

<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>	
<p><b>Attorneys for Defendants:</b> JOHN W. SUTHERS, Attorney General</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. FERO, 35754* Assistant Attorney General E-mail: jon.fero@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: <b>2005 CV 4794</b></p> <p>Div: 9</p>
<p align="center"><b>DEFENDANTS' RESPONSES TO PLAINTIFF-INTERVENORS' <u>THIRD SET OF INTERROGATORIES</u>, <u>SECOND REQUEST FOR PRODUCTION AND SECOND REQUEST FOR ADMISSIONS</u></b></p>	

Defendants, by and through their counsel, hereby submit their Responses to Plaintiff-Intervenors' Third Set of Interrogatories, Second Request for Production and Second Request for Admissions.

Defendants' 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.

8. 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.

9. 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.

10. 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.

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

12. Defendants object to the discovery requests to the extent the burden of deriving or ascertaining responses to the requests is substantially the same for Plaintiffs as for Defendants.

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. THIRD SET OF INTERROGATORIES**

25. Identify any consulting experts, that is, consulting experts whose work has been reviewed by the testifying expert, or experts whom you may call to testify in this case, and any person you intend to call who may present expert testimony but for whom an expert report is not required under the Colorado Rules of Civil Procedure. For each expert, provide the following information:
- a. The expert's name, address and telephone number.
  - b. The facts known to the expert that related to or form the basis of the expert's mental impression and opinions formed or made in connection with the case, regardless of when and how the factual information was acquired.
  - c. The mental impressions or opinions of the expert formed or made in connection with the case and any methods used to derive them.
  - d. Any bias of the expert.

- e. Identify all documents and tangible things, including reports, models or data compilations, which have been provided to, reviewed by, or prepared by or for the expert.
- f. The case name, number and nature of the case in which the expert has testified (by deposition or trial) or submitted an expert report over the last 4 years.

**RESPONSE:** Defendants object to this Interrogatory on the ground that it is vague and confusing. Defendants interpret this Interrogatory to seek information about two categories of witnesses: (1) consulting experts and (2) any persons who may present expert testimony but for whom an expert report or summary is not required under the Colorado Rules of Civil Procedure. Under that interpretation, Defendants further object to this Interrogatory on the ground that, pursuant to C.R.C.P. 26(b)(4),

[a] party may, through interrogatories ... , discover facts known or opinions held by an expert who has been retained or specifically employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided by C.R.C.P. 35(b) [report of physical/mental examiner] or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

Therefore, this Interrogatory for information from consulting expert is improper.

Subject to and without waiving this objection and the General Objections, Defendants state that Kathy Hebbler has been consulted by Lori Bowers in connection with her expert testimony. However, pursuant to C.R.C.P. 26(b)(4), Plaintiff-Intervenors are not entitled to discover any additional information about the facts known or opinions held by Ms. Hebbler without a showing of exceptional circumstances. Defendants further state that all persons Defendants may call at trial who may present expert testimony have had or will have their reports or summaries of testimony disclosed as required by the Colorado Rules of Civil Procedure. There are, therefore, no undisclosed testifying expert witnesses to whom this Interrogatory applies.

Pursuant to conversation between Marisa Bono and Nicholas Heinke on May 18, however, Defendants agreed to produce documents, if any, reviewed or relied upon by any of Defendants' non-retained experts. Defendants will produce these documents in the near future.

- 26. If you contend that any of the Plaintiff-Intervenor school districts or Plaintiff districts are over-paying their teachers or administrators or expending an excessive amount of their budget on the salaries and benefits of teachers and administrators (using your definitions for "over-paying" and "excessive"), identify those school districts and state the basis for your answer, including your definitions for "over-paying" and "excessive."

**RESPONSE:** Defendants object to this Interrogatory on the ground that the phrases “over-paying” and “excessive” are vague and undefined. Defendants further object to this Interrogatory to the extent that it is directed to the wrong party. With limited exception, it is the school districts, not any of the Defendants, that have control over allocation of their budgets and, thus, the compensation level of teachers and administrators.

