

DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO
1437 Bannock Street
Denver, Colorado 80202

PLAINTIFFS: **Anthony Lobato**, as an individual and as parent and natural guardian of **Taylor Lobato** and **Alexa Lobato**; **Denise Lobato**, as an individual and as parent and natural guardian of **Taylor Lobato** and **Alexa Lobato**; **Jaime Hurtado and Coralee Hurtado**, as individuals and as parents and natural guardians of **Maria Hurtado** and **Evan Hurtado**; **Janet L. Kuntz**, as an individual and as parent and natural guardian of **Daniel Kuntz** and **Stacey Kuntz**; **Pantaleón Villagomez** and **Maria Villagomez**, as individuals and as parents and natural guardians of **Chris Villagomez**, **Monique Villagomez** and **Angel Villagomez**; **Linda Warsh**, as an individual and as parents and natural guardian of **Adam Warsh**, **Karen Warsh** and **Ashley Warsh**; **Elaine Gerdin**, as an individual and as parent and natural guardian of **N.T.**, **J.G.** and **N.G.**; **Dawn Hartung**, as an individual and as parent and natural guardian of **Q.H.**; **Paul Lastrella**, as an individual and as parent and natural guardian of **B.L.**; **Woodrow Longmire**, as an individual and as parent and natural guardian of **Tianna Longmire**; **Steve Seibert** and **Dana Seibert**, as individuals and as parents and natural guardians of **Rebecca Seibert** and **Andrew Seibert**; **Olivia Wright**, as an individual and as parent and natural guardian of **A.E.** and **M.E.**; **Herbert Conboy** and **Victoria Conboy**, as individuals and as parents and natural guardians of **Tabitha Conboy** and **Timothy Conboy**; **Terry Hart**, as an individual and as parent and natural guardian of **Katherine Hart**; **Larry Howe-Kerr** and **Kathy Howe-Kerr**, as individuals and as parents and natural guardians of **Lauren Howe-Kerr** and **Luke Howe-Kerr**; **John T. Lane**, as an individual; **Jennifer Pate**, as an individual and as parent and natural guardian of **Ethan Pate** and **Evelyn Pate**; **Robert L. Podio** and **Blanche J. Podio**, as individuals and as parents and natural guardians of **Robert Podio** and **Samantha Podio**; **Tami Quandt**, as an individual and as parent and

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natural guardian of **Brianna Quandt, Cody Quandt** and **Levi Quandt**; **Brenda Christian**, as an individual and as parent and natural guardian of **Ryan Christian**; **Toni L. McPeek**, as an individual and as parent and natural guardian of **M.J. McPeek, Cassie McPeek** and **Michael McPeek**; **Christine Tiemann**, as an individual and as parent and natural guardian of **Emily Tiemann** and **Zachary Tiemann**; **Paula VanBeek**, as an individual and as parent and natural guardian of **Kara VanBeek** and **Antonius VanBeek**; **Larry Haller** and **Pennie Haller**, as individuals and as parents and natural guardians of **Kelly Haller** and **Brandy Haller**; **Tim Hunt** and **Sabrina Hunt**, as individuals and as parents and natural guardians of **Shannon Moore-Hiner, Eris Moore, Darean Hunt** and **Jeffrey Hunt**; **Mike McCaleb** and **Julie McCaleb**, as individuals and as parents and natural guardians **Rebekka McCaleb, Layne McCaleb** and **Lynde McCaleb**; **Todd Thompson** and **Judy Thompson**, as individuals and as parents and natural guardians of **Garson Thompson** and **Tarek Thompson**; **Doug Vondy** and **Denise Vondy**, as individuals and as parents and natural guardians of **Kyle Leaf** and **Hannah Vondy**; **Brad Weisensee** and **Traci Weisensee**, as individuals and as parents and natural guardians of **Joseph Weisensee, Anna Weisensee, Amy Weisensee** and **Elijah Weisensee**; **Stephen Topping**, as an individual and as parent and natural guardian of **Michael Topping**; **Donna Wilson**, as an individual and as parent and natural guardian of **Ari Wilson, Sarah Patterson, Madelyn Patterson** and **Taren Wilson-Patterson**; **David Maes**, as an individual and as parent and natural guardian of **Cherie Maes**; **Debbie Gould**, as an individual and as parent and natural guardian of **Hannah Gould, Ben Gould** and **Daniel Gould**; **Lillian Leroux**, as an individual and natural guardian of **Ari Leroux, Lillian Leroux, Ashley Leroux, Alexandria Leroux** and **Amber Leroux**; **Theresa Wrangham**, as an individual and natural guardian of **Rachel Wrangham** and **Deanna Wrangham**

and

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Alamosa School District, No. RE-11J; Centennial School District No. R-1; Center Consolidated School District No. 26 JT, of the Counties of Saguache and Rio Grande and Alamosa; Creede Consolidated School District No. 1 in the County of Mineral and State of Colorado; Del Norte Consolidated School District No. C-7; Moffat, School District No. 2, in the County of Saguache and State of Colorado; Monte Vista School District No. C-8; Mountain Valley School District No. RE 1; North Conejos School District No. RE1J; Sanford, School District No. 6, in the County of Conejos and State of Colorado; Sangre de Cristo School District, No. RE-22J; Sargent School District No. RE-33J; Sierra Grande School District No. R-30; and South Conejos School District No. RE10.

vs.

DEFENDANTS: The State of Colorado; the Colorado State Board of Education; William J. Moloney, in his official capacity as Commissioner of Education of the State of Colorado; and **Bill Owens**, in his official capacity as Governor of the State of Colorado.

Attorneys for Plaintiffs:

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Case Number:

Div:

COMPLAINT

The Plaintiffs, by their counsel, for a Complaint against the Defendants, allege as follows:

1. This action challenging the constitutionality of the Colorado system of public school finance is brought pursuant to Rules 57 and 65 of the Colorado Rules of Civil Procedure and the Uniform Declaratory Judgments Law,¹ for declaratory and injunctive relief to determine and enforce rights guaranteed to the Plaintiffs by article IX, sections 2 and 15 and article X, section 3 of the Colorado Constitution and the statutes of the State of Colorado.

2. This Court has jurisdiction pursuant to article VI, section 9 of the Colorado Constitution. Venue is proper in the City and County of Denver pursuant to C.R.C.P. Rule 98(b).

GENERAL ALLEGATIONS

3. Adopted in 1876, article IX, section 2 of the Colorado Constitution (the Education Clause) mandates that the “general assembly shall . . . provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously.”

4. The Education Clause has qualitative content and meaning independent of the acts of the legislative and executive branches of the state government. The Education Clause guarantees to each and every school-age resident of Colorado the fundamental right to attend free public schools that provide an equal opportunity to obtain a constitutionally adequate, quality education.

5. To meet this mandate, a quality education must at least prepare residents to participate meaningfully in the civic, political, economic, social and other activities of our society and the world, and to exercise the basic civil and other rights of a citizen of the State of Colorado and the United States of America. An education that fails to fulfill this purpose is constitutionally inadequate.

6. The Education Clause imposes upon the state the duty to provide the financial resources necessary and appropriate to assure that all resident children have an equal opportunity to obtain a constitutionally adequate, quality education. A system of public school finance that fails to provide sufficient financial resources to the schools and school districts of the state and to provide such financial resources in a manner that is intentionally, rationally, and demonstrably related to the accomplishment of the qualitative mandate of the Education Clause is unconstitutional.

¹ §§13-51-101, *et seq.*, C.R.S. (2004). Unless specifically stated otherwise, all statutory references are to the Colorado Revised Statutes (2004).

7. Article IX, section 15 of the Colorado Constitution directs the general assembly to “provide for the organization of school districts of convenient size,” governed by locally elected boards of education and empowers the directors of the local boards of education with the “control of instruction in the public schools of their respective districts.” Control of instruction by locally elected school boards is an integral component of a thorough and uniform system of public education. A system of public school finance that fails to provide sufficient financial resources to the school districts of the state to permit local boards of education to provide services, materials, and facilities necessary to meet the qualitative mandate of the Education Clause is unconstitutional under article IX, sections 2 and 15 of the Colorado Constitution.

8. The general assembly has consistently and repeatedly acknowledged its obligations under the Education Clause and affirmed the fundamental right to an equal opportunity to obtain a quality education. For example, the general assembly has declared that:

[S]ection 2 of article IX of the state constitution requires the general assembly to provide for the establishment and maintenance of a thorough and uniform system of free public schools. The state therefore has an obligation to ensure that every student has a chance to attend a school that will provide an opportunity for a quality education.²

9. The general assembly has acknowledged that compliance with the Education Clause imposes a financial responsibility upon the state. Thus, the Public School Finance Act of 1994 (the Public School Finance Act or PSFA)³ states that it “is enacted in furtherance of the general assembly’s duty under section 2 of article IX of the state constitution to provide for a thorough and uniform system of public schools throughout the state”⁴

10. The general assembly has acknowledged the constitutional role of local school districts in the system of public education and has provided for the establishment of school districts by legislation, including, most recently, the School District Organization Act of 1992, as amended.⁵ The stated purposes of the School District Organization Act include the general improvement of the public schools, maintaining a thorough and uniform system of free public schools throughout the state, equalization of the benefits of education throughout the state, and more responsible expenditure of public funds for the support of the public school system of the state.

11. Beginning in the 1990s, in the name of education reform, the State of Colorado has undertaken a legislative transformation of the public education system. This “education reform legislation” includes, without limitation, the Educational

² §22-30.5-301(1).

³ §§22-54-101, *et seq.*, adopted in 1994.

⁴ §22-54-102(1).

⁵ §§22-30-101, *et seq.*, C.R.S. (2004).

Accountability Act of 1971 (the Educational Accountability Act);⁶ the Colorado Basic Literacy Act;⁷ the Educational Accreditation Act of 1998, (the Educational Accreditation Act);⁸ the Safe Schools Act;⁹ the Alternative Education Act;¹⁰ the English Language Proficiency Act (ELPA);¹¹ and Colorado Commission on Higher Education admissions standards.¹²

12. Key elements of the education reform legislation include the implementation of a state-wide standards-based education system incorporating mandatory minimum public school content standards and associated student performance objectives; universal assessment of public school student proficiency with respect to these content standards by standardized testing; comparative rating of the performance of students, schools, and school districts measured by the results of these assessments; and school and school district accountability for student assessment results and progress, including a mandatory improvement process for schools deemed “unsatisfactory” leading to a comprehensive restructuring of the school.¹³

13. Colorado has elected to conform to the requirements of the federal No Child Left Behind Act of 2001¹⁴ (NCLB), and, in furtherance thereof, the State Board adopted the Colorado Consolidated State Plan (Consolidated State Plan) in 2002. NCLB and the Consolidated State Plan establish a statewide accountability system holding school districts and schools accountable for improving academic achievement of all students, identifying and turning around low-performing schools, providing high-quality alternatives to students in low-performing schools, and improving accountability, teaching, and learning by the use of state assessment systems, all designed to ensure that students meet challenging state academic achievement and content standards and are increasing achievement in compliance with a schedule of annual yearly progress designed to accomplish one hundred percent academic proficiency by the school year 2013-14.

14. Education reform legislation and the Consolidated State Plan have established certain standards, goals, objectives, methods, and information that assist in defining, without limiting, the qualitative mandate of the Education Clause; measuring whether the State has fulfilled its constitutional responsibilities; and determining whether there are sufficient financial resources to establish and maintain a thorough and uniform system of free public education in Colorado. This legislation substantially expanded the

⁶ §§22-7-101, *et seq.*, amended in its entirety in 1997.

⁷ §§22-7-501, *et seq.*, amended in its entirety in 1997.

⁸ §§22-11-101, *et seq.*

⁹ §22-32-109.1, adopted in 2000.

¹⁰ §22-7-604.5, adopted in 2002.

¹¹ §§22-24-101, *et seq.*

¹² §23-1-113(1)(b), adopted in 2000.

¹³ Statutory provisions that formerly mandated conversion to a charter school were amended by the general assembly to provide for a number of restructuring alternatives by House Bill 05-1216, signed by the Governor on June 9, 2005.

¹⁴ 20 U.S.C. §§6301, *et seq.*

role of the state in areas of instruction, program, and educational policy historically controlled by school districts; significantly increased the testing and administrative tasks of school districts; and has mandated directly and indirectly substantial increases in the costs of providing a constitutionally adequate, quality education without providing school districts with sufficient funding or the means to obtain sufficient funding to meet those costs.

15. The Colorado system of public education, and particularly education reform legislation and the Consolidated State Plan, has imposed instructional and other substantive mandates upon school districts without analyzing funding needs or providing the means to fund the accomplishment of those mandates, and prevents school districts from obtaining adequate funding to meet the statutory and constitutional rights of their constituents, in violation of the Education Clause and the constitutional authority vested in the local boards of education.

