

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</p>	<p><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p>
<p>PLAINTIFFS: <b>Anthony Lobato</b>, as an individual and as parent and natural guardian of <b>Taylor Lobato</b> and <b>Alexa Lobato</b>; <i>et al.</i></p> <p>vs.</p> <p>DEFENDANTS: <b>The State of Colorado</b>; <i>et al.</i></p>	
<p><b>Attorneys for Defendants:</b> JOHN W. SUTHERS, Attorney General</p> <p>NANCY J. WAHL, 31890* First Assistant Attorney General E-mail: nancy.wahl@state.co.us</p> <p>ANTONY B. DYL, 15968* Senior Assistant Attorney General E-mail: tony.dyl@state.co.us</p> <p>CAREY TAYLOR MARKEL, 32987* Senior Assistant Attorney General E-mail: carey.markel@state.co.us</p> <p>NICHOLAS P. HEINKE, 38738* Assistant Attorney General E-mail: nicholas.heinke@state.co.us</p> <p>JONATHAN P. FERRO, 35754* Assistant Attorney General E-mail: jon.ferro@state.co.us</p> <p>ERICA WESTON, 35581* Assistant Attorney General E-mail: erica.weston@state.co.us</p> <p>Office of the Colorado Attorney General 1525 Sherman Street, 7th Floor Denver, CO 80203 Telephone: (303) 866-2383 Fax: (303) 866-5671 * Counsel of Record</p>	<p>Case Number: 2005 CV 4794</p> <p>Div: 9</p>
<p align="center"><b>DEFENDANTS' ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT</b></p>	

Defendants, by and through their counsel, hereby answer Plaintiffs' Third Amended Complaint ("Complaint"):

## **INTRODUCTION**

1. Defendants admit that Plaintiffs bring this action for declaratory and injunctive relief pursuant to Rules 57 and 65 of the Colorado Rules of Civil Procedure to determine alleged rights under the Colorado Constitution, article IX, section 2 (the Education Clause) and section 15 (the Local Control Clause), but deny that Plaintiffs are entitled to such relief. Defendants further deny the allegations of Paragraph 1 of the Complaint to the extent that they are an inaccurate and incomplete recitation of the Constitution, which is the best evidence of its contents.

2. Paragraph 2 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 2 misstates and mischaracterizes the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations. Defendants further deny that Plaintiffs have standing to assert claims on behalf of all children of the State of Colorado.

3. Defendants deny the allegations of the first sentence of Paragraph 3 of the Complaint. The second and third sentences of Paragraph 3 purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the second and third sentences misstate and mischaracterize Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

4. Paragraph 4 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 4 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

5. Paragraph 5 of the Complaint purports to summarize a report by the Colorado School Finance Project, which is not a part of the Colorado Department of Education or an agent of the State. Defendants deny the allegations of Paragraph 5 to the extent that they are an incomplete or inaccurate summary of the report, which is the best evidence of its contents. Defendants further deny that the report defines the constitutional standards for education and deny the remaining allegations of Paragraph 5.

6. Paragraph 6 of the Complaint purports to summarize a report by the Colorado School Finance Project, which is not a part of the Colorado Department of

Education or an agent of the State. Defendants deny the allegations of Paragraph 6 to the extent that they are an incomplete or inaccurate summary of the report, which is the best evidence of its contents. Defendants further deny that the report defines the constitutional standards for education and deny the remaining allegations of Paragraph 6.

7. Paragraph 7 of the Complaint mischaracterizes the referenced October 2009 presentation, which is the best evidence of its contents, and therefore Defendants deny the allegations of Paragraph 7.

8. Defendants deny the allegations of the first and third sentences of Paragraph 8 of the Complaint. Defendants admit the allegations of the second sentence of Paragraph 8 as it relates to 2003-2007. The fourth sentence of Paragraph 8 purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of the fourth sentence to the extent that they contain an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 8.

9. Defendants admit that the unreferenced statistics alleged in Paragraph 9 of the Complaint may be supported by certain reports, but deny that the numbers are definitive. Defendants deny the remaining allegations of Paragraph 9 and deny that the statistics are a valid measure of Colorado's expenditures for elementary and secondary school education.

10. Defendants deny the allegations of the first two sentences of Paragraph 10 of the Complaint. As to the third sentence of Paragraph 10, defendants admit that the state of Colorado's 2010-11 budget has been signed into law and state that the state budget speaks for itself. However, defendants lack knowledge sufficient to form a belief as to school districts' final 2010-11 budgets and therefore deny the remaining allegations of the third sentence of Paragraph 10. Defendants deny the allegations of the fourth sentence of Paragraph 10 to the extent that they are an incomplete or inaccurate summary of CDE's projections, which are the best evidence of their contents.

11. Defendants lack knowledge sufficient to form a belief as to the accuracy of Paragraph 11 of the Complaint's speculation as to future events and therefore deny the allegations of Paragraph 11.

