

DISTRICT COURT, DENVER COUNTY, COLORADO

Denver City and County Building
1437 Bannock St.
Denver, Colorado 80202

Plaintiff: Anthony Lobato, et al.

and

Plaintiff-Intervenors: Armandina Ortega, et al.

v.

Defendants: State of Colorado, et al.

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Case No. 2005CV4794

Ctrm: 9

PLAINTIFFS' FIRST SET OF DISCOVERY REQUESTS TO DEFENDANTS

Pursuant to C.R.C.P. 33, 34, and 36, Plaintiffs submit their First Set of Discovery Requests to Defendants. Responses and documents are due within 30 days of service at the offices of Davis Graham & Stubbs LLP, 1550 Seventeenth Street, Suite 500, Denver, Colorado 80202.

DEFINITIONS

1. “You” or “your” shall mean each Defendant, any of its attorneys, agents, or representatives, and anyone acting for or on its behalf.

2. “Plaintiffs” shall mean each Plaintiff, any of its attorneys, agents, or representatives, and anyone acting for or on its behalf.

3. “School Districts” shall mean any and all Colorado school districts and cooperative associations of school districts, such as Boards of Cooperative Educational Services, established pursuant to Art. IX, Sec. 2, of the Colorado Constitution (the “Education Clause”), any of their schools (including charter schools), attorneys, agents, representatives, officers, directors, employees, affiliates, and anyone acting for or on any of their behalves.

4. The term “public school finance system,” unless otherwise defined in a specific interrogatory or request, shall mean all sources and methods established by state or federal law and/or established or administered by any of the Defendants or the Colorado Department of Education, to provide funding for School Districts to provide the educational services required by the Colorado Constitution, state or federal law, or regulations, including, without limitation, the Public School Finance Act of 1994, all categorical funding programs, and funding for school district capital construction and facilities.

5. “Document” or “Documents” shall have the broadest meaning permitted under the Colorado Rules of Civil Procedure, and includes, without limitation, all originals, copies, non-identical copies (whether different from the original because of underlining, editing marks, notes made on or attached to such copy, or otherwise) and drafts of the following items, in each case, whether printed or recorded through a sound, video or other electronic, magnetic or digital recording system, or reproduced by hand: letters, correspondence, telegrams, telexes, memoranda, records, summaries of personal conversations or interviews, minutes or records or notes of meetings or conferences, agendas, note pads, notebooks, postcards, “Post-It” notes, stenographic notes, notes, notebooks, opinions or reports of financial advisors or consultants, opinions or reports of experts, projections, financial or statistical statements or compilations, contracts, agreements, appraisals, analyses, purchase orders, confirmations, publications, articles, books, pamphlets, circulars, microfilm, microfiche, reports, studies, logs, surveys, diaries, calendars, appointment books, maps, charts, graphs, bulletins, photostats, speeches, data sheets, pictures, photographs, illustrations, blueprints, films, drawings, plans, tape recordings, videotapes, disks, diskettes, data tapes or readable computer-produced interpretations, or transcriptions thereof, electronically transmitted messages (“email”), voice-mail messages, interoffice communications, advertising, packaging and promotional materials and any other

writings, papers, and tangible things of whatever description whatsoever, including, but not limited to, any information contained in any computer or other electronic storage device, even if not yet printed in paper form, in each case, within your possession, custody, or control. "Documents" and "Document" shall also include any and all data compilations from which information can be obtained.

6. "Communication" or "Communications" shall mean any manner or means of disclosure, transfer, or exchange, and every disclosure, transfer or exchange of information, whether orally or by Document (including, but not limited to, by electronic means), and whether face-to-face, in person, by telephone, telecopy, mail, delivery service, personal delivery, email, or otherwise, and includes correspondence, memoranda, reports and records of telephone calls, reports of meetings, and all accounts or summaries of oral conversations.

7. The term "person" means any individual, corporation, partnership, proprietorship, association, organization, private entity, governmental entity, or group of persons.

