PREPARED REMARKS OF R. SCOTT PLACEK
Lead Counsel for Plaintiffs in
Lewis, et al. v. Morath

In the 2015 legislative session, our elected representatives heard the voices of Texas parents complaining of abusive and overly burdensome assessment requirements for Texas's youngest and most vulnerable students. The legislature responded by passing, on an emergency basis, H.B. 743, which required that the assessments administered to students in Grades 3-8 be shortened significantly.

Specifically, the Texas Education Agency (TEA) was required to design the assessments such that (a) 85% of students in grades 3-5 could finish the assessments in less than two hours, and (b) 85% of students in grades 6-8 could finish the assessments in less than three hours. Governor Abbot signed the bill into law on June 19, 2015, and the law was immediately effective.

Yet, more than nine months later, when our young learners sat for the spring STAAR assessments, they were faced with the precise design as previously existed. A design that, for instance, showed that more than 85% of 5th graders required in excess of two hours to finish the assessment. And the TEA was aware of this. Although they claimed that they needed to take a year to study the time requirements of these assessments, in fact, the TEA knew the assessments were designed to be completed in four hours. They also did not disclose that they had already studied the completion time of these assessments in both 2012 and 2015, and knew they would not be in compliance with H.B. 743.

Although the TEA ignored the legislature, the governor and the law itself, no such flexibility was extended to the students or school districts who were subject to these illegally designed assessments. Despite all of the grade 3-8 results being based on non-compliant assessments, the TEA is demanding that students be subject to all the penalties of the education code if their scores are not deemed satisfactory. The penalties may include summer school, the loss of electives and retention at grade level. School districts are also being subject to accountability reporting based on these illegal assessments. This may result in school closure or TEA takeover of non-performing schools. Charter schools may have their charters revoked. Apparently, in the TEA's view, everyone must be accountable except for the TEA itself.

Today, four parents of Texas students subject to penalties resulting from these illegal assessments have filed suit asking to declare that these assessments do not comply with section 39.023 of the Education Code. They are seeking both declaratory and injunctive relief to prevent the TEA from penalizing, or requiring that districts penalize, students based on these illegally obtained results. They are seeking to prevent the results from being used for district or campus level accountability as well.

The TEA is not above the law. It exists only by the pleasure of the legislature, and does not have the statutory authority to ignore those laws it finds inconvenient. Nor may it punish students or school districts based on its own disregard of the law. We are confident that the evidence in this case will be clear. It is a shame that it has taken litigation to bring this matter to the attention of the TEA. We still hold out hope that the Commissioner will do the right thing and take action to assure that neither students not districts are further harmed by the inaction of the TEA. This should not require a judge's decision, and there is still time to avoid that. We call on Commissioner Morath to take steps to address this matter responsibly and in a manner consistent with the dictates of the legislature and the clear will of Texas parents.