And, in Section 2 of your report, you were
8 talking with Mr. Diamond earlier about this smaller
9 district that you reviewed that had about 6.3 million of
10 aggregate expenditures in the 2009/2010 school year.
11 And you said a handful of example entries in the ledger
12 included --

13 A. Uh-huh.

14 Q. And you have those items there. So my first
15 question is, which school district is this?

16 A. I don't know. I'll call our former analyst,
17 since he's the one who dug this up. He's no longer with
18 us. But I can -- I can get you the name. I forget,
19 there were so many of these guys.

20 Q. Okay. And, you know, we'll leave a place
21 holder in the -- in your deposition, and maybe you can
22 add that school district in. Is that okay?

23 A. Sure. _____.

24 Q. And then -- so, for instance, in Ledger Item
25 Number 1, it says HITEQ -- H-I-T-E-Q --

1 improve without implementing this measure that you've
2 recommended as a predicate?

3 A. To be clear, as I said earlier, there may be
4 better ways to achieve the same thing. This is an
5 example of how to do it. But, if your question is --
6 is, can you improve public education in the state of
7 Texas if you can't first figure out where the money is
8 being spent --

9 MR. HINOJOSA: Objection --

10 A. -- the answer is, no.

11 MR. HINOJOSA: -- nonresponsive.

12 Q. I'm trying to find out the basis for your
13 opinion, because you've offered, you know, some pretty
14 extensive opinions here --

15 A. Sure.

16 Q. -- in this paper. And so I'm trying to find
17 out what the basis for your opinion is. Other than your
18 own study and analysis, is there some other research out
19 there done by --

20 A. No.

21 Q. -- other researchers, or is there any kind of
22 papers out there that we can look at that you --

23 A. There are --

24 Q. -- that you relied on --

25 A. No, there are no other papers that I've been

1 able to find that suggest that, if you don't know where
2 the money is spent, you can improve the output of what
3 you're doing.

4 Q. Okay.

5 A. Of anything.

6 Q. Are you aware of the texastransparency.org web
7 site?

8 A. No.

9 Q. Are you aware of any reports touting the
10 financial reporting system of the state of Texas as one
11 of the most transparent among all the states in the
12 country?

13 A. No.

14 Q. Have you ever analyzed other financial
15 reporting requirements in other states of public school?

16 A. No. With that award, I would love to see what
17 the other systems look like, though. My Lord. I also
18 wonder who is giving the award out.

19 Q. Are you aware that many of the districts that
20 have financial reports on-line do show a breakout of
21 overhead or indirect costs?

22 A. That's not what we found.

23 Q. Are you aware of that?

24 A. The stuff that we found -- we found nothing
25 that provided any real clarity or transparency. We saw

1 if I can find.

2 Q. You also mentioned that you had asked questions
3 of different parties, that you had tried to talk to a
4 few of the districts. Which districts did you reach out
5 to and speak to?

6 A. Again, it's been a while. I don't remember
7 which ones. It would be -- people would come back and
8 -- some people would call us. Some people would just
9 ignore the records request. Make a call and try to get
10 ahold of somebody.

11 Q. So can you identify any of those persons and/or
12 the districts that --

13 A. No. Our objective was not to try to pin a
14 district down or cause a problem. We were just trying
15 to -- it quickly became a study of the rules. And our
16 conclusion -- part of the reason why we were very
17 empathetic with the challenges the districts are facing
18 is that the requirements of all the stuff they've got to
19 collect is, like, insane.

20 So we weren't trying to pick on any
21 districts. We were frustrated, though, that they tended
22 not to be responsive with this information, a lot of
23 them. Other ones were really very helpful.

24 Q. Do you know when -- during what time of year
25 did you speak to them?

1 Q. Right. I want to direct your attention again
2 to these two categorical statements that you make in
3 your report. As written, would you agree these
4 statements are overbroad?

5 A. If taken in context of what is said here as to
6 what led us to it, they're not overbroad.

7 Q. Is there any reference --

8 A. The thesis of the paper isn't that school
9 districts have not -- don't do anything to produce
10 something that is -- to demonstrate some modicum of
11 their version of how they view efficiency.

12 The thesis of the paper is that the system
13 of reporting financial data in the state of Texas
14 produces no useful information. Therefore, it is
15 impossible for people who don't work in a school
16 district to measure and understand adequacy,
17 suitability, and efficiency of the district.

18 MR. THOMPSON: Okay. I'm going to object
19 to that as a nonresponsive answer.

20 Q. The point I want to make, Mr. Hurley -- and it
21 goes to the question of whether you actually have
22 factual knowledge of this or whether you are offering an
23 opinion that you're qualified to draw based upon your
24 review of factual information. These two statements,
25 that districts have not made any attempt to show that

1 Q. -- of how you, in fact, did spend money?

2 A. No, I would not agree. I would argue that,
3 instead, a predicate to having a rational understanding
4 of the budget is to have an accurate understanding of
5 how the money has been spent previously as opposed to
6 how -- what is proposed to be spent on a prospective
7 basis. And the current system fails to provide that
8 data.

9 Q. Okay.

10 A. Information as opposed to data. I want to be
11 clear. There's lots of data oceans of data.

12 Q. So you personally, as we sit here today, would
13 say the financial report is a more important tool than a
14 budget?

15 A. No. It's a predicate.

16 Q. Okay. You've made the statement several times
17 that no one outside a district can answer the question
18 about whether money is being spent efficiently or
19 inefficiently or some variation on that statement.
20 Would you agree?

21 A. I have said, no one outside a district can
22 understand exactly how -- who does not work for the
23 district or is part of the district, exactly how the
24 district spends its money.

25 Q. Okay. Would you agree that that statement --

1 Q. Okay. I'm very interested, Mr. Hurley, in your
2 choice of Whole Foods as an example. I think it's -- I
3 think it's a very apt example. Whole Foods is a
4 Texas-based company, correct?

5 A. (Nods.)

6 Q. Would you agree that the grocery-store business
7 as a business generally is very labor intensive?

8 A. Yes.

9 Q. Do you think it is somewhat analogous to school
10 districts --

11 A. No.

12 Q. -- in the sense of being labor intensive?

13 A. No.

14 Q. Do you think school districts are more labor
15 intensive?

16 A. More labor intensive? Well, I think a grocery
17 business -- enormous set of your outcomes is based on
18 the produce that you're providing.

19 Q. Okay.

20 A. Instead, a school district, you're effectively
21 imparting knowledge. And so it's -- it's quite
22 different.

23 Q. Okay. One apple may be closer to another apple
24 than one kid is to another kid. Is that a fair
25 statement?

1 Q. Yeah.

2 A. -- someone else's money.

3 Q. I actually understand and agree with your point
4 of view there. And I want to be clear on that.

5 A. Sure.

6 Q. What I'm trying to get to is -- is your
7 potential testimony, at some point in the future, as a
8 -- as a potential witness --

9 A. Sure.

10 Q. -- for the admission of this report.

11 A. Okay.

12 Q. I think it's clear, you do not have a personal
13 background or expertise in school budgeting, funding, or
14 accounting. Is that a fair statement?

15 A. Correct.

16 Q. You do not have a personal background as an
17 educator, as a teacher, principal, superintendent,
18 anyone else who is responsible from a professional
19 standpoint, for the conduct of schools, correct?

20 A. Correct.

21 Q. You do not have personal background or
22 information --

23 A. Well, let me amend just quickly.

24 Q. Okay.

25 A. I serve as the head of the investment committee

1 Q. Okay.

2 A. -- on their -- on their finance side, da Vinci.

3 Q. Are any of the other members of your team --

4 A. No.

5 Q. -- teachers, principals, administrators?

6 A. No.

7 Q. Are -- any other members of your team have
8 expertise or background in school funding, budgeting,
9 auditing, or finance?

10 A. No. That's exactly --

11 Q. All right.

12 A. -- why we think the report --

13 Q. Very good.

14 A. -- distinguishes itself.

15 Q. All right. So you would agree that none of you
16 have expertise in any of those areas?

17 A. I would say that our study is that expertise
18 that we provided --

19 Q. Okay.

20 A. -- as an independent third party looking at the
21 same information.

22 Q. All right. But -- but the conclusions you draw
23 from your study are not based upon your experience
24 actually working --

25 A. That's right.

1 Q. -- with --

2 A. No, that's correct. We're not anchored --

3 Q. Let me finish.

4 A. Yeah.

5 Q. The conclusions you draw in your report are not
6 based upon your experience working with school district
7 budgets, funding, finance, or accounting?

8 A. That's precisely the point of why the group did
9 the study.

10 Q. All right. So, to the extent that you do bring
11 expertise to bear in your report, would you agree that
12 it is your expertise in your professional capacity that
13 you are applying in the area of public-education funding
14 and, in particular, auditing?

15 A. It would be expertise from that and the fact
16 that we're -- if you've studied any behavior finance or
17 cognitive psychology, we're not anchored on the previous
18 presumptions. We're an independent third party --

19 Q. Right.

20 A. -- looking at the same facts, same data or
21 information that others are. But we're not -- you know,
22 the -- if you read Amos Tversky or Dan Comrie or this
23 other stuff, there's a tendency -- when you decide
24 stuff, you start from a point and move away from it.
25 We're not anchored to a particular point, so we can

1 okay, what -- you know, if the rules say this, well, how
2 does that wind up showing up in someone's ledger or
3 check register, something like that, and how does that
4 feed back, as opposed to saying, this district has got a
5 benchmark of their efficiency versus that benchmark of
6 this efficiency. You just couldn't --

7 Q. How many districts ultimately did you -- whose
8 data you actually used for your report? Let me ask a
9 better question. How many districts did there end up
10 being whose data you actually used in your report?

11 A. Well, we -- every district we looked at we
12 used, because we were trying to compare and see what one
13 district was saying versus another district and what --
14 based on what the rules were. So we looked at about a
15 hundred districts. So we used in some fashion
16 information from, you know, the ones we could get
17 information from, which would be about half of about 60
18 or 70, plus another 20 or 33, so probably about 50 would
19 be my guess.

20 (Exhibit 4 marked.)

21 Q. I hand you Exhibit 4. Exhibit 4 is a -- looks
22 like a letter from your production that appears to be
23 a --

24 A. Yeah.

25 Q. -- letter of a request to a school district.

1 This one --

2 A. Yeah. This is one of the early ones, isn't it?

3 Yeah. 2011. Yeah --

4 Q. And is this an example of a letter that you
5 would have sent --

6 A. Yeah. This was much longer --

7 Q. Why don't you let -- I'll --

8 A. Yeah.

9 Q. -- finish my question, if I can.

10 A. Sorry.

11 Q. Is this an example of a letter that you sent to
12 school districts requesting various kinds of records?

13 A. Yeah. It's one of the longer ones. In other
14 words, we were so clueless when we started we sent out
15 some longer ones. And then some of the districts
16 pointed out, a lot of stuff they didn't have
17 electronically. And so we started shrinking down our
18 requests to other stuff.