Subject to and without waiving these objections and the General Objections, Defendants state that the Colorado Department of Education does not collect data concerning the specific question of whether school districts are “over-paying” their teachers or administrators or expending an “excessive” amount of their budget on the salaries and benefits of teachers and administrators. Witnesses for Plaintiffs or Plaintiff-Intervenors may have additional information on allocation of resources, and Defendants reserve their right to elicit such testimony during depositions or at trial.

27. For each of the grants and funding sources identified as "competitive" or "formula and competitive" or "upon invitation" in the CDE's Human Capital Funding Matrix, identify the total amount of funding available, the school districts that have received grants or funding and the amount each district received and for which school year(s).

**RESPONSE:** Defendants object to this Interrogatory on the ground that the phrase “Human Capital Funding Matrix” is undefined. Defendants interpret this phrase to refer to the Human Capital Funding Matrix identified as an Excel document on the CDE Educator Effectiveness Resource Bank contained at <http://www.cde.state.co.us/EducatorEffectiveness/ResourceBank.asp>. Under that interpretation, Defendants answer as follows:

Closing the Achievement Gap (competitive)

Pursuant to C.R.C.P. 33(d), the requested information is contained in the document labeled “Closing the Achievement Gap.xls” on the CD\_ROM Bates-labeled CDE106311.

Expelled and At-Risk Student Services (competitive)

Pursuant to C.R.C.P. 33(d), the requested information is contained in the document labeled “Expelled At-Risk Student Services.xls” on the CD\_ROM Bates-labeled CDE106311.

School Counselor Corps (competitive)

Pursuant to C.R.C.P. 33(d), the requested information is contained in the documents labeled “2009 SCC Grant Annual Report.pdf” and “2010 SCC Grant Annual Report” on the CD\_ROM Bates-labeled CDE106311.

Comprehensive Health Education (competitive)

Pursuant to C.R.C.P. 33(d), the requested information is contained in the document labeled “Comprehensive Health Education.pdf” on the CD\_ROM Bates-labeled CDE106311.

Library Services and Technology (competitive)

The total amount of funding is approximately \$250,000—\$400,000 annually. This is not limited to schools, but is open to any eligible school, public, academic, or special library. In any given year, around 2 to 4 school projects are funded out of the 15 or so awarded to libraries statewide.

Grants are made to schools, not districts, although the district typically serves as the fiscal agent. Pursuant to C.R.C.P. 33(d), lists of funded projects and locations for 07-08 to present are available at <http://www.cde.state.co.us/cdelib/LSTA/index.htm> under the LSTA Awarded Grants section. Below are the 05-06 and 06-07 LSTA grant awards to schools (these are only the school-related projects):

**FY05-06**

- “Media Center Upgrade” Las Animas Secondary School /Las Animas School District RE-1, Las Animas CO, \$15,000
- “Library Assistants Plus!” Wiggins Jr/Sr High School/ Wiggins School District RE-50, Wiggins CO, \$2,550

**FY06-07**

- “Using Audio Technology to Enhance Learning” Del Norte School District C-7, Del Norte CO, \$19,900
- “Alamosa High School Wireless Mobile Computer Lab” Alamosa High School / Alamosa School District RE-11J, Alamosa CO, \$15,000
- “Non-fiction for Collaborative Teaching” La Junta Middle School/ East Otero School District R-1, La Junta, CO, \$14,300
- “Information Literacy and Integration Project” Peak to Peak Charter Schools, Inc. / Boulder Valley School District RE-2, Lafayette CO, \$14,407

- “Soroco High School Library Works” South Routt School District RE-3, Oak Creek CO, \$13,140
- “Increasing Reading and Math Achievement” Colorado Springs School District 11 Colorado Springs CO, \$11,628

Read to Achieve (competitive)

Pursuant to C.R.C.P. 33(d), the requested information is contained in the document labeled “Read to Achieve.xls” on the CD\_ROM Bates-labeled CDE106311.

