

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PLAINTIFFS: Anthony Lobato, <i>et al.</i></p> <p>and</p> <p>PLAINTIFFS-INTERVENORS: Armandina Ortega, <i>et al.</i></p> <p>v.</p> <p>DEFENDANTS: The State of Colorado, <i>et al.</i></p>	
<p>Attorneys for Defendants: 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. 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: 2005 CV 4794</p> <p>Div: 9</p>
<p>DEFENDANTS' RESPONSES TO PLAINTIFFS' <u>SECOND</u> SET OF DISCOVERY REQUESTS</p>	

Defendants, by and through their counsel, hereby submit their Responses to Plaintiffs' Second Set of Discovery Requests ("Responses").

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 further supplement or amend these Responses if and when additional information becomes known.

The following General Objections apply to Plaintiffs' 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 Plaintiffs' 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 the 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 seek information over a ten-year time period or longer on the ground that such requests are overbroad, unduly burdensome, and require unreasonable efforts or expense on behalf of Defendants. Unless otherwise indicated, Defendants will produce relevant information from the prior five years.
6. Defendants object to the discovery requests to the extent the requests are vague or ambiguous.
7. 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.
8. 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.

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

10. 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.

11. Defendants object to Plaintiffs' definition of the terms "refer," "relate," "concern," "referring," "relating," or "concerning," to the extent these terms are to be "construed in the broadest sense to mean information (1) referring to, describing, evidencing, constituting, embodying or otherwise discussing in any way the subject matter identified in a request; (2) which contains or comprises any communication . . . referred to in these requests; or (3) information which discusses, mentions or refers, whether directly or indirectly, to the subject matter of the request," as this definition renders the requests overly broad and unduly burdensome on their face.

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

13. 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.

14. Defendants object to the discovery requests to the extent the requests exceed the number provided for in the Modified Case Management Order.

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

I. REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 10: Admit that the total program funding levels for each and every School District established on the enactment of the Public School Finance Act of 1994 were not based on a rational assessment of the cost to provide a public education that met the requirements of then-current "State education statutes and regulations" or any other measure of the quality of public education.

RESPONSE: Defendants object to this Request for Admission on the ground that it does not seek admission of "statements or opinions of fact or of the application of law to fact," C.R.C.P. 36(a), but impermissibly seeks admission of the truth of multiple legal

conclusions. *See Cunningham v. Standard Fire Ins. Co.*, No. 07-cv-02538, 2008 WL 2247860, *2 (D. Colo. May 29, 2008) (“[R]equests for admission relating to the truth of a legal conclusion are properly objectionable, even though Rule 36 permits the application of law to fact.”) (citing cases). Specifically, whether total program funding levels were based on a “rational assessment” seeks admission of the legal conclusion of whether the public school finance system satisfies the rational basis test, which is the core legal issue in this case. *See, e.g., Lobato v. State*, 218 P.3d 358, 363 (Colo. 2010) (“[I]t is the responsibility of the judiciary to determine whether the state’s public school financing system is rationally related to the constitutional mandate that the General Assembly provide a ‘thorough and uniform’ system of public education.”). In addition, this Request for Admission suggests that “State education statutes and regulations” or “any other measure of the quality of public education” are the definition of a “thorough and uniform system of free public schools” under article IX, section 2 of the Colorado Constitution. The determination of the contours of article IX, section 2 is a legal question not subject to discovery. *See Defs.’ Mtn. for Determination of Questions of Law Pursuant to R. 56(h).*

Defendants further object to this Request for Admission on the ground that it seeks to obtain discovery regarding the General Assembly, an entity that is not a party to this lawsuit and that the Office of the Attorney General does not represent as a matter of law. C.R.S. § 24-31-101. It is the General Assembly, not any of the Defendants, that sets funding levels and appropriates funds for various programs and services. *Colorado General Assembly v. Owens*, 136 P.3d 262, 266 (Colo. 2006) (“The General Assembly maintains the exclusive authority to enact legislation, including appropriations. The legislature’s power over appropriations is plenary, subject only to constitutional limits . . .”).

Defendants further object to this Request for Admission to the extent that it seeks information about all school districts, including school districts that are not a party to this litigation, on the ground that such information is irrelevant. As explained in detail in Defendants’ Combined Response to Plaintiffs and Plaintiff-Intervenors’ Motions to Strike Affirmative Defenses, Plaintiffs may not prosecute this case on behalf of unnamed parties.

