

**SENATE COMMITTEE
ON EDUCATION**



**Report to the 80th Legislature
December 2006**

SENATE COMMITTEE ON EDUCATION

SENATOR FLORENCE SHAPIRO
Chair
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Vice Chair



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December 2006

The Honorable David Dewhurst
Lieutenant Governor of the State of Texas
Members of the Texas Senate
P.O. Box 12068
Austin, Texas 78711

Dear Governor Dewhurst and Members of the Texas Senate:

The Senate Committee on Education is pleased to submit its final interim report with recommendations for consideration by the 80th Legislature in preparation for the regular session.

Respectfully submitted,

Handwritten signature of Florence Shapiro in cursive.

Senator Florence Shapiro, Chair

Handwritten signature of Royce West in cursive.

Senator Royce West, Vice-Chair

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Senator Kip Averitt

Handwritten signature of Kyle Janek in cursive.

Senator Kyle Janek

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Senator Todd Staples

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Senator Leticia Van De Putte

Handwritten signature of Tommy Williams in cursive.

Senator Tommy Williams

Handwritten signature of Judith Zaffirini in cursive.
Senator Judith Zaffirini

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CHARGES TO THE SENATE COMMITTEE ON EDUCATION



1. Review and make recommendations on any improvements necessary for the state's accountability system, especially as it relates to closing and measuring achievement gaps. The committee should study the feasibility of establishing statutory minimum or baseline performance standards for state education policies. Such a review should include a thorough study of the current assessment structure and make any recommendations about moving to other formats such as end of course testing. The committee shall also make recommendations on how to incorporate alternative delivery methods when assessing student performance.
2. Study and make recommendations on educational reforms necessary to focus high schools and student performance on post-secondary readiness and success.
3. Review the operation of the State Board of Education, including its oversight of the Permanent School Fund, and make recommendations, if necessary, for appropriate legislative oversight and review.
4. Study the impact of pay-for-performance and differentiated pay scales on teacher recruitment and retention. Examine alternative approaches to improving teacher retention. Study value-added assessment/individual student growth measures as a factor in determining compensation for teacher effectiveness. Examine programs in other states that expand the range of teacher salaries and provide incentives for effective teachers to remain in the classroom. Make recommendations for changing teacher salary structures.
5. Review and make recommendations, if necessary, that streamline and clarify Chapter 37 of the Education Code dealing with student discipline. Include a study of state accountability measures for disciplinary alternative education programs to evaluate academic performance and effectiveness in modifying behavior. Include a study of the effects of zero tolerance practices and other changes made by the 79th Legislature. Include a review of after school prevention programs.
6. Evaluate the impact of successful school choice programs on students, parents, and teachers.

EXECUTIVE SUMMARY

Interim Charge 1 - Accountability

- 1) Incorporate valued added accountability measures that are based on individual student performance into the Texas accountability system.
- 2) Increase the minimum performance standards for an acceptable district rating in the subjects of math and science.
- 3) Phase-out the TAKS test at the high school level and replace exit level assessments with standardized end-of-course examinations.
- 4) Reformulate the cumulative criterion-referenced tests in grades 3-8.
- 5) Require an exit-level norm-referenced test such as the ACT or SAT be administered to all students. Establish a passing standard for graduation in lieu of end-of-course examinations for students who transfer late or have not completed all end of course exam requirements.
- 6) Allow students to place out of core courses through passage of the end-of-course examination according to a higher passing standard equivalent to demonstrating mastery of the subject.
- 7) Require all school districts report their level of readiness to administer assessments on-line at all their campuses. Based on these results, require TEA to develop and submit to the legislature an implementation timeline for administering assessments on-line statewide.

Interim Charge 2 - Post Secondary Readiness and Success

- 1) Continue to support the work and progress made by the Texas Higher Education Coordinating Board and Texas Education Agency as they implement the reform measures passed in House Bill 1, 79th Legislature, Third Called Session.
- 2) Monitor how effectively and transparently school districts use high school allotment funds to increase student performance and decrease dropout rates.
- 3) Adopt policies to place more highly qualified math and science teachers in Texas classrooms who are equipped to teach a rigorous curriculum that will prepare students for post-secondary education.
- 4) Develop standards for dual-credit courses to ensure the rigor of coursework.

Interim Charge 3 - State Board of Education

- 1) In order to provide consistency, the Legislature should explore methods to require the General Land Office to provide a minimum amount of distribution to the permanent school fund.
- 2) Raise the rate of the multiplier used in the permanent school fund bond backing guarantee program by seeking a change in IRS rule and changing state statute, but ensure the triple A bond rating afforded by the program is not jeopardized.
- 3) Maintain the alignment between curriculum, assessments and instructional materials.
- 4) Expand the definition of instructional materials to include curriculum content in any media format.

Interim Charge 4 - Pay for Performance

- 1) Continue to fund the teacher incentive programs passed in House Bill 1, 79th Legislature, Third Called Session.
- 2) Monitor the effects of the educator excellence awards program passed in HB 1 on teacher recruitment and retention.

Interim Charge 5 - Student Discipline

- 1) Hold Disciplinary Alternative Education Programs (DAEPs) accountable under the performance-based monitoring system.
- 2) Relieve districts from reporting burdens that no longer provide relevant information regarding compliance due to the passage of HB 603 during the 79th Regular Legislative Session.
- 3) Prohibit Class C Misdemeanors from being issued to students on school grounds unless the conduct is a violation of law.
- 4) Require that each district promptly notify parents when a violation of the code of conduct committed by their child results in suspension, removal to a DAEP, or expulsion.
- 5) Require that each district specify in their code of conduct a process by which parents can appeal the disciplinary decisions made by an administrator.
- 6) Require that DAEPs offer students just as many instructional hours as they would receive in the general education setting.
- 7) Establish a limit for the number of consecutive days a student can be assigned to in-school suspension without a review consistent with that of assignment to a DAEP.

- 8) Expand the list for mandatory expulsion offenses to include possession of the components of a bomb, stun guns and tasers, and toxic/hazardous substances.