Federal Child Care Block Grant – Early Childhood Councils and Expanding Quality in Infant Toddler Care (competitive)

The Expanding Quality in Infant Toddler Care Initiative is a collaboration between the Colorado Department of Education and the Colorado Department of Human Services, Division of Child Care. The grants do not flow directly to school districts, but rather to councils established throughout Colorado. For three of the 30 councils, a school district acts as the fiscal agent, but the grant monies still do not flow directly to the school district or any particular schools. Therefore, Defendants are unable to respond to this Interrogatory with respect to this particular grant.

Federal Title I-A (to be used district-wide for districts on improvement) (competitive)

The State is required to set aside 4% of its total Title IA funds to support schools identified for Improvement. When not enough schools on Improvement request to participate in the school improvement grant, then the funds are reallocated in the subsequent year for other district grants. The total amount available for districts varies from year to year, depending on the carryover from the previous year.

Despite reasonable and diligent efforts, Defendants are still compiling the specific requested information about this grant. Defendants will produce this information in the near future.

Federal Title I-A 1003(a) District Improvement (upon invitation)

Pursuant to C.R.C.P. 33(d), the requested information is contained in the document labeled “1003(a) District Improvement.xls” on the CD\_ROM Bates-labeled CDE106311.

Federal Title I-A 1003(g) Tiered Intervention School Improvement (competitive)

Pursuant to C.R.C.P. 33(d), the requested information is contained in the document labeled “1003(g) Tiered Intervention School Improvement.xls” on the CD\_ROM Bates-labeled CDE106311.

Federal Title I-C Migrant Education (upon invitation)

Pursuant to C.R.C.P. 33(d), the requested information is contained in the document labeled "Title I-C Migrant District Distributions.xls" on the CD\_ROM Bates-labeled CDE106311. Despite reasonable and diligent efforts, Defendants are still in the process of collecting data from two specific regions. Defendants will produce this information in the near future.

Federal Title II-A Improving Teacher Quality for Institutions of Higher Education (competitive)

DHE receives approximately \$850,000 annually from the federal government to administer funds to institutions of higher education that in turn provide college coursework and other professional development activities to educators in P-12 school districts. The purpose of these competitive grants is to increase P-12 student academic achievement by improving educator effectiveness and the equitable distribution of effective educators throughout the state. Below is the allocation of funding to institutions of higher education, by institution, as well as the school districts that have received professional development because of the grant:

**2005**

Total amount of funding available to institutions of higher education through the grant.

\$374,525

Amount of funding each institution of higher education received.

Western State College: \$74,542

Morgan CC: \$75,000

Adams State College: \$75,000

Colorado School of Mines: \$74,983

Colorado State University-Pueblo: \$75,000

School districts that have received professional development because of the grant.

Rural Western Slope schools

Southern Colorado schools

San Luis Valley schools

Gunnison Watershed School District

Montezuma-Cortez School District

**2006**

Total amount of funding available to institutions of higher education through the grant.  
\$966,654

Amount of funding each institution of higher education received.

Colorado State University-Pueblo: \$140,000  
Front Range CC: \$150,000  
Western State College: \$145,152  
Adams State College: \$149,913  
University of Colorado Denver: \$81,638  
Metropolitan State College of Denver: \$149,972  
Colorado State University: \$149,979

School districts that have received professional development because of the grant.

Adams County School District 14  
Aguilar RE-6  
Branson RE-82  
Cotopaxi RE-3  
Crowley County RE-1-J  
Custer Consolidated C-1  
Florence RE-2  
Fowler RE-4J  
Hoehne RE-6  
Huerfano RE-1  
LaVeta RE-2  
Primero RE-2  
Pueblo 60  
Pueblo County 70  
Trinidad 1  
Frenchman RE-3  
Weld RE-1  
San Luis Valley Schools

**2007**

Total amount of funding available to institutions of higher education through the grant.  
\$807,444

Amount of funding each institution of higher education received.

Adams State College: \$95,550  
Colorado School of Mines: \$123,271  
Metropolitan State College of Denver: \$187,644  
Colorado State University-Pueblo: \$139,980

University of Colorado-Denver: \$106,012  
Western State College: \$154,987

School districts that have received professional development because of the grant.

