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Travis District
D-1-GN-11-003130

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

THE TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, et al; CALHOUN COUNTY ISD, et al; EDGEWOOD ISD, et al; FORT BEND ISD, et al; TEXAS CHARTER SCHOOL ASSOCIATION, et al., Plaintiffs,	§	IN THE DISTRICT COURT
JOYCE COLEMAN, et al., Intervenors,	§	
vs.	§	200th JUDICIAL DISTRICT
MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION, IN HIS OFFICIAL CAPACITY; SUSAN COMBS, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, IN HER OFFICIAL CAPACITY; TEXAS STATE BOARD OF EDUCATION, the TEXAS EDUCATION AGENCY, and the STATE OF TEXAS, Defendants.	§	TRAVIS COUNTY, TEXAS

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NOTICE OF WITHDRAWAL OF DEFENDANTS' REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

TO THE HONORABLE JOHN K. DIETZ, TRAVIS COUNTY DISTRICT COURT:

On February 2, 2013, the Court ruled that the Texas school finance system is unconstitutionally inadequate, unsuitable, inefficient, and creates a state-imposed property tax. On March 18, based on the Court's request and believing the entry of a final judgment was imminent, Defendants filed a Request for Findings of Fact and Conclusions of Law, and then on

March 19 filed an Amended Request for Findings of Fact and Conclusions of Law. Shortly thereafter, the Plaintiffs and Intervenors either e-mailed to the Court or filed proposed findings of fact and conclusions of law to support the Court's February 2 ruling. [Exhibit 1 (3.15.13 Email from Michelle Jacobs to Court with attached ISD Plaintiffs' Final Proposed FOF/COLs); Exhibit 2 (3.18.13 Email from Isabel Pena to Court with attached Edgewood Plaintiff's Separate Proposed FOF/COLs); Efficiency Intervenor's Findings of Fact filed 3-12-13].

Since then, the 83rd Texas Legislature enacted legislation that significantly changes aspects of Texas' public education system for the 2013-2014 and 2014-2015 school years, many of which are material to the litigation and affect the public education landscape going forward. These changes prompted the Court to re-open the evidence, and the Plaintiffs and Intervenors to amend their petitions. A lengthy supplemental evidentiary hearing is set for January 2014. [Transcript June 19, 2013 at 20].

Defendants submit that the legislative changes, the Plaintiffs' and Intervenors' actions, and the re-opening of the evidence serve to automatically withdraw or supersede the Court's February 2 ruling and the Plaintiffs and Intervenor's proposed findings of fact and conclusions of law. Thus, Defendants' request for findings of fact and conclusions of law is untimely and inappropriate. TEX. R. CIV. P. 296 (request 20 days *after* judgment).

Further, the legislative developments and the evidentiary proceeding raise the possibility that the district court could rule in the Defendants' favor on all claims. Should that be the case, as the prevailing party, Defendants could choose to not request findings and conclusions at all.

For these reasons, Defendants withdraw the March 18, 2013 Request for Findings of Fact and Conclusions of Law and the March 19, 2012 Amended Request for Findings of Fact and Conclusions of Law. Defendants reserve their right to make a similar request within the time

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limits imposed by the Texas Rules of Civil Procedure if and when it is appropriate for them to do so.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General for Defense Litigation

JAMES "BEAU" ECCLES
Division Chief, General Litigation Division

/s/ Shelley N. Dahlberg

SHELLEY N. DAHLBERG
Assistant Attorney General
Texas Bar No. 24012491
General Litigation Division

NICHOLE BUNKER-HENDERSON
Assistant Attorney General
Texas Bar No. 24045580
Administrative Law Division

LINDA HALPERN,
Assistant Attorney General
Texas Bar No. 24030166
General Litigation Division

Texas Attorney General's Office
P. O. Box 12548, Capitol Station
Austin, Texas 78711
Phone: (512) 463-2121
Fax: (512) 320-0667

ATTORNEYS FOR DEFENDANTS

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2013, I forwarded the foregoing document to all known counsel of record via email:

Richard E. Gray, III
Toni Hunter
GRAY & BECKER
900 West Ave.
Austin, TX 78701

Randall B. Wood
Doug W. Ray
RAY & WOOD
2700 Bee Caves Rd., Suite 200
Austin, TX 78746

Mark R. Trachtenberg
HAYNES AND BOONE, LLP
1 Houston Center
1221 McKinney Street, Suite 2100
Houston, Texas 77010

John W. Turner
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219

Mexican American Legal Defense and Education Fund, Inc.
David G. Hinojosa
Marisa Bono
110 Broadway, Ste 300
San Antonio, TX 78205

Multicultural, Education, Training and Advocacy, Inc.
Roger L. Rice
240A Elm St., Ste 22
Somerville, MA 02144

J. David Thompson, III
Philip Fraissinet
THOMPSON & HORTON LLP
Phoenix Tower, Suite 2000
3200 Southwest Freeway
Houston, TX 77027

Holly G. McIntush
400 West 15th Street, Suite 1430
Austin, Texas 78701

J. Christopher Diamond
THE DIAMOND LAW FIRM, P.C.
17484 Northwest Freeway, Suite 150
Houston, Texas 77040

Craig T. Enoch
ENOCH KEVER PLLC
600 Congress, Suite 2800
Austin, Texas 78701

Robert A. Schulman
Joseph E. Hoffer
Betsy Hall Bender
SCHULMAN, LOPEZ & HOFFER, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

Shelley N. Dahlberg
SHELLEY N. DAHLBERG
Deputy Chief – General Litigation Division

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From: Dahlberg, Shelley
To: Hernandez, Sylvia; Chester, Bonnie
Subject: FW: TTSFC et al v. Williams et al - ISD Plaintiffs" Draft findings of fact and conclusions of law
Date: Monday, March 18, 2013 11:05:43 AM
Attachments: Final FOF_COL (3.15.13).pdf

From: Jacobs, Michelle [mailto:Michelle.Jacobs@haynesboone.com]
Sent: Friday, March 15, 2013 11:33 PM
To: 'Carol Jenson'; 'John Dietz'; 'johndietz@mac.com'; 'Stacey Rosen'
Cc: 'Allen Keller (akeller@slh-law.com)'; 'Christopher Diamond'; 'Craig Enoch'; 'Cynthia Pacheco'; 'David Hinojosa'; 'J. David Thompson'; Eccles, Beau; Turner, John; 'Joseph Hoffer'; 'L. Payton'; Faruque, Lora; Sisler, Mary; 'Melissa Lorber'; Trachtenberg, Mark; Bunker-Henderson, Nichole; 'Philip Fraissinet'; 'Pina, Isabel'; 'Holly McIntush'; 'Randall Buck Wood (buckwood@raywoodlaw.com)'; 'Richard Gray IV'; 'Rick Gray'; O'Keefe, Robert; 'Robert Schulman'; 'Roger Rice'; 'S. Rodriguez'; Dahlberg, Shelley; 'Susan Jennings'; 'Toni Hunter'; "mbono@MALDEF.org' (mbono@MALDEF.org)'
Subject: RE: TTSFC et al v. Williams et al - ISD Plaintiffs' Draft findings of fact and conclusions of law

Dear Judge Dietz, Ms. Jenson, and Ms. Rosen,

Attached is an updated version of the findings and conclusions that Mr. Trachtenberg provided to the Court on Tuesday. We have updated cross references, cite checked the document, and made other minor clean-up edits, but have not substantively edited the document. Please let me know if you have any questions.

Regards,
Michelle

Michelle C Jacobs
Associate
(t) 214.651.5058

From: Trachtenberg, Mark
Sent: Tuesday, March 12, 2013 6:41 PM
To: 'Carol Jenson'; 'John Dietz'; 'johndietz@mac.com'; 'Stacey Rosen'
Cc: 'Allen Keller (akeller@slh-law.com)'; 'Christopher Diamond'; 'Craig Enoch'; 'Cynthia Pacheco'; 'David Hinojosa'; 'J. David Thompson'; 'James "Beau" Eccles'; Turner, John; 'Joseph Hoffer'; 'L. Payton'; Faruque, Lora; 'Mary Sisler'; 'Melissa Lorber'; 'Nichole Bunker-Henderson'; 'Philip Fraissinet'; 'Pina, Isabel'; 'Holly McIntush'; 'Randall Buck Wood (buckwood@raywoodlaw.com)'; 'Richard Gray IV'; 'Rick Gray'; 'Robert O'Keefe (Robert.O'keefe@texasattorneygeneral.gov)'; 'Robert Schulman'; 'Roger Rice'; 'S. Rodriguez'; 'Shelley Dahlberg'; 'Susan Jennings'; 'Toni Hunter'; "mbono@MALDEF.org' (mbono@MALDEF.org)'; Jacobs, Michelle
Subject: TTSFC et al v. Williams et al - ISD Plaintiffs' Draft findings of fact and conclusions of law
Importance: High

Dear Judge Dietz, Ms. Jenson and Ms. Rosen-

I understand that the Court has instructed me to coordinate the preparation of a set of findings of fact and conclusions of law that reflects the rulings announced from the bench on February 4th. The attached reflects the attempt of the ISD Plaintiffs to comply with this instruction. To do so, we have sought findings from the prevailing parties on each of the claims at issue. We: (1) updated our omnibus findings on the state property tax and adequacy claims and worked with the Edgewood ISD Plaintiffs to integrate their adequacy findings; (2) sought and obtained agreed findings from the 3 equity

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plaintiff coalitions and inserted them into document; (3) sought and obtained findings from the State on the taxpayer equity/equal and uniform claim; (4) sought and obtained findings from both the Charter Plaintiffs and the State on the Charter Plaintiffs' claims, given the mixed ruling on those claims; and (5) sought and obtained State review of our previous findings relating to the Intervenor claims (they had no substantive modifications but stated that they did not want to sponsor each of these proposed findings).

In short, this document is our attempt to compile an order consistent with the court's rulings and does not reflect any one party's proposed findings. In fact, I can quite confidently say that no single party agrees with every finding. (By way of example, the Calhoun County ISD Plaintiffs are not sponsoring the findings and conclusions relating to the equity claim. The TTFSC Plaintiffs are not sponsoring the findings and conclusions relating to the "equal and uniform tax claim." The Edgewood ISD Plaintiffs are not sponsoring the pollster findings in Part I.B.9.b. None of the ISD plaintiffs are sponsoring the findings and conclusions relating to the Charter Plaintiffs).

Given the size of the document and the late integration of several of the pieces, we still need a few days to complete our cite-check of the document, to fix many of the cross-references (many of which are not correct), and to conduct other clean-up tasks, but we do not anticipate additional substantive edits at this point. To avoid any confusion, we are submitting this document as a pdf, and will provide a Word version once the document is in final form (we aim to do this by the end of the week).

I am certain that several of the parties will take issue with some of these findings and conclusions, and I am equally certain they will make their concerns known to the Court through separate communications or submissions in the near future.

A few other caveats:

- This Court has not yet ruled on the fees claims of the Charter Plaintiffs or Intervenors, and we have no dog in that fight, so we just left a placeholder at the end of the document on those issues.
- The attorneys' fee amounts for the ISD plaintiffs reflect the affidavits that were filed, but it is our understanding that the State will have an opportunity to file objections later this week regarding the availability and amount of fees that can be awarded.

Please let me know if you have any questions.

Best regards,
Mark

haynesboone
Mark Trachtenberg
Partner
mark.trachtenberg@haynesboone.com

Haynes and Boone, LLP
1221 McKinney Street
Suite 2100
Houston, TX 77010

(t) 713.547.2528
(f) 713.236.5567
(m) 713.446.3138

vCard | Bio | Website

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THE TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, et al; CALHOUN COUNTY ISD, et al; EDGEWOOD ISD, et al; FORT BEND ISD, et al., TEXAS CHARTER SCHOOL ASSOCIATION, et al.	§	IN THE DISTRICT COURT
Plaintiffs,	§	
JOYCE COLEMAN, et al.,	§	
Intervenors,	§	
vs.	§	TRAVIS COUNTY, TEXAS
MICHAEL WILLIAMS, COMMISSIONER OF EDUCATION, IN HIS OFFICIAL CAPACITY; SUSAN COMBS, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, IN HER OFFICIAL CAPACITY; TEXAS STATE BOARD OF EDUCATION,	§	
Defendants.	§	200th JUDICIAL DISTRICT

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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Exhibit 1 - Attachment

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EXECUTIVE SUMMARY

Based on the Court's review of the relevant case law and the evidence presented during the forty-five-day trial (including testimony from over eighty live witnesses and over 5,000 admitted exhibits), this Court provides the following summary of its findings of fact and conclusions of law:

A. Introduction

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

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

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

TEX. CONST. art. VII, § 1 (emphasis added).

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

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

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

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

A second constitutional provision also plays a central role in this dispute. Article VIII, Section 1-e of the Constitution provides that "[n]o State ad valorem taxes shall be levied upon any property within this State." TEX. CONST. art. VIII, § 1-e. The Texas Supreme Court has held that Article VIII, Section 1-e is violated when districts lack "meaningful discretion" in

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setting their property tax rates for a local ad valorem tax because of state constitutional, statutory, and regulatory mandates, such that the tax becomes a de facto state tax (the "state property tax claim").

With this legal background in mind, the Court provides the following summary of its ruling on these and the other claims at issue in this case.

B. The ISD Plaintiffs' adequacy and suitability claims

In the previous school finance case, the Texas Supreme Court held that "[i]t would be arbitrary [and therefore unconstitutional] . . . for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals." *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.,* 176 S.W.3d 746, 785 (Tex. 2005) ("*WOC II*"). The Court concludes that what has transpired in the nearly eight years since that decision was rendered plainly violates this arbitrariness standard.

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

Defense and Plaintiffs witnesses unanimously agreed that the incorporation of college-readiness standards into the state curriculum and the transition from the TAKS assessment to the STAAR assessment constitute a dramatic increase in the level of expectations for Texas students and school districts. These higher standards are being phased in at a time when Texas's student population is becoming increasingly more costly to educate, as a result of the growing percentages of economically disadvantaged, minority, and English Language Learner ("ELL") students enrolled in Texas schools.

Rather than provide districts more resources to meet the higher standards, the Legislature, in the 2011 session, imposed $4 billion in cuts to the Foundation School Program ("FSP") and an additional $1.3 billion in cuts to special grant programs. Many of the grant program cuts affected programs specifically targeted to the at-risk student population. As a result of the cuts, on a proper inflation-adjusted basis (using the state and local government price deflator), total per-student revenues for public education have actually declined from roughly $7,100 in 2003-04 to $6,293 in 2012-13 using constant 2004 dollars. This represents about a 12% reduction from 2004 levels – even though Texas's student population has become more challenging to educate and the bar for student performance has been raised substantially since that time. The Court notes that the level of funding Texas provides to public education was not high, by national standards, even before the 2011 reductions. *Quality Counts*, an annual report prepared by *Education Week*, ranked Texas forty-ninth out of the fifty states on per-pupil expenditures after adjusting for regional cost differences – before the cuts had been implemented. Other evidence at trial yielded similar comparative results.

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The evidence at trial showed that these budget cuts have hit districts hard. Despite enrollment growth of 44,454 in 2011-12 (excluding charter schools), districts lost approximately 12,000 teachers and 15,000 other school employees. Districts have been forced to increase class sizes, eliminate tutors and other instructional specialists, eliminate full-day pre-K programs, and implement other cost-saving measures that have negatively impacted their ability to carry out their educational mission.

Student performance data from the STAAR exam, as well as other testing data, reveal that Texas is far from accomplishing its mission of producing college- and career-ready graduates. The failure rates on STAAR constitute a current crisis, not a future crisis. After two test administrations, almost half of last year's ninth grade students still had not passed at least one of the required End-of-Course exams and were therefore off track to graduate. More than 122,680 of last year's ninth grade students still have not passed at least one of these exams after *three* testing opportunities. These failures have resulted in substantial remediation costs for districts, which will only grow as the administration of the STAAR exam expands to more grades in the current school year.

As large as the gap is between Texas's expectations and current levels of student achievement, the gap is even larger when considering the performance levels of economically disadvantaged and ELL student populations, which constitute approximately 60% and 17% of the overall student populations, respectively. Even in the last year of TAKS, there remained an eighteen-point gap in passage rates between economically disadvantaged and non-economically disadvantaged students. The gap at the higher "commended" level actually grew from the first year of TAKS to the last year. Similar achievement gaps can now be seen in the STAAR test.

Many of the principal strategies that substantial evidence suggests districts could employ to improve student performance – such as (1) smaller class sizes, particularly in the early grades, (2) full-day quality pre-K programs, (3) more competitive teacher salaries to improve the hiring and retention of quality teachers, (4) instructional coaches, (5) tutors, and (6) extended day and summer school programs – cannot be implemented without additional resources.

The State's witnesses uniformly testified that neither the Legislature nor the Texas Education Agency made any effort to determine the costs of meeting increasing standards or took those into consideration when making the budget cuts described above. The Education Code directs the Legislative Budget Board ("LBB") to make such a calculation and determine necessary costs per student, including the costs of the regular program, special population programs, and adjustments such as the cost-of-education index, the guaranteed yield level for enrichment, and funding for the school facilities programs. Similar language has been in the Education Code for at least fifteen years, and yet the LBB has simply not complied with this provision. As a result, the special program weights and allotments are sorely out of date and in need of adjustment.

In estimating the cost of funding an adequate educational program, the Court considered the testimony of national and state finance experts and superintendents, as well as updated calculations of previous cost estimates used by the Texas Supreme Court. Based on this evidence, this Court concludes that an adequate funding system would require, on average, a minimum of $824 more per student in average daily attendance than 2010-11 spending levels

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(pre-budget cuts). Such an infusion of funding would not even close half the gap between the average Texas student spending level and the national average.

The Court also finds that the constitutional requirement of adequacy, and the financial resources it necessarily entails, cannot be made subject to a vote in a special election. For this reason, at a minimum, school districts must be able to finance the cost of meeting the constitutional mandate of adequacy within the range of taxing authority not subject to a tax ratification election ("TRE"), which is a $1.04 maintenance and operations ("M&O") tax rate under the current system.

In summary, the plaintiff school districts, which are representative of the system at large, lack sufficient funding at a $1.04 M&O tax rate, or even at the maximum $1.17 tax rate, to reasonably provide all of their students (including the growing number of ELL and economically disadvantaged students) with a meaningful opportunity to learn the Texas Essential Knowledge and Skills and graduate with the knowledge and skills needed for post-secondary educational or employment settings. Thus, this Court declares that the Texas school finance system is presently in violation of the "general diffusion of knowledge" clause and the "suitability" clause of Article VII, Section 1 of the Texas Constitution.

C. The ISD Plaintiffs' state property tax claim

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

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

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

Further, the combination of the TRE requirement (for taxing above $1.04) and recapture in the copper-penny tier effectively prevents many property-wealthy districts from taxing beyond a rate of $1.04 (the rate beyond which a TRE is required, and beyond which many property-wealthy districts are subject to recapture at the highest statutory rate) or $1.06 (the rate beyond which all property-wealthy districts are subject to recapture at the highest statutory rate). Testimony from superintendents and independent polling data indicate that voters in many, if not most, property-wealthy districts are unlikely to pass a TRE when a significant portion of the money raised would be sent to the state in the form of recapture. Recapture, however, has not

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been directly challenged by any party and the Court recognizes its importance to the current system.

Many superintendents from property-poor districts credibly testified that their districts would have great difficulty passing a TRE because of the poverty of their districts, the low yield they receive compared to neighboring districts, and the low yield available in the copper-penny tier. Lack of facilities funding also negatively impacts the ability of many districts to pass a TRE, particularly in fast-growth districts. Because state aid for facilities has not kept pace with property value growth, inflation, or the growing student population, districts have been forced to issue more bonds and raise interest and sinking fund ("I&S") tax rates. In order to finance needed facilities and comply with the state's fifty-cent limit on the issuance of new bonds, districts have been forced to issue debt with longer maturities and greater interest expenses. Having to go to the voters for approval of additional and more expensive bonds, combined with rising I&S tax rates due to lack of state support, also hampers districts' ability to hold successful TREs and contributes to the loss of meaningful discretion over M&O tax rates.

Significantly, even if all districts increased their tax M&O rates to $1.17, the amount of revenue raised would be roughly equivalent to the 2011 legislative budget cuts. This amount does not constitute meaningful discretion because it is insufficient even to meet the heightened adequacy standards, as established by the Court's findings.

For the foregoing reasons, the Court concludes that the ISD Plaintiffs have established a violation of the prohibition on statewide ad valorem taxes. Their current M&O rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent they could raise taxes to the statutory maximum rate of $1.17 (and have not already done so), the districts would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education. Because the ISD Plaintiffs collectively have established a systemic/statewide violation, this Court declares that the Texas school finance system is presently in violation of Article VIII, Section 1-e of the Texas Constitution.

D. The TTSFC Plaintiffs, Edgewood ISD Plaintiffs, and Fort Bend ISD Plaintiffs' financial efficiency/equity claims

The Texas Supreme Court has consistently ruled that the State's duty to provide funding up to the level of a general diffusion of knowledge comes with a responsibility to structure the system so that districts "have substantially equal access to funding up to that same level."

Texas continues to rely heavily on local property taxes to fund its public schools, though property values across Texas remain incredibly disparate. This decision to rely on local taxes does not by itself render the school finance system unconstitutional, but it does mean that the Legislature must take action to compensate for these disparities to ensure that all districts have sufficient funding so that all students have a meaningful opportunity to graduate college or career ready.

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In the last challenge to the constitutionality of the school finance system in 2004, this Court, and later the Texas Supreme Court, held that the then-existing school finance formulas did not create such disparities between property-poor and property-wealthy districts as to run afoul of the duty to provide equal access up to the level of a general diffusion of knowledge. It further noted that local supplementation above the level of a general diffusion is allowed, but repeated two cautions from *Edgewood IV* about the use of local supplementation:

- First, it reminded the State that "the amount of 'supplementation' in the system cannot become so great that it, in effect, destroys the efficiency of the entire system." *WOC II*, 176 S.W.3d at 792.

- Second, it warned that "[t]he danger is that what the Legislature today considers to be 'supplementation' may tomorrow become necessary to satisfy the constitutional mandate for a general diffusion of knowledge. Supplementation must be just that: additional revenue not required for an education that is constitutionally adequate." *Id.* (footnote omitted).

Since that time, the legislative changes to the structure of the system – tax compression, the target revenue system, and creation of the unrecaptured "golden pennies" – combined with the $5.3 billion cut to the public education system, and the dramatically increased academic standards, have caused the system to run afoul of both of these limits.

Even more disturbingly, the combination of these changes results in most districts in this state being unable to access enough revenue to provide a general diffusion of knowledge – even using the "enrichment" pennies intended for supplementation. As noted above, the Court heard from national and state experts regarding the cost of funding an adequate educational program. Just as this expert testimony revealed the Texas system to be inadequate, it also revealed it to be inequitable. Taxing at $1.04, at least 382 of the 1,024 school districts in Texas do not raise the revenue per student in weighted average daily attendance ("WADA") noted in any of the three estimates of the cost of an adequate education. Even if districts used all of their "enrichment pennies" to satisfy the constitutional mandate of a general diffusion of knowledge, at least 765 districts still could not raise the revenue per WADA of any of the three estimates at the tax cap of $1.17.

The Court also heard from state experts on the differences in the amount of revenue available to school districts and the corresponding levels of tax effort. The Court finds that in order for the poorest 15% of the districts in the state to raise the approximately $6,500 to $7,000 per WADA in the FSP that the experts (and this Court) estimate is necessary to achieve adequacy, they would have to tax between $1.28 and $1.38 – a tax rate substantially above the $0.96 to $1.03 rate that would raise the same amount for the wealthiest 15% of districts. Because property-poor districts access far fewer dollars in the system than property-wealthy districts at $1.04, they tend to have even less discretion. A system in which the poorest districts can never even raise the level of funds necessary to provide for a general diffusion of knowledge – much less do so with room for meaningful discretion with supplemental enrichment pennies – clearly does not ensure substantially equal access to adequate funding at similar tax rates.

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The Court also heard from superintendents in every region of the state whose districts are negatively impacted by these disparities. For a district receiving just $1,000 less per WADA than a neighbor, that translates into $22,000 less for a classroom of twenty-two students or $400,000 less for a campus of 400 students. These funds could be used on a whole range of reasonable and necessary educational resources to increase student performance, including: recruiting and retaining the best teachers, improving technology, reducing class sizes, upgrading the quality of pre-K programs, and offering a fuller and deeper range of accelerated and intervention programs.

Furthermore, under the target revenue system, the differences in funding levels match the definition of arbitrary. The target revenue system takes the quirks of a single year's formula results – such as a "boost" in revenue from increased property values or a "hit" from declining property values or the loss of a major taxpayer – and makes them permanent. As a result, there is often no consistent relationship between a district's wealth and/or tax effort and its target revenue.

School districts across the state are, as Dr. Meria Carstarphen of Austin ISD put it, "up against the wall on the ever increasing state standards" and unable to meet them with current resources. These problems are compounded for the low-target revenue and property-poor districts across the state. It is the State's duty to provide all districts with the revenue necessary to prepare their students for college or a career at similar tax rates and with meaningful discretion for enrichment. The evidence before this Court makes it clear that the Legislature has failed in this duty.

E. The TTSFC Plaintiffs' taxpayer equity claim

Four taxpayers in the TTSFC Plaintiff coalition brought a claim that the school finance system violates Article VIII, Section 1(a)'s requirement that taxation be "equal and uniform." They complain that taxpayers in other districts receive greater benefits in the form of revenue per WADA than they do for a similar rate of ad valorem tax effort. This claim fails as a matter of law under Article VIII, Section 1(a) because the "equal and uniform" clause requires only that taxpayers in the same taxing district (whether a state, county, or ISD) be taxed at the same rate, and does not require equal and uniform benefit from taxation.

F. The Intervenors' qualitative efficiency claims

The Intervenors posit that the Texas educational system cannot be deemed constitutionally efficient until Texas adopts several structural reforms that have yet to attract majority support in the Legislature, including, among other things, lifting the statutory cap on charter schools; changing laws, regulations, and practices that govern teacher compensation, hiring, firing, and certification; creating greater school choice or vouchers; and modifying school district financial reporting requirements. While the Intervenors contend that they do not seek any particular remedy besides a declaration that the system is "qualitatively inefficient" and therefore unconstitutional, a cure for the constitutional deficiency they allege necessarily would require the Legislature to adopt some version of their preferred educational policy choices.

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This Court finds that the Intervenors' claims involve non-justiciable questions. The Texas Supreme Court has emphasized that the judiciary's role is limited to ensuring that the constitutional standards are met, not prescribing *how* the standards should be met. The Intervenors' arguments take issue with specific policy choices of the Legislature. A declaration that the system is unconstitutional for the reasons Intervenors urge would entail a level of judicial interference in specific questions of education policy that past precedents do not justify or permit. The Court further finds that even if the Intervenors' claims had been justiciable, they would have failed because the Intervenors did not satisfy their factual burden of proof.

G. The Charter School Plaintiffs' claims

Because the ISD Plaintiffs established the inadequacy of their funding on the school funding formulas, and because charter schools are financed based on state averages of ISD funding levels, the Charter School Plaintiffs prevail on their claim that funding for open-enrollment charter schools is also inadequate.

The Charter School Plaintiffs' equal protection claim based on the differences between how charter schools and school districts are funded (particularly, in relation to facilities funding) fails as a matter of law because this choice is within the discretion of the Legislature. Because charter schools and districts are subject to different requirements, the Legislature had a rational basis for funding them differently. Similarly, with respect to the Charter School Plaintiffs' complaint about the statutory cap on open-enrollment charters, this choice is within the Legislature's discretion, and the Legislature had a rational basis for implementing this cap – namely to ensure that TEA could handle its oversight responsibilities.

H. Relief awarded

In light of the foregoing analysis, the Court declares that the current school finance system is inadequate, unsuitable, and inequitable under Article VII, Section 1 of the Texas Constitution, and violates the prohibition on a state ad valorem tax contained in Article VIII, Section 1-e. The Court enjoins the State from giving any force or effect to the sections of the Education Code relating to the financing of public school education until these violations are remedied, but is staying the effect of this injunction until July 1, 2014 to give the Legislature a reasonable opportunity to cure these constitutional deficiencies. The Court also awards the ISD Plaintiffs their reasonable and necessary attorneys' fees. [Placeholder for ruling on other fee claims.]

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Findings of fact

A. The parties and claims at issue

FOF 1. This case involves five separate lawsuits and an intervention raising challenges to the state's school finance system and other aspects of the educational system. The cases have been consolidated into a single proceeding.

1. The "ISD Plaintiffs"

FOF 2. The **"TTSFC Plaintiffs"** are (1) the Texas Taxpayer and Student Fairness Coalition, a Texas non-profit corporation composed of 443 school districts identified in their Seventh Amended Petition; (2) the following individually-named school districts: Alief ISD, Canutillo ISD, Elgin ISD, Greenville ISD, Hillsboro ISD, Hutto ISD, Lake Worth ISD, Little Elm ISD, Nacogdoches ISD, Paris ISD, Pflugerville ISD, Quinlan ISD, Stamford ISD, San Antonio ISD, Taylor ISD, and Van ISD; (3) taxpayers Randy Pittenger, Chip Langston, Norman Baker, Brad King; and (4) Shelby Davidson, individually and as next friend of Cortland Davidson, Carli Davidson, and Casi Davidson.

FOF 3. The **"Calhoun County ISD Plaintiffs"** are composed of Calhoun County ISD, Abernathy ISD, Aransas County ISD, Frisco ISD, Lewisville ISD, and Richardson ISD.

FOF 4. The **"Fort Bend ISD Plaintiffs"** are composed of Fort Bend ISD, Abilene ISD, Allen ISD, Amarillo ISD, Angleton ISD, Austin ISD, Balmorhea ISD, Bluff Dale ISD, Brazosport ISD, Carthage ISD, Channelview ISD, Clear Creek ISD, Cleveland ISD, College Station ISD, Coppell ISD, Crosby ISD, Cypress-Fairbanks ISD, Dallas ISD, Damon ISD, Decatur ISD, Denton ISD, East Central ISD, Edna ISD, Fort Worth ISD, Hardin-Jefferson ISD, Hays Consolidated ISD, Hempstead ISD, Highland ISD, Houston ISD, Huffman ISD, Humble ISD, Katy ISD, Keller ISD, Kenedy ISD, Kingsville ISD, Klein ISD, La Marque ISD, La Porte ISD, Lamar Consolidated ISD, Leggett ISD, McKinney ISD, Midland ISD, New Caney ISD, North East ISD, Northside ISD, Pampa ISD, Pasadena ISD, Pearland ISD, Perrin-Whitt Consolidated ISD, Pleasant Grove ISD, Rice Consolidated ISD, Rockdale ISD, Round Rock ISD, Royal ISD, Santa Fe ISD, Sheldon ISD, Spring Branch ISD, Stafford Municipal School District, Sweeny ISD, Trent ISD, Waco ISD, West Orange Cove Consolidated ISD, Woodville ISD, Albany Independent School, Beaumont ISD, Corsicana ISD, Deer Park ISD, Dumas ISD, Duncanville ISD, Ector County ISD, Galena Park ISD, Goose Creek Consolidated ISD, Graford ISD, Liberty ISD, Sharyland ISD, Schertz-Cibolo-Universal City ISD, Splendora ISD, Sudan ISD, Weatherford ISD, Pine Tree ISD, Troup ISD, and Kerrville ISD.

FOF 5. The **"Edgewood ISD Plaintiffs"** are composed of Edgewood ISD; McAllen ISD; San Benito Consolidated ISD; La Feria ISD; Harlingen Consolidated ISD; Yolanda Canales, individually and as next friend for her minor children, Ek. and Ea. Canales; Arturo Robles, individually and as next friend for his minor child, A. Robles; Araceli Vasquez, individually and as next friend for her minor children, J.L. and Al. and Ad. Vasquez; and

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Jessica Ramirez, individually and as next friend for her minor children, B. and G. Ramirez.

2. The Intervenors

FOF 6. The **"Intervenors"** are composed of Joyce Coleman, individually and as next friend of her minor children; Danessa Bolling, individually and as next friend of her minor child; Lee Beall and Allena Beall, individually and as next friends of their minor children; Joel Smedshammer and Andrea Smedshammer, individually and as next friends of their minor children; Darlene Menn, individually and as next friend of her minor child; Texas for Real Efficiency and Equity in Education; and Texas Association of Business.

3. The Charter School Plaintiffs

FOF 7. The **"Charter School Plaintiffs"** are composed of Mario Flores, individually and as next friend of his minor child; Aiden Flores; Christopher Baerga, individually and as next friend of his minor child Abby Baerga; Dana Allen, individually and as next friend of her minor child Teal Evelyn Allen; Jason and Sarah Christensen, individually and as next friends of their minor children Luke and Grace Christensen; Brooks Flemister, individually and as next friend of his minor child Ulric Flemister; and the Texas Charter School Association.

4. The State Defendants

FOF 8. The **"State Defendants"** are Michael Williams, in his official capacity as Texas Commissioner of Education; the Texas Education Agency ("TEA"); Susan Combs, in her official capacity as the Texas Comptroller of Public Accounts; and the Texas State Board of Education ("SBOE").

5. The use of focus districts

FOF 9. Because of the large number of school districts in the TTSFC Plaintiff group and the Fort Bend ISD Plaintiff group, those groups agreed to present proof of their claims through the use of a smaller group of "focus" districts. This agreement was incorporated into the Agreed Scheduling Order signed by this Court on April 16, 2012.

- The TTSFC Plaintiffs designated Alief ISD, Lubbock ISD, Pflugerville ISD, Los Fresnos ISD, Lufkin ISD, Brownwood ISD, Anton ISD, Van ISD, Everman ISD, Quinlan ISD, Bryan ISD, Belton ISD, Kaufman ISD, and Hillsboro ISD as their focus districts.

- The Fort Bend ISD Plaintiffs designated Aldine ISD, Abilene ISD, Amarillo ISD, Austin ISD, Corsicana ISD, Duncanville ISD, Fort Bend ISD, Humble ISD, Northside ISD, Waco ISD, and Weatherford ISD as their focus districts.

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6. The causes of action at issue

FOF 10. The ISD Plaintiffs, Charter School Plaintiffs, and Intervenors seek declarations that the Texas educational system is unconstitutional under the following theories:

- **"Adequacy/suitability" claims.** The ISD Plaintiffs assert a violation of the "general diffusion of knowledge" clause in Article VII, Section 1 of the Texas Constitution, because they lack adequate funding to reasonably provide all their students with a meaningful opportunity to learn the essential knowledge and skills reflected in the state curriculum and to graduate at a college-ready or career-ready level. The Edgewood ISD Plaintiffs more specifically assert a violation of the "general diffusion of knowledge" clause in Article VII, Section 1 of the Texas Constitution because they lack adequate funding to reasonably provide English language learner ("ELL") and economically disadvantaged students with a meaningful opportunity to learn the essential knowledge and skills reflected in the state curriculum and to graduate at a college- or career-ready level.[1] The Charter School Plaintiffs likewise assert that the level of funding is inadequate and unsuitable for open-enrollment charter schools in Texas.[2]

- **"State property tax" claims.** The ISD Plaintiffs assert that the school finance system violates Article VIII, Section 1-e of the Texas Constitution, which prohibits the levy of a state ad valorem tax, because they lack meaningful discretion in setting their M&O tax rates (resulting in a de facto state property tax).[3]

- **"Quantitative efficiency" or "equity" claims.** The TTSFC Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs assert that the school finance system violates the "efficiency" clause of Article VII, Section 1 of the Texas Constitution in that it fails to provide substantially equal access to similar revenues necessary to provide a general diffusion of knowledge at similar tax efforts.[4] The Charter School Plaintiffs also assert a violation of the efficiency clause on the theory that the school finance system fails to provide

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[1] Findings of fact related to these claims can be found in Part I.B. Conclusions of law related to these claims can be found in Parts II.A.2, II.A.3, and II.B.1.

[2] Findings of fact relating to this claim can be found in Part I.F. Conclusions of law related to this claim can be found in Parts II.A.8 and II.B.6.

[3] Findings of fact related to these claims can be found in Part I.B. Conclusions of law related to these claims can be found in Parts II.A.4 and II.B.2.

[4] Findings of fact related to these claims can be found in Part I.C. Conclusions of law related to these claims can be found in Parts II.A.5 and II.B.3.

"efficient and non-arbitrary" access to revenues to open-enrollment charter schools, including funding for facilities.[5]

- **"Taxpayer equity" claim.** The TTSFC Plaintiffs assert that the school finance system violates the Article VIII, Section 1(a) prohibition on taxation that is not "equal and uniform."[6]

- **"Qualitative efficiency" claims.** The Intervenors assert a "qualitative efficiency" claim that they contend is distinct from the adequacy claim or other efficiency claims. They claim that the entire system of public free schools violates the efficiency clause of Article VII, Section 1 of the Texas Constitution because it is not effective or productive of results with little waste. They contend that various statutes and regulations (including but not limited to the statutory cap on the number of charter school operators, and statutes found in Chapter 21 of the Texas Education Code governing teacher compensation, evaluation, hiring and dismissal, etc.) render the system qualitatively inefficient.[7] The Charter School Plaintiffs also contend that the statutory cap on the number of open-enrollment charter school operators violates the "efficiency" clause of Article VII, Section 1 of the Texas Constitution.[8]

- **"Equal protection" claim.** The Charter School Plaintiffs assert a violation of the Equal Protection Clause on the grounds that the Legislature fails to provide charter schools with substantially equal access to revenues and funding adjustments available to independent school districts, including the omission of facilities funding.[9]

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[5] Findings of fact relating to this claim can be found in Part I.F. Conclusions of law related to this claim can be found in Parts II.A.8 and II.B.6.

[6] Findings of fact related to this claim can be found in Part I.D. Conclusions of law related to this claim can be found in Parts II.A.6 and II.B.4.

[7] Findings of fact related to this claim can be found in Part I.E. Conclusions of law related to this claim can be found in Parts II.A.7 and II.B.5.

[8] Findings of fact relating to this claim can be found in Part I.F. Conclusions of law related to this claim can be found in Parts II.A.8 and II.B.6.

[9] Findings of fact relating to this claim can be found in Part I.F. Conclusions of law related to this claim can be found in Parts II.A.8 and II.B.6.

B. Findings of fact relating primarily to the adequacy, suitability, and state property tax claims

1. The state faces tremendous demographic challenges, which can be addressed only through the fulfillment of the Texas Constitution's guarantee of adequate educational opportunities for all students.

FOF 11. From 2000 to 2010, Texas's population grew by almost 21% or 4.3 million people, making it one of the fastest growing states over that period. (RR3:12-14 (referencing Ex. 3228 at 4-6).)[10] The composition of Texas's population is also rapidly changing. The state's Hispanic population grew by almost 42% during the decade, while the non-Hispanic White population grew by just 4.2%. (RR3:17-19 (referencing Ex. 3228 at 14).) Even under conservative assumptions, the overall Hispanic population in Texas will become larger than the non-Hispanic White population during the next ten years. (RR3:61 (referencing Ex. 3228 at 63).) Already, the Hispanic population is larger than the non-Hispanic White population in every age group under the age of thirty-five. (Ex. 3228 at 67.)

FOF 12. These changes are even more pronounced in the school-age population. From 2000 to 2010, the Hispanic population under the age of eighteen grew by more than 930,000, whereas the non-Hispanic White population decreased by 184,486. (RR3:21 (referencing Ex. 3228 at 16).) This change is reflected in the public schools. Texas public school enrollment during the 2000-01 school year was 4,071,433 students. (Ex. 11123 at 6.) By 2010-11, enrollment had risen to 4,933,617 students. Over the ten-year period, total enrollment increased by 862,184 students, or by 21.2%. (*Id.*) The Hispanic student population grew during this period by more than 50%, and Hispanic students comprised more than 50% of the student population during the 2010-11 school year, for the first time in Texas history. (*Id.* at 8; RR3:45-46 (referencing Ex. 3228 at 53).)

FOF 13. According to Steve Murdock, the former state demographer and former director of the U.S. Census Bureau, these trends in the changing school-age population are expected to continue. By 2050, it is estimated that Hispanics will constitute approximately 62% of the Texas population ages five to nineteen, compared to 17% for non-Hispanic Whites. (Ex. 3228 at 66.) Total enrollment in Texas public schools is projected to grow from 4.8 million in 2010 to nearly 9.3 million in 2050. (RR3:72 (referencing Ex. 3228 at 72).) Hispanic enrollment in Texas public schools is projected to increase by 148% from 2010 to 2050, while non-Hispanic White enrollment is projected to decrease by 7% during that same time period. (RR3:72-73 (referencing Ex. 3228 at 72-75).)

FOF 14. The Texas population has changed in another significant way – it has become poorer. From 1999 to 2010, the percentage of the non-Hispanic White population living in poverty grew from 7.0% to 9.3%, the percentage of the Hispanic population living in

[10] The Court has cited to the final transcripts as follows: "RR(volume):(page)." However, many final transcripts were not available at the time these findings are entered. Where daily transcripts were available, the Court cited those transcripts as "(Month)/(date) Tr. at (page)" (e.g., 1/16 Tr. at 14) but the pagination will change when final transcripts from those trial days become available.

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poverty grew from 18.1% to 25.6%, and the percentage of the non-Hispanic Black population living in poverty grew from 17.8% to 24.4%. (Ex. 3228 at 34.) In all three groups, median household income declined. (*Id.*)

FOF 15. Again, the pattern is more pronounced in the school-age population. During the 2000-01 school year, 2,003,121 students – or 49.2% of the student population – qualified as "economically disadvantaged" (also referred to as low income), meaning they are eligible for free- or reduced-price meals under the National School Lunch and Child Nutrition Program. (Ex. 11123 at 10; Ex. 10415 at 16.) By 2010-11, the number of economically disadvantaged students had risen to 2,914,916, or 59.1% of all students. (Ex. 11123 at 10.) The 45.5% increase in the number of economically disadvantaged students was more than double the 21.5% increase in the public school population as a whole. (Ex. 11123 at 10; RR3:46 (referencing Ex. 3228 at 53).)

FOF 16. The numbers of limited English proficient ("LEP," also referred to as "English Language Learner," or "ELL") students in Texas are also substantial. (RR3:88-90 (referencing Ex. 3228 at 78-79, 90-92).) An ELL student is defined in statute as "a student whose primary language is other than English and whose English language skills are such that the student has difficulty performing ordinary class work in English." TEX. EDUC. CODE § 29.052. (Ex. 1104, Izquierdo Report, at 4; Ex. 4231 at 5.)

FOF 17. In 2011-12, ELL students constituted 16.8% of the total public school student population in Texas, or 837,536 students. (Ex. 11223 at 2.) Texas has the second largest ELL student population in the nation. (Ex. 1104, Izquierdo Report, at 3.) By 2050, it is anticipated that 1,480,000 children will need bilingual services in Texas. (RR3:76 (referencing Ex. 3228 at 78).)

FOF 18. The numbers of economically disadvantaged, ELL students, and other special-need students is projected to continue to rise rapidly – much faster than the rate of overall student enrollment growth – in the coming years. (RR3:75-76, 88-89 (referencing Ex. 3228 at 78-79, 90-92).)

FOF 19. The future socioeconomic well-being of Texas will depend largely on how successfully the state educates its growing population of economically disadvantaged students. (RR3: 90-93.) Dr. Murdock established that the rapidly growing Hispanic population in Texas has lower levels of educational attainment, which directly impacts income and poverty levels among that population and for the state as a whole. (RR3:43-44 (referencing Ex. 3228 at 44), 85-86.) Moreover, Texas's Hispanic students have substantially higher rates of enrollment in specialized education programs than other students and lower educational attainment rates. (RR3:76 (referencing Ex. 3228 at 79); Ex. 3228 at 90-91.)

FOF 20. Based on these demographic trends, Dr. Murdock established that if existing gaps in educational attainment levels and household income remain in place between the White population and the Black and Hispanic populations, Texas's population will have substantially lower incomes (with a decline of $7,759 in mean annual household income from 2010 to 2050 in constant dollars, an 11.6% decline) and a higher rate of poverty (increasing from 14.4% in 2010 to 17% in 2050). (RR3:89-90; Ex. 3228 at 93-94, 96.)

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Further, Texas will face reduced levels of consumer expenditures, reduced tax revenues, higher enrollment in specialized educational programs and higher state expenditures for these programs. (RR3:79-84; Ex. 3228 at 81-82, 90-97.)

FOF 21. Conversely, Dr. Murdock testified that higher levels of education lead to higher income for all racial/ethnic groups and that that higher levels of education can level the differences in income disparities between majority and minority populations. (RR3:85-87; Ex. 3228 at 83-89.)

FOF 22. According to Dr. Murdock, if the state were able to close the gap in income levels between Black and Hispanic households and non-Hispanic White households, total state income would increase to $1.52 trillion in real dollars in 2050. (RR3:79 (referencing Ex. 3228 at 80).) This represents a $400 billion increase over the projected state income without such closure. (RR3:80 (referencing Ex. 3228 at 80).) Closure of these income gaps would have a comparable positive effect on consumer spending and total tax revenues available to the state. (RR3:80-90 (referencing Ex. 3228 at 81, 82, 95-97).)

FOF 23. Even if the gap between non-Hispanic Whites and Black/Hispanic households were closed by half, Texas would experience substantial improvements in household income levels, consumer expenditures, and state tax revenues. (Ex. 3228 at 80-82, 95-97.)

FOF 24. Texas has its work cut out for it in meeting the demographic challenges described above. The rapid growth in student enrollment requires more classrooms, teachers, support personnel, equipment, books, technology, transportation and other resources needed to educate these additional students. Moreover, because economically disadvantaged, ELL, and special education populations require significantly more funds to educate, these changing demographics have resulted in significantly higher costs for school districts that are not compensated adequately through the current school finance system, because of the insufficiency of the basic formulas and weights and allotments. (*See infra* Parts I.B.6.b, I.B.6.h.) The inadequacies of these weights exacerbate the demographic challenge facing Texas school districts. (*See infra* Parts I.B.6.b.i(c), I.B.6.b.ii(c), I.B.6.h.)

FOF 25. Unfortunately, these populations are the very populations who are struggling the most academically. As discussed in Parts I.B.5.c-d, significant performance gaps exist between economically disadvantaged and non-economically disadvantaged students on the state's assessments, including the standard most associated with college-readiness.

2. The changes to the structure of the school finance system since *WOC II* have left Texas school districts severely underfunded and have rendered the school finance system unsuitable.

a. At the time of *WOC II*, the school finance system was out of capacity.

FOF 26. At the time of the last Texas Supreme Court school finance decision, *Neeley v. West Orange Cove Consolidated ISD*, 176 S.W.3d 746 (Tex. 2005) ("*WOC II*"), the public

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school finance system relied on a two-tiered finance structure known as the Foundation School Program ("FSP"). (Ex. 6396 at 2.) Locally adopted maintenance and operations ("M&O") tax rates were generally subject to a statutory maximum of $1.50 per $100 of assessed valuation. (*Id.* at 1.) In fiscal year 2003-04, 494 out of 1,031 school districts in Texas, which educated roughly 59% of the state's public school student population, were taxing at the $1.50 cap. *WOC II*, 176 S.W.3d at 794. Furthermore, 691 districts, which educated roughly 81% of the public school student population, were taxing at or within five cents of the $1.50 cap. *Id.* This lack of local capacity to raise additional tax revenues was a major factor in the Texas Supreme Court's decision in *WOC II*, which found that the school finance system had evolved into an unconstitutional state property tax in that school districts were deprived of meaningful discretion to set their local tax rates. *Id.* at 794-98.

b. The passage of HB1 brought temporary relief, but also set several structural problems in motion.

FOF 27. In 2006, the 79th Texas Legislature, in its third called special session, passed House Bill 1 in response to the Supreme Court's decision. (Ex. 6393; Ex. 6396 at 1.) House Bill 1 required school districts to reduce their M&O tax rates by one third and appropriated state funds to replace this loss of maintenance and operations tax revenue. (Ex. 6395 at 2.) This tax "compression" was phased in during the 2006-07 school year and was fully effective in the 2007-08 school year. (*Id.*) From 2007-08 to the present, each district's "compressed tax rate" has been calculated by multiplying its 2005-06 tax rate by two-thirds. (Ex. 5653 at 12.) For districts taxing at an M&O tax rate of $1.50 in 2005-06, the compressed tax rate in the post-HB1 system is $1.00. (*Id.* at 11.)

FOF 28. In an attempt to provide school districts with the constitutionally required "meaningful discretion" to tax locally for supplementation and enrichment, House Bill 1 included several additional provisions.

FOF 29. First, the Legislature increased state funding enough to make up for the compression of local M&O tax rates and to include about $1.4 billion of additional money for the 2006-07 school year. (RR7:17-18 (referencing Ex. 6349 at 65).) Much of this new money, however, was required to be used by districts for new state mandates, thereby reducing the intended local discretion. For example, the State required districts to use a significant portion of any new money for an across-the-board net $2,000 pay increase for teachers, nurses, counselors, and librarians. (Ex. 6322, Moak Report, at 41; RR6:139-41 (referencing Ex. 6349 at 2).)

FOF 30. Second, House Bill 1 allowed districts to raise their M&O taxes above their compressed rate. The first six pennies of additional M&O taxes above the compressed rate are commonly known as "golden" pennies, because they yield higher per-penny revenues than other components of the school finance system and are not subject to the recapture requirements pertaining to property wealthy districts. (Ex. 1188, Dawn-Fisher Report, at 1.)

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FOF 31. Third, House Bill 1 guaranteed a yield of $31.95 per weighted student for any pennies of M&O tax effort that exceeded the compressed tax rate plus six cents (the "copper pennies"), up to a maximum M&O tax rate of $1.17. (*Id.*)

FOF 32. To levy an M&O tax rate above $1.04, however, districts were required to obtain the approval of the district's voters at a special election called for that purpose, known as a tax ratification election ("TRE"). TEX. TAX CODE § 26.08(a), (n).

FOF 33. Former Commissioner of Education Robert Scott testified that he understood that under this framework, the State was supposed to provide funding for the basic program at the level of the compressed tax rate, and the additional pennies of tax effort (typically above $1.00) – particularly those pennies above $1.04 that are subject to a TRE – were intended to provide for local supplementation, enrichment, and "meaningful discretion." (Ex. 5630, Scott Dep., at 341, 343-45.) The pennies of taxation up to the compressed rate are sometimes referred to as Tier I, while the pennies of taxation above this rate are sometimes referred to as Tier II. (Ex. 5654 at 16-17.) The Education Code explains that the purpose of this structure is to "provide each school district with the opportunity to provide the basic program and to supplement that program at a level of its own choice." TEX. EDUC. CODE § 42.301. The revenue received under Tier II of the system (discussed below) is intended to be "enrichment revenue." *Id.* § 42.2516(c).

FOF 34. House Bill 1 also created a new funding element in the FSP called Additional State Aid for Tax Reduction ("ASATR"). *See* TEX. EDUC. CODE § 42.2516. This component was intended to ensure that districts did not lose funding as a result of the tax compression – which had itself arisen indirectly from the school districts' victory in *WOC II*. (Ex. 5654 at 92-93.) This hold harmless mechanism, commonly known as "target revenue," provided that districts would be funded at the best of three scenarios: (1) the actual M&O revenue per WADA (defined in footnote 11 below) that the district received in 2005-06; (2) the 2006-07 M&O revenue that would have existed at the 2005-06 M&O tax rate had the laws not been changed by HB1; or (3) the 2006-07 M&O revenue that would have existed had the district adopted the "effective rate," or the rate that maintains revenue per student from the preceding year. (Ex. 5653 at 106; Ex. 1328, Casey Report, at 17-18; Ex. 1188, Dawn-Fisher Report, at 2.)

FOF 35. In the first year under the "target revenue" system, 188 districts received the greatest revenue benefit from the first scenario, 570 districts received the greatest revenue benefit from the second scenario, and 266 districts received the greatest revenue benefit from the third scenario. (Ex. 1328, Casey Report, at 18.) To the extent that Tier I state aid and local M&O tax collections at the compressed M&O tax rate did not provide the revenues needed to maintain these target levels, a district was eligible for ASATR funding. (*Id.*)

c. The business margins tax did not raise enough revenue to replace revenue from HB1's property tax compression, resulting in a sizable structural deficit.

FOF 36. The Legislative Budget Board ("LBB") estimated that House Bill 1's compression of local M&O tax rates by one-third would reduce property tax revenue by $14.2 billion in

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the 2008-09 biennium. (Ex. 5657 at 194.) To replace this significant loss of local revenue, in the same special session the 79th Texas Legislature created the Property Tax Relief Fund ("PTRF"), to be funded from several sources, including a restructured business margins tax (but only the portion in excess of the amount that would be been derived from the prior franchise tax) and increased cigarette and tobacco taxes. (Ex. 5592 at 8; Ex. 5657 at 194.) From the very outset, the State recognized that the new taxes would not fully fund the compression of local school taxes, and state funds would be needed from other sources for this purpose. (Ex. 5658 at 2; Ex. 5592 at 8.)

FOF 37. The PTRF underperformed from the beginning. The Comptroller estimated that the new revenue sources would raise $8.3 billion in the 2008-09 biennium. (Ex. 5658 at 2.) The new funds were short by over $3 billion. (*Id.*) The largest component of the new revenue sources – the revised business margins tax – was estimated to produce over $6.8 billion but earned just over $3 billion. (*Id.*) The Comptroller lowered expectations for the 2010-11 biennium, estimating increased revenues at only $5.5 billion. (Ex. 11301 at 5.) But the PTRF earned just $4.2 billion, over $1 billion short of the projection. (*Id.*) The Comptroller has continued to lower expectations for the PTRF, estimating just $4.5 billion in new revenues for the 2012-13 biennium. (*Id.* at 5-6.) These amounts are far short of the $14.2 billion per biennium that the LBB initially estimated would be needed to cover the loss of revenue from the property tax compression. As a result, the Comptroller has estimated that the tax "swap" implemented in 2006 has left the state with a recurring "structural deficit" of nearly $10 billion per biennium. (1/7 Tr. at 79-81.)

FOF 38. The State was able to avoid a more serious budget reckoning in the 2009 legislative session, by relying on the infusion of approximately $12 billion in federal stimulus funds. (Ex. 6322, Moak Report, at 42; RR7:192-93; 1/7 Tr. at 27.) This included $5.8 billion earmarked specifically for education. (State general revenue support for public education actually declined by about $3.2 billion for the 2010-11 biennium). (Ex. 6322, Moak Report, at 42.) The State used a large portion of these federal funds to supplant state funds and again mandated that school districts use about one-half of the remaining one-time federal funds for an across-the-board pay increase for teachers, nurses, counselors, librarians, and speech pathologists. (RR6:140-41; RR7:76-78.) The federal stimulus funds enabled the Legislature to postpone confronting the true challenges of the structural deficit it had created.

FOF 39. But in the 82nd Legislative Session, beginning in January 2011, federal stimulus funds had disappeared (1/7 Tr. at 27), and the extent of the structural deficit could no longer be hidden. Rather than revise the funding system to ensure that it is "structured, operated, and funded so that it can accomplish its purpose for all Texas children," *WOC II*, 176 S.W.3d at 753, the Legislature significantly cut funding for public education, as discussed further below. (*See infra* Part I.B.2.e.)

d. The current finance system employs a multi-tiered formula system with a "target revenue" overlay.

FOF 40. **Tier I.** Under the current finance system, school districts with compressed tax rates of $1.00 are entitled to a "Basic Allotment" of $4,765 for each student in Average Daily

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Attendance ("ADA"). (Ex. 5653 at 22; Ex. 5654 at 32.) TEX. EDUC. CODE § 42.101. Districts with compressed tax rates below $1.00 receive a proportionally smaller Basic Allotment ($4,765 multiplied by the district's compressed tax rate, divided by $1.00). (Ex. 5653 at 23; Ex. 5654 at 32-33.) The Basic Allotment is then adjusted based on (1) how much it costs to educate students in that district, via the "Cost of Education Index" ("CEI") and (2) whether the district is small or mid-sized and therefore suffers from diseconomies of scale (the "small district adjustment" and the "mid-size district adjustment"). *See* TEX. EDUC. CODE § 42.102-.105. These changes result in an "Adjusted Allotment." (Ex. 5653 at 22, 24-34; Ex. 5654 at 33-40.) Districts receive the Adjusted Allotment for each student in ADA that is not receiving certain special education services or career and technical education (the "Regular Program Allotment"). (Ex. 5653 at 35; Ex. 5654 at 40, 43-44.)

FOF 41. In addition, districts receive program allotments for special programs or conditions based on the number of students covered by these programs or conditions (typically calculated by the use of a "weight" multiplied by the relevant student count affected). This special program formula funding – intended to account for the varying, additional costs of educating different types of students – is provided for special education, career and technology, compensatory education, bilingual/ESL, and gifted and talented, among other categories. (Ex. 5653 at 37-56; Ex. 5654 at 44-54.) *See* TEX. EDUC. CODE § 42.151-.154, § 42.156-.159. Additional Tier I funding is provided based on the number of high school students ($275 for each student in ADA in grades nine through twelve) and to cover a portion of transportation costs. (Ex. 5653 at 57-65; Ex. 5654 at 54-57.) *See* TEX. EDUC. CODE §§ 42.155, 42.160. The Regular Program Allotment plus these additional special program funds together comprise a district's "Tier I entitlement." (Ex. 5653 at 66-73; Ex. 5654 at 57-59.)

FOF 42. A school district is responsible for funding a portion of its Tier I entitlement. The portion of the Tier I entitlement that the district is responsible for is called the local fund assignment ("LFA"). TEX. EDUC. CODE § 42.251-.252. The LFA is the amount of tax collections generated by assessing the district's compressed tax rate or a tax rate of $1.00, whichever is lower, for each $100 of property valuation, using the preceding school year's property values as determined by the uniform study of property values by the Comptroller. (Ex. 5654 at 59; Ex. 5653 at 72.) The total Tier I entitlement minus the LFA equals the state's share of the Tier I entitlement. (Ex. 5653 at 72-75; Ex. 5654 at 58-62.)

FOF 43. **Tier II.** Tier II provides a "guaranteed yield," or guaranteed level of funding, to school districts intended to supplement the basic funding provided for by Tier I. TEX. EDUC. CODE § 42.301. The guaranteed yield ensures that school districts will generate at least a specified amount of state and local funds per student in weighted average daily attendance ("WADA") for each cent of tax effort above the compressed rate, up to $1.17.[11] (Ex. 5653 at 77; Ex. 5654 at 63.) TEX. EDUC. CODE § 42.302.

[11] "WADA" is defined as the number of students in weighted average daily attendance, which is calculated by dividing the sum of the school district's allotments under Subchapters B [Basic Entitlement] and C [Special

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FOF 44. There are two components of Tier II. For the first six pennies of tax effort above the compressed rate, a district is entitled to a minimum of $59.97 per penny per WADA ("Tier II-A" or the "golden pennies"). (Ex. 5653 at 85, 88; Ex. 5654 at 63, 68-75.) For any remaining cents of tax effort above Tier II-A up to a maximum of $1.17, districts receive a guaranteed yield of $31.95 per penny per WADA ("Tier II-B" or the "copper pennies"). (Ex. 5653 at 85, 89-90; Ex. 5654 at 63, 75-77.) TEX. EDUC. CODE § 42.302. As noted above, any M&O tax effort above $1.04 requires the approval of the voters of the district in a TRE. TEX. TAX CODE § 26.08(a), (n).

FOF 45. **Wealth equalization.** A district is subject to the provisions of Chapter 41 if its property wealth per WADA exceeds certain equalized wealth levels ("EWLs") set in statute. *See* TEX. EDUC. CODE § 41.002. Property-wealthy districts subject to this chapter are typically called "Chapter 41 districts." (*See* Ex. 5384, Kallison Equity Report, at 4.) Districts that are not subject to this chapter are typically called "Chapter 42 districts." (*See id.*) The Education Code provides for three equalized levels of property wealth per WADA that either limit districts' access to the tax revenue generated by local M&O tax effort, or, in the case of the second EWL (*see infra* FOF 47), guarantee a yield up to a level for all school districts. (Ex. 1188, Dawn-Fisher Report, at 8.)

FOF 46. The first EWL is set at $476,500 per WADA. (*Id.*); *see also* TEX. EDUC. CODE § 41.002(a)(1). This level applies to the M&O tax pennies up to a district's compressed tax rate. (Ex. 1188, Dawn-Fisher Report, at 8.) A district with property wealth per WADA in excess of $476,500 typically will have the excess tax collections associated with these pennies recaptured unless provided otherwise by hold harmless provisions, as described in FOF 50. (*Id.*) Approximately 174 districts, representing 9.6% of WADA, are currently subject to recapture at the compressed rate. (Ex. 5653 at 96.)

FOF 47. The second EWL applies to the next six pennies above a district's compressed tax rate. (Ex. 1188, Dawn-Fisher Report, at 8.) For those pennies, the State currently ensures that districts will receive the same revenue per penny of tax effort as that generated by the Austin ISD (presently $59.97 per penny per WADA). TEX. EDUC. CODE § 41.002(a)(2). (Ex. 5654 at 63; Ex. 5653 at 85.) As long as other districts are funded at the Austin yield, property-wealthy school districts that can generate per-penny revenues in excess of the Austin yield are allowed to keep the additional revenues they generate on these six pennies, without recapture. (Ex. 1188, Dawn-Fisher Report, at 8; Ex. 5653 at 95.) Since 2006, the State has funded Tier II at sufficient levels to allow Chapter 41 districts to retain all of the revenue they generate on their golden pennies of tax effort. (Ex. 1188, Dawn-Fisher Report, at 8.) Approximately 109 districts, with approximately 5% of the state's ADA, or approximately 250,000 students, benefit from the absence of recapture on these golden pennies because they generate local yields in excess of the guaranteed yield of $59.97. (*Id.* at 3.) The total revenue generated by these districts in excess of the guaranteed yield is approximately $33.9 million. (*Id.* at 3-4.)

Allotments], less any allotment to the district for transportation, any allotment under Section 42.158 or 42.160 [new Instructional Facility Allotment and High School Allotment], and 50% of the adjustment under Section 42.102 [Cost of Education Adjustment], by the basic allotment for the applicable year. *See* TEX. EDUC. CODE § 42.302.

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FOF 48. The third EWL is set in statute at $319,500 per WADA, and it applies to any tax effort that exceeds the district's compressed rate plus six cents. (*Id.* at 8); *see also* TEX. EDUC. CODE § 41.002(a)(3). A district whose property wealth per WADA exceeds $319,500 and taxes in the "copper penny" tier will have the excess tax collections associated with this tax effort recaptured, subject to some exceptions. (Ex. 1188, Dawn-Fisher Report, at 8; Ex. 4240 at 8.) Approximately 327 districts representing 35.6% of WADA have an EWL above $319,500. (Ex. 5653 at 96.)

FOF 49. Chapter 41 districts have five options to reduce their wealth level under Section 41.003 of the Education Code, including: (1) consolidating with another district; (2) detaching property; (3) purchasing attendance credits from the state; (4) contracting to educate nonresident students from a partner district; or (5) consolidating tax bases with another school district. (Ex. 1188, Dawn-Fisher Report, at 7.) TEX. EDUC. CODE § 41.003. The vast majority of Chapter 41 districts choose option three, which requires a district to send money to the state. (Ex. 5653 at 95; Ex. 5654 at 80.) These funds are used to help finance the FSP payments that are made to property-poor districts. (Ex. 1188, Dawn-Fisher Report, at 7.)

FOF 50. **Target revenue overlay.** While the preceding findings describe how districts would be funded "on formula," most districts in 2011-12 were still funded based on the "target revenue" system. (Ex. 5653 at 153.) Districts are entitled to the target revenue amount if this amount exceeds what they would have received under Tier I of the school finance formulas described above. (*Id.* at 105; Ex. 5654 at 93-94.) The Legislature modified the target revenue calculation with the passage of House Bill 3646 in 2009. (*See* Ex. 6379.) HB 3646 created a new funding component, based on the revenue target, known as revenue at the compressed (tax) rate, or RACR. The RACR amount is the sum of the state share of a district's Tier I entitlement and the revenue from the district's compressed tax rate, both as calculated under HB 3646, adjusted as necessary based on certain minimum and maximum hold harmless provisions of HB 3646. (*See id.*; Ex. 5653 at 109-10; Ex. 5654 at 99-101.) For school years 2009-10 and beyond, HB 3646 provided that a district levying at least its compressed rate will be entitled to a RACR amount equal to at least the sum of the following: (1) the revenue per WADA the district was entitled to in 2009-2010; and (2) adjustments to reflect current year funding for certain other allotments. (Ex. 5653 at 109-10; Ex. 5654 at 99-102.) The first figure was based on the best of the three scenarios described in FOF 34 above, taking into account other legislative action in 2006, 2007, and 2009. (Ex. 5653 at 109; Ex. 5654 at 99-100.)

FOF 51. For a more detailed explanation of the structure of the school finance system, see the Texas Association of School Boards' publication, "A Guide to Texas School Finance: January 2012," (Ex. 6321 at App. 9, Part Q), or the presentation to the Court made by expert witness Joseph Wisnoski, a former Deputy Associate Commissioner for Finance of TEA. (Exs. 5653, 5654.)

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e. The 2011 legislative budget cuts heightened the funding inadequacies and turned an impending constitutional crisis into a present one.

i. The Legislature cut $5.3 billion from the Texas public education system in 2011.

FOF 52. In 2011, faced with a revenue shortfall and a structural deficit, the Legislature made a number of changes to public education finance aimed at reducing education funding through the passage of Senate Bill 1. (Ex. 6322, Moak Report, at 47; *see also* Ex. 6362, article 57.) Senate Bill 1 reduced funding distributed through the FSP by approximately $4 billion for the biennium compared to what would have been provided under prior law. (Ex. 6322, Moak Report, at 47; RR6:203-04 (referencing Ex. 6349 at 38); Ex. 6362 at Article 57; Ex. 6364 at 12.)

FOF 53. The mechanism for reducing FSP funding was different in the first versus second year of the 2012-13 biennium. (Ex. 6322, Moak Report, at 48.) In the first year of the biennium, the Legislature reduced the regular program allotment in Tier I to 92.39% of the prior-law levels. (*Id.*; RR6:203 (referencing Ex. 6349 at 44); Ex. 5653 at 147.) This was accomplished by applying an adjustment – known as the Regular Program Adjustment Factor ("RPAF"), which is set in statute for the 2011-12 and 2012-13 school years at 0.9239 and 0.98 respectively. (Ex. 6322, Moak Report, at 48; Ex. 5653 at 147.) This had the effect of reducing state aid not only in Tier I, but also in Tier II and in ASATR. (Ex. 6322, Moak Report, at 48.) This occurs because reducing the regular program allotment in Tier I reduces the calculated number of students in weighted average daily attendance for all districts, which in turn affects the funding calculations for both tiers and ASATR. (*Id.*)

FOF 54. In the second year of the current biennium, the regular program was reduced to 98% of prior-law levels, effectively restoring part of the first-year reduction. (Ex. 6322, Moak Report, at 48; RR6:203 (referencing Ex. 6349 at 44).) The effective 2% reduction to the regular program allotment produced a state savings of $500 million in 2012-13. (Ex. 6322, Moak Report, at 48.) The remaining funding reduction in 2012-13 comes from hold harmless ASATR funds. (*Id.*) Target funds are reduced to 92.35% of prior-law levels in 2012-13, which has the effect of reducing ASATR by more than 50%. (*Id.*; RR6:203 (referencing Ex. 6349 at 44); Ex. 5653 at 148.)

FOF 55. As a result, the proportion of districts funded on target revenue versus formula changed between the 2011-12 and 2012-13 biennia. In 2011-12, it is projected that a total of 786 districts will have been funded under target revenue, while 243 districts will be funded on formula. (Ex. 5653 at 153.) It is projected that in 2012-13, 403 districts will be funded under target revenue, while 626 districts will be funded on formula. (*Id.*)

FOF 56. Funding for a number of specific educational programs was also eliminated or significantly reduced during the 82nd legislative session.

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FOF 57. Over the objections of former Commissioner Robert Scott, appropriations to the Student Success Initiative ("SSI") grant program were reduced from over $300 million in the 2010-11 biennium to $41 million for the 2012-13 biennium. (Ex. 5630, Scott Dep., at 44-45; Ex 17 at III-19.) Commissioner Scott had recommended funding the program at $290.5 million for the 2012-13 biennium. (Ex. 16 at 30; Ex. 5630, Scott Dep., at 70.) This program, established by the Legislature in 2000, was designed to provide support for students in need of accelerated instruction to help them pass statewide examinations. (Ex. 6322, Moak Report, at 49; RR6:204-05.) SSI funds were used to provide intensive tutoring, extended day programs, and summer school programs. (Ex. 5630, Scott Dep., at 28-29; RR6:205.) SSI cuts included cuts to the LEP Student Success Initiative & Special Projects ($19 million). (Ex. 10748.)

FOF 58. TEA's Associate Commissioner for Standards and Programs requested internally that restoration of funding for SSI be included as part of the agency's Legislative Appropriations Request for the 2014-15 Biennium, but it was not ultimately included. (12/11 Tr. at 182-83.)

FOF 59. Also over the objections of Commissioner Scott, the Legislature eliminated $201 million in grants designed to assist districts with providing pre-K services for the second half of the school day, since only a half-day program is funded by the FSP. (Ex. 6322, Moak Report, at 49; Ex. 5630, Scott Dep., at 30-34, 42-44.) Commissioner Scott described the program as "critical" and recommended that it be funded at $208.6 billion in the 2012-13 biennium.[12] (Ex. 5630 at 30; Ex. 16 at 35; Ex. 15 at 3.) The program received no funding. (Ex. 5630, Scott Dep., at 42.) This program served approximately 56,000 students in fiscal year 2011. (Ex. 6322, Moak Report, at 49.) Local districts that no longer receive the funds must choose between discontinuing the full-day services or funding the program through reductions in other areas. (*Id.*)

FOF 60. Programs aimed at improving teacher quality also were cut significantly. District Awards for Teacher Effectiveness ("DATE") grants were reduced from $372.5 million in the 2010-11 biennium to $49 million for the 2012-13 biennium, despite the Commissioner's recommendation to fund the program at approximately $392.5 million. (*Id.* at 49; RR6:205-06; Ex. 5630, Scott Dep., at 46; Ex. 16 at 55; Ex. 17 at 18.) These grants were used to support district-designed incentive pay programs (i.e., a form of merit pay) for teachers. (Ex. 5630, Scott Dep., at 45-46; RR6:205-06.)

FOF 61. Funding for a number of other state grant programs was also eliminated in the 2012-13 biennium. For example, school districts must allow students to take courses through the Virtual School Network. TEX. EDUC. CODE § 26.0031. In 2011, the State eliminated funding for this program, but did not eliminate the requirement that districts make the program available to students. (12/11 Tr. at 185-86.) Districts must now bear the cost

[12] A related program is the "kindergarten readiness program," which is part of the SSI and is designed to collect data to help the State analyze the effectiveness of its pre-K programs. (12/11 Tr. at 192.) The State eliminated this program in the 2012-13 biennium as part of its cuts to the SSI. Recognizing the importance of this funding, TEA's Associate Commissioner for Standards and Programs requested that an additional $12 million for the program as part of its 2014-15 LAR, but it was not included in the agency's budget request. (*Id.*)

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for this program entirely on their own. (12/11 Tr. at 186.) Funding to Regional Service Centers, which provide professional development to teachers, decreased from $21 million in each year of the 2010-11 biennium to $12.5 million in each year of the current biennium. (12/11 Tr. at 183-84; 1/7 Tr. at 156-57.) The State also eliminated funding for a technology allotment previously provided for each student. (12/11 Tr. at 189-91; RR6:206-07.) Total reductions in state grant programs have been estimated at $1.3 billion to $1.4 billion. (*See* 1/8 Tr. at 185; Ex. 6322, Moak Report, at 47.)

FOF 62. Commissioner Scott testified that determining whether to restore money to the FSP (compared to initial proposed FSP reduction released early in the 2011 legislative session) or to the special programs described above "was akin to asking the guy on the operating table whether he wants his heart or his lungs back." (Ex. 5630, Scott Dep., at 349.) He acknowledged that with the cuts to the special programs, "the lungs never got put back." (*Id.* at 358.)

FOF 63. Many of the cuts described above particularly impacted the state's highest need children (RR6:204-07), as did other program funding cuts, including: (1) a $30.6 million cut for the FSP-Extended Year Programs, which provided support for students who were not meeting the state content standards and were at-risk of not being promoted; (2) a $20 million reduction to the Teacher Mentor Program for teachers with less than two years of experience; (3) a $14.6 million cut for the Texas Advance Placement Incentive, which provided subsidies for test fees for low income students, (4) the elimination of the Reading, Math and Science Initiative, which through a $25 million allocation, had funded diagnostic testing and research-based training and materials and was targeted at districts with lower student performance in those areas; (5) a reduction of $110 million in funding for instructional materials; (6) a $72 million cut to the Texas High School Completion and Success program; and (7) a $4 million reduction in funding to the Center for Improvement of Districts and Schools. (Ex. 4000, Cortez Report, at 49-50; 1/7 Tr. at 157-58; Ex. 10748.)

FOF 64. The 2011 budget cuts have had a significant impact. Even though there were 44,454 more students enrolled in the non-charter public schools statewide in 2011-12 than in 2010-11, total employment declined by just over 26,000 full time equivalent staff, driving staffing ratios up for teachers and non-teachers alike. (Ex. 6322, Moak Report, at 49; RR6:208 (referencing Ex. 6349 at 45).)

Number of Staff Employed by School Districts, 2010-11 and 2011-12

	2010-11	2011-12	Difference
Teachers	325,891	314,404	-11,487
Other Staff	323,809	308,913	-14,896
Students	4,799,541	4,843,995	44,454
Students per Teacher	14.7	15.4	4.76%
Students per Other Staff	14.8	15.7	6.08%

(Ex. 6322, Moak Report, at 49.)

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FOF 65. Average salaries and experience levels across staff also have declined. In 2010-11, the average teacher salary for teachers employed in non-charter school districts through all fund sources, was $48,860. (*Id.*) The following year, this figure fell to $48,615. (*Id.*) Total base pay across all staff categories declined by more than $1 billion dollars between 2010-11 and 2011-12. (*Id.*)

FOF 66. The 2011 budget cuts forced many districts to seek waivers of the twenty-two to one class size requirement for grades K through four. In 2011-12, the TEA granted nearly 8,600 waivers of the state's class size waiver requirement. (Ex. 5630, Scott Dep., at 391-92 (referencing Ex. 30 at 3).) The requests for waivers came from approximately 30% of all elementary schools in Texas and directly affected about 150,000 students. (Ex. 5630, Scott Dep., at 394-95 (referencing Ex. 31 at 1).) Commissioner Scott confirmed that the TEA would not waive a state requirement if the TEA did not feel that the waiver was necessary. (Ex. 5630, Scott Dep., at 394.) Many superintendents testified that they believed they had no choice but to increase class sizes and that doing so adversely affected their ability to educate students. (*See infra* FOF 378, FOF 382, FOF 388.)

FOF 67. Teacher salaries, staffing ratios, and class sizes were not the only area affected by the cuts. Many districts were forced to eliminate full-day pre-K programs, but according to superintendents, these programs provide a key educational foundation for students, especially ELL and economically disadvantaged students. (*See infra* Part I.B.6.d.) Other districts maintained their full-day pre-K programs, but only at the expense of other interventions. (*See, e.g.*, RR20:138-39; Ex. 3208, Williams Dep., at 210-11; Ex. 3198, Garza Dep., at 22-23.) One superintendent testified regarding the cuts, "instead of culling out programs that are ineffective, you decide which of the effective programs you're going to cut back and streamline." (RR19:37 (referencing Ex. 6355 at 16).) More detailed findings concerning district-specific effects are provided in Part I.B.10 below. Each of these cuts came at the same time the State implemented a new, more rigorous assessment regime that superintendents testified will require significant additional resources to prepare students. (*See infra* Part I.B.3.)

FOF 68. As a result of the cuts, on an inflation-adjusted basis, total per student revenues for public education will have declined from over $7,100 in 2003-04 to $6,293 in 2012-13 (in 2004 dollars), representing an average loss of more than $800 per student. (Ex. 6322, Moak Report, at 47-48; RR6:200-02 (referencing Ex. 6349 at 43).) This represents close to a 12% reduction from 2004 levels. (Ex. 6322, Moak Report, at 47-48.) The chart below reflects this decline. The decline has been continual since 2009.

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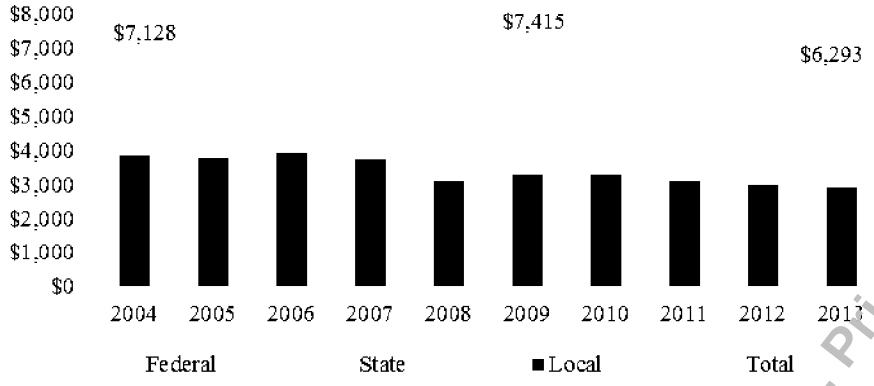

(*Id.* at 48.) (Source: Moak Casey Analysis of Figure 181 from LBB Fiscal Size-Up (available at Ex. 10804). Adjusted for payment delays and enrollment.)

FOF 69. In fact, on an inflation-adjusted basis, using the implicit price deflator for state and local governments (a measure that the LBB has used to adjust for inflation in educational expenditures), spending per student in 2011-12 is below 1996-97 levels. (Ex. 6322, Moak Report, at 45; RR6:193-94 (referencing Ex. 6349 at 40).)

FOF 70. Even before these cuts, a Quality Counts report (an annual report prepared by *Education Week*) ranked Texas forty-ninth among the states on per pupil expenditures after adjusting for regional cost differences, and gave Texas an "F" on spending per pupil. (Ex. 6322, Moak Report, at 44.)

FOF 71. The Court finds that the cuts detailed above – which the State imposed at the same time it adopted increased performance standards and the goal for all students to become college or career ready – reflect a state funding system that is unsuitable and that is not linked to the state's definition of a general diffusion of knowledge. (*See infra* Part I.B.3.)

FOF 72. The State Defendants presented several witnesses whose testimony suggested that educational expenditures in Texas had increased in recent years. Upon examining this testimony, however, the Court has not found it to contradict the essential picture of a state where operational expenditures on education have, in recent years, failed to keep pace with inflation and rapid enrollment growth. This is especially true when the 2011 budget cuts are taken into account.

FOF 73. For example, Tom Currah, a senior advisor and data analysis director for the Texas Comptroller of Public Accounts, averred that "total expenditures" by school districts in the aggregate and per student have increased between 2000 and 2011, even when compared with inflation (measured by the Consumer Price Index ("CPI") and growth in enrollment). (1/9 Tr. at 156-60 (referencing Ex. 11279 at 26-35).) Mr. Currah's presentation did not reflect the budget cuts made during the current biennium. (1/9 Tr. at 157, 188-89.)

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FOF 74. The "total expenditure" values presented by Mr. Currah also include not only operational spending but also amounts paid by districts for debt service and capital outlays. (1/9 Tr. at 180, 185-86.) Both of these most often apply to spending for the building of new facilities or renovation of existing facilities. These items are not measured in the basket of goods used for the CPI. (1/9 Tr. at 180, 185-86.) Moreover, including both debt service and capital outlays in the "total expenditures" metric double-counts the amounts school districts spend to build facilities financed by debt, since the sum includes both the initial capital outlay and the eventual repayment of the debt incurred to pay for it. (1/9 Tr. at 173-74, 182-83.) The inclusion of debt service and capital outlays in total expenditures, therefore, overstates the growth in real (inflation-adjusted) educational spending over time. (1/9 Tr. at 173-74, 182-83.)

FOF 75. Notably, the "total expenditure" metric is not the spending measure used in the state's Financial Allocation Study of Texas ("FAST"). (1/9 Tr. at 183-84.) Instead, the FAST project used only operational expenditures – a measure that does not include either capital expenditures or debt service – adjusted by a comparable wage index. (1/9 Tr. at 148-49, 183-84.) As the FAST study's authors appear to recognize, operating expenditures are a better measure than total expenditures of the money that can be used to deliver the educational services most directly crucial to student learning. (Ex. 965 at 44, 50 (describing the methodology for the FAST study and the use of the operating expenditures measure).)

FOF 76. Mr. Currah's testimony also did not address several crucial factors discussed at greater length elsewhere in these Findings, such as the growing percentage of economically disadvantaged students and the state's recent significant step-up in performance expectations for both students and schools. (1/9 Tr. at 186-88; *see supra* Parts I.B.1, I.B.3.) Mr. Currah did acknowledge that through 2008, even without accounting for the $5.3 billion in cuts made over the last two fiscal years, Texas's "total expenditures" per student had consistently lagged behind the national average. (1/9 Tr. at 179; Ex. 5684 at 3.)

FOF 77. The State also relied on Rob Coleman, Assistant Director of Fiscal Management for the Texas Comptroller of Public Accounts, to testify regarding the Comptroller's role in setting the biennial budget and to describe the budget patterns over the past several years. Mr. Coleman acknowledged that the Legislature cut education funding from the 2010-11 biennium to the 2012-13 biennium but also noted that public education funding overall has increased from the funding levels of the 2004-05 biennium. (Ex. 11270 at 23; 1/7 Tr. at 54, 44-45.) He also agreed, however, that this change in appropriations over time reflects the Legislature's shift away from reliance on local property taxes and toward more reliance on state funds. (1/7 Tr. at 87-89.) This shift was necessary to make up for the $14.2 billion in local property tax revenue losses following the tax rate compression mandated in House Bill 1. (1/7 Tr. at 88-89 (referencing Ex. 1700); Ex. 5657 at 192.)

FOF 78. The State also presented Shirley Beaulieu, the Chief Financial Officer of the TEA, who provided documentation of educational spending from all sources for each biennium from 2006-07 to 2012-13. While a focus solely on state aid to education through the FSP appears to create the impression of a slight increase in per-student spending in the 2012-

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13 biennium, this fails to account for the fact that approximately $3.2 billion in federal stimulus funding was used in 2010-11 to plug the gap in state FSP spending created by the structural deficit. (1/7 Tr. at 169-70; *see also supra* FOF 38.) Texas did not replace these federal funds after the 2010-11 biennium. (1/7 Tr. at 170.)

FOF 79. Ms. Beaulieu's presentation was not inconsistent with the conclusion, verified by several witnesses, that in the 2012-13 biennium, the FSP was funded at approximately $4 billion less than its previous-law levels. (*See* 1/7 Tr. at 140-41, 165.) In addition, the numbers she presented for each biennium were not adjusted for inflation or enrollment growth. (1/7 Tr. at 165, 167.) When adjusted by the CPI and presented on a per-student basis, educational spending from all sources (state, local, and federal) and for all purposes (including operating expenditures, capital spending, debt service, and state and federal programs and grants) is lower in the 2012-13 biennium than it was during the 2006-07, 2008-09, or 2010-11 biennia. (1/7 Tr. at 165-69 (referencing Ex. at 5686 at 3).) This was despite having a historically high $6.1 billion in the rainy day fund. (1/7 Tr. at 16, 17, 85.)

FOF 80. The State's expert, Dr. Dawn-Fisher, testified that state FSP funding has increased between 2006 and 2012, primarily due to student enrollment growth and the compression of M&O tax rates under HB1. (1/8 Tr. at 164-65; Ex. 1188, Dawn-Fisher Report, at 5.) Dr. Dawn-Fisher's analysis also does not account for inflation during the 2006-2012 period. (1/8 Tr. at 165.) Nor does Dr. Dawn-Fisher's representation that per WADA funding increased between FY 2011 and FY 2012 account for the reduction in WADA caused by the RPAF, which actually reduced funding by more than $2 billion in FY 2012. (1/8 Tr. at 166-67 (referencing Ex. 1188, Dawn-Fisher Report, at 6), at 184; *see also supra* FOF 53.) Indeed, Dr. Dawn-Fisher admitted that the effect of the legislative changes to the FSP formulas was to reduce FSP funding by $4 billion, and agreed that, when combined with the grant cuts, school districts experienced a $5.3 billion dollar cut. (1/8 Tr. at 184-85.)

FOF 81. Because revenues for the 2012-13 biennium significantly exceeded expectations, the State currently has a projected surplus from the current biennium of about $8.8 billion. (1/24 Tr. at 111, 114, 116 (referencing Ex. 11305 at 11).) The ending fund balance and revenue projections for the upcoming 2014-15 biennium would allow the State to (1) fully fund the FSP through the end of the current biennium (including reversing the deferral of the August payment), (2) pay the remaining unfunded Medicaid liability from the 2012-13 biennium, (3) fully fund education at existing formula levels for the upcoming biennium, accounting for enrollment growth, and (4) fully fund Medicaid for the upcoming biennium, while (5) still having an unencumbered revenue surplus of approximately $5.5 billion. (1/24 Tr. at 116-23 (referencing Ex. 6510), 123-26 (referencing Ex. 6511), 126-27.) While using all of this $5.5 billion would require exceeding the state spending cap (at about $3.7 billion), this can be done by a simple majority vote on a resolution in the House and Senate. *See* TEX. CONST. art. VIII, §22(b). On top of this surplus, by the end of the upcoming biennium, the economic stabilization (rainy day) fund is expected to have a balance of over $11 billion. (1/24 Tr. at 114-16 (referencing Ex. 11305 at 31).)

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ii. The Legislature repealed the target revenue system effective 2017.

FOF 82. Senate Bill 1, passed in 2011, also repealed the target revenue/ASATR system effective September 1, 2017. (Act of July 19, 2011, 82nd Leg., S.S., art. 57 § 57.32 (available at Ex. 6362) (repealing Section 42.2516 of the Education Code effective 9/1/17); *see also* FOF 34 - FOF 35, FOF 50.)

FOF 83. Senate Bill 1 also provided that: "It is the intent of the legislature, between fiscal year 2014 and fiscal year 2018, to continue to reduce the amount of Additional State Aid for Tax Reduction (ASATR) to which a school district is entitled under Section 42.2516, Education Code, and to increase the basic allotment to which a school district is entitled under Section 42.101, Education Code." (Act of July 19, 2011, 82nd Leg., S.S., art. 57 § 57.34 (available at Ex. 6362).) For other findings relating to these ASATR provisions, see *infra* FOF 972 - FOF 982.

3. The Legislature has significantly increased academic performance requirements for Texas public schools and students.

FOF 84. Since the Supreme Court last analyzed the adequacy issue in *WOC II*, the Texas Legislature has substantially increased the academic performance requirements for Texas public schools and students. Specifically, the Legislature has incorporated college-readiness standards into the curriculum, introduced additional and more difficult assessment requirements, added coursework at the high school level, and implemented steps to increase the number and percentage of students graduating on the more rigorous Recommended High School Plan. *See, e.g.*, TEX. EDUC. CODE §§ 4.001, 28.001, 28.008, 28.025. These changes, which are aimed at increasing the percentage of Texas students who are prepared to enter college or the workforce, "are the most significant changes [to public education] that we've seen in a substantial amount of time." (RR6:144-45, 155; *see also* Ex. 6322, Moak Report, at 16-20; Ex. 5624, Zyskowski Dep., at 25-27, 34-35.)

a. College and career readiness is now the operational goal of the Texas school system.

FOF 85. The Legislature has tied the general diffusion of knowledge to the goal of preparing all Texas students to graduate from high school ready to enter college or the workforce. (*See* 12/11 Tr. at 167; RR5:125.)

FOF 86. The Legislature first articulated this intent in 1995 when it adopted Section 28.001:

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

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TEX. EDUC. CODE § 28.001 (emphasis added).

FOF 87. The TEA's Associate Commissioner for Standards and Programs, Anita Givens, acknowledged that Section 28.001 describes the purpose of the state's curriculum, and that this provision reflects the Legislature's intent to ensure that all students have a meaningful opportunity to learn the subject areas laid out in the curriculum and to be ready for post-secondary education or employment. (12/11 Tr. at 157-58.)

FOF 88. The Legislature also has acknowledged its duty to ensure that all Texas school children have access to an adequate education reflecting the reality of the competitive employment market and the changing world. It affirmed that the preservation of democracy and the promotion of the state's economic well-being are linked to the provision of the "general diffusion of knowledge":

> The mission of the public education system of this state is to ensure that *all Texas children have access to a quality education* that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation. That mission is grounded on the conviction that a general diffusion of knowledge is essential for the welfare of this state and for the preservation of the liberties and rights of citizens . . .

TEX. EDUC. CODE § 4.001 (emphasis added).

FOF 89. The Texas Supreme Court concluded that through the passage of Section 4.001, "the Legislature has expressly defined the mission of the public school system, including school districts, to accomplish a general diffusion of knowledge." *West Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558, 584 (Tex. 2003) ("*WOC I*").

FOF 90. More specifically, the mission of Texas public schools is to produce college- or career-ready graduates. (12/11 Tr. at 167.) To advance this mission, in 2006, the Legislature required the Commissioner of Education and the Commissioner of Higher Education to work together to:

- establish "college readiness standards and expectations that address what students must know and be able to do to succeed in entry-level courses offered at institutions of higher education";
- "evaluate whether the high school curriculum requirements under Section 28.002 and other instructional requirements serve to prepare students to successfully perform college-level course work"; and
- "recommend how the public school curriculum requirements [could] be aligned with college readiness standards and expectations."

TEX. EDUC. CODE § 28.008; Tex. H.B. 1, 79th Leg. 3rd C.S. (2006) (available at Ex. 6393). (12/11 Tr. at 109, 165-67; RR5:125-26.)

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FOF 91. The Legislature has defined college readiness as "the level of preparation a student must attain in English language arts and mathematics courses to enroll and succeed, *without remediation*, in an entry-level general education course for credit in that same content area for a baccalaureate degree or associate degree . . . ." TEX. EDUC. CODE § 39.024(a) (emphasis added).

FOF 92. In 2007 and 2009, the Legislature required these same college-readiness standards to be incorporated into the state's assessment and accountability system. Tex. S.B. 1031, 80th Leg., R.S. (2007) (available at Ex. 6388); Tex. H.B. 3, 81st Leg., R.S. (2009) (available at Ex. 6375). (*See also* Ex. 5624, Zyskowski Dep., at 25-26, 34-35.) Section 39.053 of the Education Code requires the Commissioner of Education to periodically increase performance standards for students and schools until Texas ranks within the top states in terms of college readiness and has eliminated any "significant achievement gaps by race, ethnicity and socioeconomic status." TEX. EDUC. CODE § 39.053(f). (*See also* Ex. 6322, Moak Report, at 17-18; Ex. 10336 at ii.)

FOF 93. To that end, in 2008, Texas adopted college- and career-readiness standards ("CCRS"). (Ex. 742.) The CCRS were approved by the Texas Higher Education Coordinating Board and the Commissioner of Education, and were subsequently incorporated into the Texas Essential Knowledge and Skills ("TEKS") by the SBOE. (*See* 12/10 Tr. at 7; 12/11 Tr. at 109; Ex. 742 at iii; Ex. 10336 at I-47 and App. B.) The curriculum is now vertically aligned so that the entire curriculum – from high school all the way to kindergarten – is designed to be preparing students to meet the CCRS. (12/11 Tr. at 112-13.)

b. The State has introduced a substantially more challenging assessment regime.

FOF 94. As part of the move toward college readiness as the outcome standard for Texas public schools, the State is transitioning from the Texas Assessment of Knowledge and Skills ("TAKS") assessment regime to the State of Texas Assessment of Academic Readiness ("STAAR") regime. (12/10 Tr. at 26-27; 12/11 Tr. at 6.)

FOF 95. Under the new STAAR system, the state's four comprehensive exit-level high school TAKS tests in English language arts, mathematics, science, and social science were replaced with a rigorous set of fifteen End-of-Course ("EOC") exams that students must pass in order to graduate from high school on the Recommended High School Plan ("RHSP") and twelve to fifteen tests to graduate on the minimum plan. (Ex. 5624, Zyskowski Dep., at 40; Ex. 37 at 2; Ex. 40 at Table 2; RR6:152-53 (referencing Ex. 6349 at 5); 12/10 Tr. at 52-53; Ex. 1083, Lopez Report, at 4, 15.) Both the STAAR grades three through eight tests and the EOC tests are aligned with the college-readiness standards. (*See* 12/10 Tr. at 26-27, 29-30; 12/11 Tr. at 14-15; Ex. 38 at 10.)

FOF 96. Plaintiff and State witnesses unanimously agree that the STAAR exams are significantly more challenging than the TAKS. (*See* 12/11 Tr. at 15-16; 12/10 Tr. at 28-29, 154-55; Ex. 5624, Zyskowski Dep., at 36-37, 70, 106, 198-99, 248-49; Ex. 5620, Twing Dep., at 101-05, 125; Ex. 5630, Scott Dep., at 39.) Commissioner Scott confirmed that Texas is raising academic standards and that the college-ready standard on STAAR is higher than

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it was on TAKS. (Ex. 5630, Scott Dep., at 20, 39.) TEA's Director of Student Assessment Dr. Gloria Zyskowski, testified that the STAAR exam has "a greater level of cognitive complexity." (12/10 Tr. at 30.)

