

<p>DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock St. Denver, Colorado 80202</p>	
<p>Plaintiffs: ANTHONY LOBATO, et al., and Plaintiff-Intervenors: ARMANDINA ORTEGA, et al. v. Defendants: THE STATE OF COLORADO, et al.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case No. 2005CV4794</p> <p>Div. 9</p>
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PLAINTIFFS' COMBINED RESPONSE TO DEFENDANTS' FIRST DISCOVERY REQUESTS TO SCHOOL DISTRICT PLAINTIFFS: MOFFAT COUNTY SCHOOL DISTRICT RE: NO. 1

Pursuant to C.R.C.P. 33, 34, and 36, Plaintiffs, Anthony Lobato, et al., (“Plaintiffs”), through counsel, hereby respond on behalf of Plaintiff Moffat County School District Re: No. 1 (“MCS D”) to Defendants’ First Set of Interrogatories to School District Plaintiffs served October 12, 2010 (“Interrogatories”) and to Defendants’ First Request For Production Of Documents to School District Plaintiffs served October 12, 2010 (“Request for Production”). The Interrogatories and Request for Production are collectively referred to as Defendants’ “Discovery Request.”

MCS D responds to the Discovery Requests as follows (“Response to the Discovery” or “Response”):

GENERAL OBJECTIONS

1. **Best Knowledge, Information and Belief.** This Response to the Discovery is made to the best of Plaintiffs’ present knowledge, information and belief. This Response is at all times subject to such additional or different information that discovery or further investigation may disclose and is subject to additional knowledge of facts, as may result from their further discovery or investigation. Plaintiffs reserve the right to supplement this Response in accordance with C.R.C.P. 26(e).
2. **Subsequent Discovery of Documents or Information.** Plaintiffs reserve the right to make any use of, or to introduce at any hearing and/or at trial, documents or other information responsive to the Discovery Request but discovered by Plaintiffs subsequent to the date of this Response to Discovery.
3. **Attorney-Client Privilege and Work Product Doctrine.** Plaintiffs object to the Discovery Request to the extent that it requests information protected by the attorney-client privilege, the work product doctrine, or any other applicable legal privilege against disclosure. Such privileged documents and information shall not be produced in response to the Discovery Request, and any inadvertent production thereof shall not be deemed a waiver of any privilege with respect to such documents or information.
4. **Preservation of Objections.** Plaintiffs reserve all objections as to the competency, relevance, materiality, privilege and/or admissibility as evidence in any subsequent proceeding and/or trial of this or any other action for any purpose whatsoever of any documents, information or things produced in this Response to the Discovery.
5. **Definitions.** Plaintiffs object to all definitions, instructions, interrogatories, and document requests in the Discovery Request in which the phrases “describe,” “relate to” or “relating to,” “every” and “all” appear. The terms “describe,” “relate to,” “relating to,” “every” and “all” are overly broad, vague, ambiguous and unintelligible, require subjective judgment on the part of Plaintiffs and their attorneys.
6. **Expansive Definitions and Instructions.** Plaintiffs object to all definitions and instructions to the Discovery Request to the extent that such definitions and instructions purport to enlarge, expand, or alter in any way the plain meaning and scope of any specific term, phrase or request on the grounds that such enlargement, expansion, or alteration renders such term, phrase or request vague, ambiguous, unintelligible, overbroad and uncertain. Plaintiffs also object to all definitions that purport to expand or enlarge Plaintiffs’ obligations under the Colorado Rules of Civil Procedure.

7. Time Period. Plaintiffs object to the Discovery Request to the extent that it requests information generated prior to 2005. Given the broad scope of the Discovery Requests and the nature and evolution of education reform and education finance, any potential relevance of that information is substantially outweighed by the burden to collect, review, analyze, and produce that information in a responsive format. The requests for information generated prior to 2005 are therefore unduly burdensome, and such information will not be produced.

8. Confidentiality. This Response to the Discovery is made subject to the Confidentiality Order entered in this action. Any confidential information produced without being marked “Confidential” is unintentional and inadvertent, and Plaintiffs reserve the right to require that such information be marked and treated confidential or returned to Plaintiffs.

9. Burden. Plaintiffs object to the Discovery Requests to the extent they request information already in the possession of Defendants. Much of this information has been previously submitted to Defendants by Plaintiffs. It would be unduly burdensome, oppressive, and unreasonably duplicative to again provide such information to Defendants. Further, Plaintiffs object to the Discovery Requests to the extent the burden of deriving or ascertaining responses to the requests is substantially the same or less for Defendants than for Plaintiffs. Plaintiffs also object to the Discovery Requests to the extent they seek information obtainable from some other source that is more convenient, less burdensome, or less expensive.

10. Possession, Custody, or Control. Plaintiffs object to producing documents that are not within their possession, custody, or control.

11. Scope of Responsive Documents. The scope of documents that fall within the ambit of Plaintiffs’ obligations under C.R.C.P. 26(a)(1)(B) and the Discovery Request does not include e-mails stored on e-mail servers. Specifically, e-mails stored on e-mail servers are not relevant to disputed facts alleged with particularity in the pleadings and are not responsive to the Discovery Request. And, to the extent such e-mails are arguably relevant, the burden and expense of collecting, reviewing, and producing such documents substantially outweighs any likely benefit of producing these documents in light of the needs of Defendants, the parties’ resources, and the importance of the e-mails to this lawsuit. Where e-mails have been produced, such e-mails were stored on non-e-mail servers that stored responsive documents, and those produced e-mails had a particular relevance not shared by e-mails simply stored on e-mail servers. Moreover, Defendants have not produced e-mails stored on e-mail servers pursuant to Rule 26(a)(1) or Plaintiff’s Request for Production. Accordingly, e-mails stored on e-mail servers will not be produced.

12. Specific Objections. In addition to these General Objections, Plaintiffs may set forth other and further objections with their specific responses. By their specific objection, Plaintiffs do not intend to limit or restrict these General Objections.

13. Incorporation. Plaintiffs incorporate all of the foregoing General Objections into each Response to the Discovery Requests below.

INTERROGATORIES

Interrogatory No. 1: Identify the person(s) who prepared or assisted in the preparation of the answers to these interrogatories and identify their relationship to you.

Response: Other than MCSD legal counsel, the following persons were principally involved with the preparation of the answers to these interrogatories:

- 1) Joe Petrone, Superintendent
- 2) Joanne Baxter, President of MCSD School Board
- 3) Christine Villard, Assistant Superintendent

Interrogatory No. 2: Describe the amount of funding and resources you contend are sufficient to provide a “constitutionally adequate, quality education” as that phrase is used in the First Claim for Relief of the Complaint?