Interim Charge 6 - Successful School Choice

- 1) The state should reward consistently high performing charters with facility funding.
- 2) The state should streamline its current statutes regarding charters and revoke the charter authorizations of consistently low performing charters.
- 3) As an additional reward for consistently high performing charters, the state should explore mechanisms for credit assistance in the issuance of bonds for instructional facilities.
- 4) Explore the impact of providing state transportation funding for local school choice options such as Public Education Grants.
- 5) Restructure and ensure notice so that the initiation of a school choice option to transfer schools occurs in a timely fashion to allow parents a reasonable opportunity to avail themselves of choice options in the same school year.
- 6) Further explore the qualities that make a successful school choice program.

ACCOUNTABILITY

Interim Charge One: Review and make recommendations on any improvements necessary for the state's accountability system, especially as it relates to closing and measuring achievement gaps. The committee should study the feasibility of establishing statutory minimum or baseline performance standards for state education policies. Such a review should include a thorough study of the current assessment structure and make any recommendations about moving to other formats such as end of course testing. The committee shall also make recommendations on how to incorporate alternative delivery methods when assessing student performance.

The Senate Education Committee held a hearing on October 4, 2006 and received both invited and public testimony on interim charge one. Digital recordings of the hearing along with submitted written materials are available via the Education Committee's website at <http://www.senate.state.tx.us/75r/senate/commit/c530/handouts06/h100406a.htm>.

Value Added Accountability

Recommendation

- 1) Incorporate valued added accountability measures that are based on individual student performance into the Texas accountability system.

Committee Comments

The Texas accountability system holds schools responsible for the percentage of students who pass state assessments by correctly answering a certain number of test items.¹ The current system creates a disservice to the education of some students. No incentive exists for schools to educate advanced students who are already well above the bar for the passing standard when the school year begins and no credit is given for those students who make an extraordinary amount of progress through the year unless they cross the hurdle.

The current system can also create an inaccurate picture of a district's ability to educate students. Some schools educate students who face greater challenges

while others receive students who can already pass the state assessments even if educational progress at the school remains stagnant. Our current system does not paint an accurate picture, in either of these cases, of the quality of education students in a particular school receive.

Texas must maintain a minimum bar of knowledge attainment. However, the state should recognize that a standard represents different levels of difficulty for different students. While one standard might seem like a huge hurdle to one student, to another it could represent a skill they mastered long ago. Every student should be challenged to learn more.

Measuring annual progress requires greater sophistication than simply calculating the additional test items answered correctly. Projections for an individual student should not be based on the performance of students with similar characteristics. In fact, Dr. Bill Sanders testified that a value-added model should not account for factors such as race or socioeconomic status, but that each student should serve as his or her own control.²

Annual projections based on the individual aptitude and characteristics of each student allow measurements of how far above or below that target a student actually achieves. This measure of progress, or “value added,” ensures an incentive exists for schools to seek improvement from all students.

Sanders testified that “good accountability systems are two-dimensional.” High quality accountability systems include both a static passing rate and a measure of progress.³ Texas will improve the quality of student learning and its understanding of district performance by incorporating a value-added measurement into the accountability system.

Baseline Performance Standards

Recommendation

- 1) Increase the minimum performance standards for an acceptable district rating in the subjects of math and science.

Committee Comments

Each spring the Commissioner of Education makes decisions regarding the state's accountability system and sets rating standards for school districts and campuses. The commissioner is advised by TEA research staff, a focus group of educators, and the Commissioner's Accountability Advisory Committee.⁴ The advisory committee is comprised of school district and region education service center representatives, legislative staff, and representatives from various stakeholder groups.⁵

Academically Acceptable Standards⁶

<i>Subject Assessed</i>	2006	2007	2008
Reading/English Language Arts, Writing, Social Studies	60	65	65
Mathematics	40	45	50
Science	35	40	45

**Exemplary requires 90%*

**Recognized requires 70% in 2006 and 75% in 2007 and 2008*

in mathematics for 2006 was 40 percent passing, expected to rise to 45 percent in 2007. The standard in science was even lower, set at 35 percent passing in 2006, expected to rise to 40 percent in 2007.⁷

When the commissioner made her decision for the 2006 accountability standards, projections estimated 670 campuses would be rated academically unacceptable.⁹ The final ratings under those standards included 286 campuses rated unacceptable.¹⁰

2006 Campus Ratings (including charters)⁸

Accountability Rating	2006	
Exemplary	564	7.1%
Recognized	2,826	35.5%
Academically Acceptable	3,586	45.1%
Academically Unacceptable	286	3.6%
Not Rated: Other	694	8.7%
Total	7,956	100.0%

The acceptable passing standards in math and science were significantly lower than the percent of students passing in the subgroup with the lowest passing rate, which was 61 percent in mathematics and 54 percent in science.¹¹

Standards should increase to boost performance and improvement. The standard for 'academically acceptable' should truly mean that a school has enough students passing state assessments to be deemed acceptable by the public at large.

End-of-course Exams

Recommendations

- 1) Phase-out the TAKS test at the high school level and replace exit level assessments with standardized end-of-course examinations.
- 2) Reformulate the cumulative criterion-referenced tests in grades 3-8.
- 3) Require an exit-level norm-referenced test such as the ACT or SAT be administered to all students. Establish a passing standard for graduation in lieu of end-of-course examinations for students who transfer late or have not completed all end of course exam requirements.
- 4) Allow students to place out of core courses through passage of the end-of-course examination according to a higher passing standard equivalent to demonstrating mastery of the subject.

Committee Comments

Numerous individuals testified before the committee regarding replacement of the Texas Assessment of Knowledge and Skills (TAKS) with end-of-course exams at the high school level. Dr. Bill Sanders explained that while the cumulative grade level tests at the elementary level provide enough spread to calculate progress and growth, general achievement tests at the high school level do not.¹² Further, Dr. Chrys Dougherty stressed the need for end-of-course exams because they “directly test the curriculum the students are taught, close to the time that they are taught it.”¹³ End-of-course exams can measure subjects in depth. This is preferable to a survey style test, which assesses multiple subjects at one time without the greater depth. John Stevens expressed concern over the fact that the small number of questions covering a large number of topic areas provided only a glimpse of what level of specific-subject mastery a student has achieved.¹⁴

Developing a criterion-referenced test to assess how much a student has learned at the end of each course accomplishes the diagnostic goals described above; however, assessment expert Mary Lyn Bourque cautioned against the temptation to use a single test for multiple purposes.¹⁵ She explained that “states could be better assisted in their decision making by both kinds of tests.”¹⁶

The administration of a national norm-referenced college readiness test such as the ACT or SAT in addition to the end-of-course testing would provide the state with the best of both worlds. As Don McAdams testified, end-of-course exams

administered along the way would prevent students and parents from the surprise of not being able to graduate even though the student has earned passing grades in each course. Problems would be identified early and additional instruction and assistance could be provided to struggling students. In addition to that assessment, a cumulative exam would measure whether or not students learned and retained information to the degree required to be successful in college-level coursework. A standard could also be established to provide multiple paths to graduation for students who enter the Texas public school system so late in their high school career that they cannot be tested in all courses required for graduation.

