John Turner – Closing Argument – as delivered, Feb. 4, 2013

Introduction

May it please the Court. Your honor, the Calhoun County ISD plaintiffs would first like to express appreciation for the efforts of the Court and all of the Court's staff during the twelve weeks we've spent together here in this courtroom. We would also like to acknowledge our fellow counsel, both for all the plaintiff groups and for the Attorney General's Office. Many of us have disagreed about different issues, but I believe we have tried to do so in a manner that reflects the overarching concern that we all share for public education in Texas. Finally, Mark Trachtenberg and I, along with the others on the Haynes and Boone team – Lacy Lawrence, Micah Skidmore, Michelle Jacobs, Adam Sencenbaugh, our trial technician Jeff Bennett and others who have supported us – are all grateful to our clients in the Calhoun County ISD coalition for the opportunity to represent them in this important trial.

Why we are here

We've been in this trial for so many days, that it's easy to forget how remarkable this lawsuit is. The elected school boards of over 600 school districts, large and small, have voted to be part of this case. They all assert that funding for education is not sufficient under the Texas Constitution.

Why are they doing this? One main reason is that just under two years ago, the Legislature decided to cut an unprecedented amount from public education – about $5.4 billion. $4 billion was from the Foundation School Program and another $1.4 billion from grants and special programs that generally targeted the most disadvantaged children. A major reason that the Legislature was $5.4 billion short of funds was that back in 2006, it had mandated that local property taxes be decreased by one-third, but it had never even come close to making up for the full amount of that lost revenue. Cuts to public education funding of this magnitude had never happened before in Texas.

Opinions about the cuts

Let's look at the witnesses who came to this Court to testify that the $5.4 billion of cuts has harmed the quality of education in Texas or in their individual school districts, or that funding is below adequate levels.

These include eighteen superintendents, who should be in a position to know. They include Lynn Moak, whose knowledge and experience on the subject of school finance are unrivaled in Texas.

Now let's ask the question in reverse. In the 44 days of this trial, who has come into this courtroom and to defend these cuts? To say that they were a good idea? Or even to say that they did not hurt education in Texas?

What you see on the screen is not a mistake. It is a blank slide, because *no one* came into this courtroom and said those things.

What did Robert Scott have to say about the cuts? He was the Commissioner of the defendant, the Texas Education Agency, when they were implemented. When the legislature was considering large cuts both to the Foundation School Program and to the special programs early in the 2011 session, Mr. Scott testified that deciding whether to restore money to the FSP or to the grant programs was "akin to asking the guy on the operating table whether he wants his heart or his lungs back."

Mr. Scott acknowledged in this case that with the $1.4 billion in cuts to the special programs, "the lungs never got put back." And the heart was only partially put back. Although the ultimate cuts to the Foundation School Program were less than first proposed, for most districts they still resulted in an average reduction in per-student revenues of 5 to 6% in a single year.

And it's not as though education had been generously funded in Texas before these cuts – either by our own recent standards or by comparison to other states.

Even before the budget cuts, districts had been struggling just to keep up. Here is an example of what the budgeted revenues for Richardson ISD over the last several years look like when adjusted for inflation. This is typical of school

districts across the state – not even keeping up with enrollment and inflation even before 2011, and then a rapid drop afterward.

The State's own expert, Michael Podgursky, had done studies in other states showing Texas was already near the bottom of the 50 states in per-student spending. When he adjusted for wage level difference among the states, Texas was 48th in 2008-09. That was, of course, before the budget cuts of 2011.

Consequences of the cuts

So what did these cuts mean, in concrete terms?

According to Lynn Moak's analysis, we had about 12,000 fewer teachers in our system in 2011-12 than we did in 2010-11. That is despite the fact that our enrollment grew by over 44,000 students during that same year. The results of this are evident in individual school districts.

In the Richardson ISD, for example, where they grew enrollment by over 1,000 students in that year, they were able to add no new teaching positions. The result was that in 2011-12 and 2012-13, the two years of the current biennium, they were forced to request over *550* waivers of the *State's own 22:1 class size requirement* for Grades K-4. That compares to 13 in the previous biennium.

This concept of state requirements is important, because this is where this ceases to be just a debate about policy and becomes a *legal and constitutional issue*. According to the Constitution, it's not enough to allow schools just to keep

their doors open, or to just to "get by." The courts have defined the general diffusion of knowledge by referring to the Legislature's *own standards and requirements*. And here we come to the next crucial reason why over 600 districts have come to this Court to say funding is inadequate: the enormous change in our State's standards and expectations – a change which became effective at the very same time as the budget cuts were implemented.

Elevated Expectations

The legislature has set "college and career readiness" as the mission and goal of the Texas educational system. This is not just a new slogan.

It resulted in major additions to our curriculum – the new college and career readiness standards – and a major step up in our high school course requirements. And it resulted in what Lynn Moak called "a quantum leap" in our standards for public education – the introduction of the new STAAR / EOC assessment regime.

Your honor has already heard a great deal about that new system during this trial and during the other closing statements this morning. The Court knows that 47% of 9th graders in Texas still had not passed all the STAAR grade level tests – even at the initial phase-in level – after two administrations, and were therefore not on track to graduate from high school. That number was even higher in some of our state's largest districts.

Your honor is aware that only a small minority of students are achieving the Level 3 standard – in the neighborhood of 3 to 17 percent in English and Math, as Dr. Kallison's testimony showed. This is the level that was designed in the standard-setting process to reflect a *high level of confidence* that students are on track to succeed in college *without remediation*. It's the level Dr. Kallison identified as the *best* match to what we meant by college readiness in our statutory definition.

I just want to emphasize one last point about the STAAR system. It is not harder merely for the sake of being harder. The performance levels on the new assessments have, for the first time, been *empirically validated* against external measures of college readiness – measures like the ACT, the SAT, the NAEP, and actual performance in entry-level college classes. The State has developed a more *rigorous* system that is designed to be a more *accurate* measure of true college and career readiness. Even if the Legislature decides to change some of the specifics of this system, or some of the consequences for not passing these exams, these results have already shown us how far we are from the general diffusion of knowledge as the State has defined it.

And it is through that lens that we must look at the legal question before this Court. As the Supreme Court stated in *WOC II:*

> *"It would be arbitrary . . . for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals.*

It would be hard to think of a better illustration of how to violate this arbitrariness standard than what we have seen in the eight years since that decision.

Money matters

One difference between this trial and the one eight years ago is the State's approach to the question of money and student performance. In the last trial in 2004, the State actually presented its own study of the costs of education. It was a sophisticated statistical analysis performed by Lori Taylor of Texas A&M. One conclusion that study reached was that, other things equal, there was a positive relationship between expenditures and student performance.

The State has attempted no such study in this case. Nor has it done any kind of study of the true costs of public education at any time since that Taylor study in 2003 – despite a statutory requirement in the Education Code to adopt rules to calculate the level of necessary costs on a biannual basis.

What the State has suggested in this trial is different. It is that, despite the finding of their cost study in 2003, maybe more money really wouldn't help.

I am not going to review right now all of the issues relating to Dr. Podgursky's scatterplots comparing spending and performance in different districts. It's enough to show again what Dr. Podgursky himself said, which was

that he did not believe any of his analysis could answer the question of whether there was a causal link between money and student performance.

The State might have a better argument on the effect of money if it had been able to point to some concrete evidence that school districts are massively inefficient. But the only major feature of our system that either the state or the intervenors have claimed shows that the system is inefficient is our method of paying teachers. If you say that our method of paying teachers is inefficient, you have to say how it should be different – and the only alternative that has been suggested is some form of teacher merit pay.

This is surely a policy issue on which reasonable people can disagree. But even Dr. Hanushek acknowledged that there is no real research to demonstrate that teacher merit pay will actually work or lead to better results in practice.

Our own experience with a form of merit pay, the career ladder, was in place for almost 10 years in the 80s and 90s and was a failure, as Dr. Richard Reedy of the Frisco ISD testified. And as Jacob Vigdor explained, any workable form of teacher merit pay would almost certainly cost more, not less, than what we are spending now on teacher salaries.

I want to frame the "money matters" issue in a different way. No one in this trial disputes that money spent unwisely will not improve student performance. I

think no one in this trial disputes the proposition that money spent well *can* and *does* make a positive difference for student performance.

School districts have never said that more money, *regardless of how it is spent*, will improve student performance. What the school districts do say is simple. It is that *to carry out the measures necessary to improve our performance will cost money*.

Measures like those that Kay Waggoner of the Richardson ISD talked about in her testimony. Measures like getting our elementary class sizes down to more manageable levels; keeping our teacher salaries competitive to recruit and retain quality people; like providing tutors, extended day, and summer school to the tens of thousands of kids who are not passing the STAAR exams and need extra help.

And here's something else we've shown in this case: when you do a reasonable estimate of how much it will cost to do those things, it exceeds the level of funding now available in the system.

Odden analysis

That's what Dr. Allan Odden did. Dr. Odden is someone who has actually performed analyses of educational costs in other states. He has done so for governors' commissions, legislative commissions, and state education agencies. He is also someone who believes that many states spend *more* than is necessary for adequacy.

Your honor heard a full day of testimony on his evidence-based method of estimating costs. It actually tackles the questions of how many teachers we need, how many hours of teacher and staff time will be required to provide tutoring, extended day, and summer school for struggling kids. How many librarians we need to ensure that our children are reading, what reasonable staffing levels are for campus and central district administration. And what all of that is going to cost. In other words, the kind of analyses the state should have been doing but has not been doing.

Now, the State has criticized some of his positions. His recommendation of a class size of 15 for grades K-3, when combined with his use of 25 for grade 4, averages out to a class size of 17.3 for grades K to 4. That is about two students per class lower than what we had in 2010-11 for grades K-4. Dr. Odden relies for that recommendation principally on the Tennessee STAR study, the only truly experimental class size study ever performed.

The State's own expert, Dr. Whitehurst, called that study "the most credible and influential study ever performed on class size reduction." It's hard to see how the State can criticize Dr. Odden for relying on the study that their own expert said is the most credible, influential study of this subject ever done.

But what I think is equally important is to consider the many ways in which Dr. Odden's estimate was conservative. He did not build in any increase in teacher

salaries, despite evidence in this case from Dr. Vigdor and others that salaries in Texas have not kept pace with overall wage levels in the economy, or even with salaries in surrounding states. He did not assume any expansion over current levels of the population served by pre-K. He assumed core class sizes in grades 4 to 12 of 25 students – which many have criticized him for, claiming that number is too high.

Even with all of these conservative approaches, his conclusion was an estimate that we ought to be spending about $824 more per ADA than what we were spending in 2010-11.

Just for context, according to the NCES, for the last year of data available for all 50 states, which is 2008-09, the the United States as a whole spent $11,339 per ADA, while Texas spent $9,350 – a difference of $1,989. By that measure, Dr. Odden's $824 more per ADA would not get us even half way to the national average.

It is also in the same general range as two other estimates this Court heard: first, the estimate from Lynn Moak, who knows more than anyone in Texas about school finance, said that in light of the formula changes and other reforms he thought necessary, that he believed we needed about $1,000 more per weighted student over where we were in 2010-11; and second, the inflation-adjusted $3,500 per WADA, which Justice Cornyn described as the amount necessary to meet

GDK in 1994 under much lower standards, which now translated to $6,576 per WADA in 2011, about $1,014 above the actual per WADA spending numbers in that year. All of those provide estimates in the same general range. All of them are well above where we are today.

