

Cause No. D-1-GN-11-003130

**THE TEXAS TAXPAYER & STUDENT
FAIRNESS COALITION, et al.; CALHOUN
COUNTY INDEPENDENT SCHOOL
DISTRICT, et al.; EDGEWOOD
INDEPENDENT SCHOOL DISTRICT, et al.;**
**FORT BEND INDEPENDENT SCHOOL
DISTRICT, et al., TEXAS CHARTER
SCHOOLS ASSOCIATION, et al.,**
Plaintiffs,

IN THE DISTRICT COURT

JOYCE COLEMAN, et al.,
Intervenors

TRAVIS COUNTY, TEXAS

vs.

**MICHAEL L. WILLIAMS, COMMISSIONER
OF EDUCATION, IN HIS OFFICIAL
CAPACITY; THE TEXAS EDUCATION
AGENCY; SUSAN COMBS, TEXAS
COMPTROLLER OF PUBLIC ACCOUNTS,
IN HER OFFICIAL CAPACITY; TEXAS
STATE BOARD OF EDUCATION,**
Defendants.

250TH JUDICIAL DISTRICT

**REQUEST FOR ADDITIONAL AND AMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND OBJECTIONS TO TRIAL COURT'S FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

TO THE HONORABLE JUDGE JOHN K. DIETZ:

Plaintiffs Mario Flores, individually and as next friend of Aidan Flores;
Christopher Baerga, individually and as next friend of Abby Baerga; Dana Allen,
individually as next friend of Teal Evelyn Allen; Jason and Sarah Christensen,
individually and as next friends of their children Luke and Grace Christensen;
Brooks Flemister, individually and as next friend of Ulric Flemister; and

Texas Charter Schools Association (TCSA Plaintiffs, Charter Plaintiffs, or Charter School Plaintiffs), in the above-entitled and numbered cause, file this, their Request for Additional and Amended Findings of Fact and Conclusions of Law and Objections to Trial Court's Findings of Fact and Conclusions of Law, and, in support thereof, would respectfully show unto the Court the following:

I.

Timely Request for Additional and Amended Findings and Conclusions

Pursuant to Texas Rule of Civil Procedure 298, the Charter School Plaintiffs file these objections to and requests for additional and amended findings of fact and conclusions of law in response and with regard to the trial court's August 28, 2014 Findings of Fact and Conclusions of Law.

II.

Objections to the Form of the Trial Court's Findings of Fact and Conclusions of Law and Introduction

The following Charter School Plaintiffs' (Charter Schools) Objections and Requests for Additional Findings of Fact and Conclusions of Law (Findings),¹ are offered to demonstrate that once having found the Charter Schools are entitled to the protections of Article VII, section 1 of the Texas Constitution, and were thus deprived of an constitutionally adequate public school finance system, it must follow that the

¹ Hereafter, and except when incompatible with the sentence or paragraph where found, "Findings of Fact and Conclusions of Law" collectively will be referred to as "Findings." This would include references to a Finding of Fact that may also be a Conclusion of Law and vice versa.

Charter School Plaintiffs are also entitled to a constitutionally suitable and equitable finance system. As more fully explained herein, this Court's rejection of the Charter Schools' claims of inequity and unsuitability ignores the overwhelming and uncontroverted trial evidence of the arbitrary finance formulas and inequitable financial support that are applied to these public schools alone. Presumably, the Court's denial of equity and suitability is based on the premise that the Legislature is not required to treat the Charter Schools in the same way it treats school districts, the other recognized implementer of the general diffusion of knowledge to public school students. The Charter Schools do not dispute this premise. On the other hand, the Charter Schools vehemently insist, and have demonstrated at trial and below, that the "different" treatment afforded them has not been constitutional and that, of all the plaintiff groups in this cause, the Charter School Plaintiffs have offered the most convincing evidence that the current funding formulas were arbitrarily derived and are inequitably applied. Finally, the Charter Schools object to general findings of the trial court regarding the unconstitutionality of the entire school finance system while removing the Charter Schools from the bulk of those protections.

The Charter Schools object to Court's Findings denying them attorneys' fees because the Charter School Plaintiffs' "contributions were not so significant as to warrant an award of fees." In fact, the school district Plaintiffs have acknowledged that it was the Charter Schools who, in large and significant part, made it possible for this Court to ultimately continue to rule in this matter. To that end, the Court is asked

to consider the Charter Schools' contribution to the ultimate ruling by Judge David Peeples on the State's Motion of the to Recuse Judge John K. Dietz.

The objections, revisions and additions to the Findings below acknowledge the Charter Schools' unique, comprehensive and uncontroverted demonstration throughout this preceding of the constitutional wrongs applicable to them alone and demonstrate that the Charter Schools were significant contributors to this case.

A court must make findings of fact and conclusions of law "on the ultimate or controlling issues but not on evidentiary issues." *In re S.R.O.*, 143 S.W.3d 237, 242 (Tex. App.—Waco 2004, no pet. h.). An issue is controlling when it will support a basis for judgment for the proponent. *Taylor v. Texas DPS*, 754 S.W.2d 464, 468 (Tex. App.—Fort Worth 1988, writ denied). Thus, valid findings of fact must be clear and specific, and a recital of evidence is inadequate. *Texas Health Facilities Comm'n v. Charter Medical-Dallas, Inc.*, 665 S.W.2d 446, 451 (Tex. 1984); *Thompson v. Railroad Comm'n*, 150 Tex. 307, 240 S.W.2d 759, 761-62 (1951).

"In an appeal from a bench trial, findings of fact are the equivalent of jury answers to special issues." *Long v. Long*, 144 S.W.3d 64, 67 (Tex. App.—El Paso 2004, no pet.). They resolve the factual disputes in the case. *See, e.g., Pacific Employers Ins. Co. v. Brown*, 86 S.W.3d 353, 356-57 (Tex. App.—Texarkana 2002, no pet.) ("Findings of fact are ultimate determinations of what specifically occurred, who did or did not do certain acts, what the values of services and property are worth,

and the answer to any other specific inquiry necessary to establish conduct or the existence or nonexistence of a relevant matter”).

Conclusions of Law, by contrast, represent the trial court’s statement of the legal principles it applied to the facts to resolve the case. *Pacific Employers*, 86 S.W.3d at 357 (“conclusions of law may be a statement of a principle of law or the application of the law to the ultimate facts in the case”). The trial court is “not required to set out in minute legal detail his every reason and theory for having reached the legal conclusion expressed. If such was necessary much difficulty would arise in drawing the line of demarcation between his real conclusions of law and his theory, reasons, legal basis and even argument in support of those conclusions of law.” *Jamison Cold Storage Door Co. v. Brown*, 218 S.W.2d 883, 887 (Tex. Civ. App.—Fort Worth 1949, writ ref’d n.l.e.).

We recognize, as we must, that nothing in Rule 297 requires “inordinately detailed” findings, but the trial court signed and filed exactly that. Many of the extremely detailed “findings of fact” on behalf of the other plaintiff groups are equally applicable to the TCSA Plaintiffs. Charter schools and school districts compose and are the significant players in the public school system. Findings that generally apply to that system must, therefore, include the Charter School Plaintiffs.

III.

Request for Additional Findings and Conclusions²

The TCSA Plaintiffs are requesting the additional findings of fact and conclusions of law that are attached hereto and incorporated herein as Exhibit A,³ on those omitted issues.⁴ In addition to those findings and conclusions requested in Exhibit A, the Charter School Plaintiffs request the following additional findings of fact and conclusions of law:

In FOF 49 the Court writes:

Because the Texas Supreme Court has directed the trial court to consider facilities funding, together with M&O, in addressing the constitutionality of public school funding, the Court notes that the facilities funding structure effectively creates a fourth EWL of \$350,000 per ADA for those districts that are successful in issuing bonds. There is no recapture of revenue generated from property values exceeding this EWL. Like the M&O weights and allotments, the Legislature has not recently updated the EWL to adjust for inflation and increased construction costs. Unlike M&O funding, however, facilities funding is

² Herein, and in Exhibit A, new and/or additional Findings of Fact and Conclusions of Law being requested by the Charter Plaintiffs will be numbered RFOF and RCOL, respectively (“R” standing for requested). References to the actual Findings and Conclusions entered by the Court will be to the number assigned in that Order (*i.e.*, FOF or COL).

³ TEX. R. CIV. P. 58 allows adoption by reference in a pleading. It states that, “Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion, so long as the pleading containing such statements has not been superseded by an amendment as provided by Rule 65.” TEX. R. CIV. P. 58.

⁴ While the requested findings and conclusions contained in Exhibit A were submitted to the Court prior to the entry of its judgment, and the Court’s entering its own findings and conclusions, they were never filed with the clerk and made a part of the official record. Accordingly, they are being submitted herewith as official requested findings and conclusions in accordance with TEX. R. CIV. P. 298. The refusal of the Court to make a finding requested is reviewable on appeal. TEX. R. CIV. P. 299.

subject to appropriation and is not a permanent part of the school funding system. Consequently, districts cannot rely on new funding to assist with construction costs.

In much the same way, charter schools are totally reliant upon funding by the legislature and “cannot rely on new funding to assist with construction costs.” Moreover, charter schools can only issue bonds that are only funded by the hopeful thinking about how much funds might become available to repay the bondholder. And, too, charters do not get equalized wealth adjustment (EWL). Hence, the charter schools are asking the Court to make the following findings:

RFOF 124. Facilities and M&O funding, by whatever name given to it by the legislature, and whether made in as a single appropriation (lump sum) or broken into separate parts in the biannual budget, is subject to appropriation and is not a guaranteed, permanent part of the school funding system. It is subject to the whims of the legislature. Consequently, charter schools (in the same way as independent school districts) cannot rely on new funding from the legislature to assist with construction costs.

RFOF 125. The Texas Supreme Court has directed the trial court to consider facilities funding, together with M&O, in addressing the constitutionality of public school funding. As charter schools do not have taxing authority, and are not subject to recapture of revenue generated from property values, they do not get any EWL adjustments.

RFOF 126. Because charter schools are funded using a formula based upon the tax structure used to fund independent school districts, all the findings of fact surrounding the tax structure of the school finance system that demonstrate the unsuitability—Findings,

section 2, subsections a–f, and G—apply to the Charter School Plaintiffs.

- RFOF 127. The arbitrary changes to the structure of the school finance system since *Neeley v. West Orange Cove Consolidated ISD*, 176 S.W.3d 746 (Tex. 2005) (*WOC II*) and the severe underfunding of Texas school districts have rendered the school finance system unsuitable.
- RFOF 128. The 2013 legislative changes did not cure the constitutional deficiencies brought about by the structural deficit, outdated formulas, and inadequate funding which affect both the independent school districts and charter schools alike.
- RFOF 129. In the current school year, approximately 161 charter schools remain worse off than they were in 2010-11 before the 2011 legislative cuts. (RR54:111-12 (referencing Ex. 6618 at 10).) [See FOF 70—this is an adaption from that finding.]
- RFOF 130. The Charter Plaintiffs have rebutted any presumption that a “general diffusion of knowledge” is equivalent to accreditation requirements. (In addition, the Charter School Plaintiffs are making a request that the entire paragraph be amended (*see* section IV below)).
- RFOF 131. The cost-of-adequacy estimates adopted by the Court (*see infra* Part I.C.5.f (FOF 625, *et seq.*)) exceed the available revenue provided by the funding formula for charter schools (state-wide averaging) in the school finance system, leaving charters without any meaningful discretion to provide enrichment.
- RFOF 132. Looking at the lowest adequacy estimate before this Court – Dr. Odden’s \$6,176 estimate for the 2010-11 school year prior to adjustment for inflation – the State’s expert, Dr. Lisa Dawn-Fisher, reported that only two charters, with approximately 229 in ADA,

obtain that level of funding, and that the other 190 charters, which educated more than 115,000 in ADA, do not. (RR63:45-47 (referencing Ex. 11440).) Due to the structure of the school finance system for charters, in the current school year, no charter receives this lower estimate of the cost to achieve a general diffusion of knowledge. (RR63:48-50 (referencing Ex. 11440).)

RFOF 133. The growing population of economically disadvantaged students faces significant educational challenges for charter schools.

RFOF 134. The economically disadvantaged population has grown since *WOC II*, and the concentration of disadvantaged students in certain charter schools exacerbates the challenges in these districts.

RFOF 135. The State's expert, Dr. Podgursky, also acknowledged that the concentration of economically disadvantaged students within a charter school can have a significant negative impact on student learning. (RR29:105-07; *see also infra* FOF 642.) Tom Templeton testified that charter schools serve a larger concentration of economically disadvantaged students (RR61:32-33), serving as prime examples of schools Dr. Podgursky determined to be at a further disadvantage.

RFOF 136. Charter schools receive no specific allocations or support for facilities. Therefore, charter schools are totally reliant on the average total tax effort of the State's independent school districts for facilities funding. No single charter can receive additional funding for any particular facilities need. For example, if a charter needs one or two laboratories, or a new library, it cannot obtain funds to meet this need as can a similarly situated school district. Hence, charter schools have no meaningful discretion over facility funding. In addition, whenever a charter school uses some of the funds it

receives under the State's formula for charter school funding, the school's M&O (educational funds) must, by definition, be lowered by the amount of funds diverted to facilities.

- RFOF 137. Because charter schools have no taxing authority and are dependent on the average tax revenues returned to school districts, they are equally captive to state controlled limits on local revenues imposed on districts, and are thus also unable to address the needs of the significant populations of economically disadvantaged students.
- RFOF 138. The growing ELL population, and the increasing diversity of home languages spoken, has magnified the challenges facing charter schools.
- RFOF 139. Texas charter schools also need funding for summer school and after-school, and extended-day programs to remediate economically disadvantaged students who have fallen behind in course work or failed the STAAR exam(s).
- RFOF 140. Due to limited funding, some charter schools are unable to afford the ESL curriculum, and not all classrooms have textbooks in both English and Spanish, which are needed to effectively implement state-mandated programs.
- RFOF 141. Charter schools must therefore recruit highly trained teams of special educators and ELL educators who can assess a special needs student's eligibility for bilingual or ESL services.
- RFOF 142. Harmful state budget cuts could not be remediated by charter schools because the local districts' taxability, upon whom the charter schools' funding is based, is limited, due to tax compression, and the lack of tax capacity.

- RFOF 143. Charter schools did not receive a restoration of funding cuts made in the 82nd Legislature.
- RFOF 144. Significant, yet essential, State mandates related to language programs for ELL students place heavy burdens on charter schools.
- RFOF 145. Despite the substantial programming and services that charter schools must provide for ELL students, the funds provided by the State to defray those expenditures have never been designed, structured, or funded to cover the actual costs, and are unrelated to actual student need.
- RFOF 146. Charter schools and other state allotted funds must use a significant amount of their total budgeted allotment to cover the cost of recruiting and retaining qualified bilingual/ESL teachers.
- RFOF 147. Finally, just as school districts must meet the demands of a growing student population by building new facilities and repairing or replacing aging facilities (*see* FOF 525), charter schools must meet the demands of a growing student population by building new facilities and repairing or replacing aging facilities.
- RFOF 148. Charter schools lack the necessary resources to replace, hire, and retain the quality teachers necessary to provide a general diffusion of knowledge.
- RFOF 149. The Charter School Plaintiffs have demonstrated that the cost of providing an adequate education exceeds the available funding under the current school finance system, as a result of the State's failure to suitably provide for the Texas public school system.
- RFOF 150. The Court found, quoting Robert Scott, former Commissioner of Education, that "when you create a charter, it's like creating a whole new school

district.” (Ex. 5630, Scott Dep., at 110.) Recognizing this truism, the Charter Plaintiffs request the Court to find that “Charters, being like school districts, are subject to the same financial problems facing traditional schools, must meet the same academic standards, compete for highly qualified teachers, must have adequate facilities and provide their students with a general diffusion of knowledge. Charters must educate students to be college and/or career ready upon graduation.”

- RFOF 151. Although charter schools do not have a minimum salary scale for teachers, they must compete with the traditional schools for competent teachers; hence most charters must pay equivalent teachers’ salaries to those paid by their respective neighboring traditional school district.
- RFOF 152. Although charter schools are only partially subject to the disciplinary and placement procedures contained in Chapter 37 of the Texas Education Code, charter schools are subject to all State and Federal employment laws, such as the Texas Whistleblower Act and the Texas Human Rights Act, and the Federal Americans with Disabilities Employment Act, and the Equal Employment Opportunities Act.
- RFOF 153. While a teacher in a charter school is required to have only a baccalaureate degree, and is not required to be certified, TEX. EDUC. CODE § 12.129, charter schools must hire teachers who are “highly qualified” under the Federal No Child Left Behind Act.
- RFOF 154. Like school districts, charter schools must follow the State’s academic accountability system. TEX. EDUC. CODE § 12.104(b)(2)(L). Charter school students take the State’s standardized tests. The performance of charter school campuses and charter school districts is assessed under the State’s accountability manual in the same manner and following the same

rating rubrics as for school districts. (Ex. 9048 at 22; RR42:77-80). All of HB5 new accountability standards, including the State's new graduation standards and modified end-of-course testing requirements, apply equally to open-enrollment charter schools. (Ex. 9072 at 5 and 8; RR61:98-99). Therefore, any Finding of Fact this Court makes regarding the standards and outcomes of the State's accountability system applies equally to open-enrollment charter schools.

IV.

Request for Amended Findings and Conclusions⁵

Charter School Plaintiffs request the following amended findings and conclusions:

FOF 10. The first sentence of FOF 10 on Adequacy should be amended to add Charter School Plaintiffs. After amendment the sentence should read as follows:

“Adequacy” claims. The ~~ISD~~ *public school*^[6] Plaintiffs assert a violation of the “general diffusion of knowledge” clause in Article VII, section 1 of the Texas Constitution, because, as evidenced by low student achievement results, they lack the resources needed to reasonably provide all their students with a meaningful opportunity to acquire the essential knowledge and skills reflected in the state curriculum and to graduate at a college-ready and career-ready level. [Plaintiffs’ Fifth Amended Original Petition and Request for Declaratory Judgment (hereinafter cited as “Petition”), ¶¶ 29, 30]

⁵ Words omitted from the original are signified by a strikethrough; added words or amended sentences are signified by use of Apple Chancery 16 pt. font.

⁶ The term “public schools” as used *herein* includes both independent school districts and open-enrollment charter schools.

FOF 10. The second sentence of FOF 10 on Adequacy should be amended to add charter schools, along with the Edgewood ISD Plaintiffs. After amendment the sentence should read:

The Edgewood **ISD and the Charter School** Plaintiffs more specifically assert a violation of the “general diffusion of knowledge” clause in Article **VII**, section 1 of the Texas Constitution because they lack the resources needed to reasonably provide English language learner (“ELL”) and economically disadvantaged students with a meaningful opportunity to acquire the essential knowledge and skills reflected in the state curriculum and to graduate at a college-ready and career-ready level, as evidenced by low student achievement results of these students and large performance gaps between these populations and their peers.

FOF 10. The last sentence in the paragraph above referenced should be amended to show that the Charter School Plaintiffs asserted that they claimed that the level of funding of all public schools was inadequate, not just funds earmarked for charters. After amendment this sentence should read:

The Charter School Plaintiffs likewise assert that the level of funding is inadequate *for all public schools, in general, and, in addition, specifically,* for open-enrollment charter schools in Texas.

FOF 10. The first sentence in the paragraph about “Suitability” Claims should be amended to include the TCSA plaintiff group. It should, after amendment, read:

“Suitability” claims. The ISD *and Charter School* Plaintiffs assert that the school finance system violates the “suitable provision” clause in Article VII, Section 1 of the Texas Constitution because the system is not structured, operated and/or funded so that it can accomplish a general diffusion of knowledge.

FOF 10. The second sentence in the paragraph about “Suitability” Claims should be amended to include the TCSA Plaintiffs group. It should, after amendment, read:

“Suitability” claims. *** Multiple defects in the current design of the school finance system cumulatively prevent districts *and Charter Schools* from generating sufficient resources to accomplish a general diffusion of knowledge for all students, but particularly with respect to its economically disadvantaged and ELL student populations.

FOF 10. The third sentence in the paragraph about “Suitability” Claims should be amended to include the TCSA Plaintiffs group. It should, after amendment, read:

“Suitability” claims. *** For example, the State relies on outdated, arbitrary weights and allotments that do not reflect the actual cost of education for school districts *and Charter Schools* (and in particular the cost of educating at-risk students)[;] and the State has made no effort to determine what it costs to provide all students with a meaningful opportunity to acquire the essential knowledge and skills reflected in the state curriculum and to graduate at a college-ready and career-ready level.

