

NO. GV-100528

WEST ORANGE-COVE CONSOLIDATED
INDEPENDENT SCHOOL DISTRICT;
COPPELL INDEPENDENT SCHOOL
DISTRICT; LA PORTE INDEPENDENT
SCHOOL DISTRICT; PORT NECHES-
GROVES INDEPENDENT SCHOOL
DISTRICT, DALLAS INDEPENDENT
SCHOOL DISTRICT, AUSTIN
INDEPENDENT SCHOOL DISTRICT,
HOUSTON INDEPENDENT SCHOOL
DISTRICT, *et al.*

Plaintiffs,

VS.

SHIRLEY NEELEY, TEXAS
COMMISSIONER OF EDUCATION;
TEXAS EDUCATION AGENCY; CAROL
KEETON STRAYHORN, TEXAS
COMPTROLLER OF PUBLIC
ACCOUNTS; and TEXAS STATE BOARD
OF EDUCATION,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

250TH JUDICIAL DISTRICT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimonial and documentary evidence in the record, this Court makes the following findings of fact and conclusions of law:

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I. General Findings of Fact

A. Parties to this action and the use of “Focus Districts.”

For purposes of these Findings of Fact and Conclusions of Law, the Court provides the following definitions of the parties:

FOF 1. **West Orange Cove Plaintiffs** -- The “West Orange Cove Plaintiffs” (1) include property-rich and property-poor districts, (2) include urban, suburban, and rural districts, and (3) hail from nearly every geographic region of the State. These districts are:

West Orange-Cove Consolidated Independent School District (“CISD”), Coppell Independent School District (“ISD”), La Porte ISD, Port Neches-Groves ISD, Dallas ISD, Austin ISD, Houston ISD, Alamo Heights ISD, Allen ISD, Argyle ISD, Beckville ISD, Carrollton-Farmers Branch ISD, Carthage ISD, College Station ISD, Cypress-Fairbanks ISD, Darrouzet ISD, Deer Park ISD, Fairfield ISD, Graford ISD, Grapevine-Colleyville ISD, Hallsville ISD, Highland Park ISD, Humble ISD, Katy ISD, Kaufman ISD, Lake Travis ISD, Lewisville ISD, Lubbock ISD, Marble Falls ISD, McCamey ISD, Miami ISD, Northeast ISD, Northside ISD, Northwest ISD, Palo Pinto ISD, Pearland ISD, Plano ISD, Pringle-Morse Consolidated ISD, Richardson ISD, Round Rock ISD, Round Top-Carmine ISD, Spring Branch ISD, Spring ISD, Stafford Municipal ISD, Sweeny ISD, Terrell ISD, Texas City ISD.

The West Orange Cove Plaintiffs’ causes of action are described *infra* FOF 12-FOF 13.

FOF 2. **Edgewood Intervenors** -- The “Edgewood Intervenors” are the following group of school districts, who appeared in this suit by filing a Plea in Intervention and who are asserting affirmative claims for relief against the State Defendants:

Edgewood ISD, Ysleta ISD, Laredo ISD, San Elizario ISD, Socorro ISD, South San Antonio ISD; La Vega ISD, Kenedy ISD, Harlandale ISD, Brownsville ISD, Pharr-San Juan-Alamo ISD, Sharyland ISD, Monte Alto ISD, Edcouch-Elsa ISD, Los Fresnos ISD, Raymondville ISD, Harlingen CISD, Jim Hogg County ISD, La Feria ISD, Roma ISD, San Benito ISD, and United ISD.

These districts are low-wealth districts and include many of the original plaintiffs that filed the *Edgewood* school finance litigation in 1984. Their causes of action are described *infra* FOF 294.

FOF 3. **Alvarado Plaintiff/Intervenors** -- The “Alvarado Plaintiff/Intervenors” are the following group of school districts, who appeared in this suit by filing a Plea in Intervention and who are asserting affirmative claims for relief against the State Defendants:

Abbott ISD, Academy CISD, Aldine ISD, Alpine ISD, Alvarado ISD, Amarillo ISD, Anna ISD, Anthony ISD, Aspermont ISD, Athens ISD, Aubrey ISD, Avalon ISD, Avery ISD, Axtell ISD, Balmorhea ISD, Bangs ISD, Beeville ISD, Bells ISD,

Belton ISD, Big Sandy ISD, Blanket ISD, Blooming Grove ISD, Boles ISD, Boling ISD, Bonham ISD, Booker ISD, Borger ISD, Bowie ISD, Brock ISD, Brownfield ISD, Bruceville-Eddy ISD, Bryson ISD, Buckholts ISD, Burkburnett ISD, Burkeville ISD, Cameron ISD, Campbell ISD, Canton ISD, Canutillo ISD, Canyon ISD, Central Heights ISD, Central ISD, Chapel Hill ISD, Childress ISD, China Spring ISD, Chireno ISD, Cisco ISD, City View ISD, Cleburne ISD, Clint ISD, Coleman ISD, Collinsville ISD, Commerce ISD, Community ISD, Como-Pickton ISD, Connally ISD, Cooper ISD, Copperas Cove ISD, Corpus Christi ISD, Cotton Center ISD, Covington ISD, Crandall ISD, Crawford ISD, Crosby ISD, Dalhart ISD, Desoto ISD, Detroit ISD, Diboll ISD, Dickinson ISD, Dilley ISD, Dime Box ISD, Dimmitt ISD, Dodd City ISD, Douglass ISD, Driscoll ISD, Early ISD, Ector ISD, El Paso ISD, Electra ISD, Elkhart ISD, Elysian Fields ISD, Ennis ISD, Era CISD, Etoile ISD, Everman ISD, Falls City ISD, Fannindel ISD, Ferris ISD, Forney ISD, Fort Davis ISD, Fort Worth ISD, Frost ISD, Gainsville ISD, Ganado ISD, Garrison ISD, Gilmer ISD, Godley ISD, Grandview ISD, Gregory-Portland ISD, Gunter ISD, Hale Center ISD, Hamlin ISD, Harleton ISD, Hart ISD, Haskell CISD, Hawley ISD, Hearne ISD, Hemphill ISD, Hereford ISD, Hico ISD, Hidalgo ISD, High Island ISD, Holland ISD, Honey Grove ISD, Hubbard ISD, Hudson ISD, Huffman ISD, Huntington ISD, Hutto ISD, Itasca ISD, Jacksboro ISD, Jasper ISD, Joaquin ISD, Karnes City ISD, Kermit ISD, Kirbyville ISD, Knox City-O'Brien CISD, Kountze ISD, Kress ISD, Krum ISD, La Joya ISD, La Pryor ISD, Lake Worth ISD, Lamesa ISD, Lasara ISD, Latexo ISD, Leverett's Chapel ISD, Linden-Kildare CISD, Lingleville ISD, Lipan ISD, Lockhart ISD, Lorena ISD, Louise ISD, Lyford ISD, Lytle ISD, Mabank ISD, Magnolia ISD, Martinsville ISD, McGregor ISD, Meadow ISD, Megargel ISD, Mercedes ISD, Meridian ISD, Merkel ISD, Mesquite ISD, Mildred ISD, Millsap ISD, Mission CISD, Montague ISD, Morton ISD, Motley County ISD, Muenster ISD, Nederland ISD, New Boston ISD, New Castle ISD, New Home ISD, New Summerfield ISD, Newton ISD, Nocona ISD, Nueces Canyon CISD, Olfen ISD, Olton ISD, Orange Grove ISD, Paint Creek ISD, Pampa ISD, Panhandle ISD, Paradise ISD, Paris ISD, Perrin-Whitt CISD, Petersburg ISD, Pflugerville ISD, Poteet ISD, Pottsboro ISD, Prairiland ISD, Premont ISD, Presidio ISD, Princeton ISD, Quanah ISD, Ranger ISD, Redwater ISD, Ricardo ISD, Rice CISD, Rice ISD, Rio Vista ISD, Rivercrest ISD, Robinson ISD, Robstown ISD, Roby CISD, Rochester County Line ISD, Rocksprings ISD, Rogers ISD, Roosevelt ISD, Rosebud-Lott ISD, Rusk ISD, Sam Rayburn ISD, Samnorwood ISD, San Augustine ISD, San Perlita ISD, Sands CISD, Sanford ISD, Santa Anna ISD, Santa Fe ISD, Santa Maria ISD, Seagraves ISD, Seguin ISD, Seymour ISD, Shallowater ISD, Shelbyville ISD, Shepard ISD, Shiner ISD, Sierra Blanca ISD, Sinton ISD, Slaton ISD, Smyer ISD, Socorro ISD, Southside ISD, Splendora ISD, Springtown ISD, Spur ISD, Stamford ISD, Sulphur Bluff ISD, Sulphur Springs ISD, Sunray ISD, Tahoka ISD, Taylor ISD, Tenaha ISD, Texline ISD, Thorndale ISD, Throckmorton ISD, Timpson ISD, Tolar ISD, Tornillo ISD, Trenton ISD, Trinidad ISD, Troup ISD, Troy ISD, Tulia ISD, Uvalde CISD, Valley View ISD, Van Alstyne ISD, Van ISD, Venus ISD, Vernon ISD, Warren ISD, Weatherford ISD, Wellman-Union ISD, Wells ISD, West Hardin County CISD, White Oak ISD and Whitesboro ISD.

The Alvarado Plaintiff/Intervenors' causes of action are described *infra* FOF 295.

FOF 4. **State Defendants** -- The defendants in the case are Shirley Neeley, in her official capacity as Texas Commissioner of Education, the Texas Education Agency (“TEA”), Carole Keeton Strayhorn, in her official capacity as the Texas Comptroller of Public Accounts, and the Texas State Board of Education. The defendants shall be referred to, collectively, as the “State Defendants.”

FOF 5. **Use of “Focus Districts” in this lawsuit** -- Because of the large number of districts involved in this lawsuit, the parties agreed to present proof of their claims through the use of a smaller group of “focus” or “representative” districts. This agreement was incorporated into the Agreed Proposed Scheduling Order filed by the parties on January 28, 2004.

- The West Orange Cove Plaintiffs designated Austin ISD, Carrollton Farmers Branch ISD, Dallas ISD, Humble ISD, Kaufman ISD, Lubbock ISD, North East ISD, Northside ISD, and Spring ISD as “Focus Districts.” These Focus Districts are typical of many districts across Texas.
- The Edgewood Intervenors designated Edgewood ISD, Ysleta ISD, Laredo ISD, San Elizario ISD, South San Antonio ISD; Pharr-San Juan-Alamo ISD, Edcouch-Elsa ISD, and Jim Hogg County ISD as Focus Districts.
- The Alvarado Intervenors did not designate any Focus Districts on the grounds that their causes of action did not lend themselves to proof by individual districts.
- Finally, the State Defendants named its own “Focus Districts” from each set of plaintiffs to highlight issues they wanted to raise, including (1) Monte Alto ISD and Socorro ISD from the Edgewood Intervenors, (2) Alvarado ISD, Bangs ISD, and Mesquite ISD from the Alvarado Plaintiff/Intervenors; and (3) Houston ISD, Terrell ISD, and West Orange Cove CISD from the West Orange Cove Plaintiffs.

B. Basic overview of the Texas public school finance system.

FOF 6. In 1993, the Legislature passed Senate Bill 7, which, as modified slightly by subsequent legislation, is the primary basis for the current system of public school financing in Texas.

FOF 7. Under this legislative scheme, the State relies primarily on local funds to finance public education. Local funds for public education are raised primarily through the local school district property tax. Taxes are levied against locally-assessed property rolls. School districts may set two tax rates each year: (i) a maintenance and operating rate for regular operating expenses (“M&O” rate) and (ii) an interest and sinking fund rate for servicing debt (“I&S” rate). Under provisions of Chapter 45 of the Texas Education Code, locally adopted M&O tax rates are generally subject to a statutory maximum of \$1.50 per \$100 of assessed valuation (the “\$1.50 cap”). In addition, a district’s I&S rate cannot exceed \$0.50 for debt issued after September 1, 1992. The state property tax claim at issue in this case is based upon the M&O rate.

- FOF 8. The public school finance system relies on a two-tiered finance structure known as the Foundation School Program (“FSP”). Under Tier 1 (also known as the “Basic Allotment”), school districts taxing at a rate of \$0.86 per \$100 of assessed property valuation are entitled to a Basic Allotment of \$2,537 for each student in average daily attendance (an amount that has not changed since 1999), subject to various adjustments and special allotments to reflect variations in actual cost. *See* TEX. EDUC. CODE §§ 42.101, 42.252. The Basic Allotment is adjusted by weighting average daily attendance for factors that impact the cost of school district operations; this results in an “Adjusted Allotment.” To the extent that an \$0.86 effective tax rate fails to produce the Adjusted Allotment from the district’s own tax base, the State makes up the difference.
- FOF 9. Tier 2 is often referred to as the “Guaranteed Yield Program.” For every cent of additional tax effort beyond the \$0.86 required for Tier 1, up to the \$1.50 cap on the M&O tax rate, the State guarantees a yield of \$27.14 per weighted student. *See* TEX. EDUC. CODE §§ 42.301-303. As with Tier 1, to the extent that an additional cent of tax effort fails to yield the guaranteed amount from the district’s own tax base, the State makes up the difference. *See id.* § 42.302.
- FOF 10. There is also a third “tier” which works in connection with a district’s I&S rate, whereby the State provides assistance to districts for debt associated with school facilities. While the statute does not explicitly refer to Tier 3, the facilities financing provisions of Chapter 46 of the Education Code are explicitly considered part of the FSP. *See id.* § 42.002. Financing for facilities is discussed in greater depth *infra* at FOF 385-FOF 388.
- FOF 11. The current financing system also establishes an equalized wealth level among districts and requires districts above this level to reduce their wealth. School districts are limited to \$305,000 of property wealth per weighted student, subject to transition guidelines for districts with excess wealth. *See* TEX. EDUC. CODE § 41.002. The State recaptures funds raised by school districts considered property-wealthy (“Chapter 41 districts”) above this level pursuant to wealth-reducing mechanisms defined by statute. *See* TEX. EDUC. CODE §§ 41.003; 41.091-099; 41.121-124. The State then distributes the funds recaptured from the property-wealthy districts to districts considered property-poor (“Chapter 42 districts”). State aid declines as local property wealth per weighted student increases.

II. Findings of Fact Relating to the West Orange Cove Plaintiffs’ Claims.

- FOF 12. The West Orange Cove Plaintiffs assert that the school finance system violates Article VIII, section 1-e of the Texas Constitution, which prohibits the levy of a state ad valorem tax. Specifically, they allege that the statutory \$1.50 cap on maintenance and operations (M&O) tax rates has become both a “floor” (because they cannot meaningfully lower their tax rates without compromising their ability to provide a constitutionally adequate education) and a “ceiling” (because the cap bars them from raising their tax rates further), such that they lack meaningful discretion in setting their M&O tax rates.
- FOF 13. The West Orange Cove Plaintiffs also assert a violation of Article VII, section 1 of the Texas Constitution. Specifically, they assert that certain of them do not have sufficient funding to provide all of their students with a meaningfully opportunity to obtain a constitutionally adequate education (or in Texas constitutional parlance, a “general

diffusion of knowledge”). They further assert that this inadequacy is so pervasive as to constitute a systemic failure to meet the constitutional “general diffusion of knowledge” standard.

FOF 14. The Court finds that the West Orange Cove Plaintiffs have established their state property tax and adequacy claims based upon the following findings.

A. Issues relating both to the state property tax claim and adequacy claim.

- 1. To the extent that the Texas Supreme Court presumed that the “general diffusion of knowledge” is the equivalent of an “academically acceptable” accreditation ranking, Plaintiffs have rebutted that presumption.**

FOF 15. During the initial appeal of this case, the Texas Supreme Court held that pursuant to Article VII, section 1 of the Texas Constitution, the Legislature has an obligation to provide an adequate public school system, i.e., it “must accomplish ‘that general diffusion of knowledge essential to the preservation and liberties and rights of the people.’” *West Orange Cove Consolidated I.S.D. v. Alanis*, 107 S.W.3d 558, 563, 572 (Tex. 2003) (citing TEX. CONST. art. VII, § 1). The Supreme Court also reiterated that the “State’s provision for a general diffusion of knowledge must reflect changing times, needs, and public expectations.” *Id.* (citing *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 732 n.14 (Tex.1995) [*Edgewood IV*]).

FOF 16. The Supreme Court also noted that: “The public school system the Legislature has established requires that school districts provide both an accredited education and a general diffusion of knowledge. It may well be that the requirements are identical; indeed, as in *Edgewood IV*, we presume they are, giving deference to the Legislature’s choices. But it is possible for them not to be--an accredited education may provide more than a general diffusion of knowledge, or vice versa--and because both are binding, a district may allege that taxation at a maximum rate in order to satisfy either is a state ad valorem tax.” *Id.* at 581.

FOF 17. Upon remand, the West Orange Cove Plaintiffs have rebutted any presumption that an accredited education is equivalent to a general diffusion of knowledge, for the reasons set forth below.¹

- a. The Legislature has defined the objectives and mission of the public education system much more expansively than simply the provision of an “academically acceptable” education, as defined in the accountability system.**

FOF 18. In 1995, following *Edgewood IV*, the Legislature articulated its intent to establish a more rigorous curriculum:

¹ Technically, all districts receive accreditation rankings and are thus “accredited.” The Supreme Court’s reference to an accredited education presumably meant an accreditation ranking of “academically acceptable” or above.

“It is the intent of the legislature that the essential knowledge and skills developed by the State Board of Education under this subchapter shall require *all* students to demonstrate the knowledge and skills necessary to read, write, compute, problem solve, think critically, apply technology, and communicate across all subject areas. *The essential knowledge and skills shall also prepare and enable all students to continue to learn in postsecondary educational, training, or employment settings.*” TEX. EDUC. CODE § 28.001 (emphasis added).

FOF 19. The Legislature also has acknowledged its duty to ensure that all Texas school children have access to an adequate education reflecting the reality of the competitive employment market and the changing world. It affirmed that the preservation of democracy and the promotion of the state’s economic well-being were linked to how well the state provided for this general diffusion of knowledge:

“The mission of the public education system of this state is to ensure that *all Texas children have 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. That mission is grounded on the conviction that a general diffusion of knowledge is essential for the welfare of this state and for the preservation of the liberties and rights of citizens.” TEX. EDUC. CODE § 4.001 (emphasis added).²

FOF 20. The Texas Supreme Court concluded that through the passage of Section 4.001, “the Legislature has expressly defined the mission of the public school system, including school districts, to accomplish a general diffusion of knowledge.” *West Orange Cove Consolidated I.S.D.*, 107 S.W.3d at 584 & n.124. As former Lieutenant Governor William Ratliff, who was the author of Senate Bill 7 and the subsequent rewrite of the Education Code in 1995 (via Senate Bill 1), testified, the goal of providing all students access to a quality education is an “attainable” and “very practical” goal.

FOF 21. The Legislature further adopted policy language that explicitly recognized the state’s responsibility in providing adequate resources to afford all students the opportunity to meet these elevated expectations. The policy language also acknowledges that different students have different educational needs and require different resources:

“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 sources so that each student*

² The Court notes that other states have also defined “adequacy” in terms of “opportunity” for all students to acquire the learning objectives prescribed by the state. *See Campaign for Fiscal Equity v. State*, 801 N.E.2d 326, 337 (N.Y. 2003) (noting that the opportunity to receive a constitutionally adequate education “must . . . be placed within the reach of *all students*, including those who present with socioeconomic deficits”) (emphasis added, internal quotation omitted); *Leandro v. State*, 488 S.E.2d 249, 255 (N.C. 1997) (“We conclude that . . . the North Carolina Constitution . . . guarantee[s] every child of this state an *opportunity* to receive a sound basic education in our public schools.”) (emphasis added).

enrolled in the public school system 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 similar student, notwithstanding varying local economic factors.

The public school finance system of this state shall adhere to a standard of neutrality that provides for substantially equal access to similar revenue per student at similar tax effort, considering all state and local tax revenues of districts after acknowledging all legitimate student and district cost differences.” TEX. EDUC. CODE § 4.003; § 42.001 (emphasis added).

FOF 22. The Legislature also adopted a number of educational objectives for the public school system that range significantly beyond providing an “academically acceptable” education, including but not limited to the following objectives:

- Through enhanced dropout prevention efforts, all students will remain in school until they obtain a high school diploma.
- A well-balanced and appropriate curriculum will be provided to all students.
- Qualified and highly effective personnel will be recruited, developed, and retained.
- The state’s students will demonstrate exemplary performance in comparison to national and international standards.
- School campuses will maintain a safe and disciplined environment conducive to student learning.
- Technology will be implemented and used to increase the effectiveness of student learning, instructional management, staff development, and administration.

TEX. EDUC. CODE § 4.001(b).

FOF 23. Moreover, the Legislature set “academic goals” for the public education system, calling for the demonstration of exemplary performance by Texas students in (1) the reading and writing of the English language, (2) the understanding of mathematics; (3) the understanding of science; and (4) the understanding of social studies. TEX. EDUC. CODE § 4.002. While the State has argued that these goals are “aspirational,” the Legislature specifically has stated that the state’s curriculum and assessment/accountability program is designed to achieve the goals set forth in Section 4.002. See TEX. EDUC. CODE §§ 39.021-.022.

FOF 24. Finally, the Legislature’s own statutory statement regarding the purpose of the Foundation School Program funding system is set forth in Section 42.002 of the Education Code:

“The purposes of the Foundation School Program set forth in this chapter are to guarantee that each school district in the state has: (1) adequate resources to provide each eligible student a basic instructional program and facilities suitable to the student’s educational needs; and (2) access to a substantially equalized program of financing in excess of basic costs for certain services, as provided by this chapter.” TEX. EDUC. CODE § 42.002(a) (emphasis added).

FOF 25. Following the Legislature's directives, the State Board of Education in 1996 and 1997 adopted a new curriculum -- the Texas Essential Knowledge and Skills (TEKS), which was taught for the first time in the 1998-99 school year. *See* TEX. EDUC. CODE § 28.002; 19 TEX. ADMIN. CODE §§ 110-128. The TEKS defines the scope of what Texas students are expected to learn, and includes a mandatory foundation and enrichment curriculum.

FOF 26. State expert and former TEA Associate Commissioner, Dr. Ann Smisko, eloquently described in her report and at trial why the state curriculum must reflect changing times, needs and public expectations:

Statewide curriculum, being the embodiment of the expected knowledge and skills that the citizens of the state expect the students to demonstrate in order to participate in the "social, economics and educational opportunities" in the state, is not static. Over time the skills and knowledge students need to be successful upon graduation from high school will change based on changes in growth in basic knowledge (e.g., new scientific discoveries such as the human genome), changes in economic conditions, including changes in the types of jobs available and changing entry-level requirements of the economy (e.g., the need for higher-level statistical knowledge and computer literacy), and finally, changing expectations concerning the knowledge and skills necessary to be a successful and productive citizen of the state. These changes tend to be increases rather than decreases in the level of skills and knowledge needed for a successful transition to adult life. . . . If the curriculum did not change to allow learning of these higher-level skills, students would be seriously handicapped in their entry into the adult world of post-secondary education, military service and careers.

FOF 27. Beginning in this school year, the Legislature has made the Recommended High School Program ("RHSP") (*see infra* FOF 44) the required graduation plan for all students (except for those whose parents elect to have their child opt out into the Minimum High School Program, which the system is designed to discourage), which has added course requirements in science, math and foreign language. According to TEA officials and numerous superintendents, the RHSP is now the minimum bar for "general diffusion of knowledge."

FOF 28. In addition, the Legislature implemented "promotion gates" at various grade levels which are not taken into account in the district accreditation rankings. With certain limited exceptions, (1) a student may not be promoted to the fourth grade without passing the third grade reading assessment instrument; (2) a student may not be promoted to the sixth grade without passing the fifth grade reading and mathematics assessment instruments; (3) a student may not be promoted to the ninth grade without passing the eighth grade reading and mathematics assessment instruments; and (4) a student cannot receive a high school diploma without passing secondary exit-level assessment instruments for English language arts, mathematics, social studies and science. *See* TEX. EDUC. CODE §§ 28.0211; 39.025(a). The third grade promotion gate was phased in during the 2002-03 school year. The fifth grade promotion gate is being phased in during the current school year (2004-

05). The eighth grade promotion gate is effective beginning in the 2007-08 school year. *See* TEX. EDUC. CODE §§ 28.0211(n).

FOF 29. In summary, there are many legislative pronouncements and requirements for both districts and students that describe a level of educational “adequacy” that districts must provide that extend significantly beyond the achievement of an “academically acceptable” accreditation ranking.

b. An “academically acceptable” ranking is not the equivalent of an adequate education.

FOF 30. The State’s position that a district with an “academically acceptable” accreditation ranking is necessarily providing a “general diffusion of knowledge” is untenable. Under the 2003-04 accountability system, a district is considered “academically acceptable” if only 25% of its students (and various disaggregated student groups) pass the science TAKS test and only 35% pass the math TAKS test.

FOF 31. Furthermore, for the 2003-04 academic year, the State Board of Education set the student passing rate at 1 standard error of measurement (“SEM”) below the panel recommended cut scores for grades 3-10 and 2 SEMs below the recommended cut scores for 11th grade. A review of the actual scores required to meet these thresholds reveals that they are minimal at best: for example, in grade 11, a student “passes” the science test (i.e., scores 2 SEMs below the cut score) when that student answers 43.6% (24 out of 55) of the science questions correctly, and that same student need only answer 41.7% (25 out of 60) of the math questions correctly to be “passing.” *See* <http://www.tea.state.tx.us/student.assessment/taks/standards/attachment7.pdf>. (WOC Ex. 675.)

FOF 32. These passing rates were set not to constitute a minimal level of adequacy but rather to ensure that most districts and campuses fell upon the “academically acceptable” side of the line, which is consistent with longstanding practice in Texas. The State cannot on one hand draw the “academically acceptable” line with the specific intention of ensuring that the vast majority (if not all) of the districts in Texas fall on the “right” side of it, and on the other hand claim that this line is the measure of adequacy.³

³ This Court notes that the State of Kansas made a similar argument in defense of an adequacy challenge to its school finance system, which was firmly rejected by the district court:

Defendants also argued, early on and again in their proposed findings, that the accreditation of a school is a guarantee of the adequacy or suitability of the education provided by that school. Because all Kansas schools are accredited, the argument goes, the suitability test is satisfied. On this point, the Supreme Court in the appeal of this case has already held to the contrary as a matter of law. Furthermore, as Defendants' Exhibit 61 shows, Kansas minorities, disabled, non-English speakers, poor children, and in some cases even majorities are failing at alarming rates in Kansas schools, all of which are accredited. Accreditation standards are all about schools, not students. Student scores are averaged when compared to averages of students in others schools. This case is about individual students who seek an equal and suitable education, individuals who are "left behind" in the averaging of the present accreditation system. Thus, accreditation is no guarantee of either suitability or student proficiency (the ultimate aim of a suitable education). Specifically, to the extent even average student performance is considered in accreditation, the Court notes that failure rates for all students as high as 70.9 percent are adequate for both AYP (adequate yearly

- FOF 33. While these passing rates and cut scores may be an appropriate starting point in light of the phase-in of the new accountability regime and testing instrument, these thresholds for “academically acceptability” are not and were never intended to be a measure of “general diffusion of knowledge.” (If anything, the panel recommended cut scores are a truer reflection of where Texas expects students to be on these particular tests). The State’s proposed measure of “adequacy” fails the test of its own expert witness, John Murphy, who testified that “a school system has a responsibility to prepare all of its children to compete in this society” and that competing in this society means “to get a good productive job.” Likewise, Commissioner Neeley agreed that all children in the State of Texas should have access to and a meaningful opportunity to receive a high quality education, including learning TEKS, passing the TAKS tests (including exit exams), and participating in the RHSP.
- FOF 34. Furthermore, the accreditation rankings rely heavily on TAKS scores and these scores alone do not provide the necessary evidence to determine whether the “general diffusion of knowledge” requirement is being met. Importantly, the State’s experts conceded that TAKS measures less than one-half of the TEKS subjects required for the RHSP and less than one-fourth of the TEKS subjects required for elementary and middle school. Therefore, an “academically acceptable” rating by definition cannot and does not measure how well a district is able to teach the entire TEKS and therefore cannot be a complete measure of the “general diffusion of knowledge.”
- FOF 35. Moreover, key TEA witnesses have admitted that the exit-level TAKS test is a measure of mid-high school level achievement, not a measure of whether a student is ready to go to college or prepared for a postsecondary employment setting. Therefore, TAKS results alone do not and cannot inform whether a district is meeting the legislative directive to prepare students to “continue to learn in postsecondary educational, training, or employment settings.” TEX. EDUC. CODE § 28.001.
- FOF 36. In addition, to the extent an “academically acceptable” ranking also depends on dropout and completion rates, the evidence casts considerable doubt as to the accuracy of this data, and thereby the “academically acceptable” rankings that have been awarded to districts in the past and which will be awarded for the 2003-04 school year. *See infra* FOF 649-FOF 651.
- FOF 37. Further, the rankings assigned to school districts are based only on two of the indicators in the accountability system, and are not even a measure of the full accountability system, much less the comprehensive requirements imposed by the State on local districts. *See* TEX. EDUC. CODE §§ 39.072, 39.051.
- FOF 38. Finally, even if one were to assume that an academically acceptable ranking is the equivalent of “general diffusion of knowledge,” State Defendants’ experts Ann Smisko

progress, under NCLB) and accreditation. . . . Accordingly, this argument fails on both legal and factual grounds.

See Montoy vs. State of Kansas, No. 99-C-1738, 2003 WL 22902963, at * 40 (Kan. Dist. Ct. Dec. 2, 2003).

and Criss Cloudt agreed that the system needs to have financial capacity now so that districts could meet the higher performance targets that are being phased in during the coming years. These and others witnesses correctly recognized that education is a cumulative enterprise and that districts cannot wait until the standards are ratcheted up to make the necessary investments.

- c. The Foundation School Program is intended to provide sufficient funding not only to maintain an “academically acceptable” ranking, but also to meet “other applicable legal standards.”**

FOF 39. In Section 42.002(b) of the Education Code, the Legislature described the purpose of the Foundation School Program (FSP):

The Foundation School Program consists of:

- (1) two tiers that in combination provide for:
 - (A) sufficient financing for all school districts to provide a basic program of education that is rated academically acceptable or higher under Section 39.072 *and meets other applicable legal standards*; and
 - (B) substantially equal access to funds to provide an enriched program; and
- (2) a facilities component as provided by Chapter 46.

TEX. EDUC. CODE § 42.002(b) (emphasis added).

FOF 40. The phrase “other applicable legal standards” means that the FSP is intended to provide sufficient funding not only to enable districts to attain an “academically acceptable” ranking but also to meet all relevant duties for offering programs and services under Chapters 28-34 and 37-39 of the Texas Education Code, together with associated regulations implementing these and other mandates, including many of the directives described *supra* Section II.A.1.a.

FOF 41. Notably, the key components of the FSP – the “Basic Allotment” of Tier 1 and the “Guaranteed Yield” of Tier 2, have not been adjusted to reflect changing times and circumstances. The Basic Allotment has remained at \$2,537 since the 2000-01 biennium and the Guaranteed Yield has remained at \$27.14 since the 2002-03 biennium, even as Texas has (1) been phasing in a more difficult and high-stakes assessment examination, (2) made the RHSP the default graduation plan, and (3) implemented promotion “gates” at grades three, five, eight.

2. Rising academic expectations result in rising costs.

a. Rising expectations at the state level.

FOF 42. The combination of clear, measurable state goals through the implementation of the accountability regime, along with the availability and investment of the necessary resources to achieve these goals, contributed to improved educational achievement during

the 1990s. In fact, between 1993-94 and 2001-02, the percentage gains made by students on the TAAS test in the 1990s (30% improvement of the percentage of students passing all sections of the TAAS) closely tracked the percentage increases in per-pupil, inflation-adjusted expenditures in the system (roughly 24% increase).

- FOF 43. The Legislature recently set in motion significant changes to the accountability regime without providing districts the fiscal capacity to meet the higher standards called for by the Legislature. *See, e.g.*, Act of June 8, 1999, 76th Leg., R.S., ch. 397, 1999 Gen. Laws 2502 (codified as amended in TEX. EDUC. CODE §§ 39.022-39.051). These changes have vastly increased school districts' budgetary pressures (as discussed below), as they now must now prepare for a more rigorous assessment on a broader curriculum.
- FOF 44. For example, in July 2000, the State Board of Education adopted changes to the curriculum and imposed more rigorous high school graduation requirements. 19 TEX. ADMIN. CODE § 74 (2000). The three graduation programs — the Minimum Program, the Recommended High School Program, and the Distinguished Achievement Program — were revised to reflect the necessary opportunities to learn content and skills that will be required for the new exit-level assessment exam. Moreover, in 2001, the Legislature, through adoption of House Bill 1174, mandated that, beginning in the 2004-05 school year, all ninth grade students enter high school on the RHSP or the Distinguished Achievement Program, unless the student's parent and school counselor or administrator agree that the student should enroll in the Minimum Program. The RHSP coursework requirements are described at: 19 TEX. ADMIN. CODE §§ 74.12 (2000).
- FOF 45. Before 2003, TEKS was divided into a "foundation curriculum," which was mandatory, and an "enrichment curriculum," which were considered "guidelines" for school districts. In Senate Bill 817, effective September 1, 2003, the Legislature amended Sections 28.002(c) and (d) of the Education Code to make clear that the enrichment curriculum was mandatory. The mandatory enrichment curriculum includes courses in the following areas: (1) foreign languages, (2) health; (3) physical education; (4) fine arts; (5) economics; (6) career and technology education; and (7) technology applications. A district must teach any high school course that satisfies a TEKS requirement if ten or more students indicate they will participate in it. 19 TEX. ADMIN. CODE §§ 74.3(b)(4) (2000).
- FOF 46. Also, in spring 2003, the Legislature implemented a new assessment test called the TAKS (Texas Assessment of Knowledge and Skills) test. Unlike the previous TAAS test, which was widely considered to measure eighth-grade skills and knowledge, the TAKS test is widely considered to be a much more rigorous test. Indeed, both Plaintiff and State witnesses testified that, as a result of the transition from TAAS to TAKS, the bar had been raised considerably.
- FOF 47. Unlike the previous assessment test, the TAKS tests and districts' accountability ratings now depend on students' aptitude (at the high school level) in the areas of science (including biology, chemistry and physics) and social studies (including early American and United States history). *See id.* § 39.023(a), (c).
- FOF 48. Beginning in 2003-04, no student can graduate from a Texas public school without passing four TAKS exit examinations in English/Language arts (including English III and

writing), social studies (including early American and United States history), science (including biology, chemistry and integrated physics), and mathematics (including algebra and geometry). Moreover, success on the TAKS test is also becoming part of the student promotion requirements in grades three, five and eight. *See supra* FOF 28.

FOF 49. The phase-in of the new curriculum requirements, the replacement of the TAAS exam with the TAKS exam, and the adoption of the RHSP as the default graduation program have resulted in significant new costs for the districts, including, but not limited to the following:

- a. The Legislature has required that districts “design and implement appropriate compensatory, intensive or accelerated instructional services for students in the district’s schools that enable the students to be performing at grade level at the conclusion of the next regular school term” and provide “accelerated instruction to a student . . . who . . . has not performed satisfactorily on each section [of the exit-level assessment instrument] or who is at risk of dropping out of school.” TEX. EDUC. CODE § 29.081(a), (b). Because many more students are failing the TAKS test (as opposed to the TAAS test), districts must spend a great deal more on preventing and remediating these failures through a variety of costly strategies, including summer school, extended day programming, remedial classes, the use of curriculum specialists, credit recovery courses, and reduced class sizes. Districts have to focus particular attention on those students who have not passed the various “promotion gate” tests (3rd grade reading, 5th and 8th grade reading and math), as well as those that have failed one or more exit level TAKS exams.
- b. Districts have had to invest in professional and staff development to ensure that teachers are familiar with the new curriculum and assessment instruments, can tailor their instruction to student needs and the standards being assessed, and are aware of the latest techniques for instruction of special education, limited English proficient, and at-risk students.
- c. The shift to the RHSP means that more students will need to take higher level math and science classes in order to graduate. However, there is already an undersupply of secondary math and science teachers in the State and districts have had to pay stipends to attract these teachers or make due with some teacher teaching out-of-field.
- d. According to the fiscal notes that TEA prepared in connection with House Bill 1174, the shift to the RHSP will result in (1) a need for 3,359 new teachers (even assuming other teachers teaching nonrequired courses were certified/capable of shifting to the required courses) costing districts approximately \$140 million annually, as well as (2) the need for new classrooms, resulting in additional capital costs ranging from \$400-\$500 million.