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 2 because it prematurely seeks the production of expert information, materials, and opinions. *See* C.R.C.P. 26(b)(4)(a). Plaintiffs further object on the basis that Interrogatory No. 2 is a contention interrogatory, and Defendants have objected to contention interrogatories on the improper ground that such interrogatories are premature. Plaintiffs believe these objections are without merit, but to the extent such objections are valid, Plaintiffs should not have to respond to contention interrogatories.

Subject to and without waiving the foregoing and General Objections, Plaintiffs state that the general assembly has the duty to define and fund a constitutionally adequate, quality education, subject to judicial review. The general assembly has adopted definitions of a constitutionally adequate, quality education in several places. While definitions adopted in statute are not necessarily and finally determinative of the scope and content of the constitutional mandate of Article IX, section 2, of the Colorado Constitution (the Education Clause), MCSD accepts the existing definitions as generally valid for purposes of this litigation.

In the 2008 Preschool and Postsecondary Education Alignment Act, C.R.S. §§ 22-7-1001, *et seq.* (CAP4K), the general assembly found that:

From the inception of the nation, public education was intended both to prepare students for the workforce and to prepare them to take their place in society as informed, active citizens who are ready to both participate and lead in citizenship. In recent years, the emphasis in public education has been squarely placed on the areas of reading, writing, mathematics, and science, but it is important that education reform also emphasize the public education system’s historic mission of education for active participation in democracy.

C.R.S. § 22-7-1002(1)(c).

The general assembly has declared that the standards-based education system adopted in 1993, including content standards, student assessments, and student achievement of performance standards, is intended to fulfill the duty to provide Colorado school children with a public education that meets that definition and to provide substance and specificity to the definition of a constitutionally adequate, quality education. In the 1993 Education Reform provisions, the general assembly stated that:

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 [the Education Reform provisions] 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.

C.R.S. § 22-7-403(2).

In that same context, the general assembly declared that “the ultimate goal of [the standards-based education system] is 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.” C.R.S. § 22-7-401.

The general assembly reaffirmed this construction of a constitutionally adequate, quality education in CAP4K, where it expressly extended it to include preschool and postsecondary and workforce readiness:

[T]he state board of education and the Colorado commission on higher education must ensure that the standards for preschool through elementary and secondary education, culminating in postsecondary and workforce readiness, are sufficiently relevant and rigorous to ensure that each student who receives a public education in Colorado is prepared to compete academically and economically within the state or anywhere in the nation or the world.

C.R.S. § 22-7-1002(4)(e).

The general assembly has also found that students must be assured not only that they will attain a certain level of proficiency upon graduation, but also that at every grade level they shall have the opportunity to obtain the knowledge and skills necessary to succeed at subsequent grade levels. Thus, an “acceptable performance level” on state assessments means that:

[T]he student has the subject matter knowledge and analytical skills necessary to succeed at subsequent grade levels. For graduating students, such acceptable performance level shall mean the student has the subject matter knowledge and analytical skills that all high school graduates should have for democratic citizenship, responsible adulthood, postsecondary education, and productive careers.

C.R.S. § 22-7-402(9).

The general assembly has directed the establishment of a comprehensive accountability system in order to evaluate the “performance of the thorough and uniform statewide system of public education for all groups of students at the state, school district or institute, and individual public school levels.” C.R.S. § 22-11-102(1)(d). The general assembly further found that school district performance of the “thorough and uniform” mandate is to be measured by the standards of the Education Accountability Act, which broadly incorporates, but is not limited to, the entire system of education reform:

The general assembly hereby finds that section 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. If a school is not providing a thorough and adequate education, as determined by the annual performance review conducted by the department pursuant to section 22-11-210, the state has an obligation to the students enrolled in that school to make changes to ensure that they have an opportunity to receive a quality education comparable to students in other public schools in the state.

C.R.S. § 22-30.5-301(1).

The measure of a constitutionally adequate, quality education, and thus the standard for determining the adequacy of public school funding, is established by the body of state legislation and regulation governing the public education system, including the provisions quoted above. This body of legislation and regulation also includes without limitation the provisions of C.R.S., title 22, article 7 (Educational Accountability), including, without limitation, Parts 4 (Education Reform) and 10 (the Preschool to Postsecondary Education Act); C.R.S., title 22, article 9 (the Licensed Personnel Performance Evaluation Act); C.R.S., title 22, article 11 (the Education Accountability Act of 2009); C.R.S., title 22, article 20 (the Exceptional Children’s Educational Act); C.R.S., title 22, article 24 (the English Language Proficiency Act); C.R.S., title 22, article 28 (the Colorado Preschool Program Act); C.R.S., title 22, article 30.5 (the Charter Schools Act); C.R.S., title 22, article 30.7 (On-line Education Programs); C.R.S. §22-32-109.1 (Safe Schools); C.R.S. § 22-32-116.5 (Extracurricular and Interscholastic Activities); C.R.S. §§ 2-32-119 and 119.5 (Kindergartens); C.R.S., title 22, article 33 (the School Attendance Law of 1963); C.R.S., title 22, article 35 (Concurrent Enrollment Programs Act); C.R.S., title 22, article 36 (Public Schools of Choice); C.R.S., title 22, article 60.5 (the Colorado Educator Licensing Act of 1991); and C.R.S., title 22, article 63 (the Teacher Employment, Tenure and Dismissal Act of 1990); Title IV, Part B, of the federal Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001; C.R.S. §§ 22-1-113, -113.2, and 113.5 (Higher Education Admission Standards); including those statutes as they currently exist and their predecessor statutes; and the rules and regulations adopted pursuant thereto.

For purposes of this litigation, MCSD accepts the mandates set forth in state law governing public education and the rules and regulations promulgated pursuant thereto, some of which are quoted and cited above, as the present day standard of a thorough and uniform system of public education. Therefore, the minimum amount of funding and resources sufficient to provide a constitutionally adequate, quality education is that amount of funding and resources necessary to provide every school district with sufficient funds and resources to meet the mandates of state law and regulation.

Plaintiffs will supplement this response by expert reports and testimony in accordance with the Case Management Order.

Interrogatory No. 3: Describe the amount of funding and resources you contend are sufficient to allow local boards of education and school districts “to fulfill the qualitative mandate of the Education Clause and the requirements of state and federal reform legislation” as that phrase is used in the Second Claim for Relief of the Complaint?

Response: Plaintiffs object to Interrogatory No. 3 because it prematurely seeks the production of expert information, materials, and opinions. *See* C.R.C.P. 26(b)(4)(a). Plaintiffs further object on the basis that Interrogatory No. 3 is a contention interrogatory, and Defendants have objected to contention interrogatories on the improper ground that such interrogatories are premature. Plaintiffs believe these objections are without merit, but to the extent such objections are valid, Plaintiffs should not have to respond to contention interrogatories.