FOF 10. The fourth sentence in the paragraph about “Suitability” Claims should be amended to include the TCSA Plaintiffs group. It should, after amendment, read:

“Suitability” claims. *** They allege that, as a result of these structural formula deficiencies, the system is not suitably operated or funded to account for uncontrollable costs arising from different student, *charter school*, district, or community characteristics, resulting in significant adverse impacts on student achievement.

FOF 10. The last sentence in the paragraph about “Suitability” Claims should be amended to include the TCSA Plaintiffs group’s claim that the level of state funding for all public schools is unsuitable. It should, after amendment, read:

“Suitability” claims. *** The Charter School Plaintiffs likewise assert, *in general*, that the level of funding is unsuitable for *all public schools, including, in particular*, open-enrollment charter schools in Texas.

FOF 10. The last sentence in the paragraph about “**Quantitative or financial efficiency**” or “**equity**” claims should be amended to state that individual charter schools do not receive substantially equal access to revenues per pupil when compared to the similarly situated school district(s). Therefore it should appropriately read as follows:

The Charter School Plaintiffs also assert a violation of the efficiency clause on the theory that the school finance system fails to provide “efficient and non-arbitrary” access to revenues to open-enrollment charter schools, including funding for facilities, *when compared to similarly*

situated school districts. (RR61:40-46, referencing Ex. 9071.)

FOF 23. Finding of Fact 23 is insufficient in that it only recognizes the harm caused by “[t]he rapid growth in student enrollment to school districts.” Finding of Fact 23 must be amended to recognize that the harm caused by “[t]he rapid growth in student enrollment ...” applies with equal weight to charter schools. (RFOF 15). In fact, “rapid growth” has an even greater adverse effect on charter schools that teach a higher percentage of economically disadvantaged, ELL, and equal percentage of special education populations than do school districts. [RFOF 18-19]. Upon amendment, the finding should read:

The rapid growth in student enrollment requires more classrooms, teachers, support personnel, equipment, books, technology, transportation and other resources needed to educate these additional students. Moreover, because economically disadvantaged, ELL, and special education populations require significantly more funds to educate, these changing demographics have resulted in significantly higher costs for *public* schools ~~districts~~ that are not compensated adequately through the current school finance system, because of the insufficiency of the basic formulas and weights and allotments. (*See infra* Parts I.C.2.d (FOF 456, *et seq.*) and I.C.4 (FOF 591, *et seq.*.) The inadequacies of these weights exacerbate the demographic challenge facing Texas school districts and charter schools. (*See infra* Parts I.C.2.a.ii (FOF 294, *et seq.*) and I.C.2.b.ii (FOF 345, *et seq.*))

FOF 113. Finding of Fact 113 is insufficient in that it only recognizes accountability vis-à-vis accreditation and does not take into consideration the

accreditation standards—which are much more difficult for charter schools than ISDs. Accordingly, FOF should be amended to add charter schools. It would, after amendment read:

The state accountability system is closely related to accreditation. *Both* school district *and* charter school accreditation is based in significant part on whether districts *and* charter schools have met certain standards under the State’s accountability system, including student achievement indicators. *See* TEX. EDUC. CODE § 39.052(b); 19 TEX. ADMIN. CODE § 97.1055.

FOF 114. The Court recognizes the additional burdens placed upon ISDs by the TAKS-based accountability system, which applied as well to the charter schools; yet, fails to recognize the same hardship that the system placed upon charters. Hence, charter schools must be added to FOF 114. It should therefore read, after proper amendment, as follows:

The accountability system changed over the course of the trial, from the TAKS-based system in place through 2010-11 to the STAAR-based system, which took effect in 2012-13. The TAKS-based system was focused on whether each of five student groups had met the minimum criteria on the TAKS test, plus up to ten dropout and high school completion measures. (Ex. 20224.) If a district *or* a *charter* did not meet the minimum criteria for any one group on any one measure, it did not achieve an “Academically Acceptable” rating. (*Id.*) TEX. EDUC. CODE § 12.104(b)(2)(L); Ex. 4061, Ex. 4686, Ex. 8000, Ex. 20230, Ex. 20231, Ex. 20232.

FOF 117. In a like manner, FOF 117 disregards the testimony of numerous witnesses that the same accountability standards that the Court says do not measure whether “districts” are achieving a general diffusion of knowledge (“GDK”) apply with equal force to charter schools. Consequently, the Charter School Plaintiffs are asking that FOF 117 be amended to refer to “public schools.” It should read as follows:

Whether looking at the TAKS-based system or the STAAR-based system, the accountability standards are set not to measure whether districts *or charter schools* are achieving a general diffusion of knowledge, but rather to ensure that most *charters*, districts and campuses fall on the “academically acceptable” or “met standards” side of the line. Shannon Housson, Director of TEA’s Division of Performance Reporting, confirmed that advisory committees that help TEA to establish the standards explicitly consider how many of these schools can achieve the standards set. Mr. Housson testified, - “That’s exactly what they’re discussing, how many schools would be impacted if the target was set at X versus Y, and that’s what they had based their recommendations on to the commissioner.” (Ex. 5785, Housson Dep. (Vol. II), at 48-50.)

[FOF 119-120]

FOF 121. The Court, in FOF 121, recognizes, as it must, that accountability is measured for “schools and districts” by standards which go beyond simply the STAAR test. It found that “the State requires much of schools and districts beyond the requirements that are measured by the accountability system. For example, HB5 now

requires schools and districts to rate themselves on student and community engagement, but the result of this process does not affect the State’s accountability ratings.” Charter Plaintiffs are asking the Court to amend this finding by deleting the words “and districts” (in two places within the finding) and substituting therefore the word “public;” and adding the phrase “the campus and district level” prior to the words student and community engagement. After amendment, the findings should read:

FOF 121. Finally, the State requires much of *public* schools ~~and districts~~ beyond the requirements that are measured by the accountability system. For example, HB5 now requires *public* schools ~~and districts~~ to rate themselves *at the campus and district level* on student and community engagement, but the result of this process does not affect the State’s accountability ratings. (Ex. 5785, Housson Dep. (Vol. II), at 71-72.)

FOF 122. FOF 122, like many of the Court’s findings, leaves out charter schools, although the proof behind the finding included public schools, not just districts. In order to correct this oversight, the finding must be amended to reflect the inclusion of charter schools. It should therefore now read:

For the reasons stated above, the Court finds that the accountability system does not measure, and accreditation is not equivalent to, a general diffusion of knowledge. The fact that a district *or charter school* is accredited *or its charter renewed, as the case may be*, does not answer the question of whether all students in that ~~district~~

public school have a meaningful opportunity to graduate college and career ready.

FOF 155. The Court found that “[d]istricts” face an enormous burden due to the need to assist the “hundreds of thousands of students” who failed one or more of the state’s standardized tests and have not, as yet, passed all exams required. Yet, this same, identical need to assist failing students exists within the charter schools. FOF 155 should be amended to reflect that charters, too, now face the enormous burden to provide accelerated instruction to hundreds of thousands of students.” After it is corrected, it will read as follows:

Regardless of which analysis is examined, however, the State’s data confirms that, even after multiple testing opportunities, hundreds of thousands of students still have not passed all exams taken. ~~Districts~~ *Public schools* now face the enormous burden to provide accelerated instruction to hundreds of thousands of students. (*See* Ex. 5796, Zyskowski Dep., at 9.)

FOF 157. The Court’s conclusion, found in FOF 157, akin to the same fault as in FOF 155, is the exclusion of charters although it was shown at trial that the need to provide enormous numbers of students who failed one or more required tests with accelerated and extensive instruction applies to charters as much as to ISDs. FOF 157 should be amended to add charters to the mix. It should thereafter read:

In conclusion, although additional students pass the end-of-course assessments during each administration of the exam, large numbers of students still have not passed all the exams they have taken after numerous attempts. Even more students are nowhere near reaching college-readiness

standards on these exams. As a result, ~~districts~~ *public schools* must provide accelerated instruction to hundreds of thousands of students who have not met passing standards, and they must help those students who are not currently on track to being college ready to significantly improve their performance.

FOF 233. The goals for college and career readiness required by TEA and the SBOE apply with equal force to the charter schools as they do to the districts. Hence, FOF 233 should be amended to include charter schools. After it is corrected, it will read as follows:

While college and career readiness was nominally the goal at the time of WOC II, in the years since that time, the Legislature has required TEA and the SBOE to hold ~~districts~~ *public schools* responsible for meeting that goal. (*See supra* Part I.B.3.a (FOF 82, *et seq.*)). Specifically, the State adopted specific college and career-readiness expectations and standards and incorporated them into the TEKS, from high school all the way down to kindergarten. (*Id.*; RR28:120-23, 176-77; RR5:125-26.) *See also* TEX. EDUC. CODE §§ 28.001, 28.008.

FOF 235. The exclusion of charters that made FOF 233 infirm makes FOF 235 ineffectual in a like manner. Charter schools, as public schools, must be included. Accordingly, the Charter Plaintiffs request that all findings that should rightfully apply to public schools, but were limited to districts, be amended to correctly reflect the status of charter schools as being part and parcel of the public institutions of education. Hence, FOF 235, after being made precise, should read:

In the 2012-13 school year, the State implemented a new accountability system that requires ~~districts~~ *public schools* to be measured by their success at closing performance gaps and student performance growth. (*See supra* FOF 115.) Beginning with the 2013-14 school year, HB5 requires the accountability system to incorporate additional achievement indicators designed to measure ~~districts~~ *public schools* based on the number and percentage of students who are graduating from high school college ready. (*See supra* FOF 91.)

FOF 240. Like the preceding two Findings, FOF 240 limits itself to districts, while the trial testimony and exhibits demonstrated that each of the items noted as creating additional costs apply to charters (indeed, one must wonder about this obvious oversight and question why). FOF 240 should be amended to be all-inclusive by adding the phrase “and charter schools” (excepting where the singular “school” is more appropriate) after each occurrence of the word “district.” As so corrected, this finding will read:

Changes in curriculum, assessment, and accountability created by HB5 will not save school districts *and charter schools* money and if anything, they will create additional potential costs for districts *and charter schools*. (RP55:157.) For example, all school districts *and charter schools* are still required to offer Algebra II at every high school. (RR54:132; RR55:142; RR63:124, 141.) Districts *and charter schools* must partner with at least one institution of higher education to develop and provide college preparatory courses in English Language Arts and Math on campus, as opposed to doing so through distance learning or online. (Ex. 20062A, Zamora Report, at 9; RR55:147-48.) HB5 will also require at least some districts

and charter schools to hire additional counselors, including bilingual counselors or translators, to meet with each and every ninth grader and his or her parent to create a personal graduation plan, and mandates that counselors counsel all students about the importance of post-secondary education. (Ex. 20062A, Zamora Report, at 10; RR55:149-50; Ex. 4336, Cavazos Dep., at 89-90.) New accountability requirements related to student and community engagement mandate that each district *and charter school* report to TEA and make available a self-evaluation related to community engagement, requiring those districts *and charter schools* that do not have such a system in place to develop and implement one. (Ex. 20062A, Zamora Report, at 13; RR55:156-57.)

FOF 241. Again, the absence of the charter schools in finding FOF 242 makes the finding incomplete. As such it is inaccurate. In order to make it whole and unobjectionable, it should be amended to add charter schools. Hence, it should, after amendment, read as follows:

Taking into consideration current student performance – particularly that of economically disadvantaged and ELL students – Dr. Zamora concluded that fully and properly implementing HB5 will require districts *and charter schools* to: (1) add more rigorous coursework (and potentially add new teachers to teach the new coursework); (2) design additional curriculum, instruction, and assessment interventions for low-performing students; and (3) develop, implement, and evaluate indicators to measure community and student engagement. (Ex. 20062A, Zamora Report, at 8-14.)

FOF 243. As stated, the failure to include charter schools in the findings dealing with increased accountability, and the intensification in academic standards, has created a lack of completeness within the body of the findings, and makes those

findings subject to attack. It is this lack of consistency that must be remedied throughout, including in FOF 243. It should be amended to include charter schools. It would, after correction, read:

Dr. Zamora's ultimate conclusion is that the changes enacted by the 83rd Legislature cannot be expected to reduce costs for school districts *and charter schools*, or alleviate the challenges many public school students and school districts *and charter schools* face.

FOF 275. Charter schools educate more EEL and economically disadvantaged students, by average of each schools ADA, than traditional schools. Yet this Court failed to include charter schools in FOF 275. The Charter School Plaintiffs therefore request that this finding be amended to show that the increased costs of educating these students falls upon charters in the same way and to the same amounts as it does school districts. After correction, the finding should read as follows:

Public Schools districts have been unable to keep up with the demands of these growing, high-need student populations because of the State's failure to structure the public school system in a way that is responsive to actual student needs. For example, instead of increasing support and programs for economically disadvantaged students, the State eliminated almost \$1.3 billion for programs and initiatives meant to address the educational needs of students who are most at risk, such as quality early childhood programs, extended learning time (*e.g.*, tutoring and summer school), and smaller class sizes. (*See infra* Part I.C.2.d.i (FOF 456, *et seq.*)) At the same time, property tax compression and the *charter school funding mechanism* left *public schools districts*

without the ability to raise funds ~~locally~~ to fill the funding gaps left by the State. (*Id.*) The State still uses arbitrary, outdated weights in the funding formulas that have no real connection to actual student need or program costs. (*See infra* Parts I.C.2.d.ii - I.C.2.d.iii (FOF 466, *et seq.*.) The rapid growth of these student populations, combined with (1) the drastic reduction of programs meant to support them, (2) the districts' inability to fill the holes left by the State's cuts (*see supra* Part I.C.2.d.i (FOF 456, *et seq.*.) and (3) the arbitrary and insufficient weights for compensatory and bilingual education, prevent the most at-risk students from getting the resources they need to stay in school and become college and career ready. The public education system has reached the point where significant improvement for these groups is impossible without adequate and suitable funding.

FOF 276. Charter schools educate more EEL and economically disadvantaged students, on average of each schools ADA, than traditional schools. Yet, this Court failed to include charter schools in FOF 276. The Charter School Plaintiffs therefore request that the second and third sentences in this finding be amended to show that the increased costs of educating these students falls upon charters in the same way, and to the same amounts as it does school districts. After correction, the finding should read as follows:

The population of economically disadvantaged students has grown substantially over the past decade and accounts for the vast majority of student growth in Texas public schools, a trend that is expected to continue. (*See supra* Parts **I.B.1** (FOF 11, *et seq.*) and I.C.2.a.ii (FOF 294, *et seq.*.) An increasing number of students in an increasing number of districts *and charter schools* are impoverished and face obstacles to educational attainment, such as language deficits, greater mobility, less familial and social capital, and higher rates of abuse and neglect. (*See infra*

Part I.C.2.a.i (FOF 277, *et seq.*.) The growth in the number and percentages of economically disadvantaged students magnifies the challenges for *public* schools districts, which must give them reasonable opportunities to meet the unprecedented rigor of the State's higher standards and expectations. (*See infra* Part I.C.2.a.iii (FOF 298, *et seq.*.)

FOF 288. Charter schools educate more EEL and economically disadvantaged students, on average of each schools ADA, than traditional schools. Charter schools must address the same trauma to its economically disadvantaged students to insure that they, like students in traditional schools, may focus upon their studies. Yet, this Court failed to include charter schools in FOF 288. The Charter School Plaintiffs therefore request that the last sentence in this finding be amended to show that charter schools are a part of this fact finding. After correction, the finding should read as follows:

The Alief ISD and Abilene ISD superintendents testified that certain economically disadvantaged students, specifically refugees from war torn countries, come to class without basic skills necessary for succeeding in school — such as knowing how to sit at a desk or how to hold a pencil or turn work in on time. (RR8:98-99; RR19:41-44.) They may also suffer from the trauma of having experienced civil unrest, similar to the students from Mexico in Los Fresnos ISD, who observed and experienced violence and kidnappings in their home countries. (RR24:126-27.) *Public* schools—~~districts~~ must address the trauma these students have suffered in order to help them focus on their studies. (*Id.*; Ex. 4224-L, Chambers Dep. at 83-84.)

FOF 295. Charter schools educate more EEL and economically disadvantaged students, on average of each schools ADA, than traditional schools. Charter schools face the same “challenges created by the poorly structured, operated, and funded school finance system and the educational barriers facing economically disadvantaged students” as traditional schools – actually more so as they educate a greater average per class of these students. Yet, this Court failed to include charter schools in FOF 295. The Charter School Plaintiffs therefore request that the last sentence in this finding be amended to show that charter schools are a part of this fact finding. After correction, the finding should read as follows:

The challenges created by the poorly structured, operated, and funded school finance system and the educational barriers facing economically disadvantaged students are even greater in school districts *and charter schools* that enroll higher concentrations of low income students. Mr. Moak analyzed the relationship between the performance of *public schools districts* and the percent of economically disadvantaged students. (RR54:147-48 (referencing Ex. 6618 at 27); Ex. 6620.) He found that as the percentage of economically disadvantaged students in a district *or charter school* increases, the percentage of students passing the STAAR EOC and STAAR 3-8 exams decreases. Notably, the pattern of lower performance appears for both the economically disadvantaged and non-economically disadvantaged student populations in schools with higher percentages of economically disadvantaged students.

FOF 309. Charter schools educate more EEL and economically disadvantaged students, on average of each school’s ADA, than traditional schools. Charter schools face the same “enormous burden of providing accelerated instruction to each of these

hundreds of thousands of students” as traditional schools—actually more so, as they educate a greater average per class of these students. Yet, this Court failed to include charter schools in FOF 309. The Charter School Plaintiffs therefore request that the first sentence in this finding be amended to show that charter schools are a part of this fact finding. After correction, the sentence should read as follows:

Districts *and charter schools* now face the enormous burden of providing accelerated instruction to each of these hundreds of thousands of students.

FOF 330. For the life of us, we cannot fathom why the Court made findings for the traditional schools and left out charters although the testimony, exhibits, and other evidence almost always demonstrated that charters, like their counterpart traditional schools suffered the same ignominies. This finding is another example and needs to have charters made a part thereof by striking the words “school districts” in the final sentence. The paragraph will then read:

In sum, economically disadvantaged students struggle to achieve academically, as evident from several measures noted above. The outcomes are only worsening as the State has raised the rigor of the standards but has not provided schools with the resources needed to educate those students. Not surprising, similar low achievement results among economically disadvantaged students across the same academic indicia are found in each of the plaintiff schools—~~districts~~. (*See generally infra* Part I.C.7 (FOF 680, *et seq.*); *see also, e.g.*, Ex. 20254 (Edgewood ISD); Ex. 4326 (La Feria ISD); Ex. 4316 (San Benito CISD); Ex. 4302 (McAllen ISD); Ex. 5708 (Calhoun County ISD); Ex. 6561 (Abilene ISD); Ex. 6567 (Amarillo ISD); Ex. 6582 (Humble ISD); Ex. 6570 (Austin ISD).).

FOF 335. This is a perfect example of the seeming incongruity and baffling inconsistency within this Court’s findings. It recognizes, as it must, that ELL students face major challenges and then limits its finding to “schools districts.” This finding needs to have charters made a part thereof by adding the word “public” before the word school, making school into the plural and striking the word “districts” in this sentence. The finding will then read:

The challenges ELL students face in Texas public schools, and in turn the *public* schools ~~districts~~ that educate them, cannot be overstated.

FOF 338. See previous FOF 335 explanation. Once amended, this finding will read as follows:

Parents of ELL children not only often have low educational backgrounds tied to their economic status, but they also tend to have language barriers themselves. (RR4:86.) Parents of ELL children often do not feel as though they belong in the schools, further increasing the educational challenges for *public* school ~~district~~ personnel in educating their children. (*Id.*)

FOF 341. Once again, the previous explanation applies. It should be amended to read:

Yet, as discussed in more detail below, the resources made available by the State for ELL students fall far short of the additional costs incurred by *public* schools ~~districts~~ in order to provide reasonable opportunities for all ELL students to achieve the state standards and achieve their full potential. (RR18:9-13, 47-48; RR22:145; Ex. 4224-S, Cervantes Dep., at 198; RR4:89-91; Ex. 4000. Cortez Report at 33; RR8:101-04, 130-31; Ex. 3207, Salazar Dep.,

at 33-34, 38-39, 44-45, 57-58, 84-85, 103-04, 110-11; Ex. 4224-P, Kincannon Dep., at 20-21; Ex. 4224-G, Wallis Dep., at 73, 87-89; *see also infra* Part I.C.2.d.iii (FOF 480, *et seq.*.)