FOF 50. The Legislature made these changes to the accountability regime without ascertaining how much it would cost for school districts to implement these changes or whether they had the funding capacity to do so. Lieutenant Governor William Ratliff aptly stated that the

State, by implementing more rigorous standards without providing additional resources, is asking districts to “make bricks without straw.”

FOF 51. In addition to the changes described above, the Legislature has imposed a wide variety of mandates on school districts, including mandates relating to curriculum requirements, special education instruction, district and school governance, information collecting and reporting, and employee relations, among others. Many of these mandates are summarized in West Orange Cove Exhibit 522. For example, Section 28.0212 of the Education Code calls for a district to develop a personal graduation plan for each student failing a state test or otherwise judged to be unlikely to receive a high school diploma. The Court accepts as true the uncontroverted testimony of Dr. Pat Forgione, the Superintendent of Austin ISD, who testified that the district had to develop personal graduation plans for 10,503 students in grades 6-12 last year, yet received no financial assistance from the State.

FOF 52. For some of these mandates referenced in West Orange Cove Exhibit 522, the Legislature provided limited funding; for other mandates, the Legislature provided no new funding. Since 1995 alone, more than 60 unfunded or partially funded mandates have been imposed on school districts. This “mandate creep” occurred despite the fact that, according to former Lieutenant Governor Ratliff, one of the fundamental purposes behind the passage of Senate Bill 1 in 1995 (rewriting the Education Code) was to minimize State mandates upon districts.

FOF 53. Districts must devote a significant portion of their budgets to comply with these mandates, but the percentages vary by district and the State has made no attempt to quantify the impact of these mandates (given the likely difficulty of such a task).

b. Rising expectations at the federal level.

FOF 54. In 2001, the United States Congress passed and in January 2002, President Bush signed the No Child Left Behind Act (“NCLB”). The State of Texas chose to comply with NCLB to receive federal funds. By opting to comply with NCLB, the State obligated school districts to meet a wide range of new federal mandates. The mandates arising from NCLB will further exacerbate the financial crisis facing Texas school districts.

FOF 55. Under the accountability provisions of NCLB, all campuses and districts in Texas will be evaluated for Adequate Yearly Progress (“AYP”). 20 U.S.C. § 6311(b)(2). To meet AYP for all districts and campuses under the plan submitted by the State, *all* students and *each* student group (African-American, Hispanic, white, economically disadvantaged, special education, and limited English proficient) meeting minimum size requirements must meet: (1) the performance standard for percent proficient (the AYP target) or performance gains criteria separately for reading/language arts and mathematics; and (2) the 95% standard for participation in the assessment program. The AYP target for 2004-05 is 53.5% in reading and language arts and 41.7% in mathematics. The target rises to 60.1% and 50%, respectively, by the 2006-07 school year, and to **100%** in both categories by the 2013-14 school year.

		AYP Targets								
		Target 2002-03 2003-04	Target 2004-05 2005-06	Target 2006-07 2007-08	Target 2008-09	Target 2009-10	Target 2010-11	Target 2011-12	Target 2012-13	Target 2013-14
Reading/English Language Arts		46.8%	53.5%	60.1%	66.8%	73.4%	80.1%	86.7%	93.4%	100%
Mathematics		33.4%	41.7%	50.0%	58.3%	66.6%	74.9%	83.2%	91.5%	100%

- FOF 56. NCLB also requires reporting of the graduation rate (defined as the percentage of students who graduate from secondary school with a regular diploma in the standard number of years), and using it as measure of AYP. 20 U.S.C. § 6311(b)(2)(C)(vi). Under the Texas plan, high school campuses and districts must meet a 70% graduation rate; elementary and middle schools must meet a 90% average attendance rate.
- FOF 57. Campuses and districts that fail to meet the federal targets for AYP for two consecutive years, and which receive federal funding through Title I, must offer school choice, implement certain school improvement activities, provide supplemental education services, and take other corrective action, depending on the number of years the campus or district fails to meet AYP. If a campus fails to improve after five years, it will be forced either to (1) reopen as a charter school; (2) replace principal and staff; (3) contract with a private management company; (4) be taken over by the State; or (5) conduct any other major restructuring of campus governance. Similarly, districts that fail to improve after three years must consider taking corrective action that is similar in scope, including, but not limited to (A) abolishing or restructuring the district and (B) appointing a receiver or trustee to administer the affairs of the district in place of the superintendent and board.
- FOF 58. Districts not receiving federal Title I funds may be required to amend their school improvement plan to address deficit areas if they fail to make AYP for two consecutive years, but are not subject to the corrective actions described above.
- FOF 59. Additionally, NCLB mandates that school districts hire “highly qualified” teachers. 20 U.S.C. § 6319(a). This means all teachers must be fully certified by the State without the opportunity for emergency, temporary, or provisional waivers. Teachers also must hold a bachelor’s degree or higher, and demonstrate a high level of competency through testing, coursework, or other means depending on the grade level taught by and employment status of a particular teacher. All teachers hired after the first day of instruction of the 2002-2003 school year were required to meet these standards immediately. School districts must ensure that all teachers hired before that date meet the “highly qualified” standard no later than the 2005-2006 school year.
- FOF 60. Similarly, NCLB imposes new, higher standards on school districts regarding the employment of paraprofessionals. Under the Act, paraprofessionals hired after January 8, 2002 must hold a high school diploma (or equivalent) and (1) complete at least two years of higher education, (2) hold an associate’s degree (or higher) or (3) demonstrate high quality through a state or local test. 20 U.S.C. § 6319(c). School districts must ensure

that all paraprofessionals hired before January 8, 2002 meet the “highly qualified” standard no later than January 8, 2006. 20 U.S.C. § 6319(d).

FOF 61. NCLB prohibits the use of Title I funds to “supplant” state allocation of resources to schools. 20 U.S.C. § 7902. Title I funds are a supplement to state and local resources, and state aid may not be reduced due to the receipt of federal formula grants. In addition, Texas is prohibited from taking into consideration payments made pursuant to the NCLB in determining the eligibility of any school district for state aid, or the amount of state aid, with respect to the free public education of children. 20 U.S.C. §§ 6322, 7902.

FOF 62. Some of the additional costs that school districts have incurred relating to NCLB include:

a. Parent Notices:

- Annual parent reporting related to adequate yearly progress (AYP). This requires campuses to copy and mail to all parents information related to AYP.
- Timely notice to parents related to highly qualified staff. This requires campuses to notify parents if the teachers at Title I schools do not meet the “highly qualified” standard.

b. Requirements related to Title I School Improvement

- Notification related to and provision of School Choice if schools identified as in need of improvement. This involves letters to all parents at the campus involved, with two follow-up letters confirming the transfer and transportation.
- Notification related to and provision of Supplemental Educational Services (SES). SES must be provided if a school is in Year 2 of School Improvement. Parents of low-income students must be notified in writing and vendor information must be made available to parents.

c. Highly Qualified Staff

- District must determine if all teachers of core content areas meet the “highly qualified” requirements. In many cases, this involves researching through individual teacher files and reviewing transcripts.
- Districts must complete an annual survey for each campus, reporting the highly qualified status of teachers.
- Districts must ensure all paraprofessionals at Title I schools meet the highly qualified standard by January 2006. This has required districts to pay for training and testing of paraprofessionals.
- Future costs could rise significantly if districts are forced to develop new mentoring and/or alternative certification programs to help recruit and train Highly Qualified staff.
- Districts must design and implement plans to ensure all staff who do not meet the highly qualified standard do so by May 2006.

d. School Safety Choice Option

- If a district has any schools identified as persistently dangerous, parents must be notified of their right to transfer their child.

- If a student is a victim of a violent criminal act, parents must be offered the option to transfer to another campus.

e. Assessment

- To meet AYP standards, costs associated with following up/tracking student TAKS participation by counselors, visiting teachers, et. al.; and costs for participation incentives will be needed.
- The State has updated the state developed alternative assessment (SDAA) to SDAAII, so there are field-testing costs associated with this new assessment.
- Districts are required to conduct annual assessments to show the progress of limited English proficient students, K-12, in five domains of English language proficiency: reading, listening, speaking, writing, and comprehension.

FOF 63. Austin ISD has spent approximately \$281,000 complying with NCLB mandates, with additional projected costs of \$2,279,189. Northside ISD has presented documentary evidence indicating that it has or will incur approximately \$494,000 in NCLB-related costs. These amounts reflect administrative costs associated with technical compliance with the act, not the costs of getting students and/or campuses to particular performance standards. Other districts throughout the state likewise will incur similar costs.

FOF 64. Going forward, the accountability requirements of NCLB, and the concomitant requirements for choice-related transportation and supplemental education services (SES), may have the effect of reducing the funding available for these school improvement activities. When a campus fails to make adequate yearly progress (AYP) for two years in a row, it is designated as needing improvement and all students on that campus must be offered the opportunity to transfer to a better performing campus with the district paying the costs of transportation. If the campus fails to make AYP for a third or subsequent consecutive year, eligible students may either elect to transfer to a better performing campus or receive supplemental educational services. NCLB requires the district to spend up to five percent of the Title I, Part A entitlement to provide choice-related transportation and up to five percent of the entitlement for SES, and if either of these is insufficient, up to twenty percent of the total entitlement for both. Dr. Forgione testified that when AYP results come out this fall, Austin ISD may have to set aside 20% or \$3,519,491 of its Title I allocation to provide choice and SES if needed, reducing funding to Title I schools not in need of improvement and hindering the district's ability to provide extra help for struggling schools.

3. Effect of demographic changes on school district costs—now and in the future.

FOF 65. During the decade of the 1990s, Texas' population grew by almost 23 percent or 3.9 million people. These increases in the state's population resulted in increased student enrollment in the public school system, escalating the need for additional teachers and more facilities.

FOF 66. Between 1950 and 2000, enrollment nearly tripled. By the 2002-03 school year, enrollment had grown to 4,259,864, adding an average of 72,500 students each year in the

13 years since 1990. According to the Texas State Data Center's population projections, student enrollment will continue to grow substantially.

- FOF 67. The demographic composition of students is also changing. Texas students have become—and will continue to become—more ethnically diverse, more likely to be from households with incomes below the poverty line, and more likely to require additional instruction in order to become fluent in English. Because the economically disadvantaged and limited English proficient populations require significantly more funds to educate (*see infra* FOF 76), these changing demographics have resulted in significantly higher costs for school districts that are not compensated adequately through school finance formulas, because of the insufficiency of the basic allotment and/or the compensatory education and bilingual weights (*see infra* FOF 74-FOF 85).
- FOF 68. During the 2002-03 school year, for the first time more than half of Texas public school students qualified for the federal free and reduced-price lunch program, and 15 percent of students were limited-English proficient (“LEP”). Virtually all of the net growth in student enrollment has been from minority and low income populations. Together, African-American and Hispanic students comprise 97 percent of the total growth (and comprise approximately 58% of the student enrollment), while 90 percent of the growth has been from low-income families. These population trends are expected to continue for decades to come. These trends are evident not only statewide, but also in each of the West Orange Cove Focus Districts.
- FOF 69. The numbers of economically disadvantaged, LEP, and other special-need students will be rising rapidly – much greater than the rate of overall student enrollment growth – in the coming decade and decades. The growth in these populations relative to the rest of the State is a clear indication that the overall performance of Texas public schools will depend increasingly on how well the needs of these populations of students are served.
- FOF 70. Based on these demographic trends, and if existing gaps between Whites and other minorities in educational attainment levels and household income remain in place, Texas will “have a population that not only will be poorer, less well educated, and more in need of numerous forms of state services than its present population but also less able to support such services. It is likely to be less competitive in the increasingly international labor and other markets.” STEVE H. MURDOCK ET AL., *THE NEW TEXAS CHALLENGE, POPULATION CHANGE AND THE FUTURE OF TEXAS* 224 (2003).
- FOF 71. However, according to Dr. Murdock, the official state demographer, “if socioeconomic differentials between demographic groups were to be reduced through increased education and other means, Texas’ population growth could be a source of increased private and public sector resource growth. Coupled with such growth would be increased competitiveness and a population whose diversity may create a competitive advantage relative to that of other states in competing in international markets.” *Id.*

FOF 72. According to Dr. Murdock, closing the educational attainment gaps between Whites and minorities at the rate Texas did in the 1990s (under the 1.0 scenario)⁴ would by 2040:

- result in an increase of \$143 billion per year in annual income in comparison to the 2000 baseline scenario.
- result in an increase in consumer expenditures of more than \$100 billion per year in comparison to the baseline scenario.
- reduce prison populations by nearly a third of the baseline levels
- reduce state costs by \$1.7 billion for prisons, \$84 million for TANF, \$47 million for food stamps; \$1 billion for Medicaid, for a total of nearly \$2.8 billion a year.

FOF 73. According to Dr. Murdock, closing the gap between Whites and minorities completely (under the 1.0 scenario) would by 2040:

- result in an increase of \$317 billion per year in annual income in comparison to the 2000 baseline scenario.
- result in an increase in consumer expenditures of more than \$224 billion per year in comparison to the baseline scenario.
- reduce prison populations to less than one half of the baseline levels
- reduce state costs by \$3 billion for prisons, \$214 million for TANF, \$123 million for food stamps; \$2.2 billion for Medicaid, for a total of nearly \$5.5 billion a year.

4. Districts face many large, uncontrollable costs that are not adequately addressed in State's existing financing formulas.

a. Costs that vary based on student characteristics.

FOF 74. Texas school districts must meet the higher state and federal standards referenced above while educating this sizable and growing population of "special need" students, including students with limited English proficiency ("LEP"), with disabilities, or from an economically disadvantaged background. Students with these and other special needs generally cost significantly more than other students to educate (*see infra* FOF 76). The State's funding formulas fail to fully compensate districts for the additional costs of educating students with special needs in these districts.

FOF 75. The results of the initial administration of TAKS in spring 2003 and the second TAKS administration in Spring 2004 reveal the challenge facing school districts to ensure that all students, including those with special needs, meet higher state and federal standards. The 2003 and 2004 TAKS results show a great discrepancy in the overall performance of students generally and those with special needs, particularly LEP and economic disadvantaged students. These results also show great discrepancies between White and minority student populations. For example, an examination of the 10th grade scores from the 2004 administration (those students who will be taking exit-level examinations this

⁴ The 1.0 scenario is a projection that assumes that the age, sex and race/ethnicity cohort-specific rates of net migration remain in the future at the same levels as those from 1990-2000. Dr. Murdock also provided similar data for the more likely "0.5 scenario," which assumes that the age, sex and race/ethnicity cohort-specific rates of net migration that are one-half of the levels of the 1990-2000 period.

year), 65% of Whites passed each of the four TAKS tests (at 1 SEM below panel recommendation), but only 30% of African-Americans, 34% of Hispanics, 32% of economically disadvantaged students, and 8% of LEP students were able to do so. The State's funding formulas fail to provide the funds necessary to ensure that all students have an opportunity to meet the State's new higher standards.

FOF 76. To provide "special needs"/LEP students a meaningful opportunity to meet state standards and graduate with the skills necessary to succeed in a postsecondary educational, training, or employment setting, increased funding is needed for a variety of purposes, including, among other things: (a) for remedial math and literacy programs and after-school programs; (b) to hire highly qualified teachers in the previous and new subjects tested; (c) for teacher professional development activities; (d) to achieve smaller class sizes; (e) for preschool programs and full-day kindergarten to give a "head start" to low-income or "at risk" students; and (f) for dropout prevention programs.

FOF 77. The Texas school funding formulas are designed to accommodate differences in cost due to factors beyond the control of local school districts, such as the greater expense of educating special needs students. However, many of these funding formulas are outdated and do not reflect the true costs to districts:

(1) Compensatory Education Weight.

FOF 78. The compensatory education weight of 0.2 or 20%, last adjusted in 1985, has not kept pace with changes in the educational context facing schools. Even at the time it was enacted, the setting of the weight was driven by resources available, rather than an assessment of the additional costs associated with educating economically disadvantaged students.

FOF 79. Texas allocates funding for "at risk" students on the basis of the number of students qualifying for the federal free and reduced price lunch program. However, school districts are directed to use this funding to provide services to any student who is at risk of academic failure (as measured by a number of factors including performance on state administered tests, classroom grades, and English language skills), regardless of economic circumstances. The policy reasons for this legislative decision are reasonable—the correlation between the percentage of students in a district who are at risk and the percentage of students who are economically disadvantaged is quite close, and the State avoids rewarding poor academic performance by choosing a measure for funding purposes that is clearly outside the control of school districts. However, if the amount of funding is not adjusted periodically to ensure that it is well aligned with state academic expectations, then the State in effect is underfunding programs designed to support students in need of additional academic support.

FOF 80. In 2002-03, Texas school districts identified 1.7 million students as at risk (roughly 40 percent of the total student body). The districts spent an average of \$228 more on compensatory education programs than they received through the state compensatory education allotment. This funding gap is significant. Furthermore, the number of students likely to become at risk (due to failure on the more rigorous state testing program) in the coming years will grow, even as the number of students upon which funding is based

remains fairly flat. Accordingly, districts will have to either spend less per at risk student or use additional local funds (if available) to supplement state compensatory education funding. For example, in 2003-04, the first year after the administration of the new state testing program, the number of students identified as at risk rose to 1.9 million (roughly 44 percent of the total student body), compared to 1.7 million figure cited above (or roughly 40 percent of the total student body). If the funding formulas are not adjusted, these additional students will have to be served through increasing local revenue sources (if available).

FOF 81. Both the Taylor Study (*see infra* FOF 277), which was commissioned by the Joint Select Committee on Public School Finance (finding that it costs \$1,960 more to educate an economically disadvantaged student than a non-economically disadvantaged student) and a study presented by Lynn Moak (calling for a \$1,100 Foundation School Program funds requirement per student) suggest that the current compensatory education weight is significantly lower than is required to offset the higher costs of educating these students.

FOF 82. Additional findings regarding the compensatory weight are set forth *infra* FOF 540-FOF 551.

(2) The Bilingual Weight.

FOF 83. The bilingual weight of 0.1 or 10%, last adjusted in 1985, does not come close to reimbursing school districts for the additional costs associated with educating bilingual or limited English proficient students. Even at the time it was proposed, the setting of the weight was driven by resources available, rather than an assessment of the additional costs associated with educating bilingual or limited English proficient students. The Taylor Study indicated that it costs \$1,248 more to educate a limited English proficient student than a regular student, a sum far in excess of the amount generated by the weight. Georgina Gonzalez, the head of bilingual programming at the TEA, testified that she believed a weight of 0.3 or 30% would better reflect the increased costs associated with educating bilingual students.

FOF 84. Additional findings regarding the bilingual weight are set forth *infra* FOF 437-FOF 459.

(3) The Special Education Weight.

FOF 85. The special education weight, last adjusted in 1993, also does not fully reimburse school districts for additional costs associated with special education services, so districts with increasing special education enrollments must pay for the additional cost out of local M&O funds. On average, the per student cost of serving students through special programs and the number of students served have risen substantially over the past five years, and state aid has not kept pace. Specifically, in 1997-98, state aid per special education student was approximately \$2,690, while district spending per special education pupil was approximately \$4,292, resulting in a difference of \$1,602. In 2002-03, state aid per special education student was approximately \$2,783, while district spending per special education pupil was approximately \$5,754, expanding the gap between district spending in state aid to \$2,970 per student.

b. Costs that vary based on district or community characteristics.

- FOF 86. The Legislature has also failed to update a number of formulas that are intended to compensate districts for certain uncontrollable school or community characteristics, like competitive salary differentials, transportation costs, size, and sparsity. The Cost of Education Index has not been updated since 1991. The Small District Adjustment has not been updated since 1985. The Sparsity Adjustment has not been updated since 1985. The Transportation Adjustment has not been updated since 1984.
- FOF 87. The Cost of Education Index was last updated in 1991, which means that the annual distribution of approximately \$1.34 billion rests on teacher compensation patterns and school district characteristics dating from 1989. Although the Legislature has twice commissioned updates (completed in 2000 and 2003), neither has been acted upon. Both studies concluded that costs had changed significantly since the 1991 index was adopted and recommended that the index be replaced. The second study, spearheaded by State Defendants' expert Lori Taylor, concluded that districts in the Houston, Dallas-Fort Worth Metroplex, San Antonio and Austin metropolitan areas (where most of the West Orange Cove Focus Districts are located) were particularly disadvantaged by the Legislature's failure to update the CEI. For example, Dr. Taylor concluded that districts in the Dallas metropolitan area had to pay teachers approximately 36% more than districts in the least-cost part of the State, a discrepancy that the existing CEI does not come close to addressing.
- FOF 88. The State has also not adequately funded costs related to transporting students to and from school and its Transportation Adjustment is outdated. The State's share of transportation funding has declined from over 45 percent of total transportation costs in 1995-96 to under 35 percent by 2001-02, even as labor, fuel, and other costs have increased. Districts with especially high transportation costs have been particularly harmed by the State's failure to adequately fund the Transportation Adjustment. Those districts with higher student transportation costs use an average of 14.2 percent of Tier 2 funding (or an average of \$0.08 of their Tier 2 tax rate) to continue their transportation programs, taking dollars away from instructional programming. Conversely, those districts with lower transportation costs use less than 2 percent of their Tier 2 funding (or less than \$0.017 of their Tier 2 tax rate), to fund their student transportation programs. A report prepared by Lynn Moak conservatively estimates that the current transportation allotment should be at least doubled.

5. Districts face difficulties hiring and/or retaining qualified teachers.

- FOF 89. Studies, including studies of Texas data, demonstrate the intuitive principle that teacher quality influences student achievement and learning. Teacher qualifications that consistently have been shown to relate to student achievement include teachers' general academic and verbal ability, subject matter knowledge, knowledge about teaching and learning, and teaching experience. Teacher certification is a general measure of these qualifications. Studies show a strong relationship between teacher certification and student achievement.

- FOF 90. Texas data show that students who are in schools with a greater proportion of uncertified teachers or teachers teaching out-of-field (i.e., teaching a subject matter for which they are not certified) score lower on and are more likely to fail the Texas assessment tests. Conversely, Texas data show that students in schools with greater proportions of fully certified teachers are significantly more likely to pass the Texas assessment tests. Texas data also show that gains in student pass rates are related to the proportion of fully certified teachers in the school.
- FOF 91. Texas requires its teacher be certified for both the grade level and subject area in which they teach. The federal No Child Left Behind Act, with which Texas has chosen to comply, has similar certification requirements. *See supra* FOF 59.
- FOF 92. There is a severe shortage or undersupply of qualified teachers in Texas. The number of uncertified teachers hired each year in Texas has been steadily increasing over the past seven years. In 1996, 14.1% of the newly hired teachers in Texas were not certified. By 2002, that figure had increased to 52.8%. The increase has been the most sharp in the last couple of years. As more and more uncertified teachers are hired, the number and share of teachers in the overall teaching force who are uncertified has been increasing as well – from 3.6% in 1996 to 13% in 2003. In 2003, 37,467 teachers in Texas were not certified. This shortage of qualified teachers is reflected both in terms of the number of teachers teaching without the standard (i.e., full) certification and the number of teachers teaching out-of-field.
- FOF 93. While the shortage is felt in many core subject areas, Texas school districts have had particular difficulty filling vacancies with qualified teachers in science, computer science, mathematics, foreign language, special education, and bilingual education. For example, in 2002, 34% of Texas Spanish teachers were either uncertified, or teaching out-of-field; 45.6% of teachers teaching integrated physics and chemistry were either uncertified or out-of-field; and 24.5% of algebra I teachers were either uncertified, or teaching out-of-field.
- FOF 94. Also, the shortage of quality teachers is more severe in low-achieving districts and districts serving greater proportions of low-income and minority students. For example, from 1997 through 2003, districts with enrollments comprising 75% or more of economically disadvantaged students have seen their percentage of not fully certified teachers, stated in full-time equivalents, increase as follows:
- Science teachers: increase from 15.8% to 23.7%
 - Math teachers: increase from 14.7% to 18.8%
 - English teachers: increase from 10.6% to 16.2%
 - Bilingual education teachers: increase from 9.5% to 13%

The Texas data also reveal that schools rated as low-performing or acceptable by the Texas accountability system have significantly higher proportions of uncertified and out-of-field teachers than do schools rated as recognized or exemplary.

- FOF 95. Moreover, Texas is experiencing high attrition and turnover which have been increasing in recent years. From 1996 through 2003, the annual attrition rates (teachers leaving the teaching profession altogether) for Texas public school teachers increased from 8.3% to 10.7%. In terms of numbers, 19,870 teachers left the profession in 1996, and 30,838 teachers left the profession in 2003. While turnover rates for Texas teachers are high in general, they are most pronounced in low-performing schools, and schools serving higher proportions of economically disadvantaged and minority students. For example, in 2001, turnover rates by school ratings under the Texas accountability system was as follows: 40.4% in low-performing schools, 23.7% in acceptable schools, 20.9% in recognized schools, and 18.9% in exemplary schools.
- FOF 96. High attrition and turnover result in both financial costs to the school districts and educational costs to the students. Attrition leads to higher financial costs for districts, such as costs associated with preparing, recruiting, developing and replacing teachers. A study conducted in Texas by the Texas Center for Education Research examined the cost of teacher attrition for districts and concluded that it costs districts between \$6,000 and \$8,000 per teacher lost. In addition, turnover and attrition imposes costs on student achievement and learning. The constant churning of teachers is interruptive and causes a lack on continuity in the students' educational program. Moreover, much of the attrition is in beginning teachers and studies have found that teachers in their first and second years are much less effective than those with greater experience. Thus, attrition is lowering the level of teacher experience which is one of the qualities linked to student achievement and learning.
- FOF 97. According to research, four factors make a difference in attracting and retaining highly qualified teachers: salaries, working conditions, preparation, and mentoring. However, these issues cannot be addressed at the district level alone. To address the undersupply of qualified teachers in Texas, the State must, at a minimum, provide districts the financial capacity to raise overall teacher salaries to levels that are competitive with other occupations and should consider (1) creating and expanding subsidies for the preparation of prospective teachers, especially for shortage fields and locations; (2) offering and expanding incentives for teachers to enter undersupplied fields of study and hard-to-staff schools, such as signing bonuses, service scholarships and loan forgiveness programs; (3) creating and expanding incentives for school districts to improve working conditions in schools, especially in schools that serve high-need students and in hard-to-staff schools; (4) updating the existing Cost-of-Education Index to better reflect geographic variations in teacher salary costs; and (5) expanding supports for high-quality teacher preparation, professional development and mentoring.
- FOF 98. These remedies, which are consistent with the available research, involve the need for additional resources. However, the \$1.50 cap prevents the Plaintiff districts from raising additional revenue to implement these remedies.

6. Districts must incur costs to address the dropout problem.

FOF 99. Dr. Walt Haney testified extensively about the significant dropout problem plaguing Texas school districts. Combating the dropout problem requires resources. For example, Dr. Forgione testified that Austin ISD has hired dropout specialists and visiting teachers to come in and work with at risk students. Similarly, Kaye Stripling testified by deposition that Houston ISD needs mentors and counselors to help combat the dropout problem. Dr. Stripling also observed that tracking “leavers,” particularly in an urban environment like Houston (with high immigrant populations, student mobility, etc.), is an incredibly expensive undertaking. Dr. Moses testified that Dallas ISD has set up truancy courts in association with Dallas County to hear and process cases involving students with excessive absences in an effort to get these students back on track. Dr. John Folks, superintendent of Northside ISD, testified that low class sizes had a positive impact on reducing the dropout rate. And many witnesses, including Commissioner Neeley, testified as to the value of co-curricular and extra-curricular activities in combating the dropout problem.

B. Issues relating primarily to state property tax claim.

FOF 100. As recounted above, the Legislature has imposed numerous requirements on school districts in connection with its obligation to provide a “general diffusion of knowledge” and in constructing the accreditation, accountability, and assessment regime. *See supra* FOF 18-FOF 29 and FOF 42-FOF 53. (The federal government has imposed numerous requirements as well. *See supra* FOF 54-FOF 64.) The costs of complying with these requirements are considerable.

FOF 101. The plaintiff districts and others are forced to tax at or near their maximum tax rates in order to meet the constitutional mandate of adequacy and/or the statutory regime of accreditation, accountability, and assessment, and some districts cannot even meet all of these requirements at their maximum tax rates. These districts therefore lack “meaningful discretion” in setting their tax rates. This finding is expanded upon below.

1. The lack of capacity in the school finance system, as reflected by the numbers of districts taxing at the \$1.50 cap.

FOF 102. Over the fifty plus year period from 1949 through the early 1990s, the increased needs of public education were funded by a roughly balanced partnership of state government and local school districts. During this time, state funding (as a percentage of state aid and local taxes) generally supplied more than half of education funding and never less than 45 percent. During the past decade, however, the bulk of school funding came from property taxes collected by school districts, rather than state aid. In fact, since the 1994-95 biennium, 75% of the new tax and state aid funding under Chapter 41 and Chapter 42 has come from local property taxes. Two-thirds of the new local funding has been generated by rising property values, which translates directly into reduced state funding. The percentage of education funds directly funded by the State has fallen to less than 40 percent and is continuing to fall, as approximately 90% of the additional revenue in the system is coming in via the local property tax. The Legislature has used revenues derived from increasing property values to reduce state requirements for existing programs while

at the same time relying upon the ability of school districts to increase tax rates to meet the challenge of increasing educational requirements. Even the Commissioner of Education publicly has called for the State to increase its share of K-12 public education spending to roughly sixty percent.

- FOF 103. The State's overreliance on the local property tax and its failure to sufficiently adjust the funding formulas have resulted in a vast increase in the amounts of money "recaptured" from Chapter 41 districts. The total amount of funds recaptured from Chapter 41 districts in 1993-94 school year was \$433 million. That number grew to \$1.094 billion in the 2003-04 school year and is expected to reach \$1.2 billion in 2004-05, becoming the fourth-largest source of "state" revenue. While this increase is not the basis for an independent cause of action, it is a symptom of the state's declining share and the system's overreliance on the local property tax to fund public schools.
- FOF 104. Because the State has not adjusted the funding formulas to keep pace with rising costs, districts have to increasingly rely on the local property tax and are pushed to the \$1.50 statutory cap on local maintenance and operations property tax rates. Once districts reach that legislatively determined ceiling, they have nowhere to turn (other than budget cuts) to address inflation, increases in uncontrollable costs, the cost of attaining higher levels of student performance, and the costs of enrollment growth (which is not fully compensated through the state aid formulas). The State's expert, Lori Taylor, identified both (1) the State's failure to adjust the Tier 2 Guaranteed Yield and the Equalized Wealth Level (now \$305,000/WADA) to keep pace with appreciating property values; and (2) a district's inability to keep up with inflation at the \$1.50 cap without making budgetary cuts as "flaws in the system."
- FOF 105. In 1993-94, only 25 out of 1040 districts were taxing at the \$1.50 cap, and 930 districts were taxing below \$1.40. The majority of school districts had tax rates of less than \$1.20. Those numbers have dramatically changed in the intervening years. Now, almost all districts have tax rates of \$1.40 or higher today and virtually no districts are at the \$1.20 or less level. In fiscal year 2003-04, 494 out of 1031 school districts in Texas (or roughly 48%) are taxing at the \$1.50 statutory cap. These 494 districts, which are composed of 78 Chapter 41 districts and 416 Chapter 42 districts, educate 2,332,465 students, or approximately 59% of the state's public school student population. Furthermore, 691 districts (roughly 67%) are taxing at or within five cents of the \$1.50 cap in 2003-04. These districts educate approximately 3,203,474 students, or roughly 81% of Texas's public school student population.
- FOF 106. The school finance system is out of capacity. Over 97 percent of the current system (funds available under the Foundation School Program) is being utilized by school districts, a huge leap from the 83.3% figure that was in effect at the time of *Edgewood IV*. During the 2003-04 school year, major urban school districts in Texas tapped 98.2% of the maximum amount of state and local money available to them under the current school financing formula, compared to just 82.5% in 1994-95. Major suburban districts tapped 98.4%, compared to 88.4% in 1994-95. Furthermore, any remaining capacity is not realistically available because accessing this capacity would require (1) a virtually 100% tax collection rate (practically impossible); (2) the repeal of any property tax exemptions (politically improbable); and (3) a district to have stable or increasing property values. In

other words, these percentages represent virtual full funding for most of the larger districts in the system.

FOF 107. Studies by the Legislative Budget Board (LBB) also indicate the lack of capacity and “meaningful discretion” within the system. In biennial studies regarding the necessary costs of a regular program allotment required to meet a minimal level of accreditation, the LBB has confirmed the erosion and actual elimination of “meaningful discretion.” For the 2002-2003 biennium, regular costs for a program in which at least 50 percent of the students passed all sections of TAAS, was established as \$4,456 for FY 2002 and \$4,525 for FY 2003. In contrast, the 2001 FSP was projected to raise \$4,705 for FY 2002 and \$4,719 for 2003. This left a surplus over which districts had discretion of \$249 in 2002 and \$194 in 2003. In 2003, the LBB repeated the study and determined that discretionary funds had essentially been eliminated under the FSP structure. For 2004 and 2005, the LBB staff calculated the costs of a regular program at \$4,820 and \$4,974 respectively. FSP revenues were projected to be \$3 short of the requirements in 2004, and \$144 short in 2005, even assuming districts were taxing at the maximum tax rate. Although the 78th Legislature did add a small amount of additional funding (\$110 per WADA), this amount did not leave districts with any measurable amount of enrichment funds under the standards used in the LBB staff report. Furthermore, this study understates costs in two ways. First, it looked only at regular program expenses, and thus understates costs to the extent that adjustments discussed *supra* (comp ed, bilingual, transportation, etc.) are inadequate. Second, the study was based on the prior accountability system and did not reflect the costs associated with the new accountability system, including the implementation of TAKS, the Recommended High School Program, and the promotion gates.

FOF 108. An additional example of the State shifting its own cost obligations onto local districts relates to the State’s maintenance of the Teacher Retirement System. Article 16, Section 67(b) of the Texas Constitution requires the Legislature to establish a Teacher Retirement System to “provide benefits for persons employed in the public schools, colleges, and universities” and that “the amount contributed by the state may not be less than six percent nor more than 10 percent of the aggregate compensation paid to individuals participating in the system.” TEX. CONST. art. XVI, § 67(b)(1),(3). The State has failed to meet its constitutionally-mandated six percent minimum contribution, falling short by approximately \$100 million annually. Local school districts have been forced to make up the difference.

2. Lack of meaningful discretion, both as to Focus Districts and in system as a whole.

a. The Focus Districts’ fund balances do not constitute meaningful discretion.

FOF 109. Fund balance is the gross difference between governmental fund assets and liabilities reflected on the balance sheet. The fund balance of the General Fund is of primary significance because the General Fund is the primary fund through which most functions are financed and which includes state aid and local maintenance taxes. One primary criterion of rating agencies for school bonds is the relative amount of undesignated

unreserved fund balance. Bond rating agencies view undesignated unreserved fund balances as a reflection of the financial strength of school districts and show concern when district fund balances decrease. Of even greater significance is that fund balances serve as the “rainy day fund” for school districts. Like the State of Texas, school districts reserve funding for economic recession or worse.

FOF 110. Funds balances do not always represent cash available for any expenditures. Accordingly, it is necessary to determine what portions of the gross fund balance pertain to:

- a. Reserved fund balances, which pertains to the portion of the fund balance that is not available for appropriation or expenditure (for example, reserve for inventories) and/or legally earmarked for a specific future use - i.e., legal restriction on the use of assets (for example, reserve for encumbrances).
- b. Designated unreserved fund balances, which refers to the portion of the fund designated to reflect tentative plans or commitments of the resources for bona fide purposes that will be fulfilled within a reasonable period of time; and
- c. Undesignated unreserved fund balances, which refers to the remainder of the fund balance and which is usually available to finance monthly operating expenditures.

