



Jun 13 2011
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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' SIXTH SUPPLEMENTAL EXPERT WITNESS DISCLOSURES</p>	

Pursuant to the Case Management Order, Defendants, by and through their counsel, hereby make their Sixth Supplemental expert witness disclosures pursuant to Colo. R. Civ. P. 26(a)(2).

Defendants reserve their right to supplement these disclosures as discovery progresses, particularly to disclose additional Rule 26(a)(2)(B)(II) witnesses who may provide both factual and expert opinions. Defendants additionally reserve their right to elicit expert testimony from any fact or expert witness disclosed or proffered at trial by Plaintiffs or Plaintiff-Intervenors.

Finally, Defendants reserve their right to disclose additional experts to rebut matters contained in the expert reports or summaries of opinions of Plaintiffs or Plaintiff-Intervenors' expert witnesses, including without limitation expert witnesses on cost studies, school funding, the economics of education, and Colorado constitutional law.

Subject to and without waiving the above reservations, Defendants designate the following expert witness pursuant to Colo. R. Civ. P. 26(a)(2)(B)(I):

1. Eric A. Hanushek
Paul & Jean Hanna Senior Fellow
Hoover Institution
Stanford University
Stanford, CA 94305

The subject matter of Dr. Hanushek's testimony is expected to include, without limitation, the lack of correlation between funding and student performance, the utility of education costing out studies, education policy and reform, school choice and vouchers, cost effectiveness and efficient use of resources in providing education services, and early childhood education. Dr. Hanushek may also render opinions regarding comparative analyses of Colorado schools' academic performance and funding against other state and national education systems, and related matters. Dr. Hanushek may also elaborate on the generally accepted criteria and factors used in determining the academic performance of students. Dr. Hanushek may also offer rebuttal testimony to the testimony offered by Plaintiffs' or Plaintiff-Intervenors' experts.

Dr. Hanushek's summary of testimony is attached hereto as **Exhibit A**. Dr. Hanushek's current CV, which contains a listing of authored publications and other cases in which Dr. Hanushek has testified, is attached hereto as **Exhibit B**. Dr. Hanushek is being compensated at the rate of \$375 per hour.

Subject to and without waiving the above reservations, Defendants further disclose the following expert witness pursuant to Colo. R. Civ. P. 26(a)(2)(B)(II). This designee is a fact witnesses who may also provide expert opinion:

4. Trish Boland
Title I Coordinator, Office of Federal Program Administration
Colorado Department of Education
1560 Broadway, Suite 1450
Denver, CO 80202

The subject matter of Ms. Boland’s testimony is expected to include, without limitation, federal law affecting public elementary and secondary education, competitive grants and awards, and related matters.

Dr. Boland is expected to testify that there are many *federal* education requirements over which the State has no control. For example, it is the federal government that set the Adequate Yearly Progress (AYP) requirements and targets. It is the federal government that requires teachers be “highly qualified.” It is the federal government that requires certain low-performing schools offer students the option to attend other schools and pay for their transportation. It is the federal government that requires schools on improvement to spend 10% of their Title funds on professional development. And it is the federal government that determines Title I allocations. The state has no control over the amount of money that districts receive.

Dr. Boland is also expected to testify that CDE is a strong advocate for the districts when communicating with the federal government. For example, CDE has advocated that the federal government use real pupil poverty counts rather than census data to capture the number of students in poverty. (Incidentally, the State’s funding formula uses the free lunch count, which may be more representative of poverty in the districts.) CDE has also advocated that any remaining Title I ARRA funds be able to be held and re-distributed rather than returned to the federal government. CDE has also made repeated overtures for Title I portability – allowing Title dollars to follow the pupil. Indeed, some of the things CDE was cited for by the federal government regarding calculating AYP were done because CDE believed they were a better way to do things for the districts.

Dr. Boland is also expected to testify that there are instances where districts do not access all potential federal funds. For example, CDE is required to set aside a certain percentage of Title I funds for supporting schools on improvement. Not all of these funds are accessed by districts because, in some instances, districts have expressed that they prefer to provide their own assistance to schools. In other cases, districts on Improvement have not signed up for a District Improvement Grant, which provides additional resources for activities such as professional development. In sum, there are numerous instances where districts simply do not access funds.

On a yearly basis, the state has federal dollars left on the table that districts have not touched and in some cases must be returned to the USDE. Indeed, the state notifies districts about the need to draw down their grant funds on a regular basis. Even so, it is common that districts do not draw down all the funds awarded through formula and competitive grants. In all likelihood, the state will have to return some ARRA funds that districts have not accessed. The

state's monitoring of districts has identified poorly managed financial systems, in some cases, that likely contribute to the problem.

Dr. Boland is also expected to testify about the increased accountability requirements of the federal government, through No Child Left Behind (NCLB). Specifically, Dr. Boland is expected to testify that the "goal" of full proficiency by 2014 was just that – a goal – because typically, reauthorization of the federal Elementary and Secondary Education law occurs every 5-6 years, which would have been well in advance of the 2014 date. Dr. Boland is also expected to testify that the federal government did not tie increased funding to the increased accountability requirements. While there were costs to the state to implement the increased accountability requirements (e.g., design of testing measures), districts ought to have been doing the things NCLB measured, such as focusing on *all* students, long before the federal requirements were put into place. Dr. Boland is expected to testify that NCLB ramped up accountability requirements, requiring educators to be responsible for the high achievement of all students. The requirement to disaggregate student groups meant that previously 'hidden' students now had a face in the accountability system.

Dr. Boland is also expected to testify that additional dollars do not necessarily correlate with improved achievement. The best example is looking at effective Title I schools. The cause of lack of achievement is not lack of resources, but rather it is things like poor use of funds and misaligned curriculum. Districts and schools could do many things that do not cost much money, such as principals holding teachers accountable for fidelity to the curriculum. Indeed, the two lynchpins for successful schools is a culture of high expectations and strong leadership. In short, more money will not necessarily result in higher achievement by students who struggle.

Finally, Dr. Boland is expected to testify regarding the significant technical assistance that CDE provides to schools and school districts. For example, CDE has re-designed its on-site trainings to focus on the districts that need the most help with the consolidated application. CDE provides guidance on accessing E-Rate funds, even though the state gets no funding to do so. CDE constantly works with districts to encourage them to draw down all available federal funds. CDE gives districts examples of how to try to leverage their funds, and how to evaluate the impact of programs to see if the use of funds is making a difference. Finally, CDE works with districts to help them consolidate school-wide programs. CDE is a partner with, and advocate for, school districts.

DATED: June 13, 2011

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*Original signature of Nicholas P. Heinke is
on file at the Office of the Colorado Attorney
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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **DEFENDANTS' SIXTH SUPPLEMENTAL EXPERT DISCLOSURES** upon all parties herein via electronic mail, Lexis/Nexis File & Serve, and/or U.S. Mail this 13th day of June, 2011:

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