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# APPENDIX A

<p>DISTRICT COURT, DENVER COUNTY, COLORADO Denver City and County Building 1437 Bannock St. Denver, Colorado 80202</p>	<p><b>EFILED Document</b> <b>CO Denver County District Court 2nd JD</b> <b>Filing Date: Dec 9 2011 3:54PM MST</b> <b>Filing ID: 41327315</b> <b>Review Clerk: Rafaelita M Almazan</b></p> <p>▲ COURT USE ONLY ▲</p>
<p><b>Plaintiffs:</b> ANTHONY LOBATO, et al., and <b>Plaintiff-Intervenors:</b> ARMANDINA ORTEGA, et al.  v. <b>Defendants:</b> THE STATE OF COLORADO, et al.</p>	<p>Case No. 2005CV4794  Div. 424</p>
<p><b>FINDINGS OF FACT AND CONCLUSIONS OF LAW</b></p>	

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## **INTRODUCTION**

This is an action for declaratory and injunctive relief brought pursuant to C.R.C.P. 57 and 65 and the Uniform Declaratory Judgments Law, C.R.S. §§13-51-101, *et seq.*

Plaintiffs claim that as a result of irrational and inadequate funding of public education, Defendants are failing to provide for a “thorough and uniform system” of public education and that the public school finance system fails to provide the financial resources necessary for local boards of education to exercise control of instruction in their schools. Therefore, Plaintiffs claim that Colorado’s public school finance system violates their rights guaranteed by article IX, sections 2 and 15 of the Colorado constitution.

This case is on remand from the Colorado Supreme Court decision in *Lobato v. State of Colorado*, 218 P.3d 358 (CO 2009) (*Lobato*). The issue before this Court is whether the Colorado system of public school finance “is not rationally related to the constitutional mandate of a ‘thorough and uniform’ system of public education.”

## **FINDINGS OF FACT**

### **I. THE PARTIES**

#### **A. Individual Plaintiffs**

1. Each of the following “Individual Plaintiffs” is a resident of the State of Colorado, a resident and taxpayer of the specifically identified school district, and is the parent and/or guardian of the child or children identified hereinafter:

a. Lillian N. Leroux, Sr. is a resident of School District No.14 in the County of Adams. Her granddaughter Lillian is a student at Adams City High School. Her daughters Alixandra and Amber are students at Adams City Middle School. Her daughter Ashley receives educational services at a day treatment program at the Community Reach Center.

b. Stephen Topping is a resident of Boulder Valley School District No. RE-2. His son Michael is a student at Southern Hills Middle School.

c. Debbie Gould is a resident of Boulder Valley School District No. RE-2. Her daughter Hannah Gould is a student at Fairview High School; her son Ben Gould is a student at Summit Middle School; her son Daniel Gould is a student at Mesa Elementary School.

d. Theresa Wrangham is a resident of Boulder Valley School District No. RE-2. Her daughter, Rachel, is in transition services in Boulder Valley School District.

e. Anthony Lobato is a resident of Center Consolidated School District No. 26JT. His child Taylor Lobato is a graduate of Center High School; his daughter Alexa Lobato is a student at Center High School.



f. Denise Lobato is a resident of Center Consolidated School District No. 26JT. Her child Taylor Lobato is a graduate of Center High School; her daughter Alexa Lobato is a student at Center High School.

g. Maria Villagomez is a resident of Center Consolidated School District No. 26JT. Her son Chris Villagomez is a graduate of Center High School; her daughter Monique Villagomez is a graduate of Center High School; her son Angel Villagomez is a student at Skoglund Middle School.

h. Pantaleón Villagomez is a resident of Center Consolidated School District No. 26JT. His son Chris Villagomez is a graduate of Center High School; his daughter Monique Villagomez is a graduate of Center High School; his son Angel Villagomez is a student at Skoglund Middle School.

i. Linda Warsh is a resident of Center Consolidated School District No. 26JT. Her son Adam Warsh and daughters Karen and Ashley Warsh are graduates of Center High School.

j. Miguel Cendejas is a resident of Center Consolidated School District No. 26JT. His daughter Natalia is a student at Haskin Elementary School; his daughter Salma is a student at Skoglund Middle School.

k. Lisa Calderon is a resident of School District No. 1 in the County of Denver. Her daughter Savannah Smith is a student at Denver Center for International Studies.

l. Jessica Spangler is a resident of School District No. 1 in the County of Denver. Her son Rider Donovan Spangler was formerly a student at Tennyson Center for Children, a private special education placement paid for by the district. Rider is currently receiving home instruction.

m. Herbert Conboy is a resident of Pueblo County School District 70. He is the legal guardian of Keila Barish, a graduate of Pueblo West High School; his son Timothy Conboy is a graduate of Pueblo West High School; his daughter Tabitha Conboy is a student at Pueblo West High School.

n. Victoria Conboy is a resident of Pueblo County School District 70. She is the legal guardian of Keila Barish, a graduate of Pueblo West High School; her son Timothy Conboy is a graduate of Pueblo West High School; her daughter Tabitha Conboy is a student at Pueblo West High School.

o. Terry Hart is a resident of Pueblo County School District 70. His daughter Katherine Hart is a student at Pueblo County High School.

p. Anne Kathleen Howe-Kerr is a resident of Pueblo County School District. Her daughter Lauren Howe-Kerr is a student at Pueblo West High School; her son Luke Howe-Kerr is a student at The Connect Charter School.

q. Larry Howe-Kerr is a resident of Pueblo County School District 70. His daughter Lauren Howe-Kerr is a student at Pueblo West High School; his son Luke Howe-Kerr is a student at The Connect Charter School.

r. Jennifer Pate is a resident of Pueblo County School District 70. Her son Ethan Pate is a student at The Connect Charter School; her daughter Evelyn Pate is a student at The Connect Charter School; her daughter Adeline Pate is a student at Sierra Vista Elementary School.

s. Blanche J. Podio is a resident of Pueblo County School District 70. Her son Robert T. Podio is a graduate of Pueblo West High School; her daughter Samantha Podio is a student at Pueblo West High School.

t. Robert L. Podio is a resident of Pueblo County School District 70. His son Robert T. Podio is a graduate of Pueblo West High School; his daughter Samantha Podio is a student at Pueblo West High School.

u. Tim Hunt is a resident of Woodlin School District No. R-104 in Washington County. His child Darean Hunt is a student at Woodlin Undivided High School; his child Jeffrey Hunt is a student at Woodlin Elementary School.

v. Sabrina Hunt is a resident of Woodlin School District No. R-104. Her child Darean Hunt is a student at Woodlin Undivided High School; her child Jeffrey Hunt is a student at Woodlin Elementary School.

w. Doug Vondy is a resident of Woodlin School District No. R-104. His step-son Kyle Leaf is a student at Woodlin Undivided High School; his daughter Hannah Vondy is a student at Woodlin Elementary School.

x. Denise Leaf Vondy is a resident of Woodlin School District No. R-104. Her son Kyle Leaf is a student at Woodlin Undivided High School; her daughter Hannah Vondy is a student at Woodlin Elementary School.

y. Brad Weisensee is a resident of Woodlin School District No. R-104. His son Joseph is a student at the Woodlin School; his daughter Anna is a student at the Woodlin School; his daughter Amy is a student at the Woodlin School; his son Elijah Weisensee is a student at Woodlin School.

z. Traci Weisensee is a resident of Woodlin School District NO. R-104. Her son Joseph is a student at the Woodlin School; her daughter Anna is a student at the Woodlin School; her daughter Amy is a student at the Woodlin School; her son Elijah Weisensee is a student at Woodlin School.

8/3/11 Order Approving Parties' Stipulations Regarding Undisputed Facts ("Stipulated Facts") ¶1.

2. Each Individual Plaintiff brings suit on his or her own behalf and on behalf of his or her child or children. Stipulated Facts ¶1.

**B. School District Plaintiffs**

1. The twenty-one “School District Plaintiffs” include: Jefferson County School District No. R-1; Colorado Springs, School District No. 11, in the County of El Paso; Bethune School District No. R-5; Alamosa School District No. RE-11J; Centennial School District No. R-1; Center Consolidated School District No. 26JT in the Counties of Saguache and Rio Grande and Alamosa; Creede Consolidated School District No. 1 in the County of Mineral; Del Norte Consolidated School District No. C-7; Moffat School District No. 2 in the County of Saguache; Monte Vista School District No. C-8; Mountain Valley School District No. RE 1; North Conejos School District No. RE-1J; Sanford School District No. 6 in the County of Conejos; Sangre de Cristo School District No. RE-22J; Sargent School District No. RE-33J; Sierra Grande School District No. R-30; South Conejos School District No. RE-10; Aurora, Joint District No. 28 of the Counties of Adams and Arapahoe; Moffat County School District Re: No. 1; Montezuma-Cortez School District No. RE-1; and Pueblo, School District No. 60 in the County of Pueblo and State of Colorado. Stipulated Facts ¶2.

2. Each of the School District Plaintiffs is a body corporate and subdivision of the State of Colorado exercising independent powers exclusively delegated to school districts by article IX, section 15 of the Colorado Constitution. Stipulated Facts ¶3.

