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<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202</p>	<p><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p>
<p>PLAINTIFFS: Anthony Lobato, et al.</p> <p>and</p> <p>PLAINTIFFS-INTERVENORS: Armandina Ortega, et al.</p> <p>vs.</p> <p>DEFENDANTS: The State of Colorado, et al.</p>	
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<p>DEFENDANTS' AMENDED <u>FOURTH</u> SUPPLEMENTAL RESPONSES TO PLAINTIFFS' <u>FIRST SET OF DISCOVERY REQUESTS</u></p>	

Defendants, by and through their counsel, hereby submit their Amended Fourth Supplemental Responses to Plaintiffs' First Set of Discovery Requests ("Responses") pursuant to C.R.C.P. 33. 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 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 to be entered by the Court.

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 Colorado Rules of Civil Procedure, prior to entry of a Case Management Order setting the discovery schedule in this case.

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

PATTERN INTERROGATORIES

15.0 Affirmative Defenses

15.1 Identify each denial of a material allegation and each affirmative defense in your pleadings and for each:

- a) state all facts upon which you base the denial or affirmative defense;
- b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those facts;
- c) identify all DOCUMENTS and other tangible things which support your denial or affirmative defense, and state the name ADDRESS, and telephone number of the PERSON who has each DOCUMENT.

RESPONSE: Defendants object to this Interrogatory as applied to this case on the ground that many of Defendants’ denials and affirmative defenses rest on legal, rather than factual, grounds, making this Interrogatory inapplicable to those denials and affirmative defenses.

Subject to and without waiving this objection and the General Objections, Defendants respond as follows.

a) Denials of Material Allegations: The factual bases for the denials of certain of Plaintiffs’ allegations in the Second Amended Complaint are set forth below:

14. Because of lack of access to adequate financial resources, public school students do not receive and school districts are not able to provide the educational programs, services, instructional materials, equipment, staffing, technology, and facilities needed by their students to obtain a constitutionally adequate, quality education. School districts have been forced to reduce instructional and support staff, administrative staff, programs, services, instructional materials, and supplies and to defer needed facilities and equipment acquisition, maintenance, and renovation, thereby preventing them from providing a constitutionally adequate, quality education to their students.

Response: As a threshold matter, Plaintiffs appear to use the term “adequate” as a synonym for constitutionally sufficient. As explained in Defendants’ Motion for Determination of Questions of Law Pursuant to Rule 56(h), Defendants deny that the Colorado Constitution guarantees any particular qualitative experience or outcome or that it creates any individual right to receive a thorough and uniform education. The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Defendants further deny that the State’s system of public education funding is unconstitutional. Defendants further deny that financial resources are the driving, or the only, causal factor in schools and school districts’ alleged inability to provide a quality education to their students.

Defendants’ denial is also based on numerous incorrect factual statements, including but not limited to the fact that certain school districts have not reduced staff or deferred facility construction. Simply by way of example, plaintiff Aurora School District added teachers between 2008-09 and 2009-10, increasing instructional staff from 1,998 in 2008-09 (<http://www.cde.state.co.us/cdereval/rv2008StaffDatalinks.htm>, Count of Teachers by District, Ethnicity and Gender) to 2,041 in 2009-10 (<http://www.cde.state.co.us/cdereval/rv2009StaffDatalinks.htm>, Count of Teachers by District, Ethnicity and Gender). As another example, millions of dollars have been awarded through the Building Excellent Schools Today (BEST) grant program that will help fund construction of numerous new facilities across the state. (Grant cycle information at <http://www.cde.state.co.us/cdefinance/CapConstBEST.htm>.)

Witnesses who may have knowledge of these facts include witnesses identified in the parties' disclosures. Documents that may support Defendants' denial include documents produced by the parties and contained on the CDE website.

15. Because of lack of access to adequate financial resources, school districts are not able to provide the educational programs, services, instructional materials, equipment, staffing, and facilities necessary to fulfill critical educational goals, including those identified by the general assembly in education reform legislation.

Response: As a threshold matter, Plaintiffs appear to use the term "adequate" as a synonym for constitutionally sufficient. As explained in Defendants' Motion for Determination of Questions of Law Pursuant to Rule 56(h), Defendants deny that the Colorado Constitution guarantees any particular qualitative experience or outcome or that it creates any individual right to receive a thorough and uniform education. The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Defendants further deny that the State's system of public education funding is unconstitutional.

Further, Plaintiffs do not define the terms "critical educational goals" or "education reform legislation." However, to the extent that Plaintiffs intend educational goals to be those referenced in the "Education Reform Legislation" section of their Second Amended Complaint, ¶¶ 70-84, Defendants denial is based on numerous incorrect factual statements, including but not limited to the fact that Plaintiffs themselves allege that many schools and school districts are meeting those goals. *See, e.g.*, Pls.' 2d Am. Compl. ¶ 83 (allegation that 60% of Colorado schools meeting AYP targets). Defendants further deny that financial resources are the driving, or the only, causal factor in schools and school districts' alleged inability to meet educational goals set forth in legislation.