Subject to and without waiving the foregoing and General Objections, MCSD states that it is the duty of the general assembly to develop, enact, and fund an “appropriate” public school finance system, subject to judicial review. An appropriate public school finance system is one that is rationally related to fulfilling and does in fact fulfill the duty of the general assembly to fund a system of public school education that provides sufficient resources to assure every child in the state with the opportunity to receive an education that meets the thorough and uniform mandates of the Education Clause and complies with the constitutionally mandated division of authority between the State and the local school district boards of education. *See* Response to Interrogatory No. 2, above, which is incorporated into this response along with all objections.

Plaintiffs will supplement this response by expert reports and testimony to be provided in accordance with the Case Management Order.

Interrogatory No. 4: Describe the system of public school finance in Colorado which you contend would be appropriate.

Response: Plaintiffs object to Interrogatory No. 4 because it prematurely seeks the production of expert information, materials, and opinions. *See* C.R.C.P. 26(b)(4)(a). Plaintiffs further object on the basis that Interrogatory No. 4 is a contention interrogatory, and Defendants have objected to contention interrogatories on the improper ground that such interrogatories are

premature. Plaintiffs believe these objections are without merit, but to the extent such objections are valid, Plaintiffs should not have to respond to contention interrogatories.

Subject to and without waiving the foregoing and General Objections, MCSD states that an appropriate system of public school finance would include without limitation funding formulae and mechanisms that are based primarily on estimations of the actual costs associated with the provision of a constitutionally compliant system of public schools, as described above in response to Interrogatories Nos. 2-3 (which are incorporated in this response along with all objections stated therein), in contrast to a system of funding based simply on arbitrary percentage or fixed dollar adjustments to the previous year's funding formula or dollar allocation.

Plaintiffs will supplement this response by expert reports and testimony to be provided in accordance with the Case Management Order.

Interrogatory No. 5: Describe your mission statement and any actions you have taken to promote or instill an understanding of the District's mission among staff, students, teachers, principals, parents and the community.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 5 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Interrogatory No. 5 is especially overbroad and burdensome in its call for "any actions" taken by the district.

Subject to and without waiving the foregoing and General Objections, the following is the mission statement of MCSD: "To foster intellectual development and academic achievement by providing our students with the educational foundation necessary to build the future of their choice."

The mission statement is posted and frequently referenced in decision-making. Our actions toward school improvement planning are aligned to our mission and vision. A recent calendar change was a direct reflection of our aim to strengthen the implementation of our professional learning community implementation. The mission and vision is posted in our central administrative offices and posted prominently on each of our campuses as a reminder to faculty, staff, students and parents of our commitment to academic achievement.

Interrogatory No. 6: Describe how you have provided professional development for District employees from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 6 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Interrogatory No. 6 is especially unduly overbroad and burdensome because the scope of the phrases "professional services" and "District employees" could potentially include every act taken by MCSD over the

course of five years, and the burden to identify and describe each and every act substantially outweighs the probative value of many of those acts.

Subject to and without waiving the foregoing and General Objections, MCSD states the following. Professional development is determined by evaluating the data, performing a needs assessment and identifying performance issues. Strategies are then developed to help address the root causes of the performance issues. Professional development is then designed to address any issues and to help improve student achievement. As an example, two years ago, the focus was on writing. MCSD brought in coaches from the National Literacy Coalition. The coaches trained around writing with content teachers as well as the paraprofessionals that assist with literacy. Similar trainings have occurred around literacy and guided reading. MCSD has a new math curriculum and hired trainers to conduct in-services for the new instructional delivery system for math. Training is on going during work days and collaboration times. Collaboration times are every Friday afternoon. MCSD has an induction program for new teachers in core areas of instruction, including classroom management, literacy, math, and content areas for secondary teachers.

Interrogatory No. 7: Describe the hiring processes for District employees, including identification of need and job posting through interviews, hiring and assessment.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 7 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Interrogatory No. 7 is especially unduly overbroad and burdensome because the scope of the phrase “hiring process” could potentially require a description of a large number of acts, and the burden to identify and describe each and every act substantially outweighs the probative value of many of those acts.

Subject to and without waiving the foregoing and General Objections, MCSD refers defendants to policies 4000,4100, and 4154. In addition, MCSD states that the administration identifies the need for new positions. The opening is posted in various places, depending on the type of position that is open. MCSD posts on the Teach in Colorado CDE web site, in the local paper as needed, in specialty journals, and on its web site. Hiring is performed by committee, department or grade level, depending on the position. MCSD has difficulty in attracting qualified applicants for many different positions. As an example, MCSD advertised for four years prior to finding a qualified school psychologist.

Interrogatory No. 8: Identify the amount of money you have spent on this litigation and the source of funds used.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 8 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. The amount of money spent on litigation has no bearing on the merits of claims and defenses asserted in this action, particularly because the claims in this action are based on violations of constitutional

rights that preceded MCSD's involvement in this action. Plaintiffs also object to Interrogatory No. 8 because the phrase "money you have spent on this litigation" is vague. Plaintiffs interpret this interrogatory as a request to identify the amount of funds contributed to legal counsel in this litigation.

Subject to and without waiving the foregoing and General Objections, MCSD states that it has not contributed money in any amount that has an order of magnitude meaningfully comparable to MCSD's annual budget or the amount that the Defendants' are constitutionally required to provide but have failed to provide. MCSD has not contributed financially to this litigation.

Interrogatory No. 9: Describe how the students in the District have failed to receive adequate educational opportunities from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 9 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the term "failed" is vague and confusing. Moreover, Plaintiffs object to Interrogatory No. 9 because it prematurely seeks the production of expert information, materials, and opinions. *See* C.R.C.P. 26(b)(4)(a). Plaintiffs further object on the basis that Interrogatory No. 9 is a contention interrogatory, and Defendants have objected to contention interrogatories on the improper ground that such interrogatories are premature. Plaintiffs believe these objections are without merit, but to the extent such objections are valid, Plaintiffs should not have to respond to contention interrogatories.

Subject to and without waiving the foregoing and General Objections, MCSD states that "adequate educational opportunities" means at a minimum educational opportunities sufficient to permit each and every student to demonstrate proficiency in meeting the performance goals and standards established by state law, rule, and regulation; to demonstrate academic growth and achievement and critical-thinking and problem-solving skills necessary to ensure the student's ultimate success in school, in postsecondary education, in the workforce, and in life; to be well prepared for active participation in democracy and to compete in the twenty-first-century workforce; and to ensure, to the extent possible, that he or she is prepared to meet his or her full potential, as set forth in C.R.S. §22-7-1002. To the extent that any student is not provided with an educational opportunity that meets these standards, he or she has failed to receive a constitutionally adequate educational opportunity. See also Response to Interrogatory No. 2-4, above, which are incorporated into this response along with all objections stated therein.

