

CAUSE NO. _____

VIRGINIA DIANE LEWIS, Individually and as Next Friend to C.J.L.; CLAUDIA ELENA DE LEON, Individually and as Next Friend to D.F.G. and P.E.G.; JENNIFER RUTH RUMSEY, Individually and as Next Friend to K.L.O.; and JENNIFER TAYLOR, Individually and as Next Friend to C.M.T.,
Plaintiffs,

v.

MIKE MORATH, in his official capacity as Commissioner of the Texas Education Agency,
Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION FOR DECLARATORY JUDGMENT

Plaintiffs Virginia Diane Lewis, Individually and as Next Friend to C.J.L.; Claudia Elena de Leon, Individually and as Next Friend to D.F.G. and P.E.G.; Jennifer Ruth Rumsey, Individually and as Next Friend to K.L.O.; and Jennifer Taylor, Individually and as Next Friend to C.M.T., pursuant to the Uniform Declaratory Judgments Act, Chapter 37 of the Texas Practice and Remedies Code, file their Original Petition for Declaratory Judgment against Defendant Mike Morath, in his official capacity as Commissioner of the Texas Education Agency, and would respectfully show the Court as follows:

NATURE OF THE CASE

1. The Texas Education Agency, by and through its commissioner, Michael Morath, has unilaterally decided that it is not bound to comply with the clear

legislative dictates of the Texas legislature regarding the appropriate length of STAAR assessments administered to Texas public school students in grades 3 – 8.

2. Despite knowing that the assessments did not comply with statute, and despite a lead time of over nine months to comply, the TEA failed and refused to develop assessments that comply with the statute. As a result, approximately 2,000,000 Texas students were administered illegal assessments. The results of these illegal assessments are now being used to enact punitive measures against students, teachers, and schools across the state. The Plaintiffs sue for declaratory and injunctive relief to ameliorate the ongoing harm.

PARTIES

3. Plaintiff Virginia Diane Lewis, Individually and as Next Friend to C.J.L., resides in Wimberley, Texas. Her child is a fifth grader attending Jacobs Well Elementary School, which is part of the Wimberley Independent School District.

4. Plaintiff Claudia Elena de Leon, Individually and as Next Friend to D.F.G. and P.E.G., resides in Houston, Texas. Her children are third and fifth graders attending James F. Helms Elementary School, which is part of the Houston Independent School District. James F. Helms Elementary School is designated an "Improvement Required" (IR-1) school by the TEA.

5. Plaintiff Jennifer Ruth Rumsey, Individually and as Next Friend to K.L.O., resides in Orange, Texas. Her child is a fifth grader attending Orangefield Junior High, which is part of the Orangefield Independent School District.

6. Plaintiff Jennifer Taylor, Individually and as Next Friend to C.M.T., resides in Corinth, Texas. Her child is an eighth grader attending Lake Dallas Middle School, which is part of the Lake Dallas Independent School District.

7. Defendant Mike Morath, in his official capacity as Commissioner of the Texas Education Agency, is the Commissioner of Education, charged by the Texas Legislature to perform certain duties and functions regarding public education; and he may be served at 1701 North Congress Avenue, Austin, Texas 78701.

VENUE AND JURISDICTION

8. The Court has jurisdiction over this matter because the amount in controversy exceeds the minimal jurisdictional limit. Pursuant to Texas Rule of Civil Procedure 47(c), Plaintiffs seek in this suit monetary relief of \$100,000 or less and non-monetary relief. Plaintiffs reserve the right to amend based on facts developed in the course of this litigation.

DISCOVERY

9. Discovery in this case will be conducted under Level 2 pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

THE HISTORY OF THE STAAR ASSESSMENT SYSTEM

10. In 2009, in HB 3, the Texas legislature revised the existing state assessment system, known as the Texas Assessment of Knowledge and Skills (TAKS), in favor of a more extensive and, ostensibly, more rigorous assessment plan. The new system was known as the State of Texas Assessments of Academic Readiness, or

STAAR, and took effect in Fall 2011. The last grandfathered high school level TAKS assessments were administered in 2013.

