

## Litigation Update

### Day Five – October 29, 2012

Dr. Jeri Pfeifer and Mr. Lynn Moak

Day five began with Dr. Jeri Pfeifer, superintendent of Everman ISD, returning to the stand for more questions from Ms. Hunter, an attorney representing the Texas Taxpayer and Student Fairness Coalition plaintiffs. Questioning focused on changes that would be made if additional revenue were available to the district; Dr. Pfeifer mentioned a list of possibilities that included adhering to the technology 7-year obsolescence/refresh cycle, increasing the number of computers available for individual use, reducing class sizes from upper elementary through high school grade levels, and expanding the available career and technical education program offerings in her district. When asked about whether she found school finance to be equitable, she responded that it is her "worst nightmare." Dr. Pfeifer explained that her district does not have sufficient resources to provide students with an education that would make them college and career ready.

Chris Diamond, attorney for the TREE efficiency interveners, cross-examined Dr. Pfeifer next. He focused on the concept of efficiency and whether that focused simply on spending less, or if it involved looking at relationships between inputs and outputs. Several times, Dr. Pfeifer commented that her district delivered the most services it could with the resources that it has. While her district had not done formal analyses of efficiency, she stated that it was a "way of life" in her district to prioritize spending and to have conversations about what was necessary for students.

Judge Deitz asked Dr. Pfeiffer how much it cost to provide a general diffusion of knowledge; after explaining that she had not done a formal calculation, she offered an estimate of \$6800 (presumably per student) without taking into account how much more might be needed to reach the new standards.

Mr. Diamond questioned staffing needs and whether Everman ISD pays according to market forces. The topic of merit pay was raised and Dr. Pfeifer stated that she'd never seen an example that worked. She mentioned that having a competitive salary schedule was one factor in staffing; the available pool also affects ability to staff schools and statewide shortages exist in areas such as bilingual education. Dr. Pfeifer also spoke of releasing teachers who are not doing a good job.

The state's attorney, Amanda Cochran McCall, questioned Dr. Pfeifer about resource allocations among campuses within the district, drawing attention to two campuses in particular. Ms. McCall specifically asked about how location can keep costs down at a given campus, and Dr. Pfeifer explained that program offerings and having centralized services affected staffing and resource levels more than simple location. Other questions focused on Dr. Pfeifer's salary over time; the changes in student

demographics over time; the use of the Texas Virtual School Network as a means of addressing the need to offer foreign language and other courses; expenditures on, and participation in, professional development relative to the new standards and assessment program; contrasts in students' performance in the first year of TAKS compared to STAAR; statements about performance in annual reports; availability of IFA funding and the failed tax ratification election to support a "tax swap;" and the district's ratings history, with Dr. Pfeifer observing that Recognized and Exemplary ratings in her district were a result of the use of Texas Projection Measure data by the state.

Judge Dietz asked additional questions related to evidence that students from Everman were not college and career ready (Dr. Pfeifer cited SAT and ACT data); whether the district had ever been able to provide for a general diffusion of knowledge; the impact of budget cuts on students; and whether the district had meaningful discretion to provide enrichment, to which Dr. Pfeifer responded that it was not possible to go beyond state requirements.

Ms. McCall resumed with questions about comparability of Everman ISD students in terms of rates of earning career-related certifications, and rates of participation in or completion of technical programs and/or 2-year colleges. She also asked about discretion with regard to teacher salaries and whether or not the district had attempted to hire anyone at the minimum salary. Dr. Pfeifer responded that common sense indicated that if she were to attempt to hire teachers at the state's minimum salary, the district would not likely get the highly qualified candidates that it seeks. There were no further questions for Dr. Pfeifer.

The next expert witness was Mr. Lynn Moak, partner in the consulting firm Moak, Casey and Associates, testifying on behalf of the Texas Taxpayer and Student Fairness Coalition; Ft. Bend ISD, et al.; and the Calhoun County plaintiffs. Attorney David Thompson listed the topics to be covered: understanding what is meant by a general diffusion of knowledge; a look at current requirements and how those had changed since 2004; an overview of assessment and accountability; current results and needs for remediation; the relationships between standards and funding; weights used in school finance; cost estimates for adequacy; and property taxes relative to capacity in 2004.

Mr. Thompson's questions turned to significant events since 2004 as these relate to school finance. These included property tax changes, mandated salary increases, the cuts made by the legislature in 2012, changes to the Recommended High School Program requirements, the transition to a new assessment program, and development of a new state accountability system.

In response to questions from Mr. Thompson, Mr. Moak explained that state-mandated salary increases effectively protect against loss of local steps on the salary schedule for teachers in a district. The state has an incentive to keep the minimum salary schedule as low as possible, because salary above those levels causes the districts to pay reimbursements back to the Teacher Retirement System.

