

request regarding 2013 legislation. However, with respect to their other requests, Defendants ask the Court to deny the ISD Plaintiffs' motion for the following reasons.

A. There is no reason for the Court to take judicial notice of *the law*.

Any and all legislation related to the Texas public education system from the 83rd Legislative Session *is now the law*. Just as the Court need not take judicial notice of any statute, caselaw, or administrative rule, there is no reason for the Court to take judicial notice of legislation that is now in effect.

B. What the State Offers are Legislative Facts.

In their response to the State's request that the Court take judicial notice, the ISD Plaintiffs argue that the Legislative Budget Board's (LBB) financial projections for the 2014-15 school year (State's Request 964, 966, 968-1002, 104-1038, 1040-1074) are adjudicative fact and, thus do not fall within the gambit of Rule 201. Similarly, they argue that Texas Education Agency documents regarding implementation of education policy (State's Request 1226-27, 1239-40, 1229-32, 1234-37, 1357-60, 1419-20, 1422-1584) arising from the 83rd Legislative Session suffers from the same infirmity. Their argument however, ignores the definitions of and distinctions between adjudicative and legislative facts: Adjudicative facts are "facts about the particular event which gave rise to the lawsuit and, like all adjudicative facts, ... [help] explain who did what, when, where, how, and with what motive and intent." [citation omitted]. *Emerson v. State*, 880 S.W.2d 759, 765 (Tex. Crim. App.), *cert. denied*, 513 U.S. 931 (1994). In contrast, legislative facts are ordinarily general and "are those which help the tribunal to determine the content of law and policy and to exercise its judgment or discretion in determining what course of action to take, and do not concern [only] the parties. *Id.* at 764; *Aguirre v. State*, 948 S.W.2d

377, 380 (Tex. App.—Houston [14th Dist.] 1997, pet. ref'd). The State Defendants are offering these documents as legislative facts.

The LBB created the financial projections—in its capacity as the entity charged with making official estimates —on the financial effects of legislation on each school district. Thus, the financial projections are legislative facts in that they set out the per student entitlement for the 2014-2015 biennium, and are now offered to the Court to “help the tribunal determine the content of the law and policy” for purposes of determining whether the current school system meets the constitutional standards at issue here. Similarly, the TEA documents define the agency’s understanding—in its capacity as the entity charged with implementing the legislation—of education legislation from the 83rd Legislative Session and are offered to “help the tribunal determine the content of the law and policy.” In sum, they are legislative facts.

C. What is good for the State Goose, is good for the ISD Gander.

The ISD Plaintiffs are asking the court to take judicial notice of

the bill analysis prepared by the Senate Research Center (Exhibit 6525), the bill analysis prepared by the House Research Organization (Exhibit 6526), the Tax/Fee Equity Note prepared by the LBB (Exhibit 6528) and the enrolled bill summary prepared by the Texas Legislative Counsel (Exhibit 6529).

The ISD Plaintiffs’ Motion to Take Judicial Notice at 4.

The Plaintiff ISDs offer an Equity Note prepared by the LBB and a Bill Analyses, which describe what the bill requires of the State and its agencies. These documents are very similar to the LBB’ s financial projections for the 2014-15 school year and Texas Education Agency documents regarding implementation of education policy that the State Defendants are asking the Court to Judicial Notice. Each of the documents offered by the parties aid the court in defining and understanding the law and policy for purposes of changes to the public education system.

The ISD Plaintiffs should not be permitted to cloak their own requested documents under the cover of “legislative fact” and then claim that similar documents offered by the State Defendants are adjudicative facts that the Court should not judicially notice.

What is good for the goose is good for the gander. Thus, the Court should either grant both the State and the ISD Plaintiffs’ request for judicial notice, or deny them.

D. The Documents offered by the State are Public Records and are not hearsay.

The Court should take judicial notice of the State’s exhibits because these documents are all public records that fall within the hearsay exception of Texas Rule of Evidence 803(8). Rule 803(8) provides:

(8) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies setting forth:

(A) the activities of the office or agency;

(B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding in criminal cases matters observed by police officers and other law enforcement personnel; or

...

Each document offered by the State is Public Record within the hearsay exception. These documents contain data conveyed to the Districts about the impact of legislative changes on funding. They contain communications directed to parents, students, and districts about how curriculum and graduation requirements. Each of these documents was created in the normal course of agency operations of the TEA and LBB.

The Calhoun, Fort Bend, and TTF SF Plaintiffs state that they would not oppose the State’s offer of its Judicial Notice Motion exhibits during trial. Response to State’s Motion to Take Judicial Notice at pp. 1-2. The Edgewood Plaintiffs, however, contend that these exhibits

should not be admitted because they are hearsay. Edgewood Plaintiff's Partial Joinder at 2. While the Edgewood Plaintiff's point to these documents as full of hearsay, they make no specific objection to any document. And to the contrary of Edgewood's assertion, these documents are not "self-serving." They are public records of the deeds and tasks that the agencies carry out on a daily basis, wholly apart from this litigation. No party appears to contest the authentication of these documents. Because Edgewood makes no specific objection to any statement within these documents, the Court should overrule the objection. *Brown v. State*, 692 S.W.2d 497, 501 (Tex. Crim. App.—1985).

While Plaintiffs clearly disagree with the State about the import of this information and how it should be weighed by the Court, Plaintiffs cannot reasonably dispute that the information in these is what it purports to be, or that the information is correct. The information is both a Public Record and subject to judicial notice. The State Defendants re-urge the Court to take judicial notice of these documents.

E. Some of the documents the ISD Plaintiffs ask the Court to judicially notice are not relevant to the school finance system as it exists for Fiscal Year 2014-2015.

All documents the Plaintiffs offer—except those specifically relating to actions taken by the 83rd legislature and relating to fiscal year 2014-15 school year—never offered into evidence during the initial trial of this matter.

These documents are not relevant to determining the only remaining issues in this case; specifically, whether the public education system adopted by the Texas legislature during the 83rd legislature and that will be implemented during the 2014-15 school year, is unconstitutional under any of the Plaintiffs' theories. Evidence from the 79th Legislature—or from any period prior to the 83rd Legislature session—is not probative of this issue. If it were probative of any

claim in this case, it should have been offered during the initial trial on this matter. Plaintiffs should not now be allowed to bolster any failures in proving their claims during the initial trial by supplementing the record with irrelevant evidence. Defendants OBJECT to the admission into the record of this evidence as wholly irrelevant and not probative of the *prospective injunctive relief* Plaintiffs seek.

CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court to take judicial notice of all documents, including those offered by the State and the Plaintiffs that legislative facts related to the 83rd Legislative Session.

Respectfully submitted,

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