19 Q. Do you have any kind of documentation showing
20 how many districts you sent a letter like this to?

21 A. Again, I said it was somewhere around 60 or 70
22 is my guess.

23 MS. DAHLBERG: Does anybody have a copy
24 that I can -- I have --

25 MR. TURNER: Here.

1 CHANGES AND SIGNATURE

2 WITNESS NAME: MARK P. HURLEY

3 DATE: JUNE 12, 2012

4 PAGE LINE CHANGE REASON

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I, MARK P. HURLEY, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

MARK P. HURLEY

THE STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared MARK P. HURLEY, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____
COMMISSION EXPIRES: _____

1 NO. D-1-GN-11-003130
2 THE TEXAS TAXPAYER &) IN THE DISTRICT COURT
3 STUDENT FAIRNESS)
4 COALITION, ET AL.,)
5 Plaintiffs,)
6 VS.) TRAVIS COUNTY, TEXAS
7 ROBERT SCOTT, COMMISSIONER)
8 OF EDUCATION, IN HIS)
9 OFFICIAL CAPACITY, ET AL.,)
10 Defendants.) 200TH JUDICIAL DISTRICT

11 REPORTER'S CERTIFICATION
12 ORAL AND VIDEOTAPED DEPOSITION
13 OF
14 MARK P. HURLEY
15 JUNE 12, 2012

16 I, April C. Presley, Certified Shorthand Reporter
17 in and for the State of Texas, hereby certify to the
18 following:

19 That the witness, MARK P. HURLEY, was duly sworn by
20 the officer and that the transcript of the oral
21 deposition is a true record of the testimony given by
22 the witness;

23 That the deposition transcript was submitted on
24 June __, 2012, to the witness or to the attorney for the
25 witness for examination, signature and return to me by
26 July __, 2012;

27 That the amount of time used by each party at the
28 deposition is as follows:

29 Mr. Richard E. Gray, III - 0 hours, 22 minutes

1 Mr. David G. Hinojosa - 1 hour, 8 minutes

2 Mr. J. David Thompson - 1 hour, 7 minutes

3 Mr. John Turner - 1 hour, 14 minutes

4 Mr. J. Christopher Diamond - 1 hour, 23 minutes

5 Ms. Shelley N. Dahlberg - 0 hours, 0 minutes

6 That, pursuant to information given to the
7 deposition officer at the time said testimony was taken,
8 the following includes counsel for all parties of
9 record:

10 Mr. Richard E. Gray, III, Attorney for Plaintiffs
11 Texas Taxpayer & Student Fairness Coalition, et al.

12 Mr. David G. Hinojosa, Attorney for Plaintiffs
13 Edgewood Independent School District, et al.

14 Mr. J. David Thompson, Attorney for Plaintiffs Fort
15 Bend Independent School District, et al.

16 Mr. Mark R. Trachtenberg, Attorney for Calhoun
17 County Plaintiffs

18 Mr. J. Christopher Diamond, Attorney for Efficiency
19 Interveners

20 Ms. Shelley N. Dahlberg, Attorney for Defendants

21 I further certify that I am neither counsel for,
22 related to, nor employed by any of the parties or
23 attorneys in the action in which this proceeding was
24 taken, and further that I am not financially or
25 otherwise interested in the outcome of the action.

1 Further certification requirements pursuant to Rule
2 203 of TRCP will be certified to after they have
3 occurred.

4 Certified to by me this _____ day of June 2012.
5
6

7 April C. Presley, CSR No. 3185
8 Expiration Date: 12/31/13
9 Liberty Litigation Support, LLC
10 Firm Identification No. 708
11 16806 Welford Point Drive
Houston, Texas 77095
12 713-581-8227 (o)
13 713-533-8997 (f)

14 FURTHER CERTIFICATION UNDER RULE 203 TRCP

15 The original deposition was/was not returned to the
16 deposition officer on July __, 2012;

17 If returned, the attached Changes and Signature
18 page contains any changes and the reasons therefor;

19 If returned, the original deposition was delivered
20 to Mr. J. Christopher Diamond, Custodial Attorney;

21 That \$_____ is the deposition officer's charges
22 to the Efficiency Intervenors for preparing the original
23 deposition transcript and any copies of exhibits;

24 That the deposition was delivered in accordance
25 with Rule 203.3, and that a copy of this certificate was
served on all parties shown herein on and filed with the
Clerk.

1 Certified to by me this _____ day of
2 _____, 2012.

3

4

5

April C. Presley, CSR No. 3185
Expiration Date: 12/31/13
Liberty Litigation Support, LLC
Firm Identification No. 708
16806 Welford Point Drive
Houston, Texas 77095
713-581-8227 (o)
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Exhibit

1

Unofficial copy Travis Co. District Clerk Velda L. Price

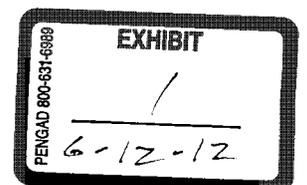
No Financial Accountability

Why Texas K-12 public education lacks any real financial accountability and the implications for both the ongoing public school financing litigation and the future of our State.

Mark F. Hurley
Yvonne N. Kanner
Jonathan Yu

Texas Education Accountability Project

March 2012



Texas Education Accountability Project

The authors would like to thank Tom Luce, Jerry Farrington, Lori Fey, Dr. Lori Taylor and Stuart Leaf for their help with this study. While each provided invaluable insights and perspectives, any shortcomings of this report are solely our own.

Mark P. Hurley

Yvonne N. Kanner

Jonathan Yu

Mark P. Hurley, Yvonne N. Kanner and Jonathan Yu are co-founders of the Texas Education Accountability Project.

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Although Texas spends \$55B per school year on K-12 public education, there is no transparency or financial accountability for how this money is actually used.

Executive Summary

We wanted to understand how Texas K-12 public education dollars are currently used.

Texas has been embroiled in a multi-decade legal and political battle over the funding of public education. The Texas Supreme Court has concluded that to be constitutional, the system of funding K-12 public education must be “efficient,” “suitable” and “adequate.” However, the Court defined these terms very broadly. It also declined to provide any quantifiable metrics by which to evaluate whether the system meets these criteria.

As outside but interested observers, we at the Texas Education Accountability Project (TEAP)¹ found the ongoing legal battle intriguing because the plaintiffs to date have failed to propose any quantifiable metrics to address the efficiency and suitability of the current system and have offered only very limited ones for evaluating its adequacy. Nor has anyone provided any useable information which would allow either the Legislature or the courts to measure how changes in funding might directly translate into changes in the quality of education provided to students.

Certainly, various parties have pointed to disparities in spending per student as well as the relative performance of students in different school districts on standardized tests.² However, the Court has already ruled that per student spending and test scores alone are not dispositive. More importantly, none of the plaintiffs has even attempted to show that they use their current funding efficiently and thus, only if they receive additional resources will they be able to provide a suitable and adequate education for their students.

Consequently, we thought it might be useful if an outside group independently conducted a detailed review of how Texas schools spend the billions of dollars of funding that they receive. Of course we recognize that there is not a perfect correlation between the amount of money spent – or even to some degree how the money is spent – on educating students and the resulting outcomes. But at the same time, a precondition to improving any system of public education (much less making it conform to the State’s constitution) is to first understand how current resources are being used and compare that with the results that they produce.

Our goal was to identify a set of quantifiable metrics that could be used in evaluating the efficiency, suitability and/or adequacy of the current system as well as any new system the Legislature might devise. To do this, we spent two years gathering and analyzing financial data from school districts across our State.

¹ By way of background, TEAP is a nonprofit, nonpartisan organization. Our goal is to utilize the private sector experience of our members in order to make some small contribution to improving public education in our State. Our members do not directly or indirectly provide any services, supplies or equipment to schools or in any other way financially benefit from K-12 Texas public education. Rather, we earn our livings investing capital into private companies unrelated to education.

² In order to support these arguments, some plaintiffs have relied on academic studies that employ macro-econometric models based on aggregate statistical data across many school districts.

No real financial accountability in Texas public education

We discovered that only those who work for a school district have any idea how it actually uses its funding.

What we found was startling – namely, there is no real financial accountability for K-12 public education in Texas. In a system of public education that in aggregate spent nearly \$55B³ in the 2008-2009 school year and which increased spending per student by nearly 63% over preceding decade (almost twice the rate of inflation), it is almost impossible for any average citizen who does not work for a school district to have any idea of how taxpayer funds are used.

To be sure, the current system of reporting generates tremendous amounts of data and each school district is required to publish an annual financial report that has been independently audited. However, for several reasons the system produces little useful information, precluding both transparency and accountability.

First and foremost, the primary financial disclosure document produced by school districts – their annual financial report – does not provide an average citizen with any real insight into how a particular school district uses its funding. These documents uselessly aggregate the overwhelming preponderance of the school district's expenditures into a small number of individual line items, each with comforting-sounding names such as "Instruction" and "School Leadership." In other words, the documents do not tell the reader what the district purchased. Rather, all that is disclosed is the generic purpose of the expenditures.

More than half of a typical school district's expenditures are disclosed in a single line item of its annual report.

For example, according to the Comptroller's office on average 56% of Texas school districts' expenditures are incorporated into their annual reports in the single line item of "Instruction." Under current Texas Education Agency rules, school districts are required to include in this line item 29 different categories of expenditures. In addition, they are allowed to add into "Instruction" any expenditure which fits the very broad definition of providing "direct interaction between staff and students to achieve learning." Our review of a group of school districts' supporting documents (general ledgers and check registers) used in preparing their annual reports found that expenditures included in "Instruction" ranged from hotel and travel costs to general supplies to "Xmas Staff Gifts" and even a "Magic Show."⁴

The paucity of the information provided to citizens by school districts on how taxpayer funds are actually used is particularly surprising given that they regularly collect immense amounts of financial data. Their general ledgers track every expenditure made and accompanying these entries are a series of "object codes" that are either very specific (i.e., cell phone allowances, print shop expenditures, water, sick leave, etc.) or extremely broad (general supplies, contracted services, other operating expenses, etc.). In the general ledgers that we reviewed, every expenditure had both a function code (i.e., "Instruction," "Curriculum Development," "School Administration," etc.) and an underlying object code. Much of this information, in turn, is captured in databases maintained by the TEA.