Subject to and without waiving these objections, and without answering on behalf of the General Assembly, Defendants direct Plaintiffs to the legislative declaration of the Public School Finance Act of 1994, C.R.S. § 22-54-102, which is evidence of the General Assembly’s intent in enacting the Public School Finance Act of 1994, and which provides that “[t]he General Assembly hereby finds and declares that this article is enacted in furtherance of the general assembly’s duty under section 2 of article IX of the state constitution to provide for a thorough and uniform system of public schools throughout the state . . .”

REQUEST FOR ADMISSION NO. 11: Admit that the annual amendments or adjustments to the total program funding levels for each and every School District set by the

general assembly in each and every year following the enactment of the Public School Finance Act of 1994, through and including fiscal year 2010-11, were not based on a rational assessment of the costs to provide a public education that met or meets the requirements of the then-current “State education statutes and regulations” or any other measure of the quality of public education.

RESPONSE: Defendants object to this Request for Admission on the ground that it does not seek admission of “statements or opinions of fact or of the application of law to fact,” C.R.C.P. 36(a), but impermissibly seeks admission of the truth of multiple legal conclusions. *See Cunningham v. Standard Fire Ins. Co.*, No. 07-cv-02538, 2008 WL 2247860, *2 (D. Colo. May 29, 2008) (“[R]equests for admission relating to the truth of a legal conclusion are properly objectionable, even though Rule 36 permits the application of law to fact.”) (citing cases). Specifically, whether total program funding levels were based on a “rational assessment” seeks admission of the legal conclusion of whether the public school finance system satisfies the rational basis test, which is the core legal issue in this case. *See, e.g., Lobato v. State*, 218 P.3d 358, 363 (Colo. 2010) (“[I]t is the responsibility of the judiciary to determine whether the state’s public school financing system is rationally related to the constitutional mandate that the General Assembly provide a ‘thorough and uniform’ system of public education.”). In addition, this Request for Admission suggests that “State education statutes and regulations” or “any other measure of the quality of public education” are the definition of a “thorough and uniform system of free public schools” under article IX, section 2 of the Colorado Constitution. The determination of the contours of article IX, section 2 is a legal question not subject to discovery. *See* Defs.’ Mtn. for Determination of Questions of Law Pursuant to R. 56(h).

Defendants further object to this Request for Admission on the ground that it seeks to obtain discovery regarding the General Assembly, an entity that is not a party to this lawsuit and that the Office of the Attorney General does not represent as a matter of law. C.R.S. § 24-31-101. It is the General Assembly, not any of the Defendants, that sets funding levels and appropriates funds for various programs and services. *Colorado General Assembly v. Owens*, 136 P.3d 262, 266 (Colo. 2006) (“The General Assembly maintains the exclusive authority to enact legislation, including appropriations. The legislature’s power over appropriations is plenary, subject only to constitutional limits . . .”).

Defendants further object to this Request for Admission to the extent that it seeks information about all school districts, including school districts that are not a party to this litigation, on the ground that such information is irrelevant. As explained in detail in Defendants’ Combined Response to Plaintiffs and Plaintiff-Intervenors’ Motions to Strike Affirmative Defenses, Plaintiffs may not prosecute this case on behalf of unnamed parties.

Subject to and without waiving these objections, and without answering on behalf of the General Assembly, Defendants direct Plaintiffs to the legislative declaration of the Public

School Finance Act of 1994, C.R.S. § 22-54-102, which is evidence of the General Assembly’s intent in enacting the Public School Finance Act of 1994, and which provides that “[t]he General Assembly hereby finds and declares that this article is enacted in furtherance of the general assembly’s duty under section 2 of article IX of the state constitution to provide for a thorough and uniform system of public schools throughout the state”

REQUEST FOR ADMISSION NO. 12: Admit that funding levels, formulas, limitations, and qualifications set for at-risk pupils, preschool education, the English Language Proficiency Act, and the Exceptional Children’s Educational Act (including both students with disabilities and gifted and talented students), and each of them, are not and have not been based upon a rational assessment of the costs of providing the services to such students that are or were at the time required by “State education statutes and regulations.”