16. School districts are controlled and strictly limited by state statutory and constitutional provisions in the revenues they can raise, receive, and expend to provide education programs to the students in their schools. The cost of providing a constitutionally adequate, quality education exceeds the maximum amount of funding that is available to school districts under the Colorado system of public school finance.

17. Governmental funding for Colorado school districts is derived from local taxes, state funds, and, to a significantly lesser degree, federal funds. In school year 2003-04, total public education funding from all sources, excluding bond sale proceeds, was some \$6.551 billion, of which school district property tax and other sources contributed \$3.257 billion (49.7%), the state contributed \$2.838 billion (43.3%), and federal funding provided \$456 million (7.0%).

18. State and local funding for public education is principally provided through the Public School Finance Act. In 2003-04, PSFA funding constituted 89 percent of the state's total contribution to public education funding. The PSFA sets the financial base of support for each school district, referred to as its "total program funding." The CDE projects that for school year 2005-06, total program funding will be approximately \$4.545 billion to provide services to some 733,000 school children, for an average of \$6,164 per pupil. Of this total, \$2.835 billion (62.4 percent) will be provided by state funding and \$1.710 billion (37.6 percent) from local school district property and specific ownership (automobile registration) taxes.

19. Neither the PSFA funding formula nor the funding levels it establishes and enforces 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, education reform legislation, and the Consolidated State Plan.

20. The PSFA formula and funding levels are not based upon a valid determination of the actual costs to provide every student with a constitutionally

adequate, quality education, or to an education that meets the standards and goals mandated by education reform legislation and NCLB. The PSFA formula and funding levels have never been studied, much less increased, to account for the additional costs to meet the mandates of education reform legislation or the Consolidated State Plan.

21. The 1994 PSFA base funding amount was based upon historical school funding levels and political compromise and not on the basis of an analytical determination of the actual costs to provide a constitutionally adequate, quality education. From 1994 through 2001, Colorado failed in every subsequent year to provide an increase in the PSFA funding amount that was sufficient to pay for increased school district costs due solely to the percentage change in inflation. The result is a \$3.4 billion cumulative shortfall in PSFA funding against inflation alone from 1994-95 to 2004-05.

22. A statewide study by the Colorado School Finance Project (CSFP), conducted in accordance with nationally accepted methods of analysis, found that in the 2001-02 school year none of the 176 Colorado school districts was able to raise and expend general operating funds at a level sufficient to provide an education that could meet the standards and mandates of the education reform legislation, much less the Education Clause. The CSFP study found that in 2001-02 alone Colorado public schools were under-funded by a minimum of \$500 million.

23. In 2004, Colorado ranked 49th among the fifty states in expenditures per \$1,000 of personal income for primary and secondary public education. Although Colorado's average per capita income was seventh highest in the nation and thirteen percent higher than the national average, its rate of state tax collections as a factor of personal income was \$44.57 per \$1,000, the lowest in the United States and thirty percent below the national average of \$63.70 per \$1,000.

24. Providing necessary educational services to certain identifiable under-served student populations requires funding above the basic PSFA total program amount. The Colorado public school finance system, through supplements to the PSFA formula and "categorical" program funding, provides limited funds to school districts for low family income ("at-risk") students, preschool and kindergarten education, students whose dominant language is not English, students with disabilities, and gifted and talented students. In 2003-04, categorical funding totaled \$160 million, or 2.5 percent of the state's financial contribution to public education.

25. The public school finance system fails to provide sufficient resources and to allocate resources in a manner rationally determined to meet the actual costs of providing for the educational needs and rights of the under-served student populations. Due to under-funding and irrational funding of categorical and other programs intended to provide adequate educational opportunities to these populations, school districts must spend less per pupil than is necessary and/or use additional general operating funds to provide such educational services, further impairing their ability to provide adequate educational opportunities for all students. The Colorado public school finance system particularly fails to meet the constitutional rights of and discriminates against students

from lower socio-economic backgrounds, ethnic and racial minorities, non-English speaking families, and students with disabilities across the state.

26. School district capital outlay expenditures in excess of PSFA capital reserve funding are financed by contracting for bonded indebtedness. School district bonded debt can be paid only by revenues from local mill levies on the taxable property within the boundaries of the district, and school districts are limited by statute in the amount of capital funding for which they may contract. The system of financing capital outlay expenditures does not provide revenue according to the educational needs of students within each district; does not provide sufficient funding for adequate facilities, technological infrastructure, and equipment; prevents school districts from adequately addressing capital issues related to growth; contravenes the constitutional mandate of local control, particularly in “property poor” school districts; and does not allocate the tax burden among Colorado citizens equally or uniformly.

27. The value of taxable property per pupil varies widely among school districts. “Property poor” school districts in particular are unable to raise sufficient funds for capital outlay purposes to provide students with facilities necessary to assure a constitutionally adequate, quality education. Taxpayers in property poor districts must pay significantly higher mill levies and bear a greater individual tax burden than similarly situated property owners in “property wealthy” districts.

28. As a result of under-funding, irrational, and unequal funding of public education, the Plaintiffs and all school children, parents, taxpayers, local boards of education, and school districts in the state have been denied their rights and authorities under the Colorado Constitution as more fully set forth in this Complaint.

PLAINTIFFS

I. Individual Plaintiffs

29. Each of the following “Individual Plaintiffs” is a resident of the State of Colorado, a resident and taxpayer of the specifically identified school district, and is the parent and natural guardian of the minor child or children identified hereinafter. Each Individual Plaintiff brings suit on his or her own behalf and on behalf of his or her child or children.

A. School District No. 14 in the County of Adams

30. David Maes is a resident of School District No. 14 in the County of Adams. His daughter Cherie Maes will be a ninth grade student at Adams City High School.

31. Lillian Leroux is a resident of School District No. 14 in the County of Adams. Her child Ari will be an eighth grade student at Adams City Middle School. Her daughter Lillian will be a seventh grade student at Adams City Middle School. Her daughter Ashley will be a fourth grade student at Monaco Elementary School. Her

daughters Alexandria and Amber will be third grade students at Monaco Elementary School.

B. Aurora, Joint District No. 28 of the Counties of Adams and Arapahoe

32. Brenda Christian is a resident of Aurora, Joint District No. 28 of the Counties of Adams and Arapahoe, Adams and Arapahoe Counties, Colorado. Her child Ryan Christian will be a fifth grade student at Arkansas Elementary School.

33. Toni L. McPeek is a resident of Aurora, Joint District No. 28 of the Counties of Adams and Arapahoe, Adams and Arapahoe Counties, Colorado. Her child M.J. McPeek will be a sophomore at Rangeview High School. Her daughter Cassie McPeek will be a seventh grade student at Mrachek Middle School. Her son Michael McPeek will be a first grade student at Arkansas Elementary School.

34. Christine Tiemann is a resident of Aurora, Joint District No. 28 of the Counties of Adams and Arapahoe, Adams and Arapahoe Counties, Colorado. Her daughter Emily Tiemann will be a seventh grade student at Mrachek Middle School. Her son Zachary Tiemann will be a second grade student at Arkansas Elementary School.

C. Boulder Valley School District No. Re2

35. Stephen Topping is a resident of Boulder Valley School District No. Re2, Boulder County, Colorado. His son Michael is an eight year old student at Mesa Elementary School.

36. Donna Wilson is a resident of Boulder Valley School District No. Re2, Boulder County, Colorado. Her child Ari Wilson will be a sophomore at Fairview High School. Her daughters Madelyn and Sarah Patterson will be fourth grade students at Creekside Elementary. Her son Teran Wilson-Patterson will be a first grade student at Creekside Elementary.

37. Debbie Gould is a resident of Boulder Valley School District No. Re2, Boulder County, Colorado. Her daughter Hannah Gould will be a fourth grade student at Mesa Elementary School. Her son Ben will be a third grade student at Mesa Elementary School. Her son Daniel is a preschooler with Boulder Valley School District.

38. Theresa Wrangham is a resident of Boulder Valley School District No. Re2, Boulder County, Colorado. Her daughter Rachel Wrangham will be a freshman at Monarch High School. Her daughter Deanna Wrangham will be a seventh grade student at Manhattan Middle School.

D. Center Consolidated School District No. 26 JT, of the Counties of Saguache and Rio Grande and Alamosa

39. Janet L. Kuntz is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa, Saguache County, Colorado. Her son Daniel recently graduated from Center High School. Her daughter Stacey will be a senior at Center High School.

40. Jaime Hurtado is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa, Saguache County, Colorado. His daughter Maria is a preschooler with the school district. His son Evan is a three year old and a future student in the school district.

41. Coralee Hurtado is a resident of is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa, Saguache County, Colorado. Her daughter Maria is a preschooler with the school district. Her son Evan is a three year old and a future student in the school district.

42. Anthony Lobato is a resident of is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa, Saguache County, Colorado. His child Taylor Lobato will be an eighth grade student at Skoglund Middle School. His daughter Alexa Lobato will be a sixth grade student at Skoglund Middle School.

43. Denise Lobato is a resident of is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa, Saguache County, Colorado. Her child Taylor Lobato will be an eighth grade student at Skoglund Middle School. Her daughter Alexa Lobato will be a sixth grade student at Skoglund Middle School.

44. Maria Villagomez is a resident of is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa, Saguache County, Colorado. Her child Chris Villagomez will be a sophomore at Center High School. Her daughter Monique Villagomez will be an eighth grade student at Skoglund Middle School. Her child Angel Villagomez will be a second grade student at Haskin Elementary School.

45. Pantaleón Villagomez is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa, Saguache County, Colorado. His child Chris Villagomez will be a sophomore at Center High School. His daughter Monique Villagomez will be an eighth grade student at Skoglund Middle School. His child Angel Villagomez will be a second grade student at Haskin Elementary School.

46. Linda Warsh is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa, Saguache County, Colorado. Her son Adam Wash will be a junior at Center High School. Her daughter Karen Warsh will be a sophomore at Center School. Her daughter Ashley Warsh will be an eighth grade student at Skoglund Middle School.

E. Harrison, School District No. 2, in the County of El Paso

47. Elaine Gerdin is a resident of Harrison, School District No. 2, in the County of El Paso. Her son N.T. will be a first grade student at Turman Elementary School. Her daughter J.G. will be a third grade student at Turman Elementary School. Her daughter N.G. will be a sixth grade student at Panorama Middle School.

48. Dawn Hartung is a resident of Harrison, School District No. 2, in the County of El Paso. Her child Q.H. will be a third grade student at Oak Creek Elementary School.

49. Paul Lastrella is a resident of Harrison, School District No. 2, in the County of El Paso. His son B.L. will be a seventh grade student at Fox Meadow Middle School.

50. Woodrow Longmire is a resident of Harrison, School District No. 2, in the County of El Paso. His daughter Tianna Longmire will be a second grade student at Turman Elementary School.

51. Dana Seibert is a resident of Harrison, School District No. 2, in the County of El Paso. Her daughter Rebecca Seibert will be a sophomore at Harrison High School. Her son Andrew Seibert will be a seventh grader at Fox Meadow Middle School.

52. Steve Seibert is a resident of Harrison, School District No. 2, in the County of El Paso. His daughter Rebecca Seibert will be a sophomore at Harrison High School. His son Andrew Seibert will be a seventh grader at Fox Meadow Middle School.

53. Olivia Wright is a resident of Harrison, School District No. 2, in the County of El Paso. Her son A.E. will be a seventh grade student at Fox Meadow Middle School. Her daughter M.E. will be a sixth grade student at Fox Meadow Middle School.

F. Pueblo County Rural School District No. 70

54. Herbert Conboy is a resident of Pueblo County Rural School District No. 70, Pueblo County. His daughter Tabitha Conboy will be a seventh grade student at Pueblo West Middle School. His son Timothy Conboy will be a sophomore at Pueblo West High School.

55. Victoria Conboy is a resident of Pueblo County Rural School District No. 70, Pueblo County. Her daughter Tabitha Conboy will be a seventh grade student at

Pueblo West Middle School. Her son Timothy Conboy will be a sophomore at Pueblo West High School.

56. Terry Hart is a resident of Pueblo County Rural School District No. 70, Pueblo County. His daughter Katherine Hart will be a seventh grade student at Pleasant View Middle School.

57. Kathy Howe-Kerr is a resident of Pueblo County Rural School District No. 70, Pueblo County. Her daughter Lauren Howe-Kerr will be a fifth grade student at Cedar Ridge Elementary School. Her son Luke Howe-Kerr will be a second grade student at Cedar Ridge Elementary School.