**C. Plaintiff-Intervenors**

1. Plaintiff-Intervenors include Armandina Ortega, individually and as next friend for her minor children S. Ortega and B. Ortega; Gabriel Guzman, individually and as next friend for his minor children G. Guzman, Al. Guzman and Ar. Guzman; Roberto Pizano, individually and as next friend for his minor children Ar. Pizano and An. Pizano; Maria Piña, individually and as next friend for her minor children Ma. Piña and Mo. Piña; Martha Lopez, individually and as next friend for her minor children S. Lopez and L. Lopez; M. Payan, individually and as next friend for her minor children C. Payan, I. Payan, G. Payan and K. Payan; Celia Leyva, individually and as next friend for her minor children Je. Leyva and Ja. Leyva; and Abigail Diaz, individually and as next friend for her minor children K. Saavedra and A. Saavedra. Pl. Intvs.’ First Am. Pet. In Intv.

a. Armandina Ortega’s children attend public schools in the Rocky Ford R-2 School District. Tr. Day 15, 3829-2832. S. Ortega is a 10th grade student at Rocky Ford Junior/Senior High School and desires to attend college and become an immigration attorney. Tr. Day 15, 3831:5-6; 3835:1-4. B. Ortega is a 9th grade student at Rocky Ford Junior/Senior High School. Tr. Day 15, 3830:22-3831:4. Ms. Ortega desires that all of her children graduate from high school and be prepared to attend and complete college. Tr. Day 15, 3854:7-3855:6.

b. Roberto Pizano’s children attend public schools in the Rocky Ford R-2 School District. Ar. is an 11th grade student at Rocky Ford Junior/Senior High School and desires to attend college and become a dentist Tr. Day 15, 3862:1-3, 3864:8-15, 3872:12-15. An. attends Jefferson Intermediate School. Mr. Pizano also has a young daughter who attends preschool at Child Development Services (CDS). Tr. Day 15, 3861:4-13. Mr. Pizano desires that all of his children graduate from high school and be prepared to attend and complete college. Tr. Day 15, 3872-3873.

c. Gabriel Guzman's children attend public schools in the Rocky Ford R-2 School District. Sealed Exs. 20011-20012. G. is a 8th grade student at Rocky Ford Junior/Senior High School. Al. is a 3rd grade student at Jefferson Intermediate School. Ar. Attends preschool at CDS. *Id.*

d. Maribel Payan's children attend public schools in the Sheridan 2 School District. Tr. Day 14, 3666:12-17. K. Payan is a 5th grade student at Fort Logan Elementary School. Tr. Day 14, 3670:25-3671:10. G. Payan is a 7th grade student at Sheridan Middle School. Tr. Day 14, 3674:4-15. I. Payan is fifteen years old and attended Sheridan High School, but now attends a charter high school. Tr. Day 14, 3677:3-4, 3681:2-4. C. Payan is an 11th grade student at Sheridan High School. Tr. Day 14, 3680:25-3681:7. Ms. Payan desires that all of her children graduate from high school and be prepared to attend and complete college. Tr. Day 14, 3689:9-13.

e. Martha Lopez's children attend public schools in the Sheridan 2 School District. S. is a 3rd grade student at Alice Terry Elementary School. Sealed Exs. 20013-20014. L. is a 10th grade student at Sheridan High School. *Id.*

f. Maria Piña's children attend public schools in the Sheridan 2 School District. Child Ma. Piña is a 10th grade student at Summit High School. Sealed Exs. 20023-20024. Child Mo. Piña is a 5th grade student at Ft. Logan Elementary School. *Id.*

g. Abigail Diaz's children attend public schools in Weld County School District 6 in Greeley, Colorado. Tr. Day 16, 4112:9-16. R. is an 11th grade student in Greeley Evans Alternative Program and hopes to be a doctor (GAP). Tr. Day 16, 4117:18-24, 4118:18-25. K. is a 9th grade student at Northridge High School. Tr. Day 16, 4123:8-4124:5. A. is a 1st grade student at Billy Martinez Elementary School and desires to be an attorney. Tr. Day 16, 4131:9-16, 4132:7-10. Ms. Diaz desires that all of her children graduate from high school and be prepared to attend and complete college and become professionals and productive citizens. Tr. Day 14, 4139:13-4142:1.

h. Celia Leyva's children attend public schools in Mapleton Public Schools. Ja. is a 3rd grade student at Welby Montessori School and hopes to be an FBI agent. Tr. Day 17, 4232:5-12, 4237:13-15. Je. is a 6th grade student at Welby Montessori School and hopes to be a doctor. Tr. Day 17, 4233:11. Ms. Leyva desires that all of her children graduate from high school and be prepared to attend and complete college. Tr. Day 17, 4249:10-4250:13.

2. Each of the plaintiff-intervenor children is a child identified on the free and reduced priced lunch program and is, or was previously, identified as an English Language Learner (ELL) student under Colorado law. Tr. Day 15, 3828:13-15, Sealed Exs. 20017-20018 (Ortega); Tr. Day 15, 3859:23-25, 3863:22-3864:4, 3865:18-3866:10, Sealed Exs. 20024-20026 (Pizano); Sealed Exs. 20020-20022 (Payan); Tr. Day 16, 4115:6-11, 4116:23-4117:3, Sealed Exs. 20027-20028 (Diaz); Tr. Day 17, 4231:8-10, 4237:1-6, 4241:3-8, Sealed Exs. 20015-20016, Ex. 908 (Leyva); Sealed Exs. 20011-20012 (Guzman); Sealed Exs. 20023-20024 (Piña); Sealed Exs. 20013-20014 (Lopez).

3. Short descriptions of the school districts attended by Plaintiff-Intervenor children follow.

a. **Sheridan 2 School District (Sheridan)** is located within the center of the Denver metropolitan area and sits in three jurisdictions: City of Englewood, unincorporated Arapahoe County and the City of Sheridan. 3547:17-3548:4. Sheridan has four schools: Early Childhood Center, Alice Terry (Grades K-2), Fort Logan (Grades 3-5), Sheridan MS (Grades 6-8), and Sheridan HS (Grades 9-12). 3553:17-24

Each of the neighborhoods in Sheridan is low income, including the Fort Logan community where there are dire housing situations and mostly apartment buildings in need of maintenance. 3551:15-3552:3.

Sheridan's demographics have changed over the past 15 years, from a predominantly Anglo community to a predominantly Hispanic community. Sheridan's per capita income is approximately \$16,000, which is considerably lower than other areas. 3550:8-21. Many of the Sheridan parents work in tough labor positions, paving companies, and in the restaurant, food and hotel industries. 3553:10-15.

The student population of Sheridan is 1,651, which had fallen previously, but since 2008 the enrollment has increased 6.9%. In the 2010-2011 school year, Sheridan 2 School District was 81.9% minority and 72.1% Hispanic. Ex. 5901, at Tbl. 4; Tr. Day 16, 4176:19-21. Latino students comprise about 78%, Anglos 18-20% and the remainder: Native American, Asian and African American, as well as a growing community from East Africa. Most of the East African immigrant students come from refugee camps. 3553:25-3555:14.

For the fall of the 2010-11 school year, Sheridan enrolled 178 special education students, 136 homeless and 623 ELLs. The homeless population is likely an underestimate because parents are too proud to report their status as homeless. Tr. Day 14, 3556:7-3557:19; Ex. 152. A more accurate estimate for the homeless population is about 15% of the student population. 3560:23-3561:4.

In the 2010-11 school year, 75.7% of students in the Sheridan qualified for free or reduced lunch. Ex. 5901 at Tbl. 5; Tr. Day 16, 4178:9-10. The percent on the reduced priced lunch program standing alone is just under 6%. Like the homeless population, the percentage of students on the FRLP is likely an underestimate because of the pride factor and the number is more likely in the range of 90%. 3563:8-18.

ELL students comprise approximately 45% (753) of Sheridan's student population. Of that number, approximately 20% are NEP and 67% are LEP. 3566:4-20.

Sheridan's mobility rate ranged from 25% to 35%. 3551:8-14.

Sheridan Superintendent Michael Clough has a Master's degree in school administration, a superintendent's license, and is in his fourth year as superintendent of Sheridan. In Colorado public schools, he has held positions as a teacher, counselor, coach, principal, superintendent and regional manager for the Colorado Department of Education ("CDE"). Tr. Day 14, 3535:5-3536:19; Ex. 20001.

b. **Weld County School District 6/Greeley-Evans School District 6 (Greeley)** is located in the plains in Weld County, Colorado, with a population of approximately 100,000. A U.S. Census Bureau survey of communities over 65,000 in Colorado found Greeley to have the second highest rate of childhood poverty. Tr. Day 16, 3990:11-25; 3991:23-25.

Greeley has a diverse economic and real estate community, ranging from the Promontory Office Park with the corporate headquarters for State Farm and JBS Beef and nice single-family home subdivisions in western Greeley to a meat-packing plant and older homes and trailer parks in eastern Greeley. *Id.* 3991:1-23.

