



rating” on a scale from A to F. According to the Texas Education Agency (“TEA”), which Commissioner Morath leads, the A–F Accountability System must be “fair, rigorous, and transparent to properly empower parents and educators to celebrate successes while improving student supports.”<sup>1</sup> Issuing A–F ratings to school districts and campuses is intended to provide the community “easy access to information” regarding the performance of educational institutions.<sup>2</sup> The A–F Accountability System is also intended to “put pressure on schools to avoid a low performance rating,” which is believed, in turn, to benefit students by increasing the likelihood that they will perform better on standardized tests, accumulate more credits, graduate from high school on time, and attend and graduate from college.<sup>3</sup>

2. In other words, the accountability rating system exists to set publicly-known standards and to measure Texas schools’ ability to meet those standards. To meet these goals, the Legislature mandates certain parameters for generating the annual A–F ratings. Specifically, the Legislature requires the Commissioner to employ a rating system that makes it possible for all districts and campuses to earn the top available A rating. The Legislature also requires the Commissioner to adopt

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<sup>1</sup> See Texas Education Agency, Updated Preliminary 2023 A–F Refresh Overview and Summary (Nov. 2022), at <https://tea.texas.gov/texas-schools/accountability/2023-a-f-refresh-preliminary-overview-summary.pdf> (last visited Sept. 5, 2023); see also Texas Education Agency, Supplemental A–F Refresh Info (May 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/supplemental-a-f-refresh-slides.pdf> (last visited Aug. 31, 2023).

<sup>2</sup> See Texas Education Agency, Updated Preliminary 2023 A–F Refresh Overview and Summary (Nov. 2022), at <https://tea.texas.gov/texas-schools/accountability/2023-a-f-refresh-preliminary-overview-summary.pdf> (last visited Sept. 5, 2023).

<sup>3</sup> See Texas Education Agency, Supplemental A–F Refresh Info (May 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/supplemental-a-f-refresh-slides.pdf> (last visited Aug. 31, 2023).

indicators and standards on which the A–F ratings are based (a) during a school year, and (b) before the TEA collects district and campus performance data needed for the evaluation process. The Legislature also requires the Commissioner to distribute to school districts, prior to the start of each school year, a document explaining the accountability performance measures, methods, and procedures that will be used to assign performance ratings for that year. The Commissioner must publicly release the final performance ratings for all districts and campuses by August 15 of each calendar year.

3. These requirements under the Education Code suit the A–F Accountability System’s goals of setting statewide standards and informing the public how school districts are meeting them. Intervenor Plaintiffs Pflugerville Independent School District (“Pflugerville ISD”), Cypress-Fairbanks Independent School District (“Cypress-Fairbanks ISD”), Waco Independent School District (“Waco ISD”), Temple Independent School District (“Temple ISD”), Spring Branch Independent School District (“Spring Branch ISD”), Academy Independent School District (“Academy ISD”), Ector County Independent School District (“Ector County ISD”), and La Vega Independent School District (“La Vega ISD”) (the “Intervenor School Districts”)—Texas school districts serving more than 240,000 students—welcome the establishment of high statewide standards and always strive to meet and exceed them, to assure their communities know that their local educational institutions provide a high quality education to all students. Indeed, the Intervenor School Districts routinely monitor the Commissioner’s establishment of indicators and

standards under the A–F Accountability System, analyze and plan what needs to be done to satisfy those benchmarks, and allocate resources to reflect the applicable standards.

4. For the 2022–2023 school year, however—the same time when the TEA implemented major changes to the State of Texas Assessments of Academic Readiness (“STAAR”) tests that generate much of the data considered by the A–F Accountability System—the Commissioner chose to hide the ball and change the playing field for the district and campus accountability ratings. The Commissioner did not adopt final indicators and standards for the accountability ratings to be issued for the 2022–2023 school year before that school year ended. The Commissioner also did not adopt final district and campus indicators for the 2022–2023 school year before gathering the school performance data based on which the Intervenor School Districts’ accountability ratings for that school year are being assigned. And the Commissioner did not provide the Intervenor School Districts a document explaining the accountability performance measures, methods, and procedures the Commissioner is actually applying for the 2022–2023 school year before the start of that school year.

5. Based on a trickle of preliminary and incomplete information from the TEA, the Intervenor School Districts understand that the Commissioner is substantially changing multiple elements of the A–F Accountability System on the fly and immediately applying the new methodology to the 2022–2023 school year performance ratings. Among other things, the Commissioner is substantially

increasing cut scores for the College, Career, and Military Readiness (“CCMR”) indicator and applying that new bar to data for the Intervenor School Districts’ graduates in the Class of 2022, who have been off campus for more than a year. The Commissioner is also changing the way students’ academic growth is measured in a manner that diminishes recognition of students’ progress. Unlike in prior years when the State modified its student testing and/or school accountability systems, the Commissioner did not gather baseline data or establish a benchmark year for schools to transition to the new STAAR test and A–F rating mechanisms. Instead, the Commissioner intends to release details about the final standards applicable for the 2022–2023 school year *and* the ratings themselves, based on those previously undisclosed standards, within a few weeks of each other in September 2023, *long after* the 2022–2023 school year ended and the data upon which ratings will be based was collected.

6. Commissioner Morath’s planned implementation of the A–F Accountability System for the 2022–2023 school year eschews the principles on which it is based. Because the Intervenor School Districts did not have advance notice of the indicators and standards being used in the evaluation process, they could not take action to satisfy the new state standards. If ratings are issued now based on previously unknown benchmarks and methods, how will the public learn whether districts’ and campuses’ efforts are meeting such benchmarks? And how will the A–F Accountability System serve as a method of standard setting when the Intervenor School Districts did not know during the 2022–2023 school year what the state’s

standards were for that school year? Accordingly, Commissioner Morath's assignment of A–F ratings to the Intervenor School Districts and their campuses for the 2022–2023 school year would do nothing to “empower parents and educators to celebrate successes while improving student supports.”<sup>4</sup>

7. Critically, not only does the Commissioner Morath's implementation of the A–F Accountability System for the 2022–2023 school year contradict the tenets of fundamental fairness, it also violates state law. The Commissioner lacks legal authority to adopt indicators and standards for the system after a school year ends and after performance data is collected for districts' and campuses' evaluations. The Commissioner also lacks legal authority to withhold an explanation of the accountability system methodologies actually being applied to calculate districts' and campuses' ratings for a given school year prior to the start of that school year. Yet Commissioner Morath did not set final accountability indicators and standards for the 2022–2023 school year before that academic year ended and did not publish an explanation of the accountability performance measures, methods, and procedures actually applicable to the Intervenor School Districts prior to, or even during, the 2022–2023 school year. The Commissioner has even breached the statutory mandate to release final district and campus ratings by August 15, 2023. At bottom, the TEA's administration of the A–F ratings for the 2022–2023 school year is haphazard and extralegal.

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<sup>4</sup> See Texas Education Agency, Updated Preliminary 2023 A–F Refresh Overview and Summary (Nov. 2022), at <https://tea.texas.gov/texas-schools/accountability/2023-a-f-refresh-preliminary-overview-summary.pdf> (last visited Sept. 5, 2023).

