



Blake G. Powell  
Sara Hardner Leon  
Andrew D. Clark  
Jennifer M. Engdale  
Tiffany B. Duncan  
William C. Bednar *of Counsel*

## TELECOPIER TRANSMISSION SHEET

DATE: August 15, 2013

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PLEASE DELIVER THIS TRANSMISSION IMMEDIATELY TO:

**Via facsimile (866) 418-4160**

Mr. Tim Cowart  
Attorney at Law  
P.O. Box 888  
Llano, Texas 78643

**Via facsimile (713) 960-6025**

Mr. Richard A. Morris  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer, Suite 1200  
Houston, Texas 77057

FROM: Sara H. Leon

**NOTICE OF CONFIDENTIALITY\*\*\*\***

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# POWELL & LEON LLP

Blake G. Powell  
Sara Hardner Leon  
Andrew D. Clark  
Jennifer M. Engdale  
Tiffany B. Duncan  
William C. Bednar of Counsel

August 15, 2013

Via Lone Star Delivery Overnight Mail

Ms. Joyce Gillow  
Llano County District Clerk  
832 Ford Street  
Llano, Texas 78643

**Re: *William R. Hussey, et. al. v. Llano Independent School District*; Cause No. D-1-GN-07-2538; In the 33<sup>rd</sup> Judicial District Court of Llano County, Texas**

Dear Ms. Gillow:

Please find enclosed the original and one copy of the Request of Texas Association of Community Schools to File Brief of Amicus Curiae and the Amicus Curiae Brief of the Texas Association of Community Schools in Support of Defendant Llano Independent School District in the above-referenced matter. Please file these among the papers in this matter and return a file marked copy in the enclosed self-addressed overnight envelope.

Please also forward this order to the court for review at the court's convenience.

Thank you for your help, please call if you have any questions.

Sincerely,



J. Brynne West  
Certified Paralegal



## 2. Identity of Amicus Curiae.

The amicus brief will be tendered on behalf of TACS, which promotes educational excellence in small and medium sized rural school districts in Texas. For over a half century, TACS has represented school districts in this size category. About 986 districts are eligible for membership, of which about 615 are TACS members. TACS is located at 1011 San Jacinto Blvd., Suite. 204, Austin, Texas 78701-2431.


## 3. Legal Fees.

Any fee paid or to be paid for preparing the amicus brief will be paid from TACS funds.

WHEREFORE the Texas Association of Community Schools respectfully asks that this request be granted and that leave be granted to file a brief as amicus curiae.

Respectfully submitted,


POWELL & LEON, LLP  
The Canyon at Wild Basin  
115 Wild Basin Road, Ste. 106  
Austin, Texas 78746  
Telephone: (512) 494-1177  
Telecopier: (512) 494-1188  
E-mail: [sleon@powell-leon.com](mailto:sleon@powell-leon.com)

By:   
Sara Hardner Leon  
State Bar No. 08980250

ATTORNEYS FOR AMICUS CURIAE  
TEXAS ASSOCIATION OF  
COMMUNITY SCHOOLS

**CERTIFICATE OF CONFERENCE**

I certify that on August 13, 2013, I conferred by telephone with Mr. Tim Cowart, attorney for plaintiffs in the above entitled action, who stated that he was opposed to the filing of the above and foregoing request for leave to file a brief amicus curiae on behalf of the Texas Association of Community Schools. On that same date, Attorney for the Llano ISD, Rick Morris, agreed to such filing

  
Sara Hardener Leon**CERTIFICATE OF SERVICE****CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument was served upon the following counsel:

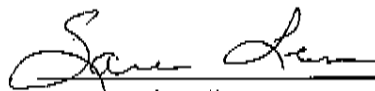
*Via facsimile Transmission 866-418-4160*

Mr. Tim Cowart  
Attorney at Law  
P.O. Box 888  
Llano, Texas 78643

*Via facsimile Transmission 713-960-6025*

Richard A. Morris  
Rogers, Morris & Grover, LLP.  
5718 Westheimer, Suite 1200  
Houston, Texas 77057

on this the 15<sup>th</sup> day of August, 2013.