Greeley's demographics have changed dramatically over the years, having become a 50% minority student school district in 2005-06 and now enrolling 67% minorities, with Hispanics comprising the majority of the racial minority students. *Id.*, 3992:15-24. 58.3% Greeley students are Hispanic. Ex. 5901 at Tbl. 4; Tr. Day 16, 4177:5-6.

Greeley is the 13<sup>th</sup> largest district in Colorado with a total enrollment of about 19,500, 18,800 of which are full-time equivalents (FTE). Approximately 10% of its students are identified as special education, and its low income students have increased to over 60%, including 1,453 students on the reduced price lunch program, or 7.6%. ELL students comprise 25% of the student population. Greeley also has experienced the enrollment of new immigrants from Somalia, Burma and other parts of East Africa. *Id.*, 3992:1-3995:24; 3997:9-19.

Greeley has a mobility rate of 30%, which brings challenges because the district has to determine where students are academically and what kind of services they need. Tr. Day 16, 4051:22-4052:21.

c. **Mapleton 1 School District (Mapleton)** is located just north of Denver in between Westminster and Commerce City and south of Thornton and Adams County School District 12. The district is 25 square miles and has 17 schools. The demographics of the community in which Mapleton sits has changed over the years from an Italian truck-farming community to a diverse light industrial, aging community composed of about 70% senior citizens. Tr. Day 17, 4340:20-4341:24.

Mapleton enrolls about 8,000 students per year, including an online contract school that serves students across the state, which makes the district the fastest-growing district in Colorado. Not including the online students, about 70% of Mapleton students are Hispanic, over 60% are ELL and 60.2% of students in Greeley qualified for free or reduced lunch in the 2010-11 school year. Ex. 5901 at Tbl. 5; Tr. Day 16, 4178:18-20.

In 2010, of the 7,634 students in PK-12, the district identified 173 as GT, 665 as special education, and 176 as homeless. *Id.*, 4344:13-4346:14.

Mapleton Superintendent Charlotte Ciancio holds a masters degree from the University of Colorado in Boulder and is pursuing her doctorate. Ms. Ciancio had her first teaching job as a teacher in Mapleton and also worked as a coordinator for special education services, a principal, an executive director of learning services and is now in her 11<sup>th</sup> year as superintendent of Mapleton. Tr. Day 17, 4331-4335.

d. **Rocky Ford R-2 School District (Rocky Ford).** Rocky Ford is a small, rural town in Otero County, Colorado. Tr. Day 14, 3826:11-16. Generally, people in Rocky Ford work in the fields. *Id.*, 3858:20-22.

Rocky Ford School District is the second largest school district in Otero County, enrolling 862 students in grades PK-12 in the fall of 2010. In the 2010-2011 school year, Rocky Ford R-2 School District was 71.7% minority and 69% Hispanic. Ex. 5901, at Tbl. 4; Tr. Day 16, 4176:22-4177:4.

Approximately 23 students were identified as gifted and talented, 99 as special education, and 89 as ELL. Ex. 152. In the 2010-11 school year, 76% of students in Rocky Ford qualified for free or reduced lunch, including 11.8% on the reduced-priced lunch program. Ex. 5901 at Tbl. 5; Tr. Day 16, 4178:11-17.; Ex. 20146. This was 3% higher than the 75.5% in 2008. Ex. 20031.

## **D. Defendants**

1. Defendant the State of Colorado is a body politic. Stipulated Facts ¶4.
2. Pursuant to article IX, section 1 of the Colorado Constitution and legislation enacted pursuant thereto, the Defendant Colorado State Board of Education (State Board) exercises the “general supervision of the public schools of the state” and appoints the Commissioner of Education. Stipulated Facts ¶ 5.
3. Robert K. Hammond, in his official capacity as the Commissioner of Education (“Commissioner”), is the chief state school officer and executive officer of the Colorado Department of Education (“CDE”). Stipulated Facts ¶6.
4. John Hickenlooper, in his official capacity as Governor, is vested with the supreme executive power of the state and charged with the duty to take care that the laws be faithfully executed. Stipulated Facts ¶7.

## **II. A THOROUGH AND UNIFORM SYSTEM OF PUBLIC EDUCATION**

### **A. The Importance of a Public Education**

1. Public education is one of if not the most important functions of Colorado state government. It is critical for individuals, business, and society that we have a well-educated populace. *See, e.g.*, 8/31/11 Trial Testimony of Sen. Ben Alexander (“Alexander Trial Tr.”) 6332:22-6333:7, 6335:6-13; 9/1/11 Trial Testimony of Sen. John Andrews (“Andrews Trial Tr.”) 6353:16-6354:16, 6372:21-24; 8/24/11 Trial Testimony of Lieutenant Governor Joseph Garcia (“Garcia Trial Tr.”) 4511:7-10, 4512:2-9, 4530:13-4531:11; 8/25/11 Trial Testimony of Dr. William Moloney (“Moloney Trial Tr.”) 5347:9-14; 9/2/11 Trial Testimony of Senator Keith King (“King Trial Tr.”) 6737:20-25, 6738:8-13.

2. In order for Colorado to build a strong and competitive state economy, all students must have the opportunity to obtain a quality education. Garcia Trial Tr. 4582:21-25; King Trial Tr. 6737:20-25.

3. A high school diploma is a public benefit because it enhances not only the life of the individual earning it, but the community in which the individual resides. Garcia Trial Tr. 4570:20-24.

4. The research literature on the economic and social benefits of education is vast. These benefits accrue to the students themselves and society as a whole. Education levels are strongly correlated with health status, criminal activity, and lower reliance on welfare systems. The unemployment rate for high school dropouts is fifty percent higher than for high school graduates. Spending on education therefore should be viewed as a public investment, yielding a stream of benefits across decades. Ex. 5603, The Fiscal and Social Burden of Inadequate Education in Colorado, at 3, 14, 18; 8/17/11 Trial Testimony of Dr. Henry Levin (“Levin Trial Tr.”) 3338:24-3339:2, 3348:20-3349:1, 3351:19-3352:6, 3356:15-24, 3360:14-20.

5. Dr. Hank Levin, an economist and national expert on the cost-effectiveness and cost-benefit studies of different educational interventions, calculated the economic consequences of failing to adequately educate students in Colorado’s public school system, using failure to complete high school as the proxy for an inadequate education. Comparing the economic burdens with the costs of certain education reforms that have been proven to increase achievement, such as class size reduction, preschool expansion, and teacher salary increases, that might be applied within the Colorado public school system, he concludes that the benefits of these investments significantly exceed the costs, thereby justifying investment in these reforms today rather than paying the fiscal and social consequences of inadequate education later. By failing to make sufficient investments in these and other effective educational interventions, Colorado is trading short run budget savings for potentially much larger long run economic burdens. Levin Trial Tr. 3282:1-7, 3377:4-11; Ex. 5603 at i, 33-34

6. The Colorado Division of Labor reports that the fastest growing occupations in the state are nursing, retail sales, retail sales managers, computer systems analysts, customer service representatives, computer support specialists, and web developers. Almost without exception, high school dropouts do not have the skills to perform these jobs. Of the .9 million new jobs that will be created in Colorado over the next decade, only ten percent will be accessible by high school dropouts and only twenty-five percent will be accessible for high school graduates with the remaining two-thirds requiring post-secondary credentials. Colorado ranks fifth in the nation in terms of its needs for workers to have post-secondary education. Ex. 5603 at 6-7; Levin Trial Tr. 3336:1-3337:17.

7. Each high school dropout imposes a net fiscal burden, defined as tax payments minus expenditures on government health assistance, the criminal justice system, welfare programs, and school/college, of \$23,500 to the federal government and \$57,700 to the state government (i.e., dropouts draw down on government programs more than they pay in taxes). In contrast, each high school graduate imposes a small fiscal burden to the state of \$4,300, but produces a fiscal gain to the federal government of \$61,600. Persons who attend college contribute significantly at both the state (+\$21,300) and federal (+\$105,700) levels. Finally, college graduates contribute \$44,300 to the state fiscal account and \$198,800 to the federal account. From the perspective of the state of Colorado, each person who fails to graduate from high school imposes a fiscal burden of \$140,100. Across each annual cohort of Colorado public school students, this burden is \$1.61 billion. Ex. 5603 at ii, 19.



8. The social burden of low educational attainment, which includes losses in workforce productivity, the deleterious effects on economic growth from having an inadequately skilled workforce, and the burdens on victims of crime, is extremely large. Relative to a high school drop-out, each high school graduate represents a present value social gain of \$434,300. Each college enrollee represents a social gain of \$640,900. Each college graduate represents a social gain of \$1.35 million. From a social perspective, the full resource burden associated with inadequate education in Colorado is \$524,400 per student. Across each annual cohort of Colorado public school students, this burden is \$6.03 billion. Ex. 5603 at ii.

## **B. The Meaning of a Thorough and Uniform System of Public Education**

1. Dr. Tom I. Romero, II, associate professor of law at the University of Denver Sturm School of Law and an expert on Colorado legal history, provided a comprehensive analysis of the political, legislative, and social history leading up to and following the adoption of the Education Article of the Colorado Constitution, and particularly sections 2 and 15, the Education Clause and the Local Control Clause. Ex. 7204, Expert Report of Dr. Tom I. Romero, II. From his research, Dr. Romero concluded as follows:

That thorough and uniform . . . clause was . . . designed to provide the superstructure, provide the basis for a [sic] educated citizenry, to give the citizens of the state of Colorado the ability to be effective citizens to be able to engage in electoral politics, as well as . . . the skills necessary to be successful in an emerging economy.

