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DISTRICT COURT, DENVER COUNTY, COLORADO
Denver City and County Building
1437 Bannock St.
Denver, Colorado 80202

Plaintiff: ANTHONY LOBATO, et al.,

v.

Defendants: THE STATE OF COLORADO, et al.,

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Case Number: 05 CV 4794

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PLAINTIFFS' REBUTTAL EXPERT DISCLOSURE

Pursuant to the Case Management Order and Rule 26(a)(2)(C)(III), Plaintiffs Anthony Lobato, *et al.*, (“Plaintiffs”), make the following rebuttal expert disclosures. Plaintiffs reserve the right to supplement such disclosures. Plaintiffs’ further reserve their right to call any rebuttal expert at trial or to have any expert previously disclosed by Plaintiffs pursuant to Rule 26(a)(2)(B)(1) and 26(a)(2)(B)(11) rebut the testimony of Defendants’ experts as part of their direct testimony at trial.

I. Plaintiffs’ Rule 26(a)(2)(C)(III) rebuttal expert disclosures are as follows:

1. Dr. Margaret J. McLaughlin
Department of Special Education
University of Maryland
1308 Benjamin Building
College Park, MD 20742
(301) 405-2337

Dr. McLaughlin provides the following rebuttal expert statement:

The following is a response to Dr. Steinberg’s statements regarding students with disabilities in charter schools. Dr. Steinberg asserts that any issues with respect to provision of special education services are “quite rare” today. This is not substantiated nor consistent with data provided in the 2007 CDE report nor my own research.

I personally led a group of researchers at the University of Maryland who collaborated with the National Association of State Directors of Special Education (NASDSE) in conducting a series of national and state specific studies of charter schools and students with disabilities. My research began in Colorado in the mid-1990’s, at which time, the state was one of only three with a charter school law.

A summary of the research was presented in Rhim and McLaughlin, *Students with Disabilities in Charter Schools: What we now Know*, Focus on Exceptional Children, Vol. 39(5), January, 2007.

The findings from our research are consistent with the issues that were raised in the 2007 CDE report, *2006 Special Education Services in Charter Schools*, and continue to exist nationally today. First, one of the major tensions between charter schools and special education is the “zero reject” policy in IDEA. Since charter schools are supposed to be created under contract to deliver a specific program model, there is a limit to the adaptations or extensions that can be made or that charter directors are willing to make in order to accommodate students with certain disabilities (or other learning or behavioral problems). Reports of “counseling out” continue to abound. In addition, charter schools do not, in general, seek out or attempt to identify students who may require special education. This is in direct opposition to the Child Find provisions of the IDEA; however, again this is due in part to the nature of the charter schools. Therefore, charter schools by and large are in a somewhat reactive mode...that is, they are required to serve students with disabilities who are enrolled, but unless specified in their charter, do not actively seek to evaluate students for special education eligibility.

A related issue concerns the characteristics of students with disabilities who are served in charter schools. With few exceptions, such as the schools that have been chartered to serve specific groups of students, such as those who have hearing impairments or autism, the majority of students with disabilities in charter schools have speech/language or learning disabilities. Further, charter schools almost exclusively serve students with disabilities in regular classrooms and have been cited for not making a continuum of settings available.

All of the concerns that are raised above have direct links to the consistent problems associated with funding, specifically surrounding “economies of scale” and problems in recruiting and retaining special education staff. Much as any small school district will struggle to fund one or two students with high educational needs, charter schools face the same problems. In our research, the only way to address these problems is to ensure that charter schools do not operate special education programs in a vacuum. As part of the chartering process, they must specify how they will provide and fund special education including any unforeseen costs. If staffing and budget issues are not anticipated, charters get into trouble when a student with a disability either attempts to enroll and/or is determined eligible after enrollment.

2. Lucinda Hundley
5776 South Crocker Street
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(303) 347-3300

Lucinda Hundley provides the following rebuttal expert statement:

Dr. Steinberg states that more emphasis should be placed on performance indicators. It should be noted that districts are currently being held accountable for outcomes for students with disabilities through the NCLB AYP targets and state accreditation process. Throughout the state, subgroups of students with disabilities are not meeting outcome requirements mandated by the state and federal governments.

Dr. Steinberg’s statement regarding how districts choose instructional programs or best practices is inconsistent with my experience in Littleton and my conversations with other district directors of special education. When we considered what programs and instructional strategies to implement in Littleton Public Schools, a group of District special education and general education instructional experts systematically analyzed research based instructional programs, considered the requirements for implementation with fidelity, identified which strategies most positively impact the five components of literacy and, within the limited funding available, developed a “short list” of proven instructional programs to most effectively close the achievement gap in literacy and numeracy of children with disabilities. Also, in this work, we consulted with other districts regarding their analysis and adoption of effective programs as a way to extend our limited resources and increase our capacity to determine which instructional approaches had the most positive impact on achievement by students’ with disabilities. In some cases, we adopted programs that have had positive achievement gains in other districts.

Dr. Steinberg's suggestion that issues with charter schools not adequately serving students with disabilities are "quite rare today" is also inconsistent with my experience. There continue to be issues with charter schools not serving students with significant disabilities in Colorado today. In the metro Denver area, some charter schools continue to either deny access for students with significant disabilities or counsel them out of the school once their true needs become known.

Dr. Steinberg states his belief that some districts do not optimally prioritize or focus their professional development, such as on the science of literacy instruction. Many Colorado district directors of special education would like to be providing more professional development regarding effective literacy and numeracy instructional strategies for special education teachers and general education teachers to more adequately meet the needs of students with disabilities. However, there is insufficient funding to meet this need. In addition, where one time funding exists, such as ARRA funds, restrictions on use of funds severely impede our ability to provide the necessary professional development for staff. When considering Littleton's current professional development structure, there is no way to redirect existing funds for additional staff training as funding for the current professional development program is already insufficient. When faced with other state instructional requirements, such as implementing the new state standards, there are forced choices for directing already insufficient professional development dollars for competing priorities, including effective instructional strategies for staff working with students with disabilities or those performing below grade level.

DATED: June 7, 2011

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

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 2011, a true and correct copy of the foregoing **PLAINTIFFS' REBUTTAL EXPERT DISCLOSURE** was served via **LexisNexis**, as follows:

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