FOF 111. The TEA, in its Financial Accountability System Resource Guide, states that “[p]rudent financial management requires accumulating undesignated unreserved fund balance in the General Fund in an amount that is adequate to cover net cash outflows that occur in virtually all schools during most of the fiscal year.” TEA also has set a rule of thumb to compute the optimum fund balance in the General Fund. The rule of thumb calls for the computation of the optimum unreserved undesignated fund balance to equal the estimated amount to cover cash flow deficits in the General Fund for the fall period in the following fiscal year plus estimated average monthly cash disbursements of General Fund for the nine months following the fiscal year.

FOF 112. The TEA has also implemented a Financial Integrity Rating System of Texas (“FIRST”), upon which it ranks districts on twenty-one different financial indicators. One of the indicators is whether a district’s total fund balance in the general fund more than 50% and less than 150% of the optimum fund balance calculation. Each of the West Orange Cove Focus Districts fell within this recommended range. In fact, each of the West Orange Cove Focus Districts received a perfect score on the FIRST ratings (21 out of 21 indicators passed), receiving a rating of “Superior Achievement.”

FOF 113. The State Defendants argue that any district whose fund balance is greater than 50% of the optimum balance (even if below the optimum) is exercising “meaningful discretion.” This Court rejects this argument. Keeping fund balances at 50% of optimum may lead to a district having its credit rating downgraded, increasing the amount of interest it must pay on debt. A Chapter 41 district that does not receive state aid and that only receives tax revenues in January must borrow money if it does not have a sufficient fund balance to cover payroll costs in the fall semester. Moreover, districts are understandably reluctant to pay recurring costs (teacher salaries, programs, etc.) out of fund balance because these costs will continue to diminish the fund balance year after year. In short, the State prescribes a range of fund balances for a reason, and a district cannot be said to have “meaningful discretion” just because it is not at the very bottom of that range.

b. The optional homestead exemption does not constitute meaningful discretion.

FOF 114. The State Defendants argue that the local option homestead exemption specifically authorized by the Texas Constitution, Article VIII, section 1-b provides districts with “meaningful discretion.” However, only one of the West Orange Cove Focus Districts – Dallas ISD – offers this exemption, and as indicated *infra* FOF 123, repeal of this exemption would have endangered the passage of a critical bond issue. Moreover, in 2002-03, only \$250-300 million of revenue – less than 1% of the total state and local revenue – was lost to the optional homestead exemption, so even a total repeal by every district would not create significant additional capacity in the school finance system. In addition, as TEA expert Joe Wisnoski testified, the local option homestead exemptions granted by some school districts are not the cause of the current school finance system’s lack of capacity, nor is their elimination the solution to the identified problems and deficiencies in the system. On the contrary, elimination of the local option homestead exemptions granted by some school districts will only increase the reliance of the school finance system on local property taxes for its primary support.

c. The West Orange Cove Focus Districts lack meaningful discretion.

(1) Dallas ISD.

FOF 115. Dallas ISD, a major urban district, is the second largest school district in Texas and is located in the eastern portion of the Dallas/Forth Worth Metroplex. It is a Chapter 42 “gap” district, meaning that it is not property wealthy enough to be classified as Chapter 41 (it has less than \$305,000 in property wealth/WADA) but it is not sufficiently property poor to generate state aid under Tier 2.

FOF 116. Dallas ISD has an M&O tax rate of \$1.50 for school year 2004-05, its second year at the \$1.50 cap.

FOF 117. Dallas ISD educates approximately 161,000 students. Approximately 61% of these students are Hispanic, 31% are African-American, and 6% are White. The population of Hispanic students in Dallas ISD has been surging, while the percentage of African American and White students have been in decline, a pattern that is expected to continue.

FOF 118. Approximately 79% of Dallas ISD’s students are economically disadvantaged, as classified by the State (i.e., they qualify for free or reduced price breakfast or lunch), far in excess of the State average.

FOF 119. More than 32% of Dallas ISD’s students (or approximately 58,906 students in 2004) are limited English proficient. This number has increased over time. Dallas ISD’s superintendent, Dr. Mike Moses, described educating LEP students as “probably the greatest challenge for the Dallas Independent School District and perhaps for our State.” LEP students are more costly to educate because they require greater levels of individualized attention, particularly when they enter the school district in the later grades.

Dr. Moses estimated that, on average, it costs Dallas ISD roughly twice the amount of money to educate LEP students that enter the district at the secondary level as opposed to non-LEP students. (On the other hand, LEP students that enter the district at earlier grades, i.e., ages 4-6, may only cost as much as an additional 10% per student.) This sizable LEP population has put a severe financial strain on the district in terms of teacher recruitment and training, and special programming for these students.

- FOF 120. Dallas ISD also incurs significant additional costs to provide special needs services to non-Dallas ISD students, particularly sick or injured children that come to Dallas to receive medical care at one of the many hospitals situated in the district.
- FOF 121. Due to its resource capabilities, Dallas ISD is also required to provide special education services to non-Dallas ISD students, which cost the district in excess of \$1 million annually.
- FOF 122. As a heavily urban district, Dallas ISD has an unusually high student mobility rate of approximately 30%. The student mobility rate is based on the number of times students enroll in or leave a school during the school year. A high mobility rate involves substantial disruption to the normal educational process, as teachers must interrupt their planned curriculum to assess and adjust to the turnover in the student population. This in turn has an overall negative effect on general student performance, creating additional challenges for Dallas ISD.
- FOF 123. Dallas ISD has an optional homestead exemption of 10%, as permitted by the Texas Constitution. In 2002, Dallas ISD asked the voters to approve a \$1.3 billion bond issue to address critical facilities needs, which was the largest bond issue in the history of the state. Had Dallas ISD repealed the optional homestead exemption, in effect hitting its residential taxpayers with a “double whammy,” it might have endangered the passage of the bond issue. Therefore, repeal of the optional homestead exemption would not be an exercise of “meaningful discretion.” Moreover, this Court finds that the scope of Dallas ISD’s needs far exceeds the amount of money that would be raised through repeal of the optional homestead exemption.
- FOF 124. Dallas ISD’s 2002-03 total fund balance was \$126,182,397, which is more than \$37 millions *less* than the TEA’s optimal fund balance calculation. Even then, Dallas’s 2002-03 fund balance was artificially inflated due to the change in the fiscal year end from August 31st to June 30 (because Dallas ISD registered only ten months of expenditures). Moreover, Dr. Moses testified that currently, Dallas ISD has only about one month of operating expenditures in the fund balance, even though credit ratings agencies prefer to see between 1½ to 2 months worth of operating expenditures there. Moreover, Dallas ISD has had to use \$10 million out of fund balance during the 2004-05 school year simply to balance the budget. In short, reducing Dallas ISD’s existing fund balance to 50% of the TEA optimum calculation would not be an exercise of meaningful discretion.
- FOF 125. Dr. Moses testified that many of the factors referenced *supra* Section II.A.2 have also driven up costs in Dallas ISD, including (1) the new accountability system, particularly the TAKS test (primarily for remediation); (2) NCLB; (3) inflationary pressure on costs associated with utilities, water, gas, bonding insurance, and other institutionally necessary

expenditures; (4) the TEKS curriculum, which has required the district to retool and retrain its work force; (5) the Recommended High School Program, which will carry with it additional costs for qualified math and science teachers as well as additional facilities costs (e.g., science laboratories); (6) unfunded mandates.

- FOF 126. The expanding immigrant population in the Dallas area is also a “cost-driver” for the district. In response to the growing number of non-English speaking immigrants, Dallas ISD opened an intake center at which it makes critical assessments of the educational needs of each incoming immigrant student, all at a significant cost to Dallas ISD (Dallas ISD spent approximately \$1 million to open the intake center and incurs additional costs to operate it).
- FOF 127. In 2003, Dallas ISD teacher salaries were lower than most districts in the Dallas-Fort Worth Metroplex, even though, given its student population, it should be paying more than its neighboring districts to attract highly qualified teachers. Dallas ISD is at a competitive disadvantage in attracting and retaining the teachers it needs to adequately meet the educational needs of its student population, particularly given its high number of LEP and economically disadvantaged students. Dr. Moses testified that Dallas ISD has had to grapple with critical shortages of qualified math, science, bilingual, ESL, and special education teachers and has a need to hire 127 ESL teachers at the present time. Alternatively certified teachers, i.e., those not going through the traditional university preparation route, constituted 47.9% of new teacher hires in Dallas ISD in 2004-05.
- FOF 128. Dallas ISD has had to significantly reduce its budget over the past three years due to its inability to generate additional revenue via the M&O tax rate and its need to remain competitive with its neighboring districts in terms of salaries (which comprises about 85.5% of Dallas ISD’s general operating budget).
- FOF 129. In 2001-02, Dallas ISD cut \$44.3 million from its budget. These cuts were made by delaying the start of the school year by eight days, reduction of one-time costs from the previous year’s budget, elimination of a contract with a company for alternative education services, and elimination of 50 non-teacher positions.
- FOF 130. In 2002-03, Dallas ISD slashed \$16.1 million from its budget. These cuts were made by reducing electricity costs by joining a co-op, reducing debt service expenses via a voter-approved bond resolution, reducing 3% from the expenditures primarily at the central office for supplies, capital outlays, and the like, and eliminating another 60 non-teacher positions.
- FOF 131. In 2003-04, Dallas ISD slashed over \$30.6 million from its budget to afford an increase in teacher salaries (needed in order to remain competitive with neighboring districts).
- a. Dallas ISD cut 350 teaching positions in 2003-04. This had the effect of:
 - i. increasing the middle school campuses’ pupil-teacher allocation from approximately 19:1 to 23:1 and increasing the high school pupil teacher allocation from 25:1 to 28:1.

- ii. forcing most campuses to doing away with “block scheduling,” an educational strategy that entails the scheduling of certain core courses grouped into longer class periods, so that instructional time is maximized and more of the day is freed for other course offerings. “Block scheduling” also offers other educational benefits, such as enhanced ability to offer individualized instruction, reducing time in the hallways for students (thereby reducing disciplinary issues), and providing increased opportunity for team-teaching and interdisciplinary teaching strategies.
- iii. reducing the number of advanced and elective course opportunities for students.

b. In 2003-04, Dallas ISD also eliminated an additional 96 non-teaching positions and made other cuts totaling in excess of \$16 million.

FOF 132. Dallas ISD’s current budget for the 2004-05 school year also contains significant budgetary reductions totaling almost \$16 million. These cuts are being made by reducing the district’s contingency fund for benefits by almost \$5 million, reduction of a one-time cost for a tax incremental financing zone payment of \$3.378 million, reducing the number of portable buildings through increased construction of permanent facilities (reducing almost \$2.6 million from the budget), cutting longevity pay for teachers by over \$1.8 million, cutting historical stipends to teachers by over \$1 million, reducing by 3% other budgetary items, and making a compensation equity adjustment of \$500,000.

FOF 133. Dallas ISD’s 2004-05 general operating budget reflects that the district is spending money efficiently and with the overriding goal of allocating the most money possible to areas where school children are directly served. The vast majority of funds are budgeted directly on matters funded via the M&O tax: student instruction, instruction-related programs, and facilities maintenance and operations. Only 1.01% of Dallas ISD’s expenditures are budgeted for co-curricular and extra-curricular programs (a percentage significantly smaller than state average), even though these programs are a critical part of reducing student drop-outs and building leadership and socialization skills in students. Central administrative costs account for only 3.32% of Dallas ISD’s budget in 2004-05. In 2002-03, the district received the highest ranking -- “superior achievement” -- on the State’s “Financial Integrity Rating System of Texas,” which assesses the quality of a district’s management of its financial resources.

FOF 134. Dallas ISD was also recently the subject of an extensive performance review by the Comptroller’s Office. The Comptroller’s Office made 193 recommendations to Dallas ISD about how to achieve cost savings. Dallas ISD implemented 192 of these recommendations, saving \$59.9 million over a five-year period, which represents slightly less than 1% of all district expenditures over the same time period. Among the recommendations that Dallas ISD implemented was a 3% reduction in central office staff (120 positions) at an annual savings of \$4 million.

FOF 135. Dallas ISD has also outsourced management of its maintenance operations as well as printing and copying services as a means of saving money.

- FOF 136. Dallas ISD's student performance on the TAKS test in 2004 indicates that Dallas ISD has a tremendous deficits to address, particularly when looking at how many students failed to meet the final, panel recommended cut scores that are being phased in for ratings purposes. For example, only 33% of Dallas ISD's 5th graders met the panel recommended standard for all TAKS tests in 2004 (54% White, 32% Hispanic, 30% African American, and 30% Economically disadvantaged). Only 39% of Dallas ISD's 8th graders met the panel recommended standard for all TAKS tests in 2004 (64% White, 39% Hispanic, 36% African American, and 37% Economically disadvantaged). Finally, only 24% of Dallas ISD's 10th graders met the panel recommended standard for all TAKS tests in 2004 (54% White, 22% Hispanic, 19% African American, and 20% Economically disadvantaged). Most importantly, the data reflects that the achievement gaps between White and minority students, which had been decreasing throughout the 1990s, have re-emerged at a time when the district lacks access to the additional resources needed to reduce these gaps. Dallas ISD also is significantly underperforming the State in terms of percentage of students taking the SAT/ACT, and the percent scoring at or above criterion on the SAT/ACT.
- FOF 137. Dallas ISD has been forced to reduce spending and alter various student programs in response to the financial constraints of the current school finance system.
- FOF 138. Dallas ISD has identified the following strategies that it would implement if additional revenue were available:
- a. Because early intervention is an effective tool in ensuring that economically disadvantaged students do not enter school far behind their more fortunate counterparts, Dallas ISD would like to implement a full-day pre-kindergarten program. However, the estimated \$36 million price tag has been prohibitive.
 - b. Because the TAKS test is substantially more difficult than the TAAS test, many more Dallas ISD students are failing the test and being designated at risk. Dallas ISD needs substantial additional money to intervene and remediate these failures.
 - c. Dallas ISD would like to reduce class sizes at the secondary level so that teachers can give more individual attention to students.
 - d. Dallas ISD would like to increase teacher salaries to address critical shortage areas.
- FOF 139. Dallas ISD has been unable to implement programs and services that it needs to provide in order to give all of its students an opportunity to satisfy new state standards.
- FOF 140. Dallas ISD's budget cuts and inability to fund programs have compromised the district's ability to provide each student with a meaningful opportunity to achieve opportunity to learn the TEKS and be prepared, upon graduation to continue to learn in postsecondary educational, training, or employment settings.
- FOF 141. If Dallas ISD reduced its tax rates to \$1.35, \$1.40, or even \$1.45, it would have to make significant additional cuts, which would seriously jeopardize its ability to maintain an

“academically acceptable” accreditation ranking while complying with all other federal and state mandates and regulations. Dallas ISD raises approximately \$6 million per penny of tax effort, and the reduction of its tax rate by five cents would result in the loss of approximately 600 teaching positions. Reducing its tax rate to \$1.40 would result in the loss of approximately 1200 teaching positions, and reducing its tax rate to \$1.35 would result in the loss of approximately 1800 teaching positions.

(2) Austin ISD.

- FOF 142. Austin ISD is a Chapter 41 major urban district located in central Texas.
- FOF 143. Austin ISD has an M&O tax rate of \$1.50 for 2004-05 school year and has been at the \$1.50 cap since 2002-03. Austin ISD does not offer the optional homestead exemption set out in article VIII, section 1-b(e) of the Texas Constitution. Austin ISD has no means of raising its M&O tax rate and no means to raise additional revenue to finance its maintenance and operations.
- FOF 144. Austin ISD educates more than 79,000 students. For the 2004-05 school year, it is projected that 54.7% of these students will be Hispanic, 13% will be African-American, and 29.4% will be White. It is further projected that 58.2% of Austin ISD’s students will be economically disadvantaged, continuing a substantial upward trend. Almost 23% of these students will be LEP students. Over the last five years, the clear trend in Austin ISD has been a steady decline in the number of African American and White students and a steady increase in the number of Hispanic students. Overall, the minority student percentage in Austin ISD has increased from 66.3% to 70.6% over the last five years.
- FOF 145. As Austin ISD also has seen dramatic growth in its LEP student population, from 13,841 students in 2000-01 to 18,200 in 2004-05, which has increased Austin ISD’s need for certified bilingual teachers. A significant component of this growth has been from immigrant students, whose numbers have grown from 3,613 in 2001-02 to a projected 5,800 in 2004-05.
- FOF 146. Because of the high number of immigrants who arrive at Austin ISD at the high school level without any proficiency in English, Austin ISD opened an international high school this year to meet the educational needs of these immigrant students. Austin ISD is expending approximately \$500,000 to bring these students to where they need to be in terms of English proficiency to be able to prepare these students to assimilate into Austin ISD’s high schools. Similarly, at the middle school level, Austin ISD has created the ELLA program (the English Language Learner Academy) to accomplish the same goal with middle-school level children who come into the district without proficiency in the English language.
- FOF 147. Despite these and other increased costs, Austin ISD’s expenditures from its general fund have not significantly changed over the past five years and it has been living on “fixed income.” As testified to by Austin ISD superintendent Dr. Pat Forgione, this means that Austin ISD has not had access to additional funds to meet the district’s increasing needs over the past five years.

FOF 148. In 2002-03, Austin ISD's local tax levy raised \$645 million for the district. But in the following year, 2003-04, at the same tax rate (which could not be raised because Austin ISD was at the cap), the local tax levy raised only \$625 million, and it is projected that in 2004-05 the local tax levy will raise only \$626 million. Because of recapture, Austin ISD was continuing to send money out at an increasing rate even though no new money was coming in. In effect, this means that Austin ISD's rising M&O tax rate and local tax levies were being used to subsidize the state funding system at the expense of the local taxpayers.

FOF 149. Austin ISD faced a severe budget crisis in 2003-04 because property values in Austin declined, even though its recapture payment, which was conditioned on the prior year's property value assessment, went up. This confluence of events resulted in a budgetary swing of \$38 million without even considering inflation - \$20 million of revenue lost because of the decline in property values, plus a recapture payment that climbed by \$18 million. Austin ISD was forced in the 2003-04 school year to slash over \$42 million from its budget. These cuts, which were educationally detrimental, included:

- (a) the elimination of 55 instructional specialists and 74 reading recovery teachers from some of its neediest schools (resulting in a reduction of over \$9.6 million);
- (b) the reduction of campus staffing ratios (i.e. cutting 2% of campus instructional staff), resulting in the loss of 41 art teachers, 41 music teachers, and 41 physical education teachers (resulting in a budget cut of over \$9 million);
- (c) over \$6 million in supplies, reading materials, software, equipment, and travel expenses;
- (d) over \$4.2 million in central administrative staff, programs, and services, which included about 125 positions and constituted approximately 18% of the central office staff; and
- (e) significant cuts to magnet programs, gifted and talented programs, and athletic programs.

FOF 150. Even with these cuts, Austin ISD had to use approximately \$30 million out of fund balance to balance its budget. Moreover, Austin ISD has had to use another \$15 million in fund balance to pay for a teacher compensation increase in 2004-05. Dr. Forgione testified that use fund balance to pay for recurring expenses was a "bad idea" but testified that it was necessary to hire and retain qualified teachers. As a result of these actions, Austin ISD's fund balance after 2004-05 is projected to be approximately half of the TEA optimal level.

FOF 151. As a Chapter 41 district, Austin ISD's fund balance is critical because of the timing by which it receives local property tax revenue – it does not receive state aid and only receives local property tax revenue in January. During the current school year (2004-05), Austin ISD's fund balance is insufficient to meet its payroll for the months of September through December, so Austin ISD will be forced to borrow approximately \$125 million to meet payroll expenses.

- FOF 152. Like other school districts, Austin ISD faces rising uncontrollable costs, such as insurance premiums and utilities. Because Austin ISD is on a “fixed income,” Austin ISD has been forced to cut programming or payroll or use its fund balance to pay for any increase in uncontrollable costs.
- FOF 153. Austin ISD has identified numerous programs and strategies that it would like to implement to accomplish goal of having all high school students graduating successfully under the Recommended High School curriculum. These include: (1) more TAKS remediation/acceleration, (2) class size reduction; (3) credit recovery courses; (4) more summer school; (5) block scheduling, (6) more programming to improve parent involvement; (7) a second campus for at risk students; and (8) expanded bilingual education programming. These programs and strategies would result in substantial additional costs in order to finance the hiring of additional teachers, teacher training, and additional materials. Because Austin ISD is at the \$1.50 cap, it has no means to raise additional revenue to pay for these expenses.
- FOF 154. Austin ISD currently has allocates one teacher for every thirty-two students at the secondary level, but has made an effort to reduce these ratios to 28:1 in the core areas for 10-12th grades. Austin ISD also allocates one teacher for every 28 students at the middle school level, but has not had the funds to reduce this ratio.
- FOF 155. As with Dallas ISD, Austin ISD’s student performance on the TAKS test in 2004 indicates that the district has a tremendous deficits to address, particularly when looking at how many students failed to meet the final, panel recommended cut scores that are being phased in for ratings purposes. For example, only 43% of Austin ISD’s 5th graders met the panel recommended standard for all TAKS tests in 2004 (74% White, 27% Hispanic, 23% African American, and 24% Economically disadvantaged). Only 47% of Austin ISD’s 8th graders met the panel recommended standard for all TAKS tests in 2004 (76% White, 30% Hispanic, 25% African American, and 25% Economically disadvantaged). Finally, only 37% of Austin ISD’s 10th graders met the panel recommended standard for all TAKS tests in 2004 (62% White, 19% Hispanic, 13% African American, and 15% Economically disadvantaged). Moreover, these scores indicate that the achievement gaps between White and minority students have re-emerged to a great extent in Austin ISD as well.
- FOF 156. The phase-in of the TAKS has resulted in significant increased costs for Austin ISD. 23.5% of Austin ISD’s fifth-graders did not meet the minimum standard on the 2004 TAKS reading test, and 21.6% of the fifth graders did not meet the minimum standard on the 2004 TAKS math test. Most of these students are economically disadvantaged and/or at-risk. Despite this need, Austin ISD cannot afford math specialists in elementary schools and only has reading specialists at the early grades. In the 04-05 school year, fifth graders who fail these exams will not be promoted to sixth grade.
- FOF 157. Austin ISD projects that over 28% of its 6th–12th graders require intervention assistance this year just to get the failing students to grade level, and that such intervention assistance will cost the district an estimated \$21.2 million. These costs would include expenses related to class size reduction, added teachers and specialists in core curricular areas,

alternative campuses for at-risk students, an international school for recent immigrants, tutors, and increased infrastructure. The funds needed to meet these core needs are not available to Austin ISD.

- FOF 158. To accomplish the State-mandated educational goals in grades K-5, Austin ISD will need to spend an amount close to the \$21.2 million estimated for grades 6-12. To raise the approximately \$40 million Austin ISD requires to meet these educational needs, it would need to raise its M&O tax rate by approximately \$0.10.
- FOF 159. Austin ISD has difficulty retaining teachers, particularly those with less than four years of experience, because of the cost of living in Austin, the student characteristics of the district, and competition from the suburbs. Dr. Forgione testified that Austin ISD is like a “farm team” for the neighboring districts.
- FOF 160. Austin ISD has used its resources efficiently. Over the last five school years, Austin ISD has dedicated less than 2% of its total budget to co-curricular and extra-curricular expenditures (approximately 1.7% in 2003-04). Within that amount, there has been a shift of resources to girls’ sports in compliance with the requirements of Title IX. Dr. Forgione attested to the strong connection between student participation in these activities and their continued attendance at school, as well as to the importance of co-curriculars and extra-curriculars to a student’s ability to get into college or the service academies.
- FOF 161. Austin ISD was also recently the subject of an extensive performance review by the Comptroller’s Office. In April 2000, the Comptroller’s Office made 163 recommendations to Austin ISD about how to achieve cost savings, recommending savings of approximately \$52 million over five years, or approximately 2% of the budget. Austin ISD has implemented all but two of the recommendations, and has sound reasons for not implementing those recommendations at this time.
- FOF 162. Austin ISD has been unable to implement programs and services that it needs to provide in order to give all of its students an opportunity to satisfy new state standards.
- FOF 163. Austin ISD’s budget cuts and inability to fund programs have compromised the district’s ability to provide each student with a meaningful opportunity to achieve opportunity to learn the TEKS and be prepared, upon graduation to continue to learn in postsecondary educational, training, or employment settings.
- FOF 164. If Austin ISD reduced its tax rates to \$1.35, \$1.40, or even \$1.45, it would have to make significant additional cuts, which would seriously jeopardize its ability to maintain an “academically acceptable” accreditation ranking while complying with all other federal and state mandates and regulations.

(3) Humble ISD.

- FOF 165. Humble ISD is a fast-growing, major suburban district (Chapter 42) in the northeast Houston metropolitan area, with a rapidly changing student population.

- FOF 166. Humble ISD has an M&O tax rate of \$1.50 for school year 2004-05, its fourth year at the \$1.50 cap. Humble ISD does not offer the optional homestead exemption set out in article VIII, section 1-b(e) of the Texas Constitution.
- FOF 167. In the 2003-04 school year, Humble ISD educated approximately 27,000 students. More than 30% of Humble ISD students were minority students in 2003-04, with approximately 12% of those students classified as African American, 18% Hispanic, and 66% White. In 2003-04, 19.13% of Humble ISD's students were economically disadvantaged and more than 5% of these students were limited English proficient.
- FOF 168. Humble ISD began the 2004-05 school year with more than 28,000 students - 1000 students more than the prior school year. In recent years, Humble ISD has been growing at a rate of about 800 students per year. Based on a recently completed demographic study, Humble ISD expects to grow at a rate of 1200 to 1400 students per year for the next ten years. This is the equivalent of adding one large middle school per year to the Humble ISD.
- FOF 169. The minority and economically disadvantaged student population in Humble ISD has been growing and will continue to grow at an even more rapid pace than the general student population. For the 2004-05 school year, the minority population has grown to 35% of the total student population, which is nearly double the percentage of minority students in Humble ISD just ten years ago. Similarly, in 2004-05, the economically disadvantaged population will constitute more than 20% of the total student population - again, nearly double the percentage of ten years ago.
- FOF 170. With a rapidly growing minority and economically disadvantaged student population, Humble ISD (like many other "first-ring" suburban districts) now faces many of the same challenges as do large urban districts. For example, Dr. Guy Sconzo, Humble ISD superintendent, testified that the mobility rate is 38% at the district's more economically disadvantaged campuses, a rate similar to that of Dallas ISD.
- FOF 171. As in large urban districts, minority and economically disadvantaged students require additional resources to address the needs of these populations. These resources include more teachers to lower class sizes or to provide increased individual attention and remediation, as well as additional teachers with specialized training in bilingual education or other special programs.
- FOF 172. Humble ISD is classified as a "Tier 2" district in the Texas school finance system, which means that the district qualifies for and relies upon State revenue to operate the school district. However, the percentage of funding provided to Humble ISD in recent years has declined significantly. In 1997-98, more than 41% of Humble ISD's revenues were provided by the State and 52% were generated by local taxes. For 2004-05, the State's share will fall to less than 32% of Humble ISD's total revenues and local taxpayers will provide 64% of revenues.
- FOF 173. Humble ISD spends approximately 88% of its operating budget on personnel costs, including teachers, other instructional staff, counselors, librarians, nurses, and other support positions.

- FOF 174. Humble ISD's average teacher salaries are below the average salaries paid by nearby school districts in almost all areas and experience levels, and especially at higher experience levels. As a result, Humble ISD had lost many of its more experienced and high-quality teachers to competing school districts. Humble ISD is at a competitive disadvantage in retaining experienced and high quality teachers it requires to meet the needs of its growing population of minority and economically disadvantaged students.
- FOF 175. In recent years, Humble ISD has experienced increased costs. Some costs are uncontrollable and not necessarily related to student growth, such as increases in utility rates and insurance premiums. Other increased costs are a function of rapid student growth, which requires more schools, teachers, supplies, and other resources.
- FOF 176. Although Humble ISD has experienced some increased revenue because of student growth and property values increases, these revenues do not match the district's increased costs attributable to student growth and other uncontrollable factors. Dr. Sconzo testified that as Humble ISD has experienced increased local revenues resulting from increased property values, the State has reduced the amount of funding it provides to the district. Likewise, the additional revenues generated by additional students are insufficient to cover the additional costs attributable to those students.
- FOF 177. As a result, from 2001-02 (the year Humble ISD hit the \$1.50 cap) through 2003-04, the district's expenditures per student have remained essentially flat. The district's expenditures per student during that time period also have been below state average per student expenditures. For 2004-05 and 2005-06, Humble ISD projects that per pupil expenditures will actually decrease as a result of the \$1.50 cap and decreasing State revenues. These expenditures will decrease at the same time the population of minority and economically disadvantaged students is increasing in the district.
- FOF 178. Humble ISD has been forced to reduce spending and alter various student programs over the past three years due to its inability to generate additional revenue via the M&O tax rate and its need to remain competitive with its neighboring districts in terms of salaries. Humble ISD cut \$5.6 million from its budget in 2002-03, \$1.5 million in 2003-04, and \$1.2 million in 2004-05. Dr. Sconzo testified that the most significant cuts that affected students were (1) the elimination of teaching positions at middle and high schools, resulting in increased class sizes, (2) reductions in teacher training and development, and (3) reductions in services for at-risk students such as summer school and tutoring.
- FOF 179. Humble ISD, as a fast growth district, faces particular financial challenges. In February 2002, local voters overwhelmingly rejected a \$217 million bond referendum, largely because it did not provide for the construction of new high schools to reduce the size of Humble ISD's two existing high schools (one has approximately 4400 students and the other has approximately 4000 students). The February 2002 bond referendum did not provide for construction of new high schools because of concerns about the district's financial ability to operate new high schools. Dr. Sconzo testified that it costs approximately \$2.2 million per year simply to operate a new high school, \$1.8 million to operate a new middle school, and \$1.2 million to operate a new elementary school.

- FOF 180. Subsequently, in September 2002, voters overwhelmingly approved a \$230 million bond referendum that provided for the construction of two new high schools, even though this second bond referendum was \$13 million more than the failed bond referendum. Nonetheless, Dr. Sconzo testified about continuing concerns about the district's ability to operate these new schools without cutting additional programs or further increasing class sizes.
- FOF 181. Humble ISD's recent bond experience may only be a sign of things to come, as the district's recent demographic study projects the District will need to build 12 new campuses in the next ten years (nine elementary schools, two middle schools, and another high school).
- FOF 182. Despite these and other financial pressures, Humble ISD has used its resources efficiently. In 2002-03, the vast majority of funds were spent directly on matters funded via the M&O tax: student instruction, instruction-related programs, and facilities maintenance and operations. Only 1.9% of Humble ISD's expenditures were spent on co-curricular and extra-curricular programs. Central administrative costs accounted for only 3.4% of Humble ISD's expenditures in 2002-03. The district received the highest ranking -- "superior achievement" -- on the State's "Financial Integrity Rating System of Texas," which assesses the quality of a district's management of its financial resources.
- FOF 183. Humble ISD's total fund balance as of June 30, 2004 was \$27,049,599, which is almost \$5 millions *less* than the TEA's optimal fund balance calculation. Dr. Sconzo testified that fund balance is essential to cover unforeseen costs and is actually used as part of cash flow to cover expenses when State revenues are unavailable. For example, Dr. Sconzo testified that the State delayed its August 2004 payment to Humble ISD so the State could balance its own biennial budget, which ends August 31, 2004. As a result, Humble ISD used fund balance to open its schools this August. As with other districts, fund balance is a critical part of Humble ISD's bond rating, which is crucial given the District's need to build new schools stemming from student growth.
- FOF 184. Humble ISD's student performance on the TAKS test in 2004 demonstrates that Humble ISD, like large urban districts, has tremendous deficits to address, particularly when looking at how many students failed to meet the panel recommended cut scores that are being phased in for ratings purposes. For example, only 55% of Humble ISD's 5th graders met the panel recommended standard for all TAKS tests in 2004 (66% White, 35% Hispanic, 24% African American, and 24% Economically disadvantaged). Only 55% of Humble ISD's 8th graders met the panel recommended standard for all TAKS tests in 2004 (65% White, 35% Hispanic, 27% African American, and 28% Economically disadvantaged). Finally, only 50% of Austin ISD's 10th graders met the panel recommended standard for all TAKS tests in 2004 (59% White, 28% Hispanic, 22% African American, and 23% Economically disadvantaged). Moreover, these scores indicate there is a significant performance gap between White and minority students, as well as between economically advantaged and disadvantaged students (based on either the current phase-in standards or the panel recommended standards).
- FOF 185. Humble ISD has been unable to implement programs and services that it needs to provide in order to give all of its students an opportunity to improve performance and satisfy new

state standards, including the reduction of class sizes at middle and high schools, student intervention and remediation programs, and increased summer school and tutoring opportunities.

- FOF 186. Humble ISD's budget cuts and inability to fund programs have compromised the district's ability to provide each student with a meaningful opportunity to achieve opportunity to learn the TEKS and be prepared, upon graduation to continue to learn in postsecondary educational, training, or employment settings.
- FOF 187. If Humble ISD reduced its tax rates to \$1.35, \$1.40, or even \$1.45, it would have to make significant additional cuts, which would seriously jeopardize its ability to maintain an "academically acceptable" accreditation ranking while complying with all other federal and state mandates and regulations. Humble ISD raises approximately \$689,186.00 per penny of tax effort, and the reduction of its tax rate by five cents would result in the loss of approximately 75 teaching positions and 13 other positions. Reducing its tax rate to \$1.40 would result in the loss of approximately 151 teachers and 25 other positions, and reducing its tax rate to \$1.35 would result in the loss of approximately 226 teachers and 18 other positions. Given prior cuts by Humble ISD and the needs of its student population, the District does not have meaningful discretion to make these additional cuts.

(4) Spring ISD.

- FOF 188. Like Humble ISD, Spring ISD is a fast-growing suburban district in the Houston metropolitan area. It is a Chapter 42 district.
- FOF 189. Spring ISD has an M&O tax rate of \$1.49 for current 2004-05 school year. Spring ISD does not offer the optional homestead exemption set out in article VIII, section 1-b(e) of the Texas Constitution. Because of the statutory M&O cap, Spring ISD can raise its M&O tax rate only one penny, which would only raise slightly more than \$580,000 in additional revenue. This amount would be insufficient to meet the needs of the district and, as reflected below, Spring ISD is already making deep cuts to its budget to try to meet the continuing fiscal crisis it now faces.
- FOF 190. Spring ISD educates nearly 27,000 students, a number which has been rapidly increasing over the past five years. Approximately 32% of these students are African American, 31% are Hispanic, and 31% are White. Over the past five school years, Spring ISD's minority enrollment has risen from 55% to 69%.
- FOF 191. 46.38% of Spring ISD's students are economically disadvantaged, as classified by the State. From 1999-00 to 2003-04, the total number of economically disadvantaged students in Spring ISD climbed rapidly from 7,686 to 12,415.
- FOF 192. More than 12% of Spring ISD students are limited English proficient. As described for other Focus Districts above, education of LEP students imposes significant additional costs on districts, and Spring ISD is no exception.

- FOF 193. Like other districts throughout the State, inflationary pressure on Spring ISD's uncontrollable costs has resulted in the need to expend more and more funds to meet those costs, which include utilities, water, insurance, transportation expenses.
- FOF 194. In 2002-03, Spring ISD's total fund balance slightly exceeded the TEA Optimum Fund Balance, but only because Spring ISD changed its fiscal year-end from August 31 to June 30th, which resulted in Spring incurring expenses during that fiscal year over only 10 months, rather than 12 months. This accounting change resulted in an artificial \$8.6 million spike in fund balance.
- FOF 195. In the 2003-04 school year, Spring ISD had to use \$5 million of its fund balance to cover operating expenses. As a result, its total fund balance will fall below the TEA maximum optimum fund balance. Spring had to dip into its fund balance, even though it implemented a number of budgetary cuts in 2003-04, including:
- a. eliminations of the middle school after school program;
 - b. elimination of the 9th grade success initiative program;
 - c. elimination of elementary math instructional specialists;
 - d. elimination of bilingual/ESL administrative assistants; and
 - e. elimination of two assistant principal positions.
- FOF 196. Increased educational costs associated with increased enrollment and more rising accountability standards deepened the crisis in the 2004-05 year. To meet these increased costs without eviscerating its remaining fund balance, Spring ISD raised its M&O tax rate to two cents to \$1.49 and implemented over \$8 million in budget reductions, including but not limited to:
- a. elimination of 52 teaching positions by increasing class sizes in grades 5-12; (as a result, Student/teacher allocations in grade 5 rose to 25:1, in middle school rose to 25.5:1, and in high school rose to 27:1);
 - b. reduction of special education staffing, resulting in the elimination of 25 teaching positions;
 - c. reduction of special education support staff (26 positions) who provided service to speech-disabled students;
 - d. reduction in staffing for bilingual and ESL paraprofessionals who provided instructional support to LEP students;
 - e. raising the counselor-student ratio (which will result in a decrease of direct services to students);
 - f. elimination of bus purchases from the transportation budget;

- g. elimination of central office administrative positions;
- h. reduction in the number of athletic coaches; and
- i. reduction in dyslexia services to students.