Financial Allocation Study of Texas

⁴ The authors would like to emphasize that in no way are we suggesting that the school districts that we reviewed are misreporting their financial data. Rather, it is the reporting rules that they must follow are what preclude any financial transparency and/or accountability.

Although there is a great amount of data, there is almost no useful information.

It is impossible to improve education in Texas unless we improve financial accountability.

Transparency a precondition to financial accountability

Unfortunately, no average person has the time or resources necessary to analyze even a fraction of this data. But without such a forensic accounting exercise, it is impossible to determine relatively simple things such as how much of the district's funding is used to pay teachers solely to teach vs. what it costs to insure driver's education vehicles (both of which are classified as "Instruction" expenditures), much less what is the district spending money on that is essential vs. optional.⁵

For many good reasons, our State's system of public education is based on "local control"—that is, local school districts and not some centralized authority determine, given their individual demographics, location, economics and other factors, the best way to educate students. Ideally, local control allows parents input into how their children are educated and how their school districts should best use taxpayer funds. However, a precondition to financial accountability under such a structure is that an average citizen be able to understand exactly how his or her school district spends money, something precluded by the current system of financial reporting.

The uninformed being evaluated by the equally uninformed

Also consider for a moment the larger implications of what we found: The Legislature somehow must design an efficient, suitable and adequate system of funding Texas public education while at the same time possessing no real idea of how school districts currently spend taxpayer money. Equally problematic, the courts somehow must evaluate the constitutionality of whatever the Legislature produces but they have no better information than that on which the Legislature must rely. The resulting process can be best characterized as the uninformed being evaluated by the equally uninformed.

Most importantly, the economic future of our State is dependent on having a well-educated populace. But without any useful information of how we currently spend our education dollars, whatever system the Legislature revises will be at best arbitrary and will likely do little to improve education in Texas.

A simple solution

There is, however, a simple solution to this dilemma: fix the current system of financial reporting. These changes should be guided by one simple, overarching principle: the primary purpose is to produce information that allows an average citizen to easily understand exactly how his or her school district spends taxpayer money.

Only if and when the system meets this standard will there ever be real financial accountability in K-12 public education. Additionally, only with these changes will the system generate the necessary information that will

⁵ In fact, we concluded after nearly two years of research that the only way TEAP – even though we invest in companies for a living – would ever be able to figure out exactly how a school district was spending taxpayer money would be to recreate a new general ledger (and from that an annual financial report) by beginning with the thousands of underlying receipts from all of a district's individual purchases and expenditures.

allow the Legislature to design a system of funding public education that is constitutional.

We would recommend that at a minimum:

- (i) School district annual financial reports must be redesigned in six ways:
 - a. The line items included in the summary pages of the reports should be tied to specific types of expenditures and not simply their general purposes;
 - b. Each of these line items should be accompanied by a schedule with numerous sub-line items which detail precisely how the funds were used;
 - c. The annual report should include key output metrics including the numbers of students taught in different types of classes;
 - d. It should also include a detailed organizational chart for the district;
 - e. It should list any and all agreements with non-district employees and entities as well as the amounts paid and services and/or products received;
 - f. For those districts which share services with other school districts and government agencies, their annual report should have a separate set of detailed disclosures describing what was purchased and how the funds provided were used.
- (ii) The coding in school district's supporting documents (i.e., general ledgers and check registers) should likewise be changed so to create an easy audit trail that ties individual expenditures into the sub-line items of the supporting schedules in the district's annual financial report. Only by doing this can an outsider easily determine not only to whom or to what money was paid but also for what exact purpose; and
- (iii) School districts should be required to make their financial reports, major contracts and supporting documents easily accessible online through the individual district's website.

We have included in this report a series of proposals to address these issues.

School district annual financial reports must be changed in six ways.

I. Introduction

Texas has been engaged in a four decade political and legal battle over how much it must spend on public education, how those monies should be allocated and from where all of this funding is going to come. Poorer districts have argued that the state's historical system of funding K-12 public education is unconstitutional because of its reliance on local property taxes which, in turn, creates a vast disparity in the amounts spent on educating students in public schools in different parts of the state. Their litigation culminated in the landmark *Edgewood* cases which forced the Legislature to materially alter how public education is funded.

The resulting system was and remains – to put it mildly – extremely unpopular and controversial. Relying on a series of formulas that are altered in every Legislative session and that are almost indecipherable, the program nicknamed “Robin Hood” takes funding that would have otherwise been used to educate students in wealthier districts and transfers it to less affluent ones.

Robin Hood spawned a series of additional lawsuits claiming that this system of funding public education violated the State's constitution because it de facto imposed a state property tax. The Court agreed that, as then structured, Robin Hood violated the State's constitution. It also indicated that the K-12 public education system in general required both structural changes and new sources of funding because it was on the cusp of being inadequate.

At the same time, however, the Court's guidance to Legislature was fairly non-specific. It determined that there is a constitutional obligation that Texas' system for providing free public education meets three key standards: (i) efficiency; (ii) suitability; and (iii) adequacy.

The Court defined efficiency as “the meaning of effective or productive of results and connotes the use of resources so as to produce results with little waste.” It explained that in order to be suitable “the public school system be structured, operated and funded so that it can accomplish its purpose for all Texas children” and that an “adequate” education system is “one that achieves a general diffusion of knowledge.” Exactly how the then current system of funding public education must be changed to meet these criteria was left up to the Legislature as the Court claimed that it lacked the basis for “declaring what education or finance systems will *alone* satisfy [the Constitution's] standards.”

Court has left it to others to propose quantifiable metrics

However, these rulings made it clear that the Court decided that it was not its job to redesign the Texas system of public education and that the Court was unwilling to propose any quantifiable metrics by which to measure whether any system would be constitutional. More specifically, the Court provided no guidance as to the types of skills that students must acquire – much less how one should measure whether these skills have been achieved – to meet the constitutional requirement of “achieving a general diffusion of knowledge.” It likewise provided no metrics on how to measure efficiency. Instead, it left it to others to propose their own ideas.

System of funding public education must be “efficient,” “suitable” and “adequate.”

Perhaps because the ruling was so broad, the Legislature subsequently elected to only marginally change the structure of funding for public education. The resulting legislation required school districts to gradually lower their maximum property tax rates for school maintenance and operation and (at least theoretically) replaced that revenue through a combination of new state taxes.

Lack of clarity + less funding + higher standards = more lawsuits

The non-specificity of the Court's ruling also made it inevitable that, regardless of whatever the Legislature did, there would be additional legal challenges. The potential for more litigation was further enhanced because the Legislature had to cut more than \$5B in public education funding over the next biennium in order to balance the State's budget. In addition, at the same time it substantially raised the education standards for Texas high schools through a program called "College and Career Readiness Standards" (CCRS).

Consequently, late last year and early this year a flurry of new litigation was filed. Although each of these lawsuits rely on different bases for challenging the public system of education, they all claim that it either fails to meet the three criteria outlined by the Court, or that in attempting to meet these criteria, it violates some other aspect of the State's constitution.

Texas Education Accountability Project (TEAP)

We at the Texas Education Accountability Project (TEAP) have dared to wade into the middle of this debate. By way of background, TEAP is a nonprofit, nonpartisan organization. Our goal is to utilize the private sector experience of our members in order to make some small contribution to improving public education in our State. Our members do not directly or indirectly provide any services, supplies or equipment to schools or in any other way financially benefit from K-12 Texas public education. Rather, we earn our livings investing capital into private companies unrelated to education.

Our members (like anyone else who has studied the current system of public education) see that it is rife with problems that must be solved and the current quality of education provided to many students in some school districts is abysmal at best. And certainly, the level of resources that school districts have at their disposal to educate students varies immensely across our State, with some school districts clearly having to do a great deal with very little.

As interested observers of the battle being waged in the Legislature and the courts over public education, we were surprised that the participants in this debate have provided to date only very limited quantifiable metrics to support their arguments. No one has proposed any methodology for measuring efficiency and/or suitability. Those who have tried to quantify adequacy have relied on very broad econometric models that purport to correlate education outcomes and different spending levels. More importantly, no plaintiff has even attempted to demonstrate that it uses its current funding efficiently and, therefore, only with additional funding can it provide a suitable and adequate education for their students.

Multiple new lawsuits have been filed, challenging the constitutionality of current system.

None of the plaintiffs have proposed metrics to determine efficiency or suitability.

Of course, plaintiffs have also pointed to spending per student and the relative performance of students in different school districts on standardized tests. However, the Court has already ruled that per student spending and test scores alone are not dispositive.

Independent review of the data

Consequently, we at TEAP thought it might be constructive to have an outside group independently examine how Texas school districts currently spend taxpayer dollars. We spent almost two years collecting and analyzing financial data across multiple school districts throughout Texas. Our goal was to identify a series of potential metrics or benchmarks that could be used to better measure the efficiency, suitability and adequacy of the current system and, thereby, assist both policymakers and jurists in fashioning a funding mechanism for public education that would meet its constitutional requirements. Ideally, these same metrics could also be used to improve how we educate children in our State.

TEAP spent two years reviewing school district financial data.

Our analysis quickly evolved into an exercise in forensic accounting. We looked at the audited financial reports for individual districts as well as the Texas Education Agency's rules for reporting. We also delved much more deeply into the numbers by comparing the financial reports of several individual school districts with their supporting documents including their general ledgers, check registers, the superintendent's employment agreement, the structure of the district's employee benefit programs and how they accounted for shared services and supplies, etc.

No real financial accountability for public education in Texas

What we found was quite different from what we had expected. More specifically, we discovered that there is currently no real financial accountability for K-12 public education in Texas.

Certainly, school districts currently generate oceans of financial data and each school district must prepare an annual financial report which is independently audited. Unfortunately, however, the current system of financial reporting produces no useful information, making it impossible for anyone who does not work in the district to have any real idea of how it spends taxpayer funds.

As we will explain later in greater detail, three findings led us to this conclusion:

- (i) The primary disclosure document produced by school districts – their annual report – tells the average citizen very little on exactly how a particular school district uses its funding;
- (ii) Although school districts regularly track thousands of pieces of financial data in their general ledgers and check registers and much of that data is captured in databases maintained by the Texas Education Agency (TEA), it is just that, raw data. No average person has the time and resources to analyze a fraction of it. But without a detailed forensic accounting analysis this mass of data provides no useful information; and

- (iii) Some – but not all – school districts make it extremely difficult for outsiders to obtain their financial data.

