

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

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

**EFFICIENCY INTERVENORS' OBJECTION TO  
THE TEXAS SCHOOL DISTRICT SYSTEM PLAINTIFFS'  
ATTEMPTS TO SEAL RECORDS**

From recent correspondence with the Court it appears the Texas School District System Plaintiffs are attempting to remove from the court record, or at least seal, permanently, the court record of the August 20, 2013 work session. The Efficiency Intervenors object. If the effort is to remove from this Court's record the record of the work session, then the Efficiency Intervenors object as there is no basis in law to do so. If the effort is to permanently seal the Court's record, then the Efficiency Intervenors object because the request contravenes the requirements of Texas Rule of Civil Procedure 76a.

**I.  
FACTUAL BACKGROUND**

On August 2, 2013, the Honorable Judge Dietz forwarded an email to all parties setting “work sessions.” See Exhibit 1. The email stated, “These are working sessions to be conducted in the jury room and should not be considered public hearings.” *Id.* After that, the State filed a motion requesting a court reporter at the work sessions. At the August 20, 2013 work session, a court reporter was present, and the entire meeting was held in the court room. There was

discussion at the conclusion of that work session regarding the confidentiality of certain documents the Court had forwarded or otherwise provided to the parties.

On August 28, 2013, the State, at the request of the Court, forwarded an Order setting out the *temporary* confidentiality of the documents provided by the Court and the work session transcripts. That proposed order states, "Upon entry of final findings of fact and conclusions of law, transcripts and all documents associated with the proceedings will be made part of the appellate record." See Exhibit 2. The Texas School District System Plaintiffs' responded with an Order excising that part of the proposed order and suggesting at best that the documents and transcript could not be made a part of the Court's record for purposes of appeal. See Exhibit 3. This was the first time any mention was made of excising from the Court's record or even permanently sealing any documents and transcripts by this Court. The Efficiency Intervenors object to the Plaintiffs' proposed order and any attempt to cull the court records.

## II. LEGAL ARGUMENT

There is no mechanism in Texas law to take part of a court record and "seal" or otherwise shield it from being made part of the appellate record. The Texas School District System Plaintiffs' attempt to keep the transcripts and materials from the August 20, 2013 work session from being made part of the appellate record is absolutely without basis in law.

Even if the Texas School District Plaintiffs only intend that the work session records be "sealed," but otherwise available for appellate review, then the appropriate avenue is through Texas Rule of Civil Procedure 76a. The Texas School District System Plaintiffs' attempt to seal any matters related to the August 20, 2013 work session ignores the requirements in Texas Rule of Civil Procedure 76a. That Rule starts with the declaration that, "Court records may not be

removed from court files except as permitted by statute or rule.” The Plaintiffs have not asserted any statute or rule to support their attempts to remove public records from the Court’s file.

Given the fact that one of the guiding principles of our country is the idea of open courts, there are very strict rules governing attempts to close the doors of our courtrooms to the public. In that regard, Rule 76a requires in part that:

Court records may not be removed from court files except as permitted by statute or rule . . . . Other court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all of the following:

- (a) a specific, serious and substantial interest which clearly outweighs:
  - (1) this presumption of openness;
  - (2) any probable adverse effect that sealing will have upon the general public health or safety;

The Texas School District System Plaintiffs have neither requested nor proven any finding that such a “specific, serious, and substantial interest” exists here. More importantly, under the circumstances here, those requirements could never be satisfied.

Further, before court records can be sealed, Rule 76a further requires a *written motion* that is *publically posted* giving members of the public an opportunity to intervene and object to the sealing of any court records. Moreover, there must be a *hearing* that is *open to the public*, and a written order that is part of the Court’s record. Obviously, none of this has occurred. The Plaintiffs have only filed an unsupported Order, apparently excising or permanently sealing court records in an attempt to circumvent the requirements of Rule 76a and prevent those records from being a part of the Court’s record on appeal.