Witnesses who may have knowledge of these facts include witnesses identified in the parties' disclosures. Documents that may support Defendants' denial include documents produced by the parties and contained on the CDE website.

103. Supplemental funding is necessary to educate pupils who due to family poverty are identified as "at-risk" of performing poorly in or dropping out of school. At risk funding is computed as a percentage increase to district per pupil funding, beginning at 11% for eligible pupils. At-risk funding is limited to pupils whose families are eligible for "free lunch" under the National School Lunch Act and does not extend to children whose families are eligible for "reduced price lunch". Free lunch eligibility is an exceptionally narrow definition of poverty (130% of the national poverty level) and is not an accurate measure of academic performance or ability to perform.

Response: Defendants deny that supplemental funding is necessary to educate each and every child who due to family poverty is identified as "at risk" of performing poorly or dropping out of school. Defendants further deny that at-risk funding begins at 11% for eligible pupils. According to CDE's "Understanding Colorado School Finance and

Categorical Program Funding, July 2009,” produced at CDE003355, “[f]or each at-risk pupil, a district received funding equal to at least 12%, but no more than 30%, of its Total Per-pupil Funding.” Defendants further deny that free lunch eligibility is intended to measure academic performance or ability to perform. Rather, “[e]ligibility for participation in the federal free lunch program is used as a proxy of each school district’s at-risk pupil population.” (CDE003358) Defendants further deny that at-risk funding is limited to pupils whose families are eligible for “free lunch” under the National School Lunch Act. According to CDE’s “Understanding Colorado School Finance and Categorical Program Funding, July 2009,” produced at CDE003355,

A district receives funding for the greater of: (1) each *actual* pupil eligible for the federal free lunch program; or (2) a *calculated* number of pupils based on the number of grades 1-8 pupils eligible for the federal free lunch program as a percent of the district's entire population. Beginning in FY 2005-06 the definition of at-risk students was expanded to include students whose CSAP scores are not included in calculating a school’s performance grade because the student’s dominant language is not English and who are also not eligible for free lunch.

(Emphasis in original.) Defendants further deny that free lunch eligibility is an “exceptionally narrow” definition of poverty. “Exceptionally” is a subjective term that is not defined and not quantifiable. Further, as Plaintiffs themselves allege, the eligibility level is set above the national poverty level.

Witnesses who may have knowledge of these facts include witnesses identified in the parties’ disclosures. Documents that may support Defendants’ denial include documents produced by the parties and contained on the CDE website.

106. The growth and changing distribution of at-risk children in Colorado presents a major challenge to the system of public education. PSFA at-risk factor funding is not based upon the actual costs of providing a constitutionally adequate educational opportunity for at-risk pupils. The PSFA fails to provide sufficient resources and to allocate resources rationally in order to meet the educational needs and rights of Colorado’s at-risk pupil population.

Response: Defendants’ only factual denial is of the first sentence of this paragraph. As to that sentence, Defendants deny that the growth and changing distribution of at-risk children presents a “major challenge” to the system of public education. “Major” is a subjective term that is not defined and not quantifiable. While it is true that growth and changing distribution of at-risk children can present challenges to certain school districts, it is the decisions made by those districts regarding how to address those challenges that are the critical elements to meeting students’ educational needs. Further, while expenses may vary as at-risk pupil populations vary, which is why increased funding for at-risk students is included in the public school funding formula, *see* CDE003358, Defendants deny that all schools in all school districts are seeing similar growth in at-risk student

population. Simply by way of example, Centennial R-1's percentage of PK-12 students receiving free and reduced lunch has decreased from 86.17% in 2005 to 79.4% in 2010. (*Compare* http://www.cde.state.co.us/cdereval/download/PDF/2010PM/D11_PK-12_FREDbyDistrictandCounty.pdf with <http://www.cde.state.co.us/cdereval/download/PDF/2005PM/District/05PK-12FREDCorrected.pdf>) Defendants also deny the implication that all schools in all school districts are failing to provide educational opportunities for at-risk students. Simply by way of example, plaintiff Aurora School District's free and reduced lunch population has shown above-average growth in reading, math, and writing over the prior two years. (*See* <https://cedar2.cde.state.co.us/documents/Growth2010/DistrictSummary/0180.pdf>) As another example, CDE annually honors two Title I schools that have shown either Exceptional Student Performance or success in Closing the Achievement Gap as measured by the Colorado Student Assessment Program (CSAP). In 2009-10, Heritage Elementary School in Pueblo 60 School District received the award for exceptional student performance.

Heritage, a Title I schoolwide school, has an enrollment of 372 students in grades K-5, 62.5% of whom are minority and 70.54% of whom qualify for free and reduced lunch. Heritage's CSAP reading and math scores aggregated across grades 3-5 were 95.54% partially proficient, proficient, or advanced in 2009 and 98.21% partially proficient, proficient, or advanced in 2010.