8. The Intervenor School Districts have been harmed by the lack of advance notice of the criteria and methods the TEA is applying as part of the A–F Accountability System for the 2022–2023 school year, because the districts do not know the expectations set by the Commissioner and have been unable to adjust to the TEA’s new accountability measures and allocate resources in a manner required to meet state standards. Upon information and belief, many of the Intervenor School Districts and their campuses are likely to see lower A–F performance ratings for the 2022–2023 school year that do not reflect their true performance, their students’ efforts and growth, or the hard work of their teachers and staff. Particularly as the Intervenor School Districts work to respond to and mitigate the learning loss so many students experienced statewide during the COVID-19 pandemic, it is remarkable that Commissioner Morath intends to dramatically change how the Intervenor School Districts are held publicly accountable to their communities without prior notice of the standards and methodologies at issue.

9. The Intervenor School Districts intervene under Texas Rule of Civil Procedure 60 to prevent irreparable harm caused by the implementation of the A–F Accountability System for the 2022–2023 school year in violation of the requirements of state law.

## **II. SUMMARY OF THE LEGAL ARGUMENT**

10. The Texas Education Code mandates that the Commissioner “adopt indicators and standards” for the annual A–F school district and campus performance rating during each school year and before the Commissioner evaluates a district or

campus. TEX. EDUC. CODE § 39.0541. Furthermore, state law requires the Commissioner to provide school districts prior to the start of a school year a document “that explains the accountability performance measures, methods, and procedures that will be applied for that school year in assigning each school district and campus a performance rating.” TEX. EDUC. CODE § 39.0542. These statutory mandates limit the Commissioner’s discretion in implementing the A–F Accountability System and issuing annual A–F performance ratings to districts and campuses.

11. In direct contravention of these statutes, Commissioner Morath did not adopt final indicators and standards applicable to the Intervenor School Districts’ and their campuses’ performance ratings for the 2022–2023 school year during that school year. The Commissioner also did not adopt those final indicators and standards before gathering the Intervenor School Districts’ performance data for the evaluation process for the 2022–2023 school year. And the Commissioner did not provide the Intervenor School Districts prior to or even during the 2022–2023 school year a document explaining the accountability performance measures, methods, and procedures that the TEA is actually employing to calculate district and campus performance ratings for the 2022–2023 school year.

12. The planned publication of A–F district and campus ratings for the 2022–2023 school year in September 2023 based on indicators and standards Commissioner Morath did not timely adopt and on methods the Commissioner did not timely explain is an *ultra vires* act by the Commissioner that exceeds his

authority under the Texas Education Code. He must be enjoined from engaging in this unlawful conduct.

### **III. PARTIES**

13. Intervenor Plaintiff Pflugerville ISD is an independent school district that serves over 25,000 students across 34 campuses, including 21 elementary schools, 7 middle schools, 4 high schools, and 2 alternative schools. Pflugerville ISD exists under and by virtue of Article VII of the Texas Constitution and the Texas Education Code as passed and amended by the Texas Legislature. Pflugerville ISD maintains its principal office in Travis County, Texas and can be contacted through the undersigned counsel.

14. Intervenor Plaintiff Cypress-Fairbanks ISD is an independent school district that serves more than 118,000 students across 95 campuses, including 58 elementary schools, 20 middle schools, 12 high schools, and 5 special program facilities. Cypress-Fairbanks ISD exists under and by virtue of Article VII of the Texas Constitution and the Texas Education Code as passed and amended by the Texas Legislature. Cypress-Fairbanks ISD maintains its principal office in Harris County, Texas and can be contacted through the undersigned counsel.

15. Intervenor Plaintiff Waco ISD is an independent school district that serves approximately 15,000 students across 27 campuses, including 13 elementary schools, 3 middle schools, 3 high schools, and 8 alternative and other schools. Waco ISD exists under and by virtue of Article VII of the Texas Constitution and the Texas Education Code as passed and amended by the Texas Legislature. Waco ISD

maintains its principal office in McLennan County, Texas and can be contacted through the undersigned counsel.

16. Intervenor Plaintiff Temple ISD is an independent school district that serves approximately 8,700 students across 14 campuses, including 8 elementary schools, 3 middle schools, 2 high schools, and 1 other campus. Temple ISD exists under and by virtue of Article VII of the Texas Constitution and the Texas Education Code as passed and amended by the Texas Legislature. Temple ISD maintains its principal office in Bell County, Texas and can be contacted through the undersigned counsel.

17. Intervenor Plaintiff Spring Branch ISD is an independent school district that serves more than 35,000 students across 43 campuses, including 25 elementary schools, 7 traditional middle schools, 4 traditional high schools, and 7 other schools. Spring Branch ISD exists under and by virtue of Article VII of the Texas Constitution and the Texas Education Code as passed and amended by the Texas Legislature. Spring Branch ISD maintains its principal office in Harris County, Texas and can be contacted through the undersigned counsel.

18. Intervenor Plaintiff Academy ISD is an independent school district that serves over 1,800 students across 5 campuses, including an elementary school, a middle school, a high school, and two other campuses. Academy ISD exists under and by virtue of Article VII of the Texas Constitution and the Texas Education Code as passed and amended by the Texas Legislature. Academy ISD maintains its principal office in Bell County, Texas and can be contacted through the undersigned counsel.

19. Intervenor Plaintiff Ector County ISD is an independent school district that serves 33,500 students across 44 campuses, including 28 elementary schools, 6 middle schools, 5 high schools, and 5 other campuses. Ector County ISD exists under and by virtue of Article VII of the Texas Constitution and the Texas Education Code as passed and amended by the Texas Legislature. Ector County ISD maintains its principal office in Ector County, Texas and can be contacted through the undersigned counsel.

20. Intervenor Plaintiff La Vega ISD is an independent school district that serves over 3,000 students across 5 campuses, including a primary school, an elementary school, an intermediate school, a junior high school, and a high school. La Vega ISD exists under and by virtue of Article VII of the Texas Constitution and the Texas Education Code as passed and amended by the Texas Legislature. Ector County ISD maintains its principal office in McLennan County, Texas and can be contacted through the undersigned counsel.

21. Defendant Mike Morath, in his official capacity as Commissioner of Educator for the State of Texas, may be served with process at 1701 North Congress Avenue, Austin, Texas 78701.

#### **IV. JURISDICTION AND VENUE**

22. This Court has original jurisdiction to adjudicate the Intervenor School Districts' claims or causes of action under the Texas Uniform Declaratory Judgments Act, section 37.001, *et seq.*, of the Texas Civil Practice and Remedies Code ("UDJA").

23. Venue is proper in the district court of Travis County because Defendant Morath is a resident of Travis County.

**V.**  
**STANDARD FOR INTERVENTION**

24. “Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.” TEX. R. CIV. P. 60. An intervenor is required to have a “justiciable interest in a pending suit to intervene in the suit as a matter of right.” *In re Union Carbide Corp.*, 273 S.W.3d 152, 154 (Tex. 2008). “A party has a justiciable interest in a lawsuit, and thus a right to intervene, when his interests will be affected by the litigation.” *Jabri v. Alsayyed*, 145 S.W.3d 660, 672 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (citing *Law Offices of Windle Turley v. Ghiasinejad*, 109 S.W.3d 68, 71 (Tex. App.—Fort Worth 2003, no pet.)). “The interest asserted by the intervenor may be legal or equitable.” *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990).