Furthermore, end-of-course exams could provide an opportunity for advanced students to place out of certain courses and pursue other options such as college-level work or specialized studies in an area of interest.¹⁷ By offering credit by examination to students who demonstrate mastery on the end-of-course exam prior to taking the course, students can customize or expedite their path to graduation.

Alternative Delivery Methods

Recommendation

- 1) Require all school districts report their level of readiness to administer assessments on-line at all their campuses. Based on these results, require TEA to develop and submit to the legislature an implementation timeline for administering assessments on-line statewide.

Committee Comments

The recent headlines concerning allegations of cheating on state assessments underscore the concerns about test security.¹⁸ The security risk of handling and distributing test documents would be virtually eliminated if the state moved toward on-line assessment administration. New risks such as multiple testing dates could usher in new concerns.¹⁹ Even so, these risks could be managed.

Perhaps the greater obstacle to administering assessments electronically is the availability of the technology required to assess students in this manner. While most schools have reported their level of

<p>Of the 7,602 campuses reporting computer access:</p> <ul style="list-style-type: none">▪ 42.7% can accommodate 4 students or less per every computer▪ 2.5% can accommodate 1 student per every computer²⁰
--

readiness to TEA, some schools do not voluntarily report this information.

Thus, there is no indication of their capability to administer assessments on-line.²⁰ In addition, no statewide plan exists to move districts towards on-line assessments. Securing accurate readiness data and developing a statewide implementation plan will move the state towards a more efficient and secure testing system.

POST SECONDARY SUCCESS

Interim Charge Two: Study and make recommendations on educational reforms necessary to focus high schools and student performance on post-secondary readiness and success.

The Senate Education Committee held a hearing on October 17, 2006 and received both invited and public testimony on interim charge two. Digital recordings of the hearing along with submitted written materials are available via the Education Committee's website at

<http://www.senate.state.tx.us/75r/senate/commit/c530/handouts06/h101806a.htm>.

Recommendations

- 1) Continue to support the work and progress made by the Texas Higher Education Coordinating Board and Texas Education Agency as they implement the reform measures passed in House Bill 1, 79th Legislature, Third Called Session.
- 2) Monitor how effectively and transparently school districts use high school allotment funds to increase student performance and decrease dropout rates.

HB 1 High School Allotment²¹

\$275/ADA

- 3) Adopt policies to place more highly qualified math and science teachers in Texas classrooms who are equipped to teach a rigorous curriculum that will prepare students for post-secondary education.
- 4) Develop standards for dual-credit courses to ensure the rigor of coursework.

Committee Comments

Texas has not matched at the high school level its success in improving student performance in early grades.²² Flat performance on college entrance assessments as well as the unacceptably high level of funds spent by the state on developmental

education suggests a general failure to connect the curriculum in our public education system with the skills necessary to succeed at the college level.²³ This also suggests a lack of preparation for the employment world since the skills necessary to succeed in the workplace are equivalent to those in a college setting.²⁴ For Texas to remain competitive in the future, its citizens must have strong skills in reading, writing, and math.²⁵ All these factors indicate the importance of improving our high schools and successfully transitioning students to post secondary endeavors.

House Bill 1, 79th Legislature, Third Called Session, initiated reforms to address this lack of curriculum connectivity and improve the level of preparation of Texas students for postsecondary success. These reforms improve both college preparation and workforce preparation. Among the reforms are: the creation of vertical alignment teams to align the Texas curriculum throughout the P-16 levels; requiring four credits of English Language Arts, Mathematics, Science and Social Studies and a writing component for high school graduation; establishing funding specifically focused to improve graduation rates and high school success; and setting the stage for Texas students to not only graduate prepared to succeed in college but with several college credits already earned.²⁶ The Texas Legislature should continue the reforms initiated by House Bill 1 and strengthen the levels of post secondary readiness in Texas schools.

STATE BOARD OF EDUCATION

Interim Charge Three: Review the operation of the State Board of Education, including its oversight of the Permanent School Fund, and make recommendations, if necessary, for appropriate legislative oversight and review.

The Senate Education Committee held a hearing on October 18, 2006 and received both invited and public testimony on interim charge three. Digital recordings of the hearing along with submitted written materials are available via the Education Committee's website at

<http://www.senate.state.tx.us/75r/senate/commit/c530/handouts06/h101806a.htm>.

Permanent School Fund - General

Recommendation

- 1) In order to provide consistency, the Legislature should explore methods to require the General Land Office to provide a minimum amount of distribution to the permanent school fund.

Committee Comments

Since its founding in 1874, the permanent school fund has grown from \$2 million to over \$22.9 billion.²⁷ The constitution authorizes the use of the permanent school fund to guarantee bonds issued by school districts.²⁸ Distributions from the permanent school fund flow to what is known as the available school fund.²⁹ Per the constitution, the available school fund is applied annually for the support of public free schools and distributed to the counties based on scholastic population (known as a per capita distribution).³⁰ The constitution also requires the State Board of Education (SBOE) to set aside a sufficient amount of available funds to provide free textbooks.³¹

Two separate state entities manage the corpus of the permanent school fund. The SBOE manages the equity portion of the fund and sets the rate that determines distributions to the available school fund.³² The School Land Board manages the real estate investments of the permanent school fund.³³ Available funding from the real estate portion has varied and provided a rate of return lower than the return

rate established for the fund as a whole.³⁴ As these distributions affect the size of the fund, these variances affect the rate of return the SBOE sets for the permanent school fund.³⁵ Consequently, it also affects the amount of funds available for the purchase of textbooks and a per capita distribution. The legislature should establish mechanisms to generate a consistent funding distribution amount.