FOF 197. Even with these reductions, Spring ISD had to use approximately \$1.2 million from its fund balance in the current school year.

FOF 198. Spring ISD's salary structure for teacher pay is in keeping with the market demands of its geographic area. In fact, Spring ISD has been forced, despite severe pressure to cut its budget overall, to raise the salaries of its more experienced teachers, who were leaving the district because they could make significantly more money in neighboring districts.

FOF 199. Spring ISD has used its resources efficiently. Only 2.2% of Spring ISD's expenditures were spent on co-curricular and extra-curricular programs in 2003-04, and Spring ISD consistently has been below the state average in this category. The district received the highest ranking -- "superior achievement" -- on the State's "Financial Integrity Rating System of Texas," which assesses the quality of a district's management of its financial resources.

FOF 200. As in the other Focus Districts, the 2004 TAKS scores reveal that Spring ISD has a tremendous amount of needs to address through increased intervention and remediation. For example, only 42% of Spring ISD's 5th graders met the panel recommended standard for all TAKS tests in 2004 (60% White, 35% Hispanic, 29% African American, and 29% Economically disadvantaged). Only 48% of Spring ISD's 8th graders met the panel recommended standard for all TAKS tests in 2004 (64% White, 43% Hispanic, 33% African American, and 35% Economically disadvantaged). Finally, only 38% of Spring ISD's 10th graders met the panel recommended standard for all TAKS tests in 2004 (55% White, 31% Hispanic, 24% African American, and 27% Economically disadvantaged). In addition, there are significant gaps in student performance between Whites and other ethnic/racial groups.

FOF 201. Spring ISD's budget cuts and inability to fund programs have compromised the district's ability to provide each student with a meaningful opportunity to achieve opportunity to learn the TEKS and be prepared, upon graduation to continue to learn in postsecondary educational, training, or employment settings.

FOF 202. Each penny of tax effort in Spring ISD yields approximately \$583,857 in local revenue, which represents approximately 14 teachers. If Spring ISD reduced its tax rates to \$1.35, \$1.40, or even \$1.45, it would have to make significant additional cuts, which would seriously jeopardize its ability to maintain an "academically acceptable" accreditation ranking while complying with all other federal and state mandates and regulations. Given prior cuts by Spring ISD and the needs of its growing student population, the District does not have meaningful discretion to make these additional cuts.

(5) Carrollton-Farmers Branch ISD.

- FOF 203. Carrollton-Farmers Branch ISD (“CFBISD”) is a Chapter 41 District situated in north central Texas on the northern edge of Dallas.
- FOF 204. CFBISD has an M&O tax rate of \$1.50 for school year 2004-05 and has been taxing at the \$1.50 cap since 2001-02. CFBISD does not offer the optional homestead exemption set out in article VIII, section 1-b(e) of the Texas Constitution. Because of the statutory M&O cap, CFBISD has no means of further raising its M&O tax rate and no means to raise additional revenue to finance its maintenance and operations.
- FOF 205. As property values rose in CFBISD between 1999 and 2002, recapture payments rose as well, increasing from approximately \$34 million in 1999-2000 to approximately \$54 million in 2002-03.
- FOF 206. CFBISD educated approximately 25,750 students in 2003-04, a jump from 23,093 in 1999-2000. Between 1998-99 and 2003-04, the percentage of Hispanic students climbed from 28.9% to 41%, the percentage of African-American students climbed from 9.3% to 13%, and the percentage of White students declined from 48.2% to 33%. The percentage of students classified as minority rose from 54.7% in 1999-2000 to 67% in 2003-04.
- FOF 207. 45.4% of CFBISD students are economically disadvantaged, as classified by the State. In raw figures, the number of economically disadvantaged students in the district has grown from 7,222 in the 1999-2000 school year to 11,633 in the 2003-04 school year.
- FOF 208. More than 21% of CFBISD students are limited English proficient. The number of LEP students in the district has grown from 4,130 in the 1999-2000 school year to an estimated 5,700 in the 2003-04 school year. As with the other Focus Districts, CFBISD has seen increased pressure on its budget associated with the additional costs to educate its LEP students. Dr. Annette Griffin, the superintendent of CFBISD, indicated that the district lacks adequate resources to meet the special educational needs of its LEP students and that it does not currently have the ability to provide the reduced class sizes needed for these students or to provide the necessary additional training for teachers to address the issues posed by educating LEP students.
- FOF 209. This challenges that CFBISD faces from its growing and changing student population is evident from its 2004 TAKS scores. For example, only 56% of CFBISD’s 5th graders met the panel recommended standard for all TAKS tests in 2004 (78% White, 40% Hispanic, 56% African American, and 40% Economically disadvantaged). Only 60% of CFBISD’s 8th graders met the panel recommended standard for all TAKS tests in 2004 (76% White, 41% Hispanic, 44% African American, and 41% Economically disadvantaged). Finally, only 50% of CFBISD’s 10th graders met the panel recommended standard for all TAKS tests in 2004 (67% White, 27% Hispanic, 28% African American, and 28% Economically disadvantaged). As in the other Focus Districts, the 2004 TAKS scores reveal that CFBISD has a significant amount of need to address through increased intervention and remediation. In addition, as in the other Focus Districts, there are significant gaps in student performance between Whites and other ethnic/racial groups.

FOF 210. A 4.49% decline in CFBISD's tax base in 2003-04 resulted in a reduction in revenue to the district, prompting a number of budget cuts, including the following:

- a. Reduction of custodial services;
- b. Increase of class size;
- c. Reduction in administrative personnel and reorganization of central administration;
- d. Reduction in cafeteria monitors; and
- e. Elimination of media technicians.

FOF 211. An further decline in property values in 2004-05 (contributing in large part to a revenue loss of \$4.3 million), along with rising student enrollments and higher standards, has further imperiled CFBISD's budget picture. In 2004-05, CFBISD adopted a deficit budget of \$7.75 million (using its fund balance to cover the difference), even while cutting General Fund Expenditures by \$11.6 million (or 5.03%) through the implementation of a number of budget cuts, including the following:

- a. Elimination of block scheduling, which will involve cutting approximately 100 teacher positions (it should be noted that, for reasons explained elsewhere in these Findings, elimination of block scheduling is not desirable from an education standpoint and Dr. Griffin, the district's superintendent, indicated that it would have been the district's strong preference to not have to eliminate block scheduling);
- b. Implementation of an early exit incentive program to prompt earlier retirement by teachers with over 25 years of experience (again, something that is not desirable from an educational standpoint);
- c. Reduction in alternative education programs;
- d. Elimination of Library/Media aides and library support staff;
- e. Outsourcing of transportation services;
- f. Further reduction of custodial and maintenance services;
- g. Further reduction of central administrative and support operations; and
- h. Restructuring of reading programs.
- i. Reduced support for Student, Family and Community Services Division, whose primary responsibility is to help at-risk students.

- FOF 212. Like the other Focus Districts, CFBISD maintains a fund balance below the optimum fund balance as recommended by the TEA. In the 2002-03 school year, the district's fund balance was \$47.4 million, while the TEA optimum was almost \$68.6 million. This fund balance is declining as CFBISD has used fund balance to cover operating expenditures. At the conclusion of the 2004-05 school year, CFBISD projects that it will have a fund balance of \$38.7 million.
- FOF 213. CFBISD has used its resources efficiently. The district spends the vast majority of its funds were directly on matters funded via the M&O tax: student instruction, instruction-related programs, and facilities maintenance and operations. Only 1.6% of CFBISD's expenditures in the 2002-03 school year were spent on co-curricular and extra-curricular programs, and the district estimated that it spent the same amount on co-curricular and extra-curricular programs in the 2003-04 school year. Central administrative costs accounted for only 3.8% of CFBISD's expenditures in 2002-03.
- FOF 214. CFBISD compensates its teachers comparably to what other districts in close geographic proximity to it are paying teachers and has had to increase salaries to keep up, even as it has implemented the budget cuts described above
- FOF 215. CFBISD has been forced to reduce spending and alter various student programs in response to the financial constraints of the current school finance system, and has been unable to implement programs and services that it needs to provide in order to give all of its students an opportunity to satisfy new state standards.
- FOF 216. CFBISD's budget cuts and inability to fund programs have compromised the district's ability to provide each student with a meaningful opportunity to achieve opportunity to learn the TEKS and be prepared, upon graduation to continue to learn in postsecondary educational, training, or employment settings.
- FOF 217. Each penny of tax effort in CFBISD yields approximately \$1.28 million in local revenue, which represents approximately 31 teachers (CFBISD had 1712 FTE's in 2002-03). If CFBISD reduced its tax rates to \$1.35, \$1.40, or even \$1.45, it would have to make significant additional cuts, which would seriously jeopardize its ability to maintain an "academically acceptable" accreditation ranking while complying with all other federal and state mandates and regulations. Given prior cuts by CFBISD and the needs of its growing student population, the district does not have meaningful discretion to make these additional cuts.

(6) Northside ISD.

- FOF 218. Northside ISD is a fast-growing major suburban district in the San Antonio metropolitan area. It is a Chapter 42 district.
- FOF 219. Northside ISD has an M&O tax rate of \$1.50 for the current 2004-05 school year. It has been at the property tax cap since 2001-02. Northside ISD does not offer the optional homestead exemption set out in article VIII, section 1-b(e) of the Texas Constitution.

- FOF 220. In the 2004-05 school year, Northside ISD will educate more than 73,000 students, a number that has been rapidly increasing over the past five years. In 1999-00, Northside educated approximately 62,728 students, which means its enrollment has increased by more than 17% since that school year. Approximately 7.3% of Northside ISD students are African American, 58.9% are Hispanic, and 30.9% are White. 43.3% of Northside ISD's students are economically disadvantaged, as classified by the State. More than 6% of these students are limited English proficient. The percentage of "at-risk" students in Northside ISD has grown from 35.4% in 2000-01 to 43.5% in 2003-04.
- FOF 221. As in other districts, minority and economically disadvantaged students require additional resources to address the needs of these populations. These resources include more teachers to lower class sizes or to provide increased individual attention and remediation, as well as additional teachers with specialized training in bilingual education or other special programs.
- FOF 222. Northside ISD has used its resources efficiently. In 2002-03, the vast majority of funds were spent directly on matters funded via the M&O tax: student instruction, instruction-related programs, and facilities maintenance and operations. Only 1.8% of Northside ISD's expenditures were spent on co-curricular and extra-curricular programs. Central administrative costs accounted for only 2.6% of Northside ISD's expenditures in 2002-03. Northside ISD's expenditures in these areas were similar in 2003-04 and will be similar in 2004-05. The district received the highest ranking -- "superior achievement" -- on the State's "Financial Integrity Rating System of Texas," which assesses the quality of a district's management of its financial resources, for 2002-03 (the last year for which rankings have been made available).
- FOF 223. In 2002-03, Northside ISD's total fund balance was \$76,682,865, which was slightly less than the TEA-established optimum fund balance.
- FOF 224. In 2002-03, the average salary in Northside ISD was \$33,271 for starting teachers, while the average salary for all teachers was \$41,124. These average teacher salaries are below the average salaries paid by nearby school districts in areas and experience levels. Northside ISD is at a competitive disadvantage in retaining experienced and high quality teachers it requires to meet the needs of its large population of minority and economically disadvantaged students.
- FOF 225. Northside ISD has been forced to reduce spending and alter various student programs in response to the financial constraints of the current school finance system. In 2003-04, Northside ISD froze all salaries at prior levels, saving the district more than \$10,000,000, given prior budgeted salary increases projected for that year. Northside ISD cut its budget by an additional \$12,422,985 in 2003-04. Many of these cuts involved reducing teaching and other instructional support positions, which resulted in increased class sizes at high schools and middle schools, increased student to counselor ratios, and fewer services for at-risk students.
- FOF 226. For 2004-05, Northside ISD provided limited salary increases to compensate for the salary freeze in effect for the prior school year. This salary increase, along with increased costs attributable to the growth in the student population, resulted in \$1,195,183 in deficit

financing for the 2004-05 school year. No funds were available to add or improve programs or services for at-risk students.

- FOF 227. Northside ISD's student performance on the TAKS test in 2004 demonstrates that Northside ISD has tremendous deficits to address. The data reflects that, like other large urban and suburban school districts, there is a significant performance gap between White and minority students, as well as between economically advantaged and disadvantaged students. This challenge is particularly significant given the large population of minority and economically disadvantaged students in Northside ISD.
- FOF 228. Northside ISD has been unable to implement programs and services that it needs to provide in order to give all of its students an opportunity to satisfy new state standards, including hiring more teachers to reduce class for at-risk students; providing intervention programs to remediate TAKS deficiencies and drop-outs; and providing staff development so teachers can more effectively deal with special needs of at-risk students.
- FOF 229. Northside ISD's budget cuts and inability to fund programs have compromised the district's ability to provide each student with a meaningful opportunity to achieve opportunity to learn the TEKS and be prepared, upon graduation to continue to learn in postsecondary educational, training, or employment settings.
- FOF 230. If Northside ISD reduced its tax rates to \$1.35, \$1.40, or even \$1.45, it would have to make significant additional cuts, which would seriously jeopardize its ability to maintain an "academically acceptable" accreditation ranking while complying with all other federal and state mandates and regulations. Northside ISD raises approximately \$1,718,904 per penny of tax effort, and the reduction of its tax rate by five cents would result in the loss of approximately 209 teaching positions. Reducing its tax rate to \$1.40 would result in the loss of approximately 418. Given prior cuts by Northside ISD and the needs of its student population, the District does not have meaningful discretion to make these additional cuts and lower its tax rate.

(7) Lubbock ISD.

- FOF 231. Lubbock ISD is a Chapter 42 district located in the city of Lubbock in West Texas.
- FOF 232. Lubbock ISD has an M&O tax rate of \$1.50 for current 2004-05 school year and has been taxing at the \$1.50 cap since 2001-02. (In 2000-01, it taxed at a rate of \$1.4966). Lubbock ISD does not offer the optional homestead exemption set out in article VIII, section 1-b(e) of the Texas Constitution.
- FOF 233. Lubbock ISD educates approximately 28,500 students, a number which has been rapidly increasing over the past five years. Approximately 45% of these students are Hispanic, 15% are African-American, and 38% are White.
- FOF 234. Nearly 55% of Lubbock ISD's students are economically disadvantaged, as classified by the State, and 14% are in special education.

- FOF 235. In addition to the other “cost drivers” faced by other districts, Lubbock ISD has two unique cost drivers that many other districts do not. First, Lubbock is home to a state institution that serves the needs of students with severe mental and physical handicaps – from Lubbock and throughout the State. Lubbock ISD serves many of these students at the state facility and must do so at very low teacher-student ratios, sometimes one to one, in light of their handicaps. Second, Lubbock ISD is a major medical hub for its region, and therefore attracts families with children that have severe problems. Lubbock ISD serves these students at significant cost.
- FOF 236. Lubbock ISD’s fund balance has remained somewhat below the TEA Optimum fund balance over the past several years. In 2002-03, the Lubbock’s fund balance was \$32.5 million, and the TEA Optimum fund balance was \$35.3 million.
- FOF 237. In 2002-03, Lubbock ISD received the highest ranking -- “superior achievement” -- on the State’s “Financial Integrity Rating System of Texas,” which assesses the quality of a district’s management of its financial resources.
- FOF 238. As educational costs have risen at a time when Lubbock ISD has been at the statutory \$1.50 cap, Lubbock has been forced to implement serious budget reductions in each of the past four budget cycles:
- a. In 2001-02, Lubbock ISD cut approximately \$2.2 million from its budget by, among other things, eliminating 24.5 secondary teacher positions, 3 school administrators, 8.5 administrator positions, and reducing its bus routes (in part by staggering school starting times).
 - b. In 2002-03, Lubbock ISD cut approximately \$3.3 million from its budget by, among other things, eliminating 21.5 technology teachers, 3.5 teaching positions, 8.5 administrator positions and capital outlay projects.
 - c. In 2003-04, Lubbock ISD cut approximately \$2.1 million from its budget by, among other things, cutting 47 teacher positions, cutting back on supplies and materials, and cutting its Early Childhood Intervention program, a program that serves children (ages 0-3) with special needs, providing in-home services and parental training.
 - d. In 2004-05, Lubbock ISD adopted a budget that cut out \$2.3 million in expenditures, through the elimination of 38.5 teaching positions, central administration staffing (2.5 administrators + 3 clerical positions), 3 homebound positions, and a department restructure.
- FOF 239. Lubbock ISD’s average teacher salaries have historically lagged behind the state average, and continue to do so. The district benefits from having a number of universities located in Lubbock. However, Lubbock is facing increasing competition from schools in the Dallas and Houston metropolitan areas, who are participating at “job fairs” at Texas Tech. Lubbock ISD teacher salaries lag significantly behind these district.

- FOF 240. Lubbock ISD's operating expenditures per pupil have lagged significantly behind the state average in recent years.
- FOF 241. The 2004 TAKS scores reveal that Lubbock ISD has a tremendous amount of needs to address through increased intervention and remediation. For example, only 42% of Lubbock ISD's 5th graders met the panel recommended standard for all TAKS tests in 2004 (65% White, 28% Hispanic, 18% African-American, and 26% Economically disadvantaged). Only 49% of Lubbock ISD's 8th graders met the panel recommended standard for all TAKS tests in 2004 (72% White, 33% Hispanic, 23% African American, and 29% Economically disadvantaged). Finally, only 40% of Lubbock ISD's 10th graders met the panel recommended standard for all TAKS tests in 2004 (60% White, 23% Hispanic, 14% African American, and 18% Economically disadvantaged). In addition, there are significant gaps in student performance between Whites and other ethnic/racial groups.
- FOF 242. Lubbock ISD does not have the funds to reduce class size or provide the staff development, teacher training, remediation and intervention required to address these needs. In fact, Lubbock ISD is increasing class sizes as a result of the teacher cuts it has implemented in the past four budget cycles.
- FOF 243. Lubbock ISD's budget cuts and inability to fund programs have compromised the district's ability to provide each student with a meaningful opportunity to achieve opportunity to learn the TEKS and be prepared, upon graduation to continue to learn in postsecondary educational, training, or employment settings.
- FOF 244. Each penny of tax effort in Lubbock ISD yields approximately \$1 million in local revenue, which represents approximately 25 teachers. If Lubbock ISD reduced its tax rates to \$1.35, \$1.40, or even \$1.45, it would have to make significant additional cuts (375, 250 and 125 teachers respectively), which would seriously jeopardize its ability to maintain an "academically acceptable" accreditation ranking while complying with all other federal and state mandates and regulations. Given prior cuts by Lubbock ISD and the needs of its student population, the District does not have meaningful discretion to make these additional cuts.

(8) North East ISD.

- FOF 245. North East ISD is a fast-growing major suburban district in the San Antonio metropolitan area. It is a Chapter 42 district.
- FOF 246. North East ISD has an M&O tax rate of \$1.50 for the current 2004-05 school year. It has been at the property tax cap since 2001-02. North East ISD does not offer the optional homestead exemption set out in article VIII, section 1-b(e) of the Texas Constitution.
- FOF 247. In the 2004-05 school year, North East ISD will educate more than 58,679 students, a number that has been rapidly increasing over the past five years. In 2000-01, Northside educated approximately 50,989 students, which means its enrollment has increased by more than 15% since that school year. For 2003-04, approximately 9.5% of Northside ISD students were African American, 41.8% were Hispanic, and 45.4% were White.

36.7% of Northside ISD's students are economically disadvantaged, as classified by the State. The percentage of economically disadvantaged students in North East ISD has grown from by more than 16% since 2000.

- FOF 248. As with other "Tier 2" districts, North East ISD qualifies for and relies upon State revenue to operate the school district. However, as with other districts, the percentage of state funds provide to North East ISD in recent years has declined significantly. In 2000-01, more than 30% of North East ISD's revenues were provided by the State and 65% were generated by local taxes. For 2004-05, the State's share will fall to less than 22% of North East ISD's total revenues and local taxpayers will provide more than 76% of revenues.
- FOF 249. North East ISD has used its resources efficiently. In 2003-04, the vast majority of funds were spent directly on matters funded via the M&O tax: student instruction, instruction-related programs, and facilities maintenance and operations. Only 2.2% of North East ISD's expenditures were spent on extra-curricular and co-curricular programs. Central administrative costs accounted for only 3.2% of North East ISD's expenditures in 2003-04. The district received the highest ranking -- "superior achievement" -- on the State's "Financial Integrity Rating System of Texas," which assesses the quality of a district's management of its financial resources, for 2002-03 (the last year for which rankings have been made available).
- FOF 250. In 2002-03, North East ISD's total fund balance was approximately \$44,710,005, almost 10% less than the TEA-established optimum fund balance.
- FOF 251. Like other Focus Districts, North East ISD has been forced to reduce spending and alter various student programs in response to the financial constraints of the current school finance system. In 2003-04, North East ISD reduced campus and non-campus positions by more than 258 positions, including more than 56 teaching positions. Although North East ISD added back many of these positions for the 2004-05 school year, the District remains below the overall staffing levels of 2002-03, despite the enrollment growth experienced in the District. In addition, North East ISD cut its budget in non-staffing areas by more than \$3,900,000 in 2003-04.
- FOF 252. North East ISD's student performance on the TAKS test in 2004 demonstrates that North East ISD, like other Focus Districts, has tremendous deficits to address. The data reflects that, like other large urban and suburban school districts, there is a significant performance gap between White and minority students, as well as between economically advantaged and disadvantaged students.
- FOF 253. North East ISD has been unable to implement programs and services that it needs to provide in order to give all of its students an opportunity to satisfy new state standards, including intervention programs and services for at-risk students; longer class periods; and additional staff to reduce class size.
- FOF 254. North East ISD's budget cuts and inability to fund programs have compromised the district's ability to provide each student with a meaningful opportunity to achieve opportunity to learn the TEKS and be prepared, upon graduation to continue to learn in postsecondary educational, training, or employment settings.

FOF 255. If North East ISD reduced its tax rates to \$1.35, \$1.40, or even \$1.45, it would have to make significant additional cuts, which would seriously jeopardize its ability to maintain an “academically acceptable” accreditation ranking while complying with all other federal and state mandates and regulations. North East ISD raises approximately \$1,800,000 per penny of tax effort, and the reduction of its tax rate by five cents would result in the loss of approximately 187 teaching positions. Reducing its tax rate to \$1.40 would result in the loss of approximately 374 teaching positions. Given prior cuts by North East ISD and the needs of its student population, the District does not have meaningful discretion to make these additional cuts and lower its tax rate.

(9) Kaufman ISD.

FOF 256. Kaufman ISD is a non-metropolitan, Chapter 42 district situated in North Central Texas to the southeast of Dallas.

FOF 257. Kaufman ISD has an M&O tax rate of \$1.50 for school year 2003-04. Its M&O tax rate has steadily increased each school year from \$1.39 in 2000-01, to \$1.43 in 2001-02, to \$1.46 in 2002-03, before hitting the \$1.50 cap in 2003-04. The district will continue to tax at the cap in 2004-05. Kaufman ISD does not offer the optional homestead exemption set out in article VIII, section 1-b(e) of the Texas Constitution.

FOF 258. Kaufman ISD had 3,186 students in average daily attendance in 2003-04, a jump from 2,836 students in 2000-01, and expects to have an ADA of 3,249 students in 2004-05 (Kaufman ISD is the smallest of the Focus Districts, so while the actual number of students added to the district during these years is small in relation to the other Focus Districts, the percentage jump between 2000-01 and 2003-04, 11%, reflects significant growth in a short period of time). Between 2000-01 and 2003-04, the percentage of Hispanic students climbed from 26.3% to 28.9%, while the percentage of African-American students declined from 8.5% to 7.0% and the percentage of White students declined from 64.4% to 63%.

FOF 259. During the 2003-04 school year, 48.3% of Kaufman ISD’s students were economically disadvantaged, as classified by the State. The percentage of economically disadvantaged students for the 2004-05 school year is expected to rise to 52.7%. More than 13% of Kaufman ISD students were limited English proficient (LEP) in the 2003-04 school year, and in the 2004-05 school year this percentage is estimated to rise to 14.6%. As with other Focus Districts, the rise in the number of LEP students in Kaufman ISD is creating fiscal problems for the district. Dr. Bruce Wood, Kaufman ISD’s superintendent, indicated that the growth in LEP students means that the district needs to hire additional teachers with the specialized training and qualifications to provide a quality education to these students, but that Kaufman ISD has difficulty in recruiting and retaining teachers given its close proximity to other districts in the Metroplex area that pay teachers higher salaries.

FOF 260. The 2004 TAKS scores reveal that Kaufman ISD has significant needs to address through increased intervention and remediation, particularly at the higher grade levels. For example, only 40% of Kaufman ISD’s 10th graders met the panel recommended standard

for all TAKS tests in 2004 (45% White, 37% Hispanic, 6% African-American, and 31% Economically disadvantaged). Only 54% of Kaufman ISD's 11th graders met the panel recommended standard for all TAKS tests in 2004 (56% White, 60% Hispanic, 22% African American, and 39% Economically disadvantaged).

- FOF 261. As Kaufman ISD has hit the \$1.50 cap, it has been forced to implement numerous budget cuts for the 2004-05 school year, including:
- a. Eliminating \$190,000 in salaried positions (three teachers and one administrator);
 - b. Eliminating SAT/ACT prep classes for high school;
 - c. Reducing transportation capital by \$38,000; and
 - d. Putting on hold \$210,000 of planned projects for continuing growth.
- FOF 262. Kaufman ISD has also not been able to replace lost state grant money for valuable programs. For example,
- a. Kaufman ISD suffered a 7.5% cut in pre-kindergarten grant money;
 - b. \$31,618 was cut from Kaufman ISD's Optional Extended Year Program budget;
 - c. Accelerated Reading grant money, was cut \$58,939, and the 9th grade grant is no longer funded (loss of \$67,485).
- FOF 263. Kaufman ISD has identified several needs for the district that it is currently unable to meet, including:
- a. Adding two teachers for a dropout prevention program;
 - b. Adding TAKS labs at high schools to provide needed assistance for those students failing TAKS;
 - c. Adding an Extended Day program for secondary schools to meet AYP and accountability standards for all student populations; and
 - d. Increasing the district's technology capabilities so that the district has adequate software and hardware to teach the State curriculum.
- FOF 264. Kaufman ISD has consistently maintained its fund balance within the TEA's guidelines for optimum fund balances. However, the fund balance declined from \$3.5 million in 2003-04 to \$3.2 million in 2004-05 as Kaufman ISD had to dip into this fund balance to cover operating expenses.
- FOF 265. Kaufman ISD has used its resources efficiently. In 2003-04, only 3.4% of Kaufman ISD's expenditures were spent on co-curricular and extra-curricular programs.

- FOF 266. As described above, Kaufman ISD compensates its teachers comparably to other Metroplex area schools. However, Dr. Wood indicated that Kaufman ISD regularly loses teachers to other area districts that pay teachers better salaries and that Kaufman ISD serves, in this respect, as “somewhat of a training ground.” Dr. Wood further indicated that Kaufman ISD would like to raise its teacher salaries so that it can continue to compete in the marketplace for qualified teachers but that it does not have funds to do so nor does it have any means to raise additional funds to do so.
- FOF 267. Kaufman ISD has been unable to implement programs and services that it needs to provide in order to give all of its students an opportunity to satisfy new state standards. Kaufman ISD’s budget cuts and inability to fund programs have compromised the district’s ability to provide each student with a meaningful opportunity to achieve opportunity to learn the TEKS and be prepared, upon graduation to continue to learn in postsecondary educational, training, or employment settings.
- FOF 268. Each penny of tax effort in Kaufman ISD yields approximately \$110,000 in local revenue and state aid, which represents approximately 2.7 teachers (Kaufman had 231 FTEs in 2003-04). If Kaufman ISD reduced its tax rates to \$1.35, \$1.40, or even \$1.45, it would have to make significant additional cuts, which would seriously jeopardize its ability to maintain an “academically acceptable” accreditation ranking while complying with all other federal and state mandates and regulations. Given prior cuts by Kaufman ISD and the needs and demographics of its growing student population, the district does not have meaningful discretion to make these additional cuts.

d. The lack of meaningful discretion is systemic.

- FOF 269. Based on the above findings about the predicament of the West Orange Cove Focus Districts, this Court finds that these districts lack “meaningful discretion” in setting their local property tax rates. The West Orange Cove Focus Districts cannot materially lower their tax rates and still provide a constitutionally adequate education, as defined above. If forced to tax at \$1.35 M&O tax rate, a \$1.40 M&O tax rate, or even a \$1.45 M&O tax rate, the West Orange Cove Plaintiffs would have to cut core services necessary for the provision of a general diffusion of knowledge.
- FOF 270. The West Orange Cove Focus Districts are typical of many Texas school districts in the system. They are located in the key metropolitan areas of the State, including Dallas, Houston, Austin and San Antonio, and serve both urban and suburban constituencies. They include small, mid-size and large school districts, both property-poor and property-rich. Collectively, they educate approximately 480,000 students, over 11% of the State’s student population.
- FOF 271. The testimony of the superintendents from the Alvarado Plaintiff/Intervenor and Edgewood Intervenor Districts, as well as the testimony of Mr. Moak, confirm that the lack of “meaningful discretion” in the system is not confined to the West Orange Cove Focus Districts or any particular region or type of district, but rather is part of a statewide pattern. *See, e.g., supra* FOF 105, Section II.B.1; *see infra* FOF 436. In fact, even the Commissioner of Education, Shirley Neeley, in her prior capacity as superintendent of Galena Park ISD, recommended and implemented an M&O tax rate of \$1.56 (pursuant to

an exception to the \$1.50 cap set forth in Texas Education Code Auxiliary Laws, Article 2784g), in the 2003-04 school year, and testified that there was no “fat” in her budget. Even while taxing at \$1.56, Dr. Neeley conceded that Galena Park ISD still had “miles to go” and “lots of work to do” given the district’s 2004 TAKS scores.

FOF 272. The TEA’s Legislative Appropriations Request dated August 2004 is additional support for the lack of meaningful discretion in the system. (WOC Ex. 808). This request sets out performance objectives that the TEA projects can be met given the level of appropriations requested. The TEA projects that during the entire period of projections (through 2007), the State will not be able to graduate two-thirds of graduating students under the RHSP. In looking at the percentage of students passing all TAKS tests, the highest percentage projected is 72% in year 2007. With respect to African-American, Hispanic, and economically disadvantaged students, that figure remains below 60% through 2005 and then barely edges into the low 60s in 2006 and 2007. In 2005, the TEA projects that 30% of districts will receive an accreditation ranking of academically unacceptable, and that 25% of campus will receive a similar ranking. Finally, the TEA projects that 43% of high school graduates will need remediation in 2005.

FOF 273. A statewide analysis of Texas students’ college readiness, as measured by the 2004 TAKS scores, indicates that Texas school districts have much work to do in this area without any additional budgetary capacity. Only 28% of Texas students met the Texas Higher Education Coordinating Board (THECB)’s standard for college readiness on the English exam, including only 18% of African-Americans, 20% for Hispanics, and 3% for LEP students. Forty-two percent of Texas students met the THECB’s standard for college readiness on the math exam, but only 21% of African Americans, 28% of Hispanics and 13% of LEP students did. State expert Ann Smisko agreed that if one of Texas’s goals is to prepare students for post-secondary learning, “there are still a ways to go.”

FOF 274. Because of the foregoing findings, this Court finds that the West Orange Cove Plaintiffs have established a systemic/statewide violation of Article VIII, section 1-e of the Texas Constitution.

C. Issues relating primarily to the adequacy claim.

1. “Costing out” an adequate education: methodology and results.

FOF 275. A letter signed by Governor Perry, Lt. Governor Dewhurst, and Speaker Craddick that was posted on a state-operated website conceded that “the current school finance system was developed with little consideration of the costs of achieving the state’s educational goals.” See <http://www.capitol.state.tx.us/psf> (visited May 6, 2004.) (WOC Ex. 640.) Rather, spending on education has been driven by litigation and the resources available in a given biennium.

FOF 276. There are four recognized methods for “costing out” an adequate education: (1) Econometrics, (2) Professional Judgment; (3) Successful Schools; and (4) Research and Demonstration.

FOF 277. The West Orange Cove Plaintiffs employed two appropriate methods for “costing out” an adequate education in order to demonstrate that they had insufficient funds to provide a “general diffusion of knowledge” or an “adequate” education. The West Orange Cove Plaintiffs provided an econometric “cost function” study prepared by Drs. Andrew Reschovsky and Jennifer Imazeki. The West Orange Cove Plaintiffs also utilized a professional judgment study by Dr. James Smith and his firm, Management Analysis and Planning, but the Court has chosen not to rely on it. The State Defendants also relied on a “costing out” study using the econometric “cost function” approach, which was prepared by Dr. Lori Taylor and others on the behest of the Joint Select Committee of Public School Finance (the “Taylor Study”).

2. The Reschovsky/Imazeki Cost Function Study.

FOF 278. Dr. Andrew Reschovsky and Dr. Jennifer Imazeki conducted a “costing out” study using the econometric/cost function approach (the “I&R Study”). Dr. Reschovsky’s extensive education, training and experience is summarized in his curriculum vitae. The Court finds that Dr. Reschovsky is qualified as an expert in the area of econometric/cost function analyses based upon his knowledge, skill, experience, training, and education. This Court notes in particular that prior to their retention as experts in this case, Dr. Reschovsky and Dr. Imazeki had written extensively about the Texas school finance system and had pioneered the use of cost function studies in Texas. Their two earlier cost function studies were written for academic/research purposes and appeared in peer-reviewed publications. The methodology employed by Dr. Reschovsky and Dr. Imazeki in their report for this case is largely consistent with their earlier work.

FOF 279. A cost function study attempts to identify a statistical relationship between per pupil spending, student performance, student characteristics, and the characteristics of each school district. The I&R cost function study was methodologically sound and provides strong evidence of the cost of meeting certain performance standards for particular districts (based on uncontrollable district and student characteristics) and for the State as a whole. The I&R Study and Dr. Reschovsky’s testimony are helpful to the Court in determining issues in dispute in this case, and are thus relevant. The Court also finds that the I&R Study and Dr. Reschovsky’s testimony are reliable because they are based on sound methods and procedures.

FOF 280. The I&R Study presented statistical evidence that the minimum amount of money needed by school districts in Texas to meet certain performance targets varies across school districts for reasons that are outside the control of local school officials. The report demonstrated, by estimating a cost function for public education, that the costs of achieving accountability standards are higher in some districts than in other districts because more resources are needed to educate some children compared to others, because school districts in some parts of the state will need to pay more to attract high-quality teachers than districts located in other parts of the state, and because of other characteristics of districts that districts can not control, such as size.

FOF 281. Using the cost function estimates, the I&R Study calculated the additional costs each school district would need to bear to meet a 55% performance rate (to match the rate

chosen by the Taylor Study) as well as to meet higher performance measures. Specifically, the I&R Study examined the costs of meeting:

- A 55% passing rate on the TAKS exam at 2005 panel recommended cut scores, the same rate utilized by the study commissioned by the Joint Select Committee of Public School Finance (*see infra* FOF 285), measured in three different ways.
 - Definition 1: School districts that have TAKS passing rates that are equal to or greater than 55 percent require no additional money to meet the standard. For districts with TAKS passing rates between 52 and 55 percent, Reschovsky and Imazeki calculated the cost of moving from the current rate to the 55 percent passing rate, and for districts with current passing rates below 52 percent, they calculated the cost of moving one-third of the way to the 55 percent standard.
 - Definition 2: Reschovsky and Imazeki's second definition of a 55 percent passing rate standard is identical to the first definition for all districts with current passing rates below 52 percent. Under Definition 2, all school districts with existing passing rates above 52 percent, including those with current passing rates greater than 55 percent, would be required to show annual yearly progress, which was defined as a three percentage point increase in the passing rate.
 - Definition 3: Reschovsky and Imazeki's third definition is similar to the second definition, except that school districts with passing rates below 52 percent are required to close the gap to 55 percent in a single year. For all other school districts, Reschovsky and Imazeki calculated the cost of improving the passing rate by three percentage points. The third definition is closest to the definition used by Dr. Lori Taylor et al. in the study commissioned by the Joint Select Committee.
- A 60% passing rate on the TAKS exam at 2005 panel recommended cut scores, using "Definition 1" model;
- A 70% passing rate on the TAKS exam at 2005 panel recommended cut scores using the "Definition 1" model; and
- A 90% passing rate on the TAKS exam at 2005 panel recommended cut scores using the "Definition 1" model.