  
Sara Hardner Leon

Cause No. D-1-GN-07-2538

<b>WILLIAM R. HUSSEY,</b>	§	<b>IN THE DISTRICT COURT</b>
<b>LETICIA McCASLAND,</b>	§	
<b>TREVOR DUPUY,</b>	§	
<b>THOMAS E. ALLEN,</b>	§	
<b>JULIE J. SCHMIDT, and</b>	§	
<b>DAVID R. HUSSEY,</b>	§	
<b>Plaintiffs</b>	§	<b>33RD JUDICIAL DISTRICT</b>
	§	
<b>vs.</b>	§	
	§	
<b>LLANO INDEPENDENT SCHOOL</b>	§	
<b>DISTRICT,</b>	§	
<b>Defendant</b>	§	<b>LLANO COUNTY, TEXAS</b>

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**AMICUS CURIAE BRIEF OF THE TEXAS ASSOCIATION OF  
COMMUNITY SCHOOLS IN SUPPORT OF  
DEFENDANT LLANO INDEPENDENT SCHOOL DISTRICT**

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Amicus, the Texas Association of Community Schools ("TACS"), is a non-profit membership organization comprised of more than 600 small and mid-sized Texas school districts. Many TACS member districts rely upon the curriculum support system offered by CSCOPE to provide a high quality, cost-effective education for students across the state. TACS files this brief in support of the Llano Independent School District and its lawful decision to select curriculum materials for the Llano public schools.

For several years, without incident, objection, or dispute in their local communities, many hundreds of school districts across Texas have used and depended on CSCOPE for cost-effective curriculum support. To forbid a local school board to use CSCOPE lesson plans as the school year

is beginning will have an immediate and widespread detrimental impact on the education of tens of thousands of Texas public school children.

The Plaintiffs' application for temporary injunction is based upon a fundamental misreading of the law, and must fail on statutory grounds. Further, a court-ordered injunction against the use of this important curriculum tool would have a disproportionately negative impact on small and mid-sized school districts that lack the curriculum expertise in all content areas necessary to meet the standards adopted by the State Board of Education, the Texas Essential Knowledge and Skills ("TEKS"). The Texas Association of Community Schools files this brief to support the valid and lawful decision of Llano ISD to continue to use CSCOPE curriculum support materials as part of its instructional programs.

## I.

### Background

TACS files this brief in support of not only Llano ISD, but in support of the hundreds of small and mid-sized schools that rely on CSCOPE as an instructional tool. TACS members ask the Court to consider the impact of this case on local school districts and students across the state.

CSCOPE is an online management system that helps teachers to organize and design instruction aligned to the Texas Essential Knowledge and Skills. It is not a textbook. CSCOPE "bundles" state standards to create units of instruction to help teachers save time in planning. CSCOPE formerly offered sample lesson plans for teachers, but no longer does so.<sup>1</sup>

TACS member Lytle Independent School District, located to the west of San Antonio, serves approximately 1,700 students. Lytle ISD has been using the CSCOPE curriculum

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<sup>1</sup> Upon the insistence of Senator Dan Patrick, all of the CSCOPE-developed lesson plans are in the public domain and available online. The lesson plans will no longer be supported after August 31, 2013.

management system since its inception. Lytle ISD uses CSCOPE materials to assist teachers in keeping up with the many changes in state standards. Lytle ISD does not employ curriculum specialists to research and update all of the subject areas that may be affected by ongoing changes to state standards. Teachers are not required to use CSCOPE lesson plans, and use their own judgment in preparing and delivering classroom instruction. Lytle ISD will be dramatically hampered in starting this school year if it were forced to develop an entire curriculum in every subject and grade level if this Court were to forbid a similarly situated public school district from continuing to use the CSCOPE system. Lytle ISD is particularly concerned about the 40 new teachers who will be reporting for their first day of work next week. If those teachers have nothing but textbooks and their peers to guide them through rigorous state standards, the students will not receive the quality of instruction they deserve.

Palacios Independent School District serves approximately 1,500 students in Matagorda County, Texas. Palacios ISD plans to continue to use the CSCOPE scope and sequence and instructional focus documents for the 2013-14 school year. Use of the CSCOPE lesson plans was never required of teachers in Palacios ISD, but the majority of teachers did elect to use most of the lessons. The Court's ruling of last week has left staff scrambling to find lessons that address the TEKS in the event that an injunction is entered against Llano ISD. Palacios ISD educators have researched other providers that might be able to provide comprehensive and rigorous lessons similar to CSCOPE, but have been unable to find any. In the wake of the political controversy over whether school districts may continue to use CSCOPE, Palacios ISD teachers have been working overtime this summer, some foregoing family vacations, in order to develop lessons similar to those they were using through CSCOPE. Palacios ISD teachers are passionate about teaching and have elected to work on their own to develop alternative plans if CSCOPE is banned. Palacios ISD

administrators fear many may suffer burnout throughout the year without the curriculum support they have had in the past.