RESPONSE: Defendants object to this Request for Admission on the ground that it does not seek admission of “statements or opinions of fact or of the application of law to fact,” C.R.C.P. 36(a), but impermissibly seeks admission of the truth of multiple legal conclusions. *See Cunningham v. Standard Fire Ins. Co.*, No. 07-cv-02538, 2008 WL 2247860, *2 (D. Colo. May 29, 2008) (“[R]equests for admission relating to the truth of a legal conclusion are properly objectionable, even though Rule 36 permits the application of law to fact.”) (citing cases). Specifically, whether total program funding levels were based on a “rational assessment” seeks admission of the legal conclusion of whether the public school finance system satisfies the rational basis test, which is the core legal issue in this case. *See, e.g., Lobato v. State*, 218 P.3d 358, 363 (Colo. 2010) (“[I]t is the responsibility of the judiciary to determine whether the state’s public school financing system is rationally related to the constitutional mandate that the General Assembly provide a ‘thorough and uniform’ system of public education.”). In addition, this Request for Admission suggests that “State education statutes and regulations” is the definition of a “thorough and uniform system of free public schools” under article IX, section 2 of the Colorado Constitution. The determination of the contours of article IX, section 2 is a legal question not subject to discovery. *See* Defs.’ Mtn. for Determination of Questions of Law Pursuant to R. 56(h).

Defendants further object to this Request for Admission on the ground that it seeks to obtain discovery regarding the General Assembly, an entity that is not a party to this lawsuit and that the Office of the Attorney General does not represent as a matter of law. C.R.S. § 24-31-101. It is the General Assembly, not any of the Defendants, that sets funding levels and appropriates funds for various programs and services. *Colorado General Assembly v. Owens*, 136 P.3d 262, 266 (Colo. 2006) (“The General Assembly maintains the exclusive authority to enact legislation, including appropriations. The legislature’s power over appropriations is plenary, subject only to constitutional limits”).

Defendants further object to this Request for Admission to the extent that it seeks information about all students in all school districts, including students and school districts that are not a party to this litigation, on the ground that such information is irrelevant. As explained in detail in Defendants' Combined Response to Plaintiffs and Plaintiff-Intervenors' Motions to Strike Affirmative Defenses, Plaintiffs may not prosecute this case on behalf of unnamed parties.

REQUEST FOR ADMISSION NO. 13: Admit that the four performance indicators adopted pursuant to the Education Accountability Act of 2009 are objective measures of whether a school or a school district is providing its students with an education that meets the mandate of the Education Clause and/or "State education statutes and regulations."

RESPONSE: Defendants object to this Request for Admission on the ground that the phrase "four performance indicators adopted pursuant to the Education Accountability Act of 2009" is vague and undefined. Defendants interpret the reference to performance indicators as a reference to C.R.S. § 22-11-204, which defines performance indicators in the Education Accountability Act of 2009. Using this definition, Defendants further object to this Request for Admission on the ground that it seeks to obtain discovery regarding the General Assembly, an entity that is not a party to this lawsuit and that the Office of the Attorney General does not represent as a matter of law. C.R.S. § 24-31-101. It is the General Assembly, not any of the Defendants, that enacted the performance indicators in C.R.S. § 22-11-204, and it is the General Assembly that would have knowledge of the purpose of those indicators. Defendants further object to this Request for Admission on the ground that it does not seek admission of "statements or opinions of fact or of the application of law to fact," C.R.C.P. 36(a), but impermissibly seeks admission of the truth of a legal conclusion. *See Cunningham v. Standard Fire Ins. Co.*, No. 07-cv-02538, 2008 WL 2247860, *2 (D. Colo. May 29, 2008) ("[R]equests for admission relating to the truth of a legal conclusion are properly objectionable, even though Rule 36 permits the application of law to fact.") (citing cases). Specifically, this Request for Admission suggests that "State education statutes and regulations" is the definition of a "thorough and uniform system of free public schools" under article IX, section 2 of the Colorado Constitution. The determination of the contours of article IX, section 2 is a legal question not subject to discovery. *See Defs.' Mtn. for Determination of Questions of Law Pursuant to R. 56(h).*

Subject to and without waiving these objections, and without answering on behalf of the General Assembly, Defendants direct Plaintiffs to the legislative declaration of the Educational Accountability Act of 2009, C.R.S. § 22-11-102, and specifically C.R.S. § 22-11-102 (1)(d) ("The general assembly hereby finds that an effective system of statewide education accountability is one that . . . [among other things,] objectively evaluates the performance of the thorough and uniform statewide system of public education for all groups of students at the state, school district or institute, and individual public school levels") and C.R.S. § 22-11-102(3)(a) ("The general assembly concludes, therefore, that it is in the best interests of the state to adopt an aligned

education accountability system for public education in this state that . . . [among other things, h]olds the state, school districts, the institute, and public schools accountable on statewide performance indicators supported by consistent, objective measures . . .”).