11. The STAAR series of assessments required at least two subject area assessments at each grade level from 3rd to 8th grade. At some grade levels, students take three or even four different assessments during the year. At the high school level, 15 different end of course examinations were required in order for a student to receive a Texas public high school diploma. In addition, HB 3 required that the STAAR End of Course assessment count for at least 15% of the student's course grade in the subject it was correlated with.

12. The STAAR assessment program also mandated that students in grades 5 and 8 must pass their STAAR assessments in reading and in math in order to move to the next grade. A student who did not pass an assessment would be assessed up to two additional times, including one assessment during the summer break, in order to give them the opportunity to pass the assessment and be promoted. Students who had not passed the STAAR after three administrations would then be reviewed by the Grade Placement Committee to determine whether they should be promoted to the next grade level.

13. In addition to the possibility of retention under Chapter 28 of the Education Code, the legislature required that schools offer "accelerated instruction" to each student at any grade level who fails to meet the passing standard on any single STAAR assessment. The accelerated instruction is subject to the requirements of the Texas compulsory attendance law, and may require students to attend outside

of normal school hours, and even on days when school is not in session. Students are often removed from elective courses or “specials” for accelerated instruction. Accelerated instruction is intended to be flexible and individualized to the needs of the participating students. But it rarely is. Rather, accelerated instruction consists primarily of all students performing the same test prep activities regardless of what their STAAR assessment identified as their purported deficiencies.

14. Accelerated instruction is funded by State Compensatory Education (SCE) funding. This funding was originally intended to help at-risk students, such as homeless kids, teen mothers and English language learners. However, as additional accelerated instruction requirements were added by the legislature, the Texas Education Agency (TEA) commissioner ordered that schools must first fully fund accelerated instruction for STAAR failures before using SCE funds for any other purpose. In the last two years, many schools have learned how to use the SCE funds to cover the cost of their basic operations. Instead of providing after school or lunch hour tutorials, schools, particularly middle schools, have started to deny STAAR failures access to curriculum broadening electives. Instead, these students are enrolled in one-size-fits-all STAAR preparatory classes. The FTE costs for teachers and materials of these new class period long test prep classes are paid for using SCE funds rather than local school funding. To fill these classes, students who fail STAAR, and often even students who don't pass the assessment by a high enough measure, are denied electives and forcibly enrolled in test prep classes.

15. Within months of the implementation of STAAR in Fall 2011, schools and parents began to express widespread dissatisfaction with the scope and reach of the STAAR assessment system. Teachers claimed they were unsure of how to prepare students for the assessment. For example, for the 40 question 3rd grade reading assessment, which covers three different types of reading skills, the TEA released only 15 sample questions covering two types of reading skills. In contrast, the TEA promulgated five pages of 3rd grade reading TEKS that were all “fair game” on the STAAR assessment. Others noted that the TEKS covered by each assessment were too numerous to cover with any depth during the instructional year. Classroom instruction, they complained, was a mile wide but an inch deep. Parents of high school students, fearful of the impact on grades for students anticipating a competitive college admission process, rebelled against the requirement that this untested, unknown STAAR assessment count for 15% of the student’s classroom grade. In response, and without apparent statutory authority, the Commissioner of Education unilaterally ordered that the districts could choose to delay implementation of the 15% rule.

16. In the 2013 legislative session, parents and districts fought back against the new assessment system. Under HB 5, the number of EOC assessments required for graduation was reduced from fifteen to five. Likewise, the 15% rule was removed, properly separating assessment from the student’s course grade. The 2013 session marked a tidal change in assessment in Texas, as it was the first time that any

assessment requirements were scaled back. However, even with these changes, the implementation of STAAR continued to anger parents and schools alike.

17. Even with the reduced number of assessments, districts and parents continued to complain about the STAAR assessment system. In particular, children in grade school and middle school were exposed to developmentally inappropriate assessment requirements. Children as young as third grade were assigned assessments designed to be completed in four hours. Fourth graders were subjected to two-day writing assessments. These lengthy assessments continued through the eighth grade year, where students were expected to complete four different assessments of four hours length each. Numerous reports of nausea, anxiety, and even heart problems accompanied each STAAR assessment period. Classroom instruction centered on preparing for the assessment. In response, many Texas students began to leave public education for private and home school environments.

