

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' SUPPLEMENTAL BRIEFING

TO THE HONORABLE DAVID PEEPLES, JUDGE PRESIDING OVER RECUSAL PROCEEDING:

The *ex parte* communications divulged to the State on May 15 and June 20, 2014, require recusal under Tex. R. Civ. P. 18b(1). Specifically, those emails show (1) secret *ex parte* advocacy by certain Plaintiffs to the judge; and (2) the Judge changing his mind about the

credibility of a witness on a key fact in this case based on the *ex parte* advocacy of certain Plaintiffs' counsel. Furthermore, the Judge made an unequivocal record statement in August 2013 (*after* Ms. Dahlberg's March 2013 email) that there would be no *ex parte* communications going forward, and revoked any alleged *ex parte* procedure certain Plaintiffs claim was "understood." Finally, the Judge had not firmly decided which witnesses to credit, what evidence he would rely on to reach his judgment, and whether the evidence met certain legal standards at the time of these *ex parte* communications with some of the Plaintiffs.¹ This Court must grant the Motion to Recuse.

SUMMARY OF THE ARGUMENT

The State has provided irrefutable evidence that the trial Judge's impartiality might reasonably be questioned based on the content of *ex parte* communications between the Judge and some, but not all, of the parties to this case. Certain plaintiffs have attempted to deflect the focus away from these prohibited *ex parte* communications by asserting that the State knowingly consented to *ex parte* advocacy over matters as crucial to the outcome of the case as witness credibility,² evidence that might become available,³ and legal grounds supporting the judgment.⁴ As grounds for this alleged "knowing consent," certain Plaintiffs refer to a single line in a single March 2013 email, to which the Judge never responded, sent by the Defendant's lead counsel, copying the designated scrivener for the ISD plaintiffs, after the Judge announced his stated intentions regarding the outcome in writing to the parties after the close of evidence in the first phase of the trial. This lone email, according to certain plaintiffs, represents a conscious acquiescence by the state to outright advocacy *in absentia*, and forecloses the state from

¹ State's Exhibit 60 is a timeline of events supporting the recusal motion.

² State's Ex. 53.

³ *See e.g.* State's Ex. 26, pages 26 [HGM41], 27 [HGM45]; 33 [[HGM62]; JKD: "Do you need to update this data?"

⁴ State's Exs. 13 at 33-34; Ex. 53; *see e.g.* State's Ex. 26 at p. 27 [JD44]

complaining about the now indisputable violations of the Texas Rules of Civil Procedure, the Texas Canons of Judicial Ethics, and the State Bar Rules by the Judge and certain Plaintiffs.

If this Court were to entertain the idea of waiver, it would first have to hold that the State could not reasonably rely on the words spoken on the record by the Judge in August of 2013 that there would be no *ex parte* communications from that point forward. It would have to ignore the fact that there is no record evidence, whatsoever, of any knowing consent by the state that certain plaintiffs, after this express representation by the court, were nonetheless able to have *ex parte* communications with the Judge, even though the Judge scheduled, and held, several “work session” hearings, at which all parties were present, ostensibly designed to allow the *all* parties to advocate regarding the state of the record and what the findings of fact and conclusions of law should be. The Court would further have to ignore the Judge’s own statement, in March of 2014, that there were “three or four” non-substantive emails between himself and Ms. McIntush that occurred before March 19, when, in fact, the State received nearly 30 additional *ex parte* emails on June 20, 2014. The Court would finally have to ignore the fact that the same parties now asserting that there was a clear understanding in which the State knowingly exempted itself from participation in the adversarial proceeding in the case, themselves, engaged in *ex parte* communications with the Judge expressing a lack of clarity regarding their understanding, and nonetheless proceeded to resolve that very issue without notice to the State (or other certain plaintiffs) or giving the State an opportunity to be heard on that point.

The following facts are simply irrefutable:

- (1) certain plaintiffs, and the Judge, communicated *ex parte* for months to the exclusion of the State and other parties, and this *ex parte* communication included outright advocacy by certain Plaintiffs that altered the Judge’s decisional process;⁵

⁵ State’s Exs. 14-41, 53, 58.