8. The term "third-party" shall mean any individual or entity, that is not a party to this action, including any of its parent corporations, predecessors in interest, subsidiaries, joint ventures, any acquired assets or business units, any other legal entities that are wholly or partly owned or controlled by that third-party, and any present or former directors, officers, members, employees, agents, representatives, attorneys, and/or all other persons acting, or purporting to act, on its behalf, collectively and individually.

9. "Identify," when applied to a person, requires that you give the person's full name, residence address, residence telephone, business or occupation, job title or description, employer, business address and business telephone. If you do not have current information on the person being identified, then give their last known residence address, residence telephone, etc.

10. "Identify," when referring to a business, organization, or other entity means to give the legal name of the entity, a description of its nature (e.g., corporation, partnership, joint venture, etc.), any business or assumed name under which it does business, its principal place of business and the address of the office(s).

11. "Identify," when used in reference to a document, requires that you (regardless of whether you may assert a privilege or other objection to its disclosure) describe the document (i.e., whether it is a letter, memorandum, contract, etc.) and state its date, the name of the person or persons whose signatures are affixed or for whom signature lines were prepared if the document was unsigned, the person who prepared it, the person to whom it was addressed and/or prepared for, a short synopsis of the document's contents, and to otherwise describe it with sufficient detail to meet the requirements for its inclusion in a Colo. R. Civ. P. 34 request for production, and also requires that you identify all persons known to you to have control or possession of such documents or copies thereof.

12. “Identify,” when used in reference to a misrepresentation, a statement, or information requires you to describe such misrepresentation, statement, or information with particularity as required by Colo. R. Civ. P. 9(b).

13. “Describe with particularity” or “state with particularity,” when used in reference to a matter of fact means to state every material fact and circumstance specifically and completely (including, but not limited to, date, time, location, and the identity of all participants), and whether each such fact or circumstance is stated on knowledge, information, or belief, or is alleged without foundation.

14. “Describe with particularity” or “state with particularity,” when used in reference to a matter of law is directed to your attorney and means to state every relevant legal theory and material conclusion of law specifically and completely and to cite the principal authorities relied upon in support of each.

15. The terms “refer,” “relate,” “concern,” “referring,” “relating,” or “concerning” shall be construed in the broadest sense to mean information (1) referring to, describing, evidencing, constituting, embodying, or otherwise discussing in any way the subject matter identified in a request; (2) which contains or comprises any communication (including representations, requests, demands, studies, analyses, and the like) referred to in these requests; or (3) information which discusses, mentions or refers, whether directly or indirectly, to the subject matter of the request.

16. “And” and “or” shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible.

17. The terms “any” and “all” shall be considered to include “each and every.”

18. Unless otherwise stated, these discovery requests concern any documents, communications, or other materials from 2000 to the present.

19. The term “Incident” includes the circumstances and events surrounding the public school finance system and the alleged Constitutional violation giving rise to this action or proceeding.

INSTRUCTIONS

1. When a document, data, knowledge, or information within your possession, custody, or control is requested, such request includes all documents, data, knowledge, or information of, or in the possession or custody of you, whether in a personal or professional capacity, your attorneys, accountants, agents, representatives, and experts, and any professional employed or retained by you, whether in your personal or professional capacity.

2. A complete, legible, and accurate copy of any document requested may be produced in lieu of producing the original document itself.

3. The documents responsive to this request shall be produced in such a manner so as to indicate clearly the identity of the file from which they were produced.

4. With respect to the documents produced, you are to:

- a. Produce them as they are kept; or
- b. Organize and label them to correspond with each numbered paragraph of this Document Request in response to which such documents are produced.

5. If any of the documents to be produced cannot be produced in full, produce each document to the extent possible, specifying the reason for the inability to produce the remainder of any document.

6. To the fullest extent permitted by the Colorado Rules of Civil Procedure, this request shall be deemed continuing so as to require further supplemental production in the event that you, or any attorney, agent, representative, or professional employed by you, obtains or discovers additional documents between the time of initial production and the conclusion of this proceeding.