FOF 282. Dr. Reschovsky and Dr. Imazeki concluded that the additional costs (on top of 2001-02 spending levels) to meet the 55% measure (in 2004 dollars) range from nearly \$1.653 billion (Definition 1) to \$6.171 billion (Definition 3) for the State as a whole. These estimates represent 5.9 and 21.8 percent of total public school revenue in 2004, respectively. For the 43 West Orange Cove Plaintiffs measured, the additional costs range

from \$456.5 million (Definition 1) to \$1.735 billion (Definition 3).⁵ On a per pupil basis, the cost of meeting the 55% standard would have to increase between \$407 (Definition 1) and \$1,511 (Definition 3).

- FOF 283. To reach the 60 percent passing rate standard would require an additional \$2.519 billion statewide, while reaching the 70 percent and 90 percent passing rate standards (under the “Definition 1” model) would increase costs statewide by \$4.665 and \$10.06 billion, respectively. As the passing standard is increased, costs rise at a more than proportional rate. Thus, while increasing the passing rate standard by 5 percentage points, from 55 percent to 60 percent, would increase costs per pupil by \$212, an increase by 10 percentage points, from 60 percent to 70 percent, would result in a more-than-double cost increase of \$526. Likewise, a 20 percentage point increase in the passing rate standard, from 70 percent to 90 percent, would increase costs per student by \$1,321.
- FOF 284. The 43 West Orange Cove Plaintiff Districts would require (1) \$651 million to get from 2001-02 TAKS converted scores to the 60% standard, (2) \$1.165 billion to reach the 70% standard, and (3) \$2.525 billion to reach the 90% standard.

3. The Taylor Cost Function Study.

- FOF 285. After the 78th session, the Joint Select Committee on Public School Finance commissioned a study (the “Taylor Study”) that would, among other things, make “a determination of appropriate funding levels to enable high academic performance.” That study was completed and delivered to the Joint Select Committee in March of 2004. The Taylor Study purports to measure the costs of meeting a 55% passing rate on the TAKS test, both at 2003 “met standard” levels (2 SEM below panel recommended cut scores) and at the 2005 panel recommended cut scores. The Taylor Study’s initial charge was to report the costs of meeting multiple performance standards, with the understanding that it was not the researchers’ job to determine which measure was “adequate.” Drafts of the Taylor cost function study discussed the costs of meeting performance standards higher than 55 percent until days before the public release of the study in March 2004. Dr. Taylor removed the discussion relating to these higher performance targets at the request of certain legislative leaders, who were concerned that the higher costs associated with the higher performance targets would be the focus of attention. The omitted analyses confirmed that the higher performance standards required additional revenues to meet. For example, the Taylor Study found that a 90% performance standard on TAKS would cost an additional \$3.6 billion per year in 2004 dollars.
- FOF 286. The Taylor Study is flawed in a number of respects:

Methodological Flaws

- a. In contrast to the I&R Study, the Taylor Study did not “pupil weight” its estimation to reflect the size of districts, as is generally accepted practice. Thus

⁵ Dr. Reschovsky and Dr. Imazeki were not able to estimate costs for 3 of the West Orange Cove Plaintiffs, the combined enrollment of which is 279 students. In addition, plaintiff Cypress-Fairbanks Independent School District joined the lawsuit after the completion of the I&R study.

Houston ISD (enrollment of 211,499 in 2003-04) makes the same contribution to the study's results as Grape Creek ISD (enrollment of 1,224). Because 40% of the students in Texas are in the 28 largest districts (and conversely because 55% of the observations in Taylor Study's estimation sample have enrollments of fewer than 2000 students), the Taylor Study overemphasizes small district behavior and understates the urban influence on cost relationships. Stated another way, the decision not to "pupil weight" likely explains the Taylor Study's finding of lower costs in large districts. The decision not to "pupil weight" also likely explains the Taylor Study's failure to find a "U-shaped curve" in analyzing the effect of scale, which the weight of the academic literature suggests should have been found. The academic literature suggests that districts of a certain size begin facing increasing diseconomies of scale, and the Taylor Study's failure to find these diseconomies calls into question the entire model.

- b. In contrast to the I&R Study, the Taylor Study assumes that the cost of achieving a one percentage point improvement in the TAAS is equivalent to a one percentage point increase on the TAKS. Dr. Taylor admitted that this assumption was made by her team and did not reflect any input from the TEA or the test developer. Because the TAKS test is significantly more difficult than the TAAS test, this assumption is likely flawed and leads to lower predictions of the costs of achieving various performance standards on the TAKS. While passing rates on the TAAS and TAKS are measured in the same units (i.e., percentage between 0 and 100), achieving a given passing rate on the TAKS is more difficult because it is a harder exam. In addition, achieving a given passing rate on the TAKS becomes much more difficult in each year between 2003 and 2005 because of the rising "cut scores" from 2 SEM to panel recommended levels. The Taylor Study's cost predictions barely reflect this increasing difficulty. In fact, the Taylor Study assumes that a one percentage point increase in the TAKS passing rate will cost the same in every year, regardless of the annual increase in the "cut scores."
- c. To determine the "value added" by a particular school district, the Taylor Study uses test scores that are matched to the test scores of the same students two years earlier (a two year "lag"). They therefore do not include any students who drop out of school during those two years, or who enter the Texas system. In contrast, I&R compare test scores (a district's average math and reading passing rates) from 2001-02 with rates in the previous year (a one-year "lag"). The Taylor Study's use of a two year lag, rather than a one-year lag, introduces additional "noise" into the value-added calculation. Because one year of spending is associated with two years of performance gains, the cost of a single year's progress is almost certainly underpredicted in the Taylor Study.
- d. Because the goal of a cost function study is to isolate costs outside the control of a district, the I&R Study used a teacher salary index to measure wages in an effort to capture variation in salaries due to cost of living and other factors that are outside a district's control. In contrast, the Taylor Study used average beginning teacher salaries, even though districts may have higher salaries because they employ more educated or experienced teachers.

Misuse of the Cost Function Results

FOF 287. Dr. Taylor used the predicted costs generated by her model for the 2002-03 school year, and then compared them against 2002-03 actual expenditures. Based on this comparison, she concluded that the West Orange Cove Plaintiff district had sufficient funds in that year to meet the 55% performance target. In fact, Dr. Taylor imputed a tax rate at which each district could meet the 55% performance target. Dr. Taylor's approach is seriously flawed and is not credible for the following reasons:

- a. Dr. Taylor incorrectly assumes that all of the district's funding is fungible, i.e., that a district's revenue dollars can be freely allocated according to the efficiency dictates of the model. For example, the Taylor Study concludes that there is an additional cost of approximately \$4,000 per high school student to achieve the desired performance standard. That is, for each student over or under the mean, the district would be charged or granted \$4,000 per high school student in addition to whatever the base cost level is within the model. However, this \$4,000 figure is substantially above the level of spending per high school student that is found in most schools in the state. The only way to achieve this level of spending at the high school level is to reallocate large sums of money away from the elementary and middle schools. The movement of such vast sums out of elementary and middle school, aside from being extremely detrimental from an educational standpoint, would undoubtedly force many districts to violate the 22:1 class size mandate. Dr. Taylor also assumes that federal and state grant funds can be spent freely, when in fact, a substantial percentage of the funds have strings attached. In short, there are legal constraints that prevent the reallocation of resources suggested by the Taylor model and by her tax rate imputations.
- b. The key outcome measures in the Taylor Study are English and math test scores. Dr. Taylor's conclusion that districts could lower their tax rates and still meet the specified performance targets in English and math necessarily would require districts to reallocate funds away from addressing other goals of the accountability system, like science proficiency and reducing dropout rates, goals that are not taken into account in her economic model.
- c. Dr. Taylor's numbers simply are not credible on their face. For example, looking at the 2002 year, Dr. Taylor concluded that Dallas ISD would need an M&O tax rate of \$1.48 to meet the 55% performance target, but in her examination of the 2003 year, Dallas could achieve the same performance target with a tax rate of \$1.27. Looking again at the 2003 year, Dr. Taylor also claims that Kaufman ISD would need to tax at \$1.47 to meet the 55% performance target, but that Austin ISD could do so at a tax rate of \$1.19. Based on these districts actual TAKS scores and on the testimony of the Austin ISD and Dallas ISD superintendents, the Court finds that Dr. Taylor's tax rate imputations are not credible.

4. Both the I&R Study and the Taylor Study underpredict the costs of meeting performance targets given the manner in which Texas’s accountability system functions.

FOF 288. As Dr. Reschovsky and the I&R Study acknowledged (and as Dr. Taylor did not), both the I&R Study and the Taylor Study underestimate actual costs for districts in a number of respects.

- a. Both the I&R Study and the Taylor Study rely heavily, as they must, on TAAS scores (converted to TAKS). However, the TAKS measures less than one half of the TEKS curriculum, which the TEA concedes defines the scope of the “general diffusion of knowledge” that school districts must impart to their students. Significant portions of the state-required curriculum are not measured in the state testing program, such as courses in the required enrichment curriculum, including foreign languages, health education, physical education, fine arts, economics, career and technology education, and technology applications.
- b. The Taylor and I&R estimates of the additional costs are based on a limited set of accountability standards.
 - i. The Taylor Study Outcome Measures: The Taylor Study chose to examine the costs associated with a very low set of outcomes; specifically, she examined the cost of achieving a 55 percent passing rate on the reading and mathematics sections of the state testing program for students *in grades five through eight and ten* (both at the 2 SEM and Panel Recommended levels), achieving a level of performance on the SAT and ACT that is *equivalent to the state average* and having an state average percentage of students take at least one advanced level course.
 - ii. The I&R Study Outcome Measures: Like the Taylor Study, the I&R Study also used test scores from grades five through eight and ten at the panel recommended level, as well as achieving a level of performance on the SAT and ACT that is equivalent to state average. Unlike the Taylor Study, the I&R study utilized a retention rate measure (the inverse of the dropout rate), as well as scores on the State Define Alternative Assessment, which is the testing instrument for disabled students.
 - iii. The limited nature of both studies’ outcome measures:
 1. The basis of the cost estimates is student performance on the English/language arts and mathematics exams only. The new accountability system also includes passing standards for science and social studies TAKS examinations, but neither study could incorporate these tests into their analyses of costs. (The studies were conducted only one year after the administration of a new state testing program that not only increased the difficulty of tested subjects but also added subjects at various grade levels, and both

studies needed multiple years of performance data to conduct the analysis).

2. Because of data limitations, neither study examined the full spectrum of grades tested in the accountability system. Both excluded tests for 3rd grade, 4th grade, 9th grade and 11th grade. This omission has important implications for the analysis. For example, in the 2002-03 administration of the TAKS, 53.1% of Dallas ISD's 5th-8th and 10th graders passed the reading and math TAKS examinations (at panel recommended cut scores). But when the other grades and the science and social studies tests are taken into account, only 31% of the Dallas ISD students passed all tests. Similar gaps appeared for other districts when the full spectrum of grades and courses are taken into account.
 3. In addition, there are new examination-linked standards for promotion from grades 3, 5, and 8, and a new 11th grade examination that will be required for graduation. Although neither study can provide an empirical estimate of the additional costs associated with meeting these standards, it is highly likely that meeting these additional requirements will require additional resources.
- c. The state accountability standards require that for schools and school districts to perform at an academically acceptable level, the passing rate standard must be met separately by several disaggregated groups of students—blacks, whites, Hispanics, and students from economically disadvantaged students. Because of data limitations, the cost estimates from both the I&R Study and the Taylor Study are based only on school district average passing rates. There is little question that for many school districts the cost of meeting the accountability standards for each disaggregated student group will substantially exceed the cost of meeting the average standard. Therefore, it is likely that the numbers cited above underestimate the total additional costs of meeting the accountability standards.
 - d. In both studies, the “test score measure” uses the average passing rate on math and reading tests. Thus, higher scores on the reading test could mask lower scores on the math test (e.g., 65% passing rate on reading + 45% passing rate on math = 55% passing rate). However, the Texas accountability system requires minimum passing rates on tests *in each subject*. Therefore, in the example cited above, additional costs would be necessary to improve the 45% passing rate on the math exam to the 55% measure, even though both studies would classified a district with these passing rates as having met the 55% performance target.
 - e. The RHSP was not the default high school graduation plan during the years being studied. To the extent that the adoption of this program as the default graduation plan results in additional costs, those costs are not reflected in either model.

- FOF 289. Additionally, no measure of graduation rates was included in the Taylor Study—so any additional efforts that districts must undertake to ensure that students do not simply drop out of the system so that their scores are not reflected in the state test data may not be accounted for by the Taylor Study.
- FOF 290. Even if taken at face value, the Taylor Study indicates that a number of districts in Texas have inadequate funds even to provide the “bare bones” performance standard utilized in the study, and that even using that measure of adequacy as the “floor,” many districts across the State lack meaningful discretion in setting their local property tax rates. A total of 171 districts in the State (roughly 18%) were spending less than the Taylor model predicted they would need to achieve a 55% TAKS passing rate on English/Language Arts and mathematics exams (under the 2003 2 SEM measure), even though they were taxing at the maximum \$1.50 rate. These districts had a total enrollment of 403,052. Another 211 districts (roughly 22%) with an enrollment of 461,593 students were spending less than the Taylor model predicted they would need to achieve a 55% TAKS passing rate on English/Language Arts and mathematics, but had tax rates between \$1.35-\$1.49, indicating that they lacked meaningful discretion even if they were able to raise additional funds to meet the predicted costs. Finally, another 210 districts (with a total enrollment of 1.563 million students) that are taxing at the \$1.50 cap have expenditures of less than 15% above the level of the predicted costs of meeting the 55% performance measure, further indicating a lack of meaningful discretion in the system.
- FOF 291. Taking the I&R Study and Taylor Study (with the proviso that it likely underpredicts the costs of meeting a fairly minimal standard, *see supra* Section II.C.4) into account, the West Orange Cove Plaintiffs demonstrated that their Focus Districts (and many other districts across the State) lack sufficient funds to provide an adequate education, even while taxing at or near the \$1.50 cap.

D. West Orange Cove Plaintiffs’ Attorneys’ Fees.

- FOF 292. The total amount of attorneys’ fees incurred by the West Orange Cove Plaintiffs from the filing of this suit through mid-September, 2004 was more than \$2,557,606.00. This amount includes fees for the previous appeals to the Court of Appeals and Texas Supreme Court, as well as fees for discovery and trial. Taking into consideration the novelty and difficulty of the questions involved, the significance of the issues involved, the fee arrangement with the clients, the skill required to perform the legal services, the time limitations imposed by the circumstances, the experience, reputation and ability of the attorneys, the benefit conferred, and the time and labor required, all of the services rendered by counsel for the West Orange Cove Plaintiffs in the prosecution and trial of this case were necessary and the amount of time spent and rates charged for such services are reasonable. This Court also finds that an award of such attorneys’ fees would be equitable and just.
- FOF 293. This Court also finds that in the event this case is appealed directly to the Supreme Court of Texas, the sum of \$100,000.00 would be a reasonable fee for representation of the West Orange Cove Plaintiffs in such an appeal. If this case is first appealed to the Court of Appeals, a fee of \$100,000.00 would be reasonable and necessary for the work at the

Court of Appeals and \$25,000.00 would be a reasonable and necessary fee should the case be appealed thereafter to the Texas Supreme Court.

III. Conclusions of Law Relating to West Orange Cove Plaintiffs' Claims.

- COL 1. To the extent any of the foregoing Findings of Fact constitute Conclusions of Law or the application of law to fact, they are incorporated herein as Conclusions of Law. Similarly, to the extent any of the following Conclusions of Law constitute Findings of Fact, they are incorporated into Section II as Findings of Fact.

The Constitutional Parameters.

- COL 2. Article VII, section 1 of the Texas Constitution – the “education” clause – provides: “A general diffusion of knowledge being essential to the preservation of liberties and rights of the people, it shall be the duty of the Legislature to establish and make suitable for the support and maintenance of an efficient system of public free schools.” TEX. CONST. art. VII, § 1. According to the Texas Supreme Court, Article VII, section 1 obligates the Legislature to meet three standards in providing for a public school system. First, the education provided must be adequate, i.e., the public school system must accomplish “that general diffusion of knowledge essential to the preservation and liberties and rights of the people,” and “must reflect changing times, needs, and public expectations.” *West Orange Cove*, 107 S.W.3d at 563, 572 (citing TEX. CONST. art. VII, § 1). Second, the means adopted must be “suitable.” *Id.* Third, the system itself must be “efficient.” *Id.*
- COL 3. The Legislature must satisfy these obligations without relying on constitutionally-prohibited state ad valorem taxes. *See* TEX. CONST. art. VIII, § 1-e (“No State ad valorem taxes shall be levied upon any property within this State.”). An “ad valorem tax is a state tax when it is imposed directly by the State or when the State so completely controls the levy, assessment and disbursement of revenue, either directly or indirectly, that the authority employed is without *meaningful discretion*. The determining factor is the extent of the State’s control over the taxation process.” *West Orange Cove*, 107 S.W.3d at 578 (emphasis added) (citing *Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Indep. Sch. Dist.*, 826 S.W.2d 489, 502 (Tex. 1992)).
- COL 4. Put another way, the Texas Constitution requires a public school finance system that (1) provides districts access to funds sufficient to provide a general diffusion of knowledge, i.e., a constitutionally adequate education (Article VII, section 1), (2) within an equalized system that still leaves districts “meaningful discretion” to raise their tax rates in order to provide local enrichment programs to their students, if they so choose (Article VIII, section 1-e). The current system is in violation of both of these requirements.
- COL 5. To assess the West Orange Cove Plaintiffs’ Article VIII, section 1-e and Article VII, section 1 claims, this Court must undertake an analysis of the meaning of the phrases “general diffusion of knowledge” and “meaningful discretion.”

“General Diffusion of Knowledge”

- COL 6. The Texas Constitution requires that Texas schoolchildren be provided with an adequate education, i.e., the public school system must accomplish “that general diffusion of knowledge essential to the preservation and liberties and rights of the people,” and “must reflect changing times, needs, and public expectations.” *West Orange Cove Consolidated I.S.D. v. Alanis*, 107 S.W.3d 558, 563, 572 (Tex. 2003) (citing TEX. CONST. art. VII, § 1).
- COL 7. To fulfill the constitutional obligation to provide a general diffusion of knowledge, districts must provide “*all Texas 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.” TEX. EDUC. CODE § 4.001(a) (emphasis added). Districts satisfy this constitutional obligation when they provide all of their students with a *meaningful opportunity* to acquire the essential knowledge and skills reflected in the Texas’s curriculum requirements (TEKS),⁶ and the Recommended High School Program,⁷ such that upon graduation, students are prepared to “continue to learn in postsecondary educational, training, or employment settings.” TEX. EDUC. CODE § 28.001 (emphasis added); *see also* TEX. EDUC. CODE § 39.023 (requiring that secondary exit-level instruments be “designed to assess a student’s mastery of minimum skills necessary for high school graduation and readiness to enroll in an institution of higher education.”). The Legislature has stated that the “essential knowledge and skills” set out in Texas’s curriculum shall “require *all students* to demonstrate the knowledge and skills necessary to read, write, compute, problem solve, think critically, apply technology, and communicate across all subject areas.” TEX. EDUC. CODE § 28.001 (emphasis added).
- COL 8. Additional components of an adequate education, as defined by the Legislature, are identified in other Texas statutes, including, but not limited to Sections 4.001(b) and 4.002 of the Texas Education Code. Moreover, any effort to assess the cost of the general diffusion of knowledge must take into account the fact that districts are bound by law to offer a variety of programs and services described in Chapters 28-34 and 37-39 of the Texas Education Code, together with associated regulations implementing these and other mandates. These chapters contain mandates for the provision of services to students.
- COL 9. The Legislature has defined the purpose of the school finance system as being to guarantee that school districts have sufficient access to funding to provide a basic program that meets accountability/accreditation requirements, that meets other applicable legal standards, that provides substantially equal access to funds for an enriched program, and that includes a facilities program. *See* TEX. EDUC. CODE § 42.002.
- COL 10. This Court rejects the notion that the general diffusion of knowledge requires expenditures only in the instructional program described in Section 39.023 of the Education Code and that other expenditures are merely “extraneous.” A district cannot provide a constitutionally adequate education without a sufficient support network, which may include, but is not limited to, (a) adequate and well-maintained facilities; (b) remedial and literacy programs to help Limited English proficiency, economically disadvantaged, and

⁶ *See* TEX. EDUC. CODE § 28.002 and 19 TEX. ADMIN. CODE §§ 74, 110-128.

⁷ *See* TEX. EDUC. CODE § 28.025(b) and 19 TEX. ADMIN. CODE §§ 74.53.

other special needs students, (c) sufficient numbers of qualified teachers; (d) small class sizes, (e) preschool programs to give a “head start” to special needs students; (f) dropout prevention programs; (g) extracurricular activities to keep students in school and assist them with getting into colleges; (h) nurses to keep students healthy; (i) security guards in certain schools to keep students safe; and (j) guidance counselors to help students with course selection and with planning for college or careers.

- COL 11. As indicated *supra*, this Court finds that the West Orange Cove Plaintiffs have rebutted any presumption that a “academically acceptable” ranking under the state’s accountability system is the proper measure of a “general diffusion of knowledge.”
- COL 12. The Court also takes heed of the Texas Supreme Court’s instruction that the “general diffusion of knowledge” standard is not a static concept. Rather, the standard must take into account “changing times, needs, and public expectations.” *West Orange Cove*, 107 S.W.3d at 572 (quoting *Edgewood IV*, 917 S.W.2d at 732 n.14).
- COL 13. Included in the “public expectations” referenced by the Texas Supreme Court are the provision of co-curricular and extra-curricular activities expected by local communities across the state, which (1) help keep many students in school that might otherwise drop out; (2) teach students valuable social skills, including leadership and how to work as part as of a team (a skill that is critical in the labor market) and (3) ensure that students have access to a well-rounded education. The Commissioner of Education has acknowledged the critical importance of extracurricular and co-curricular activities in the delivery of an adequate education.

“Meaningful Discretion”

- COL 14. The Texas Supreme Court has held that a district must have “meaningful discretion” in setting its property tax rates for a local ad valorem tax to remain constitutional under Article VIII, section 1-e of the Texas Constitution. The Court concludes that a district has meaningful discretion only when it can devote, at a minimum, 10% of its taxing capacity, or approximately 15 cents of tax effort to raise additional revenues to enrich its programs beyond what is required to provide a “general diffusion of knowledge” and comply with state and federal mandates.
- COL 15. The State Defendants maintain that the Plaintiff districts have “meaningful discretion” if they have the discretion to reduce their M&O tax rate a fraction of a cent below \$1.50 while still meeting state educational requirements, and that the Plaintiff districts have the discretion to eliminate any course, extracurricular activity, benefit, or program not required by state law. This proposed definition functionally removes the word “meaningful,” a critical modifier, from the phrase. *See American Heritage Dictionary of the English Language* (4th ed., 2000) (defining meaningful as “significant”). It also proves too much. There are no class size mandates at the secondary level, so under the State’s theory, a district would always have the discretion to lay off teachers and maintain secondary class sizes of fifty. Furthermore, there are no statutory requirements that schools have nurses, guidance counselors, security guards, and the like, but districts quite obviously lack the discretion to eliminate these positions wholesale. There is no statutory requirement regarding the amount of maintenance and custodial service that districts must

utilize, but it is a matter of common sense that inadequate and poorly maintained facilities impede student learning. So-called “discretion” to eliminate librarians, nurses, guidance counselors, and janitors is not “meaningful discretion.”

STATE PROPERTY TAX CLAIM

Violation of Article VIII, Section 1-e of the Texas Constitution.

- COL 16. The West Orange Cove Plaintiffs’ Focus Districts lack “meaningful discretion” in setting their local M&O property tax rates as a result of the combination of the \$1.50 statutory cap and legislative and constitutionally-imposed requirements. Accordingly, this Court hereby declares that the West Orange Cove Plaintiffs’ Focus Districts have established a violation of Article VIII, section 1-e as applied to them.
- COL 17. Because the West Orange Cove Plaintiffs have also established a systemic/statewide violation, this Court declares that the Texas school finance system is presently in violation of Article VIII, section 1-e of the Texas Constitution

ADEQUACY CLAIM

Violation of Article VII, Section 1 of the Texas Constitution.

- COL 18. The West Orange Cove Plaintiffs have shown that as to their Focus Districts, the costs of meeting the constitutional mandate of adequacy (the “general diffusion of knowledge”) exceeds the maximum amount of funding that is available under the State’s current funding formulas. Accordingly, this Court hereby declares the State’s school finance system fails to provide an adequate, suitable, and efficient education system as required by Article VII, section 1 of the Texas Constitution as to these districts.
- COL 19. Because the West Orange Cove Plaintiffs 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.
- COL 20. Because the West Orange Cove Plaintiffs have established that the school finance system fails to recognize or cover the costs of meeting the constitutional mandate of adequacy, or the Legislature’s statutory definition of a comprehensive adequate program, this Court declares that the State’s school finance system is financially inefficient, inadequate and unsuitable, in violation of Article VII, section 1 of the Texas Constitution.

IV. Findings of Fact Relating to Intervenors’ Claims.

- FOF 294. The Edgewood Intervenors assert that (1) the gap in funding between property-poor and property-rich districts in conjunction with the greater burden borne by property-poor districts of the inadequacy of those formulas, violates the “efficiency” and “suitability” provisions of article VII § 1 of the Texas Constitution; (2) the inadequacy of student weights, in conjunction with the inequity in the school finance system and current funding limits, violates the efficiency and suitability provisions of article VII, § 1 of the Texas Constitution; (3) the inequity and lack of equalization measures and funds for Tier 3

facilities financing for property-poor districts violates the efficiency and suitability provisions of article VII § 1 of the Texas Constitution; (4) the current funding capacity of the Texas school finance system, in conjunction with the inequitable access to revenue in the system, does not provide property-poor districts with sufficient access to revenue to provide for a general diffusion of knowledge, in violation of article VII § 1 of the Texas Constitution; and (5) the current funding capacity of the Texas school finance system, in conjunction with the inequitable access to revenue in the system, does not provide property-poor districts with meaningful discretion nor sufficient access to revenue to access enrichment programs in violation of the suitability and efficiency provisions of article VII § 1 of the Texas Constitution.

FOF 295. The Alvarado Plaintiff/Intervenors assert that the amount of state and local funds is inadequate to meet the constitutional mandate of providing a “general diffusion of knowledge” for a significant number of districts in the state, and that the state’s accreditation standards, as applied, are insufficient to provide a general diffusion of knowledge. They also assert that the equity mandates set forth in prior school finance litigation have been violated.

FOF 296. Based on the following findings, the Court holds that the Intervenors have established that (1) the prohibition on the use of Tier 2 funds for facilities, combined with the Legislature’s failure to make the IFA or EDA programs statutorily permanent and to adequately fund the IFA program, means that property-poor districts do not have substantially equal access to facilities funding in violation of the efficiency and suitability provisions of article VII § 1 of the Texas Constitution; and (2) the current funding capacity of the Texas school finance system for maintenance and operations, in conjunction with the inadequacy of student weights and the demographic characteristics of property-poor districts, does not provide such districts with sufficient access to revenue to provide for a general diffusion of knowledge, in violation of article VII § 1 of the Texas Constitution. All other claims referenced in FOF 294-FOF 295 are denied.

A. Inequitable and inadequate facilities financing for property-poor districts.

FOF 297. All Texas public schoolchildren, wherever they live, are entitled to access to sufficient funding for adequate physical facilities and classrooms. As the Supreme Court has held, “The Constitutionally imposed state responsibility for an efficient education system is the same for all citizens regardless of where they live.” *Edgewood I*, 777 S.W.2d at 396. According to the Court, “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, it is “the State’s duty to provide all districts with substantially equal access to the operations and facilities funding necessary for a general diffusion of knowledge.” *Id.*

FOF 298. The property-poor Edgewood Intervenors lack adequate funds for, and do not have substantially equal access to funds for school facilities, and therefore do not have all the facilities essential to providing students a learning environment in which to attain a suitable and adequate education.

1. Unmet facilities needs in Texas schools have been substantial and long-standing.

- FOF 299. By its own admission, the State does not maintain information on school district facilities, making it difficult for the State to estimate school districts' facilities needs over time. When asked if there were any estimates of the cost of bringing school facilities up to the standards adopted by the commissioner of education, Joe Wisnoski, Deputy Associate Commissioner for School Finance and Fiscal Analysis, testified: "I don't know that anyone has assessed what would be needed to that, if anything. There may be estimates for individual schools, but I don't know of anything done statewide."
- FOF 300. Nonetheless, on the basis of available estimates, it is clear that Texas has long had substantial unmet school facilities needs.
- FOF 301. In 1996, the U.S. General Accounting Office (GAO) estimated that in Texas, 27.1 percent of schools had at least one inadequate building, 46 percent had at least one inadequate building feature, and 23.2 percent had at least one inadequate building and building feature. In particular, the GAO estimated that 25.8 percent of Texas schools had less than adequate Heating, Ventilation, and Air Conditioning; 13 percent had unsatisfactory lighting, 12.3 percent had unsatisfactory air quality, and 21.3 percent had unsatisfactory acoustics for noise control. Last, the GAO found that 76.3 percent of Texas schools reported needing to spend additional funds to bring schools into good overall condition. (EDG Ex. 405 (GAO, *School Facilities: America's Schools Report Differing Conditions* (June 1996)) at EDG 4823, 4827, 4842-43, 4854).
- FOF 302. In April 1998, the Texas Comptroller published a report entitled *Current and Future Facilities Needs of Texas Public School Districts*. (EDG Ex. 548 at 2). The report was intended to "give lawmakers an up-to-date idea of the state's likely school facility needs." (EDG Ex. 549 (*Current and Future Facilities Needs of Texas Public School Districts*, Executive Summary) at p. 1 of 19).
- FOF 303. For the report, the Comptroller surveyed school district superintendents regarding their facilities needs. As the Comptroller stated, "the state sought answers from the people in the best position to make this judgment—the superintendents." (EDG Ex. 549 at p. 1 of 19).
- FOF 304. The Comptroller's survey showed that the 614 responding districts' most pressing needs for repair, renovation, and new school construction totaled nearly \$9.1 billion.
- FOF 305. In 2000, the National Education Association (NEA) estimated that Texas' unmet school facilities needs totaled nearly \$13.7 billion, with nearly \$9.5 billion needed for school infrastructure and nearly \$4.2 billion for education technology. (EDG Ex. 588 (NEA, *Modernizing Our Schools: What Will It Cost?* (2000) at 11, Table 1)).
- FOF 306. In 2001, researchers estimated that unmet needs for school infrastructure in Texas totaled nearly \$9.5 billion.

2. Property-poor districts like the Edgewood Intervenors have been unable to meet their facilities needs and their facilities remain inadequate.

FOF 307. Lacking sufficient funding, property-poor districts such as the Edgewood Intervenors have been unable to provide adequate facilities for all the children in their districts. Sub-standard conditions include: overcrowded schools and classrooms; out-of-date buildings, equipment and fixtures; inadequate libraries, science labs, cafeterias, gymnasiums, and other school facilities.

a. Ysleta ISD's facilities deficiencies.

FOF 308. In November 2003, Ysleta ISD conducted an assessment that estimated the district's facilities needs to total approximately \$550 million.

FOF 309. Ysleta ISD last passed a school facilities bond measure more than 20 years ago.

FOF 310. As can be expected, with no bond funds in over twenty years, "the facilities needs are extensive." (EDG Ex. 22 at EDG 3784).

FOF 311. The Ysleta ISD facilities assessment documents the severity of the district's facilities crisis.

FOF 312. Over 60% of the district's schools facilities were then more than 34 years old, and 21 of its schools were then more than 40 years old. (EDG Ex. 22 at EDG 3782). "Many buildings suffer from deficiencies, simply stated that are age-related." (*Id.*)

FOF 313. Age of school buildings is significant because "the building components that are necessary for good student learning . . . are usually absent in older buildings. If older buildings do have some of the important components, these components may well be compromised" (EDG Ex. 431 (Earthman Report) at 9).

FOF 314. The district's school facilities were ranked on a 1000-point scale, with 1 being worst and 1000 best. A score of 900 to 1000 indicates a building that is highly satisfactory. Buildings scoring 700 to 900 are acceptable, but their component parts must be studied. A score of 600 to 700 "indicates the need for considerable rehabilitation," and a score of 500 to 600 indicates that a building is "markedly unsatisfactory" and that it's possible that repairs and improvements could make the building "habitable" again.

FOF 315. Fifty-eight percent of the district's school facilities scored less than 600 – markedly unsatisfactory – and 87% fell below 700 – need considerable rehabilitation. The average rating for district secondary schools was 537, and the average for elementary schools was 578.

FOF 316. The report found that students were housed in facilities "not designed for the particular attendant age groups. For example, a middle school is in an elementary school facility and pre-kindergarten programs are housed in middle and high school level facilities. The

classrooms in some schools are too small in size to accommodate the age group.” (EDG Ex. 22 at EDG 3784).

- FOF 317. In sum, the report identified a number of significant problems including: major structural issues; overcrowded facilities; pest and rodent infestation; roofs with leaks and ceilings in disrepair; district-wide heating/cooling failures that raised health, safety, and comfort concerns; and electrical problems that impacted the use of computers and other devices required for effective learning and teaching.

b. South San Antonio ISD’s facilities deficiencies.

- FOF 318. South San Antonio ISD’s 2004 needs assessment likewise identified significant facilities needs. The needs totaled approximately \$55 million to \$77 million in potentially IFA-eligible projects and another \$22 million in non-IFA eligible projects.⁸
- FOF 319. The identified needs totaled approximately \$75 million – approximately \$54 million for IFA-qualified projects and approximately \$21 million for the non-IFA-qualified projects.
- FOF 320. The assessment found an estimated \$10 million (of the total \$50 million) was needed merely for maintenance.
- FOF 321. The assessment found the district needed to spend nearly \$3 million for asbestos abatement.
- FOF 322. The assessment found the district needed to spend more than \$5 million to repair or replace inadequate roofs. It found leaky roofs at 13 different schools..
- FOF 323. According to Dr. Cortez, the Superintendent, “when it rains outside, it rains inside.”
- FOF 324. The assessment found nearly \$5 was million needed in technology improvements.

c. Edgewood ISD’s facilities deficiencies.

- FOF 325. Edgewood ISD had a facilities needs assessment in 2001 indicating \$145 million in facilities needs that could be covered by IFA funding.
- FOF 326. Edgewood ISD’s facilities needs assessment identified many needs, including but not limited to: compliance with Americans with Disabilities Act; upgrades of existing schools, such as replacing roofs, adding classrooms, and upgrading the plumbing, lighting, heating, ventilation and air-conditioning systems; construction of new schools to replace elementary schools greater than 45 years old and with minimal renovation in the last 10 years; and technology accessibility.
- FOF 327. The facilities needs were also identified and described in photos taken by Edgewood ISD, showing foundation problems, portables, and general decay of buildings. Facilities needs

⁸ The district proposed two bonds to partially meet its needs – one for \$40.5 million, the maximum available to the district under the IFA, and another for \$10 million, the maximum believed to be viable for non-IFA-eligible projects.

that are not instructional facilities and, therefore, ineligible for IFA assistance were also described.

- FOF 328. The most Edgewood ISD could qualify for IFA assistance is approximately \$49 million because of the limitations on the qualifying amount per average daily attendance.
- FOF 329. Edgewood ISD taxpayers approved two separate \$49 million bond proposals, the latest one in 2004. However, at least \$47 million of needs identified in 2001 still have not been met. Edgewood ISD is unable to pass a bond for the remaining \$47 million because such a tax effort in the low-wealth district would cause the district to exceed the \$.50 cap on I&S tax rates.
- FOF 330. Even with IFA assistance for the year 2004, the taxpayers of Edgewood ISD will have to raise taxes almost twelve cents for the new debt of \$49 million.

d. PSJA ISD facilities deficiencies.

