



Mar 28 2011
10:56AM

DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO
1437 Bannock Street
Denver, Colorado 80202

Plaintiffs: **Anthony Lobato**, et al.

Plaintiff-Intervenors: **Armandina Ortega**, et al.

vs.

Defendants: **The State of Colorado**, et al.

▲ COURT USE ONLY ▲

Alexander Halpern, #7704
ALEXANDER HALPERN LLC
1426 Pearl Street, Ste. 420
Boulder, CO 80302
Phone: 303.449.6180
ahalpern@halpernllc.com

Kathleen J. Gebhardt, #12800
Jennifer Weiser Bezoza, #40662
KATHLEEN J. GEBHARDT LLC
1900 Stony Hill Road
Boulder, CO 80305
Phone: 303.499.8859
gebhardt@indra.com; jennifer@bezoza.com
Attorneys for Anthony Lobato, et al.

Kenzo Kawanabe, #28697
Terry R. Miller, #389007
Geoffrey C. Klingsporn, #38997
Daniel P. Spivey, #41504
Rebecca J. Dunaway, #41538
DAVIS GRAHAM & STUBBS LLP
1550 17th Street, Ste. 500
Denver, CO 80202
Phone: 303.892.9400
kenzo.kawanabe@dgsllaw.com; terry.miller@dgsllaw.com;
geoff.klingsporn@dgsllaw.com; daniel.spivey@dgsllaw.com;
rebecca.dunaway@dgsllaw.com
Attorneys for Plaintiffs Anthony and Denise Lobato, Taylor Lobato, Alexa Lobato, Aurora Joint School District No. 28, Jefferson County School District No. R-1, Colorado Springs School District No. 11, Alamosa School District No. RE-11J and Monte Vista School District No. C-8

Case Number: 05 CV 4794

Div: 9

PLAINTIFFS' SECOND SET OF DISCOVERY REQUESTS TO DEFENDANTS

Pursuant to C.R.C.P. 33, 34, and 36, Plaintiffs submit their Second Set of Discovery Requests to Defendants. Responses and documents are due within 30 days of service at the offices of Alexander Halpern LLC, 1426 Pearl Street, Ste. 420, Boulder, CO 80302

DEFINITIONS

1. "You" or "your" shall mean each Defendant, any of its attorneys, agents, or representatives, and anyone acting for or on its behalf.
2. "Plaintiffs" shall mean each Plaintiff, any of its attorneys, agents, or representatives, and anyone acting for or on its behalf.
3. "School Districts" shall mean any and all Colorado school districts and cooperative associations of school districts, such as Boards of Cooperative Educational Services, established pursuant to Art. IX, Sec. 2, of the Colorado Constitution (the "Education Clause"), any of their schools (including charter schools), attorneys, agents, representatives, officers, directors, employees, affiliates, and anyone acting for or on any of their behalves.

3A. The term "Plaintiff School Districts" means and includes all Plaintiff School Districts and all School Districts that operate schools attended by any of the Individual Plaintiffs or any of the Plaintiff-Intervenors in this action.

3B. The term "State education statutes and regulations," unless otherwise defined in a specific request or interrogatory, means and includes C.R.S., title 22, article 7 (Educational Accountability), including, without limitation, Parts 4 (Education Reform) and 10 (the Preschool to Postsecondary Education Act); C.R.S., title 22, article 9 (the Licensed Personnel Performance Evaluation Act); C.R.S., title 22, article 11 (the Education Accountability Act of 2009); C.R.S., title 22, article 20 (the Exceptional Children's Educational Act); C.R.S., title 22, article 24 (the English Language Proficiency Act); C.R.S., title 22, article 28 (the Colorado Preschool Program Act); C.R.S., title 22, article 30.5 (the Charter Schools Act); C.R.S., title 22, article 30.7 (On-line Education Programs); C.R.S. §22-32-109.1 (Safe Schools); C.R.S. § 22-32-116.5 (Extracurricular and Interscholastic Activities); C.R.S. §§22-32-119 and 119.5 (Kindergartens); C.R.S., title 22, article 33 (the School Attendance Law of 1963); C.R.S., title 22, article 35 (Concurrent Enrollment Programs Act); C.R.S., title 22, article 36 (Public Schools of Choice); C.R.S., title 22, article 54 (the Public School Finance Act of 1994); C.R.S., title 22, article 60.5 (the Colorado Educator Licensing Act of 1991); and C.R.S., title 22, article 63 (the Teacher Employment, Tenure and Dismissal Act of 1990); Title IV, Part B, of the federal Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001; C.R.S. §§ 22-1-113, -113.2, and 113.5 (Higher Education

Admission Standards); including those statutes as they currently exist and their predecessor statutes; and the rules and regulations adopted pursuant thereto.

4. The term “public school finance system,” unless otherwise defined in a specific interrogatory or request, shall mean all sources and methods established by state or federal law and/or established or administered by any of the Defendants or the Colorado Department of Education, to provide funding for School Districts to provide the educational services required by the Colorado Constitution, state or federal law, or regulations, including, without limitation, the Public School Finance Act of 1994, all categorical funding programs, and funding for school district capital construction and facilities.