12. Defendants deny the allegations of Paragraph 12 of the Complaint. The referenced legislation speaks for itself and is the best evidence of its contents.

13. Defendants deny the allegations of Paragraph 13 of the Complaint. The referenced legislation speaks for itself and is the best evidence of its contents.

14. Defendants deny the allegations of Paragraph 14 of the Complaint.

15. Defendants deny the allegations of Paragraph 15 of the Complaint.

16. Defendants deny the allegations of Paragraph 16 of the Complaint and further deny that Plaintiffs have standing to assert claims on behalf of groups of parents or students of which they are not a part.

17. Defendants deny the allegations of Paragraph 17 of the Complaint and further deny that Plaintiffs have standing to assert claims on behalf of groups of parents or students of which they are not a part.

## **JURISDICTION AND VENUE**

18. Defendants admit that Plaintiffs bring this action for declaratory and injunctive relief under Rules 57 and 65 of the Colorado Rules of Civil Procedure and the Uniform Declaratory Judgments Law, but deny that Plaintiffs are entitled to such relief.

19. Defendants admit the allegations of Paragraph 19 of the Complaint.

## **PARTIES**

### **I. Plaintiffs**

#### **A. Individual Plaintiffs**

20. Defendants lack information sufficient to admit or deny the allegations of the first sentence of Paragraph 20 of the Complaint, and therefore deny them. Defendants admit that the Individual Plaintiffs seek to bring this suit on their own and their children's behalf, but deny that they have standing to do so.

21. Defendants deny the allegations of Paragraph 21 of the Complaint.

22. Defendants lack information sufficient to admit or deny whether many of the Individual Plaintiffs have children who are eligible for programs as alleged in Paragraph 22 of the Complaint, and therefore deny those allegations. Defendants deny the remaining allegations of Paragraph 22.

**1. School District No. 14 in the County of Adams**

23. Defendants lack information sufficient to admit or deny the allegations of Paragraph 23 of the Complaint, and therefore deny them.

**2. Boulder Valley School District No. Re2**

24. Defendants lack information sufficient to admit or deny the allegations of Paragraph 24 of the Complaint, and therefore deny them.

25. Defendants lack information sufficient to admit or deny the allegations of Paragraph 25 of the Complaint, and therefore deny them.

26. Defendants lack information sufficient to admit or deny the allegations of Paragraph 26 of the Complaint, and therefore deny them.

**3. Center Consolidated School District No. 26 CT of the Counties of Sagauche and Rio Grande and Alamosa**

27. Defendants lack information sufficient to admit or deny the allegations of Paragraph 27 of the Complaint, and therefore deny them.

28. Defendants lack information sufficient to admit or deny the allegations of Paragraph 28 of the Complaint, and therefore deny them.

29. Defendants lack information sufficient to admit or deny the allegations of Paragraph 29 of the Complaint, and therefore deny them.

30. Defendants lack information sufficient to admit or deny the allegations of Paragraph 30 of the Complaint, and therefore deny them.

31. Defendants lack information sufficient to admit or deny the allegations of Paragraph 31 of the Complaint, and therefore deny them.

32. Defendants lack information sufficient to admit or deny the allegations of Paragraph 32 of the Complaint, and therefore deny them.

33. Defendants lack information sufficient to admit or deny the allegations of Paragraph 33 of the Complaint, and therefore deny them.

#### **4. School District No. 1 in the County of Denver**

34. Defendants lack information sufficient to admit or deny the allegations of Paragraph 34 of the Complaint, and therefore deny them.

35. Defendants lack information sufficient to admit or deny the allegations of Paragraph 35 of the Complaint, and therefore deny them.

#### **5. Pueblo County School District 70**

36. Defendants lack information sufficient to admit or deny the allegations of Paragraph 36 of the Complaint, and therefore deny them.

37. Defendants lack information sufficient to admit or deny the allegations of Paragraph 37 of the Complaint, and therefore deny them.

38. Defendants lack information sufficient to admit or deny the allegations of Paragraph 38 of the Complaint, and therefore deny them.

39. Defendants lack information sufficient to admit or deny the allegations of Paragraph 39 of the Complaint, and therefore deny them.

40. Defendants lack information sufficient to admit or deny the allegations of Paragraph 40 of the Complaint, and therefore deny them.

41. Defendants lack information sufficient to admit or deny the allegations of Paragraph 41 of the Complaint, and therefore deny them.

42. Defendants lack information sufficient to admit or deny the allegations of Paragraph 42 of the Complaint, and therefore deny them.

43. Defendants lack information sufficient to admit or deny the allegations of Paragraph 43 of the Complaint, and therefore deny them.

#### **6. Woodlin School District No. R-104**

44. Defendants lack information sufficient to admit or deny the allegations of Paragraph 44 of the Complaint, and therefore deny them.

