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<p>DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock St. Denver, Colorado 80202</p>	
<p><b>Plaintiffs:</b> ANTHONY LOBATO, et al., and  <b>Plaintiff-Intervenors:</b> ARMANDINA ORTEGA, et al. v. <b>Defendants:</b> THE STATE OF COLORADO, et al.</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case No. 2005CV4794</p> <p>Div. 9</p>
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**PLAINTIFFS' COMBINED RESPONSE TO DEFENDANTS' FIRST DISCOVERY  
REQUESTS TO SCHOOL DISTRICT PLAINTIFFS:  
SECOND SUPPLEMENTAL RESPONSE OF COLORADO SPRINGS  
SCHOOL DISTRICT NO. 11**

Pursuant to C.R.C.P. 33, 34, and 36, Plaintiffs, Anthony Lobato, et al., (“Plaintiffs”), through counsel, hereby respond on behalf of Plaintiff Colorado Springs School No. 11 (“D-11”) to Defendants’ First Set of Interrogatories to School District Plaintiffs served October 12, 2010 (“Interrogatories”). This second supplemental response addresses further information gathered regarding Interrogatory 7. D-11 responds to the Discovery Requests as follows:

## **GENERAL OBJECTIONS**

1. Best Knowledge, Information and Belief. This Response to the Discovery is made to the best of Plaintiffs' present knowledge, information and belief. This Response is at all times subject to such additional or different information that discovery or further investigation may disclose and is subject to additional knowledge of facts, as may result from its further discovery or investigation. Plaintiffs reserve the right to supplement this Response in accordance with C.R.C.P. 26(e).

2. Subsequent Discovery of Documents or Information. Plaintiffs reserve the right to make any use of, or to introduce at any hearing and/or at trial, documents or other information responsive to the Discovery Request but discovered by Plaintiffs subsequent to the date of this Response to Discovery.

3. Attorney-Client Privilege and Work Product Doctrine. Plaintiffs object to the Discovery Request to the extent that it requests information protected by the attorney-client privilege, the work product doctrine, or any other applicable legal privilege against disclosure. Such privileged documents and information shall not be produced in response to the Discovery Request, and any inadvertent production thereof shall not be deemed a waiver of any privilege with respect to such documents or information.

4. Preservation of Objections. Plaintiffs reserve all objections as to the competency, relevance, materiality, privilege and/or admissibility as evidence in any subsequent proceeding and/or trial of this or any other action for any purpose whatsoever of any documents, information or things produced in this Response to the Discovery.

5. Definitions. Plaintiffs object to all definitions, instructions, interrogatories, and document requests in the Discovery Request in which the phrases "describe," "relate to" or "relating to," "every" and "all" appear. The terms "describe," "relate to," "relating to," "every" and "all" are overly broad, vague, ambiguous and unintelligible, require subjective judgment on the part of Plaintiffs and their attorneys.

6. Expansive Definitions and Instructions. Plaintiffs object to all definitions and instructions to the Discovery Request to the extent that such definitions and instructions purport to enlarge, expand, or alter in any way the plain meaning and scope of any specific term, phrase or request on the grounds that such enlargement, expansion, or alteration renders such term, phrase or request vague, ambiguous, unintelligible, overbroad and uncertain. Plaintiffs also object to all definitions that purport to expand or enlarge Plaintiffs' obligations under the Colorado Rules of Civil Procedure.

7. Time Period. Plaintiffs object to the Discovery Request to the extent that it requests information generated prior to 2005. Given the broad scope of the Discovery Requests and the nature and evolution of education reform and education finance, any potential relevance of that information is substantially outweighed by the burden to collect, review, analyze, and

produce that information in a responsive format. The requests for information generated prior to 2005 are therefore unduly burdensome, and such information will not be produced.

8. Confidentiality. This Response to the Discovery is made subject to the Confidentiality Order entered in this action. Any confidential information produced without being marked "Confidential" is unintentional and inadvertent, and Plaintiffs reserve the right to require that such information be marked and treated confidential or returned to Plaintiffs.

9. Burden. Plaintiffs object to the Discovery Requests to the extent they request information already in the possession of Defendants. Much of this information has been previously submitted to Defendants by Plaintiffs. It would be unduly burdensome, oppressive, and unreasonably duplicative to again provide such information to Defendants. Further, Plaintiffs object to the Discovery Requests to the extent the burden of deriving or ascertaining responses to the requests is substantially the same or less for Defendants than for Plaintiffs. Plaintiffs also object to the Discovery Requests to the extent they seek information obtainable from some other source that is more convenient, less burdensome, or less expensive.

10. Possession, Custody, or Control. Plaintiffs object to producing documents that are not within its possession, custody, or control.