FOF 344. FOF 344 should be amended to read as follows for the same reason that is set forth in the preceding several paragraphs:

Like economically disadvantaged students, these students are capable of performing far better, but they, too, lack the necessary quality programs and interventions to help them achieve their full potential and to meet the State's standards. As shown below, the performance of ELL students is far below acceptable levels and demonstrates the failure of the school finance systems to enable school districts *and the charter schools* to provide the opportunities ELL students need to acquire English proficiency and the essential knowledge and skills set forth in the State's curriculum.

FOF 346. Likewise, this finding of fact must be revised, as it has the same infirmities of the immediately past discussed findings. The amendment should simply add the words "and the charter schools" after "school districts." It will then read:

While the majority of ELL students (90%) speak Spanish as their native language, over 120 other languages are spoken in Texas public schools. (Ex. 1104, Izquierdo Report at 5.) The increasing numbers of ELL students, coupled with the expanding number of native languages spoken by the students, brings even greater challenges for school districts, *and the charter schools*. (RR4:225.)

FOF 348. The Charter Plaintiffs are asking the Court to amend FOF 348 so that it reads as follows:

The increasing diversity of the ELL population requires additional programming and resources. (*See* RR19:148.) For example, districts *and the charter schools* are required to provide each of these students with certain services in their home language. (*See infra* Part I.C.2.d.iii(a) (FOF 480, *et seq.*.) TEA, however, does not provide districts *and the charter schools* with TAKS or STAAR-based resources in the multitude of languages spoken by the state's students. (PR19:42-45.)

FOF 459. The impact of the budget cuts made in the previous legislative session impacted charters in the same way that it impacted school districts. Accordingly, FOF 459 needs to be amended to demonstrate that charters, too, were harmed by the failure to add back the lost funds in the last, and next to last, legislative sessions. It should read:

As described throughout these findings, the budget cuts significantly harmed at-risk students, requiring districts *and the charter schools* to eliminate full-day pre-K programs or otherwise reduce the quality of the pre-K programs offered to economically disadvantaged and ELL students; increase class sizes; lay off necessary teachers; and eliminate summer school, tutoring, and other extended learning opportunities that low-income and ELL students so desperately needed. (*See supra* Part I.B.2.e (FOF 52, *et seq.*); *see infra* Part II.C.7 (FOF 680, *et seq.*.)

FOF 476. Charters have a larger percentage of economically disadvantaged students (per school) than traditional school districts. Hence the first sentence in FOF 476 should be amended to include charter schools. It will thereafter read:

Furthermore, while the statutory school finance formulas reflect the Legislature's acknowledgement that economically disadvantaged students cost more to educate, the result of the funding system does not actually send more dollars to districts *and the charter schools* with higher concentrations of economically disadvantaged students.

FOF 482. Echoes of the past. Here, again, the infirmity is the failure to include charter schools into this finding. It should be amended to read:

These significant policy interests of the State impose significant additional costs on school districts *and the charter schools*. Some of these mandates are set forth in greater detail below. As the succeeding section lays out, schools lack sufficient resources to meet the State's mandates and the basic educational needs of ELL students, including the recruitment and retention of certified bilingual and ESL teachers, and provision of quality prekindergarten programs and appropriate books and materials, among other things. (*See infra* Parts I.C.2.d.iii(b) – I.C.2.d.iii(c) (FOF 496, *et seq.*))

FOF 488. Once again, the failure to include charters makes this finding incomplete. It needs to be amended to read:

Although the State does not require native language instruction for every district, it recognizes that “public school classes in which instruction is given only in English are often inadequate for the education of those [ELL] students. – TEX. EDUC. CODE § 29.051. Dual language

programs show particular promise in helping raise ELL student achievement, and TEA has pointed to such programs as examples of “best practices.” However, these programs entail additional costs to school districts *and the charter schools*, which can be a barrier to their implementation. (RR14:128-32 (referencing Ex. 4231 at 8-11); Ex. 1104, Izquierdo Report, at 6-7; RR18:8-9; Ex. 4233-A, Carstarphen Dep., at 89-91; Ex. 3206, French Dep., at 84; Ex. 3198, Garza Dep., at 95-96.)

FOF 516. Not just school districts, but public schools, compete to find and retain qualified bilingual/ESL teachers. Hence, FOF 516 must be amended to include charter schools. Therefore the first sentence should read:

Many school districts *and the charter schools* across Texas compete to recruit and retain qualified bilingual/ESL teachers by paying significant stipends to certified teachers, which in turn, uses up significant portions of the bilingual allotment.

FOF 523 and FOF 524. Charter Plaintiffs wish to be included as part of the public school system. They ask that these two findings be amended to read as follows:

FOF 523. To close the gap between Texas’s standards and student performance, school districts *and the charter schools* must hire and maintain a quality workforce, including both teachers and educational support staff, such as counselors and librarians; however, superintendents *and expert witnesses* uniformly testified that they lack the resources to hire the personnel needed to achieve the necessary

progress. (*See infra* Parts I.C.3.a (FOF 526, *et seq.*) and I.C.3.d (FOF 575, *et seq.*.)

FOF 524. School districts *and the charter schools* also must be able to provide additional quality programs and interventions. Superintendent and expert testimony establishes that quality, full-day pre-K and reduced class sizes are among the most effective tools, yet districts currently lack the necessary funding to provide them. (*See infra* Parts I.C.3.b (FOF 550, *et seq.*) and I.C.3.c (FOF 562, *et seq.*.)

FOF 585. Instruction and facilities are inseparable; yet the Court does not recognize this symbiotic relationship when it comes to the charter schools. FOF 585 needs to rectify this monumental error. It should read:

As the Texas Supreme Court has noted, “An efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place. These components of an efficient system – instruction and facilities – are inseparable.” *Edgewood IV*, 917 S.W.2d at 726. Accordingly, the Court finds that adequate school facilities are necessary to the functioning of the Texas public school system. To provide an adequate education, districts *and the charter schools* must have adequate facilities, which requires access to sufficient funds to build new facilities and maintain and renovate current ones.

FOF 1497. The 83rd Legislature changed the minimum qualifications for charter school teachers (and principals). FOF 1497 should be amended to read as follows:

Charter schools and school districts, despite their similarities, are quite different. Charter schools have much more flexibility in personnel matters, including that charter school teachers are employees “at will,” there is no minimum salary scale for teachers, and charter schools are only partially subject to the disciplinary and placement procedures contained in Chapter 37 of the Texas Education Code. (Ex. 9048 at 23; RR42:80-83.) Moreover, a teacher in a charter school is required to have only a ~~high school diploma~~ *baccalaureate degree*, and is not required to be certified. TEX. EDUC. CODE § 12.129. (RR42:117.)

V

Objections to Findings of Fact

Charter School Plaintiffs object to the following Findings of Fact:

FOF 1505. Charter Plaintiffs object to that part of FOF 1505 stating, “the total funding [charter schools] receive under the Foundation School Program per ADA is nearly identical to that available to school districts. When considering General Fund revenue per ADA, charter schools fare better than school districts.” This Finding distorts the trial evidence and cannot support a conclusion that charter funding per ADA is “nearly identical to that available to school district” in that:

- a) The General Fund, as reported though this Finding, included revenue that was not generated by the Foundation School Program formulas (RR32:82-87, 93-94, 152-154; RR33:107-110, 130-133);

- b) The General Fund data reported in the first phase of the trial was not updated by Dr. Fisher in the second phase of the trial [Dr. Lisa Dawn–Fisher’s Data Sheet, Ex. 11470]; and
- c) The most recent Foundation School Program WADA data presented by Dr. Fisher in the second phase of the trial reported charters as funded \$1,138 per weighted student *below* ISDs. [Dr. Lisa Dawn–Fisher’s Data Sheet, Ex. 11470, Ex. 9064].

FOF 1505. Charter Plaintiffs object to that part of FOF 1505 which reads that “Charters accordingly have access to revenue in excess of what is available to school districts, and that revenue is available to meet charter schools’ facilities needs.” It is contrary to the testimony of both Toni Templeton and Dr. Lisa Dawn–Fisher (Fisher) in the second phase of this trial and not supported by ANY evidence or testimony. While Fisher might have testified to this in the original trial, she shows in her Exhibit that at the present time – and at the time of the second phase of the trial already was no longer accurate – this is not true. Ms. Templeton testified that, using Fisher’s own exhibit, the gap between school districts and charters is significant, whether one uses ADA or WADA, and is growing (and under the current formulas will grow larger each coming year). And, Fisher’s exhibit demonstrates this using both ADA and WADA. [Dr. Lisa Dawn–Fisher’s Data Sheet, Ex. 11470, Ex. 9064].

VI.

Requests for Additional Conclusions of Law

The Charter School Plaintiffs request the following additional Conclusions of Law, which are supported by state law and by the greater weight of evidence produced and admitted at trial. These proposed Conclusions of Law are in addition to those proposed by Charter School Plaintiffs in Exhibit A:

- RCOL 46. The Texas Legislature is bound by Article VII, section 1 whenever it establishes a public school, regardless of what the Legislature calls the public school or how the Legislature structures the governance, finance, or operations of the public school.
- RCOL 47. All public schoolchildren are entitled to the rights and protections of Article VII, section 1, no matter where the child attends public school.
- RCOL 48. The test to determine the constitutionality of the school finance system under Article VII, section 1 of the Texas Constitution is whether the system is efficient, suitable and adequate to deliver a general diffusion of knowledge and not the rational basis or compelling State interest tests used to determine equal protection questions.
- RCOL 49. Like the charter schools, school districts are also creatures of statute, neither being required by the Texas Constitution. *Thompson v. Elmo Indep. Sch. Dist.*, 269 S.W. 868, 870 (Tex. Civ. App. – Waco 1925, no writ); TEX. EDUC. CODE §12.001 *et seq.*
- RCOL 50. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the Charter School Plaintiffs shall recover from the State Defendants, attorneys' fees in the sum of \$645,970.50, an amount that this

Court finds to be both reasonable and necessary and equitable, and just.

- a. The sum awarded to the Charter School Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.
- b. The Court's rulings on State Defendants' objections to the Charter School Plaintiffs' attorneys' fees are addressed in the Final Judgment. The amounts stated in these conclusions of law reflect the Court's rulings.
- c. The Charter School Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:
 1. \$475,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or
 2. (i) \$475,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said

amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (ii) \$150,000, if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

- d. If, following an appeal, the Charter School Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit. *See Scottsdale Ins. v. Travis*, 68 S.W.3d 72, 77 (Tex. App.-Dallas 2001, pet. denied) ("Under the [UDJA], attorney's fees may be awarded to the non-prevailing party.").

VII.

Requests for Amended Conclusions of Law

The Charter School Plaintiffs request the following amended Conclusions of Law, as supported by state law and by the greater weight of evidence produced and admitted at trial.

COL 27. In addition to amending the accountability and accreditation system for school districts *and charter schools* the legislative changes since *WOC II* established an elaborate set of requirements that affect individual students – requirements that determine whether students are able to be promoted or graduate. (*See supra* Parts I.B.3.b - I.B.3.c (FOF 93, *et seq.*.) This new element of the accountability system is a critical component of the legislatively-defined general diffusion of knowledge. Just as the Legislature may not “define what constitutes a general diffusion of knowledge so low as to avoid its obligation to make suitable provision” for the public school system, *see WOC I*, 107 S.W.3d at 571, it may not set accreditation requirements for *public schools school districts* so low as to create the appearance that these *schools districts* are meeting those requirements, while tens of thousands of students are not able to be promoted or graduate because they do not meet the State’s performance standards.

COL 28. Any effort to assess the cost of the general diffusion of knowledge must take into account the fact that districts *and charters* are bound by law to teach the full array of the TEK, including both the required and enrichment curriculums. They must also offer a variety of programs and services described in Chapters 28-34 and 37-39 of the Texas Education Code, and abide by associated regulations implementing these and other mandates. These chapters contain numerous mandates for the provision of services to students. Among these mandates *for school districts* is the Legislature’s longstanding requirement that “a school district may

not enroll more than 22 students in a kindergarten, first, second, third, or fourth grade class,” unless the Commissioner grants an exemption. TEX. EDUC. CODE § 25.112(a), (d).

COL 29. It follows that the Legislature must ensure that districts *and charters* have resources sufficient to provide all schoolchildren a meaningful opportunity to be college or career ready upon graduation from high school, to provide all schoolchildren a meaningful opportunity to acquire and master the TEKS as measured by the State’s assessment system, and to meet the mandates of the Education Code. *See WOC II*, 176 S.W.3d at 785 (“It would be arbitrary, for example, for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals.”).

COL 30. Part of the duty to ensure that districts *and charters* have sufficient resources is a duty to make a reasonable effort to determine what it will cost to adequately provide for its own standards and meet its own definition of a general diffusion of knowledge. The State effectively has recognized and accepted this constitutional responsibility by enacting Section 42.007 of the Texas Education Code, which requires rule making and the conduct of specific studies on a biennial basis to determine the cost of meeting State performance requirements. (*See supra* Part I.C.5.a (FOF 603, *et seq.*), *and specifically and annually as to charters by enacting Section 12.118(b)(1) of the Texas Education Code, which requires an annual cost review of instruction, administration and transportation.* As urged by the Intervenors, this is a necessary aspect of making suitable provision for public education and being productive of results without waste.

COL 33. The Texas Supreme Court found that the constitutional right of adequacy extends to all schoolchildren. *See WOC II*, 176 S.W.3d at 774. These schoolchildren (and the general public) will be

irreparably harmed if they are denied access to an adequate education. (*See supra* Part IB. I (FOF 11, *et seq.*.) Furthermore, these constitutional rights cannot be made subject to a vote. For this reason, at a minimum, school districts *and charter schools* must be able to finance the cost of meeting the constitutional mandate of adequacy. *For school districts, this must be accomplished* within the range of taxing authority not subject to the tax rate elections. In the current system, that level is an M&O tax rate of \$1.04 or below. *See WOC I*, 107 S.W.3d at 580 (“A public school system dependent on local districts free to choose not to provide an adequate education would in no way be suitable.”), at 584 (“As we have explained, the Legislature has chosen to make suitable provision for a general diffusion of knowledge by using school districts, and therefore the State cannot be heard to argue that school districts are free to choose not to achieve that goal.”) The State must fulfill its obligation to provide additional State funds to replace the local tax revenue that was lost when the Legislature imposed the compressed tax rate. The evidence established that a majority of districts would be unable to access sufficient tax revenues to accomplish the general diffusion of knowledge even at the maximum M&O tax rate of \$1.17; therefore, the school finance system is structured so that it is impossible for districts to access adequate funds to provide the basic, required level of education. *For charter schools, that have no ability to levy a local tax this must be accomplished solely from the state funding each charter school receives. Therefore the school finance system is structured so that it is impossible for charters to access adequate funds to provide the basic, required level of education.*

- COL 34. An adequate system must also include sufficient funding for facilities. *Edgewood IV*, 917 S.W.2d at 746. (*See supra* FOF 585.) The Legislature’s failure to adjust the facilities guaranteed yield to

account for inflation and increases in construction costs from the \$35 established in 1999, failure to make facilities funding a permanent part of the school finance system, *failure to provide facilities funding to charter schools*, and failure to equalize funding by either substantially increasing the guaranteed yield or requiring recapture renders facilities funding constitutionally inadequate and financially inefficient.

COL 49. Because ...[a]n efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place, ... the system must be analyzed as a whole, taking into consideration both the instruction and facilities components. *WOC 11*, 173 S.W.3d at 790 (quoting *Edgewood IV*, 917 S.W.2d at 726). The current structure for facilities funding violates the constitutional requirement that districts have substantially similar access to revenues for similar tax effort. The relatively low guaranteed yield, coupled with the lack of recapture means that property-wealthy districts can far outstrip low wealth districts in access to funds for facilities necessary for a general diffusion of knowledge. Further, unlike formula funding for M&O expenses, facilities funding for eligible lower wealth school districts is not a permanent part of the school finance structure and is subject to appropriations. As a result, the Legislature can arbitrarily choose not to fund facilities to the same level as it has in the two most recent biennia, requiring districts to use already limited M&O funds for facility needs, *and requiring charter schools, which receive no facility support, to utilize their instructional and operational funds for facility expenses*. The structural inequity in the current system is arbitrary and does not provide substantially equal access to similar revenues at similar or no tax efforts. Further, the failure to update the guaranteed yield to a level that bears a relationship to the cost of maintaining, constructing, and renovating facilities is arbitrary and an unconstitutional failure to make suitable provision.

- COL 50. As long as the Legislature maintains an efficient system up to the level of adequacy in compliance with Article VII, section 1, it may authorize local school districts to supplement their educational resources from local funds, *and charter schools to supplement their educational resources from local funds such as private fund raising. See Edgewood IV*, 917 S.W. 2d at 732. Even then, the amount of “supplementation” in the system cannot become so great that it, in effect, destroys the efficiency of the entire system. The danger is that what the Legislature today considers to be “supplementation” may tomorrow become necessary to satisfy the constitutional mandate for a general diffusion of knowledge. Supplementation must be just that: additional revenue not required for an education that is constitutionally adequate.” *WOC II*, 176 S.W.3d at 792.
- COL 51. Furthermore, the Supreme Court has clearly found that *all districts public schools* must have “meaningful discretion” for enrichment purposes (*see supra* Part II.A.2 (COL 9, *et seq.*)), and the disparities in local property wealth (*see supra* Part I.D.4.a (FOF 1376, *et seq.*)) make it clear that, in order for this discretion to be truly meaningful for all ~~districts~~ *public schools*, at least some portion of this additional “enrichment” revenue must be substantially equalized.
- COL 52. Having determined how the Legislature has defined adequacy/a general diffusion of knowledge, and how much it costs districts *and charters* to provide for it, it is this Court’s role to determine whether school districts *and charter schools (which currently are dependent on the tax efforts of school districts)*, have substantially equal access to funding up to that level. The Texas Supreme Court has determined that the primary standard for evaluating substantially equal access is the differences in tax rates needed to fund an adequate education. *See*

Edgewood IV, 917 S.W.2d at 731. In other words, even if every district *and charter school* in the state is reaching adequacy, if the gaps in tax rates necessary to do so are too great, the system is unconstitutionally inefficient. *Id.*

COL 53. Based on the findings adopted herein (*see* Part I.D (FOF 1204, *et seq.*)), the Court concludes that the Texas school finance system is not financially efficient and fails to provide districts *and charters* with substantially equal access to funding up to the level necessary to provide a general diffusion of knowledge at similar tax efforts and, as such, violates Article VII, section I of the Texas Constitution. The State Defendants are not ensuring an efficient system of public schools where “[c]hildren who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds.” *WOC II*, 176 S.W.3d at 753 (citing *Edgewood I*, 777 S.W.2d at 397).

COL 54. The Court further concludes that the facts in this case show that property-poor districts *and charter schools that have no taxing authority* have far less access to the educational funds they need to achieve their full potential and meet the standards set by the State, and, therefore, the current school finance system is not efficient in the sense of producing results for the provision of a general diffusion of knowledge under Article VII, section I of the Texas Constitution. *See id.* at 757; *Edgewood I*, 777 S.W.2d at 395.

a. The Charter School Plaintiffs’ adequacy claim

COL 61. Because the ISD Plaintiffs established the inadequacy of their funding under the school funding formulas (*see supra* Part I.C.2 (FOF 271. *et seq.*)), because charter schools are financed based on

state averages of ISO funding levels (*see supra* FOF 1498 – FOF 1502), and *because the charter schools demonstrated their own inability to reach a general diffusion of knowledge under the current charter school finance funding scheme*, the Charter School Plaintiffs prevail on their claim that funding for open-enrollment charter schools is also inadequate under Article VII, section I.

b. The Charter School Plaintiffs' claims arising out of differential inadequate funding with ISDs, including facilities funding

COL. 62. The *independent school districts* and charter-school systems ~~was~~ were created by statute, and neither are required by the Texas Constitution *Thompson v. Elmo Indep. Sch. Dist.*, 269 S.W. 868, 870 (Tex. Civ. App. – Waco 1925, no writ); TEX. EDUC. CODE §12.001 *et seq.*; TEX. EDUC. CODE § 12.001 *et seq.*; *LTTs Charter Sch., Inc. v. C2 Constr., Inc.*, 342 S.W.3d 73, 81 (Tex. 2011) (stating “The wellspring of open-enrollment charter schools’ existence and legitimacy is the Education Code”). The Legislature established charter schools to “(1) improve student learning; (2) increase the choice of learning opportunities within the public school system; (3) create professional opportunities that will attract new teachers to the public school system; (4) establish a new form of accountability for public schools; and (5) encourage different and innovative learning methods.” TEX. EDUC. CODE § 12.001.

