



Jun 17 2011
6:42AM

<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>	
<p>Attorneys for Defendants: JOHN W. SUTHERS, Attorney General</p> <p>NANCY J. WAHL, 31890* First Assistant Attorney General E-mail: nancy.wahl@state.co.us</p> <p>ANTONY B. DYL, 15968* Senior Assistant Attorney General E-mail: tony.dyl@state.co.us</p> <p>CAREY TAYLOR MARKEL, 32987* Senior Assistant Attorney General E-mail: carey.markel@state.co.us</p> <p>NICHOLAS P. HEINKE, 38738* Assistant Attorney General E-mail: nicholas.heinke@state.co.us</p> <p>JONATHAN P. FERRO, 35754* Assistant Attorney General E-mail: jon.ferro@state.co.us</p> <p>ERICA WESTON, 35581* Assistant Attorney General E-mail: erica.weston@state.co.us</p> <p>Office of the Colorado Attorney General 1525 Sherman Street, 7th Floor Denver, CO 80203 Telephone: (303) 866-2383 Fax: (303) 866-5671 * Counsel of Record</p>	<p>Case Number: 05 CV 4794</p> <p>Div: 9</p>
<p>DEFENDANTS' SEVENTH SUPPLEMENTAL EXPERT WITNESS DISCLOSURES</p>	

Pursuant to the Case Management Order, Defendants, by and through their counsel, hereby make their Seventh 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 further disclose the following expert witness pursuant to Colo. R. Civ. P. 26(a)(2)(B)(II). This designee is a fact witness who may also provide expert opinion:

10. Barbara Medina
Assistant Commissioner for Innovation and Transformation
State Director, Language Culture and Equity
Colorado Department of Education
201 East Colfax Ave.
Denver, CO 80203

The subject matter of Dr. Medina's testimony is expected to include, without limitation, education of English language learners, migrant students, programs to enhance provision of education to English language learners and migrant students, factors impacting student outcomes, online learning and regional services, and related matters. Dr. Medina's CV is attached hereto as **Exhibit A**.

Dr. Medina is expected to testify that providing services to English Learner (EL) students is a shared responsibility between the state and the districts. The state has the responsibility to build capacity to provide technical advice and guidance, and to monitor compliance. For example, CDE has developed a nationally-respected EL guidebook, which is available for districts to use as a resource. Districts are responsible for knowing their community, linguistic needs, and historical context, particularly because demographic changes manifest themselves differently in different districts. In a local control state, the state does not require districts to use a particular program or curriculum for EL students. Choice and implementation of appropriate programs, and other instructional choices, are the obligation of the districts.

Dr. Medina is expected to testify that ELPA funding is supplemental to the state per pupil operating revenue (PPOR), which is much greater than the supplemental ELPA dollars. District

should not be relying solely on ELPA dollars to support their EL students. Rather, ELPA dollars are to triage meeting the needs of the neediest students.

Dr. Medina is also expected to testify that resources alone do not guarantee an effective EL program. Lack of resources is not always the issue. For example, certain communities that are not considered high wealth have effective dual-language programs and are providing effective instruction for their students. The Colorado growth model allows us to see that schools with similar contextual factors have different growth and achievement patterns. Further, there are opportunities within the current system for districts to more efficiently leverage their resources. In short, money alone doesn't guarantee success.

Dr. Medina is also expected to testify that some challenges aren't a resource issue at all. For example, building leadership capacity at the district level is critical. Constant turnover can hurt instructional program choices; if a district or school is regularly changing instructional routines or strategies, it can't develop the consistency that is necessary to develop appropriate programs. It is important to make long-term instructional decisions and to avoid taking shortcuts that appear to fix the problem but in fact do not. It is also important to have a culture of high expectations for all students, engagement of all teachers, and effective community and parent outreach.

Dr. Medina is also expected to testify about the tension between theoretical models of EL programs and actual, practical implementation. Research requires that a school or district determine the needs of its students before selecting a particular instructional model, rather than selecting a model and trying to make it fit the students. Moreover, implementation of the same model often looks quite different in different schools or districts. While there are theoretical pros and cons around different instructional models, what matters in practice is implementation – knowing your kids and matching resources to needs. That is why CDE developed a secondary instructional walk-through tool, to help districts evaluate the effectiveness of their actual instructional practices.

Dr. Medina is also expected to testify about the assistance CDE provides to districts and the assistance districts and schools requested. In a local control state, technical assistance is not something CDE imposes upon districts arbitrarily. Rather, if a district needs help, they should (and often do) reach out and ask questions, search for best practice models, etc. CDE's role as a resource is to promote best practices and expertise, not to hand down edicts. Moreover, a district asking for technical assistance around its EL population must be open to change and to a holistic assessment of instruction and resource allocation.