25. There is no pre-judgment deadline for intervention. *Tex. Mut. Ins. Co. v. Ledbetter*, 251 S.W.3d 31, 36 (Tex. 2008) (citing TEX. R. CIV. P. 60); *Citizens State Bank of Sealy v. Caney Invs.*, 746 S.W.2d 477, 478 (Tex. 1988). A petition in intervention may be untimely only if it is “filed after judgment,” *Texas v. Naylor*, 466 S.W.3d 783, 788 (Tex. 2015) (quoting *First Alief Bank v. White*, 682 S.W.2d 251, 252 (Tex. 1984)), and even post-judgment interventions are permissible in some circumstances. *Ledbetter*, 251 S.W.3d at 36 (citing *In re Lumbermens Mut. Cas. Co.*, 184 S.W.3d 718, 725–26 (Tex. 2006)).

26. The Intervenor School Districts have an interest in challenging Commissioner Morath’s unlawful implementation of the A–F Accountability System for the 2022–2023 school year in contravention of the requirements of Chapter 39, Subchapter C of the Texas Education Code, the interpretation of which is directly at issue in this proceeding. The Intervenor School Districts’ intervention is timely, as there is no final judgment in this case.

27. The Intervenor School Districts seek non-monetary relief through this Petition in Intervention. The Intervenor School Districts seek declaratory, injunctive, and equitable relief.

## VI. BACKGROUND

### **A. The Intervenor School Districts welcome the opportunity to meet and exceed high academic standards.**

28. The Intervenor School Districts’ foremost goal is to deliver a high-quality education and provide all students with the opportunity to meet and exceed Texas standards. The Intervenor School Districts are committed to providing rigorous and challenging curricula that prepare students for college and career success. The Intervenor School Districts employ teams of highly qualified and dedicated teachers and staff who are committed to helping students achieve their full potential. Teachers and staff on the Intervenor School Districts’ campuses are working daily to provide children with the finest education and innovative opportunities for students to learn.

29. Meeting academic standards sets a foundation for students’ future success. It ensures they possess essential knowledge and skills required for higher education, employment, and active citizenship. The Intervenor School Districts do not

shy away from high standards for student and school performance and welcome rigorous benchmarks—even ones that are difficult to reach—because they recognize that establishment of performance standards is necessary to encourage academic excellence and the provision of equitable opportunities for every student.

30. When standards for performance are established, the Intervenor School Districts review, adopt, and respond to those standards. The Intervenor School Districts plan their budgets and allocate staff and academic and support resources to reflect applicable standards and develop strategies to meet and exceed them.

31. As the Intervenor School Districts work diligently to serve their students, provide great academic opportunities, and meet all applicable performance standards, they also recognize that their students recently experienced significant and widespread learning loss during the COVID-19 pandemic. Indeed, the TEA recognizes the tremendous impact of the pandemic on learning and found that the negative impact of COVID-19 erased years of improvement in reading and math statewide.<sup>5</sup> Commissioner Morath has stated that Texas lost at least a decade of academic progress as a result of the pandemic.<sup>6</sup> According to TEA data, in 2021 STAAR results showed a decrease in Texas students' academic performance, with the

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<sup>5</sup> See Texas Education Agency, Impacts of COVID-19 and Accountability Updates for 2022 and Beyond (November 2021), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/2021-tac-accountability-presentation-final.pdf> (last visited Aug. 31, 2023).

<sup>6</sup> Lynnanne Nguyen, Texas students lost decade's worth of learning progress during pandemic, TEA says, FOX4 KDFW (Oct. 13, 2021), at <https://www.fox4news.com/news/texas-students-lost-decades-worth-of-learning-progress-during-pandemic-tea-says> (last visited Aug. 31, 2023).

largest decline in math.<sup>7</sup> And economically disadvantaged students experienced much greater learning loss in both reading and math than non-economically disadvantaged students.<sup>8</sup> Since the height of the COVID-19 pandemic and the return to in-person learning, the Intervenor School Districts have worked to respond to that learning loss.

## **B. History of the A–F Accountability System**

32. Texas provides annual academic accountability ratings to its public schools. In 2017, through House Bill 22 that was adopted in the Regular Session of the 85th Texas Legislature, the State substantially restructured its accountability reporting system. House Bill 22 established three domains of indicators to evaluate the academic performance of districts and campuses: Student Achievement, School Progress, and Closing the Gaps.<sup>9</sup> House Bill 22 required the Commissioner to adopt rules to assign districts a rating of A, B, C, D, or F for overall performance, as well as for performance in each domain, beginning in August 2018, and for campuses to receive A–F ratings beginning in August 2019.<sup>10</sup>

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<sup>7</sup> See Texas Education Agency, Impacts of COVID-19 and Accountability Updates for 2022 and Beyond (November 2021), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/2021-tac-accountability-presentation-final.pdf> (last visited Aug. 31, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> See Act of 2017, 85th Leg., R.S. ch. 807 (H.B. 22); Texas Education Agency, The Implementation of House Bill 22, at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/a-foverviewfnlv03ar.pdf> (last visited Aug. 31, 2023).

<sup>10</sup> *See id.*

33. In addition to specifying the domains for the A–F Accountability System, the Legislature established certain mandatory parameters for the Commissioner’s implementation of the system.

34. The Legislature prohibited the Commissioner from issuing district and campus ratings using a “bell curve.” Rather, under the A–F Accountability System, there must be the mathematical possibility that all districts and campuses receive the highest possible rating of A.<sup>11</sup> The TEA recognizes that this legislative mandate establishes the objective that the A–F Accountability System is “fair for schools.”<sup>12</sup>

35. The Legislature requires the Commissioner to adopt indicators and standards for the A–F Accountability System at any time during a school year before the evaluation of a school district or campus takes place.<sup>13</sup> The evaluation process for purposes of the A–F Accountability System is the TEA’s gathering of district and campus performance data relevant to the standards and indicators established by the Legislature. Accordingly, the Commissioner must have all standards and indicators in place before starting that data collection process and may not issue district or campus accountability ratings based on standards and indicators implemented after the evaluation process under the A–F Accountability System begins.

36. This requirement is logical because the establishment of standards and indicators specifies what is expected in terms of campus and district performance.

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<sup>11</sup> TEX. EDUC. CODE § 39.054(b).

<sup>12</sup> See Texas Education Agency, Supplemental A–F Refresh Info (May 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/supplemental-a-f-refresh-slides.pdf> (last visited Aug. 31, 2023).

<sup>13</sup> TEX. EDUC. CODE § 39.0541.

Having a clear understanding of these expectations ensures that the evaluation process serves the broader purpose of improving educational quality. The establishment of standards and indicators for the A–F Accountability System also informs school districts’ decision-making processes, such as allocating resources, designing professional development, and implementing targeted support for students and staff. When the Intervenor School Districts know and understand the standards and indicators applicable under the A–F Accountability System, they can work on specific areas that align with the standards and indicators, leading to more effective teaching practices. Knowledge of the standards and indicators also informs the development of curriculum frameworks and staffing plans.

37. Moreover, the Legislature requires the Commissioner each school year to “provide each school district a document in a simple, accessible format that explains the accountability performance measures, methods, and procedures that will be applied for that school year in assigning each school district and campus a performance rating.”<sup>14</sup> Accordingly, the Commissioner must not only adopt indicators and standards that will govern the A–F Accountability System’s ratings prior to an evaluation for each school year, but must also distribute to all school districts information regarding the relevant measures, methods, and procedures.