11. Scope of Responsive Documents. The scope of documents that fall within the ambit of Plaintiffs' obligations under C.R.C.P. 26(a)(1)(B) and the Discovery Request does not include e-mails stored on e-mail servers. Specifically, e-mails stored on e-mail servers are not relevant to disputed facts alleged with particularity in the pleadings and are not responsive to the Discovery Request. And, to the extent such e-mails are arguably relevant, the burden and expense of collecting, reviewing, and producing such documents substantially outweighs any likely benefit of producing these documents in light of the needs of Defendants, the parties' resources, and the importance of the e-mails to this lawsuit. Where e-mails have been produced, such e-mails were stored on non-e-mail servers that stored responsive documents, and those produced e-mails had a particular relevance not shared by e-mails simply stored on e-mail servers. Moreover, Defendants have not produced e-mails stored on e-mail servers pursuant to Rule 26(a)(1) or Plaintiff's Request for Production. Accordingly, e-mails stored on e-mail servers will not be produced.

12. Specific Objections. In addition to these General Objections, Plaintiffs may set forth other and further objections with its specific responses. By its specific objection, Plaintiffs do not intend to limit or restrict these General Objections.

13. Incorporation. Plaintiffs incorporate all of the foregoing General Objections into each Response to the Discovery Requests below.

## INTERROGATORIES

**Interrogatory No. 7:** Describe the hiring processes for District employees, including identification of need and job posting through interviews, hiring and assessment.

**Response:** In addition to the General Objections, Plaintiffs object to Interrogatory No. 7 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Interrogatory No. 7 is especially unduly overbroad and burdensome because the scope of the phrase “hiring process” could potentially require a description of a large number of acts, and the burden to identify and describe each and every act substantially outweighs the probative value of many of those acts.

Subject to and without waiving the foregoing and General Objections, D-11 states that a full description of its hiring process can be found on its website at: <http://www.d11.org/hr/careers/>. Additionally, D-11 states the following:

### Identification of need and posting:

The hiring process starts with identification of positions to be filled. Once positions are identified, we create a job description and a requisition form is completed to post the position. We require a *Request to Post* form be completed identifying the funding source and the reason for the vacancy. The following questions must be answered in the form:

1. Why is the position needed?
2. What impact would result if the position remained vacant?
3. What alternative solutions have been considered?

In addition, signatures from the Division Deputy Superintendent and the Superintendent are required on the *Request to Post* form prior to posting positions. Positions are posted for an identified amount of time. Once applications are received and the posting period has expired, applications are screened for interviews.

### Interviews:

Applicants meeting the job requirements are interviewed.

- Licensed and non-licensed executive positions (assistant principals/assistant directors and above) - three rounds of interviews are planned. Human Resources Department conducts the first round of interviews. The Executive Director for K-12 Schools and Human Resources conduct a 2<sup>nd</sup> round. The superintendent conducts the final round.
- Reference checks are conducted for applicants participating in the 2<sup>nd</sup> round interviews.
- Teachers – applicants meeting the job requirements are interviewed at the school level.
- Educational Support Staff – applicants meeting job requirements are interviewed at the school and in each department where the vacancy occurred.

Hiring and assessment:

Upon completion of interviewing applicants that meet the job requirements, a *Request to Hire* form is submitted to Human Resources. Human Resources staff members ensure that all hiring procedures are completed and submit a personnel recommendation to our Board of Education for approval. The recommended candidate is contacted with salary and start date.

Once hired, the new staff member is provided the opportunity to participate in a *New Employee Orientation*. This orientation is offered several times throughout the school year. Topics include – The District’s Vision-Mission-Goals, Human Resources, Benefits, Payroll, and Equal Opportunities Programs.

**VERIFICATION**

I hereby certify that I have read and reviewed the foregoing **PLAINTIFFS' COMBINED RESPONSE TO DEFENDANTS' FIRST DISCOVERY REQUESTS TO SCHOOL DISTRICT PLAINTIFFS: SECOND SUPPLEMENTAL RESPONSE OF COLORADO SPRINGS SCHOOL DISTRICT NO. 11** and know the contents thereof. I am informed, and on the basis of such information and belief allege, that the foregoing responses are true and correct, although many of the facts stated therein are not within my personal knowledge. I am authorized by D-11 to verify these responses on its behalf.

Colorado Springs School District No. 11

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_                )

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(S E A L)

Dated: March 8, 2011

DAVIS GRAHAM & STUBBS LLP

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***The original, executed document is on file at the offices of Davis Graham & Stubbs LLP.***

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 8th day of March, 2011, a true and correct copy of the foregoing **PLAINTIFFS' COMBINED RESPONSE TO DEFENDANTS' FIRST DISCOVERY REQUESTS TO SCHOOL DISTRICT PLAINTIFFS: SECOND SUPPLEMENTAL RESPONSE OF COLORADO SPRINGS SCHOOL DISTRICT NO. 11** was served, via LexisNexis<sup>®</sup> File & Serve, addressed to the following:

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