FOF 97. The Legislature required the Commissioner to establish three specific performance standards on each STAAR EOC assessment:

a. **Passing/satisfactory standard – Level II:** For all EOC assessments, the Legislature instructed the Commissioner to determine the level of performance considered to be satisfactory. TEX. EDUC. CODE § 39.0241(a). Students were required to achieve, for each subject in the foundation curriculum, a cumulative score that is at least equal to the number of exams required in that content area multiplied by the "passing" or "satisfactory" scaled score. TEX. EDUC. CODE § 39.025(a). (12/10 Tr. at 50-51; Ex. 41 at 8.) The Legislature specifically noted that the cumulative score requirement "does not require a student to demonstrate readiness to enroll in an institution of higher education." TEX. EDUC. CODE § 39.025(a). This Level II standard, which is being phased in over four years and two steps (Ex. 41 at 2), has been linked through various empirical studies to a 60% probability of a "C" or better in college courses in the same content area. (12/10 Tr. at 92 (referencing Ex. 11241 at 27).) Students meeting this standard are deemed "on track" to graduate from high school. (Ex. 10871 at 31; 12/10 Tr. at 102.)

b. **Minimum standard – Level I.** The Commissioner was also required to establish "a minimum score within a reasonable range of" the satisfactory performance level. TEX. EDUC. CODE § 39.025(a). This Level I standard is not considered passing or satisfactory but allows a score to count toward a student's cumulative score in that content area. (12/10 Tr. at 51-52 (referencing Ex. 11241 at 27), 99; RR6:163-65; Ex. 41 at 8-9.) For example, to graduate under the RHSP in 2014-15 or 2015-16, a student must achieve a cumulative score of 11,250 for English (six exams times the 1,875 scale score representing passing on each test) and a 10,500 cumulative score for each of the three remaining subject areas of math, science, and social studies (three exams times the 3,500 scale score representing passing on each test). (Ex. 41 at 8-9.) If a student scores above the minimum score but below satisfactory, his or her score would count towards the cumulative score but he or she would need to achieve a score that is at least as many scale points above the satisfactory level as the first score was below the satisfactory level in order to achieve the necessary cumulative score. (*Id.*) For such students achieving a minimum but less than satisfactory score, districts are required to provide remediation. (RR6:165; Ex. 1083, Lopez Report, at 7-8.) If a student scores below the minimum score, the student would be required to retake the test and the score would not count towards his or her cumulative score. *See* TEX. EDUC. CODE § 39.025(a). (Ex. 41 at 8-9; 12/10 Tr. at 51-52.)

c. **Advanced/college-ready standard – Level III:** The Legislature also mandated that the Commissioner of Education and the Commissioner of Higher Education jointly establish performance standards necessary to indicate college readiness.

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See TEX. EDUC. CODE §§ 39.024(b), (e), 39.0241(a-1). (*See also* 12/10 Tr. at 90.) Specifically, the Legislature called for the setting of performance standards for the Algebra II and English III EOC instruments indicating that students have attained college readiness. (12/10 Tr. at 90.) This Level III standard is associated with a 75% probability of a "C" or better in college courses in the same content area. For English III reading, English III writing, and Algebra II, the Level III performance standard is being phased in over two years. (12/10 Tr. at 92 (referencing Ex. 11241 at 27); Ex. 41 at 2.) For all other EOC assessments, the Level III performance standard is not being phased in. (Ex. 41 at 2.)

FOF 98. The college-ready performance standards were set through a series of external validity studies designed to link performance on the STAAR EOC tests to external measures of performance on other state and national exams associated with college readiness, including the SAT, ACT, NAEP, Accuplacer, and others. TEX. EDUC. CODE § 39.0242; TEX. EDUC. CODE § 39.024(c). (*See also* 12/10 Tr. at 38.)

FOF 99. Employees of the TEA and its testing contractor, Pearson, testified that the State also conducted studies empirically linking the TAKS met standard, college ready (HERC), and commended levels to performance on STAAR. (Ex. 5624, Zyskowski Dep., at 79-81, 166-67; Ex. 5621, Gaertner Dep., at 10-11; *see also* Ex. 49; Ex. 50; Ex. 88; Ex. 91; Ex. 10937.) The results of those studies clearly indicate that the final standards on STAAR are much more rigorous than were the final TAKS standards. (*See generally* Ex. 10937.) In fact, in certain EOC subjects, the TAKS passing rate is linked to a lower score on the STAAR-EOC exam than would be expected from random guessing on the STAAR exam. (*See id.* at 4, 7, 9, 13, and 16; *see also* Ex. 44; Ex. 57; Ex. 5624, Zyskowski Dep., at 111, 114.) The Level II final standard on STAAR is higher than the college-ready level on TAKS in both English III and Algebra II. (Ex. 10937 at 4, 7, 9; *see also* Ex. 88; Ex. 91 Ex. 5620, Twing Dep., at 124-25; Ex. 5621, Gaertner Dep., at 32-34, 62.) The Level III advanced standard on STAAR was set at a level that is "higher than the commended level of performance on the TAKS examination." (*See* Ex. 5624, Zyskowski Dep., at 113; Ex. 41 at 2-3; Ex. 6322, Moak Report, at 25 and n.12; Ex. 10937.)

FOF 100. The Legislature required the Commissioner to vertically align the college-ready standard established for Algebra II and English III with the Algebra I, English I, and English II EOCs. *See* TEX. EDUC. CODE. §§ 39.024(b),(e), 39.0241(a-2). (*See also* 12/10 at 26-27.) This vertical alignment was to continue all the way down to the grade three assessment in reading and mathematics. TEX. EDUC. CODE § 39.0241(a-2)(4)-(5). (12/10 at 27; RR5:124-126.) TEA's Director of Student Assessment Dr. Gloria Zyskowski testified that vertical alignment means that "there is a link between the performance standards for one year that's in grade three to the performance standard required of students in a subsequent year so that we can make statements about student performance in one year and subsequent performance and we have done that throughout the system so that ultimately we can make statements about students' post-secondary readiness." (12/10 Tr. at 27.)

FOF 101. TEA officials – in depositions in this case and in numerous other settings – repeatedly and consistently associated the Level III standard with being on track for college readiness. (*See, e.g.*, Ex. 5624, Zyskowski Dep., at 47-50, 54, 103-06, 180-81; Ex. 37 at

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8, 11; Ex. 38 at 8; Ex. 39 at 12 (Q47); Ex. 10871 at 31, 34, 36; 12/13 Tr. at 106-07, 120-21; *see also* Ex. 1083, Lopez Report, at 7-8.) However, at trial, Dr. Zyskowski testified that the TEA would be recommending that the Final Level II standard be associated with the "college-readiness" measure for the purposes of Section 39.024 of the Texas Education Code. (12/10 Tr. at 90-91.) Despite Dr. Zyskowksi's testimony, this Court finds that Level III is a more appropriate measurement for college readiness than Level II, because:

a. As discussed in FOF 97 above, the Legislature contemplated separate performance measures for "satisfactory" performance and "college-readiness" performance, as Dr. Zyskowski conceded. (12/10 Tr. at 107, 109.)

b. As noted above, prior to Dr. Zyskowski's testimony, the TEA had consistently referenced Level III as the appropriate measure of post-secondary readiness. (12/10 Tr. at 159-62; 12/13 Tr. at 106-07, 120-21.) Adopting Level II as the appropriate measure would erase any distinction between the college-ready standard and the basic standard that must be met even to graduate from high school. (12/10 Tr. at 105-06.) This would contravene the clear purpose of the statute, which directs the TEA to develop one standard to measure college readiness, and another standard to serve as the basic passing standard. *See* TEX. EDUC. CODE. §§ 39.0233, 39.024, 39.025.

c. As noted above, the Legislature defined "college readiness" as "the level of preparation a student must attain in English language arts and mathematics courses to enroll and succeed, *without remediation*, in an entry-level general education course for credit in that same content area for a baccalaureate degree or associate degree . . . ." *Id.* § 39.024(a) (emphasis added). But Dr. Zyskowski acknowledged that the TEA's operative definition of Level II contemplated a significant chance that students would need some level of remediation in college. (12/10 Tr. at 102-05; Ex. 10871 at 32, 34, 36.)

d. While it is undoubtedly true that students' readiness for college cannot always be measured by a single indicator, it is equally clear that the purpose behind the Level III designation was to provide a measurement that indicates a high level of confidence that a student is prepared to succeed in college without remediation. While many students achieving Level II (particularly at the higher score levels closer to the Level III standard) may be adequately prepared for college, the Level II designation taken as a whole is associated with (1) a lower degree of confidence in a student's college readiness, and (2) a significant possibility that some remediation in college may still be necessary. (12/10 Tr. at 101-04 (referencing Ex. 10871 at 31-32, 34).)

e. For this reason, the Court finds persuasive the conclusion of Dr. Kal Kallison, formerly the Deputy Assistant Commissioner at the Texas Higher Education Coordinating Board, that the Level III standard reflects the state's definition of college readiness more closely than does the Level II standard. (RR21:47.)

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f. The STAAR Level III advanced standard on the EOC tests has been empirically linked to other measures of college readiness – such as the SAT, ACT, and actual course performance – and can be interpreted to reflect a 75% chance or greater of obtaining a "C" in the introductory level college course in that subject. (Ex. 5624, Zyskowski Dep., at 46, 70, 104-06, 111-14; (12/10 Tr. at 92 (referencing Ex. 11241 at 27), 170.) TEA officials have testified that they have greater confidence in the STAAR Level III standard as a proper measure of college readiness than in the previous TAKS Higher Education Readiness Component (or "HERC"). (Ex. 5624, Zyskowski Dep., at 90.)

g. The accountability system being developed contemplates four separate indices: (1) student achievement; (2) student progress; (3) closing performance gaps; and (4) post-secondary readiness. (Ex. 11207; 12/13 Tr. at 98-106.) Shannon Housson, Director of the TEA's Division of Performance Reporting, testified that as of the date of his testimony, STAAR Level III was still contemplated as the measure to be used for the postsecondary readiness index. (12/13 Tr. at 121.)

FOF 102. The increased rigor of the STAAR assessment system poses significant hurdles to high school graduation for many students. For the classes of 2009 and 2010, less than 40% of high school graduates met college-ready standards on the TAKS in both reading and math. (*See* Ex. 6322, Moak Report, at 24-25.) After the first administration of the STAAR exam in Spring 2012, 53% of ninth graders failed to meet even the lower, phase-in standard on at least one test. (*See id.* at 25-26.) Performance on the STAAR retests was also worse than performance on TAKS retests. (RR6:183-84 (referencing Ex. 6349 at 30); *see also infra* FOF 132.)

FOF 103. The cumulative nature of the STAAR EOC system means that many of these students will need to re-take the previous test at the same time they are taking the next level course and preparing for the next EOC test. (Ex. 5624, Zyskowski Dep. at 141-42; RR3:129; RR8:117-20; 12/10 Tr. at 124-26.) Superintendent testimony persuasively established that student performance on STAAR (which is discussed in more detail in Part I.B.5.a) and the number of exams still awaiting these students places the state at high risk of increased dropout rates. (*See, e.g.*, Ex. 6341, Frost Dep., at 34-35; Ex. 6336, Burns Dep., at 56; RR3:129-30; RR22:63-65 (referencing Ex. 6352 at 18-19); Ex. 6335, Cain Dep., at 59.) The State's Director of Student Assessment, Dr. Gloria Zyskowski, agreed that this might be an "unintended consequence" of the EOC regime. (12/10 Tr. at 126.) For the nearly 123,000 ninth graders who are no longer on track for graduation (*see* Ex. 6519), waiting for school districts to make slow progress on improving the passing rates is not an option.

FOF 104. While individual students were held accountable for passing the STAAR EOC exams during the first administration in 2012, TEA is still in the process of developing a new accountability structure for school districts to accompany these higher student expectations. This accountability system will be phased in beginning with the 2012-13 school year. (12/13 Tr. at 91; RR6:165, 167; Ex. 7349 at 10.) While the initial ratings in 2013 will be based solely on Level II final performance, future years will also consider Level III advanced performance. (12/13 Tr. at 98, 100; Ex. 11245 at 13; Ex. 11208 at 9;

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Ex. 75 at 6.) As set forth in Chapter 39 of the Education Code, the new accountability system will include an increased focus on preparedness for college and the workforce, and will have as one of its express goals enabling Texas to be among the top ten states in post-secondary readiness by 2020. (12/13 Tr. at 105-06, 108-09 (referencing Ex. 11245 at 13), 117-18; Ex. 11207; Ex. 11208 at 9-17.) To begin to prepare school districts for a new assessment and accountability program focused on these higher levels of educational attainment, performance at the higher commended level on TAKS was included in the criteria for earning "recognized" or "exemplary" state ratings for the first time in 2011. (Ex. 6322, Moak Report, at 20; 12/13 Tr. at 134.)

c. The State has substantially increased requirements for graduation.

FOF 105. The state's increasing requirements for high school graduation must be considered when determining how the Legislature has defined the general diffusion of knowledge. Students who fail to graduate from high school are, by definition, not prepared to enter post-secondary education, much less succeed at it. Neither are these students well prepared for the work force. Adults without a high school diploma are three times as likely to be unemployed as those who have earned a high school diploma. If employed, high school dropouts earn less than high-school graduates. (*See* Ex. 6330, Murdock Supp. Report, at 8-14; RR3:85-96 (referencing Ex. 3228 at 83-89); RR15:40-48; Ex. 4040, Belfield Report, at 3-5.)

FOF 106. In 2004-05, the Legislature made the RHSP the default high school program for all students. (12/11 Tr. at 121; Ex. 5624, Zyskowski Dep., at 41-42; RR6:152-53; RR5:127.) Since *WOC II*, the Legislature has established multiple barriers to prevent students from moving down to the Minimum Plan. (12/11 Tr. at 123; Ex. 6375 at Section 30.) Section 28.025 of the Education Code requires signatures from a parent/guardian, the student, *and* a counselor or administrator to authorize participation in the Minimum Plan. TEX. EDUC. CODE § 28.025. (12/11 Tr. at 123.) In addition, students must be sixteen years old, or have completed two credits in each of the four core subject areas, or have failed to be promoted to the tenth grade prior to moving down to the Minimum Plan. *See* TEX. EDUC. CODE § 28.025. (12/11 Tr. at 123; Ex. 6322, Moak Report, at 18.)

FOF 107. The Legislature also increased the number of courses students must pass in order to graduate on the RHSP. (Ex. 6375 at Section 30.) Beginning with those entering the ninth grade in 2007-08, to graduate on the RHSP, students must complete twenty-six credits (compared to twenty-four credits prior to that time). (12/11 Tr. at 123, 161-62; RR6:151; Ex. 6349 at 5-6; Ex. 1083, Lopez Report, at 3.) This means that students must accumulate 6.5 credits every year for four years to graduate on time, assuming no need to make up courses that students did not pass. Credits must include four courses in each of the core areas of mathematics, science, social studies and language arts, as well as two years of the same foreign language. (RR6:151; Ex. 6322, Moak Report, at 18; Ex. 6349 at 5; 12/11 Tr. at 120, 123.)

FOF 108. Furthermore, under the STAAR-EOC regime, to graduate on the RHSP, students must meet the Level II performance standard on Algebra II and English III reading and writing

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assessments as well the cumulative score requirements across all fifteen EOC assessments in each of the four core subject areas. TEX. EDUC. CODE § 39.025(a-2). (Ex. 6375 at 54; Ex. 5624, Zyskowski Dep., at 40; Ex. 6322, Moak Report, at 18.) This will make Texas the state with the greatest number of high-stakes testing requirements, outnumbering the second place state – Virginia – which requires students to pass just six exit-level exams to receive a minimum high school diploma. (RR5:144-45.)

FOF 109. In addition, it is much more difficult for students who do not graduate on the RHSP to attend college than it was when the Supreme Court heard *WOC II*. In 2009, the Legislature amended Section 51.803 of the Education Code to provide that students must graduate on the RHSP to be considered for admission to any public four-year institution of higher education (with limited exemptions for students who score high enough on the SAT or ACT). (RR6:153.)

FOF 110. In summary, in the introduction of the STAAR / EOC regime, and in the standard-setting process associated with the new system, the State has undertaken an unprecedented effort to revise the curriculum, to better align the assessment system with this curriculum, and to empirically link levels of performance on statewide assessments to a wide range of external measures of college readiness. There can be little question that these statutory changes have tremendously raised expectations for Texas school districts.

FOF 111. The Court notes, moreover, that while the details of the new assessment and accountability systems are always subject to additional tinkering and to further legislative change, the fundamental finding that expectations for students and schools have been substantially heightened is not dependent upon any single statutory provision or requirement. While reducing the number of EOC exams that students must pass, for example, might help to alleviate the immediate crisis presented by nearly half of the state's 2011-12 ninth graders being off track to graduate, easing the graduation requirements would not mean that student performance has changed. Nor would it mean that students are better prepared for college or for careers.

FOF 112. In determining whether the State has met its constitutional obligations, the Court does not focus merely on the consequences the State may choose to impose for failing to meet the standards it has now promulgated. Instead, the Court focuses on whether students are actually meeting the standards identified as reliable indicators of college and career readiness.

d. The ISD Plaintiffs have rebutted any presumption that a "general diffusion of knowledge" is equivalent to accreditation requirements.

FOF 113. In *WOC I*, the Texas Supreme Court noted that, "The public school system the Legislature has established requires that school districts provide both an accredited education and a general diffusion of knowledge. It may well be that the requirements are identical; indeed, as in *Edgewood IV*, we presume they are, giving deference to the Legislature's choices. But it is possible for them not to be – an accredited education may provide more than a general diffusion of knowledge, or vice versa – and because both are

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binding, a district may allege that taxation at a maximum rate in order to satisfy either is a state ad valorem tax." *WOC I*, 107 S.W.3d at 581 (discussing *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 755, n.10 (Tex. 1995)) ("*Edgewood IV*").

FOF 114. In this case, as in *WOC II*, the Plaintiffs have rebutted any presumption that an accredited education is equivalent to a general diffusion of knowledge.

FOF 115. First, the accountability system is essentially frozen. The last year districts were rated was the 2010-11 school year. (12/13 Tr. at 74.) These ratings did not carry over to the 2011-12 school year; rather, the entire district accountability/rating system was "suspended." (12/13 Tr. at 74, 115-16.)

FOF 116. The TEA has not yet adopted the STAAR-based accountability system. The agency's Director of Performance Reporting testified that the entire system is still a "proposal" only – a final decision regarding the standards for the new accountability system will not be made until March 2013 and the first ratings under it will not be released until August 2013. (12/13 Tr. at 91-92.)

FOF 117. Second, the Court cannot look back to the previous accountability system as an answer. The Legislature has made college and career readiness the "mission" or "operational directive" of the public school system. TEX. EDUC. CODE §§ 4.001, 28.001, 28.008, 39.053. (12/11 Tr. at 166-69; RR6:175; *see also infra* Part I.B.3.a.) The previous accountability system did not require a district to meet any "college-readiness" standards – not even the number of students achieving either the HERC or the commended standard on TAKS – in order to be considered acceptable. (12/13 Tr. at 8486 (referencing Ex. 11245 at 3); Ex. 10323.)

FOF 118. Furthermore, the accountability standards under the TAKS exam were set not to constitute a minimal level of adequacy but rather to ensure that most districts and campuses fell upon the "academically acceptable" side of the line. As with the student passing standards, the districts' standards were slowly phased in. For example, in 2004 a district that had only 25% of its students pass the science exam, 35% of its students pass the mathematics exam, and 50% of its students pass social studies, writing, and reading/English language arts would have been ranked acceptable. (12/13 Tr. at 76 (referencing Ex. 11245 at 2).) These percentages were raised incrementally, thus ensuring that over the entire course of the TAKS-based accountability system the highest percentage of districts ever ranked "unacceptable" was 6.2% – and that number occurred in 2010-11 – the last year of the system. (12/13 Tr. at 77; Ex. 11245 at 10.)

4. The historic linkage between increased standards and increased funding has been broken.

FOF 119. The Legislature's significant reduction in school funding at the very time the substantial changes above have been introduced stands in contrast to past approaches to new reforms in Texas. Over the last three decades, major academic and operational reforms have ordinarily been accompanied by school finance reforms that supplied new revenues. (Ex. 6322, Moak Report, at 40 and Figure 43.)

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FOF 120. For example, in 1984, the year before large-scale graduation-related standardized testing began in Texas, the Legislature increased equalization aid. (Ex. 6349 at 33; RR6:187-88; Ex. 6322, Moak Report, at 37 and Figure 43.) Senate Bill 7 in 1993 both created the state accountability ratings system based on TAAS scores, *and* provided substantial new money through the expansion of guaranteed yields. (Ex. 6349 at 34; RR6:188; Ex. 6322, Moak Report, at 38 and Figure 43.) In 1999, when passage of the TAAS became required for promotion in grades three, five, and eight, the Legislature also increased the basic allotment, the equalized wealth level, and the guaranteed yield, and created the SSI grant program. (Ex. 6349 at 36; RR6:189-90; Ex. 6322, Moak Report, at 39 and Figure 43.) In 2006, two years after the TAKS replaced the TAAS test (and after *WOC II*), the Legislature added revenues to the system once again. (Ex. 6349 at 37; RR6:191-92; Ex. 6322, Moak Report, at 40-41 and Figure 43; *see also supra* FOF 27 - FOF 31.)

FOF 121. This has not happened in the case of the introduction of the STAAR regime. As described in Part I.B.2.e above, formula funding and grant funding alike have dramatically fallen just as the new system has taken effect. The Court finds that the decoupling of standards and funding is precisely the opposite of "structur[ing], operat[ing], and fund[ing]" the public school system "so that it can accomplish its purpose for all Texas children." *WOC II*, 176 S.W.3d at 753.

5. Student performance measures show that the Texas educational system is falling far short of its stated mission and is failing to make the necessary level of forward progress.

a. Various performance measures show that Texas is far from meeting its objectives relating to college and career readiness.

FOF 122. Statewide performance results using a variety of metrics reveal that the State is far from meeting its objectives relating to college and career readiness.

FOF 123. Dr. Kallison analyzed the results of various college-readiness measures. As set forth in more detail below, Dr. Kallison found that: (1) students are showing some improvement in recent years on TAKS-based measures of college readiness, but TAKS-based indicators are inferior measures of college readiness and the results are still unacceptably low; (2) student performance on college-readiness measures other than the TAKS and STAAR exams have been flat, and absolute performance on these measures is lower than on the TAKS-based indicators; and (3) the STAAR exam, which is superior to TAKS as an indicator of college readiness, shows that an overwhelming number of students are not on track to attend college and succeed without remediation. (RR21:45-46, 49-50 (referencing Ex. 5396 at 16); *see also infra* Part I.B.5.a.iii.)

FOF 124. In short, an alarming percentage of Texas students graduate high school without the necessary knowledge and skills to perform well in college. (Ex. 1161, Kallison College Readiness Report, at 15; RR21:49-51.) In addition, substantial gaps exist in college readiness between different racial/ethnic groups and students of different socioeconomic status. (Ex. 1161, Kallison College Readiness Report, at 14; Ex. 6322, Moak Report, at 22.)

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FOF 125. The consequences of having a large percentage of high school graduates who are not prepared for college are significant. The costs to remediate students who are not college ready are substantial. (Ex. 1161, Kallison College Readiness Report, at 3; RR21:20-21.) College graduation rates drop as students enter college unprepared, and workers without a college degree earn average salaries well below those with college degrees. (Ex. 1161, Kallison College Readiness Report, at 3; RR21:20-21.)

i. STAAR results show that Texas students are not on track to graduate college and career ready.

FOF 126. The results of the initial round of STAAR tests have been sobering. In 2012, Texas ninth graders took the first five in a series of up to fifteen new STAAR / EOC assessments in grades nine to eleven. (Ex. 6322, Moak Report, at 25-26.) The table below displays the number and percentage of students below various cut points on the Spring 2012 assessments typically taken by ninth graders. As the table indicates, even at the initial passing standards, which were set lower than the final phase-in standards that are expected to apply beginning in 2015-16, the following percentages of students scored below the passing standard in these respective subjects: 32% in reading, 45% in writing, 17% in Algebra I, 13% in Biology, and 19% in World Geography. (*Id.*) After the initial administration of the exams, 53% of ninth-graders (representing 185,757 students) were off track to graduate from high school. (*Id.*) To graduate, these students must retest or score high enough on future assessments in the same discipline to compensate for low scores on these examinations. (*Id.*) The percentages of students who scored below Level III suggest that relatively small percentages of students are on track for college readiness as defined by the state through the STAAR / EOC standard-setting process. (Ex. 1161, Kallison College Readiness Report, at 12.)

STAAR EOC Tests for Typical 9th Grade Courses	Number Tested	Below Minimum – Level I Standard (Must Retest)	Below Passing Level II Standard (Below Graduation Standard)	Below Level III
English I Reading	334,831	77,980 23%	107,435 32%	308,373 92%
English I Writing	334,951	113,706 34%	152,270 45%	324,483 97%
Algebra I	333,527	32,569 10%	57,669 17%	277,688 83%
Biology	319,022	20,095 6%	41,406 13%	290,137 91%
World Geography	320,925	38,916 12%	62,270 19%	277,745 87%
Failed at least one test (9th grade only)	351,311	142,873 41%	185,757 53%	346,784 99%

(Ex. 6322, Moak Report, at 26.)

FOF 127. When the Level II final standard is considered, the picture is even worse. The table below displays the percentage of students scoring below the passing standard at the final recommended performance levels, as of the Spring 2012 administration. (*Id.* at 27.) Under these more challenging standards, more than half of students tested would have

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failed their first examination in each of the traditional ninth-grade subjects. (*Id.*) This reveals a high risk that even larger numbers of high school students will soon be off track for graduation and will require substantial levels of remediation through intensive in-classroom instruction, summer school, extended day programs, or other means. (*Id.*)

Subject	Tested	Number of Students Below Final Recommended Passing Standard	% Below Final Recommended Passing Standard
English I Reading	334,831	181,814	54%
English I Writing	334,951	219,517	66%
Algebra I	333,527	203,688	61%
Biology	319,022	187,938	59%
World Geography	320,925	192,168	60%

FOF 128. Passing percentages on the Spring 2012 STAAR EOC exams were lower than the TEA had anticipated. For example, the percentage of students who reached the Level II phase-in standard was seven percentage points lower on English I Reading than the TEA had anticipated. (Ex. 5624, Zyskowski Dep., at 94; Ex. 42, 44.) At the Level II final standard, the percentage of students who passed the exam was eight percentage points lower on English I Reading than the TEA had estimated. (Ex. 5624, Zyskowski Dep., at 94-95; Ex. 42, 44.)

FOF 129. The performance of economically disadvantaged students and ELL students on the 2012 STAAR EOCs was particularly disconcerting, with average scores lagging far behind those of their peers. (*See infra* Parts I.B.5.c and I.B.5.d.)

FOF 130. Passing percentages on the Spring 2012 STAAR grades 3-8 exams also give cause for concern. While the passing rates at Level II phase-in standard for the STAAR 3-8 exams were higher than for the EOC exams, the rates were lower than the corresponding passing rates at the phase-in standard from the first year of TAKS. (Ex. 6515; Ex. 6513; Ex. 6514.) Even more troubling, the percentage of students meeting the Level II final standard was approximately half the percentage of students who met the final recommended standard on the first administration of TAKS. (Ex. 6515; Ex. 6513; Ex. 6514.)

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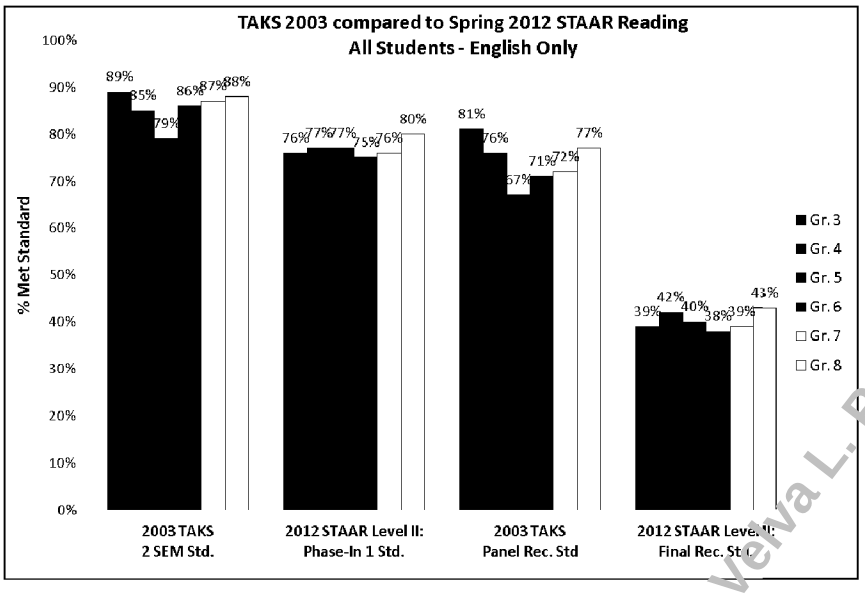

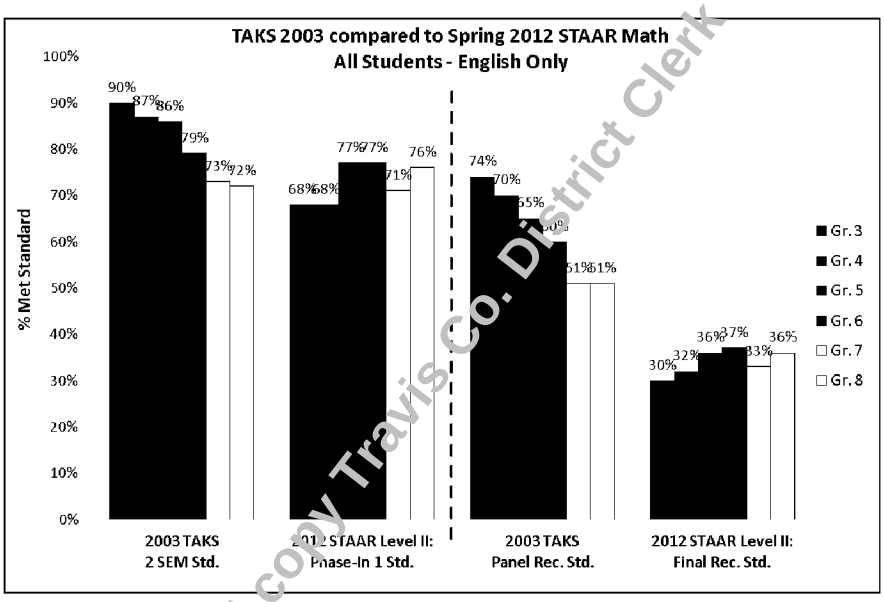

(Ex. 6515 at 1-2.) (Sources: TEA STAAR Gr. 3-8 Statewide Summary Reports, Jan. 2013 (available at Ex. 6513); TEA TAKS Met Std. Spring 2003 to Spring 2005 (available at Ex. 6514))

FOF 131. In the Summer of 2012, ninth-grade students who did not meet the Level II standard on any of the Spring 2012 STAAR EOC exams had the opportunity to retest. (Ex. 6324, Moak Supp. Report One, at 1.) The Summer 2012 retest passing rates ranged from 23% for English I Writing to 48% for Biology. (*Id.*; RR6:179-80 (referencing Ex. 6349 at 29).) The passing rate was 37% for English I Reading, 31% for Algebra I, and 27% for World Geography. (Ex. 6324, Moak Supp. Report One, at 1.) After the Summer 2012 retest, at least 132,874 of the state's 2011-12 ninth graders remained off track to graduate and in need of accelerated instruction based on the English I writing examination. (*Id.*) The ISD Plaintiffs' expert, Lynn Moak, testified that he is not aware of any other time

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when this many students have been off track for graduation as a result of an exam. (RR6:182-83 (referencing Ex. 6349 at 29).)

FOF 132. When the results of the Spring and Summer administrations of the 2012 STAAR EOC tests are combined, only 53% of freshmen met the passing standard for all tests taken. (Ex. 6324, Moak Supp. Report One, at 1.) By comparison, 75% of juniors met the passing standard for all tests taken on the TAKS exam in the first year that it was required for graduation. (*Id.* at 2.)

FOF 133. In December 2012, students who had still not met the Level II standard had another opportunity to retake the EOC exams. (Ex. 6518; Ex. 6519.) The December retest passing rates ranged from 20% for World Geography to 37% for English I Writing. (Ex. 6519 at 2.) After three administrations, 35% of the state's 2011-12 ninth graders, and 47% of the economically disadvantaged students from that class, still had not passed all of their ninth-grade level EOC exams. (*Id.* at 1.) This means that, from that class, 122,680 students still remain off track to graduate and need remediation on collectively 262,343 exams. (*Id.* at 1-2.)

FOF 134. The cumulative nature of the EOC exams presents another sharp contrast to the TAKS regime. (12/10 Tr. at 124-26.) Under TAKS, students were only required to pass four exams in eleventh grade to graduate, which means that students who failed the exams could focus on retaking the eleventh grade exams as many times as needed. (Ex. 6322, Moak Report, at 20.) Under STAAR, students must pass a series of fifteen exams that test separate content areas in grades nine through eleven. (*Id.*) This means that the 35% of students who have not passed one of more STAAR exams must attempt to (again) retake the relevant exams while at the same time preparing to take the new slate of tenth grade exams this spring – each of which is a high-stakes exam counting toward graduation requirements. (12/10 Tr. at 124-26; Ex. 6519.) Dr. Zyskowski agreed that the cumulative nature of the EOC exams must be taken into account when using TAKS retest results to predict retest results on the STAAR exam. (12/10 Tr. at 125-26.)

h. Texas students are not meeting the state's ACT and SAT benchmarks for college readiness.

FOF 135. Texas has set its own benchmark scores on the ACT and SAT exams to determine college readiness. Less than 27% of the graduating class of 2010 who took either the ACT or SAT met the state's benchmarks for readiness on the composite ACT or combined reading and mathematics for SAT. (Ex. 1161, Kallison College Readiness Report, at 13; RR21:29-31 (referencing Ex. 5396 at 11).) This percentage dropped to less than 26% for the graduating class of 2011. (Ex. 11300 at 10.) Less than 17% of all students in the class of 2010 both (1) took the ACT or SAT and (2) met the state's benchmarks on those exams. (RR21:31 (referencing Ex. 5396 at 11).) This percentage rose to just over 17% for the class of 2011. (Ex. 11300 at 10.) ACT and SAT scores of Texas high school students indicate that many of the state's graduates are not academically prepared for college. (Ex. 1161, Kallison College Readiness Report, at 13.)

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FOF 136. The ACT exam uses its own college-readiness benchmarks. (Ex. 6322, Moak Report, at 9.) Using a broad-based sample of first-year students over a wide range of higher education institutions, ACT links student performance in college courses to their high school ACT scores. (Ex. 1161, Kallison College Readiness Report, at 10.) Using this methodology, ACT determines a benchmark score that represents the minimum score needed on an ACT subject-area test to indicate a 50% chance of obtaining a B or higher, or about a 75% chance of obtaining a C or higher in the corresponding credit-bearing college course. (Ex. 6322, Moak Report, at 9; Ex. 1161, Kallison College Readiness Report, at 10; RR21:40-41.) Data on the percent of students meeting the college-readiness benchmarks in all four subjects show that Texas was below the national average in all years except 2010, when Texas had the same percentage as the national average. (RR21:40-41 (referencing Ex. 5396 at 13).) Only 24% of Texas ACT test takers met the college-readiness benchmarks in all four subject areas in 2011. (Ex. 1161, Kallison College Readiness Report, at 10, 13.)

FOF 137. Dr. Linda Roska, Director of the Division of Research and Analysis for the TEA, testified that Texas average scores across all public and non-public school students taking the SAT continue to decline. (1/14 Tr. at 114-15.) Texas students averaged a combined score of 999 on the math and critical reading portions of the exam in 2007. (1/14 Tr. at 114-15 (referencing Ex. 11300 at 8).) That average dropped to 973 in 2012. (1/14 Tr. at 114-15 (referencing Ex. 11300 at 8).) Texas students averaged 482 on the writing portion of the SAT in 2007 but averaged only 461 in 2012. (1/14 Tr. at 114-15 (referencing Ex. 11300 at 8).) The gap between Texas students and students nationwide has grown during this same time period. In 2007, Texas students were averaging ten points less on critical reading, eight points less on math, and twelve points less on writing than the national average. (1/14 Tr. at 188-89 (referencing Ex. 11300 at 8).) These gaps grew to twenty-two points on critical reading, fifteen points on math, and twenty-seven points on writing in 2012. (1/14 Tr. at 188-89 (referencing Ex. 11300 at 8).) Dr. Roska did not include the average scores for just Texas public schools students in her direct examination presentation, which are even more disconcerting. Texas public school students averaged a combined score of only 966 on critical reading and math in 2012 – thirty points less than the national average for public school students that same year. (1/14 Tr. at 185-86 (referencing Ex. 5687 at 41).) Texas public school students averaged 456 on the writing portion of the SAT in 2012 – twenty-five points less than the national average. (Ex. 5687 at 41.)

FOF 138. From 2006 to 2012, Texas graduates' combined scores on the reading and mathematics sections of the SAT and ACT have remained flat at best and in some instances have declined. (RR21:17, 34; Ex. 5396 at 11; Ex. 11300 at 8-9.) Dr. Roska discussed the increasing participation rates for both the SAT and ACT during her direct examination and suggested that the increased participation rates may help explain this decline in test scores. (1/14 Tr. at 116.) Participation rates among public school graduates did not increase significantly, however, during the 2006-10 period that Dr. Kallison examined. (Ex. 1161, Kallison College Readiness Report, at 8.) Dr. Roska also agreed that even if participation rates were increasing, the relationship between participation and performance begins to stabilize when participation reaches between 40 and 60% of the

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total. (1/14 Tr. at 182-83.) Texas, according to Dr. Roska, saw a 62% participation rate for the SAT in 2012 and a 39% participation rate for the ACT for 2012. (Ex. 11300 at 3, 6.) Dr. Kallison expressed the opinion, which the Court finds to be credible, that if Texas students were improving in college readiness, they would have shown positive movement on the SAT and ACT exams. (RR21:35.) This did not happen.

iii. Other college-readiness measures also show that Texas students are not graduating prepared to succeed in college without remediation.

FOF 139. Several additional measures that purport to assess college readiness are Texas Success Initiative ("TSI") test results, "College-Ready Graduates," and the Texas Success Initiative Higher Education Readiness Component ("TSI-HERC"). (Ex. 1161, Kallison College Readiness Report, at 4-5.) Each of these measures relies to some extent on TAKS scores. (*Id.*; RR21:24, 26-27.) TSI test results reflect the number of first-year students matriculating at Texas public colleges or universities who either pass one of four TSI exams or are exempt from the exams by satisfying the College-Ready Graduates standard. (Ex. 1161, Kallison College-Readiness Report, at 4-5.) The College-Ready Graduates standard is met when a student meets state benchmarks for either (1) the exit-level TAKS, (2) the ACT, or (3) the SAT. (*Id.*; RR21:22-23.) The TSI-HERC is encompassed within the College-Ready Graduates measure and reflects those students who meet state benchmarks on the TAKS exam. (RR21:22.)

FOF 140. These metrics provide a more favorable picture of college readiness than STAAR, SAT, or ACT results. But substantial evidence casts doubt on the TAKS as a reliable measure of college readiness. (Ex. 1161, Kallison College Readiness Report, at 12-13.)

FOF 141. First, TAKS is being replaced by STAAR largely due to the limitations of TAKS as an evaluation tool. (*Id.* at 13; Ex. 3188, Baker Report, at 59.) Second, TAKS was implemented before the addition of the college and career readiness standards to the state curriculum. (Ex. 5624, Zyskowski Dep., at 54.) The STAAR EOC exams, by contrast, are intended to fully assess the TEKS that now include these standards. (*Id.*) The STAAR exams are intended to more accurately measure whether students are learning the required curriculum. (*Id.* at 35.) Third, STAAR, unlike TAKS, has been empirically linked to other external measures of college readiness. (*Id.* at 46, 70.) Finally, the testimony is uniformly in agreement that the STAAR exams are better than TAKS at measuring the growth of high performing students. (*Id.* at 36-37.)

FOF 142. Even if TAKS were deemed a reliable measure of college readiness, student performance on TAKS-based college-readiness indicators is still unacceptably low. (Ex. 1161, Kallison College Readiness Report, at 5-6, 10, 13; RR21:48-49 (referencing Ex. 5396 at 9), 19-20 (referencing Ex. 5396 at 10), 27-32 (referencing Ex. 5396 at 12).) For example, in 2010, only two-thirds of students entering Texas public colleges or universities either passed one of the four TSI exams or were exempt from taking the exams in all content areas. (Ex. 1161, Kallison College Readiness Report, at 5, 10; RR21:35-36 (referencing Ex. 5396 at 12).) The tens of thousands of students who do not meet the TSI standards are required by law to participate in remediation before they can take a college credit

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course in English or mathematics. (RR21:36-38.) By definition, these students are not college ready. *See* TEX. EDUC. CODE § 39.024(a).

b. Texas is not making the necessary forward progress.

FOF 143. When *WOC II* was decided in 2005, the Texas Supreme Court observed that "undisputed evidence is that standardized test scores have steadily improved over time, even while tests and curriculum have been made more difficult. By all admission, NAEP scores . . . show that public education in Texas has improved relative to the other states." *WOC II*, 176 S.W.3d at 789. This is no longer the case.

i. Student performance on NAEP has not shown significant or consistent gains since 2005.

FOF 144. The Court has been presented with evidence of National Assessment of Educational Progress ("NAEP") scores for Texas in four separate categories: (1) reading at grade four; (2) math at grade four; (3) reading at grade eight; and (4) math at grade eight. Since 2005, Texas's scores on NAEP have remained relatively flat in three of the four categories tested. (RR26:160-61, 164-72 (referencing Ex. 5678 at 11-14); Ex. 5460 at 1.)

FOF 145. On the grade four math test, Texas had made continual progress until 2005. (RR26:164-65 (referencing Ex. 5678 at 11); Ex. 5460 at 1.) But since 2005, Texas's scores on fourth grade math have essentially remained flat. (RR26:165 (referencing Ex. 5678 at 11); Ex. 5460 at 1.) The percentage of students achieving the proficient score on this test has also remained flat since 2005. (RR26:65-66 (referencing Ex. 5678 at 11); Ex. 5460 at 1.)

FOF 146. Similarly, on the fourth grade reading test, scores have remained stagnant since 2005, including at the proficient standard. (RR26:167-68 (referencing Ex. 5678 at 13); Ex. 5460 at 1.)

FOF 147. On eighth grade reading, Texas's scores have essentially remained flat since 2005, although the nation's scores on this exam have increased somewhat during this same time. (RR26:170-71 (referencing Ex. 5678 at 14); Ex. 5460 at 1.)

FOF 148. Since 2005, Texas has improved against the national average only on the eighth grade math test. (RR26:166-67 (referencing Ex. 5678 at 12); Ex. 5460 at 1.) On the other three tests, Texas's scores since 2005 have held close to or fallen slightly below the national average. (RR26:164-68, 170-72 (referencing Ex. 5678 at 11, 13-14); Ex. 5460 at 1.)

FOF 149. In addition, significant gaps remain between Black and White students, Hispanic and White students, and students who are eligible for free and reduced price meals and those who are not. (RR26:172-77 (referencing Ex. 5678 at 15-18).) On the fourth grade reading test, the gap has increased since 2005 between Hispanic and White students and between students who are eligible for free lunch and those who are not. (RR26:177 (referencing Ex. 5678 at 17).) Across the remaining tests and demographic groups, the gap between demographic groups has closed minimally since 2005 in comparison to the size of the gap that still remains. (RR26:172-77 (referencing Ex. 5678 at 15-18).)

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ii. While student performance initially improved on TAKS, it has leveled off.

FOF 150. Texas students improved their performance in the early years of the administration of the TAKS exams. Between 2003, which was the first year of administration, and 2007, the percentage of students meeting the passing standard on all tests taken increased by twenty-three points. (Ex. 6322, Moak Report, at 21.) Between 2007 (the first assessment data available after the Legislature's response to the Supreme Court decision in *West Orange-Cove*) and 2011 (the last year that all grade levels were tested with TAKS), the percentage of students passing all tests grew by only seven points, less than two points per year. (*Id.*)

FOF 151. With respect to the percentage of students reaching the commended performance standard, score gains were less significant. Although the percentage of students reaching the commended performance standard on all tests tripled between 2003 and 2008, the percentage achieving "commended" grew by only one additional point in the final three years of test administration. (*Id.*)

FOF 152. In 2011-12, the State administered the new STAAR testing program for students enrolled in grades three through nine, but Texas public school tenth and eleventh graders continued to take TAKS since it remains the examination that these students must pass to graduate. (*Id.*) At the tenth grade level, performance was relatively flat between 2011 and 2012. (*Id.*)

FOF 153. As with STAAR, significant performance gaps existed under TAKS between economically disadvantaged versus non-economically disadvantaged students, and ELL students compared with their peers. (*See infra* Parts I.B.5.c and I.B.5.d.)

(a) Flat NAEP scores call into question the extent of any progress under TAKS.

FOF 154. TAKS and NAEP were both administered in Texas between 2003 and 2011 to monitor math and reading skills of fourth and eighth graders. (Ex. 5430, Klein Report, at 1.) Two comparisons of TAKS scores to NAEP scores demonstrate that improvements on TAKS during this timeframe do not reliably show student progress. The first comparison was conducted by Dr. Stephen Klein, and the second by the National Center for Education Statistics ("NCES").

FOF 155. To compare TAKS and NAEP scores, Dr. Klein calculated "effect sizes," which are a recognized way of putting scores from different scales on a common metric. (*Id.* at 2-3.) Dr. Klein's effect sizes calculated the difference between mean scores at two points in time (or between two groups) divided by the standard deviation of the scores among all students at time one. (*Id.* at 3.) He then compared effect sizes on NAEP and TAKS for all Texas students who took the exams, and for racial/ethnic sub-groups, to evaluate how student performance compared on the two exams from 2005 to 2011. (*Id.* at 3-7.)

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FOF 156. In comparing effect sizes on NAEP and TAKS for all Texas students, Dr. Klein observed little or no gains in effect sizes on NAEP, but large gains on TAKS from 2005 to 2011. (*Id.* at 3-5.) For example, the gain in effect size in reading between 2005 and 2011 was 0.06 on NAEP but 0.73 on TAKS, which is a twelve-fold difference between exams. (*Id.* at 3.)

FOF 157. The gaps in mean scores between racial/ethnic groups were generally larger on NAEP than they were on TAKS. (*Id.* at 7.) The gaps also were generally larger between Whites and Blacks than they were between Whites and Hispanics. (*Id.*) They also were usually larger on reading than on math. (*Id.*)

FOF 158. From this data, Dr. Klein concluded that the improvements in TAKS math and reading scores between 2003 and 2011 do not generalize to NAEP. (*Id.* at 10.) His findings indicate that the gains on TAKS over the past decade should not be relied upon to reflect exactly how much improvement has actually occurred in the underlying and much broader range of knowledge and skills that standardized tests such as NAEP, TAKS, and STAAR are intended to measure. (*Id.*) The Court finds Dr. Klein's methodology and analysis on these points to be credible.

FOF 159. The Court also finds the NCES mapping standards reports to be instructive in evaluating TAKS scores. The NCES biennially produces mapping standards reports in which they use school level data on schools that participated in NAEP to equate the percentages of children within those schools who scored proficient on state assessments with scores on NAEP. (Ex. 5597.) The study also identifies the NAEP scale score that statistically aligns with "proficient" cut scores on state assessments. (Ex. 3188, Baker Report, at 57; *see also* Ex. 5597 at 5-6.) Further, because the data are re-evaluated every two years, NCES can determine which states have lowered or raised standards over a two-year period, relative to NAEP and relative to other states. (Ex. 3188, Baker Report, at 57; *see also* Ex. 5597 at 5.)

FOF 160. On average, the mapping standards reports find that proficiency standards on Texas's exam, the TAKS, are relatively low among states for fourth grade reading and math assessments, and very low for eighth grade assessments. (Ex. 3188, Baker Report, at 57; *see also* Ex. 5597 at 10-13.) On each test, Texas falls below average and below the NAEP equivalent for "basic" performance. On eighth grade reading, Texas's proficiency standards are in last place. (Ex. 3188, Baker Report, at 57; Ex. 5597 at 10-13.)

FOF 161. From 2005 to 2009, Texas standards (as measured by cut scores on assessments) stay relatively constant for fourth grade assessments – staying low among states and below basic on NAEP. (Ex. 3188, Baker Report, at 57-58; *see also* Ex. 5597 at 10, 12, 36-37.) However, at the eighth grade level, Texas standards appear to have drifted downward in rigor during the same time period. (Ex. 3188, Baker Report, at 58.) Both the reading and math assessment proficiency cut scores were associated with much lower NAEP scores in 2009 than in previous years. (*Id.*; *see also* Ex. 5597 at 36-37.) Again, Texas was at the bottom of states on the eighth grade reading proficiency cut score in 2009, while it had been somewhat higher in previous years. (Ex. 3188, Baker Report, at 58; *see also* Ex. 5597 at 36.)

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(b) The data do not reliably demonstrate forward progress from 2011 to 2012.

FOF 162. Federal law requires states to evaluate if districts are making adequate yearly progress or "AYP," based on whether a certain percentage of students (which increases each year) have passed the state's standardized assessments. (12/11 Tr. at 55-56.) The State undertook a "bridging analysis" to compare 2011 performance on TAKS to 2012 performance in grades three through eight on STAAR. (Ex. 1117; 12/11 Tr. at 56.) The study was designed and carried out by Pearson, the state's testing contractor. (12/11 Tr. at 45-46.) The state's conclusion – that performance modestly improved from 2011 to 2012 – is, by the admission of the State's witness, not supported by the strictly empirical data the study generated. (12/11 Tr. at 79, 83-85; Ex. 60.)

FOF 163. To determine what score on STAAR was comparable to the passing score on TAKS, the bridging study used two approaches: an "empirical" analysis and an "impact" analysis. (12/11 Tr. at 57.) The empirical approach involved embedding STAAR field test items in 2011 TAKS assessments and then using those same questions on the actual 2012 STAAR assessments. (12/11 Tr. at 65-66.) By comparing student performance on the same reference set of embedded STAAR questions in 2011 and 2012, Texas was then able to compare 2011 performance on TAKS to 2012 performance on STAAR. (12/11 Tr. at 54-55.) This analysis allows for the possibility that the 2011 students might be more or less prepared or proficient than the 2012 students.

FOF 164. This empirical methodology showed declines in performance for most tests and grade levels in 2012 compared to 2011. (Ex. 60; 12/11 Tr. at 79, 83-85.)

FOF 165. In the impact analysis, the bridging study identified the score point on the 2012 STAAR exams that would pass the same percentage of 2012 STAAR test takers as passed the corresponding 2011 TAKS tests. (12/11 Tr. at 67.) This "bridging" method therefore assumes implicitly that statewide performance on TAKS would have remained constant from 2011 to 2012. (12/11 Tr. at 73.) By its very nature, this method cannot be used to determine if the 2012 students performed better or worse than the 2011 students. (12/11 Tr. at 74-75.) As Pearson representative Dr. Laurie Davis acknowledged, the impact method will inevitably result in a showing that the passing percentage either would have remained constant or increased from 2011 to 2012. (12/11 Tr. at 73.) This is true even if students in 2012 are less prepared or academically capable than in the previous year. (12/11 Tr. at 70-71.)

FOF 166. To obtain the final raw score on the 2012 STAAR exams that corresponded to the previous passing standard on 2011 TAKS, the bridging study identified, for each separate exam, the "midpoint" between the raw score generated by the empirical studies and that suggested by the impact method. (12/11 Tr. at 57-58, 64 (referencing Ex. 60).) When the midpoint was a non-integer, the final raw score was obtained by uniformly rounding down, rather than up, to the nearest integer, thus producing a lower raw score, which in turn yielded a higher passing percentage for 2012 test-takers. (12/11 Tr. at 57-58, 64.)

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FOF 167. Using this method to "average out" the results of the empirical studies and to round systematically to the lower raw score yields, on the whole, higher passing percentages for 2012 than would have resulted from the use of the empirical data alone. (12/11 Tr. at 59-61 (referencing Ex. 60).)

FOF 168. Regardless of whether the impact method was appropriate for use in the AYP study, the State's witness, Dr. Davis, acknowledged that the impact method cannot be used to measure statewide progress. (12/11 Tr. at 71-75.) Because the bridging study in most grades simply reflected the impact analysis (*see* Ex. 60 at 1), this calls into question any effort to use the bridging study itself to demonstrate statewide progress from 2010-11 to 2011-12.

FOF 169. Dr. Davis confirmed that the results of the bridging analysis would have been less positive if the State had not used the impact method. (12/11 Tr. at 59-61.) In fact, the empirical analysis alone would have shown a decline in student performance from 2011 to 2012 in each of grades three through eight in math, and in grades five, six, and eight in reading (with grades three and seven reading showing a positive change and grade four reading showing no change). (12/11 Tr. at 81-84; Ex. 60.) While the differences are often slight, and while uncertainties are also inherent in the empirical methodology, the Court finds that on the whole, the bridge study cannot be relied upon to demonstrate positive academic progress in Texas third to eighth graders from 2010-11 to 2011-12.

iii. The State's evidence does not show students making forward progress.

FOF 170. The State's expert, Dr. Grover Whitehurst, compared Texas's performance on various indicators to that of other states. Specifically, he looked at Texas's performance on the NAEP, its high school graduation rate, and its Advanced Placement ("AP") participation rate. The Court finds that Dr. Whitehurst's opinions on these subjects do not shed light on Texas students' progress toward college and career readiness.

FOF 171. Dr. Whitehurst acknowledges that none of the three measures he considers are specific indicators of college readiness. (RR26:145-46.)

FOF 172. Dr. Whitehurst focused on NAEP scores in four separate categories: (1) reading at grade four; (2) math at grade four; (3) reading at grade eight; and (4) math at grade eight. Instead of comparing performance in each individual category, Dr. Whitehurst averaged the scores on the four tests. (RR26:36-37, 160-61.) This average shows that Texas is ranked only twenty-ninth on NAEP performance in the four areas. (RR26:37.) Dr. Whitehurst specifically did not analyze Texas's performance on NAEP relative to other states in any year other than 2011, and he did not consider how Texas's relative performance among the states may have changed over time. (RR26:160.) Since 2005, Texas scores have improved against the national average only on the eighth grade math test. (RR26:172.) On each of the three other tests, Texas has consistently scored close to or below the national average and has fallen relative to the national average. (RR26:172 (referencing Ex. 5678 at 11-14).)

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FOF 173. The State contends that Texas does better on national comparisons of NAEP scores when scores are disaggregated by racial group. While such disaggregation does appear to improve Texas's relative standing among states (but note the reservations in FOF 176 related to exclusion rates), no evidence has been presented to the Court that the scores any racial group have improved in comparison to the national average for such groups since the 2003-05 time period.

FOF 174. Dr. Whitehurst also testified about the total gains by various subgroups in Texas since 2005, but the data demonstrate that the gains are small compared to the gaps that still remain between these groups. (RR26:175-77.) On the fourth grade reading tests, the gap has actually increased between white and Hispanic students and between economically disadvantaged and non-economically disadvantaged students. (RR26:177.)

FOF 175. Perhaps most significantly, the Court notes Texas does not set lower standards for students because of their race, poverty status, or ELL status. Texas aims for each of these students to be college and career ready, without respect to how poorly or well students in a similar demographic group perform in other states.

FOF 176. A final factor that calls into question the reliability of Dr. Whitehurst's cross-state comparisons is the issue of the differing rates at which students are excluded from NAEP testing in different states. States and school districts can exclude students from the small sample of NAEP test takers if those students have learning disabilities or are ELL. (RR26:189, 200-01 (referencing Ex. 5678 at 19-22).) The exclusion issue presents a two-fold problem. First, states are inconsistent in how they classify learning disabled and ELL students. (RR26:189-90.) Second, states and school districts are inconsistent in the rate at which they exclude these identified students from taking NAEP exams. (RR26:190-91.) On each of the four tests, in the year 2011, Texas's exclusion rate ranked among the highest in the nation. (RR26:191-92.) The National Assessment Governing Board has released a statement about the exclusion problem, stating that the difference in exclusion rates "may jeopardize the fairness and validity of state comparisons and other NAEP data trends." (RR26:197-98; Ex. 5678 at 23.) Dr. Whitehurst's analysis did not adjust or account for the possibility that Texas's relative rankings are affected by its consistently high exclusion rates. (RR26:191.) The record is bereft of what influence the widely varying exclusion rates may have in the relative performance of states on NAEP, whether disaggregated by racial group or not. (RR26:189-98.)

FOF 177. Finally, Dr. Whitehurst's analysis of NAEP scores, by its nature, does not address performance by ninth through twelfth graders (or students in any grades other than four and eight) or student performance since the 2011 budget cuts. (RR26:161-62.) For each of these reasons, the Court finds that Dr. Whitehurst's analysis of NAEP data, on the whole, does not provide a reliable or convincing demonstration either of forward progress or of high educational attainment by Texas students as a whole.

FOF 178. In addition to his testimony concerning NAEP, Dr. Whitehurst provided two differing opinions about Texas's graduation rates. Relying on data from the National Center for Education Statistics, Dr. Whitehurst observed in his expert report, and testified in his

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deposition, that one in four Texas students fail to graduate from high school. (RR26:152, 159-60.) These rates have been the trend for a number of years and place Texas at the national average. (RR26:152, 159-60.) At trial, however, he noted that, based on data recently released by a different division in the U.S. Department of Education, Texas has a graduation rate of 86%. (RR26:155.)

FOF 179. Dr. Whitehurst candidly acknowledged to the Court that, "I'm not sure which numbers to believe." (RR26:157.) He further testified that both measures have "obvious flaws" and "I think we need to know more before we place large scale bets on particular graduation rates generated either by the new method and we knew the previous method had estimation problems." (RR26:158-59.) The Court similarly cannot determine which – if either – measure is reliable, and is therefore unable to reliably compare Texas's graduation rates to those of other states.

FOF 180. Regardless of these flaws, the Court concurs with Dr. Whitehurst's admission that Texas's graduation rates, as reflected in the NCES data, are "a disaster" and should be a focus of state policy. (RR26:160.) He aptly observed, "When students drop out of high school, their lives are literally at risk, because [of] their inability to get gainful employment. So it's a big problem." (*Id.*)

FOF 181. Dr. Whitehurst's final measure of student progress is AP participation rate. This measure does not reflect how students actually perform on the exam, but only the number of students who participate. (RR26:146.) Some states require students to take the AP exams. (RR26:147.) As a result, if AP participation rates were used to gauge college readiness, states could immediately jump to the top of the college readiness ranking simply by requiring students to participate in the exams. (*Id.*) Notably, from 2007 to 2011, the percentage of Texas AP test takers earning a score of three or more (the score needed to qualify for college credit) declined from 47% to 45%. (Ex. 6322, Moak Report, at 11.) Only Florida ranked lower than Texas among the ten largest states in this regard. (*Id.*)

c. Substantial gaps in performance exist between economically disadvantaged students and the rest of the student population.

FOF 182. Student performance data on STAAR, TAKS, and other measures reveal wide gaps between economically disadvantaged and non-economically disadvantaged students. The Court is persuaded that these gaps will not be closed, much less narrowed, without adequate funding for economically disadvantaged students. (*See* RR18:151-53; RR4:122-23; Ex. 4000, Cortez Report, at 24-25; RR22:143-44.)

FOF 183. **STAAR.** Low-income students' scores on the STAAR exams have lagged far behind those of non-low-income students for all grade levels and on all exam administrations for which data is currently available. (Ex. 6322, Moak Report, at 29-30; Ex. 6324, Moak Supp. Report One, at 4; Ex. 6519 at 1.) On the Spring 2012 exams, less than one-third of economically disadvantaged students were able to reach the Level II final standard on any single subject in the assessments traditionally associated with ninth grade students. (Ex. 6322, Moak Report, at 29.) On only one exam did more than 5% of economically

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disadvantaged students manage to reach the college-ready standard (9% achieved that mark on Algebra I). (*Id.*) The gaps between economically disadvantaged and non-economically disadvantaged students are especially large at the Level III standard. (*Id.*) For most subjects, the percentage of economically disadvantaged students reaching Level III was less than half the percentage of non-economically disadvantaged students. (*See id.* at 29 and Figure 34.)

FOF 184. Even at the Level II phase-in standard, economically disadvantaged students performed significantly worse than their non-economically disadvantaged peers on the Spring 2012 STAAR EOCs. In English I Reading, only 58% of low-income students achieved the Level II phase-in standard, while 81% of non-low-income students reached this level. (Ex. 4114.) In English I Writing, 42% of low-income students reached the Level II phase-in standard, compared to 70% of non-low-income students. (*Id.*) In Algebra I, 77% of low-income students met the Level II phase-in standard, compared to 90% of non-low-income students (a gap of 13%). (Ex. 4131.) In Algebra II, 57% of low-income students passed, compared to 72% of non-low-income students. (*Id.*)

FOF 185. Low-income students also lagged far behind their non-low-income peers at the district level. (*See, e.g.*, Ex. 4237 at 17 (in Edgewood ISD, 40% of low-income students compared to 47% of all district students passed at the Level II phase-in in English I Reading, and 50% of low-income students passed English I Writing, compared to 58% of all students); Ex. 3221 (in Everman ISD, 51% of low-income students passed at the Level II phase-in in English I Reading, compared to 63% of non-low-income students passed, and in English I Writing, 35% of low-income students passed at the Level II phase-in, while 43% of non-low-income students passed); *see also infra* Part I.B.10.)

FOF 186. **<u>TAKS met standard</u>.** The "all tests" indicator in the State's AEIS reports allows the Court to determine how students are performing in all subjects tested on TAKS at each grade level. (*See, e.g.*, Ex. 3207, Salazar Dep., at 100.) As noted above, TAKS is being phased out and replaced by STAAR. Nevertheless, the final results on TAKS do not show a system in which economically disadvantaged students have "topped out"; rather, it evidences the unmet educational needs of the economically disadvantaged population. After eight years of testing under TAKS, economically disadvantaged students passed at significantly lower percentages than their peers. (*See, e.g.*, Ex. 4232 at 7-8; RR18:66-70; Ex. 4227 at 8-9; Ex. 4237 at 12-14; Ex. 4237 at 17-20; RR22:131-34.) These gaps between economically disadvantaged and non-economically disadvantaged students remain stark and generally have not declined over the last three years of TAKS testing. (*See generally* Ex. 20.) By the last full year of TAKS implementation, an eighteen-point gap remained between economically disadvantaged and non-economically disadvantaged students' TAKS passing rates across all tests for grades three through eleven. (*See* Ex. 6322, Moak Report, at 22.)

FOF 187. These gaps can be found, not only in the statewide average data, but also across all of the plaintiff districts – both property-wealthy and property-poor. Whereas 86% of non-economically disadvantaged students in all grades statewide reached the TAKS met standard on all tests in 2010-11 (*Id.* at 23), significantly lower percentages of economically disadvantaged students from each of the plaintiff school districts met the

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same standard. (*See, e.g.*, Ex. 4237 at 12 (59% of low-income students in Edgewood ISD failed to meet the standard); Ex. 4239 at 7 (68% for Harlingen CISD); Ex. 4232 at 7 (47% in La Feria ISD); Ex. 206 at Sec. II, p. 1; Sec. I, p. 4 (66% for Everman ISD); Ex. 451 at Sec. II, p. 1; Sec. I, p. 3 (68% for Quinlan ISD); Ex. 512 at Sec. II, p. 1; Sec. I, p. 4 (23% for Los Fresnos CISD); Ex. 252 at Sec. II, p. 1; Sec. I, p. 4 (66% for Pflugerville ISD); Ex. 1047 at Sec. II, p. 1; Sec. I, p. 3. (70% for Brownwood ISD); Ex. 474, at Sec. II, p. 1; Sec. I, p. 4 (74% for Humble ISD); Ex. 667 at Sec. II, p. 1; Sec. I, p. 3; Sec. 1, p. 4 (69% for Fort Bend ISD); Ex. 543 at Sec. II, p. 1; Sec. I, p. 3 (68% for Abilene ISD); Ex. 1723 at Sec. II, p. 1; Sec. I, p. 4 (65% for Austin ISD); Ex. 924-S at Sec. II, p. 1; Sec. I, p. 4 (71% for Amarillo ISD); Ex.1767 at Sec. II, p. 1; Sec. I, p. 4 (74% for Northside ISD); Ex. 925-W at Sec. II; Sec. I (80% for Richardson ISD); Ex. 717, at Sec. II, p. 1; Sec. I, p. 3 (74% for Calhoun County ISD).)

FOF 188. **TAKS commended standard.** At the TAKS commended level, the gap on all tests for all grades has only grown, from five points in 2003 to fourteen points in 2011. (Ex. 6322, Moak Report, at 23.) Very low percentages of economically disadvantaged students were able to pass all TAKS tests at the commended performance level in 2010-11: 6% in grade seven, 7% in grades eight and nine, 2% in grade ten, and 4% in grade eleven. (Ex. 4001 at 51-55.) In 2010-11, only 9% of low-income students at all grades tested were able to pass all tests at the commended performance standard, while 16% of all students passed all tests at the commended performance level. (Ex. 20.)

FOF 189. At the tenth grade level in 2011 and 2012, an economically disadvantaged student reached the commended standard, on average, only about one-fourth as often as his or her non-economically disadvantaged counterpart. (*See* Ex. 6322, Moak Report, at 22 and Figure 23.) At the eleventh grade level, economically disadvantaged students reached the commended standard less than one-third as often as non-economically disadvantaged students in both 2011 and 2012. (*Id.*)

FOF 190. **AEIS Indicators.** College-Ready Graduate rates (described in Part I.B.5.a.iii.) for economically disadvantaged students are also dismal. In 2010-11, only 32% of economically disadvantaged eleventh graders reached the College-Ready Graduates standard in both subjects (English Language Arts and Mathematics). At the same time, 62% of all students met the standard in grade eleven in both subjects. (Ex. 1086, Pompa Report, at 13.)

FOF 191. In 2010-11, 38% of economically disadvantaged students met the College-Ready Graduates standard in both subjects. At the same time, 52% of all students met the College-Ready Graduates standard in grade twelve in both subjects. (*Id.*)

FOF 192. In each of the Plaintiff districts, very few low-income students met the College-Ready Graduates standard in both subjects – sometimes as low as one-fourth, and in nearly all cases, less than one half. (*See, e.g.*, Ex. 828; Ex. 1738; Ex. 940; Ex. 805; Ex. 589 (31% in Edgewood ISD, 36% in Harlingen CISD, 33% in La Feria ISD, 34% in San Benito CISD, 43% in McAllen ISD); Ex. 206 at Sec. I, p. 10 (34% in Everman ISD); Ex. 400 at Sec. I, p. 11 (41% in Alief ISD); Ex. 451 at Sec. I, p. 10 (26% in Quinlan ISD); Ex. 512 at Sec. I, p. 10 (44% in Los Fresnos CISD); Ex. 717 at Sec. I, p. 8 (37% in Calhoun

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County ISD); Ex. 543, at Sec. I, p. 10 (43% in Abilene ISD); Ex. 924-S at Sec. I, p. 11 (30% in Amarillo ISD); Ex. 474 at Sec. I, p. 11 (30% in Humble ISD); Ex. 1723 at Sec. I, p. 11 (33% in Austin ISD); *see also infra* FOF 747, FOF 759, FOF 772, FOF 798, FOF 806, FOF 817, FOF 830, FOF 872, FOF 882, FOF 954.)

FOF 193. Economically disadvantaged students fared just as poorly on other college-readiness indicators. For example, although 22.7% of all students in 2010 were tested in the AP/IB program, there were so few low-income students in AP/IB that the state report for low-income students was "n/a." (Ex. 10796 at Sec. I, p. 12.)

FOF 194. **Dropout data.** For the Class of 2010, low-income students had a 7.8% four-year dropout rate and an 81.9% graduation rate. (Ex. 20 at Sec. I, p. 11.) The Class of 2010 dropout rate for White students was 3.5% and their graduation rate was 91.6%. (*Id.*)

d. Substantial gaps in performance exist between ELL students and the rest of the student population.

FOF 195. ELL student performance falls far behind acceptance standards, as measured by Texas's assessment of ELL language proficiency, and in comparison to performance rates by non-ELLs. On every metric from STAAR results, to TAKS results, to various AEIS indicators, and student retention and dropout rates, ELL students lag far behind all students and non-ELL students. (Ex. 1085, Pompa Report, at 3.) The Court is persuaded that these gaps could be closed with adequate funding for quality bilingual and ESL programs, which currently is lacking. (*See infra* Part I.B.6.b.ii.)

FOF 196. **TELPAS results.** Texas has adopted the Texas English Language Proficiency Assessment System ("TELPAS") as its measure of the English proficiency of its ELL students. (Ex. 1104, Izquierdo Report, at 13-14.) TELPAS scores are reported at the beginning, intermediate, advanced and advanced high levels. It is the State's goal and expectation that ELL students will advance at least one level for each year of bilingual or ESL instruction. (*Id.* at 13; 1/14 Tr. at 100-01.) Only at the advanced high level are students presumed to be able to pass TAKS standards, although advanced high level students may still need additional interventions to pass TAKS. (Ex. 4054 at 28; Ex. 4224-T, Givens Dep., at 148-50.)

FOF 197. TELPAS is aligned with the old met standard on TAKS. TELPAS is not aligned with either the commended TAKS standard or the new, higher STAAR standards. (1/14 Tr. at 79; Ex. 4224-T, Givens Dep., at 142.)

FOF 198. TELPAS results are reported by the number of years ELL students at each grade have been in U.S. schools, beginning with year-one "immigrants" up to ELL students who have been in U.S. schools for six or more years. (Ex. 4180 at 27, 29.) The use of the term "immigrants" in the TELPAS report, however, is misleading because TEA does not collect data on the immigration status of students. (1/14 Tr. at 61-62.) Furthermore, TEA does not include the grade "kindergarten" or "pre-K" under its calculations of years in U.S. schools. Consequently, the TELPAS reports likely undercount students in each

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category, and the scores identified below therefore under-represent the actual number of students in each category of students identified by years in U.S. schools. (1/14 Tr. at 61.)

FOF 199. According to the Spring 2012 TELPAS Statewide Summary Report for all ELL students grades three through twelve, 49% had not reached the advanced high level of English proficiency at which they might be able to pass the TAKS met standard at their grade level. (Ex. 4180 at 30.) Between 65-73% of ELL students in grades nine through twelve were not at the advanced high level of proficiency in writing, which is particularly concerning given the new STAAR tests' emphasis on writing at the secondary level. (*Id.* at 19, 21, 23, 29.)

FOF 200. TELPAS measures the English proficiency of "current ELLs," i.e., students who are in the process of becoming proficient in English with the expectation that English proficiency will be attained within four to five years. However, the TELPAS results show that many ELL students are not making progress in learning English. For grades three through twelve, 35%, of ELL students (approximately 64,000) failed to progress even one level in learning English during 2011-12. (*Id.*) The rates of failure to progress were highest at the high school level where between 36-41% of ELL students did not progress even one level in English during the year. (*Id.* at 20, 22, 24, 26.)

FOF 201. The TELPAS data also reveal that while Texas expects ELL students to master English in four to five years, significant numbers of ELL students are still classified as ELL after six or more years in U.S. schools. (Ex. 11010, Ayala Report, at 29.) In 2012, 128,657 ELL students in grades three through twelve had been in U.S. schools for six or more years. These long-term ELL students constitute 30% of all grade three through twelve current ELL students. (Ex. 4180 at 29.)

FOF 202. Progress in learning English lags for these long-term ELLs: 36% in grades three through twelve failed to progress even one level in their English proficiency, with over 40% in grades ten through twelve showing no progress. (Ex. 4180 at 22,24, 26, 30.) Long-term ELLs are at great risk of dropping out and require intensive levels of attention. (RR14:25-26.) While it can be expected that students who are identified as "current ELLs" will not perform as well as other former ELL students who mastered English and exited the bilingual/ESL program, the high number of students who are not making progress in learning English, who are not achieving the advanced high level needed to pass even the less challenging TAKS met standard, and who are still in the bilingual/ESL program after six or more years, all tell a story of an inadequate program that is producing insufficient results. (*See generally* Ex. 4180.)

FOF 203. These results are not attributable to a "new immigrant" population weighing down the scores. Of 422,302 ELL students in grades three through twelve assessed in Listening on TELPAS, only 18,445 or 4% were reported as new immigrants in their first or second semester in U.S. schools. (Ex. 4180 at 19, 21, 23, 25, 29.)

FOF 204. **STAAR.** On the Spring 2012 STAAR EOC assessments, current ELLs lagged far behind non-ELL students. Statewide, ELLs and non-ELLs reached the Level II phase-in standard at the following respective rates: 18% versus 72% in English I Reading, 8%

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versus 59% in English I Writing, 60% versus 84% in Algebra I, and 41% versus 66% in Algebra II. (RR14:29-30 (referencing Ex. 4230 at 8); Ex 1085, Pompa Report, at 3; Exs. 4114 at 1, 4115 at 1, 4131 at 1, 3.) Susie Coultress, the TEA State Director for Bilingual/ESL, Title III and Migrant Education, testified that the performance of ELL students on the 2012 STAAR exam was "dismal" and much lower than what it should be. (1/10 Tr. at 175-76; Ex. 4233-B, Coultress Dep., at 178.)

FOF 205. For ELL students who were eligible to take the STAAR-L assessment, a computer-based linguistically accommodated alternative to the STAAR assessment version taken by other students, the results were even worse. Only 46% of ELLs were able to pass the linguistically accommodated Algebra I exam, and only 39% were able to pass the Algebra II "STAAR-L" exam. In Biology, 58% of ELL students passed while 89% of non-ELL passed. On the Chemistry exam, 28% of ELL and 55% of non-ELLs passed, and in Physics, only 29% of ELLs but 62% of non-ELL students passed. All of these STAAR passing rates are for the current STAAR "phase in" passing rates, rates that will be raised in the next few years. (Ex. 1085, Pompa Report, at 3; Ex. 4132 at 1, 3; Ex. 4134 at 1-3.)

FOF 206. **TAKS met standard.** In 2010-11, only 30% of ELL eighth graders, 34% of ELL ninth graders, 25% of ELL tenth graders, and 27% of ELL eleventh graders reached the TAKS met standard on all tests. (Ex. 1085, Pompa Report, at 3; Ex. 20, at Sec. I, pp. 3-4.)

FOF 207. The gap between ELL students and all students passing all TAKS tests at the met standard in 2010-11 ranged from thirty-nine percentage points in grade eight to forty-seven percentage points in grade eleven. (Ex. 1085, Pompa Report, at 3; Ex. 20, at Section I, 3-4.)

FOF 208. **TAKS commended standard.** In 2010-11, only 7% of ELL students at all grades tested passed all tests at the commended performance standard, compared to 16% of all students who passed the same commended standard. (Ex. 1085, Pompa Report, at 3; Ex. 20.)

FOF 209. **AEIS indicators.** ELL students also showed significant, chronic gaps on various AEIS indicators. In 2009-10, 11.6% of ELL students completed advanced course/dual enrollment classes compared with 26.3% of all students in the state. Although 22.7% of all students in 2010 were tested in the AP/IB program, there were so few ELL students in AP/IB that the state report for ELL students was "n/a." For the Class of 2010, 66% of all students, but only 9% of ELL students, were deemed College-Ready Graduates in English Language Arts under that TAKS-based indicator. In Mathematics, 64% of all students, but only 28% of ELL students, were deemed College-Ready Graduates. For both subjects, 52% of all students but only 5% of ELL students were College-Ready Graduates in the Class of 2010. (RR14:27-28 (referencing Ex. 4230 at 7); Ex. 1085, Pompa Report, at 3; Ex. 20, at Sec. I, pp. 12-13.)

FOF 210. In most of the Plaintiff districts, fewer than 1% of ELL students in the Class of 2010 were considered College-Ready Graduates in both English Language Arts and Mathematics. (*See, e.g.*, RR22:132 (Edgewood ISD); Ex. 512, at Sec. I, p. 10 (Los Fresnos ISD); Ex. 925-W, at Sec. I (Richardson ISD); Ex. 543, at Sec. I, p. 10 (Abilene ISD).) Even in

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those Plaintiff districts where more than 1% of ELL students were considered College-Ready Graduates in both subjects, ELL students fared quite poorly, especially in comparison to their non-ELL counterparts in the district. (*See, e.g.*, Ex. 589 at Sec. I, p. 11 (In McAllen ISD, 11% of ELL Class of 2010 students were deemed College Ready compared with 51% of all students); Ex. 252, at Sec. I, p. 10 (Pflugerville ISD: 8% of ELL students vs. 55% of all students); Ex. 474, at Sec. I, p. 11 (Humble ISD: 10% of ELL students vs. 55% of all students); (Ex. 667, at Sec. I, p. 11) (Fort Bend ISD: 7% of ELL students vs. 65% of all students); Ex. 1723, at Sec. I, p. 11 (Austin ISD, 7% of ELL students vs. 53% of all students).)

FOF 211. **Retention/dropout data.** ELL students are also retained in their grades at higher rates than non-ELLs. For the 2009-10 school year, in elementary school, ELL students were retained at rates higher than non-ELL students (ELL students: 3.4%; non-ELL students: 2.0%). (Ex. 1085, Pompa Report, at 3-4; Ex. 4152 at 40.) Likewise, retention rates of ELL students in secondary school were dramatically higher than retention rates of non-ELL students. (Ex. 1085, Pompa Report, at 3-4; Ex. 4152 at 47.) For the year 2009-10, ELL students in grades 7-12 were retained rates far higher than were non-ELL students (ELL students: 11.5%; non-ELL students: 4.8%). (RR14:30-32 (referencing Ex. 4230 at 9); Ex. 1085, Pompa Report, at 3-4; Ex. 4152 at 47.) There has been little improvement in retention rates for ELL students since 2006-07. (Ex. 4152 at 41.)

FOF 212. For the Class of 2010, ELL students had a 25.6% four-year dropout rate and a 54.8% graduation rate, compared to 7.3%, and 84.3% for all students, respectively.

FOF 213. These data also show little to no progress in closing the gaps between ELL and the all student category. Virtually all of the superintendents who testified in this case, including superintendents of property-wealthy school districts, testified of similar difficulties in closing the achievement gaps between ELL and non-ELL students. However, all unequivocally agreed that ELL students can achieve on par with non-ELL students if provided the necessary resources and opportunities. (RR3:49-50; RR5:175; RR19:141-42, 145, 149; RR22:66-67; 12/5 Tr. at 71; Ex. 5617, Reedy Dep., at 68-69; Ex. 3207, Salazar Dep., at 93, 189; *see also* RR15:113, 116-17, 169.)

FOF 214. **The State Defendants' ELL Performance Testimony.** Ms. Laura Ayala, the former director of ELL assessment, testified for the State Defendants regarding ELL student outcomes on state assessments and how the State tracks ELL student performance. While Ms. Ayala clearly has served TEA ably, she does not have the qualifications to offer opinions about the drivers of ELL student performance, other than to report publicly available data on scores. Ms. Ayala has no formal education in assessments or in bilingual or ESL education. She has not published any peer-reviewed articles on ELL assessments or the performance of ELL students, and had not previously performed an analysis of ELL student performance similar to the one performed in this case. (1/14 Tr. at 56-57.)

FOF 215. This Court also questions the reliability of Ms. Ayala's methodology. She acknowledged errors in the data (for example, the inclusion of students identified as "former ELLs" who, in all likelihood, were never ELLs) and admitted that these errors would impact her

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analysis, although she was unsure to what degree. She also acknowledged the concept of under-identifying ELL students but could not account for the effect that such under-identification would have on her analysis. Ms. Ayala's review of retention rates also did not include the lowest grade levels, where there is significant grade retention, and she admitted that she was not an expert in retention rates. (1/14 Tr. at 68-71, 80-81, 88-89.)

FOF 216. Ms. Ayala looked at TAKS data only in limited subject areas and she did not review dropout rates, graduation rates, college-readiness indicators or the recent STAAR results. Her analysis of ELL performance on TAKS did not control for the number of years students were in the ELL program or the knowledge of the English language that the various students brought with them into school. These factors likely would affect the performance of the former ELL student cohort. (1/14 Tr. at 58, 60-66.)

6. Texas school districts require significant additional funding to ensure that all children have a reasonable and meaningful opportunity to achieve state standards.

a. The evidence shows that money, if spent well, matters.

i. Both the State and the Texas Supreme Court have recognized a relationship between funding and student performance.

FOF 217. The State has previously acknowledged a positive relationship between money and student performance. In the *West Orange-Cove* litigation, the State proffered a cost function study whose authors stated, "[t]here appears to be a fundamental economic relationship among input prices, educational outcomes, and cost in Texas public schools. Other things being equal, the analyses suggest that it costs more to produce higher levels of educational outcomes." (Ex. 5676 at 1.)

FOF 218. In the current litigation, while the State has appeared at times to question the relationship between money and student performance, the State's witnesses have continued to acknowledge that funding is a crucial element in achieving positive student performance. The State's expert, Dr. Michael Podgursky, testified that: (1) resources are required to provide a quality education to students; (2) poverty has a significant impact on learning, and low-income students are more costly to educate; and (3) additional resources may be required as the State increases its expectations for students. (12/12 Tr. at 96-99.) The former Commissioner of Education, Robert Scott, recognized that additional resources will be needed to meet the challenges faced during the implementation of the STAAR/EOC regime. (Ex. 5630, Scott Dep., at 91-92.) In addition, the State's expert, Dr. Whitehurst, testified, "[i]f you want to close gaps, you need to provide services to the children who need those services." (RR26:67.) Logic dictates that resources are necessary to provide services. (*See infra* FOF 227, FOF 357, FOF 361, FOF 375, FOF 384.)

FOF 219. The Texas Supreme Court has also recognized the linkage between money well spent and student performance. *See, e.g.*, *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391,

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393 (Tex. 1989) ("The amount of money spent on a student's education has a real and meaningful impact on the educational opportunity offered that student.") ("*Edgewood I*"); *WOC II*, 176 S.W.3d at 788 ("While the end-product of public education is related to the resources available for its use, the relationship is neither simple nor direct; public education can and often does improve with greater resources, just as it struggles when resources are withheld, but more money does not guarantee better schools or more educated students.").

FOF 220. The Supreme Court's statements comport with common sense and some of the most basic data about the Texas school finance system. Districts with higher revenue per WADA perform better across many different performance measures, including (1) districts' accountability ratings for 2011, (2) the percent of students scoring at the commended level on TAKS reading tests, mathematics tests, and all tests, (3) the percent of students scoring at or above the criterion level set by the TEA on college entrance examinations (ACT/SAT), and (4) the percent of students passing five STAAR exams at the Level II, Phase I standard. (Ex. 6322, Moak Report, at 63; RR6:232-43 (referencing Ex. 6349 at 59).) The table below reflects several of these indicators as examples of this pattern.

	# Districts	# ADA	# WADA	WADA Ratio	Revenue per WADA
District Rating					
Unacceptable	15	35,360	51,067	1.4442	$5,495
Acceptable	271	2,509,239	3,367,847	1.3422	$5,645
Recognized	182	1,582,587	2,050,021	1.2954	$5,801
Exemplary	10	78,823	91,488	1.1607	$6,474
% Commended - Math					
< 20%	97	353,153	500,365	1.4169	$5,596
20% to < 30%	257	2,296,522	3,111,911	1.3551	$5,593
30% to < 40%	83	966,646	1,229,553	1.2720	$5,835
40% and Greater	41	589,687	718,594	1.2186	$6,115
% Satisfactory on 2012 STAAR five tests					
<= 40%	198	1,740,074	2,399,798	1.3791	$5,592
41% to 52%	133	1,023,584	1,361,689	1.3303	$5,693
53% to 64%	102	988,226	1,250,037	1.2649	$5,757
65% and Greater	45	454,125	548,898	1.2087	$6,207
STATE TOTALS	478	4,206,008	5,560,423	1.3220	$5,714

(Ex. 6322, Moak Report, at 63.)

FOF 221. Moreover, a substantial body of credible research – including the use of randomized experiments – confirms the effectiveness of educational strategies such as reduced class sizes, instructional coaches, full-day pre-K, tutoring, summer school, and competitive teacher salaries. (RR17:76-77; Ex. 3188, Baker Report, at 15-19; RR16:15-17; RR23:103-04; *see infra* Parts I.B.6.c-f.) Each of these strategies cost money.

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ii. The State's and Intervenors' expert testimony does not demonstrate that funding does not matter or that funding cuts do not harm student performance.

FOF 222. The State and Intervenors offered "cross-sectional" and "time-series" evidence purporting to question the relationship between funding and student achievement. Cross-sectional evidence examines data from schools or districts at a single point in time. (RR24:31-32; 12/12 Tr. at 104.) Time-series evidence examines data at varying points in time. (RR24:24.) The Court is not persuaded by either category of evidence presented.

FOF 223. **Cross-sectional evidence.** Both the State's expert, Dr. Podgursky, and the Intervenors' expert, Dr. Hanushek, presented numerous charts and graphs purporting to illustrate the absence of a relationship between spending and student performance by comparing districts that use differing amounts of resources in a common time period. (Ex. 1128, Podgursky Supp. Report, at 7-35, 83-178; Ex. 11244 at 2-7; 12/12 Tr. at 104-05; Ex. 1001, Hanushek Report, at 6-14; Ex. 8001, Hanushek Supp. Report, at 26-32.) The Court finds Dr. Podgursky and Dr. Hanushek's analyses to be uninformative regarding whether increased or decreased resources have a causal impact on student performance. Dr. Podgursky acknowledged that he could not determine whether spending has a causal impact on performance based on his analysis. (12/12 Tr. at 122.)

FOF 224. Both Dr. Podgursky's and Dr. Hanushek's analyses fail to account adequately for the complex and multi-faceted variables that impact student performance. Dr. Podgursky acknowledged a whole host of student and school characteristics that impact student learning, such as economic disadvantage, proficiency in English, need for special education services, and racial or ethnic background. (12/12 Tr. at 95-96.) Importantly, he also agreed that the concentration of these characteristics within a school or school district can have a significant impact on student learning. (12/12 Tr. at 96.) Yet Dr. Podgursky's and Dr. Hanushek's plots and graphs each fail to consider any concentration-related variables and do not include or account for any variables other than the straightforward demographic statistics captured in the TEA databases. (12/12 Tr. at 114.) Plaintiffs' witness Dr. Jacob Vigdor credibly explained how this failure can bias both Dr. Podgursky and Dr. Hanushek's statistical analyses. (RR24:34-36.)

FOF 225. Further, all of Dr. Hanushek's analyses and most of Dr. Podgursky's analyses involved only a single year of spending and performance data – commonly referred to as a "snapshot" or "cross section." (12/12 Tr. at 104-05.) Dr. Podgursky agreed that a "value-added" approach (one that considers changes in student test scores and spending over a number of years) is a superior and more reliable way to determine whether there is a causal relationship between resources and outcomes. (12/12 Tr. at 106.) Dr. Podgursky did include some value-added data in his testimony, drawing upon the State's FAST report. Still, even with this additional data, Dr. Podgursky agreed that his analysis cannot answer the question of what effect increases or decreases in spending will have on student performance. (12/12 Tr. at 124.) Dr. Hanushek similarly stated that he would not "push [his analysis] real far." (1/16 Tr. at 150.)

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FOF 226. **Time-series evidence.** Dr. Hanushek also provided charts showing increases in national per student educational expenditures from 1960 to 2009, juxtaposed with relatively flat NAEP scores from 1971-2008, purporting to show that increases in expenditures have not resulted in student performance gains. This Court does not find Dr. Hanushek's evidence persuasive for the following reasons:

a. First, Dr. Hanushek acknowledged that, as a consequence of federal and state legislation, a significant portion of the spending increases related to increase in the costs of special education and the numbers of special education students in the system. (1/16 Tr. at 125-26.) Specifically, Dr. Hanushek's own previous research demonstrated that about one-third of the decline in pupil-teacher ratio and 18% of the spending increases that occurred in the 1980s were attributable to the rise in special education costs. (1/16 Tr. at 176-77.) And while the absence of clear data prevented precise calculations for the 1970s, Dr. Hanushek acknowledged that the growth in special education expenditures in that decade was even larger. (1/16 Tr. at 177.)

b. Second, Dr. Hanushek implicitly assumes that adjustment for inflation is the only correction necessary for changes over time in prices of the resources schools purchase. But he admitted that the price of one of the most important components of education – the cost of college-educated female labor – has risen much faster than the average rate of inflation from 1960 to today because of the decline of gender discrimination and the opening up of opportunities for women in other fields and industries. (RR24:26-27; 1/16 Tr. at 135-39; *see also infra* FOF 349 - FOF 350.)

c. Third, Dr. Hanushek presented NAEP scores only for seventeen-year-olds. (RR24:27-28, 67.) But the NAEP program can only test students who appear in schools. (RR24:27-28, 67; Ex. 5412 at 47-48; Ex. 5400, Vigdor Supp. Report, at 1.) Because of changes in compulsory schooling laws, more seventeen-year-olds – and particularly, more seventeen-year-olds with a limited attachment to school – are tested now relative to a generation ago. (RR24:27-28, 67; Ex. 5412 at 47-48; Ex. 5400, Vigdor Supp. Report, at 1.) As of 1980, twelve states had compulsory schooling until age seventeen or higher. (RR24:27-28, 67; Ex. 5412 at 47-48; Ex. 5400, Vigdor Supp. Report, at 1.) In 2009, there were twenty-nine states with such laws. (RR24:27-28, 67; Ex. 5412 at 47-48; Ex. 5400, Vigdor Supp. Report, at 1.) Comparisons of test outcomes for students at a younger age show much more substantial improvements since the 1980s. (RR24:28; 1/16 Tr. at 144-47; Ex. 5412 at 48.)

d. Fourth, Dr. Hanushek made no effort to control for the changing ethnic and economic composition of the student population over the last four decades. (1/16 Tr. at 144.)

e. Fifth, Dr. Hanushek looked only at national data and made no effort to analyze spending or achievement patterns in Texas. (1/16 Tr. at 140-41.)

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FOF 227. A number of State and Intervenor experts have acknowledged that increased funding can have a positive impact in the right circumstances. (1/16 Tr. at 227; *see also supra* FOF 218; *infra* FOF 361.) They have not, however, been precise in identifying those circumstances. It is telling, moreover, that both Dr. Hanushek and Dr. Podgursky believe that additional funding should be provided for low-income students on the ground that bringing such students to satisfactory performance levels is more costly than it is for other students. (1/16 Tr. at 190; 12/12 Tr. at 97.) If levels of funding and student performance were truly unrelated, it would be difficult to justify this opinion.

FOF 228. While the Court finds much of the testimony of the State's and Intervenors' witnesses on this point to be unpersuasive, the Court emphasizes that the ISD plaintiffs' claims do not require proof that money, however spent, will always lead to improved student performance. Rather, this Court must determine whether additional interventions or improvements are likely to be necessary in order to meet the state's higher standards – and if so, whether such improvements or interventions are likely to require greater funding.

FOF 229. Stated differently, additional funding does not always *guarantee* better results. But in an environment where additional improvements and interventions are needed, failure to provide additional funding makes it very unlikely that the state's new and far more rigorous standards can be successfully met.

FOF 230. The Court also notes that all parties, including State witnesses and Intervenor experts, laud Texas's system of accountability and the decision-making abilities of local school districts. (*See, e.g.*, 1/16 Tr. at 116-17; 12/13 Tr. at 74-90.) Having found little credible evidence of large inefficiencies in Texas schools, and having heard many superintendents testify concerning specific efforts needed to improve performance on STAAR exams, the Court is persuaded that school districts are incentivized to use additional funding in ways that are productive of better academic performance. Whether to further constrain districts' use of funds, or whether instead to trust that local districts know best how to use the money they receive, is a question that must be left to the Legislature. The Court's function is merely to ensure that resources are adequate to allow school districts to fulfill the state's constitutional mission.

iii. The evidence shows that failure to invest in education results in decreased economic productivity and increased social costs.

FOF 231. Research shows not only that "money spent well matters," but also that productive investment in education "easily repays the initial outlay." (Ex. 4040, Belfield Report, at 2; *see generally id.* at 3-16; RR15:41-42.) Compared to high school graduates, dropouts are less likely to be employed, are less productive workers when they are employed, are more likely to commit crimes, and are more likely to require greater health care costs and welfare benefits. (*See* RR15:44-52; Ex. 4040, Belfield Report, at 3-5.) Other research studies, using a variety of methodological approaches, empirically establish a causal link between education levels and these outcomes. (RR15:50-52, 48-49; Ex. 4040, Belfield Report, at 5; RR16:14-17; Ex. 3189-E.)

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FOF 232. Economist Clive Belfield examined the cost-benefit ratio of several types of interventions aimed at increasing the high school graduation rate, and found that "[a]veraging across all interventions, the benefits to the taxpayer were 3.05 times the cost of the interventions." (Ex. 4040, Belfield Report, at 13 and Table 2; RR15:46-47.) The Court finds Dr. Belfield's testimony in this case to be credible and reliable.

b. Funding for economically disadvantaged and ELL students is inadequate and unsuitable.

i. Economically disadvantaged students in Texas

(a) Economically disadvantaged students face myriad obstacles to educational attainment.

FOF 233. Dr. Belfield also testified regarding the economic consequences of the failure to educate economically disadvantaged students adequately and the social and economic impacts of uneducated students. (*See generally* RR15:7-102; Ex. 1102 at 62.)

FOF 234. According to Dr. Belfield, low-income students in Texas are often not able to take advantage of the significant benefits of education because they lack the financial, family, and social capital needed to access educational opportunity. (RR15:18-24.) Low-income students tend to come from one-parent families, leading to lower parental resources that undermine educational development, such as fewer or weaker parent-child interactions related to language and literacy, less of a "school-like" home, and increased conflicts in the home. (RR15:18-24; RR4:72-73; RR22:155-58; Ex. 4224-S, Cervantes Dep., at 17; RR17:239-40; RR14:126; Ex. 3207, Salazar Dep., at 14-21.)

FOF 235. Economically disadvantaged students receive poorer nutrition and are less likely to have access to health insurance, which leads to poor health status that affects students' ability to learn in school. (RR22:139; RR4:70; RR14:126; Ex. 3207, Salazar Dep., at 42; RR18:34-35.)

FOF 236. Low-income families also have less access to "out-of-school" educational opportunities, such as preschool programs, summer school, tutoring, after-school programs, and educational amenities like museum trips. (RR18:12-13; RR4:73-74, 86; Ex. 3207, Salazar Dep., at 14-21; Ex. 1102 at 23-25; RR19:18-20.)

FOF 237. Due to employment and lower educational attainment, low-income parents are less likely to be involved with their children's school and schoolwork. (RR4:70-71; Ex. 4224-S, Cervantes Dep., at 173; RR17:239-40, 250-51.) They are also less likely to be able to transport their children to school, which means that students rely on the schools to provide transportation to and from school, and their opportunities to participate in after-hours and summer school learning opportunities may be limited.