Gypsum Elementary in Eagle County School District received the award for closing the achievement gap.

Gypsum, a Title I schoolwide school, has 331 students in grades pre-K-5. 63.75% of the students qualify for free/reduced lunch and 71.6% are minority. Heritage cut the achievement gap between free/reduced lunch students and non-free/reduced lunch students by 4.44 points. (See chart below.) Heritage's CSAP reading and math scores aggregated across grades 3-5 were 89.57% partially proficient, proficient, or advanced in 2009 and 94.66% partially proficient, proficient, or advanced in 2010. Gypsum principal Mitchell Forsberg attributes the school's success to "multiple short interventions for students, data-driven instruction and a school-wide culture of achievement."

Witnesses who may have knowledge of these facts include witnesses identified in the parties' disclosures. Documents that may support Defendants' denial include documents produced by the parties and contained on the CDE website.

111. Due to under-funding of the cost of adequate preschool and full-day kindergarten programs, school districts cannot provide necessary programs and must either spend less per pupil than is necessary, use additional general operating funds for preschool and

kindergarten purposes, or both, thereby adversely impacting the ability to provide adequate educational opportunities for all students.

Response: As a threshold matter, Plaintiffs appear to use the term “adequate” as a synonym for constitutionally sufficient. As explained in Defendants’ Motion for Determination of Questions of Law Pursuant to Rule 56(h), Defendants deny that the Colorado Constitution guarantees any particular qualitative experience or outcome or that it creates any individual right to receive a thorough and uniform education. The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Defendants further deny that the State’s system of public education funding is unconstitutional.

Defendants further deny that “spend[ing] less per pupil” or “us[ing] additional general operating funds for preschool and kindergarten purposes” are the only options for school districts to generate additional revenue. For example, school district may levy mills for full-day kindergarten excess cost. *See, e.g.*, CDE003360. Other school districts, including plaintiff school districts Aurora and Colorado Springs District 11, have used portions of their general mill levy override to fund full-day kindergarten.

Witnesses who may have knowledge of these facts include witnesses identified in the parties’ disclosures. Documents that may support Defendants’ denial include documents produced by the parties and contained on the CDE website.

114. The purpose of override funding is to provide educational services above those required to meet the requirements of the Education Clause. Due to under-funding of the PSFA total program, school districts that are able to pass override elections use the additional revenues to assist in providing basic education services. Due to variations in local property tax bases, the override option fails to provide “property-poor” school districts with an effective opportunity to meet their obligation to provide a constitutionally adequate public education, much less to enhance the educational opportunities of their students.

Response: Defendants’ factual denials are of the first and second sentences of this paragraph. As to those sentences, Defendants deny Plaintiffs’ description of the purpose of override funding. Pursuant to C.R.S. § 22-54-108(1),

a district which desires to raise and expend local property tax revenues in excess of the district's total program, as determined in accordance with section 22-54-104, may submit the question of whether the district should be authorized to raise and expend additional local property tax revenues, subject to the limitations of subsection (3) of this section, thereby authorizing an additional levy in excess of the levy authorized under section 22-54-106 for the district's general fund for the then current budget year and each budget year thereafter. The question authorized by this

subsection (1) shall be submitted at an election held in accordance with section 20 of article X of the state constitution and title 1, C.R.S.

Further, to the extent that plaintiffs use the terms “under-funding” and “basic education services” as proxies for constitutionally sufficient, Defendants also deny those sentences. As explained in Defendants’ Motion for Determination of Questions of Law Pursuant to Rule 56(h), Defendants deny that the Colorado Constitution guarantees any particular qualitative experience or outcome or that it creates any individual right to receive a thorough and uniform education. The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Defendants further deny that the State’s system of public education funding is unconstitutional.

Finally, Defendants lack knowledge of how each and every school district uses its override funding.

Witnesses who may have knowledge of these facts include witnesses identified in the parties’ disclosures. Documents that may support Defendants’ denial include documents produced by the parties and contained on the CDE website.

116. The PSFA formula, factors, and funding levels have never been studied, much less increased, to account for the additional costs to meet the mandates of education reform legislation. Neither the PSFA funding formula nor the funding levels it dictates provide school districts with sufficient funds or funding ability to meet the actual and foreseeable costs of educating their students in accordance with the requirements of the Education Clause and education reform.

Response: Defendants’ only factual denial is of the first sentence of this paragraph. As to that sentence, it is the General Assembly, not any of the Defendants, that has responsibility for funding the PSFA, and thus this allegation, and the question of whether the General Assembly has ever increased funding, in whole or in part, to account for any costs related to “education reform legislation” is directed toward the wrong party.