- (2) at the time the *ex parte* communications occurred, the evidence was not, and indeed is not now, closed; and thus there is no current judgment nor any reasonable facsimile thereof;⁶ and
- (3) neither the State nor this Court has a full accounting of the extent of *ex parte* communications between the Judge and certain plaintiffs, insofar as (1) there are references in the material turned over on June 20 showing that other *ex parte* communications remain undisclosed; and (2) there are references in the materials turned over on May 15 that communications occurred between certain plaintiffs' counsel and the Judge via telephone.

ARGUMENT

A. NEWLY-DISCLOSED EVIDENCE SHOWS CLEAR ADVOCACY BY CERTAIN PLAINTIFFS AND A HEAVY INFLUENCE ON THE JUDGE'S DETERMINATION OF A KEY ISSUE (FUNDING).

On June 17, 2014, certain plaintiffs' counsel produced to this Court *in camera* numerous *ex parte* communications pre-dating March 19. *See* State's Ex. 57, June 17 Ltr to Judge Peeples. On June 20, during the hearing of the recusal matter, Plaintiffs' counsel first produced nearly 30 additional *ex parte* communications (including numerous attachments containing additional separate communications with the Judge) dated February 21 through March 18, 2014. *See generally* State's Ex. 58. Some of the *ex parte* email communications produced on June 20 includes discussion between the Judge, his staff, and Plaintiffs' counsel about whether they should continue *ex parte* communications. *See* State's Ex. 54, 55. That the State was not given notice of either the lack of clarity on the issue or the opportunity to be heard on this issue, alone, should necessitate recusal.

But the substance of the *ex parte* communications turned over on June 20 represent a disturbing glimpse into the extent to which the Judge and certain plaintiffs felt comfortable advocating key aspects of the case without the participation of all parties. In response to an

⁶ State's Exs. 8 at 82, Ex. 13 at 17, 51, 54. In fact, in the Judge's comments to the Plaintiffs' counsels, he asks them whether they need to update certain data points in the record. Ex. 26 at p. 33 [[HGM62]: JKD: "Do you need to update this data?"]. Clearly, the Judge sought new evidence from the Plaintiffs' without giving the State notice of the request and an opportunity to be heard on its admissibility or reliability.

apparent comment in the then-current draft, certain plaintiffs inform the Judge that they wish to “take of advantage of [the Judge’s] offer to answer questions. . . .” State’s Exhibit 53, March 11 email at 2:52pm. Certain plaintiffs’ counsel goes on to advocate for the Judge’s inclusion of testimony and opinions of a plaintiffs’ expert witness that the Judge had previously determined was “mincemeat.” *Id.* In response, the Judge states “[w]ith the explanation I agree on not using the [S]tate number and using Dr. Odden’s number. Secondly, I retract my request to strike FOF 104-108.” *Id.*, March 11 email at 4:18pm. This newly disclosed email is direct evidence of harm to the State Defendants.

That the trial had ended (albeit the record is still open and the Judge continues to look for evidence to support his findings, *see, e.g.*, State’s Ex. 26, pages 26 [HGM41]; 27 [HGM45]; 33 [[HGM62]: JKD: “Do you need to update this data? ”]) is of no consequence to the harm to the Defendants and the legitimacy of the legal process arising from the recent ex parte advocacy. At least one Texas appellate court case deals squarely with the issue. In *Duffey*, the trial court accepted the defendant’s guilty plea. *Duffey v. State*, 428 S.W.3d 319, 320 (Tex. App.—Texarkana 2014, no pet.). Before the sentencing hearing, the trial court engaged in an ex parte meeting with members of the victim’s family and his pastor, and then announced he would reject the previously-entered plea agreement. *Id.* at 320-21. The court of appeals reviewed the denial of the defendant’s recusal motion and held that the ex parte communications gave rise to a question of the trial court’s impartiality and was harmful:

While the recusal testimony indicates that the trial judge refused to discuss the details of the case during the ex parte meeting, he clearly listened to the concerns and objections of the [victim’s family and pastor] regarding a sentence decision that was not yet final. Allowing this trial judge, even if he were to sit mute, to meet privately with a crime victim’s family and pastor regarding sentencing and unfinalized plea agreements would create dangerous precedent that could produce injustice in other cases. Characterizing this behavior by a jurist as harmless would undermine public confidence in the justice system.