At the same time, it . . . attempted to balance the statewide mandate for that in relation to the ability of local school districts to control both the content of the curriculum and the types of teachers that they would have in their schools.

8/2/11 Trial Testimony of Dr. Tom I. Romero, II (“Romero Trial Tr.”) 562:16-563:6.

2. The fundamental contours of a thorough and uniform system of public education described by Dr. Romero have been expressly adopted by the General Assembly in the education statutes, and particularly in the education accountability laws enacted from 1993 to the present.

3. As discussed hereinafter, the General Assembly has consistently identified the goals of the Education Clause to include developing the knowledge and skills necessary for all children to be able to: (1) participate effectively as citizens of Colorado and the United States; (2) engage productively and competitively in the workforce; and (3) be successful lifelong learners. These three goals define the fundamental policies to be served by a thorough and uniform system of public education.

4. At a finer level of definition, the Colorado Supreme Court specifically noted that Justice Erickson, in his concurrence in *Lujan v. Colorado State Board of Education*, 649 P.2d 1006 (CO 1982) (*Lujan*), incorporated the following language from the Washington Supreme Court:

A general and uniform system, we think, is, at the present time, one in which every child in the state has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities to at least the 12th grade . . . and with access

by each student of whatever grade to acquire those skills and training that are reasonably understood to be fundamental and basic to a sound education

*Lobato*, 218 P. 3d at 372, fn 16, citing *Lujan*, 649 P.2d at 1028 (Erickson, J., specially concurring) (quoting *Northshore Sch. Dist. v. Kinnear*, 84 Wn.2d 685, 530 P.2d 178, 202 (Wash. 1975)).

5. The Supreme Court further noted that Colorado's "education reform statutes with proficiency targets and content standards" "may also be used to help evaluate the constitutionality of the legislature's actions." *Lobato*, 218 P.2d at 372, fn 17.

6. It is undisputed that the General Assembly adopted the education reform statutes that created the education accountability and standards-based education systems in order to further specify the content of the thorough and uniform system and measure the accomplishment of its goals.

7. Marcia Neal, a member of the Colorado State Board of Education, testified that the legislature has defined the contours of a thorough system of public schools through reform statutes and that in a thorough system of public schools, students achieve proficiency on state standardized assessments, such as Colorado Student Assessment Program (CSAP) and American College Testing (ACT), and the State achieves the graduation rates required by reform statutes. 8/29/11 Trial Testimony of Marcia Jean Neal ("Neal Trial Tr.") 5471:13-16; 5471:13-5472:11.

8. Ms. Neal and Elaine Gantz Berman, another State Board member, both agreed that recent legislation enacted as part of the education reform statutes, including CAP4K (Colorado Achievement Plan for Kids), SB 09-163 (Education Accountability Act of 2009), and SB 10-191 (Educator Effectiveness Act) are all part of a thorough and uniform system of public schools. 8/29/11 Trial Testimony of Elaine Gantz Berman ("Gantz Berman Trial Tr.") 5696:15-22; Neal Trial Tr. 5473:7-5474:2. See also 8/26/11 Trial Testimony of Nina Lopez ("Lopez Trial Tr.") 5264:10-5267:23.

9. In 1993, the General Assembly, in the name of education reform, adopted a system of "educational accountability" founded on a "standards-based education" system with the purpose of defining the content of a thorough and uniform system of public education and creating measures to test the accomplishment of that system. The basic criterion of success is student academic performance.

10. This system has rapidly progressed, and today Defendants administer a comprehensive educational accountability system anchored by a standards-based education system that sets student academic performance standards; mandates measurable student achievement results with respect to those standards; compares student performance levels against statewide achievement expectations; and holds the State, the school districts, and the public schools accountable for the accomplishment of those expectations.

11. Educational accountability and the standards-based education system are founded on the principle that student performance can and must be objectively quantified and the General Assembly has mandated a universal process of standardized testing for that specific purpose.

12. Thus, in the legislative declaration to SB 09-163, the General Assembly finds that “an effective system of statewide education accountability” is one that “objectively evaluates the performance of the thorough and uniform statewide system of public education for all groups of students at the state, school district . . . and individual public school levels . . .” C.R.S. §22-11-102(1)(d).

13. School accountability standards adopted by the State Board and implemented by CDE are intended to provide the decisive measure to determine if every individual student is receiving an education that meets the constitutional standard:

[The Education Clause] 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 [Colorado Department of Education] . . . 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) (emphasis added).

14. Therefore, under the standards and guidelines provided by the Supreme Court, a basic measure of the constitutionality of the public school finance system is whether it is rationally related to providing funding sufficient to permit school districts to meet the mandates of the educational accountability system and provide an education that results in student achievement of the performance outcomes set by state law and regulation.

### **C. Education Reform: HB 93-1313 and the Inception of Standards-Based Education**

1. In 1993, the General Assembly adopted HB 93-1313 as Part 4 (“Education Reform”) of the Educational Accountability article, C.R.S. Article 7,<sup>1</sup> Title 22. HB 93-1313 introduced and directed the implementation of the elements of what has become a pervasive system of standards-based education linked to educational accountability. HB 93-1313 declares that the “system of standards-based education will serve as the anchor for education reform, with the focus of education including not just what teachers teach, but what students learn.” C.R.S. §22-7-401.

2. The General Assembly further declared that “the ultimate goal of this Part 4 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.” *Id.*

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<sup>1</sup> Article 53 of Title 22, the Educational Accountability Article, was relocated with amendments to Article 7 in 1997, where it is presently found. For clarity of reference, citations will be to the present statute, C.R.S. (2011), unless specifically stated otherwise.

3. The methods employed in standards-based education are designed to create a fully aligned set of academic content standards, programs of instruction, and standardized assessments applicable to all students across the state. 8/2/11 Trial Testimony of Dr. John C. Hefty (“Hefty Trial Tr.”) 294:15-295:7.

4. “Content standards” are “a compilation of specific statements of what a student should know or be able to do relative to a particular academic area.” C.R.S. §22-7-402(4). “Programs of instruction” are “a description of the educational experiences and curriculum which will enable students to achieve content standards.” *Id.* at (10). “Assessments” are “the methods used to collect evidence of what a student knows or is able to do.” *Id.*, at (1).<sup>2</sup> Hefty Trial Tr. 290:14-291:21; 293:11-295:7; 305:20-306:20.

5. A student’s “performance level” is the “level of achievement by a student on an assessment relative to a content standard.” An “acceptable performance level” is a level of student achievement that meets a fundamental standard of educational quality:

For graduating students, [an] 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.

*Id.*, at (9).

6. The General Assembly committed to the principle that every school child has the fundamental right to an opportunity to achieve the content standards at a performance level that meets a basic definition of a constitutionally sufficient public education:

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

C.R.S. §22-7-403(2).

7. To accomplish these purposes, HB 93-1313 directed the State Board of Education to adopt “state model content standards” and “state assessments” aligned with those content standards that “specify an acceptable performance level on each such state assessment” and established a schedule for the development and implementation of state model content standards and assessments. C.R.S. §§22-7-407, -409; 22-7-406(1)(a) and (3).<sup>3</sup>

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<sup>2</sup> The 2008 Preschool to Postsecondary Education Alignment Act or “CAP4K” expanded on the definition of an “assessment” by adding “and to measure a student’s academic progress toward attaining a standard.” C.R.S. §22-7-1003(1).

<sup>3</sup> The original schedule adopted by HB 93-1313 as §22-53-409 has been amended substantially and frequently as testing requirements have become more complex and demanding.

8. HB 93-1313 then required all school districts to adopt district content standards that met or exceeded the state standards, to revise and align curriculum and programs of instruction with those content standards, and to develop and administer assessments to measure student achievement of the standards. C.R.S. §§22-7-407(1) and (2).

9. HB 93-1313 mandated annual reporting of student achievement results on statewide assessments for all students in the state and for each school district.<sup>4</sup> District assessment results were to be reported for the district as a whole and by “gender, race, separate handicapping condition, and ethnicity of students.”<sup>5</sup>

10. Dr. Monte C. Moses, retired superintendent of schools of the Cherry Creek School District, described the three major transformations that have impacted education in Colorado:

The first has been an attempt to alter the condition of unequal access to a quality education to universal access for all students regardless of race, gender, disability, or socio-economic status. More recently, the effort to provide universal access has evolved into an expectation of universal proficiency of all students as measured by a system of state standards and assessments and has constituted the second major transition.

The third transformation, directly related to the first two, has been the growing control of public education by state and federal mandates. Both transformations have been characterized by a proliferation of new statutes, rules, and regulations pertaining to standards and assessments. These mandates have added enormous new responsibilities and costs to school districts without the resources to meet the additional demands. Trial Exhibit 4800, pp. 9-10.