Further, the term “studied” is vague and ambiguous. To the extent the term is intended to be understood as commonly used, i.e., research, analyzed, or examined, Defendants deny that the PFSA formula, factors, and funding levels have never been “studied.” CDE personnel routinely review, research, analyze, and examine the PSFA formula, factors, and funding levels. Further, the Colorado Legislative Council conducts a study every two years to update the cost-of-living factors used in the state’s school finance funding formula. (See <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1251573184527>, 2010 School District Cost-of-Living Study Results (Legislative Council Staff memorandum, March 25, 2010))

Finally, Defendants deny that all “education reform legislation” carries “additional” costs. Simply by way of example, in discussing passage of SB-191, John Barry,

superintendent of plaintiff Aurora School District, stated that Aurora could implement the legislation without new state funds, and even in the face of a \$20 million budget reduction. (See <http://coloradostatesman.com/content/991792-education-bill-passes-committee>)

Witnesses who may have knowledge of these facts include witnesses identified in the parties' disclosures. Documents that may support Defendants' denial include documents produced by the parties and contained on the CDE website.

123. ELPA allocates \$256 per student per year for category A and B students, and \$37 per student per year for category C students. ELPA supplemental funding is limited to a total of only two years per student beginning in first grade. Total ELPA funding in school year 2008-09 was \$8.6 million. These funding amounts and the two year limit are arbitrary and bear no rational relationship to the actual costs of providing the instruction and materials necessary to enable these students to gain the English language literacy skills necessary to learn course content.

Response: As to the first sentence, Plaintiffs fail to specify a date for these ELPA allocations, and therefore Defendants deny Plaintiffs' allegations. In 2010-11, the ELPA program allocated \$474.85 for category A and B students, and \$61.25 for category C students. (See http://www.cde.state.co.us/FedPrograms/dl/tiii_elpa_distalloc.pdf; prior year ELPA allocations may be found at http://www.cde.state.co.us/FedPrograms/dl/tiii_elpa_2000-10ten.pdf) As to the second sentence, Defendants deny that ELPA funding begins in the first grade. A student is eligible for ELPA funding at whatever point she is identified for inclusion in the English language proficiency program. See C.R.S. § 22-24-104. Defendants admitted the third sentence. As to the fourth sentence, Defendants deny that ELPA is intended to be the sole source or to provide full funding for the costs of providing the instruction and materials necessary to enable students with limited English proficiency "to gain the English language literacy skills necessary to learn course content." Pursuant to C.R.S. § 22-24-102,

it is the purpose of [ELPA] to provide for the establishment of an English language proficiency program in the public schools and facility schools and to provide for the distribution of moneys to the several school districts, the state charter school institute, and facility schools *to help defray the costs* of such program.

(Emphasis added) The school district is obligated to serve students with limited English proficiency even after the two-year ELPA supplemental funding. (See http://www.cde.state.co.us/FedPrograms/dl/tiii_elpa_faq.pdf)

125. ELPA fails to provide sufficient resources and to allocate resources in a manner rationally designed to meet the educational needs and rights of Colorado's ELPA pupil population. Due to under-funding of the cost of providing adequate educational opportunities for ELPA pupils, school districts must spend less per ELPA pupil than is

necessary, use additional general operating funds for this purpose, or both, thereby adversely impacting the ability to provide adequate educational opportunities for all students.

Response: As to the first sentence, whether ELPA provides “sufficient” resources, or those resources are “rationally” allocated, appear to be legal questions. As to the second sentence, Plaintiffs appear to use the term “adequate” as a synonym for constitutionally sufficient. As explained in Defendants’ Motion for Determination of Questions of Law Pursuant to Rule 56(h), Defendants deny that the Colorado Constitution guarantees any particular qualitative experience or outcome or that it creates any individual right to receive a thorough and uniform education. The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Defendants further deny that the State’s system of public education funding is unconstitutional.

Further, as to the first sentence, to the extent that Plaintiffs use the term “sufficient” as a factual, rather than a legal, term, Defendants deny that sentence. As a threshold matter, the term “sufficient” is vague and undefined. Similarly, the phrase “educational needs and rights” is vague and undefined. To the extent that Plaintiffs use the term “sufficient” to mean full funding of all costs incurred by schools and school districts in educating the ELPA pupil population, Defendants admit that ELPA does not pay 100% of the current costs school districts incur for providing services to students with limited English proficiency. However, as explained above, ELPA was not intended to pay full costs, but rather to “help defray the costs” of such a program. C.R.S. § 22-24-102. Defendants further deny that financial resources are the driving, or the only, causal factor in determining whether Colorado’s ELPA pupil population has received educational opportunities. As to the second sentence, Defendants deny that “spend[ing] less per ELPA pupil” or “us[ing] additional general operating funds” are the only options for school districts to generate additional revenue. For example, school districts may levy override mills. *See, e.g.*, CDE003361.

