

Cause No. D-1-GN-11-003130

THE TEXAS TAXPAYER & STUDENT §  
FAIRNESS COALITION, et al. §

vs. §

MICHAEL WILLIAMS, et al. §

*Consolidated Case:* §

MARIO FLORES, et al., §

vs. §

MICHAEL WILLIAMS, et al., §

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

**TEXAS CHARTER SCHOOLS ASSOCIATION PLAINTIFFS'**  
**MOTION FOR JUDICIAL NOTICE**

Now come Plaintiffs Mario Flores, individually and as next friend of Aidan Flores; Christopher Baerga, individually and as next friend of Abby Baerga; Dana Allen, individually as next friend of Teal Evelyn Allen; Jason and Sarah Christensen, individually and as next friends of their children Luke and Grace Christensen; Brooks Flemister, individually and as next friend of Ulric Flemister; and Texas Charter Schools Association (hereafter "Plaintiffs") in the above-styled action, and file this Motion requesting this Court take Judicial Notice of certain current and former state laws related to the Texas public school finance system, and in support, Plaintiffs would respectfully show the Court as follows:

**I.**  
**Motion**

This Motion requests the Court take judicial notice under Texas Rules of Evidence Rule 201, of current and former laws of the State of Texas related to the public school finance system for open-enrollment charter schools, attached as the following exhibits:

- a. Exhibit 9057 – Texas Education Code § 12.106, as enacted in 1995 by the 74th Legislature;
- b. Exhibit 9058 – Texas Education Code § 12.106, as amended in 2001 by the 77th Legislature;
- c. Exhibit 9059 – Texas Education Code § 12.106, as amended in 2009 by the 81st Legislature;
- d. Exhibit 9060 – Texas Education Code § 46.009, as enacted in 1997 by the 75th Legislature;
- e. Exhibit 9061 – Texas Education Code § 46.009, as amended in 1999 by the 76th Legislature;
- f. Exhibit 9062 – Texas Education Code § 46.036, as enacted in 2001 by the 77th Legislature.

**II.**  
**Prayer**

Therefore, Plaintiffs respectfully request that the court take judicial notice of the facts stated above that such judicially noticed facts be applied in the trial and become part of the record of this cause.

Respectfully submitted,

**SCHULMAN, LOPEZ & HOFFER, LLP**

  
**Robert A. Schulman**

Texas Bar No. 17834500

**Joseph E. Hoffer**

Texas Bar No. 24049462

**Leonard J. Schwartz**

Texas Bar No. 17867000

517 Soledad Street

San Antonio, Texas 78205-1508

Telephone: (210) 538-5385

Facsimile: (210) 538-5384

**Attorneys for Plaintiffs**

**CERTIFICATE OF SERVICE**

This is to certify that on February 4, 2013, a true and correct copy of the foregoing was served upon the following counsel of record *via* e-mail, pursuant to the agreement of the parties, and in compliance with the Texas Rules of Civil Procedure and the Texas Local Rules:

Shelley N. Dahlberg, Eric Vinson, Robin Sanders and Nicole Bunker-Henderson, Texas Attorney General's Office, P. O. Box 12548, Capitol Station, Austin, Texas 78711; **Attorneys for State Defendants;**

Mark R. Trachtenberg, Haynes and Boone, LLP, 1 Houston Center, 1221 McKinney Street, Suite 2100, Houston, Texas 77010; John W. Turner and Lacy M. Lawrence, Haynes and Boone, LLP, 2323 Victory Avenue, Suite 700, Dallas, Texas 75219; **Attorneys for Calhoun County, et al. Plaintiffs;**

David G. Hinojosa, Marisa Bono and Rebecca Couto, Mexican American Legal Defense and Educational Fund, Inc., 110 Broadway, Suite 300, San Antonio, Texas 78205; and Miguel A. Perez Vargas, META, Inc., 240 "A" Elm Street, Suite 22, Somerville, Massachusetts 02144; **Attorneys for Edgewood ISD, et al. Plaintiffs;**