Abernathy Independent School District serves approximately 800 rural students in the Texas Panhandle. Many Abernathy ISD teachers choose to use some of CSCOPE lesson plans because they are aligned with the TEKS. Rarely do teachers use the plans verbatim; rather, each teacher uses professional judgment in when, whether and how to use the plans. Abernathy ISD teachers have found that many state-approved textbooks are designed for use in multiple states and often fail to address the TEKS with sufficient depth and rigor to meet state standards.<sup>2</sup> Abernathy ISD teachers rely on CSCOPE lesson plans knowing that CSCOPE lessons are specifically tailored to state standards and have been used and vetted by teachers across the state, with improvements being made continuously in response to feedback from thousands of teachers statewide.

Teachers in Hudson Independent School District (2,500 students) have customized CSCOPE lessons locally to meet student needs. On August 31, everything those teachers have developed will be removed from the CSCOPE website and will no longer be available to them. Hudson ISD teachers have multiple preparations and the engaging, higher-level lessons that had previously been locally created using the CSCOPE lessons as a tool will not be available beginning September 1. Beginning teachers lack the experience or the skills necessary to create the quality of lessons that will be lost with CSCOPE, and the hard work of Hudson ISD teachers in customizing CSCOPE lesson plans will be lost. Hudson ISD is planning to hire substitute teachers to work with students this fall in order to allow classroom teachers time during the school year to develop lessons

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<sup>2</sup> In order to be included on the list of approved textbooks adopted by the Texas State Board of Education, a textbook must meet *only 50%* of the Texas essential knowledge and skills (TEKS) for the subject and grade level. 19 TEX. ADMIN CODE §66.66(c)(1)

to replace the lessons they are losing. As a result, teachers will be out of classrooms and the school district will assume additional costs for substitutes and curriculum experts to help.

Roosevelt Independent School District is located just outside of Lubbock, Texas and serves 1,100 students. Roosevelt ISD will welcome 23 new teachers this year, many of whom will be teaching school for the first time. Roosevelt ISD has no curriculum resources to offer these new teachers other than CSCOPE. In many instances, Roosevelt ISD teachers will not have bound textbooks in their classrooms this year. The school district does not employ specialists in all subject areas who can develop curriculum. While teachers are not required to use CSCOPE lessons, they are permitted to do so. CSCOPE is a critical resource for new teachers in particular. Roosevelt ISD has found that the CSCOPE curriculum meets the rigor that new state standards require. Roosevelt ISD teachers will be accountable for student performance under the new accountability standards that go into effect this school year. Without CSCOPE curriculum support, Roosevelt ISD teachers will be denied the support they need to effectively meet those standards.

Granger Independent School District, serving just over 400 students in rural Williamson County, asks the Court to consider the cost to local school districts to replace the CSCOPE curriculum. Exhibit "A" to this brief is a graphic showing the relationship between the TEKS, the instruction offered on a local level, and the state assessment requirements. While school districts are permitted, on a local level, to make individual choices about curriculum, the TEKS are mandated by the State of Texas, and students are tested by the state and held to state accountability standards on mastery of those TEKS. Granger ISD must have the local flexibility to select a curriculum that the school district finds is most closely aligned to the TEKS so that its students will be successful in demonstrating mastery on the state-mandated assessments. Exhibit "B" to this brief is a graphic

depicting the nearly \$1 million price tag that Granger ISD taxpayers will pay if the school district is forced to replace the CSCOPE lesson supports it currently uses.

These local examples are by no means exhaustive or unique; they are representative of the impact a ban on use of CSCOPE would have in hundreds of small and mid-sized school districts across the state of Texas.

## II.

### Argument

- a. **Public school districts have lawful authority to acquire instructional materials as a matter of local control. Senate Bill 1406 mandates certain action by the State Board of Education, and has no bearing on the local decisions made by public schools.**

On its face, SB 1406 speaks only to the State Board of Education, not local school districts. It requires any curriculum management program developed by a regional education service center to be reviewed by the State Board of Education under Section 31.022 of the Texas Education Code in the same manner as textbooks. At the time of its passage, it was clearly understood that SB 1406 would not remove CSCOPE from public school districts that had already paid for, and were currently using, the CSCOPE curriculum support tool.<sup>3</sup> Indeed, TACS registered support for SB 1406, fully understanding that while the CSCOPE lessons would be subject to the same review and payment process as textbooks, local school districts would retain the same power they have always had to purchase and use any instructional resources they choose. TACS would not have supported SB 1406 had the bill diminished the authority of local school boards to make curriculum decisions regarding materials outside of the SBOE-approved list.