38. When the Intervenor School Districts are aware of the standards and indicators being assessed, they can actively engage in discussions about educational quality and improvement. Knowing the applicable standards and indicators that are

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<sup>14</sup> TEX. EDUC. CODE § 39.0542.

part of the A–F Accountability System before an evaluation ensures that the process is purposeful, objective, and focused on improving educational quality. It promotes fairness, consistency, and continuous improvement within the educational system.

39. The Commissioner recognizes that monitoring district and school performance through the A–F Accountability System is intended to create a long-term benefit for students in Texas, including by encouraging better student performance and increasing the likelihood of graduation from high school and college attendance and graduation.<sup>15</sup> According to the TEA, the A–F Accountability System helps accomplish this goal by putting pressure on schools to avoid a low performance rating.<sup>16</sup> The Intervenor School Districts can only respond to the Commissioner’s standards by working to improve student performance to meet those standards when the Intervenor School Districts know in advance what standards will apply to them.

40. The Legislature requires the Commissioner to make school district and campus performance ratings developed under the A–F Accountability System publicly available no later than August 15 of each calendar year.<sup>17</sup>

41. Advance knowledge of the standards and indicators applicable under the A–F Accountability System also helps facilitate the system’s goal of providing information to stakeholders regarding district and campus performance. The TEA states that “clear performance information helps students,” and that the A–F

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<sup>15</sup> See Texas Education Agency, Supplemental A–F Refresh Info (May 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/supplemental-a-f-refresh-slides.pdf> (last visited Aug. 31, 2023).

<sup>16</sup> See *id.*

<sup>17</sup> TEX. EDUC. CODE § 39.054(a-3).

Accountability System helps “educators, parents, business leaders, and community members [have] easy access to information regarding how schools and districts are doing.”<sup>18</sup> Establishing standards and indicators in advance of the evaluation process allows the Intervenor School Districts to use the results to monitor progress, identify areas for improvement, and make informed decisions. Such data-driven decision making is impossible if the A–F Accountability System’s ratings are based on unknown standards. As a bipartisan group of Texas legislators recognized in May 2023, while the State takes pride in setting high standards for its schools, “our accountability system must also be fair with clear and transparent expectations set for educators and students so that they have a realistic opportunity to strive to meet these goals.”<sup>19</sup>

42. From its implementation in 2017 after the Legislature’s adoption of House Bill 22 through 2022, the A–F Accountability System employed a common structure and similar indicators and standards for each domain that is a component of the system. In 2021, however, the TEA announced that there would be an “accountability system reset” implemented in the 2022–2023 school year.<sup>20</sup> The TEA promised that it “will complete reset development” in May 2022, at which time “[t]he

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<sup>18</sup> See Texas Education Agency, Supplemental A–F Refresh Info (May 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/supplemental-a-f-refresh-slides.pdf> (last visited Aug. 31, 2023).

<sup>19</sup> State Representative Gina Hinojosa, Letter to Commissioner Morath (May 26, 2023), at <https://twitter.com/GinaForAustin/status/1663947551626723328/> (last visited Aug. 31, 2023).

<sup>20</sup> See Texas Education Agency, Impacts of COVID-19 and Accountability Updates for 2022 and Beyond (November 2021), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/2021-tac-accountability-presentation-final.pdf> (last visited Aug. 31, 2023).

accountability system reset framework will be released,” in advance of the implementation of the “reset” for the 2022–2023 school year.<sup>21</sup> The TEA also announced that “[t]argets and scaling updates will be released in fall 2022 after processing 2022 STAAR data.”<sup>22</sup>

43. Under the TEA’s stated plans and timeline, by May 2022 the Intervenor School Districts would have received information about the “reset” of the A–F Accountability System, including information about changes to targets and scales that would be applied, in advance of the reset’s first application during the 2022–2023 school year. Had the TEA followed through on that promise, this lawsuit would never have been filed. Indeed, had the TEA provided the Intervenor School Districts the promised information about the changes to the A–F Accountability System, the Intervenor School Districts would have been able to analyze the system’s standards and indicators, recognize the impact of any changes to the evaluation process, and respond as needed before the 2022–2023 school year—and the collection of performance data for it—began.

44. Contrary to its published plans and, critically, to state law that establishes the A–F Accountability System, in May 2022 the TEA did not release detailed information about the system’s “reset” that accurately reflects the evaluation process that the Commissioner is now employing to assign school districts and campuses performance ratings for the 2022–2023 school year. For example, the TEA

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

did not provide the Intervenor School Districts with the “accountability system reset framework,” information concerning the “targets and scaling” that it is applying to accountability ratings for the 2022–2023 school year, or information concerning new procedures for assigning district-wide performance ratings.

45. In June 2022, prior to the start of the 2022–2023 school year, the TEA did publish a document entitled “Preliminary 2023 Accountability Refresh Overview,” which purports to give information regarding the performance measures, methods, and procedures applicable to the 2022–2023 school year under the A–F Accountability System.<sup>23</sup> In August 2022, the TEA also published the “2022 Accountability Manual” which, although it establishes the final performance measures, methods, and procedures to be used for the then recently-completed 2021–2022 school year, could also provide information regarding the performance measures, methods, and procedures to be used for the then upcoming 2022–2023 school year.<sup>24</sup> Both documents, however, have turned out to be completely irrelevant to the performance measures, methods, and procedures that the TEA is, in fact, utilizing in calculating accountability ratings for the Intervenor School Districts and their campuses for the 2022–2023 school year. The materials published by the TEA in June and August 2022 predate and do not reflect the “accountability system reset.” Since the publication of

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<sup>23</sup> See Texas Education Agency, Preliminary 2023 Accountability Refresh Overview (June 2022), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/preliminary-2023-academic-accountability-system-one-pager.pdf> (last visited Sept. 5, 2023).

<sup>24</sup> See Texas Education Agency, 2022 Accountability Manual (Aug. 5, 2022), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/2022-accountability-manual> (last visited Aug. 31, 2023); see also 47 Tex. Reg. 4669 (Aug. 5, 2022), codified in 19 TEX. ADMIN. CODE § 97.1001.

both documents, the TEA has substantially modified the system’s components, such that neither the Preliminary 2023 Accountability Refresh Overview nor the 2022 Accountability Manual have any significant applicability to the accountability ratings the TEA intends to release in September 2023 for the 2022–2023 school year. Consequently, the Commissioner did not inform the Intervenor School Districts in advance about the accountability measures, methods, and procedures actually being applied to them and their schools for the 2022–2023 school year prior to the start of that school year and, indeed, never released that information in final form during that school year.<sup>25</sup>

46. In addition to revising the A–F Accountability System wholecloth during the 2022–2023 school year, without providing the Intervenor School Districts information about the revisions in advance, during the same school year the TEA also implemented a major redesign of the STAAR assessments (known as STAAR 2.0). According to Commissioner Morath, the redesign of the STAAR test is so significant “that it might even be worth calling it a new name.”<sup>26</sup> The changes to the STAAR assessments include, among other things, implementation of online-only test administration; inclusion of revising, editing, and extended constructed responses as

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<sup>25</sup> The Intervenor School Districts understand that the TEA is in the process of releasing the final 2023 Accountability Manual in September 2023, on the date of the filing of this Petition in Intervention. The publication of the 2023 Accountability Manual long after the end of the 2022–2023 school year and well into the 2023–2024 school year is irrelevant to Commissioner Morath’s failure to comply with the requirements of the Texas Education Code relating to the A–F Accountability System *prior to and during the 2022–2023 school year*.