FOF 238. Low-income students often attend schools that have fewer learning resources, such as quality teachers, suitable facilities, libraries, and counseling. (*See generally* RR18:29-34; RR4:81; Ex. 4224-S, Cervantes Dep., at 30; RR22:155-57, 160, 162-64; Ex. 4237 at 11;

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Ex. 3207, Salazar Dep., at 53-54, 147-49, 283-85; RR5:244-45; RR20:78, 105-06; Ex. 1102 at 24.)

FOF 239. Higher mobility rates are also prevalent among low-income students, which interrupts their schooling and inhibits their educational attainment. (RR19:150-51; RR4:72; Ex. 4224-S, Cervantes Dep., at 196; RR22:140-42.) For example, attendance data from at least one district reveals that students who are residentially mobile are twice as likely to miss more than 10% of the school year. (RR19:153; Ex. 6356 at 8; *see also* Ex. 6335, Cain Dep., at 18-24.)

FOF 240. Higher mobility rates also make it difficult for district administrators to identify where mobile students are in their academic achievement and what their needs are. Increased professional development is needed to help teachers and administrators address the challenges presented by mobility. (RR19:153; Ex. 6356 at 8; *see also* Ex. 6335, Cain Dep., at 18-24.)

FOF 241. Because of the social and familial obstacles they face, low-income students generally start school less prepared and over time fall farther behind without intervention, creating challenges for institutions where they are learning. (*See, e.g.*, RR11:178-79; RR4:72-73, 94-95, 175-76; Ex. 4224-S, Cervantes Dep., at 176-77; RR22:153-54; RR19:18-20.) As students progress through school, and achievement gaps become wider between economically disadvantaged students and their more affluent peers, the economically disadvantaged student can become an "an unwilling learner" – "a disenfranchised, disconnected student" who is difficult to engage in the learning process and who is more likely to drop out of school. (RR19:23-24.)

FOF 242. Superintendents corroborated Dr. Belfield's findings, and uniformly testified that at-risk[13] and economically disadvantaged students are among the most challenging students to educate, and often start school without the same context for learning, have smaller vocabularies, are less likely to be read to, and have a more limited understanding of the social norms of organized education. (*See, e.g.*, RR4:223-24; Ex. 5614, Patek Dep., at 12; 12/5 Tr. at 70-71; RR3:143-44; RR19:18-19, 78-79; RR5:172-75, 182-183; RR20:100; Ex. 3202, Pfeifer Dep., at 15-17.)

(b) Intervention strategies for economically disadvantaged students can help them overcome these challenges.

FOF 243. No witness testified that low-income students in Texas are incapable of performing scholastically in school on equal terms with their peers. Their chances of success can be significantly improved with the appropriate educational interventions. (*See, e.g.*, RR4:73-80; RR20:78, 105-06; RR19:64-65; *see generally* Ex. 1101, Belfield Report.)

[13] An "at-risk" student is one who meets one or more of thirteen criteria – such as failing the STAAR exam, failing two or more secondary level foundation curriculum courses, having limited English proficiency, or being homeless – that the Legislature has determined increases the chances that a student will drop out of school. TEX. EDUC. CODE § 29.081(d). A significant majority of at-risk students are economically disadvantaged.

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FOF 244. In order to combat this cycle, districts must have funds to pay for tutors, academic coaches, reading specialists, and instructional aides to help students who are falling behind. (*See, e.g.*, RR24:135; Ex. 5616, Waggoner Dep., at 12-13; Ex. 5615, Waddell Dep., at 62-64.) These types of educational support personnel are able to provide individualized attention to struggling and at-risk students, which helps students engage in the learning process and enables them to understand difficult concepts and catch up with their peers. (12/5 Tr. at 87; Ex. 6345, Folks Dep., at 35-36; Ex. 6341, Frost Dep., at 25-28; Ex. 6335, Cain Dep., at 90-91; Ex. 6344, Carstarphen Dep., at 19-20, 83-85; Ex. 6343, Schroder Dep., at 17.)

FOF 245. Small learning communities in high school create needed personalization and monitoring that low-income students may not otherwise receive at home. (RR15:37-38; RR19:27-28.) The evidence also shows that technology and instructional software programs and alternative high schools are important to meet the individualized needs of at-risk students. (RR19:26-29 (referencing Ex. 6355 at 4-6); RR20:80-81, 100; RR18:154-55.)

FOF 246. The state budget cuts forced many districts to drastically reduce the size of their educational support staff. (*See* 12/5 Tr. at 87; Ex. 6345, Folks Dep., at 35-36; Ex. 6341, Frost Dep., at 25-28; Ex. 6336, Burns Dep., at 35-36; RR19:48-50, 162; Ex. 6334, Sconzo Dep., at 48-49.) As a result, many school districts are unable to provide the support and individualized attention that at-risk students need and therefore anticipate extreme difficulty in closing the achievement gap under the STAAR exam. (*See, e.g.,* Ex. 6341, Frost Dep., at 39; Ex. 6335, Cain Dep., at 90-91.)

FOF 247. Texas school districts also need funding for summer school and after-school and extended-day programs to remediate economically disadvantaged students who have fallen behind in course work or failed the STAAR exam(s). (RR19:122-24, 153-54, 175-76; RR20:77-79; Ex. 3198, Garza Dep., at 13-14; Ex. 3206, French Dep., at 35, 58-59, 63-65; Ex. 6337, Hanks Dep., at 67.) Because the State eliminated SSI funding, many school districts were forced to reduce or eliminate such programs. (Ex. 6342, Ray Dep., at 28-29; Ex. 6334, Sconzo Dep., 227-28; Ex. 6337, Hanks Dep., at 252-53.) Other school districts have temporarily funded such programs with federal or private grant money, but once the grant expires, they will be unable to maintain the programs without increased state aid. (RR19:30-32; Ex. 6341, Frost Dep., at 41-42.) Others are relying on teachers who volunteer to stay before or after school to tutor their students.

FOF 248. The interventions described above are not a "wish list." As Dr. Belfield testified, sound research shows that programs such as tutoring and summer school, parental outreach, and creating small learning communities in high school increase the high school graduation rate for economically disadvantaged students. (*See, e.g.*, Ex. 1101, Belfield Report, at 11-14; RR4:73-76; RR15:24; RR4:73-80) The Court also credits the extensive superintendent testimony that such services can be effective with their low-income student populations, can reduce the dropout rate, and are necessary for districts to meet the needs of their low-income students. (*See*, *e.g.* RR19:28-29 (referencing Ex. 6335 at 6).)

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FOF 249. As stated in Parts I.B.6.c-e, this Court also finds that more competitive teacher pay, reductions in class size (especially for kindergarten through third grade), and publicly funding quality preschool are also critical strategies for helping economically disadvantaged students succeed.

(c) The compensatory education weight is inadequate and unsuitable.

FOF 250. The costs of providing the effective interventions described above and other resources for low-income students are substantial. (RR4:73-80; Ex. 4237 at 11; Ex. 1101, Belfield Report, at 13.)

FOF 251. Dr. Bruce Baker cites evidence that the cost to educate low-income children is 50% to 100% higher than the cost to educate the average child. (Ex. 3188, Baker Report, at 28-29; RR16:34-35.) Similar variations were found in a study by Moak, Casey & Associates. (*See* Ex. 6321 at App. 9, Sections 5-8, pts. A1, pp. 84-88 of PDF; *see also generally id.* at App. 9, Sections 5-8, pts. A1, pp. 2-83 (discussing national research regarding funding adjustments).)

FOF 252. The FSP provides a compensatory education weight of 0.2 or 20% for students who are eligible for free- or reduced-price lunches. (Ex. 1328, Casey Report, at 15.) Compensatory education funds are intended to support supplemental programs and services designed to eliminate (not simply reduce) any disparity in student performance on the state's standardized tests and to eliminate disparities in high school completion rates. TEX. EDUC. CODE § 29.081. A district receives compensatory education funds based on the number of students on the free- and reduced-price lunch program. TEX. EDUC. CODE § 42.152(a), (b).

FOF 253. The compensatory education weight has not been modified since 1984. (RR6:214-15, 217-18 (referencing Ex. 6349 at 48).) At that time, the School Finance Working Group, consisting of members of virtually every educational organization in Texas, recommended a weight for compensatory education of at least 0.4 in order to provide special needs students with a minimum accredited education. (RR23:80-81.) The 0.4 recommendation was arbitrarily cut in half by the Legislature to 0.2. (Ex. 1328, Casey Report, at 15.)

FOF 254. Since it was last adjusted, the compensatory education weight has not kept pace with changes in the educational context facing schools. (Ex. 5653 at 45-46; Ex. 6322, Moak Report, at 58.) Even at the time it was enacted, the setting of the weight was driven by resources available, rather than an assessment of the additional costs associated with educating economically disadvantaged students. (Ex. 1123, Cortez Report, at 36.)

FOF 255. Lynn Moak testified that his review of the research base on economic weights – both that which he conducted at the time the weight was enacted and more recent research – combined with the significant achievement gap between economically disadvantaged and non-disadvantaged students, convinced him that the compensatory education weight

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should be at least doubled. (RR6:219-26 (referencing Ex. 6349 at 48-51).) The Court finds this testimony credible.

FOF 256. In 2009-10, a Joint Select Committee on Public School Finance Weights, Allotments, and Adjustments was appointed by the Legislature and composed of fifteen legislators and other public members. While the Committee did not issue a final report, the Committee issued a "Stakeholder Group" report which recommended an increase in the compensatory education weight from 0.2 to 0.4. This recommendation was not acted upon. (Ex. 1328, Casey Report, at 11-12.)

FOF 257. Several superintendents testified regarding the costs of educating economically disadvantaged and at-risk students and that the compensatory education weight does not fully cover these additional costs. (*See, e.g.*, RR19:144-45.) As described by the Plaintiff districts in Part I.B.10, districts do not have sufficient resources to meet the needs of low-income students and provide them with the quality of education necessary to meet state standards. The increasing numbers of economically disadvantaged students, the introduction of more rigorous standards, and the expansion of achievement gaps in the STAAR regime magnify the harm to districts arising from the inadequate compensatory education weight.

FOF 258. Because the amount of funding has not been adjusted at least periodically to ensure that it is well aligned with state academic expectations, the State in effect is underfunding programs designed to support students in need of additional academic support. The 0.2 weight bears no relationship to the standards imposed today on students and school districts. (Ex. 6322, Moak Report, at 58-60; RR18:77-78; RR22:151-59; 1/8 Tr. at 69-70, 124 (Dawn-Fisher testifying that adequacy is not part of the policy discussion).) The recent budget cuts – including cuts to grant programs that were targeted at economically disadvantaged students – have only exacerbated the problem and forced school districts to reduce or eliminate programs serving low-income students. *See generally* Part I.B.10.

FOF 259. Furthermore, while the statutory school finance formulas reflect the Legislature's acknowledgement that economically disadvantaged students cost more to educate, the result of the funding system does not actually send more dollars to districts with higher concentrations of economically disadvantaged students. Mr. Moak analyzed the relationship between 2010-11 FSP revenue per ADA and per WADA and the percent of the district's students who are classified as economically disadvantaged for districts with more than 1,000 ADA. (Ex. 6322, Moak Report, at 59.) As the percentage of economically disadvantaged students increases, the FSP revenue decreases:

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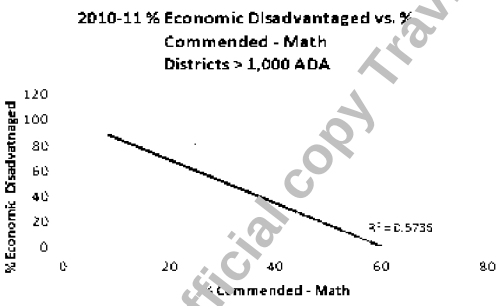
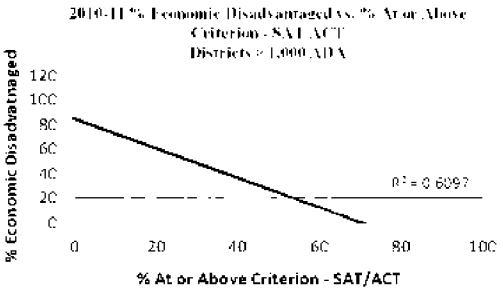
% Economically Disadvantaged	ADA	WADA	FSP Revenue	Revenue per ADA	Revenue per WADA
Under 10%	30,219	34,415	$225,853,345	$7,474	$6,563
10% to under 30%	570,856	697,294	$4,244,405,813	$7,435	$6,087
30% to under 50%	808,325	1,020,791	$5,892,091,212	$7,289	$5,772
50% to under 70%	1,276,001	1,698,012	$9,635,063,254	$7,551	$5,674
70% to under 90%	1,298,873	1,793,660	$10,022,020,910	$7,716	$5,587
90% and over	221,735	316,250	$1,755,071,075	$7,915	$5,550
Grand Total	4,206,008	5,560,423	$31,774,503,609	$7,555	$5,714

(*Id.*)

FOF 260. Mr. Moak analyzed the relationship between the performance of districts and the percent of economically disadvantaged students. (*Id.* at 59-60.) He found a strong negative correlation between the percent of the students who are economically disadvantaged and their performance at the commended level on the Math and Reading TAKS exams, SAT or ACT scores, and performance at the commended level on all tests taken on TAKS. (*Id.*; RR6:222-25 (referencing Ex. 6349 at 49).) In other words, as the percentage of economically disadvantaged students increases in districts with more than 1,000 ADA, performance decreases. (Ex. 6322, Moak Report, at 59.)





(Ex. 6349 at 49.)

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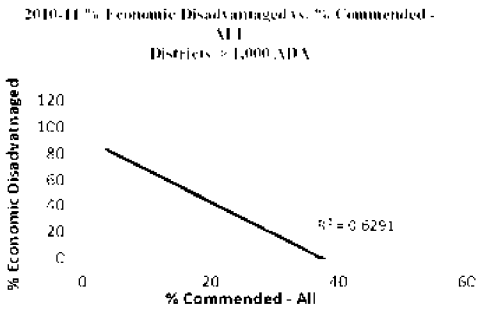

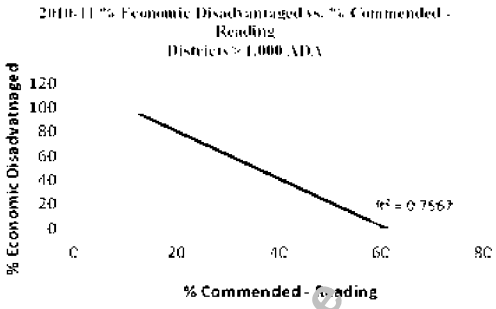

FOF 261. Mr. Moak found the same pattern in performance on the first administration of the STAAR EOC exams. (Ex. 6322, Moak Report, at 33-34.)

Under 10%	2,982	85%	38%
10% to less than 30%	46,715	66%	19%
30% to less than 50%	71,794	56%	9%
50% to less than 70%	110,594	46%	-1%
70% to less than 90%	100,792	37%	-10%
90% and over	18,188	27%	-20%
Unknown	246	15%	-32%
Grand Total	351,311	47%	

ii. ELL students in Texas

(a) ELL students in Texas face obstacles to educational attainment that are unrelated to their economic status.

FOF 262. Children from homes where English is not spoken well are more likely to be of lower socio-economic status than children in the general population. (RR14:126-27 (referencing Ex. 4231 at 4); Ex. 1104, Izquierdo Report, at 3.) However, their language-related educational needs often do not overlap with their poverty-related educational needs. (1/10 Tr. at 163-64; RR17:152.)

FOF 263. ELLs come to school with a range of language proficiencies in English and their native languages, content knowledge, prior education, and ages, among other characteristics. Some ELL students were born in the United States, others are immigrants who have been in the United States for several years, and others have just arrived in the country. (RR15:169-71.) ELL students who arrive in the United States with limited literacy in

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their native language and an interrupted school experience need much higher levels of support than those who possess strong native-language literacy skills. (RR14:127 (referencing Ex. 4230 at 7).)

FOF 264. While the majority of ELL students (90%) speak Spanish as their native language, many other languages are spoken in Texas public schools. (*See, e.g.*, Ex. 1104, Izquierdo Report, at 5 (over 120 languages represented in Texas schools); RR4:212 (ninety-three languages and dialects spoken in Richardson ISD); RR8:96 (eighty-two languages spoken in Alief ISD); RR19-41-42 (thirty-five languages spoken in Abilene ISD).) Each of these students must receive certain required services in their home language. (*See infra* Part I.B.6.b.ii(b).)

FOF 265. The rigor, depth and level of cognitive complexity of the new STAAR assessments present a challenge for students of all backgrounds, but especially for ELLs. (RR14:142 (referencing Ex. 4231 at 23); Ex. 1104, Izquierdo Report, at 3.)

FOF 266. ELLs in the upper elementary and middle school grades often face the challenge of learning core content with specialized vocabulary and basic English at the same time. (RR14:145-48; Ex. 1104, Izquierdo Report, at 13.) ELL students who have been receiving services for over five years, also called long-term ELLs, are at great risk of dropping out and require intensive levels of attention. (RR14:25-26.)

FOF 267. Some schools have experienced a significant influx of refugee students. These students – who are often ELLs – often have no formal schooling and have experienced severe emotional and psychological trauma that provides a barrier to education if it is not addressed. (RR19:42-45; Ex. 6343, Schroder Dep., at 14, 117-18.)

FOF 268. Despite these added challenges, ELLs must meet the same college- and career-readiness standards and achieve the same outcomes as non-ELLs. (Ex. 1104, Izquierdo Report, at 15-16.)

FOF 269. As discussed in more detail below, the resources made available by the State for ELL students falls far short of the additional costs incurred by school districts in order to provide reasonable opportunities for all ELL students to achieve the state standards and achieve their full potential. (RR18:9-13, 47-48; RR22:145; Ex. 4224-S, Cervantes Dep., at 198; RR4:89-91; Ex. 4000, Cortez Report, at 33; RR8:101-04, 130-31; Ex. 3207, Salazar Dep., at 33-34, 38-39, 44-45, 57-58, 84-85, 103-04, 110-11; Ex. 4224-P, Kincannon Dep., at 20-21; Ex. 4224-G, Wallis Dep., at 73, 87-89; *see also infra* Parts I.B.6.b.ii(b)-(d).)

(b) Texas statutes recognize the importance of quality bilingual/ESL programs and impose substantial obligations on Texas schools.

FOF 270. Through statutory and regulatory mandates governing bilingual and ESL programs, Texas has recognized the important role that quality, effective, and comprehensive language programs play in allowing ELL students to learn, progress, and succeed in

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public schools. The Legislature has declared that every ELL student is entitled to a full opportunity to become competent in English through bilingual or English as a Second Language ("ESL") programs that emphasize mastery of English, mathematics, science and social studies, as well as the opportunity to participate fairly in school. 19 TEX. ADMIN. CODE § 89.1201.

FOF 271. The Legislature has further recognized that compliance with the bilingual/ESL statute (Chapter B, Subchapter 29 of the Education Code) is "an imperative public necessity." TEX. EDUC. CODE § 29.062(a). Nevertheless, the state's requirements related to ELLs impose significant additional burdens on school districts. As discussed in greater detail below, schools lack sufficient resources to meet the state's mandates and the basic educational needs of ELL students. (*See infra* Parts I.B.6.b.ii(b) - (d).)

FOF 272. **Program requirements.** Each district with an enrollment of twenty or more ELL students in the same grade level from kindergarten through twelfth grade is required to offer bilingual education in kindergarten through elementary grades; either bilingual education, ESL, or another transitional language instruction program in post-elementary grades through grade eight; and ESL in grades nine through twelve. TEX. EDUC. CODE § 29.053(d); 19 TEX. ADMIN. CODE §§ 89.1225(e), 89.1210.

FOF 273. Bilingual and ESL programs are full-time programs of instruction designed to ensure that ELL students have a full opportunity to master the essential knowledge and skills of the required curriculum. 19 TEX. ADMIN. CODE § 89.1210(a)-(b).

FOF 274. The SBOE adopted the English language proficiency standards ("ELPS") in 2007, which are the English language acquisition standards that must be implemented for ELL students in conjunction with the state curriculum. *Id.* § 74.4. (Ex. 1104, Izquierdo Report, at 11.)

FOF 275. Bilingual education programs must address the affective, linguistic, and cognitive needs of ELL students. These needs include, but are not limited to, instruction addressing the student's cultural heritage as well as the history and culture of the United States; listening, speaking, reading and writing in the home language and in English; instruction structured to ensure mastery of required essential knowledge and higher-order thinking skills in all subjects. 19 TEX. ADMIN. CODE § 89.1210(c).

FOF 276. ESL programs are an integral part of the regular educational program and provide instruction in English in language arts, mathematics, science, and social studies using second language methods to ensure that students master the required essential knowledge and skills and higher-order thinking skills. ESL programs also must address the affective and linguistic needs of students. At the high school level students receive sheltered instruction, or the teaching method for delivering the content standards necessary for language acquisition, in all content areas. *Id.* § 89.1210(f)-(g). (RR14:157-58.)

FOF 277. Although the State does not require language instruction for every district, it recognizes that "public school classes in which instruction is given only in English are often inadequate for the education of those [ELL] students." TEX. EDUC. CODE § 29.051. Dual

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language programs show particular promise in helping raise ELL student achievement, and TEA has pointed to such programs as examples of "best practices." However these programs entail additional costs to school districts, which can be a barrier to their implementation. (RR14:128-32 (referencing Ex. 4231 at 8-11); Ex. 1104, Izquierdo Report, at 6-7; RR18:8-9; Ex. 4233-A, Carstarphen Dep., at 89-91; Ex. 3206, French Dep., at 84; Ex. 3198, Garza Dep., at 95-96.)

FOF 278. **Other requirements.** In those districts where ELL services are required, schools are required to meet a number of other requirements related to ELL education. For those students believed to be ELL, schools must conduct home language surveys in both English and the home language to determine the language normally used in the student's home. TEX. EDUC. CODE § 29.056(1).

FOF 279. If students are identified as possible ELL students, districts must also administer English and primary-language oral and written proficiency tests by professionals or paraprofessionals with the language skills and training required by the test publishers. *Id.* § 29.056(a)-(b).

FOF 280. School districts must then form a language proficiency assessment committee ("LPAC") to determine the language proficiency level of each potential ELL student, designate his or her level of academic achievement, classify such students and recommend their exit from a bilingual or ESL program when appropriate, and monitor the academic progress of any exited students for the first two years after program exit. 19 TEX. ADMIN. CODE § 89.1220(e)-(g), (k). LPACs must include a professional bilingual educator, a professional transitional language educator, a parent of an ELL student, and a campus administrator. TEX. EDUC. CODE § 29.063(a)-(b). School districts are required to establish and operate a sufficient number of LPACs to enable them to discharge their duties within twenty school days of the enrollment of ELL students. 19 TEX. ADMIN. CODE § 89.1220(e).

FOF 281. Texas also requires teachers in bilingual or ESL programs to be certified in bilingual education or ESL. TEX. EDUC. CODE § 29.061. If a district obtains a waiver of this requirement, it must use at least 10% of its bilingual education allotment to fund a training program for its teachers. 19 TEX. ADMIN. CODE § 89.1207(a)(1)(D), (b)(1)(E).

FOF 282. Additionally, each school district that is required to offer a bilingual education program must offer an eight-week summer preschool program for children eligible for admission to kindergarten or first grade at the beginning of the next school year. The preschool program must include 120 hours of intensive bilingual education or special language program and a student/teacher ratio of 18:1 or lower. TEX. EDUC. CODE § 29.060; 19 TEX. ADMIN. CODE § 89.1250.

FOF 283. School districts must also implement assessment procedures that differentiate between language proficiency and handicapping conditions. 19 TEX. ADMIN. CODE § 89.1230.

FOF 284. School districts with bilingual education or ESL programs must conduct regular assessments to determine the program impact and student outcomes, and prepare annual

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reports detailing the progress of the ELL students. Each school principal at a campus with a program must develop, review, and revise the campus improvement plan annually. 19 TEX. ADMIN. CODE § 89.1265.

(c) Texas lacks the essential elements of quality bilingual/ESL programs.

FOF 285. The Court finds the testimony of Ms. Pompa, who served as an expert witness in *WOC II* and *U.S. v. Texas*, No. 6:71-CV-5281 (E.D. Tex. 2010), and Dr. Izquierdo related to bilingual/ESL programs and ELL students to be credible and their opinions to be reliable. (Ex. 1084; Ex. 1103.)

FOF 286. Ms. Pompa and Dr. Izquierdo testified about the essential elements of a quality bilingual/ESL education that ELL students need in order to achieve the more rigorous standards established by the State and to achieve their full potential. (RR14:12-21, 123-227.)

FOF 287. Regardless of the program model employed by school districts, appropriate and effective programs for ELL students at a minimum require: (1) high-quality instructional materials and technologies; (2) adequately trained teachers and administrators who have access to ongoing, high-quality professional development; (3) extended time to learn, such as additional tutoring and high-quality after-school and summer programs; (4) support services including counseling, dropout prevention, and programs for ELL students with disabilities; (5) high-quality pre-school programs geared toward ELLs; (6) curriculum aligned with state standards; and (7) parent engagement programs. (Ex. 4230 at 11; RR14:36, 133-34 (referencing Ex. 4231 at 12); Ex. 1104, Izquierdo Report, at 8-10, 18-20, 22-24; RR15:144-45, 172-73; 1/10 Tr. at 154; Ex. 4233-B, Coultress Dep., at 84-86, 106-08, 110, 181-82; Ex. 4224-P, Kincannon Dep., at 20-21.) These elements do not stand in isolation but, instead, are part of a comprehensive program that are critical for ELL students to succeed in the classroom and later on in life. (Ex. 4230 at 11; RR14:36, 133-34 (referencing Ex. 4231 at 12); Ex. 1104, Izquierdo Report, at 16; RR15:144-45, 172-73; 1/10 Tr. at 154; Ex. 4233-B, Coultress Dep., at 84-86, 106-08, 110, 181-82; Ex. 4224-P, Kincannon Dep., at 20-21.)

FOF 288. Ms. Pompa's and Dr. Izquierdo's findings were corroborated by the superintendents of the Plaintiff districts. (*See, e.g.*, Ex. 4237 at 9; RR18:15-37; RR4:89, 91-94.)

FOF 289. Dr. Izquierdo conducted qualitative research interviews of seven to eight hours each in five of the Edgewood school districts to determine the extent to which the districts had in place all of the elements of an adequate bilingual program. (RR14:123-25,150; Ex. 1345, Ex. 4231 at 28.) Dr. Izquierdo's investigative research and the testimony from the Edgewood districts and other Plaintiff districts showed that the districts were not able to implement many of the basic components of a quality bilingual program at an adequate level and these districts are struggling to meet the needs of ELLs.

FOF 290. The deficiencies included: (1) a lack of quality ongoing professional development; (2) a lack of materials such as incomplete sets of textbooks and technologies for ELLs; (3) a

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lack of resources needed to provide high quality preschool and extended instructional time for ELLs in addition to the regular instructional day; (4) a lack of quality parental programs for parents of ELLs; (5) a lack of bilingual paraprofessionals adequately assigned to bilingual/ELL classrooms; (6) a lack of bilingual/ELL teachers to support ELL newcomers who have very unique needs; and (7) the use/misuse of bilingual teachers in combined classrooms of regular English speaking students and ELLs who need instruction in their first language, thus creating a very difficult instructional and management situation for the teacher. (*See, e.g.*, RR14:151-56 (referencing Ex. 4231 at 30); Ex. 1345, Izquierdo Site Visits Report, at 2; *see also* Ex. 4224-S, Cervantes Dep., at 184-85; RR18:15-34; RR4:89-90, 95.)

FOF 291. **Materials and Technology.** High-quality materials in both English and the students' native language are essential to the academic success of ELLs and are often the key link between the student and the curriculum. For ELLs, these materials bridge the gap between languages and help them understand complex ideas. Important materials for ELLs include (1) visuals to learn new vocabulary, (2) bilingual dictionaries or picture dictionaries for younger students, and (3) leveled readers, charts, instructional games, and interactive digital technology. The lack of adequate instructional materials can have a devastating impact on ELL student achievement. (RR14:49-56 (referencing Ex. 4230 at 18); Ex. 1085, Pompa Report, at 7-8; RR18:12-13, 18-19, 21-26, 28.)

FOF 292. ELL student learning is greatly aided when libraries are equipped with books in the ELL students' home languages. Curriculum materials in these same languages are often necessary so that parents can provide additional support in the home language. (Ex. 1104, Izquierdo Report, at 23-24.)

FOF 293. In Texas, the majority of ELL children are also low-income and are thus less likely than other students to have computer and Internet access at home, making access at school even more important. Most schools do not have sufficient computers for ELL students, despite persuasive evidence that computer technologies, such as language recognition and response programs and interactive software, enhance ELL student learning. (Ex. 1085, Pompa Report, at 8; Ex. 1104, Izquierdo Report, at 24; RR15:157; RR:18:11-12; RR14:38-39.)

FOF 294. Due to limited funding, some districts are unable to afford the ESL curriculum, not all classrooms have textbooks in both English and Spanish, which are needed to effectively implement state-mandated programs. (*See, e.g.*, Ex. 1345, Izquierdo Site Visits Report, at 3-9.)

FOF 295. As described in more detail in Part I.B.10.d, Dr. Izquierdo's analysis and the testimony of superintendents reveal serious deficiencies in the materials and technologies needed to serve ELL students in the Plaintiff districts. (*See, e.g.*, RR14:157-58 (referencing Ex. 4231 at 31); Ex. 1345, Izquierdo Site Visits Report, at 3-4; Ex. 4224-S, Cervantes Dep., at 185; RR14:162-63 (referencing Ex. 4231 at 37-38).)

FOF 296. **Trained Teachers.** More than half of Texas's ELL students are educated through bilingual programs. Effective bilingual programs require teachers who are highly

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competent in the subject matter they teach and are knowledgeable about bilingual children's language development. Teachers providing instruction in the native language need to have high levels of proficiency in that language. (Ex. 1085, Pompa Report, at 9.) Moreover, because ELLs (particularly those in secondary school) are often placed in regular classrooms, all teachers must possess the knowledge and skills to deliver instruction targeted at supporting the linguistic and academic achievement of ELLs. The ELPS require content-area teachers to build the English-language skills that enable ELLs to understand and use grade-appropriate English in class. (Ex. 4233-B, Coultress Dep., at 107; Ex. 4224-T, Givens Dep., at 146-47.)

FOF 297. High-quality professional development significantly aids in effectively instructing ELL students. Professional development allows teachers to (1) update their subject knowledge, (2) learn new teaching techniques, and (3) share expertise among teachers.

FOF 298. Coaches and mentor teachers provide important training and feedback to teachers who instruct ELL students. Intensive learning communities which allow for small-group faculty collaboration in instructional planning have also been shown to improve bilingual and ESL programs. Coaching, mentoring, and small learning communities all require additional time and resources. (Ex. 1085, Pompa Report, at 13; Ex. 1104, Izquierdo Expert Report, at 17-18; RR18:33.)

FOF 299. According to the TEA, Texas faced a shortage of bilingual and ESL teachers in the 2012-13 school year. Although ELLs now make up a greater percentage of the student population than in years past (17% in 2010-11 compared to 15% in 2002-03), bilingual/ESL teachers make up a smaller percentage of the total teacher population (8.1% in 2002-03 compared to 5.5%). (RR14:21; Ex. 4219; Ex. 1087 at Sec. II, p. 1; Ex. 20 at Sec. II, p. 1.)

FOF 300. TEA also reported that in 2010, many bilingual/ESL teachers were teaching with out-of-field credentials – 20% in early childhood education/kindergarten, 10% in elementary school, 37% in middle school, and 85% in high school. (RR14:21-23 (referencing Ex. 1085, Pompa Report, at 8); 1/10 Tr. at 155.) Despite the importance of quality, trained teachers for ELL students, because of the shortage of certified bilingual and ESL teachers in Texas, some districts must seek waivers from TEA so that uncertified teachers can teach in bilingual or ESL classes. (1/10 Tr. 156-57; RR6:32-33.)

FOF 301. Districts have also responded to the teacher shortage by paying stipends in an effort to recruit trained and certified bilingual education and ESL teachers. (RR18:13; RR22:145-47; Ex. 4237 at 8.) In 2011-12, approximately 40% of school districts pay a bilingual stipend, according to a survey by the Texas Association of School Boards. (RR14:21-23 (referencing Ex. 4230 at 5 and TASB survey); Ex. 4219; RR6:103; Ex. 4224-P, Kincannon Dep., at 22.) Paying stipends to recruit and retain certified instructions requires additional resources. (Ex. 1085, Pompa Report, at 8 (according to a Texas Association of School Boards survey, in 2011-12, the average stipend for bilingual education teachers was $2,483 and $1,191 for ESL teachers).)

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FOF 302. Districts expressed need for professional development and training to properly implement second language acquisition and ESL/Sheltered Instruction Observation Protocol ("SIOP") strategies. (Ex. 1345, Izquierdo Site Visits Report, at 3, 6; RR22:148-50 (Edgewood ISD).)

FOF 303. As described in more detail in Part I.B.10.d, inadequate funding has led to serious deficiencies in teaching quality for ELL students, because of the lack of quality training and professional development for teachers and lack of sufficient program monitoring, among other things. (*See, e.g.*, RR14:157-58, 160-63, 165-66 (referencing Ex. 4231 at 31, 34-39); Ex. 1345, Izquierdo Site Visits Report, at 3-4, 7-9; RR15:121,138-39,173-74; RR18:17-18, 28.)

FOF 304. **Extended Learning Time and Special Programs.** Many factors can contribute to the differences in time needed for ELL students to meet academic standards, including the student's current age and age upon entering English schooling; the family's socio-economic status; language of home and community, parental education levels; the educational conditions to which the student is exposed including the general skill level of the teacher(s); any additional interventions; and the level of linguistic segregation in the school. Additional time, in the form of tutoring sessions, after-school programs, and summer school with trained staff, are beneficial to supplement the existing instructional time. These interventions require additional resources that often are not available. (Ex. 1104, Izquierdo Report, at 22; 1/10 Tr. at 163-64; RR18:31-34, 79-80; RR4:85-86, 89-90; Ex. 4237 at 8-9; RR22:142-43; Ex. 4224-L, Chambers Dep., at 16-17, 19; Ex. 3198, Garza Dep., at 118; RR24:146-49.) ELLs who come to school with the highest risk factors (*see supra* Part I.B.6.b.ii(a)) require extended time for learning, particularly those who come to the United States in later grades and those with interrupted schooling in their native country. Adding more weeks to the school year or more hours to the school day can capture this essential time English learners need to learn complex content and academic English language skills. (Ex. 1085, Pompa Report, at 13.)

FOF 305. Special programs that develop college and career readiness for ELL students, such as the Quality Teaching for English Learners ("QTEL") program in Austin, have demonstrated success. This program was funded through an $8.4 million grant from a private foundation. (*Id.* at 7; RR19:197-99.)

FOF 306. Texas schools lack the funding to provide sufficient extended learning time programs, including extended-day sessions, tutoring, and summer school, to aid their ELL student populations. To the extent these schools offer any extended learning programs, many students are prevented from participating, because the schools do not have the resources to provide transportation to and from the programs. (*See, e.g.*, Ex. 1345, Izquierdo Site Visits Report, at 4-5, 7-8; RR15:175; RR4:75-79; RR18:34-41.)

FOF 307. **Counseling and Dropout Prevention.** ELLs need access to high-quality counseling services. Counselors help to distinguish among ELLs to determine which students require more specialized services. Counselors also provide long-term ELLs with the intensive language and academic supports they need to graduate college ready. Bilingual counselors address the needs of students and their parents at schools with large

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concentrations of speakers of a foreign language. (Ex. 1085, Pompa Report, at 12; RR24:126-29, 132-34.)

FOF 308. Counseling services and ongoing training for counselors in the area of ELL schooling are absent or lacking in many districts due to lack of funding. (*See, e.g.*, Ex. 1345, Izquierdo Site Visits Report, at 4, 7.)

FOF 309. Dropout prevention programs for ELL students have been shown to be effective and are necessary to address the high dropout rate of ELL students in Texas. (RR14:69-70 (referencing Ex. 4230 at 29); Ex. 1085, Pompa Report, at 13.) But these programs, like other interventions, require additional funding. These programs have been reported to cost in the range of $1,200 to $1,400 per student. Despite the need for such programs, districts do not have the funds to establish or sustain effective dropout prevention programs. (*See, e.g.*, RR18:52-53.)

FOF 310. **ELLs with Disabilities.** ELL students who also need special education face particular challenges. These students' need for special education often is not identified because it is confused with the need for language acquisition. Those students are therefore often not referred for special education services. When the need is identified, these students sometimes lose time participating in ESL instruction in order to participate in special education services. Districts must therefore recruit highly trained teams of special educators and ELL educators who can assess a special needs student's eligibility for bilingual or ESL services. (RR14:76-78 (referencing Ex. 4230 at 34, 35); Ex. 1085, Pompa Report, at 13-14; Ex. 4233-B, Coultress Dep., at 166-67.)

FOF 311. **Parent Engagement.** Parental involvement in ELL students' learning is a key to the students' success. But engaging parents of ELLs in their children's education can be challenging for schools. Although parents of ELLs generally support their children's education, they may not understand the U.S. school system. Furthermore, parents with limited English language skills often hesitate to communicate with teachers and administrators at schools in which no one speaks their language. Similarly, teachers and administrators may have no familiarity with the language, culture, and values of ELL students' families, and therefore often cannot effectively involve the parents. Effective parent engagement requires resources which are not currently available. (RR14:73-75 (referencing Ex. 4230 at 32, 33); Ex. 1085, Pompa Report, at 14; Ex. 4231, Pompa Report, at 30; RR4:86; Ex. 3206, French Dep., at 86-87; Ex. 3198, Garza Dep., at 119-21; RR24:127-29, 133-34.)

FOF 312. To encourage effective parental engagement, districts require additional parent liaisons and parent programs to create awareness of current policies, conduct home visits and outreach, and foster parental support of student educational progress. (*See, e.g.,* Ex. 1345, Izquierdo Site Visits Report, at 4, 7; RR22:152; RR14:155-56.)

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(d) The bilingual weight is inadequate and unsuitable.

FOF 313. **Background on the bilingual weight.** The State provides funds to school districts to help meet the extra costs of programs for ELL students. TEX. EDUC. CODE § 29.051. For each student in average daily attendance in a bilingual education or special language program, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1. TEX. EDUC. CODE § 42.153(a).

FOF 314. The 0.1 bilingual weight was first enacted by the Legislature in 1984 and has never been adjusted. (Ex. 6322, Moak Report, at 58; RR6:215.) The current 0.1 bilingual weight was not based on actual studies of the cost to educate bilingual students. (Ex. 6322, Moak Report, at 58.) In fact, it ignores studies indicating that a significantly higher weight was necessary.

FOF 315. A 1984 school finance working group recommended an add-on weight of 0.4, or 40 percent, based on the actual costs of providing programs for ELL students. (RR23:80-81; Ex. 4000, Cortez Report, at 12, 30.) The 2009-10 Legislative Stakeholder Group referred to above recommended that the bilingual weight be increased from 0.1 to 0.6. Neither recommendation was acted upon. (Ex. 1328, Casey Report, at 11-12.)

FOF 316. School districts cannot implement adequate programs for ELL students with the funding generated by the adjusted basic allotment multiplied by the 0.1 weight. (*See, e.g.*, Ex. 4000, Cortez Report, at 30; RR10:127-28; RR6:214-16, 217-19; Ex. 6322, Moak Report, at 58; RR18:77-78; RR4:85-95; Ex. 4224-S, Cervantes Dep., at 198; Ex. 3205, Chambers Dep., at 61-62; Ex. 3204, Dupre Dep., at 118; Ex. 3198, Garza Dep., at 116, 123-24; RR24:141-42, 149-50, 167-69; RR20:55.) Districts are further burdened by the inadequate bilingual weight in the higher grades, where the subject matter is more difficult, and yet districts receive less total funding from the weight because students have exited the program. (RR24:171-73.)

FOF 317. School finance experts have conducted studies in several states of the incremental costs of providing bilingual programs. (RR23:82-86.) These studies show that Texas's funding of bilingual education falls significantly short. For example, a 2011 Colorado study by nationally known experts found that add-on resources would require a weight of between 0.43 for an ELL student in a large school district to 0.564 per ELL student in a small or rural district, compared to the average student. (RR23:84-86; Ex. 4000, Cortez Report, at 31-32.) A 2005 Arizona study conducted by the National Conference of State Legislatures found that the incremental costs of ELL student education ranged from $1,026 to $2,571 per student depending on the student's grade level. (Ex. 4000, Cortez Report, at 31.) However, the bilingual weight in Texas fails to account at all for the difference in cost to educate bilingual students at different grade levels.

FOF 318. Moreover, the weight of 0.1 is substantially below many other states. (Ex. 6322, Moak Report, at 58, 61-62.) A 2008 national study of sixteen states that have bilingual add-on weights found Texas to be at the lowest end of what states have found necessary for ELL

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students, a range that can run up to twice the weight for non-disadvantaged students. (RR6:218-20; Ex. 6322, Moak Report, at 58.)

FOF 319. The 0.1 weight bears no relationship to the standards imposed today on students and school districts. The weight – which was not based on actual costs even in 1984 – pre-dated the successive eras of higher educational standards and assessments such as TEAMS, TAAS, TAKS, and now STAAR. (Ex. 4000, Cortez Report, at 30; *see also* RR18:77-78; RR4:114-23 (stating resources were not sufficient under TAKS and comparing results to increased rigor under STAAR).)

FOF 320. Based on the most recent research, there is some consensus that the weight needed for ELL students in Texas is as high as .40 – or 40%. (RR23:85; Ex. 4000, Cortez Report, at 33; RR6:218-20.)

FOF 321. Districts' actual expenditures on ELL programs also confirm the inadequacy of the bilingual weight. (*See, e.g.*, RR18:10-11; Ex. 10644 (the State allocated approximately $400 additional dollars for each ELL student enrolled in La Feria ISD, but the district's expenditures amounted to approximately $1,446 per ELL student); Ex. 10633; Ex. 4237 at 8 (The State allocated approximately $430 for each ELL student enrolled in Edgewood ISD, but the district spent nearly six times that amount).) These expenditures include only those elements necessary to support quality bilingual programs, including stipends for bilingual and ESL certified teachers to help with their retention, professional development, teacher and instructional aides, tutoring, and extended-day programming. (*See, e.g.*, RR18:9-13, 49; RR22:145-46, 148.)

FOF 322. The bilingual allotment, even when combined with general revenue dollars for expenditures, falls far short of that needed to provide ELL students access to reasonable opportunities these students require to acquire a general diffusion of knowledge as established by the State. (RR22:145-46, 148.)

FOF 323. **<u>Budget and expenditures for ELL programs</u>.** Further, despite the growth of ELL students over recent years, the amounts of both budgeted and actual funds dedicated to bilingual/ESL programming have declined. In the three school years from 2009-10 to 2011-12, the amount budgeted for bilingual/ESL dropped from 4.34% of all program expenditures (or $253 per student) to 3.76% of all program expenditures (or $219 per student) to 3.15% of all program expenditures (or $191 per student) – which represents a 24.5% drop over this period. (Ex. 4074.) This amounted to a roughly $270 million drop – from $1,219,062,042 to $949,388,965. (RR14:19 (referencing Ex. 4230 at 4); Ex. 4074.) Actual financial data showed similar declines. (Ex. 4073; *see also* RR14:15; Ex. 4230 at 4.)

FOF 324. From 2002-03 to 2011-12, budgeted expenditures for bilingual/ESL instruction fell from 4.5% to 3.45% of all funds expenditures, even though the ELL student population grew from 14.9% to 17% of the total student population during that same period. (RR14:19 (referencing Ex. 4230 at 4); Ex. 1087 at Sec. II at 1; Ex. 11213 at 2.)

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FOF 325. The budgeted and actual expenditures far exceed the amounts allocated to districts for bilingual education under the FSP. For example, when adding up the "Total FSP Bilingual Funding" for the 1,024 districts for the 2010-11 school year (Ex. 4226, Column U), the amount was a mere $369,953,277, compared to $1,150,211,353 in actual expenditures. (Ex. 4073 at 6.)

c. Districts need funding to hire and retain quality teachers.

i. Texas must hire substantially more teachers to account for student growth and to replace those that are near retirement.

FOF 326. Texas employs the equivalent of 335,000 full-time teachers in its public schools, including charter schools in 2011. (Ex. 1122, Vigdor Report, at 2.) Texas must fill 40,000 net teaching positions every year simply to replace the teachers leaving the workforce and to keep up with population growth. Over the last twelve years, 10% of teachers on average have left the workforce annually. (RR23:182-83; Ex. 1122, Vigdor Report, at 2.)

FOF 327. The challenge of teacher recruitment in Texas is exacerbated by the aging of the teacher workforce. Estimates from the Census Bureau indicate that the median age for primary and secondary schoolteachers in Texas increased from thirty-five to forty-two between 1980 and 2010. (Ex. 1122, Vigdor Report, at 2.) The percentage of teachers over fifty-five – and therefore at high risk of retirement over the coming decade – has doubled since 1990, to the point where they represent nearly 20% of the workforce – a proportion not seen in more than a generation. (*Id.*; RR23:183-84; Ex. 5412 at 4-5.)

FOF 328. Texas simply does not train enough new teachers to keep up with this demand. Indeed, in only one year has the production of newly certified teachers from in-state preparation programs exceeded 27,000 individuals, and historically many of those obtaining certification never choose to enter the teaching profession. Texas must "import" thousands of teachers each year. (Ex. 1122, Vigdor Report, at 3; RR23:184-85; Ex. 5412 at 6-7.) As the state's population continues to grow, and as its sizable cohort of baby boom-era teachers retire over the next decade, its need to import teachers from outside of Texas – to compete with other states for teaching talent – will only increase. (Ex. 5412 at 6-8.)

ii. Texas faces significant challenges in ensuring the quality of its teacher labor force.

FOF 329. Texas also needs to ensure that its teaching labor force is high quality. The consensus view among education policy researchers is that teacher quality is a key determinant of student achievement. (RR23:209-10; Ex. 1122, Vigdor Report, at 18; Ex. 3188, Baker Report, at 103.) Yet, the evidence supports the conclusion that the absolute level of teacher quality in Texas has declined over time. (Ex. 1122, Vigdor Report, at 1.)

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FOF 330. According to the research base, two credentials are strongly associated with improvements in student performance: teacher experience and certification or credentialing in the field in which the teacher is teaching. (RR23:193; Ex. 1122, Vigdor Report, at 6-7.)

FOF 331. Novice teachers have been found to be less effective than more experienced teachers. (Ex. 1122, Vigdor Report, at 6; RR23:193-94.) A substantial body of literature has found that concentrations of novice teachers can have significant negative effects on student outcomes. (Ex. 3188, Baker Report, at 111.) Teachers' competence increases rapidly within the first few years on the job, and their effectiveness continues to grow over time (albeit at a slower pace). (Ex. 1122, Vigdor Report, at 18-20; RR23:194 (referencing Ex. 5412 at 17-18).) Yet Texas schools are increasingly hiring novice teachers to fill the large number of vacancies that must be filled each year. (Ex. 1122, Vigdor Report, at 7; RR23:199.) The reliance on novice teachers is concentrated in districts that face persistently high turnover rates. In such districts, it is common for over 20% of the workforce to consist of beginning teachers. (RR23:200-01 (referencing Ex. 5412 at 21-22).) A teacher in a high poverty district is 26% more likely to be a novice teacher than a teacher in a low poverty district. (Ex. 3188, Baker Report, at 111.) Reliance on large numbers of inexperienced teachers is likely to negatively affect the average quality of teachers in Texas and to adversely affect student outcomes. (Ex. 1122, Vigdor Report, at 8; RR23:193-97 (referencing Ex. 5412 at 18); Ex. 3188, Baker Report, at 111.)

FOF 332. Teacher quality is also correlated with in-field certification, and students perform more poorly in a subject when their teachers lack certification in the subject matter. (Ex. 1122, Vigdor Report, at 6-7.) Yet schools are increasingly relying upon teachers who lack traditional certification and/or certification in the subject matter they teach. (*Id.* at 10.)

FOF 333. **Alternative certification programs.** A generation ago, about 80% of teachers in Texas possessed traditional certification, meaning that they had progressed through a traditional teacher education program as a postsecondary student. Today, that proportion stands at 45%. (*Id.*; RR23:204 (referencing Ex. 5412 at 25-26).) As traditional certification has waned, so-called "alternative" certification, a route pursued by less than 1% of teachers in the late 1980s, is now the route of choice for more than a quarter of the state's teachers. (Ex. 1122, Vigdor Report, at 10.) In some recent years, alternatively certified teachers have accounted for more than 40% of new entrants into the profession. (*Id.*; RR23:205 (referencing Ex. 5412 at 27).) Alternative certifications may be obtained from a range of public entities (school districts, community colleges, regional service centers, etc.) or private entities. (RR23:203, 205.)

FOF 334. To a large extent, Texas has relied on private alternative certification programs ("ACPs") to meet the immense need for new teachers created by turnover within the profession and population growth. (Ex. 1122, Vigdor Report, at 11; RR23:205-06.) Private ACPs, in turn, meet this demand in part by circumventing certification requirements that would ordinarily apply to traditionally certified teachers. (Ex. 1122, Vigdor Report, at 11.)

FOF 335. Teachers must pass a state certification exam to be fully certified as a teacher in Texas. (Ex. 1122, Vigdor Report, at 12.) The state's certification tests measure content

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knowledge in the subject a candidate intends to teach. (Ex. 1122, Vigdor Report, at 12.) Results on these tests raise doubt about the level of knowledge of teachers coming through the private ACPs in the areas they teach. (RR23:207 (referencing Ex. 5412 at 28).) Based on 2002-07 data, the odds of failing a Texas teacher certification test are 25% to 90% higher, depending on subject matter, for teachers trained in private ACPs, relative to teachers with traditional university-based training. (Ex. 1122, Vigdor Report, at 13; RR23:205-07 (referencing Ex. 5412 at 29).) On the elementary-level generalist certification exam, which is the most commonly taken exam, the odds of failure are as much as 90% higher for teachers trained by a private ACP. (Ex. 1122, Vigdor Report, at 12.)

FOF 336. Teachers pursuing alternative certification are often working in the classroom while in the process of being certified. (RR23:207-08.) This means that a large number of the teachers encountering difficulty in demonstrating a minimum level of content knowledge on the certification exam are actually responsible for educating students. (Ex. 1122, Vigdor Report, at 12.)

FOF 337. In part because of their difficulties in obtaining full certification, teachers trained in private ACPs have higher turnover rates than their traditionally-certified counterparts. (Ex. 1122, Vigdor Report, at 13; RR23:208 (referencing Ex. 5412 at 30).) Turnover causes a loss of institutional memory about specific students, state mandates, and similar issues. (Ex. 1122, Vigdor Report, at 8.)

FOF 338. **Certification in field.** Studies show that students fare more poorly in a subject when their teacher lacks certification in field. (*Id.* at 6-7.) In Texas and nationwide, teacher shortages are acute in certain subject areas, which has caused schools to rely more heavily on less-qualified candidates in these fields. (*Id.* at 14.)

FOF 339. Math and science teachers, for example, frequently possess credentials that are in demand in the private sector, and consequently have options to leave the profession at various points in their career. (*Id.*) This competition for skilled teachers forces the state to rely on less-qualified candidates in these fields. (*Id.*) In 2011, 70% or fewer of Texas's high school science, high school computer science, middle school science, middle school English, and middle school computer science teachers were fully certified in their respective grades and subjects. (*Id.* at 15; RR23:202 (referencing Ex. 5412 at 23).) In the course of normal progress through middle school and high school, the average Texas public school student can expect to spend two years instructed by science teachers who lack certification to teach the subject, and an additional one or two years taught by a similarly uncertified math teacher. (Ex. 1122, Vigdor Report, at 14-15.)

FOF 340. In addition, the percentage of high school teachers in Texas with an undergraduate major in their main assignment area decreased from 77.8% in 2003-04 to 71.9% in 2007-08. (*Id.* at 15; RR23:202-03.) Texas's ranking by this measure decreased from forty-fourth to forty-sixth over the four-year time period. (Ex. 1122, Vigdor Report, at 15.)

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iii. Teacher salaries impact the ability of districts to hire and retain quality teachers, which impacts student performance.

FOF 341. Economist Jacob Vigdor testified persuasively, based on experimental and quasi-experimental research that he and other researchers have performed, that higher salaries help schools attract and retain better quality teachers. (RR23:212-13 (referencing Ex. 5412 at 34).) This in turn results in improved student achievement. (RR23:212-13 (referencing Ex. 5412 at 34).) For example, evidence suggests that increasing teacher pay can lead to higher graduation rates. (RR15:30.)

FOF 342. Dr. Baker corroborated Dr. Vigdor's analysis, testifying that teacher salaries affect the quality of entrants to the teaching profession and impact how long teachers remain in the profession and where they choose to work. (Ex. 3188, Baker Report, at 102-05; RR16:82-83, 151-52.)

FOF 343. Higher salaries also can help schools recruit and retain teachers in high need settings. (Ex. 1122, Vigdor Report, at 21-26; Ex. 3188, Baker Report, at 105.) The types of students a district serves may influence the desirability of working in a district, and as a result, districts that serve students that present extra challenges will have to pay more to attract and retain high quality teachers. (Ex. 1122, Vigdor Report, at 21-26; Ex. 3188, Baker Report, at 10.) Schools serving predominantly low income and minority populations must pay a higher price to recruit and retain comparable numbers of teachers with comparable qualifications. (Ex. 1122, Vigdor Report, at 21-26; Ex. 3188, Baker Report, at 49-50.) Many superintendents from low-wealth districts testified that they lose large numbers of teachers after the first or second year to neighboring districts that have the funding to pay higher salaries and that have an easier population of students to teach. (Ex. 3203, Knight Dep., at 24-25; RR20:83-85; RR24:205-06; Ex. 3200, Wallis Dep., at 32-36; Ex. 3199, R. Knight Dep., at 27-31; Ex. 3198, Garza Dep., at 49-51; Ex. 3204, Dupre Dep., at 31.)

FOF 344. Other superintendent testimony also confirms Dr. Baker's and Dr. Vigdor's conclusions that compensation affects the quality of teachers a school can hire and retain. (*See, e.g.*, RR3:143-44; RR19:125-26; RR4:253-54.) Numerous superintendents emphasized that districts compete with each other to hire new teachers and that salary plays an important role in teachers' decisions where to work. (RR4:253-54; 1/24 Tr. at 56; Ex. 3198, Garza Dep., at 49-50.) Even higher wealth districts have lost teachers to neighboring districts because their district's salaries are not competitive. (*See, e.g.*, RR20:84; RR4:254-55.) And numerous superintendents testified that they believe their ability to recruit and retain teachers will be adversely affected if they are forced to continue to reduce or freeze teacher salaries. (RR4:253-55; Ex. 5617, Reedy Dep., at 49; Ex. 5614, Patek Dep., at 42.)

iv. Texas teacher salaries are not competitive.

FOF 345. Despite the importance of salaries to attracting and retaining quality teachers, Texas teacher salaries have declined significantly relative to the national average teacher salary.

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(Ex. 1122, Vigdor Report, at 4.) Twenty years ago, Texas teacher salaries were close to the national average, but today, age-adjusted salaries paid to teachers in Texas lag 7% to 10% below the national average. (*Id.*; RR23:185-86 (referencing Ex. 5412 at 10).) A State expert, Dr. Podgursky, conceded that it was appropriate to compare salaries across states on an age-adjusted basis (12/13 Tr. at 2), because it allows for a better measurement of a teacher's earning potential by eliminating any distortions caused by each state's differing distributions of teachers across experience levels. (RR23:186-87.)

FOF 346. The most recent data from the NCES shows that the average teacher salary in Texas was $47,311 in 2009-10 dollars, well below the national average of $54,965 and lower than thirty-two other states. (RR23:192 (referencing Ex. 5412 at 15).) This data also shows that that Texas is falling behind other states, including neighboring states.

FOF 347. Since 1999-2000, Texas was one of only fifteen states where teacher salaries failed to keep pace with inflation. (RR23:192 (referencing Ex. 5412 at 15).) Since 1999-2000, forty-one states increased salaries at a faster rate than Texas. (RR23:192 (referencing Ex. 5412 at 15).) And Texas's four neighboring states posted much stronger inflation-adjusted growth in Texas salaries than Texas, with Oklahoma at 20%, Louisiana at 14.8%, New Mexico at 10.4%, and Arkansas at 9.4%, with Texas bringing up the rear at -1.6%. (RR23:192-93 (referencing Ex. 5412 at 15).) Moreover, average Texas teacher salaries have fallen behind those of other states that are expected to be Texas's main source of competition for new teachers in the coming decade, including Arizona, Colorado, Florida, Georgia, Nevada, New Mexico, Utah, and Wyoming. (Ex. 1122, Vigdor Report, at 5; RR23:191 (referencing Ex. 5412 at 14).)

FOF 348. Texas teacher wages are also low when compared to non-teachers with similar education levels who work similar amounts of time. (RR16:151-53; Ex. 3188, Baker Report, at 105-08.) In fact, teachers in Texas earn a weekly wage that is less than 70% of the wage of their similarly educated peers. (Ex. 3188, Baker Report, at 105; Ex. 1122, Vigdor Report, at 4.) Texas teacher wages fall into the bottom ten states in terms of their relative competitiveness with other career opportunities for individuals at the same education level. (Ex. 3188, Baker Report, at 105.) Teacher wages in Texas are particularly low in metropolitan areas like Houston, Dallas, and Austin, when compared to non-teacher wages in Texas for individuals working the same number of hours and weeks per year, and at the same age and education level. (*Id.* at 107.) It is reasonable to assume from this data that the quality of applicants to the teaching profession is lower than it would be if wages were more competitive. (*Id.* at 105.)

FOF 349. It is also important to consider how teacher salaries have declined over time in assessing the competiveness of teacher salaries compared to other fields. Over the past fifty years, opportunities for women in highly paid occupations – from medicine and law to engineering and business – have expanded tremendously. (Ex. 1122, Vigdor Report, at 16-17; RR24:27.) Elementary and secondary teaching, once one of the primary options available to highly educated women, is now only one of many such options. (Ex. 1122, Vigdor Report, at 16-17; RR24:27.) The decline in teacher salaries relative to other professions makes it much more difficult to attract teachers. (Ex. 1122, Vigdor Report, at 4, 16-17; RR23:187-88.) Evidence also supports the view that the declining relative

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attractiveness of teaching to women – evident not just in Texas, but throughout the country – has led highly qualified candidates to choose other professions. (Ex. 1122, Vigdor Report, at 17; RR23:189-90.)

FOF 350. Dr. Vigdor persuasively opined that: (1) at the salaries currently in place, there is an insufficient number of well qualified teachers willing to work in Texas public schools; (2) Texas schools have had to compromise their standards for teacher quality; and (3) higher teacher salaries are needed to address these concerns. (RR23:180-81; RR24:43-44; Ex. 1122, Vigdor Report, at 13, 18.)

FOF 351. This Court finds that the analysis of Dr. Vigdor and Dr. Baker discussed above is sound and adopts their conclusions.

d. Districts need funding for quality pre-K programming.

i. All students benefit from high quality preschool, but Texas lacks critical elements of quality programming.

FOF 352. Dr. Steven Barnett, Director of the National Institute for Early Education Research, testified persuasively regarding the research base associated with the impact of quality preschool education. Multiple meta-analyses conducted over the past twenty-five years have found preschool education to produce on average an immediate effect of about half a standard deviation (0.50 sd) on cognitive development. (RR11:143-44; Ex. 1074, Barnett Report, at 2.) This is the equivalent of seven or eight points on an IQ test, or an increase from the thirtieth to the fiftieth percentile on achievement tests. (Ex. 1074, Barnett Report, at 2.) High-quality preschool education has been shown to increase both test scores and graduation rates and to reduce grade retention, behavioral problems, delinquency, and crime. (RR11:140.) Neither ordinary childcare or Headstart programs are sufficient substitutes because they do not provide the large, long-term substantive gains in cognitive and social development that have been achieved with high quality pre-K programs. (RR11:148-50; Ex. 1074, Barnett Report, at 5.)

FOF 353. Research shows that the pre-K programs with the largest and longest-lasting effects are more educationally intensive and expensive. (RR11:139-41; Ex. 1074, Barnett Report, at 8.) The preschool programs identified as more effective have been part of the public education system and have had more highly educated, better paid teachers than Head Start and child care. (RR11:149; Ex. 1074, Barnett Report, at 8.) In addition, the evidence indicates that starting earlier produces greater long-term gains; two years beginning at age three produces better results than one year beginning at age four, and starting prior to age three may produce even better results. (Ex. 1074, Barnett Report, at 9; RR11:175-76.)

FOF 354. Dr. Barnett noted a number of weaknesses in Texas's state-funded pre-K program, including the fact that the State places no limits on maximum class size or child-staff ratio in pre-K. (RR11:186; Ex. 1074, Barnett Report, at 15.) Texas is one of only three states that has no such limits. (Ex. 1074, Barnett Report, at 15.) In addition, assistant teachers in Texas are not required to have an education beyond a high school diploma so

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they are not required to have the specialized preparation that would enable them to be effective teaching partners. (*Id.*; RR11:187.)

FOF 355. No state with a pre-K program has less state level capacity to monitor and oversee pre-K than does Texas in terms of absolute numbers of staff – even states as small as Delaware. (Ex. 1074, Barnett Report, at 15; RR11:173-74.) Texas is currently without any statewide system to evaluate the quality of public preschool programs and determine what percentage of students exit the public preschool system kindergarten ready. (1/10 Tr. at 54-55, 64.) In fact, the State only gathers information on approximately 30% of public preschool programs statewide. (1/10 Tr. at 59.) TEA does not collect data on what percentage of three- and four-year olds in the state are preschool eligible, or what percentage of ELL and economically disadvantaged students in the state actually have access to preschool. (1/10 Tr. at 65.) Lack of state capacity for monitoring and oversight precludes a continuous improvement process that would ensure that programs actually use resources effectively and provide a high quality education. (Ex. 1074, Barnett Report, 14-16.)

FOF 356. Highly effective programs also provide specialists to support, monitor, and coach teaching practices. (RR11:167; Ex. 1074, Barnett Report, at 10-11; 1/10 Tr. at 74.) Although the State contends that there are twenty integration specialists that provide services for pre-K programs statewide, those individuals admittedly do not provide assessment, monitoring, coaching, or support services. (1/10 Tr. at 48-49.) Moreover, the TEA's Director of Early Childhood Education, Gina Day, admitted that Texas has never gauged the effectiveness of any services provided by those specialists. (*Id.*)

FOF 357. Dr. Barnett's opinions about the importance of quality, full-day pre-K programs were bolstered by the testimony of former Commissioner Robert Scott. Mr. Scott has long championed improvement in the quality of pre-K programs and funding for full-day pre-K programs. (Ex. 5630, Scott Dep., at 31-32, 43.) He advocated for the state grant that provided funding for full-day pre-K in many districts. (*Id.* at 32, 43.) According to Mr. Scott, this grant was a "critical program[] that support[s] student progress from pre-K through grade 12." (Ex. 15.)

FOF 358. Superintendents from across the state echoed the testimony of Dr. Barnett and Mr. Scott regarding the importance of a quality pre-K program, emphasizing the significant impact the program made in their districts before it was eliminated as a result of budget cuts. (*See, e.g.*, RR19:185; Ex. 5613, Youngblood Dep., at 23-24; RR5:172; RR8:103-04; RR20:50-56, 74-75; RR24:115-17, 195-96; Ex. 3208, Williams Dep., at 210-11.)

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ii. High-quality preschool programs are critical to closing the achievement gap and providing an adequate education for economically disadvantaged and ELL students.

FOF 359. High-quality early childhood education is a particularly important means to improve the developmental and educational outcomes for low-income and ELL students and to close the achievement gap. (RR11:141-43; Ex. 1074, Barnett Report, at 3.) Pre-K programs – particularly full-day pre-K – are critical in addressing the needs of economically disadvantaged students because these students often do not receive basic educational experiences at home and begin school behind their peers. (RR5:172; RR8:103-04; RR20:74-75; Ex. 3208, Williams Dep., at 210.) Early intervention is also especially important for ELL students, because that is when they have the greatest capacity to acquire new language and literacy skills. (RR11:141-43; Ex. 1074, Barnett Report, at 12-13.)

FOF 360. It is well established that low-income and ELL students begin school far behind their non-disadvantaged peers. (Ex. 1074, Barnett Report, at 14; RR4: 72-73.) When children begin kindergarten, the achievement gap between low-income and ELL students and non-disadvantaged students is approximately one standard deviation. (RR11:143.) Disadvantaged children are often as much as eighteen months behind their peers in language development when they enter kindergarten. (RR11:141-42.) Intensive, quality programs like the kind discussed above are important to help at-risk children avoid the cycle of failure. (RR11:146-47; Ex. 1074, Barnett Report, at 4-5, 17.)

FOF 361. Intervenor expert Dr. Eric Hanushek agreed that high-quality pre-K programs can provide low-income and ELL students an important educational jump start. (1/16 Tr. at 200.) Gina Day, the State's Director of Early Childhood Education, agreed that high quality preschool programs help prepare ELL and low-income students to meet state standards. (1/10 Tr. at 77.)

FOF 362. A study of New Jersey's high-quality Abbott preschool program indicates that the achievement gap between disadvantaged and non-disadvantaged students closed by at least one-quarter in one year, and by 40% in two years of preschool through second grade. (Ex. 1074, Barnett Report, at 5-6.) Long-term gains from the most intensive programs can close the achievement gap by as much as half for children living in poverty. (*Id.* at 3; RR11:139-40.)

iii. Texas's pre-K program is inadequately funded.

FOF 363. Texas currently funds only half-day pre-K as part of public education. (Ex. 1074, Barnett Report, at 14.) School districts are not required to offer pre-K to all students (1/10 Tr. at 6), but must offer pre-K if they serve fifteen or more eligible four-year-olds. (1/10 Tr. at 3; Ex. 1074, Barnett Report, at 14.) To be eligible for pre-K, students must meet one of the following categories: (1) children unable to speak and comprehend the English language; (2) children deemed educationally disadvantaged (eligible for free and reduced lunch program); (3) children that are homeless; (4) children whose parents are either on

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active military duty, in an activated reserve unit, or who were killed or wounded while serving on active duty; or (5) children who have been in the Texas foster care system. (1/10 Tr. at 6.)

FOF 364. Texas previously provided funding for full-day programs. (Ex. 1074, Barnett Report, at 14; RR11:184-85.) In 2011, however, the Pre-Kindergarten Early Start Grant, which had provided approximately $100 million annually, was discontinued. (1/10 Tr. at 21, 84; *see also supra* FOF 59.) Full-day pre-K is important because when only half-day programs are offered (and wrap-around arrangements are not offered), some children in lower-income working families will not participate at all because their families cannot manage the multiple arrangements required to accommodate parents' work schedules. Instead these children are likely to attend poor quality child care, which does little to enhance, and may hinder, their development. (Ex. 1074, Barnett Report, at 11.)

FOF 365. Rather than provide resources to expand pre-K programs, Texas has significantly cut funding for these programs, which are critical for the academic success of at-risk students. (Ex. 5630, Scott Dep., at 30-32, 42-44; RR11:186-88; Ex. 4224-S, Cervantes Dep., at 186; Ex. 1074, Barnett Report, at 14-15.) In the 2010-11 school year, Texas provided state funding to serve only 52% of the state's four-year-olds and 6% of its three-year-olds. (RR11:184.) In 2010-11, prior to the budget cuts, state funding per child already had fallen to $3,761 per child, which is lower than in any of the three prior years, adjusting for inflation. The available funding affects the quality of teachers schools are able to recruit and retain, as well as materials and other essential elements of a high quality pre-K program. (Ex. 1074, Barnett Report, at 10; RR11:161-62.)

FOF 366. Although Texas has chosen to "focus" the program on economically disadvantaged and ELL children, it does not provide sufficient funding for quality pre-K for all economically disadvantaged and ELL children. (1/10 Tr. at 85; RR11:186-87; Ex. 1074, Barnett Report, at 15.) For example, Edgewood ISD, which is over 90% economically disadvantaged, has a waiting list of 165 students for full-day pre-K and lacks the approximately $1.2 million dollars required to provide those seats. (Ex. 4237 at 11; RR22:152-53.)

FOF 367. Many other districts with high percentages of economically disadvantaged and ELL students have higher class sizes than recommended, and lack resources to recruit and retain high quality teachers, and to provide those teachers with professional development, continual monitoring, and high quality materials. (*See, e.g.*, RR4:73-74; Ex. 4237 at 9,11; RR22:154-56.) Adequately funding these essential elements would help to increase student achievement, especially for low-income and ELL students. (*See, e.g.*, RR4:73-74; Ex. 4237 at 9, 11; RR22:154-56.)

FOF 368. Superintendents confirmed that their districts currently lack funding to sustain full-day pre-K, but that such a program would be critical in closing achievement gaps and improving performance among economically disadvantaged children. (RR5:43; RR22:154-56; Ex. 3201, Witte Dep., at 24-25.) They testified that pre-K programs, particularly full-day pre-K, are critical in addressing the needs of economically disadvantaged students because these students often do not receive basic educational

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experiences at home and begin school behind their peers. (RR5:172; RR8:103-04; RR20:55-56, 74-75; Ex. 3208, Williams Dep., at 210; RR22:154-56; 1/16 Tr. at 200.)

FOF 369. No State witness was able to credibly dispute this superintendent testimony. Ms. Day admitted that she did not know whether the amount the State allots to districts is sufficient to provide an adequate preschool program. (1/10 Tr. at 77-78, 81.)

FOF 370. This Court is persuaded by Dr. Barnett's testimony that Texas's current pre-K programs are not producing the outcomes proven possible with intensive, high quality preschool education. (RR11:190-91.)

e. Districts need funding to keep class sizes manageable.

i. Smaller class sizes improve learning for all students.

FOF 371. Research and evidence from both the State and the plaintiff school districts show that the effect of lower class sizes on student achievement in the elementary grades is significant.

FOF 372. Extensive research on class size shows that reducing classes to approximately fifteen students in kindergarten through grade three has significant positive effects on graduation rates and student achievement in math and reading. (Ex. 5520, Odden Report, at 4; Ex. 1101, Belfield Report, at 11-14; RR4:73-74.) Small class sizes result in higher achievement because they provide higher levels of student engagement, increased time on task, and the ability for high quality teachers to better tailor their instruction to students in the class. (Ex. 1079, Schanzenbach Report, at 4.)

FOF 373. Tennessee's Student Teacher Achievement Ratio ("STAR") experiment is a well-known, large scale, randomized trial involving class size reduction. (Ex. 5520, Odden Report, at 4.) In this experiment, students and teachers in seventy-nine Tennessee elementary schools were randomly assigned to small or regular-sized classes from 1985 to 1989. (Ex. 1079, Schanzenbach Report, at 2.) Because the STAR experiment employed random assignment, any difference in outcomes can be attributed with great confidence to being assigned to a smaller class. (*Id.*)

FOF 374. The study showed that students assigned to classes of approximately fifteen students achieved at a significantly higher level than those assigned to classes of approximately twenty-two students. (Ex. 5520, Odden Report, at 4.) According to one credible interpretation of the STAR results, the study indicated that elementary students randomly assigned to small classes out-performed their classmates who were assigned to regular classes by about 0.22 standard deviations after four years. (RR26:112-13.)

FOF 375. The State's expert, Dr. Russ Whitehurst, agreed that the STAR experiment is the most influential and credible study of class size reduction to date. (RR26:112.) He identified a number of studies related to class size reduction and agreed that STAR is the strongest study in terms of its ability to show causation. (RR26:76-77.)

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FOF 376. The STAR study involved class size reductions in kindergarten through third grade. (RR17:197-98.) In the opinions of Dr. Odden and Dr. Schanzenbach, the study is consistent with a finding that, other things being equal, smaller class sizes in these grades lead to improvements in student performance. (Ex. 1079, Schanzenbach Report, at 2-3; Ex. 5520, Odden Report, at 4.) In an article published by the Brookings Institution, Dr. Whitehurst agreed that the weight of the high-quality research literature supports the view that class size reductions in these grades are associated with improved performance. (Ex. 1195 at 1; RR26:76, 118, 122-27; Ex. 5678 at pp. 6-8 of PDF).) In addition, later studies utilizing the data gathered during the STAR study indicate that the experiment showed positive long-term impacts for exposure to small class sizes for more than two years, with the greatest impacts for students who spent the most time in smaller classrooms. (RR17:199-200; RR13:122.)

FOF 377. Longitudinal research also shows impacts on college attendance fifteen years later for students who participated in the study. (RR26:77.) Dr. Whitehurst agreed that the proposition that significant class size reductions can have meaningful long-term effects on student achievement is broadly consistent with the body of the most credible research on the subject. (RR26:112, 118; *see also* Ex. 1195.)

FOF 378. Superintendents and teachers at Texas schools confirmed their belief that small class sizes improve learning because they allow teachers to provide individualized instruction to students, reduce disruptive behavioral problems, and devote more time involving parents in their child's education. (*See, e.g.*, Ex. 5618, Wiggins Dep., at 53-55; Ex. 5617, Reedy Dep., at 34, 42; Ex. 3198, Garza Dep., at 45-48.) Superintendents also uniformly pointed out that AEIS data on class size averages across all classes – including those that must be kept small such as special education classes and behavioral programs – and therefore reports a lower number than one would see when walking into a typical regular program class. (*See, e.g.*, Ex. 6337, Hanks Dep., at 232-33; Ex. 6339, Bamberg Dep., at 179-81; Ex. 6341, Frost Dep., at 84, 170-71; RR18:198-99; 12/5 Tr. at 20.)

FOF 379. While most of the evidence on class size reduction is based on studies of early grades, there is evidence that smaller class sizes in eighth grade also positively impact test scores and measures of student engagement. (Ex. 1079, Schanzenbach Report, at 4.) In any event, the ISD Plaintiffs' expert, Dr. Odden, calculated the cost of adequacy based on class sizes of fifteen only in kindergarten through third grade and larger class sizes of twenty-five in grades four through twelve. (Ex. 5520, Odden Report, at 4.)

FOF 380. Dr. Diane Schanzenbach testified that she believes the effects of class size are linear. In other words, the benefits of small class sizes do not occur only when class sizes are reduced to around fifteen. (Ex. 1079, Schanzenbach Report, at 5.) In her view, the benefits also occur when class sizes decrease from sizes such as twenty-four or twenty-five to twenty-one or twenty-two. (*Id.*)

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ii. Smaller class sizes are critical to closing the achievement gap and providing an adequate education to economically disadvantaged and ELL students.

FOF 381. The evidence shows that small class sizes are particularly important for economically disadvantaged and ELL students. While the STAR experiment showed that small classes led to improved student performance, the impact of small class size was even greater for students from low-income and minority backgrounds. (Ex. 5520, Odden Report, at 4; Ex. 1079, Schanzenbach Report, at 2.) While research has shown that students who enjoy smaller class sizes at the elementary level graduate high school at higher rates than those assigned to larger classes, the effects on minority and low-income children are even greater. (Ex. 1101, Belfield Report, at 11.)

FOF 382. Superintendents and teachers confirmed that small class sizes are particularly important for economically disadvantaged and ELL students, as well as special education and elementary school children, because these students need more one-on-one attention than other students. (*See, e.g.*, RR4:258-60; Ex. 5618, Wiggins Dep., at 53-55; Ex. 5614, Patek Dep., at 33-37; Ex. 5613, Youngblood Dep., at 17-22, 34-35; RR4:73-74.)

FOF 383. Reducing class size, especially in the elementary grades, has long-term substantial effects for low-income students. (RR15:32-35; RR4:73-74; Ex. 1101, Belfield Report, at 11.) Smaller class sizes in elementary school have been associated with improvements in high school graduation rates of up to 18% for minority and low-income children. (Ex. 1101, Belfield Report, at 11; RR15:33.)

FOF 384. Experts for both the State Defendants and Intervenors agreed that class size has beneficial impacts on student learning for high need students such as economically disadvantaged and ELL students. (1/16 Tr. at 156-58; RR26:81.)

FOF 385. The Court concludes from this evidence that smaller class sizes are one important strategy for closing the achievement gap and getting low-income and ELL students on track to graduate college and career ready.

iii. Districts have been forced to seek class size waivers in record numbers.

FOF 386. Texas has a maximum class size of twenty-two in kindergarten through fourth grade, with some exceptions. (Ex. 1079, Schanzenbach Report, at 6.) If a class becomes larger than twenty-two, the district must apply to the TEA for an exception, or a "waiver." (*Id.*) In 2011-12, the number of class size waivers requested in Texas spiked. (*Id.* at 7.) Typically, between 90 and 150 districts request waivers, but in 2011-12, more than 280 districts requested waivers. (*Id.*) Over 60% of these districts cited financial hardship as the reason for the waiver request. (*Id.*) Statewide, over 1,700 schools had at least one classroom waiver request, and the TEA granted approximately 8,600 class-size waivers in 2011-12. (*Id.*; Ex. 5630, Scott Dep., at 391-92 (referencing Ex. 30 at 3).)

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FOF 387. In 2011-12, schools with class size waivers had higher percentages of ELL or bilingual students than schools without class size waivers. (Ex. 1079, Schanzenbach Report, at 7 (schools were on average 61% economically disadvantaged, 24% ELL, and 23% bilingual).)

FOF 388. Many superintendents testified that, even though their students learn better in smaller classes, their districts were forced to seek significantly more class size waivers than ever before as a result of the State's budget cuts. (*See, e.g.*, RR4:257-59; RR3:171-72; Ex. 5617, Reedy Dep., at 40-42; RR6:30; Ex. 3200, Wallis Dep., at 23-24; Ex. 3198, Garza Dep., at 45-47; RR20:78-79; RR4:83-84.)

f. Districts need funding to provide a support network for learning.

FOF 389. Districts also need funding to provide a variety of programs and supports that are either statutorily required or are necessary to support a general diffusion of knowledge.

FOF 390. In addition to the curriculum tested by the STAAR regime, the State requires districts to provide a full complement of courses that are not tested, including music, art, and physical education, each of which are included in the required enrichment curriculum set forth in Chapter 28 of the Education Code and in Title 19, Chapter 74, of the Administrative Code.

FOF 391. School districts must also provide educational support systems to support the general diffusion of knowledge – including counselors, librarians, school nurses, tutors, principals, assistant principals, and central administrators. (RR17:91-92, 94, 100; Ex. 5520, Odden Report, at 6, 8, 10-14; RR7:49-51 (referencing Ex. 6349 at 77); Ex. 3207, Salazar Dep., at 40-45.) Schools with a high level of economically disadvantaged students need outreach programs and parent liaisons to involve families in the education of their children. (RR20:75, 79-80; RR24:127-29.) While these support staff positions may not be statutorily required, they are critical to helping schools meet the statutory and constitutional requirements of a general diffusion of knowledge. (RR19:49-50.) School districts must also provide professional development and planning and collaboration time to enable teachers to teach the TEKS and provide for a general diffusion of knowledge. (RR6:150; RR20:85; 12/11 Tr. at 173-77; Ex. 3198, Garza Dep., at 17-18.) Anita Givens, who oversees TEA's professional development efforts, testified that continual professional development is important, particularly in light of the state's changing curriculum. (12/11 Tr. at 184.) She sought an additional $24 to $36 million to be included in the agency's budget request for the 2014-15 biennium to help cover the cost of state-developed professional development. (*Id.*) Her efforts were unsuccessful. (*Id.*)

FOF 392. Counselors play critical roles in (1) identifying and intervening with high risk-children and lining up resources to help these students overcome challenges they face at home or in their neighborhoods, and (2) helping older children identify and choose among their post-secondary options. (RR23:218; RR24:126; Ex. 3206, French Dep., at 60-62.) Various studies associate a lower ratio of students to counselors with better student outcomes. (RR23:218; Ex. 1122, Vigdor Report, at 28.) Yet while a consensus of

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organizations recommends a maximum student-counselor ratio of 250:1, in 2012, more than 90% of Texas schools had ratios greater than 350:1 and two-thirds of schools had ratios greater than 500:1. (RR23:219-20 (referencing Ex. 5412 at 38).) TEA data shows that counselors can provide only thirty-nine minutes of individual planning time for each student *per year* at a 500:1 ratio, and only fifty-six minutes at a 350:1 ratio. (RR23:219 (referencing Ex. 5412 at 37).) These high ratios, which have been trending upward since 2009, particularly impact economically disadvantaged students, who are more likely to face difficult family circumstances inhibiting their performance, less likely to have parents with an active interest in their educational trajectory, and more likely to need help from outside the family in applying for colleges and financial aid. (Ex. 1122, Vigdor Report, at 29; Ex. 3207, Salazar Dep., at 40-45; RR24:126-27.)

FOF 393. The TEA, along with the Texas State Library, produced a report in December 2008 (the "TEA Library Report") which found that school libraries are critical for student achievement, have an important role in teaching, are leading the way for technology use in schools, and inspire literacy. (Ex. 744; 12/11 Tr. at 175.) But they must be staffed by qualified librarians to have these positive effects. (Ex. 744; 12/11 Tr. at 175.) The TEA Library Report called for increases in state funding (for facilities, staffing, current materials, and technology) to enable the public school library programs to meet their educational goals. (Ex. 744 at 2, 10, 14, 16-17.) TEA Associate Commissioner Anita Givens participated in the preparation of the report and agreed with the conclusions and recommendations of the report. (12/11 Tr. at 174-75.) In the four years since the report issued, however, the Legislature has never provided the specific funding for libraries that was called for in the report. (12/11 Tr. at 175-76.) To the contrary, the percentage of elementary schools with full-time librarians has declined significantly between 2010 and 2012. (RR23:221 (referencing Ex. 5412 at 39).)

FOF 394. Abilene ISD's superintendent Dr. Heath Burns, explained that librarians are certified teachers whose literacy expertise can be used to improve teacher and staff development and to foster a love of reading in students. (RR19:48-49.) He described the loss of twelve librarians in his district as one of the significant "casualties" of the 2011 budget cuts. (RR19:48.)

FOF 395. School districts must also incur costs for operational support systems, such as transportation, plant facilities and upkeep, utilities, insurance premiums, and groundskeeping. (RR6:149-50; RR7:49-51 (referencing Ex. 6349 at 77); Ex. 5520, Odden Report, at 14.) Transportation is necessary to encourage student attendance and to prevent dropouts. (RR6:149; *see also* Ex. 5613, Youngblood Dep., at 88-89.) Transportation costs are particularly high for large, geographically disperse districts. (*See, e.g.*, RR24:124-25.) These costs are not only necessary, but superintendents testified that they are also increasing. (*See, e.g.*, Ex. 5618, Wiggins Dep., at 35-36; Ex. 3200, Wallis Dep., at 310; Ex. 3227, Gilcrease Dep., at 150-51.)

FOF 396. Research shows that improved support networks – including better facilities and school leadership and the presence of educational aides – help schools to recruit and retain

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higher quality teachers. (Ex. 1122, Vigdor Report, at 25, 28, 30-31.) As discussed above, teacher quality affects student performance. (*See supra* Part I.B.6.c.iii.)

FOF 397. Districts must also provide co-curricular and extra-curricular programs that: (1) help keep many students in school that might otherwise drop out; (2) teach students valuable social skills, including leadership and how to work as part as of a team (a skill that is critical in the labor market); (3) ensure that students have access to a well-rounded education; and (4) help students gain admission into and succeed in college. (*See, e.g.*, Ex. 3199, R. Knight Dep., at 38-39.) Superintendents testified that extracurriculars, athletics, and the arts are "high motivators" for students to come to school, to stay engaged in school, and to keep their grades up so they can participate in these activities. (RR3:196-97; RR8:137-39.) Other superintendents similarly testified that athletic programs prevent students from dropping out and motivate students to perform better academically so they can participate in athletic programs. (*See, e.g.*, Ex. 5617, Reedy Dep., at 116; RR4:104-05, 261-62; RR3:196-97.) Athletic programs also foster important skills such as leadership and team work. (RR4:261-62.)

g. Districts need funding to provide adequate educational facilities.

FOF 398. The Court finds that adequate school facilities are necessary to the functioning of the Texas public school system. As the Texas Supreme Court has noted, "An efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place. These components of an efficient system – instruction and facilities – are inseparable." *Edgewood IV*, 917 S.W.2d at 726. The Court further finds that in order to provide an adequate education, districts must have adequate facilities, which requires access to sufficient funds to build new facilities and maintain and renovate current ones.

i. State facilities aid has not kept pace with district needs.

FOF 399. From 2007-2008 to the 2011-2012 school year, the Texas public school system grew by 330,306 students. (Ex. 1328, Casey Report, at 21.) More than 90% of this enrollment growth has occurred in approximately 100 school districts. (*Id.*; RR10:177.) The Court finds that these "fast-growth" districts are particularly in need of new facilities in order to keep up with their rapid enrollment growth. Other school districts have older buildings that need significant renovation in order to meet TEA's standards or in order to update their technological infrastructure to use twenty-first century technology. (*See*, *e.g.*, Ex. 6341, Frost Dep., at 20-21.)

FOF 400. School districts pay for new facility construction and renovation of current facilities by issuing voter-approved bonds and levying interest and sinking fund ("I&S") taxes to meet their annual debt service requirements. (Ex. 6318 at App. E, Part 14, p. 20; RR11:65-66, 73-77.) Currently, 810 Texas public school districts levy I&S taxes to service $62.6 billion in outstanding school district debt (including both principal and interest). (*See* Ex. 1328, Casey Report, at 21.)

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FOF 401. Following the *Edgewood IV* decision, the State took a number of steps to address the Supreme Court's warning that "the lack of a separate facilities component has the potential of rendering the school finance system unconstitutional in its entirety in the very near future." *Edgewood IV*, 917 S.W.2d at 746. The structure of the current state facilities funding program was initiated in 1997 with the creation of the Instructional Facilities Allotment ("IFA"). (Ex. 1328, Casey Report, at 21.)

FOF 402. Like the state's M&O funding, the IFA operates on a guaranteed yield system, but without recapture. (*Id.* at 21-22.) Eligible school districts initially received the equivalent of a tax yield guarantee of $28 per penny per ADA to assist in meeting a district's debt service needs. (*Id.*) In 1999, the yield was increased to $35 per penny per ADA, and has not increased since. (RR10:166-67 (referencing Ex. 6352 at 12).)

FOF 403. Unlike the state's M&O funding, districts are not actually guaranteed funding based solely on having a tax yield that is less than the guaranteed yield. (Ex. 1328, Casey Report, at 22.) The IFA system requires districts to submit an application that details the proposed bond schedule and the educational facilities to be constructed. (*Id.*) In the event of a greater demand for IFA funds than the appropriation for the program would support, districts are ranked on the basis of their state property wealth per ADA – from lowest to highest – with the lowest-ranking districts the first to qualify for these funds. (*Id.*) Therefore, the number of districts whose applications are granted varies by the amount of the Legislative appropriation for new IFA awards. (*Id.*) The Legislature did not appropriate any money for new IFA awards during the 2011 session. (*Id.*)

FOF 404. While the IFA helps districts who seek to enter into new debt, the Existing Debt Allotment ("EDA") seeks to help districts pay back already existing debt. (Ex. 1328, Casey Report, at 23.) When the EDA was enacted in 1999, districts were guaranteed a yield of $35 per student for each cent of tax effort, equivalent. As enacted, only twelve cents of I&S tax effort were eligible for EDA state support. (*Id.*) This cap was raised to twenty-nine cents in 2001. (*Id.* at 23; RR10:172.) The $35 yield per student per cent of tax effort has not been increased since 1999. (Ex. 1328, Casey Report, at 23; Ex. 6352 at 12; 1/8 Tr. at 189.)

FOF 405. At the time the EDA program was initiated, 896 school districts enrolling 91.2% of all Texas schoolchildren were eligible for state support under either the EDA or IFA programs. (Ex. 1328, Casey Report, at 23.) For the 2011-12 school year, fewer than 57% of all Texas students now attend school in districts that are eligible for EDA or IFA support. (RR10:168; Ex. 6352 at 12; 1/8 Tr. at 188-89.) If the EDA and IFA yields had been pegged to the 91.2 percentile of wealth, it would have a yield of $62.71 per penny today. (RR10:173.) If the $35 yield had simply been adjusted for inflation over the last decade, the yield today would be $54.77, with 84.8 percent of Texas students attending school in eligible districts. (RR10:174.)

FOF 406. Whether or not they receive EDA or IFA funding, before a school district may issue a bond, it is required to demonstrate to the Attorney General that the district has the ability

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to meet its principal and interest payments on bonds[14] from an I&S tax rate that does not exceed $0.50 per $100 of taxable value. *See* TEX. EDUC. CODE § 45.0031. (*See also* Ex. 1328, Casey Report, at 26-27; RR10:187-90.) The decline in EDA and IFA funding has caused districts to increase their local I&S rates. (1/8 Tr. at 189-90 (referencing Ex. 6352 at 20).) In the 1999-2000 school year, the first year of full implementation of the EDA, only thirty-nine school districts had I&S rates of $0.30 or higher that year. (Ex. 1328, Casey Report, at 26.) By 2011-12, 222 school districts had I&S rates above $0.30. (*Id.* at 21; 1/8 Tr. at 189 (referencing Ex. 6352 at 20).)

FOF 407. Fast-growing school districts are particularly hard hit by the combination of the stagnant $35 yield and the requirements of the fifty-cent test. (Ex. 1328, Casey Report, at 26; Ex. 6352 at 26-27.) For the 2011-12 school year, fast-growth school districts have an average I&S tax rate of $0.333 per $100, compared with $0.223 for districts that are not fast growth. (Ex. 1328, Casey Report, at 26.)

FOF 408. In addition to creating an inability to issue new voter-approved debt, the fifty-cent test is forcing some fast-growth school districts to issue bonds with longer maturities to meet this requirement and meet their facilities needs. (*Id.*; Ex. 6352 at 28-29; RR10:191-92; RR11:80-83 (referencing Ex. 665 at 12, 14-15).) The longer maturities can result in local school districts and taxpayers paying tens to hundreds of millions in additional interest costs. (Ex. 1328, Casey Report, at 26-27; Ex. 6352 at 30; RR11:84 (referencing Ex. 665 at 14-15).)

FOF 409. The Court finds that the Legislature's failure to appropriate sufficient funds and increase the guaranteed yield for facilities funding has contributed to the inadequacy of the system as a whole.

ii. Many districts have unmet facilities needs.

FOF 410. The Texas Comptroller released a report in 2006 studying school facilities. According to the Comptroller's report, roughly 40% of the high schools were considered in the categories of fair, poor, or needs replacing, with the average age of these facilities being 34.5 years old. (Ex. 3231 at 6; RR18:162-87.) Districts with an economically disadvantaged rate of less than 20% reported the highest percent of facilities in good or excellent condition, whereas districts with an economically disadvantaged rate of 80% or higher reported the lowest percentage of facilities in good or excellent condition. (Ex. 3231 at 6; RR18:164-77.)

FOF 411. The conditions necessary to address when considering whether a building is adequate or inadequate are health and safety, age of the building, human comfort, indoor air quality, lighting, acoustical control, and secondary science laboratories. (Ex. 3231 at 37-42; Ex. 3198, Garza Dep., at 35-36; RR18:164-77.)

FOF 412. Superintendents from across the state testified about aging facilities that the district cannot afford to repair or replace. (Ex. 3200, Wallis Dep., at 49 and 56; Ex. 3203, Knight

[14] Excluding those bonds approved by voters on or before April 1, 1991 and issued prior to September 1, 1992.

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Dep., at 40-42; RR5:193-94, 224-28; RR20:86-88; Ex. 3198, Garza Dep., at 32-33.) These older facilities cost more to maintain and operate (Ex. 3200, Wallis Dep., at 49 and 56.) Superintendents testified about having to educate students in buildings with damaged roofs and foundations with structural problems. (Ex. 3204, Dupre Dep., at 48-51; Ex. 3207, Salazar Dep., at 52-53; RR5:225-27; RR20:86-88; Ex. 3206, French Dep., at 52-53.) Oftentimes, unmaintained buildings can pose a safety hazard. (Ex. 3203, Knight Dep., at 40-42; Ex. 3200, Wallis Dep., at 49, 56.)

FOF 413. Other superintendents testified that the district cannot afford to construct buildings to keep pace with student growth. (RR5:193-94, 224-28.) As a result, campuses become overcrowded, with classes being held in auditoriums, libraries, and other common spaces instead of traditional classrooms. (RR5:193-94, 224-28.) These overcrowded campuses do not have sufficient restrooms or cafeteria space. (RR5:193-94, 224-28.) Other campuses do not have sufficient science facilities, which prevent districts from offering advanced science courses or meeting the requirements of TEKS. (RR5:225, 227; RR20:87-88; Ex. 3206, French Dep., at 18, 52-53.)

FOF 414. In light of the above findings, this Court finds that there is a significant problem in the condition of district facilities; that adequate facilities are necessary to provide a general diffusion of knowledge, *Edgewood IV*, 917 S.W.2d at 726, 746-47; that overall funding for facilities is insufficient, and, in particular, that the guaranteed yield for facilities is inadequate. The failure in funding for facilities has contributed to the inadequacy of the system as a whole.

h. Outdated formulas contribute to inadequate and unsuitable funding.

FOF 415. The Texas school funding formulas are designed to accommodate differences in cost due to factors beyond the control of local school districts, including: (1) costs arising from differing student characteristics, including the greater expense of educating economically disadvantaged, bilingual, and special needs students; (2) costs attributable to various programmatic variables, including career and technology programs; and (3) costs relating to certain uncontrollable school or community characteristics, such as competitive salary differentials, transportation costs, and district size and sparsity. (Ex. 6322, Moak Report, at 55, 61.)

FOF 416. Most of these adjustments are out-of-date and lack a research base. (*Id.* at 56.) Because these adjustments do not reflect the true costs to districts arising from the differing student, programmatic, and community characteristics or variables, they contribute significantly to the inadequacy and unsuitability of the school funding system. (RR24:148-49.)

FOF 417. As discussed below, the State has failed to meet its obligation under Section 42.007 of the Education Code to update these adjustments. (*See infra* FOF 428 - FOF 430.) The Court finds that the mechanism of Section 42.007 would, if enforced, help ensure that the school finance formulas were structured and funded so as to provide districts with adequate funding to enable school districts to provide a general diffusion of knowledge.