State property tax

Another conclusion that is clear from Dr. Odden's work, from the other estimates, and from the testimony of one superintendent after another, is that the amount school districts need today to meet the GDK standard exceeds the revenues they can generate by taxing at $1.00, or even at $1.04 – the maximum amount permitted without a tax ratification election. This is another reason why the current system is inadequate and unsuitable. It's also a reason why the system has again become an unconstitutional state property tax.

As Mr. Moak has shown, we have even less local taxing discretion in the system now than we did in 2005 when Supreme Court upheld this Court's ruling that we had a state property tax. While the State has pointed out that many districts still tax at $1.04, and not all the way to the $1.17 cap, we've pointed out in response many of them *can't* go above $1.04, either because they attempted an election and it failed, or because they've made a reasonable judgment that they won't be able to pass a tax increase. That's especially true for Chapter 41 districts, many of which would pay large amounts of recapture on these extra pennies, and

would therefore be asking their voters to approve a tax increase when a large percentage of the additional revenue would not stay in the district.

Dr. Waggoner of Richardson ISD, Mr. Wiggins of Calhoun County ISD, and Dr. Kallison of Eanes ISD all made this point in their testimony. But we didn't ask this Court to rely solely on this testimony.

We actually performed polls in several representative Chapter 41 districts to show this effect. And the polls confirmed what superintendents had concluded – that proposed tax increases became insurmountable when the idea of recapture was introduced.

Billy Wiggins of Calhoun County ISD said it well – he could neither go up nor go down in his M&O tax rate. Under *West Orange Cove I* and *II*, that is the definition of an unconstitutional state property tax.

Financial efficiency

I want to say a word about financial efficiency. Mr. Trachtenberg told the Court in his opening statement in October that he expected you would hear more in this trial about what unites school districts than about what divides them, and I believe that has been the case. We in the Calhoun County coalition have not claimed that other districts don't need more funding – we agree that they do, and we agree that the entire state is underfunded. We have not challenged the current recapture system or claimed that recapture should be eliminated. That said, we do

disagree with some of the positions of the Texas Taxpayer and Edgewood coalitions.

I am not going to review again all of Dr. Kallison's testimony, including the points he made about how the differences between revenue per WADA disproportionately involved smaller school districts educating a relatively small portion of our state's schoolchildren. But I do want to make two important points.

First, the Court *should look at* the most current data from the 2012-13 school year. *None* of the numbers, data, or comparisons provided to the Court in this case by Dr. Pierce or Dr. Cortez are from the 2012-13 school year. The per-WADA funding gaps that do exist between districts are considerably narrower in the current school year – 2012-13 – than they were in 2011-12.

This is, of course, because on the whole, the cuts fell more heavily on property-wealthy districts in both years of the biennium, but especially in the second year, when the reductions were focused on target revenue, as Mr. Wisnoski's presentation, Ex. 5653, slide 152, shows.

The 2012-13 data was presented to this Court by Dr. Kallison – he was the only one who did this – and it showed a significant shrinking of the per-WADA funding gaps between Chapter 41 and Chapter 42 school districts. Using a constant tax rate of $1.00 for all school districts, the average differences are reduced by in the range of a third to a half between the two years.

We've heard arguments that the 2012-13 data is not yet final. But the formulas and target revenue numbers for every district that apply to that school year *are* completely final – and that is what matters. We believe it is essential that the Court consider the data from the year 2012-13, the school year that we are already halfway through today.

My second point on financial efficiency is that all parties and experts – including Dr. Pierce – agree that the principal source of remaining differences in revenue per WADA that do exist in the system is target revenue and the related Additional State Aid for Tax Reduction, or ASATR. Under current law, target revenue and ASATR are repealed, effective September 2017. The legislature has formally expressed its intent to continue to reduce ASATR between now and then.

Without target revenue, as Dr. Kallison has shown, the differences in per-WADA funding virtually disappear – and in fact, differences between Chapter 41s and 42s show up in favor of Chapter 42s, using weighted averages.

I would submit that this Court can only make a decision as to the constitutionality of current law. The sole question before this court on this issue is whether anything in the Constitution requires that target revenue or ASATR be eliminated *immediately* as opposed to being gradually phased out, as it already is under current law.

We illustrated the problem of immediate elimination using the concrete example of the Austin ISD – a district that has *already* been hit harder than most by the recent budget cuts. In 2011-12, it still received about $120 million in ASATR funding – from a total tier 1 allotment of about $600 million. It goes without saying that the hardship that would result in Austin by forcing a further cut of this amount of money or anything close to it would be tremendous. Even Dr. Pierce acknowledged that it would be appropriate to phase it out over a period of years.

The crucial point here is that ASATR should not be eliminated before sufficient funds can be added to the formula system to replace it for those districts that depend upon it. It is only reasonable to allow target revenue to be gradually phased out – as it is under current law -- even as, we would hope, fully adequate funding for all districts is phased in.

Conclusion: the general diffusion of knowledge

Your honor, as I conclude, let me turn back to the idea of the general diffusion of knowledge. It is not the province of this Court to dictate legislative budget decisions or to tell the Legislature exactly how much money to spend on education. But it *is* the province of this Court, and in fact the *duty* of this Court, under Article VII, Section 1 of the Constitution, to ensure that the funding we devote to education is adequate to the purposes our State has set forth in the

Education Code – purposes that now define the constitutional general diffusion of knowledge.

We know that the general diffusion of knowledge standard is not perfectly precise. But this Court and the Supreme Court in the past have wisely interpreted it as requiring the courts to hold the Legislature's feet to the fire. When the Legislature enacts requirements that schools have to meet, it has to provide them with the means to achieve them. To do otherwise is arbitrary.

It's arbitrary to raise our standards to the highest levels ever while lowering our real per-student funding to below where it was seventeen years ago. It's arbitrary to impose a class size limit of 22 and then not give districts the resources to hire enough teachers. It's arbitrary to require that students must pass 15 new tests to graduate from high school, and at the same time force districts to cut tutoring, summer school, and extended day programs for the students who struggle most on those tests.

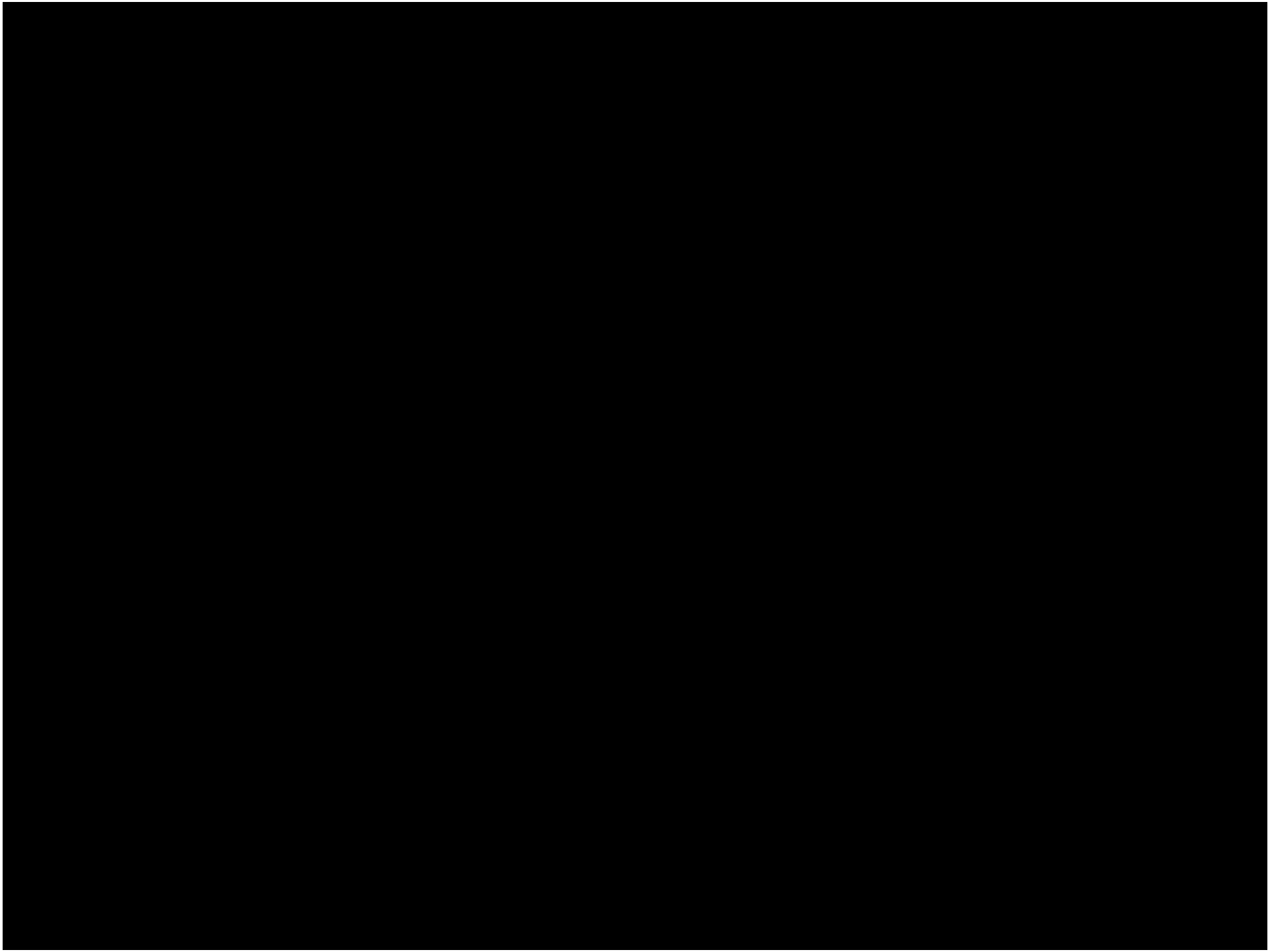
The general diffusion of knowledge means giving all children a meaningful opportunity – not a guarantee, but a meaningful opportunity – to master the State's curriculum; to graduate from high school; and to do so with a level of accomplishment that has prepared them for success in college or in a career.

If we do this, we help ensure that we develop the skills our economy needs. We also help ensure that we develop the readers, the writers, the critical thinkers,

those with knowledge of our history and our place in the world, the *citizens* that we will need to thrive as a state and nation. Funding for education is not the only element in achieving these goals – but it is a crucially important one.

After 44 days in this courtroom, and the testimony of some of the most knowledge people our State has to offer in the field of public education, the evidence is clear. To live up to its own standards, Texas must do more. Texas must do better. Thank you.