58. Larry Howe-Kerr is a resident of Pueblo County Rural School District No. 70, Pueblo County. His daughter Lauren Howe-Kerr will be a fifth grade student at Cedar Ridge Elementary School. His son Luke Howe-Kerr will be a second grade student at Cedar Ridge Elementary School.

59. John T. Lane is a resident and taxpayer of Pueblo County Rural School District No. 70, Pueblo County.

60. Jennifer Pate is a resident of Pueblo County Rural School District No. 70, Pueblo County. Her daughter Evelyn Pate will be a second grade student at Sierra Vista Elementary School. Her son Ethan Pate will be a third grade student at Sierra Vista Elementary School.

61. Blanche J. Podio is a resident of Pueblo County Rural School District No. 70, Pueblo County. Her son Robert Podio will be an eighth grade student at Skyview Middle School. Her daughter Samantha Podio will be a sixth grade student at Skyview Middle School.

62. Robert L. Podio is a resident of Pueblo County Rural School District No. 70, Pueblo County. His son Robert Podio will be an eighth grade student at Skyview Middle School. His daughter Samantha Podio will be a sixth grade student at Skyview Middle School.

63. Tami Quandt is a resident of Pueblo County Rural School District No. 70, Pueblo County. Her daughter Brianna Quandt will be an eighth grade student at Vineland Middle School. Her son Cody Quandt will be a sixth grade student at Vineland Middle School. Her son Levi Quandt will be a sophomore at Pueblo County High School.

G. Westminster, School District No. 50, in the County of Adams

64. Paula VanBeek is a resident of Westminster, School District No. 50, in the County of Adams. Her child Kara VanBeek will be a senior at Iver C. Ranum High School. Her child Antonius VanBeek will be a sophomore at Westminster High School.

H. Woodlin School District No. R-104

65. Larry Haller is a resident of Woodlin School District No. R-104, Washington County, Colorado. His child Kelly Haller is nineteen year old student at Woodlin Undivided High School. His child Brandy Haller is a thirteen year old student at Woodlin Undivided High School.

66. Pennie Haller is a resident of Woodlin School District No. R-104, Washington County, Colorado. Her child Kelly Haller is nineteen year old student at Woodlin Undivided High School. Her child Brandy Haller is a thirteen year old student at Woodlin Undivided High School.

67. Tim Hunt is a resident of Woodlin School District No. R-104, Washington County, Colorado. His child Shannon Moore-Hiner is a nineteen year old student at Woodlin Undivided High School. His child Eris Moore is an eighteen year old student at Woodlin Undivided High School. His child Darean Hunt is twelve year old student at Woodlin Elementary School. His child Jeffrey Hunt is preschool student at Woodlin Elementary School.

68. Sabrina Hunt is a resident of Woodlin School District No. R-104, Washington County, Colorado. Her child Shannon Moore-Hiner is a nineteen year old student at Woodlin Undivided High School. Her child Eris Moore is an eighteen year old student at Woodlin Undivided High School. Her child Darean Hunt is twelve year old student at Woodlin Elementary School. Her child Jeffrey Hunt is preschool student at Woodlin Elementary School.

69. Mike McCaleb is a resident of Woodlin School District No. R-104, Washington County, Colorado. His child Rebekkah McCaleb is a twelve year old student at Woodlin Elementary School. His child Layne McCaleb is a nine year old student at Woodlin Elementary School. His child Lynde McCaleb is a nine year old student at Woodlin Elementary School.

70. Julie McCaleb is a resident of Woodlin School District No. R-104, Washington County, Colorado. Her child Rebekkah McCaleb is a twelve year old student at Woodlin Elementary School. Her child Layne McCaleb is a nine year old student at Woodlin Elementary School. Her child Lynde McCaleb is a nine year old student at Woodlin Elementary School.

71. Todd Thompson is a resident of Woodlin School District No. R-104, Washington County, Colorado. His child Garson is a thirteen year old student at Woodlin Undivided High School. His child Tarek is a nine year old student at Woodlin Elementary School.

72. Judy Thompson is a resident of Woodlin School District No. R-104, Washington County, Colorado. Her child Garson Thompson is a thirteen year old student

at Woodlin Undivided High School. Her child Tarek Thompson is a nine year old student at Woodlin Elementary School.

73. Doug Vondy is a resident of Woodlin School District No. R-104, Washington County, Colorado. His child Kyle Leaf is a student in the Woodlin School District. His child Hannah Vondy is a student in the Woodlin School District.

74. Denise Vondy is a resident of Woodlin School District No. R-104, Washington County, Colorado. Her child Kyle Leaf is a student in the Woodlin School District. Her child Hannah Vondy is a student in the Woodlin School District.

75. Brad Weisensee is a resident of Woodlin School District No. R-104, Washington County, Colorado. His child Joseph Weisensee is a seven year old student at Woodlin Elementary School. His child Anna Weisensee is a preschool student at Woodlin Elementary School. His child Amy Weisensee is a three year old future student in the school district. His child Elijah Weisensee is a one year old future student in the school district.

76. Traci Weisensee is a resident of Woodlin School District No. R-104, Washington County, Colorado. His child Joseph Weisensee is a seven year old student at Woodlin Elementary School. His child Anna Weisensee is a preschool student at Woodlin Elementary School. His child Amy Weisensee is a three year old future student in the school district. His child Elijah Weisensee is a one year old future student in the school district.

II. School District Plaintiffs

77. The fourteen “School District Plaintiffs” include: Alamosa School District No. RE-11J, Centennial School District No. R-1, Center Consolidated School District No. 26JT, Creede Consolidated School District No. 1 in the County of Mineral, Del Norte Consolidated School District No. C-7, Moffat School District No. 2 in the County of Saguache, Monte Vista School District No. C-8, Mountain Valley School District No. RE 1, North Conejos School District No. RE-1J, Sanford School District No. 6 in the County of Conejos, Sangre de Cristo School District No. RE-22J, Sargent School District No. RE-33J, Sierra Grande School District No. R-30, and South Conejos School District No. RE-10.

78. Each of the School District Plaintiffs is a body corporate and subdivision of the State of Colorado exercising independent powers exclusively delegated to school districts by article IX, section 15 of the Colorado Constitution. The School District Plaintiffs have general authority to bring suit pursuant to §22-32-101, C.R.S. (2004).

79. The School District Plaintiffs are all of the school districts in the San Luis Valley area of south-central Colorado. The School District Plaintiffs serve student and taxpayer communities with some of the lowest average levels of personal income, highest percentages of poverty, and highest percentages of Hispanic, non-English speaking, and

migrant students in the state. The School District Plaintiffs are also among the most “property poor” school districts in the state, *i.e.*, those with the lowest level of taxable property wealth per pupil. The School District Plaintiffs are among the school districts in the State that are the most adversely affected by the constitutional deficiencies of the system of public school finance, and they serve student and taxpayer communities who are among the most severely impacted by those constitutional deficiencies.

DEFENDANTS

80. The State of Colorado is a body politic.

81. Pursuant to article IX, section 1 of the Colorado constitution and legislation enacted pursuant thereto, the Colorado State Board of Education (State Board) exercises the “general supervision of the public schools of the state” and appoints the Commissioner of Education.

82. William J. Moloney, in his official capacity as the Commissioner of Education (Commissioner), is the chief state school officer and executive officer of the Colorado Department of Education (CDE). The Commissioner’s duties include causing all policies, rules, and regulations adopted by the State Board to be executed and issuing instructions to public school district officers and employees concerning the government of the public schools.

83. Bill Owens, in his official capacity as Governor, is vested with the supreme executive power of the state and charged with the duty to take care that the laws be faithfully executed.

EDUCATION REFORM LEGISLATION

I. The Standards-Based Education System

84. The “anchor for education reform” is a statewide “standards-based education” system which has the ultimate goal “to ensure that Colorado’s schools have standards which will enable today’s students of all cultural backgrounds to compete in a world economy in the twenty-first century.”¹⁵

85. Standards-based education is a “system of instruction focused on student learning of content standards [that] aligns programs of instruction and assessments with the content standards.” “Content standard” means a “compilation of specific statements of what a student should know or be able to do relative to a particular academic area.” “Programs of instruction” means a “description of the educational experiences and

¹⁵ §22-7-401.

curriculum which will enable students to achieve content standards.” “Assessments” means the “methods used to collect evidence of what a student knows or is able to do.”¹⁶

86. The general assembly has directly correlated student achievement of the content standards with accomplishing the mandate of the Education Clause:

Every resident of the state six years of age or older but under twenty-two years of age has a fundamental right to a free public education that assures that such resident shall have the opportunity to achieve the content standards adopted pursuant to this part 4 at a performance level which is sufficient to allow such resident to become an effective citizen of Colorado and the United States, a productive member of the labor force, and a successful lifelong learner.¹⁷

87. Since 1993, the State Board has adopted twelve state model content standards in the first priority areas of reading, writing, mathematics, science, history, and geography and in the second priority areas of art, music, physical education, foreign language, economics, and civics.

88. The state model content standards effectively drive the curriculum in the public schools. All school districts are required to adopt local content standards that meet or exceed the state model content standards; to align curriculum and programs of instruction to address the adopted content standards “to ensure that each student will have the educational experiences needed to achieve the adopted content standards;” to develop and administer assessments to adequately measure each student’s progress toward achieving adopted content standards (except in the areas of reading and writing, mathematics, and science which are the subjects of statewide assessments); to address the different needs of students of different backgrounds and abilities and eliminate barriers to equity within the public schools; and to provide professional educator development in standards-based education.¹⁸

89. The exclusive method for gauging compliance with the purposes of standards-based education is a statewide system of mandatory standardized testing. In 1997, CDE began the progressive implementation of the Colorado student assessment program (CSAP) by which it administers a statewide assessment of reading/language arts and mathematics content standards in all public schools. CSAP assessments are directed to be aligned with the statewide model content standards and are intended to produce results that can be used as “diagnostic tools to assist in preparing strategies for student academic improvement in specific areas,” “to measure academic progress over time,” and to permit measurement of students’ skills and competencies.¹⁹

¹⁶ §22-7-402.

¹⁷ §22-7-403(2).

¹⁸ §22-7-407.

¹⁹ §§22-7-409(1) and (1.2).

90. In the spring semester of each school year, every public school student in grades three through ten is required to take the CSAP assessment tests in the appropriate content areas at the grade level in which they are enrolled. Limited exceptions are made for certain students with disabilities and students whose dominant language is other than English. Every public school student enrolled in the eleventh grade is required to take a “standardized, curriculum-based, achievement, college entrance examination” in the areas of reading, writing, mathematics, and science. The college entrance examination adopted for this purpose is the ACT assessment (ACT).²⁰

91. A student achieves an acceptable performance level with respect to a content standard if he or she is determined by means of an assessment to have the “subject matter knowledge and analytical skills necessary to succeed at subsequent grade levels.” In the case of graduating seniors, an acceptable performance level includes the subject matter knowledge and analytical skills that “all high school graduates should have for democratic citizenship, responsible adulthood, postsecondary education, and productive careers.”²¹

92. The CDE reports annually on the results of these statewide assessments, presenting the percentage of students achieving each of four (4) proficiency levels (unsatisfactory, partially proficient, proficient, or advanced) by school district, school district size, and for the state as a whole, and disaggregated by student gender, race, disabling conditions, and ethnicity.

II. The School Accountability System

93. Public school and school district performance with respect to meeting content standards is measured, rated, and enforced through a public school accountability reporting system instituted in the 2000-01 school year. The school accountability system is intended to measure whether there is a thorough and uniform system of schools throughout the state; to determine if schools are providing “quality academic instruction in an environment that is conducive to learning;” and to know whether tax dollars are being appropriately spent to provide students with an opportunity for a quality education.

94. The stated purposes of the accountability program include “to define and measure academic and safety quality in education” in order to help public schools “to achieve such quality and to expand the life opportunities and options of the students” of the state; to develop a method “to measure objectively the quality and efficiency of the educational programs offered by the public schools;” and “to develop a means for evaluating the achievements and performance of students.”²²

95. Under the school accountability system, CDE annually assigns each public school a rating of excellent, high, average, low, or unsatisfactory for its “overall

²⁰ §22-7-409(1)(d); §22-7-409(1.5)(a).

²¹ §22-7-402(9)

²² §22-7-102.

academic performance.” A school’s ratings are determined exclusively on the basis of the individual “proficiency levels” (unsatisfactory, partially proficient, proficient, or advanced) demonstrated by its students on the CSAP and ACT assessments in each academic area and grade level.²³

96. All public schools are then measured against each other on a statistical “bell curve.” An academic performance rating of “excellent” is assigned to public schools whose overall standardized, weighted total scores are in the highest eight percent of scores received by all public schools at the same school level; a rating of “high” is assigned to public schools whose scores are below the highest eight percent and above the lowest 67 percent; a rating of “average” is assigned to public schools whose scores are below the highest 33 percent and above the lowest 27 percent; a rating of “low” is assigned to public schools whose scores are below the highest 73 percent and above the lowest two percent; and a rating of “unsatisfactory” is assigned to public schools whose scores are in the lowest two percent.