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The State's failure to comply with its own statutory requirements has contributed to the inadequacy of the system.

FOF 418. **Student and programmatic weights.** The compensatory education and bilingual weights affect a significant portion of Texas's student population, but the State has failed to update these weights in recent decades. (*See supra* Parts I.B.6.b.i(c), I.B.6.b.ii(d).) As discussed above, these outdated weights contribute to the inadequacy and unsuitability of the system. (*See supra* Parts I.B.6.b.i(c), I.B.6.b.ii(d).)

FOF 419. Other student and programmatic weights are also out of date and contribute to the inadequacy and unsuitability of the system. For example, the special education allotments (which have not been modified since 1993) and the allotment for high school students (established in 2006) have not been studied to determine the actual cost to educate these students. (Ex. 6322, Moak Report, at 61-62; Ex. 1328, Casey Report, at 15-17; RR6:216-17.) Several superintendents and one CFO testified that special education costs in their districts are increasing and are a significant cost driver. (RR3:146-49; RR4:13-18; RR4:192-93; Ex. 6338, Hoke Dep., at 62-66 (referencing Ex. 664 at 25-26); RR24:132; 12/5 Tr. at 141-43.)

FOF 420. The career and technology weight, which is comparable to the funding structure first adopted in 1984, is intended to serve as a substantial financial incentive for districts to offer quality vocational programs. (Ex. 1328, Casey Report, at 16; Ex. 6322, Moak Report, at 62; RR6:216.) The overall effective weight of 0.35 (or 35% additional funding) also has not been examined in terms of actual costs or performance criteria in recent years. (Ex. 6322, Moak Report, at 62; Ex. 1328, Casey Report, at 16.)

FOF 421. **Cost of Education Index.** The Cost of Education Index ("CEI") is an adjustment designed to reflect the variation in known resource costs and costs of education beyond the control of school districts. (Ex. 6322, Moak Report, at 56-57; RR6:211-12.) The CEI is based on five school district characteristics that were measured in 1989-90 – district size, type, percentage of low income students, average beginning teacher salary in surrounding districts, and location in a county with a population less than 40,000. (Ex. 6322, Moak Report, at 56; Ex. 5653 at 24.) These measures have become outdated as populations have shifted, the cost of housing has increased, and student populations have changed. (Ex. 6322, Moak Report, at 56; RR6:209-11; Ex. 3188, Baker Report, at 4, 27; RR16:26-29.)

FOF 422. The CEI has not been updated since 1990, which means that the annual distribution of approximately $2.36 billion rests on teacher compensation patterns and school district characteristics dating from 1989-90. (Ex. 6322, Moak Report, at 56; Ex. 1328, Casey Report, at 8, 16; RR6:209-12.) Mr. Moak testified that an updated index should provide approximately $1 billion more to school districts. (RR6:212-14 (referencing Ex. 6349 at 51).) Although the Legislature has twice commissioned updates (completed in 2000 and 2004), neither has been acted upon. (Ex. 1328, Casey Report, at 10-11.) Both studies concluded that costs had changed significantly since the 1990 index was adopted and recommended that the index be replaced. (*Id.*)

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FOF 423. The second study was conducted by Lori Taylor of Texas A&M University at the request of the Joint Select Committee on Public School Finance. Dr. Taylor observed that Texas school districts are facing substantial and uncontrollable differences in labor costs that vary by over 30% from district to district, and that the geographic pattern of cost has shifted. (Ex. 6322, Moak Report, at 56-57.) She concluded that the existing CEI is badly outdated, and that a new index that is "accurately reflecting uncontrollable variations in the cost of education requires adoption of a new CEI." (*Id.* at 57.) The Legislature has ignored this recommendation. The Legislature's failure to update the CEI has particularly harmed central city and suburban school districts. (*Id.*)

FOF 424. **District size and sparsity adjustments.** Texas has long recognized the need to provide funding differentials to small and/or sparsely populated districts to account for diseconomies of scale and other unique costs these districts face. (*Id.* at 61.) The current system recognizes several types of districts, including districts with 1,600 to 5,000 students, districts with fewer than 1,600 students but more than 300 square miles, districts with fewer than 1,600 students but less than 300 square miles, and districts with fewer than 130 students. (*Id.*; Ex. 1328, Casey Report, at 14.) The adjustment for district size has not been updated since 1995, except for the addition of a mid-sized district adjustment. (Ex. 1328, Casey Report, at 16; RR6:226-28.) The sparsity adjustment has not been changed since 1984. (Ex. 1328, Casey Report, at 16.) Several factors suggest that the formulas are in need of modification under the current performance oriented system. (Ex. 6322, Moak Report, at 61.) These factors include a lack of evidence that the 300 square mile variation is based on current cost differentials and the failure to adjust formulas for modifications in curriculum standards. (*Id.*)

FOF 425. **Transportation allotment.** The transportation allotment recognizes a legitimate cost variation in transportation costs among districts, but only finances a small portion of the actual cost. (*Id.*; RR6:217.) As a result, districts are forced to fund this expense through the collective use of over $900 million in funds intended for other programs in Tier I and II. (Ex. 6322, Moak Report, at 61; RR6:217; *see, e.g.*, RR12:17.)

FOF 426. The Court finds that these outdated formulas contribute to the inadequacy and unsuitability of the system.

7. The cost of providing an adequate education in Texas, sufficient to meet state standards, exceeds the available funds under the current school finance system.

a. Despite statutory mandates, the State has made no attempt in the last decade to calculate the cost of adequacy or the costs of meeting its own performance standards.

FOF 427. The State Defendants have not attempted to calculate the cost of adequacy in this case. In fact, the State of Texas (including the Legislature and TEA) has not conducted a study of the cost of an adequate education since 2003. (RR17:37; 1/8 Tr. at 192-95.) Moreover, the State's witnesses acknowledge that the State has made no effort to determine the cost of meeting the state's new and higher standards. (1/8 Tr. at 69-71,

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123-24, 187, 192-95; 1/9 Tr. at 19-20, 174-77; 12/10 Tr. at 126-27; 12/11 Tr. at 163-65, 175; 1/7 Tr. at 154-56; 1/10 Tr. at 81, 185-86.) Further, TEA's CFO testified that the State does not attempt to factor increased costs to districts into TEA's biennial legislative appropriations request ("LAR") for the FSP, although the State does consider the cost to TEA of administering the laws and incorporates those estimates into TEA's LAR. (1/7 Tr. at 153-56.)

FOF 428. Section 42.007 of the Education Code creates a mechanism for keeping the important funding elements of the FSP up-to-date and consistent with the state's academic goals, as well as changing local demographic and financial conditions. (Ex. 1328, Casey Report, at 4-5.) Under this section, the LBB is directed to adopt rules that provide for "the calculation for each year of a biennium of the qualified funding elements" – including the cost per student for the regular program, as well as special population programs, and adjustments such as the CEI, the guaranteed yield level for enrichment, and funding for the school facilities programs – that are "necessary to achieve the state policy under Section 42.001." (*Id.* at 4; RR10:152-54 (referencing Ex. 6352 at 7-8).) *See also* TEX. EDUC. CODE § 42.001(a) ("It is the policy of this state that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to the student's educational needs . . . .")

FOF 429. Daniel Casey testified that the LBB has failed to fulfill its statutory obligation to adopt rules and conduct studies regarding the cost of the state's requirements and goals. (RR10:154-55 (referencing Ex. 6352 at 9).) Mr. Casey further testified that, when the State has conducted studies, it has rarely taken action on them. (RR10:154-55 (referencing Ex. 6352 at 9); *see also* Ex. 1328, Casey Report, at 6-12.) The Court finds this testimony by Mr. Casey (a former head of the Legislative Education Board, which is the former agency responsible for conducting such studies) to be credible and persuasive, and adopts the testimony.

FOF 430. As discussed in greater detail in Parts I.B.6.b.i(c), I.B.6.b.ii(d), and I.B.6.h, most of the "qualified funding elements" that should have been studied under this statutory requirement are out-of-date and lack a research base. (*See also* Ex. 6322, Moak Report, at 56-62.) Because these adjustments do not reflect the true costs to districts arising from the differing student, programmatic, and community characteristics or variables, they contribute significantly to the inadequacy and unsuitability of the school funding system.

b. Superintendent testimony establishes that the 2011 budget cuts have left school districts with insufficient funding to successfully meet state standards.

FOF 431. Superintendents uniformly testified that their districts do not have sufficient funding to provide a general diffusion of knowledge. As Austin ISD's superintendent testified, "we are up against the wall on the ever increasing state standards and there's an expectation that we deliver on all of that in short order . . . so it is unreasonable, in our minds, to believe that for any reason whatsoever, we would be able to do all of those things that are

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starting with the base required by the State with the resources we have today." (RR19:255; *see also* RR5:33; Ex. 3206, French Dep., at 37-38; Ex. 3226, Kincannon Dep., at 27, 142-43.) Superintendents further testified that they do not have the means to generate additional revenue, and even raising their tax rates to $1.17 was (or would be) barely sufficient to restore the funding they lost from the budget cuts in 2011. (RR5:169-70, 196-97; Ex. 5614, Patek Dep., at 80–81; Ex. 3201, Witte Dep., at 19-21; Ex. 3202, Pfeiffer Dep., at 38-42, 46-48.)

FOF 432. Districts' needs are particularly acute in light of the transition to the STAAR assessment system. When the State implemented new assessment regimes in the past, it provided additional resources to help students meet the new standards. (*See supra* Part I.B.4.) The additional resources that were available to school districts under prior assessment transitions, such as the transition from TAAS to TAKS, are not available for the current transition from TAKS to STAAR. (Ex. 6322, Moak Report, at 35.) But all witnesses to address the subject uniformly testified that the STAAR exam is far more rigorous than TAKS, and superintendents testified uniformly that districts will need additional resources to prepare students to pass the exams. (*See e.g.*, Ex. 5618, Wiggins Dep., at 58-60; Ex. 5617, Reedy Dep., at 59; Ex. 5615, Waddell Dep., at 45-46; Ex. 5614, Patek Dep., at 53-56, 55-56; Ex. 5613, Youngblood Dep., at 164-65; *see also* Ex. 6322, Moak Report, at 30.) The evidence leaves little doubt that inadequate funding for these kinds of interventions will impair districts' ability to effectively prepare students to pass the STAAR exam. (Ex. 6322, Moak Report, at 30, 35; Ex. 5617, Reedy Dep., at 62.)

c. The "evidence-based" model presented to the Court credibly estimates adequacy costs substantially in excess of current spending levels.

FOF 433. Allan Odden, of the University of Wisconsin at Madison, estimated the cost of adequate school funding levels for Texas school districts using a cost estimate model known as the "evidence-based" approach. (*See generally* Ex. 5520, Odden Report, at 1.) Dr. Odden's education, training, and experience are summarized in his curriculum vitae. (*See* Ex. 1300.) In collaboration with Lawrence Picus of the University of Southern California, Dr. Odden has previously performed cost estimates in other states at the request of state legislative or governors' commissions and state education agencies. (RR17:41-44 (referencing Ex. 5665 at 3).) In several of these states, their estimates have been adopted as the basis for state school finance systems. (RR17:44 (referencing Ex. 5665 at 5).) The Court finds that Dr. Odden is qualified to opine on the cost of adequate education based on his knowledge, skill, experience, training, and education. This Court also finds that Dr. Odden's opinions are reliable and credible.

FOF 434. Dr. Odden applied the model to estimate the per-pupil cost of an adequate education for each school district in Texas and for the state as a whole. (Ex. 5520, Odden Report, at 1.) Dr. Odden estimates the level of funding that is necessary to meet the Texas constitutional requirements for education, which in the present context requires both meeting applicable statutory requirements and providing a system in which students are placed on a trajectory of significant positive improvement in core academic subjects. (*Id.*) His estimates do not include any amount that is used for enrichment purposes. (*Id.*)

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FOF 435. The evidence-based approach uses current research findings to specify the resources needed in prototypical elementary, middle, and high schools. (*Id.* at 2.) That research includes experimental design studies, other peer reviewed publications, and analysis of best practices from schools and districts that have significantly improved student performance over a four- to six-year time period. (*Id.*) The approach also relies on professional standards, as well as Texas legal requirements, for elements such as guidance counselors and nurses, as well as maintenance, custodial, and groundskeeper personnel. (*Id.*)

FOF 436. To estimate the cost of the evidence-based model for each district, which is then aggregated to a total state cost, Dr. Odden followed these steps:

- Described in detail a prototypical school district designed for high student performance, including resources at each school (elementary, middle, and high schools, separately) (*see id.* at 4-26);
- Estimated the core per-pupil resources needed for each prototypical school;
- Determined the additional per-pupil resources necessary to meet the needs of special needs students (economically disadvantaged, bilingual/ESL, special education, and career and technical education);
- Computed the per-pupil costs of the central office and maintenance and operations;
- Determined the per-pupil costs of a comprehensive pre-K program, serving the same number of pre-K students currently served in Texas pre-K; and
- Estimated the additional costs required due to the diseconomies of small school districts.

(*Id.* at 2.)

FOF 437. These per pupil cost estimates are then applied to the ADA of each district such that a total estimated cost per ADA – based on the characteristics of the students in that district – can be determined for each school district in the state. (*Id.* at 3.) This figure is then adjusted by a Cost of Education Index that accounts for differences in the cost of providing educational services in different regions of Texas. (*Id.* at 2; *see also supra* FOF 421.)

FOF 438. Some of the key strategies recommended by Dr. Odden's evidence-based approach include (1) core teachers for class sizes of fifteen in kindergarten through third grade and of twenty-five in grades four through twelve, (2) full-day kindergarten, (3) specialist teachers at 20% of core teachers at elementary and middle schools and 33% at high school, and (4) instructional coaches to provide professional development, including classroom observation and feedback for teachers. (Ex. 5520, Odden Report, at 4-6.) Dr. Odden's evidence-based model provides additional resources, including tutors and

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summer school, which are targeted toward struggling students. (*Id.* at 10-11.) Dr. Odden persuasively testified that Texas is unlikely to substantially improve student performance without implementing the core interventions recommended by his evidence-based model. (RR17:147.)

FOF 439. The benefits of Dr. Odden's strategies are supported by a substantial body of credible research, including randomized trials and meta-analyses (which determine average effect sizes across a large number of studies). (RR17:67-78; Ex. 5520, Odden Report, at 4-6, 20.)

FOF 440. For example, the Tennessee STAR study, which is a large-scale randomized trial, supports Dr. Odden's recommendation to reduce class sizes at the elementary level. (RR17:76-77; Ex. 5520, Odden Report, at 4; *see also supra* FOF 373 - FOF 377.) Randomized trials also support Dr. Odden's recommendations for full-day kindergarten (which Texas already funds), instructional coaches, tutors, summer school, and pre-K. (RR17:76-77, 86-87.) Dr. Odden reasonably determined that the strategies included in his model are likely to result in substantial increases in student outcomes.

FOF 441. The Court finds that Dr. Odden's model is conservative in several respects. For example, Dr. Odden based his calculation of teacher salaries on average salaries in Texas (RR17:100-02), despite evidence from Dr. Vigdor and others that salaries in Texas have not kept pace with overall wage levels in the economy, or even with salaries in surrounding states. (*See supra* Part I.B.6.c.) He also did not assume any expansion over current levels in the population served by pre-K. (RR17:87.) And he assumed core class sizes of twenty-five students in grades four through twelve – a number that many have criticized as being too high. (RR17:84-85.) His model also does not reflect all of the costs needed to provide ELL students with a basic, adequate education, including the costs of stipends that are needed to recruit and retain certified bilingual/ESL instructors, textbooks in two languages, materials and professional development geared toward the language programs, and tutoring and remediation costs to address ELL needs.

FOF 442. Dr. Odden's model yielded an estimate of $43,016,784,418 for necessary educational spending in Texas in 2010-11. (RR17:120 (referencing Ex. 5665 at 23).) This calculation excludes the costs for special education for children with severe and profound disabilities, as well as the costs of transportation, food services, and security. (RR17:108, 120-21.) To make an apples-to-apples comparison of Dr. Odden's estimate of adequate spending to the total operating expenditures in 2010-11, Lynn Moak added in the excluded costs of transportation, food services, and security. (Ex. 6325, Moak Supp. Report Three, at 1; RR17:137.) He determined that Dr. Odden's adequacy calculation needs to be increased by $3,749,767,519 to account for these excluded costs. (Ex. 6325, Moak Supp. Report Three, at 1.) Adding these costs to Dr. Odden's calculation produces an adjusted adequacy estimate of $46,766,551,937. (RR17:137-39.) This adjusted adequacy estimate is $3.66 billion more than the amount spent on education in Texas in 2010-11 – before the 2011 budget cuts. (RR17:139.) Adding the $2.5 billion in budget cuts to this adjusted adequacy calculation indicates that Texas schools are currently underfunded by approximately $6.16 billion annually. (RR17:140-41.) This amount does not include the additional funding required to provide districts with meaningful local

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enrichment opportunities. (RR17:141.) Incorporating Mr. Moak's estimate of the amount of dollars that would ordinarily be considered "enrichment" in an adequately funding system, Texas schools are underfunded by $7.76 billion. (RR17:141-42.)

FOF 443. The Court finds Dr. Odden's conclusion to be a reasonable estimate of the cost of an adequate education in Texas.

d. Lynn Moak's expert testimony established that school funding is currently inadequate.

FOF 444. Lynn Moak testified that he believes Texas cannot close the educational gap or achieve college and career readiness without additional funding. (RR6:241-42.) He explained that approximately $1,000 of additional funding per weighted student is necessary to correct outdated weights and adjustments and to allow schools to meet increased state standards. (RR6:241-43; *see also* Ex. 6325, Moak Supp. Report Three, at 1.) This Court finds Mr. Moak's estimate that an additional $1,000 per weighted student is necessary – in addition to the amount cut from public education in 2011 – to be a reasonable approximation of the level of resources necessary for Texas students to meet these heightened requirements. (*See* RR6:242-43.)

e. Updated calculations of previous costs estimates for educational adequacy demonstrate that the current system falls short.

FOF 445. Nearly twenty years ago – at a time when Texas school districts faced very different student populations and outcome standards, the Texas Supreme Court noted, "[b]ased on the evidence at trial, the district court found that meeting the accreditation standards, which is the legislatively defined level of efficiency that achieves a general diffusion of knowledge, requires about $6,500 per weighted student." *Edgewood IV*, 917 S.W.2d at 755, n.10. Applying the average rate of growth of education costs from the NCES Education Comparable Wage Index for Texas, Dr. Baker determined that this $3,500 figure is equivalent to $6,576 in 2011. (RR16:23-26 (referencing Ex. 3230 at 5); Ex. 3189-B.) The evidence showed that only 130 out of 1,024 school districts could generate $6,576 in M&O revenue by taxing at $1.04 or less. (RR9:159-60 (referencing Ex. 3098).) Only 233 districts could raise this amount by taxing at $1.17 or less. (RR9:123-24 (referencing Ex. 3098).)

FOF 446. Although Dr. Baker's $6,576 per-WADA calculation (using old law WADA without the RPAF) accounts for inflation, it does not account for the increased costs districts face as a result of the state's heightened expectations. (Ex. 3188, Baker Report, at 25.) Yet, the costs to provide a general diffusion of knowledge have increased since *Edgewood IV*. (RR9:123-24; *see also supra* Parts I.B.1, I.B.3.) In addition, this analysis assumes that districts could fund an adequate education using revenue from Tier I and Tier II, but revenue from Tier II was intended solely to provide local enrichment. (Ex. 5630, Scott Dep., at 341, 343; *see also supra* FOF 40 - FOF 44.) As a result, even if districts could raise their M&O tax rates to $1.17, less than one-quarter of districts could obtain enough revenue to generate the inflation-adjusted per WADA revenue that was necessary to

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provide an adequate education in 1994, much less to generate enough revenue to provide an adequate education under today's heightened standards or to provide local enrichment.

FOF 447. The Court recognizes that the $3,500 per student cost of adequacy found in *Edgewood IV* is a rough approximation, but this finding and the analysis above further support Dr. Odden's opinion, Mr. Moak's opinion, and the testimony of every superintendent to address the subject before the Court that current school funding is inadequate.

f. Summary of evidence concerning adequate funding

FOF 448. The State has a responsibility under Article VII, Section 1 to make a reasonable effort to determine what it will cost to suitably provide for its own standards and meet its own definition of general diffusion of knowledge. The State effectively has recognized and accepted this constitutional responsibility by enacting Section 42.007 of the Texas Education Code, which requires rule making and the conduct of specific studies on a biennial basis to determine the cost of meeting state performance requirements. (*See supra* FOF 428.)

FOF 449. The State has failed to perform this constitutional and statutory responsibility for the past decade. (*See supra* Part I.B.7.a.) In particular, there is no evidence that the State made any effort in 2011 to determine the cost of its own performance requirements, or what effect the $5.3 billion in cuts, including implementation of the RPAF, would have on the ability of schools and students to meet the higher performance standards that the State began to implement in the 2011-12 school year. (*See, e.g.*, 1/8 Tr. at 68-69, 123-24, 187, 192-95; 1/9 Tr. at 19-20, 174-77; 12/10 Tr. at 126-27; 12/11 Tr. at 163-65, 175; 1/7 Tr. at 154-56; 1/10 Tr. at 81, 185-86.)

FOF 450. Because the State has not complied with its constitutional and statutory responsibility to determine the cost of its own performance standards, the State is not entitled to any judicial deference or presumption that the current school finance system is funded appropriately. As the Texas Supreme Court has stated, if the system is not reasonably designed and supported so as to accomplish the very purpose for which it is created, then it is arbitrary and therefore not suitable. *WOC II*, 176 S.W.3d at 784-85.

FOF 451. While the State has failed to fulfill its constitutional and statutory responsibility to determine the cost of its own performance standards, the plaintiffs have submitted extensive evidence relating to these costs in the form of testimony from superintendents and experts. (*See infra* Parts I.B.7.b - I.B.7.e, I.B.10.) To determine if the current system has sufficient funding to meet current performance standards, the Court must consider this evidence.

FOF 452. At least five significant considerations drive the Court's assessment of the level of funding required to accomplish the constitutionally mandated general diffusion of knowledge. These are: (1) the well documented increase in performance standards for students and districts described in Part I.B.3 above; (2) the cost estimates provided by experts during the trial; (3) the amount of spending the courts have found necessary to achieve the general diffusion of knowledge in the past; (4) the effects of recent budget

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cuts on school districts, as established principally in the testimony of superintendents; and (5) the amount of local taxing discretion that the system must provide to avoid violating the prohibition against a state property tax.

FOF 453. The table below summarizes the cost estimates provided by plaintiffs' experts Allen Odden and Lynn Moak, compared to actual levels of operating expenditures in the 2010-11 school year. The 2010-11 expenditures in this table include federal funding and state special grant program funding. Mr. Moak stated generally that his estimate represented an increase of $1,000 per WADA over 2010-11 funding levels. Mr. Moak also adjusted Dr. Odden's original adequacy estimate to account for expenditures on food, transportation, and security, which were not included in Dr. Odden's original model. It is therefore reasonable to compare Dr. Odden's estimates (with Mr. Moak's adjustment) to 2010-11 "all funds" operating expenditures, which include these categories.

Adequacy Cost Estimates

	Total	Per 2010-11 ADA	Per 2010-11 WADA	Differential Between Actual and Estimates per 2010-11 ADA	Differential Between Actual and Estimates per 2010-11 WADA
2010-11 Actual Operating Expenditures (All Funds)	$43,110,208,183	$9,712	$7,241	--	--
Odden Estimate with Moak Adjustment	$46,766,551,937	$10,536	$7,855	$824	$614
Moak Estimate ($1,000 per WADA increase)	$49,065,900,357	$11,054	$8,241	$1,342	$1,000

(Ex. 6326 (2010-11 actual operating expenditures); RR17:137-39 (Odden estimate); RR6:241-43 (Moak estimate); Ex. 11323 (ADA and WADA; uses 2011 spreadsheet with ADA and WADA for ISDs only (cells F-1225 and I-1225).)

FOF 454. The following table summarizes the inflation-adjusted cost of achieving the general diffusion of knowledge provided by the Supreme Court in *Edgewood IV*, as calculated by Dr. Baker, compared to actual levels of FSP funding in the 2010-11 school year. The updated *Edgewood IV* calculation is best compared to 2010-11 FSP funding, as the original $3,500 per WADA identified in *Edgewood IV* referred to the formula system and not to funding sources outside the FSP.

Updated *Edgewood IV* Calculation

	Total	Per 2010-11 ADA	Per 2010-11 WADA	Differential Between Actual and Updated *E4* per 2010-11 ADA	Differential Between Actual and Updated *E4* per 2010-11 WADA
2010-11 Actual FSP M&O Revenue (net of recapture)	$33,112,519,207	$7,460	$5,562	--	--
Updated *Edgewood IV* Calculation	$39,152,695,152	$8,821	$6,576	$1,361	$1,014

(Ex. 11323 (2010-11 actual FSP M&O revenue; uses 2011 spreadsheet with total M&O revenue for ISDs only (cell CD-1225)); RR16:23-26 (referencing Ex. 3230 at 5)

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(*Edgewood IV* calculation); Ex. 11323 (ADA and WADA; uses 2011 spreadsheet with ADA and WADA for ISDs only (cells F-1225 and I-1225).)

FOF 455. While Dr. Odden's estimate compares to "all funds" operating expenditures, and the updated *Edgewood IV* calculation compares to FSP funding, the amounts by which the various estimates find the current system to be underfunded fall within a relatively consistent range. The next table below provides the per-ADA and per-WADA FSP spending that would result from each expert's proposed addition of funds. The Court includes per-WADA calculations for both 2010-11 and 2011-12 to account for the fact that the RPAF implemented in 2011 resulted in a change in the calculation of WADA between those two years.

Required FSP Spending Under Adequacy Cost Estimates

	Additional Spending Needed per 2010-11 ADA	Total FSP Spending Needed per 2010-11 ADA	Additional Spending Needed per 2010-11 WADA	Total FSP Spending Needed per 2010-11 WADA	Total FSP Spending Needed per 2011-12 WADA
Odden Estimate with Moak Adjustment	$824	$8,284	$614	$6,176	$6,542
Moak Estimate ($1,000 per WADA increase)	$1,342	$8,802	$1,000	$6,562	$6,951
Updated *Edgewood IV* Calculation	$1,361	$8,821	$1,014	$6,576	$6,966

(RR17:137-39 (Odden estimate); RR6:241-43 (Moak estimate); RR16:23-26 (referencing Ex. 3230 at 5) (*Edgewood IV* calculation); Ex. 11323 (2010-11 actual FSP M&O revenue; uses 2011 spreadsheet with total M&O revenue for ISDs only (cell CD-1225)); Ex. 11323 (ADA and WADA; uses 2011 spreadsheet with ADA and WADA for ISDs only (cells F-1225 and I-1225).)

FOF 456. The Court acknowledges the difficulty of selecting any single number to represent the cost of educational adequacy in Texas. But the Court does not agree with the State's position that there are no judicially manageable approaches to estimating a reasonable range of costs consistent with the state's performance expectations. The Court finds that the analyses of Dr. Odden and Mr. Moak and the updated *Edgewood IV* calculation provided by Dr. Baker provide reasonable, credible, and relatively consistent estimates of the cost of achieving the general diffusion of knowledge. As noted previously, Dr. Odden's calculations are conservative in many respects. (*See supra* FOF 441.) The *Edgewood IV* calculation represents an amount acknowledged by the Supreme Court as necessary to satisfy constitutional requirements under much less rigorous 1994 standards. The Court also notes that the adequacy estimates are very near the $6,474 average per WADA spending level of districts that achieved exemplary status under the prior standards. (*See supra* FOF 220.) In the Court's view, there can be little doubt that a comparable amount of funding, properly adjusted for inflation, is minimally necessary to meet significantly more rigorous standards today. (*See* RR9:123-24.)

FOF 457. For these reasons, the Court finds that achieving a level of funding adequate to meet the state's performance standards requires, at a minimum, the $6,542 per WADA in FSP

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funding estimated by Dr. Odden, which is the lowest supplied to the Court and which would require on average an additional $824 per ADA above 2010-11 spending levels.

FOF 458. HB1 was designed with the intent that districts be able to provide an adequate education by taxing at no higher than $1.00, as evidenced by testimony from Robert Scott and the structure of the system implemented by HB1. (Ex. 5630, Scott Dep., at 339-41, 343-45.) Tier I was intended to provide funding necessary to meet basic program requirements – in other words, the performance expectations implicit in the Constitution and in statute. (*Id.* at 341, 343-45.) For most school districts, Tier I applies to funding up to $1.00 of M&O tax effort. (*Id.* at 339-40.) Tier II was intended to provide meaningful local enrichment discretion above this level. (*Id.* at 341, 343-45.)

FOF 459. The Court finds that, at a very minimum, all districts must be able to meet state requirements under the current statutory structure by taxing at $1.04. This is the level beyond which a TRE is required and a level that still leaves thirteen cents for enrichment at the voters' discretion. The Court agrees with the ISD Plaintiffs that the question of whether to achieve adequate funding cannot be made subject to a vote. Requiring districts to tax above $1.04 to achieve adequacy would leave districts with insufficient local discretion to tax for enrichment purposes, considering the current yield per penny in that tier.

FOF 460. None of the experts addressed the question of the specific timetable by which funds would need to be added to the system in order to meet constitutional standards. At least two considerations lead the Court to conclude that the total amount of necessary funding increases could be phased in over a period of years. First, the required levels of performance on the STAAR / EOC exams are gradually increasing according to the calendar established for the full phase-in of Level II and Level III on those exams. (*See supra* FOF 97.) Second, Dr. Odden acknowledged that not all of the reforms and interventions that his model encompasses need be accomplished in a single year. (RR17:210.)

FOF 461. The Court therefore concludes that a gradual phase-in of the funding levels contemplated here – an average of $824 per ADA above 2010-11 spending levels or $6,542 per WADA in FSP funding – would furnish an appropriate remedy for the present constitutional violation so long as funding at such levels were provided in time for the 2015-16 school year.

FOF 462. As further discussed below, the Court will retain jurisdiction over this matter during this phase-in period, in an effort to ensure an orderly transition to a constitutionally adequate system. (*See infra* COL 119.) During that period, the Court will remain open to considering whether changed circumstances or additional information warrant any modification of these findings.

FOF 463. The Court notes that testimony from superintendents has demonstrated that the budget cuts implemented in 2011 have left districts unable to satisfy the rigors of the new assessment system and other state mandates. (*See supra* I.B.7.b, FOF 66 - FOF 67, FOF 103, FOF 213, FOF 358, FOF 388.) The record is bereft of any evidence that the RPAF,

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which was applied as a funding reduction mechanism (*see supra* FOF 53), was based upon any empirical data relating to educational costs or the new performance standards. While the Court will not dictate the details of any legislative timetable, restoration of these cuts and elimination of the RPAF may well represent an appropriate immediate step on the path to achievement of the fully adequate funding levels discussed above.

FOF 464. The Court emphasizes that in the discussion of ADA in this section, the Court is focusing on overall levels of funding in the system, not funding levels for specific districts. Findings related to the distribution of funding between districts are discussed separately in Part I.C below pertaining to the financial efficiency claims. Similarly, the Court addresses findings relating to the outdated weights and formula adjustments separately in Parts I.B.6.b.i(c), I.B.6.b.ii(d), and I.B.6.h.

8. There is no credible evidence that the ISD Plaintiffs are misallocating the resources they have now.

FOF 465. While it is undoubtedly possible to find some inefficiency and wasteful spending in the Texas school system, the State and Intervenors failed to demonstrate *significant* wasteful spending by Texas school districts sufficient to refute the showing of need for additional resources to meet the state's higher performance standards. (*See infra* Part I.E.2.) The State and Intervenors also have failed to demonstrate inefficient or inequitable allocation of resources by school district plaintiffs.

FOF 466. The State's Financial Integrity Rating System of Texas ("FIRST") is designed to ensure that school districts and open-enrollment charter schools are held accountable for the quality of their financial management practices and achieve improved performance in the management of their financial resources. 19 TEX. ADMIN. CODE § 109.1001. The system is designed to encourage Texas public schools to manage their financial resources better in order to provide the maximum allocation possible for direct instructional purposes. *Id.* Each of the TTSFC Plaintiffs' focus districts, Fort Bend ISD Plaintiffs' focus districts, and Calhoun County ISD Plaintiffs received a "Superior Achievement" FIRST rating (the highest possible rating) in 2010-11, the most recent year for which a rating is available.[15] (Ex. 3240; Ex. 5037 at 1; Ex. 5076 at 1; Ex. 5146 at 1; Ex. 5168 at 1; Ex. 5293 at 1; Ex. 5346 at 1; Ex. 6016 at 1; Ex. 6061 at 1; Ex. 6095 at 1; Ex. 6119 at 1; Ex. 6138 at 1; Ex. 6168 at 1; Ex. 6199 at 1; Ex. 6222 at 1; Ex. 6249 at 1; Ex. 6293 at 1; Ex. 6317 at 1.)

a. The State did not prove that districts were systematically misallocating resources among their campuses.

FOF 467. Dozens of school superintendents and other school district officials testified live at trial or provided testimony by deposition admitted into evidence. The State questioned many of these superintendents regarding different levels of per student funding allegedly allocated to campuses within the same school district.

[15] The record does not contain FIRST ratings for the Edgewood ISD Plaintiffs.

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FOF 468. Broadly speaking, the testimony of these superintendents consistently demonstrated that school districts generally do not allocate specific dollar amounts on a per-pupil basis to individual campuses as part of the budgeting process. (RR4:28-29; RR20:14; RR20:15, 20-21; 12/27 Tr. at 94-95; RR5:231-38; Ex. 6337, Hanks Dep., at 280; Ex. 6338, Hoke Dep., at 172-73.) Rather, school districts generally allocate staffing levels to individual campuses based on the enrollment level of each campus, special programs housed at some campuses, and level of need of the students at each campus as reflected by demographic information such as level of economic disadvantage, percentage of special education, percentage of ELL students, and other criteria. (RR4:28-29; RR20:14; RR24:199-200; RR20:15, 20-21; 12/27 Tr. at 94-95; RR5:231-38; RR19:110-11; RR4:193; Ex. 6337, Hanks Dep., at 279-85.) Because the vast majority of costs in a district or at a campus are due to personnel and salary, these staffing allocations drive the per pupil cost and may result in different expenditures per student at different campuses.

FOF 469. Dr. Podgursky's analyses using campus level spending data to show intra-district misallocation of resources is flawed because he fails to control for variables that explain much of the differences in per pupil spending at the school level. For example, Dr. Podgursky acknowledged that some campuses house special programs, such as special education programs (often serving the most severely disabled students), refugee and homeless student programs, and discipline programs that result in higher spending levels at those schools. (12/12 Tr. at 124-125.) Dr. Podgursky also agreed that size differences between campuses could explain some of the per student spending level differences in those campuses. (*Id.* at 129.) Dr. Podgursky did not attempt to investigate or control for these or any other variables that tend to explain spending differences at the campus level. (*Id.* at 130.)

b. Neither the State nor Intervenors proved that districts could substantially improve performance at current resource levels by adopting a merit pay compensation scheme.

FOF 470. The Intervenors and the State have argued that school districts could boost performance by abandoning the traditional teacher salary schedule in favor of merit pay. Indeed, when asked to name concrete examples of inefficient spending, the Intervenors' expert, Dr. Hanushek, could identify only the teacher compensation system. (1/16 Tr. at 122, 189.)

FOF 471. Under some versions of merit pay, including that advocated by Dr. Hanushek, a component of teacher compensation would be tied to the test scores of students, typically on a "value added" basis. (*Id.* at 107, 167-69.)

FOF 472. As even Dr. Hanushek conceded, however, there is no strong empirical evidence that merit pay for teachers improves student performance. (*Id.* at 169-73, 175; *see also* RR24:11, 15.) Dr. Hanushek also acknowledged that there was little empirical evidence about how to structure any merit pay system or what the effects may be. (1/16 Tr. at 175.) Indeed, recent studies suggest that performance pay may have little impact in educational settings. (RR17:133-34; 1/16 Tr. at 169-73.) Dr. Hanushek also noted that a merit pay system would likely require considerably higher salaries for many teachers and "might well" require more money than the present salary system. (1/16 Tr. at 194.)

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FOF 473. Several superintendents testified that an individualized pay-for-performance scheme could negatively impact teacher collaboration and morale, particularly where there is a limited amount of money available to pay for the merit-based compensation. (1/24 Tr. at 57-62; RR24:11-13; RR6:46-47.) Dr. Hanushek agreed that a merit pay scheme raises valid concerns about destructive competition among teachers. (1/16 Tr. at 234.) The vast majority of Texas school districts do not have the capability to design and implement a complex pay-for-performance compensation system without state guidance and leadership. (RR24:16.) In an answer to an interrogatory, the State acknowledged that its only effort to encourage or promote a merit-based compensation system over the last decade was through the DATE Grants, which provided bonuses for teachers and principals who improved student performance. (Ex. 5649 at 15.) However, the Legislature dramatically reduced funding for the DATE program in 2011. (*See supra* FOF 60.)

FOF 474. A district that implemented such a compensation scheme in isolation, and without significantly higher salaries, would likely lose many of its experienced teachers to its neighboring districts. (RR24:16-17.)

FOF 475. In addition, measuring the performance of teachers via test scores requires standardized tests, and the majority of teachers teach classes in which standardized tests are not administered. (RR24:17-19; Ex. 5400, Vigdor Supp. Report, at 5; 1/24 Tr. at 61.)

FOF 476. Further, teacher value-added cannot be observed until after a teacher has taught. Research suggests that at least three years' worth of data must be used to overcome statistical unreliability. (RR24:18-19; Ex. 5400, Vigdor Supp. Report, at 5.) Thus, a district could not reliably calculate "value added" for novice teachers or teachers not in the state for the prior three years. (RR24:18-19.)

FOF 477. In short, even the advocates of teacher merit pay concede that it is a proposal that currently lacks an empirical research base and that it might cost more money than the present system. Many superintendents and teachers believe such a system would be unworkable and counterproductive. Dr. Hanushek acknowledged that he had never personally assisted a state or school district with the design of a merit pay system or recommended any specific design (1/16 Tr. at 234-35), and also acknowledged (but never offered any credible solutions to) the implementation difficulties associated with a merit pay regime. (*Id.* at 173-75, 202-06, 208-12, 233-34.) While the State is free to pursue such proposals through legislative change if it so desires, this Court cannot conclude that the unwillingness, to date, of either the State or school districts to commit to a large-scale transition to a merit pay system is a significant source of inefficiency in the public schools.

c. Neither the State nor Intervenors proved that districts could substantially improve performance at current resource levels by firing the bottom 5% to 8% of teachers.

FOF 478. The Intervenors, through their expert Dr. Hanushek, have argued that student performance could be improved at little cost simply by removing the worst-performing 5

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to 8% of teachers and replacing them with "average" teachers, i.e., teachers drawn randomly from the distribution of teacher quality. While the parties appear to agree that ineffective teachers should either be improved through professional development or removed from the classroom, the weight of the evidence does not suggest that Dr. Hanushek's proposal can be straightforwardly implemented or that it can replace the need for other improvements and interventions.

FOF 479. To the extent the proposal would depend to any significant degree upon standardized test results (which Dr. Hanushek advocates), several problems present themselves. First, districts cannot calculate value added for: (1) teachers whose students do not take standardized tests; (2) novice teachers or teachers for which the districts have insufficient number of years of data; or (3) teachers who teach subjects not aligned with the prior year subject in the same field. (RR24:18; *see also supra* FOF 476 - FOF 477.) Dr. Hanushek conceded that districts might be able to generate value-added scores for only about 20% to 25% of their teacher workforce. (1/13 Tr. at 174.)

FOF 480. Second, the proposal would require the recruitment of at least 15,000 additional teachers, a large expansion that might well require the State to relax its already diminishing standards or offer salary increases substantial enough to attract more promising candidates into the profession. (RR24:22.)

FOF 481. Third, the proposal would make the teaching profession riskier, other things being equal, and therefore might discourage many qualified candidates from entering the field. (RR24:11-12.)

FOF 482. Fourth, the proposal necessarily would heighten competition among teachers in public schools – in the form of competition to avoid being fired. (RR24:23-24; Ex. 5400, Vigdor Supp. Report, at 6.) Teachers who do not wish to lose their jobs might reasonably have new incentives to avoid sharing information with their colleagues, or to lobby administrators for assignments to easier-to-teach students. Such a degree of competition could, again, be harmful to the education process. (RR24:23-24.)

FOF 483. Fifth, Dr. Hanushek's proposal is entirely theoretical. He did not point to a single district or state that has implemented the proposal and therefore could not say whether his predictions of the positive impact of such a proposal have been validated by actual evidence.

9. The ISD Plaintiff Districts have demonstrated that they lack meaningful discretion over their M&O tax rates and that there is a systemic lack of capacity.

FOF 484. Given the Court's findings below that the thirty-six focus/plaintiff districts lack meaningful discretion (*see infra* Part I.B.10), and that these districts are representative of the system as a whole (*see infra* FOF 516), this Court finds that the lack of meaningful discretion is systemic. That finding is bolstered by the evidence discussed below.

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a. Just as in 2004, there is a systemic lack of capacity.

FOF 485. In response to *WOC II*, the 79th Texas Legislature enacted HB1. As described more fully in Part I.B.2.b, HB1 was intended to provide districts with the ability to provide local enrichment over and above the state's basic requirements. Originally, the system was intended so that districts could provide the state's basic program at districts' compressed M&O tax rates – generally $1.00 for most districts. (Ex. 5630, Scott Dep., at 341, 343-45.) This provided districts with the ability to enrich up to the new statutory M&O tax rate cap of $1.17, with the first four cents available without an election and the remaining eleven cents available only after approval by voters through a TRE. (*Id.* at 339-41, 343-45.) However, the original intent to provide for local enrichment, as required by *WOC II*, has given way as a result of increasing costs, more state mandates, higher state performance standards, and most recently, drastic cuts in state funding. As a result, districts have relied on pennies above their compressed rates (and in many instances, above $1.04 and up to $1.17) to fund the state's basic program, instead of to provide local enrichment. (*See, e.g.*, RR3:155; Ex. 6336, Burns Dep., at 26; Ex. 6337, Hanks Dep., at 29-30; RR12:23; *see also generally infra* Part I.B.10.)

FOF 486. The Court finds that the ability to provide a constitutionally adequate education cannot be left to the discretion of voters to pass a TRE. (*See* RR15:52.) Nevertheless, as a result of the cost pressures described above, and as reflected in the chart below, there has been a dramatic increase in the number of districts taxing at the statutory $1.17 cap – nearly a quarter of Texas school districts with almost 600,000 in ADA taxed at $1.17 in 2011. Another 623 districts, with almost 2.9 million in ADA, tax at $1.04, the maximum rate level permitted without holding a TRE.

Figure 51. M&O Tax Rates for Texas School Districts 2007-08 and 2011-12

M&O Tax Rate	# Districts 2007-08	2007-08 ADA	# Districts 2011-12	2011-12 ADA
<$1.00	96	165,709	49	74,093
$1.00 to <$1.04	108	994,860	43	430,114
$1.04	699	2,680,939	623	2,869,653
$1.04 to <$1.17	24	217,130	57	506,161
$1.17 and Above	97	171,294	252	593,675
Total	1,026	4,229,933	1,024	4,473,695

Source: Moak, Casey & Associates data files (original source data from the State Comptroller of Public Accounts Self-Report Property Value File and TEA reports of student counts by district)

(Ex. 6322, Moak Report, at 51.)

FOF 487. These cost pressures identified above have eliminated the required level of enrichment as demonstrated through two different analyses conducted by Mr. Lynn Moak. First, Mr. Moak demonstrated that the amount of capacity to enrich the state's basic program is far less today than it was when HB1 was enacted in 2006 and less than the amount of enrichment capacity that existed at the time of *WOC II*, even without considering the higher performance standards set by the State. (*Id.* at 50-54; RR7:27-28 (referencing Ex. 6349 at 66).)

FOF 488. Mr. Moak explained that HB1 funded the basic program at the level of the districts' compressed tax rates, and therefore the system as enacted provided the possibility of

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enrichment funding equal to 12.5% of total revenue (that is, the revenue districts could raise above their compressed level). (Ex. 6322, Moak Report, at 51.) However, because of increasing costs and state requirements, districts have been forced to increase tax rates primarily to fund the basic program, rather than to provide enrichment. (*Id.* at 52; RR7:34-37 (referencing Ex. 6349 at 66-67).) Although the State provided some additional funding from 2006 to 2010, the vast majority of this funding was used to (1) offset the reduced revenue districts could generate after as a result of tax rate compression and (2) fund mandatory teacher pay raises. (Ex. 6322, Moak Report, at 52; RR7:17-23, 32-34 (referencing Ex. 6349 at 65).) For example, the State provided $802 million in 2006-07; $140 million in 2007-08 and 2008-09; and $616 million in 2009-10 and 2010-11 for state-mandated increases in teacher salaries. (RR7:33-34 (referencing Ex. 6349 at 65).) The State did not pass a salary decrease when it cut funding in 2011, even though it effectively eliminated all of the increased state funding that had been provided from 2006 through 2010 (except for the funding used to offset the effect of tax rate compression). (Ex. 6322, Moak Report, at 52; RR7:23-25 (referencing Ex. 6349 at 65).)

FOF 489. When state funding for education was cut in 2011 the burden of funding the basic program shifted more heavily to local districts.

FOF 490. Mr. Moak calculated the capacity in the school finance system and compared it to the amount necessary to fund the state's basic program under 2010-11 standards to determine the amount available to districts for enrichment. (RR7:25-26 (referencing Ex. 6349 at 66).) He determined that the total capacity is $35.025 billion, which represents the amount of funding that would be available if all districts increased their M&O tax rates to $1.17. (Ex. 6322, Moak Report, at 53; RR7:26, 28-29, 35-36 (referencing Ex. 6349 at 66-67).) Mr. Moak opined that the amount necessary to meet the state's basic program under 2010-11 standards (i.e., before the adoption of higher standards) is at least equal to the revenue that is generated at $1.04 M&O tax rate under the 2010-11 formulas. (Ex. 6322, Moak Report, at 53; RR7:29-32 (referencing Ex. 6349 at 66).) Mr. Moak estimated that the cost to achieve the state's basic program based on taxation at $1.04 under 2010-11 formulas (excluding the newly adopted accreditation standards, higher education readiness standards, and substantially increased STAAR requirements) is $34.191 billion. (Ex. 6322, Moak Report, at 53; RR7:35-36 (referencing Ex. 6349 at 67).) This leaves at most an aggregate amount of $833.8 million, or 2.4% of the total revenue, available in the system for local enrichment. (Ex. 6322, Moak Report, at 53; RR7:27, 35-36 (referencing Ex. 6349 at 66-67).)

FOF 491. As a result, Mr. Moak demonstrated that the effective level of enrichment available, even prior to adoption of higher standards, is far less than the 12.5% level available at compressed rates under HB1. (Ex. 6322, Moak Report, at 53.)

FOF 492. Mr. Moak further demonstrated that when considering the true cost of adequacy under the new higher standards, even this minimal level of enrichment capacity is illusory. As discussed above, Dr. Odden estimated the amount of funding that is required for an adequate education under the new state requirements. (*See supra* Part I.B.7.c.) Based on adjustments from Mr. Moak to account for spending on transportation, food service, and

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security, and accounting for the budget cuts in the 2012-13 biennium, Dr. Odden testified that Texas schools are underfunded by more than $6 billion. (RR17:140-41; *see also supra* FOF 442.) The Court has already concluded that an additional $824 per ADA above 2010-11 spending levels is necessary to achieve a general diffusion of knowledge, and that this revenue must be available at M&O tax rates no higher than $1.04. (*See supra* Part I.B.7.f)

FOF 493. The State's expert, Lisa Dawn-Fisher, estimated that another $2.3 billion in capacity is available to districts that do not currently levy the maximum $1.17 tax rate. (1/8 Tr. at 184; Ex. 1188, Dawn-Fisher Report, at 18.) This additional amount is less than the amount of cuts in the 2011 legislative session. (1/8 Tr. at 184-86.) Similarly, superintendents testified that their districts could not recoup the state funds they lost in 2011 even if they raised their tax rates to $1.17. (*See, e.g.*, RR3:169-70 (referencing Ex. 6340 at 10).) The Court finds that the $2.3 billion in remaining capacity is insufficient to provide a constitutionally adequate education, as determined by this Court in Part I.B.7.f above. It also leaves no additional revenue for districts to use for local enrichment.

FOF 494. Furthermore, even if districts could raise their M&O tax rates to $1.17, less than one-fourth of districts could obtain the inflation-adjusted revenue that *Edgewood IV* found was necessary to achieve an adequate education in 1995. (*See supra* FOF 445 - FOF 446.) This calculation says nothing of the additional revenue necessary to meet the state's increased standards or to provide local enrichment. (*See supra* FOF 445 - FOF 446.)

FOF 495. Under these various analyses, which the Court finds credible, the Court finds that the current finance system no longer provides districts with the amount of "meaningful discretion" to provide local enrichment required by the Supreme Court in *WOC II*.

FOF 496. The Court also finds that the districts' fund balances do not provide a source of meaningful discretion. Fund balances are used for cash flow purposes. (RR3:177-80 (referencing Ex. 6346 at 12); RR19:240-41; Ex. 6338, Hoke Dep., at 44-46 (referencing Ex. 664 at 16); RR22:89, 97-98; Ex. 5614, Patek Dep., at 50-52; Ex. 5616, Waggoner Dep., at 52; Ex. 5613, Youngblood Dep., at 48-49; Ex. 5618, Wiggins Dep., at 67-68.) Revenue from the state and local taxpayers do not come in at regular intervals, and therefore, many districts must use their fund balances to cover the shortfall in months where expenses exceed revenues. (RR19:240-41; Ex. 6338, Hoke Dep., at 44-46 (referencing Ex. 664 at 16); Ex. 6335, Cain Dep., at 31-32; Ex. 6343, Schroder Dep., at 50-51; RR5:200-01; Ex. 3201, Witte Dep., at 26-27.) Chapter 41s receive most of their revenue in December and January when taxes are paid, and fund balances are necessary to sustain these districts through months of negative cash flow. (*See, e.g.*, RR5:35; Ex. 5614, Patek Dep., at 50-51; Ex. 5618, Wiggins Dep., at 67.)

FOF 497. While some districts have used their fund balance to cover a deficit budget as a result of the cuts, such procedures are not a solution to school district funding cuts. (RR22:97-98 (referencing Ex. 6358 at 12); RR19:253-55.) Districts rely on their fund balances to cover unexpected one-time costs. (*See, e.g.*, Ex. 6338, Hoke Dep., at 45-46; RR22:88-89.) For example, some districts use their fund balances to cover the deductible on their

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property insurance in case of a catastrophic loss or to insulate against fluctuating local property values and tax revenues. (Ex. 5618, Wiggins Dep., at 67-68; Ex. 5614, Patek Dep., at 50-51; Ex. 5613, Youngblood Dep., at 48-49.)

FOF 498. The Government Financial Officers Association recommends that school districts maintain three months' worth of operating expenditures in their fund balances. (Ex. 6338, Hoke Dep., at 45-46). Bond rating agencies look at fund balances when establishing a district's bond rating. (*Id.* at 46; RR5:35.) Under FIRST, a district loses points for reducing its fund balance by more than 20% and gains points for increasing its fund balance. 19 TEX. ADMIN. CODE §109.1002(g).

FOF 499. As a result of the foregoing, school districts cannot and should not spend down their fund balances entirely to negate the impact of funding cuts. (Ex. 5616, Waggoner Dep., at 51-52; Ex. 5618, Wiggins Dep., at 68; Ex. 5614, Patek Dep., at 50-51; Ex. 6338, Hoke Dep., at 44-46.)

b. The TRE requirement and Tier II-B structure deprive Chapter 41 districts of meaningful discretion.

FOF 500. As indicated above, districts cannot increase M&O tax rates above $1.04 without obtaining approval from their voters through a TRE. (*See supra* FOF 32.)

FOF 501. Under Tier II-A, the first six pennies of tax effort above the compressed rate (also known as the golden pennies) are not subject to recapture. (Ex. 5653 at 95; RR21:86.) Under Tier II-B, any additional cents of tax effort above the golden pennies are subject to recapture. (Ex. 5653 at 95.) Tier II-B consists of the "copper pennies," or the pennies above the golden pennies, which can potentially take a district to an M&O tax rate of $1.17. (Ex. 5384, Kallison Equity Report, at 7; *see supra* FOF 44.)

FOF 502. As a result of the TRE requirement and the Tier II-B funding structure, if a Chapter 41 district wishes to increase its M&O tax rate above $1.04 and above the level of the golden pennies, the district must ask voters to approve a tax increase in which the tax revenue will not all be retained by the district. (*See supra* FOF 32 and FOF 48.) These requirements have effectively denied many districts meaningful discretion to set their M&O tax rates.

FOF 503. The structure of Tier II-B dictates that it is generally more difficult for property-wealthy Chapter 41 districts to access the copper pennies, because taxation of any pennies over $1.04 requires voter approval through a TRE. (Ex. 5384, Kallison Equity Report, at 7; RR21:86-90.) Unlike Chapter 41 districts, Chapter 42 districts seeking a TRE above $1.06 do not carry the additional burden of asking voters to approve a tax increase in which part of their revenue collected is recaptured and sent back to the state for other districts. (Ex. 5384, Kallison Equity Report, at 7.)

FOF 504. Not only are copper pennies recaptured, but they are recaptured at an equalized wealth level of $319,500 per WADA rather than the Tier I level of $476,500 per WADA. (*Id.*; RR21:87-88; *see also supra* FOF 46, FOF 48.) Therefore, all Chapter 41 districts are

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subject to recapture and at a relatively high rate, making a TRE for more than six pennies above the compressed rate potentially politically challenging. (Ex. 5384, Kallison Equity Report, at 7; RR21:86-88; *see also infra* FOF 506, FOF 508, FOF 657, FOF 669, FOF 688, FOF 701, FOF 731.)

FOF 505. A comparison of Chapter 41 versus Chapter 42 districts suggests that relatively few of the former have successfully obtained voter approval through a TRE to tax into the copper penny tier. (Ex. 5384, Kallison Equity Report, at 7; RR21:89-91 (referencing Ex. 5396 at 31).) In 2011-12, 10.8% of Chapter 41 districts taxed at more than $1.06 (the level at which it is assured that a district is both taxing in the copper penny tier and has conducted a successful TRE) compared to 37.1% of Chapter 42 districts. (RR21:89-90 (referencing Ex. 5396 at 31).) The percentage is even lower for districts with wealth per WADA above $599,700; only 3 of 113 such districts (or 2.65%) taxed above $1.06 for the 2011-12 period. (RR21:90 (referencing Ex. 5396 at 31).) Recapture is imposed in Tier I, but that tier is mandatory and is not subject to voter approval and its recapture level is at $476,500 per WADA. (Ex. 5384, Kallison Equity Report, at 7.) A TRE for an M&O rate above $1.06 is the first time that most Chapter 41 district residents would be faced with a vote that would require part of their tax dollars to leave the district. (*Id.*)

FOF 506. As an example of this predicament for Chapter 41 districts, Dr. Kallison, who is the president of the Eanes ISD school board, testified that Eanes ISD is capped at an M&O tax rate of $1.06 for all practical purposes. (RR21:88-89.) To raise Eanes ISD's tax rate above $1.06, voters would have to approve a tax that would return seventy percent of the additional revenue to the state. (RR21:88.) Dr. Kallison testified that passing such a tax is not politically viable. (*Id.*)

FOF 507. Dr. Dawn-Fisher testified on behalf of the State that the TRE passage rates for Chapter 41 districts are comparable to the passage rates for Chapter 42 districts. (1/8 Tr. at 93-94.) Yet Dr. Dawn-Fisher's data does not show what number of Chapter 41 districts passed TREs into the copper penny tier, where revenues are recaptured at the highest rate, and what number of Chapter 41 districts passed TREs within the golden penny tier. (*Id.* at 112-13.) Far fewer Chapter 41 districts have attempted TREs than Chapter 42 districts. (*Id.* at 115.)

FOF 508. Survey results by Larry Harris of Mason-Dixon Polling and Research confirm that the existence of recapture is likely to substantially reduce voters' willingness to support an increase in M&O tax rates. Mr. Harris conducted three polls of 500 registered voters each in Grapevine-Colleyville ISD, Frisco ISD, and Calhoun County ISD. (Ex. 1023 at 1; RR20:155, 157-58.) The goal of the polls was to assess the level of support or opposition to an increase in M&O taxes and to test the impact of recapture on voters' willingness to support a tax increase. (Ex. 1023 at 2; RR20:149-52, 155, 174.) These polls showed much stronger opposition to a tax increase when the impact of recapture on the projected tax revenues was explained to the voters. (Ex. 1023 at 2-5; RR20:177, 179-80 (referencing Ex. 5512 at 16-18).) That opposition diminished in each poll when the voters were presented with a hypothetical scenario where all tax revenues would remain in the district. (Ex. 1023 at 2-5; RR20:174-78 (referencing Ex. 5512 at 15-18).) These results suggest that the combination of an election requirement for any increase in M&O

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tax rates above $1.04 and application of the recapture rate to the resulting revenues make it particularly difficult, if not impossible, for many Chapter 41 districts to obtain voter approval for such increases. (*See* Ex. 1023 at 4-5.) The Court finds that Mr. Harris' methodology in conducting the surveys is sound.

c. The TRE requirement and the lack of facilities funding deprive Chapter 42 districts and fast-growth districts of meaningful discretion.

FOF 509. School districts pay for new facility construction and renovation of current facilities by issuing voter-approved bonds and then levying I&S taxes to meet their annual debt service requirements. (RR10:164-68.) Because state aid for facilities has not kept pace with property value growth or the growing student population, districts have been forced to raise I&S rates to keep pace with facilities needs. (*See* RR10:171-77, 180-83; Ex. 6352 at 17, 20-21; 1/8 Tr. at 189-90; *see also supra* Part I.B.6.g.i.) Currently, 810 Texas public school districts levy I&S taxes to service $62.6 billion in outstanding school district debt (including both principal and interest). (*See* Ex. 1328, Casey Report, at 21; Ex. 6352 at 20-21; RR10:180.)

FOF 510. Because the guaranteed yield for IFA and EDA has stayed flat, *see supra* FOF 402 - FOF 405, the number of districts receiving facilities funding has decreased. (RR10:165-66, 167-68 (referencing Ex. 6352 at 13), 171-72 (referencing Ex. 6352 at 17).) Mid-wealth Chapter 42 districts are particularly hard hit by the stagnant state aid, as their property value growth has been enough to grow out of the system, but not enough to keep up with the need to repair aging buildings. (RR10:184-86; RR11:61; *see also supra* FOF 405.) In addition, as pressure on operating budgets has become greater, additional maintenance and technological infrastructure needs must be paid for with bond proceeds, thus forcing districts to increase I&S rates. (RR11:68-70, 84-85, 118-20.)

FOF 511. Greater than 90% of the student population growth is concentrated in approximately 100 school districts. Northside ISD, one of these "fast-growth" district, has built and opened thirty-seven new schools in the last ten years. (12/5 Tr. at 64.) A demographic study in Los Fresnos, another fast-growth district, found that the district would have to build one school each year for the next twenty-five years. (RR24:139.) Fast-growth districts face even greater pressures on their I&S tax rates, thereby depriving them of any discretion in setting their M&O tax rates. (RR10:177, 182; Ex. 6352 at 22-25.) While student population growth does result in some property value growth, it is not enough to cover the costs of new facilities construction for these districts. (*See* RR11:61; RR24:212.) Some fast-growth districts have even been forced to pledge to use M&O tax revenue to pay back bonds, in order to meet the fifty-cent debt test. (RR10:189-90.)

FOF 512. The Court finds that the fifty-cent debt test functions as a de facto cap on I&S tax rates, and that as districts are forced to tax at or near that cap in order to meet their facilities needs –whether for repair of older facilities or construction of new ones – fast-growth and mid-wealth Chapter 42 districts have lost discretion over their I&S tax rates, in violation of the constitutional prohibition against a statewide property tax.

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FOF 513. Several superintendents testified that the district's need to seek voter approval for bond issuances hampers its ability to hold a successful TRE. (RR22:57; RR19:85-86; 12/5 Tr. at 81-82.) As the Chief Financial Officer of Fort Bend ISD testified, increasing I&S rates necessarily impacts a district's discretion over its M&O rate because "it's just one tax bill to [the district's] constituents." (RR11:84-85.) The Court finds this testimony both credible and compelling, and further finds that facilities needs and the resulting bond elections and rising I&S rates have contributed to the loss of meaningful discretion over M&O tax rates for fast-growth and mid-wealth Chapter 42 districts.

d. Other factors deprive Chapter 42 districts of meaningful discretion.

FOF 514. Numerous Chapter 42 superintendents credibly testified that their districts would have difficulty passing a TRE because of the poverty of their districts and the low yield they receive compared to neighboring districts. (Ex. 3198, Garza Dep., at 30-32; Ex. 3204, Dupre, Dep., at 46-47; RR20:127; Ex. 3201, Witte Dep., at 19-21; Ex. 3202, Pfeiffer Dep., at 35-42, 46-48; RR15:197-199.) Many high funded districts can raise more at an M&O tax rate of $1.04, without the need for a TRE, than lower funded districts can raise at a rate of $1.17. (Ex. 3187, Pierce Report, at 14; Ex. 3226, Kincannon Dep., at 148; Ex. 3198, Garza Dep., at 30-32.)

FOF 515. Some Chapter 42 districts were able to pass TREs only by simultaneously lowering their I&S rates, so that voters' overall tax rates remained flat. (RR5:187-96; RR6:28; RR24:138-39.) This strategy is simply a desperation measure to buy time. These districts must pay their debt service from I&S surplus, and will have to raise their I&S rate in short order. (RR5:187-96; RR6:28; RR24:140-41.)

10. The district-specific findings show that the ISD Plaintiff focus districts do not have access to adequate funding and lack meaningful discretion to set their M&O tax rates.

FOF 516. The "focus"/plaintiff districts discussed below: (1) hail from nearly every geographic region of the state (Ex. 6349 at 71); (2) include both property-wealthy and property-poor districts; (3) include urban, suburban, and rural districts; and (4) include fast-growing districts, stable districts, and districts in which the student population is declining. (*See generally* Part I.B.10.) Moreover, when these districts are aggregated together, they are very close to the state averages in many key statistics, including wealth per WADA, average M&O rate, revenue available in Tier I, percentage of ASATR, and percent of students who are economically disadvantaged. (Ex. 6349 at 76; RR7:49.) These thirty-six districts also have approximately 737,856 students in ADA, which represents 16.5% of the total statewide ADA. (Ex. 6349 at 76 (20,496 average ADA for focus districts times thirty-six districts; 4,369 statewide average ADA times 1,024 total districts.) For these reasons, this Court concludes that these thirty-six districts are fairly representative of the system as a whole.

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a. Fort Bend ISD Plaintiff focus districts

i. Abilene ISD

FOF 517. Abilene ISD is a Chapter 42 district located in Taylor County in west Texas, approximately 150 miles west of Fort Worth. (Ex. 11323.) Surrounded by smaller rural towns and school districts, Abilene serves as an urban center for that region of west Texas. (Ex. 6336, Burns Dep., at 10-11.)

FOF 518. Abilene ISD has slightly more than 17,000 students. (RR19:17; Ex. 6355 at 3.) Historically, Abilene ISD's enrollment has fluctuated significantly, with enrollment growth and decline triggered by variations in the local economy. (Ex. 6336, Burns Dep., at 11-12 (referencing Ex. 539 at 2).)

FOF 519. Abilene ISD has a student population that is at least 65% economically disadvantaged. (RR19:17; Ex. 6355 at 3.) Even at Abilene's "most affluent" campus, almost 40% of its students are on free and reduced lunch. (Ex. 6336, Burns Dep., at 16; Ex. 539 at 46.) The economically disadvantaged population is likely even larger than the official count represents, as students often fail to self-identify in middle school and high school. (RR19:17.) The large economically disadvantaged population "come[s] to school without the same context, without the same background and foundation that their more affluent counterparts come to school with," making it "a challenging population to reach and to teach." (RR19:18.)

FOF 520. Abilene has a steadily growing minority populations, and in 2011-12 was 12% Black, 40% Hispanic, and 6% "other" – a group that included 277 refugee students speaking thirty-six different languages. (Ex. 6355 at 10; Ex. 6336, Burns Dep., at 17-18 (referencing Ex. 539 at 7).) This refugee student population makes up about half of the district's ELL population and faces unique challenges above and beyond those of Abilene ISD's other economically disadvantaged and English language learning students. (RR19:41-42 (referencing Ex. 6355 at 10); Ex. 539 at 7.)

FOF 521. Over the course of the 2011-12 to 2012-13 biennium, Abilene ISD suffered a budget cut of $8.1 million in its FSP funds, or $162 per WADA. (RR19:103, 127 (referencing Ex. 6355 at 14).) In addition, Abilene suffered an additional $2.6 million in cuts to its grant programs, many of which were aimed at closing the achievement gap and improving the performance of at-risk students. (Ex. 6355 at 15.) While Abilene ISD worked hard to insulate its student population from the impact of these cuts, they were just too large to be able to do so entirely. (Ex. 6336, Burns Dep., at 37-38.) Even with an infusion of federal money, Abilene had to cut approximately 125 teaching positions and thirty-six teacher's aides. (Ex. 6366, Burns Dep., at 35-36; Ex. 539 at 20-23; RR19:50-51, 60.) As a result of the cuts, "Abilene ISD has been compelled to cut programs and weed down programs that have been proven to be successful in closing gap and growing students." (RR19:60-61.) Also a result of the cuts, Abilene went from seeking five class-size waivers in one grade at one exemplary-rated campus, to having to seek 102 class-size waivers at sixteen campuses, and was no longer able to confine the waivers to its highest performing

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campuses. (RR19:50 (referencing Ex. 6355 at 12); Ex. 6336, Burns Dep., at 38-40; Ex. 539 at 25-27.)

FOF 522. If Abilene ISD's funding was restored, it would use the additional funds to restore programs aimed at its at-risk and disadvantaged populations, such as the Woodson Center for Excellence (its alternative high school for at-risk students) and its Extended School Program (which provides students with individualized attention and targeted remediation), and AVID (a program aimed at creating first generation college students.) (RR19:26-30 (referencing Ex. 6355 at 4-6), 38-39 (referencing Ex. 6355 at 9), 30-33 (referencing Ex. 6355 at 7).) It would also invest more in innovative elementary-level curriculum programs such as Reasoning Mind, a program proven to help prepare students for Algebra, and Read 180, which helps struggling readers. (RR19:33-37 (referencing Ex. 6355 at 8).) In addition, Abilene would restore some of its personnel cuts, hire additional translators to serve its refugee population and return to its former practice of strategically requesting class size waivers at only its highest-performing campuses. (RR19:44-47 (referencing Ex. 6355 at 10), 50-51 (referencing Ex. 6355 at 12).)

FOF 523. At the time of the *WOC II* decision in 2005, Abilene ISD was taxing at the then-maximum M&O tax rate of $1.50. (RR19:56; Ex. 539 at 12.) Abilene ISD is a formula-funded district. (RR19:56.) Tax compression pushed Abilene ISD's tax rate down to $1.00, but the district immediately had to raise its current rate of $1.04 in order to provide an adequate education. (Ex. 6336, Burns Dep., at 26.) Abilene ISD cannot increase its tax rate further without holding a TRE but, because Abilene has several impending facilities needs, it cannot hold a TRE without jeopardizing the chances of being able to pass a bond election. (*Id.* at 122-23.) Currently, any revenue raised from such an election would go toward a general diffusion of knowledge only, and not towards enrichment. (RR19:58-59.)

FOF 524. While Abilene ISD was able to use targeted interventions to make some improvement in the percentage of students achieving the met-standard score on TAKS, there remained a troubling and persistent achievement gap and the district never had more than 23% of its students reach the commended level for any grade or subject level. (Ex. 6336, Burns Dep., at 45-49 (referencing Ex. 539 at 33-35).)

FOF 525. After the first administration of the STAAR-EOC exams, 567 (53%) of Abilene ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 21.) Two hundred and seventy-seven students failed multiple tests. (Ex. 539 at 45.) Looking at the Level II final standard, only 33% of Abilene ISD students reached the standard in Algebra I, 37% in Biology, 35% in English I reading, 42% English I Reading, and 36% in World Geography. (*Id.* at 36.) After the summer retest, 513 students had failed 1,164 tests and are still off track for graduation and require remediation. (Ex. 6324, Moak Supp. Report One, at 21, 41.) Because of the cumulative nature of the STAAR-EOC system, these numbers will only grow and are likely to result in higher dropout rates at Abilene ISD. (Ex. 6336, Burns Dep., at 56.)

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FOF 526. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Abilene ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

ii. Aldine ISD

FOF 527. Aldine ISD is a Chapter 42 district that covers approximately 110 square miles of northern Harris County. (Ex. 6339, Bamberg Dep., at 12; Ex. 11323.) It is primarily urban in nature, with almost 85% of its students classified as economically disadvantaged. (Ex. 6339, Bamberg Dep., at 11; Ex. 364 at 1, 2.)

FOF 528. In 2011-2012 Aldine ISD enrolled 65,613 students, making it the twelfth largest school district in Texas. (Ex. 6339, Bamberg Dep., at 12; Ex. 364 at 1.) From 2007 through 2012 the district's enrollment increased by about 11.5%, or just over 1,300 students per year, on average. (Ex. 6339, Bamberg Dep., at 16; Ex. 364 at 1.) The district educates these students at seventy-five different campuses. (Ex. 6339, Bamberg Dep., at 12.)

FOF 529. Aldine ISD's student body is almost 85% economically-disadvantaged, up from 72% in 2000 and 38% in 1990. (*Id.* at 13; Ex. 364 at 1-2.) The district's students also have a very high mobility rate – almost 25% of Aldine students district-wide change campuses or move in or out of the district during any particular school year. (Ex. 6339, Bamberg Dep., at 23.) At some campuses, the mobility rate is as high as 35%. (*Id.*)

FOF 530. The high poverty level and mobility rate have had a significant impact on the services Aldine ISD must provide in order provide a quality education to its students. (*Id.* at 22.) Many of Aldine's students lack the background experiences, resources at homes such as books and technology, and stable family environment to give them a realistic opportunity to be successful at school, unless the district can provide resources to address those deficiencies. (*Id.* at 43-44.)

FOF 531. Aldine ISD has also experienced a dramatic change in student ethnicity over that last two decades. In 1990, Aldine ISD had a majority white student population, an Hispanic population of less than 10%, and an African American population of approximately 35%. (Ex. 6339, Bamberg Dep., at 20; Ex. 364 at 1.) In 2011, the Hispanic student population had grown to almost 70%, while the White student population had fallen to 2.2% and the African American population declined to 25.8%. (Ex. 6339, Bamberg Dep., at 13, 20; Ex. 364 at 1.)

FOF 532. Along with these changes has come a dramatic increase in the number of ELL students served by Aldine ISD such that today, more than 31% of Aldine ISD students have limited proficiency in English. (Ex. 6339, Bamberg Dep., at 31; Ex. 364 at 2.) This has created further need for resources to properly serve these students. At the lower grade levels at many elementary schools, more than one-half of the programs offered are bilingual programs. (Ex. 6339, Bamberg Dep., at 33-34.) The district has struggled to obtain and provide the specialized teachers, materials, training, and curriculum necessary to serve these students. (*Id.*)

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FOF 533. Prior to tax rate compression, Aldine ISD had an M&O tax rate of $1.64. (*Id.* at 46; Ex. 364 at 3.) Aldine was one of a few school districts that had the ability to levy an M&O tax rate that exceeded the $1.50 cap then in effect. (Ex. 6339, Bamberg Dep., at 46-47.) Despite taxing higher than the $1.50 cap, after tax compression Aldine ISD received a target revenue funding level that was lower than state average. (*Id.* at 48-49.) Because of its lower than average funding level, Aldine ISD held a TRE in 2010, but it was unsuccessful. (*Id.* at 50-52.) As such, Aldine has been locked in to a static, and then reduced funding level. (*Id.*)

FOF 534. Aldine ISD's expenditures have been decreasing since 2008-09. (*Id.* at 53; Ex. 364 at 3.) The biggest decreases came after reductions in state formula funding of $14 million in 2011-12 and $8 million in 2012-13, in addition to the elimination of or reduction in state grant funds of more than $25 million for the current legislative biennium. (Ex. 6339, Bamberg Dep., at 55-59; Ex. 364 at 4.) These cuts have negatively impacted programs that are aimed at helping Aldine ISD's most needy students. For example, in order to continue to provide full-day pre-K for Aldine's poorest students, the district has had to increase class sizes in a manner that is not in the best interest of those students. (Ex. 6339, Bamberg Dep., at 61-62; Ex. 364 at 5.) The district also increased class sizes at all other grade levels, eliminated performance pay incentives for teachers, eliminated magnet programs, and made other reductions that have negatively impacted the district's ability to provide all of its students an opportunity to graduate college or career ready. (Ex. 6339, Bamberg Dep., at 61-70; Ex. 364 at 4-5.)

FOF 535. While the district had been making progress on the met standard level of the TAKS exam, this is not a strong indication of how well prepared Aldine ISD students were under the new college- and career ready standards. (Ex. 6339, Bamberg Dep., at 71-72.) The percentage of the district's students meeting the commended level (a better indication of college or career ready) remained troublingly low, with only 10% of Aldine ISD students meeting that standard on all tests. (*Id.* at 72-73; Ex. 366 at 4.)

FOF 536. After the first administration of the STAAR-EOC exams, 2,747 (65%) of Aldine ISD's ninth graders failed to achieve the Level II phase-in standard on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 13.) Looking at the Level II final standard, only 35% of Aldine ISD students reached the standard in Algebra I, 31% in Biology, 35% in World Geography, 20% in English I Writing and 34% in English I Reading. (Ex. 364 at 5.)

FOF 537. After the July retests, Aldine ISD still had 2,537 ninth graders, 60% of the class of 2015, who failed 5,458 tests and were off track for graduation. (Ex. 6324, Moak Supp. Report One, at 13, 32.)

FOF 538. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Aldine ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

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iii. Amarillo ISD

FOF 539. Amarillo ISD is a seventy square mile Chapter 42 district that covers portions of Randall and Potter Counties in the Texas Panhandle. (Ex. 11323.)

FOF 540. The district enrolls approximately 33,000 students and has experienced moderate but steady enrollment growth since 2007-08. (Ex. 6358 at 2.) Over that same time period, the districts Hispanic population has grown to 14,476 or 44.7%, while its African-American and non-Hispanic White populations have decreased. (*Id.*; Ex. 6343, Schroder Dep., at 12-13 (referencing Ex. 919-S at 1).) Almost 67% of the Amarillo ISD student population is economically disadvantaged. (Ex. 6358 at 2.)

FOF 541. Amarillo ISD had 4,611 ELL students in 2011-12. Within that population, the number and percentage of students speaking languages other than Spanish has almost tripled, going from 586 (18.8% of the ELL population) in 2006-07 to 1,695 (36.8% of the ELL population) in 2011-12. (*Id.*) This growth is largely due to the placement of refugee populations in Amarillo by the State Department. (Ex. 6343, Schroder Dep., at 13-14.) These refugee students often un-schooled and not literate in their own language. (*Id.* at 15-17.) The growth in this population and in other economically disadvantaged and ELL populations have caused increased financial pressure on the district. (*Id.*)

FOF 542. Amarillo ISD was steadily reducing its budget for several years prior to the state funding cuts. (Ex. 6358 at 9.) After the state funding cuts, the district reduced its budget by another $6.3 million. (*Id.*; Ex. 6343, Schroder Dep., at 38-39 (referencing Ex. 919-S at 10-11).) To do so, the district reduced its administrative and educational support staff; reduced health insurance contribution by 10%, shifting costs to its employees; reduced each campus's budget 5%, resulting in cuts to instructional materials, professional development, and field trips. (Ex. 6343, Schroder Dep., at 40-41 (referencing Ex.919-S at 11).) The district has eliminated its art program at elementary schools, and is operating at half-staffing levels for nurses, counselors, and librarians. (Ex. 6343, Schroder Dep., at 46.)

FOF 543. At the same time, Amarillo's required, "fixed" costs – for things such as utilities and health insurance, and workers compensation insurance – are rising. (RR22:59 (referencing Ex. 6358 at 11).) Thus, despite the budget reductions, Amarillo ISD is currently operating on a deficit budget, and predicts that it will need to do so for the next biennium. (RR22:59-60 (referencing Ex. 6358 at 12).) The district does not have room in its projected budget to hire additional teachers even as its enrollment is projected to increase. (Ex. 6343, Schroder Dep., at 53.)

FOF 544. Prior to tax compression, Amarillo ISD was taxing at the $1.50 cap. (Ex. 6358 at 6.) Upon being compressed to $1.00, Amarillo ISD immediately accessed its first four "golden pennies." (*Id.*) The next year, Amarillo ISD held a tax ratification election to raise its rate to $1.08. (RR22:56-57 (referencing Ex. 6358 at 6).) Therefore, Amarillo ISD has no more "golden pennies" available to it. The money raised from the TRE went for basic operations. (RR22:56-57.) Because Amarillo ISD has facilities needs that require a bond issuance, it cannot at this time pursue another TRE. If it were to do so and

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raise its tax rate to the $1.17 cap, the resulting additional state and local revenue would almost cover the lost revenue due to state funding cuts, and would not be enough to cover the district's projected deficit over the upcoming biennium. (RR22:57-58, 60-61.) Indeed, it would take two of those nine cents to simply cover the district's increased health insurance costs. (Ex. 6343, Schroder Dep., at 45 (referencing Ex. 919-S at 12).)

FOF 545. After the first administration of the STAAR-EOC exams, 1,288 (60%) of Amarillo ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (RR22:115-16 (referencing Ex. 6358 at 18).) Of those, 595 three or more exams. (RR22:115-16 (referencing Ex. 6358 at 18).) Looking at the Level II final standard, only 39% of Amarillo ISD students reached the standard in Algebra I, 36% in Biology, 39% in English I reading, 29% in English I Reading, and 36% in World Geography. (Ex. 6358 at 13-17.) For each of these tests, the achievement gap between white students and economically disadvantaged students was significantly greater at the final level. (*Id.*)

FOF 546. After the summer retest, 1,152 students (52%) from the Class of 2015 failed 2,376 tests are still off track for graduation and require remediation. (Ex. 6324, Moak Supp. Report One, at 19, 39.) Projecting forward, after the December retests and the May 2013 tests for the class of 2016 Amarillo ISD expects to be remediating students for 4,202 freshman level EOC tests – without taking into consideration additional remediation that the class of 2015 will need for its sophomore level EOC tests. (RR22:64-65 (referencing Ex. 6358 at 19).)

FOF 547. To fund remediation programs for these students, Amarillo ISD needs an additional $1,200 per student in need of remediation. (RR22:65.) To improve its programs and avoid future remediation, Amarillo ISD needs an additional $1,000 per student across the board. (*Id.*)

FOF 548. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Amarillo ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iv. Austin ISD

FOF 549. Austin ISD is a Chapter 41 district that serves the city of Austin, as well as certain unincorporated areas of Travis County. (Ex. 11323.) The district operated 124 schools, including eighty-one elementary schools, eighteen middle schools, and sixteen high schools, in 2011-12.

FOF 550. In 2011-12, Austin ISD enrolled 86,124 students, and grew by approximately 8,000 students over the past decade. (RR19:138 (referencing Ex. 6356 at 2).) Because population growth is not uniform across the city, the district faces challenges in terms of over-crowding in certain schools, as well as pockets of disadvantage. (RR19:138-39.)

FOF 551. Austin ISD is a diverse district, with a majority Hispanic population. Its Hispanic population grew from 51.5% in 2003 to 60.55% in 2012. (RR19:139-40.) Over that

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same time period, the non-Hispanic White population decreased from 31.2% to 24.5% and the African-American population decreased from 14.4% to 9.1%. (*Id.*)

FOF 552. Concurrent with the Hispanic population growth, the population of ELL students has grown from 16,191 (20.7%) in 2003 to 24,000 (27.9%) in 2012. (RR19:145-46 (referencing Ex. 6356 at 5).) While the majority of the ELL population is Spanish-speaking, Austin ISD students speak sixty-four languages. (RR19:147.) This population of students often enters Austin ISD and the Texas public school system at higher grades, and without the same preparation to meet the high standards of the Texas public school system as the students who have grown up in the system. (RR19:140-41, 148.) Sometimes, the students have previously undiagnosed educational needs and challenges that the district must assess and address. (RR19:146-47.) Austin's biggest challenge in educating its ELL population is recruiting, training, and compensating qualified bilingual teachers. (*Id.*)

FOF 553. As the Austin ISD population has grown more diverse, it has also become more impoverished. As of 2012, Austin ISD had 55,318 students (64.2%) classified as economically disadvantaged, up from 41,397 (53%) in 2003. (RR19:142-43; Ex. 6356 at 4).) This economically disadvantaged student population tends to be more mobile – moving both within and between districts (RR19:144, 149-51, (referencing Ex. 6356 at 7-8).) Austin ISD students who are residentially mobile are twice as likely to miss more than 10% of the school year, and students who move campuses are three times as likely to miss more than 10% of the school year. (RR19:153.) As a result, the district must spend more money on transportation, remediation, and other support services for these students – expenses which are not accounted for under the current school finance system. (RR19:153-54.) Economically disadvantaged students often come to school with unmet basic needs, requiring the district to provide what superintendent Dr. Meria Carstarphen described as "wrap-around services." (RR19:144.) Included in this economically disadvantaged population are 1,975 homeless students. (Ex. 6356 at 6.) The district's homeless population has needs above and beyond those of the rest of the economically disadvantaged population, which are not taken into account in the state's funding system. (RR19:150.)

FOF 554. As Austin ISD's student population was becoming poorer, more diverse, and more challenging and expensive to educate, it lost $35.6 million in state funds during the 2011-12 school year, and an additional $25.1 million the next year, for a total of $60.7 million over the current biennium. (RR19:160-61 (referencing Ex. 6356 at 12).) As a result of the first year's cuts, its inflation adjusted expenditures per student decreased $400 compared to the 2009-10 school year, and were roughly equivalent to what they were during the 2002-03 school year. (RR19:155-56 (referencing Ex. 6356 at 9).) In addition to the state cuts, Austin ISD lost more than $60 million in Federal ARRA funding. (Ex. 6356 at 12.) Furthermore, as ASATR funding is phased out, Austin ISD will lose an additional $150 million. (*Id.*)

FOF 555. As a result of stagnant and then decreasing state revenues, Austin ISD has experienced three-years of budget cuts and austerity planning. (*Id.* at 16.) As part of this process, Austin ISD cut $66 million from the budget and eliminated eighteen central office

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positions in 2009-10 and another 117 central office positions in 2010-11. (*Id.* at 17.) The district also restructured its employee health insurance program and did what it could to reduce operational costs such as electricity costs. (RR19:170.) While the district took these measures first to postpone impacting classrooms "for as long as possible," it eventually had to; in 2011-12 it implemented a reduction in force that cut 1,153 positions in 2011-12. (*Id.* (referencing Ex. 6356 at 17).) In Fall of 2010, Austin ISD requested class size waivers at just two campuses; in the Fall of 2011, as a result of the state budget cuts and the reduction in force, it had to request waivers at sixteen campuses. (Ex. 6103.)

FOF 556. At the time of *WOC II*, Austin ISD was taxing at the $1.50 cap. (Ex. 6356 at 11.) In 2007-08, when its compressed rate under HB1 was $1.00, it immediately accessed the first four golden pennies. (RR19:158 (referencing Ex. 6356 at 11).) Austin ISD then held a TRE and raised its rate to $1.079 starting with the 2008-09 school year. (RR19:158 (referencing Ex. 6356 at 11).)

FOF 557. In 2011-12, $135.2 million of Austin ISD's local tax revenue (or almost 20%) was recaptured. (RR19:163 (referencing Ex. 6356 at 13).) The "copper pennies" above $1.06 are recaptured at nearly 45%. (Ex. 6356 at 13.) While the district is considering holding another TRE, Dr. Meria Carstarphen persuasively testified that as a growing district, Austin ISD must frequently go to the voters to pass a bond election and that this, combined with the higher recapture rate on the additional pennies factor into the district's calculation of whether the district's taxpayers will support a TRE. (RR19:159-60.) If the district were to hold a TRE and raise its rate to the $1.17 cap, it would not generate enough additional revenue to make up for the district's $60M state funding cut. (RR19:161.)

FOF 558. In addition, Austin ISD is one of fewer than forty-eight districts that is locked into contributing to the Social Security system. (RR19:165-66 (referencing Ex. 6356 at 15).) This costs the district approximately $33 million a year, or $380 per student – an expense which is completely unaccounted for in the state's funding system. (RR19:166 referencing Ex. 6356 at 15).) In fact, because of recapture, in order to make its $33 million in Social Security payments, the district must raise $45 million in local tax revenue. (RR19:166.)

FOF 559. After the first administration of the STAAR-EOC exams, 2,689 (52%) of Austin ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 22.) Looking at the Level II final standard, only 42% of Austin ISD students reached the standard in Algebra I, 41% in Biology, 50% in English I Reading, 37% in English I Writing, and 43% in World Geography. (Ex. 6356 at 21.)

FOF 560. Comparing the economically disadvantaged students to the non-economically disadvantaged students reveals a large and troubling achievement gap. At the initial phase-in standard, the gap between the percentage of economically disadvantaged students achieving the phase-in standard and the percentage of non-economically disadvantaged students achieving the phase-in standard ranged from eighteen points in Algebra I to thirty-six points in English I Writing. (*Id.* at 23-27.) The gaps grow at the

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higher final standard. Only 25% of economically disadvantaged students met the final standard on Algebra I, compared to 64% of non-economically disadvantaged students. (*Id.* at 23.) On the Biology EOC, only 20% of economically disadvantaged students achieved the final standard compared to 66% of non-economically disadvantaged students. (*Id.* at 24.) Twenty-two percent of economically disadvantaged students achieved the final standard in World Geography compared to 71% of non-economically disadvantaged students. (*Id.* at 25.) Turning to English I, only 18% of economically disadvantaged students achieved the final standard in Writing and 31% in reading, compared to 64% and 74% respectively for non-economically disadvantaged students. (*Id.* at 26-27.)

FOF 561. After the July retests, Austin ISD still had 2,454 ninth graders, 47% of the class of 2015, who failed 5,633 tests and are off track for graduation. (Ex. 6324, Moak Supp. Report One, at 22, 41.)

FOF 562. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Austin ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

v. Corsicana ISD

FOF 563. Corsicana ISD is a Chapter 42 district located about fifty miles south of Dallas in Corsicana, the county seat of Navarro County. (Ex. 11323.) Corsicana is a small, mostly low income community. (Ex. 6341, Frost Dep., at 11.) The district is the largest employer in the county. (*Id.* at 14.)

FOF 564. In 2011-12, Corsicana ISD enrolled 5,875 students. (Ex. 368 at 2.) The district grows, on average, by about sixty students a year, but because it serves a small community, its enrollment can be strongly impacted by the closing of just one business. (Ex. 6341, Frost Dep., at 11-13 (referencing Ex. 368 at 2).)

FOF 565. Corsicana ISD's student body is approximately 75% economically-disadvantaged, up from 57% in 2006-07. (Ex. 6341, Frost Dep., at 13-14 (referencing Ex. 368 at 3).) Because the community is so impoverished, the district often has to help the students with basic needs, such as food and clothing. (Ex. 6341, Frost Dep., at 15-16.)

FOF 566. Like Texas, Corsicana is majority-minority – approximately 47% Hispanic, 30% Anglo, and 20% African-American – with a steadily growing Hispanic population and a steadily shrinking Anglo population. (Ex. 368 at 4.) About 18% of the student body is classified as ELL. (*Id.*)

FOF 567. In 2011-12, Corsicana ISD's budget was cut by over $2 million dollars, from $38.6 million to $36.4 million – or by about $450 per student. (*Id.* at 8-9.) In order to absorb the cuts, Corsicana had to cut twenty-two elementary teachers and fourteen secondary teachers – resulting in larger class sizes across the board – plus eight aides, and several other support staff. (Ex. 6341, Frost Dep., at 25, 27 (referencing Ex. 368 at 9).) The cuts

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inevitably also touched the district's most needy and challenging populations – including cutting its pre-K program from full day to half day, reduction in teachers for disciplinary alternative program and the credit recovery program for the students it serves, larger caseloads for teachers working with students with disabilities, and elimination of a position aimed at assisting the district's low-income students in obtaining college scholarships and other financial aid. (Ex. 6341, Frost Dep., at 23-26 (referencing Ex. 368 at 9).)

FOF 568. Prior to tax compression, Corsicana ISD was taxing at $1.41. (Ex. 368 at 6.) Its compressed rate was $0.98, but Corsican immediately accessed all six golden pennies in and has been taxing at $1.04 since the 2007-08 school year. (Ex. 6341, Frost Dep., at 19 (referencing Ex. 368 at 6).) Corsicana is cannot raise its tax rate further without a TRE. (Ex. 6341, Frost Dep., at 6.) Corsicana is "out" of golden pennies, so therefore any additional taxes it did raise through a TRE would only raise the lower, "copper yield." (*Id.* at 19-20.) Further, Corsicana's I&S rate is already at $.243 and it has several aging buildings – including ones built in 1923 and 1924 – that need updated wirings to support today's educational technology. (*Id.* at 20-21.) The combination of the lower yield, the higher I&S tax rate, the pending facilities needs and the poverty of the district's community has prevented the district from holding a TRE. (*Id.* at 19-20, 174-75.)

FOF 569. While the district had been making progress on the met standard level of the TAKS exam, much like the rest of the state, the district's scores were flat or declining in the last two years. (Ex. 6341, Frost Dep., at 28-29 (referencing Ex. 368 at 10-11).) Further, the percentage of the district's students meeting the commended level remained troublingly low, especially for the 75% of the students who are economically disadvantaged and the district's African-American population. (Ex. 368 at 12-14.)

FOF 570. After the first administration of the STAAR-EOC exams, 255 (68%) of Corsicana ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 18.) Looking at the Level II final standard, only 20% of Corsicana ISD students reached the standard in Algebra I, 21% in Biology, 28% in World Geography, 38% in English I Writing and 40% in English I Reading. (Ex. 368 at 15-20.) The results at the Level II final standard are even more disturbing for the district's economically disadvantaged students, only 11% of whom that standard in Algebra I, 17% in Biology, 21% in World Geography 35% in English I Writing and English I Reading. (Ex. 6341, Frost Dep., at 29-31 (referencing Ex. 361 at 15-20).)

FOF 571. After the July retests, Corsicana ISD still had 215 ninth graders, 57% of the class of 2015, who failed 517 tests and were off track for graduation. (Ex. 6324, Moak Supp. Report One, at 18, 38.) Superintendent Dr. Diane Frost described that the challenge that these numbers represent is "not a hill or a bump in the road, it's a mountain that as a district we're going to have to climb." (Ex. 6341, Frost Dep., at 34.) The district was able to offer summer school remediation in 2012 only because of non-recurring federal funds and needs more resources for extended day programs and summer school and other remediation and intervention efforts. (*Id.* at 34-35, 39-43.)

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FOF 572. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Corsicana ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

vi. Duncanville

FOF 573. Duncanville ISD is a Chapter 42, "mid-urban" district, approximately 56% of which is in southern Dallas and 44% of which is in the City of Duncanville. (Ex. 6342, Ray Dep., at 9-10; Ex. 11323.)

FOF 574. Duncanville is a steadily growing district, and has gained 3,000 students since 2006-07. (Ex. 1703 at 2.) Duncanville enrolls slightly more than 13,300 students in nine elementary schools, three intermediate schools, three middle schools, one traditional comprehensive middle school, and two alternative schools. (*Id.*; Ex. 6342, Ray Dep., at 3.)

FOF 575. The demographics of the Duncanville ISD student body have changed drastically over the past twenty-five years, going from 25.9% minority in the 1988-89 school year to 92.96% minority in 2011-12. (Ex. 1703 at 4.) It is currently about 48% Hispanic, 42% African-American, and 7% non-Hispanic White. (*Id.* at 6; Ex. 6342, Ray Dep., at 9-10.) Approximately 13% of the district's population is ELL, many of whom are first generation Americans. (Ex. 6342, Ray Dep., at 14 (referencing Ex. 1703 at 5).)

FOF 576. The district has also become poorer, and is now 75% economically disadvantaged. (Ex. 6342, Ray Dep., at 10, 12-13 (referencing Ex. 1703 at 3).) To meet the challenges of educating this population of students, the district needs quality pre-K programs, smaller class sizes, one-on one tutoring, after-school and extended day programs, and summer school. (Ex. 6342, Ray Dep., at 13-14, 28-29.) The challenges – and the need for intervention services – are even greater for the economically-disadvantages students whose first language is not English. (*Id.* at 15-16.)

FOF 577. Despite the challenges facing its students, the expectation of Duncanville ISD for *all* of its students to be prepared for college or career by becoming "21st Century Learners" – citizens who are not just competent academically in the hard subjects, but also has skills beyond that in the leadership, communication, technological fluency, [and] multi-fluencies in other . . . cultures [and] languages." (Ex. 6342, Rey Dep., at 16-18, 41-42 (referencing Ex. 23-25).)

FOF 578. Duncanville ISD's budget was cut by almost $5 million in 2011-12, and by "only" $1.1 million in 2012-13. (Ex. 6342, Ray Dep., at 25-26.) Because the district had several campuses that were overcrowded or needed remodeling, the district withdrew $2 million from its fund balance to make ends meet in 2011-12 and adopted a deficit budget in 2012-13. (*Id.* at 24-25 (referencing Ex. 1703 at 9-10), 59-60.) Despite withdrawing this money, in order to deal with the budget cuts the district had to implement a salary freeze, make significant personnel cuts – including administrative, teaching, and support staff – reduce the number of days on its staff contracts, increase the number of class-size

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waivers, reduce stipends for extra assignments taken on by teachers, and adjust its busing schedule (and school start times, accordingly). (Ex. 6342, Ray Dep., at 26-28 (referencing Ex. 1703 at 11).) The district also had to reduce its remedial summer school program to just the grades five and eight – the grades for at which students must pass the standardized test to be promoted to the next grade – thus reducing the amount of quality of intervention the district can provide students who are falling behind and at-risk of failing. (Ex. 6342, Ray Dep., at 28-30 (referencing Ex. 1703 at 12).)