45. Defendants lack information sufficient to admit or deny the allegations of Paragraph 45 of the Complaint, and therefore deny them.

46. Defendants lack information sufficient to admit or deny the allegations of Paragraph 46 of the Complaint, and therefore deny them.

47. Defendants lack information sufficient to admit or deny the allegations of Paragraph 47 of the Complaint, and therefore deny them.

48. Defendants lack information sufficient to admit or deny the allegations of Paragraph 48 of the Complaint, and therefore deny them.

49. Defendants lack information sufficient to admit or deny the allegations of Paragraph 49 of the Complaint, and therefore deny them.

**B. School District Plaintiffs**

50. Defendants admit the allegations of Paragraph 50 of the Complaint.

51. Defendants admit the allegations of Paragraph 51 of the Complaint. However, Defendants deny that the School District Plaintiffs have independent standing to bring this action.

**II. Defendants**

52. Defendants admit the allegations of Paragraph 52 of the Complaint.

53. Defendants admit that the quoted language is contained in article IX, section 1 of the Colorado Constitution. The remaining allegations of Paragraph 53 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they contain an incomplete and inaccurate summary of article IX of the Constitution and legislation enacted pursuant thereto, which are the best evidence of their contents.

54. Defendants admit the allegations of the first sentence of Paragraph 54 of the Complaint. Defendants deny the remaining allegations of Paragraph 54 to the extent that they misstate and mischaracterize Colorado law, which is the best evidence of its contents.

55. Defendants admit the allegations of Paragraph 55 of the Complaint.

## GENERAL ALLEGATIONS

### I. The Education Clause and Local Control Clause

56. Defendants admit that article IX, section 2 of the Colorado Constitution (the Education Clause) was adopted in 1876 and that the quoted language is contained therein. The remaining allegations of Paragraph 56 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 56 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

57. Paragraph 57 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 57 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

58. Paragraph 58 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 58 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

59. Paragraph 59 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 59 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

60. Defendants admit that certain of the quoted language is contained in article IX, section 15 of the Colorado Constitution. The remaining allegations of Paragraph 60 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 60 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

61. Paragraph 61 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 61 contains an inaccurate and incomplete summary of the

Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

62. Defendants admit that the Education Clause is referenced in select pieces of legislation. The remaining allegations of Paragraph 62 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 62 contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

63. Defendants deny the allegations of the first sentence of Paragraph 63 of the Complaint. Defendants admit that the quoted statutory language is contained in § 22-54-102, C.R.S. However, the remaining allegations contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

64. Paragraph 64 of the Complaint contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

## **II. Education Reform Legislation**

65. Defendants admit that beginning in the 1990s, the state of Colorado has undertaken a comprehensive legislative transformation of the public education system and deny the remaining allegations of the first sentence of Paragraph 65 of the Complaint. The remaining allegations of Paragraph 65 contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

66. Defendants deny the allegations of the first sentence of Paragraph 66 of the Complaint. Defendants admit that the quoted statutory language appears in § 22-7-1002, C.R.S. However, the remaining allegations contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

67. Defendants admit that the quoted statutory language is contained in § 22-7-401, C.R.S. However, the remaining allegations of Paragraph 67 of the Complaint contain an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

68. Paragraph 68 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants

state that Paragraph 68 contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

69. Defendants admit that CAP4K was adopted in 2008 and that according to the Colorado Department of Education and the Colorado Department of Higher Education “postsecondary and workforce readiness” describes knowledge, skills, and behaviors essential for high school graduates to be prepared to enter college and the workforce and to compete in the global economy. The remaining allegations of Paragraph 69 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, the remaining allegations contain an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

70. Paragraph 70 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 70 contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

71. Defendants deny the allegations of the first sentence of Paragraph 71 of the Complaint. Defendants admit that the quoted statutory language is contained in § 22-7-403, C.R.S., but deny the remaining allegations of Paragraph 71 to the extent that they misstate and mischaracterize Colorado law, which is the best evidence of its contents.

72. Defendants admit that the 2001 amendments to the federal Elementary and Secondary Education Act of 1965 (ESEA), known as the No Child Left Behind Act (NCLB), were signed into law on January 8, 2002. Defendants further admit that the quoted statutory language is contained in 20 U.S.C. § 6301, but deny the remaining allegations of Paragraph 72 of the Complaint to the extent that they misstate and mischaracterize ESEA and NCLB, which are the best evidence of their contents.

73. Paragraph 73 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 73 to the extent that they contain an inaccurate and incomplete summary of federal law, which is the best evidence of its contents.

74. Paragraph 74 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants

deny the allegations of Paragraph 74 to the extent that they contain an inaccurate and incomplete summary of federal law, which is the best evidence of its contents.

75. Defendants admit that the State Board adopted the Colorado Consolidated State Plan (the State Plan) in 2002. The remaining allegations of Paragraph 75 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the remaining allegations of Paragraph 75 to the extent that they contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents.