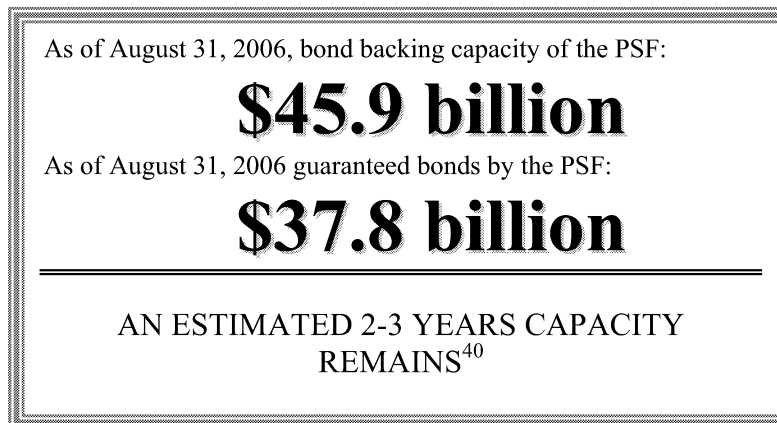
Permanent School Fund - Bond Backing Guarantee

Recommendation

- 1) Raise the rate of the multiplier used in the permanent school fund bond backing guarantee program by seeking a change in IRS rule and changing state statute, but ensure the triple A bond rating afforded by the program is not jeopardized.

Committee Comments

The Texas Constitution authorizes the use of the permanent school fund (PSF) to provide financial backing of bond issuances by school districts.³⁶ With its guarantee, school districts enjoy the highest bond rating (triple A) and save funds through low interest rates with no need for bond insurance.³⁷ No school district has defaulted on bond issuances since the Great Depression the PSF has never had to pay a claim.³⁸ Thus, the bond-backing guarantee provides a financially secure method for the state to assist districts in providing facilities.



State statute and IRS arbitrage restricts the amount of bonds guaranteed by the PSF to two and half times the market value or cost value (whichever is less) of the PSF.³⁹ Currently, the bond backing capacity of the PSF amounts to \$45.9 billion with guaranteed bonds totaling \$37.8 billion.⁴⁰ At this level, projections forecast

the capacity of the PSF will be consumed by new district bond issuances in two to three years.⁴¹ The current multiplier is not set at the maximum level that allows the triple A rating. Thus, the state has some flexibility to modify the multiplier rate and provide additional capacity without a subsequent loss in the rating afforded by the bond-backing guarantee.

Instructional Materials

Recommendation

- 1) Maintain the alignment between curriculum, assessments and instructional materials.
- 2) Expand the definition of instructional materials to include curriculum content in any media format.

Committee Comments

Texas has successfully aligned its state curriculum standards, the Texas Essential Knowledge and Skills (TEKS), with the state assessment, the Texas Assessment of Knowledge and Skills (TAKS), and the textbooks provided to students.⁴² The purchase of math textbooks in 2007 is the final step in the process for a completely aligned system.⁴³ This ensures a provision of the constitutional requirement of a 'general diffusion of knowledge'.⁴⁴ As the legislature contemplates changes to the manner in which instructional materials are provided, that alignment must be maintained.

The current process needs to be updated to ensure students have access to the best instructional materials available. The definition of instructional materials should include innovative delivery methods and should not be confined to print media.

Currently districts may not use state textbook funds to purchase materials that only cover particular portions of the TEKS, such as novels. Some schools purchase class sets of Moby Dick while keeping the comprehensive English book purchased by the state on the shelf and out of use. Schools should have access to the materials they need to teach students, so long as SBOE approval is maintained for instructional materials purchased with state funds.

Additionally, the timeline for the textbook adoption process is so lengthy that some materials are out of date before they are ever placed in students' hands. When new

and innovative materials are developed after the lengthy process has begun, they have to wait until the next cycle rolls around, which makes them ineligible for state funding for years. Innovative materials using media other than the written word should be approved for use with students, so long as the SBOE approves that they satisfy the necessary content standards.

PAY FOR PERFORMANCE

Interim Charge Four: Study the impact of pay-for-performance and differentiated pay scales on teacher recruitment and retention. Examine alternative approaches to improving teacher retention. Study value-added assessment/individual student growth measures as a factor in determining compensation for teacher effectiveness. Examine programs in other states that expand the range of teacher salaries and provide incentives for effective teachers to remain in the classroom. Make recommendations for changing teacher salary structures.

Due to the recent passage of pay for performance programs in House Bill, 79th Legislature, Third Called Session, the Senate Education Committee held no formal hearing regarding this charge.

Recommendation

- 1) Continue to fund the teacher incentive programs passed in House Bill 1, 79th Legislature, Third Called Session.
- 2) Monitor the effects of the educator excellence awards program passed in HB 1 on teacher recruitment and retention.

Committee Comments

The 79th Legislature passed House Bill 1 during the Third Called Session in May of 2006. A key provision in that sweeping school finance reform bill included two separate teacher incentives programs.

The first program, the Awards for Student Achievement, now known as the Texas Educator Excellence Grant, replicates the Governor's Educator Excellence Grant. This incentives program awards \$100 million each year to educators on campuses that: 1) rank in the top 50% of campuses for educating the highest percentage of

Educators at 1,119 campuses will receive \$95.5 million for Educator Excellence Awards in 2007.⁴⁶

economically disadvantaged students, and 2) are either rated recognized or exemplary under the State Accountability System or rank in the top quartile of their peer group for comparable

improvement in reading or math. Eligible campuses must develop their own plan to distribute 75 percent of the funds directly to classroom teachers who improved student achievement and 25 percent of the funds to other campus employees or initiatives to improve teacher quality.⁴⁵

In November, the Texas Education Agency announced that 1,119 campuses representing 381 different school districts received grants of \$40,000 to \$300,000, depending on the size of the student population on their campus. The number of campuses that opted to participate represents 97 percent of those eligible.⁴⁶

The second program, the Educator Excellence Awards Program, is open to any school district with a plan approved by the commissioner as satisfying the parameters established by law. Applications for grants under this program will be due in June 2007. At least 60 percent of the funds awarded under this grant must be used to reward teachers based on an objective measure of student achievement. Remaining funds may be used on teacher stipends, awards for principals or other personnel, or elements of the Teacher Advancement Program (TAP). A majority of teachers on each participating campus must vote to participate in this program.⁴⁷

The state should continue its support of teacher incentives and monitor how the incentives affect teacher retention and recruitment.