The uninformed being evaluated by the equally uninformed

Consider for a moment some of the consequences of our findings. The Texas system of public education is based on the concept of “local control” – that is, instead of relying on a centralized authority, each district determines the best way to educate its students given its geography, demographics, economics and other factors. Ideally, local control allows parents input into how their children are educated and how their school districts should best use taxpayer funds.

Clearly, a precondition to financial accountability in a system based on local control is that average citizens must be able to understand exactly how their school district spends money. Unfortunately, the current system of financial reporting precludes any such understanding.

Further, the Legislature likewise has no better information with which to (re) design the system of funding public education. However, whatever it devises must “produce results with little waste,” although it lacks any ability to measure or evaluate exactly how the money it appropriates is employed. It also must create a system that “accomplishes its purpose” and produces “a general diffusion of knowledge” without the ability to measure precisely what is being done to educate students with the dollars provided.

Both the Legislature and the courts lack the information required to design a constitutional system.

Equally problematic, the courts must evaluate the constitutionality of whatever the Legislature designs but has no better information than that on which the Legislature must rely. The resulting process can be best characterized as the uninformed being evaluated by the equally uninformed.

More importantly, whatever the Legislature and the courts arrive at will be at best arbitrary and will likely do little to improve education in Texas. It also will invariably lead to more lawsuits challenging the new system’s constitutionality.

A simple solution

However, there is a simple solution to this dilemma: fix the current system of financial reporting in public education in Texas. It should be redesigned so that the information that it provides allows the average citizen to easily understand how his or her school district spends taxpayer money. Later in this report we will outline a series of proposals to address these issues.

II. A system of financial reporting financial that produces little useful information

School districts in Texas report their financial data using the Public Education Information Management System (PEIMS). Designed by the Texas Education Agency (TEA), the system's purpose is to track a wide variety of information from school districts across the state including student demographics and academic performance, personnel, financial and organizational information.

School districts track all of their expenditures in their general ledgers and check registers. The data is used in preparing the district's primary financial disclosure document, an independently audited annual financial report. The manner and format used by school districts to prepare this report is prescribed by the TEA's Financial Accountability Resource Guide (FARG).

As described in the FARG, the goal of all this work and expense is to "communicate adequate information to user groups to enable them to assess the performance of those parties that have been empowered to act in the place of the citizenry." Further, the reporting is not "an end in itself" but, rather "helps fulfill government's duty to be publicly accountable." It also is designed to help "satisfy the needs of users who have limited authority, ability, or resources to obtain information and who therefore rely on the reports as an important source of information."

Finally, the FARG also identifies the three primary target audiences for the districts' annual financial reports:

Only if citizens can understand how tax dollars are used can school districts be accountable.

- (i) Citizens of the school district (taxpayers, voters, service recipients, media, advocate groups, and public finance researchers)
- (ii) Direct representatives of the citizens such as legislatures and oversight bodies (state legislatures, school boards)
- (iii) Creditors (individual and institutional investors, bond rating agencies, intergovernmental grantors)

Simply put, the consumers of tax dollars – namely, the school districts – are accountable to their constituents, elected officials and creditors. In order to be accountable, the districts are obligated to provide financial disclosure in such a manner so that someone who does not work in the district on a day to day basis can understand how these tax dollars are being used.

Three reasons why the current system fails to meet its own stated objectives

Unfortunately, for three reasons the current system of public education financial reporting falls far short of meeting these objectives. First, the rules on how school districts are required to prepare their annual financial reports effectively preclude

any transparency on how school districts actually spend their money. Second, although school districts amass large amounts of financial data in their check registers and general ledgers (much of which is captured by databases maintained by the TEA), it is just that, raw data. Absent a detailed forensic accounting analysis – something impractical for most people – the data provides no useful information. Finally, Texas school districts are not required to make their financial data easily accessible to outsiders.

Issue 1 – Disclosing only the general purpose of spending and not what exactly was purchased

Annual financial reports disclose only the general purpose of spending and not what was purchased.

If you pick up a copy of a school district's annual report, you will find many similarities to that of the financial report of any public company. The report includes basic financial statements as well as notes explaining in greater detail some of the data that was incorporated in the summary pages.

But, unlike a public company, school districts do not have income statements because they are not intended to make money. Instead, the basic financials include a "Statement of Revenues, Expenditures and Changes" which both describes the sources of the district's revenues and its expenditures in that school year.

This page of its annual financial report is the primary way in which school districts disclose how they spent taxpayer money. It is also a key reason why there is no real financial accountability for public education in Texas.

Vast number of different types of expenditures crammed into individual line items of disclosure

More specifically, as currently designed, the expenditures listed in this page of the report are crammed into a small number of individual line items with comforting sounding names such as "Instruction", "School Leadership," "Curriculum and Staff Development," etc. But these line items do not tell the reader how the money was spent; rather, they only disclose the general purpose of the spending.

More problematic, they provide only very limited additional information on exactly how the district used its funding, although there are notes and additional schedules to the annual report. Consequently, the reader has no idea of very basic items such as how much is being spent to pay teachers to teach or what are the overhead costs of the district.

In addition, no outsider reading this report has any idea of how to determine which activities that are being funded by the district are necessary and essential to educating students versus those that are nice and useful but, in reality, are optional to getting a good education. Further, the disclosure provided makes it impossible for anyone to measure how efficiently the school district is using its funding.

For example, according to the Comptroller's office, on average about 56% of school districts' expenditures were included in a single line

item of their annual financial report. With the ubiquitous title of “Instruction,” this line item aggregates, at a minimum, 29 different types of expenditures including:

29 categories of spending are included in the “Instruction” line item of the report.

1. Paying regular and/or substitute classroom teachers;
2. Paying teacher aides;
3. Paying classroom assistants;
4. Paying graders;
5. Paying staff working in the classroom on a dedicated basis;
6. Paying adult basic education teachers;
7. Paying teachers that deliver instruction by television or satellite;
8. THN services provided by education service centers;
9. Classes taught to students by education service centers;
10. Special education instructional services, including speech occupational and physical therapy;
11. Upkeep and repairs to instructional materials and equipment in the classroom;
12. Instruction in health;
13. Field trips;
14. Band instruments purchased by the school district or donated by band boosters or other groups;
15. Instructional computer networks;
16. Software;
17. Licensing fees;
18. Maintenance and supplies for instructional computer networks;
19. Paying staff and instructional computer lab teachers;
20. Paying network managers for instructional networks;
21. Paying technology coordinators for instructional networks;
22. Testing materials for tests developed and administered by teachers;
23. Salaries for instruction including that portion of the salary for the regular school day that is for teaching physical education courses for credit when athletic activities are taking place;
24. Instructional supplies including but not limited to classroom supplies, grade books, grade book software, report cards, student handbooks and related costs;
25. Insurance for driver’s education vehicles;
26. Graduation expenditures/expenses;
27. Pre/post-employment physicals for personnel classified in this function;
28. Drug testing for personnel classified in this function; and
29. Purchase of vehicles for instructional purposes, including driver education.

Wide variety of other types of expenditures included in “Instruction”

“Instruction,” however, is not limited to only these kinds of expenditures. So long as any expenditure falls into the category of providing “direct interaction between staff and students to achieve

learning," it qualifies to be lumped into this single line item of a school district's annual report.

Our analysis of general ledgers of a cross section of school districts found that they included all kinds of expenditures in "Instruction" in their annual financial reports. A small sample of the examples that we uncovered included:

Travel, postage, puppets and magic shows are also included in "Instruction."

1. "Magic show" (\$2,700.00)
2. "Pictures" (\$250.00)
3. "General Supplies" (\$280,000 in aggregate across multiple entries)
4. "Hyatt Regency" (\$273.20)
5. "Primetime Entertainment Center" (\$143.20)
6. "Agape Tours" (\$3,300)
7. "Radisson Hotel and Suites" (\$502.44)
8. "Hilton Anatole" (\$627.84)
9. "Postage" (\$1,750.00)
10. "Puppets-LIBR-MS" (\$313.17)
11. "Xmas Staff Gifts" (\$136.53)

All of these expenditures may in reality provide "direct interaction between staff and students to achieve learning" and thus, these school districts' reporting is consistent with their rules for financial disclosure. However, what is also clear is that no outsider would have any idea if this was the case.

Further, how could anyone who does not work in the district be able to separate out essential functions such as teachers' salaries versus non-essential items such as cars for drivers' education or even "magic shows" or "Xmas Staff Gifts"? This kind of financial reporting is the antithesis of transparency.

Most of the remaining expenditures are likewise crammed into only a few line items

Most of the remaining expenditures are crammed into a handful of line items.

TEA's reporting rules require that school districts aggregate most of their remaining expenditures into a relatively small number of other line items in their financial disclosures. For example, the second largest category of expenditures was "Instructional and Media Resources." Under the TEA's rules, there are (at a minimum) sixteen different kinds of expenditures incorporated, including the salaries and costs associated with:

1. Librarians;
2. Library aides and assistants;
3. Media or resource center personnel who work in an audio visual center, television studio or related work study areas;
4. Substitute pay for library staff;
5. Selecting, preparing, cataloging and circulating books and other printed materials;
6. Planning the use of the library by students, teachers and other instructional staff;
7. Building individuals' ability in their use of library books and materials;

Sixteen categories of spending are included in “Instructional and Media Resources.”

8. Selecting, preparing, maintaining and making available to members of the instructional staff equipment, films, filmstrips, transparencies, tapes, TV programs, software, CD/DVDs and similar materials;
9. Planning, programming, writing, and presenting educational programs or segments of programs by closed circuit or broadcast television;
10. Studio crews that record educational programs or segments of programs by closed circuit or broadcast television including those for T-H-N;
11. Library books, films, video cassettes, CD/DVD disks and, other media that are maintained by a resource center or library;
12. Supplies for binding and repairing books or other media contained in resource centers;
13. Upkeep and repairs to media, library and resource center materials and equipment;
14. Media and Living Science services provided by an education center;
15. Pre-post-employment physicals or drug testing for personnel in this function;
16. Purchase of vehicles for instructional resources and media purposes.

However, this list is not all inclusive. Also included in this line item are any and all expenses that are “directly and exclusively used for resource centers, establishing and maintaining libraries and other major facilities dealing with educational resources and media.”

How do you determine if an automobile is solely for “staff development”?

With so many types of expenditures mixed together, it is impossible to determine what is necessary vs. optional.