- FOF 331. Pharr-San Juan-Alamo ISD identified \$92 million in facilities needs to address overcrowding and high growth only. Over 3,300 students in the district attend school in 150 portable classrooms, some of which were described and identified through photos. The photos included classrooms known as the “barracks” because of their similarities to older, migrant farmworker camps, and overcrowded classrooms. The photos also depicted other needs that were not identified in the needs assessment, such as gymnasiums for elementary students with open air walls, poor technology infrastructure, and roof leaks.
- FOF 332. PSJA ISD taxpayers passed a bond for \$29 million in June 2004, contingent upon the receipt of IFA assistance from the State because the taxpayers could not afford the tax increase without assistance. However, despite PSJA ISD being one of the poorest districts in the state, PSJA ISD did not receive any IFA assistance due to the insufficiency of the appropriation for IFA; accordingly, the district will not be able to issue the bonds and meet its immediate facilities needs.

3. The State itself has documented significant facilities deficiencies in property-poor Edgewood Intervenor districts.

- FOF 333. The State’s own reports have long put it on notice of the significant deficiencies and inadequacies in property-poor districts like the Edgewood Intervenor.

a. Texas School Performance Review of Brownsville ISD.

- FOF 334. In 2003, the Comptroller conducted a review of the Brownsville ISD as part of the Texas School Performance Review (TSPR). The Comptroller found that 11 district schools fell below minimum square foot guidelines.
- FOF 335. The Comptroller also found that “[r]epairs to BISD’s existing facilities are being made on an urgency and funds-availability basis. For example, mold and air quality issues have closed two schools, forcing the district to build temporary schools while the existing school buildings are renovated.” (EDG Ex. 4397 at EDG 4406).

b. Texas School Performance Review of Raymondville ISD.

FOF 336. In 2002, the Comptroller conducted a review of the Raymondville ISD. The Comptroller found:

Safety hazards were identified in the high school home economics and chemistry classrooms. These conditions are not only safety hazards for the students and teachers but they impede the teacher's ability to instruct the students.

The high school home economics classroom does not have an exhaust fan. When the students cook the classroom fills with smoke making it hard to breathe and burning people's eyes. . . .

The chemistry classroom has safety equipment that does not work properly. The emergency shower located in the classroom floods the floor if used. As a result the teacher has not conducted any emergency shower tests. The classroom has two emergency eye wash systems; one works perfectly while the other does not produce a spray of water to wash a person's eyes. The classroom has two fume hoods, one on each end of the classroom, to vent chemicals outside. If only one fume hood is used, the fumes from it are vented into the classroom through the fume hood that is not in use. Also, the fume hoods have drains on one end so that water can be mixed with the chemicals and then washed down the drain. However, the drains are higher than the rest of the fume hood bottom and will not allow the water to drain. Finally, the classroom has no mechanism for detecting gas leaks.

Because of these potential hazards the teacher does not use chemicals or allow students to handle chemicals. Chemistry instruction is limited to lectures, depriving students of valuable hands-on lessons.

(EDG Ex. 403 at EDG 4578).

c. Texas School Performance Review for Kenedy ISD.

FOF 337. In 2001, the Comptroller conducted a review of the Kenedy ISD. The Comptroller found:

"Kenedy High School does not have a cafeteria to serve its students. The dining area provided for high school students is a room with an unlocked door that leads to the stage facing the elementary cafeteria. The room also is used as a storage area for computers, modems, cables and keyboards." (EDG Ex. 401 at EDG 4472).

"Critical elements in the school's facilities, such as heating, ventilation and air conditioning (HVAC) systems, need attention. One problem identified through TSPR's surveys of parents and staff and public forum comments is the presence of mold in the elementary school building." (EDG Ex. 401 at EDG 4473).

"The district tested the air quality of 21 rooms in the elementary school in 1997 and in 1999. Both tests found evidence of a serious mold problem. The reports

have identified the mold problem to be caused primarily by the school's air conditioning units" (EDG Ex. 401 at EDG 4473).

d. Texas School Performance Review for Socorro ISD.

FOF 338. The Comptroller conducted a review of Socorro ISD. The Comptroller found that "[m]any SISK classrooms do not meet the state's minimum space standards of 30 square feet per student for elementary schools and 28 square feet per student for secondary schools All three school facilities examined by TSPR do not meet the state's minimum space requirements" (EDG Ex. 404 at EDG 4619-620).

4. Inadequate school facilities negatively impact student achievement and teacher effectiveness.

FOF 339. School facilities have an impact on student achievement and teacher satisfaction and effectiveness.

FOF 340. Research studies demonstrate that school building conditions have a measurable influence upon student learning, with temperature, lighting, acoustics and age being among the most influential features and components that, when deficient, significantly and negatively affect student academic performance and teacher effectiveness.

FOF 341. In fact, research studies have repeatedly found a difference of between 5-17 percentile points between the achievement of students in poor condition buildings and those in standard condition buildings, even after the socioeconomic status of students is controlled.

FOF 342. As the State itself admits, "[s]afe, clean, well-maintained schools enhance student achievement and teacher satisfaction" (EDG Ex. 398 at 1).

FOF 343. More specifically, the State admits:

While the buildings, land and equipment do not make the school, they have a decided impact on the day-to-day operations of the educational process. In a 1998 [U.S.] Department of Education study of school districts in three states, a positive relationship was found between school condition and both student achievement and behavior. Another study, conducted by the American Association of School Administrators, found that students who attended schools in poor condition scored on a standardized test, 5.5 percentage points below students who attended schools in fair condition and 11 percentage points below students who attended schools in excellent condition. Finally, a study of working conditions in urban schools, conducted by Corcoran, Walker and White, found that physical conditions have direct positive and negative effects on teacher morale, sense of personal safety, feelings of effectiveness in the classroom and on the general learning environment.

(EDG Ex. 397 at 1).

5. The Edgewood Intervenors have school facilities that are inadequate by the State's own standards of adequacy.

- FOF 344. State law mandates the development of standards for the “adequacy of school facilities.” TEX. EDUC. CODE § 46.008. “The standards must include requirements related to space, educational adequacy, and construction quality.”
- FOF 345. State law provides that the standards for adequacy of school facilities shall apply to new facilities constructed after September 1, 1998. TEX. EDUC. CODE § 46.008.
- FOF 346. The State has developed standards for school facilities constructed on or after January 1, 2004. 19 TEX. ADMIN. CODE § 61.1036.
- FOF 347. For example, the State has adopted minimum requirements for general classrooms. 19 TEX. ADMIN. CODE § 61.1036(d)(5)(B).⁹
- FOF 348. The State has not formally developed any standards for existing schools -- schools constructed prior to the development of the standards for new school projects. As Joe Wisnoski put it, “The legislature had not authorized [facility] standards to be imposed on school districts until, I believe, about 1991 or 1993, so prior to that time, there were no standards established by the state. The state had, under previous regimes of accountability, inspected buildings, but there were no formally adopted standards, and so there – aside from building codes, which would apply, there are no state facility standards that are applied retroactively to existing facilities”
- FOF 349. However, the State has recognized the applicability of the standards for *new* schools to *existing* schools.
- FOF 350. As the State admits, “[a]lthough minimum space planning standards normally are intended to apply to the planning of new construction and major renovations, they can provide general guidelines for assessing space usage for existing educational programs.” (EDG Ex. 401 at EDG 4472).
- FOF 351. Indeed, in assessing whether district schools provide sufficient space for students, the State has applied its minimum new school standards to existing schools.
- FOF 352. As State documents show, fourteen school facilities in Brownsville and Socorro do not meet minimum facilities standards.
- FOF 353. The State has adopted adequacy standards for science laboratories and classrooms. 19 TEX. ADMIN. CODE § 61.1036(d)(5)(C).

⁹ “Classrooms for pre-kindergarten-Grade 1 shall have a minimum of 800 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 36 square feet per student.” (19 TEX. ADMIN. CODE § 61.1036(d)(5)(B)(i).) “Classrooms at the elementary school level for Grades 2 and up shall have a minimum of 700 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 32 square feet per student.” (19 TEX. ADMIN. CODE § 61.1036(d)(5)(B)(ii).) “Classrooms at the secondary school level shall have a minimum of 700 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 28 square feet per student.” (19 TEX. ADMIN. CODE § 61.1036(d)(5)(B)(iii).)

- FOF 354. In particular, the State has mandated that science laboratories and classrooms include, among others, the following educational and safety items, and detailed the necessary specifications for each: a built-in fume hood; a built-in eye/face wash;¹⁰ a built-in safety shower;¹¹ ventilation systems;¹² an exhaust fan controlled by the instructor in all rooms where hazardous or vaporous chemicals are to be used or stored;¹³ and a minimum of 6 linear feet of total horizontal workspace, such as lab stations, lab tables, countertops, desktops, or some combination of these.¹⁴ 19 TEX. ADMIN. CODE § 61.1036(d)(5)(C)(vi)(I-VII).
- FOF 355. Many science labs in property-poor Edgewood Intervenor middle and high schools do not meet the state’s own standards of adequacy.
- FOF 356. The Raymondville science lab highlighted by the Comptroller does not meet the state’s standard of adequacy because the required “safety equipment . . . does not work properly.” (EDG Ex. 403 at EDG 4578).
- FOF 357. The facilities survey in Ysleta ISD identified a number of inadequate science classrooms and labs in district schools.
- FOF 358. The facility survey for Del Valle High School in Ysleta ISD shows that four science rooms have no student workstations and need to be equipped with safety features.
- FOF 359. The facility survey for Hanks High School in Ysleta ISD shows that 13 of its older labs “al[l] have some deficiencies,” i.e., “safety features, size, too few workstations . . . etc.” (EDG Ex. 11 at EDG 4213).
- FOF 360. The facility survey for Riverside High School in Ysleta ISD shows that there are no exhaust hoods in the chemistry labs and the exhaust fans “overheat and cut off after about 45 seconds of operation.” (EDG Ex. 11 at EDG 4223).

¹⁰ “In Texas schools, eye/face washes are required in all science laboratories where students and teachers are exposed to chemicals or other hazardous substances that may splash into their eyes or onto their faces.” (EDG Ex. 547 (*Kindergarten through Grade 12 Science Facility Standards* (TEA 2002)) at 43.)

¹¹ “Emergency showers are designed to rinse contaminants from the body. These showers are required in all high school chemistry laboratories and are recommended for integrated physics and chemistry. . . . An emergency shower located in a separate room, such as the preparation room, is not acceptable for use by chemistry students.” (EDG Ex. 547 at 50.)

¹² “A floor-to-ceiling ventilation system pulls air from the floor upward toward the ceiling and vents it to the outside of the building. This type of system is required in science laboratories, where hazardous chemicals are used and noxious fumes are produced.” (EDG Ex. 547 at 64.)

¹³ “The purpose of the fume hood is to contain and eliminate hazardous contaminants before they escape into the science laboratory. Fume hoods are required in chemistry laboratories and recommended for integrated physics and chemistry. Advanced Placement (AP) Chemistry and International Baccalaureate (IB) Chemistry laboratories should provide two fume hoods for students.” (EDG Ex. 547 at 58.)

¹⁴ “School classrooms and science laboratories must provide each student with a workstation. Laboratory tables can accommodate 2-4 student workstations per table. The purchase of laboratory tables is a major expense for a school district” (EDG Ex.547 at 69.)

- FOF 361. The facility survey for Cesar Chavez Academy shows that it has no science labs.
- FOF 362. The facility survey for Eastwood Middle School shows that its six science classrooms have “no special features, i.e., work stations, safety feature [sic], equipment and supply storage facilities.” (EDG Ex. 11 at EDG 4156).
- FOF 363. The facility survey for Ranchland Hills Middle School shows that the eye wash equipment in its 4 science lab/classrooms is “inoperable” and that there is only one safety shower.
- FOF 364. The facility survey for Riverside Middle School shows that there are no operable gas lines connected to the teacher demonstration tables in its 6 science classrooms, that students have no work stations, that there is no safety shower, and that the eye wash basins are not connected to operable water lines.
- FOF 365. Nine of 10 elementary schools in South San Antonio ISD lack science labs.
- FOF 366. Although one district high school just completed a new science wing, which was funded as part of its 1998 bond, the other still has no science labs.
- FOF 367. Monte Alto ISD has grossly inadequate science equipment. For the middle school, the district does not even have a science lab where students can pair up and perform experiments hands-on. Instead, the district must rely on a rolling cabinet that is brought into the classroom and only a couple of students perform the experiment while the other students in the class look on.

6. Inadequate school facilities impact students’ ability to meet the TEKS standards.

- FOF 368. Inadequate school facilities deprive students of an equal opportunity to meet state-defined standards and obtain a constitutionally adequate education.

- FOF 369. According to the TEA,

Every day our world becomes more complex and demanding. To succeed beyond high school, students must be better prepared than at any time in the history of our state. Our expectations for our students and our schools are higher than they have ever been.

To meet these expectations, the State Board of Education has adopted a new curriculum for all Texas schools — the Texas Essential Knowledge and Skills (TEKS). These learning standards will help ensure that all students meet the challenges ahead of us as we move into the next century:

- Each student must become a more effective reader.
- Each student will have to know and apply more complex mathematics.

- Each student needs to develop a stronger understanding of science concepts, especially in biology, chemistry, and physics.
- Each student must master social studies skills and content necessary to be a responsible adult citizen.
- Each student must master a wider range of technology.

The Texas Essential Knowledge and Skills identify what Texas students should know and be able to do at every grade and in every course in the foundation and enrichment areas as they move successfully through our public schools.

(Downloaded from <http://www.tea.state.tx.us/teks/teksls.pdf> (emphasis added)).

FOF 370. Through the TEKS, the State has specified the knowledge and skills to be developed by students in science courses, for example. *See* 19 TEX. ADMIN. CODE § 112.1 *et seq.*

FOF 371. For high school science courses, the State requires that “[t]he student, *for at least 40% of instructional time, conducts field and laboratory investigations* using safe, environmentally appropriate, and ethical practices.” *See, e.g.,* 19 TEX. ADMIN. CODE § 112.42(c)(1) (emphasis added).

FOF 372. For middle school, while the State does not mandate the amount of instructional time required for it, the State does require that the student “conduct[] field and laboratory investigations.” *See, e.g.,* 19 TEX. ADMIN. CODE § 112.24(a)(1). The same is true for elementary school. *See, e.g.,* 19 TEX. ADMIN. CODE § 112.6(a)(1).

FOF 373. To have an equal opportunity to acquire all the knowledge and skills required of science, students must have equal access to safe and adequate science laboratories.

FOF 374. As a report entitled *Kindergarten through Grade 12 Science Facility Standards*, published by the Texas Education Agency in 2002, puts it, “Our schools must provide well-equipped classrooms and laboratories . . . so that students can do investigations using scientific inquiry.” (EDG Ex. 547 at 1).

FOF 375. As the State publication explains:

Good science facilities are necessary in order for teachers to provide the quality of instruction that is expected in today’s education system. As more demands are placed on our teachers to improve student performance and schools are held accountable for the level of student performance, the need for modern, well-equipped science facilities becomes increasingly important. Research has proven that students learn and understand science concepts better when all of their senses are stimulated during the learning process. Nowhere can they acquire this level of understanding better than during laboratory and field investigations.

Small laboratory rooms with overcrowded student workstations, a lack of safety equipment, and inadequate supplies and materials can no longer be tolerated in our schools.

(EDG Ex. 547 at 1 (emphasis added)).

- FOF 376. As a result of their inability to meet their facilities needs, some districts do not offer all their school students an adequate science lab, depriving students of the opportunities to conduct state-required laboratory investigations.
- FOF 377. As the Comptroller’s report for Raymondville shows, because of deficiencies in the science lab, “[c]hemistry instruction is limited to lectures, depriving students of valuable hands-on lessons.” (EDG Ex. 403 at EDG 4578) .
- FOF 378. Science teachers assigned to the numerous inadequate science labs in Ysleta ISD and South San Antonio ISD, noted above, likewise must forego laboratory experiments and deprive students of required and valuable laboratory investigations.

7. Property-poor districts cannot meet their facilities needs because the State fails to provide substantially equal access to facilities funding.

- FOF 379. In *Edgewood IV*, the Court upheld the Texas school finance system because the plaintiffs failed to show that districts could not meet their facilities needs with the equalized funding available under Tier 2. *Edgewood IV*, 917 S.W.2d at 717.
- FOF 380. At the time *Edgewood IV* was decided, equalized facilities funding was available under Tier 2. *Edgewood IV*, 917 S.W.2d at 728 n.5 (“The second tier provides a guaranteed yield system of financing to provide all school districts with substantially equal access to funds to provide an enriched program and additional funds for facilities.”) (quoting TEX. EDUC. CODE § 16.002(b)).
- FOF 381. The Court upheld the system in *Edgewood IV* precisely because “all districts [then] ha[d] access to *equalized* funding for facilities purposes under Tier 2.” *Edgewood IV*, 917 S.W.2d at 746 (emphasis added). Indeed, as the Court held, “the poorest districts in the State must levy a maintenance and operations tax of approximately \$1.31 to provide the operations revenue necessary for a general diffusion of knowledge. However, *equalized* access under Tier 2 is afforded up to a tax rate of \$1.50.” *Id.* (emphasis added). Accordingly, with property-poor districts having access to equalized capacity under Tier 2, it is not surprising that the Court should have concluded that “the plaintiffs have not demonstrated that there is even one district that cannot presently provide the facilities necessary for a general diffusion of knowledge *within the equalized program.*” *Id.* (emphasis added).
- FOF 382. Facilities funding has since been removed from the equalized Tier 2; the 76th Legislature specifically excluded I&S tax rates from Tier 2. *See* TEX. EDUC. CODE § 42.301. Accordingly, “Tier 2 funds may not be used for debt service or capital outlay.” (EDG Ex. 396 (Legislative Budget Board, *Financing Public Education in Texas Kindergarten Through Grade 12: Legislative Primer* (“LBB Primer”) (October 2001)) at 18).

- FOF 383. State assistance for school facilities funding is now provided under what is called Tier 3.
- FOF 384. For several reasons, as explained below, Tier 3 fails to provide “districts substantially equal access to the funding for a general diffusion of knowledge for both operations *and facilities needs.*” *Edgewood IV*, 917 S.W.2d at 747 n.37 (emphasis added).

a. The functioning of “Tier 3” for facilities financing.

- FOF 385. Tier 3 facilities financing was created in 1997 to address the financing of new facilities, and amended in 1999 to address existing district debt. Tier 3 financing consists of two state programs: 1) the Instructional Facilities Allotment (IFA), to address new facilities financing; and 2) the Existing Debt Allotment (EDA), to address existing district debt. TEX. EDUC. CODE §§ 46.001 *et seq.*; TEX. EDUC. CODE § 46.304.
- FOF 386. While the State’s contribution to the Tier 1 basic allotment and the Tier 2 guaranteed yield is “fully funded,” the extent of state assistance under the IFA is not. The availability of IFA funds for new awards is limited to that appropriated by the Legislature in each biennium.
- FOF 387. The IFA program was intended to guarantee to each school district qualifying for assistance a specific yield per ADA, currently \$35 per penny of local tax effort, for servicing “new” (rather than existing) debt incurred in the financing of instructional facilities. The debt incurred includes the costs of construction, acquisition, renovation or improvement of instructional facilities. Districts apply for funds and funds are allocated first to the districts ranked lowest in wealth per ADA based on certain formulas. *See* TEX. EDUC. CODE § 46.006. Because the Legislature has not appropriated sufficient amounts, not all property-poor districts applying for funds have received IFA funds since the institution of the program.
- FOF 388. The second program available under Tier 3 facilities financing is known as the Existing Debt Allotment (EDA). Under EDA, districts receive revenue equalization in the form of a guaranteed yield of \$35 per penny per ADA of tax effort related to debt payments made in the prior biennium. The State equalizes up to 29 cents of tax effort for existing debt payments under this program, subject to the availability of funds for the current biennium. TEX. EDUC. CODE § 46.304. Because there is no guarantee that the Legislature will roll EDA forward to cover debt payments from this biennium, property-poor districts cannot afford to take the risk of issuing bond debt for school facilities.

b. There is no equalized wealth level and no recapture for state facilities funding.

- FOF 389. First, there is no equalized wealth level and there is no recapture of funds under Tier 3. All debt service for districts with property wealth above \$350,000 per ADA is unequalized, and recapture, if implemented as it is for M&O, would occur at and above approximately \$405,000 per unweighted ADA.

FOF 390. Because there is no recapture, property-rich districts can raise funds for facilities many times over that which property-poor districts can raise with similar tax effort. For example, Alamo Heights ISD, a property-rich school district in the same county and metropolitan area as the property-poor Edgewood ISD, has approximately 15 times the wealth per student (ADA) that Edgewood ISD has. Alamo Heights ISD could thus fund a bond of approximately \$75 million with a tax effort of 7 to 8 cents, while Edgewood ISD, if it received no assistance under the IFA or EDA programs, could fund only a \$5 million bond with that same tax effort.

FOF 391. The Court does not find that the elimination of recapture of funds for debt services, in and of itself, violates the constitutional duty to equalize funding for facilities. However, such elimination of recapture, in conjunction with the failure to make either the IFA and/or EDA programs statutorily permanent, coupled with insufficient funding by the Legislature and the prohibition on the use of Tier 2 funds for facilities, means that Chapter 41 and Chapter 42 districts do not have substantially equal access to funds for facilities.

c. There is no state assistance for districts too poor to pass bonds.

FOF 392. Second, districts are generally eligible for Tier 3 assistance only if a local bond has been approved by voters. *See* TEX. EDUC. CODE §§ 46.003(a), 46.032(a).

FOF 393. The IFA, when available, helps low-wealth districts that are able to get approval for school bonds and sell them, but it does not assist those too poor to make that effort.

d. There is no guarantee that property-poor districts that pass bonds will receive state facilities assistance.

FOF 394. Third, “[w]hile the IFA is structured as a guaranteed yield similar to Tier 2, it does not guarantee that all districts that have received voter approval to sell bonds will receive IFA funding. Districts must apply to the Texas Education Agency (TEA) for state aid through the IFA. The IFA is a ‘sum certain’ appropriation, which means that when all of the appropriation is claimed (through the application process), no more money can be allocated by the TEA.” (EDG Ex. 396 (LBB Primer) at 20).

FOF 395. Because funding is limited, state law requires the Commissioner of Education to rank school districts by wealth per student to determine priority for funding, beginning with those with the least wealth. TEX. EDUC. CODE § 46.006. Awards are made in ascending order of wealth until funding is exhausted. TEX. EDUC. CODE § 46.006(e).

FOF 396. The amounts appropriated under the IFA have been substantially insufficient to meet eligible districts needs since 1999-2000 biennium. As Joe Wisnoski, Assistant Commissioner for School Finance and Fiscal Analysis, has reported, “For the time period from fiscal years 2000 through 2003, the legislature typically provided \$50 million per fiscal year in funding for new awards.” (STATE EX. 16060 (Wisnoski Report) at D-001491A). Yet, as Wisnoski has testified, “In the past history of the IFA program, aside from the first two cycles of awards, there has been some excess demand compared to supply of appropriations that has varied. . . . [I]t’s probably ranged anywhere from 25 to \$50 million more requested than we had available for funding.”

- a. The Legislature appropriated only \$150 million for the IFA in the 1999-2000 biennium, reducing the amount available each year for new projects to \$50 million. Only 87 districts received funding in 1999 out of the 160 that applied. In 2000, only 83 of the 245 districts that applied received funding.
- b. In the 2001-02 biennium, \$150 million was again appropriated, with \$50 million available each year for new projects.

FOF 397. The Legislature provided no new IFA funding for the 2003-2004 school year. Districts that applied therefore received no funding.

FOF 398. This year, the Legislature appropriated only \$20 million for new IFA projects, contingent on a surplus in EDA funding. *See* 2003 Tex. Sess. Law Serv. Ch. 201, § 69 (Vernon’s 2004); STATE EX. 16060 (Wisnoski Report) at D-001491A (“Due to fiscal constraints, the legislature made available only \$20 million in contingent funding for fiscal year 2005 . . .”). Demand for IFA funds exceeded \$100 million, or 5 times the amount made available by the Legislature.

FOF 399. As a result, IFA funds were approved this year for only 16 IFA applicants, the last having a wealth per ADA of a mere \$63,302. The more than 300 applications with higher wealth per ADA – including property-poor Edgewood Intervenors such as Pharr-San Juan-Alamo ISD (\$67,733), South San Antonio ISD (\$86,777), Socorro (\$91,703), and Ysleta ISD (\$101,152) – were shut out of new IFA funding.

FOF 400. Without state facilities assistance, property-poor districts find themselves unable to issue approved bonds and build or repair all necessary school facilities. The tax rates necessary to pay for all or even a substantial part of an approved bond, in the absence of state funding, can be prohibitive. Further, even if school districts could issue bonds, they are limited by a 50-cent facilities tax rate cap, which restricts the amount of money that poor school districts can raise on their own without state aid.

- (a) For example, in June 2004, South San Antonio ISD succeeded in passing a \$40.5 million bond in an effort to meet a portion of its significant facilities deficiencies, some of them first identified by a needs assessment completed in 1998. Identified needs totaled approximately \$54 million, but that amount was reduced because it exceeded the maximum amount available to the district under the IFA. (A \$10 million bond to cover the costs of non-qualified IFA projects appeared on the same ballot but failed to gain voter approval. That amount was likewise reduced, from about \$21 million, in order to increase the chances of its passing. This bond was not approved by voters.)

South San Antonio ISD proposed and approved the \$40.5 million bond contingent on receiving IFA funding. Because South San Antonio ISD did not receive any portion of the recent \$20 million IFA appropriation, it will not issue the approved \$40.5 million bond. With IFA funding, the district’s I&S tax rate would have increased by only 7 cents to cover the \$40 million

bond, but without IFA funding, the rate would have to increase by 28 cents.¹⁵ The district's current I&S tax rate is approximately 23 cents, so covering the bond on its own would take it over the legal limit of 50 cents.

- (b) Similarly, Pharr-San Juan-Alamo ISD proposed a \$29 million bond in June 2004, with its issuance contingent on receiving IFA funding. The district had done the same with prior bond proposals. The taxpayers of PSJA could not afford the tax increase without IFA assistance.

When asked what would happen to the facilities proposed to be built with bond proceeds if the district did not receive IFA funding, the Superintendent testified: "I don't even want to think about that, but I know that it will mean more of what we're doing right now, higher pupil-teacher ratio. It will mean doing . . . more with less. It will mean more portables. We're currently using about one hundred and 50 portables, and that's not the same as a regular classroom." Although the bond was approved, the district did not receive IFA funding, as noted above, and will not issue the bond.

- (c) Ysleta ISD recently approved a \$250 million bond in an attempt to address a portion of its \$550 million in exigent facilities' needs. Because Ysleta ISD did not receive any of the \$20 million IFA appropriation in the spring of 2004, Ysleta ISD would have to raise its I&S tax rate by 41 cents to cover the entire bond – from 7 cents to 48 – leaving the district with little if any capacity to meet its additional facilities needs, given the 50 cent cap on I&S. Ysleta ISD will issue only \$72 million in bonds this year. Even this reduced bond amount will result in an increase of 18 cents – from 7 to 25.

- FOF 401. Although districts not funded under the IFA may apply under for EDA funding, the EDA, like the IFA, does not guarantee equal access to facilities funds.
- FOF 402. Like the IFA, the availability of new EDA funds is contingent upon legislative appropriation.
- FOF 403. In 2003, the Legislature amended the EDA, recognizing that the appropriated amount may be insufficient to fund all eligible districts. *See* TEX. EDUC. CODE § 46.034(d).
- FOF 404. As a result of the amendment, if the appropriation to support newly eligible bonds for 2003-04 and 2004-05 is not sufficient to provide all the aid that districts are eligible for through the EDA, the State will reduce the \$35 guaranteed level to a level that will fund applicants within the appropriated amount. TEX. EDUC. CODE § 46.034(d).
- FOF 405. Thus, the Legislature-mandated proration of the state share of any new EDA debt should the appropriated amount prove insufficient to fund all eligible districts.

¹⁵ The district's tax rate would have had to increase by an additional 6 cents to cover the separate \$10 million bond, which was not eligible for IFA funding.

- FOF 406. More importantly, the EDA was initially limited only to projects that had been funded in the biennium prior to the one when the program was first established. Each legislative session since then, the Legislature has rolled that limitation forward to include projects from the preceding biennium.
- (a) Section 46.033 of the Texas Education Code originally provided that “[b]onds, including bonds issued under Section 45.006, are eligible to be paid with state and local funds under this subchapter if (1) taxes levied to pay the principal of and interest on the bonds were included in the district's audited debt service collections for the *1998-1999 school year*; and (2) the district does not receive state assistance under Subchapter A for payment of the principal and interest on the bonds.” 1999 Tex. Sess. Law Serv. Ch. 396, § 1.29 (Vernon’s 2004) (emphasis added).
 - (b) Section 46.033 was amended in 1999 to cover bonds if the district “made payments on the bonds during the *2000-2001 school year* or taxes levied to pay the principal of and interest on the bonds were included in the district's audited debt service collections for that school year.” 2001 Tex. Sess. Law Serv. Ch. 1156, § 9 (Vernon’s 2004) (emphasis added).
 - (c) Finally, section 46.033 was amended in 2003 to cover bonds if the district “made payments on the bonds during the *2002-2003 school year* or taxes levied to pay the principal of and interest on the bonds were included in the district's audited debt service collections for that school year.” 2003 Tex. Sess. Law Serv. Ch. 201, § 40 (Vernon’s 2004) (emphasis added).
- FOF 407. There is no guarantee, however, that the Legislature will roll the EDA forward in the future.
- FOF 408. Districts not receiving IFA funds can make substantial payments on the debt they issue and risk that the Legislature will roll the EDA forward in the next biennium to include the debt. If the Legislature does not do so, many districts taking this gamble will face extremely high and unequalized tax rates. Some districts either cannot afford the risk or cannot secure financing in the absence of guaranteed state assistance.
- FOF 409. Extremely low property wealth districts like Pharr-San Juan-Alamo ISD and South San Antonio ISD, for example, cannot afford to take this gamble on EDA funding. Given their yields of approximately \$7 to \$8/ADA per penny of tax effort, they would have to adopt extremely high tax rates to fund the bonds on their own. That is why they will not issue their bonds without IFA assistance and do not risk the EDA roll forward.
- FOF 410. As a result, districts too poor to issue bonds must fund school buildings, if they can fund them at all, from already insufficient operating funds. This compromises the adequacy of funding in these districts.

FOF 411. Accordingly, IFA funding is insufficient to meet the needs of all eligible districts, and not all districts shut out of IFA funding can afford to gamble on EDA funding being appropriated and rolled forward in the next biennium.

e. The IFA does not cover all school facility expenses.

FOF 412. The IFA is narrowly defined in terms of the projects that can be funded and does not cover all needed repair and construction costs. The IFA covers bond indebtedness to pay for “instructional facilities,” but not “non-instructional facilities.” *See* TEX. EDUC. CODE § 46.001 (“In this subchapter, ‘instructional facility’ means real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required under Section 28.002.”).

FOF 413. The distinction lies in whether a facility’s “predominant use is for purposes other than teaching the curriculum required by TEC, §28.002.” *Compare* 19 TEX. ADMIN. CODE 61.1032(a)(1) *with* (a)(2).

FOF 414. As a TEA document entitled “Examples of Qualified and Non-Qualified Projects” shows, costs for administration buildings, extracurricular athletic fields and field houses, parking areas and walkways for non-instructional facilities, for example, are not included in the IFA. (EDG Ex. 552).

FOF 415. As South San Antonio ISD’s 2004 bond assessment showed, the cost of items not covered by the IFA can be substantial. While a maximum of \$40.5 million worth of the district’s needs were estimated to be IFA eligible, an additional \$21 million were not. Items not eligible for IFA funding included parking lots, fencing, drainage systems, and furniture. Had the \$10 million bond proposed to partially meet these needs been approved, the district would have had to increase its I&S tax rate by 6 cents just to cover these non-qualified IFA expenses.

FOF 416. As a result, even if districts approve bonds and receive state assistance, they must set aside some of their local tax effort for necessary improvements that they must pay for without state assistance.

FOF 417. Accordingly, for all the reasons stated above, property-poor districts do not have substantially equal access to funds to provide adequate facilities for all their students.

8. The State has found a strong link between district wealth and educational capital and a strong link between building age and poor and Hispanic students.

FOF 418. The State has documented systematic disparities in the distribution of educational facilities across the state.

FOF 419. Dr. Lori Taylor recently conducted a facilities study entitled “Meetings Needs? A Survey of School Facilities in the State of Texas” for the Joint Select Committee on Public School Finance.

- FOF 420. Dr. Taylor surveyed Texas' 1039 traditional school districts, receiving responses from 327, and supplemented the survey with information from the Texas Association of School Boards for 392 additional school districts, for a total of 719 school districts.
- FOF 421. Using the date of building construction or last renovation, Dr. Taylor found that the average Texas school building was 26 years old.
- FOF 422. Dr. Taylor assessed whether or not there were disparities in the distribution of educational resources.
- FOF 423. Dr. Taylor used "a composite measure of educational capital." (EDG Ex. 408 at 9). As Dr. Taylor explains, "The replacement value of facilities and equipment reflects not only the quantity but also the quality of the physical resources available to school districts. We use the per-pupil value of general purpose facilities and equipment as our indicator of educational capital. This indicator excludes teacherages and capital devoted to athletics, but includes all portable, partial, agricultural and operational facilities. As such, it is a measure of educational capital rather than school district assets." (EDG Ex. 408 at 9).
- FOF 424. Dr. Taylor found: "There is dramatic variation in the educational capital of Texas school districts. Educational capital per student ranges from less than \$5,000 per pupil . . . to over \$100,000 per pupil." (EDG Ex. 408 at 9).
- FOF 425. Dr. Taylor concluded that there is "substantial evidence that educational capital differs systematically across districts." (EDG Ex. 408 at 11). "Despite all the state's efforts to break the link between district wealth and school facilities, the relationship remains strong. The amount of educational capital in a district is an increasing function of the district's wealth, and variations in wealth alone can explain nearly 40 percent of the variations in educational capital. . . . The average Chapter 41 district in the sample has nearly 60 percent more educational capital per pupil than the average Chapter 42 district." (*Id.* at 10).
- FOF 426. Dr. Taylor also concluded that "there is a strong correlation between building size and [district] wealth. As district wealth per student increases, the square footage per student increases. Chapter 41 districts, on average, have 100 more square feet per student than other districts in the sample." (EDG Ex. 408 at 9).
- FOF 427. Dr. Taylor concluded: "it is important to note that, overall, districts with large minority populations have older facilities While these patterns may be nothing more than artifacts of the under-representation of poor or minority districts in the sample, *they are clearly inconsistent with the state's equity goals.*" (EDG Ex. 408 at 11 (emphasis added)).
- FOF 428. Dr. Taylor concluded that there was "a significant correlation between [the] age [of facilities] and student characteristics. As the share of students who are Hispanic increases, the age of capital stock increases. . . . [T]here is a significant relationship between the share of students receiving free or reduced lunches and building age. Within the sample, poor students attend class in significantly older buildings than other students." (EDG Ex. 408 at 7).

- FOF 429. In a 1995 report, the National Center for Education Statistics (NCES) concluded that a measure combining age of school and year of last major renovation “represents a rough approximation of ‘condition’ of schools, assuming that all other building conditions were equal.” (EDG Ex. 433 at 2).
- FOF 430. Unlike Dr. Taylor, the NCES uses the date of “last major renovation,” not merely the last renovation of any kind. (EDG Ex. 433 at 1).
- FOF 431. According to the NCES, schools in the “oldest condition” are those that are more than 25 years old or last had a major renovation 20 or more years ago. (EDG Ex. 433 at 2).
- FOF 432. Putting aside the fact that Dr. Taylor did not determine the date of last *major* renovation, and applying the NCES definition to Dr. Taylor’s finding that the average Texas school building was built or last renovated 26 years ago, in 1978, not only is the average school building in Texas in the “oldest condition,” but poor and minority students attend significantly older school buildings than other students.
- FOF 433. Accordingly, due to the failure of the State to provide substantially equal access to funds for facilities, property-poor districts like the Edgewood Intervenors lack all the facilities essential to providing students a learning environment in which to attain a general diffusion of knowledge. *See Edgewood IV*, 917 S.W.2d at 747 n.37.