76. Paragraph 76 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they contain an inaccurate and incomplete summary of state or federal law, which is the best evidence of its contents.

77. Defendants deny the allegations of Paragraph 77 of the Complaint to the extent that they misstate and mischaracterize the State Plan, which is the best evidence of its contents.

78. The first sentence of Paragraph 78 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the first sentence contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Defendants further deny the remaining sentences of Paragraph 78 to the extent that they misstate and mischaracterize published Adequate Yearly Progress (AYP) results, which are the best evidence of their contents.

79. Defendants deny the allegations of Paragraph 79 of the Complaint to the extent that they misstate and mischaracterize published AYP results, which are the best evidence of their contents.

80. Defendants deny the allegations of Paragraph 80 of the Complaint to the extent that they misstate and mischaracterize published AYP results, which are the best evidence of their contents.

81. Defendants admit the allegations of Paragraph 81 of the Complaint.

82. Defendants admit that in 2009, the General Assembly adopted the Education Accountability Act of 2009 (SB 163). The remaining allegations of Paragraph 82 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the

extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

83. Paragraph 83 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

84. Paragraph 84 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents.

85. Paragraph 85 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they contain an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents.

86. Defendants deny the allegations of Paragraph 86 of the Complaint.

87. Paragraph 87 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 87 to the extent that they are an incomplete and inaccurate summary of the Constitution and legislative provisions, which are the best evidence of their contents.

88. Paragraph 88 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 88 to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

89. Paragraph 89 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the allegations of Paragraph 89 misstate and mischaracterize Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

### **III. The System of Public School Finance**

#### **A. The Public School Finance Act of 1994 (PSFA)**

90. Defendants admit that governmental funding for Colorado school districts is derived from local taxes, state funds, and federal funds and deny the remaining allegations of Paragraph 90 of the Complaint.

91. Defendants admit the first sentence of Paragraph 91 of the Complaint. Defendants further admit that in school year 2008-09, local school district property tax and other sources contributed 36.6% of state and local PSFA funding and the state contributed 63.4%. Defendants deny the remaining allegations of Paragraph 91.

##### **1. Total Program Funding**

92. Paragraph 92 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 92 to the extent that they are an incomplete or inaccurate summary of Colorado law, which is the best evidence of its contents.

93. The first sentence of Paragraph 93 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the first sentence of Paragraph 93 contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents. Therefore, Defendants deny those allegations. Defendants deny the second sentence of Paragraph 93 and admit the allegations of the last sentence of Paragraph 93.

94. Defendants deny the allegations of the first two sentences of Paragraph 94 of the Complaint. The allegations of the third sentence of Paragraph 94 purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they misstate and mischaracterize Colorado law, which is the best evidence of its contents. Defendants admit that per pupil funding levels vary among school districts and deny the remaining allegations of Paragraph 94.

95. Defendants admit the allegations of the first and last sentences of Paragraph 95 of the Complaint to the extent that they relate to funding under the PSFA. Defendants admit that the mill levy is one component of the local or district share of total program under the PSFA. Defendants deny the remaining allegations of Paragraph 95.

96. Paragraph 96 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 96 to the extent that they misstate and mischaracterize Colorado law, which is the best evidence of its contents.

## **2. PSFA Formula Factors**

97. The first sentence of Paragraph 97 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they are an inaccurate or incomplete summary of the PSFA, which is the best evidence of its contents. Defendants deny the second sentence of Paragraph 97.

### **a. PSFA Funding for At-Risk Pupils**

98. Defendants deny the allegations of Paragraph 98 of the Complaint.

99. Defendants admit that the number of at-risk pupils in Colorado has increased and deny the remaining allegations of Paragraph 99 of the Complaint.

100. Defendants deny the allegations of Paragraph 100 of the Complaint.

101. Defendants deny the allegations of the first sentence of Paragraph 101 of the Complaint. The second and third sentences purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that the second and third sentences of Paragraph 101 mischaracterize and misstate Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

102. Paragraph 102 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 102 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

### **b. PSFA Funding for Preschool Education**

103. The first two sentences of Paragraph 103 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny those allegations to the extent that they misstate or mischaracterize Colorado law, which is the best evidence of its contents.

Defendants admit that CPP served 20,160 children in 2008-09 and deny the remaining allegations of Paragraph 103.

104. Defendants admit that the quoted language in Paragraph 104 of the Complaint appears in the referenced report, which is the best evidence of its contents.

105. Paragraph 105 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 105 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

106. Defendants deny the allegations of Paragraph 106 of the Complaint.

**c. PSFA Cost of Living Funding**

107. Defendants admit that the PSFA includes a “cost of living factor” but deny the remaining allegations of Paragraph 107 of the Complaint.