COL 67. The Legislature, in its discretion, created charter schools to serve as an alternative form of education in Texas, and in doing so, has relaxed applicable personnel requirements, subjects them to different levels of oversight and regulation, and allows them more flexibility in delivering curriculum to their students. These

differences serve as a rational basis for the Legislature's policy choice to fund charter schools differently than it funds school districts. *However, the Legislature may not arbitrarily deny any facilities funding or support to charter schools so as to deprive them of substantially equal access to the educational funding available to school districts and such categorical denial violates Article 1, section 3, of the Texas Constitution.*

A. Declaratory relief

1. Adequacy claims (ISD and Charter Plaintiffs) . . .

COL 72. Because the ISD and Charter Plaintiffs collectively have also established a systemic/statewide "adequacy" violation, this Court declares that the Texas school finance system is presently in violation of Article VII, section 1 of the Texas Constitution. Stated another way, this Court finds that the Legislature violated the "arbitrary" standard described in *WOC II* by "defin[ing] the goals for accomplishing the constitutionally required general diffusion of knowledge," and then providing "insufficient means for achieving those goals." *WOC II*, 176 S.W.3d at 785. The current structure of the school finance system is such that *neither districts nor charter schools can generate sufficient revenues to fund and provide an adequate education.*

COL 73. The Edgewood ISD Plaintiffs, the TTSFC Plaintiffs, *the Charter School Plaintiffs*, and the Fort Bend ISD Plaintiffs have further shown that economically disadvantaged students and ELL students are not achieving a general diffusion of knowledge and that the cost of providing a general diffusion of knowledge to

these students exceeds the amount of funding made available for their education under the current school finance system. The Court concludes the funding for economically disadvantaged and ELL students is inadequate and arbitrary. Accordingly, this Court declares that the current public school finance system is inadequate for the provision of a general diffusion of knowledge for economically disadvantaged and ELL students under Article VII, section 1 of the Texas Constitution.

COL 74. The *ISD and Charter School Plaintiffs* have further shown that the current facilities funding is constitutionally inadequate to suitably provide sufficient support for districts or charter schools to maintain, build, and renovate the classrooms necessary for an adequate education. This constitutional infirmity exacerbates the problems resulting from inadequate M&O funding because many districts *and charter schools* are forced to use those scarce funds to make up for unfunded facilities needs. Accordingly, this Court declares that considered separately and as part of the total school finance system, facilities funding is arbitrary and inadequate in providing Texas schoolchildren with the constitutional mandate of adequacy.

3. Suitability claims (*ISD and Charter School Plaintiffs*)

COL 78. The *ISD and Charter School Plaintiffs* have shown that the State has made no effort to determine the costs of meeting its own standards or of bridging the performance gaps. The *ISD and Charter School Plaintiffs* have further shown that the costs of providing a general diffusion of knowledge exceed the funding provided through the current system, and that multiple defects in the current design of the school finance system – including inadequately funded weights for economically disadvantaged and ELL students – cumulatively prevent districts and charter schools

from generating sufficient resources to accomplish a general diffusion of knowledge for all students, and particularly with respect to the State's economically disadvantaged and ELL students. Accordingly, this Court declares that the Texas school finance system violates the "make suitable provision: clause in Article VII, section 1 of the Texas Constitution because the system is not "structured, operated, and funded so that it can accomplish its purpose [of providing a general diffusion of knowledge] for all Texas children." *WOC II*, 176 S.W.3d at 753.

COL 79. The Edgewood ISD *and Charter School Plaintiffs* have further shown that the costs of providing a general diffusion of knowledge to economically disadvantaged and ELL students exceed the funding provided through the current system, due to the arbitrarily designed and insufficient weights for those students. This defect, coupled with the arbitrarily designed and insufficient Foundation School Program funding made available to districts *and charter schools*, like the Edgewood ISD Plaintiffs, cumulatively prevent those districts *and charters* from generating sufficient resources to accomplish a general diffusion of knowledge for the State's economically disadvantaged and ELL students. Because a majority of Texas school children are economically disadvantaged, *and over 71% of charter school students are economically disadvantaged*, this defect strikes the core of the school finance system. Accordingly, this Court declares that the Texas school finance system violates the "make suitable provision" clause in Article VII, Section 1 of the Texas Constitution because the system is not "structured, operated, and funded so that it can accomplish its purpose [of providing a general diffusion of knowledge] for [economically disadvantaged and ELL] children." *WOC II*, 176 S.W.3d at 753.

COL 81. The TTFSC Plaintiffs, Edgewood ISD Plaintiffs, *Charter School Plaintiffs*, and the Fort Bend ISD Plaintiffs have shown that the Texas school finance system is structured, operated, and funded so that it cannot accomplish financial equity. Property wealthy districts are able to access substantially more funding at all levels of the system. ~~The Further~~-use of two separate funding mechanisms for M&O, formula funding and target revenue, makes it impossible for the finance system to be equalized to accomplish financial efficiency. *Further, the use of the statewide average in the charter school funding formula and the denial of facilities funding makes it impossible for the finance system, as applied to charter schools, to accomplish efficiency.* This Court declares that the Texas school finance system fails to satisfy the “make suitable provision“ requirement because it is structured, operated, and funded so that it is impossible to achieve a general diffusion of knowledge in a financially efficient manner.

4. Financial efficiency claims (TTSC Plaintiffs, Edgewood ISD Plaintiffs, Fort Bend Plaintiffs *and Charter School Plaintiffs*)

COL 83. This Court declares that the school finance system violates the “efficiency“ provisions of Article VII, section I of the Texas Constitution in that it fails to provide substantially equal access to revenues necessary to provide a general diffusion of knowledge at similar tax effort, and instead arbitrarily funds districts *and charter schools* at different levels below the constitutionally required level of a general diffusion of knowledge.

COL 84. Because the TTSFC Plaintiffs, the Edgewood ISD Plaintiffs, *Charter School Plaintiffs*, and Fort Bend ISD Plaintiffs collectively have established a systemic/statewide violation, this Court declares that the Texas school finance system is presently in violation of Article VII, section I of the Texas Constitution with respect to both maintenance and operations funding and facilities funding, separately and as complementary aspects of the school finance system.

7. Charter School Plaintiffs' claims ...

COL. 89. Because the school finance system for independent school districts under the statutory formulas is constitutionally inadequate, because charter schools are financed based on state averages of school district M&O funding levels, *and because the Charter School Plaintiffs have demonstrated the inadequacy of charter school funding necessary to reach a general diffusion of knowledge*, this Court declares that funding for open-enrollment charter schools also is inadequate.

C. Other Relief

1. Injunctive Relief ...

COL 98. This injunction does not impair any lawful obligation created by the issuance or execution of any lawful agreement or evidence of indebtedness before July 1, 2015, that matures after that date and that is payable from the levy and collection of ad valorem taxes, and a school district may, before, on, and after July 1, 2015, levy, assess, and collect ad valorem taxes, at the full rate and in the full amount authorized by law necessary to pay such obligations when due and payable. A school district *or a charter school* that, before July 1, 2015, issues bonds, notes, public securities, or other

evidences of indebtedness under Chapter 45 of Education Code, or other applicable law, or enters into a lease-purchase agreement under Subchapter A, Chapter 271 of the Local Government Code, may continue, before, on, and after July 1, 2015, to receive *any applicable* state assistance with respect to such payments to the same extent that the district would have been entitled to receive such assistance under *Chapters 42, 43 or 46* of the Education Code, notwithstanding this injunction.

COL 99. This injunction does not limit, modify or eliminate the authority of a school district *or a charter school* to issue or execute bonds, notes, public securities, or other evidences of indebtedness under Chapter 45 *or 53* of the Education Code, or other applicable law, before, on, or after July 1, 2015, or *the authority of a school district* to levy, assess, and collect, before, on, or after July 1, 2015, ad valorem taxes at the full rate and in the full amount authorized by Section 45.002 of the Education Code or other applicable law, necessary to pay such bonds, notes, public securities, or other evidences of indebtedness when due and payable.

COL 100. This injunction does not limit, modify, or eliminate the authority of the commissioner of education, before, on, or after July 1, 2015, to grant assistance to a school district *or a charter school* under *Chapters 42, 43 or 46* of the Education Code, in connection with bonds, notes, public securities, lease-purchase agreements, or evidences of indebtedness, including those described by Subchapter A, Chapter 271 of the Local Government Code.

e. **The State Defendants and Intervenors
and Charter School Plaintiffs.**

COL 117. The Court finds that it is equitable and just to deny the attorneys' fees requests of the State, and the Intervenors, ~~and the Charter School Plaintiffs~~ because they were predominantly non-prevailing parties and, while they contributed to the public debate on school finance law through this lawsuit, those contributions were not so significant as to warrant an award of fees.

VIII.

Objections to Conclusions of Law

The Charter School Plaintiffs object to the following Conclusions of Law. These Conclusions of Law are not supported by state law or by the great weight of the evidence produced and admitted during trial. Accordingly, these Conclusions of Law should be removed entirely from the trial court's Findings of Fact and Conclusions of Law as entered on August 28, 2014 or amended to be consistent with the Conclusions of Law offered by the Charter School Plaintiffs in Exhibit A. The Conclusions of Law offered by the Charter School Plaintiffs reflect correctly the evidentiary record and the law.

1. Conclusion of Law Number 65 is erroneous and should be removed or amended to reflect correctly the evidentiary record and the law. In Conclusion of Law 65, the trial court incorrectly characterizes the Equal Protection claim raised by the Charter School Plaintiffs. Contrary to the court's assertion, the Charter School Plaintiffs' Equal Protection claim is not regarding ineligibility for facilities funding. The claim is that the charter school funding mechanism denies charter schools and charter school students "substantially equal access" to the educational funding available to school districts and that the categorical denial of any facilities funding or assistance to charter schools contributes to the inequality.

2. Conclusion of Law Number 69 is erroneous and should be removed or amended to reflect correctly the evidentiary record and the law.
3. Conclusion of Law Number 90 is erroneous and should be removed or amended to reflect correctly the evidentiary record and the law.
4. Conclusion of Law Number 91 is erroneous and should be removed or amended to reflect correctly the evidentiary record and the law.
5. Conclusion of Law Number 92 is erroneous and should be removed or amended to reflect correctly the evidentiary record and the law.
6. Conclusion of Law Number 93 is erroneous and should be removed or amended to reflect correctly the evidentiary record and the law.
7. Conclusion of Law Number 94 is erroneous and should be removed or amended to reflect correctly the evidentiary record and the law.

IX.

Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, the Charter School Plaintiffs respectfully request that this Court sustain its objections to the original findings of fact and conclusions of law and enter findings and conclusions in proper form; that the Court enter such additional and/or amended findings and conclusions as are appropriate; and that the Court grant Charter School Plaintiffs such other and further relief to which they are entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on September 8, 2014, a true and correct copy of the foregoing and Exhibit A thereto has been served *via* electronic service on the following:

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Robert A. Schulman

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FINDINGS OF FACT

OVERVIEW OF THE STATE’S CHARTER SCHOOL SECTOR

A. Statutory Framework: Charter schools are primary implementers of the public school system.

- RFOF 1. School districts and charter schools both were created in accordance with and under the laws of this State and both have “the primary responsibility for implementing the State’s system of public education and ensuring student performance in accordance with the [Texas Education Code].” (TEX. EDUC. CODE § 12.002). As primary implementers of the public school system, charter schools play an integral and critical role in the Texas public education system. (RR43:120).
- RFOF 2. The State Legislature authorized charter schools in 1995 to accomplish five purposes: (1) to improve student learning; (2) to increase the choice of learning opportunities within the public school system; (3) to create professional opportunities that will attract new teachers to the public school system; (4) to establish a new form of accountability for public schools; and (5) to encourage different and innovating learning methods. TEX. EDUC. CODE § 12.001(a).

- RFOF 3. To achieve these purposes, the State Legislature created several classes of charter schools: home-rule school district charters, campus charters, campus program charters, open-enrollment charter schools, junior college charter schools, and university charter schools. TEX. EDUC. CODE §§ 12.002, 12.151, *et. seq.*
- RFOF 4. The plaintiffs in this case bring their cause of action on behalf of all open-enrollment charter schools, including those authorized by the State, as well as those authorized by colleges and universities, all funded in accordance with Subchapters D and E of the Texas Education Code, and are hereinafter, collectively called “open-enrollment charter schools” or “charter schools.”¹
- RFOF 5. A charter school is “an opportunity for a group of educators . . . to come together and provide innovative learning possibilities for students.” (RR41:5-6). Charter schools are public schools (TEX. EDUC. CODE §§ 12.005, 12.103). Charter schools serve as an alternative to traditional school districts for families and students. (RR42:84).
- RFOF 6. An open-enrollment charter school is a creature of statute, expressed in the form of a contract between the SBOE and a charter school applicant. (RR41:5-6, 13; Ex. 9043; TEX. EDUC. CODE § 12.112). Most open-enrollment charter schools in Texas are operated by 501(c)(3) non-profit corporations. (RR:41:7; RR42:56). Independent school districts are local public corporations of the same general character but created for school purposes alone. Like the charter schools, school districts are also creatures of the statute, neither being required by the Texas Constitution. *Thompson v. Elmo Indep. Sch. Dist.*, 269 S.W. 868, 870 (Tex. Civ. App.--Waco 1925, no writ); TEX. EDUC. CODE § 12.001 *et seq*; *LTTTS Charter Sch., Inc. v. C2 Constr., Inc.*, 342 S.W.3d 73, 81 (Tex. 2011).
- RFOF 7. Like school districts, charter schools must follow the State’s academic accountability system. Charter school students take the State’s standardized tests. The performance of charter school campuses and charter school districts is assessed under the State’s accountability manual in the same manner and following the same rating rubrics as for school districts. (Ex. 9048 at 22; RR42:77-80). All of HB5 new accountability standards, including the State’s new graduation standards and modified end-of-course testing requirements, apply equally to open enrollment charter schools. (Ex. 9072 at 5 and 8; RR61:98-99).

¹ The term “open-enrollment charter school” refers to an assigned county district number (or CDN) by the Texas Education Agency. In other words, the term refers to a charter holder at the district level. Thus, an “open-enrollment charter school” or “charter school” references the charter organization’s central administration, which may operate one or more charter school campuses within its charter district.

- RFOF 8. Teachers in open-enrollment charter schools must be highly qualified under Federal law to teach core curriculum subjects, and must additionally be certified under State law in order to teach special education and bilingual education. (TEX. EDUC. CODE § 12.129; RR28:51, 86). In 2013, the 83rd Legislature required charter school teachers to minimally hold a baccalaureate degree. (Ex. 9072 at 9; RR61:100).
- RFOF 9. Also like school districts, charter schools are subject to annual financial accountability ratings, participation in TRS, adherence to open meetings and open records laws, mandatory board training, reporting through the Public Education Information Management System (“PEIMS”), special education programming, bilingual education programming, pre-kindergarten, health and safety safeguards, and criminal history background checks, to name a few similarities. (Ex. 9048 at 22; RR42:78-80).
- RFOF 10. Charter school students are partially subject to the disciplinary and placement procedures contained in Chapter 37 of the Texas Education Code, and are protected by constitutional due process rights regarding expulsion. (Ex. 9048 at 23; RR42:51-54).
- RFOF 11. Taken together, these factors demonstrate that open-enrollment charter schools are bona fide public schools educating the State’s public school children.

B. Statutory Framework: The State Legislature requires charter schools to meet higher performance standards even while the Legislature reduces State funding.

- RFOF 12. In 2013 the 83rd Legislature restored \$3.4 billion of the 82nd Legislature’s \$5.4 billion cut in Foundation School Program funding for Texas public schools. The 83rd Legislature also increased the basic allotment, restored the regular program adjustment factor to one, increased the Tier II guaranteed yield for Level I for 2015, and increased the ASATR reduction factor. (Ex. 9071 at 8; RR61:33).
- RFOF 13. These changes by the 83rd Legislature increased charter funding slightly per WADA but does not restore charter school students to funding levels prior to the cuts of the 82nd Legislature. (Ex. 9071 at 9; RR61:15-16). While each charter school received about \$5,754 per WADA in 2011 (prior to the 82nd cuts) and \$5,388 per WADA in 2013 (after the 82nd cuts), charter schools will receive only \$5,607 per WADA in 2015 (after the partial funding restoration by the 83rd). (Ex. 9071 at 9). In fact, the combination of Senate Bill 1 and House Bill 1025 of the 83rd Legislature, charters will receive an increase of only about \$79 per WADA in the 2013-14 school year, and about \$140 per WADA in the 2014-15 school year. (Ex. 9072 at 6; RR61:116).
- RFOF 14. This funding deficit persists at the precise moment charter schools face higher performance standards and increased costs under new legislation.

- a. House Bill 5, passed by the 83rd legislature, redefined high school diploma categories, graduation plans and reduced the number of End of Course exams required for graduation for both school districts and charter schools, but did not alter the number of credits required for a student to graduate with a high school diploma; nor did it affect the entrance requirements of institutions of higher education, which also are determinative of the achievement of a general diffusion of knowledge required of any public school under Article VII, section I of the Texas Constitution. (Ex 9072 at 8; Ex. 6322; Ex. 6536).
- b. House Bill 5 does not lessen the cost of education. Rather, its requirement of five new diploma endorsements very likely increases the cost of compliance for school districts and charter schools. (Ex. 9072 at 8; Ex. 6322; Ex. 6536).
- c. House Bill 5 does not affect the measure of post-secondary readiness for public school students. (Ex. 6322; Ex. 6536).
- d. Under the new requirements of Senate Bill 1458, charter schools may have increased costs related to the new employer contribution (1.5% of member compensation) required for the Teacher Retirement System. (Ex. 9072 at 5-6).
- e. Senate Bill 2, also passed by the 83rd Legislature, amended multiple sections to Chapter 12 of the Texas Education Code relating to charter schools. These amendments add to the existing academic and financial accountability standards that a charter school must achieve. These new standards do not apply to school districts:
- i. Senate Bill 2 requires the Commissioner to establish performance frameworks by which to annually evaluate a charter school's academic achievement, financial management, operational functions, and governance. Failure to satisfy the performance framework standards could result in a charter school's nonrenewal or revocation. (Ex. 9072 at RR61:117, 124, 126).
 - ii. Under Senate Bill 2, the Commissioner is required to non-renew a charter school contract if a charter school fails to meet certain academic and financial performance criteria over a five-year period. The Commissioner's non-renewal decision is final and may be not be appealed. (RR61:125-126).

- iii. Senate Bill 2 adds two new grounds for charter revocation: (1) imminent insolvency, and (2) failure to satisfy the new performance frameworks. Additionally, under the new law the Commissioner is authorized to reconstitute the governing board of the charter holder a basis for revocation occurs. (RR61:125-126). The action taken by the Commissioner is based on the Commissioner's discretion, and must be based on several factors, including the best interest of the students, the severity of the violation, any previous violation the school has committed, and the accreditation status of the school. TEX. EDUC. CODE § 12.115(a) and (b).
- iv. Senate Bill 2 also adds a new, non-discretionary dimension to charter revocation. The Legislature requires the Commissioner to revoke the charter of an open-enrollment charter school if the charter holder (1) fails to attain a satisfactory academic rating for three consecutive years, (2) fails to attain a standard financial rating for three consecutive years, or (3) fails to attain satisfactory/standard academic or financial ratings in any combination for three consecutive years. (RR61:126-127; TEX. EDUC. CODE § 12.115 (c)).
- v. Budgetary decisions in charter schools are very likely to be driven by the new high-stakes accountability for charter schools established under Senate Bill 2. (RR61:124-126).

C. Student demographics: Texas has been rapidly adding students to its public school population, the vast majority of which are economically disadvantaged.

RFOF 15. Over the past decades, Texas has been rapidly adding students to its public school population, which includes students enrolled in traditional school districts, as well as open-enrollment charter schools. From the 1996-1997 school year to the 2011-12 school year, total public school enrollment grew from approximately 3.8 million students to 4.9 million students. (Ex. 6322 at 2, Figure 1).