7. If you object to any of the requests herein, whether in whole or in part, on the grounds that information sought therein is subject to a claim of attorney-client privilege, work product immunity, or any other privilege or immunity, you shall produce as much of the document concerned as to which no claim of privilege or immunity is made. With respect to documents or portions of documents for which a claim of privilege or immunity is made, state the following:

- a. the type and nature of the document or communication;
- b. the date of the document;
- c. the person(s) in receipt of the document or the person(s) present during the communication;
- d. the person(s) who authored or created the document or the person(s) who made the communication;
- e. the person(s) to whom such document or communication was made;
- f. the general subject matter of the document or communication in a manner sufficient to support the privilege or immunity claimed;

- g. the nature of the privilege or immunity asserted and/or the specific reason why the document is not being produced; and
- h. the same information referenced in a-g above for each enclosure to each listed document if the enclosure also is withheld from production.

8. An objection or claim of privilege or immunity directed to part of a request does not constitute an excuse for failure to respond to the parts of a request for which no objection or claim of privilege or immunity is made.

9. If any document responsive to any request for production has been lost, destroyed, or otherwise disposed of, such document is to be identified as completely as possible, including the following information: contents; author(s); recipient(s); sender(s); copied recipients (indicated or blind); date prepared or received; date of disposal; manner of disposition; person(s) currently in possession of the document; and person(s) disposing of the document.

10. If any document responsive to any request for production has been lost, destroyed, or otherwise disposed of, identify any and all persons who participated in, or were involved in, the decision to destroy or dispose of such document, any document retention or destruction policy under which such document was destroyed or disposed of, and any and all persons who participated in, or were involved in, the formulation of any such policy, the reason for the destruction or disposition of such document, and the date (approximate, if precise date is not known) of the destruction or disposition of such document.

11. In response to these discovery requests, please restate the text of each discovery request before the corresponding response.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that the General Assembly has defined by statute the “thorough and uniform system of free public schools” required by Article IX, Section 2, of the Colorado Constitution (the “Education Clause”).

REQUEST FOR ADMISSION NO. 2: Admit that the public school finance system applies uniformly to all Colorado school districts and the claims raised in this action are common to all school districts.

REQUEST FOR ADMISSION NO. 3: Admit that the General Assembly has failed to establish a public school finance system that assures that sufficient financial resources are available to meet the mandate of the Education Clause.

REQUEST FOR ADMISSION NO. 4: Admit that the General Assembly has failed to establish a public school finance system that is rationally related to the mandate of the Education Clause.

REQUEST FOR ADMISSION NO. 5: Admit that the State has never conducted a study to determine the cost to fully implement the system of public education established by statute and regulation.

REQUEST FOR ADMISSION NO. 6: Admit that the public school finance system does not provide sufficient resources for local boards of education to exercise the “control of instruction in the public schools of their respective districts,” as provided for in Art. IX, Sec. 15, of the Colorado Constitution (the “Local Control Clause”).

REQUEST FOR ADMISSION NO. 7: Admit that the State has never conducted a study to determine the cost to provide all boards of education with sufficient funding (from any sources) to exercise their authority under the Local Control Clause.

REQUEST FOR ADMISSION NO. 8: Admit that Article X, Section 20, of the Colorado Constitution, the Taxpayer’s Bill of Rights (“TABOR”) does not define or limit the substantive rights guaranteed by the Education Clause or the funding necessary to fulfill that guarantee.

REQUEST FOR ADMISSION NO. 9: Admit that the Gallagher Amendment of the Colorado Constitution (“Gallagher Amendment”) does not define or limit the substantive rights guaranteed by the Education Clause or the funding necessary to fulfill that guarantee.

PATTERN INTERROGATORIES

12.0 Investigation – General

12.2 Have YOU OR ANYONE ACTING ON YOUR BEHALF interviewed any individual concerning the INCIDENT?

If so, for each individual state:

- (a) the name, ADDRESS, and telephone number of the individual interviewed;
- (b) the date of the interview;
- (c) the name, ADDRESS, and telephone number of the PERSON who conducted the interview.