Witnesses who may have knowledge of these facts include CDE and plaintiff school district witnesses identified in the parties’ disclosures. Documents that may support Defendants’ denial include much of the data produced by the parties and contained on the CDE website.

131. Funding for students with disabilities is not based upon the actual costs of providing an adequate educational opportunity for those students. The majority of ECEA funding is allocated among districts on the basis of 1994 student population ratios, which are not an accurate measure of specific district current actual funding needs. ECEA funding fails to provide sufficient resources and to allocate resources rationally in order to meet the educational needs and rights of Colorado’s students with disabilities.

Response: As to the first sentence, Plaintiffs appear to use the term “adequate” as a synonym for constitutionally sufficient. As to the third sentence, whether the ECEA

provides “sufficient” resources, and whether those resources are “rationally” allocated, appear to be legal questions. As explained in Defendants’ Motion for Determination of Questions of Law Pursuant to Rule 56(h), Defendants deny that the Colorado Constitution guarantees any particular qualitative experience or outcome or that it creates any individual right to receive a thorough and uniform education. The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Defendants further deny that the State’s system of public education funding is unconstitutional.

Further, as to the first sentence, Defendants deny that funding for students with disabilities is not based on the actual costs of educating those students. Students with disabilities are provided a free, appropriate public education (FAPE). Federal, state, and local funds combine to provide FAPE. As to the second sentence, Defendants deny that the majority of ECEA funding is allocation on the basis of 1994 student population ratios. The most recent year’s December 1 count of children with disabilities is used to allocate the majority of the ECEA funds. There are then additional pieces of ECEA funds that are allocated each year. These costs are all based on data from the previous fiscal year.

- \$500,000 is allocated for “educational orphans.” These are children with IEPs who for whom: (a) parental rights had been relinquished by the parents; (b) parental rights had been terminated by the court; (c) parents were incarcerated; (d) parents could not be located; (e) parents resided out of the state, but the Department of Human Services placed the child within the administrative unit; or (f) the children were legally emancipated and they are placed in residential treatment centers that have approved on-grounds schools. These funds provide partial reimbursement for the cost that administrative units were required to pay to approved facility schools for the special education programs of these children.
- \$2M for high cost in-district children with disabilities and \$2M for high cost out-of-district children with disabilities.
- Funding for evaluations of children, ages birth to 3, referred to special education.

The ECEA funding formulas and requirements are contained in C.R.S. § 22-20-114.

As to the third sentence, to the extent that Plaintiffs use the term “sufficient” as a factual, rather than a legal, term, Defendants deny that sentence. As a threshold matter, the term “sufficient” is vague and undefined. Similarly, the phrase “educational needs and rights” is vague and undefined. To the extent that Plaintiffs use the term “sufficient” to mean full funding by the State of all costs incurred by schools and school districts in educating students with disabilities, Defendants admit that ECEA funding does not pay 100% of the current costs school districts incur for providing services to students with disabilities. However, ECEA funding is not intended to pay the full cost of providing services to students with disabilities. Federal funding covers a portion of the cost of providing services to students with disabilities. Defendants further deny that financial resources are

the driving, or the only, causal factor in determining whether students with disabilities have received educational opportunities.

Witnesses who may have knowledge of these facts include witnesses identified in the parties' disclosures. Documents that may support Defendants' denial include documents produced by the parties and contained on the CDE website.

144. School buildings and facilities are an essential component of a quality education and a thorough and uniform system of free public schools. The public school finance system fails to provide adequate funds or a means for school districts to raise and expend sufficient funds to provide all students with an equal opportunity for a constitutionally adequate, quality education. This failure is evidenced by conditions such as over-crowded facilities, use of temporary structures, unsafe facilities, antiquated facilities, inadequate access for the disabled, inadequate facilities and grounds to meet gender equity standards, excessive maintenance and repair costs for antiquated facilities, inadequate technology infrastructure, inadequate heating and cooling systems, inadequate fire security systems, leaking and failing roofs; substandard plumbing, substandard wiring, and hazardous building materials.

Response: Defendants' factual denials are of the second and third sentences of this paragraph. As to the second sentence, Plaintiffs appear to use the term "adequate" as a synonym for constitutionally sufficient. Further, whether funds are "sufficient" appears to be a legal question. As explained in Defendants' Motion for Determination of Questions of Law Pursuant to Rule 56(h), Defendants deny that the Colorado Constitution guarantees any particular qualitative experience or outcome or that it creates any individual right to receive a thorough and uniform education. The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Defendants further deny that the State's system of public education funding is unconstitutional.

Defendants further deny that the public school finance system does not provide the means for school districts to raise and expend funds for school buildings and facilities, as stated in the second sentence, According to CDE's "Understanding Colorado School Finance and Categorical Program Funding, July 2009," produced at CDE003355,

Four distinct avenues through which a school district may meet its capital/building needs are discussed below.