At trial, Dr. Moses explained the essential characteristics of standards-based education as follows:

[T]he first definition is the dimension of a content standard. I would draw a distinction about a content standard from just a basic curriculum objective that's very discrete. A content standard is a broader and higher level of definition of what a student should know and be able to do, and that definition would normally entail not just what that student needs to know and be able to do at that grade level but what would ensure their success at the next level of education as well. So they're broader, more comprehensive, and definitely more rigorous, with higher demands embedded within them.

The next part would be a plan of instruction, essentially the curriculum that the students would experience as well as the kind of instruction that would be necessary for them to master that curriculum and ultimately achieve those standards. And then the third element would be a system of assessments to measure how well the students had attained the standards that had been written for that grade level or that course of study.

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<sup>4</sup> Originally codified at C.R.S. §22-53-409(4), this section has also been substantially amended over time.

<sup>5</sup> *Id.*

Q. And what does it mean to say that those are aligned?

A. When the word is used that they're aligned, that there's been a careful examination to ensure that the curriculum that's written is totally synchronized with what the content standard says and what its true intended outcome should be. The same would hold true for the assessments in a valid and reliable measure way -- a valid and reliable way, actually measure what the content standard intended.

8/3/11 Trial Testimony of Dr. Monte C. Moses (“Moses Trial Tr.”) 676:24–678:6. *See also* 8/24/11 Trial Testimony of Josephine O’Brien (“O’Brien Trial Tr.”) 4723:25–4725:18; 8/30/11 Trial Testimony of Mike Miles (“Miles Trial Tr.”) 5791:24–5792:6.

#### **D. Education Reform: The Expansion of Content Standards and Assessments**

1. The growth of standards-based education began with the adoption of the first statewide content standards in the early 1990s. The State Board adopted state “model content standards” in 1995 in the first priority areas of reading, writing, mathematics, science, history, and geography. C.R.S. §22-7-406(1)(a); Hefty Trial Tr. 291:14–292:9; 309:19–310:7.

2. The State Board has progressively expanded this system and today state content standards are in place in twelve academic areas, including mathematics, science, reading and writing, social studies, music, visual arts, theatre, dance, comprehensive health and physical education, and world languages, all of which are further articulated by grade levels. Hefty Trial Tr. 292:18–293:10.

3. The adoption and expansion of state and school district content standards was followed by the development of a statewide assessment system, referred to as CSAP. In 1994–95, it was projected that state assessments would be limited to a random sample of students in just a few grade levels. CSAP began with two tests in 1997, fourth grade reading and writing, and expanded in each year thereafter. By 2000, annual CSAP assessments in reading, writing, and math were required for all students in grades three to ten; in science for all students in grades four and ten; and every eleventh grade student was required to take a standardized college entrance examination, the Colorado ACT. Today, school districts administer a total of thirty-one annual standardized assessments to all students, including CSAP, the ACT, and the Colorado English Language Assessment (CELA) for non-English speaking students. Moses Trial Tr. 680:1–681:23; 8/4/11 Trial Testimony of Dr. Carol Eaton (“Eaton Trial Tr.”) 1146:18–1147:3; 8/3/11 Trial Testimony of Dr. Elliott Asp (“Asp Trial Tr.”) 716:1–717:6.

#### **E. Education Reform: School District Accountability and Accreditation**

1. School district accountability and accreditation developed hand in hand with content standards and assessments. “[I]n a nutshell in a standards-based system [accountability] is whether or not are students making progress in the meeting the standards that have been established in the system . . . .” Asp Trial Tr. 710:19–22.

2. Accountability created expectations for school district student achievement as measured by CSAP scores and imposed consequences for schools and districts that failed to perform up to standard. Content standards and assessments became a “dominating force in what

curriculum became because the consequences for students not doing as well as everyone might hoped [sic] they would do became more severe.” Moses Trial Tr. 683:25–686:9; 681:24–682:6.

3. The General Assembly began the practice of tying educational accountability to school accreditation and student CSAP results with HB 98-1267, the Educational Accreditation Act of 1998. The General Assembly found that there should be “greater emphasis . . . placed on standards-based education and testing” because “standards-based testing [would] better demonstrate individual student progress over time and provide an accurate indicator of how well the public schools and school districts of the state are educating the children of the state.” C.R.S. §22-11-102(2).

4. Under HB 98-1267, the State Board developed “accreditation indicators” designed to assess “the quality of education and learning in the public schools and school districts of the state.” Among other things, the accreditation indicators included state-level assessment results, dropout rates, attendance rates, graduation rates, and the results of district-level assessments. C.R.S. §22-11-104(1), (2).

5. The accreditation process began with each local school board entering an accreditation contract with the State Board to “define the standards, goals, and requirements to be met by the school district over the term of the contract.” §22-11-201(2)(a), (3). Goals included developing “methods for improving the scores of students who score below proficient” on CSAP and reducing gaps in learning correlated with “ethnicity, gender, disability, and limited English proficiency,” among others. If a school district failed to comply with the accreditation contract, it would be subject to three ascending levels of corrective action: notice, probation, and non-accreditation status. C.R.S. §§22-11-201(5)(a), -204(1)-(3).

6. In 2000, SB 00-186 introduced “school report cards”<sup>6</sup> designed to aid parents in determining “whether the public schools in which their children are enrolled are providing quality academic instruction in an environment that is conducive to learning;” to aid taxpayers in determining “whether their tax dollars are being appropriately spent;” and to assist parents and taxpayers “in making choices that will enable all children to have an opportunity for a quality education.” C.R.S. §22-7-601(1)(b)-(d).

6. SB 00-186 directly tied school accountability to student results on CSAP. Beginning with the 2000-01 school year, CDE assigned each school a letter grade ranging from “A” (“excellent academic performance”) to “F” (“failing academic performance”).<sup>7</sup> The grades were calculated based on “the levels of student achievement and improvement on all CSAP assessments” and the Colorado ACT. C.R.S. §§22-7-604(1), (2);<sup>8</sup> Moses Trial Tr. 685:11–686:9; Hefty Trial Tr. 310:15–312:14.

<sup>6</sup> Renamed “School Accountability Reports” or SARs in 2001 by SB 01-098.

<sup>7</sup> These letter grades were changed to ratings of “excellent,” “high,” “average,” “low,” and “unsatisfactory” in 2001 by SB 01-98.

<sup>8</sup> A school whose overall score was in the “highest eight percent of scores” received an “A,” a school whose overall score was “below the highest eight percent and above the lowest sixty-seven percent of scores” received a “B,” a school whose overall score was “below the highest thirty-three percent and above the lowest twenty-seven percent of scores” received a “C,” a school whose overall score was “below the highest seventy-three percent and above the

8. A school with a poor grade based on low student performance was subject to state imposed sanctions. A school that received a grade of “D” could be required to implement strategies to “improve educational services,” including using resources and funding more effectively, implementing new curriculum strategies, or reorganizing the school “under a new principal who is authorized to hire new staff and implement a plan that addresses the causes of inadequate progress.” C.R.S. §22-7-608(1), (2).

9. A school that received a grade of “F” was required to submit a “school improvement plan.” If the school received a second “F” after the first year on the improvement plan, the State Board was to recommend that the school become an independent charter school, unless the school had achieved a certain threshold of improvement that year.<sup>9</sup> However, if the school received a third grade of “F” after the second year on the school improvement plan, the State Board would then recommend that the school become an independent charter school.<sup>10</sup> C.R.S. §22-7-609(2), (5).

#### **F. Education Reform: The No Child Left Behind Act of 2001**

1. In 2001, the United States Congress adopted the No Child Left Behind Act (NCLB), 20 U.S.C. §§6301, *et seq.* NCLB mandated that all students attain a specified level of academic proficiency to be established by each of the states. Hefty Trial Tr. 313:9-314:23.

2. The stated congressional purpose for NCLB was “to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.” 20 U.S.C. §6301.

3. NCLB mandated strategies that were essentially identical to those adopted and in the process of being implemented in Colorado, including establishing challenging state academic standards that permit measuring progress against common expectations for student academic achievement; aligning academic assessments, accountability systems, teacher preparation and training, curriculum, and instructional materials with the state academic standards; holding states, school districts, and schools accountable for improving academic achievement of all students, identifying and turning-around low-performing schools, and providing high-quality alternatives to students in low-performing schools; and improving accountability, teaching, and learning by the use of state assessment systems designed to ensure that students meet academic achievement and content standards and are increasing achievement overall. 20 U.S.C. §§6301, 6311.

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lowest two percent of scores” received a “D,” and a school whose overall score was “in the lowest two percent of scores” received an “F.” § 22-7-604(5)(b)(I)(A)-(E).

<sup>9</sup> In 2006, the general assembly overhauled school improvement plans in HB 06-1240. Under the revised version, if the school was still rated “unsatisfactory” after two years under a school improvement plan, the State Board would determine whether the school would “continue to operate pursuant to the school improvement plan,” whether the school improvement plan should be modified, or whether the school should be converted to an independent charter school. C.R.S. §22-7-609(5)(a)(I).

<sup>10</sup> This requirement was deleted in 2006 by HB 06-1240 in favor of that act’s revised rules for school improvement plans. *See* C.R.S. §22-7-609(5)(b) (deleting language from 2000 act and replacing with unrelated language). The 2006 act also added a section allowing a school district to voluntarily restructure an “unsatisfactory” school. C.R.S. §22-7-609.3(1)(a).



