

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

TEXAS TAXPAYER & STUDENT	§	IN THE DISTRICT COURT OF
FAIRNESS COALITION, et al.,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
MICHAEL WILLIAMS, Commissioner of	§	
Education, et al.,	§	
	§	
Defendants.	§	200 TH JUDICIAL DISTRICT

ISD PLAINTIFFS’ RESPONSE TO STATE DEFENDANTS’ OBJECTION AND TEXAS RULE OF EVIDENCE 104 MOTION TO EXCLUDE EVIDENCE RELATED TO THE 2012-13 SCHOOL YEAR

The ISD Plaintiffs file this Response to State Defendants’ Objection and Texas Rule of Evidence 104 Motion to Exclude Evidence Related to the 2012-13 School Year.

INTRODUCTION

The State’s motion to exclude 2012-13 STAAR data should be denied, and evidence related to these test administrations admitted, for at least three important reasons:

- The original motion to reopen the evidence specifically referenced the need to include 2012-13 STAAR data in the record, and the Court granted the motion without limitation.
- The evidence the State seeks to exclude will show that districts must presently remediate hundreds of thousands of students who are now off-track for graduation as a result of the 2012-13 STAAR exams. This recent data shows the enormous burden districts currently face, which is now even greater than it was when the first phase of trial concluded. This data is necessary to understand the impact of (and the continuing insufficiency of) the new appropriations, as well as the impact of House Bill 5.
- Under the principles of *West Orange-Cove II*, this Court should review the most recent and current output data to assess the adequacy of the school finance system. This is particularly crucial in this case where the 2012-13 data demonstrates the absence of “forward progress” that the Texas Supreme Court relied upon in that case.

ARGUMENT AND AUTHORITIES

A. The Motion to Reopen asked that the record be reopened to allow introduction of updated STAAR data.

In their Motion to Reopen the Evidence, the Calhoun County ISD Plaintiffs asked the Court to reopen the record to allow evidence of the “[c]hanges to the STAAR end-of-course testing regime and graduation requirements, *along with 2013 student performance data relating to these tests.*” (Motion to Reopen at 5 (emphasis added).) The Court granted the motion without limitation. (6/19/2013 Order on Mot. to Reopen Evidence at 6.)

While the admissibility of this information was the subject of later discussion with the Court – and while the parties understood that the Court would later issue a ruling as to this issue – there can be no question that the inclusion of 2013 STAAR data was contemplated by the Calhoun County ISD Plaintiffs from the time of their motion to reopen. This information has been central to some of the expert reports provided by parties since this time, including the report of Lynn Moak for the Calhoun County ISD Plaintiffs, Fort Bend ISD Plaintiffs, and Texas Taxpayer Plaintiffs. The State Defendants, moreover, are clearly prepared to present their arguments in response to the evidence relating to the 2013 STAAR exams, as shown by their inclusion of multiple documents on their exhibit list conditioned on the admission of this data. Evidence of 2012-13 STAAR scores is therefore within the scope of the reopened evidence and its inclusion will cause no surprise or prejudice to any party. It should be allowed into the record.

B. 2012-13 STAAR data is necessary to understand the impact of the new legislation.

Upon reopening the record, the Court will need to assess not only the content of the new legislation, but also its impact upon the various conclusions that the Court reached during the first phase of trial. The State Defendants apparently recognize this point, and argue that the

scope of reopening should be limited to determining if the actions of the 83rd Legislature cured the constitutional defects already found by the Court. (*See* State Def.'s Mot. at 2.) But evidence of 2012-13 STAAR data is critical to understanding the impact of the new legislation, and shows that the actions of the 83rd Legislature do not overcome the inadequacy or unsuitability of the system.

Recent STAAR data shows a significant *increase* in the number of students who now need remediation to pass the end-of-course exams that are currently required for graduation. After the second year of STAAR testing, 338,000 students have failed to reach passing levels on the end-of-course exams required by House Bill 5. Each of these students must be remediated and prepared to pass the exams in order to graduate from high school (let alone to graduate college- and career-ready). School districts have the responsibility to see that this happens.

The Court should not ignore this data in determining if the 83rd Legislature's *partial* restoration of funding cured the constitutional deficiencies the Court has already found. The funding provided by the 83rd Legislature must be viewed in light of the obstacles districts face in meeting the State's standards. Data from last year's STAAR exams demonstrates the challenges districts must now overcome to provide a general diffusion of knowledge. In addition, although the number of end-of-course exams has now been reduced, recent STAAR data confirms that districts continue to face overwhelming obstacles in preparing students for the exams that House Bill 5 still requires for graduation. 2012-13 STAAR data therefore provides the necessary context for the Court to determine the impact of the legislative changes.¹

¹ Because the 2012-13 data provides relevant information about the impact of the new legislation, it also defeats the State Defendants' argument that the plaintiffs' claims are not yet ripe for lack of output data from later years. (*See* Def.'s Joinder of Intervenors' Plea to the Jurisdiction.)

C. *West Orange Cove II* indicates that the latest output data should be used to evaluate the constitutionality of the school finance system.

Guidance from the Texas Supreme Court establishes that the most recently available output data is critical to assessing the adequacy of the current Texas school finance system. In *West-Orange Cove II*, the Court referenced the State’s argument that “whether a general diffusion of knowledge has been accomplished depends entirely on ‘outputs’— the results of the educational process measured in student achievement.” *Neeley v. West Orange-Cove I.S.D.*, 176 S.W.3d 746, 788 (Tex. 2005) (*West-Orange Cove II*). Agreeing that a review of outputs was critical to the adequacy inquiry, the Court held that “the constitutional standard is plainly result-oriented.” *Id.* The Court then found no violation of the adequacy clause, based largely on what it called “undisputed evidence . . . that standardized test scores have steadily improved over time.” *Id.* at 790. The 2012-13 STAAR data tells a very different story here, and the ISD Plaintiffs will show that performance in the second year of STAAR was largely flat in comparison to the first year discussed during the initial phase of trial.