Id. at 327. Likewise, one federal appellate court has determined that where a judge surrounds himself with individuals who may not be truly disinterested gives rise to an almost irrebuttable presumption that the judge is tainted and must be recused. *In re Kensington Intern. Ltd.*, 368 F.3d 289, 308 (3d Cir. 2004).

The new evidence bolsters the State's fundamental argument in its original Motion to Recuse the Judge: his participation in *ex parte* communications between some, but not all, of the parties, in which outright advocacy not only occurred but was demonstrably effective, is the essence of *ex parte* conduct that all rules on the subject forbid. The Judge here surrounded himself with interested parties, and the taint arising from the contact is irrefutable.

B. THE STATE DID NOT “CONSENT” OR “ACQUIESCE” FOR CERTAIN PLAINTIFFS TO ENGAGE IN *EX PARTE* COMMUNICATIONS.

According to those plaintiffs attempting to defend the Judge's *ex parte* conduct, the State “consented” or “acquiesced” to a procedure in which certain plaintiffs were permitted to engage in *ex parte* merits-based advocacy with the Judge about the Court's ultimate opinion. But the evidentiary record was open, and the Judge had entered neither a judgment, nor oral ruling, after the February 2014 trial at the time it entertained voluminous *ex parte* communications with certain plaintiffs. *See* State's Ex. 8 at 82, Ex. 13 at 51. And there is nothing in the record evidencing the State's express, affirmative consent to *ex parte* communication including the Judge's feedback on proposed findings/conclusions, because the State never consented to such an arrangement. Plaintiffs' exhibits—particularly exhibits 2-6, 8, 9, 11, 13—contemplate *only submissions* to the Judge, and do not indicate that the Judge and only one subset of the plaintiffs were permitted to engage in an ongoing dialog during his decisional process.

(1) Legal Standard for Waiver/Consent: “Affirmative Consent”

The law does not permit waiver by silent consent. Instead, “affirmative” consent, on the record, is required to waive the State’s objection to the at-issue *ex parte* conversations:

[W]e cannot regard [parties’] silence that accompanied the [Court’s] preemptive statement that “[a]ny objection to [] *ex parte* communications is deemed waived” as manifesting consent. To fulfill the principles and objectives of Canon 3 of the [Federal] Code of Conduct, which proscribes *ex parte* communications except with consent, *affirmative consent* is dictated.”

In re Kensington Intern. Ltd., 368 F.3d at 311 (emphasis in original); see *Tramonte v. Chrysler Corp.*, 136 F.3d 1025, 1031 (5th Cir. 1998) (“A judge has a duty to be watchful of such disqualifying circumstances with disclosure necessary to the decision made clear upon the record.”).⁷

(2) Lone Email does not represent “Affirmative Consent”

In a record containing more than a million pages of evidence and transcripts, the plaintiffs seeking to defend their *ex parte* communications with the Judge point to a single statement in one email from the State to the Judge on which they were copied, but other Plaintiffs’ counsel were not. Plfs’ Ex. 15. However, the lone statement to “[p]lease let me know. . . “ in March of 2013 does not remotely represent the “affirmative consent” required by the *Kensington Intern* court. First, the email itself was not *ex parte* with respect to the party whose *ex parte* conduct is now being challenged. That is, those same plaintiffs who engaged in *ex parte* communication were not excluded from that March 2013 email. As such, it does not follow that mere forwarding of draft findings of fact and conclusions of law (in compliance with the court’s order), and copying Mr. Trachtenberg, represents a knowing, “affirmative consent” to

⁷Texas Judicial Canon 3 mirrors the Canon relied upon in *Kensington*. See *Duffey v. State*, 428 S.W.3d 319, 325 (Tex. App.—Texarkana 2014, no pet.) (“Texas courts often look to federal recusal opinions for additional guidance” because rules are similar).