97. The local board of education of a public school whose students’ CSAP scores result in an overall academic performance rating of “unsatisfactory” is required to adopt and submit a “school improvement plan” to the State Board. If, upon completion of the second school year of operation under the school improvement plan, the school again receives an unsatisfactory rating, the State Board is directed to recommend that it be converted to an independent charter school; unless the public school met a defined annual improvement score, in which case, the school district is allowed to continue to operate the school under the school improvement plan for another year.

98. If, upon completion of the third school year of operation under the school improvement plan, the public school again receives an overall academic performance rating of “unsatisfactory,” the school is statutorily deemed to have failed to provide a “thorough and adequate” education and the school district is statutorily deemed to have failed to provide “adequate educational opportunities,” in violation of the mandate of the Education Clause. The State Board is then directed to convert the school to an “independent charter school.”²⁴

99. Beginning with the 2003-04 school year, CDE assigns each public school an annual rating for academic growth (“significant improvement”, “improvement”, “stable”, “decline”, or “significant decline”) based upon the proportion of its students

²³ §§22-7-604(1) and (2).

²⁴ The statutory provisions referred to in this and in the immediately preceding paragraph were amended by House Bill 05-1216, effective upon receipt of the academic performance ratings for the 2004-05 school year. The 2005 amendments retain the concepts of placing an unsatisfactory school on an improvement plan with corrective actions, including restructuring, which, if the school remains unsatisfactory, result in mandatory alteration of the school’s governance structure by contracting with a private management company to manage the school, closing the school, conversion to a district or an institute charter school, or other, specified major restructuring methods.

who make gains in their CSAP scale scores. Beginning in 2004, if, upon the completion of the third year of a school improvement plan, a school's CSAP scores have not improved significantly over the scores received during the first year of the school improvement plan, the State Board may remove the school district's accreditation.

III. The Educational Accreditation Act

100. In 1998, the general assembly adopted the Educational Accreditation Act implementing a public school accreditation process to “foster greater accountability from public schools and school districts” and “enhance improvement of public schools and school districts by setting benchmarks and measuring improvement in attaining those benchmarks.” The public school accreditation process is intended to enhance standards-based education and testing and is focused on student achievement results on the CSAP and ACT assessments.²⁵

101. “Accreditation” means certification by the State Board that a school district meets the requirements of the Educational Accreditation Act and statutory budgetary and financial policies and procedures. A school district's accreditation category is based upon achievement indicators such as results on statewide assessment instruments (*i.e.*, CSAP and ACT assessments); student attendance rates, dropout rates, and graduation rates; the percentage of students taking advanced placement courses and the percentage of students taking statewide assessments; the results of local district assessments administered in areas not tested by CSAP assessments; the percentage of students whose dominant language is not English; and compliance with statutory budgeting, accounting, and financial reporting requirements.

102. Each school district is required to enter into an accreditation contract with the State Board that binds the school district to set and attain local achievement goals and student achievement and proficiency levels; to implement content standards for student learning; to implement systems for measuring student achievement and methods for improving the scores of students who score below proficient; to reduce consistent patterns of academic achievement discrepancies in student performance related to ethnicity, gender, disability, and limited English proficiency; and to provide for annual comparisons between the school district's assessment results and statewide assessment results.

103. If a school district fails to achieve the standards, goals, and requirements or otherwise to comply with any of the provisions of the accreditation contract, CDE initiates a corrective action cycle by placing the school district on level one (“accreditation watch”) in a corrective action cycle. A school district on accreditation watch must submit an improvement plan to CDE for approval. If the school district fails in the next year either to comply with a provision of the accreditation contract or to show adequate growth on its improvement plan, it is placed on level two (“accreditation probation”) in the corrective action cycle. If the school district fails in the next year

²⁵ §22-11-102.

either to comply with a provision of the accreditation contract or to show adequate growth on its improvement plan, it may be designated as “nonaccredited,” resulting in involuntary reorganization of the school district by the state.

IV. No Child Left Behind and the Colorado Consolidated State Plan

104. The 2001 amendments to the federal Elementary and Secondary Education Act of 1965 (ESEA), known as the No Child Left Behind Act of 2001 (NCLB), were signed into law on January 8, 2002. The stated congressional purpose for NCLB is “to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.”²⁶

105. This purpose is to be accomplished by strategies that are essentially identical to those adopted in Colorado education reform legislation, including establishing challenging state academic standards that permit measuring progress against common expectations for student academic achievement; aligning academic assessments, accountability systems, teacher preparation and training, curriculum, and instructional materials with the state academic standards; holding states, school districts, and schools accountable for improving academic achievement of all students, identifying and turning-around low-performing schools, and providing high-quality alternatives to students in low-performing schools; and improving accountability, teaching, and learning by the use of state assessment systems designed to ensure that students meet academic achievement and content standards and are increasing achievement overall.

106. NCLB also and particularly seeks to meet the educational needs of low-achieving children in high poverty schools, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance; and to close the achievement gap between high- and low-performing children, especially between minority and non-minority children and between disadvantaged and more advantaged children.

107. NCLB conditions receipt of ESEA grants upon submittal and acceptance of a State Plan prepared by, in Colorado, the State Board without prior consultation with school districts, school administrators and teachers, and parents. Colorado has chosen to comply with the requirements of NCLB and has adopted the Colorado Consolidated State Plan (the Consolidated State Plan). The Consolidated State Plan obligates the state and all school districts receiving ESEA grant funds to meet the requirements of NCLB by accomplishing comprehensive performance goals, including attaining one hundred percent student proficiency in reading/language arts and mathematics by 2013-14; assuring that all students will be taught by “highly qualified teachers” by 2005-06; assuring that all students will be educated in learning environments that are safe, drug free, and conducive to learning; and assuring that all students will graduate from high school.

²⁶ 20 U.S.C. §6301.

108. In Colorado, attainment of the goal of one hundred percent proficiency within a twelve year period is measured by student results on CSAP assessments, with “proficiency” defined as any score above “unsatisfactory.” Schools and school districts are held accountable for continuous and substantial annual improvement pursuant to annual performance targets that progressively lead to attainment of the goal of one hundred percent proficiency by 2013-14 (“adequate yearly progress” or “AYP”). To meet AYP, the state, each school district, school, and each of eight student subgroups in each school²⁷ must:

(a) Meet state reading/language arts and math performance targets, or, for any student subgroups (exceeding thirty members) that fail to meet a performance target, reduce the percentage of non-proficient students by ten percent of the previous year’s percentage;

(b) Meet the standard of 95 percent participation in the assessment program by all students in every subgroup; and

(c) Meet the additional indicators at the elementary and middle school levels of at least one percent of students scoring at the advanced level on reading/language arts and math and, at the high school level, meeting the state graduation rate goal.

109. The Consolidated State Plan establishes separate reading/language arts and math AYP performance targets for the elementary, middle, and high school levels that increase every three years until they converge at one hundred percent proficiency in 2013-14. For the school years 2002-03 through 2004-05, elementary level AYP performance targets were 76.92 percent proficient in reading/language arts and 75.86 percent proficient in math; middle level targets were 73.61 percent proficient in reading/language arts and 59.51 percent proficient in math; and high school targets were 79.65 percent proficient in reading/language arts, 47 percent proficient in math, and a graduation rate of 55.3 percent. Effective with the 2005-06 school year, elementary level AYP performance targets will increase to 82.69 percent proficient in reading/language arts and 81.90 percent proficient in math; middle level targets will be 80.21 percent proficient in reading/language arts and 69.63 percent proficient in math; and high school targets will be 84.74 percent proficient in reading/language arts, 60.25 percent proficient in math, and a graduation rate of 57.4 percent.

110. NCLB requires that ELL students be included in all AYP statistics after one year of attendance in a US public school. ELL students may be tested by approved assessments in their native language; however, all ELL students must take state

²⁷ The subgroups include ethnic/racial classifications (White, Hispanic, Black, Asian, and Native American), English language learners (ELL), economically disadvantaged students (based on free and reduced cost lunch eligibility), and students with disabilities, that meet the minimum size requirement of thirty students in a school or school district. CDE also disaggregates and reports AYP statistics by gender and migrant students.

assessments in English after three years of continuous enrollment in any United States public school. Title III of NCLB and the Consolidated State Plan impose an additional requirement on school districts to meet annual measurable achievement objectives (AMAO) demonstrating growth in English language proficiency over time by student cohorts pursuant to state language proficiency assessments. Failure to meet AMAO will constitute a school district level failure to meet AYP independent of student results on CSAP assessments.

111. Colorado did not meet all of its state AYP targets in 2003-04. At the elementary level, black students did not meet the math proficiency target and students with disabilities; and migrant students did not meet the reading/language arts and math proficiency targets, although they did make AYP through the ten percent improvement “safe harbor.” At the middle level, black students did not meet the math proficiency target and ELL, students with disabilities, and migrant students did not meet the reading/language arts and math proficiency targets or the safe harbor. At the high school level, black students did not meet the math proficiency target and Hispanic, ELL, economically disadvantaged students, students with disabilities, and migrant students did not meet the reading/language arts and math proficiency targets. ELL, students with disabilities and migrant students made AYP in reading/language arts through the safe harbor.

112. In 2003-04, 67 of 182 school districts and boards of cooperative educational services (BOCES) (36.8 percent) did not make AYP because one or more of their student subgroups failed to meet one or more of the targets. These districts include the large majority of students enrolled in the public schools. Due to the requirement to measure AYP by disaggregated student groups in schools and district-wide, larger population school districts must meet over one hundred performance targets. For example, in 2003-04, Adams County School District No. 50 (Westminster) met AYP on 117 of 128 targets; Harrison School District No. 2 met AYP on 127 of 138 targets; and Pueblo County School District No. 70 met AYP on 83 of 88 targets. In each case, the school district failed to meet AYP.

113. Schools and school districts that fail to meet AYP are subject to an escalating series of sanctions, leading to comprehensive restructuring of school governance. School districts are required to monitor district school performance and implement school improvement plans, corrective actions, and restructuring as follows:

(a) A school that receives ESEA grant funding that fails to meet AYP in the same content area for two consecutive years must create and implement a comprehensive, two year “school improvement plan,” and the district must provide students in the school with the option to transfer to a school that is not on a school improvement plan and provide transportation to that school. If the school fails to meet

AYP in the next year, it must also provide supplemental educational services²⁸ for low-performing, low-income students.

(b) If after two years under a school improvement plan a school still does not meet AYP, the school district must identify it for “corrective action.” Corrective action includes at least one of the following actions: (1) replacing school staff who are relevant to the failure to make AYP; (2) implementing a new curriculum; (3) decreasing school level managerial authority; (4) appointing an outside expert to advise the school; (5) extending the school day or school year; or (6) restructuring the internal organization of the school.

(c) If AYP is not met in the first year of corrective action, the school district must prepare a plan for alternative governance to be implemented in the next year if the school should fail to meet AYP again. The restructuring plan must include at least one of the following actions: (1) reopening the school as a public charter school; (2) replacing all or most of the school staff who are relevant to the inability to make AYP; (3) contracting with a private management company to operate the school; (4) turning the operation over to the state, if it agrees; or (5) implementing any other major restructuring of the school’s governance.

CDE administers a similar system of progressive sanctions applicable to school districts that fail to meet AYP, including a program improvement plan after two years followed by corrective action that culminates in CDE either deferring programmatic funds or authorizing students to transfer from schools operated by the school district to a higher performing school operated by a different school district and requiring the failing school district to provide transportation for those students.

114. NCLB and the Consolidated State Plan require that teachers of core academic subjects, including English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography, in Title I fund recipient schools be “highly qualified.” All new hires in Title I programs after the start of the 2002-03 school year must meet these requirements; all existing teachers must meet these requirements by the end of the 2005-06 school year.

115. In Colorado a “highly qualified” teacher must be licensed and endorsed in each and all core-academic content areas in which he or she is teaching; or, for a teacher teaching outside of his or her licensed and endorsed core-academic content areas, by having completed twenty-four semester hours, or its equivalent, in the core-academic

²⁸ NCLB defines supplemental educational services as additional academic instruction designed to increase academic achievement, including tutoring, remediation, and other educational interventions that are consistent with the content and instruction used by the school district and are aligned with the state academic content standards. Supplemental educational services must be provided outside of the regular school day and must be high quality, research-based, and specifically designed to increase student academic achievement.

content areas being taught, or having passed the adopted, or a national certification core content-area test in the content areas being taught.