Consider also how school districts report what they spend on developing their curriculums and improving the quality of the staff which provide instruction. Included (but not limited to) in the “Curriculum Development and Instructional Staff Development” line item are: the costs of outside consultants, curriculum coordinators who are not responsible for supervising instructional staff, Assistant/Deputy Superintendents for Curriculum, tuition and fees paid by instructional staff to attend college, upkeep and repairs of equipment used for curriculum development or in-service training, paid sabbatical leaves for instructional staff and even purchases of vehicles for staff development or curriculum development purposes.

Let’s put aside for the moment the question of how a school district might determine that the purchase of a vehicle was solely for “staff development” purposes. But when an annual report mixes into a single line item of disclosure everything from the cost of paid sabbaticals for teachers to the maintenance costs of certain types of equipment to the costs drug testing, how can any outsider have any idea as to what exactly are a district’s spending priorities?

Also consider the line item (“School Leadership”) of the annual financial report that any outsider would likely assume as most associated with overhead – namely the administrators who are not involved in teaching

students. While it is extremely broad, it is not all inclusive. For example, encapsulated in it are the costs of principals, assistant principals and related staff as well as those staff who track student attendance.

However, not included in this line item is that part of the superintendent's salary for performing "administrative duties directly related to the superintendency" as well as "other salaries and expenditures related to the office of the superintendent" and "salaries related to the budgeting, accounting and fiscal affairs" and "related to human resources." This category also excludes the cost of those staff members who prepare "the superintendent's annual report."

Loosely translated, this means that someone must divine how much of a superintendent's time is spent on "school leadership" (and any associated costs) separately from any costs associated with the time that a superintendent spends on administration. We find all of this remarkable given that superintendents are almost by definition administrators who lead their districts and that the necessary time and effort required to parse through these definitions probably could be put to much better use in educating our children.

There is almost no disclosure about more than one fifth of some districts' expenditures.

Line item with the least transparency

As bad as all of these examples of how school districts are required to disclose their non-"instruction" expenditures, they are downright transparent when compared with "Payments to Fiscal Agent/Member Districts of Shared Services Arrangements." This line item is used when a school district outsources any functions to another school district. All of the costs associated with doing so are aggregated into a single line item.

To reiterate – the school district's annual report does not disclose what services it is buying, the other school districts involved and how and for what purpose the money was used. Rather, so long as it shares services with another school district, its annual report simply discloses the total dollars involved.

As innocuous as this may sound, we found that several school districts had about 20% of their aggregate expenditures included in this line item. In other words, the district's financial report simply discloses that it paid another district(s) one out of every five dollars that it spent that year to perform some unknown services for the district. It is unclear how a set of accounting rules could make a school district's financial disclosures less transparent but it would definitely take much imagination and creativity.

Illegal for publicly traded companies

What all of these examples mean is that a school district's annual financial report – again, its primary financial disclosure document – provides no useful information as to how it actually spends taxpayer dollars. It is also a bit bizarre that the State relies on such an opaque system of financial disclosure for public education when one considers what would happen if the management of a public company tried to likewise aggregate so much of its expenditures into so few line items of its primary financial

What is illegal for public companies is mandatory for Texas school districts.

disclosure documents (i.e., annual report, 10K, 10Q, etc.) with no additional detailed disclosure.

It is quite probable that the management of the company would face civil sanctions from the SEC and even potential criminal ones from the Department of Justice. Further, it is also highly likely that the company would quickly find itself in a class action lawsuit for inadequate and misleading financial disclosure. But in the Texas system of public education, making such grossly insufficient financial disclosure is not only acceptable under the current rules for financial reporting, it is required.⁶

Issue II – Immense amounts of data but no useful information

It is particularly surprising to us that Texas school districts provide no useful information in their annual reports on how they spend taxpayer dollars given that they regularly track and record immense amounts of data. All of their individual expenditures are captured in their general ledgers and check registers. It is from these supporting documents that the data incorporated into annual reports is drawn.

For example, one smaller school district that we reviewed had about \$6.3M of aggregate expenditures in the 2009 – 2010 school year. But a review of its general ledger only reveals who or what got paid but not what for. A handful of example entries in the ledger included:

1. HITEQ Computer Systems \$870.95
2. Masterscapes \$596.02
3. Roberts Truck Center \$1932.50
4. Roberts Truck Center \$4,550.00
5. Roberts Truck Center \$512.44
6. Webb Electronics \$7,579.00
7. Webb Electronics \$1,670.00
8. John Deere Govmt and Ntl Sales \$3611.94
9. Alton's Sewing Machine \$300.00
10. JRnR Electronics \$68.00
11. Interstate Battery \$84.69
12. School Specialty Supply \$1768.18
13. CDW Government \$3,330.00
14. Future Pro \$3,285.00
15. Academic Superstore \$542.00

⁶ To better understand just how much more publicly-traded companies disclose in their financial statements as compared to Texas school districts, consider the reports provided by a great Texas-based company, Whole Foods. Although it is in a ferociously competitive business and (understandably) wants to provide its competitors with as little information as possible, a small portion of its annual disclosures includes: direct store expenses, G&A expenses, pre-opening expenses, relocation, store closure and lease termination costs, costs of goods and store occupancy costs, average pre-opening expense per store, its average pre-opening rent per store, stores opened, acquired, divested, relocated and closed, remodeled stores with major expansions, total gross square footage in stores, the sales mix between stores, number of stores in development, their average size and the total gross square footage in development, percentage sales by product category (non-perishables, prepared foods and bakery and other perishables), store sales growth by year over the last ten years, advertising as a % of revenues and compared with peers, contributions to not-for-profit organizations as a % of profits, number of stores by state, return to shareholders compared with peer benchmarks, sales growth, identical store sales growth, sales increases from stores acquired over the previous 52 weeks, direct sales expenses as a percentage of sales, wage expenses as a percentage of sales, workers' compensation expense as a percentage of sales, inventory valuation and methodology employed, impairment of long-lived assets, long-lived assets and sales domestically and in foreign countries, construction accruals, intangible asset depreciation, accretion of interest on existing reserves and new closures, rental expenses, deferred tax assets, stock options granted, exercised, expired and forfeited and weighted average exercise price for each and aggregate intrinsic value, restricted stock grants, stock purchase plan shares, 401(k) plan contributions, equity compensation plans and exhibits detailing each of the material contracts that company has entered into. Additionally, it publishes an annual proxy statement that provides detailed information on executive compensation, directors and corporate governance.

16. Curriculum Support \$3,581.42
17. Group Logic \$2,695.50
18. Loews Home Center \$515.99
19. Loews Home Center \$887.07
20. Wireless Generation \$2,562.50
21. CDW Government \$1,400.00
22. CDW Government \$2,818.60
23. HP Direct \$2,267.00

However, as with all of the general ledgers and check registers that we reviewed, each of these expenditures recorded in these documents were accompanied by two types of codes. The first, a "Functional" code, indicated the general purpose of the spending, tying it to the corresponding line item of the district's annual financial report. The expenditure also had an "Object" code, that is either very specific (i.e., cell phone allowances, print shop expenditures, water, sick leave, etc.) or extremely broad (general supplies, contracted services, other operating expense, etc.). Much of this information, in turn, is captured in databases maintained by the TEA.

It is impossible for an average citizen to determine what a school district pays its teachers solely to teach.

As noted earlier, the school districts and TEA combined gather an immense amount of financial data but it provides non-experts with little useful information for two reasons. First, the average citizen lacks the time or resources necessary to analyze even a fraction of it. But absent such a forensic accounting exercise, it is impossible to determine relatively simple things such as how much of the district's funding is used to pay teachers solely to teach vs. what it costs to insure driver's education vehicles (both of which are classified as "Instruction" expenditures), much less what is the district spending money on that is essential vs. optional.

Second, even if someone had the time and resources to wade through all of this data, the codes currently used in tracking expenditures are on one hand too specific and in other instances are too broad to allow a non-expert to formulate a coherent understanding of the school district's spending. In other words, one may be able to tell that this school district paid Group Logic \$2,695.50 for something that is classified in the district's annual financial report as "Instruction" and has an object code of "other expense." However, knowing this tells you very little as to what the district purchased and why.

In fact, we concluded after nearly two years of research that the only way TEAP – even though we invest in companies for a living – would ever be able to figure out exactly how a school district was spending taxpayer money would be to recreate a new general ledger (and from that an annual financial report) by beginning with the thousands of underlying receipts from all of a district's individual purchases and expenditures. But if someone is going to have to do all of this in order to understand how a district spends money, why even bother to produce the current reports?

Issue III – It can be very difficult for outsiders to access school district financial data

In researching this report we requested financial information from many school districts across the State. As part of this, we filed numerous Texas Open Records requests.

Our experience in collecting this information was that the response that we received from the school districts was somewhat binary. Several school districts were extremely responsive and helpful. At the same time, getting financial data from about half of the school districts that we contacted was quite difficult.

Some school districts either ignore requests for financial data or make getting it very expensive.

The latter group of school districts typically employed one of two tactics: (i) simply ignore the Open Records request or (ii) make a determination that providing this data (which it likely already has on a hard drive on one of its computers) will take many, many hours to produce. Thus, if the requesting party wants the information it must pay as much as \$10,000 to get it.

In either case, the only way to get them to comply with our information requests would have been for TEAP to hire an attorney and formally file a complaint. Fortunately, we never had to resort to doing so because we requested information from so many different school districts that eventually we were able to get a large enough sample of data to write this report.

However, it is somewhat outrageous that some school districts are allowed to make it difficult for outsiders to access their financial information. Imagine if you are an average citizen trying to figure out how your local school district is spending your money and for what purpose. It is unlikely that you would fully understand how the Texas Open Records requests work and even less likely that you could afford to hire an attorney to force the school district to comply with the request.

School districts are spending someone else's (i.e. the taxpayers') money. It is their duty to make their financial data as easily accessible as possible to their constituents.

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III. Potential solutions

Although the current system of financial reporting for Texas K-12 public education is problematic, fixing it is not a Herculean task. As noted earlier, school districts already regularly collect immense amounts of data. The key challenge is synthesizing this data in a manner so that it is useful information that would allow an average citizen to understand in detail how his or her school district uses taxpayer dollars.

We would recommend that three steps be taken to fix the current system of financial reporting:

The structure of school district annual financial reports must be revamped.