When asked about whether changes to school finance or changes to accountability and curriculum requirements were more significant to a general diffusion of knowledge, Mr. Moak stated that he believed the academic requirements were more significant than the changes on the finance side. Mr. Moak reviewed some of the statutory references related to a general diffusion of knowledge, including

the state's mission and objectives, the TEKS, graduation requirements, and academic accountability, among others. Mr. Thompson questioned whether expenditures associated with such things as transportation, insurance, utility bills, collaborative planning time for teachers, and so on, were required in law; Mr. Moak explained that while they were not requirements, per se, they were vital to district operations.

Next Mr. Moak reviewed the current requirements associated with the various diploma plans in Texas, noting that the Recommended High School Plan is considered the default plan and that it is required for admission to a Texas public 4-year institution of higher education. He spoke of the added complexity in preparing high school master schedules, given the need for districts to provide required remediation to students who failed STAAR end-of-course tests. Differences between the TAKS and STAAR programs were reviewed, with attention to factors associated with increased rigor of the STAAR program. Mr. Moak explained the phase-in of performance standards on STAAR end-of-course tests, and contrasted these with the phase-in used with the old TAKS testing program. There are additional requirements for students associated with STAAR end-of-course (EOC) tests compared to exit-level TAKS tests, such as the requirement that EOC test scores contribute 15% of the weight in students' grades and the new cumulative score requirements in each core subject area. Mr. Moak explained that minimum scores can contribute to cumulative score requirements, but students who consistently perform at minimum within a core area will not achieve the cumulative score requirement; and, all students who perform at less than a satisfactory level -- including those at minimum -- must be provided with remediation or accelerated instruction.

Mr. Moak provided an overview of the current, working proposal for the new state accountability system and contrasted it with the former system. He explained that final decisions on the system will not be available until spring 2013, for the ratings that will be released by August 8.

Mr. Thompson asked about several slides describing student performance, both under the old TAKS and accountability programs and at present on STAAR. Relative to other performance indicators, Mr. Moak described long-term outcomes for cohorts of ninth-grade students, including their college readiness; a key point, said Moak, was that *only about half the students under the TAKS program were demonstrating college readiness and that the TAKS standards were now considered too low*. Other data were reviewed that showed: an inverse relationship between the percentage of economically disadvantaged students in a district and test performance; the Level II rates after summer retesting; the direct relationship between performance at Commended level on TAKS and performance on STAAR EOC tests; and, the high need for remediation in terms of sheer numbers of ninth grade students who are now off-track for graduation. Mr. Moak determined that the percentage of economically disadvantaged students accounted for the greatest degree of variation in observed results on STAAR and that gaps were wider now between economically disadvantaged students and non-economically disadvantaged students than they had been under TAKS.

Judge Dietz stated that he had policy questions concerned with the intent of the new requirements, combined with the estimated costs.

At this point Mr. Thompson focused his questions on changes in school finance. He asked Moak about the historical relationship between additional funding and curriculum changes in Texas. Moak described a series of improvements going back to the mid-1980s in which Texas accompanied school finance improvements with increased expectations for students. This historical relationship changed in recent years, when end-of-course tests were implemented simultaneously with historic budget cuts. Next, he showed slides depicting revenue and expenditures per student over time, indicating that Texas schools have lost ground, on an inflation-adjusted basis over the last few years.

Turning to the weights and cost-adjustments in Texas funding formulas, Mr. Thompson took Mr. Moak through a series of slides regarding out-of-date adjustments to the funding formulas, including the cost-of-education index, the compensatory education allotment, the bilingual allotment and the transportation allotment. Moak said that all of these allotments are out of date and under-funded. He also said that Texas should be conducting research on the other weights and adjustments including the small schools formula, high school and CATE programs, special education programs, gifted and talented programs, hold-harmless provisions and facilities funding to ensure that the entire funding structure is aligned with current costs and expectations. He showed evidence that school districts serving low-income students receive systematically less revenue per WADA under the current school finance formulas and also that by multiple academic outcome measures, higher performing districts receive more revenue than lower performing districts.

At the end of the day, Mr. Thompson asked Mr. Moak about cost studies conducted on behalf of the plaintiffs describing the cost of meeting the general diffusion of knowledge. Moak pointed to a study by Dr. Odden and Dr. Picus and one by Dr. Duncombe that indicate the need for additional dollars in Texas schools. The studies use differing research methodologies, but suggest that Texas is behind (using 2010-11 expenditures as a base). Moak indicated that, considering these studies as well as the out-of-date adjustments and allotments, Texas school districts are \$6 billion per year behind where they need to be, and this is before the funding reductions of last session are taken into account.

Today, Moak will continue with information on the state property tax. We will post the slides from these two days of testimony once the testimony has concluded.