12.3 Have YOU OR ANYONE ACTING ON YOUR BEHALF obtained a written or recorded statement from any individual concerning the incident?

If so, for each statement state:

- (a) the name, ADDRESS, and telephone number of the individual from whom the statement was obtained;
- (b) the name, ADDRESS, and telephone number of the individual who obtained the statement;
- (c) the date the statement was obtained;
- (d) the name, ADDRESS, and telephone number of each PERSON who has the original statement or a copy.

15.0 Affirmative Defenses

15.1 Identify each denial of a material allegation and each affirmative defense in your pleadings and for each:

- (a) state all facts upon which you base the denial or affirmative defense;
- (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those facts;
- (c) identify all DOCUMENTS and other tangible things which support your denial or affirmative defense, and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT.

17.0 Responses to Request for Admissions

17.1 Is your response to each request for admission served with these interrogatories an unqualified admission?

If not, for each response that is not an unqualified admission:

- (a) state the number of the request;
- (b) state all facts upon which you base your response;
- (c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those facts;
- (d) identify all DOCUMENTS and other tangible things that support your response and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

NON-PATTERN INTERROGATORIES

NON-PATTERN INTERROGATORY NO. 1: Describe with particularity how Colorado's public school financing system is rationally related to accomplishing the mandate of the Education Clause.

NON-PATTERN INTERROGATORY NO. 2: Define and describe with particularity the system of public education that is required by the mandate of the Education Clause.

NON-PATTERN INTERROGATORY NO. 3: Define with particularity the amount of funding per pupil that is necessary to assure that all children have the opportunity to receive a public education that fulfills the mandate of the Education Clause.

NON-PATTERN INTERROGATORY NO. 4: Describe with particularity how the public school finance system fulfills the local control of instruction mandate of the Local Control Clause.

NON-PATTERN INTERROGATORY NO. 5: Describe with particularity the roles and responsibilities of the Colorado State Board of Education, Colorado Commissioner of Education, Colorado Governor, the Colorado Department of Education, and the Colorado General Assembly as related to fulfilling the mandate of the Education Clause.

NON-PATTERN INTERROGATORY NO. 6: State with particularity all facts, reasons and theories that support your affirmative defense, set forth in your Answer to Plaintiffs' Amended Complaint, at page 24, paragraph 2, that the Plaintiffs' Complaint fails to join necessary and indispensable parties, and identify each and every such party.

NON-PATTERN INTERROGATORY NO. 7: State with particularity all facts, reasons and theories that support your affirmative defense that any of the Plaintiffs lack standing, as alleged in your Answer to Plaintiffs' Amended Complaint, at page 24, paragraphs 3 and 4, and pages 3-4, paragraphs 16-17.

NON-PATTERN INTERROGATORY NO. 8: Describe with particularity how, if at all, Plaintiffs' claims seek an unconstitutional remedy, as alleged in your Answer to Plaintiffs' Amended Complaint, at page 24, paragraph 5.

NON-PATTERN INTERROGATORY NO. 9: Describe with particularity how, if at all, Plaintiffs' claims and requested relief violate the separation of powers, as alleged in your Answer to Plaintiffs' Amended Complaint, page 24, paragraph 6.

NON-PATTERN INTERROGATORY NO. 10: Describe with particularity how, if at all, TABOR or the Gallagher Amendment defines or limits the Education Clause.

NON-PATTERN INTERROGATORY NO. 11: State with particularity the amount of funding, and how each amount is calculated and distributed by each School District per student per school.

NON-PATTERN INTERROGATORY NO. 12: State with particularity the amount of total program funding distributed by each School District per student per school, and how each amount is calculated.

NON-PATTERN INTERROGATORY NO. 13: State with particularity the amount of local funding distributed by each School District per student per school for English language learners, gifted and talented students, and students with disabilities.

NON-PATTERN INTERROGATORY NO. 14: Identify with particularity schools within each School District that receive direct benefits of central office spending, and the form of such direct benefits, *i.e.*, specialists, special program staff, professional development.