Arickaree R-2  
Frenchman RE-3  
Holly RE-3  
Montezuma-Cortez RE-1  
Mountain Valley RE-1  
Pueblo City 6  
Delta County  
Montrose County  
Plateau Valley  
Moffat Consolidated School District #2  
Colorado Rural School Network

## **2008**

Total amount of funding available to institutions of higher education through the grant.  
\$839,385

Amount of funding each institution of higher education received.

Colorado State University-Pueblo: \$141,867  
Colorado State University: \$263,506  
Metropolitan State College of Denver: \$197,506  
University of Northern Colorado: \$236,506

School districts that have received professional development because of the grant.

Adams County District 50  
Aurora Public Schools  
Delta County Schools,  
Montrose County Schools  
Silverton School District  
Adams County School District 14  
East Otero R-1 (town of La Junta)  
Fremont RE-2  
Lamar RE-2  
Las Animas RE-1  
Manzanola J3  
Pueblo School District 60  
Pueblo District 70  
Rocky Ford R-2  
Aguilar RE-6  
Branson RE-82

Campo-RE-6  
Crowley County RE-1-J  
Custer County School District C-1  
Fowler R4J  
Fremont RE-1  
Granada RE-1  
Holly RE-3  
Huerfano RE-1  
McClave RE-2  
Primero RE-2 (town of Weston)  
Pritchett RE-3  
Springfield RE-4  
Trinidad 1 (Las Animas County)  
Walsh RE-1 (Baca County)  
Wiley RE -13 JT  
Moffat Consolidated School District #2  
Monte Vista C-8  
Frenchman Re-3  
Valley RE-1  
Platte Valley RE-3,  
Lone Star 101  
Northeastern BOCES  
Greeley 6

**2009**

Total amount of funding available to institutions of higher education through the grant.  
\$946,917

Amount of funding each institution of higher education received.

Metropolitan State College of Denver: \$249,480  
University of Colorado-Colorado Springs: \$457,287  
University of Colorado Denver: \$103,889  
University of Northern Colorado: \$136,261

School districts that have received professional development because of the grant.

North Conejos School District  
Moffat 2  
Monte Vista C-8  
Edison School 54JT  
Miami-Yoder 60 JT  
Harrison 2  
Fountain 8  
Pueblo District 60  
Denver Public Schools

## 2010

Total amount of funding available to institutions of higher education through the grant.  
\$1,074,887

Amount of funding each institution of higher education received.

Colorado State University: \$305,310

Regis University: \$279,680

Metropolitan State College of Denver: \$283,577

University of Colorado-Colorado Springs: \$206,320

School districts that have received professional development because of the grant.

Weld County S/D RE-8

Adams County 14

Adams-Arapahoe 28J

North Conejos RE-1J

Rocky Ford R-2

Huerfano RE-1

Trinidad 1

Montezuma-Cortez RE-1

Aurora Public Schools

Montevista

Pueblo District 60

### Federally Funded Recruitment and Retention Grants (competitive)

This grant derives funds from reallocated Title I grants so the total amount is dependent on how much money is spent in a specific part of Title I in a given year. This past year CDE had \$700,000 for the Recruitment and Retention grant. Each district asks for a different amount, but the maximum award is \$50,000. A large majority of the districts apply for an amount close to the maximum. Pursuant to C.R.C.P. 33(d), additional information is contained in the document labeled "Federally Funded Recruit Retain.pdf" on the CD\_ROM Bates-labeled CDE106311.

### Federal Title II-B Math Science Partnerships (competitive)

Pursuant to C.R.C.P. 33(d), the requested information is contained in the document labeled "Math Science Partnership.pdf" on the CD\_ROM Bates-labeled CDE106311.

### Federal Title II-D Enhancing Education through Technology (formula and competitive)

Pursuant to C.R.C.P. 33(d), the requested information may be found at [http://www.cde.state.co.us/cdefisgrant/Grant\\_Distribution\\_Reports.htm](http://www.cde.state.co.us/cdefisgrant/Grant_Distribution_Reports.htm). More specifically, each Fiscal Year listed on this webpage contains a link to a spreadsheet

entitled “Competitive Grant Distributions.” In these spreadsheets, the requested information may be found in the tab labeled “Title II-D Competitive.” The tab contains the yearly allocation amounts for each grantee and the total grant funds as well as monthly and yearly draw downs.