**III.  
CONCLUSION**

The public nature and importance of this case is axiomatic. It affects every person in the State of Texas, not just the parties to the lawsuit. Self-serving attempts at closing the doors and records of this Honorable Court should be scrutinized carefully. The Efficiency Intervenors object to any attempt to excise or seal court records without strict adherence to the statutes and procedures in Texas law, which have not been—and cannot be—met here.

Respectfully submitted,

By: \_\_\_\_\_ /s/ \_\_\_\_\_

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***ATTORNEYS FOR THE  
EFFICIENCY INTERVENORS***

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 6<sup>th</sup> day of September 2013 a true and correct copy of the above and foregoing has been served via email pursuant to agreement of the parties and in compliance with Texas Rule of Civil Procedure:

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/s/

J. Christopher Diamond

**Subject:** Work Sessions

**From:** John Dietz <John.Dietz@co.travis.tx.us>

**Date:** 8/2/2013 8:40 PM

**To:** "Allen Keller (akeller@slh-law.com)" <akeller@slh-law.com>, "C. Beyer" <CBeyer@raywoodlaw.com>, Christopher Diamond <christopherdiamond@yahoo.com>, Craig Enoch <cenoch@enochkever.com>, Cynthia Pacheco <cpacheco@slh-law.com>, David Hinojosa <dhinojosa@maldef.org>, David Mattax <david.mattax@texasattorneygeneral.gov>, Debbie Noel <Debbie.Noel@haynesboone.com>, Doug Ray <dray@raywoodlaw.com>, Holly McIntush <hmcintush@thompsonhorton.com>, "J. David Thompson" <dthompson@thompsonhorton.com>, "James \"Beau\" Eccles" <beau.eccles@texasattorneygeneral.gov>, John Turner <John.Turner@haynesboone.com>, Joseph Hoffer <jhoffer@slh-law.com>, "L. Payton" <lpayton@thompsonhorton.com>, Lora Faruque <Lora.Faruque@haynesboone.com>, Mark Trachtenberg <Mark.Trachtenberg@haynesboone.com>, Melissa Lorber <mlorber@enochkever.com>, Nichole Bunker-Henderson <nichole.bunker-henderson@texasattorneygeneral.gov>, Philip Fraissinet <pfraissinet@thompsonhorton.com>, "Pina, Isabel" <ipina@maldef.org>, "Randall Buck Wood (buckwood@raywoodlaw.com)" <buckwood@raywoodlaw.com>, Richard Gray IV <Richard.GrayIV@graybecker.com>, Rick Gray <Rick.Gray@graybecker.com>, "Robert O'Keefe (Robert.O'keefe@texasattorneygeneral.gov)" <Robert.O'keefe@texasattorneygeneral.gov>, Robert Schulman <rschulman@slh-law.com>, Roger Rice <rlr24@comcast.net>, Shellee Rodriguez <srodriguez@thompsonhorton.com>, Shelley Dahlberg <shelley.dahlberg@texasattorneygeneral.gov>, Susan Jennings <Susan.Jennings@graybecker.com>, Toni Hunter <toni.Hunter@graybecker.com>

**CC:** Carol Jenson <Carol.Jenson@co.travis.tx.us>, John Dietz <John.Dietz@co.travis.tx.us>, Stacey Rosen <Stacey.Rosen@co.travis.tx.us>

Dear Counsel:

I would like to schedule two working sessions. The first will be on August 20, 2013, at 1:30 p.m. to discuss the final judgment and findings of fact and conclusions of law. The second will be on September 12, 2013, at 1:30 p.m. to discuss a timetable to finalize those documents with respect to the original trial and address any pre-trial issues. These are working sessions to be conducted in the jury room and should not be considered public hearings. The timetable will ultimately include additional findings and revisions to the judgment to address the supplemental evidence. It is the Court's intent that the Court will draft the Final Judgment, and the prevailing parties will carry the burden of finalizing the FOF/COL.