Mr. Trachtenberg's (or anyone else representing the ISD plaintiffs) *ex parte* advocacy to the Court. Moreover, Ms. Dahlberg's single email occurred after the first phase of the trial, after the evidence was fully closed and the Judge had orally stated his views on the case. There is no back-and-forth advocacy with the Court. To this point, it comes as no surprise that, despite the allegedly "well understood" process by which subsets of parties would separately advocate *ex parte* to the Judge, no party other than the ISD plaintiffs took advantage of this allegedly well-understood opportunity to advocate in the absence of other parties.

- (3) Regardless of Any Alleged "Understanding" in March of 2013, the Judge's Express Statements in August 2013 Removed any Possibility of "Affirmative Consent" by the State

To the extent pre-August 2013 communications are claimed to reflect a purported "understanding" the Judge could send feedback *ex parte* and subsequently allow advocacy by some plaintiffs in the absence of the other plaintiffs and Defendants, this "understanding" was indisputably revoked when the Judge stated in August 2013 in no uncertain terms that: "I can't have [] *ex parte* communication...I've got to give y'all the feedback at the same time." State's Ex. 3, pages 56-57. To this end, there is no record *after* August 2013 that the Judge intended to give feedback on findings and conclusions *ex parte*, because he never provided the State with notice of his intent to allow *ex parte* advocacy, and as such, there simply is no reasonable basis upon which to conclude that the State affirmatively consented to *ex parte* advocacy in its absence.

- (4) The Allegedly "Well-Defined" Procedure was not Well-Understood by the Exclusive Participants to the *Ex Parte* Advocacy, and the Judge, Along with Some, but not all, Parties Resolved the Confidentiality Question itself *Ex Parte*

The plaintiffs, seeking to defend their *ex parte* advocacy to the Judge have advanced the argument that all parties were aware of, and acquiesced in, a clear, well-defined "procedure" that

allowed for ongoing *ex parte* advocacy from the very beginning of trial. In fact, the behavior of the very *ex parte* participants as recently as June 20 shows that this alleged procedure was fluid.

The lack of clarity regarding the alleged procedure is evidenced in the materials provided to the State for the first time on June 20, 2014. Specifically, one of plaintiffs' counsel expressed confusion about the "procedure" in an email to the Judge and asked whether the next draft of findings of fact and conclusions of law would be "confidential or public" going forward, because it "dictates [how the Plaintiffs] will handle certain edits." (Feb. 26, 2014 Email). The Judge responded to the Plaintiff's Counsel *only*, providing, "[t]he State has tried to make these [FOL and COL] a public document by entering on the record, my sixteen page paper and other things, which I have sealed. I'm sticking with this rule and trying to honor the no *ex-parte* rule at the same time. . . . The [Plaintiffs] proposed drafts of the FOF/COL . . . are exempt from public disclosure." (Email Feb. 27, 2014).

In a March 7, 2014 email, the Judge writes, "I am attaching my comments on the first sections of the Draft Findings of Fact and Conclusion of Law First, I want to talk about confidentiality. These comments are confidential. I am relying on [Rule] 12.5" State's Exhibit 54. He goes on to state "[a]fter the close of evidence, I do not see the necessity of confidentiality as between the lawyers. That is, I believe the drafts of the FOF/COL following the close of evidence should be shared between all parties. . . ." *Id.* Perhaps most concerning about this *ex parte* communication is that the Court, *sua sponte*, raises the issue of confidentiality *ex parte*, then declares without notice to the state, or an opportunity to be heard, that the statements will be confidential. This, itself, is further *ex parte* communication between the court and some, but not all, of the plaintiffs, and no one from the State. The State was literally incapable of waving any *ex parte* discussion about whether the communications were or were not

ex parte insofar as the State was not invited into the discussion raised by the Judge. And, in any event, this email is further evidence that there was no pre-existing understanding regarding the Judge's participation in confidential, *ex parte* communications with some, but not all, of the parties because the Judge felt compelled to state in the very email that he was introducing the idea of confidentiality and resolving it in one fell swoop.