NON-PATTERN INTERROGATORY NO. 15: For each school in each School District, state with particularity the disaggregated demographic information regarding school populations, including number and percentages of gifted and talented students, English Language Learners, special education students, migrant students, students qualifying for free lunch, and students qualifying for reduced lunch.

NON-PATTERN INTERROGATORY NO. 16: For each School District, state with particularity the disaggregated demographic information regarding School District populations, including number and percentages of gifted and talented students, English Language Learners, special education students, migrant students, students qualifying for free lunch, and students qualifying for reduced lunch.

NON-PATTERN INTERROGATORY NO. 17: For each School District, state all policies for identifying students at risk and any intervention policies or support services for such students.

NON-PATTERN INTERROGATORY NO. 18: For each School District, please state with particularity amounts spent on programs (or other items) not required by the Education Clause.

NON-PATTERN INTERROGATORY NO. 19: Identify with specificity any and all education programs required or permitted by statute or regulation that you believe are not required to fulfill the mandate of the Education Clause.

NON-PATTERN INTERROGATORY NO. 20: Identify with specificity any and all education programs provided by any school or school district that you believe are not required to fulfill the mandate of the Education Clause.

NON-PATTERN INTERROGATORY NO. 21: Identify with specificity any and all funding provided through the public school finance system for any purpose or use that is not required to fulfill the mandate of the Education Clause.

NON-PATTERN INTERROGATORY NO. 22: Identify with specificity any non-Plaintiff school districts, and non-Plaintiff witnesses from such school districts, which you intend to rely upon for any of your defenses.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: All documents relating to your responses to the interrogatories above, whether or not such documents support your position, specifying the interrogatory to which such documents relate.

REQUEST FOR PRODUCTION NO. 2: All documents (regardless of the source from which you obtained them) which support or are related to any of Plaintiffs' claims or your defenses.

REQUEST FOR PRODUCTION NO. 3: All documents that you have received from or through any School District in response to any Colorado Open Records Act request served by you (including your attorneys).

REQUEST FOR PRODUCTION NO. 4: All documents prepared by or for the Legislative Joint Budget Committee concerning public school finance, finance policy, or other considerations affecting public school funding, and education reform.

REQUEST FOR PRODUCTION NO. 5: All documents prepared by or for the Colorado Legislative Council concerning public school finance, finance policy, or other considerations affecting public school funding, and education reform.

REQUEST FOR PRODUCTION NO. 6: All documents and reports prepared by or for the Colorado House or Senate Education Committees and any interim committees (including, without limitation, the school finance, long term fiscal stability, and early childhood interim committees) concerning public school finance, finance policy or other considerations affecting public school funding, and education reform.

REQUEST FOR PRODUCTION NO. 7: All documents prepared by or for the Governor's P-20 Coordinating Council or any committees or subcommittees thereof concerning public school finance, finance policy or other considerations affecting public school funding, and education reform.

REQUEST FOR PRODUCTION NO. 8: Legislation, legislative history, fiscal notes, and documents evidencing, analyzing, or describing legislation affecting public school finance and education reform from 1988 to the present, including, but not limited to, school finance bills, the Long Bills, the Gallagher Amendment, and TABOR.

REQUEST FOR PRODUCTION NO. 9: Documents evidencing, analyzing, or describing the use of gifts, grants, donations, or in-kind support as a source for funding public education and accounting, including, but not limited to, applications for and accounts of gifts, grants, donations, or in-kind support.

REQUEST FOR PRODUCTION NO. 10: Documents evidencing, analyzing, or describing the use of public school lands fund monies.

REQUEST FOR PRODUCTION NO. 11: The Colorado “Race to the Top” applications, drafts thereof, supporting exhibits, and documents describing, analyzing, or used or prepared in connection with the preparation thereof.

REQUEST FOR PRODUCTION NO. 12: Speeches, reports, presentations, or publications by members of the legislature, the State Board of Education, the office of the Governor, members of the Joint Budget Committee, members of the House or Senate Education Committees, the Commissioner of Education, or employees of the Colorado Department of Education concerning public school finance, finance policy, or other considerations affecting public school funding and education reform.