Calhoun County ISD
Plaintiffs' Closing Argument



Guy Sconzo
Humble ISD

Jerilyn Pfiefer
Everman ISD

William Wiggins
Calhoun County ISD

Antonio Limon
San Benito ISD

Henry Chambers
Alief ISD

Nabor Cortez
La Feria ISD

Kay Waggoner
Richardson ISD

Tracey Hoke
Fort Bend ISD

James Blincoe
Brownwood ISD

Heath Burns
Abilene ISD

Meria Carstarphen
Austin ISD

Michael French
Quinlan ISD

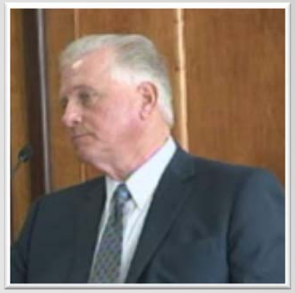
Rodney Schroder
Amarillo ISD

Jose Cervantez
Edgewood ISD

Gonzalo Salazar
Fresnos ISD

Charles Dupre
Pflugerville ISD

John Folks
(Formerly)
Northside ISD



Richard Reedy
Frisco ISD

Lynn Moak

Wayne Pierce

Bruce Baker

Allan Odden

James Kallison

Robert Scott

Former Commissioner of Education

Robert Scott

Former Commissioner of Education

THE TEXAS TRIBUNE Tuesday, June 26, 2012

Senators Grill Texas Education Agency Over Cuts

by **Morgan Smith** | February 7, 2011 | **11 Comments**

photo by: Marjorie Kamys Cotera

Texas Commissioner of Education Robert Scott speaks at the TASA midwinter conference in Austin, Texas February 1st, 2011

As the Texas Education Agency appeared before members of the upper chamber for the first time since the release of an initial budget that reduced school funding by $9.3 billion, senators offered clues as to where they thought cuts would be most appropriate.

State Sen. Florence Shapiro, R-Plano, called for a "full picture" of Texas' spending on public education while the state considers funding reductions. Shapiro, the Senate Education Committee chairwoman, noted that over the past decade, state funding has increased 63 percent per pupil. Since 2005, she said, spending on the Foundation School Program, which finances the state's basic educational curriculum, has increased $14 billion — "more than twice the rate of inflation."

Both Shapiro and state Sen. Dan Patrick, R-Houston, asked for a more detailed breakdown from the agency on the number of teachers districts employ versus the amount of other staff members employed in administrative and clerical positions. Patrick, the committee's vice chairman, observed that excluding military bases, Texas school districts are the fifth-largest employers in the world. Without fully committing to the idea that districts should be called on to use those reserves,

During his testimony, Education Commissioner Robert Scott said that determining what money he would ask to be restituted in the final budget was akin to asking "a guy on the operating table whether wants his heart or his lungs back." Scott said his No. 1 priority was to restore funding to the Foundation School Program, which provides money for the state's core education programs. After

achievement exams, a proposition popular with school officials. "If we need to put a pause on this testing because we don't have the resources, you need to tell us," said state Sen. Royce West, D-Dallas, who said he didn't want to see "a bunch of ethnic minority kids being left behind" because the state couldn't pay for the instructional materials to teach them what's on the new tests.

Scott said the agency is on track to implement STAAR, but added that if the new instructional materials weren't funded in the final budget, it would affect students' performance on the exams.

SCOTT Ex. 27 M. Miller 6/29/12

RISD Inflation Adjusted Revenues per WADA: Operating Fund (Net of Recapture)

* Uses Consumer Price Index
* WADA calculated using pre-2011 method for consistency.

See Ex. 5339

Podgursky Wage Adjusted Spending per Student, 2008-09

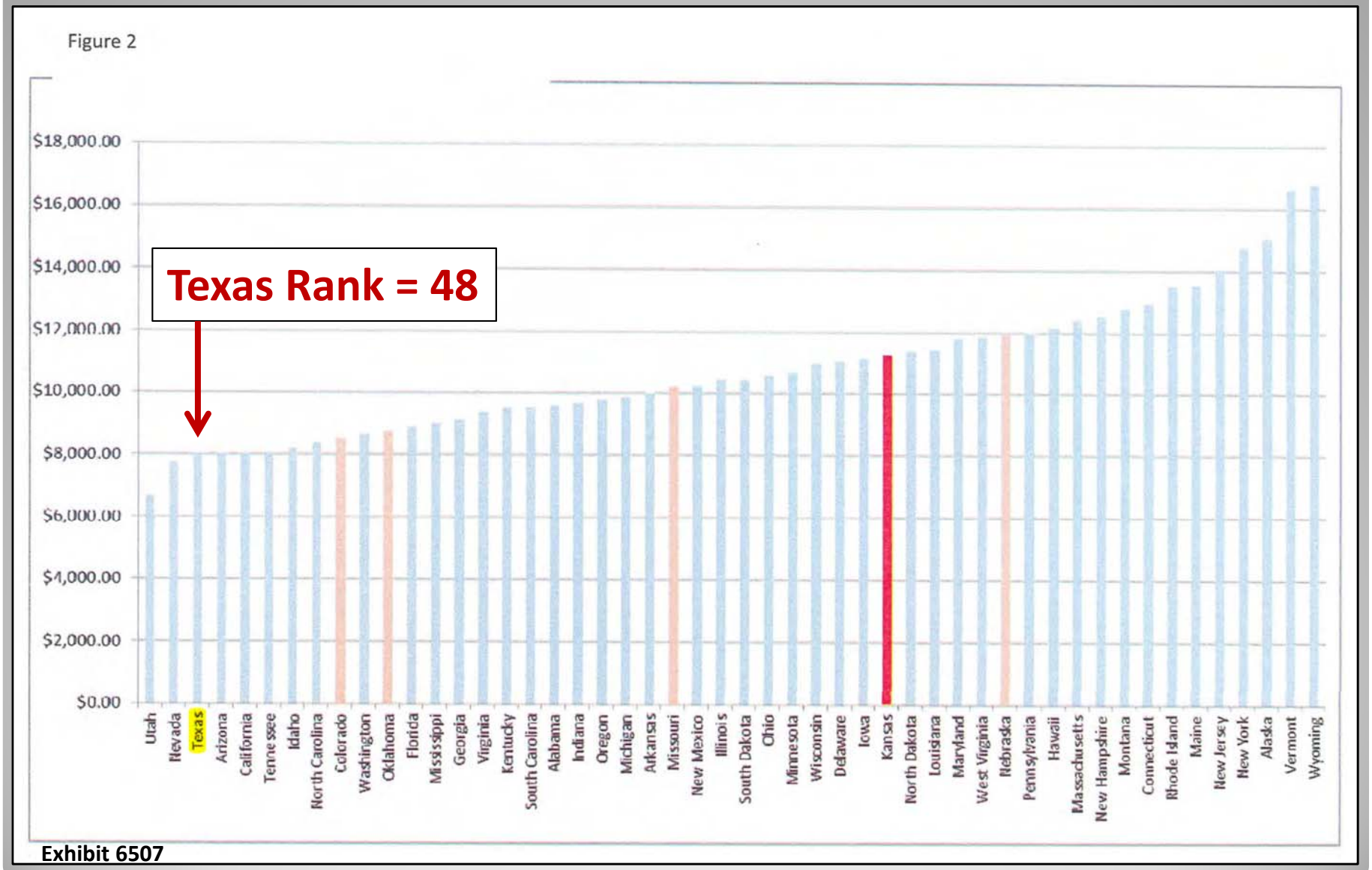


Exhibit 6507

Figure 50. Number of Staff Employed by School Districts, 2010-11 and 2011-12

Source: TEA PEIMS Staffing Data, All funds, non charter districts.

	2010-11	2011-12	Difference
Teachers	325,891	314,404	-11,487
Other Staff	323,809	308,913	-14,896
Students	4,799,541	4,843,995	44,454
Students per Teacher	14.7	15.4	4.76%
Students per Other Staff	14.8	15.7	6.08%

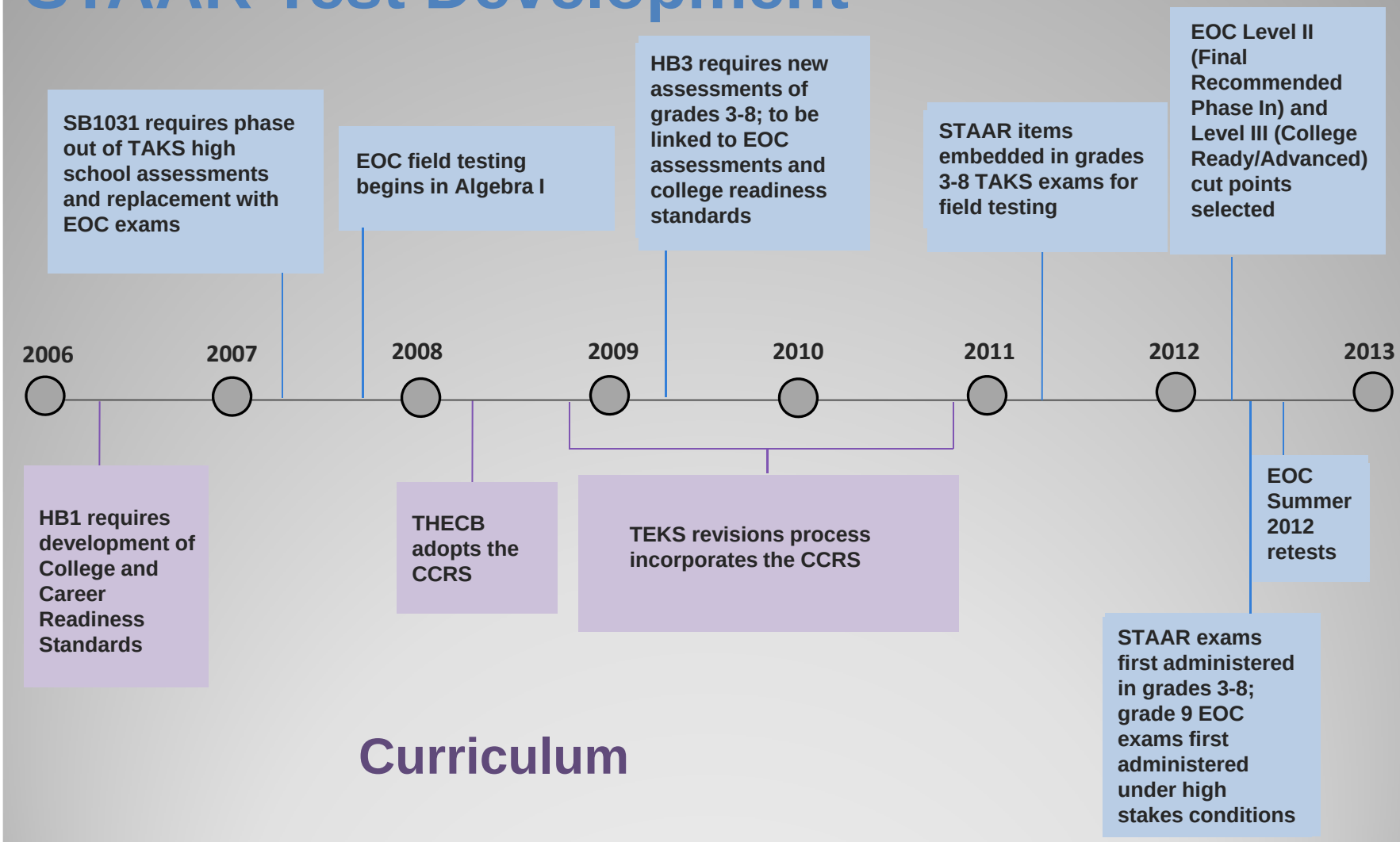
Richardson ISD
Elementary Maximum Class Size Exceptions

School Year	Total Sections
2000-01	0
2001-02	0
2002-03	0
2003-04	0
2004-05	0
2005-06	1
2006-07	4

School Year	Total Sections
2007-08	12
2008-09	6
2009-10	3
2010-11	10
2011-12	268
2012-13	291

See Ex. 916-W

STAAR Test Development



Curriculum

Sources: Exhibits 4129 (Chapter 1), 44

Lynn Moak

MOAK, CASEY & ASSOCIATES
SCHOOL FINANCE & ACCOUNTABILITY EXPERTS

August 20, 2012

8.0 Conclusion

From the analysis presented in this report, several conclusions can be reached. The rising percentages of economically disadvantaged students, limited English proficient students, and students considered "at risk" of not graduating increases the complexity of the educational enterprise, the cost of current standards, and impact of new standards now being put in place.