J. Christopher Diamond, The Diamond Law Firm, PC, 17484 Northwest Freeway, Suite 150, Houston, Texas 77040; Craig T. Enoch and Melissa A. Lorber, Enoch Keever, PLLC, 600 Congress, Suite 2800, Austin, Texas 78701; **Attorneys for Efficiency Intervenors;**

J. David Thompson and Philip Fraissinet, Thompson & Horton, LLP, Phoenix Tower, Suite 2000, 3200 Southwest Freeway, Houston, Texas 77027; Holly G. McIntush, Thompson & Horton, LLP, 400 West 15th Street, Suite 1430, Austin, Texas 78701; **Attorneys for Ford Bend ISD, et al. Plaintiffs; and**

Richard E. Gray, III, Toni Hunter and Richard Gray, IV, Gray & Becker, PC, 900 West Avenue, Austin, Texas 78701; Randall B. "Buck" Wood and Doug W. Ray, Ray, Ray & Wood, 2700 Bee Caves Road, Suite 200, Austin, Texas 78746; **Attorneys for Texas Taxpayer & Student Fairness Coalition, et al. Plaintiffs.**

  
Attorney for TCSA Plaintiffs

Texas Education Code § 12.106, as enacted in 1995 by the  
74th Legislature

§ 12.106. State Funding

(a) An open-enrollment charter school is entitled to the distribution from the available school fund for a student attending the open-enrollment charter school to which the district in which the student resides would be entitled.

(b) A student attending an open-enrollment charter school who is eligible under Section 42.003 is entitled to the benefits of the Foundation School Program under Chapter 42. The commissioner shall distribute from the foundation school fund to each school an amount equal to the cost of a Foundation School Program provided by the program for which the charter is granted as determined under Section 42.251, including the transportation allotment under Section 42.155, for the student that the district in which the student resides would be entitled to, less an amount equal to the sum of the school's tuition receipts under Section 12.107 plus the school's distribution from the available school fund.

Texas Education Code § 12.106, as amended in 2001 by the  
77th Legislature

§ 12.106. State Funding

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 as if the school were a school district without a tier one local share for purposes of Section 42.253 and without any local revenue ("LR") for purposes of Section 42.302. In determining funding for an open-enrollment charter school, adjustments under Sections 42.102, 42.103, 42.104, and 42.105 and the district enrichment tax rate ("DTR") under Section 42.302 are based on the average adjustment and average district enrichment tax rate for the state.

(b) An open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding.

(c) The commissioner may adopt rules to provide and account for state funding of open-enrollment charter schools under this section. A rule adopted under this section may be similar to a provision of this code that is not similar to Section 12.104(b) if the commissioner determines that the rule is related to financing of open-enrollment charter schools and is necessary or prudent to provide or account for state funds.

Texas Education Code § 12.106, as amended in 2009 by the 81st Legislature

Sec. 12.106. STATE FUNDING.

Text of subsection effective until September 28, 2011

(a) A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 equal to the greater of:

(1) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Sections 42.302(a-1)(2) and (3), as they existed on January 1, 2009, that would have been received for the school during the 2009-2010 school year under Chapter 42 as it existed on January 1, 2009, and an additional amount of \$120 for each student in weighted average daily attendance; or

(2) the amount of funding per student in weighted average daily attendance, excluding enrichment funding under Section 42.302(a), to which the charter holder would be entitled for the school under Chapter 42 if the school were a school district without a tier one local share for purposes of Section 42.253 and without any local revenue for purposes of Section 42.2516.

(a-1) In determining funding for an open-enrollment charter school under Subsection (a), adjustments under

Texas Education Code § 12.106, as amended in 2009 by the 81st Legislature

Sections 42.102, 42.103, 42.104, and 42.105 are based on the average adjustment for the state.

(a-2) In addition to the funding provided by Subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under Section 42.302 based on the state average tax effort.

(b) An open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding.