Interrogatory No. 10: Identify all grants received and how any grant monies were used.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 10 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms "used" is vague and confusing and could potentially call for a large

amount of information not reasonably calculated to lead to admissible evidence. Plaintiffs also object to this interrogatory because the information sought is already in the possession of Defendants. *See* http://www.cde.state.co.us/index_finance.htm

Subject to and without waiving the foregoing and General Objections, MCSD states that information concerning the grants that MCSD has received and the grant monies used can be found in the previously produced budget documents. MCSD further states that aside from Title grants it receives from the federal government, it has not received any other grants.

Interrogatory No. 11: Identify all resources of any kind received from the Colorado Department of Education.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 11 on the basis that the scope of information called for by this interrogatory is unduly burdensome to obtain, and the term “resources” is vague and confusing. Further, to the extent this interrogatory is not unintelligible, Defendants have the same access to the information requested by Interrogatory No. 11.

Subject to and without waiving the foregoing and General Objections, MCSD states that the CDE provides the District with School Accountability Reports (SAR), CSAP released items, CSAP Item maps, CSAP testing guidelines, CSAP scores, CO PBIS training, materials, Colorado Preschool Program (CPP) materials, and teacher/administrator licensing materials. MCSD has access to some limited CDE training. Three years ago, CDE offered a consortium of regional professional development that was helpful to MCSD but CDE no longer offers that program.

Interrogatory No. 12: Describe the programs the District has developed or used to provide educational opportunities to English Language Learner students from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 12 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms and phrases “programs,” “has developed or used,” and “educational opportunities” are vague and unintelligible, and could be construed to call for an unduly overbroad and burdensome response. The request purports to call for a description of all programs related to English Language Learner students without regard to whether the program was ever used or implemented, and without regard to the size of the program or number of students involved. Further, many of “the programs the District has developed or used to provide educational opportunities to ‘English Language Learner students’” are developed or used to provide educational opportunities to all students, and to the extent the request calls for descriptions of programs not aimed exclusively at “English Language Learner students,” MCSD incorporates its responses to all Interrogatories and the objections stated therein.

Subject to and without waiving the foregoing and General Objections, MCSD refers defendants to its policy 6180:

<http://moffatsd.schoolfusion.us/modules/groups/homepagefiles/cms/500599/File/policies/6180EnglishSecondLangReg.htm?sessionid=cf17785ca11ce77b061093bdce556e81>

See also:

<http://moffatsd.schoolfusion.us/modules/cms/pages.phtml?pageid=56735&sessionid=cf17785ca11ce77b061093bdce556e81&sessionid=cf17785ca11ce77b061093bdce556e81>

MCSD states that identified English Language Learners K-12 receive instruction based on their listening, speaking, reading, and writing proficiency levels in English. MCSD has one ESL endorsed teacher who works as the ESL coordinator in addition to providing direct services. MCSD also has a English literacy instruction class that is open to any student who needs literacy intervention. All services provided to English Language Learners are in addition to the opportunities they have to access core content and instruction.

Interrogatory No. 13: Describe the programs the District has developed or used to provide educational opportunities to gifted and talented students from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 13 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms and phrases “programs,” “has developed or used,” “educational opportunities,” and “gifted and talented students” are vague and unintelligible, and could be construed to call for an unduly overbroad and burdensome response. The phrase “gifted and talented” is not defined, and it is not clear from the interrogatory what criteria are to be used to determine whether a student is “gifted and talented.” The request also purports to call for a description of all programs related to “gifted and talented students” without regard to whether the program was ever used or implemented, and without regard to the size of the program or number of students involved. Further, many of “the programs the District has developed or used to provide educational opportunities to ‘gifted and talented students’” are developed or used to provide educational opportunities to all students, and to the extent the request calls for descriptions of programs not aimed exclusively at “gifted and talented students,” MCSD incorporates its responses to all Interrogatories and the objections stated therein.

Subject to and without waiving the foregoing and General Objections, MCSD refers defendants to its policy 6160:

<http://moffatsd.schoolfusion.us/modules/groups/homepagefiles/cms/500599/File/policies/6160Gifted%20and%20Talented%20Educationfinal.htm?sessionid=cf17785ca11ce77b061093bdce556e81>

See also:

<http://moffatsd.schoolfusion.us/modules/cms/pages.phtml?pageid=56735&sessionid=cf17785ca11ce77b061093bdce556e81&sessionid=cf17785ca11ce77b061093bdce556e81>

MCSD states that it has a part-time gifted and talented coordinator. MCSD uses differentiated instruction at all grade levels. Each identified GT student has an ALP. In addition, MCSD offers enrichment programs, and a multiple pathways component of involving

both the community and region in providing opportunities to students outside the classroom (e.g. field trips).

Interrogatory No. 14: Describe the programs the District has developed or used to provide educational opportunities to “students at risk of academic failure,” as that phrase is used in paragraph 16 of the Complaint, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 14 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms and phrases “programs,” “has developed or used,” and “educational opportunities” are vague and unintelligible, and could be construed to call for an unduly overbroad and burdensome response. The request also purports to call for a description of all programs related to “students at risk of academic failure” without regard to whether the program was ever used or implemented, and without regard to the size of the program or number of students involved. Further, many of “the programs the District has developed or used to provide educational opportunities to ‘students at risk of academic failure’” are developed or used to provide educational opportunities to all students, and to the extent the request calls for descriptions of programs not aimed exclusively at “students at risk of academic failure,” MCSD incorporates its responses to all Interrogatories and the objections stated therein.

Subject to and without waiving the foregoing and General Objections, MCSD states that students at risk of academic failure are offered the same educational opportunities as other MCSD students. In addition, MCSD provides literacy and math interventions to support “students at risk of academic failure”. MCSD also provides system wide behavioral support. MCSD also follows the RTI model. For information on MCSD RTI, see:

<http://moffatsd.schoolfusion.us/modules/cms/pages.phtml?pageid=78756&&sessionid=cf17785ca11ce77b061093bdce556e81>

MCSD offers an alternative high school program and both on line opportunities for students. MCSD has the ACE program. MCSD also has counselors in each of its schools and a district wide nurse who provides medical support for MCSD students.

We offer a three-tiered model of interventions in all academic areas for students that are identified as “at-risk” for school failure. This is done through the RTI model, which provides an integrated approach to service delivery that encompasses general and special education. Our program is a single, well-integrated system that connects general, remedial and special education through scientifically based practices, common measures and explicit decision-making procedures driven by child-centered outcomes.