B. The Intervenors do not have access to adequate funds for maintenance and operations to provide a general diffusion of knowledge.

- FOF 434. The factors that led to this Court’s conclusion that the West Orange Cove Plaintiffs have proven their adequacy claim also leads to the conclusion that the Intervenors have done so as well, including but not limited to: (1) the rising academic expectations at the state and federal level, *see supra* Section II.A.2; (2) the demographic changes impacting Texas, *see supra* Section II.A.3; (3) the large, uncontrollable costs that are not adequately addressed in the school finance formulas, *see supra* Section II.A.4, (4) the undersupply of qualified teachers, *see supra* II.A.5, and (5) the expense of remedying the dropout problem, *see supra* II.A.6.
- FOF 435. This conclusion is strengthened with respect to the Intervenors by the (1) the disproportionate impact that inadequate bilingual and compensatory education weights have on the Intervenors’ districts and other property-poor districts; (2) the greater difficulty that property-poor districts like those of the Intervenors have in recruiting and retaining qualified teachers, and (3) a structural disparity in access to revenues, that, while not reaching the level of a constitutional violation at this time, still puts property-poor districts at a financial disadvantage when compared to Chapter 41 districts.
- FOF 436. In 2003, 16 of the 22 Edgewood Intervenor districts had a tax rate of at least \$1.45, and a total of 10 were at the maximum rate of \$1.50. All four Focus Districts presented at trial -- South San Antonio ISD, Pharr-San Juan-Alamo ISD, Edgewood ISD, and Ysleta ISD – and three of the other four Edgewood-designated Focus Districts – Ed-Couch Elsa ISD, Jim Hogg County ISD, and San Elizario ISD – were all taxing at \$1.50 (as are as Roma ISD, Kenedy ISD, and Harlandale ISD). Brownsville ISD (\$1.47), La Feria ISD (\$1.45),

La Vega ISD (\$1.48), Harlingen ISD (\$1.45), Los Fresnos ISD (\$1.47), and Sharyland ISD (\$1.45) were all near the maximum, with a tax rate of at least \$1.45.

1. Inadequacy of weights in school finance formulas.

a. The bilingual weight is inadequate.

- FOF 437. It costs substantially more in educational resources to bring LEP students to a given level of educational performance than it does for their more advantaged peers to achieve that same level.
- FOF 438. The State of Texas recognizes that LEP students require specialized education, guaranteeing an “efficient system ... substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to the student’s educational needs” TEX. EDUC. CODE § 42.001(a).
- FOF 439. According to the 2002-2003 TEA AEIS data, while LEP students are 14.9% of the total student enrollment statewide, and students in Bilingual/ESL make up 13.5% of student enrollment by program, only 8.1% of teachers listed under “Teachers by Program” are Bilingual/ESL teachers, and only 4.5% of Budgeted Instructional Operating Expenditures by Program are for Bilingual/ESL programs. There is a very large disparity between the percentage of LEP students and the percentage of operating expenditures spent on Bilingual/ESL programs.
- FOF 440. The 2003-2004 TEA PEIMS report for Budgeted Financial Data, Statewide Totals show that 4.38% of all funds are spent on Bilingual/ESL instruction. The 2002-2003 TEA PEIMS report of Actual Financial Data shows that 4.17% of All Funds were spent on Bilingual/ESL instruction.
- FOF 441. As indicated above, one of the ways that the Texas school finance system attempts to accommodate differences in cost due to factors beyond the control of local school districts is through weights and adjustments to the state aid distribution formulas. *See* TEX. EDUC. CODE § 42.001(b) (“The public school finance system of this state shall adhere to a standard of neutrality that provides for substantially equal access to similar revenue per student at similar tax effort, considering all state and local tax revenues of districts after acknowledging all legitimate student and district cost differences.”)
- FOF 442. For each student in average daily attendance in a bilingual education or special language program, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1. *See* TEX. EDUC. CODE § 42.153(a).
- FOF 443. The current LEP cost adjustment used by Texas, however, does not accurately reflect the substantial costs associated with educating these special needs students.
- FOF 444. The current cost adjustment has been identified by school administrators in districts serving high LEP student populations as being “substantially” and “grossly” insufficient.

Dr. Moses, the Dallas Superintendent, testified that for the neediest LEP students, a weight of 2.0 would be necessary.

- FOF 445. The current cost adjustment for bilingual education has been grossly insufficient since its inception and does not provide the resources necessary to provide LEP students with an adequate education.
- FOF 446. The current weight of .10 for bilingual/LEP students dates back to HB 72, enacted during the June 1984 special session. *See* HB 72, 68th Leg. (1984). HB 72 made a significant change to the school finance system's basic distribution method by introducing the concept of weighted-pupil units.
- FOF 447. Ten years before the enactment of HB 72, the Governor's Office of Educational Research and Planning (GOERP) published a report on restructuring school funding with the goal of improving vertical equity in the system, i.e., leveling the playing field for students with different needs and abilities.
- FOF 448. The GOERP collected data from a program-by-program cost audit of 42 school districts of varying size, nominated as exemplary by 1,500 educational leaders. An in-depth cost analysis of all state and local funds spent by these districts yielded a recommendation for a "beginning" bilingual weight of 0.15 for bilingual education programs, with an increase to 0.40 in two years. As with all of the study recommendations, additional "accountable cost" studies were to be conducted in subsequent years to determine the appropriate weight levels.
- FOF 449. The Governor's bill was defeated in the 64th Legislature in 1975, and through legislative action a bilingual/ESL allotment was eventually (and arbitrarily) set at \$50 for each student in a bilingual program and \$12.50 for each student in an English as a second language class.
- FOF 450. In the early 1980s, the School Finance Working Group, a coalition of education organizations and associations, reported to the legislature regarding a more appropriate weight for bilingual education students.
- FOF 451. The School Finance Working Group study examined a number of models for the delivery of effective bilingual education services. Smaller class sizes, the use of education aides to assist teachers, extended day and extended year programs, and the cost of additional instructional materials were all reviewed.
- FOF 452. Costs of the arrangements reviewed by the School Finance Working Group ranged from slightly over 40% to as much as double the cost of a regular education program for each grade grouping (elementary, middle, and high school).
- FOF 453. The School Finance Working Group eventually recommended a conservative 0.4 weight for bilingual education and further recommended that the bilingual weight and the compensatory education weight (also recommended at 0.4) be cumulative for students meeting both conditions.

- FOF 454. Despite the recommendations by both the GOERP and the School Finance Working Group, the legislature determined that the weight for bilingual education would be set in accordance with the funds available for appropriation, rather than on the actual costs associated with the education of this special need student population.
- FOF 455. As noted by the House Research Organization,¹⁶ “most of the recommended program weights [including the recommended weight for bilingual education programs] were reduced by more than half during the appropriations process in order to enact HB 72 with a feasible fiscal note.”
- FOF 456. In addition to being set at only one-fourth of the level recommended by both the GOERP three decades ago and the School Finance Working Group two decades ago, the current bilingual education weight also falls below the findings of recent resource cost studies and adequate weights used by other states across the nation.
- FOF 457. As noted in drafts of reports prepared by State-designated experts Drs. Wood and Taylor, researchers studying the additional costs recently estimated limited English proficient children in New York, across different regions of the state. In general, the researchers found that the additional costs of bringing LEP children to state average performance standards were approximately 100 percent or more above (or two times) state average spending. This is consistent with the findings of recent resource cost studies, which have found that, for larger school districts, costs range from about 60 percent above basic costs to about 100 percent above basic costs for educating the limited English proficient child to specific outcome standards.
- FOF 458. Based on interviews with state bilingual education directors around the country, Edgewood Intervenors’ expert witness found that adequate weights to meet LEP students’ needs range from .40 (Massachusetts) up to 1.0 (Maryland).
- FOF 459. As indicated *infra* FOF 83, even the state’s own bilingual witness stated that without federal funding, the state would need to increase the weight from .1 to .3 in order to provide an adequate bilingual program. By its own admission, the state is only placing one-third of the resources necessary to provide a minimally acceptable bilingual education, relying on uncertain federal resources for the remainder.

(1) The effects of inadequate funding for bilingual education programs on LEP student achievement.

- FOF 460. The current bilingual program weight used in Texas was set prior to the implementation of the TAAS and TAKS standards and has proven to be substantially insufficient to allow school districts to offer adequate bilingual education/ESL programs to their LEP students in order to meet educational standards.

¹⁶ The House Research Organization is a nonpartisan source of impartial information on legislation and issues considered by the Texas Legislature. The HRO is an independent administrative department of the Texas House of Representatives. It is governed by a broadly representative steering committee of 15 House members elected by the House membership to set policy for the organization, approve its budget, and ensure that its reports are objective. See <http://www.capitol.state.tx.us/hrofr/frame6.htm>

- FOF 461. LEP students are lagging substantially behind in the Texas schools, whether measured by state mandated examinations, grade retention or other similar indicia of success. These deficiencies are partly based on the serious bilingual teacher shortage in Texas and on the related fact that students do not have access to the fully qualified teacher they need because local school districts are without the fiscal means on their own to implement the sorts of professional development, recruitment and training programs that are needed or to provide the other components of an adequate bilingual program.
- FOF 462. The TAKS scores of LEP students throughout secondary school show an increasing failure gap between LEPs and non-LEP students. LEP students are required to take and pass the English TAKS at the secondary level. According to the TEA data many LEP students have been enrolled in schools in the United States for three or more years, many for five years or more. Only about 10% of LEP students are recent immigrants.
- FOF 463. In 2002-2003, almost 7 out of 10 (68.2%) of Texas LEP students in Grade 5 failed to meet the state's standards on the TAKS test; almost 8 out of 10 (75.7%) of Texas LEP students failed to meet state's standards in Grade 8; and more than 8 out of 10 students (84.8%) of Texas LEP students in grade 11 failed to meet state standards. Overall, almost 7 out of 10 LEP students in Texas (68%) failed to meet state standards in all tests taken for the 2003 Spring TAKS administration.
- FOF 464. In the second year of TAKS administration, Texas LEP students continued to have difficulty meeting state standards. For the year 2003-04, over 7 out of 10 (73%) of the state's LEP students failed to meet the state's standards on the TAKS for the 2004 grade 5 assessment, almost 8 out of 10 (79%) of the state's LEP students failed to meet the state's standards for grade 8; and almost 8 out of 10 (76%) failed to meet the standards for the exit level grade 11 assessment.
- FOF 465. The failure of LEP students to pass the state's 11th grade exit-level TAKS in the two years that it has been administered is even more alarming in the Edgewood Intervenor Focus Districts,¹⁷ including: Edgewood ISD (2002-03- 92.9% of 11th Grade LEP students failed to meet the standard, 2003-04- 79% failed to meet the standard); Edcouch-Elsa ISD (2002-03- 81.5% of 11th Grade LEP students failed to meet the standard, 2003-04- 87% failed to meet the standard); Laredo ISD (2002-03- 95.3% of 11th Grade LEP students failed to meet the standard, 2003-04 80% failed to meet the standard); Pharr-San Juan-Alamo ISD (2002-03- 86.3% of 11th Grade LEP students failed to meet the standard, 2003-04- 81% failed to meet the standard); San Elizario ISD (2002-03- 93.3% of 11th Grade LEP students failed to meet the standard, 2003-04- 87% failed to meet the standard); South San Antonio ISD (2002-03- 92% of 11th Grade LEP students failed to meet the standard, 2003-04- 83% failed to meet the standard), Ysleta ISD (2002-03- 88.3% of 11th Grade LEP students failed to meet the standard, 2003-04- 79% failed to

¹⁷ Monte Alto ISD and Jim Hogg County ISD are not included in this snapshot of the Edgewood Intervenor Focus Districts' LEP student performance on the 2002-03 and 2003-04 11th Grade TAKS results. Monte Alto ISD does not have a high school, and thus only administers state tests up to the 8th Grade. No AEIS information on LEP student performance for these years is available for Jim Hogg County ISD

meet the standard); Socorro ISD (2002-03- 92.5% of 11th Grade LEP students failed to meet the standard, 2003-04 - 84% failed to meet the standard).

FOF 466. According to the 2002-03 AEIS Reports and the results from the 2004 TAKS results, 3rd grade LEP students performed at much higher levels and the achievement gap for third grade LEP TAKS test takers was reduced substantially compared to the other grade levels. This resulted from greater resources aimed at LEP students in the lower grades.

(2) The effects of inadequate funding for bilingual education programs on LEP student retention rates.

FOF 467. The insufficiency of the funding weight for minimally adequate bilingual education programs in Texas is also evident in the fact that LEP students in Texas are being retained, or held back, at an alarming rate, both at the elementary and secondary level.

FOF 468. From the 1996-97 school year to the 2001-02 school year, the LEP student retention rate at the elementary level increased by 44% from 2.7% to 3.9%.

FOF 469. In the 1999-00 school year, LEP elementary students were retained at a rate approximately 52% greater than Texas children overall (LEP: 3.8%; All other students: 2.5%).

FOF 470. In the 2000-01 school year, LEP elementary students were retained at a rate approximately 50% greater than Texas children overall (LEP: 3.9%; All other students: 2.6%).

FOF 471. In the 2001-02 school year, LEP elementary students were retained at a rate approximately 56% greater than Texas children overall (LEP: 3.9%; All other students: 2.5%).

FOF 472. At the secondary level, even higher percentages of LEP students are being retained in Texas schools as compared to all other students.

FOF 473. For the year 1998-99, LEP students in grades 7-12 were retained at a rate approximately 88% greater than Texas children overall (LEP: 13.2%; All other students: 7.0%).

FOF 474. For the year 1999-00, LEP students in grades 7-12 were retained at a rate approximately 88% greater than Texas children overall (LEP: 12.8%; All other students: 6.8%).

FOF 475. For the year 2000-01, LEP students in grades 7-12 were retained at a rate approximately 87% greater than all other students (LEP: 12.7%; All other students: 6.8%).

FOF 476. For the year 2001-02, LEP students in grades 7-12 were retained at a rate approximately 100% greater than all other students (LEP: 13%; All other students: 6.5%)

(3) The effects of inadequate funding for bilingual education programs on LEP student dropout rates.

FOF 477. The academic lag of LEP students has a cumulative effect, causing an academic gap and contributing to their high dropout rates. In addition, due to the inadequate funding for the

education for LEP students, these students drop out of school at significantly higher rate than other students.

- FOF 478. Even using the state's official definition of a "dropout," which has been criticized for greatly underestimating the actual loss of students from the school system, the disparities between LEP and non-LEP dropout rates are significant.
- FOF 479. For the 2000-01 school year, LEP students in Texas dropped out of school at a rate 40% greater than other students (LEP dropout rate: 1.4%; All other students: 1.0%)
- FOF 480. For the 2001-02 school year, LEP students in Texas dropped out of school at a rate 77% greater than all other students (LEP dropout rate: 1.6%; All other students: .9%). This was despite the fact that LEP students had a greater attendance rate (96.3%) than Texas children overall (95.6%).
- FOF 481. The exacerbation of local school district dropout rates by the lack of adequate funding for special needs students results in reduced funding for schools, since State funding is based on a district's average daily attendance.

(4) Edgewood Intervenor districts serve high LEP student populations.

- FOF 482. Low-wealth districts like the Edgewood Intervenors are responsible for educating a much higher percentage of LEP students than the average school district in Texas and thus disproportionately bear the effects of the inadequate funding for these special needs students.
- FOF 483. All the Edgewood Intervenor Focus Districts but one have an LEP student population greater than the state average (Jim Hogg County ISD: 14.0% LEP).
- FOF 484. While the average Texas school district had an LEP student population of 14.9% in 2002-03, LEP students accounted for 53.1% of San Elizario ISD's student population, 59.9% of Laredo ISD's student population, 30.2% of Socorro ISD's student population, 22.3% of Edgewood ISD's student population, 23.8% of Ysleta ISD's student population, 17.2% of South San Antonio ISD's student population, 37.4% of Pharr-San Juan-Alamo ISD's student population, 33.5% of Monte Alto ISD's student population, and 40.4% of Edcouch-Elsa ISD's student population.

(5) The inability of Edgewood Intervenor school districts to recruit/retain fully certified bilingual teachers.

- FOF 485. Due to the insufficient funds that they receive from the state for bilingual education programs, the Edgewood Intervenor Focus Districts are unable to effectively recruit and retain fully certified bilingual teachers.
- FOF 486. Teacher shortages have led school districts to become part of the teacher preparation system by hiring unqualified teachers or paraprofessionals and paying for their degree and certification programs.

- FOF 487. In order for LEP/ELL students in Texas to receive an adequate education, they must have access to a fully qualified teacher who has received specialized preparation to meet their learning needs. This is a costly imperative, since 75 to 85 percent of the Edgewood Intervenor Focus Districts' bilingual education expenditures are related to personnel costs.
- FOF 488. Bilingual teachers must have the full preparation of a "regular" certified teacher plus specialized skills that are required of a bilingual teacher. On the official Texas Examination of Educator Standards (TExES) there are 120 required items for Generalist EC-4 certification while the Bilingual Generalist examination contains 180 items. The additional standards indicate the additional knowledge and skills that bilingual teachers must master and also represent additional effort, time and expense needed to prepare a bilingual teacher.
- FOF 489. The TEA lists Bilingual/ESL teachers as among the Texas designated subject-matter shortage areas for the 2003-2004 school year.
- FOF 490. Forty-eight percent of elementary school level bilingual teacher hires and 41% of secondary school bilingual/ESL hires are not fully certified. Secondary bilingual/ESL positions are the most difficult to fill, with statewide results showing 26% of 3,522 anticipated positions not being filled.
- FOF 491. Alternative certification programs can provide a small number of bilingual/ESL teachers but are not intended to be a long-term solution for providing adequate numbers of fully qualified bilingual teachers. The only stable, cost-effective solution to obtaining a permanent supply of fully qualified teachers for the education of LEP students utilizes "home-grown" teachers from among students, paraprofessionals and community members. These "home-grown" projects take substantial resources for tuition, stipends, books and other supports.
- FOF 492. The University of Texas, San Antonio, has collaborated with the Edgewood ISD and other school districts for many years in "home-grown" bilingual teachers training projects. The federal government has provided most of the support for these projects which cost approximately \$20,000 per trained bilingual teacher.
- FOF 493. The TEA, pursuant to its obligations under the No Child Left Behind Act, recognizes the requirement that bilingual teachers be fully certified:
- Teachers of limited-English proficient (LEP) students must meet the "highly qualified" requirements that apply to elementary teachers or secondary teachers, as appropriate, in addition to holding the required English as a Second Language (ESL) or Bilingual certification.
- (EDG Ex. 444, NCLB Bulletin, TEA May 2003, Vol 1, Issue 1).
- FOF 494. Having a fully qualified teacher matters because what teachers do in the classroom can have a vast effect on student achievement, and particularly so for students with limited English proficiency.

FOF 495. As Dr. Linda Darling-Hammond has observed:

Quantitative analyses indicate that measures of teacher preparation and certification are by far the strongest correlates of student achievement in reading and mathematics, both before and after controlling for student poverty and language status . . . the effects of well-prepared teachers on student achievement can be stronger than the influences of student background factors, such as poverty, language background, and minority status.

(EDG Ex. 513, Darling-Hammond, Linda, Teacher Quality and Student Achievement: A Review of State Policy Evidence (2000)).

FOF 496. Due to the high demand and shortage of adequately trained bilingual teachers, many districts must pay additional stipends in order to hire and retain bilingual teachers.

FOF 497. According to a recent survey conducted by the Texas Association of School Boards, bilingual education is the most frequently reported stipend paid with 60 percent paying a stipend in this area. The bilingual stipend is the highest stipend reported in Texas, paid at an average of \$2,073.

FOF 498. When school districts cannot recruit the appropriate number of certified bilingual education teachers, many have to resort to the use of teachers who are not fully certified.

(a) Pharr-San Juan-Alamo ISD.

FOF 499. Pharr-San Juan-Alamo ISD is unable to provide more than a \$1000 stipend in order to recruit certified bilingual teachers. This amount is well below the average bilingual teacher stipend in Texas, and Pharr-San Juan-Alamo ISD is unable to compete with the stipends offered by other districts who recruit in its community.

FOF 500. Pharr-San Juan-Alamo ISD will employ 209 teachers who are not fully certified for the year 2004-05.

FOF 501. 155 of these teachers are in the Alternative Certified Program (ACP), and 42 of these ACP teachers will be utilized in place of fully certified bilingual teachers.

FOF 502. Pharr-San Juan-Alamo ISD will also report that, for the year 2004-05, it has had to retain 22 teachers under Emergency Teaching Permits (12 for bilingual teacher substitution) and 15 permanent substitutes (4 for bilingual teacher substitution).

FOF 503. Despite its effort, without the use of additional stipends and salaries, Pharr-San Juan-Alamo ISD has been unable to recruit and retain the number of certified bilingual teachers necessary to adequately educate the LEP/ESL students in its district.

(b) South San Antonio ISD.

- FOF 504. In order to remain competitive, South San Antonio ISD has had to offer a \$2000 stipend to certified bilingual teachers.
- FOF 505. Being unable to fund that stipend through the bilingual education funds provided by the state, South San Antonio ISD has had to utilize Title I federal funds to pay for the entirety of the stipend.
- FOF 506. South San Antonio ISD is concerned with its reliance on federal funds to pay bilingual education stipends, as Title I funds decreased by over \$100,000 between the years 2002-03 and 2003-04.
- FOF 507. For the year 2003-04, South San Antonio ISD reported 4 teachers in the bilingual education program who were not fully certified; that number, however, is expected to increase dramatically if stipends for bilingual certified teachers has to be reduced.

(c) Edgewood ISD.

- FOF 508. In Edgewood ISD schools with fewer than 80 LEP students have no paraprofessionals, schools with 81-100 LEP students have a half-time paraprofessional, and schools with over 100 have one paraprofessional. There are no paraprofessionals at middle school although they are needed. Paraprofessionals are leaving the district because of a lack of funding for appropriate training. Bilingual teachers in Edgewood ISD receive a \$1,500 stipend, ESL teachers receive a \$1,000 stipend, yet they are still struggling to compete for and retain bilingual teachers. There is no funding for specific bilingual education evaluation.

(d) Ysleta ISD.

- FOF 509. Ysleta ISD provides a \$1500 stipend for bilingual personnel. The district, however, is feeling the pressure to increase the stipend because districts as far as East Texas are now recruiting bilingual teachers out of its district and area.

(6) The requirements of a successful bilingual education program.

- FOF 510. Teachers in bilingual programs need additional training and staff development, which requires additional resources, as they: 1) must have the full preparation of a “regular” certified teacher plus specialized knowledge and skills that are required of a bilingual teacher under the Texas Examination of Educator Standards (TexES); 2) must be prepared for a variety of circumstances and changes in variables regarding student, language and teacher characteristics, reform and accountability attributes, governance and community participation features, and logistical arrangements; and 3) must be able to teach children both in academic and ordinary language.
- FOF 511. Bilingual education teachers need ongoing professional development, they need to know about current developments in first and second language acquisition and literacy

development in both languages as well as teaching content in both languages. Teachers need opportunities to practice what they learn in professional development sessions and they need coaches and planned situations for evaluation of their classroom implementation of what they learn through professional development.

- FOF 512. Not only do LEP students need qualified bilingual teachers, but all teachers who teach LEP or former LEP students need to learn teaching methodologies that are special designed for such students.
- FOF 513. An adequate bilingual education also necessitates the use of specialized programs and materials to adequately educate LEP and ESL students.
- FOF 514. The requirements for an adequate bilingual education program are applicable to all districts serving LEP students.
- FOF 515. For instance, in order to raise the achievement of LEP students to the level required by the current accountability standards, an adequate bilingual/LEP education must contain a variety of programs responsive to the particular needs of sub-groups within the LEP student population, including: gifted and talented programs; early childhood education programs (especially for low-income LEP students); bilingual special education programs; bilingual preschool programs; bilingual after-school tutoring and mentoring programs; bilingual summer school; parent in community involvement services; and low literacy and newcomer programs.
- (a) For those LEP students who are very recent immigrants, for example, newcomer programs are part of an adequate bilingual education program. These programs include participation by parents and family members to introduce them to school policies and expectations. Newcomer programs include a heavy emphasis on English as a second language, bilingual transitional content materials, special instructional strategies and instruction in extra curricular activities to enhance the students' socialization into the school culture. The programs need to be available in clusters of grade levels.
 - (b) Some newcomer students are not literate in Spanish or any language. These students need specialized curricula, services and materials tailored to language development and specialized bilingual instruction.
 - (c) Avoiding inappropriate referrals of LEP students to special education is critical in reducing the number of LEP students whose academic delays are not the results of a disability. An adequate program for LEP students must be staffed with bilingual diagnosticians and psychologists, bilingual special education teachers and bilingual guidance counselors who are trained in assessing students and understanding the impact of the students' language, culture and background on academic achievement and behavior.
 - (d) The involvement of parents of LEP children in the education of their children is more than a question of sending out report cards in Spanish.

There needs to be interpreters and translators at PTA meetings, parent-teacher conferences, community meetings and bilingual home-school liaisons. A comprehensive parent involvement program includes a parent education program.

FOF 516. Many necessary LEP programs consistently are underfunded by the State and therefore districts rely heavily on federal funds because the State continues to cut funding. The TEA administers a \$5 million competitive grant program known as the Limited English Proficient Student Success Initiative. Approximately 20 school districts in the entire state will receive funds under this program. For 2004-2005 only 14 school districts received funding under this limited program. (www.texas.state.tx.us/opge/disc/lep/overview.html)

FOF 517. Federal funding has also been reduced and has negatively affected the Edgewood Intervenor school districts. Even with federal funding, Edgewood Intervenor districts are unable to provide each of the programs that are merely necessary to provide an adequate bilingual education to the LEP students. These districts also must be wary of offering necessary programs through “supplanting” because such is not allowed under federal law.

(7) The inability of Edgewood Intervenor school districts to provide quality bilingual education programs.

FOF 518. The Edgewood Intervenor districts, like all school districts in Texas, are allotted additional state funds for bilingual education programs based on the number of students in a bilingual education or special language program. *See* TEX. EDUC. CODE § 42.153.

FOF 519. The actual amount of bilingual funds allocated to each district thus depends on how many bilingual education program students they serve. For instance, Ysleta ISD receives an additional \$250 per student in bilingual education funds; South San Antonio ISD receives an additional \$210 per student in bilingual education; Pharr-San Juan-Alamo ISD receives an additional \$264 per student in bilingual education funds; and Edgewood ISD receives an additional \$276 per student in bilingual education funds.

FOF 520. An overwhelming percentage of these funds are directed solely to salaries and benefits for teachers and staff in the bilingual education programs. For example, at Ysleta ISD, approximately 80-85% of the additional funds they receive is allocated to salaries and benefits for bilingual teachers and staff; at South San Antonio ISD, the same percentage (approx. 80-85%) is allocated to salaries and benefits for bilingual teachers and staff; and at Pharr-San Juan-Alamo ISD approximately 87% is allocated to salaries and benefits for bilingual teachers and staff.

FOF 521. Once salaries and benefits for bilingual teachers and staff are accounted for, very little bilingual education funds are left over and the districts comprising the Edgewood Intervenor lack the ability to provide the appropriate necessary instructional material for bilingual education students, the appropriate staff development and annual training both for bilingual teachers and core curriculum teachers that educate LEP students, the necessary technology software and hardware for bilingual education programs, or to supplement the below average stipends that these districts pay to recruit and retain certified bilingual teachers.

- FOF 522. Pharr-San Juan-Alamo ISD, as one example, testified that, after providing for salaries and benefits for bilingual teachers and staff, it is able to allocate only 6% of the bilingual education funds it receives (approximately \$16 per student) to purchase instructional materials for the bilingual education program; only 1% (approximately \$3 per student) for staff development for bilingual teachers and staff; and only 4% (approximately \$10.50 per student) for necessary LEP student assessments. After these allocations, no state allotted bilingual education funds remain for technology hardware and software for LEP students or to supplement the inadequate stipend that the district provides to recruit certified bilingual teachers.
- FOF 523. Edgewood Expert Witness Ms. Pompa, along with Dr. Maria Medina Seidner, the former TEA director of bilingual education, conducted qualitative research interviews in eight of the Edgewood Intervenor school districts. Ms. Pompa has studied, and is familiar with, the professionally recognized process of qualitative research and has conducted such qualitative research on other occasions. The interviews were structured and took about 90 minutes with each district and were designed to find out the extent to which the districts had in place all of the elements of an adequate bilingual program.
- FOF 524. The research showed that none of the districts had implemented most or all of the components at an adequate level and that the districts could only implement many of the components through the use of federal funds.

(a) Edcouch-Elsa ISD.

- FOF 525. Edcouch-Elsa ISD only can afford to offer half-day preschool. In Edcouch-Elsa ISD only 118 of 144 bilingual teachers have a certificate. Teachers that get certification are lured away by other districts in the area that can afford to provide stipends. The district was able to send only two teachers from each campus to attend professional development sponsored by the regional service center and only 6 of 30 paraprofessionals were able to attend professional development. Non-bilingual/ESL teachers and administrators who work with LEP students have little opportunity for professional development. The district could easily use twice the amount of funds it receives from state and federal (Title III) for staff development. There is no funding for a teacher recruitment plan.
- FOF 526. Edcouch-Elsa ISD lacks a district curriculum specialist which has handicapped its efforts to align its curriculum and coordinate instruction in the district. It has only a limited number of materials in its libraries for LEP students -- less than is needed. There are no TEKS-based ESL materials available for all LEP students at all grade levels because the state has not provided them. State summer school funds for Edcouch-Elsa ISD were cut from \$135,000 to \$35,000 and there was no summer school available for secondary LEP students who needed it.
- FOF 527. There is an over-representation of LEP students in special education and the district is short on staff in the area of trained diagnosticians. Its special education teachers are not trained in the linguistic and instructional needs of LEP students. The district wants to help parents of LEP students to help their children at home but does not have sufficient funds to cover this training and was unable to fund a federally funded parent director this year.

(b) Edgewood ISD.

FOF 528. There is insufficient space in Edgewood ISD to serve all 4 year olds in preschool programs. There is also no native language software due to lack of funds, nor Spanish materials for mandated special programs, such as dyslexia programs. Required summer school programs for LEP students rely on federal funds.

(c) Jim Hogg ISD.

FOF 529. There is a waiting list for eligible preschool LEP students. The district had planned for 4-6 groups of 3 year olds but did not get the state funds they needed. Software for bilingual students is limited because of financial constraints.

(d) Laredo ISD.

FOF 530. There is little professional development for bilingual/ESL teachers due to a shortage of funds. There exists minimal Spanish language software for the bilingual program and few Spanish library materials. There is no scope and sequence to go with the bilingual TEKS. The district lacks the funds for an evaluation of its bilingual program. The district also lacks funds to transport parents to school meetings and events and would like to have more materials for parents and parent trainers.

(e) Pharr-San Juan-Alamo ISD.

FOF 531. PSJA ISD lacks funds to pay for teacher stipends for bilingual teachers or to pay for professional development which is needed for high school teachers. There is a very limited availability of school library materials and Spanish language software or specialized technology programs for LEP students. The district has no evaluation department. The district is trying to offer ESL programs for the parents of LEP students but there is a waiting list.

(f) San Elizario ISD.

FOF 532. San Elizario ISD is reliant upon federal funds for its after-school programs, tutoring and Saturday academies and its state required summer school programs. The district provides a \$2,500 stipend for bilingual/ESL teachers in order to recruit and retain its teachers.

(g) South San Antonio ISD.

FOF 533. There are insufficient funds for library materials including books and periodicals for LEP students and for supplementary preschool materials for LEP students. The district's paraprofessionals lack training. There are insufficient computer labs, particularly in the elementary schools, and the district relies on federal funds to train its counselors on LEP students needs.

(h) Ysleta ISD.

- FOF 534. Ysleta ISD uses most of its state and local bilingual budgets for salaries. Supplementary materials in ESL and Spanish are not available at the secondary level, nor are there sufficient library materials for LEP students. The district is dependent upon federal funds for its technology program and summer school. The actual cost of summer school is \$3,600 per unit; the district receives \$1,600 from the state for this state mandated program and must use its federal funds for the rest. The district no longer receives federal recent immigrant funding. Most pre-school programs are only half-day.
- FOF 535. School districts find that the lack of resources for professional development is a major challenge, which forces them to exclude groups of teachers from needed training.
- FOF 536. The TEA data is consistent with research findings that it takes between four and eight years for LEP students to become proficient in English and achieve broadly defined academic proficiency, such as the ability to read or communicate abstract ideas at grade level.
- FOF 537. While the TEA offers, online, certain model outlines for bilingual and ESL at certain grade levels, these are useful adjuncts to professional development but they are not a substitute for it. Teachers still need to develop their own daily lesson plans, tailored to the needs of their individual students who may display a wide range of language abilities in both languages, and to the educational programs and philosophies of their schools and school districts. They still need ongoing classroom observation and evaluation. TEA's materials are not a plug-and-play replacement for trained teachers.
- FOF 538. Because there is no required bilingual education in Texas above the 6th grade, and because LEP students in grades 7-12 are required to pass state standards in English, there is a particular need to address the achievement gap for such students. This can be accomplished through extensive supports and very intensified literacy instruction including extended day, specialized teachers, specialized content instruction in every class and specialized individual tutoring. This requires a substantial commitment of resources.
- FOF 539. LEP children, in particular, benefit from early childhood education programs and the extra time to develop their native language and to begin mastering English. In order to develop both languages, prekindergarten programs for LEP students need books in both languages, teachers trained to teach a second language, teachers trained in early childhood development and materials in both languages.
- b. The inadequacy of the compensatory education weight negatively impacts the performance and dropout rates of economically disadvantaged students.**
- FOF 540. The intended purpose of compensatory education is to provide additional investments in human capital for low income students to compensate for the higher investments in human capital afforded to more advantaged populations.

- FOF 541. According to Texas state policy, compensatory education is designated for educationally disadvantaged children who do not have a disability. TEX. EDUC. CODE § 42.152. Compensatory education funds are designated as funds for supplemental programs and services designed to eliminate (not simply reduce) any disparity in student performance on the TAKS and to eliminate disparities in high school completion rates. TEX. EDUC. CODE §29.081. A district is provided with state compensatory education funds based on the number of students on the free and reduced-price lunch program. TEX. EDUC. CODE § 42.152(a).
- FOF 542. The current state compensatory education weight used by Texas is .20 of the adjusted basic allotment. *Id.* Because of compensatory education set-asides, the current .2 weight has dropped to .18 for Chapter 42 districts.
- FOF 543. The cost adjustment for compensatory education funds has not been modified since it was set at an inadequate level prior to the creation of the current finance system. In 1984, the School Finance Working Group, consisting of members of virtually every educational organization in Texas, recommended a weight for compensatory education of at least .4 in order to provide the special need students with a minimum accredited education. The recommended .4 weight was a conservative number and discounted the instructional models developed. The .4 recommendation was arbitrarily cut in half by the Legislature to .2 and was not based on any subsequent research.
- FOF 544. A study conducted by Texas A&M University for the Texas Legislature almost 15 years ago produced weights of 0.38 for compensatory education for the “least-cost” districts. The Texas legislature, however, chose to assign the weight for compensatory education for at-risk students at half the value recommended by the State study, and one-third the average of such value from studies in other states.
- FOF 545. The more recent Taylor Study found that students on the free lunch program required an additional \$1,960 per student to merely meet the low outcome standards put in place for that study. That study excluded drop-outs due to the implausibility of the state’s own reported drop out figure. Economically disadvantaged children do cost more to bring up to an equal educational level as non-economically disadvantaged children.
- FOF 546. Some common characteristics of economically disadvantaged children include low levels of parental education; inadequate housing with very few, if any resources; homes with extended or multiple families; parental unemployment or underemployment; poor access to health care; and insufficient support systems. Photos of some of the homes that Edgewood Intervenors’ districts’ economically disadvantaged children live in were depicted during the trial, showing the colonias in South Texas. These homes were very run-down and some of them did not even have plumbing.
- FOF 547. According to poverty rates of people in families by family types and presence of workers, 32 percent of families have no workers in the family. The more intense the poverty and the number of economically disadvantaged students in a given district, the greater the obstacles mount for districts to provide a quality education.

