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Amalia Rodriguez-Mendoza
District Clerk
Travis County
D-1-GN-11-003130

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

TEXAS TAXPAYER & STUDENT FAIRNESS COALTION, *et al.*,	§	
Plaintiffs,	§	
EDGEWOOD INDEPENDENT SCHOOL DISTRICT, *et al.*, (consolidated)	§	IN THE DISTRICT COURT
Plaintiffs,	§	TRAVIS COUNTY, TEXAS
v.	§	200TH JUDICIAL DISTRICT
MICHAEL WILLIAMS, in his Official Capacity as the COMMISSIONER OF EDUCATION, *et al.*,	§	
Defendants.	§	

EDGEWOOD PLAINTIFFS' RESPONSE TO DEFENDANTS' OBJECTIONS TO PLAINTIFFS' DEPOSITION DESIGNATIONS

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TO THE HONORABLE JUDGE DIETZ:

Edgewood Plaintiffs hereby submit their Response to Defendants' Objections to Plaintiffs' Deposition Designations. In support thereof, Edgewood Plaintiffs show the following:

I. Defendants Waived Objections to Form Not Asserted at Deposition.

Texas Rule of Civil Procedure 199.5(d) states that the "oral deposition must be conducted in the same manner as if the testimony were being obtained in court during trial." Tex. R. Civ. P. 199.5(d). "Objections to questions during oral deposition are limited to 'Objection, leading' and 'Objection, form.' " Tex. R. Civ. P. 199.5(e). These objections are waived f not stated during the oral deposition. *See id.* To be timely, an objection to testimonial evidence under rule 199.5(e) "must be made prior to the witness responding to the question where it is reasonably obvious that the question calls for

inadmissible evidence." *Beall v. Ditmore,* 867 S.W.2d 791, 793 (Tex. App.—El Paso, 1993). Although parties may agree under TRCP 191.1 to reserve all objections, including those stated in TRCP 199.5(e), no such agreement was entered here.

Texas courts have that found that objections to form include speculation, foundation and hearsay. *See, e.g.,* TEX. R. EVID. 199.6, cmt. 4 (speculation); *Fernandez v. Peters*, Not Reported in S.W.3d, 2010 WL 4137491, *4 (Tex. App.-Austin, 2010) (hearsay); *Crow v. Rockett Special Utility Dist.*, 17 S.W.3d 320, 324 (Tex. App.–Waco, 2000) (hearsay); *Green v. Industrial Specialty Contractors, Inc.*, 1 S.W.3d 126, 130 (Tex. App.–Houston [14 Dist.], 1999) (hearsay); *Hou-Tex, Inc. v. Landmark Graphics*, 26 S.W.3d 103, 112 (Tex. App.–Houston [14 Dist.], 2000) (foundation); and *Morin v. Helfrick*, 930 S.W.2d 733 (Tex. App.–Houston [1 Dist.], 1996) (foundation/lack of personal knowledge).

Defendants waived the following objection to form by failing to raise them at deposition, as depicted in the chart below:

DEPONENT	OFFERING PARTY	DESIGNATION	OBJECTION	SUSTAINED	OVERRULED
Julio Cavazos	Edgewood	27:7-30:4	27:2-23 Hearsay (waived as to 27:14-23)		
		54:5-56:15	Foundation (waived as to 54:9-56:15)		
		62:20-64:4	Foundation		
		64:10-66:12	Foundation		
		66:16-67:17	Foundation		
		79:7-14	Foundation (waived as to 79:8-9)		
		103:14-18	Speculation		
		144: 9-19	Foundation (waived as to 144:14-17)		
		145:21-146:11	Foundation (waived as to 145:21-146:1)		

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II. Those Objections That Defendants Did Not Waive Are Meritless.

To the extent that Defendants now raise objections that were not raised at deposition, but were not required to be raised at deposition in order to be preserved, those objections are meritless. Tex. R. Civ. P. 199.5(e).

A. Legal Conclusion

The State makes a number of objections based on "legal conclusion." A majority of the deposition designations that drew such objections, which are reflected in the chart below, contained testimony regarding whether the district is currently providing a general diffusion of knowledge and/or an adequate education. Mr. Cavazos established in his testimony that he is not an attorney, and that he does not have legal training. *See* Ex. 4334 at 19:24-20:2. He did, however, state that he was present at trial in this case, that he attended at least one superintendent deposition, and that he was familiar with the claims Harlingen CISD and other districts are making in this case. *See* Ex. 4334 at 20:3-12. He also provided his understanding and definition of "general diffusion of knowledge." *See* Ex.4334 at 20:13-19 ("GDK is basically to have school districts provide the access and opportunity or a good education for all students to get them college and career ready.").

