

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</p>	<p><input type="checkbox"/> <b>COURT USE ONLY</b> <input type="checkbox"/></p>
<p><b>PLAINTIFFS:</b> Anthony Lobato, <i>et al.</i></p> <p><b>and</b></p> <p><b>PLAINTIFFS-INTERVENORS:</b> Armandina Ortega, <i>et al.</i></p> <p><b>v.</b></p> <p><b>DEFENDANTS:</b> The State of Colorado, <i>et al.</i></p>	
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<p align="center"><b>DEFENDANTS' <u>FIRST</u> SUPPLEMENTAL RESPONSES TO PLAINTIFF- INTERVENORS' <u>FIRST</u> SET OF DISCOVERY REQUESTS</b></p>	

Defendants, by and through their counsel, hereby submit their First Supplemental Responses to Plaintiff-Intervenors' First Set of Discovery Requests to Defendants pursuant to C.R.C.P. 33, 34, and 36. Defendants' Supplemental Responses are based on Defendants' current knowledge and a good faith investigation into the discovery requests. That investigation is ongoing and Defendants reserve the right to supplement or amend these Responses if and when additional information becomes known.

The following General Objections apply to Plaintiff-Intervenors' discovery requests and are incorporated by reference into the answers contained herein. The assertion of the same, similar, or additional objections, or the provision of partial answers in response to Plaintiff-Intervenors' discovery requests, does not waive Defendants' General Objections as set forth below.

### **GENERAL OBJECTIONS**

1. Defendants object to the discovery requests to the extent the requests seek information that is protected from disclosure under the attorney-client privilege, the work product doctrine, the joint-defense doctrine, the common-interest doctrine, the governmental deliberative process privilege, or any other applicable privilege, law, rule or immunity.
2. Defendants object to the discovery requests to the extent the requests seek confidential information, the disclosure of which could negatively impact Defendants' obligation to maintain the confidentiality of such information.
3. Defendants object to the discovery requests to the extent such requests seek information that is not relevant to the subject matter of this litigation and not reasonably expected to yield information relevant to the allegations of the complaint, the proposed relief, or the defenses.
4. Defendants object to the discovery requests to the extent the requests are overbroad, unduly burdensome, or require unreasonable efforts or expense on behalf of Defendants.
5. Defendants object to the discovery requests to the extent the requests are vague or ambiguous.
6. Defendants object to the discovery requests to the extent the requests require answers greater than, beyond the requirements of, or at variance with the Colorado Rules of Civil Procedure.
7. Defendants object to the discovery requests to the extent the requests seek the premature disclosure of expert testimony. Defendants will submit expert reports and make their experts available for deposition pursuant to the Modified Case Management Order entered by the Court.
8. Defendants object to the discovery requests to the extent the requests seek to impose an obligation on Defendants to provide information for or on behalf of any person or entity other than the Defendants named in the complaint, or seek information that is not in Defendants' possession, custody, or control. Defendants expressly object to the discovery requests to the

extent the requests seek to obtain discovery responses from Defendants on behalf of state or governmental entities not named in the complaint.

9. Defendants object to the discovery requests to the extent the discovery sought is cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

10. Defendants object to the definition of “ELL” to the extent it is inconsistent with C.R.S. § 22-24-103.

11. Defendants object to the definition of “at-risk” to the extent it is inconsistent with C.R.S. § 22-54-103(1.5).

12. Defendants object to the definition of “low income” to the extent it is inconsistent with Colorado law.

11. Defendants object to the definition of the term “related to” to the extent it is defined to mean “reflecting, concerning, referring or responding to, describing, representing, estimating, discussing, evidencing, memorializing, or constituting” as overly broad and unduly burdensome.

12. Defendants object to the definition of the phrases “describe with particularity,” “state the basis,” “stating the basis,” “state all facts,” and “stating all facts” to the extent it attempts to impose a duty on Defendants to “identify each and every document,” or to “identify each and every communication” or to “state separately the acts or omissions,” or to “state separately any other fact” as more fully set forth in the definitions of these requests on the ground that the definitions are overly broad and unduly burdensome.