5. “Document” or “Documents” shall have the broadest meaning permitted under the Colorado Rules of Civil Procedure, and includes, without limitation, all originals, copies, non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts of the following items, in each case, whether printed or recorded through a sound, video or other electronic, magnetic or digital recording system, or reproduced by hand: letters, correspondence, telegrams, telexes, memoranda, records, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, agendas, note pads, notebooks, postcards, “Post-It” notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations, or transcriptions thereof, electronically transmitted messages (“email”), voice-mail messages, interoffice communications, advertising, packaging and promotional materials and any other writings, papers, and tangible things of whatever description whatsoever, including, but not limited to, any information contained in any computer or other electronic storage device, even if not yet printed in paper form, in each case, within your possession, custody, or control. “Documents” and “Document” shall also include any and all data compilations from which information can be obtained.

6. “Communication” or “Communications” shall mean any manner or means of disclosure, transfer, or exchange, and every disclosure, transfer or exchange of information, whether orally or by Document (including, but not limited to, by electronic means), and whether face-to-face, in person, by telephone, telecopy, mail, delivery service, personal delivery, email, or otherwise, and includes correspondence, memoranda, reports and records of telephone calls, reports of meetings, and all accounts or summaries of oral conversations.

7. The term “person” means any individual, corporation, partnership, proprietorship, association, organization, private entity, governmental entity, or group of persons.

8. The term “third-party” shall mean any individual or entity, that is not a party to this action, including any of its parent corporations, predecessors in interest, subsidiaries, joint ventures, any acquired assets or business units, any other legal entities that are wholly or partly owned or controlled by that third-party, and any present or former directors, officers, members, employees, agents, representatives, attorneys, and/or all other persons acting, or purporting to act, on its behalf, collectively and individually.

9. “Identify,” when applied to a person, requires that you give the person’s full name, residence address, residence telephone, business or occupation, job title or description, employer, business address and business telephone. If you do not have current information on the person being identified, then give their last known residence address, residence telephone, etc.

10. “Identify,” when referring to a business, organization, or other entity means to give the legal name of the entity, a description of its nature (e.g., corporation, partnership, joint venture, etc.), any business or assumed name under which it does business, its principal place of business and the address of the office(s).

11. “Identify,” when used in reference to a document, requires that you (regardless of whether you may assert a privilege or other objection to its disclosure) describe the document (i.e., whether it is a letter, memorandum, contract, etc.) and state its date, the name of the person or persons whose signatures are affixed or for whom signature lines were prepared if the document was unsigned, the person who prepared it, the person to whom it was addressed and/or prepared for, a short synopsis of the document’s contents, and to otherwise describe it with sufficient detail to meet the requirements for its inclusion in a Colo. R. Civ. P. 34 request for production, and also requires that you identify all persons known to you to have control or possession of such documents or copies thereof.

12. “Identify,” when used in reference to a misrepresentation, a statement, or information requires you to describe such misrepresentation, statement, or information with particularity as required by Colo. R. Civ. P. 9(b).

13. “Describe with particularity” or “state with particularity,” when used in reference to a matter of fact means to state every material fact and circumstance specifically and completely (including, but not limited to, date, time, location, and the identity of all participants), and whether each such fact or circumstance is stated on knowledge, information, or belief, or is alleged without foundation.

14. “Describe with particularity” or “state with particularity,” when used in reference to a matter of law is directed to your attorney and means to state every relevant legal theory and material conclusion of law specifically and completely and to cite the principal authorities relied upon in support of each.

15. The terms “refer,” “relate,” “concern,” “referring,” “relating,” or “concerning” shall 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 (including representations, requests, demands, studies, analyses, and the like) referred to in these requests; or (3) information which discusses, mentions or refers, whether directly or indirectly, to the subject matter of the request.

16. “And” and “or” shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible.

17. The terms “any” and “all” shall be considered to include “each and every.”

18. Unless otherwise stated, these discovery requests concern any documents, communications, or other materials from 2000 to the present.

19. The term “Incident” includes the circumstances and events surrounding the public school finance system and the alleged Constitutional violation giving rise to this action or proceeding.

INSTRUCTIONS

1. When a document, data, knowledge, or information within your possession, custody, or control is requested, such request includes all documents, data, knowledge, or information of, or in the possession or custody of you, whether in a personal or professional capacity, your attorneys, accountants, agents, representatives, and experts, and any professional employed or retained by you, whether in your personal or professional capacity.

2. A complete, legible, and accurate copy of any document requested may be produced in lieu of producing the original document itself.

3. The documents responsive to this request shall be produced in such a manner so as to indicate clearly the identity of the file from which they were produced.

4. With respect to the documents produced, you are to:

- a. Produce them as they are kept; or
- b. Organize and label them to correspond with each numbered paragraph of this Document Request in response to which such documents are produced.