FOF 579. Prior to tax compression, Duncanville ISD was taxing at the $1.50 cap for M&O. (Ex. 6342, Ray Dep., at 20 (referencing Ex. 1703 at 8).) Despite that, its target revenue was well below the state average; therefore, after compression, the district immediately accessed the first four golden pennies and raised its rate to $1.04, where it remains today. (Ex. 6342, Ray Dep., at 20-21.) The district held an unsuccessful TRE in 2008 – just a few weeks after an explosion in gas prices. (*Id.* at 22-23.)

FOF 580. The district's I&S is at $0.39, making it one of 222 districts in the state that levies an I&S tax above $0.30. (*Id.* at 36; Ex. 1328, Casey Report, at 26.) The district's last successful bond election was in 2001, and it has several unmet facilities needs, including twelve schools that are at or over capacity, and five science labs and 115 elementary classes that do not meet the minimum TEA square footage requirement. (Ex. 6342, Ray Dep., at 37-39 (referencing Ex. 1703 at 13).) The school board is discussing its need for a TRE to address unmet operational needs *and* a bond election to address unmet facilities needs, but must weigh the needs against each other because "[m]ost taxpayers look at the entire school tax rate, the M&O plus I&S as one number." (Ex. 6342, Ray Dep., at 39-40.)

FOF 581. After the first administration of the STAAR-EOC exams, 662 (62%) of Duncanville ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 9.) Looking at the Level II final standard, only 33.4% of Duncanville ISD ninth graders reached the standard in Algebra I, 56.1% in Biology, 52.3% in World Geography, 45.7% in English I Writing and 59.4% in English I Reading. (Ex. 1703 at 15-22.) After the July retests, Duncanville ISD still had 579 ninth graders, 54% of the class of 2015, who failed 1,355 tests and were off track for graduation. (Ex. 6324, Moak Supp. Report One, at 9, 29.)

FOF 582. The results are worse for the 75% of the population who is economically disadvantaged, and Duncanville ISD Superintendent Dr. Alfred Ray testified that it was going to take additional resources directed at targeted interventions to improve these scores. (Ex. 6342, Ray Dep., at 53.) With current resources, Dr. Ray testified, "We may be able to provide better test scores for some kids for a short period of time, but if you want that to be all kids and sustain it, not with the current resources – I don't think that could happen." (*Id.* at 59.)

FOF 583. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Duncanville ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

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vii. Fort Bend ISD

FOF 584. Fort Bend ISD is a Chapter 42 district that covers almost 200 square miles and includes most of Sugar Land and portions of southwest Houston, Missouri City, Pearland, Mission Bend, southwest Houston, and unincorporated areas of Fort Bend County. (Ex. 11323.) It is a growing, residential community. Seventy-eight percent of the district's property wealth is residential. (RR11:63 (referencing Ex. 6353 at 6).)

FOF 585. It has approximately 69,500 students, an increase of 10,200 students since 2003. (Ex. 6353 at 3.) Fort Bend ISD grew by almost 1,000 students per year between 2003 and 2009, before the economic downturn slowed development in the area. (RR11:59 (referencing Ex. 6353 at 3).) The district built twenty schools over the past ten years, including thirteen elementary schools, three high schools, three middle schools, and an alternative school. (RR11:60.) Fort Bend's Chief Financial Officer, Dr. Tracy Hoke, testified that growth is projected to pick back up as housing developments are completed. (Ex. 6338, Hoke Dep., at 17-18.)

FOF 586. Fort Bend ISD is a diverse district, with 29.5% African-American students, 26.2% Hispanic students, 21.7% Asian/Pacific Islander students, and 19.5% non-Hispanic White students. (Ex. 6353 at 4.) The district has pockets of wealth and pockets of poverty, with the average home value in Fort Bend ISD neighborhoods ranging from $68,750 in Arcola Heights to $794,551 in Sweetwater. (RR11:63 (referencing Ex. 6353 at 5).) Twenty-four percent of Fort Bend ISD residents lack basic literacy skills, and 36% of its households speak a language other than English. (RR11:58 (referencing Ex. 6353 at 2); Ex. 664 at 6.)

FOF 587. In 2011-12, Fort Bend ISD enrolled 26,267 economically disadvantaged students and 516 homeless students. (Ex. 664 at 5, 8.) That same year, 9,669 of Fort Bend ISDs students were classified as ELL. (*Id.* at 6.) District students speak 100 different languages and dialects. (RR11:58.) The district has taken many steps to meet the resulting need for bilingual teachers, including having its regular education teachers get certified in ESL and even recruiting teachers from overseas and sponsoring them for VISAs, but has still not been able to fill all of its openings for bilingual teachers. (Ex. 6338, Hoke Dep., at 25-27.)

FOF 588. The student population of Fort Bend ISD is extremely mobile. On any given day of the school year, the district population has a turnover of 300 students. (*Id.* at 19-20.) At some campuses, the population shifts by up to 25% each year. (*Id.* at 20.) The student turnover rate makes it hard for the district to assess and meet the students' needs. (*Id.*)

FOF 589. Fort Bend ISD was forced to cut its budget by $23 million in 2010-11, in order to make up for a budget deficit and to find room in the budget to open three new schools. (*Id.* at 49-50.) Then, in 2011-12, the district lost another $22 million because of the state budget cuts. (*Id.* at 51.)

FOF 590. Because 87% of the district's budget is in salaries and benefits – including the seven legislatively-mandated salary and benefit increases since 1999 – the district could not

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absorb the cuts without making personnel cuts. (*Id.* at 39-41 (referencing Ex. 664 at 13-14).) The majority of the districts personnel cuts implemented in Summer 2010 were campus administrators, paraprofessionals and other support staff, "helping teachers," and secondary teachers. (Ex. 6338, Hoke Dep., at 50-53 (referencing Ex. 664 at 19), 59-61; Ex. 664 at 21-23.) The district was able to implement the cuts so as to maintain its teacher-to-student ratios at the elementary level and in secondary math and science classes. (Ex. 6338, Hoke Dep., at 52-53.) The next year, the district was forced to cut even more secondary teachers and to raise its elementary school class size to 24:1. (*Id.* at 53-54.) The district filed more than 100 class size waivers as a result. (*Id.* at 54.)

FOF 591. Special education has been a cost-driver for Fort Bend ISD. While the number of special education students in the district is declining, the severity of disability and cost of serving the students has been increasing. (*Id.* at 65-71; Ex. 664 at 26-32.) Special education expenditures regularly outpace the amount of money the district receives for those services. (Ex. 6338, Hoke Dep., at 64-65; Ex. 664 at 25.)

FOF 592. Projecting forward, Fort Bend ISD does not have room in its budget to increase its staffing to keep pace with enrollment growth, to cover rising health care costs, or to pay for salary increases. (Ex. 6338, Hoke Dep., at 71-73 (referencing Ex. 664 at 33).) Fort Bend ISD's teacher salaries are lower than those of its surrounding districts, and the district regularly has a hard time filling math, science, bilingual, and special education positions. (Ex. 6338, Hoke Dep., at 73-74.)

FOF 593. The escalating pressure on the district's operating budget has forced the district to issue bonds to pay for its technology and maintenance needs. (RR11:70-71 (referencing Ex. 6353, at 13); Ex. 6338, Hoke Dep. at 74-76.)

FOF 594. At the time of *WOC II*, and up until tax compression, Fort Bend ISD was taxing at the $1.50 cap. (RR11:64; Ex. 6353 at 8.) The district accessed the first four "golden pennies" in 2008. (Ex. 6353 at 8.) Fort Bend cannot raise its M&O tax rate any further without holding a TRE. The district has not held a TRE because enrollment grown in the district and the resulting facilities needs (and the maintenance and technology needs discussed *supra*) has forced the district to steadily raise its I&S tax rate, which has increased by eleven cents since 2006. (Ex. 6338, Hoke Dep., at 35-38 (referencing Ex. 664 at 10); Ex. 6353 at 8.) The district has additional bond needs that will cause it to issue more bonds in the near future, and its I&S rate will continue to increase as a result. (RR11:71 (referencing Ex. 6353 at 13).)

FOF 595. After the first administration of the STAAR-EOC exams, 2,360 (41%) of Fort Bend ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 11.) Of those, 1,198 students did not even achieve the minimum score necessary to have their English I Writing score count towards their cumulative score. (Ex. 664 at 36.) Looking at the Level II final standard, only 49% of Fort Bend ISD students reached the standard in Algebra I. Only 29% of economically disadvantaged students and 24% of ELL students reached that benchmark, compared to 60% of non-economically disadvantaged students. (*Id.* at 37.) A similar pattern exists for each of the other subject areas, with non-economically

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disadvantaged students persistently achieving the Level II final standard at approximately twice the rate of economically disadvantaged students. (*Id.* at 37-41.) After the summer retest, 2,165 (38%) of Fort Bend ISD's Class of 2015 still needed remediation on 4,321 tests are off-track for graduation. (Ex. 6324, Moak Supp. Report One, at 11, 31.)

FOF 596. Under the last five years of the TAKS system, Fort Bend ISD never had more than 1,571 test failures. (Ex. 664 at 42.) The state financing system does not provide funding for the increased remediation efforts and Fort Bend ISD does not have capacity in its budget to pay for such unprecedented levels of remediation. (Ex. 6338, Hoke. Dep., at 72, 93-94 (referencing Ex. 664 at 43).)

FOF 597. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Fort Bend ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

viii. Humble ISD

FOF 598. Humble ISD is a Chapter 42 district located in northeast Harris County and includes the City of Humble and a portion of the City of Houston. (RR3:122; Ex. 11323.) The district has approximately 37,000 students and is considered a fast-growing school district. (RR3:122.) Humble ISD has added about 900 to 1,000 students (about the size of a typical middle school) per year since the *WOC* trial. (RR3:132 (referencing Ex. 6346 at 2).) This continued growth has increased costs each year for the district, just to provide the same level of services. The growth in the number of students requires more teachers, equipment, books and technology, and facilities – sometimes necessitating the construction of new schools. (RR3:132, 137-39, 168.) Since 2004, Humble ISD has opened seven new elementary schools, one new middle school, and three new high schools. (RR3:137.) Voters in Humble ISD have approved three separate bond programs since 2002 to construct these schools.

FOF 599. Humble ISD, once considered an outer-ring suburban district, has continued to become much more diverse, with increasing urban characteristics. At the time of the *WOC* trial, Humble ISD's student population was 35% minority and 21% low income. (RR3:140 (referencing Ex. 6346 at 3).) In the 2010-2011 school year, for the first time, the minority student population exceeded 50% of the total student population in the district. (RR3:140 (referencing Ex. 6346 at 3).) Moreover, since 2006-07, the economically disadvantaged student population has increased by 36%, and these students now make up more than one-third of the student population in the district. (RR3:141 (referencing Ex. 6346 at 4).)

FOF 600. At the time of the *WOC II* decision in 2005, Humble ISD was taxing at the then-maximum M&O tax rate of $1.50. (RR3:150 (referencing Ex. 6346 at 6).) After HB1, Humble ISD's tax rate was compressed to $1.33. (Ex. 6347 at 6.) Despite taxing at the maximum rate prior to compression, Humble ISD's target revenue was set at $5,400 per WADA, which was below average for the state and below that of several districts in its area. (Ex. 6334, Sconzo Dep., at 30-35; RR3:151-52.) In order to keep up with the costs

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of growth and competition in the area, Humble ISD Superintendent Dr. Guy Sconzo testified that the district had no choice but to immediately access the four "golden pennies," resulting in a tax rate of $1.37 in 2006-07. Humble ISD's tax rate was further compressed to $1.04 in 2007-08. (RR3:151.)

FOF 601. In 2008, Humble ISD held a TRE seeking voter approval to tax at the new maximum tax rate of $1.17. (RR3:154-55.) Superintendent Sconzo testified that the district had no choice but to seek to tax at the maximum rate in order to keep up with growth, rising costs, and increased state requirements. (RR3:155-56; 166-67.)

FOF 602. By accessing the seventeen cents above its compressed M&O rate of $1.00 between 2006-07 and 2008-09, Humble ISD was able to generate additional revenue during this time period. (RR3:162 (referencing Ex. 6346 at 7).) Despite these increased revenues, however, because of increased costs and growth, the district was nonetheless forced to begin making cuts during the 2007-08 ($6.01 million), 2008-09 ($8.76 million), and 2009-10 ($4.3 million) school years. (RR3:167-69 (referencing Ex. 6346 at 9).) Finally, in 2011-2012, Humble ISD was forced to make budgetary cuts of $24.20 million in response to the 2011 legislative cuts of more than $5 billion statewide. (RR3:169-70.) This single year of cuts exceeded the $17.9 million raised by Humble ISD through its 2008 TRE. (RR3:169-70 (referencing Ex. 6346 at 10).)

FOF 603. Because Humble ISD had already been making cuts prior to 2011-12, the district could not absorb the $24.2 million in cuts without impacting classrooms and students. (RR3:170-75.) This included the reduction of more than 170 teachers and resulted in increased class sizes in the district, as well as other reductions that impacted the quality of education the district could provide its students. (*Id.*)

FOF 604. During the years that Humble ISD was able to increase expenditures per student (through 2009-10), it also experienced increases in the performance of its students on the TAKS basic proficiency standard (i.e. passing). (RR3:179-80 (referencing Ex. 6346 at 13-16).) However, student performance on passing TAKS leveled off just as the district's funding levels declined. (RR3:179-80 (referencing Ex. 6346 at 13-16).) More concerning, the district's performance on reaching the TAKS commended standard, already at a much lower level than its performance on the proficiency standard, has also leveled off. (RR3:180-83 (referencing Ex. 6346 at 14-16).) In 2011, only 38% of Humble ISD's students met the commended standard on the ELA/Reading exam, while only 32% met that standard on the Math exam. (Ex. 6346 at 15.) Moreover, although only 45% of Humble ISD's non-economically disadvantaged students scored at the commended level on the ELA/Reading exam, about one-half that percentage, or 23% of the district's economically disadvantaged students met the standard. (*Id.*) Likewise, only 19% of Humble ISD's economically disadvantaged students met the commended level on the Math test, while 36% of its non-economically disadvantaged students scored at that level. (*Id.*)

FOF 605. The results from the first year of the new EOC exams, designed to more accurately reflect college and career readiness, reveal a crisis consistent with that demonstrated by the district's TAKS commended scores. Even at the initial lower phase-in standard, more

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than 1,144 Humble ISD students (out of 2,755 students who tested) failed a total of 2,159 tests on the first EOC administration. (*Id.* at 24.)

FOF 606. Unfortunately, the first round of remediation efforts and first retest opportunity in July barely made a dent in the number of students who now are not on-track toward graduation. After the July retest opportunity, 1,050 students have still failed 1,930 tests. (*Id.* at 25.) Thus, the first round of remediation and retesting has reduced the number of students who are "off track" by less than 10%. (*Id.*) The district must continue to provide remediation to all these students to ensure they pass all of these tests, and must also prepare them for an additional ten EOC exams that they and all other students must pass prior to graduation. (RR3:190-95.) As Dr. Sconzo testified, there is no additional funding available for such remediation efforts. (RR3:195-99.)

FOF 607. This level of crisis is unlike anything experienced by Humble ISD or its students in prior testing programs, including the TAKS test. (RR3:124-127 (referencing Ex. 6346 at 26).) Since 2008, Humble ISD has never had more than 527 students fail more than 900 exit level exams, and the district typically experienced success rates on retests of about 50%. (Ex. 6346 at 26.)

FOF 608. Dr. Sconzo testified that without required resources to provide effective remediation, more individualized instruction, more tutoring, more instructional time, and other support for these students, there is little hope that they will be able to achieve the standards that now confront all Texas students. (RR3:124-27, 190-99.)

FOF 609. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Humble ISD lacks sufficient funds to provide a general diffusion of knowledge to its students at its current $1.17 M&O tax rate. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

ix. Northside ISD

FOF 610. Northside ISD is a Chapter 42 district located in northwest San Antonio in Bexar County, and extends out to Bandera and Medina Counties. (12/5 Tr. at 64-65; Ex. 11323.) It covers 354 square miles, and includes urban, suburban, and rural areas. (12/5 Tr. at 64-65.)

FOF 611. Northside ISD is the fourth largest district in the state, enrolling almost 100,000 students. (Ex. 6438 at 2; Ex. 6345, Folks Dep., at 8-9.) Northside ISD has grown by 25,000 students since *WOC II* and is considered a fast-growth district. (Ex. 6438 at 2; 12/5 Tr. at 64; Ex. 6345, Folks Dep., at 10-11.) As a result of that growth, Northside ISD had to build and open thirty-seven schools from 2002 to 2012, and has had to pass a bond issue approximately every three years. (12/5 Tr. at 64, 67-68.) Approximately 60% of the area within Northside's geographic boundaries is developed, leaving room for significant additional growth. (*Id.* at 65-66.)

FOF 612. As the population of Northside ISD has grown, it has also become more challenging to educate. (12/5 Tr. at 69-70.) Northside's economically disadvantaged population has

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grown from 38,091 (46.1%) in 2006-07 to 52,438 (53.4%) in 2011-12. (Ex. 6438 at 3.) The ELL population in Northside ISD, while small, is growing. (*Id.* at 4.) In order to properly serve its changing population of students, Northside ISD has needed to provide additional professional development and technology, and concentrate more teachers and tutors on the campuses with higher percentages of economically disadvantaged students. (12/5 Tr. at 69-72; Ex. 6345, Folks Dep., at 13-15.)

FOF 613. At the same time that Northside ISD's student population was becoming more challenging and expensive to educate, Northside's revenue was being held to basically its 2006 levels via the target revenue system. (12/5 Tr. at 78-79.) Northside ISD's revenue was then cut by approximately $38 million in 2011-12 and by $47 million in the second year – or an average of $42.5 million a year. (*Id.* at 82; Ex. 6345, Folks Dep., at 32.) Even before the cuts, Northside ISD was a four-star district under the Comptroller's FAST analysis, having scored in the highest percentile in terms of academic progress with average spending levels. (Ex. 8073.)

FOF 614. As a result of these cuts, Northside ISD cut each campus's supply budget by 5%, cut each departmental budget by 5%, cut twenty counselors and reduced central office staff by forty-five positions, cut fifty computer instructional technologists, ninety-nine library assistants, and eighteen athletic coaches in an attempt to minimize the number of classroom teachers that were cut. (12/5 Tr. at 85-86; Ex. 6345, Folks Dep., at 34.) However, Northside ISD was still forced to cut 238 teaching positions – eighty-eight elementary teachers, eighty-six middle school teachers, and sixty-four high school teachers. (Ex. 6345, Folks Dep., at 34.) At the same time, Northside grew by more than 2,500 students. (12/5 Tr. at 90 (referencing Ex. 6438 at 8).)

FOF 615. As a result of the budget and personnel cuts, the district had to increase class sizes and ask for waivers from the 22:1 ratio – a practice it had previously been able to avoid. (12/5 Tr. at 91; Ex. 6345, Folks Dep., at 35.) The district also was unable to put extra teachers and academic coaches into classrooms to act as an academic coach for struggling learners and at-risk students – the very practices that had led to the district's academic success with its low-income and other challenging student populations. (12/5 Tr. at 87, 89-90; Ex. 6345, Folks Dep., at 35-36.)

FOF 616. Prior to tax compression, Northside ISD was taxing at the $1.50 cap. (12/5 Tr. at 73 (referencing Ex. 6438 at 5).) The district accessed the first four "golden pennies" in 2008-09. (12/5 Tr. at 73 (referencing Ex. 6438 at 5).) Northside cannot raise its M&O tax rate any further without holding a TRE. The district has not held a TRE because enrollment grown in the district and the continuing bond and facilities needs that result. (12/5 Tr. at 82-83.) The facilities needs, combined with the loss of state facilities aid, has forced the district to steadily raise its I&S tax rate, which has increased by ten cents since 2008-09. (*Id.* at 74-75 (referencing Ex. 6438 at 5).)

FOF 617. After the first administration of the STAAR-EOC exams, 3,124 (44%) of Northside ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 6.) Looking at the Level II final standard, only 47% of Northside ISD students reached the standard in Algebra I. (Ex.

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6438 at 11.) Only 35% of economically disadvantaged students and 17% of at-risk students reached that benchmark. (*Id.*) In Biology and English I Writing, only 40% of Northside ISD students reached the Level II final standard. (*Id.* at 12, 14.)

FOF 618. After the summer retest, 2,552 (36%) students in Northside ISD's Class of 2015 were off track for graduation and still needed remediation on 4,916 tests (Ex. 6324, Moak Supp. Report One, at 6, 26.) Under the last seven years of the TAKS system, Northside ISD never had more than 985 students fail 1,600. (Ex. 6438 at 16.)

FOF 619. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Northside ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

x. Waco ISD

FOF 620. Waco ISD is a Chapter 42 district located in central Texas and serves the city of Waco, the county seat of McLennan County. (Ex. 11323.) Waco maintains a steady enrollment of around 15,300 students. (Ex. 6335, Cain Dep., at 12-13 (referencing Ex. 530 at 2).)

FOF 621. Waco ISD's student population is almost 88% economically disadvantaged and 89% minority. (Ex. 6335, Cain Dep., at 13-16 (referencing Ex. 530 at 3-4).) The district's Hispanic population is growing, while its non-Hispanic White and African American populations are declining. (Ex. 6335, Cain Dep., at 17-18 (referencing Ex. 530 at 5).) The percentage of students who are ELL is increasing slowly but steadily, up three percentage points in five years to 17.2%. (Ex. 530 at 5.)

FOF 622. Approximately 30% of Waco ISD's student population is mobile – that is, during the school year, the student moves in and out of the district and/or between attendance zones within the district. (Ex. 6335, Cain Dep., at 18-19 (referencing Ex. 530 at 5).) This population of students is often also living in poverty and, as Waco's superintendent, Dr. Bonny Cain aptly observed, "When you're worried about where your next meal's coming from, are you going to go home and all your stuff's been moved, are you going to go home and all your stuff's been taken, you're not as able to focus on learning as you are whenever your life is very stable and you're confident that you're going to get that next meal." (Ex. 6335, Cain Dep., at 21.) The "only ticket out" of the cycle of poverty for these students is public education, yet the instability of the student's residency translates into instability in their education and lower attendance rates, making it that much harder for the district to intervene in order to reach a struggling student. (*Id.* at 18-24 (referencing Ex. 530 at 6).) Lower attendance rates lead to lower levels of state funding for the district, since FSP funding is based on average daily attendance, further inhibiting the district's ability to reach these students and give them a meaningful opportunity to graduate college or career ready. (Ex. 6335, Cain Dep., at 24.)

FOF 623. Despite an infusion of federal stimulus funds in 2009-10 and 2010-11, Waco ISD has had to steadily decrease its current services budget since the 2009-10 school year. (*Id.* at 33-34 (referencing Ex. 530 at 11).) The district lost $3 million in state funds in 2011-12 and

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$3.4 million 2012-13. (Ex. 6335, Cain Dep., at 29-30.) This translated into $230 less per ADA. (*Id.* at 32 (referencing Ex. 530 at 10).) Even before the cuts, Waco had a below state average target revenue, and at the same time that its revenue was declining, Waco ISD's needs were increasing due to rising state standards. (Ex. 6335, Cain Dep., at 33, 38-39.)

FOF 624. To absorb the cuts, Waco ISD has had to correspondingly steadily reduce its number of teachers. (*Id.* at 47 (referencing Ex. 530 at 14).) In response to the 2011-12 cuts, the district reduced its contribution to employee health insurance, cut stipends for extra duties, cut classroom supplies and materials, postponed vehicle replacements, and reduced travel budgets, and consolidated eight campuses in 2011-12 – all in an attempt to minimize the number of teacher layoffs. (Ex. 6335, Cain Dep., at 35-36 (referencing Ex. 530 at 12), 41-46.) However, in the end, the district still had to make $1.8 million in staff reductions, cutting fifty teachers, eleven custodial staff, four central office staff, four campus administrators, two librarians, and one maintenance staff. (Ex. 6335, Cain Dep., at 36-38 (referencing Ex. 530 at 12-13).)

FOF 625. As a result of the teaching staff cuts, Waco ISD class-sizes have risen, thus reducing the amount of individualized attention and communication with parents – strategies that are especially important for the districts largely impoverished student population. (Ex. 6335, Cain Dep., at 47-49.)

FOF 626. Prior to tax compression, Waco was taxing at $1.45. (*Id.* at 27 (referencing Ex. 530 at 8).) Upon compression, Waco immediately accessed all six golden pennies and has been taxing at $1.04 since the 2007-08. (Ex. 6335, Cain Dep., at 27 (referencing Ex. 530 at 8).) Waco cannot raise its tax rate further without a TRE. (Ex. 6335, Cain Dep., at 27-28.) Any money raised from one would be used to help a district that is struggling to meet state standards, and not for enrichment. (*Id.* at 28-29.)

FOF 627. After the first administration of the STAAR-EOC exams, 753 (78%) of Waco ISD's ninth graders failed to achieve the Level II phase-in on at least one of the STAAR-EOC exams. (Ex. 6324, Moak Supp. Report One, at 17.) On no test did more than 68% of the ninth graders meet the Level I phase-in. (Ex. 530 at 18-20, 22-23.) Looking at the Level II final standard, only the highest score was 23% of all ninth graders meeting Level II final on English I Reading. (*Id.* at 19.) In the other subjects, 11.47% met Level II final in English I Writing, 6.83% in Algebra I, 12.44% in Biology, and 14.66% in World Geography. (*Id.* at 18, 20, 22-23.)

FOF 628. Even after the summer retest, 724 (75%) students in Waco ISD's Class of 2015 were off track for graduation and still needed remediation on 1,900 tests. (Ex. 6324, Moak Supp. Report One, at 17, 37.)

FOF 629. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Waco ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

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xi. Weatherford ISD

FOF 630. Weatherford ISD is a Chapter 41 district that covers more than 200 square miles of Parker County, just west of the Dallas-Fort Worth Metroplex. (Ex. 6337, Hanks Dep., at 11-12; Ex. 641 at 2; Ex. 11323.)

FOF 631. In 2011-2012 Weatherford ISD enrolled 7,608 students. (Ex. 641 at 3.) From 2006-07 through 2011-12 the district's enrollment increased by about 5%. (Ex. 6337, Hanks Dep., at 12-13; Ex. 641 at 3.) Over the last decade, the rate of growth in student enrollment has been higher than 10%. (Ex. 6337, Hanks Dep., at 13.)

FOF 632. As has happened throughout Texas, Weatherford ISD has seen significant change in the ethnic and economic background of its students. Minority students now make up more than 27% of the student population. (*Id.* at 15; Ex. 641 at 4, 7.) In addition, economically disadvantaged students now make of almost 45% of the total student body – an increase of more than 20%, or almost 900 students, since 2006. (Ex. 6337, Hanks Dep., at 15-16, 25; Ex. 641 at 5.)

FOF 633. Because economically disadvantaged students often come to school without the experiences and family support structure of more advantaged peers, Weatherford ISD has seen an increase in the need for resources to help these students be successful at school. This includes, for example, the need for more individualized teaching, which requires smaller class sizes and more teachers and paraprofessionals. (Ex. 6337, Hanks Dep., at 16-18.)

FOF 634. Weatherford is classified as a property wealthy district that is subject to recapture payments to the state. (*Id.* at 31.) For the last couple of years, Weatherford has made annual recapture payments of between $500,000 and $600,000. (*Id.*) Despite its status as a property wealthy district, Weatherford ISD's target revenue level after tax rate compression was close to the state average and lower than the target revenue level of many of its peer districts. (*Id.* at 31-32.)

FOF 635. Prior to tax rate compression, Weatherford ISD had an M&O tax rate of $1.50, the maximum rate allowed by law at the time. (*Id.* at 27; Ex. 641 at 8.) In 2010, the district held a successful TRE to increase its M&O rate to the $1.17 cap. (Ex. 6337, Hanks Dep., at 29; Ex. 641 at 8.) The TRE was necessary because of a reduction in state funding and because the district had been forced to use money from its fund balance for construction projects and some operating expenses. (Ex. 6337, Hanks Dep., at 29.) Prior to the TRE, the district had less than two weeks operating expenses in its fund balance. (*Id.* at 29-30.) The TRE raised about $4 million in annual revenue – approximately the same amount as the state funding cut experienced by Weatherford ISD for each year of the current biennium. (*Id.*) As a "property-wealthy" district, most of Weatherford ISD's revenue is generated locally, so it no longer has any ability to increase revenue through its local M&O tax. (*Id.* at 47-48.)

FOF 636. Weatherford ISD's per pupil expenditures have been decreasing since 2008-09. (*Id.* at 34; Ex. 641 at 10.) Since 2003, Weatherford ISD has had an increase in student

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enrollment of 10.9%, yet has decreased personnel by 1.65% because of these reductions. (Ex. 6337, Hanks Dep., at 48; Ex. 641 at 12.)

FOF 637. Because the reduced spending has required the reduction of personnel, the district has had to eliminate its pre-K program for three-year-olds and increase class sizes at all grade levels, including elementary school, and for programs such as bilingual classes. (Ex. 6337, Hanks Dep., at 35-38.) The district has also had to eliminate several teacher aide positions as well as teacher coaches. (*Id.* at 38-39, 43.) It has had to increase the number of classes taught by teachers and as a result eliminate collaboration time during which teachers used to plan with and learn from one another. (*Id.* at 40-41.) The district has also eliminated ESL teachers who were specifically assigned to provide services to ESL students only; now the homeroom teacher must instruct both ESL and non-ESL students in the general classroom. (*Id.* at 44.) These changes have negatively impacted the ability of teachers in Weatherford ISD to provide support for students, particularly for those who are economically disadvantaged or not proficient in English. (*Id.* at 37-39, 41, 43-45.)

FOF 638. While the district had been making progress on the met standard level of the TAKS exam, this is not a strong indication of how well-prepared Weatherford ISD students were under the new college- and career-ready standards. (*Id.* at 54.) The percentage of the district's students meeting the commended level (a better indication of college or career ready) remained troublingly low, with only 18% of Weatherford ISD students meeting that standard on all tests. (Ex. 643 at 4.)

FOF 639. After the first administration of the STAAR-EOC exams, 286 (48%) of Weatherford ISD's ninth graders failed to achieve the Level II phase-in standard on at least one of the STAAR EOC exams. (Ex. 6324, Moak Supp. Report One, at 19.) Looking at the Level II final standard, only 30% of Weatherford ISD students reached the standard in Algebra I, 51% in Biology, 46% in World Geography, 35% in English I Writing and 47% in English I Reading. (Ex. 641 at 23.) The results at the Level II final standard are even more disturbing for the district's economically disadvantaged students, only 18% of whom met that standard in Algebra I, 35% in Biology, 31% in World Geography, 22% in English I Writing, and 33% in English I Reading. (*Id.*)

FOF 640. After the July retests, Weatherford ISD still had 256 ninth graders, 43% of the class of 2015, who failed 542 tests and were off track for graduation. (Ex. 6324, Moak Supp. Report One, at 19, 38.)

FOF 641. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Weatherford ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

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b. Calhoun County ISD Plaintiff districts

i. Richardson ISD

FOF 642. The majority of Richardson ISD, a Chapter 41 district, is located in Dallas, but the district also covers portions of the cities of Richardson and Garland. (RR4:210-11 (referencing Ex. 5343 at 2); Ex. 11323 (2012 spreadsheet).)

FOF 643. Richardson ISD serves approximately 38,000 students. (RR4:212.) The district has grown substantially in recent years, adding about 1,000 new students in both 2011-12 and 2012-13. (Ex. 5616, Waggoner Dep., at 9; Ex. 892-W at p. 2 of PDF.)

FOF 644. The largest ethnic group in Richardson ISD is Hispanic, which comprises about 39% of the district's student population. (Ex. 5616, Waggoner Dep., at 10-11 (referencing Ex. 892-W at 2).) African American students comprise 23% and White students 28%. (Ex. 5616, Waggoner Dep., at 11 (referencing Ex. 892-W at 2).)

FOF 645. The percentage of economically disadvantaged students in Richardson ISD has steadily increased over time. (RR4:222-23 (referencing Ex. 5343 at 14).) From 2004-05 to 2011-12, the district's economically disadvantaged student population increased from 45% to 57%. (RR4:222-23 (referencing Ex. 5343 at 14).)

FOF 646. The percentage of ELL students in Richardson ISD has also grown each year from 2004-05 to 2011-12. (RR4:224-25 (referencing Ex. 5343 at 16.).) In 2011-12, almost one-fourth of Richardson ISD's student population was ELL. (RR4:224-25 (referencing Ex. 5343 at 16.).) Ninety-three languages and dialects are spoken in Richardson ISD. (RR4:212.)

FOF 647. From 2010-11 to 2011-12, Richardson ISD's budgeted operating fund revenues dropped from $255.7 million to $246.5 million. (Ex. 5616, Waggoner Dep., at 23 (referencing Ex. 901-W).) Richardson ISD also lost funding from other federal, state, and local grant programs outside the operating fund. (Ex. 5616, Waggoner Dep., at 24 (referencing Ex. 901-W).) For example, in 2011-12, the State eliminated the district's SSI grants and reduced Richardson ISD's DATE grants by $1.7 million from the previous year. (Ex. 5616, Waggoner Dep., at 50-51 (referencing Ex. 917-W).)

FOF 648. Richardson ISD's budgeted operating fund revenues per ADA and operating fund revenues per WADA were lower in 2011-12 and 2012-13 than in any of the five preceding years, even before adjusting for inflation. (RR5:15-16 (referencing Ex. 5343 at 36).)

FOF 649. Adjusting for inflation using the CPI, Richardson ISD's operating fund revenues per ADA dropped from $7,438 in 2006-07 to $6,110 in 2012-13. (RR5:17-18 (referencing Ex. 5343 at 37).) The district's CPI-adjusted operating fund revenues per WADA decreased during this same time period from $5,661 to $4,632. (RR5:17-18 (referencing Ex. 5343 at 37).)

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FOF 650. Similar to its revenues, Richardson ISD's budgeted Operating Fund appropriations per ADA and per WADA were lower in 2011-12 and 2012-13 than in any year from 2006-07 through 2010-11, even without adjusting for inflation. (Ex. 5616, Waggoner Dep., at 30 (referencing Ex. 909-W).)

FOF 651. State funding to Richardson ISD decreased by a total of $21.7 million in 2011-12 and 2012-13 compared to what would have been received under previous law. (RR4:247.)

FOF 652. In 2011-12, Richardson ISD slashed $5.6 million from its budget in response to the state's budget cuts. (Ex. 5616, Waggoner Dep., at 35 (referencing Ex. 914-W).) Richardson ISD reduced expenditures associated with Saturday school, professional development, and secondary summer school. (Ex. 5616, Waggoner Dep., at 37-38.) The district also reduced its number of instructional specialists, who offer remediation in reading and math. (*Id.* at 38.) Each department was also required to reduce its budget. (*Id.* at 38-39.) Richardson ISD's superintendent, Dr. Kay Waggoner, testified that these cuts adversely affected the district's ability to provide quality instruction. (*Id.* at 37-39.)

FOF 653. In 2011-12, Richardson ISD froze the salaries of every employee in the district and reduced starting salaries for teachers. (RR4:252.) The district kept its total number of teachers flat in 2011-12, and added only twenty-four teaching positions in 2012-13, even though the student population grew by 1,000 during each of these two years. (RR4:255-56.)

FOF 654. The cuts described above occurred at the same time that Richardson ISD was facing rapid student growth, increasing percentages of economically disadvantaged and ELL student populations, and the first administration of the STAAR exam under high stakes conditions. (Ex. 5616, Waggoner Dep., at 28-29.)

FOF 655. Because the district did not hire new teachers to keep up with enrollment growth, average class sizes increased at both the elementary and secondary levels. (RR4:256.) In 2011-12, Richardson ISD requested 268 class size waivers, and in 2012-13 it requested 291 class size waivers – significantly more than it had requested at any time during the past decade. (RR4:257-58 (referencing Ex. 5343 at 34).) The overwhelming majority of the district's class size waivers were for financial hardship. (RR4:258.) Dr. Waggoner testified that she believes the district had no realistic alternative than to request these class size waivers. (RR4:261.)

FOF 656. According to Dr. Waggoner's testimony, possible uses of additional funds would be to hire more teachers, reduce class sizes, provide cost of living salary adjustments for teachers and staff, implement a full-day pre-K program to address the needs of low-income and ELL students, offer additional remediation and interventions to address deficiencies in student performance, add support programs at early ages for students, and use funds to target the career and college-readiness standards. (Ex. 5616, Waggoner Dep., at 63-65; RR4:232-34; RR5:30-33, 42-43.)

FOF 657. Richardson ISD's M&O tax rate is currently $1.04. (Ex. 5616, Waggoner Dep., at 52.) If Richardson ISD raised its M&O tax rate to $1.06, the additional two pennies would not

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be subject to recapture, but would raise only $3 million in revenue, compared to the $21.7 million that the district lost in state funding. (*Id.* at 53.) Any additional taxation above $1.06 would be subject to recapture at a 20% rate. (*Id.* at 52, 56.) Dr. Waggoner testified that she believes the voters of Richardson ISD are unlikely to approve a TRE to increase the M&O tax rate in the near future. (*Id.* at 52, 53-54, 56; RR5:36-38.) Even if voters were to approve an increase to $1.17, the additional revenue generated would barely be sufficient to restore the district to its pre-budget cut levels. (RR5:41-42.)

FOF 658. After the first administration of the STAAR exam, 47% of Richardson ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (RR4:237; Ex. 6324, Moak Supp. Report One, at 9.) Scores were particularly low on the English I Writing and English I Reading EOCs. Only 40% of ninth-graders achieved the Level II final standard on English I Writing, and only 52% did so on English I Reading. (RR4:231-32 (referencing Ex. 5343 at 24.).) Only 5% of students achieved Level III on English I Writing and 10% did so on English I Reading. (RR4:235 (referencing Ex. 5343 at 25).) After the summer retake 37% of ninth graders – which represents 966 students – still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (RR4:237-38; Ex. 6324, Moak Supp. Report One, at 9.)

FOF 659. Richardson faces greater challenges today than it has in the past – including the more rigorous STAAR EOC assessment system – even as its financial resources are diminishing. (RR4:221-28.) Richardson ISD has been required to increase class sizes, and consequently to seek class size waivers (*see supra* FOF 655). It must attempt to prepare students to pass the more rigorous STAAR program. During this time, the district's economically disadvantaged and ELL student populations have been growing. (Ex. 5616, Waggoner Dep., at 45.) Richardson ISD has no immediate means to generate significant additional revenue to meet these challenges.

FOF 660. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Richardson ISD lacks sufficient funds to provide a general diffusion of knowledge to its students at its current $1.04 M&O tax rate and would remain inadequately funded even if it raised its tax rate to $1.17. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

ii. Calhoun County ISD

FOF 661. Calhoun County ISD is a chapter 41 district located along the coast of the Gulf of Mexico, just east of Victoria. (Ex. 11323 (2012 spreadsheet); RR12:10-11.) Calhoun County ISD's classification as a Chapter 41 district results from the industrial facilities in the district, and not from residential property values. (RR12:12.) In other words, the district is "industry rich," but "rooftop poor." (*Id.*)

FOF 662. Calhoun County ISD currently serves about 4,250 students. (RR12:12-13.) Sixty percent of Calhoun County ISD's student population is Hispanic. (RR12:13 (referencing Ex. 5143 at 4).)

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FOF 663. The percentage of economically disadvantaged students in Calhoun County ISD increased from 56% in 2006-07 to 64% in 2010-11, and has increased further since then. (Ex. 5618, Wiggins Dep., at 13 (referencing Ex. 692).)

FOF 664. Calhoun County ISD's budgeted operating fund revenues decreased from $33.1 million in 2010-11 to $32.4 million in 2012-13. When other federal, state, and local grants are included, the district's total available revenues dropped even further. (Ex. 5618, Wiggins Dep., at 27-28 (referencing Ex. 703).) Calhoun County ISD's budgeted operating fund revenues per ADA and per WADA have decreased continually from 2009-10 to 2012-13. (Ex. 5618, Wiggins Dep., at 27 (referencing Ex. 702).)

FOF 665. Adjusting for inflation using the CPI, Calhoun County ISD's budgeted operating fund revenues per WADA have decreased every year since 2006-07, with the exception of 2007-08. (Ex. 5618, Wiggins Dep., at 28-30; (referencing Ex. 704).) In 2006-07, the district's CPI-adjusted operating fund revenues per WADA were $6,062, compared to $5,554 in 2011-12 and $5,380 in 2012-13. (Ex. 5618, Wiggins Dep., at 28 (referencing Ex. 704).)

FOF 666. State funding to Calhoun County ISD decreased approximately $4 million in 2011-12 compared to what would have been received under previous law. (Ex. 5618, Wiggins Dep., at 24.) In addition, the district received State Fiscal Stabilization Funds in 2009-10 and 2010-11, and ARRA stimulus funds in 2009-10, but did not receive these funds in later years. (*Id.* at 22-24.) The district was able to partially offset this lost revenue through increased local revenues, but was still required to cut about $2 million from its budget from 2010-11 to 2011-12. (*Id.* at 24-25.)

FOF 667. Calhoun County ISD achieved $2 million in budget cuts from 2010-11 to 2011-12 by, among other things: (1) closing an elementary school, which caused student-teacher ratios at other elementary schools to increase, (2) eliminating various programs at the high school level, including career training programs such as auto tech and cosmetology, (3) eliminating a middle school remediation program, (4) eliminating a junior high band program, and (5) eliminating twenty-five auxiliary positions. (*Id.* at 43-48 (referencing Ex. 712); RR12:13-15.) Calhoun County ISD also effectively froze salaries in 2011-12 and 2012-13. (Ex. 5618, Wiggins Dep., at 50-51.) Calhoun County ISD's superintendent, William Wiggins, testified that these cuts negatively impacted the district's ability to educate its students. (*Id.* at 48-49.)

FOF 668. Calhoun County ISD also reduced its number of teachers by about twenty-four from 2010-11 to 2012-13, which caused class sizes to increase. (*Id.* at 51-52 (referencing Ex. 713).) As of the time of Mr. Wiggins's deposition, the district anticipated needing class size waivers for its elementary schools in 2012-13. (Ex. 5618, Wiggins Dep., at 53.)

FOF 669. Calhoun County ISD's M&O tax rate is $1.04. (*Id.* at 68.) If Calhoun County ISD raised its M&O tax rate above $1.04, it would owe approximately half of the additional revenue to the state in the form of recapture. (RR12:20 (referencing Ex. 5143 at 7).) For example, if the district raised its M&O tax rate to $1.17, it would retain an additional $2.2 million in revenue, but would owe an additional $1.9 million to the state in recapture.

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(RR12:20 (referencing Ex. 5143 at 7).) Mr. Wiggins persuasively testified that he believes it would be impossible to pass a TRE, in large part because of the additional recapture that would be owed. (Ex. 5618, Wiggins Dep., at 68-73; RR12:21-22.)

FOF 670. A recent poll of Calhoun County ISD voters indicates that Calhoun County ISD voters are unlikely to pass a TRE to increase the M&O tax rate, especially in light of the recapture requirement. (*See supra* FOF 508.) Only 28% of polled voters stated they would approve an increase of the M&O tax rate from $1.04 to $1.07. (RR20:175 (referencing Ex. 5512 at 16).) Only 13% stated they would support an increase to $1.13. (Ex. 5500, Harris Report, at 4; RR20:175 (referencing Ex. 5512 at 16).) When polled voters were informed of the percentage that would be recaptured, support for a higher M&O tax rate decreased. (Ex. 5500, Harris Report, at 4; RR20:175 (referencing Ex. 5512 at 16).) Significantly, the poll indicated that a higher percentage of voters would support an increase in the M&O tax rate if the additional revenue were not subject to recapture. (Ex. 5500, Harris Report, at 4; RR20:175-76 (referencing Ex. 5512 at 16).)

FOF 671. Mr. Wiggins testified that Calhoun County ISD has no means to obtain additional revenue, except through additional state funding. (Ex. 5618, Wiggins Dep., 76.) The district's M&O tax rate of $1.04 is currently both a floor and a ceiling, in that the district cannot lower its M&O tax rates, but also cannot pass a TRE to raise the tax rate. (RR12:23.)

FOF 672. After the first administration of the STAAR exam, forty-seven percent of Calhoun County ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 7.) Only 48% of students achieved the Level II final standard on English I Reading, 41% did so on English I Writing, and 47% did so on World Geography. (RR12:24 (referencing Ex. 5143 at 9).) Only 7% met the Level III standard on English I Reading and 4% achieved Level III on English I Writing. (RR12:24 (referencing Ex. 5143 at 10).) After the summer retake, 40% of ninth graders still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 673. Calhoun County ISD's passing rates on the Spring 2012 STAAR EOC exams at the Level II final standard are significantly lower than the district's passing rates have historically been on TAKS. (Ex. 5618, Wiggins Dep., at 57, 66-67.)

FOF 674. Like other districts, Calhoun County ISD's funding decreased at the same time the State imposed the more rigorous STAAR examinations. (*Id.* at 60-61.) Mr. Wiggins testified that additional funding is essential for Calhoun County ISD to reach the new expectations of the STAAR system. (*Id.* at 67.) Calhoun County ISD will require significantly more resources to train teachers and administrators so they can prepare students for the STAAR EOC exams. (*Id.* at 59-60; RR12:28-29.) The district also requires resources to remediate students who fail the exams. (Ex. 5618, Wiggins Dep., at 65.) During the Summer of 2012, the district provided a STAAR remediation program for sixty students, which it was required to fund from its local budget. (*Id.* at 61-62.)

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FOF 675. In addition to preparing students for STAAR, the district faces a number of other significant challenges. During the 2007 school year, approximately 100 Burmese refugees moved into Calhoun County ISD. (*Id.* at 32-33.) These students did not speak any English, and required significant additional resources to educate. (*Id.* at 32-34.) Many Burmese refugee students remain in the district and still present a great challenge to educate. (*Id.* at 34.)

FOF 676. Other challenges arise as a result of Calhoun County ISD's location along the coast. Because of its location, the district must pay for windstorm and flood insurance, which raises its insurance costs above those of similarly sized districts. (RR12:16-17.) The district's costs to maintain buildings are also higher as a result of its coastal climate. (RR12:17.) The State does not provide any additional assistance to the district to help with these costs. (RR12:17-18.)

FOF 677. Calhoun County ISD covers more than 1,000 square miles and is one of the largest districts in Texas geographically. (RR12:11.) As a result, its transportation costs are higher than those of other districts. (RR12:17.) The district spends approximately $2 million per year on transportation, but receives only $300,000 from the state to assist with transportation costs. (*Id.*)

FOF 678. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Calhoun County ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iii. Lewisville ISD

FOF 679. Lewisville ISD is a Chapter 41 district located in a suburb of Dallas. (Ex. 5615, Waddell Dep., at 69; Ex. 11323 (2012 spreadsheet).) There are sixty-three schools in Lewisville ISD. (Ex. 5615, Waddell Dep., at 10.)

FOF 680. Lewisville ISD currently educates approximately 52,000 students. (*Id.*) Lewisville ISD's student population has grown at a rapid rate. The district's student population increased by about 700 in 2011-12 and by 1,000 in 2012-13. (*Id.*)

FOF 681. Lewisville ISD's budgeted operating fund revenues decreased by approximately $20 million from 2010-11 to 2011-12, and by an additional $3 million in 2012-13. (Ex. 5615, Waddell Dep., at 15-16 (referencing Ex. 756).) This represents nearly a 6% decrease from 2010-11 to 2012-13. The percent decrease in Lewisville ISD's operating fund revenues, combined with its revenues from federal, state, and local grants, was even greater. (Ex. 5615, Waddell Dep., at 16 (referencing Ex. 757).)

FOF 682. Lewisville ISD's budgeted operating fund revenues per ADA and per WADA sharply declined in 2011-12, and then further declined in 2012-13. (Ex. 759.) The same per-ADA and per-WADA trends result when federal, state, and local grants are added to the district's budgeted operating fund revenues. (Ex. 5615, Waddell Dep., at 19 (referencing Ex. 760).)

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FOF 683. Adjusting for inflation using the CPI, Lewisville ISD's operating fund revenues per ADA and per WADA are lower in 2011-12 and 2012-13 than in any year from 2006-07 through 2010-11. (Ex. 5615, Waddell Dep., at 20 (referencing Ex. 761).) The district's inflation-adjusted budgeted operating fund revenues per ADA were $7,187 in 2006-07; $6,808 in 2011-12; and $6,585 in 2012-13. (Ex. 761.) Lewisville ISD's budgeted per-ADA and per-WADA revenues from the operating fund – combined with other federal, state, and local grants – show a similar pattern. (Ex. 5615, Waddell Dep., at 22 (referencing Ex. 763).)

FOF 684. Similarly, the district's CPI-adjusted, budgeted operating fund appropriations are lower in 2011-12 and 2012-13 on a per-ADA and per-WADA basis than in any of the preceding five years. (Ex. 5615, Waddell Dep., at 23 (referencing Ex. 765).)

FOF 685. Lewisville ISD reduced its general operating budget by about $18 million from 2010-11 to 2011-12. (Ex. 5615, Waddell Dep., at 27-28 (referencing Ex. 768 at 1).) Among other things, Lewisville ISD (1) reduced its number of teachers by about sixty at the same time its ADA increased by nearly 350, (2) provided an incentive for teachers to retire or resign, (3) increased class sizes to an average of twenty-two students in kindergarten through fourth grade, which required the district to obtain twenty-seven class size waivers, and (4) cut support services such as a reading recovery program that provided reading intervention for early childhood. (Ex. 5615, Waddell Dep., at 24-25 (referencing Ex. 767), 31-34.) The district's superintendent, Dr. Stephen Waddell, testified that Lewisville ISD had no realistic choice but to make these cuts, and that they have negatively affected teaching and learning in the district. (Ex. 5615, Waddell Dep., at 31, 34-35.)

FOF 686. Lewisville ISD has budgeted a deficit for the last several years. (*Id.* at 37.) In 2012-13, the district budgeted a $22 million deficit, despite having cut $18 million from its budget the previous year. (*Id.* at 37-38.)

FOF 687. Lewisville ISD pays its teachers the salaries that are necessary to be competitive with other districts in the area. (*Id.* at 151.)

FOF 688. Lewisville ISD's M&O tax rate is $1.04. (*Id.* at 35.) The district held a TRE in September 2010 in an effort to raise the M&O tax rate from $1.04 to $1.06. (*Id.* at 36-37.) The TRE failed by a margin of two-to-one. (*Id.* (referencing Ex. 769).) Considering the widespread opposition to this TRE, the district cannot expect to raise its M&O tax rate above $1.04 at any time in the near future. (Ex. 5615, Waddell Dep., at 36-37, 81.)

FOF 689. One-third of Lewisville ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam after the first administration of the exams. (Ex. 6324, Moak Supp. Report One, at 9.) Passage rates at the Level II final standard ranged from 53% to 64% on each of the EOC exams on the first administration. (Ex. 770 at 25, 27, 29-31.) Only 12% of students met the Level III standard on English I Reading and 6% of students did so on English I Writing. (*Id.* at 9, 15.) After the second administration of the exam,

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30% of ninth graders still had not passed at least one EOC exam at the initial phase-in standard. (Ex. 6324, Moak Supp. Report One, at 9.)

FOF 690. Lewisville ISD students' passing rates on the STAAR EOC exams at the Level II final standard in the Spring of 2012 are lower than they have been on the TAKS exam in recent years. (Ex. 5615, Waddell Dep., at 44.)

FOF 691. Dr. Waddell testified that Lewisville ISD's costs will significantly increase under the new STAAR regime. (*Id.* at 46-47.) The district anticipates that the number of students in summer school will double as a result of STAAR, and its costs to remediate students who fail to meet the necessary standards on the STAAR exams will also double. (*Id.* at 47-48.) These costs are in addition to the costs needed to improve regular classroom education designed to help students pass the exams in the first place. (*Id.* at 48.) Dr. Waddell testified that the State is now requiring more of students, teachers, and administrators than before, and the resources provided to Lewisville ISD have not kept pace with these increased demands. (*Id.* at 49-50.)

FOF 692. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Lewisville ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iv. Aransas County ISD

FOF 693. Aransas County ISD is a Chapter 41 district located along the Gulf of Mexico, near Corpus Christi. (Ex. 11323 (2012 spreadsheet); Ex. 5669 at 24.) There are five campuses in Aransas County ISD. (Ex. 5614, Patek Dep., at 10.)

FOF 694. Aransas County ISD currently educates about 3,150 students. (*Id.* at 11.) The population of economically disadvantaged students in Aransas County ISD has grown from approximately 48% in 2001 to about 65% in 2011. (*Id.* at 11-12 (referencing Ex. 300).)

FOF 695. Aransas County ISD's budgeted operating fund revenues have decreased more than $800,000, or nearly 3%, from 2006-07 to 2012-13, before adjusting for inflation. (Ex. 304.)

FOF 696. The district's budgeted operating fund revenues per ADA are approximately the same in 2012-13 as they were in 2006-07, even without accounting for inflation. (Ex. 306.) Adjusting for inflation using the CPI, the district's budgeted operating fund revenues per ADA have decreased from $9,669 in 2006-07, to $8,662 in 2011-12, and to $8,511 in 2012-13. (Ex. 307.) The district suffered this loss at the same time the percentage of economically disadvantaged students in the district was growing. (Ex. 5614, Patek Dep., at 26-27.)

FOF 697. In 2011-12, Aransas County ISD was required to cut $2.3 million from its operating fund budget as a result of the State's budget cuts. (*Id.* at 28-30.) Among other things, the district (1) cut various teaching positions, (2) discontinued extended class periods for

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middle school Math and English-Language Arts students, (3) discontinued its middle school intervention program, and (4) cut teaching and aide positions in its special education inclusion program. (*Id.* at 31-39 (referencing Ex. 309).) In addition to these cuts, Aransas County ISD also cut campus and department operating budgets by at least 15% and froze salaries and wages for all employees. (Ex. 5614, Patek Dep., at 31-32 (referencing Ex. 309), 37-38.)

FOF 698. As a result of these cuts, Aransas County ISD reduced its full time equivalent count by a total of twenty-five. (Ex. 5614, Patek Dep., at 39.) Aransas County ISD's elementary school classes are all at or near the limit of twenty-two students. (*Id.* at 58-59.) Some of Aransas County ISD's middle school and high school classes have up to thirty-eight students. (*Id.* at 58.)

FOF 699. Aransas County ISD pays its teachers salaries that are often lower than – but at most competitive with – surrounding districts and districts with which it competes for teachers. (*Id.* at 41-42.)

FOF 700. According to Mr. Patek, potential uses of additional funds, if they were available, would include replacing previously cut teacher positions, instituting a full-day pre-K program, and applying funds toward career and technology programs to help students prepare for employment immediately after high school. (*Id.* at 56, 58-59.)

FOF 701. Aransas County ISD is unable to raise additional revenue without a TRE. (*Id.* at 44.) Aransas County ISD's M&O tax rate is currently $1.04. (*Id.*) Mr. Patek testified that voters would be unlikely to approve an M&O tax rate above $1.04, because approximately 50% of the additional revenue would be subject to recapture. (Ex. 5614, Patek Dep., at 45, 198-99.) As a practical matter, Aransas County ISD cannot raise its M&O tax rate above $1.04 to generate additional local revenue. (Ex. 5614, Patek Dep., at 50.)

FOF 702. Even if Aransas County ISD could raise its M&O tax rate to $1.17, it would only generate approximately $1.2 to $1.3 million in revenues, compared to the $2.3 million it was required to cut from its budget. (*Id.* at 80–81.) As a result, if Aransas County ISD could raise its M&O tax rate to $1.17, the additional revenue would not be used to provide local enrichment, but would only be used to restore some of the items previously cut from its budget. (*Id.* at 81.)

FOF 703. From the 2006-07 to 2010-11 school years, performance on the TAKS exam by Aransas County ISD students has, at best, remained stagnant. (*Id.* at 1317 (referencing Ex. 301, Ex. 302).) Moreover, the ratings of Aransas County ISD's schools have declined in recent years. In the last year that a rating was given, the district's ratings declined from two exemplary and two recognized campus ratings to two recognized and two acceptable campus ratings. (Ex. 5614, Patek Dep., at 17.) For the last couple of years, Aransas County ISD has failed to meet the adequate yearly progress required by the No Child Left Behind Act. (*Id.* at 20.) Considering the district's performance on TAKS and the AYP, Mr. Patek testified that student performance improved somewhat from 2007 through 2010, but then started to decline, particularly in reading and writing. (*Id.* at 20-21.)

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FOF 704. After the first administration of the STAAR exam, 61% of Aransas County ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 5.) Only 12% of Aransas County ISD's ninth graders met the Algebra I Level II final standard. (Ex. 5614, Patek Dep., at 54-55 (referencing Ex. 312).) Only 0.4% of ninth graders (i.e., one student) met the Level III standard for English I Writing and 3% did so for English I Reading. (Ex. 5614, Patek Dep., at 54-55.) After the summer retake, 48% of ninth graders still had not passed at least one EOC exam at the initial phase-in standard and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 5.)

FOF 705. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Aransas County ISD lacks sufficient funds to provide a general diffusion of knowledge to its students at its current $1.04 M&O tax rate or at the statutory maximum of $1.17. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

v. Abernathy ISD

FOF 706. Abernathy ISD is located eighteen miles north of Lubbock. (Ex. 5613, Youngblood Dep., at 8.) Abernathy ISD became a Chapter 41 district in 2009. (*Id.* at 7-8; Ex. 11323 (2012 spreadsheet).)

FOF 707. There are three campuses in Abernathy ISD – one elementary school, one middle school, and one high school. (Ex. 5613, Youngblood Dep., at 9.)

FOF 708. Abernathy ISD educates approximately 750 students. (*Id.*) About 60% of Abernathy ISD's students are economically disadvantaged, 57% are Hispanic, and 40% are at-risk. (*Id.* at 9-10.) The percentage of economically disadvantaged and Hispanic students in Abernathy ISD has increased over time. (*Id.* at 10; Ex. 5669 at 18.)

FOF 709. Adjusted for inflation using the CPI, Abernathy ISD's budgeted operating fund revenues per ADA dropped from $9,704 in 2010-11 to $9,216 in 2011-12, which represents about a 5% decrease. (Ex. 877.) Its CPI-adjusted budgeted operating fund revenues per WADA fell from $6,161 in 2010-11 to $5,894 in 2011-12, which represents a 4.3% reduction. (Ex. 5613, Youngblood Dep., at 41-42 (referencing Ex. 877).) The decrease in funding is even greater when operating fund revenues are considered together with other federal, state, and local grants. (Ex. 5613, Youngblood Dep., at 43 (referencing Ex. 878).)

FOF 710. Abernathy ISD responded to the State's 2011 budget cuts by, among other things, (1) reducing its full-day pre-K program to a half-day program, (2) cutting about $400,000 in capital outlay expenses, (3) not replacing an elementary teacher and a fine arts teacher, and (4) cutting central administration. (Ex. 5613, Youngblood Dep., at 23, 54-55.)

FOF 711. Abernathy ISD's superintendent, Mr. Youngblood, testified that if Abernathy ISD were forced to make additional cuts, it would be required to cut staff and elementary teachers,

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which would impair the district's ability to prepare students for middle school and high school. (*Id.* at 55-56.)

FOF 712. Abernathy ISD staffs its schools and central office leanly. One employee of Abernathy ISD serves as the curriculum director, district testing coordinator, and head of the GT program, ESL program, dual college credit program, and high school summer school program. (*Id.* at 15-16 (referencing Ex. 871).) Another individual currently functions as secretary to the superintendent, federal programs clerk, and PEIMS coordinator. (Ex. 5613, Youngblood Dep., at 14.) When this individual planned to retire at the end of 2012, the district planned to spread her duties among current employees, instead of hiring a new employee to fulfill her responsibilities. (*Id.* at 14-15.) Abernathy ISD's elementary school assistant principal also serves as the cafeteria manager, custodian supervisor, and federal programs coordinator. (*Id.* at 21.)

FOF 713. Abernathy ISD pays its teachers only $2,000 above the state minimum salary. (*Id.* at 19.) This salary is significantly lower than the salary paid in nearby Lubbock and is on target with the salaries paid by other districts of similar size to Abernathy ISD. (*Id.*)

FOF 714. Potential uses of additional funding, according to Mr. Youngblood, include reinstating the district's full-day pre-K program, which primarily serves low socioeconomic, special education, ELL, and migrant students; and hiring a math specialist at the middle school, which recently failed to meet AYP based on its math scores. (*Id.* at 23, 56-57.)

FOF 715. In the Fall of 2005, Abernathy ISD passed a TRE to rate its M&O tax rate to $1.17. (*Id.* at 10-11.) When the voters of Abernathy ISD approved the TRE, the district was not yet paying recapture. (*Id.* at 12.) In 2012-13, approximately one-third of Abernathy ISD's tax revenue from $1.04 to $1.17 will be recaptured by the State. (*Id.*)

FOF 716. After the budget cuts, the district attempted to balance its budget in a way that would not require it to use the full $1.17 of taxation, but it was unable to do so. (*Id.* at 12-13.)

FOF 717. After the first administration of STAAR, 47% of Abernathy ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 12.) At the Level II final recommended standard, only 22% of students passed World Geography and 41% passed English I Writing and Biology. (Ex. 881 at 12-13, 15-16.) Only 4% of students met the Level III standard for Biology, 6% did so on English I Writing, and no students met the standard on World Geography. (*Id.* at 4, 8, 10.) After the summer retake, 44% of ninth graders still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 12.)

FOF 718. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Abernathy ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

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vi. Frisco ISD

FOF 719. Frisco ISD is a chapter 41 district located in a northern suburb of Dallas. (Ex. 11323 (2012 spreadsheet); 1/24 Tr. at 50-51.)

FOF 720. Over the past twenty years, Frisco ISD has been the fastest growing school district in the nation on a percentage basis. (1/24 Tr. at 51-52.) Frisco ISD's ADA and WADA have nearly doubled from 2006-07 to 2012-13. (Ex. 5617, Reedy Dep., at 21 (referencing Ex. 332).) In 2011-12, Frisco ISD served more than 40,000 students. (1/24 Tr. at 51 (referencing Ex. 323 at 1).) Frisco ISD's enrollment increased by nearly 3,000 students in 2012-13. (*Id.* at 52.)

FOF 721. About 9% of Frisco ISD's students are special education students. (Ex. 5617, Reedy Dep., at 10 (referencing Ex. 323 at 1).) Frisco ISD serves students who speak fifty-nine different languages. (1/24 Tr. at 51 (referencing Ex. 323 at 1).)

FOF 722. Frisco ISD's revenues have not kept pace with its rapid growth. The district's budgeted operating fund revenues per ADA decreased from $8,120 in 2010-11 to $7,708 in 2011-12 and $7,856 in 2012-13. (Ex. 5617, Reedy Dep., at 22 (referencing Ex. 333).) During these same years, Frisco ISD's budgeted operating fund revenues per WADA decreased from $7,048 to $6,682 and $6,742, respectively. (Ex. 5617, Reedy Dep., at 22-23 (referencing Ex. 333).)

FOF 723. Adjusted for inflation using the CPI, Frisco ISD's budgeted operating fund revenues per ADA and per WADA decreased slightly from 2006-07 to 2010-11. (Ex. 5617, Reedy Dep., at 26 (referencing Ex. 335).) Thereafter, its inflation-adjusted, budgeted operating fund revenues per ADA dropped from $7,507 in 2010-11, to $6,908 in 2011-12, to $6,901 in 2012-13. (Ex. 5617, Reedy Dep., at 26-27 (referencing Ex. 335).) The inflation-adjusted budgeted operating fund revenues per WADA dropped from $6,516 in 2010-11, to $5,988 in 2011-12, and finally to $5,923 in 2012-13. (Ex. 5617, Reedy Dep., at 26-27 (referencing Ex. 335).)

FOF 724. Frisco ISD's budgeted operating fund revenues, together with revenues from federal, state, and local grants, were lower on a per-WADA basis in 2011-12 and 2012-13 than in any of the preceding five years. (Ex. 5617, Reedy Dep., at 24 (referencing Ex. 334).) On a per-ADA basis, the same category of funds was lower in 2011-12 and 2012-13 than in any year since 2007-08. (Ex. 334.)

FOF 725. In 2011-12, Frisco ISD received approximately $14 million less in funding than it would have under previous law. (Ex. 5617, Reedy Dep., at 27-28 (referencing Ex. 336).) In 2012-13, Frisco ISD received $17.4 million less than it would have under previous law. (Ex. 5617, Reedy Dep., at 28-29 (referencing Ex. 336).)

FOF 726. In 2011-12, Frisco ISD reduced its budgeted expenditures by approximately $6 million by not hiring new personnel that it normally would have hired based on student growth. (Ex. 5617, Reedy Dep., at 34.) The district ordinarily would have added about 200

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teachers to keep up with student growth, but it only added sixty to eighty new teachers. (*Id.* at 32-33.) As a result, class sizes have increased. (*Id.* at 34, 37-39, 40-42.)

FOF 727. From 2010-11 to 2011-12, Frisco ISD's average class size for kindergarten to fourth grade increased by 1.1 students, middle school class sizes increased by 0.5 students, and high school class sizes increased an average of almost five students. (*Id.* at 37-38 (referencing Ex. 339).) Frisco ISD requested class size waivers for 110 classrooms in 2011-12. (Ex. 5617, Reedy Dep., at 40-41 (referencing Ex. 340).) The district's superintendent, Dr. Richard Reedy, testified that Frisco ISD had no real choice but to increase class sizes and seek class size waivers. (Ex. 5617, Reedy Dep., at 39, 41.) The district sought its class size waivers as a result of financial hardship. (*Id.* at 41 (referencing Ex. 340).)

FOF 728. In addition to the personnel costs of $6 million that caused the district to increase class sizes, Frisco ISD reduced its budget by another $8 million in 2011-12 by, among other things (1) reducing enhancement funds for after-school tutoring and related costs by 50%, (2) reducing the per pupil allotment for materials and supplies, (3) suspending the purchase of new library books, (4) suspending the use of substitutes for absences due to school business, (5) reducing custodial contracted services, (6) initiating triple routing for buses, and (7) suspending its 401(a) matching recruiting/retention incentive plan. (Ex. 5617, Reedy Dep., at 29-30 (referencing Ex. 337).) Dr. Reedy testified that these cuts will detrimentally affect the operations of Frisco ISD. (Ex. 5617, Reedy Dep., at 31.)

FOF 729. Frisco ISD also froze salaries for teachers and other personnel in 2011-12. (*Id.* at 33.) The district pays its teachers mid-range salaries in comparison to other school districts in the Dallas/Fort Worth area. (*Id.* at 48-49.) Dr. Reedy testified that Frisco ISD must pay the salaries that it currently pays to remain competitive in the region. (*Id.* at 49.)

FOF 730. Frisco ISD raised its M&O tax rate from $1.00 to $1.04 for the 2012-13 year. (*Id.* at 11.) Despite raising its tax rate, Frisco ISD's total operating fund budget increased only 6.7% from the previous year, while its student population increased 7.3%. (*Id.* at 45 (referencing Ex. 336).)

FOF 731. Each penny of tax effort above $1.04 would be subject to recapture at a rate of approximately 10%. (Ex. 5617, Reedy Dep., at 50.) Dr. Reedy testified that it would be "difficult" and a "tough sell" to get voters to approve an increase in M&O taxes above $1.04, especially considering that the additional pennies of taxation would be subject to recapture. (*Id.* at 50-53.)

FOF 732. A recent poll of 500 Frisco ISD voters supports Dr. Reedy's testimony. This poll indicates that over 68% of Frisco ISD voters oppose a tax increase from $1.04 to $1.13 under the existing recapture rules. (*See supra* FOF 508.) If recapture were eliminated, however, only 45% of voters would oppose the tax increase to $1.13. (Ex. 1023 at 3.)

FOF 733. Frisco ISD receives a substantial portion of its funding in the form of ASATR. (Ex. 5617, Reedy Dep., at 54.) If the State reduces or eliminates ASATR and no additional

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funding is offered in its place, Frisco ISD will have no way to compensate for the loss of funding. (*Id.* at 54-55.)

FOF 734. Frisco ISD's revenues per student have decreased at the same time the State introduced the STAAR EOC accountability standard. (*Id.* at 55.)

FOF 735. After the first administration of the STAAR exam, approximately one-fourth of Frisco ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 8.) Only 63% of students met the Level II final standard for English I Writing. (Ex. 5151 at 26.) Only 17% of students met the Level III English I Reading standard and 6% met the English I Writing standard. (*Id.* at 9, 13.)

FOF 736. Frisco ISD's passing rates on the STAAR EOC exam at the Level II final standard are considerably lower than the district's passage rates have historically been on the TAKS exam. (Ex. 5617, Reedy Dep., at 59-60.)

FOF 737. Frisco ISD's unique challenges include its rapid rate of growth over the past twenty years, which has created particular challenges in educating students. (*Id.* at 13-14; *see supra* FOF 720.) One challenge involves providing sufficient facilities and programs to the growing student population. (Ex. 5617, Reedy Dep., at 13-14.) In addition, students who move into Frisco ISD from outside Texas are unfamiliar with the state's standardized tests and require remediation efforts to be successful. (*Id.* at 14.) Frisco ISD's rapidly growing student population has required the district to hire a large number of first-year teachers. (*Id.* at 14-15.) Providing professional development to each of the new teachers is a significant challenge. (*Id.*) Frisco ISD must now help its fast-growing student body to meet the new demands set out by the state with less funding than it has had in the past.

FOF 738. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Frisco ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

c. TTSFC Plaintiff focus districts

i. Alief ISD

FOF 739. Alief ISD is a property-poor Chapter 42 district located in the western portion of Harris County. Alief ISD currently educates about 46,000 students on forty-nine campuses. (RR8:94; Ex. 11323; Ex. 3205, Chambers Dep., at 110.)

FOF 740. Eighty-three percent of Alief's students are economically disadvantaged. A little over 36% of the students are ELL. The district is 50% Hispanic and 32% African American. There is about 40% mobility within the student body in a year. In 2011-12 the student body spoke eighty-two languages as their primary language. The district has a large number of Burmese refugee students who, in addition to learning English, must learn

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cultural skills. Alief ISD has changed in the last twenty years from a suburban district to an urban district with a highly mobile population. (RR8:94-96, 110.)

FOF 741. In 2010-11, Alief ISD received a "gold circle" recognition from the Comptroller for transparency, effectiveness, and efficiency. (RR8:96, 110.)

FOF 742. Alief was forced to make $22 million in budget cuts because of the Legislature's failure to fund the public school system to previous levels in 2011. They achieved these cuts by eliminating 100 teachers including "response to intervention" teachers. Alief also eliminated sixty paraprofessionals, made across-the-board cuts to instructional materials and supplies, and cut technology expenditures. The budget cuts forced Alief to raise its class sizes in pre-K and only offer a half-day program. Alief also increased class size in grades five through twelve. (RR8:121-28.)

FOF 743. Alief ISD's superintendent testified that if Alief had additional funds, his priorities would include a full-day pre-K, more and more meaningful career work force development, and more teachers to reduce class sizes. He would reinstitute the full Response to Intervention program and additional staff development. (RR8:131-32.)

FOF 744. Alief ISD's M&O tax rate is $1.125. If the district held a TRE to raise its tax rate to the maximum $1.17, that would only raise $4.5 million. There is nothing Alief ISD can do to make up for the Legislature's failure to fully fund education. (Ex. 3229 at 1; RR8:121, 129.)

FOF 745. After the first administration of the STAAR exam, 59% of Alief ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 13.) Scores were particularly low on the Algebra, Biology, English I Writing, and World Geography EOCs. At the Level II final standard, only 33% of students passed Algebra, only 37% passed Biology, only 27% passed English I Writing, and only 34% passed World Geography. (*Id.*) At Level III, only 10% of students passed Algebra, 5% passed Biology, 6% passed English I Reading, 1% passed English I Writing, and 8% passed World Geography. (Ex. 439 at 1.) After the summer retake, 53% of ninth graders – which represents 1599 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 13.)

FOF 746. Over 900 ninth graders in Alief ISD had to retake one of the end of course exams after the Spring administration in 2012. The district has students who are in sophomore level courses who must still pass freshman tests. There has to be a cumulative score to graduate which means those ninth graders are already off track to graduate. This failure rate puts more pressure on Alief ISD's resources because it requires Alief ISD to offer remediation classes while still offering the regular curriculum. (RR8:117-20.)

FOF 747. In 2008, according to the State's AEIS Report, 44% of Alief's students were college ready in Math, 48% were college ready in English Language Arts, and 32% were college ready in both subjects. In 2009, 53% of Alief's students were college ready in Math, 59% were college ready in English Language Arts, and 40% were college ready in both subjects. In 2010, 61% of Alief's students were college ready in Math, 56% were college

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ready in English Language Arts, and 43% were college ready in both subjects. (Ex. 451, 458.)

FOF 748. Because of a lack of funding, Alief cannot offer all the courses for the distinguished curriculum, or offer innovative programs. (Ex. 3205, Chambers Dep., at 57.)

FOF 749. During 2010-11 and 2011-12, Alief studied how students who participated in co-curricular and extra-curricular activities performed on TAKS tests. Those students that participated did three percentage points to seven percentage points better than those who did not. The graduation rate for these students was also several percentage points higher than those who did not participate. These programs keep children in school and keep them engaged in school. Alief ISD spends about 1% of its budget on extra-curricular and co-curricular activities. (RR8:137-39.)

FOF 750. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Alief ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

ii. Lubbock ISD

FOF 751. Lubbock ISD is a property-poor Chapter 42 district in the panhandle of west Texas. Lubbock ISD educates 29,000 students on fifty-two campuses. (Ex. 3198, Garza Dep., at 10; Ex. 11323.)

FOF 752. Sixty-five percent of Lubbock ISD's students live in poverty, 55% are Hispanic, 13% are African American, and 12% are special education students. (Ex. 3198, Garza Dep., at 10.)

FOF 753. Lubbock ISD's budget for 2012-13 is $186 million, only slightly higher than its 2007-08 budget of $185 million, despite the fact that in that timeframe it grew by 800 students and state standards became more rigorous. (*Id.* at 53.)

FOF 754. As a result of the State's budget cuts, Lubbock ISD closed or consolidated eleven schools in the last three years. The district eliminated eighty-five positions in its central office, fourteen of which were in core curriculum areas. Lubbock's superintendent, Karen Garza, testified that every one of these people provided meaningful resources to students and losing them decreased Lubbock's ability to educate its students. Additionally, Lubbock ISD eliminated 424 campus positions, 189 of which were classroom teachers. The majority of the other positions were classroom aide positions. (*Id.* at 39, 41-44.)

FOF 755. Because of budget cuts Lubbock ISD asked for forty-seven class size waivers in 2010-11 and twenty-one waivers in 2011-12. Some of Lubbock ISD's kindergarten through fourth grade classes have twenty-five students in them. Elementary grades above grade four routinely have twenty-five students in them while the goal for middle school and high school classes is twenty-seven students. (*Id.* at 46-47.)

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FOF 756. Lubbock ISD's superintendent testified that if Lubbock ISD had an additional $3,000 per WADA it would expand its career technology programs to include pathways in logistics and healthcare, which would lead to jobs in the area, and ensure that more of its students are in advanced programming and dual credit courses. Additionally, Lubbock ISD would lower its class sizes, and make teacher salaries more competitive to attract quality teachers. It would provide more interventions and classroom support for students having difficulty learning. (*Id.* at 77-79.)

FOF 757. Lubbock ISD's M&O tax rate is $1.04. The district has not pursued a TRE because of the poverty of its population. (*Id.* at 29-30.) The success of a TRE is doubtful because its voters are aware that even if Lubbock ISD taxed at $1.17, it could not raise what its neighbors, Friendship ISD and Lubbock-Cooper ISD, raise at $1.04. (*Id.* at 29-32.)

FOF 758. After the first administration of the STAAR exam, 56% of Lubbock ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 17.) Scores were particularly low on the Algebra, Biology, English I Writing, and World Geography EOCs. At the Level II final standard, only 26% of students passed Algebra, only 35% passed Biology, only 33% passed English I Writing, and only 38% passed World Geography. (Ex. 439 at 1.) At Level III, only 12% of students passed Algebra, 7% passed Biology, 10% passed English I Reading, 3% passed English I Writing, and 14% passed World Geography. (*Id.* at 1.) After the summer retake, 47% of ninth graders – which represents 952 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 17.)

FOF 759. In 2008, according to the State's AEIS Report, 54% of Lubbock's students were college ready in Math, 58% were college ready in English Language Arts, and 41% were college ready in both subjects. In 2009, 55% of Lubbock's students were college ready in Math, 59% were college ready in English Language Arts, and 43% were college ready in both subjects. In 2010, 58% of Lubbock's students were college ready in Math, 59% were college ready in English Language Arts, and 45% were college ready in both subjects. (Exs. 94, 101.)

FOF 760. In the Fall of 2009, Lubbock ISD commissioned a comprehensive facilities study of every building in the district. The study found that Lubbock ISD had over $150 million of infrastructure needs in terms of capital improvements and deferred maintenance. Lubbock, after a bond election in 2010, was able to address $44.5 million of those needs, but has over $100 million of unmet needs. This district lacks the funding to deal with these problems. (Ex. 3198, Garza Dep., at 32-33.)

FOF 761. Lubbock ISD has to compete with districts that have up-to-date technology and, in many cases, one-on-one technology. Lubbock ISD cannot afford one-on-one technology and does not have the money to keep its computers in its labs updated. Computers are important to allow teachers to differentiate learning based upon individual student needs. Lubbock ISD students are unable to compete with students from other districts because of the inadequacy of Lubbock's technology. (*Id.* at 36-38.)

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FOF 762. Lubbock ISD offers career tech programs, but it needs to expand those programs to include pathways in logistics, health careers, and pre-engineering. Lubbock ISD does not have sufficient funds to meet these needs. (*Id.* at 59-62.)

FOF 763. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Lubbock ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iii. Pflugerville ISD

FOF 764. Pflugerville ISD is a property-poor Chapter 42 district located in Central Texas, northeast of Austin. Pflugerville ISD serves over 21,000 students. (RR24:186; Ex. 11323; Ex. 3238; Ex. 3204, Dupre Dep., at 13.)

FOF 765. About 52% of the students at Pflugerville ISD are eligible for the federal free and reduced lunch program. Forty-three percent of the students are Hispanic, of which 18% are ELL. Pflugerville ISD's student population is 20% African American and 10% Asian. Students at Pflugerville ISD speak over sixty-five different languages. The student population has changed dramatically in the last twenty years. (Ex. 3238; RR24:186, 189.)

FOF 766. Pflugerville ISD has been cutting its budget since 2007 because of the inadequacy of state funding. After the budget cuts of the 82nd Legislature, Pflugerville ISD had to cut an additional $8.5 million from its budget. It eliminated twenty-five high school teachers and twenty-five middle school teachers. It cut twenty-two positions from its administration and support staff. As a result of these staff reductions, Pflugerville ISD increased its class sizes. At the middle school level, Pflugerville ISD had to reduce its school day from seven periods to six periods and end school one hour earlier. Pflugerville ISD was also forced to cut its transportation budget. (RR24:190-95.)

FOF 767. Because of the lack of funding in 2011-12, Pflugerville ISD cut instructional technology support. The primary responsibility of this type of support was to work with teachers in classrooms to ensure that they were incorporating technology based tools in the delivery of instruction. (RR24:201-02.)

FOF 768. Pflugerville ISD's M&O tax rate is $1.04. It would have a difficult time raising that rate because of poverty in the district, the rates in neighboring districts and pressure from the business community to keep rates low to attract business. (Ex. 3238; RR24:196-97; Ex. 3204, Dupre Dep., at 46-47.)

FOF 769. Pflugerville ISD's I&S rate is $.44. Its last bond election was in 2007. With that money the district built a middle school and several elementary schools. It also upgraded technology, replaced HVAC systems, and fixed roofs. The new buildings were necessary because of growth and some of them opened at capacity. Pflugerville has deferred maintenance on HVAC systems and has leaking roofs. Because of growth it will have another bond election in 2013. (Ex. 3204, Dupre Dep., at 48-51.)

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FOF 770. After the first administration of the STAAR exam, 48% of Pflugerville ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 22.) At Level III, only 21% of students passed Algebra, 9% passed Biology, 12% passed English I Reading, 5% passed English I Writing, and 17% passed World Geography. (Ex. 3204 at 1.) After the summer retake, 36% of ninth graders – which represents 601 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 22.)

FOF 771. Approximately 800 students failed one or more EOC exams in the Spring of 2012 requiring Pflugerville ISD to find roughly $800,000 in its budget for remediation which substantially changed its usual summer school program. (RR24:198-99.)

FOF 772. In 2008, according to the State's AEIS Report, 66% of Pflugerville's students were college ready in Math, 66% were college ready in English Language Arts, and 51% were college ready in both subjects. In 2009, 64% of Pflugerville's students were college ready in Math, 58% were college ready in English Language Arts, and 47% were college ready in both subjects. In 2010, 69% of Pflugerville's students were college ready in Math, 67% were college ready in English Language Arts, and 55% were college ready in both subjects. (Ex. 3238 at 2.)

FOF 773. The shortening of the middle school day in Pflugerville ISD meant the elimination of the period used by teachers for meeting and collaborating and discussing trends in student performance and behaviors to decide on appropriate interventions. (RR24:192; Ex. 3204, Dupre Dep., at 17.)

FOF 774. Reducing the number of class periods in Pflugerville ISD impacted students who needed to be in full-time intervention classes because those students did not get to participate in any elective classes or activities. (RR24:192-93.)

FOF 775. Pflugerville ISD is a growing district having added nine campuses in the last ten years. Beyond the need for facilities, this growth is challenging because it requires more teachers and more materials and supplies. (RR24:186, 189.)

FOF 776. In light of these findings and those in Parts I.B.1 to I.B.9, this Court finds that Pflugerville ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

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iv. Los Fresnos ISD

FOF 777. Los Fresnos ISD is a property-poor Chapter 42 district located in Cameron County about twenty miles north of the Mexican border. Los Fresnos ISD educates 9,502 students. (RR24:112-13; Ex. 11323; Ex. 3237 at 1.)

FOF 778. Seventy-seven percent of Los Fresnos ISD's student population is economically disadvantaged ranging from the stark poverty of La Colonias to those just at the poverty

level. Ninety-six percent of the student population is Hispanic, of which 22% are ELL. (RR24:113.)

FOF 779. When the 82nd Legislature failed to fully fund the public school system Los Fresnos lost $6,000,000 over the biennium. Included in that loss was grant money for pre-K, the Student Success Initiative, and the pilot program to reduce the number of dropouts. (Ex. 3207, Salazar Dep., at 57.)

FOF 780. Los Fresnos ISD has been in a continuous state of budget cutting since 2008 because of low target revenue funding. The district put in a hiring freeze and cut staff through attrition. The district cut pre-K to half day; cut LVN's and reduced the number of counselors; and cut teacher aides and replaced the certified teachers in their computer labs with aides. The district also cut clerical staff. (RR24:117, 131-36.)

FOF 781. Los Fresnos ISD's M&O tax rate is $1.17. (RR24:138.)

FOF 782. After the first administration of the STAAR exam, 57% of Los Fresnos ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 7.) Scores were particularly low on the Biology, English I Writing, and World Geography EOCs. At the Level II final standard, only 36% passed Biology, only 33% passed English I Writing, and only 34% passed World Geography. (Ex. 3207 at 1.) At Level III, only 28% of students passed Algebra, 7% passed Biology, 7% passed English I Reading, 2% passed English I Writing, and 7% passed World Geography. (*Id.* at 1.) After the summer retake, 52% of ninth graders – which represents 364 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 783. In 2008, according to the State's AEIS Report, 61% of Los Fresnos' students were college ready in Math, 41% were college ready in English Language Arts, and 36% were college ready in both subjects. In 2009, 58% of Los Fresnos' students were college ready in Math, 47% were college ready in English Language Arts, and 35% were college ready in both subjects. In 2010, 72% of Los Fresnos' students were college ready in Math, 52% were college ready in English Language Arts, and 45% were college ready in both subjects. (Ex. 10253, 10254.)

FOF 784. Los Fresnos ISD does not have the funds necessary to keep up with their maintenance needs. Los Fresnos has facilities with roof and HVAC issues, for which the maintenance has to be deferred because of a lack of funding. (Ex. 3207, Salazar Dep., at 52-53.)

FOF 785. Counselors are important in schools. Aside from everything counselors do in other schools, the counselors in Los Fresnos have to help students through the emotional violence they have seen and experienced in Mexico. They cannot deal with academics without dealing with these issues. Students from economically disadvantaged homes need a lot of counseling to envision the possibility of college or career and to negotiate towards those goals. There is a shortage of counselors in Los Fresnos ISD because of a lack of funds. (RR24:126-33.)

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FOF 786. Los Fresnos ISD utilized family engagement counselors funded by grants as part of its dropout recovery efforts at the high school level beginning in ninth grade. These counselors were liaisons with identified families. They developed a relationship with a family and understood its needs. Los Fresnos ISD had this program for two years and saw excellent results. It had to be discontinued for lack of funding. (RR24:127-29.)

FOF 787. Los Fresnos ISD has a College and Career Technology Academy where dropouts can return to school without stigma. These students are exposed to classes at Texas State Technical College in Harlingen to build a bridge between high school and college. The first two years of this program were funded by TEA grants, which have been discontinued. Los Fresnos ISD is currently funding this program with its state Compensatory Education funds, which are insufficient for the program's needs. The higher standards imposed by STAAR will increase the dropout rate exponentially, increasing the need for this program. (RR24:129-31.)

FOF 788. Los Fresnos ISD cannot afford the number of nurses they need for their schools. (RR24:131-32.)

FOF 789. Los Fresnos ISD encompasses 540 square miles. The district operates ninety-one buses, fifteen of which are older than eleven years old with 200,000 miles on them. (RR24:124-25.)

FOF 790. Buses are important in Los Fresnos which covers 541 square miles. Many of the district's buses are rusty and have holes in them. One-third of their buses need to be replaced, but Los Fresnos lacks the funding to do so. (*Id.*)

FOF 791. Los Fresnos ISD has some computer labs which can be used by twenty-five students at a time. This is not adequate computer technology to keep up with curriculum needs and experiences for functioning in today's world. They do not have the funding to provide necessary technology or the infra-structure to support it. The population of students at Los Fresnos ISD does not have access to computers at home. (Ex. 3207, Salazar Dep., at 34-37.)

FOF 792. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Los Fresnos ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

v. Lufkin ISD

FOF 793. Lufkin ISD is a property-poor Chapter 42 district in Angelina County about 100 miles north of Houston. Lufkin ISD educates over 7,800 students. (Ex. 3199, R. Knight Dep., at 9-10; Ex. 11323.)

FOF 794. Seventy-five percent of Lufkin ISD's student population qualifies for federal free and reduced lunches. Thirty percent of the students at Lufkin ISD are Hispanic and 30% are

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African American. There are 583 students in ESL and about 1,200 bilingual education students. (Ex. 3199, R. Knight Dep., at 9-10.)

FOF 795. As a result of the budget cuts, Lufkin ISD increased class size, reduced staff, eliminated or cut back programs like art, German, French and debate. Lufkin offered early resignation incentives for staff even though it resulted in the loss of years of valuable teaching experience. Lufkin ISD currently only hires novice teachers. Lufkin ISD has also deferred maintenance including HVAC and roofing repairs. Lufkin ISD froze all salaries. Even with these budget cuts the district is running a budget deficit. (*Id.* at 14-16, 21, 25 and 31.)

FOF 796. Lufkin ISD's M&O tax rate is $1.04. (*Id.* at 10.)

FOF 797. After the first administration of the STAAR exam, 56% of Lufkin ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 5.) Scores were particularly low on the English I Writing, and World Geography EOCs. At the Level II final standard, only 32% passed English I Writing, and only 19% passed World Geography. (Ex. 110 at 1.) At Level III, only 24% of students passed Algebra, 20% passed Biology, 10% passed English I Reading, 1% passed English I Writing, and 6% passed World Geography. (*Id.*) After the summer retake, 42% of ninth graders – which represents 226 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 5.)

FOF 798. In 2008, according to the State's AEIS Report, 60% of Lufkin's students were college ready in Math, 55% were college ready in English Language Arts, and 43% were college ready in both subjects. In 2009, 60% of Lufkin's students were college ready in Math, 56% were college ready in English Language Arts, and 45% were college ready in both subjects. In 2010, 62% of Lufkin's students were college ready in Math, 58% were college ready in English Language Arts, and 50% were college ready in both subjects. (Exs. 109, 111.)

FOF 799. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Lufkin ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

vi. Brownwood ISD

FOF 800. Brownwood ISD is a property-poor Chapter 42 district located in the western part of the Hill Country. Brownwood ISD has an ADA of approximately 3,300 students. (RR18:145; Ex. 11323.)

FOF 801. Sixty-six percent of Brownwood ISD's student population is economically disadvantaged with one campus at a 90% level. (RR18:146-47; Ex. 3231.)

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FOF 802. Brownwood ISD began making budget cuts before the 82nd Legislature's failure to fully fund the public school system. For the 2010-11 and 2011-12 fiscal years it made 10% across the board budget cuts throughout the district. That meant eliminating teaching positions and administrative staff. The district also cut the number of teacher aides. The district deferred maintenance including delaying HVAC repairs. (Ex. 3209, Blincoe Dep., at 252.)

FOF 803. In order to keep some classes small at the high school, Brownwood ISD put up to forty students in its speech classes, its language classes and its health classes (which are not areas tested on the standardized tests.) The district did this to keep some of their other class sizes smaller. They had to make this choice because of limited resources. (RR18:198-99.)

FOF 804. Brownwood ISD's M&O tax rate is $1.04. (Ex. 3231.)

FOF 805. After the first administration of the STAAR exam, 64% of Brownwood ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 7.) Scores were particularly low on the Algebra, Biology, English I Reading, English I Writing and World Geography EOCs. At the Level II final standard, only 24% of students passed Algebra, only 23% passed Biology, only 39% passed English I Reading, only 28% passed English I Writing, and only 23% passed World Geography. (*Id.*) At Level III, only 8% of students passed Algebra, 4% passed Biology, 4% passed English I Reading, 1% passed English I Writing, and 6% passed World Geography. (Ex. 1061 at 1.) After the summer retake, 61% of ninth graders – which represents 159 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 806. In 2008, according to the State's AEIS Report, 60% of Brownwood's students were college ready in Math, 47% were college ready in English Language Arts, and 34% were college ready in both subjects. In 2009, 70% of Brownwood's students were college ready in Math, 61% were college ready in English Language Arts, and 51% were college ready in both subjects. In 2010, 75% of Brownwood's students were college ready in Math, 74% were college ready in English Language Arts, and 63% were college ready in both subjects. (Ex. 1047, 1048.)

FOF 807. Brownwood ISD has been aggressive in providing technology to its students through grant programs. Brownwood ISD does not have sufficient funding to continue its investment in technology. (RR18:154-58.)

FOF 808. Brownwood ISD needs career courses in digital media, digital art creation, and it needs to strengthen its auto technology, building trades and ag-science courses. Brownwood ISD does not have sufficient funds to meet these needs. These career pathways would lead to jobs in the community. (RR18:195-196.)

FOF 809. Only about 50% of the students from Brownwood ISD go on to a two year or four year college, and many of them have to take remedial classes as freshman. In 2010 only about

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20% of the Brownwood students who took the SAT/ACT exams scored at or above criteria. (Ex. 3209, Blincoe Dep., at 241.)

FOF 810. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Brownwood ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

vii. Anton ISD

FOF 811. Anton ISD is located twenty miles northwest of Lubbock. Anton currently educates 250 students. (Ex. 3203, J. Knight Dep., at 10-11, 46-49.)

FOF 812. Approximately 86% of Anton ISD's students qualify for the federal free and reduced lunch programs. (*Id.* at 11.)

FOF 813. As a result of the State's budget cuts, Anton's budget was cut by $130,000. Anton ISD cut five staff members and seven teachers, going from fifty-two to thirty-nine employees, merged maintenance and transportation, merged educational positions, and merged bus routes. It had to reduce their nurse to three days a week. It lost technology and their TAKS coordinator. It had to raise their class sizes and lost aides. Salaries have been frozen for two years, and the district already had the lowest salaries in their region. (*Id.* at 15-21.)

FOF 814. Anton ISD's superintendent testified that if the district had $2,000 more per WADA the district could hire reading interventionists to assist its economically disadvantaged students and hire more aides to enable the district to have small group instruction. (*Id.* at 54-55.)

FOF 815. Anton ISD's M&O tax rate is $1.17. (*Id.* at 11-12.)

FOF 816. After the first administration of the STAAR exam, 47% of Anton ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 14.) Scores were particularly low on the Algebra, Biology, English I Writing, and World Geography EOCs. At the Level II final standard, only 15% of students passed Algebra, only 17% passed Biology, only 38% passed English I Writing, and only 15% passed World Geography. (Ex. 7586 at 1.) At Level III, 0% of students passed Algebra, 0% passed Biology, 0% passed English I Reading, 0% passed English I Writing, and 0% passed World Geography. (*Id.*) After the summer retake, 20% of ninth graders – which represents three students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 14.)

FOF 817. In 2008, according to the State's AEIS Report, 50% of Anton's students were college ready in Math, 40% were college ready in English Language Arts, and 25% were college ready in both subjects. In 2009, 38% of Anton's students were college ready in Math, 54% were college ready in English Language Arts, and 31% were college ready in both subjects. In 2010, 67% of Anton's students were college ready in Math, 67% were

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college ready in English Language Arts, and 42% were college ready in both subjects. (Ex. 237, 238.)

FOF 818. Anton ISD does not have the funds to offer its students the courses necessary for the Distinguished Curriculum degree. (Ex. 3203, Knight Dep., at 46.)

FOF 819. The elementary campus in Anton ISD was built in the 1940s and is in disrepair and the classroom facilities are poor. In 2010-11, Anton ISD's elementary school was cited for safety issues because it had doors that would not shut. The elementary school in Anton ISD needs new flooring and asbestos removal. The high school was built in the 1970s and needs repairs. Anton ISD does not have the funds to make these repairs. (*Id.* at 40-42.)