13. Defendants object to the discovery requests to the extent the requests do not adequately define terms used in them.

14. Defendants object to the discovery requests to the extent the burden of deriving or ascertaining responses to the requests is substantially the same for Plaintiff-Intervenors as for Defendants.

15. Defendants object to the definition of “Plaintiff-Intervenor Districts” as there are no school districts that have intervened as parties in this case.

16. Defendants object to the discovery requests to the extent Plaintiff-Intervenors have requested paper and digital copies of the documents on the ground that it is overly broad, unduly burdensome to request paper copies in addition to digital copies, given that Plaintiff-Intervenors, may print paper copies if they wish to have paper copies of the documents.

17. Defendants object to the discovery requests to the extent the requests exceed the number provided for in the Colorado Rules of Civil Procedure or the Modified Case Management Order setting the discovery schedule in this case.

Subject to and without waving these General Objections, or any other objections or claim of privilege, Defendants hereby answer and object to Plaintiff-Intervenors' discovery requests as follows:

**I. FIRST SET OF INTERROGATORIES**

- 12. Identify and describe with particularity all state educational mandates required of public school districts in the State of Colorado and the corresponding source of funding, if any, appropriated or otherwise made available to school districts to meet the mandate.

**RESPONSE:** Defendants object to this Interrogatory on the ground that it is overly broad and unduly burdensome to the extent it seeks information regarding all 178 Colorado school districts, particularly given that the intervening parties reside in only 4 Colorado School Districts. Defendants object to this Interrogatory on the ground that the phrase "state educational mandates" is vague, ambiguous and undefined and the use of the term "required" in this context is argumentative. Defendants object to this Interrogatory on the ground it is directed to the wrong party as school districts, not Defendants, would have information responsive to this Interrogatory. Subject to and without waving these objections and the General Objections: in accordance with CRCP 33(d) and 26(a)(1) please refer to EDAC Data produced contemporaneously herewith at bates numbers: CDE092136 – CDE092432.

**II. REQUESTS FOR PRODUCTION**

- 3. Produce all documents evidencing your efforts, if any, made in the past five years in helping to close the educational performance achievement gap ("achievement gap") based on race and poverty, including documents evidencing how you measure the achievement gap based on race and poverty.

**RESPONSE:** Defendants object to this Request on the ground that to the extent it seeks information regarding "your efforts, if any, made in the past five years" it is overly broad and unduly burdensome as it seeks documents related to potentially thousands of acts taken by various employees of Defendants over the last five years. Defendants further object to this Request to the extent it seeks disaggregated information regarding Defendants' efforts to close the achievement gap as many efforts to close the achievement gap are aggregated across risk factors. Defendants object to this Request on the ground the phrase, "helping to close the educational performance achievement gap," is vague and ambiguous. Subject to and without waving these objections and the General Objections, Defendants are producing contemporaneously herewith:

<b>BATES #</b>	<b>Description</b>	<b>Document Date</b>
CDE086221- CDE086230	Agreement between NGA and State of Colorado	6/2/2009

CDE086231- CDE086237	Memo re: Colorado Diagnostic & Work Plan	5/12/2009
CDE086238- CDE086255	Colorado's Proposal to NGA Center for Best Practices re: The Turnaround Challenge: State Strategies to Improve Chronically Low-Performing Schools Initiative	June.2009
CDE086256- CDE086287	Learning about Science, Technology, Engineering and Mathematics - Assessing the State of STEM Education in Colorado	Jan. 2008

19. Produce all documents evidencing your efforts in determining the elements of a quality full-day kindergarten program for at-risk, low income and ELL students and how those programs help those students achieve in school.

**RESPONSE:** Defendants object to this Request on the ground that it is vague and ambiguous to the extent the word “quality” is undefined. Defendants object to this Request on the ground the phrase, “help those students achieve in school” is vague and ambiguous. Defendants object to this Request to the extent that the use and definition of the terms “at-risk,” “low income,” or “ELL” are inconsistent with state law. Defendants object to this Request on the ground it is directed to the wrong party to the extent it seeks information regarding how full-day kindergarten “help[s] those students achieve in school” as that it is information that school districts would have the opportunity to observe. Subject to and without waiving these objections and the General Objections, Defendants are producing contemporaneously herewith:

BATES #	Description	Document Date
CDE092224	Statement re CPKP	

21. Produce all documents evidencing how the “state budget stabilization factor” affects Total Program Funding under the PSFA for each school district in Colorado, including the specific reduction in funding for each district.