Federal Title IV-B 21<sup>st</sup> Century (competitive)

Pursuant to C.R.C.P. 33(d), the requested information may be found at [http://www.cde.state.co.us/cdefisgrant/Grant\\_Distribution\\_Reports.htm](http://www.cde.state.co.us/cdefisgrant/Grant_Distribution_Reports.htm). More specifically, each Fiscal Year listed on this webpage contains a link to a spreadsheet entitled “Competitive Grant Distributions.” In these spreadsheets, the requested information may be found in the tab labeled “Title IV-21st Century.” The tab contains the yearly allocation amounts for each grantee and the total grant funds as well as monthly and yearly draw downs.

Federal Learn and Serve America (competitive)

Pursuant to C.R.C.P. 33(d), the requested information is contained in the document labeled “Federal Learn and Serve America Grant.xlsx” on the CD\_ROM Bates-labeled CDE106311.

28. For each of the grants and funding sources identified in the CDE's Human Capital Funding Matrix, explain how each may be used for various activities related to recruiting, training, evaluating and retaining effective teachers and leaders.

**RESPONSE:** Defendants object to this Interrogatory on the ground that the phrase “Human Capital Funding Matrix” is undefined. Defendants interpret this phrase to refer to the Human Capital Funding Matrix identified as an Excel document on the CDE Educator Effectiveness Resource Bank contained at <http://www.cde.state.co.us/EducatorEffectiveness/ResourceBank.asp>. Defendants further object on the ground that the phrase “various activities related to recruiting, training, evaluating and retaining effective teachers and leaders” as vague and undefined.

Subject to and without waiving these objections or the General Objections, Defendants respond as follows. Pursuant to C.R.C.P. 33(d), Defendants refer Plaintiff-Intervenors to the Human Capital Funding Matrix, as defined above, which contains a description of the grant program. Defendants further refer Plaintiff-Intervenors to the substantive web pages for each grant program, which are listed in the Human Capital Funding Matrix, as defined above, for additional information on the grant programs.

29. For each set of data noted in the Colorado Preschool Program 2010 Legislative Report, Exhibit 4 and the Colorado Preschool Program 2009 Legislative Report comparing the achievement data of students served by preschool programs and those not served, please identify the number of students for each given percentage.

**RESPONSE:** Pursuant to C.R.C.P. 33(d), the requested information is contained in the document labeled “CPP Data.xlsx” on the CD\_ROM Bates-labeled CDE106312. This data indicates the number of students used to calculate the percentages reported in the 2010 Legislative Report and Exhibit 4. Defendants were unable to provide any data for the 2009 Legislative Report because the only achievement data reported comparing the outcomes of students served by preschool programs and those not served was reported by individual districts. Those districts did not provide CDE the number of students used to calculate the percentages.

## **II. SECOND REQUEST FOR PRODUCTION**

31. For each consulting expert, that is, consulting experts whose work has been reviewed by the testifying expert, or experts whom you may call to testify in this case, and any person you intend to call who may present expert testimony but for whom an expert report is not required under the Colorado Rules of Civil Procedure, produce:
- a. all documents and tangible things, including reports, models or data compilations, which have been provided to, reviewed by, or prepared by or for the expert;
  - b. the most current resume and bibliography or vita;
  - c. all communications by and between you and the expert related to the expert's testimony and work in this case;
  - d. copies of all case testimony and expert reports in which the expert has testified (by deposition or trial) or submitted an expert report over the last 4 years;
  - e. copies of all contracts entered into by and between you, or on your behalf, and the expert;
  - f. all drafts of the expert reports, summaries of testimony, and drafts of consulting experts' work that has been reviewed by testifying experts.

**RESPONSE:** Defendants object to this Request for Production on the ground that it is vague and confusing. Defendants interpret this Request for Production to seek information about two categories of witnesses: (1) consulting experts and (2) any persons who may present expert testimony but for whom an expert report or summary is not required under the Colorado Rules of Civil Procedure. Given that interpretation, Defendants further object to this Request for Production on the ground that, pursuant to C.R.C.P. 26(b)(4),

[a] party may ... discover facts known or opinions held by an expert who has been retained or specifically employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided by C.R.C.P. 35(b) [report of physical/mental examiner] or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

Therefore, this Request for Production for information from consulting expert is improper.