Interrogatory No. 15: Describe the programs the District has developed or used to provide educational opportunities to “students with disabilities,” as that phrase is used in paragraph 16 of the Complaint, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 15 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms and phrases “programs,” “has developed or used,” and “educational opportunities” are vague and unintelligible, and could be construed to call for an unduly overbroad and burdensome response. The request also purports to call for a description of all programs related to “students with disabilities” without regard to whether the program was ever used or implemented, and without regard to the size of the program or number of students involved. Further, many of “the programs the District has developed or used to provide educational opportunities to ‘students with disabilities’” are developed or used to provide educational opportunities to all students, and to the extent the request calls for descriptions of programs not aimed exclusively at “students with disabilities,” MCSD incorporates its responses to all Interrogatories and the objections stated therein.

Subject to and without waiving the foregoing and General Objections, MCSD states that the educational opportunities for “students with disabilities” is a continuum of services that range from consultative to self contained based on the students needs. MCSD provides Child Find from the ages of 0 to 21. MCSD provides services from 3 to 21. From least restrictive to most restrictive the services include consultative services to the student and to the staff that works with the students, direct services are provided in the general education setting and outside of the general education setting dependent on the students’ needs; related services can be both consultative and direct based on the students’ needs, and self-contained services are provided to students that require the most intensive services.

The district offers an array of transition services to students with disabilities. These services will be outlined in each student’s Individualized Education Program (IEP) when the student turns 15 (or no later than ninth grade). Some transition service components are continued for some students’ IEPs until they turn 21 years of age. Services will include individual case management and transition-specific coursework in high school. MCSD has two special education teachers at the high school and middle school, one at each elementary, and two at the pre-school.

See MCSD policy regarding special education:

<http://moffatsd.schoolfusion.us/modules/groups/homepagefiles/cms/500599/File/policies/6190SpEdPhilosophy.htm?sessionid=cf17785ca11ce77b061093bdce556e81>

See also:

<http://moffatsd.schoolfusion.us/modules/cms/pages.phtml?pageid=56735&sessionid=cf17785ca11ce77b061093bdce556e81&sessionid=cf17785ca11ce77b061093bdce556e81>

Interrogatory No. 16: Describe the programs the District has developed or used to provide educational opportunities to “students of low income families,” as that phrase is used in paragraph 16 of the Complaint, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 16 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms and phrases “programs,” “has developed or used,” and “educational opportunities” are vague and unintelligible, and could be construed to call for an unduly overbroad and burdensome response. The request also purports to call for a description of all programs related to “students of low income families” without regard to whether the program was ever used or implemented, and without regard to the size of the program or number of students involved. Further, many of “the programs the District has developed or used to provide educational opportunities to ‘students of low income families’” are developed or used to provide educational opportunities to all students, and to the extent the request calls for descriptions of programs not aimed exclusively at “students of low income families,” MCS D incorporates its responses to all Interrogatories and the objections stated therein.

Subject to and without waiving the foregoing and General Objections, MCS D states that it receives federal Title I, Part A funds under No Child Left Behind that are used to supplement the district instruction the district’s schools. MCS D provides free and reduced lunch to each qualified student. See also response to Interrogatory No. 14, above.

Interrogatory No. 17: Describe the programs the District has developed or used to provide educational opportunities to “students of minority racial and ethnic heritage,” as that phrase is used in paragraph 16 of the Complaint, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 17 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms and phrases “programs,” “has developed or used,” and “educational opportunities” are vague and unintelligible, and could be construed to call for an unduly overbroad and burdensome response. The request also purports to call for a description of all programs related to “students of minority racial and ethnic heritage” without regard to whether the program was ever used or implemented, and without regard to the size of the program or number of students involved. Further, many of “the programs the District has developed or used to provide educational opportunities to ‘students of minority racial and ethnic heritage’” are developed or used to provide educational opportunities to all students, and to the extent the request calls for descriptions of programs not aimed exclusively at “students of minority racial and ethnic heritage,” MCS D incorporates its responses to all Interrogatories and the objections stated therein.

Subject to and without waiving the foregoing and General Objections, MCS D states that it addresses these issues on an ongoing basis, including with professional development, and outreach to the community. The District is constantly evaluating and assessing its policies and procedures to identify any policies or procedures that may be barriers to equity and excellence and works toward systemic change that will result in high levels of achievement for all students.

To achieve this end, we engage in a comprehensive planning process, which compares these subgroups of children against non-subgroup children and make necessary instructional adjustments.

Interrogatory No. 18: Describe how the District measures the effectiveness of District employees.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 18 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms and phrases “measures,” and “effectiveness” are vague and unintelligible, and could be construed to call for an unduly overbroad and burdensome response. Further, the district employs many different categories of employees, and a description of the manner in which the district measures the effectiveness of some types of employees is irrelevant to this action and not reasonably calculated to lead to admissible evidence.

Subject to and without waiving the foregoing and General Objections, MCSD states that it measures the effectiveness of MCSD employees through its evaluation process. The evaluation process differs slightly for classified employees versus licensed employees.

Classified staff is evaluated annually. These staff members are “at will” employees and do not become probationary.

Licensed employees are evaluated twice in their first year of employment in the district. They are then evaluated once a year during their second and third years of employment. After their first three years of employment (their probationary period), licensed employees are evaluated every three years. A minimum of two formal observations is used per evaluation.

Interrogatory No. 19: Describe the District’s role in the delivery of education services to students in the District from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 19 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. The term “role” is especially vague in both its substantive and temporal scope.

Plaintiffs also object to Interrogatory No. 19 because Defendants improperly objected to Plaintiffs’ Non-Pattern Interrogatory No. 5, which sought a description of the roles and responsibilities of certain defendants and government entities. Plaintiffs submit that such objections are improper. Nevertheless, to the extent Defendants’ objections are proper, Plaintiffs should not be required to respond to Interrogatory No. 19 on the basis that it is “overly broad, unduly burdensome and seeks information equally available to [Defendants]. Subject to and without waiving these objections and the General objections, [Plaintiffs] state that the legal roles

and responsibilities of [MCSD] are set forth in Colorado law.” *See, e.g., Defendants’ Responses to Plaintiffs’ First Set of Discovery Requests* at 14.