FOF 820. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Anton ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

viii. Van ISD

FOF 821. Van ISD is a property poor Chapter 42 district located in east Texas about one hour east of Dallas. Van ISD educates approximately 2,300 students. (Ex. 3201, Witte Dep., at 18; Ex. 11323.)

FOF 822. Seventeen percent of Van ISD's student population is Hispanic and 3% are African American. (Ex. 3201, Witte Dep., at 18.)

FOF 823. State funding to Van ISD decreased by $1.4 million in 2011-12. (*Id.*)

FOF 824. As a result of the State's budget cuts, Van ISD was forced to cut three administrative positions and 22% of the administrative staff. Superintendent Witte reduced his paid days by ten and reduced administrative staff paid days by six. All salaries were frozen. Van ISD also cut twenty-nine staff including twenty-two teachers. Van ISD increased class sizes and ended its full-day pre-K program. (*Id.* at 21-25.)

FOF 825. The cuts that Van ISD was forced to make negatively affected its ability to give differentiated instruction in the classroom. (*Id.* at 24.)

FOF 826. Van ISD's superintendent testified that if the district had $2,000 more per WADA it would reduce the student to teacher ratio in all classes and particularly try to keep the student-teacher ratio at 15:1 in pre-K to fourth grade. It would reinstitute full-day pre-K, and it would add aides on a ratio of one per classroom. The district would make salaries more competitive. The district would add the infrastructure for a broader use of technology. It would strengthen its career/technology program. (*Id.* at 39-42.)

FOF 827. Van ISD's M&O rate is $1.17. (Ex. 3006.)

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FOF 828. Superintendent Witte testified that, because, since 2008, Van ISD taxed at the statutory maximum, it had no means to generate additional revenue in response to the State's 2011 budget cuts. As a result, Van ISD had no choice but to reduce staff, raise class sizes, and cut pre-K to half-day programs. (Ex. 3201, Witte Dep., at 19-27.)

FOF 829. After the first administration of the STAAR exam, 52% of Van ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 23.) Scores were particularly low on the Algebra, Biology, English I Writing, and World Geography EOCs. At the Level II final standard, only 39% of students passed Algebra, only 31% passed Biology, only 35% passed English I Writing, and only 27% passed World Geography. (Ex. 194 at 1.) At Level III, only 14% of students passed Algebra, 1% passed Biology, 8% passed English I Reading, 0% passed English I Writing, and 0% passed World Geography. (*Id.*) After the summer retake, 41% of ninth graders – which represents seventy-two students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 23.)

FOF 830. In 2008, according to the State's AEIS Report, 56% of Van's students were college ready in Math, 63% were college ready in English Language Arts, and 42% were college ready in both subjects. In 2009, 54% of Van's students were college ready in Math, 65% were college ready in English Language Arts, and 40% were college ready in both subjects. In 2010, 72% of Van's students were college ready in Math, 74% were college ready in English Language Arts, and 62% were college ready in both subjects. (Exs. 165, 181, 195.)

FOF 831. Because of a lack of funding, Van ISD cannot offer all of the courses set forth in the Education Code for the distinguished graduation program. It is unable to offer advanced courses for pre-AP or AP classes. (Ex. 3201, Witte Dep., at 51 and 58.)

FOF 832. In light of these findings and those in Parts I.B.1 to I.B.9, this Court finds that Van ISD lacks sufficient funding to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment to its students.

ix. Everman ISD

FOF 833. Everman ISD is a property-poor Chapter 42 district in the southwest corner of Tarrant County. Everman ISD educates 5,400 students. (RR5:167-68; Ex. 11323.)

FOF 834. Since 2005, Everman ISD's poverty rate has climbed from 60% to 88.5%. Forty-seven percent of Everman ISD's students are Hispanic and 44% are African American. (RR5:170, 186.)

FOF 835. In 2005, Everman was in the lowest quartile of wealth and their revenue was frozen at a target revenue of $4,634, which necessitated budget cuts in 2005. The district cut teachers and paraprofessionals and increased class size; it deferred maintenance; it cut coaching stipends, reduced all employee sick leave by three days, and gave no raises.

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Everman ISD ended its optional homestead exemption. Everman ISD cut administrative positions, cut substitute days, and eliminated capital purchases, travel and conference fees. Everman ISD reduced its bus routes. It replaced registered nurses and librarians with paraprofessionals. (RR5;169, 184-85; Ex.3202, Pfeiffer Dep., at 37-41.)

FOF 836. Everman ISD's funding was cut by $2.1 million. The district was forced to declare financial exigency and terminated forty-one employees, obtained class size waivers and increased the class sizes in grades K through four to twenty-four to one. Class sizes in higher grades also went up. (RR 5:184-86, Ex. 3202, Pfeifer Dep., at 37-42.)

FOF 837. Everman ISD's superintendent testified that if the district had $3,000 more per student it would hire more teachers to get class sizes lower so that ELS students and economically disadvantaged students could get more individualized attention. It would enrich its curriculum including adding AP preparation classes and more AP classes. The district would make repairs to its roofs and its HVAC systems and make sure its buildings were safe. Everman ISD would wire its classrooms for technology and buy more computers. It would go to full-day pre-K and add more summer school classes. (RR 6:33, Ex. 3202, Pfeifer Dep., at 87-88.)

FOF 838. Everman ISD increased its M&O tax rate to $1.17 in 2012, and this additional tax effort did not make up for the $2.1 million shortfall in state funding. (Ex. 3202, Pfeiffer Dep., at 38-42, 46-48.)

FOF 839. After the first administration of the STAAR exam, 72% of Everman ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 21.) Scores were particularly low on the Algebra, Biology, English I Reading, English I Writing, and World Geography EOCs. At the Level II final standard, only 28% of students passed Algebra, only 19% passed Biology, only 27% passed English I Reading, only 19% passed English I Writing, and only 23% passed World Geography. (Ex. 3221, 3222 at 1.) At Level III, only 8% of students passed Algebra, 1% passed Biology, 3% passed English I Reading, 0% passed English I Writing, and 6% passed World Geography. (Exs. 3221, 3222 at 1.) After the summer retake, 60% of ninth graders – which represents 217 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 21.)

FOF 840. Three hundred and seven ninth graders at Everman took the EOC exams in 2012 and 208 of them had to attend summer school remediation classes. In order to fund the remediation, Everman ISD had to defer maintenance. (Ex. 3202, Pfeifer Dep., at 81.)

FOF 841. In 2008, according to the State's AEIS Report, 42% of Everman's students were college ready in Math, 47% were college ready in English Language Arts, and 30% were college ready in both subjects. In 2009, 37% of Everman's students were college ready in Math, 39% were college ready in English Language Arts, and 20% were college ready in both subjects. In 2010, 56% of Everman's students were college ready in Math, 50% were college ready in English Language Arts, and 35% were college ready in both subjects. (Exs. 205, 206, 207.)

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FOF 842. Everman ISD has insufficient facilities for full-day pre-K, although it is desperately needed. Everman ISD is a property poor/fast growing district. Even if there were sufficient facilities, Everman does not have funds to hire and retain the necessary pre-K teachers, especially bilingual teachers. (RR5:175-76.)

FOF 843. Everman ISD is intersected by I-20 and I-35. The district runs about forty buses which are essential to getting the district's students to school. Many of Everman ISD's buses are old, some as old as twenty years old. The cost to maintain them is high, but Everman ISD does not have the funds to replace them. Everman ISD tried to outsource its transportation needs, but four contractors refused to bid because of the age of Everman ISD's fleet. (RR5:167-68, 221-23.)

FOF 844. In Everman ISD, the oldest operating campus is Hommel Elementary, which is over-crowded. It does not have a sufficient number of restrooms, and the cafeteria is insufficient for the number of students. It is estimated that it would take $13 million to rehabilitate Hommel Elementary, which the district does not have. The next oldest school is Bishop Elementary, built in 1955. At Bishop, the ground floats and so the floor floats requiring the district to use mud jacking under the building to compensate. Nonetheless, the cafeteria is sinking. The district cannot afford to repair Bishop. One of Everman ISD's junior highs was built in 1962 for 400 students, with no windows (to conserve energy.) It now houses 800 children. The high school was built in 1961. It is fifty years old. E Ray Elementary was built in 1961. It, too, is fifty years old. These campuses are beyond the architect's statement of capacity; these campuses cannot hold any more children, and Everman cannot afford to repair or replace them. (RR5:193-94, 224-28.)

FOF 845. Roofing issues are the major deferred maintenance issue for Everman ISD. Everman cannot afford to fix them. HVAC units must be replaced and plumbing is also a major issue on the Everman ISD campuses and the district has insufficient funds to correct those problems. It does not have the science labs to meet the STAAR requirements or offer advanced science courses. (RR5:225-28.)

FOF 846. Everman cannot raise sufficient funds to address its current facility needs. Everman does not have sufficient science classrooms to meet its students' needs. Consequently, it impossible for Everman to offer AP Chemistry, AP Physics or Physics 2. (RR5:225, 227.)

FOF 847. Everman's Career and Technology Programs are inadequate. The district offers an outdated home economics course, and a business class which teaches keyboarding, office procedure, and accounting. It is trying to start a computer animated career course, and they offer automotive technology through Tarrant County community college. It needs more of these types of programs, but its funding is inadequate to do more. (RR6:28-30; Ex.3202, Pfeifer Dep., at 70-75.)

FOF 848. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Everman ISD lacks sufficient funds to provide a general diffusion of knowledge to its students.

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The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

x. Quinlan ISD

FOF 849. Quinlan ISD is a property-poor Chapter 42 district in Hunt County, outside of Dallas. Quinlan ISD educates 2,500 students. (RR20:71; Ex. 11323.)

FOF 850. Seventy percent of Quinlan ISD's students participate in the federal free and reduced lunch program, but that percentage is an underestimate of the number of students who are economically disadvantaged. (RR20:71.)

FOF 851. As a result of the State's budget cuts, Quinlan ISD was forced to cut 41% of its Administrative staff which includes assistant principals, counselors, nurses, and librarians. The district also cut 18% of its teaching staff and 14% of its auxiliary staff. (RR20:76.)

FOF 852. Quinlan ISD's superintendent testified that he estimated that the district needs $9,400 per student to provide a general diffusion of knowledge to the students who are served by Quinlan ISD. If he had this additional revenue the district would extend the instructional day. It would increase its programs for at-risk students and have all-day three-year-old and four-year-old pre-K. It would reduce class size particularly in the early grades for reading comprehension. It would raise teacher salaries to retain teachers. It would employ a mentor coach at each grade level to monitor student attendance, discipline, and academics. It would have a counselor, a vocational counselor, and a social worker at every campus. It would improve its science courses, expand reading courses, make technology available to students and expand its vocational programs. The district would have nurses and librarians at all campuses. It would replace its aging bus fleet to serve the 150 square miles encompassed by the district. Quinlan ISD would add depth and breadth to its course offerings including more AP classes, dual credit courses, and college-readiness classes. The district would make its facilities safer, repair roofs, HVAC systems, eliminate asbestos in its buildings, and equip its classrooms for a modern education. (RR20:105-06, Ex. 3206, French Dep., at 59-69.)

FOF 853. Quinlan ISD's M&O tax rate is $1.04. The district is not able to raise that rate because of the poverty of its population. The tax delinquency rate has been rising, and Quinlan ISD's superintendent testified that it would be counter-productive to foreclose on any more houses. (Ex. 3206, French Dep., at 22; RR20:100-01.)

FOF 854. After the first administration of the STAAR exam, 58% of Quinlan ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 15.) Scores were particularly low on the Algebra, Biology, English I Reading, English I Writing, and World Geography EOCs. At the Level II final standard, only 25% of students passed Algebra, only 22% passed Biology, only 30% passed English I Reading, only 18% English I Writing, and only 24% passed World Geography. (Ex. 469 at 1.) At Level III, only 4% of students passed Algebra, 3% passed Biology, 3% passed English I Reading, 1% passed English I Writing, and 5% passed

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World Geography. (*Id.*) After the summer retake, 52% of ninth graders – which represents 104 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 15.)

FOF 855. Sixty percent of the 200 ninth graders who took the STAAR exam this year in Quinlan ISD required remediation. (Ex. 3206, French Dep., at 53.)

FOF 856. In 2008, according to the State's AEIS Report, 41% of Quinlan's students were college ready in Math, 54% were college ready in English Language Arts, and 28% were college ready in both subjects. In 2009, 49% of Quinlan's students were college ready in Math, 54% were college ready in English Language Arts, and 34% were college ready in both subjects. In 2010, 49% of Quinlan's students were college ready in Math, 54% were college ready in English Language Arts, and 30% were college ready in both subjects. (Ex. 451, 458.)

FOF 857. Quinlan ISD is forced to have paraprofessionals teaching certain classes at the middle school because it cannot hire certified teachers at the salary it can afford to offer. The superintendent of Quinlan ISD testified that if Quinlan ISD paid teachers in conformity to the state's minimum salary schedule, some of his teachers would qualify for food stamps. (RR20:83, 127.)

FOF 858. Quinlan ISD has serious facility and maintenance issues. The high school has structural problems requiring about $10 million in repairs. The elementary schools have roof leaks and the HVAC routinely fails. Quinlan ISD does not have sufficient funds to make the necessary repairs and renovations. (RR20:86-87.)

FOF 859. The limited number of science labs and their poor condition in Quinlan ISD's middle schools pose safety issues for the students. The equipment is limited antiquated and inadequate. Because of gas leaks, the district cannot use Bunsen burners for experiments. They have not had the funds to repair these leaks. These problems make it impossible to cover all the TEKS in middle school in the way they are supposed to be taught. Quinlan does not have sufficient funds to make the necessary repairs. (*Id.*; Ex. 3206, French Dep., at 52-53.)

FOF 860. Superintendent French testified that Quinlan ISD was forced to reduce its pre-K programs to half day because of budget cuts, but re-instituted full-day pre-K in 2012 because there was a noticeable drop in preparedness of this group of students. (RR20:76-77.)

FOF 861. Quinlan ISD only has computers in one lab on each campus. These labs have twenty to twenty-five computers for all children on the campuses with 600 students, and those computers are five to six years old. A lack of funding prevents Quinlan from having more and better technology. Children in Quinlan usually do not have technology available at home. (RR20: 80-82; Ex. 3206, French Dep., at 56-58.)

FOF 862. Quinlan ISD is able to offer business information management, a small cosmetology program and a small automotive tech program. The district cannot afford the necessary equipment for an effective cosmetology or automotive tech program. Quinlan ISD was

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forced to cut its culinary arts program because it could not afford the necessary equipment. Quinlan needs a pre-nursing program, computer programming programs, and a pre-engineering program, but it does not have sufficient funds to offer these programs. These programs would prepare students for jobs that exist in the area. (RR20:94-95; Ex.3206, French Dep., at 39-42.)

FOF 863. In light of these findings and those in Parts I.B.1 to I.B.9, this Court finds that Quinlan ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

xi. Bryan ISD

FOF 864. Bryan ISD is a property-poor Chapter 42 district in central Texas adjacent to College Station. Bryan ISD currently educates 16,000 students on twenty-three campuses. (Ex. 3200, Wallis Dep., at 10, 32, 206; Ex. 11323.)

FOF 865. Seventy-eight percent of the students in Bryan ISD are economically disadvantaged. The student body is 52% Hispanic and 24% African American. (Ex. 3200, Wallis Dep., at 10.)

FOF 866. Even prior to the 2010 budget cuts, Bryan ISD did not have the resources to prepare a majority of its students to graduate college-ready. Now they have to meet more rigorous standards and their funding was cut by $6 million by the 82nd Legislature. (*Id.* at 14-15.)

FOF 867. As a result of the State's budget cuts, Bryan ISD cut $4.5 million from its budget in 2011-12, but still had a $1.5 million deficit. To make these cuts Bryan ISD reduced the district healthcare insurance premium by $15 per employee, reduced the district contribution to the workman's compensation risk pool, and reduced administrative professional services by reducing special education district-level positions. It eliminated two professional technology positions and eliminated a dropout prevention specialist. It eliminated five special education teachers, an assistant principal, and an assistant band director. The custodial staff was reduced by approximately twenty. It eliminated three additional instructional aides and eliminated a life skills teacher. It eliminated stipends for bilingual education teachers, eliminated the tuition reimbursement program for its employees, and eliminated transfers between its middle schools and high schools. It reduced bus routes. It eliminated two middle school interventionists. It reduced the number of permanent substitute teachers. These cuts impacted negatively the education of students in Bryan ISD. (Ex. 3200, Wallis Dep., at 16-17, 19, 21.)

FOF 868. Because of budget cuts some classes at Bryan ISD's high schools will have thirty-five to forty students in them. Bryan ISD received class size waivers for its elementary schools. Bryan ISD could not continue its one computer to one student ratio in its middle schools because of a lack of funding. Those computers allowed students to use the INQUIRE and Odyssey programs for research and presentations. (*Id.* at 23-25.)

FOF 869. Bryan ISD's M&O tax rate is $1.04. (*Id.* at 14.)

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FOF 870. After the first administration of the STAAR exam, 63% of Bryan ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 7.) Scores were particularly low on the Algebra, English I Reading, English I Writing, and World Geography EOCs. At the Level II final standard, only 33% of students passed Algebra, only 38% passed English I Reading, only 25% passed English I Writing, and only 35% passed World Geography. (Ex. 163 at 1.) At Level III, only 15% of students passed Algebra, 9% passed Biology, 6% passed English I Reading, 1% passed English I Writing, and 12% passed World Geography. (*Id.*) After the summer retake, 57% of ninth graders – which represents 628 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 871. About 50% of Bryan's ninth graders had to take remediation. The State did not provide any funding for this remediation. Bryan ISD cannot accomplish the college-ready mandate under the existing funding structure even if it raises its tax rate to $1.17. (Ex. 3200, Wallis Dep., at 56-58.)

FOF 872. In 2008, according to the State's AEIS Report, 56% of Bryan ISD's students were college ready in Math, 57% were college ready in English Language Arts, and 41% were college ready in both subjects. In 2009, 62% of Bryan's students were college ready in Math, 59% were college ready in English Language Arts, and 47% were college ready in both subjects. In 2010, 64% of Bryan ISD's students were college ready in Math, 61% were college ready in English Language Arts, and 50% were college ready in both subjects. (Ex. 161, 162.)

FOF 873. Eighty-seven percent of all students at Bryan ISD, 92% of ELL students, and 93% of economically disadvantaged students are not performing well enough to meet the college ready standards. (Ex. 3200, Wallis Dep., at 76-77.)

FOF 874. Bryan ISD does not have the funding to provide the variety of courses necessary to get its high school students ready for the distinguished curriculum. (*Id.* at 33, 41)

FOF 875. One-third of Bryan ISD's school buildings are over fifty years old. The district's science labs are outdated and ill-equipped. Bryan high school has approximately 226 doors that open to the outside and ninety that open to the outside at one of the middle schools. This is a safety concern. There are plumbing issues on some campuses. Bryan ISD can only afford to make superficial fixes. There are portable buildings on many campuses which have been used for many years. The portables are not well insulated and in 2012-13, an entire campus will be housed in portable buildings because Bryan cannot afford to fix the buildings on this campus. (*Id.* at 49, 56.)

FOF 876. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Bryan ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

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xii. Belton ISD

FOF 877. Belton ISD is a property poor Chapter 42 district located between Austin and Waco in central Texas. Belton ISD currently educates 9,800 students. It is a fast growing district. (Ex. 3226, Kincannon Dep., at 9-10; Ex. 609 at 12.)

FOF 878. Over 30% of Belton ISD's students are Hispanic, and its African American population is close to 7%. Forty-eight percent of its students are economically disadvantaged. (Ex. 3226, Kincannon Dep., at 12-13; Ex. 609.)

FOF 879. The superintendent of Belton ISD testified that the district does not have sufficient resources to provide the programs and services needed to give its students an opportunity to achieve the college-ready standard. It needs more resources to help children achieve higher levels in the elementary grades. It needs early childhood intervention, and remediation all through the lower grades and middle school. At the high school level, it needs to help students who still are not at grade level. It needs additional teaching staff and additional professional development to provide quality trained staff at every grade level so that it catches up students before they get to high school. (Ex. 3226, Kincannon Dep., at 27 and 142.)

FOF 880. Belton ISD's M&O tax rate is $1.17. (Ex. 3006.)

FOF 881. After the first administration of the STAAR exam, 39% of Belton ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 5.) At Level III, only 23% of students passed Algebra, 17% passed Biology, 13% passed English I Reading, 4% passed English I Writing, and 19% passed World Geography. (Ex. 7613 at 1.) After the summer retake, 37% of ninth graders – which represents 250 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 5.)

FOF 882. In 2008, according to the State's AEIS Report, 58% of Belton ISD's students were college ready in Math, 59% were college ready in English Language Arts, and 45% were college ready in both subjects. In 2009, 60% of Belton ISD's students were college ready in Math, 65% were college ready in English Language Arts, and 49% were college ready in both subjects. In 2010, 64% of Belton ISD's students were college ready in Math, 66% were college ready in English Language Arts, and 52% were college ready in both subjects. (Ex. 609, 614.)

FOF 883. Belton ISD has to buy its buses on a lease-purchase arrangement because it cannot afford to buy them outright. (Ex. 3226, Kincannon Dep., at 58-59.)

FOF 884. Belton ISD had a bond election in May of 2012 and raised $60 million which it used to build three new schools for the district, two elementary schools and a middle school, to address the growth of the school district which has been 40% over a ten-year period. (Ex. 3226, Kincannon Dep., at 59-61.)

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FOF 885. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Belton ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

xiii. Kaufman ISD

FOF 886. Kaufman ISD is a property-poor Chapter 42 district located about thirty miles east of Dallas. Kaufman ISD educates 3,500 students. (Ex. 563, 574 and 11323.)

FOF 887. Sixty-three percent of Kaufman ISD's students qualify for the free and reduced lunch program. Forty percent of Kaufman ISD's students are Hispanic and about 7% of its students are African American. (Ex. 3208, Williams Dep., at 25-26.)

FOF 888. Kaufman ISD's M&O tax rate is $1.17. (*Id.* at 68.)

FOF 889. After the first administration of the STAAR exam, 61% of Kaufman ISD's ninth graders failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 15.) Scores were particularly low on the Algebra, Biology, English I Reading, English I Writing, and World Geography EOCs. At the Level II final standard, only 25% of students passed Algebra, only 32% passed Biology, only 32% passed English I Reading, only 29% passed English I Writing, and only 37% passed World Geography. (Ex. 3208 at 1.) At Level III, only 8% of students passed Algebra, 2% passed Biology, 3% passed English I Reading, 2% passed English I Writing, and 9% passed World Geography. (*Id.*) After the summer retake, 54% of ninth graders – which represents 141 students – still had not passed at least one EOC exam and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 15.)

FOF 890. In 2008, according to the State's AEIS Report, 66% of Kaufman's students were college ready in Math, 60% were college ready in English Language Arts, and 50% were college ready in both subjects. In 2009, 61% of Kaufman's students were college ready in Math, 67% were college ready in English Language Arts, and 50% were college ready in both subjects. In 2010, 59% of Kaufman's students were college ready in Math, 74% were college ready in English Language Arts, and 52% were college ready in both subjects. (Ex. 563, 564.)

FOF 891. Kaufman ISD is only able to offer one foreign language, Spanish, because of a lack of funding. (Ex. 3208, Williams Dep., at 187-188.)

FOF 892. Employers in Kaufman County are telling Kaufman ISD that graduates are not college or career ready. (*Id.* at 190-91.)

FOF 893. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Kaufman ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

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d. Edgewood ISD Plaintiff districts

i. Edgewood ISD

FOF 894. Edgewood ISD is an urban, Chapter 42 school district located in San Antonio, Texas. (RR22:129; Ex. 4235.)

FOF 895. In 2010-11, Edgewood ISD educated 11,904 students. (Ex. 828.) Of these students, 98.3% were Hispanic, 1% were African-American, and 0.5% were White. (*Id.*; 4237 at 3.)

FOF 896. In 2010-11, 92.6% of Edgewood ISD's students were economically disadvantaged – far in excess of the state average. (Ex. 4237 at 4.) More than 19.4% of Edgewood ISD's students (or approximately 2,314 students) were ELL in 2010-11. (*Id.*)

FOF 897. As an urban district, Edgewood ISD has a high student mobility rate of approximately 24.5%. (RR22:140; Ex. 865 at Sec. II.) The student mobility rate is based on the number of times students enroll in or leave a school during the school year. A high mobility rate involves substantial disruption to the normal educational process, because teachers must interrupt their planned curriculum to assess and adjust to the turnover in the student population. This, in turn, has an overall negative effect on general student performance, creating additional challenges for Edgewood ISD. (RR22:138-40; Ex. 4224-S, Cervantes Dep., at 196; Exs. 840-56 at Sec. II.)

FOF 898. The property value per WADA in Edgewood ISD is $62,754, and its revenue per WADA is $5,809.[16] (Ex. 4235.) Edgewood ISD has an M&O tax rate of $1.17, and has been at the $1.17 cap for five years. (Exs. 826-828; Ex. 4224-S, Cervantes Dep., at 198.) Edgewood ISD has no means of raising its M&O tax rate and no means to raise additional revenue to finance its maintenance and operations. (Ex. 4224-S, Cervantes Dep., at 198.)

FOF 899. Edgewood ISD has an I&S tax rate of $0.25. (Ex. 828.)

FOF 900. As a result of the budget cuts, Edgewood ISD had to eliminate all campus interventionists and reduce its summer school opportunities by half, which hindered its effort to prevent dropouts and bring low-income students up to grade level. (Ex. 4237 at 7; RR22:154-62.) The district requires extended learning time with low-income students to provide the level of intensity required to get those students up to grade level. (RR22:160-61; Ex. 4237 at 11.)

FOF 901. Also due to lack of funding, bilingual teachers in Edgewood must teach both English-speaking children and ELLs in the same classroom, which is not an adequate learning environment for both the ELL and non-ELL students. Because of this exceptionally challenging environment, ELL teachers, including special education teachers, require

[16] Unless otherwise noted, the data cited for Edgewood Plaintiffs is the preliminary, but latest, 2011-2012 corrected data produced by TEA in January 2013.

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higher quality ESL professional development which includes SIOP strategies that can help ELL students succeed and become academically proficient in the English language. There is no funding for this training. Full-day paraprofessionals are also needed, but lacking, in kindergarten classrooms to meet the needs of the high populations of ELL and low-income students in those classes. (RR14:157-58 (referencing Ex. 4231 at 31); Ex. 1345, Izquierdo Site Visits Report, at 3-4; RR22:149-50.)

FOF 902. The district was left with substantial needs that it cannot meet, such as quality professional development, extended learning time, high quality tutoring, family liaisons, and smaller learning communities for its low-income and ELL students. (Ex. 4237 at 9, 11; RR22:150-62 (district superintendent approximating the costs to implement and expand programs needed to provide reasonable opportunities to all students); Ex. 4224-S, Cervantes Dep., at 153-54.)

FOF 903. After the first administration of the STAAR exam, 42% of Edgewood ISD's students failed to meet the Level II phase-in standard on Algebra, 52% failed to meet the standard in Biology, 53% failed to meet the standard in English 1 Reading, 72% failed to meet the standard in English 1 Writing, and 67% failed to meet the standard in World History. (Ex. 4237 at 16.) After the first administration, a total of 78% of Edgewood ISD's ninth graders had failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 6.)

FOF 904. No ELL student in Edgewood was able to meet the Level II phase-in standard for English 1 Writing, and 85% failed to meet the standard in English 1 Reading. (Ex. 4237 at 17.)

FOF 905. At the Level II final standard, only 14% of students passed Algebra, 17% passed Biology, 12% passed English I Reading, 10% passed English I Writing, and 18% passed World History. (*Id.* at 19.)

FOF 906. At the Level III advanced standard, no student met the standard in English I Writing, and not more than 3% met the standard in Algebra, Biology, English I Reading, or World History. (*Id.* at 20.)

FOF 907. After the summer retake, 73% of ninth graders still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 6.)

FOF 908. In 2010, only 32% of Edgewood's students were considered College-Ready Graduates in both subjects. (Ex. 828 at 11; Ex. 4237 at 14.) Only 3.8% of Edgewood students scored at or above the state's criterion for college readiness on the SAT/ACT. (Ex. 4237 at 15.)

FOF 909. Whereas 26.9% of students statewide met the state's benchmarks under the SAT/ACT college readiness indicator[17] in the 2010-11 school year (Ex. 4227 at 14), only 3.8% in Edgewood ISD reached this level. (Ex. 828 at Sec. I, p. 11.)

[17] Under the previous accountability rating system, a student could be considered college ready if he or she met or exceeded the college-ready criteria on the SAT or ACT. (Ex. 10324 at 56.)

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FOF 910. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Edgewood ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

ii. San Benito CISD

FOF 911. San Benito CISD is a property poor Chapter 42 district located in the Rio Grande Valley. (RR4:95.)

FOF 912. The property value per WADA in San Benito CISD is $59,758, and its revenue per WADA is $5,842. (Ex. 4235.)

FOF 913. San Benito CISD has an M&O tax rate of $1.17. (*Id.*) San Benito CISD's I&S tax rate is $0.1349. (*Id.*) San Benito CISD has no means of raising its M&O tax rate and no means to raise additional revenue to finance its maintenance and operations. (RR4:95.)

FOF 914. In the 2010-11 school year, San Benito CISD educated approximately 11,351 students. (Ex. 805 at Sec. II, p. 1.) Of these students, 99.1% were minority students, including 0.1% African American, 98.9% Hispanic, and 0.8% White. (*Id.*) In addition, 81.8% were economically disadvantaged and 24.2% were ELL. (*Id.*)

FOF 915. San Benito CISD lost approximately $6 million as a result of the statewide budget cuts. (RR4:100.) To absorb the loss, the district eliminated thirty-six paraprofessional positions, causing the district to increase its student-teacher ratios. (RR4:103.) San Benito has had to draw from its general fund solely to prevent further cuts to the classroom and is prevented from providing enrichment or lowering its tax rate. (RR4:101-02.)

FOF 916. San Benito CISD's superintendent explained that due to the budget cuts his district lacks funding to be able to offer after-school tutorials, provide student transportation, retain highly qualified teachers, or lower class ratios. (RR4:76-79 (for example, the district is unable to provide tutoring to at least 10% of its economically disadvantaged students who are below grade level or to assist those who are struggling to keep up, and at least 500 to 600 students require summer school that the district is unable to provide).)

FOF 917. Due to limited funding, the district was unable to afford the ESL curriculum, not all classrooms have textbooks, and all have needs for technologies for ELL students. (RR14:162-63 (referencing Ex. 4231 at 37-38); Ex. 1345, Izquierdo Site Visits Report, at 7-8; RR4:92; RR22:222-23.) Teachers are also forced to teach in "mixed classrooms," making it exceptionally challenging to implement fully the district's transitional late-exit bilingual program, but still have inadequate professional development and ELL specialists to support them. The district is unable to compensate teachers for staying after school for trainings and meetings. As a result of this lack in support, program

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monitoring, program implementation, and program effectiveness suffer. (RR14:162-63 (referencing Ex. 4231 at 37-38); Ex. 1345, Izquierdo Site Visits Report, at 7-8; RR4:89-90.)

FOF 918. San Benito lacks funding to provide important interventions for its students, including extended learning time, high quality tutoring, summer school, and smaller learning communities for its low-income and ELL students, solely to provide them with an adequate education. (RR4:73-83.)

FOF 919. After the first administration of the STAAR exam, 18% of San Benito's students failed to meet the Level II phase-in standard for Algebra, 16% failed Biology, 44% failed English 1 Reading, 52% failed English 1 Writing, and 34% failed World Geography. (Ex. 4227 at 10.) After the first administration, a total of 64% of San Benito CISD's ninth graders had failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 920. Ninety-seven percent of ELL students in San Benito were unable to meet the phase-in standard for English 1 Writing and Reading. (Ex. 4227 at 10.)

FOF 921. In 2010, only 37% of San Benito's students were considered College-Ready Graduates in both subjects. (Ex. 805 at 11; Ex. 4227 at 15.) Less than 1% of San Benito ELL students were college ready on the SAT/ACT. (Ex. 805 at 11; Ex. 4227 at 15.)

FOF 922. In 2010-11, students in San Benito CISD reached the state's standard under the SAT/ACT AEIS college-readiness indicator at rates about one-third of the state average (9% in San Benito CISD compared to 26.9% statewide). (Ex. 805 at Sec. I, p. 11.)

FOF 923. After the summer retake, 58% of San Benito CISD's ninth graders still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 924. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that San Benito CISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iii. La Feria ISD

FOF 925. La Feria ISD is a Chapter 42 district situated in the Rio Grande Valley in South Texas. (Ex. 4235.)

FOF 926. The property value per WADA in La Feria ISD is $75,196, and its revenue per WADA is $5,559. (*Id.*)

FOF 927. La Feria ISD has an M&O tax rate of $1.04 and an I&S tax rate of $0.296. (Ex. 4235.) La Feria ISD has sought a TRE twice in recent years to increase its M&O rate above $1.04, but those elections were unsuccessful due to economic difficulties and unemployment in the community. (RR15:197.)

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FOF 928. La Feria ISD educated approximately 3,576 students in 2010-11. (Ex. 4232 at 2.) In 2010-11, Hispanic students comprised 96.2% of the total student population, African-American students comprised 0.1%, and White students comprised 3.3%. (Ex. 4015.)

FOF 929. In addition, 80.5% of La Feria students were economically disadvantaged in 2010-11 and 13.7% were ELL. (*Id.*)

FOF 930. As a result of budget cuts, La Feria ISD was forced to eliminate teaching positions, reduce summer school availability, and reduce overtime, among other measures. As a result of cuts, the district has had to increase student-teacher ratios in the classroom. (RR18:32-34, 48-49.) These cuts further limited the district's ability to provide an adequate education for its low-income and ELL students. (Ex. 4232 at 6.)

FOF 931. La Feria's superintendent testified that the district lacks funding to provide necessary interventions, including, quality professional development, extended learning time, high quality tutoring, ESL curriculum, textbooks and technologies needed to serve all ELL students, and smaller learning communities for its low-income and ELL students, solely to provide them with an adequate education. (RR15:208-09; RR18:10-40; RR14:162-63 (referencing Ex. 4231 at 37-38); Ex. 1345, Izquierdo Site Visits Report, at 7-8; RR4:92; RR22:222-23.)

FOF 932. There are mixed classrooms in La Feria ISD as well. and specifically in grades seven through eight professional development is limited, even though teachers have expressed the need for quality professional development to meet the challenge of managing both groups and both curriculum requirements simultaneously. Many of La Feria's secondary school teachers have not received adequate training for ELPS/SIOP for supporting ELLs or are not certified in ESL. (RR14:165-166 (referencing Ex. 4231 at 39); Ex. 1345, Izquierdo Site Visits Report, at 8-9; RR18:17-18, 28.) The district is unable to afford ESL curriculum; teachers are constantly having to translate their own materials and assessments; and not all classrooms have basic textbooks, technologies, and materials such as bilingual and pictures dictionaries, readers, and instructional games needed to serve all ELL students. (RR14:162-63 (referencing Ex. 4231 at 37-38); RR4:92; RR22:222-23; RR14:165-166 (referencing Ex. 4231 at 39); Ex. 1345, Izquierdo Site Visits Report, at 7-9; RR18:17-18, 28.)

FOF 933. After the first administration of the STAAR exam, 26% of La Feria's students failed to meet the Level II phase-in standard in Algebra, 35% failed Biology, 47% failed English 1 Reading, 60% failed English I Writing, and 59% failed World History. (Ex. 4232 at 9.) After the first administration, 70% of La Feria ISD's ninth graders had failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 934. Forty-four percent of economically disadvantaged students failed to meet the phase-in standard for Algebra, 50% failed Biology, 71% failed English I Reading, 83% failed English I Writing, and 70% failed World History. One hundred percent of ELL students failed English I Reading and Writing. (Ex. 4232 at 9.)

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FOF 935. At the Level II final recommended standard, only 16% of students passed Algebra and Biology, 31% passed English I Reading, 24% passed English I Writing, and only 13% passed World History. (*Id.* at 10.) No economically disadvantaged student passed at this standard. (*Id.*)

FOF 936. No student in La Feria was able to meet the Level III advanced standard in Biology, and only 1% met the standard in English I Writing and World History. (*Id.* at 11.)

FOF 937. After the summer retake, 63% of La Feria ISD's ninth graders still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 938. In 2010, on TAKS only 40% of La Feria's students were college ready in both subjects, and only 33% of grade 12 economically disadvantaged students met the standard. (Ex. 4232 at 14; Ex. 940 at 11.)

FOF 939. In 2010-11, 9.9% of La Feria ISD's students reached the state's criterion under the SAT/ACT college-readiness indicator, compared to 26.9% of students statewide. (Ex. 4015 at Sec. I, p. 11.)

FOF 940. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that La Feria ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

iv. McAllen ISD

FOF 941. McAllen ISD is a Chapter 42 district located in the Rio Grande Valley in South Texas. The property value per WADA in McAllen ISD is $202,868, and its revenue per WADA is $5,777. (Ex. 4235.)

FOF 942. McAllen ISD is taxing at an M&O rate of $1.165, just a half-cent under the statutory maximum. (Ex. 11333- 2012 Tab, column V.)

FOF 943. In 2010-11, McAllen ISD educated 25,490 students. (Ex. 589 at Sec. II, p. 1.) Of these students, 92.5% were Hispanic, 0.4% were African-American, and 4.8% were White. (Ex. 4238 at 3.) In addition, 64.9% of McAllen ISD's students were economically disadvantaged and 27.4% were ELL. (*Id.*) Over the years, the trend in McAllen ISD has been a steady decline in the number of African-American and White students and a steady increase in the number of Hispanic students. (*Id.*)

FOF 944. As a result of the budget cuts, McAllen ISD had to close a school, consolidate buildings, and reduce health benefits for teachers, in addition to making other cuts. (Ex. 4233-E. Ponce Dep., at 194-96.) The district also has $160 million in unmet facilities needs. (*Id.* at 199-200.)

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FOF 945. McAllen ISD's superintendent testified that the district lacks funding to provide necessary interventions, including smaller learning communities and class sizes for its low-income and ELL students, solely to provide them with an adequate education. (*Id.*)

FOF 946. There are insufficient funds to provide adequate technologies, textbooks, and translator/interpreter services to develop comprehensible materials for students and parents. (RR14:160-61 (referencing Ex. 4231 at 34-36); Ex. 1345, Izquierdo Site Visits Report, at 5-7.)

FOF 947. In 2010-11, McAllen had approximately 7,000 ELL students and more than 300 bilingual/ESL teachers. ELL teachers are assigned to several schools or classrooms and consequently do not have sufficient time to work effectively with ELL students. Additional middle school teachers are also needed for newcomer students who enter secondary schooling with academic gaps in their home language and require specialized support that they cannot and do not receive in a regular class. (RR14:160-61 (referencing Ex. 4231 at 34-36); Ex. 1345, Izquierdo Site Visits Report, at 5-7.)

FOF 948. The special education department in McAllen does not have sufficient assessments in Spanish and other languages to appropriately evaluate ELL students with disabilities, and the district needs additional funds for properly trained ELL special education teachers to deliver instruction utilizing second language acquisition and SIOP strategies. (Ex. 1345, Izquierdo Site Visits Report, at 5-7.)

FOF 949. Additional properly-trained personnel are further needed in McAllen to review and evaluate ELL transcripts in order to provide credit for students to meet graduation requirements and place students in the appropriate courses. Professional development for teachers and school administrators is limited due to lack of funding, and program monitoring and implementation suffer as a result. (RR14:160-61 (referencing Ex. 4231 at 34-36); Ex. 1345, Izquierdo Site Visits Report, at 5-7.)

FOF 950. In 2010-11, looking at all tests and all grades, nearly half of McAllen's ELL students failed to meet the TAKS met standard and 94% failed to reach the TAKS commended standard. (12/5 Tr. at 162-64, 167.)

FOF 951. After the first administration of the STAAR exam, almost half of McAllen's students failed English I Writing, 37% failed English I Reading, and 46% failed World History. (Ex. 4238 at 11.) After the first administration of the STAAR exam, 57% of McAllen ISD's ninth graders had failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 14.)

FOF 952. Not more than 5% of McAllen's students were able to meet the Level III advanced standard in Biology, English I Reading, or English I Writing, and no economically disadvantaged or ELL students met that standard in English I Reading, English I Writing, or Biology. (Ex. 4238 at 13.)

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FOF 953. After the summer retake, 52% of McAllen ISD's ninth graders still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 14.)

FOF 954. In 2010, 57% of grade twelve economically disadvantaged students in McAllen were not College-Ready Graduates in both subjects. (Ex. 4238 at 9; Ex. 589 at 11.) Ninety percent of McAllen's ELL students were not college ready in both subjects. (Ex. 4238 at 9; Ex. 589 at 11.)

FOF 955. While 26.9% of students statewide scored at or above the state's criterion under the SAT/ACT college-readiness indicator in the 2010-11 school year (Ex. 4227 at 14), only 15.9% of students did so in McAllen ISD. (Ex. 4238 at 10.)

FOF 956. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds McAllen ISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

v. Harlingen ISD

FOF 957. Harlingen CISD is a property-poor Chapter 42 district. The property value per WADA in Harlingen CISD is $136,166, and its revenue per WADA is $5,404. (Ex. 4235.)

FOF 958. Harlingen CISD has an M&O tax rate of $1.04. (*Id.*) It has an I&S tax rate of $0.179. (*Id.*) Harlingen CISD is taxing at $1.04 but it is not able to raise its taxes above $1.04 and therefore, TREs have not been sought. (Ex. 4233-D, Flores Dep., at 156-57 (explaining that the community just passed a bond election); Ex. 11333- 2012 Tab, Column V.)

FOF 959. In the 2010-11 school year, Harlingen CISD educated 18,339 students. (Ex. 1738.) Of these students, 0.6% were African American, 90.4% Hispanic, and 7.8% White. (Ex. 4239 at 3.)

FOF 960. Similarly, the economically disadvantaged population in 2010-11 constituted 76.9% of the total student population. (*Id.* at 4.) In 2010-11, 13.7% of Harlingen CISD students were ELL. (*Id.*)

FOF 961. Harlingen ISD lacks funding to provide necessary interventions, including quality professional development, smaller class sizes, extended learning time, full-day pre-K, sufficient services for parental involvement, increased technologies, and specialized learning communities for its low-income and ELL students, solely to provide them with an adequate education. (Ex. 4233-D, Flores Dep., at 54, 83-84, 86-91, 157, 164, 212-220; RR14:158-60 (referencing Ex. 4231 at 32-33); Ex. 1345, Izquierdo Site Visits Report, at 4-5.)

FOF 962. Teaching quality in the elementary bilingual/ESL program implementation for ELLs is weak due to a lack of funds for the quality ongoing professional development, program

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specialists, and coaches, needed to support teachers and principals. There are mixed classrooms in elementary grades, adding to the difficulties already faced by the teachers. (RR15:121, 138-139, 173.) High school ELLs have an English for Speakers of Other Languages ("ESOL")/English Language Arts teacher for part of the day; the rest of the day, ELL students have core content teachers who do not have a strong preparation in SIOP. Currently, ELL students use English or poorly translated versions of the CSCOPE curriculum, which are insufficient for their needs, and translators are needed to develop the state-required common unit assessments for the required curriculum in Spanish. (RR14:158-160 (referencing Ex. 4231 at 32-33); Ex. 1345, Izquierdo Site Visits Report, at 4-5; Ex. 4233-D, Flores Dep., at 54, 83-84, 86-91, 157, 164, 212-20[illegible]

FOF 963. In addition, there are no funds to support paraprofessionals to become teachers or to support training for teachers to receive their bilingual/ESL endorsement. (RR14:158-160 (referencing Ex. 4231 at 32-33); Ex. 1345, Izquierdo Site Visits Report, at 4-5; Ex. 4233-D, Flores Dep., at 54, 83-84, 219-20; RR15:128-29, 130, 140, 145.)

FOF 964. In 2010-11, 95% of ELL students failed to meet the TAKS commended standard in all grades and all tests. (12/5 Tr. at 162-64, 167.)

FOF 965. After the first administration of the STAAR exam, 29% of Harlingen's students failed to meet the Level II phase-in standard in Algebra; 29% failed Biology; 41% failed English 1 Reading; 53% failed English 1 Writing; and 76% failed World History. (Ex. 4239-A at 11.) After the first administration of the STAAR exam, 63% of Harlingen ISD's ninth graders had failed to meet the Level II phase-in standard on at least one EOC exam. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 966. No ELL student in Harlingen was able to meet the phase-in standard for English 1 Writing. (Ex. 4239-A at 12.) In English I Reading, 51% of low-income students passed at the Level II phase-In standard, while 59% all district students passed. (Ex. 4239 at 12.) In English I Writing, 38% of low-income students passed, compared to 47% of all students. (*Id.*) In Algebra I, 66% of low-income students passed, compared to 71% of all students. (*Id.*)

FOF 967. No Harlingen student was able to meet the Level III advanced standard in Biology or World History. Only 5% and 1% were able to meet the standard in English I Reading and Writing, respectively, and only 11% met the standard in Algebra. (Ex. 4239-A at 14.)

FOF 968. After the summer retake, 59% of Harlingen ISD's ninth graders still had not passed at least one EOC exam at the initial phase-in level and were not on track to graduate. (Ex. 6324, Moak Supp. Report One, at 7.)

FOF 969. In 2010, only 54% of Harlingen's economically disadvantaged students were considered College-Ready Graduates in both English and Mathematics. (Ex. 4239-A at 9.) Only 16.3% of Harlingen students scored at or above the state's criterion for college readiness in the SAT/ACT, compared to 26.9% of students statewide. (*Id.* at 10; Ex. 4227 at 14.)

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FOF 970. In light of the findings above and in Parts I.B.1 to I.B.9, this Court finds that Harlingen CISD lacks sufficient funds to provide a general diffusion of knowledge to its students. The district also lacks meaningful discretion to raise its tax rates to provide local enrichment programs to its students.

C. Findings of fact relating primarily to TTFSC, Edgewood, and Fort Bend ISD Plaintiffs' financial efficiency claims

1. The State has failed to provide districts with substantially equal access to funding up to the level that achieves a general diffusion of knowledge.

FOF 971. The State's duty under Article 7, Section 1 to define a general diffusion of knowledge (*see supra* FOF 84 - FOF 93 and *infra* COL 9 - COL 24) also comes with a duty to establish a school funding system that equalizes up to that level. The Supreme Court has consistently held that in order to fulfill its constitutional mandate to provide for an efficient system, the State must ensure that districts "'have substantially equal access to funding up to the legislatively defined level that achieves the constitutional mandate of a general diffusion of knowledge.'" *WOC I*, 107 S.W.3d at 571 (quoting *Edgewood IV*, 917 S.W.2d. at 730-31.) Furthermore, this funding must be available to districts at substantially equal levels of tax effort. *WOC II*, 176 S.W.3d at 790-91.

FOF 972. In the last challenge to the constitutionality of the school finance system in 2004, this Court, and later the Supreme Court of Texas, held that the then-existing school finance formulas did not create such disparities between property-poor and property-wealthy districts so as to run afoul of its duty to level up to the level of a general diffusion of knowledge. *See id.* at 791-92; *West Orange-Cove Consol. Indep. Sch. Dist. v. Neeley*, No. GV-100528, slip op. at 121 (250th Dist. Ct., Travis County Nov. 30, 2004). (*See also infra* COL 41 - COL 42.)

FOF 973. The Supreme Court noted that local supplementation *above* the level of a general diffusion is allowed, but repeated two cautions from *Edgewood IV* about the use of local supplementation: First, it reminded the State that "the amount of 'supplementation' in the system cannot become so great that it, in effect, destroys the efficiency of the entire system." *WOC II*, 176 S.W.3d at 792. Second, it warned that:

> The danger is that what the Legislature today considers to be "supplementation" may tomorrow become necessary to satisfy the constitutional mandate for a general diffusion of knowledge. Supplementation must be just that: additional revenue not required for an education that is constitutionally adequate.

Id. at 792 (quoting *Edgewood IV*, 917 S.W.2d at 732).

FOF 974. Since that time, legislative changes to the structure of the system (*see supra* Parts I.B.2.b-d. and *infra* Part I.C.1.b), combined with the $4 billion cut to the FSP (*see supra* Part I.B.2.e.) and the increased academic performance requirements (*see supra* Part I.B.3),

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have caused the system to both fail to provide substantially equal access to funding up to the level of a general diffusion of knowledge and to run afoul of the Supreme Court's warnings regarding supplementation.

a. Gross disparities in property values still exist.

FOF 975. Texas continues to rely substantially on local property taxes to fund its public schools, though property values across Texas remain incredibly disparate. Property wealth variation alone explains about half of the variation in M&O revenues per WADA. (Ex. 3188, Baker Report, at 39.) Based on funding levels for the 2011-12 school year, property values per WADA range from $22,218 (lowest) in Boles ISD to $7,341,341 (highest) in Kenedy Countywide ISD. (Ex. 4252.) Even after the wealth equalization efforts described in FOF 45 - FOF 49 above, these disparities result in wide disparities in revenue per WADA. For its 740 WADA, Boles ISD receives $5,648 per WADA while taxing at the maximum $1.17 M&O rate; in contrast, for its 145 WADA, Kennedy Countywide ISD receives $11,216 per WADA while taxing at a $1.00 M&O tax rate. (*Id.*)

FOF 976. These disparities can also be seen in various regions throughout Texas and have much more to do with what is above and below the ground, as opposed to educational need. For example, Lufkin ISD is surrounded by, but not in, oil and gas shale areas. (Ex. 3199, R. Knight Dep., at 39-40, 41-42.) Lufkin ISD generates $5,290 per WADA for M&O, but a 30-minute bus ride from Lufkin takes you to property-wealthy districts like Chireno ISD and Garrison ISD that have around $6,500 per WADA, and Carthage ISD that has around $6,700 per WADA. (*Id.* 39-40.) As La Feria ISD Superintendent Dr. Nabor Cortez testified, the property-poor districts in the Valley all wished they had their own little island like property-wealthy Point Isabel ISD: "We all would love to have an island in our district, but we don't. We don't. We are poor and we are without our island." (RR18:86-87.) Point Isabel ISD, which encompasses Padre Island, taxes at $0.98 and yet raises over $300 more per WADA than its neighbor, Los Fresnos ISD which taxes *nineteen cents higher* at $1.17. (Ex. 3207, Salazar Dep., at 12-14; Ex. 3006.)

b. Legislative changes since *WOC II* have increased the disparities in revenues available to property-wealthy versus property-poor districts.

FOF 977. In *WOC II*, the Supreme Court noted that the then-existing school finance formulas emanated from the same formulas found constitutional in 1995. *See WOC II*, 176 S.W.3d at 783-84, 791-92. However, following the 2005 *West Orange-Cove II* decision, the State made at least three significant changes under HB1 that increased the inequities to heights not seen since before 1993: the compression of M&O tax rates by one-third; the reliance on a new hold-harmless provision commonly known as "target revenue" in lieu of formula funding to fund the majority of school districts; and the introduction of unrecaptured revenue generated from the "golden pennies." (RR23:24-31.)

FOF 978. **Tax Compression:** As noted above, the post-*WOC II* legislation "compressed" districts tax rates by one-third of their 2005 rate. (*See supra* FOF 27.) A district that had been

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taxing at the $1.50 cap currently receives a basic allotment based on a $1 compressed rate. (*Id.*) However, a district with a tax rate below a dollar receives a basic allotment based on a lower compressed rate – for example, if a district had been taxing at $1.45, its compressed rate would be $0.9666. (*Id.*) While the basic allotment would be correspondingly lower, the lower compressed rate also means that the district can access its "golden pennies" at a lower tax rate. (*See supra* FOF 30.) And because the golden pennies are worth more than Tier I pennies, *compare* FOF 40 and FOF 46 *with* FOF 44 and FOF 47, the additional money gained from the two extra pennies can be significantly greater than that lost by the lower compression percentage. Because the requirement for a TRE is pegged to the $1.04 tax rate (not the compressed rate plus four cents), such a district could access all six golden pennies without a TRE. TEX. TAX CODE § 26.08(a), (n). (*See also supra* FOF 32.) Because wealthy districts were more likely to have a tax rate below $1.50, they are more likely to benefit from the tax compression scheme. (*See* RR23:151-52; Ex. 11323; Ex. 3187, Pierce Report, at 8-9.)

FOF 979. **Target Revenue:** As described earlier, "target revenue" is a hold harmless system that guarantees that a district receives, for its compressed rate, the revenue it would have received in 2005-06 or 2006-07, under the old formulas, if that amount is greater than that it receives under the new tiered system. (Ex. 1328, Casey Report, at 17; *supra* FOF 50.) Under the old formulas that form the basis of target revenue, a district might receive a "boost" in per student revenue from increased local property values in one year, that would be balanced out by a reduction in revenue the next year. (Ex. 1328, Casey Report, at 18.) But the target revenue system takes the quirks of a single year's formula results and makes them permanent, and as a result, there is no consistent relationship between a district's property wealth and/or tax effort and its target revenue. (*Id.*; RR23:28-30.) For example, although Richardson ISD was taxing at the same or higher rates than the other property-wealthy districts in the Dallas-Fort Worth area with whom it competes for teachers, Richardson received between $400 and $1,000 less per student than neighboring districts. (RR5:56-62; Ex. 4226; Ex. 4252.) The same problem of vastly different target revenues despite the same tax rate and similar property values applies to low-wealth districts. (Ex. 4000, Cortez Report, at 10.)

FOF 980. Target revenue has increased the tax rate gaps and revenue gaps among districts. (Ex. 3187, Pierce Report, at 9.) Indeed, a former cap on revenue gains resulting from compressed rates of $350 was eliminated in 2009. (Ex. 1188, Dawn-Fisher Report, at 2.) The average compressed tax rates for districts with the lowest target revenues is higher than the compressed tax rates for districts with the highest target revenues. (Ex. 3187, Pierce Report, at 9.) The average Tier I funding level for those districts with the lowest target revenue is about $1,900 per student *below* the Tier I funding level provided for the average district in the lower taxing, higher funded group. (*Id.*) This Tier I funding gap, *even at this fundamental instructional program level*, amounts to more than $50,000 less in funding for a typical elementary classroom of 22 children in the lower funded districts. (*Id.*)

FOF 981. "Target revenue" was intended to be temporary but has already been extended through at least 2017. (RR23:74-75; RR10:76, 202.) It is part of a long legislative tradition of

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"temporary" hold harmless provisions. In *Edgewood IV*, plaintiffs complained that the wealth hold harmless (which essentially has the same effect as target revenue) then in existence had a de-equalizing effect on the school finance system; but the Supreme Court analyzed the school finance system assuming the hold harmless was no longer in existence since by law (at the time of the Court's opinion *Edgewood IV*) the hold harmless was set to expire and be of no force and effect by 1996. (Ex. 3118 – Ex. 3122.) After the Supreme Court rendered its decision in *Edgewood IV*, the Legislature first extended the wealth hold harmless until the end of the 1997-1998 school year, then extended it until the end of the 1999-2000 school year, and finally made it permanent, and it lives on today through the target revenue system. (Ex. 3118 – Ex. 3125.) The Legislature's previous patterns of turning hold harmless provisions into permanent features give the Court no confidence that the target revenue system will in fact be repealed in 2017.

FOF 982. Furthermore, the need to fully fund the school finance formulas to adequate and financially efficient levels for all districts remains the core obstacle in providing a constitutionally efficient system. Simply repealing the target revenue hold harmless without a corresponding increase in formula funding would simply "level down" the revenue of the districts who require target revenue to provide a general diffusion of knowledge. Such action would do nothing to *level up* the revenue of districts on formula funding to the level of a general diffusion of knowledge – a "solution" that the Supreme Court has previously said would do nothing to cure an unconstitutional inefficiency. *WOC I*, 107 S.W.3d at 571 (quoting *Edgewood IV*, 917 S.W.2d at 729-30).

FOF 983. **Unrecaptured Golden Pennies:** Under "Tier II-A" or the "golden pennies," school districts are guaranteed up to the greater of Austin ISD's property wealth per WADA, or $59.97 per WADA, for the first six pennies above the compressed tax rate. (*See supra* FOF 44.) School districts with wealth levels exceeding these amounts are allowed to keep all of their revenue. (*See supra* FOF 47.) This is the first time since before Senate Bill 7 was enacted in 1993 that the Legislature has allowed school districts to generate unequalized revenue from M&O pennies. (Ex. 4000, Cortez Report, at 8; RR23:27.) For pennies above $1.04, districts must hold a TRE. (RR23:51; *supra* FOF 32.) The ability to raise all six golden pennies without an election benefited a far greater percentage of property-rich districts compared to property-poor districts because many property-rich districts were not previously taxing at the $1.50 rate and, therefore, were compressed to rates at or below $.98. (RR23:151-52; Ex. 11323; Ex. 3187, Pierce Report, at 8-9.)

FOF 984. Although the golden pennies were intended to supplement a basic adequate education, the more rigorous standards and expectations for all students and school districts, coupled with rising costs and the recent budget cuts, have forced school districts to use revenue generated from those pennies for a basic adequate education. (RR15:196-97, 199-209; RR3:156-57; RR19:165.) This was confirmed by even the property-wealthy school districts that generate substantially greater funds at those levels of tax effort compared to property-poor school districts. (Ex. 5617, Reedy Dep., at 79; Ex. 4224-I, Patek Dep., at 60; Ex. 5618, Wiggins Dep., at 93-94.) Because the "golden pennies" are now necessary for a general diffusion of knowledge, it is appropriate to consider the revenue generated

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from the golden pennies for purposes of determining whether the system is financially efficient. (*See supra* FOF 972; RR23:110-11.) *See also WOC II*, 176 S.W.3d at 792 (quoting *Edgewood IV*, 917 S.W.2d at 732).

c. Unacceptably large disparities result in most districts being unable to access enough revenue to provide a general diffusion of knowledge.

FOF 985. As noted in Part I.B.7.f above, the Court was informed by three estimates of adequacy, which indicated that districts need a range of between $6,176 and $6,576 per 2010-11 WADA, which is equivalent to between $6,542 and $6,966 per 2011-2012 WADA,[18] in FSP funding in order to provide a general diffusion of knowledge. All three estimates reveal the system to be significantly underfunded and inadequate as a whole. Likewise, all three estimates reveal that the current system is inefficient, in that the disparities in funding allow some districts to generate enough revenue to achieve adequacy, while others cannot. *Cf. Edgewood I*, 777 S.W.2d at 397 (concluding that the system was neither "financially efficient nor efficient" in the sense of providing the resources necessary for a "general diffusion of knowledge," and "therefore it violates *article VII, section I of the Texas Constitution*." (emphasis added)).

FOF 986. **Updated *Edgewood IV* Calculation:** In *Edgewood IV*, the Court stated, in footnote 10: "Based on the evidence at trial, the district court found that meeting the accreditation standards, which is the legislatively defined level of efficiency that achieves a general diffusion of knowledge, requires about $3,500 per weighted student." (RR9:122.) *See also Edgewood IV*, 917 S.W.2d at 755 and n.10. As described in Part I.B.7.e above, when adjusted for inflation, this number is equivalent to $6,576 in 2011 (or $6,966 in terms of 2011-12 WADA), and is a reasonable and credible estimate of the cost of achieving a general diffusion of knowledge. (RR9:123; RR16:23-26.)

FOF 987. As of 2011-12, at most 159 districts taxing up to $1.04 in M&O could raise $6,576 in revenue per WADA (using the 2010-11 definition of WADA). (RR9:159-60.) This means that at least 894 districts could not, without a TRE, raise the inflation adjusted revenue amount that the Supreme Court determined necessary to achieve a general diffusion of knowledge under the prior academic standards. (*Id.*)

FOF 988. As of 2011-12, at most 233 districts taxing up to $1.17 in M&O could raise $6,576 in revenue per WADA (using the 2010-11 definition of WADA). (Ex. 3094; Ex. 3095; Ex. 3096; Ex. 3097; Ex. 3098; RR9:124-29.) This means that at least 791 districts could not raise the inflation adjusted revenue amount that the Supreme Court determined necessary to achieve a general diffusion of knowledge under the prior academic standards while

[18] *See* FOF 53, FOF 80, and FOF 455, which explain the change in the way WADA was calculated between 2010-11 and 2011-12.

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taxing within legal limits ($1.17 or below). (Ex. 3094; Ex. 3095; Ex. 3096; Ex. 3097; Ex. 3098.)[19]

FOF 989. **Odden Estimate with Moak Adjustment:** Dr. Odden used an evidence-based approach to determine the cost of providing the appropriate interventions to meet the state's standards. (*See supra* Part I.B.7.c.) His estimate indicates that districts need, on average, $6,176 per 2011 WADA or $6,542 per 2012 WADA. (*See supra* FOF 455.)

FOF 990. According to the State's own data, as of 2011-12, at most 142 districts, taxing at $1.04 in M&O, could raise $6,542 per WADA. (Ex. 5660 at Tab "2012," Column N.) This means that at least 882 districts in the state cannot raise the Odden estimate of the average revenue amount necessary to achieve a general diffusion of knowledge without a TRE.

FOF 991. As of 2011-12, at most 259 districts, taxing at the $1.17 cap, could raise $6,542 per WADA. (Ex. 5660 at Tab "2012," Column R.) This means that at least 765 districts cannot raise the Odden estimate of average revenue amount necessary to achieve a general diffusion of knowledge because to do so would require exceeding legal limits.

FOF 992. **Moak Estimate:** Mr. Lynn Moak testified that districts need, on average, $1,000 more per WADA, which translates to $6,562 per 2011 WADA or $6,951 per 2012 WADA. (*See supra* Part I.B.7.d. and FOF 455.)

FOF 993. As of 2011-12, at most 98 districts, taxing at $1.04 in M&O, could raise $6,542 per WADA. (Ex. 5660 at Tab "2012," Column N.) This means that at least 944 districts in the state cannot raise the Moak estimate of the average revenue amount necessary to achieve a general diffusion of knowledge without a TRE.

FOF 994. As of 2011-12, at most 149 districts, taxing at the $1.17 cap, could raise $6,951 per WADA. (Ex. 5660 at Tab "2012," Column R.) This means that at least 875 districts cannot raise the Moak estimate of the average revenue amount necessary to achieve a general diffusion of knowledge because to do so would require exceeding legal limits.

FOF 995. A system that allows some districts to raise the revenue amount necessary to achieve a general diffusion of knowledge while others cannot do so at substantially similar tax rates does not provide "'substantially equal access to funding up to the legislatively defined level that achieves the constitutional mandate of a general diffusion of knowledge,'" *WOC I*, 107 S.W.3d at 571 (quoting *Edgewood IV*, 917 S.W.2d. at 730-31), and is unconstitutionally inefficient.

[19] The listing of those districts that could reach $6,576 at $1.17 or less and those that could not reach $6,576 within the legal limits is in Exhibit 3098. (RR9:123-24; Ex. 3098 at 1.)

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2. Analysis of the "gaps" reveal that school districts do not have substantially equal access to similar revenue at similar tax efforts.[20]

FOF 996. The Court heard from two financial efficiency experts who conducted analyses for the plaintiff districts, Dr. Wayne Pierce and Dr. Albert Cortez. Although the two experts used slightly different methodologies, both the "weighted" average analysis by Dr. Albert Cortez and the "simple" average analysis by Dr. Wayne Pierce reveal great disparities among the wealthiest and poorest percentiles. (*See generally* Ex. 4000, Cortez Report; Ex. 4225, Cortez Supp. Report; Ex. 4251, Cortez 2nd Supp. Report; Ex. 3187, Pierce Report.) The Court finds the testimony of these witnesses to be highly credible, competent and reliable in assisting the Court with determining whether school districts "have substantially equal access to similar revenues per pupil at similar levels of tax effort," and adopts their testimony and the reports their testimonies rely on. (*See generally* Ex. 4225, Cortez Supp. Report.)

FOF 997. The comparison of districts by decile (which amounts to approximately 100 districts in each grouping) is similar to the analysis of the 100 wealthiest and 100 poorest districts relied upon by the Court in *Edgewood I*. *See Edgewood I*, 777 S.W.2d at 392-93. The decile comparison also is similar to the quintile comparison in *Edgewood IV*, analyzing tax efforts needed to raise the amount needed for an adequate education between the three highest wealth groups of districts (totaling 15%) and the three lowest wealth districts (totaling 15%). *See Edgewood IV*, 917 S.W.2d at 731 & n.12.

FOF 998. Whether you look at the gap in tax rates, or the gap in tax rates to generate the revenue necessary for a general diffusion of knowledge, or the gap in revenue between the highest property-wealth districts and the lowest property wealth districts with 5, 10, 15, or 20% of the WADA, each has increased from 2005-06 to 2011-12. (*See generally* Ex. 3100-3117; Ex. 4000, Cortez Report, at 15-23; Ex. 4225, Cortez Supp. Report; Ex. 4251, Cortez 2nd Supp. Report (showing similar gaps for years 2009-10 thru 2011-12).) Correspondingly, the average classroom disadvantage that the lowest property-wealth districts with 5, 10, 15, or 20% of the WADA experience has increased from 2005-06 to 2011-12. (Ex. 3106; Ex. 3111; Ex. 3114; Ex. 3117.)

FOF 999. This gross inequity in the system led parents, taxpayers, and approximately one-half of the school districts across Texas to challenge the financial inefficiency of the current school finance system. This is a substantial increase from the *West Orange-Cove* litigation in 2004-05. These include the TTSFC Plaintiff group, the Fort Bend ISD plaintiff group, and the Edgewood plaintiff group. These districts also enroll well over one-half of the Texas public student population. (*See supra* FOF 2, FOF 4, FOF 5.)

[20] The following analyses all use data from the 2011-12 school year, because the data for 2012-13 school year will not be finalized until the spring of 2014. (RR9:49-52; Ex. 4240 at 3-4; RR23:33-34, 104.) The Court further notes that, aside from the substantial budget cuts implemented for the 2011-12 school year, which negatively affected all school districts, there were no significant changes between the 2010-11 and the 2011-12 school year (1/8 Tr. at 165-73.)

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a. Property-poor districts must tax at substantially higher rates than property-wealthy school districts.

FOF 1000. In 1995, the Texas Supreme Court determined that a nine-cent difference among tax rates between property-wealthy and property-poor districts to raise the M&O *and* I&S funds necessary to provide an adequate education was not so significant as to violate the efficiency requirement of Article VII, Section 1. *Edgewood IV*, 917 S.W.2d at 731.[21] Because the Supreme Court's determination was prior to the compression of tax rates by legislative action in 2006, *see* FOF 27 above, and was meant to cover maintenance and operation and facilities funding, *see Edgewood IV*, 917 S.W.2d at 731, this Court finds that under the current compressed system, the 9-cent difference now is more equivalent to a maximum five-to-six-cent difference in M&O tax rates.

i. Property-poor districts must levy higher M&O taxes.

(a) Dr. Albert Cortez's weighted average analyses demonstrate that property-poor districts must tax at substantially higher rates in order to achieve a general diffusion of knowledge.[22]

FOF 1001. Dr. Cortez performed a series of "weighted average" analyses of the funding disparities between school districts in Texas using finalized school finance data from TEA for the school years 2009-10, 2010-11 and 2011-12.[23] (*See generally* Ex. 4000, Cortez Report; Ex. 4225, Cortez Supp. Report; Ex. 4251, Cortez 2nd Supp. Report.) The "weighted" approach is computed by grouping districts by percentile or decile, summing up the numerator variable (for example, property values) for each decile group and then dividing that total by another variable totaled among the grouping (for example, WADA), and then reporting the weighted average (wealth per WADA in this example) for each grouping. (RR23:34-36.)

FOF 1002. Using this approach, Dr. Cortez compared the revenue generated by the wealthiest districts that collectively enroll 15% of the statewide WADA ("top 15%") to the poorest

[21] At the time of *Edgewood IV*, the formula funding included both maintenance and operations and facilities funding; today, facilities are funded largely through I&S for which there is no recapture. The disparity in taxes and access to revenue between property-wealthy and property-poor districts would increase even greater if I&S were included. (RR23:94; *see* Ex. 3187, Pierce Report, at 13-14.)

[22] The Court notes that the findings regarding the analyses performed by Dr. Cortez are based on corrected data provided by TEA in January 2013, after the cross-examination of Dr. Dawn-Fisher revealed that the State's original data set contained errors. Dr. Cortez had used the State's data in order to prevent the State from questioning the reliability of his data. The Court finds that the supplemental analysis performed by Dr. Cortez, however, is consistent with his findings and opinions elicited in his testimony in this case. (*See generally,* Ex. 4251, Cortez 2nd Supp. Report, at 14-16). Therefore, although the final numbers changed slightly between his initial report (Ex 4225, Cortez Supp. Report) and his final report (Ex. 4251, Cortez 2nd Supp. Report), they do not substantively change his opinions reflecting the inequity in the system (indeed, many of the gaps *increased* between property-wealthy and property-poor districts from his prior analysis), and the Court relies on his opinions and reports accordingly.

[23] Both the State's and Calhoun County's equity experts incorrectly criticized Dr. Cortez for failing to analyze the financial efficiency system through a "weighted analysis," though he did in fact do so. (RR21:70; 1/8 Tr. at 108.)

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districts that enroll 15% of the WADA ("bottom 15%"); he compared weighted deciles of school districts; and he compared recapture districts to non-recapture districts. Dr Cortez conducted these comparisons using yields based on both the revenue generated at the adopted M&O tax rates and that generated at the maximum $1.17 tax rates. (*See generally* Ex. 4000, Cortez Report; Ex. 4225, Cortez Supp. Report; Ex. 4251, Cortez 2nd Supp. Report.) According to Mr. Wisnoski, former TEA Deputy Associate Commissioner for School Finance, the decile analysis is the same type of analysis utilized by TEA for a number of years, and he disaggregated school districts by wealth in a similar manner when presenting the Court with an overview of the Texas school finance system in this case (though this analysis was not an equity analysis.) (*Compare* Ex. 4240 at 9 and Ex. 5675, Wisnoski Dep., at 119-20 *with* Ex. 3241 at 152.)

FOF 1003. Under each of the methods employed by Dr. Cortez, the gap between the tax rate that the poorest 10% or 15% and the wealthiest 10% or 15% would need to raise the revenue necessary to achieve a general diffusion of knowledge is substantially greater than both the $0.09 gap and the adjusted $0.06 gap to raise the amount necessary to achieve adequacy that was allowed in *Edgewood IV*. (*See infra* FOF 1004 - FOF 1008.) Furthermore, under each, the bottom 15% and the bottom seven to eight deciles would have to tax above the legal limit to have enough revenue to provide a general diffusion of knowledge. (*Id.*)

FOF 1004. **Analysis comparing the top 15% and bottom 15% using district yields at adopted M&O tax rates:** Using 2011-12 yields, the poorest districts that collectively enroll 15% of the state's WADA ("bottom 15%") must tax at substantially higher rates than the wealthiest districts that enroll 15% of the WADA ("top 15%") in order to generate revenue amounts near the estimates of adequacy provided in this case. (*See* Ex. 4251, Cortez 2nd Supp. Report, at 12.) Under each of these estimates, the bottom 15% could not raise the revenue necessary for a general diffusion of knowledge under the current system because the maximum rate is $1.17. (*Id.*) Specifically:

a. To generate $6,580 in revenue per WADA, an amount close to both the $6,576 per 2010-11 WADA adequacy estimate based on the *Edgewood IV* calculation and the $6,562 per 2010-11 WADA adequacy figure based on the testimony of Mr. Moak, the bottom 10% would need to tax at $1.28, whereas the highest wealth districts need only tax at $0.96. (*Id.*)

b. At $6,000, an amount close to the average FSP spending needed per 2010-11 WADA under the adequacy estimate provided by Mr. Odden, the top 15% have a thirty-cent advantage ($.88 v. $1.18). (*Id.*)

c. At $7,000, an amount close to the *Edgewood IV* and Moak estimates per 2011-12 WADA, the top 15% have a thirty-five-cent advantage ($1.03 v. $1.38).[24] (*Id.*)

[24] Even at levels below the various adequacy estimates, the tax gaps are substantial. At $5,000, the wealthiest districts enjoy a 24-cent tax advantage ($0.74 v. $0.98); at $5,500, the wealthiest districts have a 27-cent tax advantage ($0.81 v. $1.08). (Ex. 4251, Cortez 2nd Supp. Report, at 12.) Although the evidence did not establish that school districts could provide an adequate education for $5,000, the figure does reflect an amount that is

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FOF 1005. **Analysis comparing the top 15% and bottom 15% using district yields at $1.17:** When analyzing the same two sets of districts using the yields generated at the maximum $1.17 M&O rate, similar substantial gaps can be found. Here again, under each of these estimates, the bottom 15% could not raise the revenue necessary for a general diffusion of knowledge under the current system because the maximum rate is $1.17. (*Id.* at 13.) Specifically:

a. To generate $6,500 per WADA, the bottom 15% would need to tax at $1.31, while the top 15% need only tax at $1.01 – a thirty-cent advantage for the highest wealth districts. (*Id.)*

b. At $6000, the top 15% have a twenty-seven-cent advantage ($0.92 v. $1.21). (*Id.*)

c. At $7,000, the top 15% have a thirty-two-cent advantage ($1.09 v. $1.41).[25] (*Id.*)

FOF 1006. Dr. Cortez's top versus bottom 15% of WADA analyses demonstrate that the current system does not provide school districts with substantially equal access to similar revenue at similar tax effort up to the level of a general diffusion of knowledge.

FOF 1007. **Analysis comparing the top and bottom deciles using district yields at adopted M&O rates:** A significant gap is also found when analyzing the level of M&O tax effort required by each decile of school districts to generate revenue to meet the various estimates of adequacy using districts' yields at their 2011-12 adopted tax rates. (RR23:47-49, 53-54.) Here again, the Court notes that under each estimate of adequacy, the poorest decile of districts could not reach the necessary level of funding because to do so would require taxing above the $1.17 cap, nor could any of the other districts in the bottom seven deciles. (Ex. 4251, Cortez 2nd Supp. Report, at 6.) Specifically:

a. For the 2011-12 school year, to generate $6,500 in revenue per WADA, the poorest decile of districts would need to tax at $1.28 for M&O while the wealthiest decile could have generated the same amount at $0.86, a substantial difference of $0.42 in taxes. (*Id.*)

b. To generate $7,000 in revenue per WADA, the poorest decile of districts would be required to tax at $1.38 compared to $0.92 for the wealthiest decile, a difference of $0.46 cents in taxes. (*Id.*) At $6,000, there is a $0.39 tax gap. (*Id.*)[26]

FOF 1008. **Analysis comparing the top and bottom deciles using district yields at $1.17:** A substantial gap is also found when analyzing the level of M&O tax necessary to generate sufficient revenue to meet the adequacy estimates using districts' yields at $1.17. (RR23:54-55.) Here again, the Court notes that under each estimate of adequacy, the

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approximate to the basic allotment of $4,765 adopted in 2009 and adjusted for inflation through the 2011-12 school year. (RR23:47-48.)

[25] At $5,000, the wealthiest districts enjoy a 23-cent tax advantage ($0.78 v. $1.01); at $5,500, the wealthiest districts have a 25-cent tax advantage ($0.86 v. $1.11). (Ex. 4251, Cortez 2nd Supp. Report, at 13.)

[26] Similar gaps can be found at $5,000 ($0.33 tax gap) and $5,500 ($0.35 tax gap). (*Id.* at 6.)

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poorest decile of districts could not reach the necessary level of funding because the maximum M&O rate needed to do so would require taxing above the $1.17 cap, nor could any of the other districts in the bottom eight deciles. (Ex. 4251, Cortez 2nd Supp. Report, at 7.) Specifically:

a. To generate $6,500 in revenue per WADA in 2011-12, the poorest decile of districts would be required to tax at $1.30 for M&O, while the wealthiest could tax at $0.92, a substantial difference of $0.38 in taxes. (*Id.*)

b. Similar gaps can be found at $6,000 ($0.35 tax gap); and $7,000 ($0.42 tax gap. (*Id.*)[27]

FOF 1009. **Revenue gaps between recapture and non-recapture districts:** The Court also compared revenue per WADA between average recapture and average non-recapture school district groupings[28] to generate various levels of revenue. The Court notes that, in contrast to years past when the Court could look at the school finance formulas in order to determine funding levels between Chapter 41 and Chapter 42 school districts, since 2006, school districts have not been funded solely through the formulas and school districts are recaptured at two vastly different levels, $476,500 per WADA (Tier I) and $319,500 per WADA (Tier II-B).[29] The vast majority (over 95%) of revenue recaptured is at the $476,500 level. Furthermore, there are not very many school districts taxing at rates above the golden pennies where their revenue would be recaptured at the $31.95 level. (RR23:56-58; Ex. 4251, Cortez 2nd Supp. Report, at 8-9; Ex. 5675 at 99-100.) Thus, the Court finds it appropriate where the analysis examines "recapture" districts as those with wealth levels above $476,500 and compares those districts to districts with wealth below $476,500 ("non-recapture").

FOF 1010. In comparing recapture to non-recapture districts, the Court finds the same unconstitutionally large gaps in tax rates, and that non-recapture districts are not able to generate sufficient revenue to achieve a general diffusion of knowledge. Specifically:

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[27] At $5,000, there is $0.29 tax gap; at $5,500 there is a $0.32 tax gap. (*Id.* at 7.) A significant gap is also found in analyzing the level of tax effort required by each decile of school districts using districts' yields for the 2010-11 school year. (*Id.* at 5; RR23:49-51.) To generate $6,500 in revenue per WADA, the poorest decile of districts would have needed to tax at $1.28 while the wealthiest could have taxed at $0.87, a substantial difference of $0.41 in taxes. (Ex. 4225, Cortez Supp. Report, at 5.) The Court notes that the poorest decile of districts could not reach that level of funding because the maximum M&O rate is $1.17, nor could any of the other districts in the bottom 7 deciles of districts. Similarly substantial gaps between the wealthiest and poorest deciles can be found in the other levels of revenue at $5,000 ($0.32 tax gap); $5,500 ($0.34 tax gap); $6,000 ($0.38 tax gap); and $7,000 ($0.44 tax gap). (*Id.*) Substantial gaps are also found between the wealthiest and poorest decile of districts for the 2010-11 school year when analyzing the yields generated at the maximum $1.17 M&O rate. (*Id.* at 6; RR23:52-53.)

[28] The Court notes that the grouping of districts in such broad categories as "recapture" and "non-recapture" districts tends to understate the real differences among property-wealthy and property-poor districts because districts with wealth levels up to $476,499 are included in the non-recapture districts. Even so, the analysis demonstrates the gross inequities in the system among Texas school districts based on their incredibly disparate property wealth.

[29] In 2005-06, the equalized wealth level was $305,000. ((Ex. 1188, Dawn-Fisher Report, at 4; 1/8 Tr. at 130.) In *Edgewood IV,* the equalized wealth level was $280,000. 917 S.W.2d at 728.

a. For the 2011-12 school year, to generate $6,500 in revenue per WADA at yields based on adopted tax rates, the non-recapture districts would have to tax at $1.23 compared to $0.94 for recapture districts, a substantial difference of $0.29. The Court notes that the non-recapture districts could not reach that level of funding because the maximum M&O rate is $1.17. (Ex. 4251, Cortez 2nd Supp. Report, at 10.) Similarly substantial gaps between recapture and non-recapture districts can be found in other levels of revenue at $5,000 ($0.22 tax gap); $5,500 ($0.25 tax gap); $6,000 ($0.27 tax gap); and $7,000 ($0.31 tax gap). (*Id.*)

b. For the 2011-12 school year, to generate $6,500 in revenue per WADA at yields based on the $1.17 maximum tax rate, the non-recapture districts would have to tax at $1.26 compared to $0.99 for recapture districts, a substantial difference of $0.27. (*Id.* at 11.) Similarly substantial gaps between recapture and non-recapture districts can be found in other levels of revenue at $5,000 ($0.21 tax gap); $5,500 ($0.23 tax gap); $6,000 ($0.25 tax gap); and $7,000 ($0.29 tax gap). (*Id.*)

c. Similarly substantial gaps in revenue and tax rates between recapture and non-recapture school districts were found for the 2010-11 and 2009-10 school years. (Ex. 4225, Cortez Supp. Report, at 9; Ex. 4000, Cortez Report, at 22-23.)

FOF 1011. Based on Dr. Cortez's analysis of three years of data, the Court finds unconstitutionally substantial gaps in tax rates between low property wealth and high property wealth school districts.

(b) Dr. Pierce's simple average analyses demonstrate that property-poor districts must tax at substantially higher rates in order to generate the same amount of revenue as their property-wealthy counterparts.

FOF 1012. Dr. Pierce performed a series of "simple average" analyses of the funding disparities between school districts in Texas. (RR9:33-35.)[30] For each analysis, he began by sorting the districts by property wealth per WADA. He then grouped the districts into percentiles. In some analyses, he calculated the percentiles by district (e.g. out of 1,024, the "top 10%" would be the 102 wealthiest districts), in others he calculated the percentiles by WADA (e.g., out of 1,024 districts with a statewide WADA of 5,670,091, the top 10% would be the 181 wealthiest districts that collectively enroll 10% (570,686) of the statewide WADA). Dr. Pierce then calculated the average tax rate the bottom ten, fifteen, and twenty percent of districts would have to levy in order to receive the same average revenue as the top ten, fifteen, or twenty percent. The simple average was

[30] The State criticized Dr. Pierce for using simple averages but the Court finds that school districts are funded on an individual basis and, thus, a simple average explains the reality of the differences among school districts. (1/8 Tr. at 45-52.) Further, the Court notes that the State uses simple averages in determining the basic allotment for funding charter schools. (1/9 Tr. at 4-6.)

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calculated by summing the applicable variable (e.g. tax rate) and dividing by number of districts in the percentile (to get average tax rate in this example).

FOF 1013. As detailed below, the bottom percentiles would have to tax between forty-one and sixty-six cents higher than the top percentiles to receive the same M&O revenue as the top percentiles currently receive. Under each of these calculations, the property-poor districts can never obtain the revenue that the property-wealthy receive, because the property-poor districts would have to tax higher than the $1.17 cap for M&O. Specifically:

a. **Sorting all districts by wealth and grouping by percentiles of districts:** In order for the 10% of districts with the lowest property wealth (bottom 10%) to receive the same M&O revenue per WADA as the 10% of districts with the highest property wealth (top 10%) receive ($7,998 per WADA), the bottom 10% of districts would have to tax, on average, $0.66 higher than the top 10%. (Ex. 3011 at 1.) Comparing the bottom 15% of districts to the top 15%, the bottom 15% of districts would have to tax, on average, $0.54 higher than the top 15% in order to receive the same revenue. (Ex. 3011 at 1; RR9:53.) Comparing the bottom 20% of districts to the top 20%, the bottom 20% of districts would have to tax, on average, $0.44 higher than the top 20% in order to receive the same revenue. (Ex. 3011 at 1.)

b. **Sorting all districts by wealth and grouping by percentiles of WADA:** In order for the districts with the lowest property wealth enrolling 10% of the WADA (bottom 10%) to receive the same revenue per WADA as the districts with the highest property wealth enrolling 10% of the WADA (top 10%), the bottom 10% of districts would have to tax, on average, $0.48 higher than the top 10%. (Ex. 3026 at 1.) Comparing the bottom 15% of districts to the top 15%, the bottom 15% would have to tax, on average, $0.46 higher than the top 15% in order to receive the same revenue. (*Id.*) Comparing the bottom 20% to the top 20%, the bottom 20% of districts would have to tax, on average, $0.41 higher than the top 20% in order to receive the same revenue. (*Id.*)

FOF 1014. Because wealthy districts are able to receive more revenue at lower tax rates, and therefore have lower average tax rates, using current tax rates underestimates the potential disparities in the system. In order to determine how much disparity there is in the system as a whole, and whether the amount of supplementation has become so great as to destroy the efficiency of the entire system, Dr. Pierce performed the same analysis using the maximum M&O revenue available to the top and bottom percentiles at the $1.17 cap. As detailed below, the bottom percentiles would have to tax between $0.51 and $1.02 cents higher than the top percentiles to receive the same M&O revenue as the top percentiles. Under each of these calculations, the property-poor districts can never obtain the revenue that the property-wealthy districts receive, because the property-poor districts would have to tax higher than the $1.17 cap for M&O. Specifically:

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a. **Sorting all districts by maximum M&O revenue per WADA ($1.17) and grouping by percentiles of districts:** In order for the 10% of districts with the lowest M&O revenue per WADA at $1.17 (bottom 10%) to receive the same M&O revenue per WADA that the 10% of districts with the highest M&O revenue per WADA at $1.17 (top 10%) can raise at $1.17, the bottom 10% would have to tax, on average, $1.02 higher than the top 10%, or at the rate of $2.19. (Ex. 3069 at 1.) In order for the bottom 15% of districts to receive the same M&O revenue per WADA that the top 15% can raise at $1.17, the bottom 15% would have to tax, on average, $0.78 higher than the top 15%, or at the rate of $1.95. (*Id.*) In order for the bottom 20% of districts to receive the same M&O revenue per WADA that the top 20% can raise at $1.17, the bottom 20% would have to tax, on average, $0.64 higher than the top 20%, or at the rate of $1.81. (*Id.*)

b. **Sorting all districts by maximum M&O revenue per WADA ($1.17) and grouping by percentiles of WADA:** In order for the districts with the lowest M&O revenue per WADA at $1.17 enrolling 10% of the WADA (bottom 10%) to receive the same M&O revenue per WADA that the districts with the highest M&O revenue per WADA at $1.17 enrolling 10% of the WADA (top 10%) can raise at $1.17, the bottom 10% would have to tax, on average, $0.66 higher than the top 10%, or at the rate of $1.83. (Ex. 3075 at 1.) In order for the bottom 15% of districts to receive the same M&O revenue per WADA that the top 15% can raise at $1.17, the bottom 15% would have to tax, on average, $0.57 higher than the top 15%, or at the rate of $1.74. (*Id.* at 1.) In order for the bottom 20% to receive the same M&O revenue per WADA that the top 20% can raise at $1.17, the bottom 20% would have to tax, on average, $0.51 higher than the top 20%, or at the rate of $1.68. (*Id.* at 1.)

FOF 1015. Because not all districts have an I&S tax rate, Dr. Pierce also performed the same type of analyses using just those districts that levied I&S taxes during the 2011-12 school year and calculated the revenue and tax rate gaps between the top and bottom percentiles in the same fashion. (FOF 71-72; Ex. 3187, Pierce Report, at 13.) Under this way of analyzing the data, the bottom percentiles would have to tax $0.42 to $0.49 cents higher and, once again, could not raise the amount the top percentiles receive without violating the $1.17 cap:

a. **Sorting only districts that have an I&S tax rate by wealth and grouping by percentiles of WADA:** In order for the districts with the lowest property wealth enrolling 10% of the WADA (bottom 10%) to receive the same M&O revenue per WADA as the districts with the highest property wealth enrolling 10% of the WADA (top 10%), the bottom 10% would have to tax, on average, $0.49 higher than the top 10%. (Ex. 3033 at 1.) Comparing the bottom 15% to the top 15%, the bottom 15% would have to tax, on average, $0.47 higher than the top 15%. (*Id.*) Comparing the bottom 20% to the top 20%, the bottom 20% would have to tax, on average, $0.42 higher than the top 20%. (*Id.*)

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ii. Property-poor districts must levy substantially higher I&S rates in order to raise the same amount of facilities revenue as their property-wealthy counterparts.

FOF 1016. Using the same process of sorting by wealth per WADA and grouping into percentiles of districts or WADA detailed in FOF 1012, Dr. Pierce calculated the average tax rate the bottom ten, fifteen, and twenty percent of districts would have to levy in order to receive the same average revenue as the top ten, fifteen, or twenty percent. (RR9:101-03.) As detailed below, the bottom percentiles would have to tax between $0.58 and $0.86 higher than the top percentiles to receive the same I&S revenue as the top percentiles receive, and between $2.50 and $6.01 higher to receive the same maximum I&S revenue that the top percentiles could raise at the $0.50 limit. Under each of these calculations, the property-poor districts can never obtain the revenue that the property-wealthy districts receive, because the property-poor districts would have to exceed the de facto $.50 cent cap for I&S created by the 50-cent debt test. (*See supra* FOF 406, FOF 512.) Specifically:

FOF 1017. **Sorting only districts that have an I&S tax rate by wealth and grouping by percentiles of WADA:** In order for the districts with the lowest property wealth enrolling 10% of the WADA (bottom 10%) to receive the same revenue per WADA as the districts with the highest property wealth enrolling 10% of the WADA (top 10%), the bottom 10% would have to tax for I&S, on average, $0.86 higher than the top 10%. (Ex. 3036 at 1.) In order for the bottom 15% of districts to receive the same I&S revenue per WADA as the top 15%, the bottom 15% would have to tax , on average, $0.74 higher than the top 15%. (*Id.*) In order for the bottom 20% of districts to receive the same I&S revenue per WADA as the top 20%, the bottom 20% would have to tax, on average, $0.58 higher than the top 20%. (*Id.*)

FOF 1018. **Sorting all districts by maximum I&S revenue per WADA ($0.50) and grouping by percentiles of districts:** In order for the 10% of districts with the lowest I&S revenue per WADA at $0.50 (bottom 10%) to receive the same I&S revenue per WADA that the 10% of districts with the highest I&S revenue per WADA at $0.50 (top 10%) can raise, the bottom 10% would have to tax, on average, $6.01 higher than the top 10%, or at the rate of $6.51. (Ex. 3072 at 1.) In order for the bottom 15% of districts to receive the same I&S revenue per WADA that the top 15% can raise at $0.50, the bottom 15% would have to tax, on average, $4.13 higher than the top 15%, or at the rate of $4.63. (*Id.*) In order for the bottom 20% of districts to receive the same I&S revenue per WADA that the top 20% can raise at $0.50, the bottom 20% would have to tax, on average, $3.15 higher than the top 20%, or at the rate of $3.65. (*Id.*)

FOF 1019. **Sorting all districts by maximum I&S revenue per WADA ($0.50) and grouping by percentiles of WADA:** In order for the districts with the lowest I&S revenue per WADA at $0.50 enrolling 10% of the WADA (bottom 10%) to receive the same I&S revenue per WADA that the districts with the highest I&S revenue per WADA at $0.50 enrolling 10% of the WADA (top 10%) can raise at $0.50, the bottom 10% would have to tax, on average, $2.97 higher than the top 10%, or at a rate of $3.47. (Ex. 3078 at 1.) In order for the bottom 15% of districts to receive the same I&S revenue per WADA that

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the top 15% can raise at $0.50, the bottom 15% would have to tax, on average, $2.78 higher than the top 15%, or at a rate of $3.28. (*Id.*) In order for the bottom 20% of districts to receive the same I&S revenue per WADA that the top 20% can raise at $0.50, the bottom 20% would have to tax, on average, $2.50 higher than the top 20%, or at a rate of $3.00. (*Id.*)

iii. Property-poor districts must levy substantially higher total (M&O and I&S) tax rates in order to raise the same amount of revenue as their property-wealthy counterparts.

FOF 1020. Using the same process of sorting districts by wealth per WADA, and grouping into percentiles of districts or WADA as described in FOF 1012, Dr. Pierce also calculated the average total tax rate (combined M&O and I&S) the bottom ten, fifteen, and twenty percent of districts would have to levy in order to receive the same total revenue per WADA that the top ten, fifteen, or twenty percent receive, or could receive at the maximum rates. As detailed below, the bottom percentiles would have to tax between $1.00 and $1.96 higher than the top percentiles to receive the same total revenue as the top percentiles currently receive, and between $3.08 and $6.65 higher than the top percentiles to receive the revenue the top percentiles could receive at the maximum allowable total tax rate ($1.67). Under each of these calculations, the property-poor districts can never obtain the revenue that the property-wealthy receive, because to do so would require, on average, a total tax in excess of the combined legal limit ($1.67). Specifically:

a. **<u>Sorting only districts that have an I&S tax rate by wealth and grouping by percentiles of districts</u>:** In order for the 10% of districts with the lowest property wealth (bottom 10%) to receive the same total revenue per WADA as the 10% of districts with the highest property wealth (top 10%), the bottom 10% would have tax, on average, $1.96 higher than the top 10%. (Ex. 3022 at 1.) Comparing the bottom 15% of districts to the top 15%, the bottom 15% of districts would have to tax, on average, $1.51 higher than the top 15%. (*Id.*; RR9:86.) Comparing the bottom 20% of districts to the top 20%, the bottom 20% of districts would have to tax, on average, $1.14 higher than the top 20%. (Ex. 3022 at 1.)

b. **<u>Sorting only districts that have an I&S tax rate by wealth and grouping by percentiles of WADA</u>:** In order for the districts with the lowest property wealth enrolling 10% of the WADA (bottom 10%) to receive the same total revenue per WADA as the districts with the highest property wealth enrolling 10% of the WADA (top 10%), the bottom 10% would have to tax, on average, $1.36 higher than the top 10%. (Ex. 3039 at 1.) Comparing the bottom 15% of districts to the top 15%, the bottom 15% would have to tax, on average, $1.21 higher than the top 15%. (*Id.*) Comparing the bottom 20% of districts to the top 20%, the bottom 20% of districts would have to tax, on average, $1.00 higher than the top 20%. (*Id.*)

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c. **<u>Sorting all districts by total maximum revenue per WADA ($1.67) and grouping by percentiles of districts</u>:** In order for the 10% of districts with the lowest revenue per WADA at $1.67 (bottom 10%) to receive the same total revenue per WADA that the 10% of districts with the highest revenue per WADA at $1.67 (top 10%) can raise at $1.67, the bottom 10% would have to tax, on average, $6.65 higher than the top 10%, or at a rate of $8.32. (Ex. 3081 at 1.) In order for the bottom 15% of districts to receive the same total revenue per WADA that the top 15% can raise at $1.67, the bottom 15% would have to tax, on average, $4.69 higher than the top 15%, or at a rate of $6.36. (*Id.*) In order for the bottom 20% of districts to receive the same total revenue per WADA that the top 20% can raise at $1.67, the bottom 20% would have to tax, on average, $3.73 higher than the top 20%, or at a rate of $5.40. (*Id.*)

d. **<u>Sorting all districts by total maximum revenue per WADA ($1.67) and grouping by percentiles of WADA</u>:** In order for the districts with the lowest revenue per WADA at $1.67 enrolling 10% of the WADA (bottom 10%) to receive the same total revenue per WADA that the districts with the highest revenue per WADA at $1.67 enrolling 10% of the WADA (top 10%) can raise at $1.67, the bottom 10% would have to tax, on average, $3.71 higher than the top 10%, or at a rate of $5.38. (Ex. 3085 at 1.) In order for the bottom 15% of districts to receive the same total revenue per WADA that the top 15% can raise at $1.67, the bottom 15% would have to tax, on average, $3.25 higher than the top 15%, or a rate of $4.92. (*Id.*) In order for the bottom 20% of districts to receive the same revenue per WADA that the top 20% can raise at $1.67, the bottom 20% would have to tax, on average, $3.08 higher than the top 20%, or at a rate of $4.75. (*Id.*)

b. Despite taxing at higher rates, property-poor school districts receive substantially less revenue per WADA than their property-wealthy counterparts.

i. Property-poor districts levy higher M&O taxes, yet raise less revenue.