C. The Judge Had Not Made a Final Decision When the *Ex Parte* Advocacy Occurred

In a final effort to immunize their *ex parte* advocacy with the Judge, those plaintiffs seeking to avoid recusal contend that their collaboration with the Judge was proper because the evidence had "closed," and the judge had already reached a "firm decision" before they began the *ex parte* back-and-forth communications. *See, e.g.*, Response at 37-38. However, the record shows the Judge made many statements indicating he had not reached a firm decision, to wit:

- in a March 12, 2014 (6:06PM) email, the Judge stated he "ha[s] found that every-time I go through the material or the cases, I obtain a new level of understanding." State's Ex. 56;
- on March 7, 2014, the Judge advised certain plaintiffs *ex parte* to write findings that will "establish how harm to the districts affects Texas students," and tells them to "assume" that his ruling hasn't changed. State's Ex. 54. *See* Response at Ex. 30 (April 2014 email from Judge stating he was "learning as I am going along"); *see also* State's Ex. 13 at 17 (May 2014 statement during work session in which Judge Dietz admits "I don't know what I think" regarding constitutionality of the school finance system);
- in the same email, the Judge expressly stated that "drafts of the FOF/COL following the close of evidence should be shared between all parties." State's Ex. 54. Despite this representation, neither the Judge nor the Plaintiffs shared the drafts of the FoF/CoL (or the *ex parte* messages accompanying them) with any of the other parties until May 2014. The only conclusion one can draw from the March 7 statement, then, is that neither the Plaintiffs nor the Judge believed the evidence was "closed" at that time.

D. If the Court finds the existing record insufficient to mandate recusal, the State requests time to conduct further discovery based on the emails disclosed on June 20.

For all of the reasons stated in the State's briefing to date, the existing record is sufficient to mandate recusal of Judge Dietz. To the extent the Court finds the current record does not mandate recusal, the State re-urges its request for time to conduct additional discovery based on the substance of the messages newly disclosed to the State during the June 20 hearing. These newly disclosed emails make clear that *additional* ex parte communications exist but have still not been disclosed to the State. Specifically, the earliest dated email disclosed is a message dated February 21, 2014, from the Judge's staff attorney to one of Plaintiffs' counsel. This message expressly references an even earlier ex parte contact by Plaintiffs' counsel to the Judge's staff, as the February 21 message begins "[s]orry, I am slow *getting back to you.*" See States Ex. 58 at 1 (February 21 email at 7:44 am). To date, Plaintiffs have failed to disclose the nature or substance of the pre-February 21 ex parte communication that prompted the response back to them from the Judge's staff. The timing, content and nature of the pre-February 21, 2014, ex parte communications directly bears on the issues raised in the State's Motion to Recuse, such that the State should be granted time to conduct discovery on these earlier ex parte contacts before the Court denies the recusal motion. Further, the newly disclosed emails also make reference to comments made by Judge Dietz's on Plaintiffs' January 20, 2014 draft of findings. See States Ex. 58 (March 10 email entitled "Adequacy & Tax FOF & COL 02.28.14 with JDK comments from *01.20 draft* added" and February 28 email entitled "Proposed FOF & COL – Equity Claims attaching "Equity Redline – 02.28.2014 draft *to 1.20 draft.dox*). Given this, the State should be permitted time for discovery so it may determine what, if any, ex parte communications occurred prior to February 21, 2014 regarding this January 20, 2014 draft, as it was during this time period the second phase of the trial occurred.

CONCLUSION

The State presented clear, undisputed evidence of *ex parte* communication between the primary plaintiffs and the Judge in this case. Those plaintiffs argued simultaneously that they could be privy to the Judge's protected judicial work product to the exclusion of the State (and other plaintiffs) but that their previously undisclosed, *ex parte* advocacy with the Court would not reasonably call into question the judge's impartiality. These same parties are arguing that the State consented to volumes and volumes of *ex parte* advocacy in January, February and March of 2014 because of a single email that, itself, was not *ex parte* to these participants, and despite the subsequent express representation by the Judge that there would be no further *ex parte* communications.