Subject to and without waiving the foregoing and General Objections, MCSD states that a public school district, acting through its board of education, is charged with the constitutional power and duty to control instruction in the public schools within its jurisdiction and to implement the mandates of the Education Clause and the statutes, rules, and regulations adopted in furtherance thereof. MCSD is the direct provider of educational services to the school children within its jurisdiction and, as such, performs the duties and exercises the powers set forth by law, including, without limitation, employing, evaluating, and compensating licensed and other personnel, such as classroom teachers, school and district administrators, and staff; adopting and presenting the school curriculum in accordance with the mandates of state law and regulation; providing supplies, technology, and other materials in support of the curriculum; administering student achievement assessments; assessing and providing for the needs of special education, non-English speaking, at-risk, gifted and talented, and other student cohorts; building and maintaining school and other buildings; and operating a student transportation system.

Interrogatory No. 20: Describe the programs and services you are unable to provide, as alleged in paragraph 181 of the Complaint.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 20 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the phrase “programs and services” is vague and unintelligible, and could be construed to call for an unduly overbroad and burdensome response. Plaintiffs also object to Interrogatory No. 20 on the basis that Interrogatory No. 20 is a contention interrogatory, and Defendants have objected to contention interrogatories on the improper ground that such interrogatories are premature. Plaintiffs believe these objections are without merit, but to the extent such objections are valid, Plaintiffs should not have to respond to contention interrogatories.

Subject to and without waiving the General Objections, MCSD states that it is unable to provide the literacy support to all the students who would benefit from such services; is unable to provide the quantity and quality of professional development that would benefit its staff, is unable to provide sufficient paraprofessional support to its students, has insufficient instructional materials and supplies, is unable to provide the technology that is needed for students and staff, is unable to provide the curriculum that would support growth for all students, lacks sufficient itinerant staff support for its students.

Interrogatory No. 21: Identify the specific “rights,” as that term is used in paragraph 196 of the Complaint, which you allege each of the named Defendants violate.

Response: Plaintiffs object to Interrogatory No. 21 on the basis that Interrogatory No. 21 is a contention interrogatory, and Defendants have objected to contention interrogatories on the

improper ground that such interrogatories are premature. Plaintiffs believe these objections are without merit, but to the extent such objections are valid, Plaintiffs should not have to respond to contention interrogatories.

Subject to and without waiving the foregoing and General Objections, MCSD states that, as alleged in paragraph 195 of the Amended Complaint, 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 state and federal education reform legislation. The combination of inadequate and irrational funding and the mandates and punitive enforcement provisions of education reform legislation 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 the Local Control Clause 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.

Interrogatory No. 22: Describe how each of the named Defendants violates the “rights” of the District, as that term is used in paragraph 196 of the Complaint.

Response: Plaintiffs object to Interrogatory No. 22 on the basis that Interrogatory No. 22 is a contention interrogatory, and Defendants have objected to contention interrogatories on the improper ground that such interrogatories are premature. Plaintiffs believe these objections are without merit, but to the extent such objections are valid, Plaintiffs should not have to respond to contention interrogatories.

Subject to and without waiving the foregoing and General Objections, MCSD states that there are two subjects that violate MCSD's rights listed in paragraph 196 of the Complaint: (1) the Colorado system of public school finance, and (2) Colorado education reform legislation. 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 state and federal education reform legislation. The combination of inadequate and irrational funding and the mandates and punitive enforcement provisions of education reform legislation 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 the Local Control Clause 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.

As explained above and in response to Interrogatory Nos. 2-4 and 21 (which are incorporated into this response along with all objections stated therein), the statutes and regulations that form the system of public school finance and education reform legislation are unconstitutional and violate MCSD's constitutional rights. Defendants violate the “rights” of MCSD by implementing these constitutional statutes and regulations. Defendants also exercise power and discretion in implementing the statutes, see C.R.S. §§ 22-2-106 & -107, and further

violate the “rights” of MCSD by exercising that discretion and power in a manner that violates the Education and Local Control clauses. Further, and without limiting the foregoing, Defendants create and implement punitive enforcement provisions of education reform legislation in a manner that prevents MCSD from exercising meaningful control of instruction in the schools within its boundaries.

Interrogatory No. 23: Identify each superintendent of the District and the length of their tenure since 2000.

Response: Subject to and without waiving the General Objections, MCSD identifies the following:

Current Superintendent: Joe Petrone (since July 2009). Pete Bergmann departed June 31, 2009. He retired after thirty-plus years of service.

Interrogatory No. 24: For each superintendent identified in Interrogatory 24, state the reasons for their departure.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 24 on the basis that it is vague, overbroad, and unduly burdensome. The phrase “state the reasons for their departure” is vague and potentially unduly burdensome in the scope of facts and detail potentially responsive to the request.

Subject to and without waiving the foregoing and General Objections, ///

Interrogatory No. 25: Identify the District’s board members since 2000.

Response: Subject to and without waiving the General Objections, MCSD identifies the following:

<p>2010 Board of Education Jo Ann Baxter, President Andrea Camp, Vice President Trish Snyder, Secretary Karen Stillion, Member Tony St. John, Member Sandra G. Johns, Member, Christine Balderston, Member</p>	<p>2003 Board of Education John Wellman, President Steve Hafey, Vice President Rod Durham, Secretar Trish Snyder Gary Elgen Jo Ann Baxter Andrea Camp</p>
<p>2007 Board of Education Rod Durham, President Andrea Camp, Vice President Trish Snyder, Secretary Jo Ann Baxter Tony St John</p>	<p>2001 Board of Education Phil Hastings, President John Wellman, Vice President Steve Hafey, Secretary Rod Durham Gary Elgen</p>

Sandie Johns Karen Stillion 2005 Board of Education Jo Ann Baxter, President Steve Hafey, Vice-President Rod Durham, Secretary Trish Snyder Karen Stillion Sandie Johns Andrea Camp	John Kincaid Jerry Magas 1999 Board of Education Gary Elgen, President Chuck Malley, Vice President John Wellman, Secretary Steve Hafey Chuck Malley Donna Deakins Donna Reihus Alman Nicodemus
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Interrogatory No. 26: Describe any visits by District administration or by Board members to other districts in Colorado or elsewhere for the purpose of learning how to enhance or improve the provision of education in the District.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 26 on the basis that it is vague, overbroad, and unduly burdensome. The term “visits” is vague and potentially unduly burdensome in the scope of facts and detail potentially responsive to the request. Similarly, the phrase “to other districts in Colorado or elsewhere” is exceedingly vague and broad in scope.

Subject to and without waiving the foregoing and General Objections, MCSD states that it has extremely limited resources to provide to either administration or Board members for the purpose asked about in this interrogatory. However, MCSD does try to provide as many opportunities as it can for administration and Board members such that members of the administration attend meetings with other administrators from the NW BOCES.. Members of the administration also attend regional and state conferences sponsored by CASE. School Board members attend regional and state -wide CASB conferences, as budgets permit.