FOF 1021. At the time of *Edgewood IV*, the property-poor districts received $600 less per WADA at the then $1.50 cap, which was meant to achieve both a general diffusion of knowledge and provide enrichment. *Edgewood IV*, 917 S.W.3d at 731. Although the Court did not ultimately rely on this gap in determining that the system then was constitutionally efficient, current analysis demonstrates that this gap in total available revenue has grown tremendously. *Id.* Under the current system, using the various analyses – both weighted and unweighted, and comparing the top and bottom ten, fifteen, and twenty percent of districts – the gap at the current $1.17 cap is significantly larger, between $1,839 and $3,499 per WADA. (*See infra* Parts I.C.2.b.i(a)-(b).)

FOF 1022. Likewise, the gaps are larger now than they were immediately following *WOC II*. Comparing top and bottom groups with 10% of districts show the funding gap increased by $890 per student from 2005-2006 (when the gap was about $1,868) to 2011-12,

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despite the low funded group having, on average, a 15.6 cent higher tax rate. (Ex. 3187, Pierce Report, at 11.) This represents an increase of nearly 50% in the gap that existed in 2005-06. (*Id.*)

FOF 1023. Even if the disequalizing impact of Tier II is left out, the disequalization in Tier I – the level intended to produce funding for the general diffusion of knowledge – is still substantial. (*See supra* FOF 33.) According to preliminary 2011-12 district data from TEA, compressed tax rates for districts at or below the 15th percentile of wealth average 1.3 cents higher than the compressed rates for districts at or above the 85th percentile of wealth. (*Id.* at 9.) Even with higher tax rates, these lower wealth districts have a Tier I funding level that is about $1,667 per student below the Tier I funding level provided for districts in the lower taxing, higher wealth/higher funded districts. (*Id.*)

FOF 1024. Sorting the same data set by target revenue funding levels instead of by property wealth exposes an even more drastic funding gap. When comparing groups of districts with 15% of the WADA, the average compressed tax rates for districts with the lowest target revenues is higher than the compressed tax rates for districts with the highest target revenues, yet the average Tier I funding level is about $1,900 per student *below* the Tier I funding level provided for the average district in the lower taxing, higher funded group. (*Id.*) This Tier I funding gap, *even at this fundamental instructional program level*, amounts to more than $50,000 less funding in a typical elementary classroom of 22 children in the lower funded districts. (*Id.*)

(a) Dr. Albert Cortez's weighted average analyses demonstrate unconstitutionally large gaps in M&O revenue despite higher tax rates.

FOF 1025. **<u>Revenue gaps between wealthiest and poorest deciles</u>:** When comparing the revenue available to school districts by weighted decile groupings at adopted tax rates for the 2011-12 school year, the gap between the poorest and the wealthiest decile of school districts was $1,443.[31] This significant gap exists despite the poorest decile of districts taxing their residents 11-cents higher at an average of $1.11 (generating $5,654 per WADA) compared to the wealthiest decile taxing at $1.00 (generating $7,097 per WADA).[32] Even when examining districts at the sixth poorest percentile of districts, those districts generated $1,560 less than the wealthiest decile at $5,537 per WADA, despite taxing 7-cents higher ($1.07). (Ex. 4251, Cortez 2nd Supp. Report, at 3.)

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[31] Analyzing differences in revenue between property-rich and property-poor districts at existing, adopted tax rates and maximum tax rates is appropriate because the Court has determined that under the current system, all districts are not able to provide a general diffusion of knowledge. *Compare Edgewood IV*, 917 S.W.2d at 730-31.

[32] If school districts were able to provide an adequate education with their existing funds at their existing adopted tax rates (which this Court has determined they are not), then the analysis of difference among revenues at the adopted tax rates would be appropriate because they are able to provide a general diffusion of knowledge at existing tax rates.

FOF 1026. If all school districts taxed at the maximum rate of $1.17, the gap per WADA would grow to $1,839 per WADA between the wealthiest and poorest decile of districts. (*Id.* at 4-5.)

FOF 1027. For the 2010-11 school year, similarly substantial disparities were found. The gap between the poorest and the wealthiest decile of school districts was $1,431 at adopted tax rates for that school year. This significant gap exists despite the poorest decile of districts taxing at $1.11 (generating $5,654 per WADA) and the wealthiest taxing at $1.00 (generating $7,085 per WADA). Even when examining districts at the sixth poorest decile of districts, those districts generated $1,552 less than the wealthiest decile, despite taxing seven cents higher ($1.07). (Ex. 4225, Cortez Supp. Report, at 3.)

FOF 1028. If all school districts taxed at the maximum rate of $1.17, the gap per WADA would grow to $1,785 per WADA between the wealthiest and poorest decile of districts. (*Id.* at 4.)

(b) Dr. Albert Cortez's simple average analyses demonstrate unconstitutionally large gaps in M&O revenue despite higher tax rates.

FOF 1029. Using the same process of sorting districts by wealth per WADA, and grouping into percentiles of districts or WADA as described in FOF 1012, Dr. Pierce also compared the revenue and tax rate between the top and bottom ten, fifteen, and twenty percent of districts. In addition, he conducted the same comparison after sorting the districts by yield per WADA per penny of tax effort and grouping into percentiles of districts or WADA.

FOF 1030. Under these analyses, property-poor districts in the bottom percentiles receive between $1,443 and $2,737 less in M&O revenue per WADA (or between $46,986 and $123,376 less per classroom of twenty-two students) than the property-wealthy districts in the top percentiles, despite levying M&O taxes at rates between $0.063 and $0.157 *higher* than the property-wealthy districts. Furthermore, each and every analysis reveals that the districts in the bottom percentiles do not receive revenue sufficient to fund a general diffusion of knowledge, as estimated above in Part I.B.7.f. Specifically:

FOF 1031. **Sorting all districts by wealth and grouping by percentiles of districts:** When sorting all 1,024 school districts in Texas by wealth and grouping by district, the 10% of districts with the highest property wealth (top 10%) have an average M&O tax rate of $1.004 and receive revenue, on average, of $7,998 per WADA, while the 10% of districts with the lowest property wealth (bottom 10%) have an average M&O tax rate of $1.108 and receive revenue, on average, of $5,616 per WADA. (Ex. 3010 at 1.) In other words, the bottom 10% of districts tax, on average, $0.104 higher than the top 10% of districts, yet receive $2,382 per WADA (or $80,935 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3012 at 1.)

FOF 1032. The top 15% of districts have an average M&O tax rate of $1.021 and receive revenue, on average, of $7,535 per WADA, while the bottom 15% of districts have an average

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M&O tax rate of $1.101 and receive revenue, on average, of $5,581 per WADA. (Ex. 3010 at 1.) In other words, the bottom 15% of districts tax, on average, $0.079 higher than the top 15% of districts, yet receive $1,954 per WADA (or $65,484 per classroom of twenty-two students) less than the top 15% (*Id.*; Ex. 3012 at 1.)

FOF 1033. The top 20% of districts have an average M&O tax rate of $1.027 and receive revenue, on average, of $7,188 per WADA, while the bottom 20% of districts have an average M&O tax rate of $1.096 and receive revenue, on average, of $5,563 per WADA. (Ex. 3010 at 1.) In other words, the bottom 20% of districts tax, on average, $0.069 higher than the top 20% of districts, yet receive $1,625 per WADA (or $53,755 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3012 at 1.)

FOF 1034. **Sorting all districts by wealth and grouping by percentiles of WADA:** When sorting all 1,024 districts in Texas by wealth and grouping by WADA, the districts with the highest property wealth enrolling 10% of the WADA (top 10%) have an average M&O tax rate of $1.025 and receive revenue, on average, of $7,347 per WADA, while the districts with the lowest property wealth enrolling 10% of the WADA (bottom 10%) have an average M&O tax rate of $1.102 and receive revenue, on average, of $5,592 per WADA. (Ex. 3025 at 1; RR9:87-88.) In other words, the bottom 10% of districts tax, on average, $0.078 higher than the top 10% of districts, yet receive $1,755 per WADA (or $58,917 per classroom of twenty-two students) less than the top 10%. (Ex. 3025 at 1; Ex. 3027 at 1.)

FOF 1035. The top 15% of districts have an average M&O tax rate of $1.025 and receive revenue, on average, of $7,253 per WADA, while the bottom 15% of districts have an average M&O tax rate of $1.096 and receive revenue, on average, of $5,567 per WADA. (Ex. 3025 at 1.) In other words, the bottom 15% of districts tax, on average, $0.071 higher than the top 15% of districts, yet receive $1,686 per WADA (or $55,785 per classroom of twenty-two students) less than the top 15%. (Ex. 3025 at 1; Ex. 3027 at 1.)

FOF 1036. The top 20% of districts have an average M&O tax rate of $1.029 and receive revenue, on average, of $7,107 per WADA, while the bottom 20% of districts have an average M&O tax rate of $1.093 and receive revenue, on average, of $5,576 per WADA. (Ex. 3025 at 1.) In other words, the bottom 20% of districts tax, on average, $0.063 higher than the top 20% of districts, yet receive $1,532 per WADA (and $50,204 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3027 at 1.)

FOF 1037. **Sorting all districts by yield and grouping by percentiles of districts:** When sorting all 1,024 districts in Texas by yield per WADA per penny of tax effort and grouping by district, the 10% of districts with the highest yield (top 10%) have an average M&O tax rate of $1.00 and receive revenue, on average, of $8,296 per WADA, for an average yield of $82.99, while the 10% of districts with the lowest yield (bottom 10%) have an average M&O tax rate of $1.156 and receive revenue, on average, of just $5,559 per WADA, for an average yield of just $48.07. (Ex. 3042 at 1; RR9:91-92.) The bottom 10% tax, on average, $0.157 higher than the top 10%, yet receive $2,737 per WADA (or $92,106 per classroom of twenty-two students) less than the top 10%. (Ex. 3042 at 1; Ex. 3043 at 1.)

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In other words, the top 10% receives $34.92 per WADA more for each penny of tax effort, which is a 73% higher yield. (Ex. 3042 at 1.)

FOF 1038. The top 15% of districts have an average M&O tax rate of $1.007 and receive revenue, on average, of $7,708 per WADA, for an average yield of $76.52, while the bottom 15% have an average M&O tax rate of $1.150 and receive revenue, on average, of $5,579 per WADA, for an average yield of $48.52. (Ex. 3042 at 1.) The bottom 15% tax, on average, $0.143 higher than the top 15%, yet receive $2,129 per WADA (or $70,399 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3043 at 1.) In other words, the top 15% receive $28.00 per WADA more for each penny of tax effort than the bottom 15%, which is a 58% higher yield. (Ex. 3042 at 1.)

FOF 1039. The top 20% of districts have an average M&O tax rate of $1.017 and receive revenue, on average, of $7,378 per WADA, for an average yield of $72.57, while the bottom 20% have an average M&O tax rate of $1.145 and receive revenue, on average, of $5,597 per WADA, for an average yield of $48.88. (Ex. 3042 at 1.) The bottom 20% tax, on average, $0.129 higher than the top 20%, yet receive $1,781 per WADA (or $58,699 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3043 at 1.) Put another way, the top 20% receive $23.70 per WADA more for each penny of tax effort than the bottom 20%, which is a 48% higher yield. (Ex. 3042 at 1.)

FOF 1040. **Sorting all districts by yield and grouping by percentiles of WADA:** When sorting all 1,024 districts in Texas by yield and grouping by WADA, the districts with the highest yield enrolling 10% of the WADA (top 10%) have an average M&O tax rate of $1.016 and receive revenue, on average, of $7,414 per WADA, for an average yield of $72.96, while the districts with the lowest yield enrolling 10% of the WADA (bottom 10%) have an average M&O tax rate of $1.152 and receive revenue, on average, of $5,581 per WADA, for an average yield of $48.47. (Ex. 3055 at 1; RR9:95.) The bottom 10% tax, on average, $0.135 higher than the top 10%, yet receive $1,832 per WADA (or $60,837 per classroom of twenty-two students) less. (Ex. 3055 at 1; Ex. 3056 at 1.) In other words, the top 10% receive $24.29 per WADA more for each penny of tax effort, which is a 51% higher yield per penny. (Ex. 3055 at 1.)

FOF 1041. The top 15% have an average M&O tax rate of $1.021 and receive revenue, on average, of $7,207 per WADA, for an average yield of $70.61, while the bottom 15% have an average M&O rate of $1.144 and receive revenue, on average, of $5,596 per WADA, for an average yield of $48.90. (*Id.*) This means that the bottom 15% tax, on average, $0.124 higher than the top 15%, yet receive $1,612 per WADA (or $52,974 per classroom of twenty-two students) less. (Ex. 3055 at 1; Ex. 3056 at 1.) In other words, the top 15% receive $21.71 per WADA more for each penny of tax effort, which is a 44% higher yield. (Ex. 3055 at 1.)

FOF 1042. The top 20% have an average M&O tax rate of $1.024 and receive revenue, on average, of $7,075 per WADA, for an average yield of $69.09, while the bottom 20% have an average M&O tax rate of $1.132 and receive revenue, on average, of $5,577 per WADA, for an average yield of $49.27. (*Id.*) The bottom 20% of districts tax, on average, $0.108 higher than the top 20%, yet receive $1,498 per WADA (or $48,767 per classroom of

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twenty-two students) less. (Ex. 3055 at 1; Ex. 3056 at 1.) In other words, the top 20% receive $19.82 per WADA more for each penny of tax effort, which is a 40% higher yield. (Ex. 3055 at 1.)

FOF 1043. **Sorting only districts that have an I&S tax rate by wealth and grouping by percentiles of districts:**[33] When sorting just those districts that have both an M&O and I&S tax rate by wealth and grouping by district, the 10% of districts with the highest property wealth (top 10%) have an average M&O tax rate of $1.001 and receive M&O revenue, on average, of $7,839 per WADA, while the 10% of districts with the lowest property wealth (bottom 10%) have an average M&O tax rate of $1.111 and receive M&O revenue, on average, of $5,635 per WADA. (Ex. 3017 at 1; RR9:81-82.) In other words, the bottom 10% of districts tax, on average, $0.110 higher than the top 10% of districts, yet receive $2,204 per WADA (or $74,398 per classroom of twenty-two students) less than the top 10%. (Ex. 3017 at 1; Ex. 3018 at 1.)

FOF 1044. The top 15% of districts have an average M&O tax rate of $1.019 and receive M&O revenue, on average, of $7,457 per WADA, while the bottom 15% of districts have an average M&O tax rate of $1.104 and receive M&O revenue, on average, of $5,591 per WADA. (Ex. 3017 at 1.) In other words, the bottom 15% of districts tax, on average, $0.085 higher than the top 15% of districts, yet receive $1,865 per WADA (or $62,510 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3018 at 1.)

FOF 1045. The top 20% of districts have an average M&O tax rate of $1.025 and the top 20% of districts receive M&O revenue, on average, of $7,101 per WADA, while the bottom 20% of districts have an average M&O tax rate of $1.099 and receive M&O revenue, on average, of $5,577 per WADA. (Ex. 3017 at 1.) In other words, the bottom 20% of districts tax, on average, $0.074 higher than the top 20% of districts, yet receive $1,524 per WADA (or $50,411 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3018 at 1.)

FOF 1046. **Sorting only districts that have an I&S tax rate by wealth and grouping by percentiles of WADA:** When sorting just those districts that have an I&S tax rate by wealth and grouping by WADA, the districts with the lowest property wealth enrolling 10% of the WADA (bottom 10%) have an average M&O tax of $1.106 and receive M&O revenue, on average, of $5,603 per WADA, while the districts with the highest property wealth enrolling 10% of the WADA (top 10%) have an average M&O tax rate of $1.023 and receive M&O revenue, on average, of $7,256 per WADA. (Ex. 3032 at 1.) In other words, the bottom 10% of districts tax, on average, $0.083 higher than the top 10% of districts, yet receive $1,653 per WADA (or $55,516 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3034 at 1.)

FOF 1047. The top 15% of districts have an average M&O tax rate of $1.023 and receive M&O revenue, on average, of $7,158 per WADA, while the bottom 15% have an average M&O tax rate of $1.099 and receive M&O revenue, on average, of just $5,581 per WADA.

[33] As noted above in FOF 1015, not all districts levy I&S taxes. (RR9:71-72.)

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(Ex. 3032 at 1.) In other words, the bottom 15% of districts tax, on average, $0.076 higher than the top 15% of districts, yet receive $1,577 per WADA (or $52,174 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3034 at 1.)

FOF 1048. The top 20% have an average M&O tax rate of $1.028 and receive M&O revenue, on average, of $7,024 per WADA, while the bottom 20% have an average M&O tax rate of $1.093 and receive M&O revenue, on average, of $5,576 per WADA. (Ex. 3032 at 1.) In other words, the bottom 20% tax, on average, $0.065 higher than the top 20%, yet receive $1,449 per WADA (or $47,485 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3034 at 1.)

FOF 1049. **Sorting only districts that have an I&S tax rate by yield and grouping by percentiles of districts:** When sorting just those districts that have an I&S tax rate by yield and grouping by district, the 10% of districts with the highest yield (top 10%) have an average M&O tax rate of $1.00 and receive M&O revenue, on average, of $8,164 per WADA, for an average yield of $81.68, while the 10% of districts with the lowest yield (bottom 10%) have an average M&O tax rate of $1.157 and receive M&O revenue, on average, of $5,576 per WADA, for an average yield of $48.21. (Ex. 3048 at 1.) The bottom 10% tax, on average, $0.157 higher than the top 10%, yet receive $2,588 per WADA ($87,105 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3049 at 1.) In other words, the top 10% receive $33.47 per WADA more for each penny of tax effort than the bottom 10% of districts receive, which is a 69% higher yield. (Ex. 3048 at 1.)

FOF 1050. The top 15% have an average M&O tax rate of $1.010 and receive M&O revenue, on average, of $7,635 per WADA, for an average yield of $75.59, while the bottom 15% have an average M&O tax rate of $1.149 and receive M&O revenue, on average, of $5,585 per WADA, for an average yield of $48.62. (*Id.*) The bottom 15% tax, on average, $0.139 higher than the top 15% of districts, yet receive $2,050 per WADA (or $67,806 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3049 at 1.) In other words, the top 15% receive $26.97 per WADA more for each penny of tax effort than the bottom 15%, which is a 55% higher yield. (Ex. 3048 at 1.)

FOF 1051. The top 20% have an average M&O tax rate of $1.020 and receive M&O revenue, on average, of $7,328 per WADA, for an average yield of $71.88, while the bottom 20% have an average M&O tax rate of $1.147 and receive M&O revenue, on average, of $5,615 per WADA, for an average yield of $48.97. (*Id.*) The bottom 20% of districts tax, on average, $0.127 higher than the top 20% of districts, yet receive $1,713 per WADA (or $56,459 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3049 at 1.) In other words, the top 20% receive $22.91 per WADA more for each penny of tax effort than the bottom 20%, which is a 47% higher yield. (Ex. 3048 at 1.)

FOF 1052. **Sorting only districts that have an I&S tax rate by yield and grouping by percentiles of WADA:** When sorting just those districts that have an I&S tax by yield and grouping by WADA, the districts with the highest property wealth enrolling 10% of the WADA (top 10%) have an average M&O tax rate of $1.019 and receive M&O revenue, on average, of $7,364 per WADA, for an average yield of $72.25 per WADA, while the

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districts with the lowest property wealth enrolling 10% of the WADA (bottom 10%) have an average M&O tax rate of $1.150 and receive M&O revenue, on average, of $5,584 per WADA, for an average yield of $48.56. (Ex. 3061 at 1.) The bottom 10% tax, on average, $0.131 higher than the top 10%, yet receive $1,780 per WADA (or $59,098 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3062 at 1.) In other words, the top 10% receive $23.69 per WADA more for each penny of tax effort than the bottom 10%, which is a 49% higher yield. (Ex. 3061 at 1.)

FOF 1053. The top 15% have an average M&O tax rate of $1.023 and receive M&O revenue, on average, of $7,155 per WADA, for an average yield of $69.93, while the bottom 15% have an average M&O tax rate of $1.146 and receive M&O revenue, on average, of $5,613 per WADA, for an average yield of $49.00. (*Id.*) The bottom 15% tax, on average, $0.122 higher than the top 15%, yet receive $1,542 per WADA (or $50,674 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3062 at 1.) In other words, the top 15% receive $20.93 per WADA more for each penny of tax effort than the bottom 15%, which is a 43% higher yield. (Ex. 3061 at 1.)

FOF 1054. The top 20% have an average M&O tax rate of $1.026 and receive M&O revenue, on average, of $7,025 per WADA, for an average yield of $68.50, while the bottom 20% have an average M&O tax rate of $1.131 and receive M&O revenue, on average, of $5,582 per WADA, for an average yield of $49.35. (*Id.*) The bottom 20% tax, on average, $0.106 higher than the top 20%, yet receive $1,443 per WADA (or $46,986 per classroom of twenty-two students) less than the top 20%. (Ex. 3061 at 1; Ex. 3062 at 1.) In other words, the top 20% receive $19.15 per WADA more for each penny of tax effort than the bottom 20%, which is a 39% higher yield. (Ex. 3061 at 1.)

FOF 1055. The gap in revenue available to the districts at the tax cap is even greater – between $2.358 and $3,449. Under each of these calculations, the revenue gap is greater than that which existed at the time of *Edgewood IV*, 917 S.W.2d at 731. (Ex. 3068 at 1; Ex. 3070 at 1; Ex. 3074 at 1; Ex. 3076 at 1.)

FOF 1056. **<u>Sorting all districts by maximum M&O revenue per WADA ($1.17) and grouping by percentiles of districts</u>:** When sorting all 1,024 districts in Texas by the M&O revenue per WADA the district could raise at the $1.17 cap and grouping by district, the 10% of districts receiving the highest revenue taxing at $1.17 (top 10%) would receive, on average, $9,112 per WADA, while the 10% of districts receiving the lowest revenue taxing at $1.17 (bottom 10%) would receive, on average, just $5,613 per WADA. (Ex. 3068 at 1; RR9:98-100.) In other words, the gap in maximum possible M&O revenue between the top and bottom 10% is $3,499 per WADA (or ($123,376 per classroom of twenty-two students). (Ex. 3068 at 1; Ex. 3070 at 1.)

FOF 1057. Taxing at $1.17, the top 15% would receive, on average, of $8,442 per WADA, while the bottom 15% would receive, on average, just $5,652 per WADA. (Ex. 3068 at 1.) In other words, the gap in maximum possible M&O revenue between the top and bottom 15% is $2,790 per WADA (or $95,678 per classroom of twenty-two students). (*Id.*; Ex. 3070 at 1.)

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FOF 1058. Taxing at $1.17, the top 20% would receive, on average, $8,039 per WADA, while the bottom 20% would receive, on average, just $5,681 per WADA. (Ex. 3068 at 1.) In other words, the gap in maximum possible M&O revenue between the top and bottom 20% is $2,358 per WADA (or $79,819 per classroom of twenty-two students). (*Id.*; Ex. 3070 at 1.)

FOF 1059. **Sorting all districts by maximum M&O revenue per WADA ($1.17) and grouping by percentiles of WADA:** When sorting all 1,024 districts in Texas by the M&O revenue per WADA the district could raise at the $1.17 cap and grouping by WADA, the districts receiving the highest revenue enrolling 10% of the WADA (top 10%) would receive, on average, $8,092 per WADA, while the districts receiving the lowest revenue enrolling 10% of the WADA (bottom 10%) would receive, on average, just $5,684 per WADA. (Ex. 3074 at 1; RR9:105-06.) In other words, the gap in maximum possible M&O revenue between the top and bottom 10% is $2,408 per WADA (or $81,167 per classroom of twenty-two students). (Ex. 3074 at 1; Ex. 3075 at 1.)

FOF 1060. Taxing at $1.17, the top 15% would receive, on average, $7,829 per WADA, while the bottom 15% would receive, on average, $5,702 per WADA. (Ex. 3074 at 1.) In other words, the gap in maximum possible M&O revenue between the top and bottom 15% is $2,128 per WADA (or $70,325 per classroom of twenty-two students). (*Id.*; Ex. 3076 at 1.)

FOF 1061. Taxing at $1.17, the top 20%, would receive, on average, $7,657 per WADA, while the bottom 20% would receive, on average, just $5,717 per WADA. (Ex. 3074 at 1.) In other words, the gap in maximum possible M&O revenue between the top and bottom 20% is $1,940 per WADA (or $63,720 per classroom of twenty-two students). (*Id.*; Ex. 3076 at 1.)

ii. Property-poor districts levy higher I&S taxes, yet raise less revenue for facilities.

FOF 1062. Using the same process of sorting districts by wealth per WADA or yield per WADA, and grouping into percentiles of districts or WADA as described in FOF 1012, Dr. Pierce analyzed the facilities revenue available to the top and bottom ten, fifteen, and twenty percent of districts. Under these analyses, property-poor districts in the bottom percentiles receive up to $1,027 less in I&S revenue per WADA (or up to $34,670 per classroom of twenty-two students) than the property-wealthy districts in the top percentiles, despite levying I&S taxes at rates up to $0.028 *more* than the property-wealthy districts. Specifically:

FOF 1063. **Sorting all districts by wealth and grouping by percentiles of districts:** When sorting all 1,024 districts in Texas by wealth and grouping by district, the 10% of districts with the highest property wealth (top 10%) have an average I&S tax of $0.133 and receive revenue, on average, of $1,467 per WADA, while the 10% of districts with the lowest property wealth (bottom 10%) have an average I&S tax of $0.161 and receive revenue, on average, of $439 per WADA. (Ex. 3013 at 1.) In other words, the bottom 10% of districts tax, on average, $0.028 higher than the top 10%, yet receive $1,027 per WADA

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(or $34,670 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3014 at 1.)

FOF 1064. The top 15% of districts tax for I&S, on average, at $0.144 and receive revenue, on average, of $1,276 per WADA, while the bottom 15% of districts tax for I&S, on average, at $0.158 and receive revenue, on average, of $412 per WADA. (Ex. 3013 at 1.) In other words, the bottom 15% of districts tax, on average, $0.013 higher than the top 15% of districts, yet receive $865 per WADA (or $28,985 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3014 at 1.)

FOF 1065. The top 20% of districts tax for I&S, on average, at $0.158 and receive revenue, on average, of $1,160 per WADA. (Ex. 3013 at 1.) While the bottom 20% of districts tax for I&S, on average, at $0.160 and receive revenue, on average, of $413 per WADA. (*Id.*) In other words, the bottom 20% of districts tax, on average, $0.002 higher than the top 20% of districts, yet receive $747 per WADA (or $24,723 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3014 at 1.)

FOF 1066. **<u>Sorting all districts by wealth and grouping by percentiles of WADA</u>:** When sorting all 1,024 districts in Texas by wealth and grouping by WADA, the districts with the highest property wealth enrolling 10% of the WADA (top 10%) have an average I&S tax of $0.154 and receive revenue, on average, of $1,229 per WADA, while the districts with the lowest property wealth enrolling 10% of the WADA (bottom 10%) have an average I&S tax of $0.158 and receive revenue, on average, of $415 per WADA. (Ex. 3028 at 1.) In other words, the bottom 10% of districts tax, on average, $0.004 higher than the top 10% of districts, yet receive $814 per WADA (or $27,343 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3029 at 1.)

FOF 1067. The top 15% of districts have an average I&S tax rate of $0.156 and receive revenue, on average, of $1,189 per WADA, while the bottom 15% of districts have an average I&S tax rate of $0.163 and receive revenue, on average, of $419 per WADA. (Ex. 3028 at 1.) In other words, the bottom 15% of districts tax, on average, $0.007 higher than the top 15% of districts, yet receive $770 per WADA (or $25,476 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3029 at 1.)

FOF 1068. The top 20% of districts have an average I&S tax rate of $0.157 and receive revenue, on average, of $1,117 per WADA, while the bottom 20% of districts have an average I&S rate of $0.157 and receive revenue, on average, of $395 per WADA. (Ex. 3028 at 1.) In other words, the bottom 20% of districts tax, on average, at the same rate as the top 20% of districts, yet receive $722 per WADA (or $23,664 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3029 at 1.)

FOF 1069. **<u>Sorting all districts by yield and grouping by percentiles of districts</u>:** When sorting all 1,024 districts by yield per WADA per penny of tax effort and grouping by district, the 10% of districts with the highest yield (top 10%) have an average I&S tax of $0.149 and receive revenue, on average, of $1,341 per WADA, for an average yield of $90.27, while the 10% of districts with the lowest yield (bottom 10%) have an average tax of $0.147 and receive revenue, on average, of $370 per WADA, for an average yield of $25.13.

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(Ex. 3044 at 1.) The difference in average I&S tax rate between the top and bottom 10% is $0.001 and the gap in revenue between the same districts is $971 per WADA (or $32,684 per classroom of twenty-two students). (*Id.*; Ex. 3045 at 1.) In other words, the top 10% receive $65.14 per WADA more for each penny of tax effort than the bottom 10%, which is a 259% higher yield per penny. (Ex. 3044 at 1.)

FOF 1070. The top 15% have an average I&S tax rate of $0.153 and receive revenue, on average, of $1,175 per WADA, for an average yield of $76.76, while the bottom 15% have an average I&S tax rate of $0.153 and receive revenue, on average, of $379 per WADA, for an average yield of $24.66. (*Id.*) The difference in average I&S tax rate between the top and bottom 15% is $0.00 and the gap in revenue between the same districts is $796 per WADA (or $26,325 per classroom of twenty-two students). (*Id.*; Ex. 3045 at 1.) In other words, the top 15%, on average, receive $52.10 per WADA more for each penny of tax effort than the bottom 15%, which is a 211% higher yield. (Ex. 3044 at 1.)

FOF 1071. The top 20% have an average I&S rate of $0.163 and receive revenue, on average, of $1,092 per WADA, for an average yield of $67.08, while the bottom 20% have an average I&S rate of $0.152 and receive revenue, on average, of $392 per WADA, for an average yield of $25.78 per WADA per penny of tax effort. (*Id.*) The difference in average I&S tax rate between the top and bottom 20% is $0.011 and the gap in revenue between the same districts is $700 per WADA (or $23,076 per classroom of twenty-two students). (*Id.*; Ex. 3045 at 1.) In other words, the top 20%, on average, receive $52.10 per WADA more for each penny of tax effort than the bottom, which is a 160% higher yield per penny. (Ex. 3044 at 1.)

FOF 1072. **Sorting all districts by yield and grouping by percentiles of WADA:** When sorting all 1,024 districts in Texas by yield and grouping by WADA, the districts with the highest yield enrolling 10% of the WADA (top 10%) have an average I&S rate of $0.161 and receive revenue, on average, of $1,104 per WADA, for an average yield of $68.63, while the districts with the lowest yield enrolling 10% of the WADA (bottom 10%) have an average I&S rate of $0.151 and receive revenue, on average, of $379 per WADA, for an average yield of $25.02. (Ex. 3057 at 1.) The difference in average I&S tax rate between the top and bottom 10% is $0.009 and the gap in revenue between the same districts is $725 per WADA (or $24,059 per classroom of twenty-two students). (*Id.*; Ex. 3058 at 1.) In other words, the top 10% receive $43.60 per WADA more for each penny of tax effort than the bottom 10%, which is a 174% higher yield. (Ex. 3057 at 1.)

FOF 1073. The top 15% have an average I&S rate of $0.166 and receive revenue, on average, of $1,037 per WADA, for an average yield of $62.50, while the bottom 15% have an average I&S rate of $0.154 and receive revenue, on average, of $396 per WADA, for an average yield of $25.75 per WADA. (*Id.*) The difference in average I&S tax rate between the top and bottom 15% is $0.012 and the gap in revenue between the same districts is $642 per WADA (or $21,087 per classroom of twenty-two students). (*Id.*; Ex. 3058 at 1.) In other words, the top 15% receive $36.75 per WADA more for each penny of tax effort than the bottom 15%, which is a 143% higher yield. (Ex. 3057 at 1.)

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FOF 1074. The top 20% have an average I&S rate of $0.171 and receive revenue, on average, of $1,003 per WADA, for an average yield of $58.67, while the bottom 20% have an average I&S rate of $0.155 and receive revenue, on average, of $392 per WADA, for an average yield of $25.23. (*Id.*) The difference in average I&S tax rate between the top and bottom 20% of districts is $0.016 and the gap in revenue between the same districts is $611 per WADA (or $19,880 per classroom of twenty-two students). (*Id.*; Ex. 3058 at 1.) In other words, the top 10% receive $33.44 per WADA more for each penny of tax effort than the bottom 10%, which is a 133% higher yield. (Ex. 3057 at 1.)

FOF 1075. **Sorting only districts that have an I&S tax rate by wealth and grouping by percentiles of districts:** When sorting just those districts that have an I&S tax rate by wealth and then grouping by district, the 10% of districts with the highest property wealth (top 10%) have an average I&S tax rate of $0.162 and receive I&S revenue, on average, of $1,720 per WADA, while the 10% of districts with the lowest property wealth (bottom 10%) have an average I&S tax rate of $0.201 and receive I&S revenue, on average, of $528 per WADA. (Ex. 3019 at 1.) In other words, the bottom 10% of districts tax, on average, $0.039 higher than the top 10% of districts, yet receive $1,192 per WADA (or $40,219 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3020 at 1.)

FOF 1076. The top 15% of districts have an average I&S tax rate of $0.181 and receive I&S revenue, on average, of $1,555 per WADA, while the bottom 15% of districts have an average I&S tax rate of $0.197 and receive I&S revenue, on average, of $502 per WADA. (Ex. 3019 at 1.) In other words, the bottom 15% of districts tax, on average, $0.017 higher than the top 15% of districts, yet receive $1,053 per WADA (or $35,286 per classroom of twenty-two students) less than the top 15%. (*Id.*)

FOF 1077. The top 20% of districts have an average I&S tax rate of $0.191 and receive I&S revenue, on average, of $1,376 per WADA, while the bottom 20% of districts have an average I&S tax rate of $0.199 and receive I&S revenue, on average, of $503 per WADA. (Ex. 3019.) In other words, the bottom 20% of districts tax, on average, $0.008 higher than the top 20% of districts, yet receive $873 per WADA (or $28,889 per classroom of twenty-two students) less than the top 20%. (*Id.* at 1; Ex. 3020 at 1.)

FOF 1078. **Sorting only districts that have an I&S tax rate by wealth and grouping by percentiles of WADA:** When sorting just those districts that have an I&S tax rate by wealth and grouping by WADA, the districts with the highest property wealth enrolling 10% of the WADA (top 10%) have an average I&S tax rate of $0.189 and receive I&S revenue, on average, of $1,468 per WADA, while the districts with the lowest property wealth enrolling 10% of the WADA (bottom 10%) have an average I&S tax rate of $0.198 and receive I&S revenue, on average, of $506 per WADA. (Ex. 3035 at 1.) In other words, the bottom 10% of districts tax, on average, $0.009 higher than the top 10% of districts, yet receive $962 per WADA (or $32,302 per classroom of twenty-two students) less than the top 10%. (Ex. 3035 at 1; Ex. 3037 at 1.)

FOF 1079. The top 15% of districts have an average I&S tax rate of $0.189 and receive I&S revenue, on average, of $1,410 per WADA, while the bottom 15% of districts have an average

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I&S tax rate of $0.200 and receive I&S revenue, on average, of $505 per WADA. (Ex. 3035 at 1.) In other words, the bottom 15% of districts tax, on average, $0.011 higher than the top 15% of districts, yet receive $905 per WADA (or $29,946 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3037 at 1.)

FOF 1080. The top 20% of districts have an average I&S tax of $0.190 and receive I&S revenue, on average, of $1,317 per WADA, while the bottom 20% of districts have an average I&S tax rate of $0.199 and receive I&S revenue, on average, of $492 per WADA. (Ex. 3035 at 1.) In other words, the bottom 20% of districts tax, on average, $0.009 higher, yet receive $826 per WADA (or $27,064 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3037 at 1.)

FOF 1081. **Sorting only districts that have an I&S tax rate by yield and grouping by percentiles of districts:** When sorting just those districts that have an I&S tax rate by yield and grouping by district, the 10% of districts with the highest yield (top 10%) have an average I&S tax rate of $0.185 and receive I&S revenue, on average, of $1,603 per WADA, for an average yield of $86.76, while the 10% of districts with the lowest yield (bottom 10%) have an average I&S tax rate of $0.197 and receive I&S revenue, on average, of $490 per WADA, for an average yield of $24.81. (Ex. 3050 at 1.) The bottom 10% tax, on average, $0.013 higher than the top 10%, yet receive $1,113 per WADA (or $37,462 per classroom of twenty-two students) less. (*Id.*; Ex. 3051 at 1.) In other words, the top 10% receive $61.95 per WADA more for each penny of tax effort, which is a 250% higher yield per penny. (Ex. 3050 at 1.)

FOF 1082. The top 15% have an average I&S tax rate of $0.190 and receive I&S revenue, on average, of $1,416 per WADA, for an average yield of $74.50, while the bottom 15% have an average I&S tax rate of $0.204 and receive I&S revenue, on average, of $495 per WADA, for an average yield of $24.27. (*Id.*) The bottom 15% tax, on average, $0.014 higher, than the top 15%, yet receive $921 per WADA ($30,467 per classroom of twenty-two students) less. (*Id.*; Ex. 3051 at 1.) In other words, the top 15% receive $50.23 per WADA more for each penny of tax effort, which is a 207% higher yield. (Ex. 3050 at 1.)

FOF 1083. The top 20% have an average I&S tax rate of $0.202 and receive I&S revenue, on average, of $1,324 per WADA, for an average yield of $65.46, while the bottom 20% have an average I&S tax rate of $0.200 and receive I&S revenue, on average, of $501 per WADA, for an average yield of $25.11. (*Id.*) The difference in I&S tax rate between the top and bottom 20% is $0.002 and the gap in I&S revenue between the same districts is $822 per WADA (or $27,109 per classroom of twenty-two students). (*Id.*; Ex. 3051 at 1.) In other words, the top 20% receive $40.35 per WADA more for each penny of tax effort, which is a 161% higher yield. (Ex. 3050 at 1.)

FOF 1084. **Sorting only districts that have an I&S tax rate by yield and grouping by percentiles of WADA:** When sorting just those districts that have an I&S tax by yield and grouping by WADA, the districts with the highest yield enrolling 10% of the WADA (top 10%) have an average I&S tax rate of $0.200 and receive I&S revenue, on average, of $1,339 per WADA, for an average yield of $66.95, while the districts with the lowest yield enrolling 10% of the WADA (bottom 10%) have an average I&S tax rate of $0.202 and

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receive I&S revenue, on average, of $498 per WADA, for an average yield of $24.61. (Ex. 3063 at 1.) The bottom 10% tax, on average, $0.002 higher than the top 10%, yet receive $841 per WADA (or $27,917 per classroom of twenty-two students) less. (*Id.*; Ex. 3064 at 1.) In other words, the top 10% receive $42.33 per WADA more for each penny of tax effort than the bottom 10%, which is a 172% higher yield. (Ex. 3063 at 1.)

FOF 1085. The top 15% have an average I&S tax rate of $0.204 and receive I&S revenue, on average, of $1,249 per WADA, for an average yield of $61.12 per WADA, while the bottom 15% have an average I&S tax rate of $0.201 and receive I&S revenue, on average, of $504 per WADA, for an average yield of $25.10. (*Id.*) The difference in I&S tax rate between the top and bottom 15% of districts is $0.003 and the gap in I&S revenue between the same districts is $746 per WADA (or $24,509 per classroom of twenty-two students). (*Id.*; Ex. 3064 at 1.) In other words, the top 15% receive $36.01 per WADA more for each penny of tax effort than the bottom 15%, which is a 143%. (Ex. 3063 at 1.)

FOF 1086. The top 20% have an average I&S tax rate of $0.211 and receive I&S revenue, on average, of $1,211 per WADA, for an average yield of $57.48, while the bottom 20% have an average I&S tax rate of $0.203 and receive I&S revenue, on average, of $501 per WADA, for an average yield of $24.73. (*Id.*) The difference in I&S tax rate between the top and bottom 20% of districts is $0.008 and the gap in I&S revenue between the same districts is $710 per WADA (or $23,124 per classroom of twenty-two students). (*Id.*; Ex. 3064 at 1.) In other words, the top 20% receive $32.75 per WADA more for each penny of tax effort than the bottom 20%, which is a 132% higher yield. (Ex. 3063 at 1.)

FOF 1087. Because of the substantial gaps in I&S revenue per WADA per penny of tax effort, property-wealthy districts such as Eanes ISD also have the unique ability to use bond money (generated from I&S taxes not subject to recapture) to pay for certain expenses that might otherwise be funded from M&O money. (RR21:111; Ex. 5617, Reedy Dep., at 80; RR9:78-81.) Property-wealthy districts use bond funds, for example, to purchase and pay for computers, technology, and other items that facilitate the education of their students (including the basic, adequate education) and thus have more funds to pay for operating expenses, including teacher salaries. (RR21:11.) There is no yield benefit to using I&S tax revenue for M&O purposes for lower wealth districts because for these districts, $35 per ADA raises less than $31.95 per WADA. (Ex. 3187, Pierce Report, at 14.) Yet some property-poor districts are still forced to do so because of increasing pressures on M&O revenues. (*See*, *e.g.*, RR11:68-71, 84-85.)

FOF 1088. The gap in revenue available to the districts at the I&S limit ($0.50) is once again even greater – up to $6,556 per WADA.

FOF 1089. **<u>Sorting all districts by maximum I&S revenue per WADA ($0.50) and grouping by percentiles of districts</u>:** When sorting all 1,024 districts in Texas by maximum I&S revenue per WADA ($0.50) and grouping by district, the 10% of districts with the highest I&S revenue per WADA (top 10%), would receive revenue, on average, of $7,381 per WADA, while the 10% of districts with the highest I&S revenue per WADA (bottom 10%) would receive revenue, on average, of $825 per WADA. (Ex. 3071 at 1;

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RR9:102-103.) In other words, the gap in maximum possible I&S revenue between the top and bottom 10% is $6,556 per WADA (or $274,231 per classroom of twenty-two students). (Ex. 3071 at 1; Ex. 3073 at 1.)

FOF 1090. The top 15% would receive, on average, $5,859 per WADA, while the bottom 15% would receive, on average, $865 per WADA. (Ex. 3071 at 1.) In other words, the gap in maximum possible I&S revenue between the top and bottom 15% of districts is $4,994 per WADA (or $199,183 per classroom of twenty-two students). (*Id.*; Ex. 3073 at 1.)

FOF 1091. The top 20% would receive, on average, $4,986 per WADA, while the bottom 20% would receive, on average, just $899 per WADA. (Ex. 3071 at 1.) In other words, the gap in maximum possible I&S revenue between the top and bottom 20% is $4,087 per WADA (or $156,157 per classroom of twenty-two students). (*Id.*; Ex. 3073 at 1.)

FOF 1092. **Sorting all districts by maximum I&S revenue per WADA ($0.50) and grouping by percentiles of WADA:** When sorting all 1,024 districts in Texas by maximum I&S revenue per WADA ($0.50) and grouping by WADA, the districts with the highest I&S revenue per WADA enrolling 10% of the WADA (top 10%) would receive, on average, $5,255 per WADA, while the districts with the lowest I&S revenue per WADA enrolling 10% of the WADA (bottom 10%) would receive, on average, of just $987 per WADA. (Ex. 3077 at 1; RR9:107-108.) In other words, the gap in maximum possible I&S revenue between the top and bottom 10% is $4,268 per WADA (or $151,407 per classroom of twenty-two students). (Ex. 3077 at 1; Ex. 3079 at 1.)

FOF 1093. The top 15% would receive, on average, $5,088 per WADA, while the bottom 15%, would receive, on average, just $1,010 per WADA. (Ex. 3077 at 1.) In other words, the gap in maximum possible I&S revenue between the top and bottom 15% is $4,078 per WADA (or $142,011 per classroom of twenty-two students). (*Id.*; Ex. 3079 at 1.)

FOF 1094. The top 20% would receive, on average, $4,786 per WADA, while the bottom 20% would receive, on average, just $1,025 per WADA. (Ex. 3077 at 1.) In other words, the gap in maximum possible I&S revenue between the top and bottom 20% is $3,761 per WADA (or $129,362 per classroom of twenty-two students). (*Id.*; Ex. 3079 at 1.)

FOF 1095. Schools housed in older facilities are significantly less likely to recruit experienced or National Board certified teachers to fill vacancies – holding salaries and student characteristics constant. (Ex. 1122, Vigdor Report, at 23-24.) Teachers working in older buildings are also more likely to quit in order to take a job in another nearby school. (*Id.*) According to a recent Texas Comptroller report, the state's poorest students are concentrated in the oldest facilities. (Ex. 1070 at 5.) The Texas Comptroller found in 2006 that schools with economically disadvantage student rates above 80% are on average forty-one years old, and have the lowest proportion of "good" or "excellent" facility ratings from administrators. (*Id.*) Schools serving high proportions of Hispanic students also tend to be older. (RR18:165, 178-79.)

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iii. Total (M&O and I&S) revenue gaps

FOF 1096. Using the same process of sorting districts by wealth per WADA or yield per WADA, and grouping into percentiles of districts or WADA as described in FOF 1012, Dr. Pierce analyzed the total combined M&O and I&S revenue available to the top and bottom ten, fifteen, and twenty percent of districts. Under these analyses, property-poor districts in the bottom percentiles receive up to $3,708 less in total revenue per WADA (or up to $124,790 per classroom of twenty-two students) than the property-wealthy districts in the top percentiles, despite levying total taxes at rates up to $0.155 *more* than the property-wealthy districts. (*See infra* FOF 1097 - FOF 1120.) The gap in revenue available to the districts at the maximum total rate ($1.67) is once again even greater – up to $9,703 per WADA. (*See infra* FOF 1121 - FOF 1126.) Specifically:

FOF 1097. **Sorting all districts by wealth and grouping by percentiles of districts:** When sorting all 1,024 districts in Texas by wealth and grouping by district, the 10% of districts with the highest property wealth (top 10%) have a combined M&O and I&S (total) tax rate, on average, of $1.137 and receive revenue, on average, of $9,465 per WADA, while the 10% of districts with the lowest property wealth (bottom 10%) have an average total tax rate of $1.269 and receive revenue, on average, of $6,056 per WADA. (Ex. 3015 at 1.) In other words, the bottom 10% of districts tax, on average, $0.132 higher than the top 10% of districts, yet receive $3,409 per WADA (or $115,065 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3016 at 1.)

FOF 1098. The top 15% of districts have an average total tax rate of $1.166 and receive total revenue, on average, of $8,812 per WADA, while the bottom 15% of districts' have a total tax rate, on average, of $1.258 and receive revenue, on average, of $5,993 per WADA. (Ex. 3015 at 1.) In other words, the bottom 15% of districts tax, on average, $0.093 higher than the top 15% of districts, yet receive $2,819 per WADA (or $94,469 per classroom of twenty-two students) less than the top 15%. (*Id.*)

FOF 1099. The top 20% of districts have an average total tax rate of $1.185 and receive revenue, on average, of $8,348 per WADA, while the bottom 20% have a total tax rate, on average, of $1.256 and receive revenue, on average, of $5,976 per WADA. (*Id.*) In other words, the bottom 20% of districts tax, on average, $0.071 higher than the top 20% of districts, yet receive $2,372 per WADA ($78,475 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3016 at 1.)

FOF 1100. **Sorting all districts by wealth and grouping by percentiles of WADA:** When sorting all 1,024 districts in Texas by wealth and grouping by WADA, the districts with the highest property wealth enrolling 10% of the WADA (top 10%) have an average total tax rate of $1.179 and receive revenue, on average, of $8,576 per WADA, while the districts with the lowest property wealth enrolling 10% of the WADA (bottom 10%) have an average total tax rate of $1.260 and receive revenue, on average, of $6,007 per WADA. (Ex. 3030 at 1.) In other words, the bottom 10% of districts tax, on average, $0.082 higher than the top 10% of districts, yet receive $2,569 per WADA (or $86,260 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3031 at 1.)

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FOF 1101. The top 15% of districts have an average total tax rate of $1.181 and receive revenue, on average, of $8,443 per WADA, while the bottom 15% of districts have an average total tax rate of $1.259 and receive revenue, on average, of $5,987 per WADA. (Ex. 3030 at 1.) In other words, the bottom 15% of districts tax, on average, $0.078 higher than the top 15% of districts, yet receive $2,456 per WADA (or $81,260 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3031 at 1.)

FOF 1102. The top 20% of districts have an average total tax rate of $1.187 and receive revenue, on average, of $8,224 per WADA, while the bottom 20% of districts have an average total tax rate of $1.250 and receive revenue, on average, of $5,971 per WADA. (Ex. 3030 at 1.) In other words, the bottom 20% of districts tax, on average, $0.063 higher than the top 20% of districts, yet receive $2,253 per WADA (or $73,869 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3031.)

FOF 1103. **Sorting all districts by yield and grouping by percentiles of districts:** When sorting all 1,024 districts in Texas by yield per WADA per penny of tax effort and grouping by district, the 10% of districts with the highest yield (top 10%) have an average total tax rate of $1.148 and receive revenue, on average, of $9,637 per WADA, while the 10% of districts with the lowest yield (bottom 10%) have an average total tax rate of $1.304 and receive revenue, on average, of $5,929 per WADA. (Ex. 3046 at 1.) The bottom 10% tax, on average, $0.155 higher than the top 10% of districts, yet receive $3,708 per WADA ($124,790 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3047 at 1.)

FOF 1104. The top 15% have an average total tax rate of $1.160 and receive revenue, on average, of $8,882 per WADA, while the bottom 15% have an average total tax rate of $1.303 and receive revenue, on average, of $5,958 per WADA. (Ex. 3046 at 1.) The bottom 15% tax, on average, $0.143 higher than the top 15%, yet receive $2,925 per WADA ($96,274 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3047 at 1.)

FOF 1105. The top 20% have an average total tax rate of $1.179 and receive revenue, on average, of $8,470 per WADA, while the bottom 20% have an average total tax rate of $1.297 and receive revenue, on average, of $5,989 per WADA. (Ex. 3046 at 1.) The bottom 20% tax, on average, $0.118 higher than the top 20%, yet receive $2,481 per WADA (or $81,775 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3047 at 1.)

FOF 1106. **Sorting all districts by yield and grouping by percentiles of WADA:** When sorting all 1,024 districts in Texas by yield and grouping by WADA, the districts with the highest yield enrolling 10% of the WADA (top 10%) have an average total tax rate of $1.177 and receive revenue, on average, of $8,517 per WADA, while the districts with the lowest yield enrolling 10% of the WADA (bottom 10%) have an average total tax rate of $1.303 and receive revenue, on average, of $5,960 per WADA. (Ex. 3059 at 1.) In other words, the bottom 10% tax, on average, $0.126 higher than the top 10%, yet receive $2,557 per WADA (or $84,896 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3060 at 1.)

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FOF 1107. The top 15% have an average total tax rate of $1.187 and receive revenue, on average, of $8,245 per WADA, while the bottom 15% have an average total tax rate of $1.298 and receive revenue, on average, of $5,991 per WADA. (Ex. 3059 at 1.) In other words, the bottom 15% of districts tax, on average, $0.111 higher than the top 15% of districts, yet receive $2,253 per WADA (or $74,061 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3060 at 1.)

FOF 1108. The top 20% have an average total tax rate of $1.195 and receive revenue, on average, of $8,077 per WADA, while the bottom 20% have an average total tax rate of $1.287 and receive revenue, on average, of $5,969 per WADA. (Ex. 3059 at 1.) In other words, the bottom 20% tax, on average, $0.092 higher than the top 20%, yet receive $2,108 per WADA (or $68,647 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3060 at 1.)

FOF 1109. **Sorting only districts that have an I&S tax rate by wealth and grouping by percentiles of districts:** When sorting just those districts that have an I&S tax rate by wealth and grouping by district, the 10% of districts with the highest property wealth (top 10%) have an average total tax rate of $1.163 and receive total revenue, on average, of $9,559 per WADA, while the 10% of districts with the lowest property wealth (bottom 10%) have an average total tax rate of $1.311 and receive total revenue, on average, of $6,163 per WADA. (Ex. 3021 at 1.) In other words, the bottom 10% of districts tax, on average, $0.149 higher than the top 10% of districts, yet receive $3,396 per WADA (or $114,616 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3023.)

FOF 1110. The top 15% of districts have an average total tax rate of $1.199 and receive total revenue, on average, of $9,012 per WADA, while the bottom 15% of districts have an average total tax rate of $1.301 and receive total revenue, on average, of $6,093 per WADA. (Ex. 3021 at 1.) In other words, the bottom 15% of districts tax, on average, $0.102 higher than the top 15% of districts, yet receive $2,918 per WADA (or $97,795 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3023 at 1.)

FOF 1111. The top 20% of districts have an average total tax rate of $1.216 and receive total revenue, on average, of $8,476 per WADA, while the bottom 20% of districts have an average total tax rate of $1.297 receive total revenue, on average, of $6,080 per WADA. (Ex. 3021 at 1.) In other words, the bottom 20% of districts tax, on average, $0.081 higher than the top 20% of districts, yet receive $2,397 per WADA (or $79,300 per classroom of twenty-two students) less than the top 20%. (*Id.*)

FOF 1112. **Sorting only districts that have an I&S tax rate by wealth and grouping by percentiles of WADA:** When sorting just those districts that have an I&S tax rate by wealth and grouping by WADA, the districts enrolling 10% of the WADA and having the highest property wealth (top 10%), have an average total tax rate of $1.211 and receive total revenue, on average, of $8,724 per WADA, while the districts enrolling 10% of the WADA and having the lowest property wealth (bottom 10%) have an average total tax rate of $1.304 and receive total revenue, on average, of just $6,108 per WADA. (Ex. 3038 at 1.) In other words, the bottom 10% of districts tax, on average, $0.092 higher

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than the top 10% of districts, yet receive $2,615 per WADA (or $87, 819 per classroom of twenty-two students) less than the top 10%. (*Id.*; Ex. 3040 at 1.)

FOF 1113. The top 15% of districts have an average total tax rate of $1.213 and receive total revenue, on average, of $8,568 per WADA, while the bottom 15% have an average total tax rate of $1.299 and receive total revenue, on average, of $6,086 per WADA. (Ex. 3038 at 1.) In other words, the bottom 15% of districts tax, on average, $0.086 higher than the top 15% of districts, yet receive $2,482 per WADA (or $82,120 per classroom of twenty-two students) less than the top 15%. (*Id.*; Ex. 3040 at 1.)

FOF 1114. The top 20% of districts have an average total tax rate of $1.217 and receive total revenue, on average, of $8,342 per WADA, while the bottom 20% of districts have an average total tax rate of $1.292 and receive total revenue, on average, of $6,067 per WADA. (Ex. 3038 at 1.) In other words, the bottom 20% of districts tax, on average, $0.075 higher than the top 20% of districts, yet receive $2,274 per WADA (or $74,549 per classroom of twenty-two students) less than the top 20%. (*Id.*; Ex. 3040 at 1.)

FOF 1115. **Sorting only districts that have an I&S tax rate by yield and grouping by percentiles of districts:** When sorting just those districts that have an I&S tax rate by yield and grouping by district, the 10% of districts with the highest yield (top 10%) have an average total tax rate of $1.184 and receive total revenue, on average, of $9,767 per WADA, for an average yield of $82.47, while the 10% of districts with the lowest yield (bottom 10%) have an average total tax rate of $1.354 and receive total revenue, on average, of $6,065 per WADA, for an average yield of $44.80. (Ex. 3052 at 1.) The bottom 10% tax, on average, $0.170 higher than the top 10%, yet receive $3,702 per WADA (or $124,567 per classroom of twenty-two students) less. (*Id.*; Ex. 3053 at 1.) In other words, the top 10% receive $37.67 per WADA more for each penny of tax effort than the bottom 10%. (Ex. 3052 at 1.)

FOF 1116. The top 15% have an average total tax rate of $1.200 and receive total revenue, on average, of $9,051 per WADA, for an average yield of $75.41, while the bottom 15% have an average total tax rate of $1.352 and receive total revenue, on average, of $6,079 per WADA, for an average yield of $44.95. (*Id.*) The bottom 15% tax, on average, $0.152 higher than the top 15%, yet receive $2,972 per WADA (or $98,272 per classroom of twenty-two students) less. (*Id.*; Ex. 3053 at 1.) In other words, the top 15% receive $30.46 per WADA more for each penny of tax effort than the bottom 15%. (Ex. 3052 at 1.)

FOF 1117. The top 20% have an average total tax rate of $1.222 and receive total revenue, on average, of $8,652 per WADA, for an average yield of $70.82, while the bottom 20% have an average total tax rate of $1.346 and receive total revenue, on average, of $6,117 per WADA, for an average yield of $45.43. (*Id.*) The bottom 20% tax, on average, $0.125 higher than the top 20%, yet receive $2,535 per WADA (or $83,567 per classroom of twenty-two students) less. (*Id.*; Ex. 3053 at 1.) In other words, the top 20% receive $30.46 per WADA more for each penny of tax effort than the bottom 20%. (Ex. 3052 at 1.)

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FOF 1118. **Sorting only districts that have an I&S tax rate by yield and grouping by percentiles of WADA:** When sorting just those districts that have an I&S tax rate by yield and grouping by WADA, the districts with the highest yield enrolling 10% of the WADA (top 10%) have an average total tax rate of $1.219 and receive total revenue, on average, of $8,703 per WADA, for an average yield of $71.38, while the districts with the lowest yield enrolling 10% of the WADA (bottom 10%) have an average total tax rate of $1.352 and receive total revenue, on average, of $6,082 per WADA, for an average yield of $44.98. (Ex. 3065 at 1.) The bottom 10% tax, on average, $0.133 higher than the top 10%, yet receive $2,621 per WADA (or $87,015 per classroom of twenty-two students) less. (*Id.*; Ex. 3066 at 1.) In other words, the top 10% receive $26.40 per WADA more for each penny of tax effort than the bottom 10%. (Ex. 3065 at 1.)

FOF 1119. The top 15% have an average total tax rate of $1.228 and receive total revenue, on average, of $8,404 per WADA, for an average yield of $68.46, while the bottom 15% have an average total tax rate of $1.346 and receive total revenue, on average, of $6,117 per WADA, for an average yield of $45.44. (*Id.*) The bottom 15% tax, on average, $0.119 higher than the top 15%, yet receive $2,288 per WADA (or $75,183 per classroom of twenty-two students) less. (*Id.*; Ex. 3066 at 1.) In other words, the top 15% receive $23.02 per WADA more for each penny of tax effort than the bottom 15%. (Ex. 3065 at 1.)

FOF 1120. The top 20% have an average total tax rate of $1.236 and receive total revenue, on average, of $8,236 per WADA, for an average yield of $66.62, while the bottom 20% have an average total tax rate of $1.334 and receive total revenue, on average, of $6,083 per WADA, for an average yield of $45.61. (*Id.*) The bottom 20% tax $0.097 higher than the top 20% of districts, yet receive $2,153 per WADA less. (*Id.*; Ex. 3066 at 1.) In other words, the top 20% receive $21.01 per WADA more for each penny of tax effort than the bottom 20%. (Ex. 3065 at 1.)

FOF 1121. **Sorting all districts by maximum revenue per WADA ($1.67) and grouping by percentiles of districts:** When sorting all 1,024 districts in Texas by total M&O and I&S revenue per WADA ($1.67) and grouping by district, the 10% of districts with the highest revenue per WADA at $1.67 (top 10%) would receive, on average, $16,244 per WADA, while the 10% of districts with the lowest revenue per WADA at $1.67 (bottom 10%) would receive, on average, $6,542 per WADA. (Ex. 3080 at 1; RR9:108-109.) In other words, the gap in maximum possible total revenue between the top and bottom 10% is $9,703 per WADA (or a disadvantage of $384,629 per classroom of twenty-two students for the bottom 10%). (Ex. 3080 at 1; Ex. 3082 at 1.)

FOF 1122. Taxing at $1.67, the top 15% of districts would receive, on average, $14,117 per WADA, while the bottom 15% would receive, on average, just $6,606 per WADA. (Ex. 3080 at 1.) The gap in maximum possible total revenue between the top and bottom 15% is $7,511 per WADA (or a disadvantage of $282,970 per classroom of twenty-two students for the bottom 15%). (*Id.*; Ex. 3082 at 1.)

FOF 1123. Taxing at $1.67, the top 20% would receive, on average, $12,882 per WADA, while the bottom 20% would receive, on average, just $6,661 per WADA. (Ex. 3080 at 1.) The

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gap in maximum possible total revenue between the top and bottom 20% is $6,221 per WADA (or a disadvantage of $231,220 per classroom of twenty-two students for the bottom 20%). (*Id.*; Ex. 3082 at 1.)

FOF 1124. **Sorting all districts by maximum revenue per WADA ($1.67) and grouping by percentiles of WADA:** When sorting all 1,024 districts in Texas by total M&O and I&S revenue per WADA and grouping by WADA, the districts with the highest revenue per WADA at $1.67 enrolling 10% of the WADA (top 10%) would receive, on average, $13,287 per WADA, while the districts with the lowest revenue per WADA at $1.67 enrolling 10% of the WADA (bottom 10%) would receive, on average, just $6,747 per WADA. (Ex. 3084 at 1.) In other words, the gap in maximum possible total revenue between the top and bottom 10% is $6,540 per WADA (or a disadvantage of $230,839 per classroom of twenty-two students for the bottom 10%). (*Id.*; Ex. 3086 at 1.)

FOF 1125. Taxing at $1.67, the top 15% would receive, on average, $12,578 per WADA, while the bottom 15% would receive, on average, $6,777 per WADA. (Ex. 3084 at 1.) In other words, the gap in maximum possible total revenue between the top and bottom 15% is $5,801 per WADA (or a disadvantage of $201,460 per classroom of twenty-two students for the bottom 15%). (*Id.*; Ex. 3086 at 1.)

FOF 1126. Taxing at $1.67, the top 20% would receive, on average, $12,436 per WADA, while the bottom 20% would receive, on average, just $6,799 per WADA. (Ex. 3084 at 1.) In other words, the gap in maximum possible total revenue between the top and bottom 20% is $5,636 per WADA (or a disadvantage of $193,810 per classroom of twenty-two students for the bottom 20%). (*Id.*; Ex. 3086 at 1.)

FOF 1127. Considering the findings above, the Court finds that, under the current Texas school finance system, there is not a direct and close correlation between a district's tax effort and the educational resources available to it.

c. The amount of recapture has declined since *WOC II.*

FOF 1128. Because the State continues to rely on property taxes, which are based on incredibly disparate property values across the state, to fund a substantial portion of the school finance system, recapture remains an essential piece of the current school finance system to attempt to reach a financially efficient system. *WOC II*, 176 S.W.2d at 798.

FOF 1129. As recognized in *WOC II*, recapture had doubled over the prior ten years and nearly tripled dating twelve years back from the 2004-05 school year. *See id.* at 760. In contrast, since *WOC II*, the amount of recapture has actually fallen from 2004-05 when it was over $1.2 billion to approximately $1.094 billion in 2011-12. (*Compare id. with* Ex. 11323.) The amount of recapture today also constitutes a smaller percentage of the total FSP revenue available in the system. (Ex. 11323, "Summary" tab, Total FSP Revenue, Col. 6/Row H ($39,009,907,517).)

FOF 1130. Furthermore, although the number of districts actually paying recapture has increased from 142 in 2005-06 to 221 districts in 2011-12, the percentage of districts identified as

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"Chapter 41" that actually pay recapture has declined from 142 out of 152 (92%) in FY 2006 to 222 out of 306 (72%).[34] (Ex. 11323.) This reduction is largely a result of the target revenue system, which allows districts to trade their ASATR payment for reduced recapture. (Ex. 5675 at 98-99.) *See also* TEX. EDUC. CODE § 42.2516(f). In addition, school districts with property values per WADA in excess of the equalized wealth levels of $476,500 and $319,500 continue to have available a number of credits that reduce the amount of recapture. (Ex. 5675 at 78-79.) Moreover, because the number of districts paying recapture has increased, but the amount of recapture paid has fallen, districts are paying per capita less recapture today than they were six years ago. (1/8 Tr. at 92.)

d. Contrary expert analysis presented by the State and Calhoun County ISD Plaintiffs is not persuasive.

FOF 1131. The State Defendants and the Calhoun County ISD Plaintiffs presented witnesses on financial efficiency,[35] but neither compared the top 15% of WADA in the highest property wealth school districts versus the bottom 15% of WADA in the lowest wealth districts and neither analyzed whether property-poor school districts had substantially equal access to similar revenue at similar tax efforts as property-wealthy school districts.

FOF 1132. Both experts combined school districts into one of only two groups ("Chapter 41" and "non-Chapter 41" districts). (Ex. 4384, Kallison Equity Report, at 4-6; Ex. 1188, Dawn-Fisher Report, at 9-12.) Prior Supreme Court analyses of the gaps have never focused on this distinction. *See, e.g., Edgewood I*, 777 S.W.2d at 393 (examining 100 poorest and wealthiest districts); *Edgewood IV*, 917 S.W.2d at 131-32 (analyzing 15% of WADA in poorest and wealthiest districts). Furthermore, both experts defined "Chapter 41" school districts as school districts with property values per WADA greater than $319,500, even though few districts and even fewer pennies are subject to recapture at that lower level. (*See supra* FOF 1009.) Finally, such a comparison is not appropriate to analyze whether the gap has increased or decreased, because it does not compare an equal number of districts or equal WADA. For example, the State compared the 152 districts that had Chapter 41 status in 2006 with all of the remaining districts in 2006 and then compared the 302 districts that had Chapter 41 status in 2012 with all of the remaining districts in 2012. (1/9 Tr. at 57-59.)

FOF 1133. Nevertheless, performing the same analysis by Dr. Dawn-Fisher demonstrates that the Texas school finance system is less equitable today than it was in 2006. For example, when comparing districts actually paying recapture against those districts not paying recapture the FSP gap reported by Dr. Dawn-Fisher increases significantly from $1,135 per WADA in 2006 to $1,537 in 2012. (Ex. 4247 at 1.) Dr. Dawn-Fisher admitted to

[34] For example, Richardson ISD is identified as a Chapter 41 district, but has not paid any recapture for three years. (RR5:58-59.)

[35] The Court notes that Calhoun County ISD expert Dr. James Kallison had not previously analyzed the financial efficiency of the Texas public school finance system, nor had he ever published any scholarly work in this field. (RR21:164-65.)

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similar differences in the growth of FSP revenue per ADA between the two groups of districts, which rose from $1,105 in FY 2006 to $1,521 in FY 2012. (1/8 Tr. at 143.)[36]

FOF 1134. Most importantly, the State did not analyze the tax rates necessary for the district groups to generate any a general diffusion of knowledge or any other specific amount of revenue. Despite this omission, the State's limited analysis of tax rates demonstrated incredible inequities in the system. The State's Exhibit 11323, on the tab entitled "yields," shows that there are 250 districts in Texas that tax at $1.17 and raise, on average, $5,897.02 per WADA. (1/9 Tr. at 22; Ex. 11323 at "yields" tab.) The same exhibit, on the tab entitled "yields," shows that there are fifty districts in Texas that tax, on average, at $0.90 and raise, on average, $6,029.13 per WADA. (Ex. 11323 at "yields" tab.) The 250 districts that are taxing at $1.17 can never obtain the revenue that the fifty districts taxing, on average, at $0.90 can get at $0.90. (1/9 Tr. at 23; Ex. 11323 at "yields" tab.)

FOF 1135. The Court finds unavailing the State Defendants' unfounded suggestion that small property-wealthy districts with less than 1,000 ADA cause the brunt of the inequities in the system, and notes that, neither Dr. Kallison nor Dr. Dawn-Fisher presented such an analysis in their reports. (*See generally* Ex. 1161, Kallison College Readiness Report; Ex. 1188, Dawn-Fisher Report.) Furthermore, cross-examination of Dr. Kallison on the inequities between similarly-sized school districts below 1,000 ADA revealed great differences among similarly sized property-wealthy and property-poor districts, thus showing that the impact of small, property-wealthy districts would be offset by the poverty of small, property-poor districts. Comparing the 111 recapture districts with less than 1,000 ADA and the 111 lowest wealth districts with less than 1,000 ADA, both weighted and simple analysis showed substantial gaps in revenue at adopted M&O tax rates and in yield-per-penny differences, favoring property-wealthy school districts. (RR21:173-84.) Similarly, a weighted analysis, such as those performed by Dr. Cortez, controls for such factors.

FOF 1136. Combined, although the omissions and methods of the State Defendants and Calhoun County ISD Plaintiffs detailed above tend to mask the disparities among and between school districts based on property wealth, they also show substantial gaps between property-wealthy and property-poor districts.

e. The disparities identified by Plaintiffs' experts can be seen in regions throughout the state.

FOF 1137. In virtually every county in Texas where there is more than one district, there are meaningful and substantial differences in tax rates and amount of revenue received between the districts. (RR9:32-33; RR9:130-37; Ex. 3009 at 1.)

[36] Based on Dr. Dawn-Fisher's corrected data and analysis, the difference in total FSP per WADA among districts actually paying recapture against those districts not paying recapture also increased significantly, from $965 per WADA in 2006 to $1,592 in 2012, a growth of $627 per WADA in favor of the property-wealthy districts. (Ex. 11323, at Summary Tab, Rows 44 & 51, Columns B & H.)

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FOF 1138. In virtually every county in Texas where there is more than one district, the situation exists where property-poor districts tax at the same or higher rates than their wealthier neighbors, yet receive less revenue per WADA. (Ex. 3009 at 1; RR9:32-33.)

FOF 1139. Testimony from Plaintiffs districts' superintendents and taxpayers make it clear to this Court that the disparities in tax rates and revenues identified by the experts' statewide analyses can be seen in districts throughout the state. This evidence includes, but is not limited to, the testimony examples detailed below:

i. Testimony by superintendents revealed large disparities in M&O revenue that leave property-poor districts unable to provide a general diffusion of knowledge, much less enrichment.

FOF 1140. Pflugerville ISD Superintendent Charles Dupre testified regarding the disparities in funding levels within Travis and Williamson Counties, which show revenue differences of up to $1,417 at similar tax rates:

Pflugerville	1.04	5,506	
Hutto	1.04	5,821	+ 315
Manor	1.04	6,079	+ 573
Round Rock	1.04	6,251	+ 745
Marble Falls	1.04	6,307	+ 801
Dripping Springs	1.04	6,319	+ 813
Leander	1.04	6,358	+ 852
Georgetown	1.04	6,418	+ 912
Lake Travis	1.04	6,518	+ 1,012
Austin	1.079	6,531	+ 1,025
Lago Vista	1.04	6,710	+ 1,204
Eanes	1.04	6,834	+ 1,328
Jarrel	1.04	6,923	+ 1,417

(Ex. 3238 at 7.)

FOF 1141. Abilene ISD superintendent Dr. Heath Burns testified that Abilene ISD has a tax rate of $1.04 – the maximum amount Abilene can tax without a TRE. In the 2011-12 school year, the first $1.00 of Abilene ISD's M&O tax rate generated $5,015 per WADA compared to Lewisville ISD's revenue per WADA of $5,849 at the same rate. (*See* RR19:57-58 (referencing Ex. 6355 at 13).) Dr. Burns testified that the additional revenue could have a tremendous positive impact in his district. But in order to raise the $5,849 per WADA available to Lewisville ISD, Abilene would have to tax at a rate of $1.20

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(59.97 * 6 cents + 31.95 * 14 cents)[37] – twenty cents higher than Lewisville taxes, and higher than the legal limit. This calculation, based on the amount of revenue the districts have under the current system, shows a disparity significantly greater than that allowed by the Supreme Court in *Edgewood IV*. *See Edgewood IV*, 917 S.W.2d at 731. Importantly, *both* districts' revenue amounts are less than any of the estimates of adequacy provided in this case. (*See supra* Part I.B.7.f.)

FOF 1142. According to former Northside ISD (Bexar County) Superintendent Dr. John Folks, Texas has one of the most inequitable school finance systems in the nation and children in the poorest school districts suffer the most from the gross inequities. (12/5 Tr. at 79-80; *see also* RR16:51-52.) Northside ISD is a Chapter 42 school district, but considered fairly affluent with a wealth level of $288,349 per WADA in 2011-12. (Ex. 4252.) For 2011-12, Northside ISD taxed at $1.04 and generated $5,671 per WADA, which is less than any of the adequacy estimates. (*Id.*) Neighboring Alamo Heights ISD (with property values of $980,903 per WADA) taxed at $1.04 and generated about $1,000 more for $6,666 per WADA, even after paying recapture. (*Id.*)

FOF 1143. Anton taxes at $1.17 and receives $5,278 per WADA. The 15% of the highest property wealth districts, on average, tax at $1.021 and receive $7,535 per WADA. Anton's tax rate is $0.149 higher, and Anton receives $2,257 less in revenue. (Exs. 3006; 3010.) Mr. Jim Knight, the superintendent of Anton ISD (a property-poor non-recapture district), is a former assistant superintendent of a property-wealthy school district, Canadian ISD. Canadian ISD generates approximately $2,000 per WADA more than Anton ISD, despite taxing twenty-three cents lower. He testified about the remarkable differences between the educational opportunities he was able to afford for students in a property-wealthy district compared to a property-poor district. These opportunities made a difference in the outcomes of students and the overall teaching environment in the schools. (Ex. 3203, J. Knight Dep., at 26-32.) For example, Anton ISD does not have the funds to offer its students the courses necessary for the distinguished curriculum degree. (*Id.* at 46.) The district also does not have adequate funding to compete for qualified teachers. (*Id.* at 24-25.)

FOF 1144. Superintendent Roger Knight worked in a property-wealthy district, Hallsville ISD, before becoming superintendent of Lufkin. The major differences were that Hallsville was able to provide up-to-date technology for its district, keep class sizes lower, and have continuous professional development training. Hallsville ISD brought in experts on brain development and assisted teachers with instructional techniques. Test scores were higher as a result. Hallsville is about 100 miles from Lufkin and is a similar community. Their poverty level is not as high and they have the benefit of oil and gas activity in their district. They have about $6,512 per WADA at the same $1.04 tax rate as Lufkin. (Ex. 3199, R. Knight Dep., at 42-45.).

FOF 1145. Alief taxes at $1.125 and receives $5,683 per WADA. The 15% of the highest property wealth districts, on average, tax at $1.021 and receive $7,535 per WADA. Alief's tax

[37] This calculation assumes that the "copper penny" yield continues beyond the current $1.17 cap.

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rate is $0.104, and Alief receives $1,852 less in revenue. (Ex. 3006, 3010.) Even before Alief was forced to make $22 million in budget cuts, because of target revenue funding, it lacked the resources to offer a full curriculum and prepare its students to be college and career ready. (RR8:121.) H.D. Chambers, the Superintendent of Alief, who previously served as the superintendent of Stafford MSD, testified that, because of higher target revenue, Stafford MSD was able to offer a full blown science, technology, engineering, and mathematics STEM program for a large percentage of its students. (Ex. 3205, Chambers Dep., at 37-38.)

FOF 1146. Belton taxes at $1.17 and receives $5,946 per WADA. The wealthiest 15% of districts, on average, tax at $1.021 and receive $7,535 per WADA. Belton's tax rate is $0.149 higher, and Belton receives $1,589 less in revenue. (Ex. 3006; 3010.) Superintendent Kincannon testified that the distribution of funds to Belton ISD is not fair. Surrounding districts are all taxing at $1.04 and getting more revenue per WADA than Belton ISD which taxes at the maximum, $1.17. (Ex. 3226, Kincannon Dep., at 148.)

FOF 1147. Brownwood taxes at $1.04 and receives $5,490 per WADA. The 15% of the highest property wealth districts, on average, tax at $1.021 and receive $7,535 per WADA. Brownwood's tax rate is $0.019 higher, and Brownwood receives $2,045 less in revenue. (Exs. 3006; 3010.)

FOF 1148. Bryan taxes at $1.04 and receives $5,536 per WADA. The 15% of the highest property wealth districts, on average, tax at $1.021 and receive $7,535 per WADA. Bryan's tax rate is $0.019 higher, and Bryan receives $1,999 less in revenue. (Exs. 3006; 3010.) Bryan ISD does not have the financial resources to exercise discretion in the curriculum it offers. They can barely meet state mandates. (Ex. 3200, Wallis Dep., at 63-64). The district does not have the funding to provide the variety of courses necessary to get its high school students ready for the distinguished curriculum. (*Id.* at 33, 41, 40-43.)

FOF 1149. Edgewood ISD continues to need to replace other school buildings but it does not have the capacity to fund the construction without additional IFA funds and those funds are not presently available. (Ex. 4224-S, Cervantes Dep., at 73, 200.)

FOF 1150. Everman taxes at $1.17 and receives $5,629 per WADA. The 15% of the highest property wealth districts on average, tax at $1.021 and receive $7,535 per WADA. Everman's tax rate is $0.149 higher, and Everman receives $1,906 less in revenue. (Exs. 3006, 3010.)

FOF 1151. Because of its lower yield, Everman ISD cannot raise the $6,576, which is the *Edgewood IV* calculation adjusted for inflation, at a tax rate of $1.17, and it costs more for Everman ISD to educate its students in 2012 than it did in 1993 because of the higher standards that have been adopted. (RR12:201.) Everman ISD does not have discretion to spend its funds on anything not required by state mandates and standards. (RR5:196-99.)

FOF 1152. Van ISD taxes at $1.17 and receives $5,731 per WADA. The 15% of the highest property wealth districts, on average, tax at $1.021 and receive $7,535 per WADA. Van's tax rate is $0.149 higher, and Van receives $1,804 less in revenue. (Exs. 3006;

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3010.) Van ISD is already at the $1.17 tax cap and does not have the ability to raise more money. It cannot prepare children to be college ready or career ready with existing funding. (Ex. 3201, Witte Dep., at 33.)

FOF 1153. Kaufman taxes at $1.17 and receives $5,814 per WADA. The 15% of the highest property wealth districts, on average, tax at $1.021 and receive $7,535 per WADA. Kaufman's tax rate is $0.149 higher, and Kaufman receives $1,721 less in revenue. (Exs. 3006; 3010.)

FOF 1154. Los Fresnos ISD taxes at $1.17 and receives $5,910 per WADA. The 15% of the highest property wealth districts, on average, tax at $1.021 and receive $7,535 per WADA. Los Fresnos's tax rate is $0.149 higher, and Los Fresnos receives $1,625 less in revenue. (Exs. 3006; 3010.)

FOF 1155. Lubbock ISD taxes at $1.04 and receives $5,310 per WADA. The 15% of the highest property wealth districts, on average, tax at $1.021 and receive $7,535 per WADA. Lubbock's tax rate is $0.019 higher, and Lubbock receives $2,225 less in revenue. (Exs. 3006; 3010.) Even though Lubbock lSD's M&O tax rate is $1.04, it has not pursued a TRE because of the poverty of its population. The success of a TRE is doubtful because its voters are aware that even if Lubbock ISD taxed at $1.17 it could not raise what its neighbors, Friendship ISD and Lubbock-Cooper lSD, raise at $1.04. (Ex. 3198, Garza Dep., at 30-32.) There is no educationally sound policy reason why students in Friendship ISD or Lubbock-Cooper ISD need more funding to educate their students than Lubbock ISD. The number of students living in poverty is higher in Lubbock ISD than in Friendship ISD or Lubbock-Cooper ISD. Lubbock ISD is funded at levels lower than Friendship ISD or Lubbock-Cooper ISD. (*Id.* at 31-32.)

FOF 1156. Lufkin taxes at $1.04 and receives $5,290 per WADA. The 15% of the highest property wealth districts, on average, tax at $1.021 and receive $7,535 per WADA. Lufkin's tax rate is $0.019 higher, and Lufkin receives $2,245 less in revenue. (Ex. 3006; 3010.)

FOF 1157. Pflugerville ISD taxes at $1.04 and receives $5,506 per WADA. The 15% of the highest property wealth districts, on average, tax at $1.021 and receive $7,535 per WADA. Pflugerville's tax rate is $0.019 higher, and Pflugerville receives $2,029 less in revenue. (Exs. 3006; 3010.)

FOF 1158. Quinlan ISD taxes at $1.04 and receives $5,326 per WADA, an amount less than all of the adequacy estimates. The 15% of the highest property wealth districts, on average, tax at $1.021 and receive $7,535 per WADA. Quinlan ISD's tax rate is $0.019 higher, and Quinlan ISD receives $2,209 less in revenue. (Exs. 3006; 3010.) Nearby Rockwall ISD, at the same tax rate, gets $6,385. (RR24:89.) Quinlan ISD lost forty to forty-five teachers in 2011-12, most of whom left because they could get better salaries in nearby districts. Quinlan is the de facto teacher training ground for Rockwell ISD. The lack of continuity hurts the education of students in Quinlan. (RR20:84-85.)

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ii. Testimony by taxpayer plaintiffs demonstrated large disparities in M&O revenue between neighboring districts across the state, despite higher tax rates.

FOF 1159. In many cases, taxpayers in two districts within the same county pay taxes according to the same adopted tax rate on property of essentially the same value. However, the resulting revenue the state's funding scheme provides to educate the children who happen to live in those districts is drastically different. In other instances, not only is the revenue provided by the State drastically different, but the tax rates charged the property owners – and the resulting taxes paid on the similarly valued property – are also different, to the distinct disadvantage of the those owning property in the lower funded district. (RR9:129-134, Exs. 3128 – 3186.)

FOF 1160. In the 2011-2012 school year, a Pflugerville ISD taxpayer's home was valued by the Travis County Appraisal District ("TCAD") at $165,328. They paid school taxes at an adopted M&O rate of $1.04 on a taxable value of $150,328, after the homestead exemption was applied. In Eanes ISD, another homeowner whose home was valued by the TCAD at $165,231, paid school taxes at an adopted M&O rate of $1.04 on a taxable value of $150,231 after his homestead exemption was applied. The homeowner in Pflugerville, on property within the same county and appraised by the same appraisal district, paid about the same in taxes to support the maintenance and operations of the local school district as their counterpart with property in Eanes ISD. But, because of the gross inequities inherent in Texas's current school funding scheme, that taxpayers' children in Pflugerville ISD had access to over $1,300 *less* per weighted student than those in Eanes ISD. At Eanes ISD's funding level, a classroom of twenty-two children in Pflugerville would have over $30,000 in additional funding. (RR9:135-136; Ex. 3172 at 1; Ex. 3187, Pierce Report, at 17.)

FOF 1161. In Irving ISD in 2011-2012, a homeowner had his homestead valued at $164,760 by the Dallas County Appraisal District ("DCAD"). His taxable value, after homestead exemptions were applied, was $149,760 and the maintenance and operations tax rate was set at $1.04 per $100 valuation. In Highland Park ISD ("HPISD"), the DCAD appraised another homeowner's homestead at $164,750. After his homestead exemptions were applied, which included additional local option exemptions, the taxable value of that property was set at $116,800 and M&O taxes for the school district were assessed at a rate of $1.027. The homeowner in Irving ISD paid taxes on a similarly valued property at a similar tax rate, and on a larger taxable value. But while he paid more in taxes on property of almost identical market value, the state funding system provided only $5,308 per weighted student for Irving ISD and $6,923 per weighted student for HPISD. If a classroom of twenty-two children in Irving was funded at the HPISD level, its funding level would be more than $40,000 higher. (Ex. 3187, Pierce Report, at 17.)

FOF 1162. Located in Nacogdoches County in East Texas, Cushing ISD and Central Heights ISD are neighboring districts sharing a common boundary. In 2011-2012, a homeowner in Central Heights ISD had his home appraised at $215,320 and after exemptions were applied (including a local option homestead exemption), paid school district M&O taxes at a rate of $1.04 on a taxable value of $157,260. In Cushing ISD, a homeowner with

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similarly valued property ($215,160 and $157,130 after exemptions) had school property taxes assessed at the same $1.04 rate. In this case, even though the tax effort of the two property owners was almost identical, the state funding system provided Central Heights ISD with about $2,400 *less* per weighted student than it did Cushing ISD. At this 45% higher funding level, Central Heights would have an additional $65,000 in funding for every twenty-two children. (*Id.* at 17-18.)

FOF 1163. River Road ISD and Bushland ISD are neighboring school districts located just north of Amarillo, in Potter County. In 2011-2012, after exemptions, a homeowner in River Road ISD had a taxable valuation of $195,448. A homeowner in Bushland ISD had a taxable valuation of $195,446 on his home. Both districts assessed M&O tax rates of $1.04 per $100 valuation so the difference in required tax effort for each homeowner would have been insignificant. However, in 2011-2012 the state funding system generated over $1,300 *less* per weighted student for River Road ISD than it did for Bushland ISD. (*Id.* at 18.)

FOF 1164. In 2011-2012, a homeowner in Laredo ISD had a taxable value of $109,662 on his home. In the same county, a homeowner in Webb CISD had a taxable value of $109,530 assigned to his home. The homeowner in Laredo ISD paid school property taxes for M&O at an assessed rate of $1.04 per $100 of valuation. The homeowner in Webb CISD paid school property taxes for M&O at an assessed rate of $0.8033 per $100 of valuation. Even though the value of the properties was essentially equal, the homeowner in Laredo paid 30% more in school property taxes. The state funding system provides Laredo ISD with $5,530 per weighted student, yet each weighted student in Webb CISD was funded at $12,398, well over twice the funding level provided per weighted student for Laredo ISD. (*Id.*)

FOF 1165. Randy Pittinger is a homeowner and taxpayer in Belton ISD. (RR8:66-70.) He is a private social worker and has been a hospital administrator. He has three children who graduated from the Belton ISD several years ago. (*Id.*) He is on the school board. His M&O taxes are $1.17. His house is valued at $316,493. (*Id.*) The $1.17 tax rate generates $5,946 per WADA for Belton ISD. (*Id.*) A taxpayer in a house of similar value in Salado ISD, which is also in Bell County, is taxed at $1.04 for M&O and receives $5,941 in revenue per WADA. (*Id.*) A taxpayer who lives in a house of similar value to Mr. Pittinger's in the nearby Georgetown ISD is taxed at $1.04 and receives $6,418 in revenue per WADA. (*Id.*)

FOF 1166. Brad King is a homeowner and taxpayer in Bryan ISD. (RR8:26-31.) He is an engineer. (*Id.*) His house is valued at $230,050. (*Id.*) His M&O taxes are $1.04. (*Id.*) The tax rate generates $5,536 per WADA for the Bryan ISD. A taxpayer in the College Station ISD adjoining Bryan ISD, who lives in a house of similar value, pays an M&O tax of $1.00 and College Station ISD receives $6,339 per WADA.

FOF 1167. Chip Langston is a homeowner and taxpayer in Kaufman ISD. (RR8:9-14.) He is a CPA. (*Id.*) He has one daughter who graduated from Kaufman ISD several years ago. (*Id.*) He is on the school board. (*Id.*) His house is valued at $230,060. (*Id.*) His M&O taxes are $1.17. (*Id.*) This tax rate generates $5,814 per WADA for Kaufman ISD. (*Id.*)

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A taxpayer who lives eight miles away in Forney ISD, who has a house of similar value, pays $1.04 in M&O taxes. (*Id.*) Forney ISD receives $5,741 per WADA. (*Id.*) An additional taxpayer who lives in nearby Sunnyvale ISD, in a house of similar value, pays $1.02 in M&O taxes and Sunnyvale ISD receives $6,651 per WADA.

FOF 1168. Norman Baker is a homeowner and taxpayer in Hillsboro ISD. (RR8:53-57.) He is a production supervisor at Anheuser-Busch. (*Id.*) He has two sons who have graduated from Hillsboro ISD and a daughter who is still attending school. (*Id.*) He is on the Hillsboro ISD school board. (*Id.*) His house is valued at $41,630. (*Id.*) His M&O taxes are $1.15. (*Id.*) This tax rate generates $4,915 per WADA for Hillsboro ISD. (*Id.*) A taxpayer who lives in nearby Glen Rose ISD in a house of similar value pays $0.825 in M&O taxes. (*Id.*) Glen Rose ISD receives $8,945 per WADA.

FOF 1169. These findings are not dependent on factors such as geographic locations, size, or population, but they occur in counties located all across the state and in counties of all sizes of population, both rural and urban. (Ex. 3187, Pierce Report, at 18.) These violations of substantially equal access to similar revenue for similar tax effort are not bound to just one area of the state or just one size of district or county. (*Id.*) Rather, they occur in all areas of the state and in all kinds of districts affecting hundreds of thousands of students, and the financial and economic impact is massive. (*Id.*)

3. The disparities result in the districts with the most challenging student populations receiving the least amount of funds.

FOF 1170. The State has long recognized the importance of educating these more-challenging student populations. Former Commissioner Scott testified that equipping underprivileged children with a quality education allows them the opportunity to compete on a level playing field with children born into wealth and privilege. (Ex. 4243, Scott Dep., at 3.) For this reason, students are held to the same standard by the State regardless of whether they attend a property-poor or high property-wealth or low-funded or high-funded district, and regardless of the student's race, ethnicity, or socio-economic status. (RR20:96; *supra* FOF 175.)

FOF 1171. In order to meet the promise of education identified by Mr. Scott, schools facing concentrated poverty, homelessness and transience need to provide not only comparable numbers of similarly qualified staff, but more of them in order to offer interventions designed to level the playing field for these children when compared with their more advantaged counterparts in other districts. (*See supra* Part I.B.6.b.i.) Schools in neighborhoods with concentrated poverty need to offer high quality early childhood programming, smaller class sizes in the early grades and extended learning time and/or small group tutoring. (*Id.*; Ex. 3188, Baker Report, at 50; *supra* Parts I.B.6.c.ii, I.B.6.e.ii.)

FOF 1172. When districts serving high-need and underperforming populations are faced with resource constraints, they are forced to divert resources from enrichment programs and advanced curriculum programs targeted at raising progress towards minimum standards in core content areas. Such choices deprive students in these districts of important

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opportunities. If high-need districts are afforded sufficient resources, they can both target necessary resources toward remedial and basic programming and continue to offer challenging as well as broad and enriched curricula, which affects access to and potential success in college and beyond. (*Id.* at 60, 112.)

FOF 1173. Ignoring differences in costs when providing financial inputs to schools leads to disparity among children in the ability to attain, and ultimately in the attainment itself, of equitable educational outcomes. (RR16:16-17, 57.)

FOF 1174. Yet the formulas the State uses to account for these differences are outdated and underfunded. (*See supra* Part I.B.6.b.i(c).) The FSP funds Texas school districts as if their costs vary only by about 15% from lowest to highest cost/needs. (Ex. 3188, Baker Report, at 6.) By contrast, cost models estimated by Dr. Baker indicate that costs vary by closer to 150%. (*Id.*) As a result, FSP substantially under-adjusts funding for the highest need/cost districts, most of which serve high concentrations of children in poverty and ELL children. (*Id.*) The under-weighting of the compensatory education and ELL programs has a great impact on property-poor districts. (Ex. 3187, Pierce Report, at 15.)

FOF 1175. Compounding matters, numerous studies have documented that wealthier school districts have an easier time recruiting highly qualified, experienced teachers. (Ex. 1122, Vigdor Report, at 3.) Teachers will sometimes accept a reduction in pay in order to take a job in a school serving fewer disadvantaged children. (*Id.*) While wealthier districts may also face a challenge due to the shortage of highly qualified teachers in the Texas labor pool, the districts serving the state's poorest children even more rarely have the option of hiring a teacher who has gained significant experience elsewhere. (*Id.*) The Edgewood ISD districts and the TTSFC focus districts exemplify many of the challenging attributes that Dr. Vigdor described in his report and are negatively impacted not only by their access to fewer dollars but also by the demographics of their student population and communities. (RR15:194-95; Ex. 4224-S, Cervantes Dep., at 172-73, 176-77; RR4:61-62; RR20:84; RR24:205; Ex. 3198, Garza Dep., at 49-50; Ex. 3200, Wallis Dep., at 32, 36.)

4. The disparities in funding and educational opportunities between property-poor and property-wealthy school districts is further evidenced by the experiences of Texas families.

FOF 1176. The effects of inadequate and inequitable resources are evidenced down to the student level. Edgewood Plaintiff parent Yolanda Canales testified about the inequalities in educational opportunities her children experienced in a property-poor district, Pasadena ISD, compared to when they attended schools in a property-wealthy district, Clear Creek ISD. (RR17:236-254.) She presently has two children on the free- and reduced-price lunch program attending Pasadena ISD schools. (RR17:237.)