116. NCLB and the Consolidated State Plan require that paraprofessionals in Title I programs must have a high school diploma or its equivalent, complete at least two years of postsecondary education or demonstrate necessary skills on a formal state or local academic assessment. All new hires after January 8, 2002, must meet these requirements; existing paraprofessionals have four years from January 8, 2002, to comply with them. However, these requirements do not apply to paraprofessionals used solely for translation or parent involvement.

117. NCLB and the Consolidated State Plan require that all students attending a “persistently dangerous” public school and any student who is the victim of a violent criminal offense while in or on the grounds of a public school that he or she attends shall be allowed to transfer to a safe public school within the same school district, or a public charter school. Colorado defines a persistently dangerous school based on the total number of annual incidents reported by the school involving alcohol or drug violations, assaults or fights, robberies, or other felonies, expulsions for firearm violations, and certain unlawful behaviors by school employees. Schools identified as persistently dangerous are also encouraged to undertake corrective actions such as hiring additional supervisory and security personnel, cooperating with law enforcement to eliminate gang-related activities, providing training to teachers and administrators concerning enforcement of discipline policies, and limiting access to campus.

118. The Consolidated State Plan imposes a wide-range of additional requirements upon school districts above and beyond the education reform legislation, all of which add to the costs of providing a constitutionally adequate, quality education, without determining the costs of meeting these requirements or providing any additional financial resources to meet such costs. This failure has further infringed upon the ability of the boards of education of the school districts to perform their constitutional and statutory duties and violates the rights of Colorado school children under the Education Clause.

119. The results of the AYP and other data further demonstrate that Colorado school children are not being provided with a constitutionally adequate, quality education, and that this is particularly true with respect to children from under-served populations, including racial and ethnic minorities, children whose dominant language is not English, children with disabilities, and children from migrant families. Notwithstanding this data, Colorado has made no significant effort to provide the financial resources necessary to assure that these children receive the education guaranteed to them by the Education Clause.

THE SYSTEM OF PUBLIC SCHOOL FINANCE

I. The Public School Finance Act

120. State and local funding for public education is principally provided through the Public School Finance Act (PSFA). The PSFA sets a financial base of support for each school district by a formula with two basic components, the district “funded pupil count” and the district “per pupil funding amount,” which when multiplied together produce the district’s “total program funding.”

121. A district’s “funded pupil count” is the actual number of pupils enrolled in its schools during a ten day period in September and October of the budget year, or the average of its last two, three, or four years’ fall pupil counts, whichever is greater, adjusted to account for on-line pupil funding, the Colorado Preschool Program (CPP) pupil count, expelled students, half-day kindergarten programs, and certain pupils with disabilities. “Per pupil funding” is a statewide base per pupil funding amount, stated as a specific number of dollars per pupil, adjusted to recognize district-by-district variances due to cost of living, personnel costs, enrollment size, and “at-risk” students.

122. Each school district’s total program is funded by a combination of state and local tax revenues. The school district or local share consists of the proceeds from a mill levy upon the assessed valuation of the taxable property within the school district’s boundaries. A school district’s authority to obtain funding by local property taxation is limited to the lowest of (a) the number of mills it levied in the preceding year, (b) the number of mills necessary to pay its entire total program, less specific ownership taxes and the minimum state share funding received, or (c) the maximum number of mills allowed by the “Taxpayer’s Bill of Rights.” The state share, funded primarily from state personal and corporate income tax and sales and use tax, equals the difference between the school district’s total program and the school district’s local share, except that every district is entitled to receive a minimum state funding amount.

123. From their total program funding, school districts are required to fund a capital reserve fund and/or an insurance fund in a fixed minimum amount, presently \$271 per pupil, up to a maximum of \$800 per pupil. Capital reserve funds may be used only for long-range capital outlay expenditures, such as acquisition of land and improvements, construction of or additions to structures, and acquisition of equipment and furnishings. School district capital outlay expenses far exceed the amount allocated to the capital reserve.

124. The PSFA permits school districts a limited option to supplement their total program with additional local revenues to provide services above those required to meet the fundamental requirements of the Education Clause. In order for a school district to raise and expend property tax revenues in excess of the local share of its total program, the local board of education must submit an initiative to its electorate seeking approval to raise such revenues and authorizing an additional mill levy for that purpose. The total

additional local revenues that may be authorized pursuant to such an “override election” cannot exceed twenty percent of the district’s total program for the budget year, as adjusted in 2001-02 for cost of living, or \$200,000, whichever is greater.

125. Due to under-funding of the PSFA total program, school districts must use override revenues to assist in providing basic education services. Additional revenues approved by this process are funded exclusively by increasing the local tax levy. The state share is neither reduced nor increased by the approval of local override revenues. Due to the variations in local property tax bases, the override option fails to provide “property-poor” school districts with an effective opportunity to meet their obligations under the Education Clause, education reform legislation, and the Consolidated State Plan, much less to enhance the educational opportunities of their students.

126. The initial statewide base funding amount established in the 1994 PSFA amendment and the subsequent annual increases in the statewide base funding amount were determined on the basis historical spending levels and political compromise, and not on a valid analysis of the actual costs of providing a constitutionally adequate, quality education. The PSFA funding formula has never been adjusted to provide sufficient funding or a method of allocating funds that was rationally related to the goals and objectives of the education reform legislation or was related to student achievement as measured by the systems of school district accountability and accreditation implemented pursuant to such legislation. The state has never conducted a study to determine if the levels of funding provided by the PSFA are sufficient to maintain a public school system that meets the qualitative standards of the Education Clause or the mandates of state education reform legislation and the Consolidated State Plan.

127. Neither the PSFA funding formula nor the funding levels it establishes and enforces provide school districts with sufficient funding to meet the actual and foreseeable costs of educating their students in accordance with the requirements of the Education Clause, education reform legislation, or the Consolidated State Plan. The PSFA formula and spending levels are not based upon a valid determination of the actual costs to provide every student with an opportunity for a constitutionally adequate, quality education, or to an education that meets the standards and goals mandated by education reform legislation and the Consolidated State Plan.

128. The PSFA formula incorporates limited supplemental funding for some of the known sources of increased costs of education, including educating at-risk student populations, preschool and kindergarten education, and local cost of living variations. Funding for these factors is not based on an analysis of actual costs and need, does not reflect the true costs to school districts, and is and has been inadequate for the intended purposes.

A. PSFA Funding for At-Risk Pupils

129. Supplemental funding is necessary for pupils who due to socio-economic and other factors are identified as “at-risk” of performing poorly in or dropping out of

school. An at-risk pupil is defined in the Charter School Act as one “who, because of physical, emotional, socioeconomic, or cultural factors, is less likely to succeed in a conventional educational environment.”²⁹ An at-risk student is defined in the Institute Charter Schools Act as a student who is eligible to receive free or reduced-cost lunch pursuant to the National School Lunch Act (NSLA) or has performed at a proficiency level of low or unsatisfactory on a statewide CSAP assessment.³⁰ NCLB and the Consolidated State Plan define “economically disadvantaged” students as those whose families are eligible for free and reduced-cost lunch under the NSLA. At-risk funding through the PSFA, however, is limited to students whose families are eligible for free lunch only under the NSLA.

130. Student eligibility for free and reduced price lunch is negatively correlated to performance on the CSAP assessment tests. Therefore, schools and school districts with higher percentages of students eligible for free or reduced price lunch generally are rated at lower levels on state accountability and accreditation measures and AYP performance goals, all of which are based on solely on CSAP results.

131. There is a significant, positive statistical correlation between students eligible for free and reduced price lunch and those identified as at-risk. The PSFA, for no valid reason and contrary to the practice in other states, excludes children from families that are eligible for reduced price lunch from its definition of at-risk pupils, thereby under-funding necessary supplemental resources. To be eligible for free lunch, children must come from a household with an income at or below 130 percent of federal income poverty guidelines. Reduced price lunch eligibility includes children from household income between 130 percent and 185 percent of poverty guidelines.

132. In 2004-05, district at-risk counts range from less than two percent of the funded pupil count to an estimated 78.6 percent at the Center Consolidated School District, with a statewide average of 29.4 percent. A school district with a percentage of at-risk pupils less than or equal to the statewide average is entitled to add an at-risk factor of twelve percent for each at-risk pupil to its total per pupil funding amount. A school district with a percentage of at-risk pupils greater than the statewide average is entitled to add an at-risk factor of between twelve and thirty percent, however, no school district actually receives over 25 percent. In 2004-05 a total of some \$163 million (four percent) in school district total program funding was attributable to at-risk funding.

133. PSFA at-risk factor funding is not based upon the actual costs of providing an adequate educational opportunity for at-risk pupils. The PSFA as written and as actually funded 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. Due to under-funding of the cost of providing adequate educational opportunities for at-risk pupils, school districts either spend less per at-risk pupil than is necessary, use

²⁹ §22-30.5-103(1)(a).

³⁰ §22-30.5-502(1).

additional general operating funds for that purpose, or both, thereby adversely impacting their ability to provide adequate educational opportunities for all students.

B. PSFA Funding for Preschool Education

134. The Colorado Preschool Program Act,³¹ (CPP) was originally enacted in 1988. The CPP provides funding through the PSFA formula for certain preschool and full-day kindergarten children by adding each eligible CPP child as a half-day pupil to a school district's funded pupil count. The CPP serves preschool children three, four, and five years of age who lack overall learning readiness due to family risk factors, are in need of language development, or are neglected or dependent children. The number of children who may participate in the CPP is limited to a state-wide total of 11,500, with no more than one thousand per school district.

135. School district participation in CPP is voluntary and is determined by an application process to the CDE. The number of participating school districts has grown from thirty-two in 1988 to a total of 154 out of 178 in 2003-04. In 2003-04, 56,000 children were enrolled in public school kindergarten programs, but CPP funding that year was provided for only 9,000, including both preschool and full-day kindergarten children.

136. A 2001 survey found that forty percent of children entering kindergarten were not academically prepared to learn. CDE has determined that quality early care and education programs are effective in improving the developmental outcomes of low-income and disadvantaged children. It is beyond dispute that these programs produce long term as well as short term gains as measured by school achievement and success in young adulthood. CDE has also determined that improved outcomes for children are achieved only if early care and education meet adequate standards of quality, and that children from low-income families and disadvantaged children benefit more from high quality care and are harmed more by poor quality care than children from middle and upper income families.

137. In the Aurora Public Schools in 2003-04, 73 percent of children receiving full day kindergarten services achieved one year's growth compared to fifty percent of first grade children and 64 percent of half-day kindergarten children. These results were even more significant for Hispanic and non-English proficient children, who were able to accomplish yearly progress equivalent to all children when provided with full day kindergarten, but, in the absence of full day kindergarten, failed to achieve a full year's progress at far greater rates than others.

138. Results of the 2003 state-wide CSAP scores further evidence the importance of quality early childhood education. CPP students' third grade reading scores were nearly equal to the state average of 71 percent proficient; whereas only 57 percent of economically disadvantaged students tested as proficient. Children in CPP funded full day kindergarten programs showed an overall pattern of improvement that

³¹ §§22-28-101, *et seq.*

exceeded progress demonstrated by half-day students and were able to close the “preparation gap” and perform at the same level as their non-disadvantaged peers within one year.

139. In a 2005 report to the General Assembly, CDE stated that: “[I]t is less expensive to provide a year of preschool than to remediate problems later. In addition to the clear academic and social benefits to children, research-based evidence demonstrates benefits to the rest of society through improvements to the K-12 system, reduction in crime, and greater contributions to the economy.”

140. Preschool and full-day kindergarten programs are necessary to assure all at-risk students an opportunity for a quality education in accordance with the guarantee of the Education Clause, education reform legislation, and the Consolidated State Plan. Despite the knowledge that quality preschool and full-day kindergarten are essential educational services, the number of funded CPP “slots” is and has always been inadequate to serve the needs of a large majority of the eligible children. The numbers of CPP funded participants and the amount of funding provided per participant and as a whole is grossly inadequate, bears no rational relationship to actual need, and has fluctuated irrationally over time. 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.

C. PSFA Cost of Living Funding

141. The PSFA includes a “cost of living factor” to permit increases in per pupil funding to compensate for differences in the cost of living for each school district based upon a statutory formula supported by a local cost of living study conducted every two years. Despite the fact that local cost of living is a recognized and determinable cost variable that must be addressed in a school finance system that seeks to assure an equal opportunity for a quality education throughout the state, the general assembly has not adequately funded or implemented the cost of living formula since the inception of the PSFA.