4. NCLB emphasized meeting the educational needs of low-achieving children in high poverty schools, limited English proficient children, migratory children, children with disabilities, Native American children, neglected or delinquent children, and young children in need of reading assistance; and to close the achievement gap between high- and low-performing children, especially between minority and non-minority children and between disadvantaged and more advantaged children. 20 U.S.C. §6301(2), (3), and (6).

5. Colorado elected to conform to the requirements of NCLB in 2002, when the State Board adopted the Colorado Consolidated State Plan. In 2008, CAP4K incorporated NCLB and the State Plan into the Colorado education accountability system. In 2010, pursuant to the Education Accountability Act (SB 09-163), NCLB compliance was incorporated into the Colorado school district accountability system. Stipulated Facts ¶9; Hefty Trial Tr. 313:10–314:23; C.R.S. §22-7-1006(1)(a)(V); 8/4/11 Trial Testimony of Michael A. Poore (“Poore Trial Tr.”) 966:8-21.

6. NCLB obligated the state and all school districts to accomplish comprehensive performance goals, including attaining 100% student proficiency in reading/language arts, writing, and mathematics by school year 2013-14; assuring that all students will be educated in learning environments that are safe, drug free, and conducive to learning; and assuring that all students will graduate from high school. Attainment of the goal of 100% student proficiency by 2013-14 was to be measured by student results on statewide assessments. 8/24/11 Trial Testimony of Richard Wenning (“Wenning Trial Tr.”) 4667:1-16.

7. Leading up to 2014, NCLB holds the State, school districts, and schools accountable for “adequate yearly progress” (AYP), defined as continuous and substantial annual improvement pursuant to annual performance targets that progressively lead to attainment of the goal of 100% proficiency. Moses Trial Tr. 688:4-20; Wenning Trial Tr. 4667:1-16.

8. AYP results are published for all students by grade level and are also “disaggregated” to show the results by key student cohorts, including “free or reduced price lunch status” (poverty), English language proficiency, special program status (students with disabilities), ethnicity (Native American, Asian, Black, Hispanic, and White), migrants, and gender. 20 U.S.C. §6011(a)(2)(B)-(H).

9. School districts and schools “make AYP” only if all students as a whole and all disaggregated groups of students meet performance targets in both reading and math. *Id.* See also Hefty Trial Tr. 314:24–318:23; Moses Trial Tr. 688:4–691:18.

10. Colorado uses student CSAP scores as the measure of AYP. Colorado includes CSAP scores of “partially proficient” and above as the standard for proficiency for AYP. This is a lower bar than CSAP “proficiency” and it is easier for students to meet and increases the percentage of Colorado students who make AYP. Gantz Berman Trial Tr. 5697:25-5698:23; Garcia Trial Tr. 4592:17-23; Wenning Trial Tr. 4667:1-16.

11. Nevertheless, Colorado is unlikely to meet the federal requirement of 100% proficiency by 2014. Wenning Trial Tr. 4671:4-21, 4684:15-19.

12. “Universal proficiency” means that every student is expected to meet a predefined standard of proficiency as measured by a particular assessment. Every student has to reach or exceed a particular score on a standardized test in order to be rated as proficient. This was a very significant policy change affecting the entire educational system: “The mandate of universal proficiency . . . says everyone is going to arrive at the same destination, irrespective of where they begin the journey. So for some students, that might mean a very accelerated amount of growth in a school year in order to meet that level of proficiency as defined by an external group.” Moses Trial Tr. 686:13-687:11.

13. The transition to universal proficiency had a “very major impact” on the way school districts apply their resources. These include the costs of being in compliance with mandates; curriculum alignment to ensure that the instructional program are aligned to the assessments and all teachers know how the system works; additional programs, particularly for non-English speaking students who are under the same 100 percent proficiency standard; materials to help students make the necessary progress; personnel compensation pressures; and staff training. Moses Trial Tr. 691:19-693:12.

14. The impact of the expectation of proficiency for all significantly impacted the teaching profession: “The change for the role of the teacher is to one of saying now it is your responsibility to assure that all students are proficient, that all students know the content. That's huge – it represents a change from a system that really was designed for the purpose of sorting and selecting . . . that produces students with very different levels of proficiency.” Hefty Trial Tr. 302:12-23.

15. Educators believe that disaggregation of scores by subgroups has been good; it shines a light on achievement gaps between the scores of children of poverty, ethnic minorities, non-English language speakers, and special education students and the scores of white or all students. Even in high-achieving school districts, it became clear that students of poverty or English language learners were scoring substantially lower. Hefty Trial Tr. 315:22-317:8.

16. One effect of disaggregation was that school districts that had more diverse student populations had far more AYP targets to meet. For example, Cherry Creek School District had some 150 targets and, as a district and in certain schools, was not able to make AYP. In fact it became extremely difficult for any larger school district to meet AYP in every one of the subgroups. Moses Trial Tr. 689:18-691:18; Hefty Trial Tr. 381:5-18.

17. The Colorado State Report Card 2009-10 published by CDE states that in 2010, the State and fifty-two percent of Colorado school districts did not make AYP, and eighty-five school districts were identified for “program improvement” or “corrective action.” Of those eighty-five school districts, thirty-three were in their fifth year of corrective action, including the following Plaintiff School Districts and school districts in which Individual Plaintiffs reside: Adams County 14, Adams-Arapahoe 28J (Aurora Public Schools), Alamosa RE-11J, Boulder Valley RE 2, Denver Public Schools, Colorado Springs District 11, Jefferson County R-1, Montezuma-Cortez RE-1, Pueblo City 60, and Pueblo County 70. The list of school districts on fifth year corrective action includes well over half of the students in the state, with Denver Public Schools and Jefferson County School District accounting for some twenty percent themselves. Ex. 434, No Child Left Behind Colorado State Report Card 2009-2010, at 42, 54, 56, 57-63.

18. The results also demonstrate continuing “achievement gaps” among disaggregated groups. For example, on a statewide basis, Males, Blacks, Hispanics, English Language Learners, economically disadvantaged students, American Indians, students with disabilities, and migrant students did not meet the performance goal (partially proficient, proficient or advanced) in high school reading/language arts; and only White and Asian students met the performance goal in high school mathematics. The state total graduation rate for the class of 2009 was 74.6%; among disaggregated groups, only Asian (85.70%), White (82.30%), and Female (78.00%) students met or exceeded that rate, while Blacks (64.30%), Hispanics (57.80%), English language learners (54.40%), economically disadvantaged students (62.50%), students with disabilities (66.50%), males (71.40%) and Migrant student (58.90%), were in some cases far below the state average. Ex. 434 at 45.

### **G. Education Reform: The Preschool to Postsecondary Education Alignment Act (CAP4K)**

1. In 2008, the General Assembly enacted the Preschool to Postsecondary Education Alignment Act (the Colorado Achievement Plan for Kids, or CAP4K) as the “next generation of standards-based education.” C.R.S. §22-7-1002(1)(a) and (d).

2. CAP4K mandated a revision of the standards-based system to accomplish a “seamless system of public education standards, expectations, and assessments” that aligns the public education system from “preschool through postsecondary and workforce readiness” in order to assure student proficiency on standards leading to the achievement of “postsecondary and workforce readiness” by high school graduation. C.R.S. §22-7-1002(4)(a).

3. CAP4K ties its goals and purposes to a qualitative standard of student achievement of academic standards that 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).

4. Postsecondary and workforce readiness is the General Assembly’s measure of the outcome required by the Education Clause in the twenty-first century. It is “the knowledge and skills that a student should have attained prior to or upon attaining a high school diploma.” C.R.S. §22-7-1003 (15).

5. CAP4K defines postsecondary and workforce readiness as follows:

[P]ostsecondary and workforce readiness requires a student to demonstrate creativity and innovation skills; critical-thinking and problem-solving skills; communication and collaboration skills; social and cultural awareness; civic engagement; initiative and self-direction; flexibility; productivity and accountability; character and leadership; information technology application skills; and other skills critical to preparing students for the twenty-first-century workforce and for active citizenship.

C.R.S. §22-7-1008(1)(a)(V); *see also* C.R.S. §22-7-1005(3)(a).

6. The Colorado Department of Education and the Colorado Department of Higher Education adopted a definition for “Postsecondary and Workforce Readiness,” describing it as “the knowledge, skills, and behaviors essential for high school graduates to be prepared to enter college and the workforce and to compete in the global economy. The description assumes students have developed consistent intellectual growth throughout their high school career as a result of academic work that is increasingly challenging, engaging, and coherent.” Colorado also makes clear that one of the measures for determining whether students achieve the essential knowledge, skills and behaviors can be analyzed by looking at the students requiring remediation. The definition states that: “Postsecondary education and workforce readiness assumes that students are ready and able to demonstrate the following without the need for remediation.” Ex. 173, Colorado Department of Education and Department of Higher Education Postsecondary and Workforce Readiness Definition; Ex. 6202, Expert Report of Dr. Linda Darling-Hammond, at 7.