**RESPONSE:** Defendants object to this Request on the ground that it seeks information outside of the relevant time period as defined by Plaintiff-Intervenors. Pursuant to the Instructions accompanying these discovery requests, “these discovery requests pertain to the last three school years for which responsive answers are available, *i.e.*, FY2006-07, FY2007-08 and FY2009-10. The “state budget stabilization factor” was not established until FY2010-11 through the enactment of HB10-1369 and thus this request falls outside of the relevant discovery period as defined by Plaintiff-Intervenors. Subject to and

without waiving these objections and the General Objections, Defendants are producing contemporaneously herewith:

<b>BATES #</b>	<b>Description</b>	<b>Document Date</b>
CDE092225- CDE092226	K-12 Local Share Stabilization FAQs	
CDE092227- CDE092228	Governor Ritter's Mill Levy Stabilization Plan	

26. Produce all documents related to any studies, reports, audits, evaluations, reviews, investigations, analyses, questionnaires and surveys of facility needs in the Plaintiff-Intervenor districts.

**RESPONSE:** Defendants object to this Request on the ground that the phrase “studies, reports, audits, evaluations, reviews, investigations, analyses, questionnaires and surveys” is vague and undefined. Defendants object to this Request on the ground that the phrase, “facility needs,” is vague and ambiguous. Defendants object to the phrase, “Plaintiff-Intervenor Districts” as defined, on the ground that there are no Plaintiff Intervenor district parties in this case.

Subject to and without waiving this objection and the General Objections, Defendants are producing contemporaneously herewith:

<b>BATES #</b>	<b>Description</b>	<b>Document Date</b>
CDE092265- CDE092276	FY2006-07 Charter School Projected Pupil Counts	2006-2007
CDE092277- CDE092291	FY2008-09 Charter School Projected Pupil Counts	2008-2009
CDE092292- CDE092306	FY2009-10 Charter School Projected Pupil Counts	2009-2010
CDE092307- CDE092315	FY2010-11 Charter School Projected Pupil Counts	2010-2011

Certain documents responsive to Request for Production No. 26 may have been inadvertently omitted from the documents produced on November 10, 2010. The potentially omitted documents, which are reports of projected charter school pupil counts and associated facility needs, correspond to cover pages produced in November. Specifically, the report for projected FY06-07 (documents CDE092265-CDE092276), corresponds to document CDE083708, its cover. The report for projected FY08-09 (documents CDE092277-CDE092291) corresponds to document CDE084057, its cover.

The report for projected FY09-10 (documents CDE092292-CDE092306), corresponds to document CDE084058, its cover. Additionally, we are producing the report for projected FY10-11 (documents CDE092307-CDE092315), which does not have a cover.

29. Produce all documents evidencing the state, local and federal funding made available to the Plaintiff-Intervenor districts.

**RESPONSE:** Defendants object to the phrase “Plaintiff-Intervenor Districts” as there are no school districts that have intervened as parties in this case. Defendants object to this Request on the ground that it is directed to the wrong parties as information regarding funding received by the referenced districts is in the possession of those districts. Defendants also object to this Request on the ground that “made available” is vague and ambiguous.

Subject to and not waiving these objections and the General Objections, Defendants are producing contemporaneously herewith:

<b>BATES #</b>	<b>Description</b>	<b>Document Date</b>
CDE092737- CDE094169	Audits from Greeley, Mapleton, Rocky Ford and Sheridan School Districts	various

DATED: February 10, 2011

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*Original signature of Carey Taylor Markel  
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**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the within **DEFENDANTS' FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFF-INTERVENORS' FIRST SET OF DISCOVERY REQUESTS TO DEFENDANTS** upon all parties herein via electronic mail, Lexis/Nexis File & Serve, and/or U.S. Mail this 10<sup>th</sup> day of February, 2011:

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*Original Signature on file at the  
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