18. In the high schools, the assessment system was no better. The Class of 2015, the first group subject to STAAR graduation requirements, was struggling to meet the standards of this assessment. As these students entered their senior year, over 75,000 students were “off track” for graduation, having failed to pass one or more of the five required assessments. Despite special tutoring classes, summer school, and loss of electives, the Class of 2015 was poised to send Texas’s graduation right into the bottom five in the United States. Action was necessary and swift in coming.

19. In light of the continuing problems with STAAR, a number of bills were filed in the 2015 legislative session to address the complaints about and problems

with the assessment system. In the Senate, Sen. Kel Seliger authored SB 149, which, in final form, permitted Texas seniors to graduate after passing 3 of 5 STAAR EOC assessments, provided that a locally based committee approved their readiness for graduation.

20. In the House, Rep. Dan Huberty filed HB 743 to address concerns regarding the validity and burden of STAAR assessments. HB 743 had two significant provisions. The first provision required that the TEA have the validity and reliability of each STAAR assessment verified by an independent party. The second provision required that the assessments be developed in such a manner as to significantly shorten the average completion time of assessments administered in grades 3-8. HB 743 passed both houses of the legislature on an emergency basis and came into effect on June 19, 2015.

21. This litigation arises out of the TEA's deliberate refusal to comply with the completion time requirements of HB 743.¹

STAAR AND THE STATE ACCOUNTABILITY SYSTEM

22. The results of the STAAR assessments are the primary factor used in the "Texas Accountability Rating System" (TARS). The TARS purports to "allow for a comprehensive evaluation of district and campus effectiveness by using a framework of four indices that measure the quality of learning from different perspectives. Index 1 provides a snapshot of student performance across all subjects,

¹ The Plaintiffs do not concede the TEA's compliance with the independent validation portion of the statute. There are significant questions regarding both "independence" of HumRRO, the vendor, and the content of the validity study.

Index 2 measures year-to-year student improvement, Index 3 emphasizes the academic achievement of certain student groups, and Index 4 emphasizes the importance of a high school diploma for success in postsecondary life.” Three of the four indices rely directly on assessment data generated by STAAR.

23. Texas campuses and districts alike receive one of three accountability ratings: Met Standard, Met Alternative Standard, or Improvement Required.

24. According to the Accountability Manual, “Improvement Required indicates unacceptable performance and is assigned to districts and campuses, including charter districts and AECs evaluated under AEA provisions, that do not meet the targets on all required indexes for which they have performance data.”

25. These designations are not without consequence to districts, teachers, parents and students. Schools designated as Improvement Required for multiple years may face state accountability interventions, sanctions, or even closure. A parent’s ability to provide placement for their child at their neighborhood school may be foreclosed by these accountability sanctions.

26. Local control over Improvement Required campuses is also lost because such schools are subject to “directives from the commissioner designed to remedy the identified concerns.” Accountability Manual, p. 96. If a campus is designated as Improvement Required for two consecutive years, “the commissioner of education shall order the campus reconstituted.” 19 T.A.C. § 97.1064(a). When a school is reconstituted, it faces the loss of its campus leadership team and professional

teaching staff. If a third consecutive unacceptable rating is received, the campus is subject to closure.

27. Plaintiff de Leon's children attend a campus which has received an initial rating of "Improvement Required" based on accountability results from the 2014-2015 school year. If the results of the illegally designed STAAR are utilized for accountability purposes for 2015-2016, this campus may be subject to reconstitution and possible closure.

THE AGENCY'S STATUTORY AUTHORITY FOR ASSESSMENTS

28. The Texas Education Code charges the State Board of Education with creating and implementing the statewide assessment program, consistent with statute. Tex. Educ. Code § 39.022. However, it is the Texas Education Agency that is charged with the duty to "adopt or develop appropriate criterion-referenced assessment instruments designed to assess essential knowledge and skills in reading, writing, mathematics, social studies, and science." Tex. Educ. Code § 39.023 (a).