**3. Override Funding**

108. Defendants admit that the PSFA permits school districts an option to supplement their total program with additional local revenues by submitting an initiative to the electorate for approval to raise such revenues and authorizing an additional mill levy for that purpose. Defendants further admit the allegations of the third and fourth sentences of Paragraph 108 of the Complaint. The remaining allegations of Paragraph 108 misstate and mischaracterize the PSFA, which is the best evidence of its contents. Therefore, Defendants deny the remaining allegations of Paragraph 108.

109. Defendants deny the allegations of the first and second sentences of Paragraph 109 of the Complaint. The third sentence purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the third sentence of Paragraph 109 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

**4. Summary Allegations Concerning the PSFA**

110. Paragraph 110 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants

deny the allegations of Paragraph 110 to the extent that it misstates and mischaracterizes Colorado law, which is the best evidence of its contents.

111. Defendants deny the allegations of the first sentence of Paragraph 111 of the Complaint. The second sentence purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, the second sentence of Paragraph 111 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

112. Paragraph 112 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Paragraph 112 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

## **B. Categorical Program Funding**

113. The first two sentences of Paragraph 113 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they are inconsistent with Colorado law, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 113.

114. Paragraph 114 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Paragraph 114 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

### **1. The English Language Proficiency Act**

115. Defendants deny the allegations of the first and third sentences of Paragraph 115 of the Complaint. Defendants admit that children whose dominant language is not English are among the fastest growing populations in the public schools, but deny the remaining allegations of the second sentence of Paragraph 115. Defendants admit the allegations of the fourth sentence of Paragraph 115. The remaining allegations of Paragraph 115 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that the remaining allegations of Paragraph 115 misstate and mischaracterize Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

116. Paragraph 116 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants

admit that certain of the quoted statutory language is contained in § 22-24-102, C.R.S., but deny the allegations of Paragraph 116 to the extent that they contain an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

117. Paragraph 117 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 117 to the extent that they contain an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents.

118. Defendants admit the allegations of the third sentence and deny the remaining allegations of Paragraph 118 of the Complaint.

119. Defendants deny the allegations of Paragraph 119 of the Complaint.

120. Defendants deny the allegations of Paragraph 120 of the Complaint.

## **2. Education of Children with Disabilities**

121. Defendants admit that the ECEA and IDEA require school districts to provide special education programs to all children with disabilities. Defendants deny the remaining allegations of Paragraph 121 of the Complaint.

122. The first two sentences and last sentence of Paragraph 122 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of those sentences to the extent that they are an incomplete and inaccurate summary of the referenced statutes and constitutional provision, which are the best evidence of their contents. The third sentence is an inaccurate and incomplete summary of a statement by the CDE, which is the best evidence of its contents, and therefore Defendants deny those allegations.

123. Defendants admit the allegations of the first sentence and deny the remaining allegations of Paragraph 123 of the Complaint.

124. Defendants admit the allegations of the first sentence of Paragraph 124 of the Complaint. The remaining allegations of Paragraph 124 misstate and mischaracterize a CDE report. Defendants deny the allegations of Paragraph 124 to the extent that they are inconsistent with CDE facts and figures, which are the best evidence of their contents.

125. Paragraph 125 of the Complaint characterizes a 2000 study of special education, which is the best evidence of its contents, and Defendants deny all characterizations to the extent that they contradict the study.

126. Defendants deny the allegations of Paragraph 126 of the Complaint.

127. Defendants deny the allegations of Paragraph 127 of the Complaint.

### **3. Gifted and Talented Education**

128. Paragraph 128 of the Complaint is an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

129. Defendants deny the allegations of the first sentence of Paragraph 129 of the Complaint. Defendants admit the allegations of the second sentence of Paragraph 129. Defendants admit that funds may be used for salaries for teachers, staff development and training, and activities materials and equipment associated with the education of gifted and talented students and deny the remaining allegations of Paragraph 129.

130. Defendants deny the allegations of Paragraph 130 of the Complaint.

### **4. Transportation Costs**

131. Defendants deny the allegations of the first and third sentences of Paragraph 131 of the Complaint. Defendants admit the allegations of the second sentence of Paragraph 131.

132. Defendants admit the allegations of the first sentence of Paragraph 132 of the Complaint and further admit that the state's contribution for transportation in fiscal year 2008-09 was \$49.6 million. Defendants deny the remaining allegations of Paragraph 132.

133. Defendants deny the allegations of Paragraph 133 of the Complaint.

### **5. Capital Construction Funding**

134. The allegations of Paragraph 134 of the Complaint purport to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the allegations constitute an incomplete and

inaccurate summary of the law, which is the best evidence of its contents, and therefore Defendants deny the allegations.

135. Defendants deny the allegations of Paragraph 135 of the Complaint.

136. The first two sentences of Paragraph 136 of the Complaint are an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Answering the third and fourth sentences of Paragraph 136, Defendants admit that property taxes vary by school district and deny the remaining allegations.