FOF 1177. Ms. Canales had three children originally attending public schools in Pasadena ISD. (RR17:236-54.) After she became a real estate agent and her family's income increased, her family purchased a home in Clear Creek ISD in order to have access to better schools. (RR17:241-54.) Ms. Canales immediately noticed the differences, such as better quality teachers, additional educational resources and programs, more extracurricular activities,

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and smaller class sizes. (*Id.*) When her children fell behind in school, the Clear Creek schools offered lots of tutoring. (*Id.*)

FOF 1178. Ms. Canales would have preferred keeping their children in the wealthy district of Clear Creek ISD but after getting a divorce and the crash of the real estate market, she had to move back to Pasadena ISD schools in 2008 and currently lives with her children in a single-wide mobile home. Her children's quality of education suffered as a result. (*Id.*)

FOF 1179. Ms. Canales's eldest daughter graduated in 2010 on the minimum high school program and passed the TAKS test but she still struggles with coursework at the community college. (RR17:246-49.) Ms. Canales's daughter in grade twelve has also struggled, despite passing the TAKS tests. (*Id.*) She has taken coursework through the credit-recovery program, PLATO. That program is not monitored full-time with a teacher and essentially allows students to recover credits without fully understanding the material. (*Id.*) Ms. Canales must also pay for her daughter's night school with her very limited income. (*Id.*)

FOF 1180. Ms. Canales also spoke of the differences in basic science activities. For example, at Clear Creek, her eldest daughter dissected animals but at Pasadena, her daughter has not had any science experiments. (RR17:236-49.) As another example, her daughter attending high school in Pasadena schools does not bring home books, because they do not have enough books for the students. Sometimes substitutes are not available in the classrooms and the students are left unattended. (*Id.*)

FOF 1181. Ms. Canales's youngest child attends half-day pre-K in Pasadena ISD The program, which runs for only three hours, does not offer enough time for learning in that small window. (RR17:249-51.) The teacher appears overwhelmed and does not have enough assistance. (*Id.*) The classroom is also overcrowded and lacks supplies. (*Id.*) In fact, the teacher has to purchase some of her supplies. (*Id.*)

FOF 1182. Ms. Canales joined this lawsuit because she is very concerned about her children's education after she herself struggled and obtained only a GED. (RR17:238-54.) Ms. Canales has also seen her older children struggle with being college-ready and wants to ensure better opportunities for her youngest child. (*Id.*) She is aware of the differences in tax rates and funding between her district and other surrounding property-wealthy districts. (*Id.*) She has seen the variation in resources and education between property-poor and property-rich school districts and "just want[s] fairness; equal opportunities for my children as well, regardless of the neighborhood we live in." (RR17:252-54.)

5. The inadequacy of the weights bears a disproportionate burden on property-poor districts.

FOF 1183. The arbitrary and inadequate weights described above in Parts I.B.6.b.i(c) and I.B.6.b.ii(d) also tend to negatively impact the lowest wealth districts greater than the highest wealth districts. (Ex. 4000, Cortez Report, at 36-40.)

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FOF 1184. As stated previously, research has shown that a weight of ".4" for both the bilingual and compensatory education allotments is necessary to provide reasonable opportunities for those students to acquire a general diffusion of knowledge. (*Id.*) In the absence of that funding being made available through the FSP, and assuming that the State provides no additional revenue to offset the cost of acquiring the additional revenue by using a forty percent add-on weight, property-poor districts are substantially less able to generate those revenues based on their existing yields. (*Id.* at 39-40.) The lowest wealth decile would need to tax at $.95 per $100 of property value to generate the needed revenue for their ELL and economically disadvantaged students, compared to $.03 in the highest wealth decile. (*Id.*)

FOF 1185. Property-poor districts would also benefit more greatly from an increase of the bilingual and compensatory education weights from their current arbitrary weights to weights that reflect sound research. (*Id.* at 36-38.) In an analysis of the impact of increasing the funding weights for bilingual/ESL and compensatory education programs to a research-based weight of ".4," the lowest wealth decile of districts would gain an average of $510 per WADA compared to $277 per WADA for the highest wealth districts. (*Id.*) It should be noted, however, that while such an increase would help serve those students appropriately, the gross inequities in the system between property-wealthy and property-poor districts would not be addressed solely by increasing the weights. (*Id.* at 39.)

6. The State's special program cuts bear a disproportionate burden on property-poor districts.

FOF 1186. While all school districts suffered from the special program cuts identified above in FOF 56 through FOF 63, the state's lowest property wealth districts experienced on average larger cuts per student than other school districts. (*Id.* at 1.)

FOF 1187. In an analysis of the special program cuts by decile sub-grouped by property wealth per WADA, the lowest wealth districts lost an average of $253 per WADA and accounted for 13% of special program cuts suffered by all public school districts. (*Id.* at 48.) In contrast, the state's highest property wealth school districts experienced the lowest cuts per student in all sub-groups at only $21 per student and accounted for a mere 1% of all special program cuts. (*Id.*) The $200 disparity in lost revenue reflected in special program cuts further exacerbate funding inequities between the state's lowest and highest wealth districts. (*Id.*) In addition, the Court finds that such cuts further negatively impacted all school districts' – and especially the lowest wealth school districts' – ability to provide their students with a general diffusion and to exercise meaningful discretion.

7. The disparities in funding result in disparities in performance.

FOF 1188. The revenue disparities between the high and low-funded districts, identified in the prior findings, have the effect of denying meaningful educational opportunities to students attending the lower funded districts, taking the form of larger student-to-teacher ratios, larger class sizes, lack of teacher aids, and the lack of many other educational resources. (RR9:65-67; RR9:65-69, Exs. 3010 – 3086.)

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FOF 1189. The differences in revenue have an impact on educational outcomes, which are the end-result of the myriad inputs to the educational process, with one important factor being equitable funding available to support local educational program efforts. (Ex. 4000, Cortez Report, at 24.) While funding may not be the sole predictor of educational success, it does impact school district access to other critical ingredients in the educational success matrix, including strong leadership at the district and campus levels and quality teaching that can be enhanced by resources allocated for professional development, as well as parent engagement programs and targeting of resources for students with special needs. (*Id.* at 24-25.)

FOF 1190. Districts that have more revenue, on average, have higher completion rates, lower teacher turnover, higher teacher base salaries, lower student-to-teacher ratios, and lower dropout rates than those districts with less revenue. (Ex. 3088; Ex. 3092; RR9:113-15, 118-19.)

FOF 1191. When posed with the question of how their district's educational programs would be affected if they were to receive $1,000 less per WADA than they currently receive (meaning they would have to operate with budgets similar to those in which property-poor districts must operate at, but with much higher tax rates), the property-rich districts responded that the quality of their educational programs would be devastated and their achievement and ability to present meaningful opportunities to their students would be negatively impacted. (*See, e.g.,* Ex. 5618, Wiggins Dep., at 92.) It therefore follows that the property-poor districts are already suffering from those devastating effects, as they so testified.

FOF 1192. The significance of the different amounts of revenue available to educate students in Texas lies not only in the financial disparities that abound in Texas schools but importantly in the impact that those differences in resources have on the quality of education that is accessible to students residing in those vastly different school districts. (RR23:76-79; Ex. 4000, Cortez Report, at 24-25.)

FOF 1193. The testimony of superintendents throughout the state bears out the negative impact of disparate funding. The Everman ISD superintendent testified that the district cannot provide the basic program, much less enrichment, and cannot compete with other districts for career pathways, on advanced science offerings, or with courses for a distinguished diploma; as a result, Everman students are at the bottom of the college applicant pool because the district cannot afford a richer curriculum. (RR5:192, 196-200.)

FOF 1194. Correspondingly, superintendents throughout the state also testified regarding the services they could provide and the improvements they could make if they were given the same funding as their property-wealthy counterparts. Dr. Folks testified that if Northside were leveled up to the revenues available to Alamo Heights ISD, it would have a tremendous positive impact on student achievement, especially given the increased standards. (RR25:103-05.)

FOF 1195. The disparities in revenue can be seen at the local level. A school district receiving $1,500 less per WADA, in a classroom of twenty students, would receive $30,000 less than a wealthier district. At the school level, a property-poor school district would

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receive approximately $300,000 less than a wealthy district at a school of 200 students. And at a district level of 2,000 students, the property-poor district would receive $3,000,000 less. (RR23:59-60; *see also* RR9:64 (explaining that a difference of $1,954 per WADA would mean that a lower wealth district among the 15% poorest by WADA would have access to $65,484 less per classroom of twenty-two students than a district among the 15% wealthiest by WADA).) These funds could be used on a whole range of reasonable and necessary educational opportunities to increase student performance including, but not limited to: recruiting and retaining the qualified and competent teachers, improving technology, reducing class sizes, upgrading the quality of pre-K programs, and offering a fuller and deeper range of accelerated and intervention programs. (*See generally* RR15:18; RR4:73-74.)

FOF 1196. The differences in revenue also do not limit themselves to the extreme gaps in excess of $1,000 per WADA. As many school officials testified, a difference of a few hundred dollars per student can make the difference in preserving necessary educational programs to provide an adequate education. (*See*, *e.g.*, RR18:200-204 (explaining reductions in educational program resulting from $1.4 million budget cut for 2011-12 school year).) This is especially true today, when the stakes have been raised for both students and school districts. (*Id.*)

FOF 1197. As resources are increasingly targeted toward passing the state's standardized tests, from which individual, school and district accountability is measured, resources are often diverted from the curriculum opportunities that provide for children exceeding minimum standards to be truly college ready including access to both intermediate level and advanced math and science courses at the secondary level. (Ex. 3188, Baker Report, at 60.)

8. Equity should be a guiding principle of the school finance system.

FOF 1198. Former TEA Commissioner Scott, testifying at the time as the then-current Commissioner, testified that Texas should not provide unequal educational opportunities depending on where a student lives and disagreed with the philosophy that some districts should have access to more resources than other districts. In response to a question of whether the State of Texas should value certain students more than other students because of where they live and attend school, he testified that it was "offensive to the very nature of what we expect our public schools to do. No, we shouldn't value students more than others." (Ex. 4243 at 8-9.) Dr. Kallison agreed and testified that equity was critically important to any school finance system. (RR21:94.)

FOF 1199. The property-wealthy school districts also acknowledged the importance of equity and fairness for all Texas schoolchildren, especially because all children are held to the same, more rigorous and increasing standards. (*See generally supra* Part I.B.3.) Many of the superintendents for Chapter 41 districts acknowledged that they are not asking this Court to eliminate recapture or to reduce recapture or to provide their students with greater access to resources than lower wealth districts taxing at similar effort. (RR5:62; Ex. 5618, Wiggins Dep., at 96-97.)

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FOF 1200. Equitable funding helps level the playing field for all schools and ensures that all districts have access to equitable resources and are thus equally investing in providing a high quality education for all students. The existing inequitable system instead pits school districts with vastly different resources against each other and encourages competition that is vastly inequitable. (Ex. 4000, Cortez Report, at 25.)

FOF 1201. Eight years ago, our highest state court held that "especially in this Information Age, education as a fundamental basis for our future has grown by orders of magnitude." *WOC II*, 176 S.W.d3d at 799. Since that time, the increase in rigor in Texas's curriculum, accountability, and testing standards, as well as competition for higher education readiness and entry for all students, has resulted in an even more heightened need for a financially efficient system to ensure that *every* Texas child, no matter where they attend school, has access to the reasonable and necessary opportunities to reach their full potential and contribute to the great future of Texas.

FOF 1202. In light of the preceding findings, collectively and severally, the Court finds that the disparity in funding (where property-poor districts tax high and spend low) has the effect of denying reasonable and meaningful educational opportunities to the students attending the lower funded districts and denying to those students a general diffusion of knowledge as required by the state constitution. Based on these findings, the findings in Part I.B.6 and the additional testimony of the superintendents set out in Part I.B.10, the Court further finds that the Texas school finance system fails to provide districts with substantially equal access to funding up to the level necessary to provide a general diffusion of knowledge. Further this denial of equal access to the funding necessary to provide a general diffusion of knowledge must be addressed without delay.

FOF 1203. In the alternative, even if the Texas school finance system provides districts with substantially equal access to funding up to the level necessary to provide a general diffusion of knowledge, the amount of unequal local supplementation in the system is so great that it, in effect, destroys the efficiency of the entire system. *WOC II*, 176 S.W.3d at 792.

D. Findings relating to the TTSFC Plaintiffs' taxpayer equity claim

FOF 1204. Plaintiff Joseph Langston, who resides in Kaufman ISD, pays property taxes at the same rate as other taxpayers in Kaufman ISD. (RR8:22.)

FOF 1205. Plaintiff Brad King, who resides in Bryan ISD, pays property taxes at the same rate as other taxpayers in Bryan ISD. (RR8:46.)

FOF 1206. Plaintiff Norman Ray Baker, who resides in Hillsboro ISD, pays property taxes at the same rate as other taxpayers in Hillsboro ISD. (RR8:64.)

FOF 1207. Plaintiff Randy Pittinger, who resides in Belton ISD, pays property taxes at the same rate as other taxpayers in Belton ISD. (RR8:83-84.)

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E. Findings relating to Intervenors' qualitative efficiency claim

FOF 1208. The Intervenors posit that the Texas educational system cannot be deemed constitutionally efficient until Texas adopts several structural reforms that have yet to attract majority support in the Legislature, including, among other things, lifting the statutory cap on charter schools; changing laws, regulations and practices that govern teacher compensation, hiring, firing, and certification; creating greater school choice or vouchers; and modifying school district financial reporting requirements. While Intervenors contend that they do not seek any particular remedy besides a declaration that the system is "qualitatively inefficient" and therefore unconstitutional, a cure for the constitutional deficiency they allege necessarily would require the Legislature to adopt some version of their preferred educational policy choices. Their claims fail on both factual and legal grounds as described below and *infra* Parts II.A.7 and II.B.5.

1. The Intervenors' claims are non-justiciable.

FOF 1209. Nearly every one of the Intervenors' complaints about the current educational system and their suggested reforms have been made the subject of proposed legislation in either the past or current legislative sessions, but none of these proposals has yet attracted majority support. *See, e.g.*, H.B. 1087, 82nd Leg. Reg. Sess. (Tex. 2011) (removing cap on charters); H.B. 17, 82nd Leg. 1st Called Spec. Sess. (Tex. 2011) (repealing teacher salary schedule); H.B. 1587, 82nd Leg. Reg. Sess. (Tex. 2011) (establishing rules regarding teacher evaluations based on performance); H.B. 33, 82nd Leg. 1st Called Spec. Sess. (Tex. 2011) (establishing school voucher program); H.B. 1589, 82nd Leg. Reg. Sess. (Tex. 2011) (creating a new Center for Financial Accountability and Productivity in Education, to annually evaluate and rank each district, charter, and campus on productivity).

FOF 1210. The Legislature has the right to determine the "'methods, restrictions, and regulations'" of the educational system. *Edgewood IV*, 917 S.W.2d at 736 (quoting *Mumme v. Marrs*, 40 S.W.2d 31, 36 (Tex. 1931)). The Texas Supreme Court has stated unequivocally that, in discharging its review of article VII claims, it will "not dictate to the Legislature how to discharge its duty . . . [nor will it] judge the wisdom of the policy choices of the Legislature, or . . . impose a different policy of our own choosing." *WOC I*, 107 S.W.3d at 564 n.12 (citation and internal quotation marks omitted). The Intervenors' arguments cross this line.

2. The Intervenors have failed to prove that the system is qualitatively inefficient.

FOF 1211. The Intervenors failed to prove that the Texas educational system is inefficient, having defined "efficiency" as productive of results with little waste.

FOF 1212. One of the Intervenors' key experts, Dr. Paul Hill, defined efficiency as "the ratio of inputs to outputs" (1/15 Tr. at 35), but conceded that he had neither reviewed the inputs (the level of funding) or the outputs (the student performance results) of the Texas educational system. (1/15 Tr. at 158-61, 183.)

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FOF 1213. Another Intervenor expert, Dr. Eric Hanushek, in forming his opinion that the Texas school finance system was inefficient, did not visit any Texas school districts, speak to any Texas administrators or faculty, examine any school district budget or financial statement, attempt to quantify the amount of money spent inefficiently, or make any attempt to quantify the costs of various educational inputs. (1/16 Tr. at 120-21, 188, 191-93.) The only example of inefficiency he could provide was the way teachers are compensated in Texas. (1/16 Tr. at 122, 189.) But Dr. Hanushek (1) conceded that there was no solid evidence that a merit pay system would have a positive impact on student achievement (1/16 Tr. at 169-73), (2) conceded that a merit pay system might be more expensive than the status quo (1/16 Tr. at 194), (3) acknowledged that he had never personally assisted a state or school district with the design of a merit pay system or recommended any specific design (1/16 Tr. at 234-35), (4) acknowledged, but never offered any credible solutions to, the implementation difficulties associated with a merit pay regime, (1/16 Tr. at 173-75, 202-06, 208-12, 233-34; *see also supra* Part I.B.8.b), and (5) acknowledged that a merit pay scheme raises valid concerns about destructive competition among teachers. (1/16 Tr. at 234.)

FOF 1214. Dr. Hanushek likewise showed scatterplots of districts based on one year of spending and performance data, in an effort to show that some districts were spending their money much more efficiently than others. But Dr. Hanushek made no effort to identify those "efficient" districts or to determine why they were shown to be more efficient. (1/16 Tr. at 151-52.) Both the "efficient" and "inefficient" districts in these scatterplots utilize the traditional salary schedule (RR24:15) – the only example that Dr. Hanushek could give of an "inefficient" practice. (1/16 Tr. at 188-89.)

FOF 1215. None of the Intervenor experts identified a measure by which the efficiency of the Texas educational system could be rated, either on an absolute or relative basis. Dr. Hill conceded that there was no generally accepted measure of efficiency in the scientific community, and he made no attempt to calculate one for Texas. (1/15 Tr. at 98-99, 164-66.) One of the State's primary experts, Dr. Michael Podgursky, agreed that it is impossible to calculate the "frontier relationship" between inputs and outputs, i.e., the most efficient way to raise student achievement. (12/13 Tr. at 54-55.) Dr. Hill further testified that even if Texas were the most efficient educational system in the country, he would still testify that it was inefficient because of the structural features of the system identified in his report. (1/15 Tr. at 184.)

FOF 1216. Dr. Vigdor also persuasively rebutted Dr. Hanushek's argument that "if resources are not used to achieve the maximum possible student outcomes, it is not possible to describe the student outcomes that will result from added funding." (Ex. 1001 at 3.) Dr. Vigdor explained that: (1) the production frontier cannot be observed in reality, and that it is impossible to verify whether the resources devoted to schools have been used in the most efficient manner possible; (2) the argument that the level of inefficiency in public schools exceeds that to be expected by virtue of its status as a human organization is a presumption rather than a fact; (3) the production frontier is also a moving target; many factors might raise the location of the frontier upward or downward; and (4) the only measurable, verifiable element represented in Dr. Hanushek's frontier analysis is the

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quantity of resources (encompassing financial resources, physical resources, and human resources), which substantial evidence indicates has declined in recent years. (RR24:39-41 (referencing Ex. 5412 at 52-53).)

3. The evidence relating to the statutory cap on charter schools does not support a claim for qualitative inefficiency.

FOF 1217. One of the Intervenors' and Charter School Plaintiffs' primary complaints is that the statutory cap on open-enrollment charters (which currently limits the number of charters that can be awarded to 215) is inefficient and leads to "unmet demand" as evidenced by the thousands of students currently on charter school waiting lists. However, the statutory cap has not even been reached (presently, 209 charters have been awarded), and any of the existing charter school operators are free to open additional campuses to meet this additional demand. (1/24 Tr. at 16-17.) The Intervenors' expert, Dr. Paul Hill, could not explain why the statutory cap acted as an impediment to meeting this additional demand. (1/15 Tr. at 133-37.) In fact, Dr. Hill testified that, given the large numbers of low-performing charter schools, Texas may have been too lenient in awarding charters. (1/15 Tr. at 134.)

FOF 1218. Former Commissioner Robert Scott also testified that it is reasonable to have a statutory cap in place is because there is a relationship between the number of charters in existence and the resources available at the TEA to review and monitor existing charters and review new applications, particularly in light of recent budget cuts at the agency. (Ex. 5630, Scott Dep., at 108-10.) In Mr. Scott's words, "when you create a charter, it's like creating a whole new school district" and "it adds that level of workload to the agency." (*Id.* at 110.) Mr. Scott stated a rational basis for maintaining a cap.

FOF 1219. The Court further notes that proposed legislation has been filed during the current legislative session that would lift the statutory cap. *See, e.g.*, H.B. 478, 83rd Leg. Reg. Sess. (2013).

4. The evidence relating to the teacher compensation system does not support a claim for qualitative inefficiency.

FOF 1220. The Intervenors' arguments regarding teacher merit pay reforms are addressed in Part I.B.8.b and in FOF 1213.

5. The evidence relating to the Chapter 21 statuses and regulations does not support a claim for qualitative inefficiency.

FOF 1221. The Intervenors offered no persuasive evidence to support their argument that eliminating many of the statutes contained in Chapter 21 of the Texas Education Code governing teacher employment (and the related regulations) would result in substantial gains in student performance. Whether to modify or eliminate these statutes and regulations is a legislative policy choice and is not a question of constitutional dimension.

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FOF 1222. In any case, superintendents credibly testified that Chapter 21 does not create any significant inefficiencies for school districts. (See, e.g., RR6:43-45; 1/24 Tr. at 65-69.) Low-performing teachers often agree to resign instead of pursuing the full Chapter 21 procedures. (RR4:216-19; 1/24 Tr. at 65-68; 1/22 Tr. at 151.) When Chapter 21 procedures are pursued, they do not prevent school districts from removing low-performing teachers. (*See, e.g.,* 1/24 Tr. at 65-67; RR6:43-45.) Superintendent testimony also showed that Chapter 21's minimum contract period does not cause problems for districts, but, in fact, protects them by ensuring that teachers do not leave before the end of a school year. (1/24 Tr. at 68.) The Court finds that Chapter 21 regulations do not create any significant inefficiencies in the system.

FOF 1223. The Intervenors proffered the testimony of Robyn Wolters, director of human resources for Irving ISD, to show that invoking the Chapter 21 non-renewal procedure is an expensive, time-consuming process. Much of her testimony about the costs of Chapter 21 non-renewal and termination procedures was based on hearsay. (1/22 Tr. at 145-47, 158.) Further, she only had personal knowledge of HR practices at Irving ISD and could not speak to the practices of the 1,023 other school districts in Texas. (1/22 Tr. at 152-54.) Ms. Wolters recognized that the Chapter 21 procedures were designed to protect teachers' due process rights so that they are not subject to arbitrary adverse employment decisions, and that such rights are important. (1/22 Tr. at 154.) Finally, Ms. Wolters could not provide any specifics about the cost of compliance with Chapter 21 procedures, either in terms of staff time or money. (1/22 Tr. at 157.)

FOF 1224. To the extent the Intervenors or the State Defendants challenge the ISD Plaintiffs' adequacy claims on the theory that removal of the Chapter 21 regulations would result in performance gains without the need for additional resources, the Court points out that the ISD Plaintiffs must operate within the current statutory framework, and have no burden to disprove what might happen in a hypothetical world with a different statutory framework.

6. The evidence relating to school choice proposals, including vouchers, does not support a claim for qualitative inefficiency.

FOF 1225. The Intervenors offered no persuasive evidence to support their argument that increasing school choice, through a voucher program or otherwise, could act as a substitute for additional funding to the existing system, or would significantly boost student achievement at little cost. Whether to adopt greater school choice is a legislative policy choice, not a question of constitutional dimension. This Court notes that the Lieutenant Governor and Chair of the Senate Public Education Committee have announced their intention to make school choice one of the centerpieces of their education agenda in the current legislative session, and the Legislature is the proper forum for such a debate. (*See* http://www.senate.state.tx.us/75r/senate/members/dist7/pr12/p121912a.pdf.)

FOF 1226. To the extent the Intervenors challenge the ISD Plaintiffs' adequacy claims on the theory that greater school choice would result in performance gains without the need for additional resources, the Court points out that the ISD Plaintiffs must operate within the

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current statutory framework, and have no burden to disprove what might happen in a hypothetical world with a different statutory framework

FOF 1227. Dr. Vigdor opined that basic economics suggests that introducing school choice would increase, not decrease, districts' collective wage bill. (Ex. 5400, Vigdor Supp. Report, at 9-10.) Those school districts that are presumed to have power over consumers in the market for education also possess a comparable degree of power over teachers in the labor market. Compared to a competitive labor market – in this context, one where many small education providers compete to hire teachers – entities with some degree of market power in labor markets can hire fewer workers and pay them less. (RR24:38-39.) Introducing competition into the market place, Dr. Vigdor stated, leads to increases in teacher compensation and expanded hiring of teachers. (Ex. 5400, Vigdor Supp. Report, at 9-10; RR24:36-38.)

FOF 1228. Mr. Joseph Bast, president and CEO of the Heartland Institute, testified for the Intervenors regarding the Texas Taxpayers' Savings Grant Program ("TTSGP"), a school voucher bill that failed in the 82nd Legislative Session. (Ex. 8068 at 1.) As a threshold matter, this Court finds that Mr. Bast is not a credible witness and that he did not offer reliable opinions in this matter. While Mr. Bast described himself as an economist, he holds neither undergraduate nor graduate degrees in economics, and the highest level of education he completed was high school. (1/22 Tr. at 63-64.) Mr. Bast testified that he is 100% committed to the long-term goal of getting government out of the business of educating its own voting citizens. (1/22 Tr. at 115.) Further, his use of inflammatory and irresponsible language regarding global warming (Exs. 5688, 1246, 1247), and his admission that the long term goal of his advocacy of vouchers is to dismantle the "socialist" public education system (1/22 Tr. at 115-16) further undermine his credibility with the Court.

FOF 1229. The proposed bill Mr. Bast discussed would have offered tuition grants to students upon entering private kindergarten or transferring from public to private schools equal to the amount of tuition at their private school, or 60% of the state average per-pupil maintenance and operations expenditure, whichever is less. (Ex. 1241 at 1.) Mr. Bast's analysis ignored significant considerations related to the purported cost savings from the TTSGP, making his opinions unreliable. For example, Mr. Bast estimated the amount of the TTSGP grants and supposed savings by using per-pupil maintenance and operating expenditure figures from the 2009-2010 Pocket Edition, which included both federal funds and state funds targeted for low-income students, at-risk students, and ELL students. (1/22 Tr. at 90-91, 93-96.) Under Mr. Bast's calculations, students transferring to private schools would receive vouchers based on these compensatory spending programs, regardless of whether the students receiving the voucher fit any of these categories. (1/22 Tr. at 94-95.) In addition, Mr. Bast predicted that between 314,000 and 382,000 students would take advantage of the TTSGP in the second year of the program (1/22 Tr. at 24), and that the TTSGP would save the State approximately $2 billion over two years. (1/22 Tr. at 24-25.) However, the TEA estimated that only 22,000 to 45,000 students would participate in the TTSGP, a fraction of what Mr. Bast estimated. (Ex. 8146 at 2.) In calculating the projected cost savings from the TTSGP, Mr. Bast also did

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not account for students who already transfer from public to private schools each year without receiving tuition assistance (1/22 Tr. at 107), nor did he account for students who start kindergarten in Texas private schools each year without receiving tuition vouchers. (1/22 Tr. at 108-09.) Mr. Bast agreed that the State would not achieve any savings by subsidizing these private school students who would have attended private schools even without receiving the TTSGP. (*Id.*)

FOF 1230. The LBB found that the TTSGP would actually cost the State money for the first two years it operated (1/22 Tr. at 88), and no government entity agreed with Mr. Bast's conclusion that the grant program would save the State $1 billion annually. (1/22 Tr. at 90.) For each of these reasons, the Court rejects Mr. Bast's conclusions about the supposed costs savings that would have resulted from the TTSGP.

7. The evidence relating to districts' financial reporting requirements does not support a claim for qualitative inefficiency.

FOF 1231. The Intervenors offered the testimony of Dr. Hill and Dallas businessman Mark Hurley to support their contention that Texas does not keep sufficient data to determine whether its educational dollars were being spent efficiently. This testimony was unpersuasive.

FOF 1232. When formulating his opinion in this case, Dr. Hill was unaware of the extensive data available in the Academic Excellence Indicator System ("AEIS"). (1/15 Tr. at 114-15, 148.) When presented with the data currently available in the AEIS system, Dr. Hill agreed that superintendents could perform financial analyses calculating the per pupil spending at different schools, but that the data set could not attach spending to individuals students. (1/15 Tr. at 149-50.) Dr. Hill presented no analysis of the costs of creating the data set he envisioned, and could not compare the costs of that data set with what Texas currently spends on educational cost data. (1/15 Tr. at 151, 153.)

FOF 1233. While Mr. Hurley has a background in finances in publicly-owned and private companies, he admits that he has no background, experience, or knowledge of the operation of public schools in Texas, nor in school district or governmental budgeting or accounting. (Ex. 8145, Hurley Dep., at 93-94, 175, 177.) Mr. Hurley acknowledged that, in forming his opinions, he did not review the "oceans of data" available through the AEIS system (*Id.* at 160-62), nor did he review the materials that board members have available to them when approving the budget. (*Id.* at 166.) He also admitted that his opinions were limited to the materials he reviewed, which were primarily the school districts' Comprehensive Annual Financial Reports. (*Id.* at 156-157, 164, 165.) Mr. Hurley further testified that the schedules he proposed in his report were mere examples, and that his proposals might not work for all districts and could and should be revised and improved by people with more knowledge of school district operations. (*Id.* at 169, 175, 178, 191, 197-99.)

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8. The evidence relating to other state mandates does not support a claim for qualitative inefficiency.

FOF 1234. Dr. Hill testified about state mandates that he claims break the link between expenditures and educational outcomes, including mandates related to teacher pay, school staffing, and school administrative organization, among others. (Ex. 1341, Hill Report, at 4-5.) But Dr. Hill's discussion of mandates in his expert report was drawn from his national research and he made no effort to determine which of these mandates applied in Texas. (1/15 Tr. at 167.) Many did not. (1/15 Tr. at 116-20, 168-71.) Nor did Dr. Hill offer any empirical or research evidence – beyond his own assertions – that removing any of the mandates that were applicable in Texas would lead to significant cost savings for districts or improvements in student performance. Dr. Hill also agreed that virtually all of the mandates he discussed could be removed with legislative action and that such legislative action had not yet attracted majority support. (1/15 Tr. at 181-82.)

F. Findings relating to the Charter School Plaintiffs' claims

1. Background on Texas charter schools

FOF 1235. The purposes of a charter are to, among other things, "increase the choice of learning opportunities within the public school system" and "encourage different and innovative learning methods." TEX. EDUC. CODE § 12.001. (*See also* 1/24 Tr. at 5-6.) They serve as an alternative to traditional school districts for families and students. (1/28 Tr. at 84.)

FOF 1236. There are three classes of charters under Chapter 12 of the Education Code. *See* TEX. EDUC. CODE § 12.002. These are: (1) home-rule school district charters that are operated by school districts, *see id.* § 12.011-.030; (2) campus or campus program charters that a school district board of trustees may grant to parents and teachers for a campus or program on a campus, *see id.* § 12.051-.065; and (3) open-enrollment charters granted by the SBOE, *see id.* §12.101-.135. The remaining findings in this section address open-enrollment charters.

FOF 1237. Most open-enrollment charter schools in Texas are operated by non-profit corporations. (1/24 Tr. at 7.)

FOF 1238. A charter is a contract between the SBOE and a charter school applicant. (1/24 Tr. at 5-6; 13; Ex. 9043.) Each charter contract is for a five-year term, after which time the charter is up for renewal. If the charter is renewed, its term is ten years. (1/24 Tr. at 13.) The charter incorporates the charter applicant's application, and together the two constitute the full terms of the contract. (1/24 Tr. at 5-6; Ex. 9043.)

FOF 1239. Once a charter is awarded, TEA treats the charter school in a manner similar to the way it treats a traditional public school. The charter school interacts with TEA's curriculum, performance-based monitoring, and monitoring and interventions departments, and with TEA's financial review division. (1/24 Tr. at 19.)

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FOF 1240. According to Robert Scott, former Commissioner of Education, "when you create a charter, it's like creating a whole new school district" and "it adds that level of workload to the agency." (Ex. 5630, Scott Dep., at 110.)

FOF 1241. Charter schools and school districts are similar in many ways. For instance, both entities are subject to financial accountability requirements, have access to the Teacher Retirement System, and must satisfy state curriculum and graduation requirements. (Ex. 9048 at 22.)

FOF 1242. Charter schools and school districts, despite their similarities, are quite different. Charter schools have much more flexibility in personnel matters, including that charter school teachers are employees "at will," there is no minimum salary scale for teachers, and charter schools are only partially subject to the disciplinary and placement procedures contained in Chapter 37 of the Texas Education Code. (Ex. 9048 at 23; 1/28 Tr. at 51-53.) Moreover, a teacher in a charter school is required to only have a high school diploma, and is not required to be certified. TEX. EDUC. CODE § 12.129. (1/28 Tr. at 51.)

2. Tier I and Tier II funding for open-enrollment charter schools is based on statewide averages for district-level adjustments and individualized adjustments for student-level weights.

FOF 1243. Charter schools are also funded differently than school districts. Charter schools, unlike school districts, lack taxing authority. TEX. EDUC. CODE § 12.102(4). Accordingly, charter schools are fully state funded. The State provides charter schools Tier I funding based on student attendance and student population characteristics. The State also provides charter schools with Tier II funding, which is based on the statewide average of school district tax effort in Tier II. Some charter schools receive ASATR if necessary to meet their revenue target per WADA. (Ex. 1188, Dawn-Fisher Report, at 14.) *See generally* TEX. EDUC. CODE § 12.106.

FOF 1244. Tier I funding for public school districts is based on each individual district's own adjusted allotment, which is a function of and is adjusted according to that district's M&O tax rate, size, sparsity, and the Cost of Education Index. Open-enrollment charter schools receive the same Tier I "special allotments" for students allocated to school districts (e.g., compensatory education, bilingual education, etc.). *See* TEX. EDUC. CODE §§12.106(a-1), 42.151-42.154. However, unlike school districts, each charter school's adjusted allotment is not adjusted for a charter's specific size, sparsity, or CEI. TEX. EDUC. CODE §§12.106(a-1), 42.102-42.105. Instead, one adjusted allotment number is applied to all charter schools so that they receive a statewide average of all the CEI, sparsity, and size adjustments received by all Texas school districts within their adjusted allotment. (1/28 Tr. at 73-75.)

FOF 1245. Tier I funding for open-enrollment charter schools is calculated through weighted funding elements. The basic allotment, the statewide average adjusted basic allotment, and the statewide average adjusted allotment are then incorporated into the same funding formulas applicable to independent school districts, using the charter school's student

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counts for the student-level special allotments. (Ex. 6441, Wisnoski Dep., at 9, 11 (referencing Ex. 5653 at 140-45, Ex. 5654 at 127-31).)

FOF 1246. Open-enrollment charter schools receive Tier II funding calculated using average school district M&O tax effort in Tier II. (1/28 Tr. at 75.) (Ex. 6441, Wisnoski Dep., at 9, 11 (referencing Ex. 5653 at 140-45, Ex. 5654 at 127-31).)

FOF 1247. The target revenue amount for open enrollment charter schools is set at the level of funding under formulas in effect for charter school funding in year 2008–09 and using 2009–10 funding per WADA.

FOF 1248. Charter schools are not eligible for separate facilities funding under either the Instructional Facilities Allotment or the Existing Debt Allotment. (Ex. 1188, Dawn-Fisher Report, at 15.)

FOF 1249. Charter applicants are aware of the funding they will receive from the State when they enter into the charter contract. (1/29 Tr. at 152-53.)

FOF 1250. Although charter schools do not receive specifically earmarked facilities funding, the total funding they receive under the Foundation School Program per ADA is nearly identical to that available to school districts. (Ex. 1188, Dawn-Fisher Report, at 15.) When considering General Fund revenue per ADA, charter schools fare better than school districts. By Fiscal Year 2012, charter schools received $1,283 per ADA more than school districts. This funding difference exceeds the maximum amount of revenue available to school districts through the EDA program. This is similarly true when looking at All Funds revenue. Charters accordingly have access to revenue in excess of what is available to school districts, and that revenue is available to meet charter schools' facilities needs. (*Id.* at 16-17.)

FOF 1251. The charter cap of 215 has been reached only once since the creation of charter schools in Texas. Presently, there are only 209 active charters. A charter holder may open more than one campus under the charter. There are currently over 500 charter campuses in Texas. (1/24 Tr. at 16-17.)

FOF 1252. Even with the cap in place, charter schools have experienced exponential growth in Texas since 1996. (1/24 Tr. at 19 (referencing Ex. 11332 at 11).)

FOF 1253. Although the majority of charter schools are either "recognized" or "academically acceptable" under the state's accountability system, charter schools are more than twice as likely as school districts to be ranked as either "exemplary" or "academically unacceptable." (Ex. 11332 at 13.) Specifically, 8.5% of charter schools are exemplary compared to 4.4% of school districts. Likewise, 17.6% of charter schools are academically unacceptable, whereas only 4.9% of districts have that designation. (*Id.*)

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II. Conclusions of law

A. The constitutional parameters and application of factual findings

COL 1. Article VII, Section 1 of the Texas Constitution – the "education" clause – provides: "A general diffusion of knowledge being essential to the preservation of liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools." TEX. CONST. art. VII, § 1. According to the Texas Supreme Court, Article VII, Section 1 obligates the Legislature to meet three standards in providing for a public school system. First, the education provided must be **adequate,** i.e., the public school system must accomplish "that general diffusion of knowledge . . . essential to the preservation of the liberties and rights of the people," and "must reflect changing times, needs, and public expectations." *WOC I*, 107 S.W.3d at 563, 572 (citing TEX. CONST. art. VII, § 1); *see also WOC II*, 176 S.W.3d at 753. Second, the means adopted must be "**suitable,**" i.e., the "public school system [must] be structured, operated, and funded so that it can accomplish its purpose for all Texas children." *WOC II*, 176 S.W.3d at 753. Third, the system itself must be both qualitatively and quantitatively "**efficient**." *Id.* at 752-53.

COL 2. The Legislature must satisfy these obligations without relying on constitutionally-prohibited state ad valorem taxes. *See* TEX. CONST. art. VIII, § 1-e ("No State ad valorem taxes shall be levied upon any property within this State."). An "ad valorem tax is a state tax when it is imposed directly by the State or when the State so completely controls the levy, assessment and disbursement of revenue, either directly or indirectly, that the authority employed is without *meaningful discretion*. The determining factor is the extent of the State's control over the taxation process." *WOC I*, 107 S.W.3d at 578 (emphasis added) (citation and internal quotation marks omitted).

COL 3. Put another way, the Texas Constitution requires a public school finance system that (1) provides all districts access to funds sufficient to provide a general diffusion of knowledge, i.e., a constitutionally adequate education (Article VII, Section 1), to all of its students, (2) within an equalized system that provides substantially equal access to similar levels of revenue at similar tax rates, while (3) still leaving districts with "meaningful discretion" to raise their tax rates in order to provide local enrichment programs to their students, if they so choose. (Article VIII, Section 1-e.)

1. The role of the judiciary and the "arbitrary" standard of review

COL 4. "The judiciary's role, though important, is limited to ensuring that the constitutional standards are met." *WOC II*, 176 S.W.3d at 753. It is not to "prescribe *how* the standards should be met." *Id.* "[M]uch of the design of an adequate public education system cannot be judicially prescribed." *Id.* at 779. The Legislature necessarily has "much latitude in choosing among any number of alternatives that can reasonably be considered adequate, efficient, and suitable. These standards do not require perfection, but neither are they lax. They may be satisfied in many different ways, but they must be satisfied." *Id.* at 784.

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COL 5. "Article VII, Section 1 allows the Legislature a large measure of discretion on two levels. The Legislature is entitled to determine what public education is necessary for the constitutionally required 'general diffusion of knowledge', and then to determine the means for providing that education. But the Legislature does not have free rein at either level." *Id.* For example, the Legislature may not "'define what constitutes a general diffusion of knowledge so low as to avoid its obligation to make suitable provision imposed by article VII, Section 1.'" *Id.* (quoting *WOC I*, 107 S.W.3d at 571). And while the Legislature "'certainly has broad discretion to make the myriad policy decisions concerning education,'" its choices must be informed by "guiding rules and principles properly related to public education," i.e., they must not be arbitrary. *Id.* at 784-85.

COL 6. "It would be arbitrary, for example, for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals." *Id.* at 785.

COL 7. "'[A] mere difference of opinion [between judges and legislators], where reasonable minds could differ, is not a sufficient basis for striking down legislation as arbitrary or unreasonable.'" *Id.* (alteration in original) (quoting *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 520 (Tex. 1995)).

COL 8. However, "[f]or article VII, Section 1, as for other provisions, '[t]he final authority to determine adherence to the Constitution resides with the Judiciary.'" *Id.* (quoting *WOC I*, 107 S.W.3d at 563 (citing *Marbury v. Madison*, 5 U.S. 137, 176-78 (1803) and *Love v. Wilcox*, 28 S.W.2d 515, 520 (Tex. 1930)).

2. Adequacy/general diffusion of knowledge

COL 9. "Under article VII, Section 1 of the Constitution of 1876, the accomplishment of 'a general diffusion of knowledge' is the standard by which the adequacy of the public education system is to be judged." *Id.* at 787 (quoting TEX. CONST. art. VII, § 1). This Court also takes heed of the Texas Supreme Court's instruction that the "general diffusion of knowledge" standard is not a static concept. Rather, the standard must take into account "'changing times, needs, and public expectations.'" *WOC I*, 107 S.W.3d at 572 (quoting *Edgewood IV*, 917 S.W.2d at 732 n.14). These changes generally increase the level of skill and knowledge students must possess. (12/11 Tr. at 165-66.)

COL 10. The Texas Supreme Court adopted this Court's previous definition of constitutional adequacy, with one modification, as set forth below:

> To fulfill the constitutional obligation to provide a general diffusion of knowledge, districts must provide "*all Texas children . . . access* to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation." TEX. EDUC. CODE § 4.001(a) (emphasis added). Districts satisfy this constitutional obligation when they [are reasonably able to] provide all of their students with a *meaningful opportunity* to

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> acquire the essential knowledge and skills reflected in . . . curriculum requirements . . . such that upon graduation, students are prepared to "continue to learn in postsecondary educational, training, or employment settings." TEX. EDUC. CODE § 28.001 (emphasis added).

WOC II, 176 S.W.3d at 787 (quoting this Court's conclusions of law in *West Orange-Cove*).

COL 11. The Texas Supreme Court found it appropriate to "draw from statutory language the Legislature's understanding of a general diffusion of knowledge." *Id.* at 788. For example, with respect to Section 4.001 of the Education Code, it found that the "Legislature has expressly linked the stated mission of public education [– to ensure that all Texas children have access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation –] to the constitutional standard." *Id.*

COL 12. In addition, the Supreme Court found that the Legislature, in Section 28.001, "labeled specific knowledge and skills 'essential,' just as a general diffusion of knowledge is." *Id.* at 789. This provision states:

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

TEX. EDUC. CODE § 28.001 (emphasis added). These essential knowledge and skills are embodied in the TEKS, the curriculum adopted by the SBOE. *See* TEX. EDUC. CODE § 28.002 and 19 TEX. ADMIN. CODE §§ 74, 110-128.

COL 13. The Supreme Court then made the important observation that:

> These clear, affirmative statements cannot be dismissed as merely hopeful rhetoric; rather, the Legislature must be presumed to have chosen its words deliberately. Nor can these words be read to describe a public education system that the Legislature believes would not only meet but exceed constitutional requirements. The specific reference to the constitutional standard in section 4.001(a) and the repeated use of the word "essential" in section 28.001 does not allow it. To avoid improper policy-making of its own, the district court properly looked to legislative policy statements.

WOC II, 176 S.W.3d at 789.

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COL 14. With "changing times, needs and public expectations" in mind, the Legislature, after *WOC II*, set "college and career readiness" as the outcome goal of the Texas educational system through significant amendments to Chapters 28 and 39 of the Texas Education Code. (*See supra* Part I.B.3.) As in *WOC II*, this Court looks to those legislative policies and choices to inform the definition of "general diffusion of knowledge."

COL 15. The Legislature has defined college readiness as the level of preparation a student must attain in English language arts and mathematics to enroll and succeed, without remediation, in an entry-level college course in those subject areas. *See* TEX. EDUC. CODE § 39.024(a). The State has adopted the STAAR / EOC regime as a means to measure how well Texas students are acquiring and mastering the TEKS and are progressing toward the objective of college and career readiness. (*See supra* Part I.B.3.b.)

COL 16. In addition to amending the accountability and accreditation system for school districts, the legislative changes since *WOC II* established an elaborate set of requirements that affect individual students – requirements that determine whether students are able to be promoted or graduate. (*See supra* Parts I.B.3.b-c.) This new element of the accountability system is a critical component of the legislatively-defined general diffusion of knowledge. Just as the Legislature may not "'define what constitutes a general diffusion of knowledge so low as to avoid its obligation to make suitable provision'" for the public school system, *see WOC I*, 107 S.W.3d at 571, it may not set accreditation requirements for school districts so low as to create the appearance that districts are meeting those requirements, while tens of thousands of students are not able to be promoted or graduate because they do not meet the State's performance standards.

COL 17. Any effort to assess the cost of the general diffusion of knowledge must take into account the fact that districts are bound by law to teach the full array of the TEKS, including both the required and enrichment curriculums. They must also offer a variety of programs and services described in Chapters 28-34 and 37-39 of the Texas Education Code, and abide by associated regulations implementing these and other mandates. These chapters contain numerous mandates for the provision of services to students. Among these mandates is the legislature's longstanding requirement that "a school district may not enroll more than 22 students in a kindergarten, first, second, third, or fourth grade class," unless the Commissioner grants an exemption. TEX. EDUC. CODE § 25.112(a), (d).

COL 18. It follows that the Legislature must ensure that districts have resources sufficient to provide all schoolchildren a meaningful opportunity to be college or career ready upon graduation from high school, to provide all schoolchildren a meaningful opportunity to acquire and master the TEKS as measured by the state's assessment system, and to meet the mandates of the Education Code. *See WOC II*, 176 S.W.3d at 785 ("It would be arbitrary, for example, for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals.").

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COL 19. Part of the duty to ensure that districts have sufficient resources is a duty to make a reasonable effort to determine what it will cost to adequately provide for its own standards and meet its own definition of a general diffusion of knowledge. The State effectively has recognized and accepted this constitutional responsibility by enacting Section 42.007 of the Texas Education Code, which requires rule making and the conduct of specific studies on a biennial basis to determine the cost of meeting state performance requirements. (*See supra* FOF 428, FOF 448.)

COL 20. Measures that superintendents and other experts have identified as important to attainment of the legislatively mandated outcome objective of college and career readiness include, among other things, (a) manageable class sizes, particularly for economically disadvantaged and ELL populations, (b) preschool programs of sufficient quality to provide a "head start" to special needs students, (c) remedial and literacy programs to help ELL, economically disadvantaged, and other special needs students, including summer school and after school programs, (d) salaries that can attract and retain sufficient numbers of qualified teachers, and (e) vocational and career courses to give those students that cannot attend college an opportunity to succeed in post-secondary employment settings. (*See generally* Part I.B.6.)

COL 21. This Court rejects the notion that the general diffusion of knowledge requires expenditures only in the instructional program described in statute and that other expenditures are merely "extraneous." A district cannot provide a constitutionally adequate education without a sufficient support network, which may include, among other things, (a) adequate and well-maintained facilities, (b) nurses to keep students healthy, (c) security guards in certain schools to keep students safe, (d) guidance counselors to help students with course selection and with planning for college or careers, (e) paraprofessionals to provide vital assistance to teachers, (f) libraries with both print and electronic resources and librarians to assist students and teachers in using these resources, and (g) tutors to help struggling students. (*See supra* Part I.B.6.f.)

COL 22. The Texas Supreme Court found that the constitutional right of adequacy extends to schoolchildren. *See WOC II*, 176 S.W.3d at 774. These schoolchildren (and the general public) will be irreparably harmed if they are denied access to an adequate education. (*See* Part I.B.1.) Furthermore, these constitutional rights cannot be made subject to a vote. For this reason, at a minimum, school districts must be able to finance the cost of meeting the constitutional mandate of adequacy within the range of taxing authority not subject to the tax rate elections. In the current system, that level is an M&O tax rate of $1.04 or below.

COL 23. An adequate system must also include sufficient funding for facilities. *Edgewood IV*, 917 S.W.2d at 746. (*See supra* FOF 398.)

COL 24. Because on the fact findings in Part I.B above, this Court concludes that the Texas school finance system is presently in violation of the "general diffusion of knowledge" clause of Article VII, Section 1 of the Texas Constitution because the Legislature "define[d] the goals for accomplishing the constitutionally required general diffusion of knowledge,"

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and then provided "insufficient means for achieving those goals." *WOC II*, 176 S.W.3d at 785.

3. Suitability

COL 25. "Suitability" under Article VII, Section 1 "refers specifically to the means chosen to achieve an adequate education through an efficient system." *Id.* at 793. "'[S]uitable provision' requires that the public school system be structured, operated, and funded so that it can accomplish its purpose for all Texas children." *Id.* at 753.

COL 26. As the Supreme Court noted, "if the funding system were efficient so that districts had substantially equal access to it, and the education system was adequate to provide for a general diffusion of knowledge, but districts were not actually required to provide an adequate education, 'the Legislature's use of districts to discharge its constitutional duty would not be suitable, since the Legislature would have employed a means that need not achieve its end.'" *Id.* at 793 (quoting *WOC I*, 107 S.W.3d at 584).

COL 27. The Supreme Court also held that the "suitable" clause would be violated if "the Legislature substantially defaulted on its responsibility such that Texas school children were denied access to that education needed to participate fully in the social, economic, and educational opportunities available in Texas." *Id.* at 794 (citation and internal quotation marks omitted).

COL 28. The "suitable" clause is likewise violated by the Legislature substantially defaulting on its responsibility such that Texas school children are denied access to a meaningful opportunity to meet the rigorous new accountability standards and obtain a high school diploma, a prerequisite to succeeding in college or the workforce.

COL 29. The "suitable" clause is likewise violated by the Legislature defaulting on its responsibility to make a reasonable effort to determine what it will cost to adequately and suitably provide for its own standards so that it can ensure that the system is in fact "structured, operated, and funded so that it can accomplish its purpose for all Texas children." (*See supra* Part I.B.7.a.)

4. "Meaningful discretion"/state property tax

COL 30. A district must have "meaningful discretion" in setting its property tax rates for a local ad valorem tax to remain constitutional under Article VIII, Section 1-e of the Texas Constitution. *WOC II*, 176 S.W.3d at 795-96.

COL 31. A district need not show that it is forced absolutely to the limit of the cap to demonstrate that it lacks meaningful discretion. *Id.* Given that the State "leaves largely to school districts the decisions on how best to expend education funds to achieve" adequacy, it is impossible to trace the impact of the adequacy requirement on each dollar spent for programs and teacher salaries. *Id.* at 796. "Recognizing these realities," the Supreme Court instructs that "State influence on district taxing and spending cannot be measured exactly but must be gauged along a spectrum of possibilities." *Id.*

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COL 32. The opportunity for "local supplementation is made a core component of the system structure, necessitated by the basic philosophy of the virtue of local control. The State cannot provide for local supplementation, pressure most of the districts by increasing accreditation standards in an environment of increasing costs to tax at maximum rates in order to afford any supplementation at all, and then argue that it is not controlling local tax rates." *Id.* at 797.

COL 33. In discussing possible remedial legislation in *WOC II*, the Supreme Court warned "a cap to which districts are inexorably forced by educational requirements and economic necessities, as they have been under Senate Bill 7, will in short order violate the prohibition of a state property tax." *Id.* at 798.

COL 34. At the time of *WOC II*, the Court found that the State's control of "$1 billion in local tax revenues recaptured from 134 districts [representing 12% of total enrollment]," was "a significant factor in considering whether local taxes have become a state property tax," particularly considering that the "number of districts and amount of revenue subject to recapture ha[d] almost tripled since 1994." *Id.* at 797. By 2011-12, these numbers had grown further, with $1.1 billion recaptured, and a total of 306 districts in the state assigned Chapter 41 status. (Ex. 11342 at 22, Ex. 5653 at 96; Ex. 11323 (2012 spreadsheet).) These are districts that either pay recapture in Tier I or that are subject to payment of recapture for any tax pennies in Tier II above their compressed rate.

COL 35. The plaintiff districts taxing at or near $1.17 have shown that they lack meaningful discretion in setting the M&O tax rates, because they cannot raise their rates beyond $1.17 and cannot materially lower their rates without further compromising their ability to provide their students with a constitutionally adequate education.

COL 36. For Chapter 41 districts, any funds generated by an increase of more than six cents above their compressed rate are subject to partial recapture by the State under statutory formulas. Chapter 41 districts that wish to tax more than six cents above the compressed rate, and above $1.04, are therefore forced to ask their voters to approve a tax increase in which a portion of the revenues raised could not be used locally and would instead be recaptured by the State. As reflected in Part I.B.9.b, as a practical consequence of the TRE requirement the additional revenues that could be generated by setting the M&O tax rate between $1.06 and $1.17 are unavailable to many Chapter 41 districts, and thus do not constitute "meaningful discretion" for these districts.

COL 37. For the reasons stated in Part I.B.9.a, this Court concludes that the lack of meaningful discretion in the school finance system is systemic, compromising the districts' ability to provide local enrichment programming and to exercise meaningful discretion over the setting of their local M&O tax rates.

5. Financial or quantitative efficiency

COL 38. "The legislature is duty-bound to provide for an efficient system of education, and only if the legislature fulfills that duty can we launch this great state into a strong economic future with educational opportunity *for all*." *Edgewood I*, 777 S.W.2d at 399 (emphasis

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added). Financial efficiency requires that "districts [] have substantially equal access to similar revenues per pupil at similar levels of tax effort" up to the level of adequacy. *WOC II*, 176 S.W.3d at 790.

COL 39. The Legislature has chosen to rely heavily on local property taxes, which remain largely disparate across Texas, to discharge its duty to provide for an efficient system of public education. (*See supra* FOF 42 - FOF 49; FOF 975 - FOF 976.) The Legislature's decision to rely so heavily on local property taxes to fund public education does not in itself violate any provision of the Texas Constitution, but in the context of a proliferation of local districts enormously different in size and wealth, it is difficult (though certainly possible) to make the result efficient – meaning "effective or productive of results and connot[ing] the use of resources so as to produce results with little waste" – as required by article VII, Section 1 of the Constitution. *WOC II*, 176 S.W.3d at 757.

COL 40. "A system that operates with an excess of resources in some locales and a dearth in others is inefficient." *Id.* at 756-57 (citing *Edgewood I*, 777 S.W.2d at 397; *Edgewood Indep. Sch. Dist. v. Kirby*, 804 S.W.2d 491, 496 (Tex. 1991) ("*Edgewood II*"); and *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489, 497 (Tex. 1992) ("*Edgewood III*")). Therefore, the system must compensate for disparities in the amount of property value per student, so that property owners in property-poor districts are not burdened with much heavier tax rates than property owners in property-wealthy districts in order to generate substantially the same revenue per student for public education. *See id.* at 757. In other words, the Legislature must ensure that the funding system it develops provides access to those funds necessary to provide an adequate education at a substantially similar tax rate. *See id.* at 757, 790. So long as the Legislature continues to rely on local property taxes as the primary basis for funding the school finance system, the equalization provisions built into the public school finance system, including the cap on maintenance and operation tax rates and the recapture provisions, remain essential to providing that equal access. *See id.* at 798.

COL 41. However, the guarantee of substantially equal access to similar revenue at similar tax effort cannot be achieved solely through the tax cap and recapture, because such a system would "'level-down' the quality of our public school system, a consequence which is universally regarded as undesirable from an educational perspective." *Edgewood IV*, 917 S.W.2d at 730. To the contrary, the constitutional guarantee of an efficient system of public schools requires the State to level districts "*up to* the legislatively defined level that achieves the constitutional mandate of a general diffusion of knowledge." *WOC I*, 107 S.W.3d at 571 (quoting *Edgewood IV*, 917 S.W.2d at 730) (emphasis added).

COL 42. Just as the State cannot artificially lower the standard of a general diffusion of knowledge in order to lower its funding obligation under the adequacy standard (*see WOC II*, 176 S.W.3d at 784 and *supra* COL 5 - COL 6), the State cannot level down to a funding level insufficient to provide for a general diffusion of knowledge. *See WOC I*, 107 S.W.3d at 571 (citing *Edgewood IV*, 917 S.W.2d at 729-30).

COL 43. The Legislature's decision on how to level up cannot be arbitrary – it must be "informed by guiding rules and principles properly related to public education." *WOC II*, 176

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S.W.3d at 784-85. A funding system that locks in the quirks of funding from a single year, and funds districts at different levels that are not connected to the district's property wealth, its tax effort, or its educational needs, is not so informed. (*See supra* FOF 979.)

COL 44. Because "'[a]n efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place,'" the system must be analyzed as a whole, taking into consideration both the instruction and facilities components. *WOC II*, 173 S.W.3d at 790 (quoting *Edgewood IV*, 917 S.W.2d at 726).

COL 45. As long as the Legislature maintains an efficient system up to the level of adequacy in compliance with Article VII, Section 1, it may authorize local school districts to supplement their educational resources from local funds. *See Edgewood IV*, 917 S.W.2d at 732. Even then, "the amount of 'supplementation' in the system cannot become so great that it, in effect, destroys the efficiency of the entire system. The danger is that what the Legislature today considers to be 'supplementation' may tomorrow become necessary to satisfy the constitutional mandate for a general diffusion of knowledge. Supplementation must be just that: additional revenue not required for an education that is constitutionally adequate." *WOC II*, 176 S.W.3d at 792.

COL 46. Furthermore, the Supreme Court has clearly found that *all* districts must have "meaningful discretion" for enrichment purposes (*see supra* COL 30 - COL 33), and the disparities in local property wealth (*see supra* FOF 975 - FOF 976) make it clear that, in order for this discretion to be truly meaningful for all districts, at least some portion of this additional "enrichment" revenue must be substantially equalized.

COL 47. Having determined how the Legislature has defined adequacy/a general diffusion of knowledge, and how much it costs districts to provide for it, it is this Court's role to determine whether school districts have substantially equal access to funding up to that level. The Texas Supreme Court has determined that the primary standard for evaluating substantially equal access is the differences in tax rates needed to fund an adequate education. *See Edgewood IV*, 917 S.W.2d at 731. In other words, even if every district in the state is reaching adequacy, if the gaps in tax rates necessary to do so are too great, the system is unconstitutionally inefficient. *Id.*

COL 48. Based on the findings adopted herein (*see* Part I.C), the Court concludes that the Texas school finance system is not financially efficient and fails to provide districts with substantially equal access to funding up to the level necessary to provide a general diffusion of knowledge at similar tax efforts and, as such, violates Article VII, Section 1 of the Texas Constitution. The State Defendants are not ensuring an efficient system of public schools where "[c]hildren who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds." *WOC II*, 176 S.W.3d at 753 (citing *Edgewood I*, 777 S.W.2d at 397).

COL 49. The Court further concludes that the facts in this case show that property-poor districts have far less access to the educational funds they need to achieve their full potential and meet the standards set by the State, and, therefore, the current school finance system is not efficient in the sense of producing results for the provision of a general diffusion of

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knowledge under Article VII, Section 1 of the Texas Constitution. *See id.* at 757; *Edgewood I*, 777 S.W.2d at 395.

COL 50. The Supreme Court has not defined what amount unequalized revenue above the level of a general diffusion of knowledge will cause the system to become inefficient. Based on the findings above, *see supra* Part I.C.2, which show substantial disparities in the system as a whole, this Court concludes that the current level of unequalized revenue in the system exceeds what can be tolerated to avoid destroying the efficiency of the entire system. *See WOC II*, 176 S.W.3d at 798.

6. Taxpayer equity

COL 51. The taxpayer equity claim brought by Plaintiffs Langston, King, Baker, and Pittinger rests on Article VIII, § 1(a) of the Texas Constitution, which provides that "[t]axation shall be equal and uniform." "Taxes are said . . . to be 'equal and uniform,' when no person nor class of persons *in the taxing district*, whether a state, county, or other municipal corporation, is taxed at a different rate than are other persons *in the same district* upon the same value or the same thing, and where the objects of taxation are the same by whomsoever owned, or whatever they be." *Norris v. City of Waco*, 57 Tex. 635, 641 (Tex. 1882) (emphasis added). Thus, "[t]he mandate that all taxes be equal and uniform requires only that all persons falling within the same class be taxed alike." *Grocers Supply Co., Inc. v. Sharp*, 978 S.W.2d 638, 645 (Tex. App.—Austin 1998, pet. denied); *see generally Spring Indep. Sch. Dist. v. Harris Cnty. Appraisal Dist.*, 889 S.W.2d 562, 564-65 (Tex. App.—Houston [14th Dist.] 1994, *rev'd on other grounds by Enron Corp. v. Spring Indep. Sch. Dist.*, 922 S.W.2d 931 (Tex. 1996) ("From its earliest decisions, Texas courts have held that taxation is 'equal and uniform' when no person or class of persons in the same territory is taxed at a higher rate than other persons on the same property in the same district. Uniformity and equality means taxation based solely on the property's value and not other factors." (citations omitted)).

COL 52. As the Supreme Court recently explained, the equal and uniform requirement "says only that taxation – not taxes – must be equal and uniform, indicating that it is the process, not each individual result, that must satisfy the requirement." *In re Nestle USA, Inc.*, 387 S.W.3d 610, 618 (Tex. 2012); *see also Rylander v. Palais Royal, Inc.*, 81 S.W.3d 909, 914 (Tex. App.—Austin 2002, pet. denied) (holding that the equal and uniform clause does not require "equality of impact among taxpayers"). The clause is, however, more than merely a "prohibition against irrational legislation." *In re Nestle*, 387 S.W.3d at 622. Rather, the clause requires that "tax classifications must not only be rational but must attempt to group similar things and differentiate dissimilar things." *Id.*

COL 53. The equality and uniformity of taxation required under the Texas Constitution does not prohibit different taxing entities from assessing different taxes on different property. *Cf. Smith v. Davis*, 426 S.W.2d 827, 834 (Tex. 1968) ("There is no constitutional requirement that different taxing bodies use the same proportion of fair market value in assessing property for tax purposes.")

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COL 54. In *Norris*, the Texas Supreme Court recognized that Article VIII, Section 1(a) required property to be taxed "in proportion to its value," but concluded that the section did not require taxpayers to receive equal and uniform benefit from taxation. *See* 57 Tex. at 642 ("To hold that each person must receive the same benefit as another may from the expenditure of money raised by taxation would be to hold that the law required an impossibility, for, in the very nature of things, some persons will derive greater pecuniary benefit from the expenditure of money for strictly public purposes than will others."). Texas courts have reaffirmed this principle in subsequent decisions. *See Wheeler v. City of Brownsville*, 220 S.W.2d 457, 461 (Tex. 1949) (quoting *Norris*); *S.W. Prop. Trust, Inc. v. Dallas Cnty. Flood Control Dist. No. 1*, 136 S.W.3d 1, 9 (Tex. App—Dallas 2001, no pet.) (rejecting argument that the taxpayer equity provision "requires that taxation be proportional to benefits received," and explaining that "[t]he constitutional requirement of equality and uniformity is met when taxation is uniformly assessed on an ad valorem basis on all taxable property *without regard to benefits received*.") (emphasis added).

COL 55. To conclude that the taxpayer equity provision does in fact require receipt of equal and uniform benefits from taxation also would violate the basic principles established in *Edgewood IV*, *WOC I*, and *WOC II*, whereby districts may elect to provide unequalized local supplementation above the level of funding required for a general diffusion of knowledge. *WOC I*, 107 S.W.3d at 570 (citing *Edgewood IV*, 917 S.W.2d at 729-30); *WOC II*, 176 S.W.3d at 792.

COL 56. As framed by the TTSFC Plaintiffs, equality and uniformity in the rate of M&O taxation by districts would destroy the meaningful discretion in property tax assessment demanded in plaintiffs' petition. To demand strict equality in benefits received in revenue per WADA from equal tax effort has not only been rejected by Texas courts, but would ignore significant differences in size and cost among the diversely situated school districts in Texas – differences not captured in the WADA metric.

COL 57. The TTSFC Plaintiffs rely upon *WOC II* and *Edgewood I*. These cases, however, discuss taxation in the context of the efficiency provision of Article VII, not as a separate limitation on school funding. *See Edgewood I*, 777 S.W.2d at 396; *WOC II*, 176 S.W.3d at 756-57. Neither case suggests that the taxpayer equity provision itself requires equal distribution of tax revenues or other benefits that derive from taxation. Texas courts have in fact uniformly rejected such an interpretation of this provision. *See Norris*, 57 Tex. at 642; *Wheeler*, 220 S.W.2d at 461; *S. W. Prop. Trust*, 136 S.W.3d at 9.

7. Qualitative efficiency

COL 58. The qualitative component of the efficiency clause is "simply shorthand for the requirement that public education accomplish a general diffusion of knowledge." *WOC II*, 176 S.W.3d at 753. Qualitative efficiency requires the school finance system to provide the resources necessary for school districts to provide a general diffusion of knowledge to every child. *See Edgewood IV*, 917 S.W.2d at 736. Contrary to the arguments of the Intervenors, "qualitative efficiency" has never been treated by the Supreme Court as a separate, independent constitutional requirement. *WOC II*, 176 S.W.3d at 753.

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COL 59. As a threshold matter, this Court lacks subject-matter jurisdiction over the Intervenors' qualitative efficiency claim because, unlike the ISD Plaintiffs' claims, their claim involves non-justiciable questions. The Texas Supreme Court has emphasized that "[t]he judiciary's role, though important, is limited to ensuring that the constitutional standards are met." *Id.* It is not to "prescribe *how* the standards should be met." *Id.* "[M]uch of the design of an adequate public education system cannot be judicially prescribed." *Id.* at 779. The Legislature has the right to determine the "'methods, restrictions, and regulation'" of the educational system. *Edgewood IV*, 917 S.W.2d at 736 (quoting *Mumme v. Marrs*, 40 S.W.2d 31, 36 (Tex. 1931)). The Texas Supreme Court has stated unequivocally that, in discharging its review of article VII claims, it will "not dictate to the Legislature how to discharge its duty . . . [nor will it] judge the wisdom of the policy choices of the Legislature, or . . . impose a different policy of our own choosing." *Id.* at 726. For example, in *Edgewood IV*, the Gutierrez intervenors had urged that the State denied them an efficient education guaranteed by the Education Clause because they were not permitted to select the schools of their choice and receive tuition reimbursement from the State. *Id.* at 747-48. The Court found these claims non-justiciable. *Id.*

COL 60. The Intervenors' arguments all take issue with policy choices of the Legislature, including, but not limited to, the Legislature's choices: (1) to impose a cap on the number of charter schools operators so that the TEA can effectively supervise these operators; (2) to adopt statutes and regulations that attempt to strike a balance between the need to protect the due process rights of teachers with the need of districts to terminate ineffective teachers; (3) to adopt teacher certification rules that ensure that students have access to teachers who are properly trained and certified; (4) to create a financial accountability system run by the TEA according to governmental accounting standards; (5) to permit regulations that restrict the use of Home-Rule School District Charters and the Public Education Grant Program; and (6) not to provide vouchers to subsidize private schools. While Intervenors contend that they do not seek any particular remedy besides a declaration of unconstitutionality, their claims necessarily involve challenging the constitutionality of the statutes and regulations to which they object. The declaration they seek would entail a level of judicial interference in specific questions of education policy and school district administration that past precedents do not justify, and that principles of judicial deference to the Legislature's choices do not permit. For these reasons, the Intervenors' claims are non-justiciable political questions.

COL 61. Even if this Court had reached the merits of the Intervenors' claims, it would deny their requested relief based on the fact findings set forth above in Part I.E.

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8. Charter School Plaintiffs' claims

a. The Charter School Plaintiffs' adequacy claim

COL 62. Because the ISD Plaintiffs established the inadequacy of their funding on the school funding formulas (*see supra* Part I.B), and because charter schools are financed based on state averages of ISD funding levels (*see supra* FOF 1243 - FOF 1247), the Charter School Plaintiffs prevail on their claim that funding for open-enrollment charter schools is also inadequate under Article VII, Section 1.

b. The Charter School Plaintiffs' claims arising out of differential funding with ISDs, including facilities funding

COL 63. The charter-school system was created by statute and is not required by the Texas Constitution. TEX. EDUC. CODE § 12.001 *et seq.*; *LTTS Charter Sch., Inc. v. C2 Constr., Inc.*, 342 S.W.3d 73, 81, (Tex. 2011) ("The wellspring of open-enrollment charter schools' existence and legitimacy is the Education Code.") The Legislature established charter schools to "(1) improve student learning; (2) increase the choice of learning opportunities within the public school system; (3) create professional opportunities that will attract new teachers to the public school system; (4) establish a new form of accountability for public schools; and (5) encourage different and innovative learning methods." TEX. EDUC. CODE § 12.001.

COL 64. A charter for an open-enrollment charter school is in the form of a contract signed by the chair of the SBOE and the chief operating officer for the school. *Id.* § 12.112. Each charter must comply with § 12.111 of the Texas Education Code. *Id.* § 12.113.

COL 65. The Charter School Plaintiffs contend that Section 12.106 of the Texas Education Code, which sets out the manner in which charter schools are funded, violates Article I, Section 3 of the Texas Constitution, because unlike the school districts, charter schools are not eligible for separate facilities funding. The Court presumes that Section 12.106 is constitutional and defers to the Legislature's determinations of a statute's wisdom or expediency. *Enron Corp. v. Spring Indep. Sch. Dist.*, 922 S.W.2d 931, 934 (Tex. 1996).

COL 66. The Equal Protection Clause directs governmental actors to treat all similarly situated persons alike. *Sanders v. Palunsky*, 36 S.W.3d 222, 224–25 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439313 (1985)). Where neither a suspect classification nor a fundamental right is involved, the challenged law survives constitutional scrutiny if it is rationally related to a legitimate governmental purpose. *See Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 457-58 (1988).

COL 67. The Legislature, in its discretion, created charter schools to serve as an alternative form of education in Texas, and in doing so, has relaxed applicable personnel requirements, subjects them to different levels of oversight and regulation, and allows them more flexibility in delivering curriculum to their students. These differences serve as a rational

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basis for the Legislature's policy choice to fund charter schools differently than it funds school districts.

c. The Article VII, Section 1 claim challenging the statutory cap on open-enrollment charters

COL 68. The SBOE may not grant a total of more than 215 charters for an open-enrollment charter school. TEX. EDUC. CODE § 12.101(b).

COL 69. The Texas Legislature did not act arbitrarily in limiting the number of charter schools to 215 or in choosing to fund charter schools differently than traditional public school districts.

B. Declaratory relief

1. Adequacy and suitability claims (ISD Plaintiffs)

COL 70. The TTSFC Plaintiffs have shown that that the cost of meeting the constitutional mandate of adequacy (the "general diffusion of knowledge") exceeds the maximum amount of funding that is available to them at the $1.04 M&O tax rate (the highest rate accessible without a Tax Ratification Election, or "TRE"). Accordingly, this Court hereby declares the State's school finance system fails to satisfy the Article VII, Section 1 adequacy and suitability requirements as to the TTSFC Plaintiff districts. The TTSFC Plaintiffs also have shown that the cost of meeting the constitutional mandate of adequacy exceeds the amount of funding that is or would be available to them at the maximum $1.17 M&O tax rate.

COL 71. The Calhoun County ISD Plaintiffs have shown that the cost of meeting the constitutional mandate of adequacy (the "general diffusion of knowledge") exceeds the maximum amount of funding that is available to them at the $1.04 M&O tax rate (the highest rate accessible without a TRE). Accordingly, this Court hereby declares the State's school finance system fails to satisfy the Article VII, Section 1 adequacy and suitability requirements as to these districts. The Calhoun County ISD Plaintiffs also have shown that the cost of meeting the constitutional mandate of adequacy exceeds the amount of funding that is or would be available to them at the maximum $1.17 M&O tax rate.

COL 72. The Fort Bend ISD Plaintiffs have shown that the cost of meeting the constitutional mandate of adequacy (the "general diffusion of knowledge") exceeds the maximum amount of funding that is available to them at the $1.04 M&O tax rate (the highest rate accessible without a TRE). Accordingly, this Court hereby declares the State's school finance system fails to satisfy the Article VII, Section 1 adequacy and suitability requirements as to these districts. The Fort Bend ISD Plaintiffs also have shown that the cost of meeting the constitutional mandate of adequacy exceeds the amount of funding that is or would be available to them at the maximum $1.17 M&O tax rate.

COL 73. The Edgewood ISD Plaintiffs have shown that the cost of meeting the constitutional mandate of adequacy (the "general diffusion of knowledge") exceeds the maximum

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amount of funding that is available to them at the $1.04 M&O tax rate (the highest rate accessible without a TRE). Accordingly, this Court hereby declares the State's school finance system fails to satisfy the Article VII, Section 1 adequacy and suitability requirements as to these districts. The Edgewood ISD Plaintiffs also have shown that the cost of meeting the constitutional mandate of adequacy exceeds the amount of funding that is or would be available to them at the maximum $1.17 M&O tax rate.

COL 74. Because the ISD Plaintiffs collectively have also established a systemic/statewide "adequacy" and "suitability" violation, this Court declares that the Texas school finance system is presently in violation of Article VII, Section 1 of the Texas Constitution. Stated another way, this Court finds that the Legislature violated the "arbitrary" standard described in *WOC II* by "defin[ing] the goals for accomplishing the constitutionally required general diffusion of knowledge, and then providing "insufficient means for achieving those goals." *WOC II*, 176 S.W.3d at 785.

COL 75. The Edgewood ISD Plaintiffs, the TTSFC Plaintiffs, and the Fort Bend ISD Plaintiffs have further shown that the funding made available to them under the current school finance system for the education of ELL and economically disadvantaged students is arbitrary, inadequate and unsuitable in providing those students with the constitutional mandate of adequacy (the "general diffusion of knowledge"). Accordingly, the Court declares the current public school finance system is inadequate and unsuitable for the provision of a general diffusion of knowledge for economically disadvantaged and ELL students under Article VII, Section 1 of the Texas Constitution.

COL 76. In light of the Court's findings about the inadequacy of the funding for independent school districts under the statutory formulas, and because charter schools are financed based on state averages of school district funding levels, the Court declares that funding for open-enrollment charter schools also is inadequate and unsuitable.

2. State property tax claim (ISD Plaintiffs)

COL 77. The TTSFC Plaintiffs have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any of the TTSFC Plaintiff districts could raise their M&O tax rate to the statutory maximum rate of $1.17 (and have not already done so), the district would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.

COL 78. The Calhoun County ISD Plaintiffs have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any of the Calhoun County ISD Plaintiff districts could raise their M&O tax rate to the statutory maximum rate of $1.17 (and have not already done so), the

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district would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.

COL 79. The Fort Bend ISD Plaintiffs have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any of the Fort Bend ISD Plaintiff districts could raise their M&O tax rate to the statutory maximum rate of $1.17 (and have not already done so), the district would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.

COL 80. The Edgewood ISD Plaintiffs have lost meaningful discretion to set their M&O tax rates, as their current rates effectively serve as a floor (because they cannot lower taxes without further compromising their ability to meet state standards and requirements) and a ceiling (because they are either legally or practically unable to raise rates further). Further, to the extent any of the Edgewood ISD Plaintiff districts could raise their M&O tax rate to the statutory maximum rate of $1.17 (and have not already done so), the district would still remain unable to meaningfully use local tax dollars for local enrichment beyond the level required for a constitutionally adequate education, in violation of the prohibition on state ad valorem taxes.

COL 81. Because the ISD Plaintiffs collectively have established a systemic/statewide violation, this Court declares that the Texas school finance system is presently in violation of Article VIII, Section 1-e of the Texas Constitution.

3. Quantitative efficiency claim (TTSFC Plaintiffs, Edgewood ISD Plaintiffs, and Fort Bend ISD Plaintiffs)

COL 82. The TTSFC Plaintiffs have shown that, in the current system, there is not a direct and close correlation between a district's tax effort and the educational resources available to it, and, as a result, there are large gaps in funding levels between low property wealth and high property wealth districts. These plaintiffs have shown that these gaps disadvantage the students in their districts in acquiring a general diffusion of knowledge and cannot be tolerated in a system that requires that "children who live in poor districts and children who live in rich districts . . . be afforded a substantially equal opportunity to have access to educational funds, *WOC II*, 176 S.W.3d at 753. The TTSFC Plaintiffs have further shown that the school finance system violates the "efficiency" provisions of Article VII, Section I of the Texas Constitution in that it fails to provide substantially equal access to revenues necessary to provide a general diffusion of knowledge at similar tax effort, and instead arbitrarily funds districts at different levels below the constitutionally required level of a general diffusion of knowledge, and in that the amount of unequal local supplementation in the system is so great as to destroy the efficiency of the system. The TTSFC Plaintiffs have also shown that insofar as the State Defendants continue to rely on disparate property values and accompanying taxes to fund public schools, equalization

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provisions such as recapture and a cap on maximum tax rates, remain essential for an efficient public school system under Article VII, Section 1 of the Texas Constitution.

COL 83. The Edgewood ISD Plaintiffs have shown that, in the current system, there is not a direct and close correlation between a district's tax effort and the educational resources available to it as required under article VII, section 1. These plaintiffs have shown that these gaps disadvantage the students in their districts in acquiring a general diffusion of knowledge and cannot be tolerated in a system that requires that "children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds." *Id.* (citing *Edgewood I*, 777 S.W.2d at 397). The Edgewood ISD Plaintiffs have further shown that the school finance system violates the "efficiency" provisions of article VII, section I of the Texas Constitution in that it fails to provide substantially equal access to revenues necessary to provide a general diffusion of knowledge at similar tax effort (*see id.* at 790) and in that the amount of unequal local supplementation in the system is so great as to destroy the efficiency of the system. *Id.* at 792 (citations omitted). The Edgewood ISD Plaintiffs have further shown that the school finance system is not efficient in the sense of providing their property-poor school districts access to resources necessary to produce results as required under article VII, section 1. *See id.* at 757. The Edgewood ISD Plaintiffs have further shown that so long as the Legislature continues to rely on local property taxes as the primary basis for funding the school finance system, the equalization provisions built into the public school finance system, including the cap on maintenance and operation tax rates and the recapture provisions, remain essential to providing that equal access. *See id.* at 798.

COL 84. The Fort Bend ISD Plaintiffs have shown that the school finance system violates the "efficiency" provisions of Article VII, Section I of the Texas Constitution in that it fails to provide substantially equal access to revenues necessary to provide a general diffusion of knowledge at similar tax effort, and instead arbitrarily funds districts at different levels below the constitutionally required level of a general diffusion of knowledge.

COL 85. Because the TTSFC Plaintiffs, the Fort Bend ISD Plaintiffs, and the Edgewood ISD Plaintiffs collectively have established a systemic/statewide violation, this Court declares that the Texas school finance system is presently in violation of Article VII, section 1 of the Texas Constitution.

4. Taxpayer equity claim (TTSFC Plaintiffs)

COL 86. Because (1) the TTSFC Plaintiffs have not complained of nor shown any impermissible variation in the rate of assessment of M&O taxes or I&S taxes on similar property values within a single school district; and (2) differences in benefits received from otherwise equitable and uniform property tax assessments does not render the system unequal or not uniform, the TTSFC Plaintiffs have failed to demonstrate that the current school finance system violates article VIII, Section 1(a) of the Texas Constitution.

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COL 87. The Court hereby denies the TTSFC Plaintiffs claim for declaratory judgment that the school finance system imposes a tax that is unequal and not uniform in violation of art. VIII, § 1(a) of the Texas Constitution.

5. Qualitative efficiency claim (Intervenors)

COL 88. Intervenors' request for declaratory judgment that the school finance system violates the "qualitative efficiency" clause of art. VII, § 1 of the Texas Constitution fails for lack of subject-matter jurisdiction, because the claim involves non-justiciable policy questions. (*See supra* FOF 58 - FOF 60.)

COL 89. Even if this Court had subject-matter jurisdiction over Intervenors' claims, it would deny them on the merits for the reasons stated in Part I.E.

6. Charter School Plaintiffs' claims

COL 90. The Charter School Plaintiffs prevail on their claim that funding for open-enrollment charter schools is inadequate under Article VII, Section 1.

COL 91. The Charter School Plaintiffs have not proved a violation of Article I, Section 3, because the Legislature had a rational basis for limiting the number of charter schools and funding them differently from traditional public school districts.

COL 92. In addition, neither the cap on the number of charter schools nor the alternative funding method for charter schools renders the school finance system inefficient or unconstitutional under Article VII, Section 1.

COL 93. Accordingly, the Court denies the Charter School Plaintiffs' request for declaratory judgment that the school finance system violates the efficiency provisions of Article VII, Section 1 of the Texas Constitution by failing to provide separate facilities funding to charter schools.

COL 94. The Court denies the Charter School Plaintiffs' request for declaratory judgment that the school finance system violates the equal protection provisions of Article I, Section 3 of the Texas Constitution.

COL 95. The Court denies the Charter School Plaintiffs' request for declaratory judgment that the limitation on the number of open-enrollment charter schools violates Article VII, Section 1 of the Texas Constitution.

C. Other relief

1. Injunctive relief

COL 96. In addition to the declaratory relief described above, this Court hereby enjoins the State Defendants from giving any force and effect to the sections of the Education Code relating to the financing of public school education (Chapters 41 and 42 and Section 12.106 of the Education Code) and from distributing any money under the current Texas

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school financing system until the constitutional violations are remedied. The effect of this injunction shall be stayed until July 1, 2014 in order to give the Legislature a reasonable opportunity to cure the constitutional deficiencies in the finance system before the foregoing prohibitions take effect.

COL 97. The Court's declarations in Sections I, II, and III rely on the credible estimates of the cost of adequacy provided by the Plaintiffs. As part of implementing this judgment and remedying the constitutional deficiencies of Article VII, Section 1 and in order to ensure that the public school system is structured, operated and funded so as to accomplish its purpose for all students, the State Defendants shall make a good faith effort to determine, in accordance with a Court-approved methodology and with the input and participation of the Plaintiffs, the particular funding elements of a school finance system that are consistent with these cost estimates and that are necessary to meet the State's performance requirements for all school districts and students. The study shall address the appropriate weights and adjustments to reflect accurately the costs associated with specific groups of students (including but not limited to economically disadvantaged and ELL students) and/or concentration levels of those students, specific instructional arrangements, and/or specific district characteristics (including but not limited to district size adjustments, regional cost differences, and transportation costs). This study shall be performed expeditiously so as not to delay the relief provided in this Judgment.

COL 98. This injunction shall in no way be construed as enjoining the State Defendants, their agents, successors, employees, attorneys and persons acting in concert with them or under their direction, from enforcing or otherwise implementing any other provisions of the Education Code.

COL 99. This injunction shall not bar suits for collection of delinquent taxes, penalties, and interest.

COL 100. This injunction does not impair any lawful obligation created by the issuance or execution of any lawful agreement or evidence of indebtedness before July 1, 2014, that matures after that date and that is payable from the levy and collection of ad valorem taxes, and a school district may, before, on, and after July 1, 2014, levy, assess, and collect ad valorem taxes, at the full rate and in the full amount authorized by law necessary to pay such obligations when due and payable. A school district that, before July 1, 2014, issues bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of Education Code, or other applicable law, or enters into a lease-purchase agreement under Subchapter A, Chapter 271 of the Local Government Code, may continue, before, on, and after July 1, 2014, to receive state assistance with respect to such payments to the same extent that the district would have been entitled to receive such assistance under Chapter 42 or 46 of the Education Code, notwithstanding this injunction.

COL 101. This injunction does not limit, modify, or eliminate the authority of a school district to issue or execute bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 of the Education Code, or other applicable law, before, on, or after July 1, 2014, or to levy, assess, and collect, before, on, or after July 1, 2014, ad valorem taxes at

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the full rate and in the full amount authorized by Section 45.002 of the Education Code or other applicable law, necessary to pay such bonds, notes, public securities, or other evidences of indebtedness when due and payable.

COL 102. This injunction does not limit, modify, or eliminate the authority of the commissioner of education, before, on, or after to July 1, 2014, to grant assistance to a school district under Chapter 42 or 46 of the Education Code, in connection with bonds, notes, public securities, lease-purchase agreements, or evidences of indebtedness, including those described by Subchapter A, Chapter 271 of the Local Government Code.

2. Attorneys' fees

a. TTSFC Plaintiffs

COL 103. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the TTSFC Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of $1,516,776.41, an amount that this Court finds to be both reasonable and necessary and equitable and just.

COL 104. The sum awarded to the TTSFC Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

COL 105. The TTSFC Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

a. $325,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

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

COL 106. If, following an appeal, the TTSFC Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this

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lawsuit. *See Scottsdale Ins. v. Travis*, 68 S.W.3d 72, 77 (Tex. App.—Dallas 2001, pet. denied) ("Under the [UDJA], attorney's fees may be awarded to the non-prevailing party.").

b. Calhoun County ISD Plaintiffs

COL 107. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the Calhoun County ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of $2,091,244.37, an amount that this Court finds to be both reasonable and necessary and equitable and just.

COL 108. The sum awarded to the Calhoun County ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

COL 109. The Calhoun County ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

a. $500,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

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

COL 110. If, following an appeal, the Calhoun County ISD Plaintiffs do not prevail on one or both of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit. *See Scottsdale Ins.*, 68 S.W.3d at 77 ("Under the [UDJA], attorney's fees may be awarded to the non-prevailing party.")

c. Fort Bend ISD Plaintiffs

COL 111. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the Fort Bend ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of

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$1,315,984.25, an amount that this Court finds to be both reasonable and necessary and equitable and just.

COL 112. The sum awarded to the Fort Bend ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

COL 113. The Fort Bend ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

a. $400,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

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

COL 114. If, following an appeal, the Fort Bend ISD Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit. *See Scottsdale Ins.*, 68 S.W.3d at 77 ("Under the [UDJA], attorney's fees may be awarded to the non-prevailing party.")

d. Edgewood ISD Plaintiffs

COL 115. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the Edgewood ISD Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of $1,760,933.14, an amount that this Court finds to be both reasonable and necessary and equitable and just.

COL 116. The sum awarded to the Edgewood ISD Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.

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COL 117. The Edgewood ISD Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:

a. $ 325,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

b. (1) $325,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (2) $200,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

COL 118. If, following an appeal, the Edgewood ISD Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit. *See Scottsdale Ins.*, 68 S.W.3d at 77 ("Under the [UDJA], attorney's fees may be awarded to the non-prevailing party.")

e. [Rulings relating to Charter/Intervenor fee requests]

3. Continuing jurisdiction

COL 119. This Court will retain continuing jurisdiction over this matter until the Court has determined that the State Defendants have fully and properly complied with its judgment and orders. *City of San Antonio v. Singleton*, 858 S.W.2d 411, 412 (Tex. 1993) ("A trial court generally retains jurisdiction to review, open, vacate or modify a permanent injunction upon a showing of changed conditions.")

SIGNED this ____ day of _____, 2013.

_____
JOHN K. DIETZ
JUDGE, 250th District Court
Travis County, Texas

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From:	Dahlberg, Shelley
To:	Hernandez, Sylvia; Chester, Bonnie
Subject:	FW: TTSFC and Edgewood ISD, et al. v. Michael Williams, et al. - Edgewood ISD"s Separate Proposed FOFs & COLs
Date:	Monday, March 18, 2013 11:06:20 AM
Attachments:	Edgewood Plf Separate Proposed FOF & COL_FINAL.pdf
Importance:	High

From: Isabel Pina [mailto:ipina@MALDEF.org]
Sent: Friday, March 15, 2013 4:57 PM
To: 'john.dietz@co.travis.tx.us'; 'johndietz@mac.com'; 'carol.jenson@co.travis.tx.us'; 'Stacey Rosen'
Cc: 'Mark.Trachtenberg@haynesboone.com'; 'akeller@slh-law.com'; 'christopher.damond@yahoo.com'; 'cenoch@enochkever.com'; 'Cynthia Pacheco'; David Hinojosa; 'dthompson@thompsonhorton.com'; 'John.Turner@haynesboone.com'; 'jhoffer@slh-law.com'; 'lpayton@thompsonhorton.com'; 'Lora.Faruque@haynesboone.com'; Sisler, Mary; 'mlorber@enochkever.com'; Bunker-Henderson, Nichole; 'pfraissinet@thompsonhorton.com'; 'hmcintush@thompsonhorton.com'; 'buckwood@raywoodlaw.com'; 'Rick Gray'; 'richard.gray@graybecker.com'; O'Keefe, Robert; 'Robert Schulman'; 'roger rice'; 'rlr24@comcast.net'; 'srodriguez@thompsonhorton.com'; Dahlberg, Shelley; 'Susan Jennings'; 'Toni Hunter'; Marisa Bono; 'Michelle.Jacobs@haynesboone.com'; Isabel Pina
Subject: TTSFC and Edgewood ISD, et al. v. Michael Williams, et al. - Edgewood ISD's Separate Proposed FOFs & COLs
Importance: High

Dear Judge Dietz, Ms. Jenson, and Ms. Rosen,

As Mr. Trachtenberg indicated in his electronic correspondence dated March 12, 2013, the Edgewood ISD Plaintiffs are not sponsoring the pollster findings in Part I.B.9.b of the Proposed Findings of Fact and Conclusions of Law.

We respectfully submit the attached alternate proposed findings regarding the same, which detail our concerns.

Best Regards,

David Hinojosa

Isabel Piña
MALDEF
110 Broadway, Suite 300
San Antonio TX 78205
210-224-5476
210-224-5382 Fax

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

TEXAS TAXPAYER & STUDENT FAIRNESS COALITION, *ET AL.*,	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, *ET AL.*, (consolidated)	§	
	§	
Plaintiffs	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
MICHAEL WILLIAMS, in his official capacity as Commissioner of Education, *ET AL.*,	§	
	§	
Intervenors,	§	20OTH JUDICIAL DISTRICT

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EDGEWOOD PLAINTIFFS' SEPARATE
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Calhoun County Plaintiffs presented Larry Harris, a pollster from Mason-Dixon Polling & Research. He conducted a poll of registered voters for 3 school districts supporting the Calhoun County lawsuit (Grapevine-Colleyville ISD; Frisco ISD; and Calhoun ISD) that found less support for increasing taxes, particularly when school district revenue was subject to recapture. (RR20:151-2, 155.)

2. Mr. Harris was designated as an expert regarding the results of the polls conducted in this case. He has no advanced degrees related to the field and has never published a scholarly article or report on the science of public opinion polling. (RR20: 152, 182; Ex. 4224-Q, Harris Dep., at 16, 20-21.) The Court finds Mr. Harris's qualifications and credibility as an expert witness in school finance to be lacking.

3. Mr. Harris's methodology and analysis was flawed in numerous respects. First, the school districts in which Mr. Harris polled registered voters were selected by Plaintiffs' counsel and are not a representative sample beyond those three school districts. Therefore, the findings are limited and not useful to the Court's analysis. (RR20:155; RR20:199.) Second, Harris's polling did not conduct any focus group or field testing to inform the survey questions. Third, the districts selected by Plaintiffs' counsel tend to be more Republican, conservative and anti-tax leaning and do not reflect Texas as a whole or any other particular school district. (RR20:199; Ex. 4224-Q, Harris Dep., at 186-87.) Mr. Harris admits there is no academic research that allows survey results from one district to be applied to another district even if the demographics match. (RR20:202-03; Ex. 4224-Q, Harris Dep., at 188.)

4. There were also structural problems with the questionnaires utilized by Mr. Harris. For example, even though Mr. Harris admits that question order matters, ordered every questions the same instead of randomizing them. (RR20:181.) The phrasing of his questions were also leading and did not offer an "undecided" option. (RR20:186-87.) Mr. Harris agrees that more people choose to answer "undecided" when the option is provided. (RR20:196-97; Ex. 4224-Q, Harris Dep., at 202-05.)

5. The questionnaire also omitted relevant information that could affect outcomes, and misrepresented other important information. For example, they failed to point out that the districts in question were already receiving more revenue than many other school districts, despite taxing at a lower rate. (RR20:196.)They also did not reveal the intended purpose for the proposed tax increase, such as lowering teacher/student ratios. (RR20:191.)

6. For Calhoun County ISD, the questionnaire states that the district will retain less than half of the M&O revenue subject to recapture, but the Superintendent testified that Calhoun County keeps more than half of those funds. (*Compare* Ex. 1025 *with* RR12:34-35.)

7. Mr. Harris's survey was conducted before the Frisco school board raised the M&O rate in Frisco after Mr. Harris conducted his survey. These results cast doubt on the real-world validity of the study. (RR20:193.)

8. Mr. Harris admits that the polls conducted in this case do not have much value for predicting the actual off-year election results and that any extrapolation to other districts, even those with similar demographics, would be anecdotal at best. (RR20:179, 188; Ex. 5500, Harris Report, at 4.)

9. Testimony from the lower wealth districts such as La Feria ISD made it clear that the anti-tax climate coupled with the economic downturn make local communities reluctant to raise taxes for schools through TREs. La Feria had twice attempted to hold a TRE and raise it taxes and failed both times. Thus, it is not the fact that districts pay recapture that necessarily causes school districts to not pass TREs. (RR15:197-199.)

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Dated: March 15, 2013

Respectfully submitted,

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

David G. Hinojosa
State Bar No. 24010689
Marisa Bono
State Bar No. 24052874
110 Broadway, Suite 300
San Antonio, Texas 78205

(210) 224-5476
(210) 224-5382 Fax

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

MULTICULTURAL, EDUCATION, TRAINING AND ADVOCACY, INC.

Roger L. Rice*
240A Elm Street, Suite 22
Somerville, MA 02144
Ph: (617) 628-2226
Fax: (617) 628-0322
**Admitted Pro Hac Vice*

Attorneys for Edgewood ISD, *et al.*, Yolanda Canales, Arturo Robles, Araceli Vasquez, and Jessica Romero, Plaintiffs

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CERTIFICATE OF SERVICE

I certify that on March 15, 2013, I served the foregoing document via electronic service to the parties listed below:

GREG ABBOTT
Attorney General of Texas
DANIEL T. HODGE
First Assistant Attorney General
DAVID C. MATTAX
Deputy Attorney General for Defense Litigation
ROBERT B. O'KEEFE
Chief, General Litigation Division
SHELLEY N. DAHLBERG
Assistant Attorney General Texas
Texas Attorney General's Office
General Litigation Division
P. 0. Box 12548, Capitol Station
Austin, Texas 78711
Fax: (512) 320-0667
Attorneys for Defendants

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

Randall B. Wood
Doug W. Ray
RAY & WOOD
2700 Bee Caves Road #200
Austin, Texas 78746
Fax: (512) 328-1156
Attorneys for Plaintiffs, Texas Taxpayer & Student Fairness Coalition, et al.

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

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

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

Attorneys for Plaintiffs, Calhoun County ISD, et al.

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

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

Attorneys for Intervenors, Joyce Coleman, et al.

By: s/Marisa Bono
Marisa Bono

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