RFOF 16. The vast majority of added students are from economically disadvantaged backgrounds, and many come to school with greater language and other needs. (Ex. 6322 at 2, Figure 1). By 2011-12, economically disadvantaged students made up 60 percent of all student enrollment, compared to 48 percent just a few decades earlier. (Ex. 6322 at 2, Figure 1).

D. Student demographics: Charter schools serve a higher percentage of economically disadvantaged students than do traditional school districts.

RFOF 17. Considered apart from the public school system as a whole, charter school student growth is on an even more rapid trajectory. From the 1996-1997 school year to the 2011-12 school year, charter school student enrollment grew from 2,412 students to 154,278 students. (RR4: 19; Ex. 11332 at 11; Ex. 6322 at 2,

Figure 1; and Ex. 9048 at 10). Based on the 2012 enrollment numbers from the Texas Education Agency, there are 154,278 Texas students in charter schools. (Ex. 9048 at 10; RR42:29). At the end of the 2011-12 school year, over 101,000 students remained on charter school waiting lists. (Ex. 9048 at 10; RR61:122).

- RFOF 18. By the 2012-2103 school year, charter schools served 178,826 students at 552 charter school campuses. Charter school enrollment growth has averaged 15% each year for the last five school years, 2008-09 through 2012-13. (Ex. 9071 at 6).
- RFOF 19. Charter schools serve a much higher percentage of economically disadvantaged students than traditional school districts serve. Charter schools served an average of seventy-one percent (71%) economically disadvantaged students in school years 2010-11, 2011-12, and 2012-13. This compares to an average of only 60% of economically disadvantaged students being served in traditional school districts across the same time period. (Ex. 9071 at 7; RR61:33).
- RFOF 20. One pointed example of the growth of economically disadvantaged students in charter schools is Wayside Schools, an open-enrollment charter school district located in Austin, Texas. In 2009-10, Wayside served only 78 (or 41%) economically disadvantaged students. By 2012-13, Wayside increased its economically disadvantaged population fivefold to 402 students (or 58%). (Ex 9053 at 8).
- a. This demographic shift was intentional – the school desired to grow its student enrollment and to serve more students in Austin’s Dove Springs area, which has more Hispanic households, more at-risk students, and more students that are economically disadvantaged. (RR43:30-31).
 - b. As Wayside Schools grows, its economically disadvantaged student population increases. (RR43:33-34).
- RFOF 21. YES Prep Public Schools, a college preparatory program in Houston, Texas primarily serves economically disadvantaged students. True to its mission to “increase the number of low income Houstonians who graduate from college prepared to compete in the global marketplace and serve in disadvantaged communities,” YES Prep operates 11 middle and high school campuses where 78% of its students were economically disadvantaged in 2009-10, 79% in 2010-11, and 84% in 2011-12. (Ex. 9049 at 2, 4; RR42:169-170). As YES Prep grows, its economically disadvantaged student population increases. (RR42:171-172).

RFOF 22. A three year (2011-14) average comparison of student populations attending charter schools to student populations attending school districts demonstrated that charter schools served a larger population of African American students and a larger percentage of economically disadvantaged students (71%) than served by the school districts. (RR61:32-33).

E. Student Demographics: Charter schools and traditional school districts serve the same percentage of students with Limited English Proficiency and these students face unique educational challenges.

RFOF 23. In the 1996-97 school year, public schools served 13.4% of students who were English language learners. (Ex. 6322 at 2, Figure 1). By 2012-13, the percentage raised to 17%. Both charter schools and traditional school districts serve 17% of students with limited English proficiency. (Ex. 9071 at 7).

RFOF 24. Substantial and persistent performance gaps and overall local academic performance demonstrate that ELL students are not acquiring a general diffusion of knowledge. [See Proposed RFOF by the school districts].

STUDENT PERFORMANCE IN OPEN-ENROLLMENT CHARTER SCHOOLS

A. Like their traditional school district counterparts, charter schools are not accomplishing a general diffusion of knowledge.

RFOF 25. For the last five years, no more than 30.7% of all charter school students have achieved the college ready standard on the Math and Language Arts TAKS tests. In every year, charter school student performance is roughly twenty percentage points lower than school district student performance. (Ex. 9052, Tables 11A-11 Summary; RR44:81).

RFOF 26. For 2012-13 the TEA's unmasked student data files reveal that only 46% of charter school students passed all graduation tests at the Level II Phase-In Standard; only 21% of charter school students passed all graduation tests at the Level II Final Recommended Standard; only 54% of charter students achieved the passing standard on the Level II Phase-In 1 for Grades 3-8; and only 18% of charter schools achieved the recommended standard for Grades 3-8 Level II. (Ex. 6536 at 17; Figure A-9).

RFOF 27. Even when considering masked student data files (which tends to show higher trends in student performance), the performance of charter school students lag. According to the masked TAPR Data released by the TEA, only 68% of charter school students passed all tests taken at the Level II Phase-In 1 standard for Grades 3-11 compared to 76% of school district students. (Ex. 9071 at 36). Similarly, only 66% of economically disadvantaged charter school students passed all tests taken at the Level II Phase-In 1 standard for Grades 3-11

compared to 71% of economically disadvantaged school district students. (Ex. 9071 at 36).

- RFOF 28. For the last five years, no more than 15.3% of all charter school students who took the SAT or ACT scored at or above the college ready standard. The average SAT score for charter school students did not exceed 910. The average ACT score for charter school students did not exceed 19.3. Over the same five-year period, the average SAT score for school district students did not exceed 973.6, and the average ACT did not exceed 20.1. (Ex. 9052, Tables 11A-11 Summary; RR44:81).
- RFOF 29. For 2012-13, no more than 12% of all charter school students who took the SAT or ACT scored at or above the criterion. The average SAT score for charter school students did not exceed 1300.² The average ACT score for charter school students did not exceed 18. Over the same period, the average SAT score for school district students did not exceed 1395 and the average ACT did not exceed 20. (Ex. 9071 at 37-38; Ex. 9068; RR61:39-40).
- RFOF 30. Schools serving greater than 75% at risk students can be rated under the Alternative Education Accountability system.³ Twenty-three percent (23%) of charter schools are registered as AEA schools for the 2012-13 school year.⁴ As many as thirty percent (30%) had been registered as AEA schools in prior school years. (RR41:38).
- RFOF 31. When excluding AEA schools from the student performance analysis, no more than 46.5% of all charter students have achieved the college ready standard on both the Math and Language Arts TAKS tests. On average, charter school student performance is roughly 4.8% below the performance of school district students. (Ex. 9052, Tables 12A-12 Summary; RR44:84).
- RFOF 32. When excluding AEA schools from the student performance analysis, for the last five years, no more than 31.0% of all charter school students who took the SAT or ACT scored at or above the college ready standard. The average SAT score for charter school students did not exceed 949.6. The average ACT score for charter school students did not exceed 20.4. (Ex. 9052, Tables 12A-12 Summary; RR44:84).

² For the 2012-13 Texas Academic Performance Report, TEA changed the way reported average SAT scores. Previously, it had reported only the student Math and Critical Reading scores. In 2012-13, TEA began reporting student Math, Critical Reading, and Writing.

³ 19 TAC §97.001(b), 2013 and 2014 Accountability Manuals:
http://ritter.tea.state.tx.us/rules/tac/chapter097/19_0097_1001-1.pdf and
<http://ritter.tea.state.tx.us/perfreport/account/2014/manual/index.html>

⁴ <http://ritter.tea.state.tx.us/perfreport/account/2013/index.html>

RFOF 33. While 4.9% of the State's school districts are ranked academically "Unacceptable," 17.6% of the State's charter schools, are ranked academically "Unacceptable." (Ex. 11332 at 13).

RFOF 34. For the 2012-13 school year, 5.0% of the State's school districts were ranked "Improvement Required," and 15% of the State's charter schools were ranked Improvement Required."⁵

B. Also like their school district counterparts, charter schools are not accomplishing a general diffusion of knowledge particularly with respect to their economically disadvantaged and ELL students.

RFOF 35. It is the policy of this State that the provision of public education is a State responsibility and that a thorough and efficient system be provided and substantially financed through State revenue resources so that each student enrolled shall have access to programs and services that are appropriate to the student's educational needs and that are substantially equal to those available to any other student, notwithstanding varying local economic factors. TEX. EDUC. CODE § 42.001(a) [Emphasis added].

RFOF 36. Despite this statutorily mandated State policy, students that are economically disadvantaged and limited English proficient struggle to receive programs and services that are appropriate to their educational needs. This is demonstrated by the poor performance of economically disadvantaged students and LEP students on State's standardized assessments:⁶

- a. By the end of the TAKS assessment program in 2011-12, only 54% of educationally disadvantaged 10th grade students were able to reach the passing standard on all tests. This is a troubling statistic considering that this is a growing segment of the State's population, now accounting for 60% of students enrolled in traditional school districts (Ex. 6322 at 2) and 71% of students enrollment in charter schools (Ex 9071 at 7).
- b. This 10th grade TAKS data reflected a 21-point gap in 2011 and a 22-point gap in 2012 between the performance of economically disadvantaged students and non-economically disadvantaged students. (Ex. 6322 at 22, Figure 23).
- c. An economically disadvantaged 10th grade student in 2011-12 student was almost four times less likely to reach the higher commended standards than

⁵ <http://ritter.tea.state.tx.us/perfreport/account/2013/index.html>

⁶ All of the student outcome evidence presented by trial expert Lynn Moak and admitted by the district court into both phases of trial record includes the performance of students enrolled in open-enrollment charter schools. (RR7:70-72; RR54:161-162; Ex. 6349; Ex. 6322; Ex. 6536; and Ex. 6618). Additional evidence concerning the performance of charter school students was presented by Dr. Anthony Rolle (Ex. 9052 and RR43 and RR44), and by Toni Templeton (Ex. 9071 and RR61). This additional student outcome evidence for charters was admitted by the district court. All evidence of charter school student performance is undisputed by the State of Texas.

his/her non-economically disadvantaged counterpart. (Ex. 6322 at 22, Figure 23).

- d. At the 11th grade, these gaps are smaller, but persist. At the passing level, there is a 12- to 14-point gap between the percentage of 11th grade economically disadvantaged and non-economically disadvantaged students who pass all exit level tests. Similarly, economically disadvantaged students reached the commended standard over three times less often than did non-economically disadvantaged students in both 2011 and 2012 (Ex. 6322 at 22, Figure 23).
- e. The tests taken by 9th and 10th graders in 2012-13 continued to show major differences between economically disadvantaged and non-economically disadvantaged populations. (Ex. 6536 at 13, Figure A-6).
- f. When all of the tests required for graduation are considered, only about 1/3 of the non-economically disadvantaged students failed to meet the transition standard in 2013. In contrast, almost 2/3 of the economically disadvantaged students failed to meet these minimum standards. (Ex. 6536 at 13, Figure A-6).
- g. The overall failure rate is 23 percentage points higher for the economically disadvantaged students. (Ex. 6536 at 13, Figure A-6).
- h. The gaps found for the high school grades are also found in the middle and elementary schools. Again, for each test, the performance of economically disadvantaged students falls well below the performance of the non-economically disadvantaged students. This differential applies at the both the transition Phase-In level, as well as at the final recommended level. (Ex. 6536 at 14-15, Figure A-7).
- i. The second administration of the STAAR exams in Grades 3-8 did not produce substantial progress, either in terms of overall passing rates or in terms of closing the economic-based gaps. (Ex. 6536 at 15, Figure A-8).
- j. As the percentage of economically disadvantaged student enrollment increases, the percentage of students passing graduation tests decreases. In other words, when school districts and open-enrollment charter schools have high concentrations of economically disadvantaged students, there is a significant reduction in the overall passing rates under the STAAR test, both at the graduation level and at the recommended standard. (Ex. 6536 at 17, Figure A-10).
 - i. In school districts and open-enrollment charter schools that serve 50% to less than 70% students who are economically disadvantaged, only 47% of the students passed the graduation tests at Level II Phase-In 1

Standard; only 21% of students passed the graduation tests at the Level II Final Recommended Standard; only 57% passed the Grade 3-8 Tests at the Level II Phase-In Standard; and only 20% passed the Grade 3-8 Tests at the Level II Final Recommended Standard.

- ii. In school districts and open-enrollment charter schools that serve 70% to less than 90% of students who are economically disadvantaged, only 39% of the students passed the graduation tests at Level II Phase-In 1 Standard; only 15% of students passed the graduation tests at the Level II Final Recommended Standard; only 50% passed the Grade 3-8 Tests at the Level II Phase-In Standard; and only 15% passed the Grade 3-8 Tests at the Level II Final Recommended Standard.
- iii. Student performance is even worse at school districts and open-enrollment charter schools serving a student population of over 90% economically disadvantaged. For these campuses, only 32% of the students passed the graduation tests at Level II Phase-In 1 Standard; only 12% of students passed the graduation tests at the Level II Final Recommended Standard; only 44% passed the Grade 3-8 Tests at the Level II Phase-In Standard; and only 11% passed the Grade 3-8 Tests at the Level II Final Recommended Standard.

RFOF 37. The undisputed evidence is that the economically disadvantaged students and English language learners require significantly more resources to achieve a general diffusion of knowledge.

- a. Public school administrators and experts testified repeatedly about the increased struggles of the economically disadvantaged students and English language learners, and the additional resources necessary to achieve GDK.
 - i. At Wayside Schools in Austin, Texas, the opportunity to serve economically disadvantaged and ELL students requires the following effort to get the students to grade level and then college- and career-ready:
 - 1. One-on-one remediation for educationally disadvantaged students, because often these students enroll at Wayside Schools well below grade level. (RR43:34).
 - 2. One-on-one pull outs with targeted reading interventions and tiered reading to accelerate ELL students who arrive at Wayside Schools reading below grade level (RR43:34-35).
 - 3. Intensive support services for ELL students who in their prior schools “for many years slipped through the cracks and [did] not received the services they need to be successful.” (RR43:35).

- ii. Wayside Schools provides these additional services to its students through additional staffing. Wayside Schools employs both full-time and part-time interventionists. These individuals are hired to work during the regular school day and in Wayside Schools' after school programs to provide remediation and targeted reading interventions for struggling students. Wayside Schools pays a premium to find "unicorns," the bilingual interventionists in Central Texas "who are out there somewhere." Wayside Schools is continually searching for qualified staff with the skills necessary to serve these needy students. (RR43:35-36, 108).
- iii. At YES Prep Public Schools (YES Prep) in Houston, Texas, where 84% of the students in the 2011-12 school year were economically disadvantaged, and 11% Limited English Proficient, students attend extended school days, after school programs, and extended school years. (RR42:174-178 and 185-190).
 - 1. School starts at 7:45 or 8:00 am and ends at 4:15 or 4:30 pm.
 - 2. The YES Prep school year includes 189 instructional days, a marked increase in instructional days from the State's minimum requirement of 180 days of instruction, as codified in Texas Education Code Section 25.081(a).
 - 3. YES Prep has a two week summer program that is for both enrichment and remediation, proving teachers "more time on task with the kids."
 - 4. Tutorials occur every day after school. Tutorials also occur on Saturdays. Tutorials are offered for students who need it or whose parents request it.
 - 5. YES Prep gives trimester common assessments so every student takes the same test three times a year. Additionally, YES Prep does benchmarks for the STAAR test.
- iv. These extra student services are "absolutely critical" and "necessary" to achieve student success under the State's STAAR standards, and for college and workforce readiness. (RR42:174-178 and 185-190).
- v. YES Prep's State funding is insufficient to support these additional learning opportunities for its educationally disadvantaged students. YES Prep affords these critical services through the receipt of private donations that amount to 10% of their State revenue. Without this additional private funding, YES Prep could not offer these additional necessary supports. (RR42:176-178, 185.) According to Mark DiBella, the Vice President of Operations at Growth at YES Prep Public Schools, without the private donations, the

school might be called ‘Maybe Prep’ or ‘No Prep,’ but certainly not YES Prep. (RR42:185).

vi. YES Prep provides these additional services to its students through a tenacious teaching staff that YES Prep works hard to train and retain. (RR42:185-189).

1. YES Prep pays for and provides cell phones to its teachers so that students may contact their teachers at any time for any reason.

2. Teachers perform the weekend tutorials.

3. YES Prep offers Teaching Excellence, a training program for new teachers that costs roughly \$7,000 per teacher.

a. The program is hosted four weeks during the summer and a certain number of additional hours throughout the school year.

b. A teacher who completes the program earns teaching certification from the State of Texas.

c. YES Prep pays for the cost of instructional coaches to provide the program.

4. To combat the charter school’s 20% teacher turnover rate, and the tendency of teachers to leave YES Prep after three years, YES Prep created a teacher compensation package to reward retention and performance.

5. Once every six weeks, YES Prep offers “mental health days where teachers get out at noon and have the afternoon to get oil -- their oil changed, go to the dentist...things that teachers sometimes have a hard time figuring out how to do with their long hours.”

6. YES Prep, which has 11 campuses in Houston (Ex. 9048 at 3), also “comes together has a system two or three times a year so that all the different teachers can see that they’re part of a movement bigger than just their one school.”

vii. YES Prep’s State funding is insufficient to support these “absolutely necessary” additional supports to train and retain its workforce. (RR42:189). YES Prep affords these personnel expenses through the receipt of private donations.

viii. The additional services and resources YES Prep provides to its teachers and students get positive results. In the past four school years, YES Prep’s

LEP and economically disadvantaged students have met the State’s academic standards, far surpassing the performance of LEP and economically disadvantaged students in other charter schools and school districts. In fact, YES Prep was rated Exemplary in the 2009-10 and the 2010-11 school years, the last two school years in which such ratings were assigned by the State. (Ex. 1942 and Ex. 1943).

**YES Prep Public Schools, Inc.
Academic Performance of Limited English Proficient Students⁷**

	2009-2010	2010-2011	2011-2012	2012-2013
	without TPM			
	TAKS Met Standard – Sum of All Grades Tested	TAKS Met Standard – Sum of All Grades Tested	TAKS Met Standard – Sum of Grades 10 and 11	STAAR Percent at Phase-In 1 Level II or Above
Reading/ELA	87%	84%	82%	62%
Mathematics	93%	92%	> 99%	79%
Science	89%	94%	75%	81%
Social Studies	97%	98%	94%	66%
All Tests	82%	79%	59%	68%

	TAKS Commended Performance – Sum of All Grades Tested	TAKS Commended Performance – Sum of All Grades Tested	TAKS Commended Performance – Sum of Grades 10 and 11	STAAR Percent at Level III Advanced – All Grades
Reading/ELA	21%	18%	< 1%	5%
Mathematics	36%	30%	6%	8%
Science	30%	21%	<1%	1%
Social Studies	56%	38%	35%	1%
All Tests	14%	10%	< 1%	5%

⁷ YES Prep Public Schools, Inc. serves students in 6th through 12th grades.

	TAKS Exit Level Cumulative Pass Rate			
Class of 2012			*	*
Class of 2011		*	*	
Class of 2010	*	*		
Class of 2009	*			

Source: (Ex. 1941, Ex. 1942, Ex. 1943, Reports from the State of Texas Academic Excellence Indicator System for school years 2009-10, 2010-11, and 2011-12). Charter Plaintiffs ask the court to take judicial notice of the 2012-13 TEA TEP-PR Data for YES Prep Public Schools, Inc., which is posted on the TEA website at <http://ritter.tea.state.tx.us/perfreport/tapr/2013/static/district/d101845.pdf>

YES Prep Public Schools, Inc.
Academic Performance of Economically Disadvantaged Students⁸
2009-2010 2010-2011 2011-2012 2012-2013
 without TPM

	TAKS Met Standard – Sum of All Grades Tested	TAKS Met Standard – Sum of All Grades Tested	TAKS Met Standard – Sum of Grades 10 and 11	STAAR Percent at Phase-In 1 Level II or Above
Reading/ELA	95%	99%	98%	83%
Mathematics	96%	96%	95%	90%
Science	97%	97%	98%	93%
Social Studies	99%	99%	99%	89%
All Tests	86%	92%	93%	86%

	TAKS Commended Performance – Sum of All Grades Tested	TAKS Commended Performance – Sum of All Grades Tested	TAKS Commended Performance – Sum of Grades 10 and 11	STAAR Percent at Level III Advanced – All Grades
Reading/ELA	36%	37%	28%	16%
Mathematics	45%	43%	39%	19%
Science	41%	43%	30%	14%

⁸ YES Prep Public Schools, Inc. serves students in 6th through 12th grades.