137. The first sentence of Paragraph 137 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the first sentence contains an inaccurate and incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 137.

138. Defendants deny the allegations of the first two sentences of Paragraph 138 of the Complaint to the extent that they are incomplete and inaccurate summaries of the referenced reports, which are the best evidence of their contents. Defendants admit the allegations of the third sentence of Paragraph 138. Defendants admit the allegations of the fourth sentence to the extent that the fourth sentence alleges that the State has released a statewide assessment and deny the remaining allegations of that sentence.

139. The first sentence of Paragraph 139 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they misstate and mischaracterize the Constitution, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 139.

140. Defendants deny the allegations of Paragraph 140 of the Complaint.

141. Paragraph 141 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 141 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

142. The first sentence of Paragraph 142 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the first sentence contains an inaccurate and

incomplete summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 142.

#### **IV. Constitutional Provisions Affecting School Finance**

143. Defendants admit that TABOR was effective as of December 31, 1992 and that the Gallagher Amendment was approved in 1982. Defendants deny the remaining allegations of Paragraph 143 of the Complaint.

144. Paragraph 144 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 144 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

145. Defendants admit that Amendment 23 was adopted by initiative on November 7, 2000. The remaining allegations of Paragraph 145 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they misstate and mischaracterize the Constitution and legislation, which are the best evidence of their contents.

146. Paragraph 146 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 146.

##### **A. The Taxpayers Bill of Rights (TABOR)**

147. Paragraph 147 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 147 to the extent that they are an incomplete and inaccurate summary of TABOR, which is the best evidence of its contents.

148. Paragraph 148 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 148 to the extent that they are an incomplete and inaccurate summary of TABOR, which is the best evidence of its contents.

149. Paragraph 149 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 149 contains an incomplete and inaccurate summary of the

Constitution, which is the best evidence of its contents, and therefore Defendants deny the allegations of Paragraph 149.

150. The first three sentences of Paragraph 150 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 150 to the extent that they are an incomplete and inaccurate summary of pre-existing Colorado law, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 150.

151. Paragraph 151 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 151 to the extent that they are an incomplete and inaccurate summary of pre-existing Colorado law, which is the best evidence of its contents.

152. Paragraph 152 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of Paragraph 152 to the extent that they are an incomplete and inaccurate summary of TABOR, which is the best evidence of its contents.

153. The first sentence of Paragraph 153 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of the first sentence of Paragraph 153 to the extent that they are an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents. Answering the second sentence of Paragraph 153, Defendants admit that in 2008-09, school district mill levies for their PSFA total program ranged from 1.68 to the statutory maximum of 27, with a statewide average of 20.817, and deny the remaining allegations.

154. Paragraph 154 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 154 is an incomplete and inaccurate summary of Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

155. Defendants admit the allegations of the first two sentences of Paragraph 155 of the Complaint. Answering the last sentence of Paragraph 155, Defendants admit that the state share of public education revenues grew and that the local share dropped correspondingly and deny the remaining allegations.

156. Defendants deny the allegations of the first two sentences of Paragraph 156 of the Complaint. The third sentence purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the third sentence of Paragraph 156 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

157. Paragraph 157 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent an answer is required, Defendants state that Paragraph 157 misstates and mischaracterizes the Constitution, which is the best evidence of its contents.

158. Paragraph 158 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that the allegations consist of an incomplete and inaccurate summary of the law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

159. Paragraph 159 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 159 misstates and mischaracterizes the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

## **B. The Gallagher Amendment**

160. Paragraph 160 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 160 misstates and mischaracterizes the cited provision, which is the best evidence of its contents, and therefore Defendants deny the allegations of Paragraph 166.

161. Defendants deny the allegations of the first and second sentences of Paragraph 161 of the Complaint. The remaining sentences of Paragraph 161 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they are an incomplete and inaccurate summary of the Gallagher Amendment, which is the best evidence of its contents.

162. The first sentence of Paragraph 162 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they are an incomplete

and inaccurate summary of the Gallagher Amendment, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 162.

163. Paragraph 163 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 163 misstates and mischaracterizes the Constitution, which is the best evidence of its contents.

### **C. Amendment 23**

164. Defendants admit the allegations of the first sentence of Paragraph 164 of the Complaint. The second and third sentences of Paragraph 164 purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations of to the extent that they are an incomplete and inaccurate summary of the Constitution, which is the best evidence of its contents.

165. The first two sentences of Paragraph 165 of the Complaint purport to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they are incomplete and inaccurate summaries of the Constitution and legislative provisions, which are the best evidence of their contents. Defendants lack knowledge sufficient to admit or deny the allegations of the third sentence of Paragraph 165.