5. If any of the documents to be produced cannot be produced in full, produce each document to the extent possible, specifying the reason for the inability to produce the remainder of any document.

6. To the fullest extent permitted by the Colorado Rules of Civil Procedure, this request shall be deemed continuing so as to require further supplemental production in the event that you, or any attorney, agent, representative, or professional employed by you, obtains or discovers additional documents between the time of initial production and the conclusion of this proceeding.

7. If you object to any of the requests herein, whether in whole or in part, on the grounds that information sought therein is subject to a claim of attorney-client

privilege, work product immunity, or any other privilege or immunity, you shall produce as much of the document concerned as to which no claim of privilege or immunity is made. With respect to documents or portions of documents for which a claim of privilege or immunity is made, state the following:

- a. the type and nature of the document or communication;
- b. the date of the document;
- c. the person(s) in receipt of the document or the person(s) present during the communication;
- d. the person(s) who authored or created the document or the person(s) who made the communication;
- e. the person(s) to whom such document or communication was made;
- f. the general subject matter of the document or communication in a manner sufficient to support the privilege or immunity claimed;
- g. the nature of the privilege or immunity asserted and/or the specific reason why the document is not being produced; and
- h. the same information referenced in a-g above for each enclosure to each listed document if the enclosure also is withheld from production.

8. An objection or claim of privilege or immunity directed to part of a request does not constitute an excuse for failure to respond to the parts of a request for which no objection or claim of privilege or immunity is made.

9. If any document responsive to any request for production has been lost, destroyed, or otherwise disposed of, such document is to be identified as completely as possible, including the following information: contents; author(s); recipient(s); sender(s); copied recipients (indicated or blind); date prepared or received; date of disposal; manner of disposition; person(s) currently in possession of the document; and person(s) disposing of the document.

10. If any document responsive to any request for production has been lost, destroyed, or otherwise disposed of, identify any and all persons who participated in, or were involved in, the decision to destroy or dispose of such document, any document retention or destruction policy under which such document was destroyed or disposed of, and any and all persons who participated in, or were involved in, the formulation of any such policy, the reason for the destruction or disposition of such document, and the date (approximate, if precise date is not known) of the destruction or disposition of such document.

11. In response to these discovery requests, please restate the text of each discovery request before the corresponding response.

REQUESTS FOR ADMISSIONS

You are reminded that pursuant to Non-Pattern Interrogatory No. 15 in Plaintiffs' First Set of Discovery Requests to Defendants you are required to provide specified information with respect to Requests for Admissions that you do not admit without qualification.

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.

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.

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."

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."

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.

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.

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.

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.

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.

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.

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.

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.

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).

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).

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

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.

Dated: March 28, 2011.

s/ Alexander Halpern

Alexander Halpern
Alexander Halpern LLC

Original signature of Alexander Halpern is on file in the offices of Alexander Halpern LLC

Kathleen J. Gebhardt
Jennifer Weiser Bezoza
KATHLEEN J. GEBHARDT LLC

Kenzo Kawanabe
Terry R. Miller
Geoffrey Klingsporn
Daniel P. Spivey
Rebecca J. Dunaway
DAVIS GRAHAM & STUBBS LLP

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that on the 28th day of March, 2011, a true and correct copy of the foregoing PLAINTIFFS' SECOND SET OF DISCOVERY REQUESTS TO DEFENDANTS was served via LexisNexis®, addressed to the following:

Office of the Attorney General John W. Suthers, Attorney General Antony B. Dyl Carey Taylor Markel Erica Weston Nicholas P. Heinke Jonathan P. Fero Nancy Wahl 1525 Sherman Street, 7th Floor Denver, CO 80203	David G. Hinojosa (via email) Nina Perales Carmen Leija Marisa Bono MALDEF 110 Broadway, Suite 300 San Antonio, TX 78205
Henry Solano Dewey & Le Boeuf 4121 Bryant St. Denver, CO 80211	David W. Stark Joseph C. Daniels Sera Chong Faegre & Benson LLP 3200 Wells Fargo Center 1700 Lincoln Street Denver, CO 80203
Kyle C. Velte Ryann B. MacDonald Reilly Pozner LLP 1900 16 th Street, Ste. 1700 Denver, CO 80202	Jess A. Dance Perkins Coie LLP 1900 16 th Street, Ste. 1400 Denver, CO 80202
Kimberley D. Nelio Jennifer Harvey Weddle Greenberg Traurig LLP 1200 17 th Street, Ste. 2400 Denver, CO 80202	Alyssa K. Yatsko Holland & Hart LLP 555 17 th Street, Ste. 3200 P.O. Box 8749 Denver, CO 80201-8749
Jessica E. Yates Snell & Wilmer LLP One Tabor Center, Ste. 1900 Denver, CO 80202	

/s/ Lauren Tinkle

[The original, executed document is on file at the offices of Alexander Halpern LLC]