Social Studies	67%	63%	62%	11%
All Tests	21%	21%	12%	14%

	TAKS Exit Level Cumulative Pass Rate			
Class of 2012				100%
Class of 2011			100%	
Class of 2010		97%		
Class of 2009	95%			

Source: (Ex. 1941, Ex. 1942, Ex. 1943, Reports from the State of Texas Academic Excellence Indicator System for school years 2009-10, 2010-11, and 2011-12). Charter Plaintiffs ask the court to take judicial notice of the 2012-13 TEA TAPR Data for YES Prep Public Schools, Inc., which is posted on the TEA website at <http://ritter.tea.state.tx.us/perfreport/tapr/2013/static/district/d101845.pdf>

1. The performance of ED and ELL students at YES Prep is not typical statewide. In fact, as described earlier, on a statewide basis school districts and charter schools are failing to achieve a general diffusion of knowledge with ED and ELL students. These atypical overwhelmingly positive results with ED and ELL students at YES Prep demonstrate the absolute necessity for additional skilled and bilingual staff, extended school days, extended school years, and summer learning opportunities throughout the public school system. Without these additional supports, public schools will not be able to accomplish a general diffusion of knowledge with this population.
2. Because of the lack of appropriate programs and resources for economically disadvantaged and ELL students statewide, substantial and persistent performance gaps exists. With the exception of outstanding performers like YES Prep Public Schools, charter schools are not immune to achievement gaps among student groups based on language and income as seen in public school districts. (RR61:132).
3. Because charter schools serve an average of 70% economically disadvantaged students and 17% ELL students, charter schools are particularly under resourced to serve these students. (RR42:59).

OVERVIEW OF THE STATE'S FUNDING SYSTEM FOR OPEN-ENROLLMENT CHARTER SCHOOLS

- RFOF 38. Both school districts and charters receive State funding from the Foundation School Program, but the funding mechanism applied to open-enrollment charter schools is unique. (TEX. EDUC. CODE §§ 12.106 and 12.102(4)).
- RFOF 39. Charter schools are statutorily required to be funded through the Foundation School Program as if they were a school district with no tax base (TEX. EDUC. CODE § 12.106(a)(2)). Unlike charter schools, school districts are funded through the Foundation School Program by a combination of State funding and local tax revenue funding. TEX. EDUC. CODE § 42.251.
- RFOF 40. Various allotments are made to school districts and charter schools through the Foundation School Program that are generated through formulas, the components of which include some combination of the Adjusted Allotment, student enrollment, student attendance, program weights, and the local tax base.
- RFOF 41. The 83rd Legislature did not change the State funding mechanism for charter schools. (RR61:33, 129).
- A. All open-enrollment schools receive the same statewide average Adjusted Allotment, hereinafter called "Average Allotment."**
- RFOF 42. The Adjusted Allotment for each individual school district is calculated by increasing the Basic Allotment in Texas Education Code 42.101 to account for that school district's size, sparsity, and cost of education, but individual adjustments are not made for each individual charter school. (*See* TEX. EDUC. CODE §12.102-.105).
- RFOF 43. The purpose of the adjustments to the basic allotment is to ensure that the overall system of school finance is tailored for the true cost of operating each individual school system; in other words, the school funding formulas are designed to accommodate the differences in cost due to factors beyond the control of public schools. By statute, Texas school funding formulas address these factors: (1) costs arising from differing student characteristics, including the greater expense of education economically disadvantaged, bilingual, and special needs students; (2) costs attributable to various programmatic variables, including career and technology programs; and (3) costs relating to certain uncontrollable school or community characteristics, such as competitive salary differentials, transportation costs, and district size and sparsity. (Ex. 6322 at 55, 61; *see* Texas Education Code Chapter 42, Subchapters B and C).
- RFOF 44. The Small and Mid-Sized Adjustment adjusts funding upward for the operational inefficiencies experienced by each individual small and mid-sized school district. TEX. EDUC. CODE §§ 42.103-.104. It is undisputed that charter schools meeting the definition of a small or mid-sized school district do not receive this unique funding adjustment. (RR44:122). In fact, most of the charter schools in

Texas would qualify for the full benefit of the small schools adjustment, but under the current funding scheme do not receive it. (Ex. 9056 at 9; RR44:122).

- RFOF 45. The Sparsity Adjustment, results in funding increases for certain rural school districts based on increased operational costs that districts geographic location. TEX. EDUC. CODE §§ 42.105. It is undisputed that funding to rural charter schools meeting the same criteria applied to rural school districts receiving the Sparsity Adjustment is not uniquely adjusted for those charter schools. (RR44:121).
- RFOF 46. The Cost of Education Index (CEI), applied to the basic allotment, adjusts for geographic variations in education resource costs. The range of the current CEI is from 1.02 to 1.20. The current CEI for each school district is derived from five aspects of the school district's characteristics in 1989-1990: competitive beginning average salary, county populations, type of district, percent of low income students, and the number of students. TEX. EDUC. CODE § 42.102; Ex. 5654 at 24.
- RFOF 47. It is undisputed that CEI adjustments individualized and assigned to each school district are not individualized for each charter school. (RR44:122). Thus, the CEI adjustment does not capture the individual characteristics of each charter school.
- RFOF 48. Instead of using individualized adjustments for each charter school that accounts for each charter's size, sparsity, and CEI, the State applies an amount, a statewide averaged Adjusted Allotment for all charter schools. The statewide averaged Adjusted Allotment is the average of all school district Adjusted Allotments, hereafter called "Average Allotment." The single amount Average Allotment is applied to adjust funding to all charter schools regardless of a particular charter school's size, sparsity, or cost of education. The result is that no charter school receives an individualized Adjusted Allotment. (TEX. EDUC. CODE §12.106; RR32:90-91; Ex. 9048 at 30; RR42:73-75; RR44:106-108).
- RFOF 49. For every individual charter school, this arbitrarily derived same amount, the Average Allotment, is substituted into the funding mechanism while, for each individual school district, an individualized Adjusted Allotment is used. (RR44:105; Ex. 6441, Wisnoski Dep. at 9, 11 (referencing Ex. 5653 at 140-45, Ex. 5654 at 127-31)).
- RFOF 50. The 83rd Legislature made no provision for adjusting any elements of the State's funding formula to address an individual charter school's size, sparsity, or cost of education. (RR61:33, 127).

B. Use of the Average Allotment in Tier I funding calculations for charter schools underfunds charter schools.

- RFOF 51. Tier I program funding is intended to allocate funding based on the particular characteristics of each district and on the particular characteristics of its student body. TEX. EDUC. CODE §§ 12.106, 42.101, 42.151-.154, 42.002.
- RFOF 52. Tier I program funding is adjusted for the particular characteristics of each school district through use of each district's specific Adjusted Allotment, but Tier I program funds are not individually adjusted for open-enrollment charter schools; since, for charter schools, the Average Allotment is applied for every charter school. (TEX. EDUC. CODE §§ 12.106 and 42.101). The current funding system therefore underfunds charter schools in Tier I.
- RFOF 53. The 83rd Legislature made no provision for individualized funding adjustments to charter schools, continuing the application of the Average Allotment to every charter school. (RR61:33, 127).

C. Use of the outdated weights in Tier I underfunds charter schools.

- RFOF 54. Within the Foundation School Program, in Tier I, the State has assigned weights, which are aimed at funding school districts and charter schools in accordance with their students' particular student characteristics. These weights are assigned by the State of Texas as follows (Ex. 5654 at 37-59):

(a) Special Education:	
Homebound	5.0
Hospital Class	3.0
Speech Therapy	5.0
Resource Room	3.0
Self-Contained:	3.0
Off Home Campus	2.7
Vocational Adjustment Class	2.3
State Schools	2.8
Residential Care and Treatment	4.0
Non-Public Contracts	1.7
Mainstream ADA	1.1
(b) Career and Technology:	1.35
(c) Compensatory Education Allotment	
a. Educationally Disadvantaged	0.20
b. Pregnant Students	2.41
(d) Bilingual Education Allotment	0.10

- (e) Gifted and Talented Allotment 0.12
- (f) Public Education Grant Allotment 0.10

- RFOF 55. These weights are outdated. (Ex. 1328 at 15-17). For example, the special education allotments (which have not been modified since 1993), and the allotment for high school students (established in 2006) have not been studied to determine the actual cost of educating these students. (Ex. 6322 at 61-62; Ex. 1328 at 15-17). The career and technology weight, adopted in 1994 – before the authorization of charter schools, is intended to serve as an incentive for offering quality vocational programs, but the effect of the weight has not been examined in terms of actual costs or performance criteria in recent years. (Ex. 6322 at 62; Ex 1328 at 16). The compensatory education weight, which includes a component for economically disadvantaged students, has not been modified since 1984. (Ex. 1328 at 15). The bilingual education weight, first enacted in 1984, has never been adjusted. (Ex. 6322 at 58).
- RFOF 56. None of these weights has changed in recent years to reflect either inflation or the actual cost of education. (RR61:33, 127). Thus, Tier I program funding is not accurately adjusted for particular charter school student characteristics. Because these weights do not reflect the true costs to public schools arising from the differing student characteristics, they contribute significantly to the inadequacy and unsuitability of the school funding system as applied to charter schools.
- RFOF 57. Charter schools teach over 70% economically disadvantaged students and 17% ELL students (Ex. 9048 at 11). Thus, the combination of the use of outdated weights and the average allotment contributes significantly to the underfunding of charter schools. Program funds meant to provide additional resources for the most difficult populations to educate, which are more prevalent in charter schools, are not provided. (Ex. 9048 at 11).

D. Use of the Average Allotment in Tier II underfunds charter schools.

- RFOF 58. Like Tier I, Tier II program funding allocates funding to school districts considering not only the particular characteristics of that district’s student body but also on the discrete characteristics of each school district. Additionally, Tier II allotments are driven by each school district’s tax effort. TEX. EDUC. CODE §§ 42.301-304.
- RFOF 59. Tier II enrichment funding is individually adjusted for school districts but is not individually adjusted for charter schools. (Ex. 9048 at 30).
- RFOF 60. Open-enrollment charter schools receive Tier II funding determined as if each charter school employed the statewide average of all school district M&O tax efforts. (RR42:75), Ex. 6441, Wisnoski Dep. at 9, 11 (referencing Ex. 5653 at 140-45, Ex. 5654 at 127-31)).

- RFOF 61. These average tax efforts are then calculated against each charter school's WADA, a Tier I funding value based on the statewide average adjusted allotment. Consequently, even Tier II allocations ignore the characteristics of each charter school.
- RFOF 62. Because Tier II is calculated using WADA, a component derived from Tier I funding, to the extent charter schools are underfunded in Tier I, they are automatically and inherently underfunded in Tier II. TEX. EDUC. CODE § 42.302.
- RFOF 63. The 83rd Legislature made no change to the Tier II calculation. (RR61:33, 127).
- RFOF 64. Because Tier II funding for open-enrollment charter schools is determined by the statewide average of all school district M&O tax rates, charter school funding will vary, depending on the annual tax rate set by each and every school district board of trustees. (Ex. 9073 at 208). In Tier II, charter schools are beholden to school districts, particularly property rich school districts that are motivated under the FSP formulas to keep their tax rates as low as possible to avoid triggering share-the-wealth obligations under Chapter 41. Where school district boards may adjust their tax rates to reap the full benefits of the FSP funding formulas, charter school boards cannot. The system affords no opportunity to charter schools to better their financial positions within Tier II, and by extension, the entire FSP.

E. Use of the Average Allotment for ASATR underfunds charter schools.

- RFOF 65. Like Tier I and Tier II, Additional State Aid for Tax Reduction (ASATR) funding allocates funding based on the distinct characteristics of each school district as well as on the particular characteristics of that school district's student body. As in Tier II, ASATR allotments also are driven by tax effort. TEX. EDUC. CODE § 42.261.
- RFOF 66. Instead, ASATR to charter schools is calculated only on WADA funding and Tier I funding. TEX. EDUC. CODE § 42.261. Therefore, because charter schools are underfunded in Tier I, that underfunding carried through ASATR.
- RFOF 67. ASATR is calculated using WADA and Tier I funding. TEX. EDUC. CODE § 42.261. Because charter schools are underfunded in Tier I, they are likewise underfunded through ASATR.
- RFOF 68. The 83rd Legislature's changes to the ASATR calculation did not result in any individual adjustment for charter schools and still underfunds ASATR for charter schools. (RR61:33).

F. The negative impact of the Average Allotment is carried through the various program funds in Tier I, Tier II and ASATR.

RFOF 69. Average Allotment adjustments in Tier I, in Tier II, and for ASATR, as opposed to individualizing adjustments for charter schools, results in a significant disparity between the amount of per pupil funding an open-enrollment charter school receives as compared to the amount of per pupil funding a school district receives. (Ex. 9071; RR42:75; RR44:107-108).

RFOF 70. After the 83rd Legislature, the disparity remains. (Ex. 11470; Ex. 9071).

G. Charter schools receive no facilities funding through the Foundation School Program.

RFOF 71. School districts levy local property taxes to pay for facilities, but charter schools have no tax base and no taxing authority. (Ex. 9048 at 24; Ex. 9042 at 7; RR42:88; RR43:132-133; RR44:123).

RFOF 72. In addition to local property tax revenue, school districts are guaranteed a level of State facilities funding assistance through the IFA and the EDA. (TEX. EDUC. CODE § 42.007; RR32:86-87). Charter schools are not eligible to receive facilities funding through IFA or EDA. (RR32:89; Ex. 9048 at 24-26; Ex. 9056 at 7 and 10; RR42:88-89; RR44:106-109, 113).

RFOF 73. Charter Schools are eligible for the State's New Instructional Facilities Allotment, but that program has not been funded since the 2009-10 school year. (Ex. 9048 at 24; RR33:110).

RFOF 74. Some federal facilities programs are administered by the TEA, but the source of the applicable grant funding (*i.e.*, Texas Credit Enhancement Program for Charter Schools) and tax credits (*i.e.*, QSCB and QZAB programs) are exclusively federal. (Ex. 9048 at 25; RR43:151).

RFOF 75. Charter schools receive no direct facilities funding of any kind from the State of Texas. (RR32:89; Ex. 1188 at 15; Ex. 9056 at 7 and 10; Ex. 9048 at 24-26; RR42:88-90; RR44:106-109).

RFOF 76. All funds charters receive from the Foundation School Program are intended for instruction and operation, but not for facilities. The Texas Education Code in Section 42.002 expressly provides that the FSP consists of two tiers: (1) sufficient funding to provide a basic program of education that is rated acceptable or higher and substantially equal access to funds to provide an enriched program; and (2) a facilities component as provided in Chapter 46 for EDA and IFA. However, according to Sections 46.012 and 46.036, open-enrollment charter schools are expressly prohibited from receiving an EDA or an IDA allotment in the facilities tier of the FSP. TEX. EDUC. CODE §§ 42.002, 46.012 and 46.036; (Ex. 9065 at 10).

- RFOF 77. Because charter schools are not eligible for the facilities tier within the FSP, charter schools must use their singular State FSP allocation for instruction to pay for both instructional cost and facilities cost. (RR42:64-65; RR43:134; RR44:109-111, 124).
- RFOF 78. The State of Texas does not increase its FSP allocation to charter schools to make up for the lack of facilities funding, nor does the State equalize funding for charter schools as it does for school districts. No State funding for charter schools are earmarked for the purpose of funding facilities. (RR43:134).
- RFOF 79. The State of Texas asserts a false contention that its funding allocation to charter schools covers the cost of both instruction and facilities. This is based on the State's analysis that charter schools receive \$1,283 more per student on an ADA basis than school districts receive. (RR33:108-109; Ex. 5683 at 33-37).
- a. Dr. Lisa Dawn-Fisher asserted that this supposed additional funding could "help [charters] pay" for facilities and is "roughly comparable" to the \$1,000 additional FSP dollars some school districts receive from the State for direct facilities assistance. (RR33:108-109).
 - b. This assertion fails for several reasons, but foremost because it is speculation. There is absolutely no statute, rule, or statement of legislative intent pointing to the conclusion that charters are afforded additional funding to help pay for facilities. Further, funding comparisons based on ADA are inappropriate, even when comparing resources available for facilities. WADA is the proper basis for all funding comparisons because it inherently captures individualized student needs, and in particular for facilities needs for special student populations, such as smaller learning labs and special equipment. (RR44:18-20).
 - c. The State's witness acknowledges educating particular students can result in costing as much as five times as much as one student over another. (RR33:113).
 - d. The State's witness further acknowledges that traditionally in public education "there [has been] a sharp diving line between money spent on facilities and the money spent on operations. And most school districts don't use their operations money on facilities... but typically that money is cordoned off just for the operations and it doesn't slash over into the facilities side..." (RR33:115).
 - e. However, for charter schools, there is no "sharp diving line between money spent on facilities as money spent on operations." The FSP money is provided in one lump sum, a sum that is wholly insufficient to cover both costs:

- i. Mark DiBella, YES Prep Public Schools, testified that a charter school administrator is “constantly weighing this limited pool of money you have and how you’re going to allocate it between the instructional program and keeping up with what your school needs.” (RR42:181).
- ii. YES Prep administrators engage an “ongoing dialogue ... in terms of diverting money away from current students and kind of plowing it back into future growth,” pointing to the constant “tension between serving kids [they] currently have and the kids [they] want to serve.” (RR42:181-182).
- iii. Matt Abbott, CEO of Wayside Schools in Austin, testified that the student enrollment at Eden Park Academy is intentionally small, constrained by the financial limitations of the charter school’s State funding. (RR43:33). He explains that “every dollar [Wayside Schools] puts into the facility is a dollar we have to not have in the classroom looking at teachers and supplies and materials and technology for students, and so it’s been a trade-off.” (RR42:57).
- iv. The Court finds that the tension experienced by YES Prep and Wayside Schools is almost certainly the same tension experienced by the State’s other charter school operators who must divide the charter school’s single allotment of FSP funding between instructional and facilities cost.

RFOF 80. The 83rd Legislature passed no legislation providing direct funding for charter school facilities. (RR61:33, 129).

RFOF 81. While charter schools, like school districts, may obtain bond financing to fund facilities costs, only a relatively small number of charter schools qualify for and finance a bond program because of strict requirements in the bond market. (Ex. 9028 at 5-6; Ex. 9042 at 14; RR43:49, 128-129). Approximately 140 of the 209 charters have less than 500 students, often making these entities too small to generate sufficient revenue for bond financing that is attractive to the markets and cost-effective for the schools. Of the remaining, only 40 to 50 charters are able to meet market requirements. (Ex. 9042 at 16; RR43:142).

RFOF 82. Charter schools that do qualify for a bond program experience higher financing costs than school districts conducting similar transactions. (Ex. 9028 at 7-8). Unlike school districts, charter schools do not have dedicated revenue from the Foundation School Program to service the bond indebtedness. (RR43:121, 130, 146).

RFOF 83. Despite the changes made by the 82rd and 83rd Legislatures to make the Permanent School Fund available to charter schools, the new program will not benefit most charter schools.

- a. In 2011, the 82st State Legislature passed a bill to allow charter schools to access the Permanent School Fund (“PSF”). (Ex. 9048 at 26; RR42:90-93; TEX. EDUC. CODE §§ 12.135, 45.0532, 45.0541).
- b. In 2013, the 83rd State Legislature amended these statutory provisions to make refunding and refinanced charter bonds also eligible for the PSF guarantee. (RR61:117-118).
- c. This new opportunity for charter schools is helpful to larger, bond ready schools, particularly since the IRS approved the program in January 2014, but the PSF guarantee is only a small piece of the overall funding scheme. (RR61:118-119).

H. The Foundation School Program, as applied to charter schools, results in inadequate charter school facilities and a disparity of funding between charter schools and school districts that is ineffectual.

1. The structure of the FSP for charter schools results in inadequate charter school facilities.

- RFOF 84. On average, charter schools divert \$829 per student per year from Foundation School Program funding to address facilities needs and costs. (Ex. 9048 at 28; Ex. 9007 at 3 and 10).
- RFOF 85. TEA has conducted facility need studies of school districts and has promulgated standards for school district facilities. (Ex. 9002; 19 TAC § 61.1036). TEA has not conducted studies, nor has the agency surveyed charter school facility needs.
- RFOF 86. The lack of facilities funding prompts charter schools to lease and purchase retrofitted spaces like the following, none of which are purposely built for schooling:
- Existing and former churches
 - Abandoned warehouses
 - Strip centers
 - Abandoned grocery stores
 - Modular buildings
 - Portable buildings
 - Former Walgreen’s and Target stores
 - Converted house barns
 - Converted apartment buildings
- Ex. 9042 at 8; RR42:180-181 (DiBella); RR43: 19-20, 27 (Abbott); RR43:134-135 (Sage).
- RFOF 87. Often charter schools have inadequate ventilation and HVAC making it cold in the winter and hot in the summer. (RR43:137).
- RFOF 88. The use of sub-par alternative spaces can threaten teacher retention and student recruitment. The use of these spaces also can require a disproportionate

expenditure of operations funds to be spent on building maintenance and upkeep (Ex. 9042 at 8-10; RR43:137), often to the benefit of a private landlord to enhance a facility the public will never own. (RR43:44).