7. CAP4K mandated the adoption of new content standards in preschool through elementary and secondary education for, at a minimum, reading, writing, mathematics, science, history, geography, visual arts, performing arts, physical education, world languages, English language competency, economics, civics, and financial literacy. C.R.S. §22-7-1005(2)(a).

8. The new standards are required, *inter alia*, to be aligned to ensure that a student who demonstrates attainment as he/she progresses through school will be able to demonstrate postsecondary and workforce readiness prior to or upon graduation; facilitate longitudinal measurement of each student’s academic growth; and be “comparable in scope, relevance, and rigor to the highest national and international standards . . . .” C.R.S. §22-7-1005(3).

9. CAP4K standards are a “huge change” from the standards developed in the 1990s and are more rigorous than the prior standards: “Standards today, while they may focus on content in math or science or any of the content areas, also include the incorporation of the 21<sup>st</sup> century skills, things like critical thinking, adaptability, collaboration. Use of technology and so forth is incorporated into all of the standards. Much more complex.” For example, by 2014, what previously was expected of a fifth grader will be required of a third grader. Hefty Trial Tr. 322:8-16; Wenning Trial Tr. 4683:19-23, 4742:12-18; O’Brien Trial Tr. 4743:4-10.

10. The new standards exemplify rigorous expectations for curriculum and teaching that will pose significant requirements and challenges for schools, teachers and students. Dr. Linda Darling-Hammond, Plaintiffs’ national expert on teacher quality and education reform, reviewed a series of ballot initiatives and jury charges as examples of civic participation that persons graduating from Colorado public schools can expect. In assessing the level of education and skills persons would need to acquire in order to fully understand and meaningfully participate in civic activities, her opinion is that the Colorado content standards appropriately reflect the kinds of social and scientific understanding, critical thinking skills, and literacy needed to be a fully informed and participating citizen. Ex. 6202, Expert Report of Dr. Darling-Hammond, at 8; 8/15/11 Trial Testimony of Dr. Linda Darling-Hammond (“Darling-Hammond Trial Tr.”) 3943:4-3949:21.

11. One of the goals of Colorado’s new standards system is to prepare students for postsecondary education or the workforce without the need for remediation. Another goal is to

have students attain “mastery” of academic areas, rather than simply achieve “proficiency.” O’Brien Trial Tr. 4735:2-21, 4773:10-24.

12. The new CAP4K standards were adopted as of August 2010 with the understanding that schools and districts would revise their own local standards no later than December 2011. If a district does not adopt the new standards, it will lose accreditation. Ex. 66, Colorado Academic Standards Revisions Adopted December 2009, January 2010; O’Brien Trial Tr. 4750:19-4751:1, 4775:2-5.

13. There is no evidence that revision of standards alone will improve student achievement or outcomes. There are a number of investments that have to go along with raising standards. Successful standards-based reform needs to be accompanied by alignment of the curriculum, new instructional materials, development of new assessments, and substantial professional development for teachers, administrators, and support staff. Schools have to reorganize the way they use tools, such as computers, to get different outcomes. It is hard to imagine that a district could implement all that is required for standards-based reform without additional financial investment. Darling-Hammond Trial Tr. 3924:10-3926:8, 3937:6-3938:10, 3951:16-3952:8, 3961:25-3962:13; 9/1/11 Trial Testimony of Lori Bowers (“Bowers Trial Tr.”) 6687:23-6688:11; 8/4/11 Trial Testimony of Cynthia Stevenson (“Stevenson Trial Tr.”) 1113:1-7.

15. The implementation of the CAP4K standards affects every aspect of the instructional program:

[A]s you start to work on something this large that’s going to have magnitude across . . . every aspect of what we’re doing instructionally, it has an impact on all of our other areas. It has an impact on human resources. It has an impact on our finances. It has an impact on every aspect of our operation because this is a priority in [Colorado Springs School District 11] because this is a priority in our district, to make sure we’re going to do everything that we can to try to make it a reality.

Poore Trial Tr. 933:5-14.

16. Teachers from around the State have contacted Josephine O’Brien, the Assistant Commissioner for Assessment, Research and Evaluation for the Colorado Department of Education, concerning the need for additional time and professional development to learn the new content standards. Ms. O’Brien gets feedback from districts that, in order to implement the new standards, they need additional resources for instructional materials (e.g., manipulatives), technology, and professional development. Ms. O’Brien agrees that some teachers will require additional time and resources to learn how to teach content in new and different ways, as required under the new standards. If these resource requests are not met, there will be an impact on the quality of instruction in the classroom and assessments results. O’Brien Trial Tr. 4775:13-4776:12, 4777:13-21, 4779:3-7, 4783:6-4784:13, 4810:7-17.

17. In 2010, the Colorado State Board of Education adopted the national “common core” standards, which were developed at the national level and adopted by the large majority of states. The common core standards in Colorado are expectations, not aspirations as in some

other states. Hefty Trial Tr. 323:9-14; O'Brien Trial Tr. 4744:16-4746:4; Garcia Trial Tr. 4581:15-18; Darling-Hammond Trial Tr. 3953:20-3954:11; 9/1/11 Trial Testimony of Robert Hammond ("Hammond Trial Tr.") 6553:12-15.

18. Without significant changes in the system to address the new standards, the expectation is that proficiency rates will go down because the new standards are much higher. Darling-Hammond Trial Tr. 3973:25-3974:5.

19. There is no financial support for the increasing standards and mandates that are being placed on districts. In fact, the response by the State to the new reforms and higher standards in universal proficiency has been declining resources. Stevenson Trial Tr. 1114:5-11; 8/15/01 Trial Testimony of Senator Stratton Rollins Heath ("Heath Trial Tr.") 2951:7-18.

20. The Joint Budget Committee, in its education briefing document for 2009-2010, addressed its concerns related to the lack of funding for CAP 4K.

Senate Bill 08-212 (CAP4K) requires that the State Board of Education adopt a fundamentally new testing system by December 2010. Based on rough estimates that were necessary as a part of Colorado's proposal for Race to the Top funds, the Department anticipates that the launching of a new assessment system could initially cost upwards of \$80 million.

Members of the General Assembly should be reminded that the \$80 million cost estimate presented by the Department does not include costs to school districts. Many school districts have a wide variation in computer equipment available and broadband access is very spotty in parts of the state. In order to be compliant with the requirements of S.B. 08-212, school districts may have to make significant investments in their information technology capacity. Another more uniform cost that all districts will likely encounter are costs related to training teachers, administrators, and parents about how to use and make sense of the new system and the information it will generate.

It is evident to staff that the out-year costs of launching a new standards and assessments system will be substantial, approximately five times of the State's current investment. Staff had difficulty identifying any viable alternative funding sources other than federal ARRA Race to the Top awards.

Questions the Department Can't Answer at this Time.

What is the total cost for a revised state assessment system (as well as separate costs for each design element?)

How will the revised system be funded?

Trial Exhibit 30146, pp.

21. Commissioner Robert Hammond testified that the State did not receive the Race to the Top Award and did not make the December 2010 deadline for implementing new assessments. Instead, the State implemented the transitional assessment, or TCAP.

Hammond Trial Tr. 6554: 15-20, 6557:1-3.

22. CAP4K also mandates a new assessment system designed to measure students' "academic progress toward attaining the standards and toward attaining postsecondary and workforce readiness." C.R.S. §22-7-1006(1)(a).

23. The purposes of the new assessment system include setting a "high level of accountability across the state for students, schools, and school districts" and to "[p]rovide assessment scores that are useful in measuring student academic performance, the academic performance of a school, and the academic performance of a school district for purposes of state and federal accountability systems." C.R.S. §22-7-1006(1)(a)(V) and (VII).

24. Toward this end, the General Assembly requires that the new assessment system incorporate "scoring criteria for measuring a student's level of attainment and progress toward attaining postsecondary and workforce readiness." C.R.S. §22-7-1006(1)(c).

25. CAP4K advanced and heightened the universal proficiency policy:

CAP4K says that all students will be postsecondary and workforce ready, and it then has the elements that design the system. The standards, the assessments, a system with readiness throughout . . . [CDE deputy commissioner Diane Sirko recently stated that the] CAP4K legislation is a readiness bill . . . that begins with a focus on school readiness and then readiness at each grade level that ultimately culminates . . . by being proficient, being ready for postsecondary and workforce.

Hefty Trial Tr. 303:9-304:10.

26. The new assessment system will directly affect the instructional programs of the school districts:

Once you've established your standards and we understand exactly what we need to teach . . . the very next step in terms of a researched approach would be to understand how we're going to assess it because if we understand that, then that helps you to go back into saying this is what we've got to do in terms of our lesson plans and our pacing guides to make sure we're delivering.

Poore Trial Tr. 938:15-23.

27. While the CSAP assessed four subject areas (reading, writing, mathematics, and science), the new assessment, when it is created, will assess five subject areas (reading, writing, mathematics, science, and social studies). However, districts will still be held accountable for designing and implementing assessments in all new subject areas. Mr. Wenning is not aware of any adjustments to the school finance system to address this change in the assessment system.

Wenning Trial Tr. 4695:20-4697:15.

28. The new assessment will require high-speed Internet connectivity, which many districts – particularly rural districts – do not have. O’Brien Trial Tr. 4763:2-20.