The ISD Plaintiffs are challenging the constitutionality of the *current* school finance system and are seeking injunctive relief relating to the *current* system. Their claims are not limited to challenging the system as it existed in 2012; they are challenging the system as it exists today. In assessing these claims, it is difficult to see why the most current test data available should not be considered by this Court, and by the Texas Supreme Court.² Excluding

² Edgewood Plaintiffs urge that the relevant 2012-13 data is not limited to STAAR results, but also includes other outputs such as college readiness factors, graduation rates, dropout rates, and SAT/ACT results. The court in *West Orange Cove II* found that “the results of the educational process measured in student achievement” included outputs such as “non-completion and dropout rates” and “college preparedness standards” which Edgewood Plaintiffs would argue include metrics beyond STAAR results. *WOC II*, 176 S.W.3d at 788-89.

such data from an evaluation of the adequacy of the current system would be in conflict with the clear guidance provided in *West Orange-Cove II*.³

CONCLUSION

For the reasons stated above, the ISD Plaintiffs respectfully request that this Court (1) overrule the State Defendants' objection to evidence related to the 2012-13 school year, (2) deny the State Defendants' Motion to Exclude Evidence Related to the 2012-13 School Year, and (3) grant any other appropriate relief.

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³ Relatedly, the State Defendants argued throughout the initial phase of trial that student performance was sure to improve over time on the STAAR exams, just as student performance improved on TAKS in the years following the introduction of this test. 2012-13 data shows this has not happened. To the contrary, recent STAAR data confirms that school districts cannot simply wait for student performance to improve, and that "automatic" improvement cannot be assumed. Schools must have the necessary resources to implement measures designed to enable students to meet these new standards. The 2012-13 STAAR evidence thus relates directly to the burdens districts face, and helps to counter one of the State's principal arguments to the contrary. The evidence should be considered by the Court.

Respectfully submitted,

HAYNES AND BOONE, LLP

/s/ Mark R. Trachtenberg

Mark R. Trachtenberg
State Bar No. 24008169
1221 McKinney St., Suite 2100
Houston, Texas 77010
Telephone: (713) 547-2000
Telecopier: (713) 547-2600

John W. Turner
State Bar No. 24028085
2323 Victory Avenue, Suite 700
Dallas, Texas 75218
Telephone: (214) 651-5000
Telecopier: (214) 651-5940

ATTORNEYS FOR THE
CALHOUN COUNTY ISD PLAINTIFFS

GRAY & BECKER, P.C.

/s/ Richard E. Gray, III

Richard E. Gray, III
State Bar No. 08328300
Toni Hunter
State Bar No. 10295900
900 West Ave.
Austin, Texas 78701
Telephone: (512) 482-0061
Fax: (512) 482-0924

ATTORNEYS FOR TTSFC PLAINTIFFS

THOMPSON & HORTON LLP

/s/ J. David Thompson, III

J. David Thompson, III
dthompson@thompsonhorton.com
State Bar No. 19950600

Philip Fraissinet
pfraissinet@thompsonhorton.com
State Bar No. 00793749

Phoenix Tower, Suite 2000
3200 Southwest Freeway
Houston, Texas 77027
Telephone: (713) 554-6767
Telecopier: (713) 583- 9668

Holly G. McIntush
hmcintush@thompsonhorton.com
State Bar No. 24065721

Wells Fargo Tower
400 West 15th St., Suite 1430
Austin, Texas 78701
Telephone: 512-615-2350
Telecopier: 512-682-8860

ATTORNEYS FOR FORT BEND ISD
PLAINTIFFS

MULTICULTURAL, EDUCATION, TRAINING
AND ADVOCACY, INC.

/s/ David G. Hinojosa

David G. Hinojosa
State Bar No. 24010689
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 PLAINTIFFS,
EDGEWOOD I.S.D.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served this 20th day of January, 2014 as provided below:

J. Christopher Diamond
The Diamond Law Firm, P.C.
17484 Northwest Freeway
Suite 150
Houston, Texas 77040

Via Email

Craig T. Enoch
Melissa A. Lorber
Enoch Kever PLLC
600 Congress, Suite 2800
Austin, Texas 78701

Via Email

Richard E. Gray, III
Toni Hunter
Gray & Becker, P.C.
900 West Ave.
Austin, Texas 78701

Via Email

Randall B. Wood
Doug W. Ray
Ray & Wood
2700 Bee Caves Road #200
Austin, Texas 78745
Telephone: (512) 328-8877
Fax: (512) 328-1156

Via Email

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

Via Email

Shelley N. Dahlberg
James "Beau" Eccles
Erika Kane
Texas Attorney General's Office
P.O. Box 12548, Capitol Station
Austin, Texas 78711

Via Email

J. David Thompson, III
Philip Fraissinet
Thompson & Horton LLP
3200 Phoenix Tower, Suite 2000
Houston, Texas 77027

Via Email

Robert A. Schulman
Joseph E. Hoffer
Ricardo R. Lopez
Schulman, Lopez & Hoffer, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

Via Email

/s/ Michelle C. Jacobs
Michelle C. Jacobs