<sup>26</sup> See Commissioner Morath testimony to the Texas House Public Education Committee (Feb. 28, 2023), at [https://tlchouse.granicus.com/MediaPlayer.php?view\\_id=78&clip\\_id=23878](https://tlchouse.granicus.com/MediaPlayer.php?view_id=78&clip_id=23878) (last visited Aug. 31, 2023).

part of the Grades 3–8 STAAR Reading Language Arts test; introduction of new non-multiple choice question types; increases in scale scores; and cut score changes.

47. Because of the significance of the redesign of the STAAR tests, the TEA decided to not calculate STAAR Progress Measures—information about the amount of improvement or academic growth a student has made from year to year—for the 2022–2023 school year.<sup>27</sup> Put simply, even the TEA recognizes that the “STAAR” test given in 2023 is not the same test as was given in 2022.

48. STAAR test results are a critical component of the A–F Accountability System. Elementary and middle school campus assessments are based entirely on the STAAR test scores of students on those campuses. For high schools, STAAR test scores account for 40% of the A–F Accountability System’s Student Achievement domain and inform the results under the School Progress and Closing the Gaps domains.<sup>28</sup>

49. The TEA has never changed the state’s district and campus accountability system and its student testing program simultaneously.

50. While student test results have long been a part of statewide accountability metrics, in past years when the State of Texas implemented major changes to student testing systems, the TEA collected baseline testing data in

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<sup>27</sup> See Texas Education Agency, STAAR Progress Measures for 2023 (July 2022), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/2023-staar-progress-measures.pdf> (last visited Aug. 31, 2023).

<sup>28</sup> See Texas Education Agency, The Implementation of House Bill 22, at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/a-foverviewfnlv03ar.pdf> (last visited Aug. 31, 2023); Texas Education Agency, Supplemental A–F Refresh Info (May 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/supplemental-a-f-refresh-slides.pdf> (last visited Aug. 31, 2023).

benchmark years and issued “hold harmless” ratings to school districts and campuses before applying the results of new student testing methods as part of district and campus accountability metrics. This was the case in 2003, when the State phased out the Texas Assessment of Academic Skills (“TAAS”) and replaced it with the Texas Assessment of Knowledge and Skills (“TAKS”) testing system. That was also the case in 2012, when the STAAR assessments replaced the TAKS. Baseline data over a benchmark year is not being collected, however, as part of the STAAR redesign effective in the 2022–2023 school year. Further, the Intervenor School Districts and their campuses will not receive “hold harmless” accountability ratings for the 2022–2023 school year, the first academic year when the Intervenor School Districts were required to administer the redesigned STAAR tests. The removal of a transition year for the implementation of the new STAAR test and accountability standards is unprecedented.

51. The simultaneous implementation of multiple significant changes to the State’s testing and accountability ratings systems during the 2022–2023 school year exacerbates the lack of transparency resulting from Commissioner Morath’s failure to provide the Intervenor School Districts information about the criteria upon which the A–F ratings for the 2022–2023 school year are based.

**C. The Intervenor School Districts did not receive notice about the changes to the A–F Accountability System before the start of the 2022–2023 school year.**

52. Before the 2022–2023 school year began, the TEA did not inform the Intervenor School Districts about the standards and indicators upon which

performance ratings for the districts and their campuses are being based under the A–F Accountability System for that school year.

53. Rather, Commissioner Morath has substantially changed the A–F Accountability System *during the 2022–2023 school year* in a manner such that the accountability ratings expected to be issued in Fall 2023 for the 2022–2023 school year will be based on a different set of rules than previous A–F ratings, making it impossible to compare the ratings issued by the TEA in 2022 and 2023 side by side. In May 2023, the Commissioner acknowledged that the forthcoming accountability ratings “cannot be easily compared with last year’s ratings . . . [and] they are no longer an apples-to-apples comparison.”<sup>29</sup>

54. The Commissioner did not release to the Intervenor School Districts information regarding the accountability performance measures, methods, and procedures being applied for the 2022–2023 school year before the 2022–2023 school year began or, indeed, over the course of that school year.

55. The TEA did not adopt or publish the final rules, indicators, and standards being applied to develop the district and campus accountability ratings for the 2022–2023 school year during that school year. Rather, on May 19, 2023, as the Intervenor School Districts were finishing the academic year, the TEA only released the “Preliminary 2023 Accountability Manual” for public comment.<sup>30</sup>

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<sup>29</sup> See Texas Education Agency, Commissioner Video Message to School Boards (May 31, 2023), at <https://www.youtube.com/watch?v=zbmp0VKzQ1Y> (last visited Aug. 31, 2023).

<sup>30</sup> See Texas Education Agency, Preliminary 2023 Accountability Manual (May 19, 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/2023-accountability-manual> (last visited Aug. 31, 2023).

56. The Preliminary 2023 Accountability Manual revealed to the Intervenor School Districts the significance of potential changes to the CCMR indicator within the A–F Accountability System. Specifically, according to the proposed Manual, the Commissioner is raising the cut score necessary for a high school to receive an “A” on the CCMR domain by almost 47%, from a 60 to an 88.<sup>31</sup> That metric will be applied retroactively to the CCMR data for the Class of 2022. The Intervenor School Districts did not receive notice of this standard prior to the start of the 2022–2023 school year. Thus, the Commissioner is applying a brand-new standard to the CCMR performance of students who graduated from the Intervenor School Districts in May 2022, even though the Intervenor School Districts have not had any influence over those former students for more than one year and were not informed of these expectations until after they graduated. In turn, any more recent improvements in the Intervenor School Districts’ CCMR data for the 2022–2023 school year will not be reflected in the A–F scores for that school year.

57. As to the Academic Growth metric under the School Progress domain of the A–F Accountability System, the Commissioner is making significant changes through use of a transition table system and new cut scores applicable to STAAR test results. The Preliminary 2023 Accountability Manual stated that a transition table mechanism, which would award students 0, 0.5, or 1 point for growth in STAAR test

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<sup>31</sup> See Texas Education Agency, Preliminary 2023 Accountability Manual, Chapter 5—Calculating 2023 Ratings (May 19, 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/chapter-5-2023-calculating-ratings.pdf> (last visited Aug. 31, 2023).

performance, would be used to calculate results for the Academic Growth metric.<sup>32</sup> Even the Preliminary 2023 Accountability Manual, however, did not provide the Intervenor School Districts information how to convert raw STAAR test scale scores into the transition table format, to show how students needed to perform on STAAR assessments to earn growth points on the transition table.

58. The Commissioner did not make information about how to convert the raw STAAR test scale scores for purposes of the transition table mechanism until August 2023, months after the 2022–2023 school year ended.<sup>33</sup> In August 2023, the Intervenor School Districts learned for the first time that under the “refreshed” A–F Accountability System being applied for the 2022–2023 school year, students must move up between STAAR performance levels (Did Not Meet, Approaches, Meets, Masters) to show growth for purposes of schools’ accountability ratings. Previously, absolute scale score improvements by students were sufficient to show growth for accountability rating purposes.