Finally, Dr. Medina is expected to testify that, given the limited resources that the people of Colorado have authorized the state to spend on all government programs, the dramatic growth in the EL population, and the economic challenges of recent years, the state has made great strides building capacity to meet the needs of EL students. These challenges also provide an opportunity to improve instruction for all students. While we have not arrived, we are doing

better than one would expect or hope for and continue to commit ourselves to increased achievement.

DATED: June 15, 2011

JOHN W. SUTHERS
Attorney General

s/ Nicholas P. Heinke

NANCY J. WAHL, 31890*

First Assistant Attorney General

ANTONY B. DYL, 15968*

Senior Assistant Attorney General

CAREY TAYLOR MARKEL, 32987*

Senior Assistant Attorney General

NICHOLAS P. HEINKE, 38738*

Assistant Attorney General

JONATHAN P. FERO, 35754*

Assistant Attorney General

ERICA WESTON, 35581*

Assistant Attorney General

ATTORNEYS FOR DEFENDANTS

*Counsel of Record

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

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **DEFENDANTS' SEVENTH SUPPLEMENTAL EXPERT DISCLOSURES** upon all parties herein via electronic mail, Lexis/Nexis File & Serve, and/or U.S. Mail this 15th day of June, 2011:

David Hinojosa, Esq.
Nina Perales, Esq.
Marisa Bono, Esq.
**Mexican American Legal Defense
and Education Fund (MALDEF)**
110 Broadway, Ste. 300
San Antonio, Texas 78205
*Attorneys for Plaintiff-Intervenors
Armandina Ortega, et al.
(via electronic-mail and U.S. Mail)*

Henry Solano, Esq.
DEWEY & LeBOEUF
4121 Bryant St.
Denver, Colorado 80211
*Attorney for Plaintiff-Intervenors
Armandina Ortega, et al.*

Alexander Halpern , Esq.
Alexander Halpern LLC
1426 Pearl Street, Suite 420
Boulder, Colorado 80302
Attorney for Anthony Lobato, et al.

Kathleen J. Gebhardt, Esq.
Kathleen J. Gebhardt LLC
1900 Stoney Hill Road
Boulder, Colorado 80305
*Attorney for Anthony Lobato, et al.
(via electronic-mail and U.S. Mail)*

Kenzo Kawanabe, Esq.
Terry R. Miller, Esq.
Geoffrey C. Klingsporn, Esq.
Rebecca J. Dunaway, Esq.
Daniel P. Spivey, Esq.
DAVIS, GRAHAM & STUBBS, LLP
1550 Seventeenth Street, Suite 500
Denver, Colorado 80202
*Attorneys for Anthony Lobato, Denise
Lobato, Taylor Lobato, Alexa Lobato,
Aurora Joint School District No. 28,
Jefferson County School District,
Colorado Springs School District,
Monte Vista and Alamosa School District*

Kyle C. Velte, Esq.
Ryann B. MacDonald, Esq.
REILLY POZNER, LLP
511 Sixteenth Street, Suite 700
Denver, Colorado 80202
*Attorneys for Plaintiffs Creed Consol.
School District No. 1, Del Norte Consol.
School District no C-7, Moffat School
District No. 2, and Mountain Valley
School District No. Re 1*

Jess A. Dance, Esq.
PERKINS COIE, LLP
1899 Wynkoop Street, Suite 700
Denver, Colorado 80202
*Attorney for Plaintiffs Sanford
School District 6J, North Conejos
School District RE-1J, South Conejos
School District RE-10, and Centennial
School District No. R-1*

Kimberley D. Neilio, Esq.
GREENBERG TRAUIG, LLP
1200 Seventeenth Street, Suite 2400
Denver, Colorado 80202
*Attorney for Plaintiff Pueblo School District 60,
County of Pueblo, Colorado*

Jessica E. Yates, Esq.
SNELL & WILMER LLP
One Tabor Center, Suite 1900
Denver, Colorado 80202
*Attorney for Plaintiffs Alexandria, Amber,
Ari, Ashley and Lillan Leroux*

David W. Stark, Esq.
Joseph C. Daniels, Esq.
Sera Chong, Esq.
FAEGRE & BENSON LLP
1700 Lincoln Street, Suite 3200
Denver, Colorado 80203
*Attorneys for Plaintiffs Jessica Spangler,
Herbert Conboy, Victoria Conboy, Terry
Hart, Kathy Howe-Kerr, Larry Howe-Kerr,
John T. Lane, Jennifer Pate, Blance J.
Podio, and Robert L. Podio*

Alyssa K. Yatsko, Esq.
HOLLAND & HART, LLP
555 Seventeenth St. Suite 3200
Denver, CO 80201-8749
*Attorney for Jefferson County School
District No. R-1*

s/ Jeannine Moore
Jeannine Moore, Paralegal
*Original Signature on file at the
Office of the Colorado Attorney General*