Although the State faces significant hurdles in the make-up of current and projected student populations, this factor has not prevented the State from launching new standards of college and workforce readiness. These standards, which are now being gradually implemented, have been under the direction of the Texas Education Agency, the State Board of Education, and the Texas Higher Education Coordinating Board. They represent a quantum leap in standards for public education, and are driven by concerns that the previous system was not properly preparing students for the 21st century higher education and workforce systems.

In undertaking this effort, Texas has rejected the move to national standards for public education and chosen to establish Texas-specific standards linking assessment in up to 15 courses covering a wide range of reading, writing, mathematics, science and social studies contents. For earlier grades, the State has redesigned the current testing system and created vertical alignment throughout the system. All 15 new high school tests are all linked to high school graduation, and tests in grades 5 and 8 remain gateway tests to upper grades.

The new testing system was designed around a set of parameters that have expanded high school course requirements and limited the options of students to take less rigorous tests. The new tests also have been incorporated into the overall grading system; two of the tests have been made effective prerequisites not only for high school graduation but also for admission to the State's senior colleges.

They represent a quantum leap in standards for public education,

The initial results of the 2012 administration generate substantial concerns over the ability of the system to meet the new standards without additional resources above the level committed by the State for the 2012-13 school year. Among the over 350,000 students who took the first round of these new tests in five subjects – English I reading, English I writing, Algebra I, Biology and Geography, over 140,000 students (or 53 percent) failed at least one test. Only 47 percent of the students reached the "satisfactory" standards, and only 4,527 students or 1.3 percent of the 9th grade students who, on all tests taken, reached the advanced level where a student is estimated to have a 75 percent chance of achieving a C or better on college work.

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Ex. 1334

District Data

Performance on the 2012 STAAR 9th Grade EOC Tests* including 1st and 2nd Administrations for the 10 Largest Districts

Source: STAAR EOC Student Level Data files via Litigation Discovery.

District Name	County Name	Total # of 9th Grade Students Taking at Least 1 EOC	# Met Level II on ALL EOCs Taken @ Phase-In 1	% Met Level II on ALL EOCs Taken @ Phase-In 1	# Failed to Meet Level II on at least 1 EOC @ Phase-In 1	% Failed to Meet Level II on at least 1 EOC @ Phase-In 1
HOUSTON ISD	HARRIS	12,096	5,513	46%	6,583	54%
DALLAS ISD	DALLAS	9,537	3,589	38%	5,948	62%
CYPRESS-FAIRBANKS ISD	HARRIS	7,845	4,705	60%	3,140	40%
NORTHSIDE ISD	BEXAR	7,024	4,472	64%	2,552	36%
FORT BEND ISD	FORT BEND	5,721	3,556	62%	2,165	38%
FORT WORTH ISD	TARRANT	5,244	2,096	40%	3,148	60%
AUSTIN ISD	TRAVIS	5,187	2,733	53%	2,454	47%
NORTH EAST ISD	BEXAR	5,132	3,362	66%	1,770	34%
EL PASO ISD	EL PASO	4,831	2,255	47%	2,576	53%
KATY ISD	HARRIS	4,721	3,264	69%	1,457	31%

*EOCs include Algebra I, English I Reading, English I Writing, Biology and World Geography

STAAR / EOC: Results for 2012 Algebra I and English I Assessments

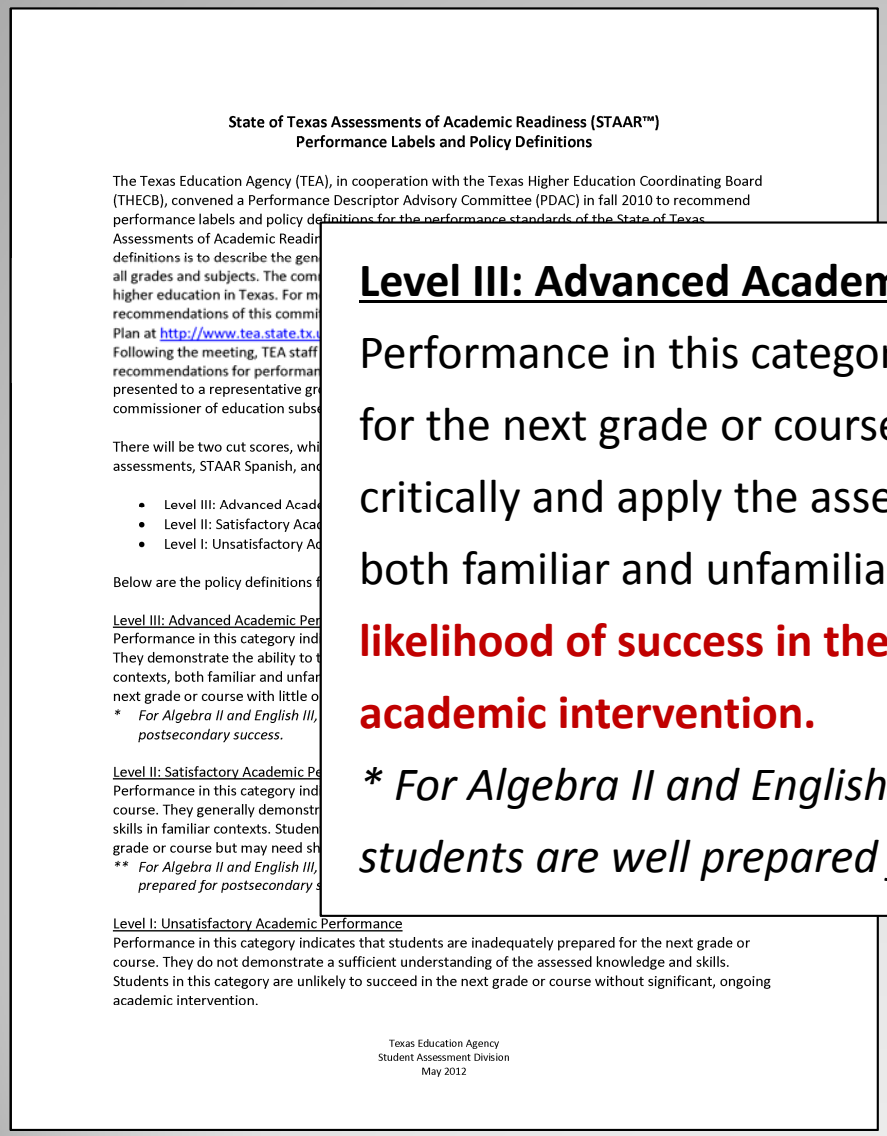
Number Tested, Scale Scores, Percent Meeting Level III Benchmark

	No. Tested	Avg. Scale Score	Percent Meeting Level III
Algebra I	333,540	3903	17%
English I Reading	334,829	1972	8%
English I Writing	334,929	1911	3%

Source: TEA

Ex. 1161, Table 10

Definition of Level 3: Advanced Academic Performance



State of Texas Assessments of Academic Readiness (STAAR™)
Performance Labels and Policy Definitions

The Texas Education Agency (TEA), in cooperation with the Texas Higher Education Coordinating Board (THECB), convened a Performance Descriptor Advisory Committee (PDAC) in fall 2010 to recommend performance labels and policy definitions for the performance standards of the State of Texas Assessments of Academic Readin
definitions is to describe the gen
all grades and subjects. The com
higher education in Texas. For m
recommendations of this commi
Plan at http://www.tea.state.tx.u
Following the meeting, TEA staff
recommendations for performan
presented to a representative gr
commissioner of education subs

There will be two cut scores, whi
assessments, STAAR Spanish, and

- Level III: Advanced Acad
- Level II: Satisfactory Aca
- Level I: Unsatisfactory Ac

Below are the policy definitions f

Level III: Advanced Academic Per
Performance in this category ind
They demonstrate the ability to t
contexts, both familiar and unfar
next grade or course with little o
* *For Algebra II and English III,*
postsecondary success.

Level II: Satisfactory Academic Pe
Performance in this category ind
course. They generally demonstr
skills in familiar contexts. Studen
grade or course but may need sh
** *For Algebra II and English III,*
prepared for postsecondary s

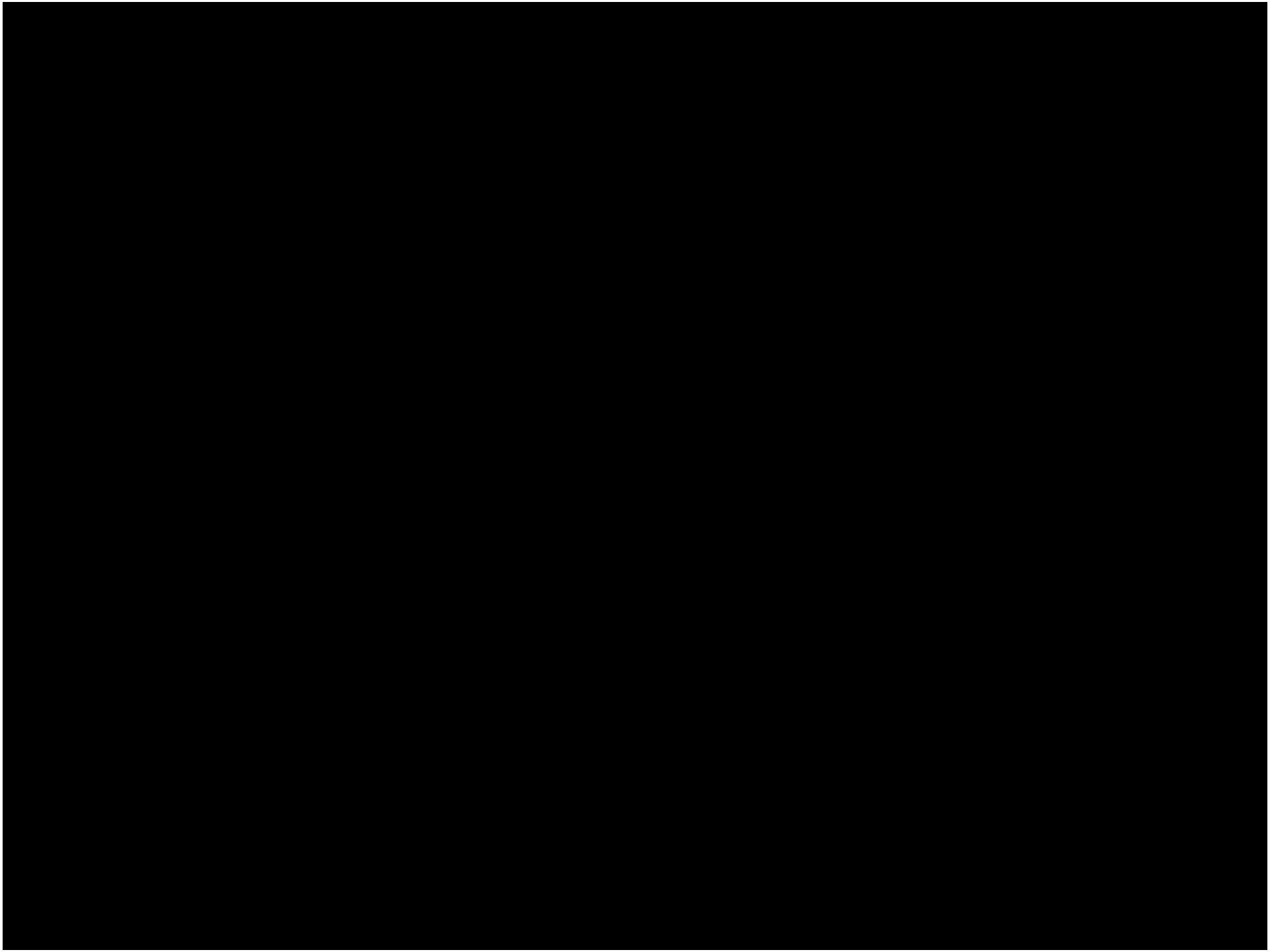
Level I: Unsatisfactory Academic Performance
Performance in this category indicates that students are inadequately prepared for the next grade or course. They do not demonstrate a sufficient understanding of the assessed knowledge and skills. Students in this category are unlikely to succeed in the next grade or course without significant, ongoing academic intervention.