A. The format and data included in the annual financial reports published by each school district must be changed. School districts should be required to disclose substantially more detailed information on how they spend taxpayer funds. As part of this,

- (i) The line items in the summary pages of their annual financial reports should be altered to reflect the specific type of expenditure involved instead of just a general purpose such as "Instruction";
- (ii) Accompanying each of these line items should be a schedule with numerous sub-line items that provide much greater detail as to how and why the money was spent;
- (iii) Annual financial reports should also include key school district output metrics in terms of the numbers of students educated by types of classes by grade;
- (iv) An organization chart should also accompany the annual report that would provide an overview of the structure of the school district, a list of teachers by school and the non-teaching professionals (by position) who work in the school district;
- (v) A list of all contracts with school district vendors and non-employees, the amounts paid to each and the specific services and/or products received should be included in a separate schedule of the annual financial report; and
- (vi) For those districts which share services with other school districts and government agencies, their annual report should be accompanied by disclosures which provide similar information as described in (i), (ii), (iii), (iv) and (v) above detailing what was purchased and how the funds provided were used.

We have included in Appendix A detailed recommendations of what should be incorporated into school district annual reports.

B. The coding currently used by Texas school districts with their general ledgers and check registers should be modified. In lieu of the current function and object codes should be coding which ties individual expenditures into both the major line items of the school's annual report but also into its sub line items. Doing so will create a clearer audit trail that, in turn, would allow a parent

to more easily understand the specific purpose of an individual expenditure if he or she wants to research the school district's spending in greater detail. It will also make it easier to compare how individual districts use their funding.

- C. **Texas school districts should be required to post their key financial data (annual reports, general ledgers, check registers, financial source data, contracts with outside vendors and with senior district and school staff, etc.) for the trailing three years on their websites.** Virtually every school district already has a website. It should not be controversial that they be required to provide their financial data so that outsiders can easily access it.

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IV. Conclusion

We began this study assuming that the financial data currently generated by school districts could be used to help improve education in our State. As we have described, what we found was both surprising and alarming.

Texas currently has a K-12 education system which consumes (according to the Comptroller's office) in excess 43% of Texas' general revenues and in aggregate spent nearly \$55B in the 2008-2009 school year. But no one who does not work for any individual school district has any real idea of exactly how that district spent its part of this money. Consequently, we have no way to determine whether that money was used intelligently, much less efficiently. It is likewise impossible for someone to determine whether what we currently spend money on are things that are essential to "the diffusion of knowledge" rather than optional or unnecessary.

Fixing the current system of financial reporting so as to create true financial accountability should not be controversial for either the property-rich or property-poor school districts. For the latter, they need to be able to clearly demonstrate and quantify that they are using the funds they currently receive in an efficient manner and that absent additional funding they will never be able to properly educate their students. Otherwise, the only financial metric that they can point to is aggregate dollars spent per student, something that is very limited in describing the quality of education being provided.

Fixing the current system of financial reporting is in the best interests of both property-poor and wealthy districts.

More importantly, the Texas Supreme Court has already ruled that the State's constitution does not include a requirement of "equality of funding." Instead, "the constitutional standard of efficiency requires substantially equivalent access to revenue *only up to a point*" and that individual school districts can and must be able to take steps to "enrich" the education of their students. Thus, although disparities between school districts in the money spent per student on education is a factor that the Court will consider when determining the constitutionality of a system for funding public education, it is by far not the only factor.

On the other hand, the primary outcome to date for the property-rich school districts from this decades-long legal battle has been that large amounts of money that they would have received otherwise have been transferred to property-poor districts through Robin Hood and its successors. And there is a real possibility that the in some future ruling the Court could accelerate this trend.

Consequently, the wealthier districts likewise have a compelling interest to find a way to address the constitutionality of the system that goes beyond just dollars spent per student. They need to be able to frame the argument from the context of what precisely is needed to be done to educate students in a constitutional manner and what specific funding is required to provide these services. However, the current system of financial accountability for Texas public education does not produce the necessary information to make this case.

Creating a consensus to spend more money on education is predicated on demonstrating that current funding is being used intelligently and efficiently

More lawsuits ahead

Regardless of whether either the property-rich or property-poor districts are willing to embrace real financial accountability, anyone worried about our State's system of public education has a compelling interest that these changes be made. Without any useful information of how taxpayer funds are used to educate students, the Legislature will be unable to devise a system that is efficient, suitable and adequate and the courts likewise will be unable to determine if it is constitutional. Thus, if and until the current system of financial reporting is fixed, any future mechanisms for funding public education in our State will remain in constant limbo, subject to repeated legal challenges.

More importantly, our State has finite resources and it must allocate them across a wide set of priorities. Consequently, it will be quite difficult for any elected official to build a consensus that we need to spend more money on public education if there is no way of accurately and clearly demonstrating that we are using the current dollars allocated to K-12 public education in an intelligent manner.

Finally, beyond just the legal and political questions, the future economic vibrancy of our state in no small way depends on having a well-educated populace. In order to do this we have to find a way to get the maximum benefit from the dollars spent on public education. But until we know exactly how the money is being used, we will never be able to determine what needs to be done to improve the system.

Unofficial copy Travis Co. District Clerk Yelva L. Price

Appendix A. Recommended Changes to the Format and Structure of School District Annual Financial Reports

The goal: Can an average citizen understand exactly how a school district uses taxpayer dollars?

In thinking about how to best redesign the current reporting and disclosure rules which Texas school districts must follow, we at TEAP began with what the Texas Education Agency (TEA) claims should be the standards that any system of financial reporting should meet. More specifically, TEA's own manual points to "accountability as the paramount objective of financial reporting by state and local governments." But to be accountable "financial reporting should communicate adequate information to user groups to enable them to assess the performance" of the governmental entity such as a school district. Moreover, the TEA argues that "financial reporting is not an end in itself but is intended to provide information useful for many purposes" that "helps to satisfy the needs of users who have limited authority, ability, or resources to obtain information and who therefore rely on the reports as an important source of information."

In other words, any rational system of financial reporting for Texas school districts should be designed so that it provides sufficient information to allow its three primary constituencies – namely, the citizens of our State, direct representatives of our citizens such as members of the Legislature and oversight bodies and creditors of the school districts – to fully evaluate the financial performance of these governmental entities.

However, we would propose an even simpler standard: An average citizen should, after reading his or her school district's annual financial report, have a clear understanding of exactly how it is spending taxpayer dollars.

Six structural changes to school district annual reports

With this in mind, we propose six changes to the school district annual report format. First, the report should include a list of major spending categories with titles tied to the specific type of expenditure (as opposed to its general purpose) such as "Compensation Expenses," "Teacher, Administrator and Staff Professional Development," "Costs Associated with Oversight of the School District", etc. In Exhibit 1 to this Appendix A, we have provided our recommendations as what should be included in the major spending categories.

Second, each these major spending categories should be accompanied by a separate schedule that has numerous sub-line items, each reflecting a specific type of financial expenditure. For example the "Compensation Expenses" line item should be broken into multiple sub-line items ranging from salaries paid to teachers solely for teaching to benefits for school district support staff. Our recommended sub-line items for each major spending category are also shown in Exhibit 1 to this Appendix A.

Third, every annual report should include an organizational chart and narrative that allows outsiders to understand the operating structure of the school district. The narrative should provide an overview of the number of students per school by district, teachers by school, non-teaching professionals by school, non-teaching support staff by school, the number of professional staff at the district level and the number of support staff at

Annual financial reports should include an organizational chart, lists of classes taught and disclose both agreements with outside contractors and other school districts.

the district level. The organization chart should include a list of teachers and administrators by position by school as well as a list of all of the professional staff by position at the school district level.

Fourth, every school district should have separate disclosure pages in its annual report listing every agreement with non-district employee contractors, the expenditures involved, the specific services and/or products provided to the district, when the contract was most recently awarded or renewed, whether at the time of the most recent award or renewal it was competitively bid and any and all political contributions made by the contractor to the election campaigns of any school board members of the district.

Fifth, the annual financial report should include detailed lists of the core outputs of the district – namely, the courses taught that year by grade; the number of each taught; and the number of students who successfully completed each. These classes should be divided by type, grade, and category (i.e., core curriculum, college preparatory, advanced placement courses, vocational, etc.). Additionally, this set of disclosures should include how many students were tutored either individually or in small groups outside of the normal school curriculum. Finally, the narrative should provide detailed information on the performance of students in the school district on standardized tests.

Lastly, the annual financial reports of those school districts which employ shared services agreements with other school districts or governmental agencies should include an additional set of disclosures. As part of this, the entity providing these services should be required to provide the same information (i.e. general categories of spending, accompanying schedules, organizational chart, detailed description of outputs and all contracts with outsiders, their cost and the services provided) that is included for the district's other expenditures.

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Exhibit 1 to Appendix A

Major Spending Categories

1. Compensation Expenses
2. Teacher, Administrator and Staff Professional Development Expenditures
3. Expenditures for Equipment and Facilities Used Directly in Teaching Students and Associated Maintenance Costs
4. Expenditures for Equipment and Acquisition Not Used Directly in Teaching Students and Associated Maintenance Costs
5. Athletic Facility Acquisition and Maintenance Costs
6. Student Transportation and Healthcare Costs
7. Expenditures on School-Provided Meals
8. Purchases of Supplies and Materials Directly Used for Teaching Students
9. Purchases of Supplies and Materials Not Directly Used for Teaching Students
10. Costs Associated with Oversight of the School District
11. Services Provided By Outside Contractors
12. Expenditures on Athletics and Extracurricular Activities
13. Long-Term Funding Costs
14. Expenditures from Shared Services with Other School Districts and Governmental Agencies
15. Costs Resulting From Other Governmental Agencies

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Schedule A – Compensation Expenses

Specific disclosure line items:

1. Salaries paid to teachers for teaching classes. (This line item should exclude any compensation paid to teachers for non-teaching activities — e.g., coaching sports, supervising extracurricular activities, etc. — any compensation for tutoring or examination preparatory classes, as well as any performance bonuses.)
2. Benefits paid to teachers. (This line item should likewise exclude that portion of any benefits paid to teachers for non-teaching activities including as well as any expenditure for professional development.)
3. Salaries paid to teachers for tutoring students.
4. Salaries paid to teachers for examination preparatory classes.
5. Salaries paid to teaching assistants and teachers' aides.
6. Benefits paid to teaching assistants and teachers' aides.
7. Salaries paid to guidance counselors.
8. Benefits paid to guidance counselors.
9. Salaries paid to coaches of athletic teams.
10. Benefits paid to coaches of athletic teams.
11. Salaries paid to librarians.
12. Benefits paid to librarians.
13. Salaries paid to school nurses and health staff.
14. Benefits paid to school nurses and health staff.
15. Compensation paid to individuals for their work in student extra-curricular activities, not including coaching athletic teams.
16. Salary paid to the District Superintendent.
17. Benefits paid to the District Superintendent.
18. Salaries paid to District Assistant Superintendents.
19. Benefits paid to District Assistant Superintendents.
20. Salaries paid to School Principals by individual.
21. Benefits paid to School Principals by individual.
22. Salaries paid to School Assistant Principals.