29. The statute further restricts the agency's discretion in adopting and developing the assessments in a number of ways. For instance, Tex. Educ. Code § 39.023 (a-1) requires that the assessments must be developed in a manner that the scoring will both "provide reliable information relating to a student's satisfactory performance for each performance standard . . . and an appropriate range of performances to serve as a valid indication of growth in student achievement." Likewise, in developing the instrument, the agency "may not adopt or develop a

criterion-referenced assessment instrument under this section based on common core state standards.” Tex. Educ. Code § 39.023 (a-3).

30. In the 2015 legislative session, the TEA’s discretion to develop and adopt assessment instruments was further restricted in response to parental complaints regarding the length and age appropriateness of the STAAR assessment instruments.

Tex. Educ. Code § 39.023 (a-12) requires that:

An assessment instrument adopted or developed under Subsection (a) must be designed so that:

- (1) if administered to students in grades three through five, **85 percent of students will be able to complete the assessment instrument within 120 minutes;** and
- (2) if administered to students in grades six through eight, **85 percent of students will be able to complete the assessment instrument within 180 minutes.**

(emphasis added)

PROMOTION AND RETENTION BASED ON STAAR ASSESSMENTS

31. The STAAR assessments developed and implemented by the TEA have a direct and immediate impact on some of the students taking them. Although in most grades, promotion to the next grade is based on local standards of performance in the classroom, the Texas Education Code imposes a different standard on 5th and 8th grade students.

32. For students in 5th and 8th grade, the Education Code requires that the student pass the state assessments in both Reading and Math in order to be promoted to the next grade. A student who fails to pass the assessment is subject to two additional assessment opportunities (with the last opportunity occurring during the summer months) in order to qualify for promotion. In preparation for the additional assessments, students are often removed from recess, elective courses and regular classroom instruction to receive intensive preparation for the second attempt. If the students fail to pass the second attempt, they are often required to attend summer school to prepare for the third attempt.

33. If a student fails to pass the required assessments after three opportunities, they are automatically retained. If the parent appeals the retention, the students may only be promoted by a unanimous decision of the Grade Placement Committee. Without regard to classroom performance, the Education Code sanctions retention of students based solely upon performance on the 5th and 8th grade Math and Reading STAAR assessments.

34. Each of the Plaintiffs is the parent of a child in the 5th or 8th grade. Each plaintiff has a child who has failed to pass one of the required 5th or 8th grade assessments. Each Plaintiff has been notified that their child is subject to retention based on their performance on the illegally designed assessments.

ACCELERATED INSTRUCTION BASED ON STAAR ASSESSMENTS

35. At all grade levels 3-8, students who do not perform to the passing standard are subjected to “accelerated instruction” provided at the campus level. This

instruction may take the form of tutorials, after or before school tutoring, summer school or placement into “lab” classes to focus on test prep work. Attendance at this instructional activity is not optional, and a student’s failure to attend may subject them or their parents to sanctions for truancy under the compulsory education act.

36. Each year, thousands of Texas families are instructed to cancel their summer vacation plans so that their students may be enrolled in summer school solely as a consequence of their assessment results. There are no exemptions based on classroom performance, learning disabilities, limited English proficiency or any other factor that might impact assessment results other than knowledge acquisition. For example, Plaintiff Lewis is the mother of a child who has long planned to attend a theater camp in June 2016. Recently, despite acknowledgment from the school that the 2016 assessments do not comply with the law, Plaintiff Lewis was informed by her school that her daughter would be required to attend summer school if she wished to be promoted despite her assessment results. Indeed, the principal of the elementary school attended by Lewis's daughter fully understood that the assessments did not comply with the law, writing in an e-mail that she did not "not understand how TEA can give us a test that does not comply with the law and then hold students accountable for passing it. But again, I am required to enforce that standard."

37. Similarly, Plaintiff Jennifer Taylor was informed that, despite plans for their summer vacation, her child, an eighth grader, must “attend Summer school in order to advance to the next grade level.”