Texas Education Agency
Student Assessment Division
May 2012

Level III: Advanced Academic Performance*

Performance in this category indicates that students are well prepared for the next grade or course. They demonstrate the ability to think critically and apply the assessed knowledge and skills in varied contexts, both familiar and unfamiliar. **Students in this category have a high likelihood of success in the next grade or course with little or no academic intervention.**

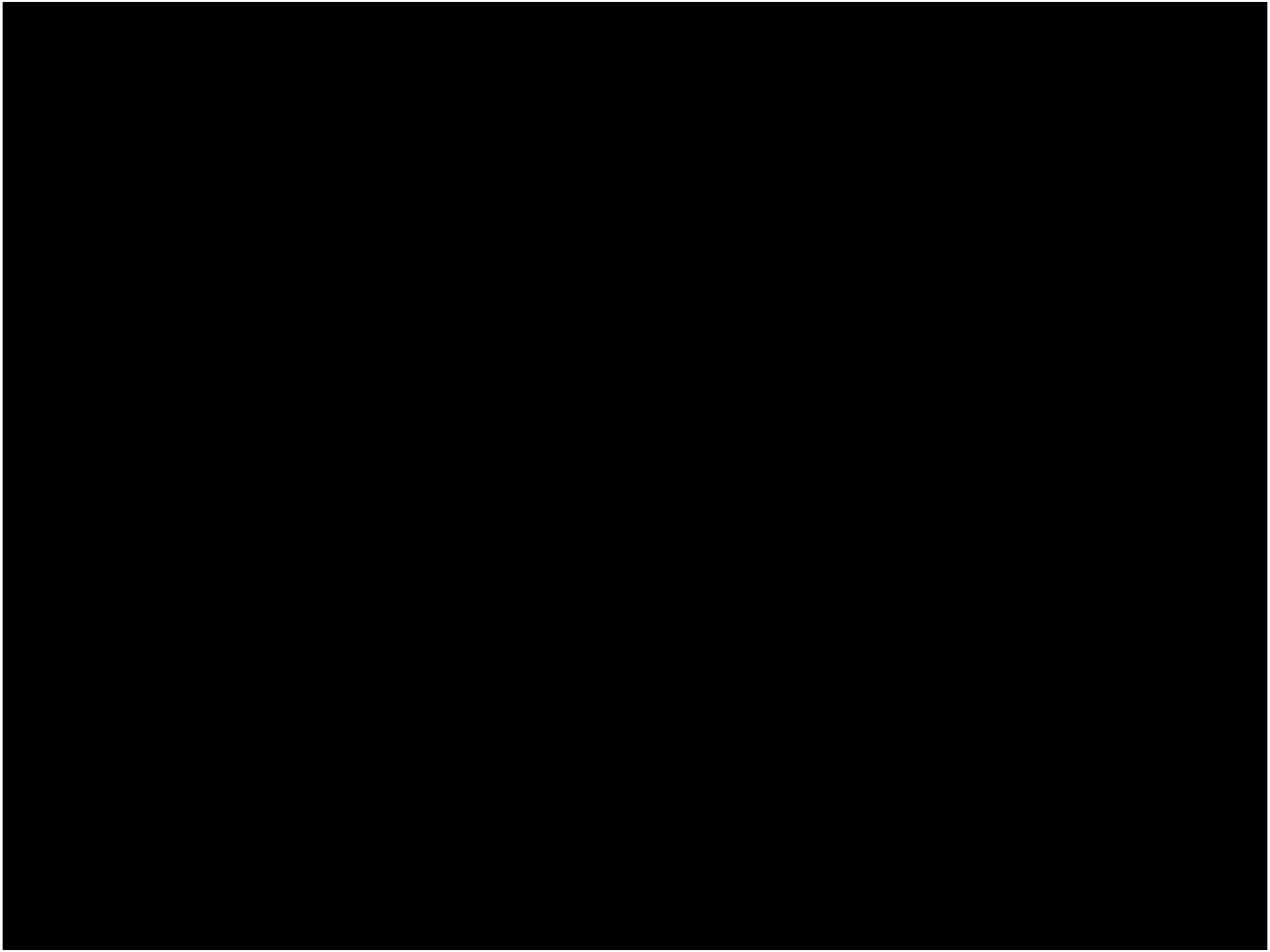
** For Algebra II and English III, this level of performance also indicates students are well prepared for postsecondary success.*



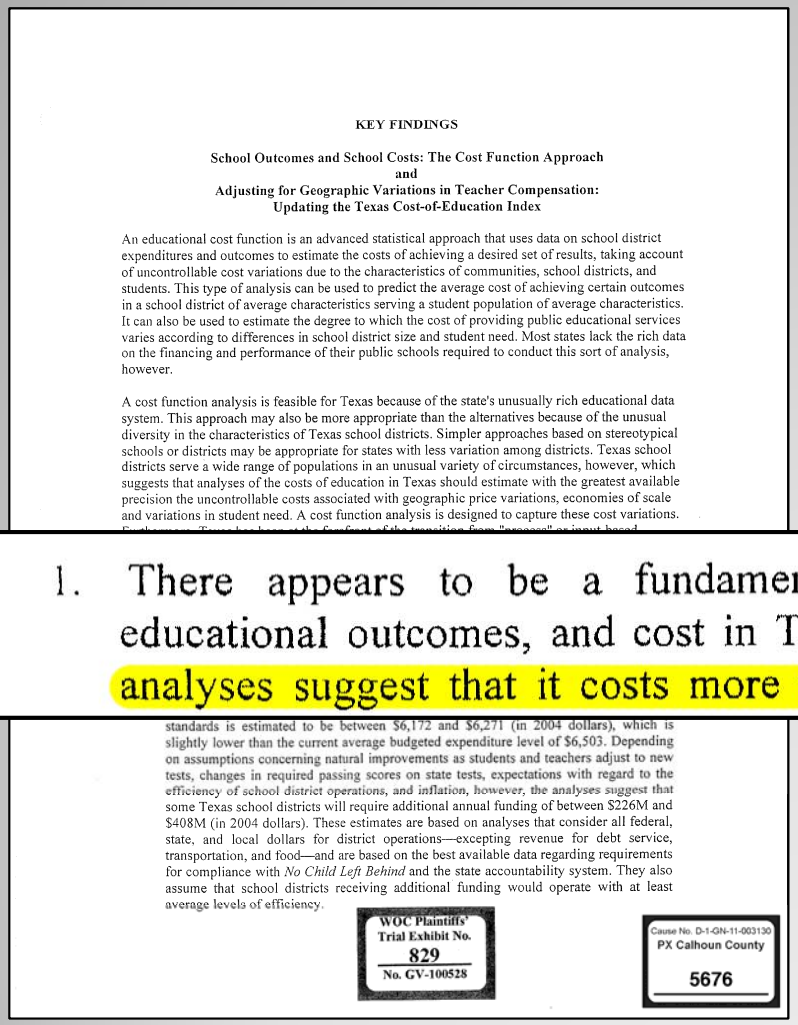
West Orange-Cove v. Neeley

It would be arbitrary, for example, for the Legislature to define the goals for accomplishing the constitutionally required general diffusion of knowledge, and then to provide insufficient means for achieving those goals.

***West Orange-Cove v. Neeley,* 176 S.W.3d 746,785 (Tex. 2005)**



The 2003 Taylor Cost Study



KEY FINDINGS

School Outcomes and School Costs: The Cost Function Approach
and
Adjusting for Geographic Variations in Teacher Compensation:
Updating the Texas Cost-of-Education Index

An educational cost function is an advanced statistical approach that uses data on school district expenditures and outcomes to estimate the costs of achieving a desired set of results, taking account of uncontrollable cost variations due to the characteristics of communities, school districts, and students. This type of analysis can be used to predict the average cost of achieving certain outcomes in a school district of average characteristics serving a student population of average characteristics. It can also be used to estimate the degree to which the cost of providing public educational services varies according to differences in school district size and student need. Most states lack the rich data on the financing and performance of their public schools required to conduct this sort of analysis, however.

A cost function analysis is feasible for Texas because of the state's unusually rich educational data system. This approach may also be more appropriate than the alternatives because of the unusual diversity in the characteristics of Texas school districts. Simpler approaches based on stereotypical schools or districts may be appropriate for states with less variation among districts. Texas school districts serve a wide range of populations in an unusual variety of circumstances, however, which suggests that analyses of the costs of education in Texas should estimate with the greatest available precision the uncontrollable costs associated with geographic price variations, economies of scale and variations in student need. A cost function analysis is designed to capture these cost variations.

standards is estimated to be between $6,172 and $6,271 (in 2004 dollars), which is slightly lower than the current average budgeted expenditure level of $6,503. Depending on assumptions concerning natural improvements as students and teachers adjust to new tests, changes in required passing scores on state tests, expectations with regard to the efficiency of school district operations, and inflation, however, the analyses suggest that some Texas school districts will require additional annual funding of between $226M and $408M (in 2004 dollars). These estimates are based on analyses that consider all federal, state, and local dollars for district operations—excepting revenue for debt service, transportation, and food—and are based on the best available data regarding requirements for compliance with *No Child Left Behind* and the state accountability system. They also assume that school districts receiving additional funding would operate with at least average levels of efficiency.

WOC Plaintiffs' Trial Exhibit No. 829 No. GV-100528

Cause No. D-1-GN-11-003130 PX Calhoun County 5676

KEY FINDINGS

School Outcomes and School Costs: The Cost Function Approach
and
Adjusting for Geographic Variations in Teacher Compensation:
Updating the Texas Cost-of-Education Index

1. There appears to be a fundamental economic relationship among input prices, educational outcomes, and cost in Texas public schools. Other things being equal, the analyses suggest that it costs more to produce higher levels of educational outcomes.

Ex. 5676

Testimony of Dr. Michael Podgursky

Q. …If there was a decrease in spending, is that going to cause a decrease in performance? You can't answer that question based on the work that you've done here, can you?