II. Categorical Program Funding

142. In addition to total program funding provided through the PSFA, school districts may receive state funding for specific programs designed to serve particular groups of students or particular student needs that are known to require substantial additional financial resources beyond the total program. These programs are referred to as “categorical” programs and include English language proficiency education, special education, gifted and talented education, small attendance centers, transportation, and vocational education.

143. The state has failed to provide adequate funding through categorical programs to meet the actual costs incurred by school districts to provide a constitutionally adequate, quality education to non-English proficient students, students with disabilities, and gifted and talented students, and to meet the costs of vocational education and transportation. For example in the Boulder Valley School District’s 2004-05 budget, state categorical funding compared to total district expenditures were as follows:

	State Funding	District Expenditures	
English Language Proficiency	\$92,000	\$4,578,000	2.0%
Special Education	\$3,563,000	\$25,014,000	14.2%
Gifted and Talented	\$194,000	\$932,000	20.8%
Vocational Education	\$790,000	\$2,493,000	31.7%
Transportation	\$1,666,000	\$6,655,000	25.0%

144. School year 2003-04 CSAP reading and math results demonstrate that Hispanic and Black students, English language learners, economically disadvantaged students, students with disabilities, and students from migrant families perform far below the levels of white students on statewide assessments. For example, in tenth grade reading, over seventy percent of white students scored proficient or advanced, compared to fewer than forty percent of Hispanic and economically disadvantaged students and fewer than thirty percent of English language learners. See attached Exhibit 1.

A. The English Language Proficiency Act

145. School Districts face known educational challenges and consequent additional expense in providing a quality education to children whose dominant language is not English. “Students whose dominant language is not English” are one of the fastest growing populations in the public schools, more than tripling in the past ten years. While Spanish-speaking students constitute the majority of these students, Colorado school children come from families with a total of some 140 different native languages. There are presently approximately 80,200 Colorado public school students (10.7 percent of total statewide enrollment) whose dominant language is not English and who are functioning below grade level. Providing an adequate education for these students, specifically including rapidly bringing them to English language proficiency, is within the mandate of the Education Clause, education reform legislation, and the Consolidated State Plan.

146. The general assembly adopted the English Language Proficiency Act (ELPA) “to improve educational and career opportunities for every student in this state,” “to provide for the establishment of an English language proficiency program in the public schools and to provide for the distribution of moneys to the several school districts to help defray the costs of such program.”³²

³² §22-24-102

147. ELPA requires school districts to identify all students whose dominant language may not be English, to assess such students, and to administer and provide programs for students whose dominant language is not English. ELPA classifies eligible students in three categories: category A students who speak languages other than English and do not comprehend or speak English; category B students who comprehend or speak some English, but their predominant comprehension or speech is in a language other than English; and category C students who comprehend and speak English and at least one other language with neither language being clearly dominant.

148. ELPA provides minimal supplemental funding to school districts for eligible students for a maximum of two years per student. In school year 2001-02, ELPA funding equaled \$82.65 per student per year for category A and B students, and \$120.75 per student per year for category C students. This equated to approximately a two percent increase above the state average PSFA total program per pupil, and a total of \$165 in financial assistance for each category A or B student's entire school career. In 2003-04, districts were eligible to receive \$35.4 million if they received the maximum ELPA entitlement for each eligible student. CDE distributed an actual total of \$3.7 million, or 10.3 percent of the maximum eligibility, to 110 school districts providing services to over 35,000 eligible students. To fund the statutory entitlement would require an additional \$32 million, an increase of some 876 percent above the actual level of funding.

149. The failure of the state to provide adequate funding particularly impacts school districts with rapidly growing and diversifying populations of non-English proficient students. From 1995 to 2004, the English language learner (ELL) population at the Aurora Public Schools grew from 8.6 percent (2,351 students) of the total student enrollment to 33.3 percent (10,235 students). In 1997, eighteen percent of entering kindergarten students were ELL; by 2001, the percentage had increased to 42 percent; and in 2004 reached 52 percent. In May 2005, 44 percent (6,738 out of 15,322 students) of all elementary school students were ELL, with the large majority in categories A and B. ELL students exceeded fifty percent of total enrollment in fourteen out of 31 elementary schools. The percentage of ELL students ranged from 2.45 percent in the only charter school in the district to 79 percent at Jamaica Elementary School. The rapid growth in non-English proficient students is reflected in the progressive growth in Hispanic students from 10.2 percent in 1994 to 44.9 percent in 2004; however, in January 2005, the Aurora Public Schools was providing English language proficiency education to students speaking 88 different languages.

150. ELPA as written and as funded fails to provide sufficient resources and to allocate resources in a manner determined to meet the educational needs and rights of Colorado's ELPA pupil population. This inadequacy is due to an insufficient level of funding, inaccurate counting of eligible students, and an insufficient number of years funded per ELPA student. 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.

B. Education of Children with Disabilities

151. The Education of Exceptional Children’s Act³³ (ECEA), and the federal Individuals with Disabilities Education Act (IDEA) require school districts to provide special education programs to all children with disabilities regardless of the cost. The general assembly enacted ECEA in recognition of “the obligation of the state of Colorado to provide educational opportunities to all children which will enable them to lead fulfilling and productive lives.”³⁴ IDEA and ECEA require school districts to provide all children with disabilities with a free, appropriate education in the least restrictive environment. A free appropriate public education includes special education and related services provided pursuant to an individualized education plan. The State Board has found that “Special Education represents at once our high obligation to our most vulnerable children and the ultimate in unfunded mandates” and recommended “accelerated funding of this critical need area.” Providing adequate special education services for children with disabilities is within the mandate of the Education Clause.

152. Special education services are provided by “administrative units,” which may be a school district or a group of school districts acting through a Board of Cooperative Educational Services (BOCES). In fiscal year 2004-05, Colorado administrative units served approximately 82,000 children with disabilities, eleven percent of the total pupil enrollment. Services are provided to children identified with long-term physical impairments or illness, significant limited intellectual capacity, significant identifiable emotional disorders, identifiable perceptual or communicative disorders, and speech disorders.

153. The State’s financial contribution to support special education services is determined and funded by a formula administered by the CDE. Both the formula and the amounts funded through the formula fail to assure special education students a quality, constitutionally adequate educational opportunity.

154. State funding of special education programs for children with disabilities in fiscal year 2004-05 was \$86.7 million. During that same period of time, total special education costs paid by administrative units were approximately \$585 million. State special education funding provided approximately fifteen percent of these costs and federal funding provided an additional fifteen percent. The remaining seventy percent of special education costs were paid from school district general operating funds, more than twice the national average of 32.3 percent funding from local general operating funds.

155. A study of special education prepared for the State Board in 2000 found that the state’s contribution to ECEA funding was inadequate and recommended that

³³ §§22-20-101, *et seq.*

³⁴ §22-20-102.

Colorado increase state funding for special education to reduce the local costs much closer to the national average. The study also found that the formula failed to link the amount of money distributed by the state to the actual costs of providing special education services and created an inequitable dependency on local taxation as a source of funding such services.

156. Funding for students with disabilities is not based upon the actual costs of providing an adequate educational opportunity for those students. 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. Due to underfunding of the cost of providing adequate educational opportunities for students with disabilities, school districts must spend less 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.

C. Gifted and Talented Education

157. Education services for gifted and talented students are identified as necessary components of a quality education by both the ECEA and the provisions of §§22-26-101 *et seq.* The general assembly has recognized an obligation to provide educational opportunities to students identified as gifted and talented which will “challenge them and enable them to lead fulfilling and productive lives.”³⁵

158. Colorado administrative units serve over 51,000 gifted and talented students. In fiscal year 2004-05, total state categorical funding for school district gifted and talented programs was approximately \$6.2 million, or \$121 per student. These funds are to be used for salaries for teachers who work with gifted and talented students; staff development and training needed by personnel to address their educational needs; and activities, materials, and equipment associated with the education of gifted and talented students. Categorical funding provided for gifted and talented students is inadequate to provide the educational programs and services needed by these students. Due to underfunding of the cost of providing adequate educational opportunities for gifted and talented students, school districts must spend less than is necessary, use additional general operating funds, or both, thereby adversely impacting the ability to provide adequate educational opportunities for all students.

D. Transportation Costs

159. Costs for student transportation vary significantly among school districts and have a significant impact on the general operating funds provided through the PSFA. The general assembly has established a categorical program for partial reimbursement of current operating expenditures for pupil transportation.³⁶ The general assembly has not fully funded this program, and, notwithstanding the fact that transportation costs have

³⁵ §22-26-102

³⁶ §§22-51-101, *et seq.*

increased substantially, funding has progressively decreased over the years. Payments made to school districts in fiscal year 2000-01 totaled 72.5 percent of the maximum allowable reimbursement. In fiscal year 2003-04, school districts were eligible for reimbursements totaling \$62.6 million, however, the total transportation appropriation was only \$40.9 million, or 65.1 percent district entitlement. Over the last four fiscal years, school districts' transportation expenses have increased at a compound annual growth rate of 8.5 percent, for a total of 27.7 percent over the period. The transportation reimbursement appropriation increased only 12.2 percent over the same period. Due to under-funding of the transportation costs, school districts must spend less than is necessary and/or use additional general operating funds, thereby adversely impacting the ability to provide adequate educational opportunities for all students.

III. Charter Schools and Public Schools of Choice

160. The Charter Schools Act was adopted in 1993 in recognition of the obligation of the state “to provide all children with schools that reflect high expectations and create conditions in all schools where these expectations can be met” and that “different pupils learn differently and public school programs should be designed to fit the needs of individual pupils.”³⁷

161. A charter school is a public, nonsectarian, nonreligious, non-home-based school which operates within a chartering public school district. Charter schools operate pursuant to a contract with a school district board of education, and they are accountable to the board of education for purposes of compliance with applicable laws and the Education Clause. However, a charter school is governed and administered by its own governing body, independent of most school district policies and many state laws and rules otherwise applicable to public schools. A charter school is responsible for its own operation including preparation of a budget, contracting for services, facilities, and personnel matters.

162. Pupils enrolled in a charter school are included in the chartering school district's funded pupil count under the PSFA. The charter school is entitled to receive one hundred percent of the district per pupil revenues for each pupil enrolled in the charter school; except that the chartering school district may retain the actual amount of the charter school's per pupil share of the central administrative overhead costs for services actually provided to the charter school, not to exceed five percent of the district's per pupil revenues for each pupil (or fifteen percent in the case of charter schools with an enrollment of fewer than five hundred pupils). Effectively, most charter schools are statutorily entitled to a minimum funding base of 95 percent of the chartering school district's PSFA total program per pupil.

163. A charter school may contract with the chartering school district for the direct purchase of services such as food services, custodial services, maintenance, curriculum, media services, and libraries. The amount to be paid by a charter school in

³⁷ §22-30.5-102(1).

purchasing any district service is determined by dividing the cost of providing the service for the entire school district by the number of students enrolled in the school district and multiplying that amount by the number of students enrolled in the charter school.

164. A charter school requiring capital construction funding may request that the board of education of its chartering school district (a) include the charter school's capital construction needs as part of a ballot question for approval of bonded indebtedness to be submitted by the district to the voters of the district; or (b) submit a special mill levy ballot question to the voters of the district if the charter school requests and agrees to pay all of the costs of submitting such special mill levy ballot question. If the ballot question is approved, the mill levy of the chartering school district is required to levy the approved mills for the charter school's capital construction.

165. Although one of the primary purposes for establishing a regime of charter schools is "to increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low-achieving,"³⁸ charter schools in general serve a disproportionately low percentage of the state's under-served student populations, including students from low income families, racial and ethnic minorities, students whose dominant language is not English, and students with disabilities.

166. The formula for funding charter schools and the mandated pricing of school district-provided services are not based upon actual school district costs to provide educational services and are insufficient to pay for those costs, including administrative, operational, and support services to the entire school district population, meeting the mandates of education reform legislation and the Consolidated State Plan, and providing necessary educational services to under-served populations. The system for charter school funding further deprives school districts of the funding necessary to provide a constitutionally adequate, quality education for all students. The system for charter school funding irrationally redistributes school district funds; adversely affects the ability of school districts to provide constitutionally and statutorily necessary educational services to all students; and infringes upon the rights of students guaranteed by the Education Clause.

167. The Public Schools of Choice law³⁹ requires every school district to permit both its resident pupils and, since the 1994-95 school year, nonresident pupils from other school districts to enroll in programs or schools of their choice within such school district, without requiring nonresident pupils to pay tuition. The Public Schools of Choice law was enacted without any study or determination of the additional costs of compliance and without making any provision for funding such costs; imposes additional direct and indirect expenses on school districts that are not provided for in the public school finance system; and further impedes the ability of school districts to provide all students with a constitutionally adequate, quality education.