STUDENT DISCIPLINE

Interim Charge 5: Review and make recommendations, if necessary, that streamline and clarify Chapter 37 of the Education Code dealing with student discipline. Include a study of state accountability measures for disciplinary alternative education programs to evaluate academic performance and effectiveness in modifying behavior. Include a study of the effects of zero tolerance practices and other changes made by the 79th Legislature. Include a review of after school prevention programs.

The Senate Education Committee held a hearing on September 20, 2006 and received both invited and public testimony on interim charge five. Digital recordings of the hearing along with submitted written materials are available via the Education Committee's website and may be found at <http://www.senate.state.tx.us/75r/senate/commit/c530/handouts06/h092006a.htm>.

Disciplinary Alternative Education Programs

Recommendation

- 1) Hold Disciplinary Alternative Education Programs (DAEPs) accountable under the performance-based monitoring system.
- 2) Relieve districts from reporting burdens that no longer provide relevant information regarding compliance due to the passage of HB 603 during the 79th Regular Legislative Session.

Committee Comments

Prior to 2003, the Texas Education Agency (TEA) was required to evaluate student performance in Disciplinary Alternative Education Programs (DAEPs). House Bill 3459 of the 78th Regular Legislative Session limited the agency's monitoring authority to three programmatic areas: 1) compliance with federal law and regulations; 2) financial accountability; and 3) data integrity. This legislation specifically prohibited monitoring unrelated to these three areas.⁴⁸

As a result of HB 3459, the agency developed the Performance-Based Monitoring Analysis System (PBMAS). While the old system monitored compliance-based inputs on a cyclical basis that only included a fraction of schools each year, the

PBMAS is a comprehensive data-driven results-based system that monitors each school each year. For the statutory reasons described above, DAEPs were not included in this system.

The performance results of students assigned to DAEPs are linked to the general education campus to which the student is enrolled. This aspect of the state accountability system provides an incentive for the general education campus to remain invested in helping the student succeed. Since placements in DAEPs are often short-term, the majority of instructional time occurs back at the general education campus. Linking students to the general education campus has positive aspects; however, it allows DAEPs to escape accountability as a collective unit for student performance. Little to no data exists concerning whether a student's assignment to the DAEP had any bearing on their performance, attendance, discipline, or ability to graduate.

The evaluation requirements that do exist for DAEPs were also enacted in 2003 via House Bill 1314 of the 78th Regular Session. This evaluation is designed to identify data or compliance violations. Due to the passage of House Bill 603 in 2005, compliance and data violations cannot be monitored as they have in the past. HB 603 enacted laws that allow schools to consider 1) self defense, 2) intent or lack of intent, 3) a student's disciplinary history, or 4) a student's disability that impairs their capacity to determine wrongfulness. Reporting compliance under the current system has been rendered meaningless by the school's allowance to make exceptions.

Class C Misdemeanors

Recommendation

- 1) Prohibit Class C Misdemeanors from being issued to students on school grounds unless the conduct is a violation of law.

Committee Comments

Current law states that “a person who violates this subchapter or any rule adopted under this subchapter commits an offense. An offense under this section is a Class C Misdemeanor.”⁴⁹ Some school districts have adopted rules, such as prohibiting students from chewing gum, for which Class C Misdemeanors have been written. While school districts should have the ability to adopt rules necessary to maintain

order, the violation of every rule does not merit an appearance in court for a Class C Misdemeanor.

For actions specifically classified as a Class C misdemeanor of the Texas Education Code, Penal Code, Controlled Substance Act, Family Code, Transportation Code, or City and County Ordinances, police officers should have the ability to issue citations to enforce laws adopted by the state legislature. Examples of Class C misdemeanor offenses specified in the Texas Education Code include trespassing on school property, gang membership, disruption of class, disruption of transportation, possession of tobacco, and possession of alcohol on school property.⁵⁰ These types of offenses should continue to carry the penalty specifically assigned to them in law, while the violation of local rules should carry local consequences.

Parental Notification

Recommendation

- 1) Require that each district promptly notify parents when a violation of the code of conduct committed by their child results in suspension, removal to a DAEP, or expulsion.
- 2) Require that each district specify in their code of conduct a process by which parents can appeal the disciplinary decisions made by an administrator.

Committee Comments

Under current law, districts must address notification of a student's parent or guardian if the student is suspended, removed to a DAEP, or expelled in the Student Code of Conduct.⁵¹ Local districts determine the method of notification and the timeline in which it is provided.

Fred Hink, Co-Director of Texas Zero Tolerance, testified that parents would like to know about, be involved in, and have the opportunity to appeal disciplinary decisions regarding their children.⁵² To partner with schools, parents must have knowledge of what is happening with their children. If an offense results in suspension, removal, or expulsion, parents should be notified right away.

Some school districts provide a means for appeal of disciplinary decisions in their student code of conduct, but many do not. The law should require each school district to specify an appeals process appropriate for that community. While students who pose a potential risk to the safety of others should be removed to the appropriate setting, parents should also be afforded the opportunity to appeal the decision that has been made regarding their child's educational placement.

DAEP Instructional Hours

Recommendation

- 1) Require that DAEPs offer students just as many instructional hours as they would receive in the general education setting.

Committee Comments

DAEPs often offer students fewer hours of instruction per day than the minimum of seven required of all other schools. Some DAEPs only offer two hours of instruction.⁵³ Students assigned to DAEPs often need more hours of instruction than students assigned to general education campuses. A shorter school day for students assigned to the DAEP allows for the potential of more unsupervised hours for these students.

In-School Suspension

Recommendation

- 1) Establish a limit for the number of consecutive days a student can be assigned to in-school suspension without a review consistent with that of assignment to a DAEP.

Committee Comments

Many schools offer in-school suspension programs, which allow for a less severe disciplinary placement than a DAEP. Students placed in in-school suspension are removed from the regular classroom and placed in a separate setting to complete

written assignments under supervision. Typically, a limited amount of instruction occurs for students assigned to in-school suspension. No current restriction exists for placement in in-school suspension.