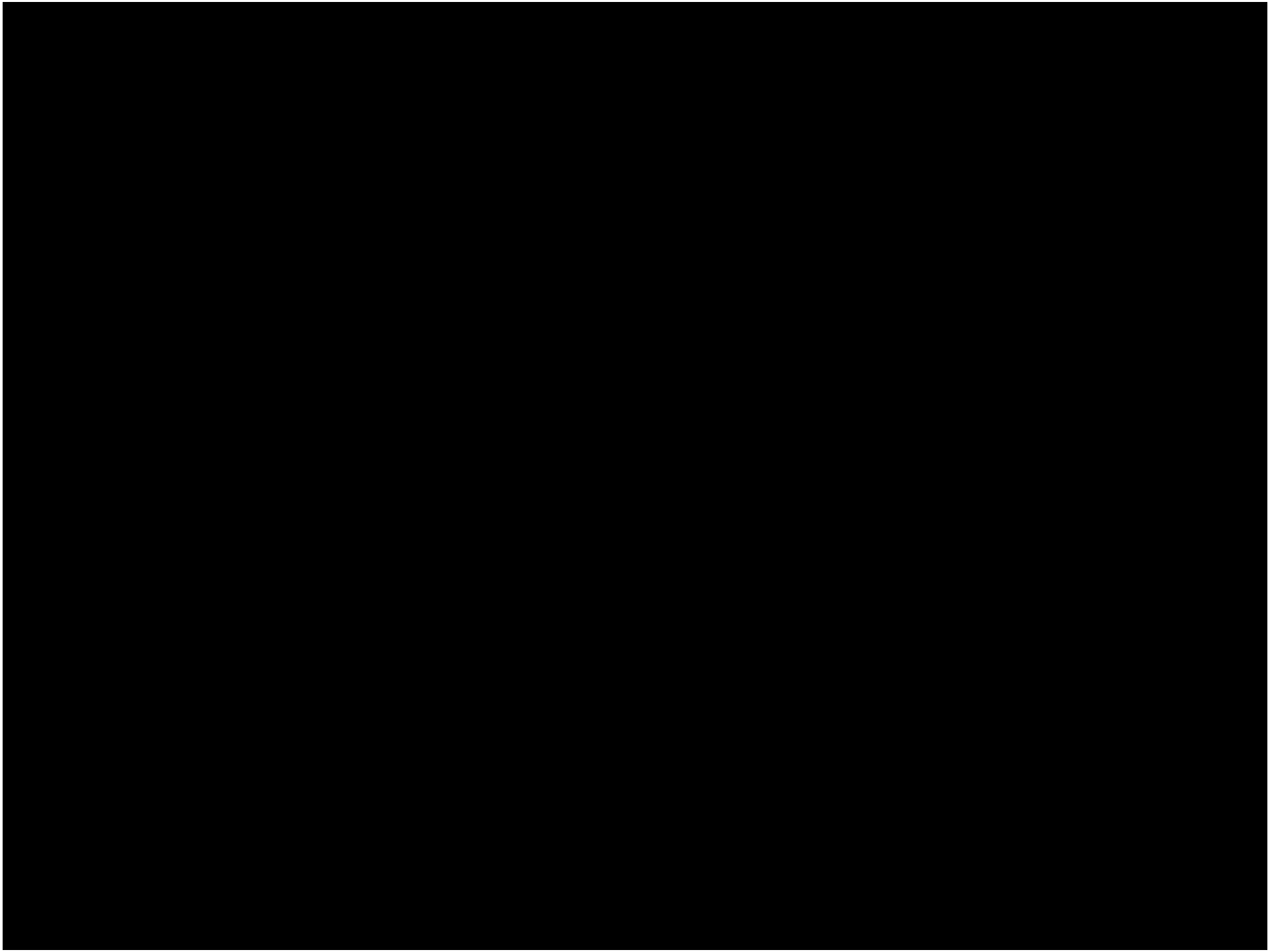
A. You cannot answer the question -- I would not attempt to answer that question with the work I did.

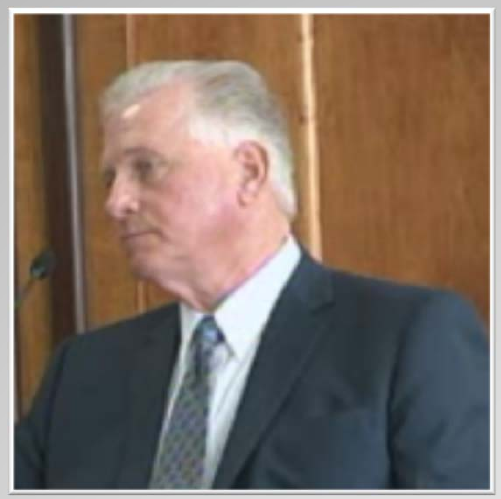
- Podgursky, Dec. 12, p.124, lines 5-10

Q. Now, does the fact that you see that correlation lead you to conclude that spending more money causes worse performance?

A. I made no statement about causality. I don't believe that is a causal relationship.

- Podgursky Depo., p.180, lines 9-13



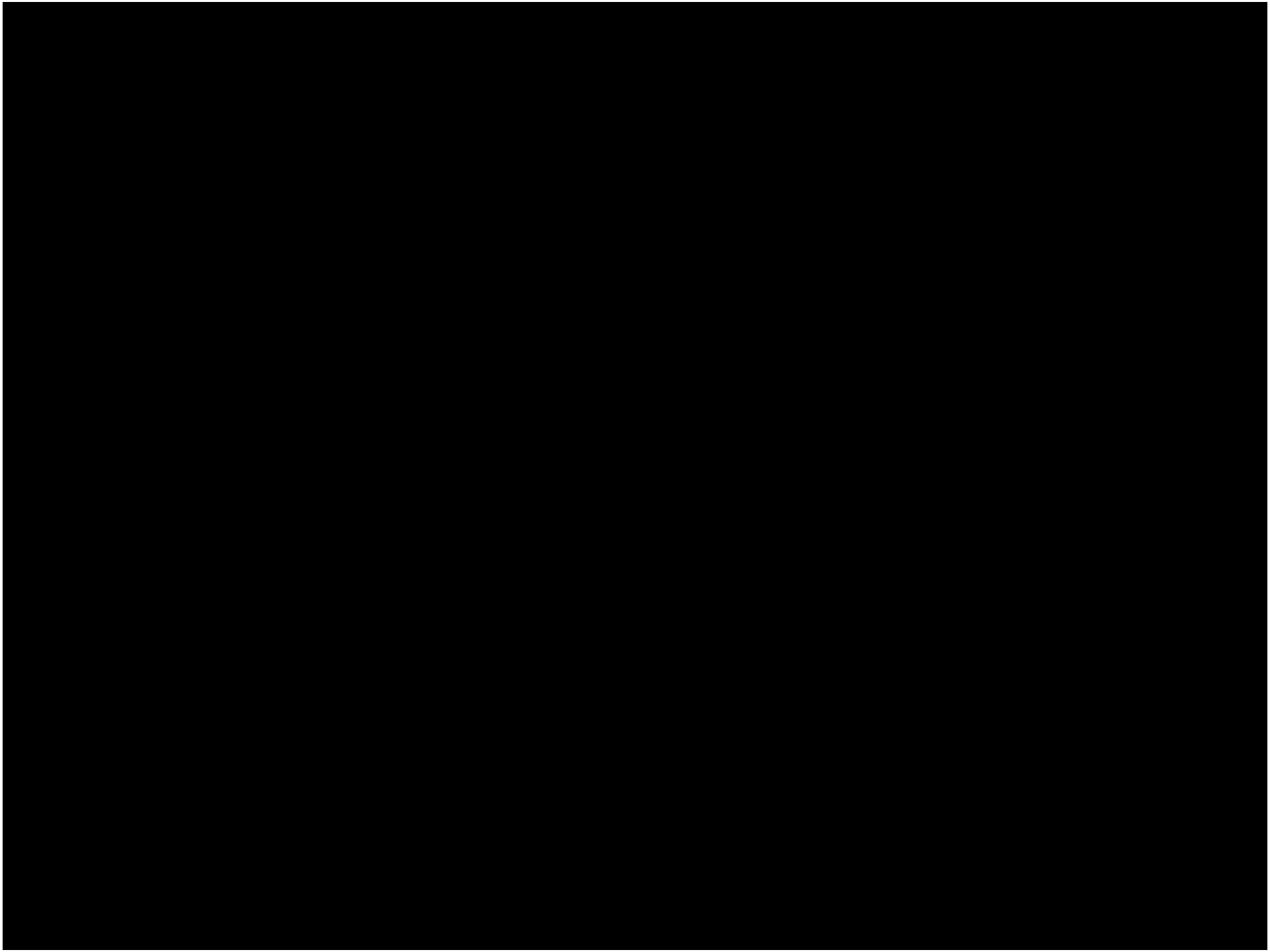


Richard Reedy

Frisco ISD

Dr. Jacob Vigdor

Duke University



What Must We Do to Improve

Class Size Reduction

Competitive Teacher Salaries

Instructional Specialists and Support

Tutoring, Saturday School, Summer School

Expansion of Pre-K

Expansion of Career and Technology

Dr. Allan Odden

University of Wisconsin, Madison

Testimony of Dr. Grover Whitehurst

Q. … Let's start right here on Page 5, and the first thing you said under research that supports effectiveness is the most influential and credible study of class size reduction is the STAR study, correct?

A. Correct.

Q. And you believe that to be true, don't you?

A. I do.

- Whitehurst, Dec. 6, p.104-5

The Possibility that the Model Underestimates Costs

- Disagreement with core class size average of 25 in Grades 4-12
- Possibility that Texas teacher salaries (or benefits) should be higher than the model predicts
- Model does not expand population served by Pre-K
- Possibility that model underestimates number of necessary elective teachers
- Possibility that current CEI is outdated and underestimates costs in largest districts

NCES 2008-09 Current Expenditures Per ADA

United States: $11,339

Texas: $9,350

Difference: **$1,989**

(Odden estimate: additional $824 per ADA over 2010-11 levels)