1. **Bonded Indebtedness** (C.R.S. 22-42-102) -- A district may hold an election to authorize it to issue bonds to meet its capital needs. Principal and interest payments on bonds are paid from increased property tax revenues generated by a separate, additional mill that the district must be authorized to levy. A district may not have outstanding bond debt in excess of 20% (25% for rapidly growing districts) of its assessed property valuation or 6% of its actual property value, whichever is greater.

School districts considering submitting a ballot question for bonded indebtedness to the electors of the district shall invite each charter school to participate in discussions regarding the possible submission of a ballot question. (See Charter School Section Below)

2. ***Special Building and Technology Fund*** (C.R.S. 22-45-103(1)(d)) – A district may hold an election to authorize it to levy up to ten mills for not longer than three years. Moneys generated by this levy are available to fund the purchase of land, the construction, purchase, and maintenance of facilities, and the purchase and installation of building security, instructional, and informational technologies.

3. ***Building Excellent Schools Today (B.E.S.T.)*** (Article 43.7 of Title 22) – Provides a new funding structure for school capital construction projects, allowing school districts to enter into certificates of participation for lease-purchase agreements through the State Treasury for construction projects. Maintains a grant program for school capital construction projects that do not meet the requirements of the lease-purchase program. Brings all capital construction funding under one umbrella for administration and distribution of funds and is intended to replace the remaining obligations of the “Giardino Settlement”

4. ***Loan Program for Capital Improvements in “Growth Districts”*** (C.R.S. 22-2-125) – A district which is identified as a “growth district” as defined above, is eligible to apply for a loan from the State Treasurer. This debt must be voter approved and if a property tax mill levy is the method of repayment, such levy must also be approved at the same time. At the time of the loan application, the district must specify the method of repayment and the terms of repayment may not exceed 10 years. The district must also have voter approval for a repayment period of longer than one year.

If a property tax mill levy will be used to repay the loan, the mill must be no more than 5 mills or a number of mills determined by dividing the latest statewide average per pupil assessed valuation (PPAV) by the latest PPAV of the growth district, whichever is less. If the district’s PPAV is greater than the statewide average PPAV, the growth district may impose an additional property tax levy of no more than 1 mill.

Further, Defendants deny that all schools in all school districts suffer from the conditions listed in the third sentence. As discussed below, several school districts have financed new facilities through the BEST program. Further, many schools are not over-crowded or over capacity; simply by way of example, plaintiff Colorado Springs District 11 has numerous schools at less than 80% capacity. (See DISTRICT-11 104215)

Witnesses who may have knowledge of these facts include witnesses identified in the parties' disclosures. Documents that may support Defendants' denial include documents produced by the parties and contained on the CDE website.

145. Due to exclusive reliance on local property taxes as a funding source, 40% of Colorado school districts do not have sufficient bonding capacity to raise the revenue needed to build a single new school. Other school districts do not have sufficient bonding capacity to meet capital needs.

Response: As to the first sentence, Defendants deny that Colorado school districts must exclusively rely on local property taxes as a funding source for construction of school buildings. For example, the BEST program provides state matching funds for qualifying grant projects. By way of further example, in FY2008-09, BEST Grant Projects included construction of two new schools in Alamosa School District for which the district's contribution was 28% (*see* CDE001470); construction of a new Pk-12 school in Sangre de Cristo school district for which the district's contribution was 19% (CDE001470); and construction of a new high school in Sargent School District for which the district's contribution was 23% (CDE001472).

As to the second sentence, Defendants deny that all other school districts lack bonding capacity to meet capital needs. School districts routinely pass bonds to meet various capital needs. In addition, school district bonding capacity is not the only source of funding for capital needs. For example, the BEST program provides cash grants for capital projects. Simply by way of example, in FY2008-09, Buffalo School District was awarded a nearly \$4M BEST Cash Grant – to which the district contributed 8.5% -- for renovation of a junior/senior high school (CDE001471); Weldon Valley School District was awarded a \$1.4M BEST Cash Grant – to which the district contributed 42% -- for a core area renovation (CDE001471-72); Holly School District was awarded a nearly \$30,000 BEST Cash Grant – to which the district contributed 30% -- for partial roof replacement (CDE001472); Pueblo 60 School District was awarded a \$1.5M BEST Cash Grant – to which the district contributed 15% -- for a district-wide fire safety and security upgrade (CDE001472); South Routt School District was awarded a BEST Cash Grant of more than \$500,000 – to which the district contributed 50% -- for a district-wide coal burning boiler replacement (CDE001472); and Mountain Valley School District received a BEST Cash Grant of more than \$100,000 – to which the district contributed 38% – for roofing repair (CDE001472-73).

Witnesses who may have knowledge of these facts include witnesses identified in the parties' disclosures. Documents that may support Defendants' denial include documents produced by the parties and contained on the CDE website.