38. Each of the Plaintiffs in this matter have received written or verbal threats that their children may be required to attend summer school as a consequence of the results received from the illegally designed assessment.

LOSS OF ELECTIVES BASED ON STAAR ASSESSMENTS

39. One of the most insidious forms of accelerated instruction is the “remedial” class period. Because of misuse of State Compensatory Education funds, remedial class periods have emerged as the preferred method of accelerated instruction in middle schools in many districts across Texas.

40. Since 1975, the Texas legislature has appropriated State Compensatory Education funds for services to at-risk students. These funds are separate from the Basic Allotment that schools receive for the education of students. Traditionally, SCE funds have been designated to serve specific populations of students, such as English Language Learners, teenage parents, homeless or migrant students and those living below the poverty line. By statute, SCE funds may not be used to fund any portion of the basic educational program of the schools.

41. Under Tex. Educ. Code § 29.081(d), students who do not pass any single STAAR assessment are also designated as at-risk. Thus SCE funds may legitimately be used to fund accelerated instruction for those students who did not pass STAAR. To the continuing detriment of those students traditionally served by SCE funding, in 2014, the commissioner required that SCE funds be first used to fully fund required accelerated instruction at the high school level before even a single penny may be spent on meeting the needs of other at-risk students.

42. Accelerated instruction is intended to be extremely focused on preparing students to pass their next STAAR assessment. Toward that end, the TEA's Student Success Initiative manual requires that accelerated instruction be flexible and individualized to the needs of each particular student. For instance, if a student's STAAR results showed mastery of some concepts but failure on others, accelerated instruction should be focused on remediating the failed concepts.

43. Over the past two years, however, some school districts have chosen to overtly ignore the individualized and focused nature of accelerated instruction, and instead, use the SCE funds to pay for the basic educational program of the school. To do this, certain districts have created remedial classes that serve as "accelerated instruction." These classes take a full class period, form a part of the regular school day, cover a basic educational subject, and are filled with students based on their results from STAAR assessment. The salaries (or a portion of the salaries) for teachers that teach these classes are paid for from SCE funds. Through this mechanism, schools are able to pay for a portion of the salaries of their teachers from SCE funds, rather than from their basic allotment from the state.

44. Students, however, are the victims of this financial accounting trick. Rather than receive accelerated instruction based on their academic needs, they spend a full semester or a full year engaged in test prep activities. The class lesson plans generally cover all areas assessed on the STAAR, not just the areas in which a particular student has an identified deficiency. To fit these "classes" into their schedules, students assigned to these periods are denied access to curriculum

broadening electives. By losing elective periods, these students are often subsequently denied the opportunity to participate in extra-curricular activities such as band or athletics.

45. Plaintiffs de Leon and Rumsey have children who will be entering middle school next fall. These parents have already received threats or information indicating that their children will be forcibly enrolled in these test prep “classes” and will not be permitted to take their chosen elective

THE TEA’S REFUSAL TO COMPLY WITH H.B. 743

46. During the 2015 legislative session, both the House and Senate committees considering HB 743 took public testimony. The TEA elected not to testify during the House committee hearing. The agency testified “on” the bill without taking a position in the Senate committee hearing. With respect to the length of completion portion of the bill, the TEA did not indicate a need to delay implementation or note any impediments to complying with the law if adopted. (Testimony at Senate Education Committee, May 20, 2015).

47. However, in its Legislative Briefing Book, the TEA took the surprising position that it would not comply with the completion time requirements for Grades 3-5 until the 2016-2017 school year.

The grades 3-5 assessments in reading and mathematics cannot be revised in time for the spring 2016 administration. The first administration of the shortened assessments would occur in spring 2017.

Texas Education Agency Legislative Briefing Book, 84th Texas Legislative Session, July 2015, page 83.

48. In addition, the TEA announced that it could not comply with the time requirements for Grade 4 and 7 writing assessments.

The grades 4 and 7 writing assessments cannot be revised in time for the 2016 spring administration. The first administration of the new writing assessments would occur in spring 2017.

Id.