Placement in a DAEP, a more severe disciplinary placement, may not exceed 60 days without a review,⁵⁴ but placement in in-school suspension is limitless for general education students (there are limits under federal law for special education students).

Mandatory Expulsion Offenses

Recommendation

- 1) Expand the list for mandatory expulsion offenses to include possession of the components of a bomb, stun guns and tasers, and toxic/hazardous substances.

Committee Comments

While possession of an explosive device results in mandatory expulsion from school, the possession of the components of an explosive device does not. A person commits this offense “if the person knowingly possesses components of an explosive weapon with the intent to combine the components into an explosive weapon for use in a criminal endeavor.”⁵⁵ Under that definition, the student in possession of the components of an explosive clearly puts the safety of other students at risk and it should therefore be an expellable offense. Additionally, the possession of a taser or stun gun, a device that, “on contact, will deliver an electrical pulse capable of incapacitating a person,”⁵⁶ is also harmful enough to merit expulsion when on school grounds.

The possession of a chemical dispensing device is an expellable offense since such a device is on the list of prohibited weapons. We know from experience on a national level with substances such as Anthrax, that a device is not always required to dispense substances “capable of causing an adverse psychological or physiological effect on a human being.”⁵⁷ Therefore, a student in possession of a hazardous or toxic substance on school grounds with the intent to cause adverse effects on others should be expelled from school.

SUCCESSFUL SCHOOL CHOICE PROGRAMS

Interim Charge Six: Evaluate the impact of successful school choice programs on students, parents, and teachers.

The Senate Education Committee held a hearing on October 13, 2006 and received both invited and public testimony on interim charge six. Digital recordings of the hearing along with submitted written materials are available via the Education Committee's website and may be found at <http://www.senate.state.tx.us/75r/senate/commit/c530/handouts06/h101806a.htm>.

Charter Schools

Recommendations

- 1) The state should reward consistently high performing charters with facility funding.
- 2) The state should streamline its current statutes regarding charters and revoke the charter authorizations of consistently low performing charters.
- 3) As an additional reward for consistently high performing charters, the state should explore mechanisms for credit assistance in the issuance of bonds for instructional facilities.

Committee Comments

In 1995, Senate Bill 1 allowed the operation of charter schools in Texas.⁵⁸ Free from the normal restrictions placed on traditional public schools; great variances exist in the missions, operations, and performance of charter schools. Some have characterized charter schools as the research and development sector of public schools.⁵⁹ Some charter schools such as the North Hills School of Irving or YES College Preparatory School of Houston have been recognized in *Newsweek Magazine's* list of the top 100 high schools in America.⁶⁰ Charters achieve this success with student populations that range from relatively homogenous to traditionally considered 'hard to serve'. The common difficulty faced by these schools is the lack of funds necessary to build adequate instructional facilities. Absent these funds, the ability of these schools to maintain their current campuses or expand their successful approaches remains uncertain.⁶¹

The successes achieved in some charter schools are over shadowed by the failures of others. Often the failures are characterized by financial mismanagement and misuse of public funds, along with the sad misfortune of stagnant learning by the attendees.⁶²

Charter schools represent an innovative way to meet the educational needs of Texas students and provide alternatives to parents to the traditional public school. The state should extend additional support for the successful charter schools and close down the charters that chronically under-perform.

School Choice

Recommendations

- 1) Explore the impact of providing state transportation funding for local school choice options such as Public Education Grants.
- 2) Restructure and ensure notice so that the initiation of a school choice option to transfer schools occurs in a timely fashion to allow parents a reasonable opportunity to avail themselves of choice options in the same school year.
- 3) Further explore the qualities that make a successful school choice program.

Committee Comments

When discussing school choice it should be remembered that parents with means have school-choice-by-mortgage, whereby parents with the necessary means purchase houses in the service areas of a particularly desirable school.⁶³ For parents without this option, school choice describes options available to send children to schools where they otherwise are not zoned to attend. In Texas, several options currently exist.

At their discretion, public schools offer a menu of choice options such as magnet schools, inter and intra district transfers, along with an ability to contract with either public or private entities for educational services.⁶⁴ Parents and students may avail themselves of these options per the parameters established by the district. Texas law also provides some transfer options at parental discretion such as in the case of bullying or assaults.⁶⁵ Students may also attend available charter schools. Privately funded scholarships are also available in select areas. For example, the Horizon program available to residents in the Edgewood School

District has been in operation since 1998. The program has made a commitment to operate for ten years.⁶⁶

In addition, two school choice options are available in Texas that require a qualifying event - poor performance by a campus. State law provides for a public education grant (PEG) which allows a student to attend another campus or district if the student's campus is rated 'academically unacceptable'.⁶⁷ However, there are impediments to this program. While the state provides a student weight (school district funding) for the public education grant, problems arising from the lack of transportation funds and a school district's ability to reject these students exist.⁶⁸ Federal law provides additional choice options. The No Child Left Behind (NCLB) Act provides choice options when a school fails to meet adequate yearly progress.⁶⁹ Often the timing and publication of the triggering performance makes it impracticable for parents to utilize the choice options.

School choice also incorporates the idea of providing scholarships for students to attend a school of their choice. These programs are similar to the privately funded scholarships in Texas but use a state funding source and are generally limited to a certain type of disadvantaged student. Testimony before the committee indicated four general conclusions from the research on these types of school choice programs: choice programs disproportionately serve disadvantaged students; the programs tend to deliver a variety of educational benefits to most of the participating students; the programs appear to spur affected public schools to improve; and the programs appear to enhance and not undermine the public purposes of education.⁷⁰ Choice programs also create legal issues on their construction and implementation. The committee heard testimony regarding the legal implications as they apply to Texas.⁷¹

LETTERS FROM MEMBERS



The Senate of The State of Texas

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November 28, 2006

The Honorable Florence Shapiro
Chairwoman - Senate Education Committee
Austin, Texas 78701

Dear Chairwoman Shapiro:

It has been a distinct pleasure and privilege serving with you on the Senate Education Committee as we maneuvered through the often choppy waters of Texas' Public Education System. Your leadership has afforded me the opportunity to share my perspective on the myriad issues that we were charged with addressing, and for that I thank you.