³⁸ §22-30.5-102(2)(b).

³⁹ §22-36-101.

168. Charter schools and schools of choice have substantially contributed to socio-economic, ethnic, and linguistic stratification within and among school districts, resulting in unequal and irrational disparities in educational opportunity and the relative costs of education; impeding school district efforts to provide a constitutionally adequate, quality education to all students; and infringing upon the rights of students guaranteed by the Education Clause.

IV. Capital Construction Funding

169. All Colorado school children are entitled to adequate physical school facilities, equipment, and classrooms as an integral part of their right to a constitutionally adequate, quality education. Because the amount allocated in the PSFA for capital outlay expenditures through the capital reserve fund is insufficient to meet the actual needs for such purposes, school districts must fund the costs of acquiring or purchasing buildings or grounds; constructing, improving, enlarging, remodeling, repairing, or making additions to school buildings or improving school grounds; and equipping and furnishing newly constructed school buildings by contracting bonded indebtedness following voter approval.⁴⁰

170. A school district's bonded indebtedness is repaid solely through a local tax levy upon the taxable property within its boundaries. The state does not provide equalization or other funds for the payment of school district bonded indebtedness. The assessed value of real property per pupil varies widely in different school districts. Accordingly, property taxes yield substantially different revenues per pupil from district to district within the state, ranging from a high of \$1.1 million of assessed value per pupil to \$13,027 of assessed value per pupil at the Sanford School District No. 6.

171. The amount of bonded indebtedness that a school district may contract is limited to the greater of twenty percent of the valuation for assessment of the taxable property in such district or six percent of the actual value of the taxable property in the district. This limitation is unrelated to the actual capital construction funding needs of school districts and, because of the wide variations the assessed value and actual value of taxable property among school districts, particularly impacts low property wealth school districts and their taxpayers, parents, and students.

172. The Colorado State Auditor has found that an additional \$4.7 billion are needed for capital construction funding for public education. More recent studies find the actual outstanding need to be between \$5.7 billion and \$10 billion. There are no statewide standards for public school facilities. The state has not conducted an evaluation of the condition of its public school facilities, many of which are severely deteriorated due to lack of funding and school district funding ability. On the contrary, the state has recommended against a statewide capital construction audit because it may be construed to mean that there is a state responsibility for the condition of school districts' facilities.

⁴⁰ §§22-42-101, *et seq.*

173. 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, condemned portions of schools, inadequate technology infrastructure, inadequate heating and cooling equipment, inadequate fire security systems, leaking and failing roofs; substandard plumbing, substandard wiring, and unremoved asbestos containing building materials.

174. Due to exclusive reliance on local property taxes as a funding source, forty percent of Colorado's 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. For example, Adams County School District No. 14 has a current bonding capacity of approximately \$60 million to address an overall capital need of at least \$140 million.

175. The statutory scheme for funding capital outlay expenditures does not provide revenue according to the educational needs of students within each district; does not provide sufficient funding for adequate facilities, technological infrastructure, and equipment; prevents school districts from adequately addressing capital issues related to growth; contravenes the constitutional mandate of local control, particularly in property poor school districts that are unable to raise funds necessary to effectively exercise local control due to a lower level of local taxable property values; and does not allocate the tax burden among Colorado citizens equally or uniformly.

CONSTITUTIONAL PROVISIONS AFFECTING SCHOOL FINANCE

176. Two provisions in the Colorado constitution prevent the state and school districts from raising and expending funds necessary to establish and maintain a thorough and uniform system of free public schools: the Taxpayer's Bill of Rights (TABOR),⁴¹ effective as of December 31, 1992, which creates comprehensive procedural barriers for state and local governments to increase either their spending or revenues; and the "Gallagher Amendment,"⁴² approved in 1982 as part of a larger property tax measure referred by the legislature, which limits the valuation for assessment of residential real property.

⁴¹ COLO. CONST., art. X, §20.

⁴² COLO. CONST., art. X, §3(1)(b).

I. The Taxpayers Bill of Rights (TABOR)

177. TABOR requires that the state and all school districts obtain advance voter approval for any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, extension of an expiring tax, or tax policy change directly causing a net tax revenue gain.

178. TABOR limits the state to a maximum annual percentage change in fiscal year spending that does not exceed the percentage change in the Denver-Boulder inflation rate (inflation) in the prior calendar year plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by state voters. If revenues exceed TABOR limits, the excess must be refunded in the next fiscal year unless voters approve an offsetting revenue change.

179. TABOR limits school districts to a maximum annual percentage change in fiscal year spending equal to inflation plus the annual percentage change in their respective student enrollments (local growth), adjusted for revenue changes approved by its voters. School districts are also limited to a maximum annual percentage change in property tax revenues equal to the annual percentage change in inflation and local growth, adjusted for property tax revenue changes approved by voters. If revenues exceed TABOR limits, the excess must be refunded in the next fiscal year unless voters approve an offsetting revenue change. School districts refund excess revenues by reducing their mill levy in the next taxable year.

180. Prior to the adoption of TABOR, the general assembly controlled property tax rates and property tax revenues available to school districts and, thereby, the level of state funding for public education. When it adopted the 1988 and 1994 amendments to the PSFA, the general assembly used this ability to establish an essentially uniform mill levy among all of the school districts and allocated state funding through the total program formula to provide nearly all school districts with the same base level of funding through the PSFA. In this way, the general assembly established a relatively equitable system of financing school general operating expenses supported by a uniform system of local property taxation. In 1991, 133 of 176 school districts, representing the large majority of the state's population, levied a uniform property tax of 40.080 mills.

181. Prior to the adoption of TABOR, school districts generally collected and spent the same amount of property tax revenue each year. School district mill levies were adjusted each year in response to changes in the total value of local taxable property and the revenues required to support educational services. The property tax provided a stable source of revenue relatively unaffected by changes in economic conditions.

182. TABOR prevents school districts from providing education funding by property taxation. School districts may levy no more than the same number of mills each year, unless that mill levy would raise more property tax revenue than TABOR permits (inflation plus local growth), in which case, the school district must reduce its mill levy.

An increase in the total assessed valuation of taxable property forces a mill levy reduction to avoid receiving property tax revenues in excess of the TABOR limit. However, if for any reason the mill levy subsequently produces lower revenues, it cannot be increased even to its former level without a taxpayer vote. In school districts with increasing property values, TABOR steadily drives mill levy rates down.

183. Due to TABOR's self-executing, continual reduction in school district mill levies, the uniformity of property tax burden achieved in 1991 no longer exists and continues to deteriorate. In 2004-05, school district mill levies for their PSFA total program ranged from 3.738 to 40.080, with a statewide average of 23.812. See attached Exhibit 2. These mill levy declines have occurred on the educationally irrelevant basis of increases in local property values. The progressive decline in school district mill levies bears no relationship to the costs of providing educational services and has substantially deprived the state and the school districts of the most important historical source of education revenues.

184. The decline in school district mill levies has caused the local share of PSFA revenues to grow at a slower rate than total program funding, requiring a greater contribution from state funds every year. The state share is steadily displacing local property tax revenues as the primary source of education revenues. In 1994, the state and local shares were approximately equal, but by 2003, the state share had increased to over sixty percent of the total. During the years 1992 to 2001, state funding per pupil increased at an average annual rate of 3.6 percent and local funding per pupil decreased by an average annual rate of 0.15 percent. This effect is accelerated by "Amendment 23"⁴³ after 2001 and until at least 2011. During that period, the state share is projected to increase by an average of 5.8 percent annually and the local share by 1.3 percent.

185. Due to the displacement of local property taxes as a source of education funding, and because the state itself suffers from a similar downward "ratcheting" effect on its revenue and expenditure levels, the state is effectively incapable of providing the level of funding necessary to fulfill the mandate of the Education Clause. This has resulted in a decline in overall school funding. Prior to TABOR, from 1988 to 1992, state funding per pupil grew at an average rate of 10.7 percent annually. From 1992 to 2000, the increase in state funding per pupil fell to an average of 3.6 percent. For 2005-06, notwithstanding Amendment 23, total program revenues, including both state and local shares, were increased by just 1.1 percent.

186. TABOR specifically precludes school districts from withdrawing from or refusing to participate in programs mandated by state or federal law.⁴⁴ School districts do not have the option to either obtain the funding necessary to comply with the mandates of education reform legislation and the Consolidated State Plan or to decline to expend the

⁴³ COLO. CONST., art IX, §17 (discussed hereinafter).

⁴⁴ "Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. . . ." COLO. CONST., art. X, §20(9).

limited funds available to comply with those mandates. School districts are statutorily and constitutionally limited in their ability to generate revenues from local resources, but are dependent upon the state which has consistently failed to provide sufficient funds to meet the qualitative mandate of the Education Clause and the requirements of education reform legislation and the Consolidated State Plan.

II. The Gallagher Amendment

187. Article IX, section 3 of the Colorado Constitution, among other things, fixes the assessment rate for most nonresidential real property at 29 percent of its actual value and lowered the assessment rate for residential real property from 30 percent to 21 percent of actual value. Subsection (1)(b), the “Gallagher Amendment,” requires residential assessment rates to be adjusted annually so that the aggregate statewide assessed valuation attributable to residential property remains proportionately the same by comparison to the aggregate statewide assessed valuation of nonresidential property. Thus, whenever statewide residential property values rise faster than nonresidential property values, the residential assessment rate must be lowered.

188. From 1987 to 2004, residential property values grew significantly, particularly in the Front Range counties, and the Gallagher Amendment progressively reduced the residential assessment rate across the state from 21.00 percent to 7.96 percent of actual value. The effect has been to significantly reduce property tax revenues as a source of education funding and shift the property tax burden away from residential to nonresidential property owners. The Colorado Department of Local Affairs estimates that in those seventeen years, the Gallagher Amendment reduced residential property tax revenues by \$7.8 billion, assuming a continuous 21 percent assessment rate.

189. The Gallagher Amendment was intended to provide stability and uniformity in the level of assessed valuations across Colorado’s counties and protect the tax base of local governments. The effect, however, has been the opposite: it has deteriorated local tax bases and destroyed property tax and mill levy stability and uniformity. Particularly in school districts with predominantly residential property, the Gallagher Amendment has depressed the assessed valuation of their property tax base and the revenues that can be raised by their mill levies. The impact has been most significant in school districts outside of the Front Range, whose actual residential property values have not increased at the statewide rate. As a result, school district PSFA mill levies have generally declined and are significantly non-uniform across the state based upon the educationally irrelevant proportion of local residential to nonresidential property values and the local rate of change in actual residential property values.

190. The Gallagher Amendment, particularly in conjunction with TABOR, has progressively reduced local property tax as an actual and potential source of school funding and has resulted in unequal and inequitable differences in school district mill levy rates across the state.

III. Amendment 23

191. Article IX, section 17 of the Colorado Constitution, “Amendment 23,” was adopted by initiative on November 7, 2000. Amendment 23 includes three principal provisions:

(a) A mandatory, minimum level of annual increases to public school funding. During state fiscal years 2001-02 through 2010-11, statewide base per pupil funding under the PSFA and state funding for categorical programs are required to “grow annually at least by the rate of inflation plus an additional one percentage point;” and after 2010-11, by a rate at least equal to the rate of inflation.

(b) The creation and funding of a state education fund to support the mandated increases and to address compelling educational needs, specifically: “for accountable education reform, for accountable programs to meet state academic standards, for class size reduction, for expanding technology education for improving student safety, for expanding the availability of preschool and kindergarten programs, for performance incentives for teachers, for accountability reporting, or for public school building capital construction.” Revenues collected from a tax of one-third of one percent of federal taxable income are to be deposited into the state education fund each year and applied to the stated purposes. These revenues are expressly exempted from the spending limitations of TABOR.

(c) The requirement to maintain minimum level of state public school funding effort. General fund appropriations for the PSFA must be increased by at least five percent annually for state fiscal years 2001-02 through 2010-11, except in any years when Colorado personal income increases by less than 4.5 percent between the two preceding calendar years. Maintenance of effort is not required for categorical programs or capital construction.

192. The purpose of Amendment 23 was to begin to reverse a trend of more than ten years of declining real funding of Colorado public education by gradually restoring education funding to the equivalent of 1988 levels, as adjusted for inflation, by 2010-11, and to prevent further erosion of education finance from the effects of TABOR and the Gallagher Amendment. The “Blue Book” description of the position of the proponents of Amendment 23 described the purpose as follows:

The proposal increases funding to public schools, which has been eroding since the late 1980s. This erosion has had a negative effect on per pupil funding, teacher salaries, and class sizes. When adjusted for inflation, school districts received less money per pupil in 1999 than they did 11 years ago. According to the federal government, Colorado’s per pupil revenue for education is below the national average and has dropped from 11th to 32nd over the last 17 years. The average teacher salary in Colorado has dropped below the national average, which could impact the state’s ability to attract and retain the best teachers. Colorado

has the eighth highest teacher-to-student ratio in the country. If Coloradans were spending the same proportion of their personal income on education today as they did ten years ago, the state's public schools would have more than \$1 billion in additional revenues.