49. Instead, the TEA announced that, despite the plain language of the statute, they would use the 2015-2016 school year to study the completion time on these assessments in order to determine whether there was a need to redesign the assessments for the following year. However, the TEA did not disclose that they had already studied the completion times for these assessments in both 2012 and 2015. Nor did they disclose that the data from these studies was clear – none of the assessments from Grade 3 to Grade 8 are in compliance with HB 743.

50. The TEA has always been clear that these assessments are designed for a four hour completion time. In noting its refusal to comply with the statute for the 2015-2016 school year, the TEA stated the following:

Change from current law: Currently, grades 3-8 assessments are designed to be finished within four hours.

Id. At page 82.

51. In the 2012 time study, the TEA obtained information clearly showing that the design of the assessments does not comply with Tex. Educ. Code § 39.023 (a-12). Looking only at Reading and Math assessments, the results are clear.

State of Texas Assessments of Academic Readiness (STAAR®)
2012 Time Tested Survey Data – General Program

		Students in Sample	Percent Completed In				
			1 Hour	2 Hours	3 Hours	4 Hours	More Than 4 Hours
Reading	Grade 3	27,166	4.4%	41.7%	39.3%	14.3%	0.3%
	Grade 4	28,488	1.8%	30.4%	45.9%	21.7%	0.2%
	Grade 5	21,242	1.3%	25.9%	46.0%	25.9%	0.9%
	Grade 6	27,677	2.3%	35.5%	43.3%	18.7%	0.2%
	Grade 7	27,584	3.0%	42.3%	41.0%	13.6%	0.1%
	Grade 8	16,020	2.5%	36.3%	43.3%	17.6%	0.3%

State of Texas Assessments of Academic Readiness (STAAR®)
2012 Time Tested Survey Data – General Program

		Students in Sample	Percent Completed In				
			1 Hour	2 Hours	3 Hours	4 Hours	More Than 4 Hours
Mathematics	Grade 3	28,683	0.6%	21.4%	47.0%	29.2%	1.8%
	Grade 4	30,131	0.5%	19.7%	48.6%	30.4%	0.8%
	Grade 5	21,202	0.3%	11.8%	44.5%	41.6%	1.8%
	Grade 6	27,616	0.4%	17.8%	49.8%	30.8%	1.2%
	Grade 7	25,924	0.5%	17.1%	48.3%	33.2%	0.9%
	Grade 8	16,224	0.4%	9.2%	42.1%	46.2%	2.1%

52. Based on the data from 2012, only the 7th grade reading assessment arguably may have been designed in a manner that is within the requirements of § 39.023 (a-12).² In some cases, such as 5th grade math, the design of the assessment actually tends to the converse of the statute. Rather than 85% of the students being able to finish within two hours, 85% of the students required more than two hours.

² Subsequent time studies indicate this is not the case.

53. The accommodation time data from 2015 did not demonstrate that the passage of time or increased familiarity with the format of the assessments significantly changed the completion times.

State of Texas Assessments of Academic Readiness (STAAR[®])
2015 Time Tested Survey Data – General Program

			Percent Completed In				
			1 Hour	2 Hours	3 Hours	4 Hours	More Than 4 Hours
Students in Sample							
Reading	Grade 3	28,538	2.0%	28.8%	45.6%	22.9%	0.8%
	Grade 4	28,787	1.1%	20.3%	45.3%	32.3%	1.0%
	Grade 6	30,589	1.7%	27.2%	45.3%	25.1%	0.6%
	Grade 7	31,140	2.1%	30.0%	42.5%	24.9%	0.5%

State of Texas Assessments of Academic Readiness (STAAR[®])
2015 Time Tested Survey Data – General Program

			Percent Completed In				
			1 Hour	2 Hours	3 Hours	4 Hours	More Than 4 Hours
Students in Sample							
Mathematics	Grade 3	30,485	0.5%	21.0%	49.5%	27.7%	1.3%
	Grade 4	30,502	0.3%	13.4%	46.7%	38.0%	1.6%
	Grade 5	30,516	0.3%	10.9%	46.3%	40.7%	1.8%
	Grade 6	28,756	0.4%	11.7%	47.0%	39.4%	1.4%
	Grade 7	26,673	0.4%	9.9%	43.2%	45.0%	1.4%
	Grade 8	21,601	0.6%	13.3%	44.5%	40.7%	0.9%

54. The 2015 time data indicates that the Grade 7 assessment design is out of compliance, as 25% of 7th graders sampled required more than three hours to complete the assessment. The 5th grade math assessment, however, yielded amazingly similar results as 2011, with 87% of students requiring more than two hours.