Source: Ex. 5612, NCES Digest of Education Statistics Table 195

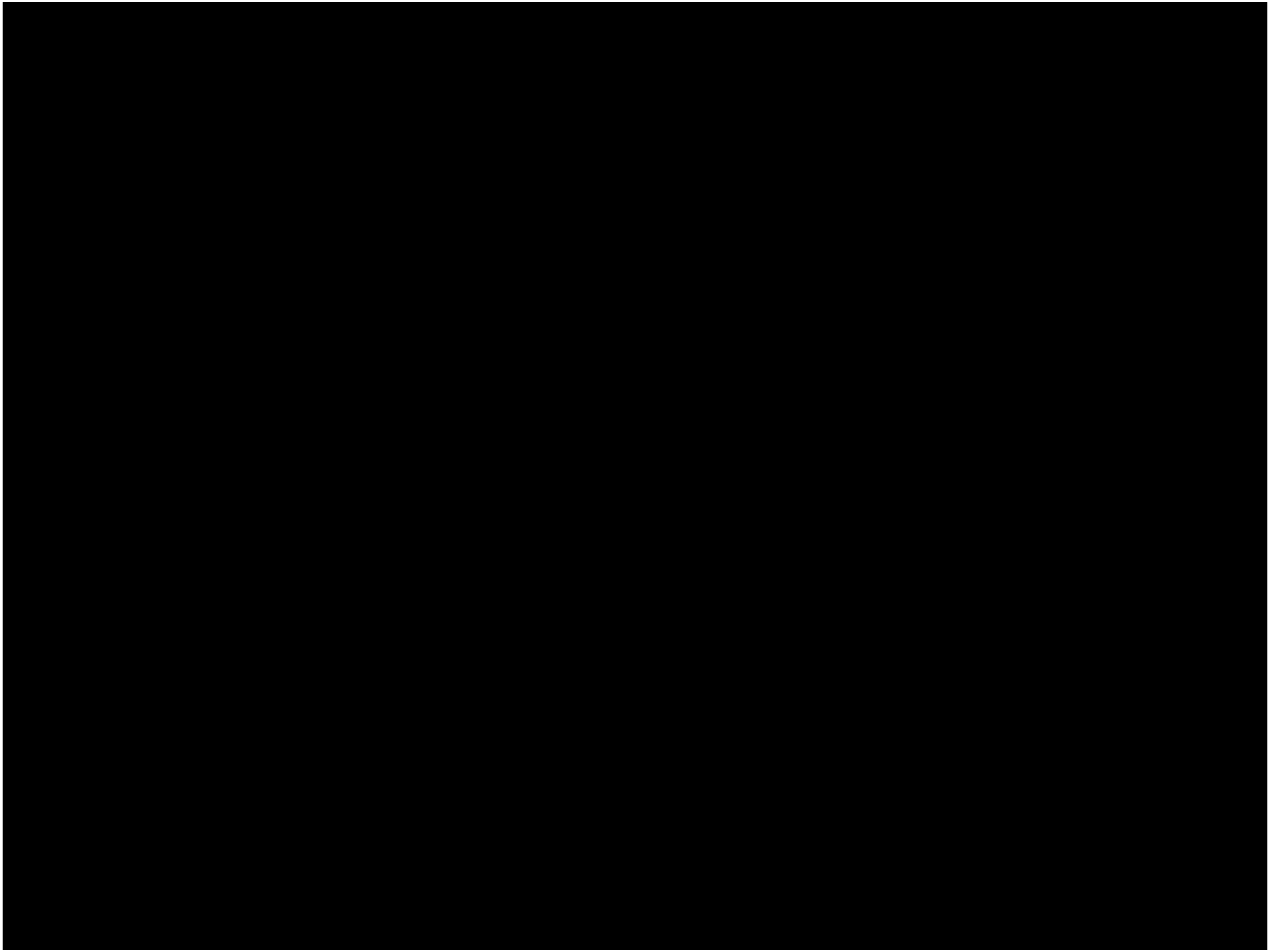
Cost of Adequacy Estimates

Odden: $824 per ADA over 2010-11 expenditures

Moak: $1,000 per WADA over 2010-11 expenditures

Updated Edgewood IV calculation: $6,576 FSP per 2010-11 WADA ($1,014 per WADA over 2010 FSP expenditures)

Source: (RR17:137-39 (Odden estimate); RR6:241-43 (Moak estimate); RR16:23-26 (referencing Ex. 3230 at 5) (Edgewood IV calculation); Ex. 11323 (2010-11 actual FSP M&O revenue; uses 2011 spreadsheet with total M&O revenue for ISDs only (cell CD-1225)); Ex. 11323 (ADA and WADA; uses 2011 spreadsheet with ADA and WADA for ISDs only (cells F-1225 and I-1225).)

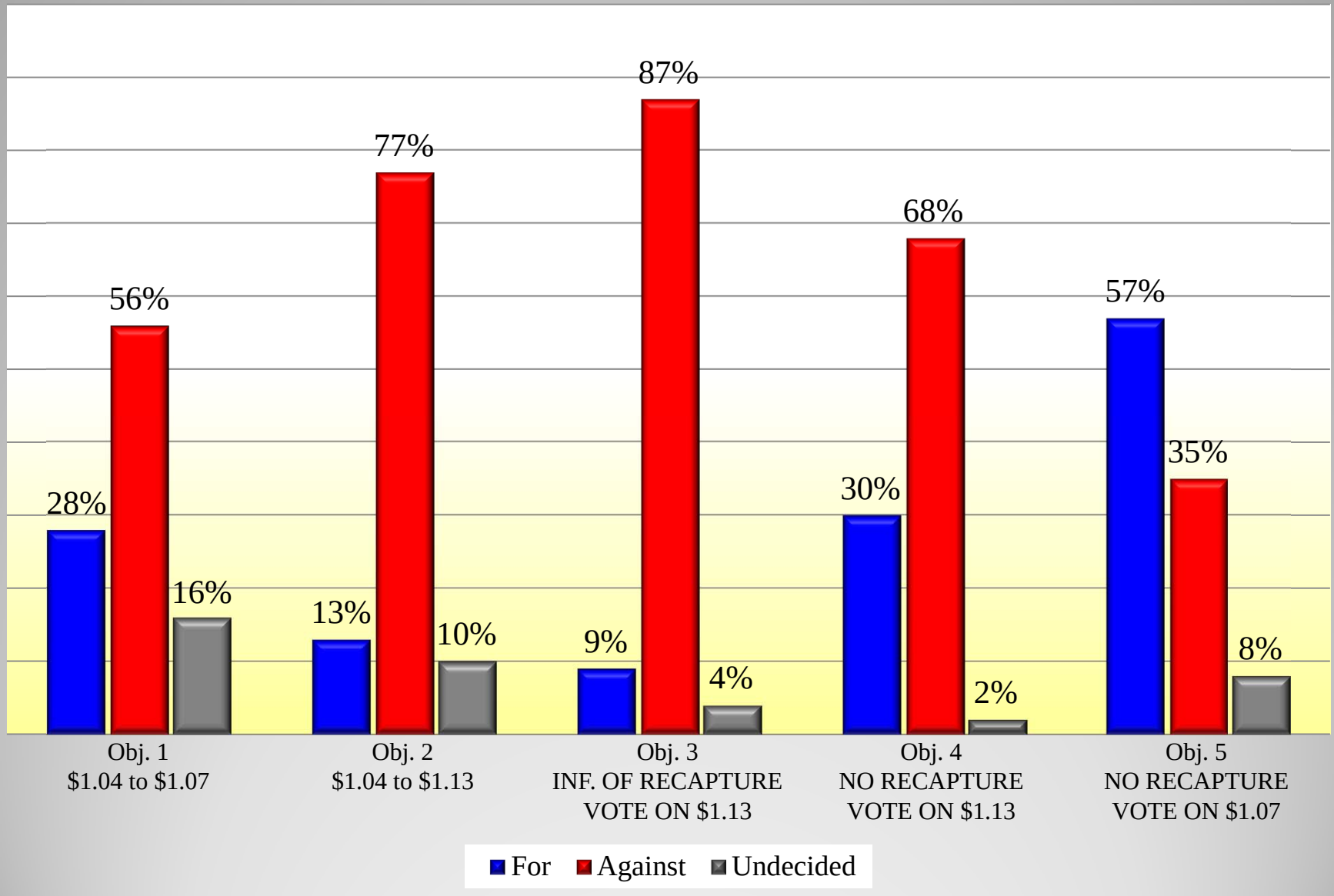


Kay Waggoner
Richardson ISD

William Wiggins
Calhoun County ISD

James Kallison
Eanes ISD

Calhoun County ISD – Level of Support for Increased Tax Rate



Testimony of CCISD Superintendent Billy Wiggins

Q. Mr. Wiggins, do you believe you have any realistic ability to tax less than the $1.04 you currently tax at?

A. No, I do not.

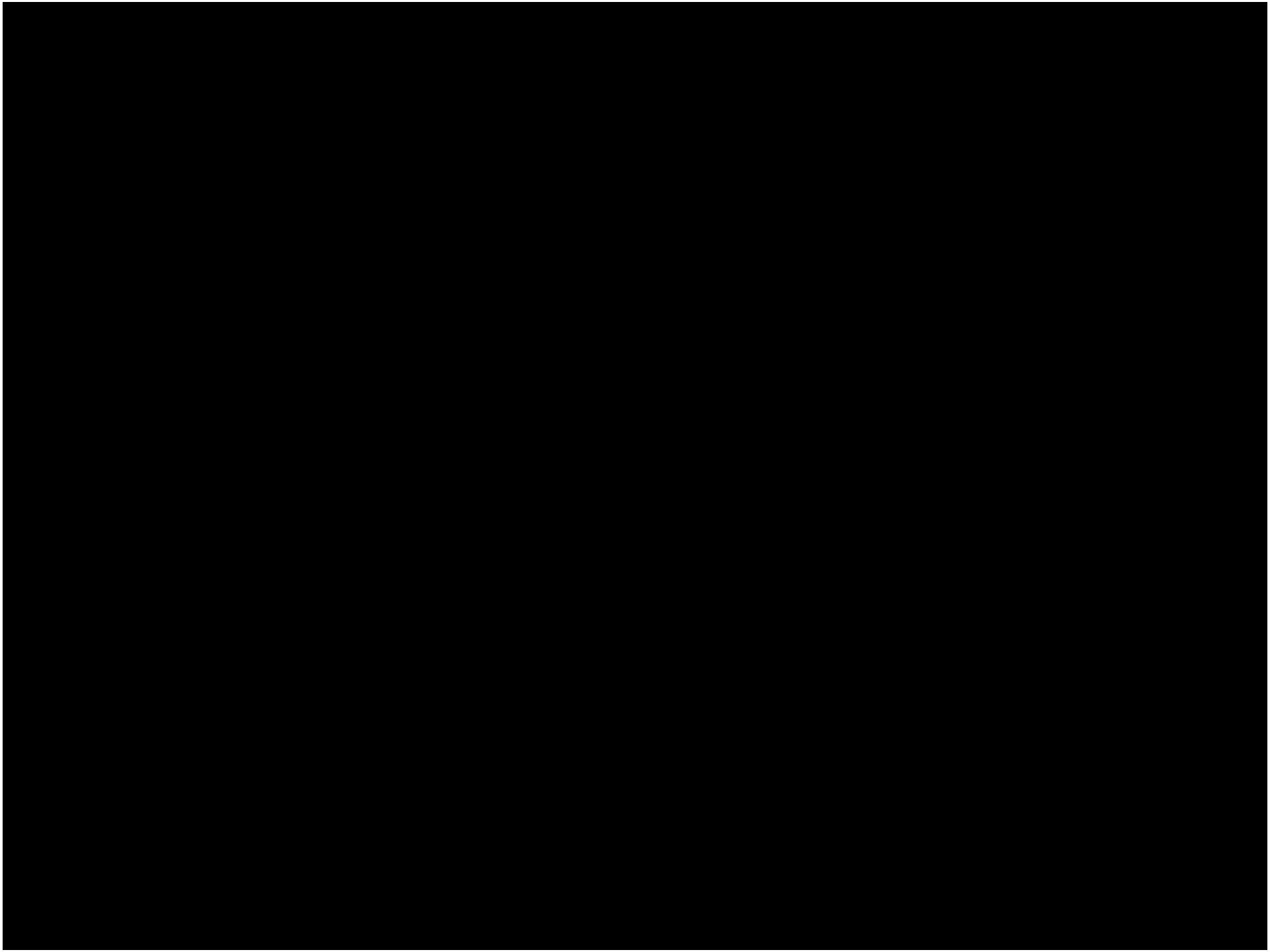
Q. Okay. Why not?

