



May 20 2011
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<p>DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock St. Denver, Colorado 80202</p>	
<p>Plaintiffs: ANTHONY LOBATO, et al., and Plaintiff-Intervenors: ARMANDINA ORTEGA, et al. v. Defendants: 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' RESPONSE TO DEFENDANTS' THIRD REQUEST FOR PRODUCTION OF DOCUMENTS TO SCHOOL DISTRICT PLAINTIFFS

Pursuant to C.R.C.P. 33, Plaintiffs, Anthony Lobato, et al., (“Plaintiffs”), through counsel, hereby respond Defendants’ Third Request For Production Of Documents to School District Plaintiffs served April 1, 2011 (“Request for Production” or “Discovery Requests”).

Plaintiffs responds to the Discovery Requests as follows (“Response to the Discovery” or “Response”):

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 their 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 their specific responses. By their 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.

DOCUMENTS REQUESTED

Document Request No. 1: All documents that you have received since 2004 from or through any entity in response to any Colorado Open Records Act (CORA) request, Freedom of Information Act (FOIA) request, or other similar request relating to school funding, school finance, or the *Lobato v. State* lawsuit.

Response: Subject to and without waiving the General Objections, Plaintiffs respond as follows:

The following Plaintiffs jointly state that they each have no responsive documents in their possession, custody, or control: Bethune School District No. R-5; Sierra Grande School District No. R-30; Sangre de Cristo School District, No. RE-22J; North Conejos School District No. RE1J; South Conejos School District No. RE10; Sanford, School District No. 6, in the County of Conejos and State of Colorado; Center Consolidated School District No. 26 JT, of the Counties of Saguache and Rio Grande and Alamosa; Centennial School District No. R-1; Sargent School District No. RE-33J; Moffat County School District Re: No. 1; Montezuma-Cortez School District No. RE-1; Mountain Valley School District No. RE 1; Moffat, School District No. 2, in the County of Saguache and State of Colorado; Creede Consolidated School District No. 1 in the County of Mineral and State of Colorado; Del Norte Consolidated School District No. C-7; Colorado Springs, School District No. 11, in the County of El Paso; Alamosa School District, No. RE-11J; Monte Vista School District No. C-8; and Aurora, Joint District No. 28 of the Counties of Adams and Arapahoe.

Document Request No. 2: All speeches, reports, presentations, or publications since 2004 made or given to schools, school districts, or other organizations, including but not limited to the National Education Association, Colorado Education Association, Colorado School Finance Project, Colorado Association of School Executives, and Colorado Association of School Boards, regarding school finance litigation or the *Lobato v. State* lawsuit.

Response: Subject to and without waiving the General Objections, Plaintiffs respond as follows:

The following Plaintiffs jointly state that they each have no responsive documents in their possession, custody, or control: Bethune School District No. R-5; Sierra Grande School District No. R-30; Sangre de Cristo School District, No. RE-22J; North Conejos School District No. RE1J; South Conejos School District No. RE10; Sanford, School District No. 6, in the County of Conejos and State of Colorado; Sargent School District No. RE-33J; Moffat County School District Re: No. 1; Montezuma-Cortez School District No. RE-1; Mountain Valley School District No. RE 1; Moffat, School District No. 2, in the County of Saguache and State of Colorado; Creede Consolidated School District No. 1 in the County of Mineral and State of Colorado; Del Norte Consolidated School District No. C-7; Colorado Springs, School District No. 11, in the County of El Paso; Alamosa School District, No. RE-11J; Monte Vista School District No. C-8; and Aurora, Joint District No. 28 of the Counties of Adams and Arapahoe.

Plaintiff Center Consolidated School District No. 26 JT, of the Counties of Saguache and Rio Grande and Alamosa; Centennial School District No. R-1 concurrently produces documents labeled “Center School District 3574-3579.

Document Request No. 3: All documents received from or through third parties relating to claims of “inadequate funding” of schools, including from or through the Colorado Education Association in response to their request for examples of “inadequate funding” in schools (<http://www.coloradoea.org/contactus/inadequatefunding.aspx>) or from or through the Colorado School Finance Project related to their “Colorado School Stories Project” (<http://www.cosfp.org/COSFSchoolStories.html>).

Response: Subject to and without waiving the General Objections, Plaintiffs respond as follows:

The following Plaintiffs jointly state that they each have no responsive documents in their possession, custody, or control: Bethune School District No. R-5; Sierra Grande School District No. R-30; Sangre de Cristo School District, No. RE-22J; North Conejos School District No. RE1J; South Conejos School District No. RE10; Sanford, School District No. 6, in the County of Conejos and State of Colorado; Center Consolidated School District No. 26 JT, of the Counties of Saguache and Rio Grande and Alamosa; Centennial School District No. R-1; Sargent School District No. RE-33J; Moffat County School District Re: No. 1; Montezuma-Cortez School District No. RE-1; Mountain Valley School District No. RE 1; Moffat, School District No. 2, in the County of Saguache and State of Colorado; Creede Consolidated School District No. 1 in the County of Mineral and State of Colorado; Del Norte Consolidated School District No. C-7; Colorado Springs, School District No. 11, in the County of El Paso; Alamosa School District, No. RE-11J; Monte Vista School District No. C-8; and Aurora, Joint District No. 28 of the Counties of Adams and Arapahoe.

VERIFICATION

I hereby certify that I have read and reviewed the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANTS' THIRD REQUEST FOR PRODUCTION OF DOCUMENTS TO SCHOOL DISTRICT PLAINTIFFS** 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 to verify these responses.

Name:

Title:

STATE OF COLORADO

s.

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: May 20, 2011

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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 20th day of May, 2011, a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANTS' THIRD REQUEST FOR PRODUCTION OF DOCUMENTS TO SCHOOL DISTRICT PLAINTIFFS** was served, via LexisNexis[®] File & Serve, addressed to the following:

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