RFOF 89. Charter schools must pay property taxes when leasing from private landowners (RR42:184; RR43:46-47, 98, 138), another expense that drains resources otherwise available for student instruction and an expense that school districts do not bear for their facilities.

RFOF 90. The uncontroverted evidence demonstrates that charter school facilities are inadequate:

- a. Thirty-nine percent (39%) of charter school classrooms meet the Texas standards for general education classrooms. (RR44:111-112; Ex. 9007 at 4 and 11).
- b. Eleven percent (11%) of of Texas charter school facilities meet the Texas standards for overall size. (Ex. 9007 at 4 and 11; RR43:122-124).
- c. Approximately 70 percent (70%) of Texas charter school students qualify for free or reduced priced meals. However, only 39 percent (39%) of Texas charter schools have kitchen facilities that meet federal standards (Ex. 9007 at 6).
- d. More than 69 percent (69%) of Texas charter schools do not have their own athletic fields or access to one nearby. Eighteen percent (18%) of Texas charter schools with elementary grades do not have their own playground or access to one nearby. Forty percent (40%) of Texas charters do not have a gymnasium or access to one that is in reasonable proximity. (Ex. 9007 at 7).
- e. Fifty-seven percent (57%) of Texas charter schools do not have a library. Thirty-five percent (35%) of Texas charter schools do not have a science lab. Fifty-six percent (56%) of charter schools do not have an Art or a Music Room. (Ex. 9007 at 8).
- f. Numerous charter schools reported insufficient natural day-lighting and too few windows with views of outside. (Ex. 9007 at 8).

2. **The structure of the FSP for charter schools results in a disparity of funding between charter schools and school districts that is inefficient.**

RFOF 91. Calculating under the professional methodologies and approaches used by the State's expert witnesses in prior school finance cases, the Wood, Rolle report finds that charter schools receive less revenue per student than do school districts. (Ex. 9052, Wood, Rolle Report, Tables 1-5 and Tables 1-5 Summaries).

- RFOF 92. Comparing total FSP revenue (M&O + I&S funds) for school districts and charter schools, the Wood, Rolle report shows that on average for five school years, school districts have received \$1,575 more per ADA each year than open-enrollment charter schools. (RR44:31; Ex. 9052 at 10, Table 1 Summary).
- RFOF 93. Contrary to the findings in the Wood, Rolle report (Ex. 9052), Dr. Lisa Dawn-Fisher testified on behalf of the State of Texas that charter schools receive more funding per ADA than charter schools receive. (RR33:108-109). The significant distinction between Dr. Anthony's Rolle's analysis and Dr. Dawn-Fisher's analysis is that Dr. Rolle's comparisons use each school district/charter school as the unit of analysis, where Dr. Dawn-Fisher uses individual students as the unit of analysis. Dr. Rolle's use of the school district/charter school as the unit of analysis is the most proper approach because (1) the State's FSP funds school districts and charter schools, not individual students, (2) in school finance research generally, district comparisons have the most value because school districts use their individual property values to determine the amount of dollars that will be received from the State, (3) this approach is established as a professional standard for school finance experts in *Measurement of Equity in School Finance*, and (4) using a student-level comparison acts as if districts do not exist. For these reasons, only the State of Hawaii has only one district where Dr. Dawn-Fisher's student level analysis would be appropriate. (RR44:18-20).
- RFOF 94. When measured by WADA, the Wood, Rolle found that charter schools are funded, on the average, \$1,000 less per student than are school districts. However, a comparison of funding between school districts and charter schools adjusted for similar size reveals a deficit for the charter schools of \$2,243 per student. (RR44:69-76; Ex. 9052 at 10 (Table 1 Summary), 16 (Table 2 Summary), 22 (Table 3 Summary), 28 (Table 4 Summary), 35 (Table 5 Summary)).
- RFOF 95. The State's own data set, as prepared by TEA Associate Commissioner for School Finance Dr. Lisa Dawn-Fisher and her staff, confirms the statewide per WADA disparity between school district and charter school funding. (Ex. 11470; Ex. 11475; Ex. 9064; Ex. 9065; Ex. 9071).
- a. Whether the per-WADA analysis is performed using the student as the unit of analysis (the State's preferred methodology) or using the district as the unit of analysis (the charter plaintiffs' preferred methodology), a disparity in FSP funding is evident. (Ex. 9071 at 10-14).
 - b. Using the student as the unit of analysis, from FY2006 through FY2015, ISDs received more FSP funding per student than charter schools in every year. (Ex. 9071 at 10). The annual funding gap in those years ranged from \$722 to \$1,138. In 2014, for example, the average FSP funding per WADA for school districts was \$6,565; the average FSP funding per WADA for

charters was \$5,467; leaving a disparate gap in funding for 2014 at \$1,098 per WADA. (Ex. 9071 at 11, 14).

- c. Using the district as the unit of analysis, from FY2006 through FY2015, ISDs received more FSP funding per student than charter schools in every year. (Ex. 9071 at 10; Ex. 9065). The annual funding gap in those years ranged from \$482 to \$1,251. In 2014, for example, the average FSP funding per WADA for school districts was \$6,538; the average FSP funding per WADA for charters was \$5,480; leaving a disparate gap in funding for 2014 at \$1,058 per WADA. (Ex. 9071 at 12-14).
- d. TEA's own graphs admit the conclusions reached by the Wood, Rolle report (Ex. 9052), and by the TCSA (Ex. 9071) that statewide disparities exist between per WADA funding for school districts and charter schools. (Ex. 11476 at 24-26). In fact, the State's funding gap data matches the TCSA data precisely. (Compare Ex. 11476 at 24 and Ex. 9071 at 10).
- e. The State admits a 20% per WADA funding gap between school districts and charter schools in FY2013, FY2014 and FY2015. (Ex. 11476 at 24). This is the highest gap in per-WADA funding reported by TEA for the period FY2006 to FY2015.

RFOF 96. Applying these disparities at the local level, almost all charter schools receive less funding per WADA than the nearby school district receives.

- a. Ser Niños Charter School in Houston received less State funding per WADA than Houston ISD in every school year from 2006 through 2012. The disparities ranged from \$560 per WADA in 2011 to \$877 per WADA in 2006. (Ex. 9056 at 15; RR44:128-129).
- b. YES Prep Public Schools in Houston received less State funding per WADA than Houston ISD in every school year from 2006 through 2012. The disparities ranged from \$343 per WADA in 2006 to \$475 per WADA in 2012. (Ex. 9056 at 16; RR44:129).
- c. Wayside Public Schools in Austin received less State funding per WADA than Austin ISD in every school year from 2006 through 2012. The disparities ranged from \$653 per WADA in 2006 to \$1,692 per WADA in 2012. (Ex. 9056 at 17; RR44:129-130).
- d. A similar schools analysis, which used the State's data (*i.e.*, Ex. 11470) to compare same-sized public schools from the same geographic area serving the same student population in school years 2012 to 2015, shows (Ex. 9067):
 - i. The four charter schools in Galveston County (Ambassadors Preparatory Academy, Premier Learning Academy, Mainland Preparatory Academy, and Odyssey Academy) received far less per student funding than their similarly situated school district counterparts (High Island ISD and

Hitchcock ISD) in every school year from 2012 to 2015. The disparities were experienced on an ADA and WADA basis. (Ex 9067; Ex. 9071 at 18-20; RR61:44-45).

- ii. Three charter schools in Southeast Texas (Tekoa Academy of Accelerated Studies, Ehrhart School, and Bob Hope School) received far less per student funding than Sabine Pass ISD, a similarly sized ISD in the same geographic area in every school year from 2012 to 2015. These disparities were experienced on an ADA and WADA basis. (Ex. 9067; Ex. 9071 at 21-23; RR61:46).
- iii. Ten charter schools in Austin (Wayside Schools, NYOS Charter School, Texas Empowerment Academy, Chaparral Star Academy, Harmony Science Academy, Cedars International Academy, UT Elementary Charter School, KIPP Austin Public Schools, Austin Discovery School, and the East Austin College Prep Academy) received less per student funding than Austin ISD. While the charter v. Austin ISD ADA funding gap is not considerable (albeit present), the charter v. Austin ISD WADA gap is incredibly large at over \$1,000 per WADA even though Austin ISD is larger than its charter school counterparts. (Ex. 9067; Ex. 9071 at 25-27; RR61:47).
- iv. The similar schools analysis proves that the existing FSP funding formula for charter schools does not work. Considering the purposes of the weights and adjustments within the funding formulas, these same-sized and similarly located public school systems ought to produce the same funding outcomes, but they do not, evidencing the arbitrariness and unsuitability of the system. Funding outcomes consistently are skewed downward for charter schools because charter schools receive the Average Allotment and do not receive Facilities Funding.

RFOF 97. The Court finds that every charter school in Texas (except one⁹) received \$5,000-\$6,000 per WADA in FY 2013, 2014 and 2015, regardless of their varying sizes and geographic locations across Texas. (RR61:51; Ex. 9071 at 27-29; Ex. 9066).

⁹ One charter school with just over 200 students received \$6,018 (FY2014) and \$6,068 (FY2015) per WADA, placing it out of the \$5,000-\$6000 range but within less than \$100. (RR61:49).

Distribution of Foundation School Program Funding
 Source: Expert Report submitted by Dr. Lisa Dawn Fisher on 1/31/2014

Number of Districts in Range (FSP per WADA)								
Range	Charters				ISDs			
	2012	2013	2014	2015	2012	2013	2014	2015
4000-5000					2	8	5	4
5000-6000	190	193	201	201	341	389	356	256
6000-7000	6	1	1	1	445	429	475	545
7000-8000					123	93	109	133
8000-9000					55	39	28	32
9000-10000					17	23	18	22
10000-11000					17	4	6	3
11000-12000					7	9	8	9
12000-13000					4	10	6	6
13000-14000					5	3	1	3
14000-15000					2	3	4	3
15000-16000					1	4	2	
16000-17000					3	1		2
17000-18000					1			
18000-19000						2	1	1
19000-20000							1	1
20000+						3		

Prepared by Toni Templeton Data Analyst Texas Charter Schools Association

RFOF 98. All charter schools are collapsed within the funding range of \$5,000 to \$6,000 per WADA because charter schools receive the Average Allotment and no facilities funding. This is clear evidence that charter schools do not receive the full benefit and advantage of the FSP's funding adjustments such as for size, sparsity, and the cost of education index. This range analysis demonstrates the school finance system is arbitrary and unsuitable as to charter schools.

RFOF 99. By contrast, school districts in FY2013, 2014 and 2015 received funding varying from \$4,000 to \$20,000 per WADA, signaling that the various individualized adjustments and facilities funding within the FSP are working to the school districts' benefit. (Ex. 9071 at 28; Ex. 9066). Even though school districts suffer from the inadequacy of the current finance system and the outdated program weights, the system does at least generate State funds for school districts that match the individual characteristics of each school district and affords school districts opportunities for facilities funding.

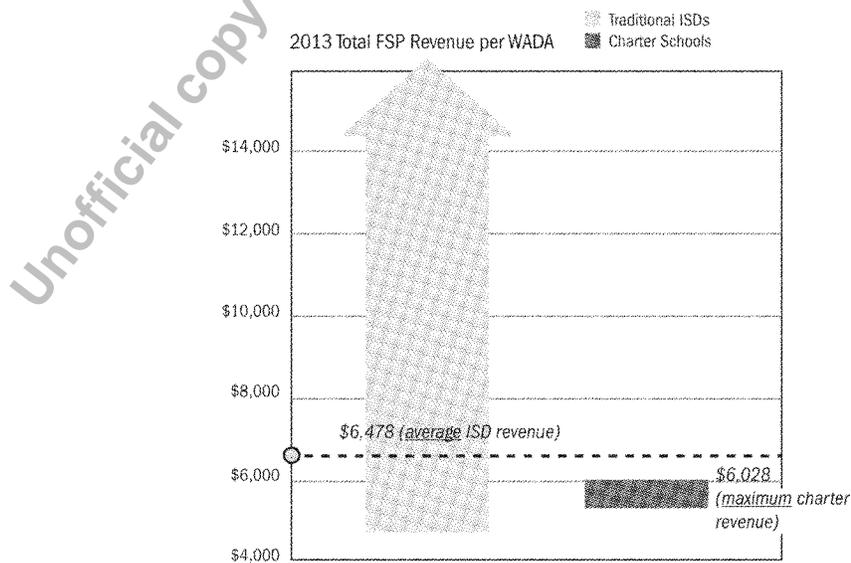
RFOF 100. The Court further finds that school districts that receive per WADA funding in the \$5,000 to \$6000 range have higher WADA counts than charter schools in the same range. (Ex. 9071 at 29; Ex. 9066). This means that school districts can generate more revenue for each student in this range than charter schools can (RR61:51; Ex. 9071 at 27-29; Ex. 9066), which is another factor pointing to the inefficient disparity between school district and charter school funding.

Distribution of Foundation School Program Funding
Source: Expert Report submitted by Dr. Lisa Dawn Fisher on 1/31/2014

Range	Average WADA of Districts in Range (FSP per WADA)							
	Charters				ISD			
	2012	2013	2014	2015	2012	2013	2014	2015
4000-5000					104	422	537	736
5000-6000	1032	1261	1376	1628	2983	3978	2515	2274
6000-7000	1173	210	217	248	7096	7772	8396	7390
7000-8000					9370	9951	10564	10880
8000-9000					5257	2945	3042	4234
9000-10000					1975	1260	1566	1429
10000-11000					981	844	686	1004
11000-12000					935	1250	1097	998
12000-13000					826	520	495	475
13000-14000					511	396	339	378
14000-15000					295	932	584	725
15000-16000					426	980	365	
16000-17000					664	430		365
17000-18000					213	219		
18000-19000						560	655	667
19000-20000							428	438
20000+					347	313		

Prepared by Toni Templeton Data Analyst Texas Charter Schools Association

RFOF 101. In 2013, 2014 and 2015, even the charter school with the *greatest* FSP revenue per WADA received less than the ISD statewide average of per WADA. (Ex. 9071 at 17). The chart below depicts the funding disparity for 2013 alone.



RFOF 102. The gap in per-WADA FSP funding between charter schools and school districts arises from two sources, (1) the M&O gap, and (2) the I&S gap.

- a. The M&O Gap: The use of the Average Allotment in the funding formulas for charter schools contributes to the continual disparity in the amount of per pupil funding a charter school receives compared to the amount of per pupil funding a school district receives. The amount of this disparity was \$403 in 2014; \$407 in 2015. (RR61:39; Ex. 9071 at 15).
- b. The I&S Gap: The lack of facilities funding for open-enrollment charter schools contributes to the continual disparity in the amount of per pupil funding a charter school receives and the amount of per pupil funding a school district receives. The amount of this disparity was \$655 in 2014 and \$667 in 2015. (RR44:41-44; RR61:39; Ex. 9071 at 15).
- c. Together, the M&O Gap and the I&S Gap resulted in charter schools receiving \$1,058 less per WADA in 2014 and \$1,074 less per WADA in 2015. (Ex. 9071 at 15). In terms of real opportunity costs for real kids, this gross funding disparity cost Wayside Schools \$2.3M in one school year, funds that could have been used to retain additional bilingual teachers to support interventions regarding their growing population of educationally disadvantaged and ELL students, and other instructional supports for their students.

I. Neither school districts nor charter schools receive sufficient funding to attain a general diffusion of knowledge.

RFOF 103. Districts need a range of between \$6,176 and \$6,576 per 2010-11 WADA, which is equivalent to between \$6,542 and \$6,966 per 2011-12 WADA, in FSP funding in order to provide a general diffusion of knowledge. (See Ex. 5520; Ex. 6325).

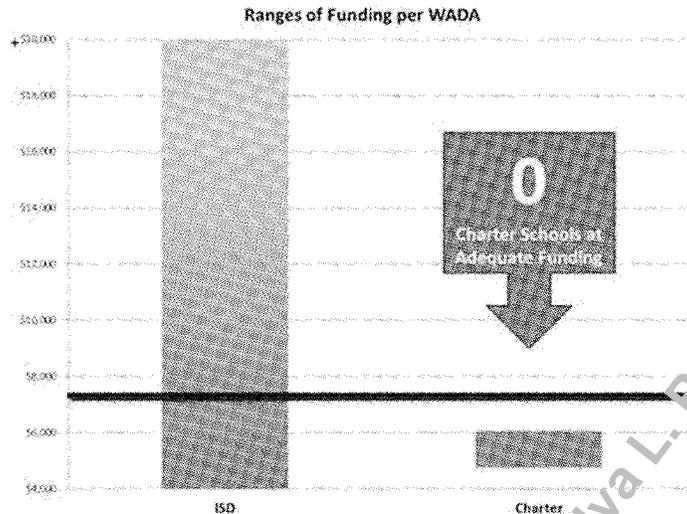
RFOF 104. Dr. Allan Odden used an evidence-based approach to determine the cost of providing the appropriate interventions to meet the State's standards. His estimate indicates that districts needed, on average, \$6,176 per 2011 WADA or \$6,542 per 2012 WADA.

RFOF 105. Mr. Lynn Moak testified that districts need, on average, \$1,000 more per WADA, which translates to \$6,562 per 2011 WADA or \$6,951 per 2012 WADA.

RFOF 106. In *Edgewood IV*, the Court stated, in footnote 10: "Based on the evidence at trial, the district court found that meeting the accreditation standards, which is the legislatively defined level of efficiency that achieves a general diffusion of knowledge, requires about \$3,500 per weighted student." (RR 9:122). See also *Edgewood IV*, 917 S.W.2d at 755 and n.10. When adjusted for inflation, this number is equivalent to \$6,576 in 2011 (or \$6,966 in terms of 2011-12 WADA),

and is a reasonable and credible estimate of the cost of achieving a general diffusion of knowledge. (RR 9:123; RR 16:23-26).

- RFOF 107. The State of Texas produced no credible evidence to refute the estimates by Dr. Odden or Mr. Moak concerning the cost of meeting the State's standards.
- RFOF 108. According to data in the State's report for 2011, only one charter school received more than Odden's estimate of \$6,176 per WADA to achieve State standards. (Ex. 9013; Ex. 11470).
- RFOF 109. According to data in the State's report for 2011, no charter school received more than Moak's estimate of \$6,562 per WADA to achieve State standards. (Ex. 9013; Ex. 11470).
- RFOF 110. According to data in the State's report for 2012, no charter school received more than Odden's estimate of \$6,542 per WADA to achieve State Standards. (Ex. 9013; Ex. 11470).
- RFOF 111. According to data in the State's report for 2012, no charter school received more than Moak's estimate of \$6,951 per WADA to achieve State standards. (Ex. 9013; Ex. 11470).
- RFOF 112. The Charter School Plaintiffs established by a preponderance of the evidence that each charter school must be provided at least \$6,951 per WADA to achieve State standards and a general diffusion of knowledge. (RR7:72).
- RFOF 113. In 2011, charter schools on average received only \$5,654 per WADA, an allocation far below the estimates of Odden and Moak, to achieve State standards. (Ex. 9013, Ex. 9071 at 9; Ex. 11470).
- RFOF 114. In 2012, charter schools on average received only \$5,761 per WADA, an allocation far below the estimates of Odden and Moak, to achieve State standards. (Ex. 9013; Ex. 9071 at 9; Ex 11470).
- RFOF 115. All three estimates – *Odden's, Moak's and Edgewood IV's* – exceed the average funding received by charter schools, reveal the system to be significantly underfunded and inadequate for charter schools to meet the cost of educating a student in Texas, as necessary to reach a General Diffusion of Knowledge. (Ex. 9013; Ex. 9071 at 9; Ex 11470).