II. NON-PATTERN INTERROGATORIES

NON-PATTERN INTERROGATORY NO. 23: Identify any and all Plaintiff School Districts and any and all schools within a Plaintiff School District that do not meet, or have not met at any time since school year 2001-02, state expectations for student academic performance due to failure to use district resources effectively. For purposes of this interrogatory, a school district or school has not “met state expectations for student performance” if it has been designated an accreditation category of “accredited with improvement plan” or below under the terms of the Education Accountability Act of 2009; or an overall academic performance rating of “C” or “average” or below on a school accountability report; or failed to meet adequate yearly progress on federal benchmarks. With respect to each school district or school identified in this response, describe with specificity the factual basis for your answer.

RESPONSE: Defendants object to this Interrogatory on the ground that it is directed to the wrong party. Specifically, with limited exception, it is the school districts, not any of the Defendants, that have control over allocation of their budgets and therefore, the “effective” use of their resources.

Subject to and without waiving this objection or the General Objections, Defendants state that the Colorado Department of Education does not collect data concerning the specific question of whether schools’ or school districts’ failure meet to state expectations for student academic performance is due to failure to use district resources effectively. There are, however, examples provided both by the Colorado Department of Education and Plaintiff School Districts regarding effective use of resources. For example, the Comprehensive Appraisal for District Improvement (CADI) reports for certain Plaintiff and Plaintiff-Intervenor School Districts, which are being produced as CDE104111-CDE104314, note issues with inefficiencies in those districts. Plaintiff School Districts and other 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.

NON-PATTERN INTERROGATORY NO. 24: For each of the fiscal years 1994-95 through 2010-11, inclusive, identify with specificity any and all adjustments made by the general assembly to the total program funding amount (including, without limitation, factors incorporated into the total program funding amount) of each and every School District and the categorical funding provided to each and every School District that was based upon a determination of the costs associated with meeting the standards and measures within the then-current Educational (or Education) Accountability Act or other “State education statutes and regulations.” For each and every such adjustment that you identify, describe with specificity all facts upon which you rely in making your answer.

RESPONSE: Defendants object to this Interrogatory on the ground that it seeks to obtain discovery regarding the General Assembly, an entity that is not a party to this lawsuit and that the Office of the Attorney General does not represent as a matter of law. C.R.S. § 24-31-101. It is the General Assembly, not any of the Defendants, that determines total program and categorical funding amounts. *Colorado General Assembly v. Owens*, 136 P.3d 262, 266 (Colo. 2006) (“The General Assembly maintains the exclusive authority to enact legislation, including appropriations. The legislature’s power over appropriations is plenary, subject only to constitutional limits . . .”).

Defendants further object to this Interrogatory to the extent that it seeks information about all school districts, including school districts that are not a party to this litigation, on the ground that such information is irrelevant. As explained in detail in Defendants’ Combined Response to Plaintiffs and Plaintiff-Intervenors’ Motions to Strike Affirmative Defenses, Plaintiffs may not prosecute this case on behalf of unnamed parties.

NON-PATTERN INTERROGATORY NO. 25: Identify each and every School District that you contend would realize a fiscally significant benefit from consolidation with any other School District or Districts. In each case, describe with specificity and quantify the fiscal benefits that such School District would realize and the facts upon which you rely in making this response.

RESPONSE: Defendants object to this Interrogatory on the ground that the term “fiscally significant benefit” is vague and undefined. As discovered during fact depositions, there is disagreement among Plaintiff school districts about what would constitute “a fiscally significant benefit.” Defendants further object to this Interrogatory to the extent that it is directed to the wrong party. Specifically, as illuminated by the depositions of representatives of Plaintiff School Districts, the districts themselves have often analyzed cost savings from cooperation, consolidation, and other such activities.