REQUEST FOR PRODUCTION NO. 13: All documents relating to state education standards, including, but not limited to, differences between state standards and other School Districts standards (*e.g.*, Denver Public School District) regarding data evaluation pertaining to such standards.

REQUEST FOR PRODUCTION NO. 14: All documents relating to the Colorado Consolidated State Plan adopted to comply with the requirements of the No Child Left Behind Act of 2001.

REQUEST FOR PRODUCTION NO. 15: All documents, including, but not limited to, any studies, related to the Preschool to Postsecondary Education Alignment Act (“Cap4K”), C.R.S. §§ 22-7-1001, *et seq.*

REQUEST FOR PRODUCTION NO. 16: All documents related to the Education Accountability Act of 2009, C.R.S. §§ 22-11-101, *et seq.*

REQUEST FOR PRODUCTION NO. 17: All documents related to the Colorado student assessment program or CSAP.

REQUEST FOR PRODUCTION NO. 18: All documents related to the English Language Proficiency Act, C.R.S. §§ 22-24-102, *et seq.*

REQUEST FOR PRODUCTION NO. 19: All documents related to the School District Organization Act, C.R.S. §§ 22-30-101, *et seq.*

REQUEST FOR PRODUCTION NO. 20: All documents related to the Colorado Preschool Program Act, C.R.S. §§ 22-28-101, *et seq.*

REQUEST FOR PRODUCTION NO. 21: All documents related to the Exceptional Children's Education Act, C.R.S. §§ 22-20-101, *et seq.*, and the federal Individuals with Disabilities Education Act.

REQUEST FOR PRODUCTION NO. 22: All documents related to the Building Excellent Schools Act, C.R.S. §§ 22-43.7-101, *et seq.*

REQUEST FOR PRODUCTION NO. 23: All documents related to Colorado Senate Bill SB 10-191 (2010).

REQUEST FOR PRODUCTION NO. 24: All documents related to the Education Clause, Local Control Clause, or Amendment 23 of the Colorado Constitution.

REQUEST FOR PRODUCTION NO. 25: All documents related to Parts 4, 5, 6, 7, and 10 of the Educational Accountability statutes, C.R.S. Title 22, Article 7.

REQUEST FOR PRODUCTION NO. 26: All documents relating to resources and funding for Categorical Programs, including, but not limited to, Special Education, Capital Construction, Transportation, Preschool, Gifted and Talented, and English Language Learners.

REQUEST FOR PRODUCTION NO. 27: All documents related to the Education Accountability Act of 2009, and its predecessor, the Educational Accreditation Act of 1998.

REQUEST FOR PRODUCTION NO. 28: All documents related to the Safe Schools Act, C.R.S. § 22-32-109.1.

REQUEST FOR PRODUCTION NO. 29: All documents related to the Accountability for Alternative Schools Act, § 22-7-604.5, C.R.S. (2009).

REQUEST FOR PRODUCTION NO. 30: All documents related to the Colorado Commission on Higher Education, § 23-1-113, C.R.S. (2009).

REQUEST FOR PRODUCTION NO. 31: All documents from any audits conducted by any agency for any department or program related to public education.

REQUEST FOR PRODUCTION NO. 32: All documents related to charter schools, including institute of charter schools, funding for charter schools, and charter school accountability.

Dated: July 15, 2010

DAVIS GRAHAM & STUBBS LLP

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



/s/ Kenzo Kawanabe

Kenzo Kawanabe, No. 28697

Terry Miller, No. 39007

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that on the 15th day of July, 2010, a true and correct copy of the foregoing PLAINTIFFS' FIRST SET OF DISCOVERY REQUESTS TO DEFENDANTS was served via LexisNexis®, addressed to the following:

Office of the Attorney General
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Monica Marquez
Antony B. Dyl
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Denver, CO 80211

Patricia R. Henson

/s/ Patricia R. Henson

Patricia R. Henson

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