Schedule A – Compensation Expenses
(Continued)

23. Benefits paid to School Assistant Principals.
24. Salaries paid to District-level administrative staff.
25. Benefits paid to District-level administrative staff.
26. Salaries paid to School-level administrative staff.
27. Benefits paid to School-level administrative staff.
28. Salaries paid to District-level support (e.g., janitorial, security, etc.) staff.
29. Benefits paid to District-level support staff.
30. Salaries paid to School level support staff, not including any compensation to individuals for their work in the preparation and delivery of school-provided meals to students.
31. Benefits paid to School-level support staff, not including any benefits provided to individuals for their work in the preparation and delivery of school-provided meals to students.
32. Performance bonuses paid to teachers by individual.
33. Performance bonuses paid to teaching assistants and teachers' aides by individual.
34. Performance bonuses paid to guidance counselors by individual.
35. Performance bonuses paid to coaches of athletic teams by individual.
36. Performance bonuses paid to librarians by individual.
37. Performance bonuses paid to school nurses and health staff by individual.
38. Performance bonuses paid to individuals for their work in non-athletic extra-curricular activities by individual.
39. Performance bonuses paid to District Superintendent.
40. Performance bonuses paid to District Assistant Superintendents by individual.
41. Performance bonuses paid to School Principals by individual.
42. Performance bonuses paid to School Assistant Principals by individual.
43. Performance bonuses paid to District-level administrative staff by individual.
44. Performance bonuses paid to District-level support staff by individual.
45. Performance bonuses paid to School-level administrative staff by individual.
46. Performance bonuses paid to School-level support staff by individual.

Schedule B – Teacher, Administrator and Staff Professional Development Expenditures

Specific disclosure line items:

1. Tuition and fees paid for teacher continuing education.
2. Travel costs associated with teacher continuing education.
3. Tuition and fees paid for teacher undergraduate and/or post-graduate education.
4. Travel costs associated with teacher undergraduate and/or post-graduate education.
5. Tuition and fees paid for teacher aide and teaching assistant continuing education.
6. Travel costs associated with teacher aide and teaching assistant continuing education.
7. Tuition and fees paid for teacher aide and teaching assistant undergraduate and/or post-graduate education.
8. Travel costs associated with teacher aide and teaching assistant undergraduate and/or post-graduate education.
9. Tuition and fees paid for guidance counselor continuing education.
10. Travel costs associated with guidance counselor continuing education.
11. Tuition and fees paid for guidance counselor undergraduate and/or post-graduate education.
12. Travel costs associated with guidance counselor undergraduate and/or post-graduate education.
13. Tuition and fees paid for athletic team coach professional development.
14. Travel costs associated with athletic team coach professional development.
15. Tuition and fees paid for librarian continuing education.
16. Travel costs associated with librarian continuing education.
17. Tuition and fees paid for librarian undergraduate and/or post-graduate education.
18. Travel costs associated with librarian undergraduate and/or post-graduate education.
19. Tuition and fees paid for nurse and health staff continuing education.
20. Travel costs associated with nurse and health staff continuing education.
21. Tuition and fees paid for nurse and health staff undergraduate and/or post-graduate education.
22. Travel costs associated with nurse and health staff undergraduate and/or post-graduate education.
23. Tuition and fees paid for staff for professional development related to extracurricular activities.
24. Travel costs associated for professional development related to extracurricular activities.

Schedule B – Teacher, Administrator and Staff Professional Development Expenditures
(Continued)

25. Tuition and fees paid for District Superintendent continuing education.
26. Travel costs associated with District Superintendent continuing education.
27. Tuition and fees paid for District Superintendent undergraduate and/or post-graduate education.
28. Travel costs associated with District Superintendent undergraduate and/or post-graduate education.
29. Tuition and fees paid for Assistant Superintendent continuing education.
30. Travel costs associated with Assistant Superintendent continuing education.
31. Tuition and fees paid for District Assistant Superintendent undergraduate and/or post-graduate education.
32. Travel costs associated with District Assistant Superintendent undergraduate and/or post-graduate education.
33. Tuition and fees paid for School Principal continuing education.
34. Travel costs associated with School Principal continuing education.
35. Tuition and fees paid for School Principal undergraduate and/or post-graduate education.
36. Travel costs associated with School Principal undergraduate and/or post-graduate education.
37. Tuition and fees paid for School Assistant Principal continuing education.
38. Travel costs associated with School Assistant Principal continuing education.
39. Tuition and fees paid for School Assistant Principal undergraduate and/or post-graduate education.
40. Travel costs associated with School Assistant Principal undergraduate and/or post-graduate education.
41. Tuition and fees paid for District-level administrative staff continuing education.
42. Travel costs associated with District-level administrative staff continuing education.
43. Tuition and fees paid for District-level administrative staff undergraduate and/or post-graduate education.
44. Travel costs associated with District-level administrative staff undergraduate and/or post-graduate education.
45. Tuition and fees paid for School-level administrative staff continuing education.
46. Travel costs associated with School-level administrative staff continuing education.
47. Tuition and fees paid for School-level administrative staff undergraduate and/or post-graduate education.

Schedule B – Teacher, Administrator and Staff Professional Development Expenditures

(Continued)

48. Travel costs associated with School-level administrative staff undergraduate and/or post-graduate education.
49. Tuition and fees paid for District-level support staff continuing education.
50. Travel costs associated with District-level support staff continuing education.
51. Tuition and fees paid for District-level support staff undergraduate and/or post-graduate education.
52. Travel costs associated with District-level support staff undergraduate and/or post-graduate education.
53. Tuition and fees paid for School-level support staff continuing education.
54. Travel costs associated with School-level support staff continuing education.
55. Tuition and fees paid for School-level support staff undergraduate and/or post-graduate education.
56. Travel costs associated with School-level support staff undergraduate and/or post-graduate education.

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Schedule C – Expenditures for Equipment and Facilities Used Directly in Teaching and Associated Maintenance Costs

Specific disclosure line items:

1. Purchases, leases, and/or licenses for computers and software used directly in teaching students.
2. Expenditures (other than compensation for district employees) associated with computer hardware and software maintenance and support used directly in teaching students.
3. Purchases and/or leases of audio visual equipment and software used directly in teaching students.
4. Expenditures (other than compensation for district employees) associated with audio visual equipment and software maintenance and support used directly in teaching students.
5. Purchases and/or leases of other electronic equipment and software used directly in teaching students.
6. Expenditures (other than compensation for district employees) associated with the maintenance and support of other electronic equipment and software used directly in teaching students.
7. Purchases and/or leases of non-electronic classroom equipment.
8. Expenditures (other than compensation for district employees) associated with the maintenance and support of non-electronic classroom equipment.
9. Purchases and/or leases of vehicles used in driver's education.
10. Expenditures (other than compensation for district employees) associated with the maintenance and support of vehicles used in driver's education.
11. Fuel costs associated with vehicles used in driver's education.
12. Purchases of band and orchestra instruments.
13. Expenditures (other than compensation for district employees) associated with the maintenance and support of band and orchestra instruments.
14. Purchases of other band and orchestra equipment including uniforms.
15. Expenditures (other than compensation for district employees) associated with the maintenance and support of band and orchestra equipment including uniforms.
16. Capital expenditures on classroom facilities.
17. Non-compensation expenditures associated with classroom maintenance and upkeep provided by district employees.

Schedule D – Expenditures for Equipment and Facilities Not Used Directly in Teaching Students and Associated Maintenance Costs

Specific disclosure line items:

1. Purchases, leases, and/or licenses for computers and software not used directly in teaching students.
2. Expenditures (other than compensation for district employees) associated with computer hardware and software maintenance and support not used directly in teaching students.
3. Purchases and/or leases of audio visual equipment and software not used directly in teaching students.
4. Expenditures (other than compensation for district employees) associated with audio visual equipment and software maintenance and support not used directly in teaching students.
5. Purchases and/or leases of other electronic equipment and software not used directly in teaching students.
6. Expenditures (other than compensation for district employees) associated with the maintenance and support of other electronic equipment and software not used directly in teaching students.
7. Purchases and/or leases of non-electronic equipment not directly used in teaching students.
8. Expenditures (other than compensation for district employees) associated with the maintenance and support of non-electronic equipment not used directly in teaching students.
9. Purchases and/or leases of vehicles other than those used in driver's education or those used in transporting students to and from school.
10. Expenditures (other than compensation for district employees) associated with the maintenance and support of vehicles other than those used in driver's education and in transporting students to and from schools.
11. Fuel costs associated with the use of vehicles other than those used in driver's education and transporting students to and from schools.
12. Capital expenditures on administrative facilities.
13. Capital expenditures on all other non-athletic facilities.
14. Non-compensation expenditures associated with administrative and all other non-athletic facility maintenance and upkeep provided by district employees.

Schedule E – Athletic Facility Acquisition and Maintenance Costs

Specific disclosure line items:

1. Capital expenditures on athletic facilities by sport.
2. Non-compensation expenditures by sport associated with athletic facility maintenance and upkeep provided by district employees.

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Schedule F – Student Transportation and Healthcare Costs

Specific disclosure line items:

1. Capital expenditures on vehicles used in transporting students to and from schools.
2. Non-compensation expenditures associated with maintenance of vehicles used in transporting students to and from schools.
3. Fuel costs associated with transporting students to and from school.
4. Non-compensation expenditures associated with healthcare services provided to students.

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Schedule G – Expenditures on School-Provided Meals

Specific disclosure line items:

1. Salaries paid to individuals for their work in the preparation and delivery of school-provided meals to students.
2. Benefits paid to individuals for their work in the preparation and delivery of school-provided meals to students.
3. Expenditures on food used in school-provided breakfast programs.
4. Expenditures on food used in school-provided lunch programs.
5. Expenditures on food used in any school-provided meals other than breakfasts or lunches.
6. Costs from the acquisition of equipment used in the preparation of school-provided meals.
7. Expenditures on the maintenance and upkeep of equipment used in school-provided meals.
8. Costs from the acquisition of non-food supplies used in the preparation of school-provided meals.
9. Number of students participating in school-provided breakfast program.
10. Number of meals served in school-provided breakfast program.
11. Number of students participating in school-provided lunch program.
12. Number of meals provided in school-provided lunch program.
13. Number of students participating in school-provided meals excluding lunches and breakfasts.
14. Number of meals served excluding breakfasts and lunches.