166. Defendants admit that the Colorado Constitution, article IX, section 3 provides, in relevant part, that “[d]istributions of interest and other income [from the public school fund] for the benefit of public schools provided for in this article IX shall be in addition to and not a substitute for other moneys appropriated by the General Assembly for such purposes.” Defendants lack information sufficient to admit or deny the remaining allegations of Paragraph 166 of the Complaint.

167. Defendants admit that in November 2005, Colorado voters passed the Colorado State Spending Act, “Referendum C.” To the extent that the remaining allegations of Paragraph 167 of the Complaint purport to state legal conclusions, no response is required. To the extent a response is required, Defendants deny the allegations to the extent that they misstate and mischaracterize Colorado law, which is the best evidence of its contents.

168. Paragraph 168 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 168 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

**FIRST CLAIM FOR RELIEF**  
**Denial of the Constitutional Right to a Quality Education**

169. Defendants incorporate herein all of the preceding averments.

170. Defendants deny the allegations of Paragraph 170 of the Complaint.

171. Defendants deny the allegations of Paragraph 171 of the Complaint.

172. Paragraph 172 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 172 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

173. Paragraph 173 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 173 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

174. Paragraph 174 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants deny the allegations as an incomplete and inaccurate summary of the Constitution, which is the best evidence of its contents.

175. Defendants deny the allegations of Paragraph 175 of the Complaint.

176. The first sentence of Paragraph 176 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants deny the allegations to the extent that they misstate and mischaracterize the Constitution, which is the best evidence of its contents. Defendants deny the remaining allegations of Paragraph 176.

177. The first sentence of Paragraph 177 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that the first sentence of Paragraph 177 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 177.

178. Paragraph 178 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants

state that Paragraph 178 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

179. Defendants deny the allegations of Paragraph 179 of the Complaint.

180. Paragraph 180 of the Complaint purports to state a legal conclusion to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 180 misstates and mischaracterizes the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

181. Defendants deny the allegations of Paragraph 181 of the Complaint.

182. Defendants deny the allegations of Paragraph 182 of the Complaint.

183. Defendants deny the allegations of Paragraph 183 of the Complaint.

184. Defendants deny the allegations of Paragraph 184 of the Complaint.

185. Defendants deny the allegations of Paragraph 185 of the Complaint.

186. Paragraph 186 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 186 contains an inaccurate and incomplete summary of the Constitution, which is the best evidence of its contents, and Plaintiffs' claims seek an unconstitutional remedy. Defendants therefore deny the allegations of Paragraph 186.

187. Paragraph 187 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 187 misstates and mischaracterizes the Constitution, which is the best evidence of its contents, and therefore Defendants deny those allegations.

## **SECOND CLAIM FOR RELIEF**

### **Violation of the Constitutional Authority to Control Instruction**

188. Defendants incorporate herein all of the preceding averments.

189. Paragraph 189 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 189 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

190. Paragraph 190 of the Complaint purports to state legal conclusions to which no answer is required. To the extent that an answer is required, Defendants state that Paragraph 190 misstates and mischaracterizes Colorado law, which is the best evidence of its contents, and therefore Defendants deny those allegations.

### **GENERAL DENIAL**

Defendants deny all allegations not specifically admitted.

### **AFFIRMATIVE DEFENSES**

1. Plaintiffs' Complaint fails to state a claim upon which relief may be granted. The public school finance system as currently structured and funded is constitutional.

2. Plaintiffs' Complaint fails to join necessary and indispensable parties. Plaintiffs raise claims on behalf of all Colorado school districts and all Colorado school children, but have not sought to bring this case as a class action or otherwise sought to join all Colorado school districts or all Colorado school children. Plaintiffs further seek an order requiring the establishment and funding of a new system of public school finance, but have not named the General Assembly as a defendant in this action.

3. Plaintiffs lack standing to the extent they assert claims on behalf of "the children of the State of Colorado" or any other person or entity not named as a Plaintiff. Plaintiffs also have not alleged any injury in fact to a legally protected interest that would establish standing to seek declaratory judgment and injunctive relief on their own behalf as taxpayers, their children's behalf as recipients of public education, or for unnamed groups of parents or students of which they are not a part.

4. The School District Plaintiffs, who are political subdivisions of the State, lack standing to bring a constitutional or other challenge to the provisions of the Public School Finance Act.

5. Plaintiffs seek an unconstitutional remedy by requesting the Court to declare that portions of the Colorado Constitution, namely TABOR and the Gallagher Amendment, must yield to other portions of the Constitution, namely the Education Clause.

6. Plaintiffs request the Court to compel affirmative actions such as to legislate or fund a particular system of public school finance and to oversee that process, but to do so would violate the separation of powers.

7. Defendants reserve the right to assert additional affirmative defenses.

WHEREFORE, Defendants request that the Court enter judgment in their favor and against Plaintiffs on the Third Amended Complaint, award Defendants their costs and attorney's fees as provided by law, and enter such other relief to Defendants as the Court deems just and appropriate.