Defendants further object to this Interrogatory to the extent that it seeks information about all school districts, including school districts that are not a party to this litigation, on the ground that such information is irrelevant. As explained in detail in Defendants’ Combined Response to Plaintiffs and Plaintiff-Intervenors’ Motions to Strike Affirmative Defenses, Plaintiffs may not prosecute this case on behalf of unnamed parties.

Subject to and without waiving these objections or the General Objections, Defendants state that the Colorado Department of Education has not done an analysis of the specific question of the fiscal benefits realized from consolidation. Pursuant to C.R.C.P. 33(d), Defendants refer Plaintiffs to two studies commissioned by CDE, the Declining Enrollment Study (CDE104372-CDE104580) and the Rural Needs Study (CDE094185-CDE094204), both of which discuss consolidation. Those studies speak for themselves.

NON-PATTERN INTERROGATORY NO. 26: Identify each and every School District that you contend is able to raise and receive, from any and all sources, sufficient funding to provide an educational program that meets all the requirements of “State education statutes and regulations.” With respect to each such School District, describe with specificity the facts upon which you rely in support of your contention.

RESPONSE: Defendants object to this Interrogatory on the ground that it is directed to the wrong party. Specifically, with limited exception, it is the school districts, not any of the Defendants, that have control over allocation of their budgets and development of their educational programs. Defendants further object to this Interrogatory’s suggestion that funding is the only, or even the primary, factor in whether school districts meet the requirements of “State education statutes and regulations.” Defendants further object to this Interrogatory on the ground that whether a school district is able to provide an educational program that meets all the requirements of “State education statutes and regulations” is irrelevant, as the issue in the case is whether the General Assembly’s education funding decisions are rationally related to the constitutional mandate requiring it to establish a through and uniform system of free public schools and the constitutional protection of local control over instruction. *See* Defs.’ Mot. for Determination of Questions of Law Pursuant to R. 56(h).

Defendants further object to this Interrogatory to the extent that it seeks information about all school districts, including school districts that are not a party to this litigation, on the ground that such information is irrelevant. As explained in detail in Defendants’ Combined Response to Plaintiffs and Plaintiff-Intervenors’ Motions to Strike Affirmative Defenses, Plaintiffs may not prosecute this case on behalf of unnamed parties.

Subject to and without waiving these objections and the General Objections, Defendants state that they are without information sufficient to respond to this Interrogatory. Specifically, no school district has fully maximized the revenue they are legally permitted to raise through bonds or mill levy overrides, so it is impossible to determine whether, assuming additional resources are needed to provide an educational program that meets all the requirements of “State education statutes and regulations,” efficient use of those additional resources would provide such a program in any given districts. Again, it is the school districts, not any of the Defendants, that determine how, and toward what goals, strategies, and priorities, to allocate their budgets. Further, whether a school district raises additional funds outside of the revenue they are permitted to generate through bonds or mill levy overrides (e.g., grants, private donations, fundraisers) is a decision left to the school district, not to any of the Defendants.

NON-PATTERN INTERROGATORY NO. 27: Identify with specificity all required or important state services that you contend the State is required to provide and/or fund with equal or superior priority to public education.

RESPONSE: Defendants object to this Interrogatory on the ground that it seeks to obtain discovery regarding the General Assembly, an entity that is not a party to this lawsuit and that the Office of the Attorney General does not represent as a matter of law. C.R.S. § 24-31-101. It is the General Assembly, not any of the Defendants, that makes determination of whether and what programs to fund, subject to constitutional constraints. *Colorado General Assembly v. Owens*, 136 P.3d 262, 266 (Colo. 2006) (“The General Assembly maintains the exclusive authority to enact legislation, including appropriations. The legislature’s power over appropriations is plenary, subject only to constitutional limits”); *see also* Defs.’ Mot. for Determination of Questions of Law Pursuant to R. 56(h) at 7-8.

Defendants further object to this Interrogatory on the ground that it asks a pure question of law and therefore calls for a legal conclusion that exceeds the scope of C.R.C.P. 33. *See, e.g., Steil v. Humana Kan. City, Inc.*, 197 F.R.D. 445, 447 (D. Kan. 2000) (“[I]nterrogatories may not extend to issues of “pure law,” i.e., legal issues unrelated to the facts of the case.”) (quoting Fed. R. Civ. P. 33, 1970 Advisory Committee Notes). Specifically, what other priorities the General Assembly is required to consider in making budgetary decisions is a question of law, not of fact. *See* Defs.’ Mot. for Determination of Questions of Law Pursuant to R. 56(h) at 7-8. Defendants further object to the Interrogatory to the extent that it misstates the legal issue in the case. The issue in the case is whether the General Assembly’s education funding decisions are rationally related to the constitutional mandate requiring it to establish a through and uniform system of free public schools and the constitutional protection of local control over instruction. *See* Defs.’ Mot. for Determination of Questions of Law Pursuant to R. 56(h) at 3-4.