(c) The commissioner may adopt rules to provide and account for state funding of open-enrollment charter schools under this section. A rule adopted under this section may be similar to a provision of this code that is not similar to Section 12.104(b) if the commissioner determines that the rule is related to financing of open-enrollment charter schools and is necessary or prudent to provide or account for state funds.

Texas Education Code § 46.009, as enacted in 1997 by the  
75th Legislature

Sec. 46.009. PAYMENT OF SCHOOL FACILITIES  
ALLOTMENTS.

(a) For each school year, the commissioner shall determine the amount of money to which each school district is entitled under this chapter.

(b) If the amount appropriated for purposes of this chapter for a year is less than the total amount determined under Subsection (a) for that year, the commissioner shall:

(1) transfer from the Foundation School Program to the instructional facilities program the amount by which the total amount determined under Subsection (a) exceeds the amount appropriated; and

(2) reduce each district's foundation school fund allocations in the manner provided by Section 42.253.

(c) Warrants for payments under this chapter shall be approved and transmitted to school district treasurers or depositories in the same manner as warrants for payments under Chapter 42.

(d) As soon as practicable after September 1 of each year, the commissioner shall distribute to each school district the amount of state assistance under this chapter to which the commissioner has determined the district is entitled for the school year. The district shall deposit the money in the interest and sinking fund for the bonds for which the assistance is

Texas Education Code § 46.009, as enacted in 1997 by the 75th Legislature

received and shall adopt a tax rate for purposes of debt service that takes into account the balance of the interest and sinking fund.

(e) Section 42.258 applies to payments under this chapter.

(f) If a school district would have received a greater amount under this chapter for the applicable school year using the adjusted value determined under Section 42.257, the commissioner shall add the difference between the adjusted value and the amount the district received under this chapter to subsequent distributions to the district under this chapter.

Unofficial copy Travis Co. District Clerk Neva L. Price

Texas Education Code § 46.009, as amended in 1999 by the 76th Legislature

Sec. 46.009. PAYMENT OF SCHOOL FACILITIES ALLOTMENTS. (a) For each school year, the commissioner shall determine the amount of money to which each school district is entitled under this subchapter.

(b) If the amount appropriated for purposes of this subchapter for a year is less than the total amount determined under Subsection (a) for that year, the commissioner shall:

(1) transfer from the Foundation School Program to the instructional facilities program the amount by which the total amount determined under Subsection (a) exceeds the amount appropriated; and

(2) reduce each district's foundation school fund allocations in the manner provided by Section 42.253(h).

(c) Warrants for payments under this subchapter shall be approved and transmitted to school district treasurers or depositories in the same manner as warrants for payments under Chapter 42.

(d) As soon as practicable after September 1 of each year, the commissioner shall distribute to each school district the amount of state assistance under this

Texas Education Code § 46.009, as amended in 1999 by the 76th Legislature

subchapter to which the commissioner has determined the district is entitled for the school year. The district shall deposit the money in the interest and sinking fund for the bonds for which the assistance is received and shall adopt a tax rate for purposes of debt service that takes into account the balance of the interest and sinking fund.

(e) Section 42.258 applies to payments under this subchapter.

(f) If a school district would have received a greater amount under this subchapter for the applicable school year using the adjusted value determined under Section 42.257, the commissioner shall add the difference between the adjusted value and the amount the district received under this subchapter to subsequent distributions to the district under this subchapter.

Added by Acts 1997, 75th Leg., ch. 592, Sec. 1.04, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 396, Sec. 1.27, eff. Sept. 1, 1999.

Texas Education Code § 46.036, as enacted in 2001 by the  
77th Legislature

§ 46.036. Applicability to Open-Enrollment  
Charter Schools

An open-enrollment charter school is not  
entitled to an allotment under this  
subchapter.

Added by Acts 2001, 77th Leg., ch. 1504,  
§ 31, eff. Sept. 1, 2001.

Unofficial copy Travis Co. District Clerk Velda L. Price