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<sup>3</sup> See, House Research Organization bill analysis, Exhibit B to Plaintiffs' Original Petition for Declaratory Judgment, Application for Temporary Restraining Order and Application for Temporary Injunction, at 2.

Section 31.022 requires the State Board of Education (“SBOE”) to adopt a review and adoption cycle for instructional materials for each subject in the required curriculum. In connection with the review and adoption cycle, the SBOE is required to adopt rules to “provide for a full and complete investigation” of those instructional materials.<sup>4</sup> At the conclusion of the review process, the SBOE must adopt a list of instructional materials. That list includes instructional materials that cover “at least half of the elements of the essential knowledge and skills” of the subject and grade level covered and are deemed to be free from factual errors.<sup>5</sup>

The rules regarding SBOE’s textbook review and adoption process are found at 19 Texas Administrative Code Chapter 66, Subchapter B, and outline the process for publishers to submit proposed materials for adoption, provide for a public hearing process<sup>6</sup> and provide for payment to be made by the Texas Education Agency to approved vendors on behalf of school districts making purchases from the approved list.<sup>7</sup>

There is nothing in Texas Education Code Chapter 31 or regulations developed under that subchapter that prohibit a public school district from acquiring instructional materials or other curriculum management resources that do not appear on the approved list. On the contrary, state law is clear that local school districts may acquire instructional materials that are not on the approved list. Section 31.106 of the Education Code expressly reserves the authority of a public school district to use local funds to “purchase *any* instructional materials” in addition to materials selected from the approved list. While the list of SBOE-approved instructional resources are paid

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<sup>4</sup> TEX. EDUC. CODE §31.022

<sup>5</sup> TEX. EDUC. CODE §31.023

<sup>6</sup> 19 TEX. ADMIN CODE § 66.60

<sup>7</sup> 19 TEX. ADMIN CODE §66.78

for directly by the Texas Education Agency from the instructional materials allotment on a per-pupil basis,<sup>8</sup> public schools also have the local authority to purchase other instructional materials, regardless of whether the instructional materials are on the SBOE approved list, and seek reimbursement for those purchases from the state instructional materials allotment funds.<sup>9</sup>

Plaintiffs argue that unless the SBOE has pre-approved the CSCOPE materials, a public school district may not use them. Plaintiffs' interpretation of SB 1406 is founded on a fundamental misunderstanding about the authority of the SBOE to mandate the adoption of any instructional material in a local public school district. The SBOE textbook review process is focused primarily on assisting school district identify instructional materials that meet at least half of the TEKS for the subject and grade level, and to provide for a means for the state to directly fund the purchase of approved materials. In no sense does the SBOE review process mandated by SB 1406 forbid the use of any instructional material, including CSCOPE, by a local public school district that chooses to acquire it free of charge from the public domain or to pay for it with local funds. On the contrary, Section 31.006 of the Texas Education Code expressly authorizes such purchases: "In addition to any instructional material selected under this chapter, a school district...may use local funds to purchase *any instructional materials*" (emphasis added). If a local school district wishes to seek reimbursement from the state education agency for the purchase of non-approved instructional materials, it may do so in compliance with Section 31.0211(c)(1)(B) of the Education Code.

Once the SBOE has complied with the mandate of SB 1406, CSCOPE materials will be available for requisition by local school districts under their annual allotments from the state

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<sup>8</sup> TEX. EDUC. CODE §31.0211(c)(1)(A)

<sup>9</sup> TEX. EDUC. CODE §31.0211(c)(1)(B)

instructional materials fund and paid for directly by TEA. Until that process is completed, CSCOPE materials will either be paid for by local funds, or the school district will need to apply to TEA for reimbursement of the purchase cost from its instructional material allotment.