Subject to and without waiving these objections or the General Objections, and without answering on behalf of the General Assembly, Defendants note that several of the other constitutional mandates applicable to the General Assembly were outlined in Defendants’ Motion for Determination of Questions of Law Pursuant to R. 56(h) at page 7. In addition, pursuant to C.R.C.P. 33(d), Defendants refer Plaintiffs to AGLEG014183-AGLEG014198, which is a Legislative Council memorandum describing various spending and revenue mandates.

NON-PATTERN INTERROGATORY NO. 28: Identify each and every education program or plan for which the State department of education is authorized by law to seek, accept, and expend public gifts, grants, or donations. With respect to each such education program or plan, specify the fund to which the gifts, grants, and donations are transmitted, the amount of gifts, grants, and donations accepted and expended within such fund, and the purposes to which those expenditures were applied.

RESPONSE: Pursuant to C.R.C.P. 33(d), Defendants refer Plaintiffs to documents GGD Statutes.xls and GGD Funds.xls, contained on the CD-ROM Bates-labeled CDE106313, which is being produced concurrent with these responses.

GGD Statutes.xls identifies statutes that authorize the department to seek, accept and expend (in some cases expend may not be included) gifts, grants and donations.

GGD Funds.xls has two tabs. The first tab indicates all Fund 100 and ARG (grants that are deposited and tracked in the General Fund and the ARG fund which represents ARRA grants received by the department). As a result of the fact that the Financial Data Warehouse is purged every few years, CDE does not have description information readily available for all entries. Most federal and private gifts, grants, and donations are put into the general fund. The second tab indicates GGDs that must be accounted for in their own fund.

NON-PATTERN INTERROGATORY NO. 29: Identify each and every educational program or plan that is authorized to receive funding from the state education fund created in section 17(4) of article IX of the state constitution and, with respect to each, identify the amount of funding distributed from the state education fund.

RESPONSE: Pursuant to C.R.C.P. 33(d), Defendants refer Plaintiffs to SEF.xls, contained on the CD-ROM Bates-labeled CDE106314, which is being produced concurrent with these responses. This document indicates all programs funded out of the State Education Fund back to 2001-02.

NON-PATTERN INTERROGATORY NO. 30: State with specificity all facts upon which you rely in support of the proposition that there is a rational relationship between (1) the General Assembly's education funding decisions as adopted in the public school finance system and (2) the constitutional mandates of Article IX, section 2 and/or section 15.

RESPONSE: Defendants object to this Interrogatory on the ground that it seeks to obtain discovery regarding the General Assembly, an entity that is not a party to this lawsuit and that the Office of the Attorney General does not represent as a matter of law. C.R.S. § 24-31-101. It is the General Assembly, not any of the Defendants, that makes determination of whether and what programs to fund, subject to constitutional constraints. *Colorado General Assembly v. Owens*, 136 P.3d 262, 266 (Colo. 2006) (“The General Assembly maintains the exclusive authority to enact legislation, including appropriations. The legislature’s power over appropriations is plenary, subject only to constitutional limits”); *see also* Defs.’ Mot. for Determination of Questions of Law Pursuant to R. 56(h) at 7-8. Defendants further object to this Interrogatory on the ground that it asks pure questions of law and therefore calls for legal conclusions that exceeds the scope of C.R.C.P. 33. *See, e.g., Steil v. Humana Kan. City, Inc.*, 197 F.R.D. 445, 447 (D. Kan 2000) (“[I]nterrogatories may not extend to issues of “pure law,” i.e., legal issues unrelated to the facts of the case.”) (quoting Fed. R. Civ. P. 33, 1970 Advisory Committee Notes). Specifically, both (1) whether the relationship between funding and the constitutional mandates requiring the General Assembly to establish a through and uniform system of free public schools and the constitutional protection of local control

over instruction is “rational” and (2) what, precisely, Article IX, section 2 and/or section 15 require are core legal questions in this case.