Subject to and without waiving this objection and the General Objections, Defendants state that Kathy Hebbler has been consulted by Lori Bowers in connection with her expert testimony. However, pursuant to C.R.C.P. 26(b)(4), Plaintiff-Intervenors are not entitled to discover any additional information about the facts known or opinions held by Ms. Hebbler without a showing of exceptional circumstances. Defendants further state that all persons Defendants may call at trial who may present expert testimony have had or will have their reports or summaries of testimony disclosed as required by the Colorado Rules of Civil Procedure. There are, therefore, no undisclosed testifying expert witnesses to whom this Request for Production applies.

Pursuant to conversation between Marisa Bono and Nicholas Heinke on May 18, however, Defendants agreed to produce documents, if any, reviewed or relied upon by any of Defendants' non-retained experts. Defendants will produce these documents in the near future.

32. Provide all documents related to the evaluation, study, audit, review, investigation or analysis of the plans for turnaround schools/districts and priority improvement schools/districts as discussed in the deposition of Rich Wenning, including but not limited to the methodology, the reports, the quality rubric used for the evaluation, study, audit, review, investigation or analysis, communications by and between the evaluation team and you and the subject district, and any findings and recommendations.

**RESPONSE:** Defendants object to this Request for Production on the ground that a request for “all documents related to the evaluation, study, audit, review, investigation or analysis of” certain school and district plans, “including but not limited to the methodology, the reports, the quality rubric used for the evaluation, study, audit, review, investigation or analysis, communications by and between the evaluation team and you and the subject district, and any findings and recommendations,” is vague, overly broad, and unduly burdensome. Defendants further object to this Request for Production on the ground that it is vague and undefined, as the Request for Production seeks information “discussed in the deposition of Rich Wenning” but does not specify the precise page(s) or line(s) of Mr. Wenning’s two-day deposition at which the information was discussed. Defendants interpret this Request for Production to seek information relating to the Unified Improvement Planning process, which is described in detail at <http://www.schoolview.org/UnifiedImprovementPlanning.asp>.

Under that definition, and subject to and without waiving these objections or the General Objections, Defendants are producing documents Bates-labeled CDE104628-CDE104687. These documents are the key documents used by CDE in reviewing district

and school plans. Defendants further direct Plaintiff-Intervenors to the documents and resources available <http://www.schoolview.org/UnifiedImprovementPlanning.asp>.

To the extent that this Request for Production calls for CDE's review or analysis of specific schools and school districts on turnaround or priority improvement status, Defendants further object on the ground that such a request is overly broad, unduly burdensome, and seeks irrelevant information. Specifically, such a request would require review of the files of all schools and districts, not just schools or school districts which are parties to this litigation, or which have parents and students who are party to this litigation. Defendants estimate that retrieving feedback forms for all districts and schools on turnaround or priority improvement status would require reviewing individual district and school files for approximately 17 districts and 200 schools. Pursuant to conversation between Marisa Bono and Nicholas Heinke on May 18, Defendants are investigating the burden of retrieving feedback forms for only those schools and school districts that are parties to this litigation, or which have parents and students who are party to this litigation.

33. Provide all documents related to the recommendations and findings of the State Council for Educator Effectiveness as discussed in the deposition of Rich Wenning pertaining to teacher and principal evaluations.

**RESPONSE:** Defendants object to this Request for Production on the ground that a request for "all documents related to" this topic is overly broad and unduly burdensome. Defendants further object to this Request for Production on the ground that it is vague and undefined, as the Request for Production seeks information "discussed in the deposition of Rich Wenning" but does not specify the precise page(s) or line(s) of Mr. Wenning's two-day deposition at which the information was discussed. Defendants interpret the Request for Production to seek documents related to the recently-released Report and Recommendations of the State Council for Educator Effectiveness.