193. Because the applicable inflation factor was only one-tenth of one percent (0.1%), in state fiscal year 2005-06, public school funding was increased by only 1.1 percent. This increase was based on the Amendment 23 formula and not on an analysis or even consideration of the actual cost of meeting the mandates of the Education Clause, education reform legislation, or the Consolidated State Plan. This nominal increase was substantially below the actual increase in fixed costs experienced by school districts and failed to provide sufficient additional funding to provide all Colorado students with the opportunity to obtain a constitutionally adequate, quality education.

194. Amendment 23 does not address, amend, supplant, or diminish the qualitative mandate of the Education Clause; nor does it define or limit the level or method of funding necessary to fulfill that mandate. The 1988 funding levels were not based upon a valid analysis of the actual costs of providing a constitutionally adequate, quality education; and there is no basis to conclude that merely restoring the 1988 funding level will provide funding sufficient to meet the mandates of the Education Clause, state education reform legislation, or the Consolidated State Plan. If the state were to adequately fund public education in accordance with the mandate of the Education Clause, Amendment 23 would be unnecessary.

FIRST CLAIM FOR RELIEF
Denial of the Constitutional Right to a Quality Education

195. Plaintiffs incorporate herein all of the preceding averments.

196. The Colorado public school finance system, including the PSFA, categorical program funding, and capital construction funding, fails to provide sufficient funding to all school districts in the state to assure that the public school students throughout the state receive an equal opportunity to obtain a constitutionally adequate, quality public education, as mandated by the Education Clause, article IX, section 2, of the Colorado Constitution.

197. The levels and allocation of public school funding are irrational, arbitrary, and unrelated to meeting the qualitative mandate of the Education Clause, which is, at least, to prepare all Colorado school children to participate meaningfully in the civic, political, economic, and other activities of our society and the world, and to exercise the basic civil and other rights of a citizen of the State of Colorado and the United States of America.

198. The Colorado public school finance system also fails to provide sufficient funding to permit public schools and school districts to meet the standards and goals established by the state and federal laws to which they and their students are held

accountable. The levels and allocation of public school funding are irrational, arbitrary, and unrelated to meeting the mandates of state education reform legislation, including the standards-based education system, and the requirements of the No Child Left Behind Act, as implemented by the Colorado Consolidated State Plan. Legislative and regulatory standards such as these represent a minimum but not a sufficient measure of the qualitative mandate of the Education Clause, and the failure to provide funding sufficient to meet these requirements violates the rights guaranteed by the Education Clause.

199. Local boards of education are invested with the constitutional authority and responsibility to control instruction in the schools within their respective boundaries. Colorado school districts have a special, constitutional duty to provide an education that meets the qualitative mandate of the Education Clause that has a separate and independent constitutional basis from the interests of the Defendants.

200. Because of lack of access to adequate financial resources, school districts are not able to provide the educational programs, services, instructional materials, equipment, 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.

201. Because of lack of access to adequate financial resources, school districts are not able to provide the staffing, programs, services, and facilities necessary to fulfill critical educational goals, including those identified by the general assembly in education reform legislation, such as: (a) improved attendance of students through the provision of engaging learning opportunities; (b) improved scholastic achievement for individual students commensurate with individual abilities; (c) improved teaching methods that will provide students with the opportunity for scholastic achievement; (d) improved preparation of students for the primary and secondary years; (e) increased parental and community support and involvement in meeting expectations of the educational system; (f) provision of a learning environment and staff that is responsive to the individual needs of students; and (g) providing a learning environment based on high expectations and challenges for students and staff.⁴⁵

202. Because of lack of access to adequate financial resources, school districts are unable to hire, retain, and compensate the instructional staff needed to provide the opportunity for a constitutionally adequate, quality education for their students. As a result of insufficient instructional staff, 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

⁴⁵ §22-7-204 (1)

in particular are not provided with the programs they need to be successful and to obtain an adequate education.

203. Hiring, retaining, compensating, and providing professional development opportunities for highly qualified administrators, teachers, and paraprofessionals are critical to meeting the qualitative mandate of the Education Clause and the requirements of education reform legislation and the Consolidated State Plan. School districts lack the financial resources necessary to effectively recruit, train, compensate, and retain highly qualified administrative and instructional staff. In 2001-02, the ratio of average teacher salaries to comparable private sector salaries in Colorado was the lowest in the United States.

204. Because of lack of access to financial resources, students in Colorado school districts do not have adequate access to textbooks and other classroom resources; instructional equipment, including computers, software, and internet access; audio-visual equipment and resources; and instructional materials, such as workbooks and library books, all of which are necessary to meet the mandate of the Education Clause.

205. The Colorado public school finance system particularly fails to provide funding sufficient to provide a constitutionally adequate, quality education for the under-served student populations in the state, including students at risk of academic failure, students whose dominant language is not English, students with disabilities, students of minority racial and ethnic heritages, and students of low-income families. PSFA and categorical funding intended to assist school districts in serving these students are inadequate and are not based on the real costs of providing the programs and services necessary to meet their educational rights and needs.

206. Because of the inadequacies of state funding of the extra cost of educational programs and services for the under-served student populations, Colorado school districts must pay for many of the extra costs of necessary programs and services for such students from funds that otherwise would be devoted to other educational programs. As a result, all school children are further deprived of the funding necessary to provide an adequate educational opportunity.

207. Preschool, full day kindergarten, and extended school day and school year programs during the early school years are critical for all children and particularly children from under-served populations. Because of lack of access to financial resources, school districts are not able to offer these services to all students who require them to succeed academically and socially, in violation of those children's rights under the Education Clause.

208. Because of lack of access to financial resources, many school districts are not able to offer the courses and curriculum needed and sought by gifted and talented and college-bound students. Advanced courses in core academic subjects, college-preparatory, and advanced placement programs are limited, over-crowded, 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 higher education and business and professional careers. Only 29 percent of Colorado high school students, and only seventeen percent of economically disadvantaged students, graduate with the minimum coursework required to attend college compared to a national average of 36 percent, and ranking Colorado 44th in the nation.

209. Because of lack of access to financial resources, many school districts are not able to offer vocational and other programs needed and sought by non-college bound students to prepare for and succeed in productive and useful work and rewarding lives in society.

210. Because of lack of access to financial resources, school districts are not able to offer the diverse approaches to learning and education and the innovative programs, educational techniques, and environments that are critical to the success of many students and to the development of new and competitive educational strategies.

211. 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.

212. The state does not provide equalization funding or other financial assistance for the construction or renovation of school facilities beyond the capital reserve portion of the PSFA total program. As a result, local property and specific ownership taxes are virtually the exclusive source of funding for school facilities. The school funding system's reliance on local property tax revenues to provide school facilities has failed and continues to fail to provide adequate school facilities for Colorado school children. Further, because of variations in local tax bases, the amount of potential and actual funding resources available for school districts to fund adequate and safe school facilities varies irrationally across the state and results in particularly severe facilities inadequacies in school districts with low local tax bases.

213. The ability of the state and school districts to provide and maintain sufficient funding and to implement a system of public school finance that meets the substantive right to a quality public education established by the Education Clause is fundamentally impaired and effectively defeated by the taxing and spending conditions imposed by TABOR and the Gallagher Amendment. These procedural amendments to the constitution are in irreconcilable conflict with and must yield to the substantive rights guaranteed by the Education Clause.

214. As a result of all of the foregoing, the Colorado system of public school finance violates the rights of the Plaintiffs guaranteed by the Education Clause of the Colorado Constitution, and the Plaintiffs are entitled to relief as hereinafter described.

SECOND CLAIM FOR RELIEF
Violation of the Constitutional Authority to Control of Instruction

215. Plaintiffs incorporate herein all of the preceding averments.

216. The Colorado system of public school finance fails to provide local boards of education and school districts with adequate funding to fulfill the qualitative mandate of the Education Clause and the requirements of education reform legislation and the Consolidated State Plan. The combination of inadequate and irrational funding and the mandates and punitive enforcement provisions of state education reform legislation and the Consolidated State Plan effectively prevent the school districts from exercising meaningful control of instruction in the schools within their boundaries, in violation of their constitutional powers pursuant to article IX, section 2 of the Colorado Constitution and their duty and authority within the constitutional structure of governance of public education to provide educational programs and services that meet the qualitative standards of the Education Clause.

217. As a result of all of the foregoing, the Colorado system of public school finance and the education reform legislation violate the rights of the Plaintiffs guaranteed by article IX, sections 2 and 15 of the Colorado Constitution.

THIRD CLAIM FOR RELIEF
Violation of the Uniform Taxation Guarantee

218. Plaintiffs incorporate herein all of the preceding averments.

219. The Colorado system of public school finance uses property taxes as a principal source of revenues to fund the state's constitutional obligation to establish and maintain a thorough and uniform system of public schools. The state effectively mandates school district property tax mill levies through the PSFA and other statutory funding limitations. Because the state fails to provide sufficient funding or the means to obtain sufficient funding, the gross funding capacity of the public school finance system is essentially depleted, and school districts do not have any real discretion in the control of instruction. While property taxes levied by school districts are local in the sense that they are levied upon property within school district boundaries, these taxes are in fact state property tax levies and are subject to the uniformity requirement of article X, section 3(1)(a) of the Colorado Constitution.

220. Property tax mill levies and revenues vary widely and irrationally among Colorado school districts in violation of the uniformity requirement of article X, section 3(1)(a) of the Colorado Constitution and the rights of the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and each of them, respectfully request that the Court:

221. Declare that the Education Clause, article IX, section 2 of the Colorado Constitution, includes a qualitative mandate that establishes the basic and fundamental right to a free, constitutionally adequate, quality education to all residents of the State of Colorado between the ages of six and twenty-one years;

222. Declare that the qualitative mandate of the Education Clause guarantees to each such resident the right to an education that will permit him or her to participate meaningfully in the civic, political, economic, social and other activities of our society and the world, and to exercise the basic civil and other rights of a citizen of the State of Colorado and the United States of America;

223. Declare that the qualitative mandate of the Education Clause imposes upon the general assembly of the State of Colorado the affirmative duty to provide the financial resources necessary, sufficient, and appropriate to assure that all such residents have an equal opportunity to obtain a constitutionally adequate, quality education and that a system of public school finance that fails to provide sufficient financial resources to the schools and school districts of the state, and to provide such financial resources in a manner that is intentionally, rationally, and demonstrably related to the accomplishment of the qualitative guarantee of the Education Clause, is unconstitutional and void;

224. Declare that the existing system of public school finance, including the Public School Finance Act, categorical funding programs, and capital construction funding, fails to provide funding in an amount and in a manner that meets the mandate of the Education Clause, in violation of the rights of the Plaintiffs and the public school students and school districts of the state;

225. Declare that the existing system of public school finance violates the rights, powers, and authority of the boards of education of the school districts of the state to the control of instruction in the public schools of their respective districts as provided in article IX, section 15 of the Colorado Constitution;

226. Declare that the existing system of public school finance imposes a state-wide property tax and a property tax levy that is not uniform across the state, in violation of article X, section 3(1)(a) of the Colorado Constitution;

227. Declare that Defendants and each of them, through the implementation of the Colorado system of public school finance, have violated and are violating the constitutional rights of each and all of the Plaintiffs;

228. Enter interim and permanent injunctions compelling the Defendants to establish, fund, and maintain a thorough and uniform system of free public schools throughout the state that fulfills the qualitative mandate of the Education Clause and the rights guaranteed to the Plaintiffs thereunder and that is in full compliance with the requirements of article IX, section 15, and article X, section 3(1)(a) of the Colorado Constitution;

229. Enter interim and permanent injunctions compelling the Defendants to design, enact, fund, and implement a system of public school finance that provides and assures that adequate, necessary, and sufficient funds are available to accomplish the purposes of the Education Clause;

230. Enter interim and permanent injunctions directing each and all of the Defendants from further executing and implementing the existing Colorado system of public school finance or any other system of public school finance that does not meet the requirements of the Education Clause;

231. Retain continuing jurisdiction over this matter until such time as the Court has determined that the Defendants have in fact fully and properly fulfilled its orders;

232. Award Plaintiffs their costs of this action, including reasonable attorneys' and expert witness fees, to the full extent permitted by law; and,

233. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23rd day of June, 2005

Original signature on file

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