Interrogatory No. 27: Describe the District’s summer school programs from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 27 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the term “programs” is vague and could be construed to call for an unduly overbroad and burdensome response. The request also purports to call for a description of all summer school programs without regard to whether the program was ever used or implemented, and without regard to the size of the program or number of students involved.

Subject to and without waiving the foregoing and General Objections, MCSD states that due to inadequate resources, MCSD is only able to provide very limited summer school opportunities to at risk students from the elementary school. The summer school program for high school students was eliminated due to budget cuts.

Interrogatory No. 28: Describe the District's preschool programs from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 28 on the basis that it is vague, overbroad, and unduly burdensome. MCSD also objects to the definition of the term "preschool" provided in the Discovery Requests. The term Preschool, as the term is naturally understood, encompasses services provided to students prior to Kindergarten, which is provided to students prior to the first grade. Defendants' definition of the term "preschool" extends the meaning of that word so far beyond its natural meaning that the term as defined is unintelligible, and any response that adheres to the definition would also be unintelligible.

Similarly, MCSD also objects to the vagueness of the term "programs," especially when used in conjunction with the defined term "preschool." Read literally, Interrogatory No. 28 asks for a description of "[all educational services provided to students prior to first grade] programs from 2000 to the present." The terms "services" and "programs" appear redundant and are impermissibly vague in that they could potentially call for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing and General Objections, see MCSD pre-school policy 6170:

<http://moffatsd.schoolfusion.us/modules/groups/homepagefiles/cms/500599/File/policies/6170PreprimaryEdReg.htm?sessionid=cf17785ca11ce77b061093bdce556e81>

MCSD states that MCSD does not have sufficient funding to offer pre-school to its students. At base, the CPP successfully provides a quality preschool program to many students gratuitously, but MCSD lacks the funding necessary to provide the same service to all students gratuitously. There are currently 40 students on a waiting list for MCSD pre-school program. MCSD offers a half day pre-school program and full day kindergarten. MCSD also provides Child Find Program. The Child Find Program assists in identifying and providing learning opportunities for children with special needs. Child Find provides free developmental screenings and multidisciplinary evaluations for young children, ages 0-5, who demonstrate delays in their development. The Child Find team includes specialists in the areas of speech-language pathology, preschool special education, occupational therapy, psychology and nursing.

MCSD believes that parents play a vital role in the education of their children. The preschool program provides parents with opportunities to build a strong connection between home and school. Parent/teacher conferences are held to inform parents about the progress

children are making in preschool. In addition to conferences, parents are also invited into their child's classroom to participate in a range of social, emotional, and pre-academic activities.

Interrogatory No. 29: Describe the District's after-school programs from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 29 on the basis that it is vague and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms and phrases "programs" and "after-school," are vague and unintelligible, and could be construed to call for an unduly overbroad and burdensome response.

Subject to and without waiving the foregoing and General Objections, due to the lack of resources, MCSD is unable to provide any after-school programs.

Interrogatory No. 30: Describe the District's on-line learning programs.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 30 on the basis that it is vague and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms and phrases "programs" and "on-line learning," are vague and unintelligible, and could be construed to call for an unduly overbroad and burdensome response.

Subject to and without waiving the foregoing and General Objections, MCSD states that it does not offer any traditional on-line classes. Some limited on-line opportunities exist with BYU.

Interrogatory No. 31: Describe the District's "vocational and other programs," for non-college bound students, as that phrase is used in paragraph 188 of the Complaint, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 31 on the basis that it is vague and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. The term "non-college bound students" is not defined and is especially vague and confusing given that MCSD views all of its students as college bound.

Subject to and without waiving the foregoing and General Objections, MCSD states that it offers FFA, ACE, family and consumer science, and welding. MCSD has its own horticulture project. MCSD lost its auto mechanic. It is also unable to offer a building trades program.

Interrogatory No. 32: Describe what services students in the District receive from any BOCES, and in so doing, identify the BOCES.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 32 on the basis that it is vague and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. The term “services” is undefined and vague.

Subject to and without waiving the foregoing and General Objections, MCS D states that it’s students do not received any services from a BOCES. However, when we can’t find a professional to staff a position or we only need a partial FTE was have contracted or jointly hired staff with BOCES. But, overall, our cooperation with NWBOCES is restricted to the aforementioned emergency personnel practice and group purchasing arrangements, professional development, grants and other collaborative partnerships, which support common programming

Interrogatory No. 33: Describe the District’s capital maintenance plan and budget from 1995 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 33 on the basis that it is vague and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. The temporal scope of the request is also especially unduly broad.

Subject to and without waiving the General Objections, MCS D refers defendants to budgets already in Defendants’ possession. From 1995 to 2009 MCS D followed prescribed State of Colorado statutory requirements, which mandated exact per pupil funding proportions to be distributed between “Capital” and “Insurance Reserve”, but, upon resending this requirement in 2009, we have significantly reduced “Capital” reserve amounts from \$678,000 in FY 2010 to \$378,000 in FY 2011.

Interrogatory No. 34: Describe the steps the District has taken to generate local funds to support the District’s schools, including but not limited to bonds, mill levies, or other tax increases, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 34 on the basis that it is vague, unduly burdensome and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms “steps” and “generate” are vague and potentially call for an unreasonable amount of information that is neither relevant to the claims or defenses in this matter nor reasonably calculated to lead to admissible evidence. Plaintiffs also object to this interrogatory because the information sought is already in the possession of Defendants. *See* http://www.cde.state.co.us/index_finance.htm

Subject to and without waiving the foregoing and General Objections, MCS D states that it passed a \$29.5M bond in 2007 but has not passed a mill levy override since 1997. MCS D is currently levying 13.88 % of the total program.

Interrogatory No. 35: Describe the District’s efforts to diminish truancy from 2000 to present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 35 on the basis that it is vague, unduly burdensome and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Specifically, the terms “efforts” and “truancy” are especially vague.

Subject to and without waiving the foregoing and General Objections, MCSD states that it has made the following efforts. There is a student initiated and supported effort to encourage 100% graduation rate, called “All Students Graduate.” Current students meet with new students, and continue to check in with students to help ease transition to a new school. The high school has a freshman mentoring program. At the middle and high school levels, students implement a 4 year and 10 year academic plan. In addition MCSD works to help students design and implement ACE and ICAP plans. MCSD has an alternative high school program, located within the high school. The alternate program has a social worker who works with the parents of the students enrolled in that program, to ensure successful completion of the program. The social worker also works with students in the middle school. ISST group hired a coordinator for case management for at risk students. In addition, each building has building level efforts to help students keep attendance up.