Mr. Cavazos also established that he has been working in various capacities for school district for close to twenty years, and in his current capacity as Assistant Superintendent for Harlingen CISD for over a decade. *See* Ex. 4334 at 5:9-10:23. He is "in charge of the overall financial business affairs for the school district…oversees payroll, accounting, purchasing, federal programs, investments…[and goes] out to the campuses on a weekly basis, meets with principals, discuss[es] their needs…" *See* Ex. 4334 at 5:11-6:7. It is reasonable that in his current professional capacity and based on

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his own testimony and knowledge, he is familiar with the State's constitutional obligations to its students and whether the district is meeting those standards.

For Plaintiffs' designations contained in pages 85-90 in the chart below, Defendants made raised objections to testimony regarding what Harlingen has to do and will have to do in order to meet new requirements of HB5, such a creating post graduation plans (PGPs) for every single ninth grader in the district and expanding endorsement curriculum offerings. Mr. Cavazos established through his experience and work with the district above that he has knowledge of those issues, and as established by his testimony, he is not providing (and Defendants do not identify) a legal conclusion on those grounds.

DEPONENT	OFFERING PARTY	DESIGNATION	OBJECTION	SUSTAINED	OVERRULED
Julio Cavazos	Edgewood	19:22-20:25 and 21:2	20:13-21:2 Legal Conclusion		
		21:8-23	21:15-18 Legal Conclusion		
		50:14-54:3	50:15-18 Legal Conclusion		
		79:7-14	Legal Conclusion		
		79:16-19	Legal Conclusion		
		85:19-88:10	88:9-10 Legal Conclusion		
		88:12-13	Legal Conclusion		
		88:15-90:5	88:15-22 Legal Conclusion		
		99:8-11	Legal Conclusion		
		99:13	Legal Conclusion		
		103:14-18	Legal Conclusion		

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B. Relevance

Defendants also make a number of objections to Mr. Cavazos's testimony based on relevance, as presented in the chart below. TRE 401 defines relevant evidence to mean "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

The first three rows in the chart below relate to 2010-11 budget cuts in the district, including the loss of special program funding that focused on the needs of low income and ELL students. This testimony is relevant to Paragraphs 40-43 of Edgewood Plaintiffs' Third Amended Petition, attached as Exhibit A, which detail the failure of the "estimated $3.4 billion of the total $5.4 billion in cuts…restored through Senate Bill 1 and House Bill 1025" to remediate the "dramatic negative impact on the Plaintiff Districts." Similarly, the testimony identified in the fourth row below discusses the impact of the reduction of teaching slots in the district on the level of instruction in the classroom, and the district's failure to meet AYP at certain campuses as a result. *See* Ex. 4334 at 50:24-52:24.

The remaining objections in this category are related to 2013 STAAR results and the need for STAAR remediation in the district, which this Court already ruled are relevant in open court on January 21, 2013.

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DEPONENT	OFFERING PARTY	DESIGNATION	OBJECTION	SUSTAINED	OVERRULED
Julio Cavazos	Edgewood	43:18-46:17	43:18-45:14 Relevance		
		47:6-49:3	48:7-49:3 Relevance		
		49:15-50:12	49:15-22 Relevance		
		50:14-54:3	50:24-52:24 Relevance		
		62:20-64:4	62:20-64:4 Relevance		
		64:10-66:12	64:10-66:12 Relevance		
		66:16-67:17	66:16-67:17 Relevance		

C. Qualification

Finally, Defendants make a number of objections based on "Qualification," as presented in the chart below. It is not clear what objection the State raises. An objection must be specific. Tex. R. Evid. 103(a)(1). The objection must identify the legal principle the court will violate if it admits the evidence. *See id.*; *see also United Cab Co. v. Mason*, 775 S.W.2d 783, 785 (Tex.App.—Houston [1st Dist.] 1989, writ denied). A general, one-word objection is not an objection at all. *See, e.g., Murphy v. Waldrip*, 692 S.W.2d 149, 151 (Tex.App.—Fort Worth 1985, writ ref'd n.r.e.). Because Defendants did not make a specific objections by the designated January 17 deadline, these objections are waived.

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DEPONENT	OFFERING PARTY	DESIGNATION	OBJECTION	SUSTAINED	OVERRULED
Julio Cavazos		21:8-23	21:15-18 Qualification		
		50:14-54:3 and 54:5-56:15	54:2-8 Witness Qual.		
		144:9-19	Qualification		
		144:21-145:3	Qualification		
		145:21-146:11	Qualification		
		146:13-21	Qualification		
		146:23-147:7	Qualification		
		147:9-18	Qualification		
		147:20	Qualification		

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III. Conclusion

For the reasons stated above, Edgewood Plaintiffs respectfully request that the Court overrule Defendants' objections to Exhibit 4334.

DATED: January 22, 2014

Respectfully submitted,

Mexican American Legal Defense and Educational Fund, Inc.

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CERTIFICATE OF SERVICE

I also certify that on January 22, 2014, I served the foregoing document via electronic mail to the parties listed below:

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