- FOF 548. Factors that put children at-risk of dropping out include low achievement, retention in grade school, behavior problems, and poor attendance.
- FOF 549. Property-poor districts like the Edgewood Intervenors are responsible for educating a much higher percentage of these special needs students than property-wealthy districts; thus, the insufficient funding for economically disadvantaged students is disproportionately borne by low wealth districts. Although Texas school districts had an average economically disadvantaged student population of 51.9% in 2002-03, the number of economically disadvantaged students for the Edgewood Intervenor Focus Districts greatly surpassed the state average as follows: 96.0% of Edgewood ISD's student population, 79.4% of Ysleta ISD's student population, 92.9% of San Elizario ISD's student population, 95.5% of Laredo ISD's student population, 71.5% of Socorro ISD's student population, 90.7% of South San Antonio ISD's student population, 90.0% of Pharr-San Juan-Alamo ISD's student population, 87.7% of Monte Alto ISD's student population, 90.4% of Edcouch-Elsa ISD's student population, and 80.5% of Jim Hogg County ISD's population.
- FOF 550. The insufficient weight for compensatory education funds does not afford districts the opportunities to fully provide the programs and services identified by Texas state policy. These programs and services include Disciplinary Alternative Education Programs, Summer School, Supplies, Material and Tutoring, Rewards for State Compensatory Education Teachers, Credit Recovery, GED, Mentoring, Class Size, Pre-school, and Intensive After-School Math and Science Programs for Disadvantaged Students. *See* Chapter 29 of the Texas Education Code.
- FOF 551. The growing number of economically disadvantaged students in the Texas public school districts coupled with the insufficient cost adjustment for compensatory education funds severely hampers districts' effort to reduce and prevent drop-outs and to provide an adequate education to those students targeted to serve. Those programs and services include: reduction in class sizes; professional development for working with at-risk students, instructional materials and technology, especially for science and math; summer school and enrichment; accelerated and remediation materials; tutoring before and after school; librarians and updated library resources; mentoring programs; additional funds to recruit and retain highly qualified teachers in various subject areas, including math and science.
- FOF 552. The current compensatory education weight used in Texas was set prior to the implementation of the TAKS standards and has proven to be substantially insufficient to allow school districts to offer adequate compensatory education programs at services to their economically disadvantaged and at-risk students in order to prevent drop outs and to meet the current educational standards.
- FOF 553. Statewide in the 2002-2003 TAKS test, for the all-tests taken standard at 2 SEM below panel recommendation, just over half (53%) of the economically disadvantaged student in Grade 5 met the standard; only 56% met the standard in grade 8; and a mere 36% met the standard in Grade 11.

- FOF 554. For the statewide 2003-04 TAKS test, at 1 SEM below panel recommendation for the all-tests standard, less than one-half (49%) of the economically disadvantaged students in Grade 5 met the standard while only one-half (50%) of those in Grade 8 met the standard. Grade 11 test takers were held to the 2 SEM standard for 2003-04, but the economically disadvantaged students still only managed to pass at a rate of 58%. The achievement gap between economically disadvantaged students and white students never closed to within thirteen percentage points, even after nine years of testing under the TAAS. The achievement gap between economically disadvantaged students and white students has reappeared and significantly widened under TAKS. The first-time, economically disadvantaged TAKS takers in 2003 scored at rates of less than ten percentage points lower than the first time, economically disadvantaged TAAS takers in 1994 within each subject area.
- FOF 555. The statewide results for the at-risk student population paint an even more disturbing picture of student performance on the 2003-04 TAKS test. For Grade 5, the at-risk students passed at only 32% versus 77% for the non at-risk students; for Grade 8, only one out of three at-risk students (33%) met the standard for all-tests versus 82% for the non-at-risk students; and for Grade 11, only 52% of the at-risk students met the standard versus 89% for the non-at-risk students.
- FOF 556. The Edgewood Intervenors' Focus Districts inability to provide access to meaningful opportunities to its economically disadvantaged and at-risk student population is evidenced by their TAKS performance scores. For the 2003 TAKS test, the economically disadvantaged of the Edgewood Intervenors performed as follows: Edgewood ISD Grade 3: 68.9%; Grade 5: 48.1%; Grade 8: 54.9%; Grade 11: 30%; Ysleta ISD Grade 3: 78%; Grade 5: 58.10%; Grade 8: 67.6%; Grade 11: 35.2%; South San Antonio ISD, Grade 5: 60.1%; Grade 8: 51.6%; Grade 11: 28.5% 2004: 52%, 34,% 49%.
- FOF 557. Because of the lack of resources (due to insufficient weights) available to implement the programs offered by state policy and supported by research as effective with economically disadvantaged students, there exists great disparities in the level of academic achievement between economically disadvantaged and non-economically disadvantaged students.
- FOF 558. The insufficiency of the funding weight for compensatory education programs in Texas is also evident in the fact that economically disadvantaged students are being retained, or held back, at an alarming rate, both at the elementary and secondary level.
- FOF 559. From the 1996-97 school year to the 2001-02 school year, the economically disadvantaged student retention rate at the elementary level increased by 29% from 2.8% to 3.6%.
- FOF 560. In the 1999-00 school year, economically disadvantaged elementary students were retained at a rate approximately 105% greater than Texas children overall (economically disadvantaged: 3.5%; not economically disadvantaged: 1.7%).
- FOF 561. In the 2000-01 school year, economically disadvantaged elementary students were retained at a rate approximately 89% greater than Texas children overall (economically disadvantaged: 3.6%; not economically disadvantaged: 1.9%).

- FOF 562. In the 2001-02 school year, economically disadvantaged elementary students were retained at a rate approximately 100% greater than Texas children overall (economically disadvantaged: 3.6%; not economically disadvantaged: 1.8%).
- FOF 563. At the secondary level, even higher percentages of economically disadvantaged students are being retained in Texas schools as compared to all other students.
- FOF 564. For the year 1998-99, economically disadvantaged students in grades 7-12 were retained at a rate approximately 71% greater than Texas children overall (economically disadvantaged: 10.1%; not economically disadvantaged: 5.9%).
- FOF 565. For the year 1999-00, economically disadvantaged students in grades 7-12 were retained at a rate approximately 70% greater than Texas children overall (economically disadvantaged: 9.7%; not economically disadvantaged: 5.7%).
- FOF 566. For the year 2000-01, economically disadvantaged students in grades 7-12 were retained at a rate approximately 65% greater than Texas children overall (economically disadvantaged: 9.4%; not economically disadvantaged: 5.7%).
- FOF 567. For the year 2001-02, economically disadvantaged students in grades 7-12 were retained at a rate approximately 75% greater than Texas children overall (economically disadvantaged: 9.3%; not economically disadvantaged: 5.3%).
- FOF 568. In addition, due to the inadequate funding for the education of economically disadvantaged students, these students drop out of school at significantly higher rates than other students.
- FOF 569. Even using the state's official definition of a "dropout," which has been criticized for greatly underestimating the actual loss of students from the school system, the disparities between economically disadvantaged and the state's averages are significant.
- FOF 570. For the Class of 2001, economically disadvantaged students in Texas had a longitudinal dropout rate 65% greater than the state average (economically disadvantaged: 11.2%; State average: 6.8%).
- FOF 571. For the Class of 2002, economically disadvantaged students in Texas had a dropout rate 63% greater than the state average (economically disadvantaged: 9.1%; State average: 5.6%).
- FOF 572. The Optional Extended Year Program (OEYP) is a TEA grant program to local school districts. By 2003-2004 the OEYP was very substantially reduced by approximately 75%, even a time of increasing decreasing TAKS passage rates. For the Edgewood Focus Districts the cut from the 2002-2003 to 2004-2005 school years was: Edcouch-Elsa ISD, from \$132,475 to \$33,566; Edgewood ISD from \$348,295 to \$89,576; Laredo ISD from \$776,981 to \$165,710; Jim Hogg County ISD from \$36,353 to \$6,317; PSJA ISD from \$639,576 to \$170,801; San Elizario ISD from \$118,288 to \$26,877; South San Antonio ISD from \$289,587 to \$79,180 and Ysleta ISD from \$780,061 to \$265,981.

- FOF 573. The state of Texas provided additional resources aimed at the K-3 grade levels. These additional resources led to significant passing results for 3rd graders, including economically disadvantaged students.
- FOF 574. All children in Texas, regardless of socioeconomic status, are held to the same accountability standards. While the performance of economically disadvantaged students improved throughout the nine years of testing under TAAS, the performance gap between economically disadvantaged students and white students never closed within 10 percentage points on the all-test standard. While white students passed the TAAS all-test standard at a rate of 84% in 1997 and ended TAAS in 2002 with a 92.5% passing rate, economically disadvantaged students ended TAAS having never eclipsed the mark of 80% for the TAAS all-test standard, ending at a mere 78.2%.
- FOF 575. Under TAKS, the performance gap has returned to even greater levels for economically disadvantaged students. Comparing the passing rates in the each of the same subject areas between the first year of TAAS and the first year of TAKS, economically disadvantaged students under the TAKS passed at rates of less than 10 percentage points.
- FOF 576. The educational deficiencies resulting from the inadequacy of the system are apparent in the levels of student performance, particularly in correlation with district wealth and student socioeconomic status. Due to the inadequate weights for economically disadvantaged students, Texas school districts — especially districts with a substantially disproportionate share of economically disadvantaged and at-risk students like the Edgewood Intervenors — cannot provide a quality education to students who are economically disadvantaged and must choose between several necessary programs.
- FOF 577. The State has failed to provide low-wealth districts with: the funds necessary to, *inter alia*, offer a broader, competitive curriculum; recruit, hire, train, and retain more highly qualified teachers and aids with the funds necessary to ensure higher graduation rates and college readiness of students exiting the system; provide enrichment opportunities to their students; meet state and federal mandates on accountability and achievement; provide drop-out prevention programs to at-risk students; and provide to each of their students an opportunity to receive an adequate education.
- FOF 578. Research conducted the Intercultural Development and Research Association and others, including the Urban Institute and the Harvard Civil Rights Project, have documented that dropout rates are highest for low-income and minority students. Lack of appropriate funding for dropout prevention efforts can contribute to higher local school district dropout rates.

2. Other effects of the inadequacy of funds on the provision of education in the Intervenor districts.

- FOF 579. The inadequacy of funds available under the system also contributes to, among other things, property-poor districts' inability to provide for adequate libraries and library staff and their inability to recruit and retain highly qualified teachers, as discussed below.

a. Inability to provide for adequate libraries and library staff.

(1) Overview.

FOF 580. As a result of insufficient available funds, the districts comprising the Edgewood Intervenors have been unable to provide adequate library services and resources to their students.

FOF 581. Section 33.021 of the Texas Education Code provides that “[t]he Texas State Library and Archives Commission, in consultation with the State Board of Education, shall adopt standards for school library services.” The State Library and Archives Commission established standards for exemplary, recognized, acceptable, and below standard libraries. 13 TEXAS ADMIN. CODE §§ 4.1-4.7. The standards are available at <http://www.tsl.state.tx.us/ld/schoollibs/standards.html>.

FOF 582. In terms of resources, an acceptable school library program will provide, among other things, “a balanced collection of at least 9,000 books, software, and electronic resources at the school library program level (school library programs with enrollments exceeding 600 ADA must provide a minimum of 15 items per pupil)” *Id.*

FOF 583. As a result of an acceptable level of resources, “[t]he learner will:

- access information easily and frequently, from a number of sources in multiple formats;
- evaluate the validity, relevancy, and accuracy of information available;
- use that information in the synthesis of ideas and development of products; and,
- make meaningful connections between classroom learning and information skills.”

Id.

FOF 584. In terms of staffing, “[b]ased on the school's student enrollment, an acceptable school library program provides appropriate professional and support staff to facilitate access and equity for learners and to allow for periodic collaboration with teachers and some integration of resources into the curriculum”

Program Level Enrollment	Minimum Program Level Staffing
0-350 ADA	1 Certified Librarian
351-700 ADA	1 Certified Librarian .5 Para-professional
701-1050 ADA	1 Certified Librarian 1 Para-professional
1051-1400 ADA	1 Certified Librarian 2 Para-professional

1401-2100 ADA	2 Certified Librarians 2 Para-professionals
2101+ ADA	Add 1 additional librarian and .5 para-professional for every 700 students

Id.

FOF 585. As a result of an acceptable level of staffing, “[t]he learner will:

- have access during the instructional day to a certified librarian who will provide access to information and provide instruction in library use;
- have the support of qualified para-professional staff; and,
- benefit from the coordination of library services throughout the district.”

Id.

FOF 586. By contrast, as a result of a below standard level of resources, “[t]he learner will:

- access information only occasionally and with some difficulty, from a limited number of sources in limited formats; and,
- lack information literacy skills.”

Id.

FOF 587. And, in terms of staffing, “a school library program that is below standard provides professional and support staff to provide limited access to the library program. Staffing is not sufficient to permit collaboration with teachers or to provide integration of resources into the curriculum. Limited district level professional staff is provided to interpret national, state, and local standards, recommend policy, or coordinate school library programs and technology.” *Id.*

FOF 588. As a result of a below standard level of staffing, “[t]he learner will:

- not have immediate and equitable access to a certified librarian;
- have significantly limited access to necessary resources that ensure academic success; and,
- have little or no assistance in locating and evaluating electronic resources.”

Id.

- FOF 589. The Texas State Library and Archives Commission published a study surveying 600 school libraries with librarians entitled “Texas School Libraries: Standards, Resources, Services, and Students’ Performance” (Texas Study) (April 2001). (EDG Ex. 399, 546, 603).
- FOF 590. The Texas Study had three objectives, one of which was to “[d]etermine the impact that school libraries have on student performance as measured by the percent of students who met minimum expectations on the reading portion of TAAS.” (EDG Ex. 546 at 3). Similar to studies conducted in other states, the Texas Study “has clearly shown the important role that libraries, librarians, and library aides have in student academic performance.” (EDG Ex. 603 at 1).
- FOF 591. The Texas Study “provided solid, systematic data on the contribution of libraries and librarians.
- The Texas Study demonstrated higher TAAS performance at all educational levels in schools with librarians than in schools without librarians. On average, over 10 percent more students in schools with librarians met minimum TAAS expectations in reading than in schools without librarians. 89.3 percent of students in schools with librarians compared with 78.4 percent in schools without librarians met minimum TAAS expectations in reading.
 - Additionally, in 2.5 times more schools with librarians than schools without librarians, over 90% of students met minimum TAAS expectations in reading. In 52.0 percent of the schools with librarians, and 21.1 percent of the schools without librarians, over 90% of students met minimum TAAS expectations.
 - One-quarter of the schools in Texas do not have librarians.
 - Librarian activities that have an impact on student performance include planning and teaching collaboratively with teachers and training teachers. In libraries with professional librarians and aides, staff expend a larger portion of their time engaging in high-priority collaborative (curriculum integration) activities such as planning with teachers and training, which are associated with higher TAAS performance.
 - In libraries with only a librarian, these key activities are not being performed because without the assistance of an aide, the librarian does not have the time to engage in these activities.
 - In libraries staffed by library aides only, these key activities are not being performed because library aides are not trained in performing them.
 - Libraries staffed with librarians and aides are associated with increased library use, as measured by more visits to the library by individual students, more information skills instruction, and more books and materials checked out.

- For libraries to have the greatest impact on student performance, libraries need to be staffed, at minimum, with both a librarian and an aide. . . .”

(EDG Ex. 603 at 2-3).

FOF 592. The Texas Study found: “There are significant gaps between recommended staffing levels and actual staffing levels. Libraries in schools with more than 350 students are generally understaffed. Currently, 38.5 percent of elementary school libraries, 35 percent of middle/junior high school libraries, and 22.5 percent of high school libraries have only one staff member.” (EDG Ex. 603 at 4).

FOF 593. The Texas Study concluded: “The staffing levels recommended by the School Library Programs: Standards and Guidelines for Texas must be followed to ensure that key library services are offered and that the collection size and its currency are adequate, and to encourage more frequent use of the library by students.” (EDG Ex. 603 at 5).

(2) Edgewood Intervenor library deficiencies.

(a) Ysleta ISD.

FOF 594. At Ysleta ISD, a recently completed library assessment (2003-04) emphasized the inadequacy of that district’s library materials.

FOF 595. The assessment determined that 24 out of Ysleta ISD’s 37 elementary school campuses fell below even the acceptable standard for books per student, let alone the exemplary or recognized standards.

FOF 596. In all the campuses at Ysleta ISD, almost 113,701 additional books were reported to be needed in order to meet the state’s acceptable library standard.

FOF 597. The study also determined that, on average, Ysleta ISD libraries had no better than 8 books in Spanish for every LEP student. For elementary LEP students, that number amounts to only 40% of the books necessary to meet even acceptable standards.

FOF 598. The total cost of bringing Ysleta ISD’s libraries to acceptable standards was estimated to be approximately \$2 million. At the present time, Ysleta ISD does not have the necessary funds to address its library needs.

FOF 599. To make matters worse for Ysleta ISD, many of the books that were counted in the library assessment were ultimately determined to be grossly outdated, and the district was forced to purge almost another 10,000 books.

(b) South San Antonio ISD.

FOF 600. A recent library assessment and report (2003-04) to the Board of Trustees evinces the library crisis that South San Antonio ISD is currently facing.

- FOF 601. As determined in the assessment, most books at all the libraries on the campuses of South San Antonio ISD were substantially outdated, with the average age of books being 15 years.
- FOF 602. Over 92.92% of South San Antonio ISD's library books were below the acceptable age range set forth by state standards; however, purging those books would leave South San Antonio ISD with a very small library collection.
- FOF 603. The libraries at South San Antonio ISD are also understaffed by certified librarians and library para-professionals.
- FOF 604. According to the recent library assessment at South San Antonio ISD, 3 out of 10 elementary schools (with student counts between 351 and 700) had no certified librarians, thereby failing to meet even acceptable state standards.
- FOF 605. At the high schools in South San Antonio ISD (with student counts between 1401 and 2100), both campuses failed to meet acceptable standards, having only one certified librarian at each campus.

(c) Edgewood ISD.

- FOF 606. A 2003-04 Library Evaluation Report at Edgewood ISD also illustrates the lack of funds available to that district to provide and maintain even minimally acceptable library services to the district's students.
- FOF 607. As noted in the Edgewood ISD report, none of the 21 campuses in the district are adequately staffed with certified librarians and paraprofessionals, failing to meet even state acceptable standards.
- FOF 608. In fact, only 2 out of 21 campuses have any para-professional staff at all, and another two fail to have even one full-time certified librarian.
- FOF 609. The library book collection at Edgewood ISD was also found to be substantially inadequate. Among all the libraries in the district, the average age of the book collection was 18 years old.
- FOF 610. The Edgewood ISD Library Report concluded:

Out of six standards, the district libraries fall below in most. The library collections of materials are out-dated in many areas, and the technology is insufficient to meet student and staff needs. The schools are working hard to create literate, creative, and knowledgeable students, and the libraries need to support these goals. In order to achieve the support necessary, the libraries need an influx of money to bring them up-to-date . . .Based on the TSLAC [Texas School Library Archives Commission] standards for public school libraries, EISD falls below acceptable level in virtually every category.

(EDG Ex. 74 at 14).

FOF 611. Edgewood ISD does not currently have the funds to address all of its immediate library materials and staffing needs.

(d) Pharr-San Juan-Alamo ISD.

FOF 612. Pharr-San Juan-Alamo ISD recently completed an assessment of the libraries in its district (2003-04) which determined that many of the libraries in the district fell below state standards in many different categories.

FOF 613. Of the 25 elementary schools at Pharr-San Juan-Alamo ISD, 12 fell below the state minimally acceptable standards for books per student and all 25 campuses failed to meet state acceptable standards for audio-visual materials.

FOF 614. The elementary campuses each fell below state minimally acceptable standards by an average of 1,741 books.

FOF 615. The elementary campuses fell below state minimally acceptable standards for audio-visual equipment and materials by an average of 1,200 items.

FOF 616. Of the 10 middle and high school campuses, 7 campuses fell well below the state minimally acceptable standards for books per student and the same 7 campuses fell well below the state minimally acceptable standards for audio-visual equipment and materials.

FOF 617. The middle and high school campuses fell below state minimally acceptable standards by an average of 9,774 books.

FOF 618. The shortfall of audio-visual equipment and materials in each of the middle and high school campuses fell below state minimally acceptable standards by an average of 3,149.

FOF 619. In addition to the substantial shortfall of books and audio visual material and equipment, 9 out of the 10 middle and high school campuses of Pharr-San Juan-Alamo ISD fail to meet the minimally acceptable state standards for certified librarians and paraprofessionals and 5 out of the 10 campuses fail to meet minimally acceptable standards for square footage area.

FOF 620. Pharr-San Juan-Alamo ISD does not have the funds available to address its dire library staff, materials or facilities needs, and will likely be unable to address these needs without the infusion of additional state funding.

b. Inability to recruit and retain highly qualified teachers.

FOF 621. As a result of the inadequacy of available funds, the districts comprising the Edgewood Intervenor also have not been able to provide competitive salaries and stipends to recruit and retain highly qualified teachers, including bilingual education teachers, to instruct

their student populations of disproportionately high LEP and economically disadvantaged students.

- FOF 622. Property-poor school districts like the Edgewood Intervenor need added incentives to attract and retain quality teachers since they are often in competition with wealthy districts for the same pool of teachers.
- FOF 623. These added incentives, including bonuses and stipends, have proven to be expensive strains on the budget of the Edgewood Intervenor school districts. Nevertheless, these districts have not been able to provide high quality teachers to all of the students in their districts.
- FOF 624. As noted *supra* FOF 89-FOF 90, teacher quality is important and has significant impact on student performance and success in learning. The demands of the workplace require that all students be provided access to highly qualified teachers.
- FOF 625. The Texas Legislature recently amended the Education Code authorizing the Commissioner of Education to establish a statewide standard to be used to certify each school district that is preparing, training, and recruiting high quality teachers in a manner consistent with the NCLB. TEX. EDUC. CODE § 21.005.
- FOF 626. In Texas, a person may not be employed as a teacher unless the person holds an appropriate certificate or permit. TEX. EDUC. CODE § 21.003.
- FOF 627. Highly qualified teachers do not include teachers who are on waivers, who have emergency certificates, who have failed the certification exam, or whose certificates have expired and may not be renewed. Teachers on alternative certificate programs who are working towards their credentials are not considered to be fully certified.
- FOF 628. Less than fully-prepared teachers are correlated with an increase in turnover rates.
- FOF 629. State agencies have studied attrition of Texas teachers for a number of years. Teachers who are certified under alternative certification programs are much more likely to be lost to attrition than teachers who are certified under traditional university programs. This phenomenon is more pronounced among low-property wealth schools.
- FOF 630. Turnover rates in Texas are higher for Alternatively Certified Program teachers, when one looks beyond the first two years of employment.
- FOF 631. On national rankings of states based on percentages of teachers with a major or minor in the field assigned to teach, Texas falls below the national average. There are only 7 states with higher percentages of out-of-field teachers than Texas.
- FOF 632. Texas is one of 10 states that had a statistically significant increase in the percentage of teachers who are assigned to subject areas outside of their field.

- FOF 633. National statistics published by the U.S. Department of Education in 2003 also show that Texas is below the national average in ensuring that its teachers are not on waivers or emergency certificates.
- FOF 634. Teacher shortages in math, science and technology create problems for districts attempting to offer Advanced Placement courses in these subject areas. In south Texas, 90% of the Advanced Placement courses focus on preparing students to take the Spanish language exams. Only 10% of the courses cover math, science, technology and other fields of study.
- FOF 635. Teacher shortages have led school districts to become part of the teacher preparation system by hiring unqualified teachers or paraprofessionals and paying for their degree and certification programs.
- FOF 636. Remedies are available to address the undersupply of highly qualified teachers, but these remedies require additional resources. Salaries are a major component. *See supra* FOF 97.
- FOF 637. Several of the non-salary factors discussed in teacher attrition studies in Texas relate to state and local expenditures. One example is class size reduction.
- FOF 638. The quality of instructional leadership, especially among school principals, can be improved through mentoring, staff development and on-going training. New administrators must also receive mentoring and on-going professional development.
- FOF 639. The state accountability system permits and encourages districts to reassign highly qualified teachers from other grades to cover the grades that are subjected to state accountability exams. This triage approach in times of teacher shortages deprives students in the non-tested grades of the highly qualified teachers.
- FOF 640. Mobility rates within districts generally display a trend of higher salaried teachers moving to more affluent neighborhoods, leaving lower paid teachers in minority or low-income neighborhoods.
- FOF 641. Local school districts are faced with the choice of allowing more qualified teachers to escape hard-to-staff schools rather than having the teachers leave the district to be hired by competitive districts in contiguous or geographically proximate areas.
- FOF 642. Students who are low-income, minority, reside in low-wealth districts, or who have special needs, have less access to highly qualified teachers in Texas.
- FOF 643. Professional development costs exceed state funds available. In one example regarding Bexar County, the University of Texas at San Antonio charges \$600 per teacher for summer institutes to qualify teachers for Advanced Placement programs. The state fund for reimbursement to districts that send teachers to these summer institutes is \$450 per teacher, as funds are available.

- FOF 644. The State of Texas has used teacher examinations, including the PPST, TECAT, EXCET and TexES as components of its required teacher training and certification programs. While the newer exams, specifically TexES, are viewed as more rigorous, the raising of requirements also tends to lower the supply of teachers.
- FOF 645. Effective in 2002, teachers with TECAT credentials were no longer considered highly qualified teachers.
- FOF 646. State data shows that teachers in the low property wealth districts have the highest failure rates on the teacher certification exam. The low wealth districts cannot replace these teachers with more qualified teachers because of the inability to match the salary offering.
- FOF 647. In addition to teachers leaving the profession, Texas data shows a statewide problem with teachers moving from campus to campus, and from district to district. Both of these types of mobility are costly for districts in terms of loss of student achievement, costs for recruiting replacements, disruption and re-training expenses.
- FOF 648. The State has been aware of teacher shortages for more than two decades and has not responded adequately to the need for teachers in Texas who meet the definition of highly qualified teachers.

C. Weaknesses in the State’s measure of dropouts preclude a finding that an academically acceptable rating is equivalent to a “general diffusion of knowledge.”

- FOF 649. The system used by Texas for accrediting schools and districts in the 1990s has been based, in part, on dropout rates. The officially reported dropout statistics, however, are understate the true number of students in Texas who fail to graduate with their cohort from high school.
- FOF 650. In general, over the last decade, the high school graduation rate in Texas, defined as the number of graduates divided by the number of students enrolled in grade 8 four-and-a-half years earlier, has consistently been less than 75% for all students, and less than 70% for minority students.
- FOF 651. Texas has established a set of “leaver codes” that districts must apply to students who leave their systems. These codes, while providing some useful information on a year-by-year basis regarding students’ mobility and attendance patterns, tend to understate longitudinal dropout rates. For instance, a student who withdraws and moves to Mexico – even telling the district that he has no intentions of returning to school in the U.S. or in Mexico – would simply be dropped from the longitudinal cohort and would not be considered a dropout in the state’s annual dropout rate.

D. Edgewood Intervenor Attorneys’ Fees.

- FOF 652. The total amount of attorneys’ fees incurred by the Edgewood Intervenors from late 2003 through mid-September, 2004 was \$1,268,289.50. Taking into consideration the novelty and difficulty of the questions involved, the significance of the issues involved, the fee

arrangement with the clients, the skill required to perform the legal services, the time limitations imposed by the circumstances, the experience, reputation and ability of the attorneys, the benefit conferred, and the time and labor required, all of the services rendered by counsel for the Edgewood Intervenors in the prosecution and trial of this case were necessary and the amount of time spent and rates charged for such services are reasonable. This Court also finds that an award of such attorneys' fees would be equitable and just.

FOF 653. This Court also finds that in the event this case is appealed directly to the Supreme Court of Texas, the sum of \$75,000.00 would be a reasonable fee for representation of the Edgewood Intervenors in such an appeal. If this case is first appealed to the Court of Appeals, a fee of \$75,000.00 would be reasonable and necessary for the work at the Court of Appeals and \$20,000.00 would be a reasonable and necessary fee should the case be appealed thereafter to the Texas Supreme Court.

E. Alvarado Plaintiff/Intervenors' Attorneys' Fees.

FOF 654. The total amount of attorneys' fees incurred by the Alvarado Plaintiff/Intervenors from September 2003 through mid-September 2004 was \$222,225.00. Taking into consideration the novelty and difficulty of the questions involved, the significance of the issues involved, the fee arrangement with the clients, the skill required to perform the legal services, the time limitations imposed by the circumstances, the experience, reputation and ability of the attorneys, the benefit conferred, and the time and labor required, all of the services rendered by counsel for the Alvarado Plaintiff/Intervenors in the prosecution and trial of this case were necessary and the amount of time spent and rates charged for such services are reasonable. This Court also finds that an award of such attorneys' fees would be equitable and just.

FOF 655. This Court also finds that in the event this case is appealed directly to the Supreme Court of Texas, the sum of \$50,000.00 would be a reasonable fee for representation of the Alvarado Plaintiff/Intervenors in such an appeal. If this case is first appealed to the Court of Appeals, an fee of \$50,000.00 would be reasonable and necessary for the work at the Court of Appeals and \$20,000.00 would be a reasonable and necessary fee should the case be appealed thereafter to the Texas Supreme Court.

V. Conclusions of Law Relating to the Intervenors' Claims.

COL 21. To the extent any of the Findings of Fact in Section IV constitute Conclusions of Law or the application of law to fact, they are incorporated herein as Conclusions of Law. Similarly, to the extent any of the following Conclusions of Law constitute Findings of Fact, they are incorporated into Section IV as Findings of Fact.

COL 22. The disparate property values among Texas public school districts, coupled with the State's continued reliance on local property taxes for the majority of funding for the Texas school finance system, requires the State to maintain equalization provisions similar to those at present, in order to ensure an efficient system among public free schools.

- COL 23. The prohibition on the use of Tier 2 funds for facilities, combined with the Legislature's failure to make the IFA and/or EDA programs statutorily permanent and the Legislature's inadequate funding of the IFA program, means that property-poor districts do not have substantially equal access to facilities funding in violation of the efficiency and suitability provisions of article VII § 1 of the Texas Constitution.
- COL 24. The current funding capacity of the Texas school finance system fails to provide Intervenor districts with sufficient access to revenue to provide for a general diffusion of knowledge to their students, in violation of the efficiency, suitability and adequacy provisions of Article VII § 1 of the Texas Constitution, particularly when taking into account (1) the inadequacy of the weight adjustments for bilingual, economically disadvantaged, and other special needs students and (2) the greater burden borne by Intervenor districts of the inadequacy of those weights, given their student populations, which are disproportionately LEP and economically disadvantaged.

VI. Relief Ordered.

1. In addition to the declaratory relief described in Sections III and V above, this Court hereby enjoins the State Defendants from giving any force and effect to the sections of the Education Code relating to the financing of public school education (Chapters 41 and 42 of the Education Code) and from distributing any money under the current Texas school financing system until the constitutional violations are remedied. The effect of this injunction shall be stayed until October 1, 2005, in order to give the Legislature a reasonable opportunity to cure the constitutional deficiencies in the finance system before the foregoing prohibitions take effect.
2. This injunction shall in no way be construed as enjoining the State Defendants, their agents, successors, employees, attorneys, and persons acting in concert with them or under their direction, from enforcing or otherwise implementing any other provisions of the Education Code.
3. This injunction shall not bar suits for collection of delinquent taxes, penalties and interest.
4. This injunction does not impair any lawful obligation created by the issuance or execution of any lawful agreement or evidence of indebtedness before October 1, 2005, 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 October 1, 2005, 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 that, before October 1, 2005, 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 October 1, 2005, to receive state assistance with respect to such payments to the same extent that the district would have been entitled to receive such assistance under Chapter 42 or 46 of the Education Code, notwithstanding this injunction.
5. This injunction does not limit, modify, or eliminate the authority of a school district to issue or execute bonds, notes, public securities, or other evidences of indebtedness under

Chapter 45 of the Education Code, or other applicable law, before, on, or after October 1, 2005, or to levy, assess, and collect, before, on, or after October 1, 2005, 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.

6. This injunction does not limit, modify, or eliminate the authority of the commissioner of education, before, on, or after to October 1, 2005, to grant assistance to a school district under Chapter 42 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.

7. West Orange Cove Attorneys' Fees

a. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the West Orange Cove Plaintiffs shall recover from the State Defendants attorneys' fees in the sum of \$2,557,606.00, an amount that this Court finds to be both reasonable and necessary and equitable and just.

b. The West Orange Cove 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:

i. \$100,000.00 if the State Defendants seek direct review in the Texas Supreme Court but the West Orange Cove Plaintiffs ultimately prevail in the Texas Supreme Court, with postjudgment interest to accrue on said amount at the rate of five percent compounded annually from the date the direct appeal is perfected in the Texas Supreme Court; with all such postjudgment interest to run until the judgment against the State Defendants is paid in full.

ii. \$100,000.00 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals but do not prevail in such appeal, with postjudgment interest to accrue on said amount at the rate of five percent compounded annually from the date of the notice of appeal in the Court of Appeals; plus (2) \$25,000.00 if the State Defendants seek review in the Texas Supreme Court but the West Orange Cove Plaintiffs ultimately prevail in the Texas Supreme Court, with postjudgment interest to accrue on said amount at the rate of five percent compounded annually from the date a petition for review is filed with the Supreme Court of Texas; with all such postjudgment interest to run until the judgment against the State Defendants is paid in full.

8. Edgewood Intervenors Attorneys' Fees

a. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the Edgewood Intervenors shall recover from the State Defendants attorneys' fees in

the sum of \$1,268,289.50, an amount that this Court finds to be both reasonable and necessary and equitable and just.

- b. The Edgewood Intervenors 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:
 - i. \$75,000.00 if the State Defendants seek direct review in the Texas Supreme Court but the Edgewood Intervenors ultimately prevail in the Texas Supreme Court, with postjudgment interest to accrue on said amount at the rate of five percent compounded annually from the date the direct appeal is perfected in the Texas Supreme Court; with all such postjudgment interest to run until the judgment against the State Defendants is paid in full.
 - ii. \$75,000.00 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals but do not prevail in such appeal, with postjudgment interest to accrue on said amount at the rate of five percent compounded annually from the date of the notice of appeal in the Court of Appeals; plus (2) \$20,000.00 if the State Defendants seek review in the Texas Supreme Court but the Edgewood Intervenors ultimately prevail in the Texas Supreme Court, with postjudgment interest to accrue on said amount at the rate of five percent compounded annually from the date a petition for review is filed with the Supreme Court of Texas; with all such postjudgment interest to run until the judgment against the State Defendants is paid in full.

9. Alvarado Plaintiff/Intervenors Attorneys' Fees

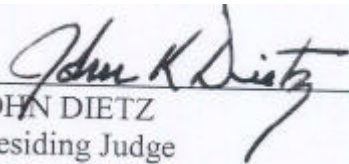
- a. Under Section 37.009 of the Texas Civil Practice and Remedies Code, the Alvarado Plaintiff/Intervenors shall recover from the State Defendants attorneys' fees in the sum of \$222,225.00, an amount that this Court finds to be both reasonable and necessary and equitable and just.
- b. The Alvarado Plaintiff/Intervenors 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:
 - i. \$50,000.00 if the State Defendants seek direct review in the Texas Supreme Court but the Alvarado Plaintiff/Intervenors ultimately prevail in the Texas Supreme Court, with postjudgment interest to accrue on said amount at the rate of five percent compounded annually from the date the direct appeal is perfected in the Texas Supreme Court; with all such postjudgment interest to run until the judgment against the State Defendants is paid in full.

\$50,000.00 if the State Defendants perfect an appeal from this Final Judgment to the Court of Appeals but do not prevail in such appeal, with

postjudgment interest to accrue on said amount at the rate of five percent compounded annually from the date of the notice of appeal in the Court of Appeals; plus (2) \$20,000.00 if the State Defendants seek review in the Texas Supreme Court but the Alvarado Plaintiff/Intervenors ultimately prevail in the Texas Supreme Court, with post judgment interest to accrue on said amount at the rate of five percent 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.

10. All costs of court expended or incurred in this cause are taxed against the State Defendants.

SIGNED this 30th day of November, 2004.


JOHN DIETZ
Presiding Judge