Defendants further object to this Interrogatory to the extent that it suggests Defendants bear any burden to prove that the General Assembly’s funding decisions are rational. Plaintiffs must prove, beyond a reasonable doubt, that the General Assembly’s education funding decisions are not rationally related to the constitutional mandate requiring it to establish a through and uniform system of free public schools and the constitutional protection of local control over instruction. Defs.’ Mot. for Determination of Questions of Law Pursuant to R. 56(h) at 3.

Defendants further object to the suggestion that Defendants must proffer any “facts” to support the legal rationality of the General Assembly’s funding decisions. Under rational basis analysis, “[i]f any conceivable set of facts would lead to the conclusion that a classification serves a legitimate purpose, a court must assume those facts exist.” *HealthONE v. Rodriguez*, 50 P.3d 879, 893 (Colo. 2002) (quoting *Christie v. Coors Transp. Co.*, 933 P.2d 1330, 1333 (Colo. 1997)), accord *Lujan*, 649 P.2d at 1022. Plaintiffs bear the burden of “negat[ing] every conceivable basis,” *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973), “[a] State . . . has no obligation to produce evidence to sustain the rationality,” *Heller v. Doe*, 509 U.S. 312, 320 (1993), and “a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data,” *Fed. Communications Comm’n v. Beach Communication, Inc.*, 508 U.S. 307 at 315 (1993). Defendants note that Plaintiffs and Plaintiff-Intervenors have challenged the applicability of this legal standard to the present case. See, e.g., Pl.-Intervenors’ Opp. to Defs.’ Mot for Determination of Questions of Law Pursuant to R. 56(h). In the event that the Court agrees with Plaintiffs and Plaintiff-Intervenors and rejects Defendants’ proffered legal standard for rational basis review, and to the extent that the Court’s decision affirmatively requires Defendants to proffer facts to support the legal rationality of the General Assembly’s funding decisions, Defendants reserve their right to amend this response to incorporate the same. This response in no way precludes Defendants from offering testimony or evidence at trial.

III. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 33: Produce the “plan for implementation of standards-based education”, including, without limitation, the “summary of the fiscal impact of the implementation of standards-based education at the state and local levels and proposed funding amounts and sources” mandated by HB 93-1313, codified at CRS §22-53-405(1)(d).

RESPONSE: Defendants object to this Request on the ground that it exceeds the permissible number of Requests for Production provided by the Modified Case Management Order, entered by the Court on September 10, 2010. More specifically,

Requests 1-27, including all discrete subparts, total 40 requests for production, the number permitted by the Modified Case Management Order.

REQUEST FOR PRODUCTION NO. 34: Produce all annual reports of the results of statewide assessments prepared by the CDE as mandated by HB 93-1313, codified at CRS §22-53-409(4), and by HB 97-1249, codified at CRS §22-7-409(2).

RESPONSE: Defendants object to this Request on the ground that it exceeds the permissible number of Requests for Production provided by the Modified Case Management Order, entered by the Court on September 10, 2010. More specifically, Requests 1-27, including all discrete subparts, total 40 requests for production, the number permitted by the Modified Case Management Order.

REQUEST FOR PRODUCTION NO. 35: Produce the accounting records for the funds identified in response to Non-Pattern Interrogatory No. 28, above.

RESPONSE: Defendants object to this Request on the ground that it exceeds the permissible number of Requests for Production provided by the Modified Case Management Order, entered by the Court on September 10, 2010. More specifically, Requests 1-27, including all discrete subparts, total 40 requests for production, the number permitted by the Modified Case Management Order.

REQUEST FOR PRODUCTION NO. 36: Produce the accounting records from the state education fund that record or evidence all distributions for the programs and plans identified in response to Non-Pattern Interrogatory No. 29, above.

RESPONSE: Defendants object to this Request on the ground that it exceeds the permissible number of Requests for Production provided by the Modified Case Management Order, entered by the Court on September 10, 2010. More specifically, Requests 1-27, including all discrete subparts, total 40 requests for production, the number permitted by the Modified Case Management Order.

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 PLAINTIFFS' SECOND SET OF DISCOVERY REQUESTS** upon all parties herein electronically through LexisNexis File & Serve or U.S. Mail this 19th day of May, 2011, addressed as follows:

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