Further, I would also like to plan monthly pre-trial conferences from September through December. Please schedule those dates with Stacey. If the parties can reach an agreement on the dates for those conferences, you should memorialize the dates in a Rule 11 agreement; otherwise, I will set the dates for these conferences.

Cordially,

Judge John K. Dietz  
250<sup>th</sup> District Court

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

Plaintiffs §

JOYCE COLEMAN, et al §  
Intervenors §

vs. §

MICHAEL WILLIAMS, COMMISSIONER §  
OF EDUCATION, IN HIS OFFICIAL §  
CAPACITY; SUSAN COMBS, §  
TEXAS COMPTROLLER OF PUBLIC §  
ACCOUNTS, IN HER OFFICIAL §  
CAPACITY; TEXAS STATE BOARD §  
OF EDUCATION, the TEXAS §  
EDUCATION AGENCY, and the §  
STATE OF TEXAS §  
Defendants. §

IN THE DISTRICT COURT

200th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

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**ORDER**

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On August 29, 2013, an *in camera* meeting was held with all parties present to discuss the Court's dicta findings of fact and conclusions of law. The Defendants objected that the proceedings, the transcript of the proceedings and any working documents discussed during the proceedings are not subject to any judicial privilege and were subject to the Public Information Act.

However, the Court FINDS the transcription of the meeting as well as any working documents associated with the meeting are judicial work product and are thus exempt from disclosure under Rule 12.5 of the Rules of Judicial Administration.

Further, the Courts FINDS that Chapter 552 of the Texas Government Code does not govern disclosure of this information. *See* TEX. GOV'T CODE § 552.0035.

Accordingly, Defendants' objection is OVERRULED, and it is ORDERED that any transcripts of meetings regarding draft findings of fact and conclusions of law and any documents associated with any such meeting are exempt from public disclosure. Upon entry of final findings of fact and conclusions of law, transcripts and all documents associated with the proceedings will be made part of the appellate record.

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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The Honorable John K. Dietz, Judge Presiding

AGREED AS TO FORM ONLY:

/s/ Shelley N. Dahlberg

SHELLEY N. DAHLBERG  
Assistant Attorney General

THE TEXAS TAXPAYER & STUDENT §  
FAIRNESS COALITION, et al; §  
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EDUCATION AGENCY, and the §  
STATE OF TEXAS §  
Defendants. §

IN THE DISTRICT COURT

200th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

---

**ORDER**

---

On August 29, 2013, an *in camera* meeting was held with all parties present to discuss the Court's draft findings of fact and conclusions of law. The Defendants ~~objected~~ requested that the proceedings should be transcribed, and suggested that the transcript of the proceedings and any working documents discussed during the proceedings would be subject to disclosure under ~~are not subject to any judicial privilege and were subject to the Public Information Act~~ absent a court order barring such disclosure.

However, ~~Accordingly,~~ the Court FINDS the transcription of the meeting as well as any working documents associated with the meeting are judicial work product and are thus exempt from disclosure under Rule 12.5 of the Rules of Judicial Administration and the judicial adjudicative privilege.

Further, the Courts FINDS that Chapter 552 of the Texas Government Code does not govern disclosure of this information. *See* TEX. GOV'T CODE § 552.0035

~~Accordingly~~ Therefore, Defendants' objection is OVERRULED, and it is ORDERED that any transcripts of meetings regarding draft findings of fact and conclusions of law and any documents associated with any such meeting are exempt from public disclosure. ~~Upon entry of final findings of fact and conclusions of law, transcripts and all documents associated with the proceedings will be made part of the appellate record.~~

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
The Honorable John K. Dietz, Judge Presiding

AGREED AS TO FORM ONLY:

/s/ Shelley N. Dahlberg

SHELLEY N. DAHLBERG  
Assistant Attorney General