Schedule H – Purchases of Supplies and Materials Directly Used for Teaching Students

Specific disclosure line items:

1. Expenditures on consumable classroom supplies and materials.
2. Expenditures on durable classroom supplies and materials.
3. Expenditures on textbooks.
4. Expenditures on electronic education materials used directly in teaching students.
5. Expenditures on other, non-electronic education materials used directly in teaching students.

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Schedule I – Purchases of Supplies and Materials Not Directly Used for Teaching Students

Specific disclosure line items:

1. Expenditures on consumable supplies and materials not directly used in teaching students.
2. Expenditures on durable supplies and materials not directly used in teaching students.
3. Expenditures on district-prepared publications.
4. Costs associated with operation, upkeep and maintenance of district website.

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Schedule J – Costs Associated with Oversight of the School District

Specific disclosure line items:

1. School Board member travel for attendance at School Board meetings.
2. School Board member stipends for attendance at School Board meetings.
3. Other costs of School Board meetings.
4. School Board member travel for reasons other than attendance at School Board meetings.
5. School Board member stipends for reasons other than attendance at School Board meetings.
6. School Board costs other than those directly occurring from participation in School Board meetings.
7. Expenditures on annual audit.
8. Outside accounting costs not directly tied to annual audit.
9. Expenditures on legal services provided to School Board.
10. Expenditures on legal services provided to District other than legal services provided to School Board.
11. Expenditures associated with lobbying activities.
12. Expenditures associated with applications for grants.
13. Costs associated with liability insurance for School Board members.
14. Costs associated with liability insurance for school district and its employees.
15. Non-compensation costs associated with preparation and submission of required data to the Texas Education Agency.

Schedule K – Services Provided by Outside Contractors

Specific disclosure line items:

1. List of all agreements with outside service providers.
2. Expenditures associated with each contractor by each agreement.
3. Specific services provided by each contractor by each agreement.
4. Date by agreement of most recent award or renewal.
5. Whether each agreement was competitively bid at its most recent award or renewal.
6. List by contractor of all political contributions made to any school board members of the district.

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Schedule L – Expenditures on Athletics and Extracurricular Activities

Specific disclosure line items:

1. Expenditures (excluding compensation for district employees and capital expenditures for facilities and maintenance) for athletics, by sport.
2. Expenditures (excluding compensation for district employees and capital expenditures for facilities and maintenance) for non-athletic extracurricular activities, by activity.

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Schedule M – Long-Term Funding Costs

Specific disclosure line items:

1. Interest on long-term debt associated with classroom facilities.
2. Interest on long-term debt associated with non-classroom facilities.
3. Interest on long-term debt associated with athletic facilities.
4. Interest on long-term debt associated with facilities for non-athletic extracurricular activities.

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Schedule N – Expenditures from Shared Services with Other School Districts and Governmental Agencies

Specific disclosure line items:

1. List of all services provided to the District as part of shared service agreement.
2. Expenditures for each individual shared services agreement.
3. Accompanying annual report for each entity providing shared services. At a minimum each report should include similar disclosure to that of school districts including general categories of spending, accompanying schedules, organizational chart, detailed description of outputs and all contracts with outsiders, their cost and the services provided.

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Schedule 0 – Costs Resulting from Other Governmental Agencies

Specific disclosure line items:

1. List all payments made to other governmental agencies by agency.
2. Purpose of each expenditure.

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For additional copies of this paper, please contact us at the addresses listed below.

Texas Education Accountability Project

Mark P. Hurley: mhurley@texedap.com
Yvonne N. Kanner: ykanner@texedap.com
Jonathan Yu: jyu@texedap.com

www.texedap.com

Exhibit

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Mark P. Hurley
Yvonne Kanner
Jonathan Yu
5400 LBJ Freeway, Suite 910
Dallas, TX 75240
Ph: 214.507.0310

March 15, 2011

Jack County – Perrin Whitt ISD
ATTN: Officer for Public Records
216 N Benson
Perrin, TX 76486

Dear Officer for Public Records:

This request is made under the Texas Public Information Act, Chapter 552, Texas Government Code, which guarantees the public's access to information in the custody of governmental agencies. We respectfully request an electronic copy (either on a flash drive or email it to mhurley@texedap.com) of the following information:

1. Please provide a copy of the District's general ledger for the school year ending August 31, 2009.
2. Please provide a copy of the District Superintendent's contract as well as his or her annual salary and any and all benefits for the school year ending August 31, 2009.
3. According to the District's audited financial reports for the school year ending August 31, 2009 ("Function 41 and related Function 53 – General Administration and function 99 – Appraisal District Cost", page 50, Exhibit J-2) the costs ("701") of the superintendent's office were \$73,324, the Indirect Costs ("750") were \$79,130 and the Direct Costs ("720") were \$0. Please provide the underlying detail that went into these numbers including the appropriate portions of the district's check register. Please provide the underlying detail and associated check registers of all district related travel, restaurant meals, subsistence, and stipend costs incurred for the school year ending August 31, 2009.
4. According to the District's audited financial reports for the school year ending August 31, 2009 ("Function 41 and related Function 53 – General Administration and function 99 – Appraisal District Cost", page 50, Exhibit J-2) the costs of the School Board ("702") totaled \$14,122. Please provide the underlying detail (include per diem and reimbursements by board member including travel) that went into these numbers including the appropriate portions of the district's check register.
5. Please provide a copy of any current contracts with school principals and assistant principals as well as his or her (or their, by individual) annual salary and benefits for the school year ending August 31, 2009.
6. Please provide: (i) a list of all full-time teachers in the District in the school year ending August 31, 2009 who did not also serve as coaches of any sports teams; (ii) the average number of classes taught per teacher; and (iii) the payroll data (salaries and benefits) for these individuals in the school year ending August 31, 2009. Please do not include in these numbers any non-full time teachers such as superintendents, principals, assistant principals, nurses, librarians, technology directors; paraprofessionals, counselors, etc.
7. Please provide: (i) a list of all full-time teachers in the District in the school year ending August 31, 2009 who also served as coaches of any sports teams; (ii) the average number of classes taught per such

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teacher; (iii) the school year ending August 31, 2009 payroll data (salaries and benefits) for these individuals in the school year ending August 31, 2009; and (iv) the portion of their salaries and benefits in the school year ending August 31, 2009 which are attributable to their roles as full-time teachers and the portion of their salaries and benefits in the school year ending August 31, 2009 which are attributable to their roles as coaches. Please do not include in these numbers any non-full time teachers such as nurses, librarians, technology directors; paraprofessionals, counselors, etc.

8. Please provide: (i) a list of all part-time teachers in the District who do not also serve as coaches of any sports teams; (ii) the average number of classes taught per teacher; and (iii) the school year ending August 31, 2009 payroll data (salaries and benefits) for these individuals. Please do not include in these numbers any non part-time teachers such as superintendents, principals, assistant principals, nurses, librarians, technology directors; paraprofessionals, counselors, etc.

9. Please provide: (i) a list of all part time teachers in the District who also serve as coaches of any sports teams; (ii) the average number of classes taught per such teacher; (iii) the school year ending August 31, 2009 payroll data (salaries and benefits) for these individuals; and (iv) the portion of their salaries and benefits which are attributable to their roles as full-time teachers and the portion of their salaries and benefits which are attributable to their roles as coaches. Please do not include in these numbers any non part-time teachers who also served as coaches such as nurses, librarians, technology directors; paraprofessionals, counselors, etc.

10. Please provide the District's school year ending August 31, 2009 pay scale (e.g., salaries based on experience, tenure, qualifications, etc.) for all teachers both full and part-time.

11. Please provide a list of: (i) all district employees, including auxiliary staff, who were not full-time or part-time teachers; (ii) their payroll data (salaries and benefits); (iii) their job function; and (iv) the locations in which they perform their job functions (name of school or office) for the school year ending August 31, 2009.

12. According to the District's audited financials for the school year ending August 31, 2009 it paid \$225 per employee per month for health benefits, \$17,294 in contributions to the Teacher Retirement System of Texas; and \$11,221 for the Retiree Health Care Plan. Please identify those line items in the District's annual report in which these costs are included by amount.

13. Please identify any district employees in the school year ending August 31, 2009 who did not receive health benefits.

14. If the district's website is not included in District's reported data processing costs, please provide a description and list of costs, including related payroll, involved in maintaining and updating the website.

15. According to the District's 2009 audited financials it spent \$219,087 in Co/Extra-Curricular Activities (Data Control Code 0036). Please provide a specific breakdown of how these funds were spent.

16. According to the District's 2009 audited financials it spent \$202,644 in School Leadership (Data Control Code 0023). Please provide a specific breakdown of how these funds were spent.

17. Please provide copies of the depreciation schedules by building/facility/equipment for each of the District's property, plant and equipment. Also please provide how the time frame over which these assets are depreciated was determined.

18. According to the District's audited financials for the school year ending August 31, 2009 it allocated \$179,842 in depreciation to instruction and \$3,136 in depreciation to instruction resources and media services. Please provide copies of the underlying detail of how these amounts were calculated.

19. Please provide a copy of the contract with the District's independent auditor for the school year ending August 31, 2009.

20. Please provide a detailed breakdown of all of the District's capital expenditures for the school year ending August 31, 2009.

21. Did the district have in the school year ended August 31, 2009 any agreements with regional service centers? If so, please provide copies of the agreements as well a description of any amounts paid.

22. Please provide the district's conflict disclosure statements. Has the superintendent received any gifts from vendors and potential vendors within the past three years?

23. According to the District's audited financials for the school year ending August 31, 2009 it attributed \$154,229 to Payments to Fiscal Agent/Member Districts of SSA (Data Control Code 0093). Please provide the specific detail on what these funds were used and copies of any associated contracts with outside vendors.

25. According to the District's audited financials for the school year ending August 31, 2009 it attributed \$43,294 to Other Intergovernmental Charges (Data Control Code 0099). Please provide the specific detail on what these funds were used and copies of any associated contracts or agreements.

Since time is a factor, please communicate with us by telephone rather than by mail. Our telephone number is: 214.507.0310.

Disclosure of this information is in the public interest because providing a copy of the information primarily benefits the general public. We therefore request a waiver of all fees and charges pursuant to Section 552.267 of the act.

We shall look forward to hearing from you promptly, as specified in the law. Thank you in advance for your cooperation.

Sincerely,