55. Although the TEA made the token gesture of removing the few field test questions³ embedded in the Spring 2016 assessments, the agency was well aware that the small number of questions removed from the assessment would not bring the design of the assessments into compliance with the statute. Moreover, although the TEA claimed a need to conduct time studies to plan for compliance, the two existing time studies provided more than sufficient evidence for the TEA to know that the 2015-2016 STAAR assessments for grades 3-8 do not comply with Tex. Educ. Code § 39.023 (a-12).

56. The TEA, by and through its commissioner, acted outside its statutory authority adopting and utilizing assessments as part of the Chapter 39 statewide assessment system that were not in compliance with the statute.

57. Further, by scoring the assessments, publishing the results of the assessments to the districts and utilizing the results in the state accountability system, the TEA has caused irreparable harm to these Plaintiffs and tens of thousands of other students across the state of Texas. Over 167,000 students in 5th and 8th grade alone have been reported as having “Unsatisfactory” performance and are subject to retention on the basis of these illegal assessments.

REQUEST FOR DECLARATORY RELIEF

58. There is an actual, justiciable controversy between Plaintiffs and the defendant over the validity of the 2015-2016 STAAR assessments administered by the defendant. The TEA has indicated that it considers the results valid and that it

³ A field-test question is a question that is not used for scoring the assessment. Rather, it is being studied for possible future use on STAAR assessments.

will continue to use the results of those assessments, despite being in violation of House Bill 743, for the determination of a school district's or campus's performance or accountability rating; for determining a student's promotion to the next grade or retention in their current grade; for labelling a student as "at-risk," not "satisfactory," or "non-compliant" and mandating secondary or accelerated education for such a student; or for any other purpose that assessment instruments administered under Chapter 39 of the Texas Education Code are to be used.

59. Pursuant to Chapter 37 of the Texas Civil Practices and Remedies Code, Plaintiffs request the following declarations from the Court:

- (1) The 2015-2016 STAAR assessments for grades 3 through 5 were not in compliance with House Bill 743, Section 1, codified at Texas Education Code § 39.023 (a-12)(1);
- (2) The 2015-2016 STAAR assessments for grades 6 through 8 were not in compliance with House Bill 743, Section 1, codified at Texas Education Code § 39.023 (a-12)(2);
- (3) The TEA acted outside of its statutory authority in administering 2015-2016 STAAR assessments that were not in compliance with House Bill 743, Section 1, codified at Texas Education Code §§ 39.023 (a-12)(1), (2);
- (4) The out-of-compliance STAAR assessments administered in 2015-2016 are not "assessment instruments under Section 39.023" to be used in retaining a student or prescribing

“accelerated instruction” to a student pursuant to Texas Education Code §§ 28.0211;

- (5) The out-of-compliance STAAR assessments administered in 2015-2016 are not “an assessment instrument administered to the student under Subchapter B, Chapter 39” to be used in labelling a student as “at risk of dropping out of school” pursuant to Texas Education Code § 29.081; and
- (6) The out-of-compliance STAAR assessments administered in 2015-2016 are not “assessment instruments required by Section 39.023” to be used in determining a school district or campus’s performance or accountability rating pursuant to Texas Education Code §§ 39.053–39.054.

REQUEST FOR TEMOPRARY AND PERMANENT INJUNCTIVE RELIEF

60. Plaintiffs require injunctive relief to prevent the defendant from utilizing results from STAAR assessments that were administered in violation of statute and outside of the defendant’s authority to their detriment.