Under that definition, and subject to and without waiving these objections or the General Objections, Defendants state that the Report and Recommendations of the State Council for Educator Effectiveness has been previously marked as Deposition Exhibit 3008, and Defendants direct Plaintiff-Intervenors thereto. Additional information related to the Report and Recommendations of the State Council for Educator Effectiveness may be found at <http://www.cde.state.co.us/EducatorEffectiveness/Partner-SCEE.asp>.

34. Provide all documents evidencing the budget for the Colorado Department of Education, including but not limited to federal, state and private monies received, expenditures, the salaries of CDE employees and pay scales or salary charts.

**RESPONSE:** Defendants object to this Request for Production on the ground that a request for "all documents" relating to the budget for the Colorado Department of Education is overly broad and unduly burdensome.

Subject to and without waiving this objection or the General Objections, Defendants respond as follows. Federal, state, and private monies received by the Colorado Department of Education are indicated in the annual Long Bill passed by the Colorado General Assembly. Bill numbers for the past three years' Long Bills are: SB 11-209, HB 10-1376, and SB 09-259. Current year bills are available on the Colorado General Assembly's website, at [www.leg.state.co.us/](http://www.leg.state.co.us/). Prior year bills are available on the Colorado General Assembly's website, at [www.leg.state.co.us/clics/clics2011a/cslFrontPages.nsf/PrevSessionInfo?OpenForm](http://www.leg.state.co.us/clics/clics2011a/cslFrontPages.nsf/PrevSessionInfo?OpenForm).

Expenditure data is being produced on the CD-ROM Bates-labeled CDE106309. Included on this CD-ROM are files labeled:

- Expenditures\_Schedule\_3\_Group1.xlsx
- Expenditures\_Schedule\_3\_Group2.xlsx
- Expenditures\_Schedule\_3\_Group3.xlsx
- Expenditures\_Schedule\_3\_Group4.xlsx

These files correspond with the four sections of the Long Bill. The files indicate actual expenditures for FY2008-09 and FY2009-10, appropriated and estimated expenditures for FY2010-11, and requested expenditures for FY2011-12.

Salaries of CDE employees and pay scales or salary charts are being produced on the CD-ROM Bates-labeled CDE106309. Included on this CD-ROM are three files related to salary schedules labeled:

- 2008-2009 AT WILL SALARY SCHEDULE.DOC
- 2009-2010 AT WILL SALARY SCHEDULE.DOC
- 2010-2011 AT WILL SALARY SCHEDULE (02.17.11).DOC

These files indicate the at-will staff salary range.

Also included on this CD-ROM are three files related to salaries of CDE employees labeled:

- June 2009 Payroll.xlsx
- June 2010 Payroll.xlsx
- April 2011 Payroll.xlsx

These files indicate the salaries for all CDE staff. These files are designed **CONFIDENTIAL** pursuant to the terms of the protective agreement entered in this case.

35. Produce all documents related to any evaluation, study, report, audit, review, investigation or analysis of the Plaintiff-Intervenor school districts' Title I or Title III funding, programs and services.

**RESPONSE:** Defendants object to this Request for Production on the ground that a request for "all documents related to" this topic is overly broad and unduly burdensome.

Defendants further object to this Request for Production on the ground that the phrase “Title I or Title III funding, programs and services” is vague and undefined.

Subject to and without waiving these objections or the General Objections, Defendants are producing documents Bates-labeled CDE104688-CDE104837 in response to this Request for Production.

36. Produce all documents relating to the CDE's role as a partner pertaining to the Individual Career and Academic Plan.

**RESPONSE:** Defendants object to this Request for Production on the ground that a request for “all documents related to” this topic is overly broad and unduly burdensome. Defendants further object to this Request for Production on the ground that the phrase “role as a partner pertaining to” the Individual Career and Academic Plan is vague, confusing, and undefined. It is not clear, for example, what partnership is being referenced.

Subject to and without waiving these objections and the General Objections, Defendants state that information related to Individual Career and Academic Plans may be found at <http://www.cde.state.co.us/SecondaryInitiatives/ICAP.htm>.

37. Produce all documents evidencing grade retention rates statewide, and by district, including but not limited to retention rates disaggregated by race, socioeconomic status and English language proficiency.