59. Commissioner Morath has changed the growth measure from focusing on how much progress a student makes in a school year, to focusing on where a student starts in a school year. For a student who starts close to the low end of a performance level, that student could make significant progress during a year, but

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<sup>32</sup> See Texas Education Agency, Preliminary 2023 Accountability Manual, Chapter 3—School Progress Domain (May 19, 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/chapter-3-2023-school-progress-domain.pdf> (last visited Aug. 31, 2023).

<sup>33</sup> See Texas Education Agency, 2022–2023 STAAR Raw Score Conversion Tables (Aug. 16, 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/2022-2023-staar-raw-score-conversion-tables> (last visited Aug. 31, 2023).

not make it all the way to the next performance level. Previously, the accountability system would have recognized the significant progress the student made. Under the new proposed system, it is as if the student made no progress at all. There is no recognition in the accountability system for that student's significant progress. By comparison, another student who starts close to the high end of a performance level could make much less progress during the school year, but still make it to the next performance level. This student's progress, even though less than the first student's progress, would be recognized by the new proposed accountability system. This failure of the new proposed accountability system to recognize the significant progress of students who start close to the low end of a performance level is unreasonable and arbitrary, and potentially forces school districts and campuses to focus resources and effort on students who are closer to the high end of a performance level.

60. The Intervenor School Districts did not receive notice of this new proposed standard prior to the start of the 2022–2023 school year.

61. The changes to measurement of STAAR performance growth will have an overwhelming impact on elementary and middle schools, whose A–F scores are based exclusively on STAAR results.

62. According to preliminary analysis of the limited information regarding the new growth standards and STAAR test data the Commissioner has released to date, the Intervenor School Districts anticipate that districts and schools that serve the most economically disadvantaged populations will likely see the highest declines

in growth metrics and, thus, declines in overall A–F ratings. This will occur even where students’ overall STAAR performance is improving in absolute terms.

63. As of the date of this Petition, the Commissioner has not published the 2022–2023 Technical Digest and the 2023 STAAR Statewide Frequency Distributions with information needed to analyze the results of the 2022–2023 STAAR assessments that are a building block for the A–F Accountability System.

64. Before the end of the 2022–2023 school year, Commissioner Morath did not provide the Intervenor School Districts a document in a simple, accessible format that reflects and explains the accountability performance measures, methods, and procedures the Commissioner is actually applying for the 2022–2023 school year in assigning each school district and campus a performance rating.

**D. The lack of advance notice of the standards applicable for the 2022–2023 school year under the A–F Accountability System has harmed the Intervenor School Districts.**

65. Because Commissioner Morath did not adopt indicators and standards for the A–F Accountability System before evaluating districts and campuses for the 2022–2023 school year and did not provide school districts an explanation of the accountability performance measures, methods, and procedures that are being applied for that school year prior to the start of that school year, in violation of state law, the Intervenor School Districts had no advance notice of the criteria and methods used to develop A–F ratings for the 2022–2023 school year.

66. The Intervenor School Districts did not know the expectations set for them by the Commissioner before the 2022–2023 school year started. They, therefore, could not review the Commissioner’s new accountability measures, determine how

those measures might impact the Intervenor School Districts' operations, and allocate resources in a manner required to meet state standards. For example, had the Intervenor School Districts known prior to the start of the 2022–2023 school year how the Commissioner would change the method for calculating scores for the growth metric under the Student Progress domain, the Intervenor School Districts could have targeted their resources, such as means of accelerated instruction and staff time and allocations, to help campuses reach the Commissioner's new growth goals. The Intervenor School Districts could have also modified instructional plans and deployed remedial resources differently to help students reach the Commissioner's new performance targets. The Intervenor School Districts, however, could not respond to Commissioner Morath's changes to the A–F Accountability System, because those changes were neither implemented before the evaluation and data collection process for the 2022–2023 school year began nor communicated to the Intervenor School Districts before the start of that school year, in violation of state law.

67. Because of the lack of advance notice of the A–F Accountability System's standards for the 2022–2023 school year, the Intervenor School Districts could not work to meet and exceed those standards. That contradicts Commissioner Morath's stated goal that the A–F Accountability System create a long-term benefit for students by pressuring schools to avoid low performance ratings.<sup>34</sup> Instead of

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<sup>34</sup> See Texas Education Agency, Supplemental A–F Refresh Info (May 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/supplemental-a-f-refresh-slides.pdf> (last visited Aug. 31, 2023).

establishing a standard and giving the Intervenor School Districts an opportunity to satisfy it, the Commissioner moved the goalposts after the game was already over.

68. The Commissioner’s failure to provide accurate information about how the system was really going to work to the Intervenor School Districts in advance of the 2022–2023 school year prevented them from taking action to improve performance in accordance with the new standards. How can a school district or campus work to improve performance to meet standards that it does not know exist?

69. Rather than receiving ratings that reflect their students’ actual performance and their employees’ actual efforts, the Intervenor School Districts are likely to see artificially lower A–F accountability scores for the 2022–2023 school year, even if they actually improved performance in that school year. A school or district could achieve the exact same level of success as in year past or show improvement but receive a much lower letter grade from the Commissioner. The Intervenor School Districts welcome the establishment of high performance standards. They, however, want to recognize the success of their students and families, as well as the hard work of their staff and teachers. Release of accountability ratings for the 2022–2023 school year based on undisclosed standards that the Intervenor School Districts could not have addressed *during that school year* will confuse their communities and will not accurately reflect “how schools and districts are doing,” contrary to the A–F Accountability System intended goal.<sup>35</sup>

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<sup>35</sup> See Texas Education Agency, Supplemental A–F Refresh Info (May 2023), at <https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/supplemental-a-f-refresh-slides.pdf> (last visited Aug. 31, 2023).

70. In addition, receipt of an accountability rating of D or F under the A–F Accountability System can put a campus or district under the threat of campus closure and school board takeover.<sup>36</sup> Accordingly, the Commissioner’s accountability ratings matter each year. Because the Commissioner did not provide the Intervenor School Districts an understanding of the expectations that underlie the A–F ratings for the 2022–2023 school year, it is fundamentally unfair to apply those undisclosed expectations to the Intervenor School Districts and their campuses.

**VII.**  
**RELEVANT LAW & ARGUMENT**

71. The Texas Constitution provides that “it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.” TEX. CONST. art. VII, § 1. The Texas Legislature enacted the Texas Education Code, which generally applies to all educational institutions supported in whole or in part by state tax funds. TEX. EDUC. CODE § 1.001.

72. Texas Education Code § 39.054 requires the Commissioner to adopt rules to evaluate school district and campus performance and assign each district and campus an overall performance rating of A, B, C, D, or F. TEX. EDUC. CODE § 39.054(a). The Commissioner is also required to assign each district and campus a separate domain performance rating of A, B, C, D, or F for the Student Achievement,

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<sup>36</sup> See TEX. EDUC. CODE § 39A.111.

School Progress, and Closing the Gaps domains under the A–F Accountability System. TEX. EDUC. CODE §§ 39.053(c), 39.054(a).

73. The Commissioner is required to release the performance ratings for each school district and campus no later than August 15 of each calendar year. TEX. EDUC. CODE § 39.054(a-3).