Because the Judge and certain parties engaged in extensive and secret *ex parte* advocacy, there is but one highly unfortunate result: the State's Motion to Recuse must be granted for the reasons set forth therein, and for the reasons identified in this Supplemental Brief and additional evidence presented to this Court.

Respectfully Submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General for Defense Litigation

JAMES "BEAU" ECCLES
Chief-General Litigation Division

/s/ Shelley N. Dahlberg

SHELLEY N. DAHLBERG

Assistant Attorney General

Texas Bar No. 24012491

General Litigation Division

shelley.dahlberg@texasattorneygeneral.gov

LINDA HALPERN

Assistant Attorney General

Texas Bar No. 24030166

General Litigation Division

NICHOLE BUNKER-HENDERSON

Assistant Attorney General

Texas Bar No. 24045580

Administrative Law Division

Texas Attorney General's Office

P. O. Box 12548, Capitol Station

Austin, Texas 78711

Phone: (512) 463-2121

Fax: (512) 323-0667

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2014, the foregoing document was served via electronic mail to the following:

Richard E. Gray, III
Toni Hunter
GRAY & BECKER
900 West Ave.
Austin, TX 78701

Randall B. Wood
Doug W. Ray
RAY & WOOD
2700 Bee Caves Rd., Suite 200
Austin, TX 78746

Mark R. Trachtenberg
HAYNES AND BOONE, LLP
1 Houston Center
1221 McKinney Street, Suite 2100
Houston, Texas 77010

John W. Turner
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219

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

Multicultural, Education, Training and
Advocacy, Inc.
Roger L. Rice
240A Elm St., Ste. 22
Somerville, MA 02144

J. David Thompson, III
Philip Fraissinet
THOMPSON & HORTON LLP
Phoenix Tower, Suite 2000
3200 Southwest Freeway
Houston, TX 77027
Holly G. McIntush
400 West 15th Street, Suite 1430
Austin, Texas 78701

J. Christopher Diamond
THE DIAMOND LAW FIRM, P.C.
17484 Northwest Freeway, Suite 150
Houston, Texas 77040

Craig T. Enoch
ENOCH KEVER PLLC
600 Congress, Suite 2800
Austin, Texas 78701

Robert A. Schulman
Joseph E. Hoffer
Leonard J. Schwartz
SCHULMAN, LOPEZ & HOFFER, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