While the political rhetoric regarding the mandate of SB 1406 has been creative and far-reaching, the language of the statute is unambiguous. On its face, SB 1406 goes no further than to require the SBOE to initiate review of the CSCOPE materials. Nothing in SB 1406 restricts the authority of local school districts to make local educational decisions. Chapter 31 of the Education Code makes abundantly clear that local school districts maintain the authority to make local decisions about instructional materials to be used in the public schools. Plaintiffs' application for preliminary injunction should be denied.

**b. Plaintiffs' claims are nonjusticiable and their application for injunctive relief should be denied.**

Plaintiffs to this suit include parents, taxpayers with no children in the Llano public schools<sup>10</sup> and candidates for school board who were unsuccessful in convincing the voters of Llano County that the school district should elect them to rid the schools of the CSCOPE curriculum. The Texas Commissioner of Education has publicly acknowledged that CSCOPE materials are in the public domain, and no education law of this state prohibits schools from using them. Frustrated by the democratic process and bypassing administrative review of their claims by the Texas Commissioner

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<sup>10</sup> Plaintiffs appearing as parents fail to allege an interest in this conflict distinct from that of the general public, such that the school districts actions have caused the plaintiffs some particular injury as would be necessary to have standing to bring this suit. *See Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984). Plaintiffs appearing only in their capacities as taxpayers have not alleged any illegal expenditure of public funds that would give them standing to sue the school district. *See Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 556 (Tex. 2000); *Williams v. Lara*, 52 S.W.3d 171, 178-79 (Tex. 2001).

of Education,<sup>11</sup> Plaintiffs bring their political disputes before this Court under the thinly-veiled pretext of a dispute arising under state law.

The Texas Constitution provides for independent branches of government, limiting the branches from exercising those powers committed to a coordinate branch.<sup>12</sup> If a question is, by its nature, committed to the political branches of state government, then a court is not free to substitute its judgment for that body's decision.<sup>13</sup> The selection of curriculum supports by local school authorities is clearly committed to the wisdom and judgment of local school officials.<sup>14</sup> Disputes of this nature must be resolved through the political process, and are nonjusticiable.

In order to support a petition for injunctive relief, the Plaintiffs' pleadings must allege a cause of action, probable right to recovery, probable injury in the interim, and willingness to post bond.<sup>15</sup> In this case, Plaintiffs' petition alleges no cause of action, nor any facts which support a probable right to relief. Rather, Plaintiffs quite simply ask this Court nothing more than to substitute its judgment for that of the local school officials.

Plaintiffs have not articulated a judicially cognizable claim or cause of action against the school district. The continued use of the CSCOPE curriculum support (which has apparently been in use for years in the Llano public schools without any apparent damage to the children or

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<sup>11</sup> See, Tex. Educ. Code §7.057 (giving the Texas Commissioner of Education authority to resolve disputes arising under the school laws of the state)

<sup>12</sup> Tex. Const. Art. II, § 1

<sup>13</sup> *Wolf v. Young*, 277 S.W.2d 744 (Tex.Civ.App.—Corpus Christi 1955, writ ref'd n.r.e.)

<sup>14</sup> TEX. EDUC. CODE §11.151(b)

<sup>15</sup> See TEX. R. CIV. P. 682, 684

taxpayers of that community) does not constitute irreparable harm for purposes of injunctive relief.

Plaintiffs' claims are insufficient as a matter of law to support a claim for injunctive relief.

Respectfully submitted,

POWELL & LEON, LLP  
The Canyon at Wild Basin  
115 Wild Basin Road, Ste. 106  
Austin, Texas 78746  
Telephone: (512) 494-1177  
Telecopier: (512) 494-1188  
E-mail: [sleon@powell-leon.com](mailto:sleon@powell-leon.com)

By: 

Sara Hardner Leon  
State Bar No. 08980250

ATTORNEYS FOR AMICUS CURIAE TEXAS  
ASSOCIATION OF COMMUNITY SCHOOLS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument was served upon the following counsel:

*Via facsimile Transmission 866-418-4160*

Mr. Tim Cowart  
Attorney at Law  
P.O. Box 888  
Llano, Texas 78643

*Via facsimile Transmission 713-960-6025*

Richard A. Morris  
Rogets, Morris & Grover, LLP.  
5718 Westheimer, Suite 1200  
Houston, Texas 77057

on this the 15<sup>th</sup> day of August, 2013.