The report provides many positive recommendations that will improve public education in Texas and therefore, I'm happy to sign it. However, I find it necessary to submit a letter outlining my concerns with certain portions of the report.

While I do share your desire for an accurate and transparent accountability system, I am concerned with the incorporation of value-added accountability measures when the methodology of the system will not measure student growth. Although I appreciated Dr. Bill Sanders' testimony on value-added accountability systems, I feel that the committee comments of "nor should projections for an individual student be based on the performance of students with similar characteristics" or "a value-added model should not account for factors such as race or socioeconomic status", undermine the fact that we need an accountability system that gives us a clear picture of how students are doing individually, as well as cohorts and as subgroups.

Texas has not historically provided each child with the same access to the resources necessary for a quality education. Our current system gives us a clearer picture. There is not enough information on the success of existing value-added models to warrant the immediate incorporation of the measures. We should therefore proceed with caution.

As you know, I have long been an opponent of increased testing. I applaud you for moving towards the phase-out of the TAKS test at the high school level and a phase-in of end-of-course exams. But, I want to make certain that, by doing this, we are not increasing the number of tests. There are also



Letter to Chairwoman Shapiro

Page 2

logistical concerns regarding the administration of these tests that still need to be worked out.

I believe that our teachers, next to our students, are our most precious resource. I would like to see incentives for teachers only after we have been able to provide them with adequate salaries that will enhance the recruitment and retention of quality teachers. We need to see tangible results from the incentives we have already implemented.

I strongly agree that school districts need to be held accountable for the success, failure and growth of their students in Disciplinary Alternative Education Programs (DAEPs) but feel that this cannot be accomplished if the districts are not required to inform the Texas Education Agency and ultimately, the legislature and general public, about the students placed in DAEPs.

During the Senate Committees on Education & Finance hearings, we heard testimony about a lack of full facilities' funding for our traditional schools. We were also made aware of the consequences of "fast growth" and "property poor" districts not being able to meet their facilities' needs through a depleted Instructional Facilities Allotment and Existing Debt Allotment. Therefore, I think it unwise that we would create an additional facilities program when we can't honor our current obligations to our traditional schools.

While high performing charter schools are to be congratulated on their success, I feel that they should not be rewarded by redistributing already limited facilities revenue. Instead, we should wait until such time as facilities in our current public school system are fully funded and then look to reward consistently high performing charter schools.

In closing, I remain totally committed in my opposition to any private school voucher program. Although the report does not specifically speak to vouchers, it brushes the surface of the issue by allowing for the usage of public state funds for school choice scholarships. I support public school choice whereby a student and his or her parents can choose to transfer from one public school to another. As a public servant, I'm obligated to do my best to provide a free and efficient public school system for all Texas children.

As always, I appreciate your leadership of the Senate Education Committee and your total commitment to the children of Texas. I stand ready to continue to work with you to make Texas a better place to live and learn.

Sincerely,

A handwritten signature in black ink, appearing to read "Royce West". The signature is stylized and written in a cursive-like font.

Royce West
State Senator
District 23



KIP AVERITT
Texas State Senator
District 22

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November 20, 2006

The Honorable Florence Shapiro
Chair, Senate Committee on Education
Capitol Building, Room 3E.2
Austin, Texas 78701

Dear Senator Shapiro:

Thank you for your work on the Senate Committee on Education's Report to the 80th Legislature. I know you and your staff have worked hard to develop recommendations that will improve public education for all Texas children.

I support the vast majority of recommendations made in the Committee's report. However, I do have reservations regarding a few of the recommendations, particularly those related to Interim Charge 6 and school choice. My concerns will not keep me from adding my name to those who support the recommendations of the Committee. I would appreciate the opportunity to work through these concerns with you on any related legislation that may arise.

Thank you again for your hard work on behalf of the school children of Texas. I look forward to working with you during the 80th Legislature.

Sincerely,

A handwritten signature in black ink that reads "Kip Averitt". The signature is written in a cursive style with a large initial "K".

Kip Averitt



The Senate of The State of Texas

Senator Leticia Van de Putte, R. Ph.

District 26

November 21, 2006

The Honorable Florence Shapiro
State Senator
Capitol Building
Room 3E.2
Austin, Texas 78701

Dear Chairwoman Shapiro:

Thank you for your leadership as chair of the Senate Education Committee. I am privileged to serve with you and share in your goal to ensure that every student in Texas receives a high quality education.

Because the report has some positive recommendations towards achieving this goal, I am happy to sign it. However, I feel it is quite important that I point out those portions of the report that I strongly believe could be improved.

While I share your desire to ensure that our accountability system allows for a more accurate picture of a districts ability to educate its students and therefore can appreciate your support for a value-added accountability system, I do not support the recommendation in the committee comments that states "nor should projections for an individual student be based on the performance of students with similar characteristics." While I realize that Dr. Bill Sanders testified that "a value-added model should not account for factors such as race or socioeconomic status", we implemented that system because there was a need for it. Unfortunately Texas had a history of not providing every child with the same quality of education. We chose to implement a system that provided us with a tool to shed some light on this issue. Accounting for race and socioeconomic status helps us make sure that those injustices never surface again. I can support a system that allows for each student to "serve as his or her own control" but feel strongly that we must continue to receive this information.

While I continue to support a phased in approach to using end-of-course exams in lieu of the TAKS and state funding for any student who wishes to take the ACT/SAT, I will not support a system that demands more high stakes testing of our students.

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The Honorable Florence Shapiro

November 21, 2006

Page 2

In regards to school choice programs, I appreciate wholeheartedly the success stories stemming from our successful charter school programs. While I would love for the state to provide these high performing charter schools with facilities funding, I cannot support doing so until we are adequately funding facilities under our current system. Those of us with "fast growth" districts cannot keep up with increased enrollment. Some of us have districts that have difficulty passing bonds to meet building needs - one of my campuses is comprised completely of portables! These students have not seen a bricks and mortar classroom for 3 years now. I also know of a Texas school that has to evacuate all its students every time it rains because it floods. I strongly feel that at this time we cannot afford to re-distribute over a larger number of schools any of the small and diminishing amount of money we appropriate for facilities funding. I do, however, look forward to the time when we adequately fund facilities under our current system and can reward these high performing charters.