Interrogatory No. 36: Describe the District’s extended learning programs from 2000 the [sic] present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 36 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. The phrase “extended learning programs” is vague and confusing. For example, it is unclear whether the phrase calls for programs provided after school hours, during the summer, or after a traditional student graduates from high school. To the extent Interrogatory No. 36 calls for information related to all three categories, Interrogatory No. 36 is impermissibly compound and will be counted as three separate interrogatories. Subject to and without waiving the foregoing and General Objections, MCSD incorporates its responses to Interrogatories Nos. 27 and 29.

Interrogatory No. 37: Describe the District’s actions to improve the delivery of education services to all children in the District from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Interrogatory No. 37 on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence. Interrogatory No. 37 could be read to call for discovery of literally every action of MCSD for the last ten years. Also, as explained above, any possible relevance of facts about MCSD prior to 2005 is substantially outweighed by the undue burden and expense in responding to the request. MCSD will limit the relevant timeframe in responding to Interrogatory No. 37 to 2005 to the present.

Subject to and without waiving the foregoing and General Objections, MCSD states that every action it takes is intended to improve the delivery of education services to all children. For specific examples of actions taken, see all MCSD documents in the possession of Defendants, as well as responses to Interrogatory Nos. 1-36.

DOCUMENTS REQUESTED

Document Request No. 1: All District school board meeting materials, including but not limited to minutes, agendas, resolutions, or other materials provided to school board members prior to, at, or following any school board meeting from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Request for Production No. 1 because it is vague, overbroad, and burdensome in substantive and temporal scope of its request.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 2: All documents relating to any preschool services the District provides, whether directly or indirectly, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to Request for Production No. 2 because it is vague, overbroad, and burdensome in scope and because the definition of “preschool” set forth in the Discovery Request expands the meaning of the that term to the point that it has lost its plain or intelligible meaning. The language of Request for Production No. 2 also is unintelligible – it is not clear whether it requests (1) documents that directly or indirectly related to preschool services, or (2) documents that relate to preschool services provided directly or indirectly to students.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 3: All documents concerning school transportation in the District, such as number of vehicles in the fleet, costs of fleet maintenance, and average age of the vehicles, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 4: All documents, including but not limited to plans, proposals, or studies, prepared by or for the District relating to improving the quality of education in the District.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 5: All District newsletters, brochures, bulletins, or other documents provided to parents and taxpayers (not including communications regarding individual students) from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 6: All documents concerning studies or evaluations of the factors or programs influencing student achievement in the District from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 7: All documents concerning comparison of resources and expenditures in the District with the resources and expenditures of other school districts in the State of Colorado.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 8: All documents concerning the evaluation of the performance of the District's teachers, including, without limitation, the results of such evaluations, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request on the basis that it is vague, overbroad, burdensome, and calls for the discovery of irrelevant information not calculated to lead to the discovery of admissible evidence, especially to the extent it seeks information regarding individual teachers. The District will not produce evaluations of individual teachers.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 9: All documents concerning programs, services, or resources for children "at risk of academic failure," as that phrase is used in paragraph 16 of the Complaint, implemented or adopted by the District in one or more of its schools from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 10: All documents concerning programs, services, or resources for "students with disabilities," as that phrase is used in paragraph 16 of the Complaint, other than individual education plans, implemented or adopted by the District in one or more of its schools from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 11: All documents concerning programs, services, or resources for English Language Learner students implemented or adopted by the District in one or more of its schools from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 12: All documents concerning programs, services, or resources for "students of low income families," as that phrase is used in paragraph 16 of the Complaint, implemented or adopted by the District in one or more of its schools from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 13: All documents concerning programs, services, or resources for "students of minority racial and ethnic heritage," as that phrase is used in paragraph 16 of the Complaint, implemented or adopted by the District in one or more of its schools from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 14: All documents concerning "vocational and other education programs," as that phrase is used in paragraph 188 of the Complaint, for non-college bound students implemented or adopted by the District in one or more of its schools from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 15: All documents concerning gifted and talented programs, services, or resources implemented or adopted by the District in one or more of its schools from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 16: All documents concerning programs or efforts to enhance parent involvement with their children's education from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 17: All documents concerning presentations given by District leaders, including but not limited to school board members, the District's Superintendent, the District's

Chief Financial Officer, or the District's business manager, regarding District budget and finances.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 18: All documents concerning the District's annual budgets and expenditures, including school-level budgets and expenditures (other than the budgets submitted to the Colorado Department of Education) from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

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

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 20: All documents concerning "school district accountability committees."

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 21: All studies regarding the school funding system in this State.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 22: All documents relating to your alleged inability to hire highly qualified administrators, teachers and paraprofessionals, as set forth in paragraph 182 of the Complaint, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 23: All documents relating to your allegation that capital construction funding for your district is inadequate, as alleged at paragraph 190 of the Complaint.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 24: All documents relating to your allegation that you lack adequate resources, as alleged at paragraph 184 of the Complaint.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 25: All documents relating to extended learning programs from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 26: All District documents relating to truancy, including but not limited to the costs associated with truancy and any efforts to diminish truancy, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 27: All documents relating to District plans, programs, and proposals to improve the delivery of education services, from 2000 to the present.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

Document Request No. 28: All documents relied upon in answering Defendants' First Set of Interrogatories.

Response: In addition to the General Objections, Plaintiffs object to this Request for Production on the basis that it is vague, overbroad, and burdensome.

Subject to and without waiving the General Objections, responsive documents in the possession, custody, or control of MCSD are also in the possession of Defendants.

VERIFICATION

I hereby certify that I have read and reviewed the foregoing **PLAINTIFFS' COMBINED RESPONSE TO DEFENDANTS' FIRST DISCOVERY REQUESTS TO SCHOOL DISTRICT PLAINTIFFS: MOFFAT COUNTY SCHOOL DISTRICT RE: NO. 1** and know the contents thereof. I am informed, and on the basis of such information and belief allege, that the foregoing responses are true and correct, although many of the facts stated therein are not within my personal knowledge. I am authorized by MCSD to verify these responses on its behalf.

Moffat County School District Re: No. 1

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed and sworn to before me this ____ day of ____, 2010.

Witness my hand and official seal.

My commission expires: _____

Notary Public

(S E A L)

Dated December 15, 2010

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

CERTIFICATE OF SERVICE

The undersigned certifies that on the 15th day of December, 2010, a true and correct copy of the foregoing **PLAINTIFFS' COMBINED RESPONSE TO DEFENDANTS' FIRST DISCOVERY REQUESTS TO SCHOOL DISTRICT PLAINTIFFS: MOFFAT COUNTY SCHOOL DISTRICT RE: NO. 1** was served, via LexisNexis® File & Serve, addressed to the following:

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/s/ Fern O. Spangler
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