183. As a result, school district programs are inadequate, and students do not receive the instruction they require to meet the academic and other programs guaranteed to them by the Education Clause. Student populations that are becoming increasingly diverse in

terms of learning ability, racial and ethnic background, dominant languages, and socio-economic levels, and students at-risk of academic failure in particular are not provided with the programs they need to be successful and to obtain an adequate education.

Response: Defendants' only factual denial was of the second sentence of this paragraph. As to that sentence, Plaintiffs appear to use the term "adequate" as a synonym for constitutionally sufficient. Further, whether funds are "sufficient" is a legal question. As explained in Defendants' Motion for Determination of Questions of Law Pursuant to Rule 56(h), Defendants deny that the Colorado Constitution guarantees any particular qualitative experience or outcome or that it creates any individual right to receive a thorough and uniform education. The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Defendants further deny that the State's system of public education funding is unconstitutional.

Defendants also deny this sentence given that several terms are vague and undefined. "Increasingly" is a subjective term that is not defined and not quantifiable. Further, it is not clear to what diversity in "learning ability" refers. "[P]rograms they need to be successful" is also vague, undefined, and substantially overbroad, as each student may have different needs and have a different definition of "successful." However, Defendants deny Plaintiffs' contention that no student from a diverse population in terms of racial and ethnic background, dominant languages, and socio-economic levels, or students at-risk of academic failure, has received programs that have helped her be successful or given her opportunities to obtain a quality education. Defendants further deny Plaintiffs' suggestion that no student from a diverse population has achieved success.

Witnesses who may have knowledge of these facts include witnesses identified in the parties' disclosures. Documents that may support Defendants' denial include documents produced by the parties and contained on the CDE website.

187. Because of lack of access to financial and other resources, many school districts are not able to offer the courses and curriculum needed and sought by many students, including those identified as gifted and talented. Advanced courses in core academic subjects, college-preparatory, and advanced placement programs are limited, overcrowded, or have been eliminated because school districts do not have the resources to provide such programs to all who need them. As a result, many Colorado students are not prepared to enter, compete, and succeed in post-secondary education and business and professional careers.

Response: As to the first sentence, Defendants deny that an unquantified "many" school districts cannot offer courses for gifted and talented students. School districts receive supplemental funding for gifted and talented students they identify, *see* CDE003365-CDE003366, and many school districts do offer gifted and talented programs and courses for their students. Simply by way of example, plaintiff Colorado Springs School District

11's website states that "D-11 offers comprehensive Gifted and Talented (GT) services, K-12, at all district schools." (<http://www.d11.org/programs.htm>) Defendants further deny that lack of access to financial resources is the sole causal factor in any given districts' decision not to offer certain courses for gifted and talented students. To the contrary, some plaintiff districts have chosen to fund other programs at the expense of gifted and talented students. Further, lack of interest among the students is also a reason.

As to the second sentence, Defendant deny that all advanced courses in core academic subjects, college-preparatory, and advanced placement programs are limited, overcrowded, or have been eliminated because school districts do not have the resources to provide such programs to all who need them. As stated above, many districts do offer gifted and talented courses, and the decision not to offer courses is driven by various factors, including lack of student interest.

As to the third sentence, Defendants deny that an unquantified "many" Colorado students are not prepared to enter, compete, and succeed in post-secondary education and business and professional careers. Simply way of example, nearly $\frac{3}{4}$ of Colorado high school graduates did not need remediation upon entering a higher education institution (CDE094745).

Witnesses who may have knowledge of these facts include witnesses identified in the parties' disclosures. Documents that may support Defendants' denial include documents produced by the parties and contained on the CDE website.

190. The school funding system fails to provide adequate funding or the means to obtain adequate funding to construct, maintain, and renovate the school buildings and facilities to which many children are consigned, particularly in Colorado's poorest communities. The state has failed to study the capital needs of Colorado schools and to provide adequate funding to address those needs.

Response: Plaintiffs appear to use the term "adequate" as a synonym for constitutionally sufficient. As explained in Defendants' Motion for Determination of Questions of Law Pursuant to Rule 56(h), Defendants deny that the Colorado Constitution guarantees any particular qualitative experience or outcome or that it creates any individual right to receive a thorough and uniform education. The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Defendants further deny that the State's system of public education funding is unconstitutional.

As to the first sentence, Defendants deny that the public school finance system fails to provide funds, or the means of obtaining funds, to construct, maintain, and renovate school buildings and facilities in which an unspecified "many" students attend school. See Defendants' Response to Paragraphs 144 and 145, above. Defendants also deny Plaintiffs' allegation that students are "consigned" to particular schools to the extent this allegation suggests students and parents lack choice in school selection. Colorado is an

educational choice state and offers a wide variety of options to educate children from grades kindergarten through twelve. *See* <http://www.cde.state.co.us/choice/index.htm>. Simply by way of example, plaintiff Colorado Springs District 11 has had more than 3,500 students “choice out” of the district. *See* Deposition Exhibit 507.