- RFOF 116. Likewise, all three estimates reveal that the current system is inefficient, in that the disparities in funding allow some districts to generate enough revenue to achieve adequacy, while others cannot. *Edgewood I*, 777 S.W.2d at 397 (concluding that the system was neither “financially efficient nor efficient” in the sense of providing the resources necessary for a “general diffusion of knowledge,” and “therefore it violates *article VII, section I of the Texas Constitution.*” (emphasis added)).
- RFOF 117. All three estimates reveal the system to be significantly underfunded and inadequate for charter schools to meet the cost of educating a student in Texas as necessary to reach a General Diffusion of Knowledge.
- RFOF 118. The only evidence in this case shows that the cost of educating a student to achieve GDK in an open-enrollment charter school is at least the same as the cost of educating a student to achieve GDK in a school district. (Ex. 3188, p. 7 and RR42:48-57; Ex. 9048 at 22-23; RR43:124-130; Ex. 9048 at 18-22).
- RFOF 119. The Court finds that charter schools are subject to financial accountability requirements and follow the same State and Federal academic accountability rules as do school districts; are judged by the same State financial accounting rubric as school districts; contribute to and are eligible for the Teacher Retirement System to the same extent as school districts and school district employees; are subject to the Open Meetings Act and Public Information Act as are school districts; are subject to the same State curriculum, graduation, public education information management system (PEIMS), special populations and special education, bi-lingual, pre-k, and health and safety requirements under Chapter 38 of the Education Code as school districts. The Court further finds that like school districts, charter schools must ensure alcohol and tobacco free schools, ensure that students meet their State-mandated immunization requirements, and that students participate in extracurricular activities as governed by Chapter 33 of the Education Code (Ex. 9048 at 22; RR42:48-49;

TEX. EDUC. CODE § 12.1057). Charter schools participating in UIL are subject to UIL rules, and all charter schools must conduct the same criminal background checks of board members and employees as required of school districts. Charter schools are subject to the same civil rights employment laws; and charter schools must compete with school districts for students and for highly-qualified and effective teachers.

- RFOF 120. The State of Texas has provided no contrary evidence that the cost of educating a charter school student is less than the cost to educate a student in a school district (RR42:48-57; Ex. 9048 at 18-23; RR43:124-130). The Court finds that charter schools incur at least the same financial responsibilities and burdens as school districts
- RFOF 121. Moreover, the evidence shows that charter schools are subject to requirements beyond those placed on school districts, subjecting them to additional costs. For example, charter schools must secure approval of educational management services agreements by the Texas Education Agency, they must follow corporate law requirements under the Texas Business Organizations Code, they are required to adhere to federal law compliance and reporting requirements as a 501(c)(3) tax-exempt organization, and must also comply with the statutory and administrative rule requirements regarding amendment, renewal and expansion of the charter. (Ex. 9048 at 23; RR42:54-56).
- RFOF 122. Texas Education Code Section 12.118 requires the State of Texas to conduct an annual evaluation of open-enrollment charter schools. The evaluation must include “an evaluation of the costs of instruction, administration, and transportation incurred by open-enrollment charter schools.” The State has not complied with its statutory duty to evaluate the cost of education in charter schools, nor did they present any expert to testify that the costs of achieving a general diffusion of knowledge for a charter school student is less than the cost for a school district student. TEX. EDUC. CODE § 12.118 (c)(1).
- RFOF 123. Despite the duty imposed by Texas Education Code Section 12.118, the State of Texas has not conducted any analysis of the costs of providing a constitutionally mandated educational opportunity to a student enrolled a charter school. (RR32:74-76).

II. CONCLUSIONS OF LAW

- RCOL 1. Article VII, section 1 of the Constitution requires the Legislature to provide a free public education system that is adequate, suitable and qualitatively and quantitatively efficient. *West Orange-Cove ISD II*, 176 S.W.3d at 751-753.
- RCOL 2. Public school districts and public charter schools are primary implementers of the public school system. The State has failed to provide adequate resources to these public schools so that the schools are able to provide students with the general diffusion of knowledge, as required by Article VII, section 1 of the Texas Constitution.
- RCOL 3. The unconstitutionality of the means of funding charter schools is not dependent upon the unconstitutionality of the means of funding the independent school districts. Public charter schools suffer constitutional violations independent and distinct from those suffered by school districts.
- RCOL 4. However, because Foundation School Program funding for charter schools is based upon an average of funding to independent school districts, if the system of funding of independent school districts does not meet the constitutional standards of adequacy, suitability, or efficiency, *a fortiori*, it must likewise be unconstitutional as to the charter schools.
- RCOL 5. While the Legislature enjoys flexibility and discretion in determining how public schools are funded, that discretion is subject to constitutional limitations. Profoundly inadequate and inequitable public school funding, whether between school districts or between school districts and public charter schools, is unconstitutional. Moreover, such inadequacy and inequity cannot be the result of an arbitrary decision of the Texas Legislature in the means it provides a Texas public school to reach the constitutionally required general diffusion of knowledge.
- RCOL 6. Although the Legislature is not required to establish either independent school districts or charter schools, once it acts to do so, it must act in accordance with the Texas Constitution to fund these systems adequately, suitably, efficiently, equitably, and not arbitrarily deny public school students a general diffusion of knowledge. Article VII, section 1.
- RCOL 7. Based on the Findings of Fact, the Court concludes that the means by which charter schools are funding does not provide for the constitutionally required general diffusion of knowledge. The system does not provide adequate funds to charter schools. It is certainly not suitable for charter schools and as such, it is not efficient.

THE FUNDING SYSTEM FOR CHARTER SCHOOLS IS INADEQUATE

- RCOL 8. A constitutionally adequate public school finance system provides opportunity for a general diffusion of knowledge, and whether the public education system is constitutionally adequate in fulfilling its purpose depends upon whether the public education system is reasonably able to provide all Texas public school children access to a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our State and nation. *West Orange-Cove ISD II* at 787; TEX. EDUC. CODE § 4.001(a).
- RCOL 9. The Court adopts \$6,542 as the amount of FSP funding per 2012 WADA necessary to provide a general diffusion of knowledge, as testified to by Dr. Allan Odden. No charter school in Texas received funding at this level in 2012. Because charter schools have not received sufficient State funding to achieve the State's college readiness standards the current school finance system is inadequate as to open-enrollment charter schools.
- RCOL 10. Further, because more than a majority of charter school students are failing to meet college readiness standards, the Court finds that the current school finance system for charter schools is not providing for a general diffusion of knowledge.
- RCOL 11. The Texas Supreme Court has held also that the school finance system is inadequate "if it is so designed that it *cannot* accomplish a general diffusion of knowledge." *West Orange Cove II*, 176 S.W.3d at 789. The charter school funding mechanism cannot accomplish a general diffusion of knowledge because it is designed so that (a) the use of a statewide average in the charter school's funding formulas does not provide adequate individualized funding for each charter school, and (b) the denial of facilities funding requires all charter schools to use their instructional funds to meet facility needs.
- RCOL 12. The Texas Supreme Court has held further that adequate school facilities are necessary to the functioning of the Texas public school system, noting that "An efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place. These components of an efficient system – instruction and facilities – are inseparable." *Edgewood IV*, 917 S.W.2d at 726. The Court further finds that in order to provide an adequate education, districts must have adequate facilities, which requires access to sufficient funds to build new facilities and maintain and renovate current ones.
- RCOL 13. The Court finds that charter schools do not receive facility support or adequate funding to compensate for lack of facility support and as a result, many have inadequate facilities in which to educate public school children. Too many charter schools do not have adequate classrooms, libraries, science labs, art rooms, music rooms, kitchens, athletic spaces, gymnasiums, or environmental characteristics.

RCOL 14. The Charter School Plaintiffs have demonstrated that the funding system is inadequate to permit all students attending charter schools an opportunity to attain the general diffusion of knowledge required by Article VII, section 1.

THE FUNDING SYSTEM FOR CHARTER SCHOOLS IS UNSUITABLE.

RCOL 15. “Suitability” under Article VII, section 1 “refers specifically to the means chosen to achieve an adequate education through an efficient system.” *West Orange Cove II*, 176 S.W.3d at 793. “[S]uitable provision’ requires that the public school system be structured, operated, and funded so that it can accomplish its purpose for all Texas children.” *Id.* at 753.

RCOL 16. The Supreme Court held that the “suitable provision” clause would be violated “if the Legislature substantially defaulted on its responsibility such that Texas school children were denied access to the education needed to participate fully in the social, economic, and educational opportunities available in Texas. *Id.* at 794 (citation and internal quotation marks omitted)

RCOL 17. The Court concludes that the means chosen by the Legislature to fund the charter schools are unsuitable as defined by the Texas Supreme Court because by using the statewide average in the charter school funding formulas, the system does not provide adequate individualized funding for each charter school, and therefore, no charter school will receive the appropriate benefit of an individual adjustment for cost of education, location, or school size.

RCOL 18. The Court concludes that the purpose of adjusting the Basic Allotment is to provide a constitutionally suitable system by compensating school systems for their individual cost of education, location, and school size. This purpose is not attainable for charter schools because individualized adjustments are not made. Instead, a statewide average is applied. There is no portion of the Foundation School Program funding for charter schools that is not affected by the use of a statewide averaged adjusted allotment.

RCOL 19. The “suitable provision” clause is also violated by the Legislature defaulting on its responsibility to make a reasonable effort to determine what it will cost to adequately and suitably provide for its own standards so that it can ensure that the system is in fact “structured, operated, and funded so that it can accomplish its purpose for all Texas children.”

RCOL 20. The State further has failed to make suitable provision for charter schools because the State is relying on outdated, arbitrary weights and allotments that do not reflect the actual cost of education to determine funding levels for charter schools, and further cutting that funding by appropriating school finance funds based upon funds that are available, rather than what funds are required.

RCOL 21. The funding mechanism for charter schools, established by averaging funding of independent school districts based on those districts’ locations and

demographics, bears no relationship to the funding needs of the charter schools. For such reason, the school finance system as to charter schools is arbitrary and unsuitable.

- RCOL 22. Additionally, as this Court has found the State's public school funding system to be inadequate and unsuitable as a whole, the Charter School Plaintiffs must also prevail on their claim that funding for open-enrollment charter schools is inadequate and unsuitable under Article VII, section 1.

THE FUNDING SYSTEM FOR CHARTER SCHOOLS IS INEFFICIENT

- RCOL 23. A system that allows some public schools to raise the revenue amount necessary to achieve a general diffusion of knowledge while others cannot do so because they have no tax authority denies "substantially equal access to funding up to the legislatively defined level that achieves the constitutional mandate of a general diffusion of knowledge," *WOC I*, 107 S.W.3d at 571 (quoting *Edgewood IV*, 917 S.W.2d. at 730-31), and is unconstitutionally inefficient.
- RCOL 24. The Supreme Court also has held that the proof of constitutional inefficiency requires evidence of an inability to provide for a general diffusion of knowledge without additional facilities and that constitutional efficiency requires substantially equal access to revenue for facilities. *West Orange Cove II*, 176 S.W.3d at 792.
- RCOL 25. Inadequate funding, caused in part because of lack of facilities funding, the average allotment and outdated weights, compromises the ability of open-enrollment charter schools to meet GDK.
- RCOL 26. An efficient system...requires...that the funds available for education be distributed equally and evenly. 777 S.W.2d at 398. The Court finds that the funds available to charter schools are not distributed "equally" and "evenly;" thereby, as to charter schools, the system is inefficient per se.
- RCOL 27. The Legislature, in its discretion, created charter schools to serve as an alternative form of education in Texas, and in doing so, has provided for different personnel requirements, subjects them to different levels of oversight and regulation, and allows them more flexibility in delivering curriculum to their students. While such differences serve as a rational basis for the Legislature's policy choice to fund charter schools differently than it funds school districts, the Legislature remains constitutionally bound to fund the charter school system efficiently and non-arbitrarily under the requirements of Article I, section VII. The Court finds that the Legislature has funded charter schools inefficiently and arbitrarily.
- RCOL 28. Failure of the Texas Legislature to conduct cost of education studies as required by Texas Education Code Section 12.118, and specifically the failure of the State to compare the cost of education in charter schools to that of school districts,

deprives the State of any reason or support for the significant disparity in that average per student funding provided to charter schools when compared to the average per student funding provided to school districts, violating the efficiency clause of Article VII, section I of the Texas Constitution.

- RCOL 29. Because the ISD Plaintiff Parent/Taxpayer Plaintiffs prevailed on adequacy, suitability and efficiency, and because all these Parent/Taxpayer Plaintiffs pay taxes to public school district systems regardless of which school they choose for their students, the Charter School Parent/Taxpayer Plaintiffs also necessarily prevail on these claims under Article VII, section 1.
- RCOL 30. The increase in Foundation School Program funding of \$3.4 billion does not impact the Charter School Plaintiffs' adequacy, suitability and efficiency claims as the funding for open-enrollment charter schools remains inadequate and unsuitable under Article VII, section I.
- RCOL 31. Because the changes made by the 83rd Legislature did not change the structure of the funding mechanism for public charter schools, the Charter School Plaintiffs' adequacy, suitability, and efficiency claims remain unchanged, and the school finance system as applied to open-enrollment charter schools remains inefficient and therefore unconstitutional under Article II, section 1.
- RCOL 32. The formulas used to fund charter schools, ignoring facility needs and averaging funding of independent school districts based on those districts' locations, demographics, and tax efforts, has no connection to the funding needs of the charter schools. For such reason, the school finance system is inefficient as to charter schools.

THE FUNDING SYSTEM FOR CHARTER SCHOOLS DENIES EQUAL PROTECTION

- RCOL 33. The Equal Protection Act directs governmental actors to treat all similarly situated persons alike. *Sanders v. Palunsky*, 36 S.W.3d 222, 224–25 (Tex. App.--Houston [14th Dist.] 2001, no pet.) (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-41 (1985)). Where neither a suspect classification nor a fundamental right is involved, the challenged law survives constitutional scrutiny if it is rationally related to a legitimate governmental purpose. See *Kedmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 457-58 (1988). However, the Texas Constitution makes constitutionally compliant funding of public education a fundamental right, and regardless of the appropriate degree of scrutiny applied will judge that funding under Article VII, section I. (*Neeley v. West Orange-Cove Consol. Independent School Dist.*, 176 S.W.3d 746, 784 (Tex. 2005)).
- RCOL 34. In addition to violating Article VII, section I of the Texas Constitution, Section 12.106 of the Texas Education Code, which sets out the manner in which charter schools are funded, also violates Equal Protection under Article I, section 3 of the Texas Constitution because charter schools are arbitrarily denied separate facilities funding. (*Texas Constitution*, Article I, section 3).

THE CHARTER SCHOOLS SHALL RECOVER THEIR ATTORNEYS FEES

- RCOL 35. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the Charter School Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of \$ _____, an amount that this Court finds to be both reasonable and necessary and equitable and just. While the Court initially denied fees at the conclusion of the first phase of this trial, upon reconsideration, and in light of the Charter School Plaintiffs' presentation during the second phase of this litigation, the Court finds that the Charter School Plaintiffs have added to the overall success of the plaintiff groups and should be, and hereby are awarded their fees and costs in this matter.
- RCOL 36. The Charter School Plaintiffs are "successful parties," having succeeded upon several of their claims, including, but not limited to, an overall declaratory judgment that the funding of the Texas School Foundation program is unconstitutionally inadequate, not suitable and does not deliver a general diffusion of knowledge. "A 'successful party' is one who obtains a judgment of a competent court vindicating a civil claim of right." *Madison v. Williamson*, 241 S.W.3d 145, 157 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (quoting *Univ. of Houston–Clear Lake v. Marsh*, 981 S.W.2d 912, 914 (Tex. App.—Houston [1st Dist.] 1998, no pet.); accord *Bayer Corp. v. DX Terminals, Ltd.*, 214 S.W.3d 586, 611–12 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). The entry of the judgment will materially alter the Charter Schools Plaintiffs' legal relationship with Defendants.
- RCOL 37. The Court also is awarding attorneys' fees because the efforts of the Charter School Plaintiffs' attorneys rendered a public service and resulted in a benefit to the general public, in addition to serving the interests of the Plaintiffs. See *Campbell v. Gen. Motors Corp.*, 19 F. Supp. 2d 1260, 1269 (N.D. Ala. 1998); *Ex parte Horn*, 1998 WL 32590, at *8–9 (Ala. 1998); see also *Polonski v. Trump Taj Mahal Associates*, 137 F.3d 139, 145 (3d Cir. 1998) (applies when litigants "confer a common benefit upon a class of individuals *not participating in the litigation*") (emphasis added).
- RCOL 38. The sum awarded to the Charter School Plaintiffs shall bear post-judgment interest at the rate of five percent (5%), compounded annually, from the date the judgment is signed until the judgment is paid in full.
- RCOL 39. The Charter School Plaintiffs shall recover from the State Defendants appellate attorneys' fees in the following amounts that the Court also finds to be reasonable and necessary and equitable and just:
- a. \$325,000 if the State Defendants seek and obtain direct review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date the direct

appeal is perfected in the Texas Supreme Court, with all such post-judgment interest to run until the judgment against the State Defendants is paid in full; or

- b. (i) \$325,000 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date of the notice of appeal in the Court of Appeals; plus (ii) \$100,000 if the State Defendants seek review in the Texas Supreme Court, with post-judgment interest to accrue on said amount at the rate of five percent (5%), compounded annually, from the date a petition for review is filed with the Supreme Court of Texas; with all such post-judgment interest to run until the judgment against the State Defendants is paid in full.

RCOL 40. If, following an appeal, the Charter School Plaintiffs do not prevail on one or more of their claims, the Court finds that this award of attorneys' fees would still be equitable and just under Section 37.009 of the Texas Civil Practice and Remedies Code, because they have made significant contributions to the public debate on school finance law through this lawsuit. *See Scottsdale Ins. v. Travis*, 68 S.W.3d 72, 77 (Tex. App.—Dallas 2001, pet. denied) (“Under the [UDJA], attorney’s fees may be awarded to the non-prevailing party.”).

THE STATUTORY CAP ON OPEN ENROLLMENT CHARTER SCHOOLS IS ARBITRARY

RFOF/RCOL 41. A charter holder may open more than one campus under the charter, but only after first applying for an amendment with TEA and meeting the administrative regulations and requirements for expansion. (RR41:17; RR42:57).

RFOF/RCOL 42. David Dunn, the Director of TCSA, as a former official for the Texas Comptroller of Public Accounts, advisor to Texas Governor William Clements on school finance issues, liaison with the Legislature on school finance issues, member of a special consortium created by the State Legislature to study school finance, and author of a report to the Texas Legislative Budget Board on charter schools to improve the condition of education within Texas, which influenced the final statute authorizing the creation of charter schools and which was passed and signed into law in 1995, testified that the State did not have any rational basis for limiting the number of the allowable charters. (RR44:102-103).¹⁰

¹⁰ The State objected to Mr. Dunn’s testimony as testimony calling for a legal conclusion. The court sustained the objection after Mr. Dunn had testified that he knew of no rational basis for the establishment of a maximum number of charter schools. However, the Charter School Plaintiffs’ Article I, section III equal protection claims were accompanied by Article VII, section I claims which will not allow the Legislature to structure a public school system that is inadequate, inefficient, unsuitable, or arbitrary regardless of whether it has a rational basis or even a compelling reason for doing so. (*Neeley v. West Orange-Cove Consol. Independent School Dist.*, 176 S.W.3d 746, 784 (Tex. 2005)).

RFOF/RCOL 43. The statutorily imposed charter cap of no more than 215 allowable charters was reached in 2008. At the time of trial, there are 209 active charters with over 500 charter campuses. (RR41:16-17). The Charter School Plaintiffs pled and argued no rational basis for the cap on the number of permitted charter schools. (RR42:77; RR44:105, 122). Defendants offered no evidence, financial or otherwise, for the Legislature's imposition of a cap on the number of permitted charter schools. (RR41:36-37). The Court finds no rational basis for the imposition of limitations of the number of charter schools.

RFOF/RCOL 44. SB2 increases the cap on the number of open-enrollment charters by 10 (for a total of 225) beginning September 1, 2014. Under Senate Bill 2, the cap on the number of open-enrollment charters that may be granted by the Commissioner of Education increases by 15 each year after September 1, 2014 until September 1, 2019, when a firm statutory cap of 305 is imposed. (RR61:121).

RFOF/RCOL 45. While SB2 increases the cap on the number of open-enrollment charters that may be granted by the Commissioner of Education, a total cap on the number of open-enrollment charter schools remains.

SIGNED _____

JOHN K. DIETZ
JUDGE, 250th District Court
Travis County, Texas

Unofficial copy Travis Co. District Clerk Velda Price