74. State law allows the Commissioner discretion to “adopt indicators and standards” as the rubric for the district and campus performance ratings at any time “during a school year.” TEX. EDUC. CODE § 39.0541. The Commissioner must, however, adopt those indicators and standards before the evaluation of a school district or campus, which for the A–F Accountability System consists of data collection during the school year, takes place. *Id.*

75. Each school year, the Commissioner must provide each school district a document in a simple, accessible format that explains the accountability performance measures, methods, and procedures that are actually being applied for that school year in assigning each school district and campus a performance rating. TEX. EDUC. CODE § 39.0542.

76. In implementing the A–F Accountability System for the 2022–2023 school year, the Commissioner has ignored and violated the Education Code’s requirements for the evaluation of the Intervenor School Districts and their campuses and the assignment of A–F performance ratings to them.

77. The evaluation of the Intervenor School Districts and their campuses mandated under section 39.0541 of the Education Code must take place after the Commissioner adopts indicators and standards for the evaluation process.

78. The Commissioner failed to adopt the “indicators and standards” for district and campus evaluations under the A–F Accountability System for the 2022–2023 school year during that school year, in violation of section 39.0541 of the Education Code. The 2023 Accountability Manual contains the “indicators and standards” used to calculate the A–F academic accountability ratings for the 2022–2023 school year. The Commissioner did not publish the final 2023 Accountability Manual during the 2022–2023 school year, leaving the complete indicators and standards governing the A–F Accountability System for the 2022–2023 school year unknown and unfinalized.

79. Meanwhile, the Commissioner has tentatively suggested that many standards and indicators being used as part of the district and campus evaluation process for the 2022–2023 school year have changed as part of a “refresh” that occurred during the 2022–2023 school year and still has not been completed. For example, the Intervenor School Districts understand that the Commissioner is changing the standards governing the CCMR and graduation rate cut scores and the STAAR test scale scores under the Student Achievement domain, modifying the procedure for calculating student growth element of the School Progress domain, adopting new indicators and standards for the Closing the Gaps domain, and changing the method for computing a school district’s performance rating by using a

weighted average of campus ratings. The Commissioner, however, did not finalize any of these changes to the standards and indicators for the A–F Accountability System during the 2022–2023 school year.

80. Once the 2022–2023 school year ended, the Commissioner no longer had statutory authority to adopt “indicators and standards” for that school year. The 2022–2023 school year is now over, and all districts have started the 2023–2024 school year. Therefore, the Commissioner cannot now adopt “indicators and standards” for district and campus evaluations for the 2022–2023 school year.

81. Furthermore, during the 2022–2023 school year, Commissioner Morath did not provide the Intervenor School Districts a document in a simple, accessible format that reflects the drastic changes to the accountability performance measures, methods, and procedures that are apparently being applied for the 2022–2023 school year in assigning district and campus performance ratings. Under the section 39.0542(a)’s plain language, the Commissioner must publish a document explaining the accountability performance measures, methods, and procedures actually applicable for the 2022–2023 school year during that school year. Yet Commissioner Morath did not provide the Intervenor School Districts information regarding the changes to the A–F Accountability System and the performance measures, methods, and procedures actually applicable to accountability rating for the 2022–2023 school year prior to the start of or even during that school year.

82. In violation of section 39.054(a-3) of the Education Code, Commissioner Morath also failed to publish districts’ and campuses’ accountability ratings for the

2022–2023 school year by August 15, 2023. The evaluation process mandated under state law remains incomplete, long after the 2022–2023 school year ended.

83. During the 2023 Regular Session, the 88th Legislature considered a proposal that would have given Commissioner Morath a reprieve from the Education Code’s strict timeline for completing the accountability evaluation process. If adopted, a proposed House Committee Substitute to Senate Bill 8 would have permitted the Commissioner to violate section 39.054(a-3)’s August 15 deadline in years when “standards are recalibrated or in which a new assessment instrument is offered.” Had that bill been adopted, state law would allow Commissioner Morath to complete the district and campus accountability evaluation process after the conclusion of the 2022–2023 school year and release district and campus performance ratings for that school year after August 15, 2023.

84. The 88th Legislature, however, did not modify any requirements of Chapter 39, Subchapter C of the Education Code that govern the A–F Accountability System. Commissioner Morath is violating state law that establishes the evaluation system and appears to be acting as if those requirements have changed when, in fact, they have not.

## **VIII. CAUSES OF ACTION**

85. The Intervenor School Districts incorporate the foregoing paragraphs by reference in support of the following causes of action.

**A. Declaratory judgment that school district and campus accountability ratings for the 2022–2023 school year must be based on indicators and standards adopted during that school year and before the evaluation of a school district or campus.**

86. The Intervenor School Districts seek declaratory relief under the UDJA, set forth in Texas Civil Practice and Remedies Code Chapter 37, to require that Commissioner Morath comply with the Texas Education Code.

87. “[S]uits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity . . . . To fall within this *ultra vires* exception, a suit must not complain of a government officer’s exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.” *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

88. Because the Texas Education Code does not authorize Commissioner Morath to adopt indicators and standards for the A–F Accountability System after the end of a school year, or after the evaluation of a school district or campus, Commissioner Morath is acting without legal authority by assigning performance ratings to the Intervenor School Districts and their campuses for the 2022–2023 school year based on indicators and standards that Commissioner Morath did not adopt and finalize during the 2022–2023 year.

89. Commissioner Morath did not adopt indicators and standards actually applicable to school district and campus A–F performance ratings for the 2022–2023 school year before the 2022–2023 school year ended. In August 2022, Commissioner Morath issued the 2022 Accountability Manual that describes indicators and

standards which do not apply to the performance ratings under the A–F Accountability System for the 2022–2023 school year.

90. Commissioner Morath did not adopt indicators and standards applicable to school district and campus A–F performance ratings for the 2022–2023 school year in final form before collecting district and campus performance data upon which the ratings are based.

91. The Intervenor School Districts seek a declaration that Commissioner Morath’s actions in failing to adopt the indicators and standards applicable to the district and campus performance ratings for the 2022–2023 school year during that school year and before the evaluation of districts and campuses for the 2022–2023 school year are *ultra vires* and exceed the Commissioner’s authority under the Texas Education Code.

92. The Intervenor School Districts further seek a declaratory judgment that because Commissioner Morath’s actions in administering these aspects of the A–F Accountability System for the 2022–2023 school year are without legal authority, the Commissioner may not issue school district and campus accountability ratings for the 2022–2023 school year based on indicators and standards that were not adopted during that school year and before the evaluation of districts and campuses.

**B. Declaratory judgment that school districts must be provided a document explaining the accountability performance measures, methods, and procedures that actually apply in assigning district and campus performance ratings for a school year prior to the start of that school year.**

93. The Intervenor School Districts seek declaratory relief under the UDJA, set forth in Texas Civil Practice and Remedies Code Chapter 37, to require that Commissioner Morath comply with the Texas Education Code.

94. Because the Texas Education Code does not authorize Commissioner Morath to withhold explanatory information regarding the accountability performance measures, methods, and procedures that will be applied for a school year in assigning each school district and campus a performance rating, Commissioner Morath acted without legal authority by failing to provide the Intervenor School Districts, prior to the start of the 2022–2023 school year, a document in a simple, accessible format that fully and accurately describes the accountability performance measures, methods, and procedures that the Commissioner is applying in assigning each school district and campus a performance rating for the 2022–2023 school year.