61. Plaintiffs have alleged a cause of action under the UDJA against the defendant, and as indicated in this petition, Plaintiffs have shown a probable right of recovery and likelihood of success on the merits. Furthermore, Plaintiffs will suffer imminent, irreparable harm without Court intervention, and there is no adequate remedy at law. Without Court intervention, the TEA will be permitted to use results from the invalid STAAR assessments, which were administered outside of its

statutory authority, to label students as non-compliant or not “satisfactory,” to promote or retain students, and assess school accountability ratings.

62. In addition, Plaintiffs are willing to post the necessary reasonable bond to facilitate the injunctive relief requested.

63. The only adequate, effective, and complete relief to Plaintiffs is to restrain the defendant from utilizing results from the invalid STAAR assessments, and in order to preserve the status quo during the pendency of this action, Plaintiffs seek, on hearing, temporary injunctions, ordering and immediately restraining the defendant, including the defendant’s agents, servants, employees, independent contractors, attorneys, representatives, and those persons or entities in active concert or participation with them, as follows:

- (1) Enjoining the TEA from requiring school districts to retain a student based on the student’s results on 2015-2016 STAAR assessments for grades 3 through 8 under Texas Education Code § 28.0211(a)(1) or Texas Education Code § 28.0211(a)(2);
- (2) Enjoining the TEA from labelling any student as having performed “not satisfactorily” (or by labelling any student’s performance on their score report as “unsatisfactory”) based on the student’s results on 2015-2016 STAAR assessments for grades 3 through 8, pursuant to Texas Education Code § 28.0211;
- (3) Enjoining the TEA from requiring school districts to prescribe “accelerated instruction” to any student on the basis of the

- student's performance on the 2015-2016 STAAR assessments for grades 3 through 8 pursuant to Texas Education Code § 28.0211;
- (4) Enjoining the TEA from maintaining in its PEIMS database or in any other record the notation of any student as "at risk of dropping out of school" based on the student's performance on the 2015-2016 STAAR assessments pursuant to Texas Education Code § 29.081;
 - (5) Enjoining the TEA from using the 2015-2016 STAAR assessments for grades 3 through 8 in determining a school district's or campus's accountability or performance rating pursuant to Texas Education Code §§ 39.053–39.054;
 - (6) Enjoining the TEA from using the 2015-2016 STAAR assessments for grades 3 through 8 to reconstitute, repurpose, order alternative management, close, or otherwise sanction a campus pursuant to 19 T.A.C. §§ 97.1064-1065;
 - (7) Enjoining the TEA from permitting the use of any SCE funds towards any accelerated instruction program assigned based on a student's performance on the 2015-2016 STAAR assessments for grades 3 through 8;
 - (8) Enjoining the TEA from administering any statewide assessments that are not in compliance with House Bill 743,

Section 1, codified at Texas Education Code §§ 39.023 (a-12)(1),
(2); and

- (9) Enjoining the TEA from publishing the score reports from its administration of the 2015-2016 STAAR assessments for grades 3 through 8.

64. Furthermore, Plaintiffs will continue to suffer imminent injury that will be irreparable and for which no remedy at law exists without the protections of injunctive relief. Therefore, Plaintiffs also request, upon full trial, permanent injunctions for the relief requested in paragraph 63, and an additional permanent injunction ordering and immediately restraining the defendant, including the defendant's agents, servants, employees, independent contractors, attorneys, representatives, and those persons or entities in active concert or participation with them, as follows:

- (1) Ordering the TEA to destroy all score reports from its administration of the out-of-compliance 2015-2016 STAAR assessments.

PRAYER

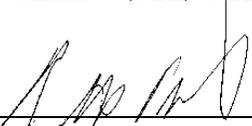
WHEREFORE, Plaintiffs request that Defendant be cited to appear and answer herein, and that Plaintiffs have judgment that: (1) Upon hearing, a preliminary injunction for the relief requested above; (2) upon final trial, declaratory judgment against the defendant as requested above; (3) upon final trial, for full permanent injunctive relief as requested above. Plaintiffs also request their

reasonable and necessary attorneys' fees, costs of suit, and such other and further relief to which they may be justly entitled.

Respectfully submitted,

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