

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

THE TEXAS TAXPAYER & §  
STUDENT § IN THE DISTRICT COURT  
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. § 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

**STATE DEFENDANTS' MOTION TO ADMIT EXHIBITS, NOTICE OF WITHDRAWAL OF EXHIBITS, AND RESPONSES TO OBJECTIONS**

TO THE HONORABLE JUDGE DIETZ:

Defendants, Michael Williams, Commissioner of Education, Susan Combs, Texas Comptroller of Public Accounts, in their official capacities, the Texas State Board of Education, the Texas Education Agency, and the State of Texas move for the admission evidence the exhibits listed below, which were originally listed in their January 6, 2014 Exhibit List, and the February 6, 2014 Supplemental List.

**A. *New Exhibit***

At the court's request, Defendants submit Exhibit 11487, which Dr. Dawn- Fisher testified to during her direct examination.

**B. *Withdrawn Exhibits***

Defendants are withdrawing the following exhibits:

- 11357 HB2836 Final Side-by-Side
- 11358 2012-2013 FIRST ratings Charter R
- 11359 2012-2013 FIRST RATINGS R
- 11360 2013 NAEP TUDA Math Grade 4 results R
- 11381 ACT Texas 2013 Report R
- 11382 ACT Texas Newsletter-September 2012 R
- 11383 act\_part\_perf20072013-v1 R (duplicate of 11368)
- 11384 ap\_2007-2011\_tps R (duplicate of 11368)
- 11389 Five School Funding Points to Consider 21813
- 11395 longitudinal\_grad\_cont\_grad\_drop\_2006-2012)v02 R (duplicate of 11368)
- 11392 HB1025 Final Side-by-Side
- 11393 HB1926 Final Side-by-Side
- 11394 HB2201 Final Side-by-Side
- 11399 NAEP 05\_13 Math 4 DISD R
- 11400 NAEP 11\_13 Dallas ISD Math Grade 8 R
- 11401, 11402, 11405, 11406 Various NAEP data. These exhibits are being consolidated into a single exhibit under the Affidavit of Kim Ackermann, dated February 10, 2014 and offered as Exhibit No. 11488
- 11403 NAEP 05\_13 Read 4 DISD R
- 11404 NAEP 05-13 Read 8 DISD R
- 11407 NAEP 2013 Austin Math Gr4 R
- 11408 NAEP 2013 Austin Math Gr8 R
- 11409 NAEP 2013 Austin Reading Gr 4 R
- 11410 NAEP 2013 Austin Reading Gr8 R

- 11411 Now Is Not the Time to Reinstitute Grants 2-26-13
- 11416 sat\_part\_perf20072013\_v1 R (duplicate of 11368)
- 11418 SB 1 Side by Side Comparison FINAL
- 11419 SB 2 FINAL
- 11420 SB 758 Final Side-by-Side
- 11421 SB1 Item of Appropriation Final Side-by-Side
- 11422 SB1 Method of Finance Final Side-by-Side
- 11425
- 11439 Master Timeline-STAAR, funding, accountability
- 11367

**C. *Unobjected to Exhibits***

Defendants will move the following exhibits into evidence at the first opportunity:

- 11361 -11365
- 11366A
- 11369
- 11373-11375
- 11377-11380
- 11385
- 11387-88
- 11390-91
- 11397-98
- 11412-14
- 11423
- 11433
- 11435
- 11437
- 11441-51
- 11453
- 11454

- 11459a (b through F are already admitted) (demonstrative only)
- 11461R (w/ redactions)
- 11462R (w/ redactions)
- 11468 (demonstrative only)
- 11475
- 11476 (demonstrative only)
- 11477
- 11478
- 11479
- 11480
- 11481
- 11482
- 11483
- 20037a (demonstrative only)
- 20312

**D. *Foundation Objections***

The Edgewood and Calhoun County Plaintiffs have objected to the following State's exhibits, which are public records, as lacking foundation: 11368, 11376, and 11488 (which consolidated 11401-11406).

- Exhibits 11367, 11368, 11488 (which consolidated 11401 through 11406), 11415, and 11417, are certified public records. TEX. R. EVID. 901(b)(7), 902(4), 902(10), 1005.
- Exhibit 11376, 11426, and 11429 are official publications of the Texas Education Agency under Texas Rule of Evidence 902(5).
- Exhibits 11415 and 11417 are periodicals under Texas Rule of Evidence 902(6).

**E. *Hearsay***

The Edgewood and Calhoun County Plaintiffs have objected to the following State's exhibits as hearsay: 11368, 11396, 11407-11410, 11429, and 11432.