Lastly, I remain opposed to any private school voucher program. I support school choice when referring to the ability of students to transfer from one public school to another - but do not support school vouchers when they require the use of public monies to be given to private schools. It is our constitutional duty to provide a free and efficient public school system for all of our children. As a State Senator it is my responsibility to do what is best for the majority of my constituents. As a member of the Senate Education Committee, it is my responsibility to do what is best for the majority of Texas students and families. That majority has sent me a very clear message: Public schools desperately need our continued support and funding in order to improve for the benefit of our children in San Antonio and throughout the State of Texas.

Again, I truly appreciate your leadership as chair of the Senate education committee. I believe our goal to be the same: to ensure that every student in Texas receives a high quality education and look forward to continuing to work with you to achieve this goal.

Sincerely,

A handwritten signature in black ink that reads "Leticia Van de Putte". The signature is written in a cursive, flowing style.

Leticia Van de Putte, R. Ph.

Committees

Vice Chair, Finance

Chair, Subcommittee on Higher
Education

Chair, Subcommittee on Capital
Funding for Higher Education
Legislative Budget Board



Judith Zaffirini

State Senator, District 21
President Pro Tempore, 1997

Committees

Education

Health and Human Services

International Relations and Trade

November 21, 2006

Senator Florence Shapiro, Chair
Senate Education Committee
Texas Legislature
Austin, Texas 78711

Dear Chair Shapiro:

Thank you for your leadership as Chair of the Senate Education Committee. It is my privilege to serve with you, and I appreciate the opportunity to share my perspective regarding the Interim Committee report.

Because the report includes many fine recommendations that could improve the quality of education for many Texans, I am delighted to sign it; however, I submit this letter to record my concerns:

First, I continue to oppose teacher incentive programs until the legislature provides funding for an adequate pay base to recruit and retain quality teachers. The funding committed to these incentive programs should be used instead for an across-the-board pay raise, mentors for beginning teachers, or for additional stipends for hard-to-staff positions, such as certified bilingual education teachers.

Second, the recommendation to incorporate value-added accountability measures based on individual student performance into the Texas accountability system ignores expert testimony that questioned the validity of this methodology, including that our current testing system is not designed to measure student growth. In addition, given the dearth of information regarding the success of the few existing value-added models, we should refine and develop this methodology before incorporating it into our accountability system.

Third, the recommendations to replace exit-level assessments with standardized end-of-course exams and to require an exit-level norm-referenced test will increase

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the number of tests, which I oppose strongly. Moreover, there are several logistical issues regarding the use of end-of-course exams as exit-level tests, including the need to administer these exams before the end of the course to provide students with multiple opportunities to pass the exams.

Fourth, I believe the state should honor its current obligation and provide a permanent revenue source to fund the Instructional Facilities Allotment and the Existing Debt Allotment to meet the needs of property-poor and fast-growth school districts before supporting facilities funding for charter schools. We heard expert testimony that there is tremendous unmet need with respect to facilities funding. It would be unwise, therefore, to create an additional facilities program while failing to fund current programs adequately.

Finally, while the report does not recommend voucher programs explicitly, it alludes to using state funds to provide scholarships for students to attend schools of their choice. We must not abrogate our obligation, as public servants, to invest in public education. Accordingly, I will continue to oppose voucher programs.

Thank you for your dedication to these important issues. Count on my continued leadership to help ensure that every Texan has access to a quality education. I look forward to continuing working with you and other members of the committee during the forthcoming legislative session. May God bless you.

Very truly yours,

A handwritten signature in cursive script that reads "Judith Zaffirini".

Judith Zaffirini, PhD

JZ/wve

ENDNOTES

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- ⁴⁹ Texas Educ. Code §37.102(c) (2006).
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- ⁵⁷ Texas Penal Code §46.01(14) (2006).
- ⁵⁸ Chapter 260, Acts of the 74th Legislature, Regular Session, 1995 (Chapter 12, Education Code).
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- ⁶¹ Barbic at 4:26.
- ⁶² See generally Adam Pitluk *Rethinking Charter Schools*, Time.com October 4, 2006, available at www.time.com/time/nation/printout/0,8816,1542554,00.html.
- ⁶³ Dr. Patrick Wolfe Department of Education Reform, University of Arkansas, *The Effects of School Choice: What the Research Says*, Texas Senate Education Committee Public Hearing. October 13, 2006. Written testimony, available at <http://www.senate.state.tx.us/75r/senate/commit/c530/handouts06/101306.c530.WolfP.pdf> at page 3.
- ⁶⁴ *Id.*; along with M. Kaye DeWalt, Special Counsel, Adams and Reese, LLP, oral testimony, Texas Senate Education Committee Public Hearing. October 13, 2006.
- ⁶⁵ Texas Educ. Code §25.0341(2006).
- ⁶⁶ Robert Aguirre, Chairman, Board of Trustees, Hispanic Council for Reform and Educational Options *A Summary Report on HORIZON Privately Funded Voucher Program in San Antonio, TX*, Texas Senate Education Committee Public Hearing. October 13, 2006 available at <http://www.senate.state.tx.us/75r/senate/commit/c530/handouts06/101306.c530.AguirreR.pdf> at page 1.
- ⁶⁷ Texas Educ. Code § 29.202(a), Education Code. (Students qualify under the public education grant program if 50% or more of the student perform unsatisfactorily on an assessment instrument in two of the previous three years or the campus was deemed low performing in any one of the three previous years).
- ⁶⁸ Texas Conservative Coalition Institute, *School Choice Must be a Choice for Texas Parents*, Texas Senate Education Committee Public Hearing, October 13, 2006 written testimony available at <http://www.senate.state.tx.us/75r/senate/commit/c530/handouts06/101306.c530.TCCRI.pdf> at page 1.
- ⁶⁹ No Child Left Behind Act of 2001, Public Law 107-110.
- ⁷⁰ Wolfe at 3.
- ⁷¹ Suzii Paynter, Director, Christian Life Commission, Baptist General Convention of Texas written testimony along with David Roland, Staff Attorney, Institute for Justice, Texas Senate Education Committee Public Hearing. October 13, 2006 available at <http://www.senate.state.tx.us/75r/senate/commit/c530/handouts06/101306.c530.PaynterS.pdf> and <http://www.senate.state.tx.us/75r/senate/commit/c530/handouts06/101306.c530.RolandD.pdf> at page 1.