Respectfully submitted this 8th day of April, 2011.

JOHN W. SUTHERS  
Attorney General

*s/ Carey Taylor Markel*

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NANCY J. WAHL, 31890

First Assistant Attorney General

ANTONY B. DYL, 15968\*

Senior Assistant Attorney General

CAREY TAYLOR MARKEL, 32987\*

Senior Assistant Attorney General

NICHOLAS P. HEINKE, 38738\*

Assistant Attorney General

JONATHAN P. FERO, 35754\*

Assistant Attorney General

ERICA WESTON, 35581\*

Assistant Attorney General

ATTORNEYS FOR DEFENDANTS

\*Counsel of Record

*Original signature of Carey Taylor Markel is  
on file at the Office of the Colorado Attorney  
General*

**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the within **DEFENDANTS' ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT** upon all parties herein via electronic mail, Lexis/Nexis File & Serve, and/or U.S. Mail this 8<sup>th</sup> day of April, 2011:

David Hinojosa, Esq.  
Nina Perales, Esq.  
Marisa Bono, Esq.  
**Mexican American Legal Defense  
and Education Fund (MALDEF)**  
110 Broadway, Ste. 300  
San Antonio, Texas 78205  
*Attorneys for Plaintiff-Intervenors  
Armandina Ortega, et al.  
(via electronic-mail and U.S. Mail)*

Henry Solano, Esq.  
**DEWEY & LeBOEUF**  
4121 Bryant St.  
Denver, Colorado 80211  
*Attorney for Plaintiff-Intervenors  
Armandina Ortega, et al.*

Alexander Halpern , Esq.  
**Alexander Halpern LLC**  
1426 Pearl Street, Suite 420  
Boulder, Colorado 80302  
*Attorney for Anthony Lobato, et al.*

Kathleen J. Gebhardt, Esq.  
**Kathleen J. Gebhardt LLC**  
1900 Stoney Hill Road  
Boulder, Colorado 80305  
*Attorney for Anthony Lobato, et al.  
(via electronic-mail and U.S. Mail)*

Kenzo Kawanabe, Esq.  
Terry R. Miller, Esq.  
Geoffrey C. Klingsporn, Esq.  
Rebecca J. Dunaway, Esq.  
Daniel P. Spivey, Esq.  
**DAVIS, GRAHAM & STUBBS, LLP**  
1550 Seventeenth Street, Suite 500  
Denver, Colorado 80202  
*Attorneys for Anthony Lobato, Denise  
Lobato, Taylor Lobato, Alexa Lobato,  
Aurora Joint School District No. 28,  
Jefferson County School District,  
Colorado Springs School District,  
Monte Vista and Alamosa School District*

Kyle C. Velte, Esq.  
Ryann B. MacDonald, Esq.  
**REILLY POZNER, LLP**  
511 Sixteenth Street, Suite 700  
Denver, Colorado 80202  
*Attorneys for Plaintiffs Creed Consol.  
School District No. 1, Del Norte Consol.  
School District no C-7, Moffat School  
District No. 2, and Mountain Valley  
School District No. Re 1*

Jess A. Dance, Esq.  
Zane Gilmer, Esq.  
**PERKINS COIE, LLP**  
1899 Wynkoop Street, Suite 700  
Denver, Colorado 80202  
*Attorney for Plaintiffs Sanford  
School District 6J, North Conejos  
School District RE-1J, South Conejos  
School District RE-10, and Centennial  
School District No. R-1*

Kimberley D. Neilio, Esq.  
**GREENBERG TRAUIG, LLP**  
1200 Seventeenth Street, Suite 2400  
Denver, Colorado 80202  
*Attorney for Plaintiff Pueblo School District 60,  
County of Pueblo, Colorado*

Jessica E. Yates, Esq.  
**SNELL & WILMER LLP**  
One Tabor Center, Suite 1900  
Denver, Colorado 80202  
*Attorney for Plaintiffs Alexandria, Amber,  
Ari, Ashley and Lillan Leroux*

David W. Stark, Esq.  
Joseph C. Daniels, Esq.  
Sera Chong, Esq.  
**FAEGRE & BENSON LLP**  
1700 Lincoln Street, Suite 3200  
Denver, Colorado 80203  
*Attorneys for Plaintiffs Jessica Spangler,  
Herbert Conboy, Victoria Conboy, Terry  
Hart, Kathy Howe-Kerr, Larry Howe-Kerr,  
John T. Lane, Jennifer Pate, Blance J.  
Podio, and Robert L. Podio*

Alyssa K. Yatsko, Esq.  
**HOLLAND & HART, LLP**  
555 Seventeenth St. Suite 3200  
Denver, CO 80201-8749  
*Attorney for Jefferson County School  
District No. R-1*

s/ Jeannine Moore  
Jeannine Moore, Paralegal  
*Original Signature on file at the  
Office of the Colorado Attorney General*