- Exhibit 11368 contains public records and reports that are not hearsay pursuant to Texas Rule of Evidence 803(8); contains statements that are records of regularly conducted activity by TEA and the SBOE and thus, are not hearsay under Texas Rule of Evidence 803(6); and contains summaries chart and calculation of voluminous assessment data recordings under Rule 1006.
- Exhibit 11396 contain statements of a public office/agency setting forth its activities and are not hearsay. TEX. R. EVID. 803(8)(A).
- Exhibits 11415 and 11417 are not hearsay. TEX. R. EVID. 803(8)(B).
- Exhibit 11429 is offered as a statement of TEA's plan, TEX. R. EVID. 803(3), and as a report of events, conditions, and opinions made by TEA in the regular course of its business activity and do not lack trustworthiness, TEX. R. EVID. 803(6).
- Exhibit 11432 is not hearsay. TEX. R. EVID. 801(e)(2)(A), (B), (C). The verifications provided by the Plaintiff ISDs, which are exhibits 11430, 11431, 11434, 11436 and 11438, certify that the statements contained in 11432 are true, and are therefore, relevant.

**E. *Outside Scope of Reopening/Relevance***

The Calhoun County Plaintiffs objected to the following State's exhibits as outside the scope of reopening/relevance: 11368 and 11429. The trial second phase is unlimited. The Court overruled the State's similar objection to limit the trial's scope to the 83<sup>rd</sup> Legislature's changes and any outputs associated with it. Moreover, the court allowed Plaintiffs to introduce evidence regarding every single claim without limit.

Additionally, the Edgewood Plaintiffs have objected to Exhibit 11489, which is the Legislative Budget Board's Fiscal Size-up for the 2014-15 Biennium as irrelevant to whether the system is currently constitutional. The Court *sua sponte* took judicial notice in the trial's first phase of the Fiscal Size-up for the 2012-13 Biennium, to which no party objected, indicating its relevance to the system in place at that time. The current Fiscal Size-up is relevant for the very same reason as last biennium's size-up.

Each of these exhibits is relevant to the Plaintiffs' adequacy, suitability, equity and state-imposed ad valorem tax claim, and is offered in response to the Plaintiffs' claims that

the 83<sup>rd</sup> Legislature's additional public education funding is not enough to satisfy minimal constitutional standards.

**G. *Not Timely Produced***

Edgewood Plaintiffs have objected that the following exhibits were not timely produced: 11368 and 11381.

The State Defendants objected to the Edgewood ISD Plaintiffs' discovery requests on the grounds of overly broad and requiring the Defendants to marshal their proof. The Court has already overruled these objections, when lodged during trial, RR. 1.127.14 at 124-127. Thus, the State Defendants were under no obligation to answer the discovery requests.

Further, the Amended Scheduling Order entered on November 5, 2013 sets the discovery completion deadline for December 9, 2013. On November 12, 2013, the Edgewood ISD Plaintiffs served on the State Defendants otherwise objectionable Amended Requests for Admissions, Interrogatories, and Requests for Production. The State Defendants answers to these discovery requests were due on December 13, 2013—four days after the discovery completion deadline. Because the Edgewood ISD Plaintiff's discovery requests were untimely served, and because the State Defendants' answers to the discovery requests were due after the court-ordered discovery completion deadline, the State Defendants objected to each and every request as being untimely and outside the discovery completion deadline. Ex. 5 (citing TEX. P. CIV. P. 190 cmt.4 ("As other rules make clear, unless otherwise ordered or agreed, parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period.")) (emphasis added); TEX. R. CIV. P. 190.4(b) (incorporating limitations of Rules 190.2 and 190.3 into 190.4 unless expressly excluded); TEX. R. CIV. P. 190.2(b)(1) ("All discovery must be

conducted during the discovery period. . . .”); TEX. R. CIV. P. 190.3(b)(1) (“All discovery must be conducted during the discovery period. . . .”); TEX. R. CIV. P. 193.1 (“A party must respond to written discovery in writing within the time period provided by court order or these rules.”); TEX. R. CIV. P. 196.1(a) (“A party may serve on another party—not later than 30 days before the end of the discovery period—a request for production. . . .”) (emphasis added); TEX. R. CIV. P. 197.1 (“A party may serve on another party—not later than 30 days before the end of the discovery period—written interrogatories. . . .”) (emphasis added); TEX. R. CIV. P. 198.1 (“A party may serve on another party— not later than 30 days before the end of the discovery period—written requests that the other party admit the truth of an matter within the scope of discovery. . . .”) (emphasis added); see *Pape v. Guadalupe-Blanco River Auth.*, 48 S.W.3d 908, 913 (Tex. App.—Austin 2001, pet. denied) (trial court did not abuse its discretion in excluding untimely evidence and denying request to modify discovery scheduling)).

### CONCLUSION

The State Defendants respectfully request the Court to admit those exhibits to which there is no objection, and to overrule the Plaintiffs’ objections and admit the remaining objections into evidence.

Respectfully Submitted,

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**CERTIFICATE OF CONFERENCE**

I hereby certify that on February 20, 2014, I conferred with the parties' counsel regarding this motion and the exhibits offered herein.

/s/ Shelley N. Dahlberg  
Shelley N. Dahlberg

Unofficial copy Travis Co. District Clerk Veva L. Price

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of March, 2014, the foregoing document was served via electronic mail:

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