**RESPONSE:** Defendants object to this Request for Production on the ground that the phrase “grade retention rates” is undefined. Defendants interpret “grade retention rates” to refer to dropout rates.

Under that definition, and subject to and without waiving this objection or the General Objections, Defendants state that dropout data is available at the Colorado Department of Education’s Colorado Education Statistic’s web page ([http://www.cde.state.co.us/index\\_stats.htm](http://www.cde.state.co.us/index_stats.htm)) under “Dropout Statistics.” Dropout rates disaggregated by ethnicity and instructional program type (including Limited English Proficient, Economically Disadvantaged, Migrant, Title I, and Homeless) are available from 2003-2004 to the present.

38. Produce all underlying data used to create Exhibit 68, the March 2011 report entitled "Shining a Light on College Remediation in Colorado: The Predictive Utility of the ACT for Colorado and the Colorado Student Assessment Program (CSAP).

**RESPONSE:** Defendants object to this Request for Production on the ground that the detailed data used to create Exhibit 68, the March 2011 report entitled "Shining a Light on College Remediation in Colorado: The Predictive Utility of the ACT for Colorado and

the Colorado Student Assessment Program (CSAP) is protected by the Family Educational Rights and Privacy Act (FERPA) and thus may not be disclosed.

Subject to and without waiving this objection or the General Objections, Defendants are producing a masked data request. That data is contained in the document labeled “Remediation Summary by High School.xls” on the CD\_ROM Bates-labeled CDE106310.

### **III. SECOND REQUEST FOR ADMISSIONS**

33. Admit that public schoolteachers in the State of Colorado are not overpaid.

**RESPONSE:** Defendants object to this Request for Admission on the ground that the term “overpaid” is undefined.

Subject to and without waiving this objection or the General Objections, Defendants refer Plaintiff-Intervenors to Defendants’ Response to Interrogatory 26, above.

34. Admit that Colorado public school districts are free to enter into labor agreements with their school teachers.

**RESPONSE:** Defendants object to this Request for Admission on the ground that the phrase “free to enter into labor agreements” is vague and undefined. Defendants interpret this Request for Admission to ask whether Colorado state law prohibits a school district’s local board of education from entering into collective bargaining agreements as defined in C.R.S. § 22-32-109.4(2).

Under that definition, and subject to and without waiving this objection or the General Objections, Defendants admit that Colorado state law does not currently prohibit a school district’s local board of education from entering into agreements as defined in C.R.S. § 22-32-109.4(2). *See, e.g., Martin v. Montezuma-Cortez School Dist. RE-1*, 841 P.2d 237, 247 (Colo. 1992) (“[T]his court ... has found an inherent right of public employees to engage in collective bargaining. *Littleton Educ. Ass’n v. Arapahoe County Sch. Dist.*, 553 P.2d 793 (Colo. 1976)). We note that teachers’ associations are not uncommon in Colorado, and that they have engaged in collective bargaining and have negotiated agreements with their respective school districts.”).

35. Admit that the Colorado Department of Education plans to develop a model curriculum that aligns with the Model Content Standards and the Common Core Standards.

**RESPONSE:** Denied. The Colorado Department of Education will not develop a model curriculum. The Colorado Department of Education may in the future post excellent examples of curriculum and is currently in the process of developing advice maps for a curriculum design.

36. Admit that the Colorado Department of Education is offering competitive grants to school districts to cover the cost of implementing the teacher effectiveness law, also known as SB 191.

**RESPONSE:** Denied. There are and have been in the past various competitive grants that school districts may use to do the sorts of activities contemplated by SB-191, but at this stage there are no specific competitive grants to school districts to cover the cost of implementing SB-191.

Dated: May 19, 2011

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**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the within **DEFENDANTS' RESPONSES TO PLAINTIFF-INTERVENORS' THIRD SET OF INTERROGATORIES, SECOND REQUEST FOR PRODUCTION AND SECOND REQUEST FOR ADMISSIONS** upon all parties herein electronically through LexisNexis File & Serve or U.S. Mail this 19<sup>th</sup> day of May, 2011, addressed as follows:

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