95. During the 2022–2023 school year, Commissioner Morath did not provide the Intervenor School Districts a document that explains the accountability performance measures, methods, and procedures the Commissioner is applying to assign districts and campuses performance ratings for that school year. Based on information and belief, the information the Commissioner provided the Intervenor School Districts in previous preliminary and non-final publications regarding the A–F Accountability System does not reflect the drastic changes the Commissioner made

to standards and procedures being used to calculate the Intervenor School Districts' and their campuses' A–F ratings for the 2022–2023 school year.

96. The Intervenor School Districts seek a declaration that Commissioner Morath's failure to issue, prior to the start of the 2022–2023 school year, a document in a simple, accessible format that explains the accountability performance measures, methods, and procedures that are being actually applied for that school year in assigning each school district and campus a performance rating is *ultra vires*.

97. The Intervenor School Districts further seek a declaratory judgment that because Commissioner Morath did not timely provide them a written explanation of the accountability performance measures, methods, and procedures that are actually being applied for the 2022–2023 school year in assigning each school district and campus a performance rating, Commissioner Morath may not issue school district and campus accountability ratings for the 2022–2023 school year.

## **IX.**

### **APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

98. In addition to the above-requested relief, the Intervenor School Districts seek a temporary injunction, and following a final adjudication on the merits, a permanent injunction to stop the Governor's *ultra vires* and unlawful administration of the A–F Accountability System for the 2022–2023 school year. TEX. CIV. PRAC. & REM. CODE §§ 37.011, 65.011.

99. The purpose of a temporary injunction “is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). The status quo is the “last, actual, peaceable,

non-contested status that preceded the controversy.” *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (citation omitted). The applicant for a temporary injunction must plead and prove the following elements: “(1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Butnaru*, 84 S.W.3d at 204. To establish a probable right to the relief, the applicant must present evidence to sustain the pleaded cause of action. *EMS USA, Inc. v. Shary*, 309 S.W.3d 653, 657 (Tex. App.—Houston [14th Dist.] 2010, no pet.); *Vaughn v. Intrepid Directional Drilling Specialists, Ltd.*, 288 S.W.3d 931, 936 (Tex. App.—Eastland 2009, no pet.). “An injury is irreparable if the injured party cannot be adequately compensated in damages, or if the damages cannot be measured by any certain pecuniary standard.” *Butnaru*, 84 S.W.3d at 204; *City of Dall. v. Brown*, 373 S.W.3d 204, 208 (Tex. App.—Dallas 2012, pet. denied). “[T]he legal issues before the trial court at a temporary injunction hearing are whether the applicant showed a probability of success and irreparable injury.” *Tom James of Dal., Inc. v. Cobb*, 109 S.W.3d 877, 882 (Tex. App.—Dallas 2003, no pet.); *see also Brown*, 373 S.W.3d at 208.

100. Here, the “last, actual, peaceable non-contested status” before the instant controversy was prior to the start of the 2022–2023 school year, when Commissioner Morath published the 2022 Accountability Manual which he then chose not to apply to the accountability evaluation process for the 2022–2023 school year.

101. Commissioner Morath has now decided that he no longer wishes to comply with the requirements of the Texas Education Code that govern the development and issuance of A–F performance ratings for school districts and campuses. Commissioner Morath did not adopt final indicators and standards applicable to school district and campus evaluations under the A–F Accountability System for the 2022–2023 school year before that school year ended, or prior to collecting performance data for the evaluation process. He also did not provide the Intervenor School Districts a written explanation of the accountability performance measures, methods, and procedures that the Commissioner is actually applying for that school year in assigning each school district and campus a performance rating before the start of the 2022–2023 school year. Thus, to return the matter to the status quo, the Court should enjoin the release of A–F accountability ratings for school districts and campuses that are being calculated in contravention to governing law.

102. The Intervenor School Districts are entitled to injunctive relief because they have demonstrated a probable right to relief on their cause of action for declaratory judgment. As set forth above, and incorporated herein by reference, the Intervenor School Districts can demonstrate that the Texas Education Code does not provide Commissioner Morath with authority to adopt indicators and standards for the performance ratings under the A–F Accountability System after the end of a school year, or after the evaluation of a school district or campus. The Intervenor School Districts can also demonstrate that the Texas Education Code does not authorize Commissioner Morath to withhold explanatory information prior to the

start of a school year concerning the accountability performance measures, methods, and procedures that the Commissioner will apply for that school year in assigning each school district and campus a performance rating. The Commissioner's attempts to ignore these mandates are statutorily impermissible and constitute *ultra vires* acts, which evidence the Intervenor School Districts' probable right to relief.

103. If Commissioner Morath is permitted to ignore and violate the statutory requirements for evaluating the performance of school districts and campuses, the Intervenor School Districts will suffer irreparable injury. Commissioner Morath intends to spring A–F performance ratings for the 2022–2023 school year on the Intervenor School Districts, their students, teachers, staff, and communities *after* substantially changing the indicators and standards that control the ratings, without an explanation in advance how the evaluation of districts' and campuses' performance was to be conducted. The ratings will not reflect the Intervenor School Districts' real performance during the 2022–2023 school year, will mislead community members, may adversely impact enrollment and the perception of the Intervenor School Districts' actual academic expertise, and may expose districts and campuses to the threat of closure or state takeover. These injuries are irreparable, and there is no adequate remedy at law.

104. Based on the foregoing, the Intervenor School Districts request a hearing on their application for temporary injunctive relief. Following such hearing, the Intervenor School Districts request that the Court enter an order enjoining Commissioner Morath from assigning districts and campuses performance ratings for

the 2022–2023 school year that are based on (a) indicators and standards the Commissioner did not adopt during that school year and before collecting performance data for district and campus evaluations, and (b) accountability performance measures, methods, and procedures that were not explained to school districts prior to the start of the 2022–2023 school year.

105. The Intervenor School Districts also seek permanent injunctive relief against Commissioner Morath following a final adjudication on the merits of this lawsuit.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Intervenor Pflugerville Independent School District, Cypress-Fairbanks Independent School District, Waco Independent School District, Temple Independent School District, Spring Branch Independent School District, Academy Independent School District, Ector County Independent School District, and La Vega Independent School District pray that this Court:

- A. Grant their application for temporary injunction enjoining the assignment of district and campus performance ratings under the A–F Accountability System for the 2022–2023 school year;
- B. Render a declaratory judgment that Commissioner Morath lacks authority to adopt indicators and standards for the A–F Accountability System after the end of a school year or after the evaluation of a school district or campus;
- C. Render a declaratory judgment that Commissioner Morath lacks authority to withhold, prior to the start of a school year, explanatory information regarding the accountability performance measures, methods, and procedures that will be applied for that school year in assigning each school district and campus a performance rating; and,

D. Award the Intervenor School Districts such other and further relief, both general and special, at law or in equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

/s/ J. David Thompson

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***Intervenor School District Plaintiffs***

**CERTIFICATE OF SERVICE**

The undersigned certifies that on September 8, 2023, a true and correct copy of this document is being served upon all parties in accordance with the Texas Rules of Civil Procedure:

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