



Feb 16 2011  
12:13PM

<p>DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock St. Denver, Colorado 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><b>Plaintiffs:</b> ANTHONY LOBATO, et al. and <b>Plaintiff-Intervenors:</b> ARMANDINA ORTEGA, et al. v. <b>Defendants:</b> THE STATE OF COLORADO, et al.</p>	
<p><i>Attorneys for Plaintiffs Creede 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</i> Kyle C. Velte, #31093 Ryann B. MacDonald, #41231 REILLY POZNER LLP 511 Sixteenth Street, Suite 700 Denver, CO 80202 Telephone:(303) 893-6100 Facsimile: (303) 893-6110 Email: kvelte@rplaw.com rmacdonald@rplaw.com</p>	<p>Case No. 2005CV4794 Div. 9</p>
<p>PLAINTIFFS' SUPPLEMENTAL RESPONSE TO DEFENDANTS' FIRST DISCOVERY REQUESTS TO SCHOOL DISTRICT PLAINTIFF MOFFAT SCHOOL DISTRICT NO. 2</p>	

Pursuant to C.R.C.P. 34, Plaintiffs, Anthony Lobato, et al., (“Plaintiffs”), through counsel, hereby respond on behalf of Plaintiff Moffat School District No. 2 (the “District”) to Defendants’ First Request For Production Of Documents to School District Plaintiffs served October 12, 2010 (“Request for Production”):

**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 its 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 its specific responses. By its 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**

Request for Production No. 19: All documents concerning the maintenance of the District's school facilities from 2000 to the present.

Response to Request No. 19: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of the District have been produced, including but not limited to District financial documents that refer to Fund 21 and 10-700-00-2400. See MOFFAT000585 – 892; MOFFAT000486 – 495; MOFFAT000081 – 212.

**VERIFICATION**

I hereby certify that I have read and reviewed the foregoing PLAINTIFFS' SUPPLEMENTAL RESPONSE TO DEFENDANTS' FIRST DISCOVERY REQUESTS TO SCHOOL DISTRICT PLAINTIFFS MOFFAT SCHOOL DISTRICT NO. 2 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 by [school district] to verify these responses on its behalf.

MOFFAT SCHOOL DISTRICT NO. 2

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO                    )  
                                                  ) ss.  
COUNTY OF \_\_\_\_\_                )

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_\_ day of February, 2011.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(S E A L)

Dated: February 16, 2011

REILLY POZNER LLP

*/s/ Kyle Velte*

\_\_\_\_\_  
Kyle C. Velte, #31093

Ryann B. MacDonald, #41234

*Attorneys for Plaintiffs Creede 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*

***The original, executed document is on file at the offices of Reilly Pozner LLP.***

**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 16<sup>th</sup> day of February, 2011, a true and correct copy of the foregoing PLAINTIFFS' SUPPLEMENTAL RESPONSE TO DEFENDANTS' FIRST DISCOVERY REQUESTS TO SCHOOL DISTRICT PLAINTIFFS MOFFAT SCHOOL DISTRICT NO. 2 was served via LexisNexis<sup>®</sup> File & Serve, addressed to the following:

David G. Hinojosa  
Nina Perales  
Diego Bernal  
MALDEF  
110 Broadway, Suite 300  
San Antonio, TX 78205

John W. Suthers, Attorney General  
Antony B. Dyl  
Carey Taylor Markel  
Ann H. Cisneros  
Erica Weston  
Jonathan Fero  
Nicholas P. Heinke  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, CO 80203  
*Office of the Attorney General*

Kathleen J. Gebhardt  
Kathleen J. Gebhardt LLC  
1426 Pearl Street, Ste. 201  
Boulder, CO 80302  
*Attorneys for Plaintiffs Anthony Lobato,  
Denise Lobato, Taylor Lobato and Alexa  
Lobato, Colorado Springs School District  
11, Monte Visa School District No. C-8,  
Alamosa School District No. RE-11J*

Alexander Halpern  
Jennifer Bezoza  
Alexander Halpern LLC  
1426 Pearl Street, Ste. 201  
Boulder, CO 80302  
*Attorneys for Plaintiffs Anthony Lobato,  
Denise Lobato, Taylor Lobato and Alexa  
Lobato, Colorado Springs School District  
11, Monte Visa School District No. C-8,  
Alamosa School District No. RE-11J*

Henry Solano  
Dewey & Le Boeuf  
4121 Bryant St.  
Denver, CO 80211

Kenzo Kawanabe  
Daniel P. Spivey  
Terry R. Miller  
Rebecca J. Dunaway  
Geoffrey C. Klingsporn  
Davis Graham & Stubbs LLP  
1550 17<sup>th</sup> Street, Ste. 500  
Denver, CO 80202  
*Attorneys for Plaintiffs Anthony Lobato,  
Denise Lobato, Taylor Lobato and Alexa  
Lobato, Colorado Springs School District  
11, Jefferson County School District No. R-  
1, Monte Vista School District No. C-8,  
Alamosa School District No. RE-11J*

Jess A. Dance  
Perkins Coie LLP  
1899 Wynkoop St., Ste. 700  
Denver, CO 80202  
*Attorneys 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*

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

Kimberley D. Neilio  
Greenberg Traurig LLP  
1200 Seventeenth Street, Ste. 2400  
Denver, CO 80202  
*Attorney for Plaintiff Pueblo, School  
District No. 60 in the County of Pueblo  
and State of Colorado*

Alyssa K. Yatsko  
Holland & Hart LLP  
555 17<sup>th</sup> Street, Ste. 3200  
P.O. Box 8749  
Denver, CO 80201  
*Attorney for Plaintiff Jefferson County  
School District No. R-1*

/s/ Kyle Velte

***The original, executed document is on file at the offices of Reilly Pozner LLP.***