Sara Hardner Leon

# Understanding Texas State Assessments:

## Curriculum Alignment

**State Standards**  
(State Curriculum)

**Texas Essential Knowledge and Skills (TEKS)**

Knowledge and Skill Statement  
**Student Expectation**

**Taught Curriculum**

Independent (School) Districts / Teachers

**LEA Decision**

**Tested Curriculum**

State of Texas Assessments of Academic Readiness (STAAR)

State and Federal Accountability

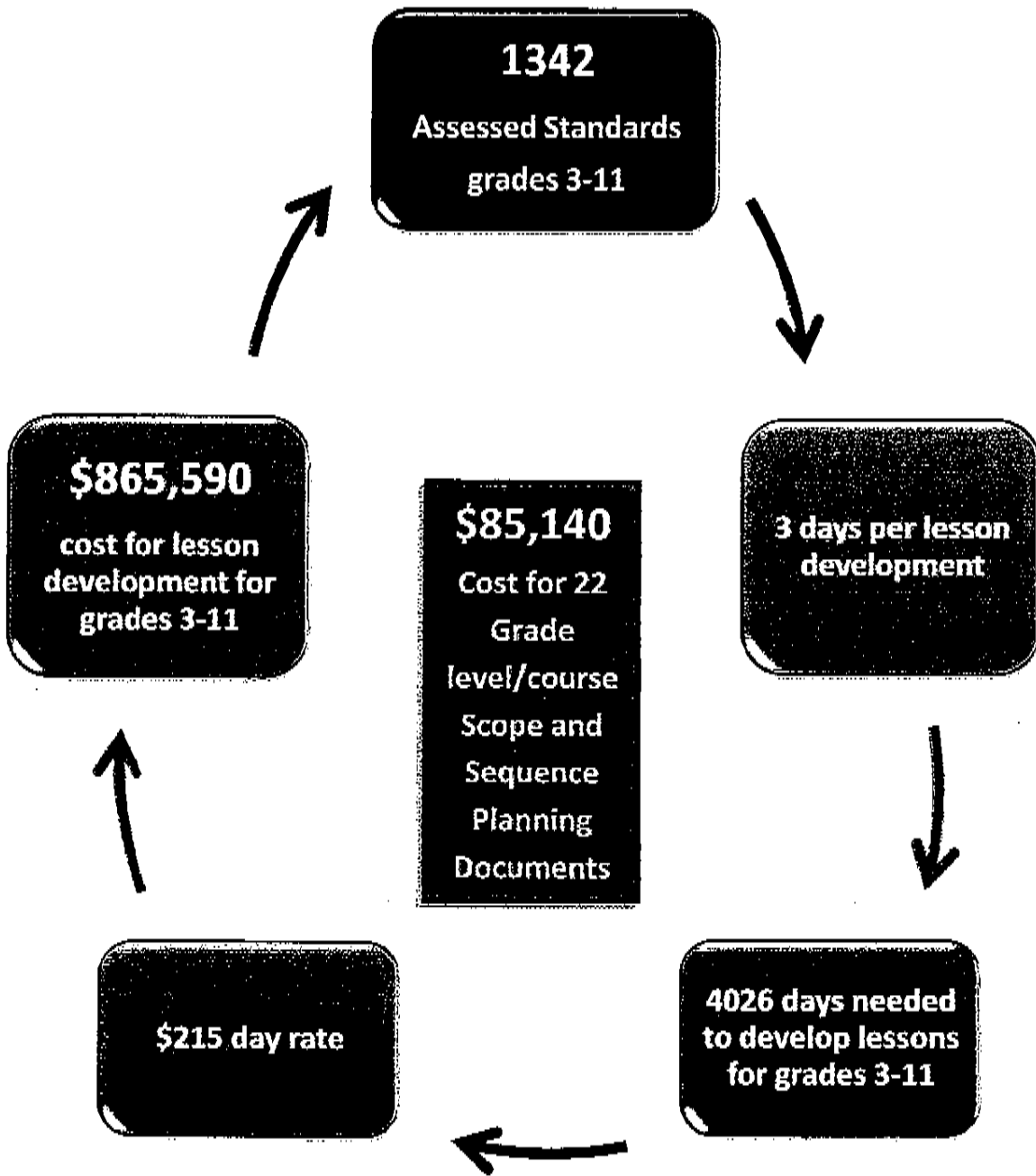
**Standards**

**Alignment**

**Test**

Rand Willis -- Superintendent Granger Independent School District

# Understanding Texas State Assessments: Cost of Standard Base Lesson Development



**Lesson Development and Alignment Cost \$950,730**