A. We are not making it as we speak, and so we -- there is no possible way that we can go below $1.04.

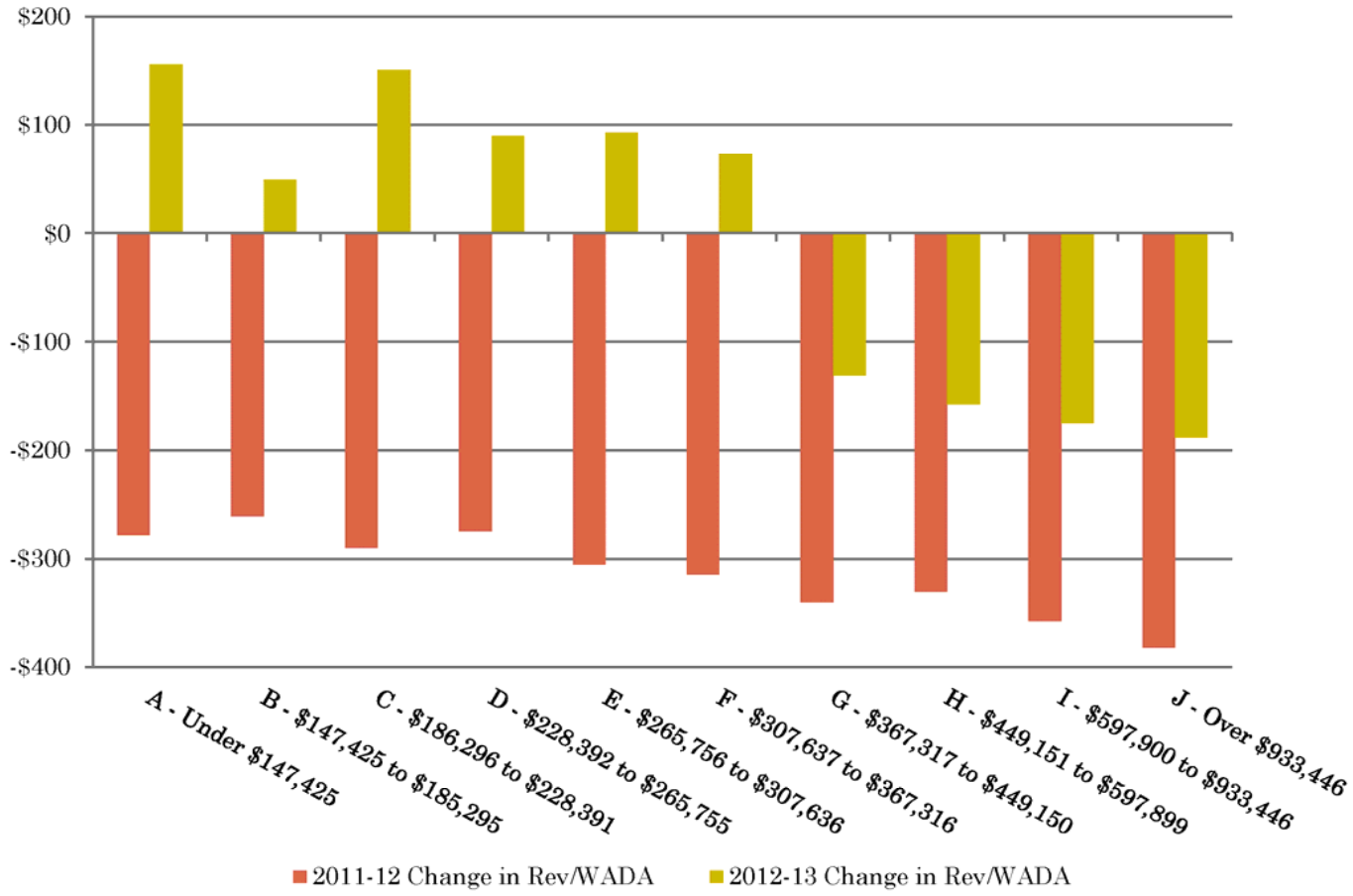
Q. Okay. What about above $1.04? Do you believe you have any realistic ability to tax above $1.04?

A. As long as there is an election involved, no, I do not.

-Wiggins, Nov. 7, p.23



Year-to-Year Change in Revenue per WADA



Source: Moak, Casey and Associates school finance model

Ex. 5653

Simple vs. Weighted Averages

Total M&O Revenue (FSP) per WADA for Chapter 41 vs. Chapter 42 Districts 2011-12 School Year

District Status	Revenue/WADA (FSP) at 2011 Adopted M&O Rate		Revenue/WADA (FSP) at $1.00 M&O Rate	
	Simple Average	Weighted Average	Simple Average	Weighted Average
Chapter 41 (325)	$6,748	$6,122	$6,517	$5,910
Chapter 42 (699)	$5,667	$5,569	$5,302	$5,252
Difference (Ch 41 – Ch 42)	$1,081	$553	$1,215	$658

Data source: TEA

Ex. 5384, Table 1

Simple vs. Weighted Averages

Total M&O Revenue (FSP) per WADA for Chapter 41 vs. Chapter 42 Districts 2012-13 School Year

District Status	Revenue/WADA (FSP) at 2011 Adopted M&O Rate		Revenue/WADA (FSP) at $1.00 M&O Rate	
	Simple Average	Weighted Average	Simple Average	Weighted Average
Chapter 41 (315)	$6,239	$5,660	$6,008	$5,448
Chapter 42 (708)	$5,421	$5,414	$5,069	$5,098
Difference (Ch 41 – Ch 42)	$818	$246	$939	$350

Data source: TEA

Ex. 5384, Table 2

Averages Without ASATR

Revenue (FSP) per WADA for Chapter 41 vs. Chapter 42 Districts Without ASATR

District Status	Revenue/WADA at Adopted M&O Rate (2011-12)		Revenue/WADA at Adopted M&O Rate (2012-13)	
	Simple Average	Weighted Average	Simple Average	Weighted Average
Chapter 41	$5,463	$5,290	$5,385	$5,204
Chapter 42	$5,431	$5,448	$5,337	$5,379
Difference (Ch 41 – Ch 42)	$32	($158)	$48	($175)

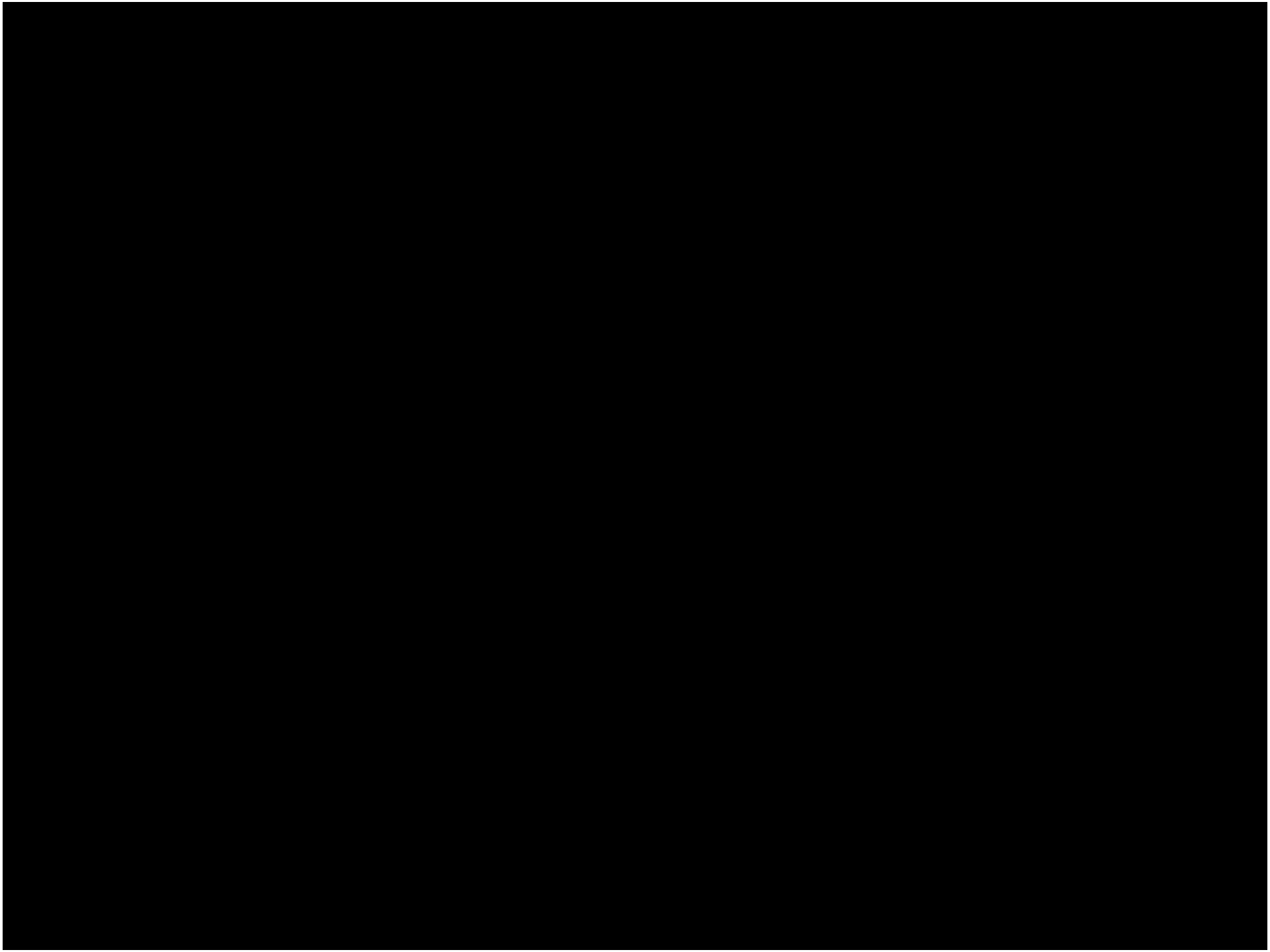
Data source: TEA

Ex. 5384, Table 3

CALCULATING ASATR 2011-12

	Operation	Itasca ISD	Pleasanton ISD	Garland ISD	Austin ISD
2011-2012 Tier I State Aid	#	$3,049,868	$13,944,395	$210,272,545	$24,402,789
2011-2012 M&O Collections @ Compressed Tax Rate	+	$1,826,984	$7,646,827	$123,923,290	$584,300,673
2011-2012 Recapture @ Compressed Rate	+	$0	$0	$0	($128,401,690)
2011-2012 State and Local Revenue	Result	$4,876,852	$21,591,222	$334,195,835	$480,301,772
2011-2012 Adjusted Minimum Revenue	#	$5,024,366	$20,876,065	$341,988,233	$600,677,729
2011-2012 State and Local Revenue	-	$4,876,852	$21,591,222	$334,195,835	$480,301,772
Additional State Aid for Tax Reduction	Result	$147,514	$0	$7,792,398	$120,375,957

Ex. 5653



The GDK Standard in West Orange-Cove II

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 . . . curriculum requirements . . . such that upon graduation, students are prepared to "continue to learn in postsecondary educational, training, or employment settings."

TEX. EDUC. CODE § 28.001.

West-Orange Cove v. Neeley, 176 S.W.36 746, 787 (Tex. 2005)