As to the second sentence, Defendants deny that the state has failed to study the capital needs of Colorado schools. The Public School Capital Construction Assistance Board prepared and released a Statewide Financial Assistance Priority Assessment of public school facilities in Colorado (CDE001535-CDE001711). Defendants further deny that funding of construction, maintenance, and renovation of school buildings and facilities is solely a state responsibility. As to the funding to address capital construction and renovation needs, see for example Defendants’ Response to Paragraphs 144 and 145, above.

Witnesses who may have knowledge of these facts include witnesses identified in the parties’ disclosures. Documents that may support Defendants’ denial include documents produced by the parties and contained on the CDE website.

NON-PATTERN INTERROGATORIES

NON-PATTERN INTERROGATORY NO. 22: Identify with specificity any non-Plaintiff school districts, and non-Plaintiff witnesses from such school districts, which you intend to rely upon for any of your defenses.

RESPONSE: Defendants object to this Interrogatory to the extent that it calls for disclosure of Defendants’ thought processes in developing their factual and legal theories and defenses, which are protected by the work product doctrine. C.R.C.P. 26(b)(3) “[T]he court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney . . .”).

Subject to and without waiving this objection and the General Objections, Defendants incorporate all persons from non-Plaintiff schools or school districts disclosed in Defendants’ Third Supplemental Disclosures, served on February 9, 2011, and Defendants’ Fifth Supplemental Disclosures, served on March 23, 2011, along with any persons from non-Plaintiff schools or school districts that any party has deposed or will depose or interview in this case. Defendants reiterate their objection that any request for witnesses on which Defendants “intend” to rely is premature and intrudes on the attorney work product privilege. However, the disclosure of these witnesses pursuant to Colo. R. Civ. P. 26(a) indicates that they may be relied on by the parties at trial.

Defendant will continue to supplement their answer to this Interrogatory and provide this requested information as the case develops and Defendants identify additional districts and witnesses.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 15: All documents, including, but not limited to, any studies, related to the Preschool to Postsecondary Education Alignment Act (“Cap4K”), C.R.S. §§ 22-7-1001, *et seq.*

RESPONSE: Defendants object to this Request, which seeks “all documents” “related” to this wide-ranging subject area, on the ground that it is overly broad and unduly burdensome, particularly in light of Plaintiffs’ sweeping definition of the term “relate[d].” Signed into law in May 2008, Cap4K is an education reform initiative that creates an aligned preschool to postsecondary educational system in Colorado. Cap4K, which will be implemented through 2014, will establish new standards and new assessments. Implementation is an ongoing process involving multiple entities who are not parties to this lawsuit, including the Colorado Department of Higher Education and the Colorado Education Association, among others. Defendants object to the burden of being asked to provide “all documents” “related” to this comprehensive 19-section statute and that statute’s passage, implementation, and administration. Finally, Defendants do not construe this Request to seek predecisional, deliberative documents assessing proposed or draft policy or legislation. Such a request would be overly broad, unduly burdensome, and may implicate the governmental deliberative process privilege.

Subject to and without waiving these objections and the General Objections, Defendants are producing contemporaneously herewith documents Bates-labeled CDE104581-CDE104591.

REQUEST FOR PRODUCTION NO. 16: All documents related to the Education Accountability Act of 2009, C.R.S. §§ 22-11-101, *et seq.*

RESPONSE: Defendants object to this Request, which seeks “all documents” “related” to this wide-ranging subject area, on the ground that it is overly broad and unduly burdensome, particularly in light of Plaintiffs’ sweeping definition of the term “relate[d].” The Education Accountability Act of 2009 (SB 09-163) holds the state, districts, and individual public schools accountable for performance on a statewide set of indicators and related measures. The purposes of the law include: aligning conflicting accountability systems into a single system that meets federal approval; modernizing and aligning reporting of state, district, and school performance information; creating a fairer, clearer, and more effective cycle of support and intervention; and enhancing state, district and school oversight of improvement efforts. Defendants object to the burden of being asked to provide “all documents” “related” to this comprehensive 6-part, 38-section statute and that statute’s passage, implementation, and administration. Finally, Defendants do not construe this Request to seek predecisional, deliberative documents assessing proposed or draft policy or legislation. Such a request would be overly broad, unduly burdensome, and may implicate the governmental deliberative process privilege.

Subject to and without waiving these objections and the General Objections, Defendants are producing contemporaneously herewith documents Bates-labeled CDE104592-CDE104627.

DATED: May 24, 2011

JOHN W. SUTHERS
Attorney General

s/Nicholas P. Heinke

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*Original signature of Nicholas P. Heinke is
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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **DEFENDANTS' AMENDED FOURTH SUPPLEMENTAL RESPONSES TO PLAINTIFFS' FIRST SET OF DISCOVERY REQUESTS** upon all parties herein electronically through LexisNexis File & Serve or U.S. Mail this 24th day of May, 2011, addressed as follows:

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