/s/ Shelley N. Dahlberg

Shelley N. Dahlberg
Deputy Chief—General Litigation Division

Date	Event
10/10/2011	ISD Plaintiffs file the school finance lawsuit.
04/16/2012	Judge Dietz enters a scheduling order, stating: “Each party shall file with the Court, without service on other parties, draft findings of fact and conclusions of law.” (ISD Plaintiffs’ Response – Exhibit 5, p. 4)
10/22/2012	Bench trial begins.
02/02/2013	After the parties close, Judge Dietz rules from the bench that the school finance system is unconstitutional, but does not enter a final judgment. (State’s Exhibit 43)
03/2013 to 03/12/2013	After Judge Dietz’s ruling, the parties send proposed findings of fact and conclusions of law. (ISD Plaintiffs’ Response – Exhibits 15–20)
03/04/2013	Dahlberg email to Jenson and Trachtenberg. (ISD Plaintiffs’ Exhibit 15)
06/19/2013	Judge Dietz reopens the evidence and sets an addendum trial for 01/06/2014. (State’s Exhibit 46)
08/02/2013	Judge Dietz orders all counsel to appear for an off-the-record “work session” to “discuss the final judgment and findings of fact and conclusions of law.” (State’s Exhibit 1)
08/12/2013	The State formally requests all remaining proceedings and communications between the Court and parties be on the record. (State’s Exhibit 42.)
08/20/2013	At the “work session,” Judge Dietz clarifies the procedure for finalizing his findings and conclusions, stating “I’ve got to speak to all of y’all at the same time...I can’t have any <i>ex parte</i> communication, and so the only way to do this is if I give feedback, I’ve got to give y’all feedback at the same time.” State’s Exhibit 2 (“Thesis”); Exhibit 3, pages 56–57 (transcript of “work session”)
09/12/2013	Judge Dietz states: (1) all future communications with the Court be through his clerk and (2) all proceedings would be on the record. (State’s Exhibit 4, page 5)
09/12/2013	Describing the scope of the addendum trial, Judge states “I think I will be considering whether or not there is a statewide property tax, whether or not the finance system as designed is suitable, whether or not the design is providing an adequate education and whether or not there is financial efficiency.” (State’s Exhibit 5, page 48; Exhibit 5, pages 25, 28, 34 (Plaintiffs’ counsel admitting fact issues in the addendum trial))
12/16/2013	Judge Dietz emails counsel for the parties and indicates that he “intends to follow the same procedure for proposed findings of fact and conclusions of law as in the first portion of the trial.” There is no reference to <i>ex parte</i> feedback from the Judge or additional advocacy from the Plaintiffs’ counsel regarding the merits of the case. (ISD Plaintiffs’ Response – Exhibit 32)
02/07/2014	The parties soft close in the addendum trial. The Judge does not issue any oral ruling. The Judge notes that he expects to rule in Spring and will announce the ruling on the county website. “You’ll be hearing from us, but not any time soon.” (State’s Exhibit 8, page 82)
02/26/2014-02/27/2014	Email from ISD Plaintiffs’ counsel questioning whether their future communications with the Judge about the findings and conclusions are “confidential or public. It dictates how we handle certain edits.”

	<i>Ex parte</i> email reply from Judge Dietz to ISD Plaintiffs' clarifying that their <i>ex parte</i> communications are confidential and stating that "I should make a record each and every time they are tendered to me by the parties, and when I give my comments back to the parties." (State's Exhibit 55)
03/07/2014	<i>Ex parte</i> email from Judge Dietz to Plaintiffs' counsel discussing whether the <i>ex parte</i> communications are confidential and whether the State should be included. (State's Exhibit 54)
03/19/2014	Judge Dietz holds a hearing, and takes up, but does not rule on all of the State's Exhibits (State's Exhibit 9, pages 1-22).
03/19/2014	At the March 19 hearing Judge Dietz discusses his working draft of the findings of fact and conclusions of law. (State's Exhibit 9; Exhibit 9A, pages 27-31) The Judge notes the State's previous objection to the <i>ex parte</i> submissions. The State confirms its understanding that the parties would be permitted to make <i>ex parte</i> submissions of their proposed findings of fact and conclusions of law to the Court. (ISD Plaintiffs' Response – Exhibit 34, page 38)
03/19/2014	Judge Dietz discloses the existence of "three or four" emails between himself and Holly [Plaintiffs' counsel], and states that he will provide those emails to all parties, and he will provide "real time" feedback on the crafting of the judgment, findings, and conclusions. Neither the Judge nor the Plaintiffs' counsel provided any emails to the State at that hearing. (State's Exhibit 9A, pages 24-29)
02/2014 - 05/14/2014	Judge Dietz and Plaintiffs' counsel engage in extensive <i>ex parte</i> dialogue regarding the merits of the case. (State's Exhibits 14-41, 58)
05/14/2014	Judge Dietz holds another "work session." Plaintiffs' counsel, seek clarification on the disclosure of their previous <i>ex parte</i> communications. Judge Dietz rules that all such communications made since 03/19/2014 should be disclosed to the State. (State's Exhibit 13, page 31)
05/15/2014	Plaintiffs' counsel produce <i>ex parte</i> communications that occurred between March 19 and May 14, 2014. (State's Exhibits 14-41)
06/02/2014	The State files its motion to recuse.
06/20/2014	During the hearing on the State's Motion to Recuse, Plaintiffs' counsel disclose nearly 30 additional <i>ex parte</i> emails with the Court dating from February 21, 2014, and referencing earlier communications. (State's Supplemental Exhibit 58)