29. The new assessment system has not yet been developed or adopted by the State Board. It is scheduled for implementation in 2014. Until that time, a transitional student assessment, known as “TCAP,” will be used. According to Defendants’ expert Dr. William Moloney, we are “in no man’s land right now” with respect to the CSAP. It will soon be replaced by another test that there is insufficient funding to develop. Poore Trial Tr. 937:24-938:4; O’Brien Trial Tr. 4751:19-4754:13; Moloney Trial Tr. 5418:1-10.

30. Ms. O’Brien expects that there will be a significant drop in test scores for the first two or three years of the new assessment. O’Brien Trial Tr. 4799:15-25.

31. CAP4K also mandates a school readiness assessment to be given to children entering kindergarten, and a postsecondary and work force readiness assessment. Asp Trial Tr. 731:23-732:14.

#### **H. Education Reform: The Education Accountability Act of 2009**

1. In order to assure accomplishment of the goals of CAP4K, in 2009, the General Assembly enacted the Education Accountability Act (SB 09-163), which expanded preexisting law to create a system of statewide education accountability that incorporates the goals, standards, and assessments of CAP4K and expressly ties the standards-based system, the CAP4K goals, and the accountability system to the qualitative guarantee of the Education Clause. C.R.S. §§22-11-101, *et seq.*

2. The General Assembly found that an “effective system of statewide education accountability” focuses on “maximizing every student's progress toward postsecondary and workforce readiness and post-graduation success” by holding the State, school districts, and individual public schools accountable for performance on performance indicators and measures that are aligned through a single accountability system that “objectively evaluates the performance of the thorough and uniform statewide system of public education for all groups of students” at the state, school district, and individual public school levels. C.R.S. §22-11-102(1)(d).

3. Like its predecessor, the Education Accountability Act is intended to report information concerning student performance at the state, school district, and individual school level and hold the school districts and schools “accountable on statewide performance indicators supported by consistent, objective measures.” C.R.S. §§22-11-102(1)(b) and (3)(a).

4. The accreditation system is the mechanism through which CDE evaluates the performance of school districts in terms of academic performance and compliance with statutory and regulatory requirements and gives school districts “authorization to operate.” Wenning Trial Tr. 4636:2-10.

5. SB 09-163 directs CDE to determine annually the “level of attainment” of each public school, school district, and the state on three “performance indicators”: student longitudinal academic growth (measured by the “Colorado Growth Model”), student



achievement levels on statewide assessments, and progress made in closing achievement and growth gaps in assessment results by disaggregated student groups. In addition, CDE is to determine the level of attainment on postsecondary and workforce readiness indicators, including graduation, dropout rates and student performance on the Colorado ACT. C.R.S. §§22-11-204(1)(a) and (b) and (4); Wenning Trial Tr. 4636:13-22.

6. The performance indicators use the assessment system results in four ways:

One component is the status measure, the achievement score, the CSAP score for this year. A second component is the growth score. A third component is the gap score . . . the gap between the subgroups. And then the fourth component focuses on postsecondary and workforce readiness and includes ACT performance, graduation rate, and dropout rate.

Hefty Trial Tr. 324:11-24; Asp Trial Tr. 712:10-713:18.

7. The achievement score is based on the performance of all students who took CSAP and CSAP-A (an alternative testing system for students with significant disabilities) by aggregating the individual scores to determine school and school district composite scores. Eaton Trial Tr. 1174:2-18.

8. Similarly, the growth score aggregates all of the individual CSAP growth scores into school and school district composite scores. The growth score is a measure of an individual student's CSAP performance from one year to the next as compared to that student's statewide "academic peer group." Eaton Trial Tr. 1174:20-1176:16.

9. Student growth measures whether the student is on track to keep up or reach proficiency within three years or by tenth grade. It is based on the "Colorado Growth Model." A student whose CSAP scores are unsatisfactory or partially proficient is not meeting proficiency expectations and needs to "catch-up." To do that, the student needs to demonstrate adequate growth each year; that is, growth that will bring him or her to proficiency within three years or tenth grade. Students who are proficient or advanced must show annual growth adequate to keep them in that category throughout their school career. Eaton Trial Tr. 1183:16-1184:19; Asp Trial Tr. 724:13-21.

10. The requirement is that all children reach proficiency. The growth measure embeds the universal proficiency policy in the accountability system. The growth indicator sets and scores an expectation that all students will achieve proficiency within a fixed period of time and will sustain proficiency throughout school. Hammond Trial Tr. 6547:13-15; Eaton Trial Tr. 1182:15-1183:9.

11. The growth gap score is based on the growth score, but the data is disaggregated by subgroups, including poverty, race and ethnicity, students with disabilities, non-English proficient students, and "catch-up" students who have tested below proficiency and need to catch-up. Eaton Trial Tr. 1176:17-1177:13.

12. There is a rubric or method for each indicator to measure how a district's scores meet state expectations. District performance is then reduced to a point value based on whether

the district's scores exceed, meet, approach, or do not meet state expectations. The point values are then given a percentage ranking by comparison to the scores of all districts in the state. The percentage rankings for the four indicators are merged, with the heaviest weighting given to academic growth (thirty-five percent) and postsecondary and workforce readiness (thirty-five percent). The result is a district total percentage of points. Eaton Trial Tr. 1177:24-1178:25; Wenning Trial Tr. 4658:8-4659:1.

13. The school district's total percentage of points earned on the performance indicators determines its accreditation rating as "accredited with distinction," "accredited," "accredited with improvement plan," "accredited with priority improvement plan," or "accredited with turnaround plan." C.R.S. §§22-11-207(1) and (2); Hefty Trial Tr. 324:1-4; Eaton Trial Tr. 1179:1-17.

14. Based on its accreditation rating, each school district and school must annually adopt and implement a plan, designated as a performance plan, improvement plan, priority improvement plan, or turnaround plan. C.R.S. §§22-11-303-306, 22-11-401, *et seq.*; Hefty Trial Tr. 324:21-24.

15. All of this information is summarized and published annually by CDE in a school district or school Performance Framework Report. *See e.g.*, Ex. 10,508, Pueblo School District 60 District Performance Framework Report 2011; Ex. 10,082 Jefferson High School Performance Framework Report 2010.

16. A district's accreditation status and corresponding plan has critical implications for its operations. For example, a district on a turnaround plan must identify "specific, research-based strategies" to address the identified needs and issues, including employing a "lead turnaround partner;" reorganizing the district oversight and management structure; reorganizing individual schools; hiring an entity to operate one or more district schools; converting one or more district schools to charter schools; or closing schools. C.R.S. §22-11-306(3)(d).

17. Failure to make defined, substantial progress under a priority improvement or turnaround plan within five years can, at the instance of CDE and the Commissioner, result in a loss of accreditation and school district or school reorganization, management takeover by a private or public entity, conversion to a charter school, and other remedial action. C.R.S. §22-11-209; Hefty Trial Tr. 325:7-15; Eaton Trial Tr. 1181:10-1182:9.

18. Thus, the Education Accountability Act places a strict five-year time limit for accomplishing the content standards and meeting the assessment goals of CAP4K. Failure to meet that time line results in mandatory school district or school restructuring or closure. The CDE District Performance Framework Report form used by CDE states:

A district may not be accredited with a Priority Improvement and/or Turnaround Plan for longer than a combined total of five consecutive years before the State Board of Education is required to restructure or close the district.

Ex. 10,508, District Performance Framework 2011 for Pueblo School District 60 – Initial Draft for District Review, at 5; Wenning Trial Tr. 4663:12-19.

19. Schools on priority improvement status do not get additional resources like schools on turnaround status. Andenucio Depo. Tr. 102:20-25.

20. All school districts and schools, without regard to their accreditation rating, must annually prepare and submit to CDE a “Unified Improvement Plan” describing in detail the action items they intend to implement to improve performance. The improvement plan allows districts to look at their current state and their desired state and figure out how they are going to get from point A to B. *See, e.g.*, Ex. 10,378, Jefferson County School District Unified Improvement Plan 2010-11. *See also* Eaton Trial Tr. 1239:1-21; Stevenson Trial Tr. 1102:1-6.

21. The Unified Improvement Plan is a comprehensive document that begins with the Performance Framework data and three year trends, analyzes the data to identify strengths and challenges, and then moves to “root cause analysis.” Eaton Trial Tr. 1241:1-1242:8.

22. A root cause is an underlying cause without which the subject of concern would not have occurred and which, if corrected, the subject of concern would not reoccur. A root cause must be a cause over which the school district has control. It cannot be a cause that is beyond school district control, such as poverty, hunger, student motivation, ethnicity, or mobility. For example, if the challenge is an achievement gap between low-income students and other students, low-income cannot be identified as the root cause. Eaton Trial Tr. 1243:10-1245:7.

23. The purpose of root cause analysis is to set annual targets and interim measures to address prioritized needs and then to develop “major improvement strategies” necessary to change the outcomes. Eaton Trial Tr. 1242:17-1243:9.

24. The Unified Improvement Plan requires a specific outline of how the district will address the major improvement strategy, including timelines, key personnel, necessary resources, and benchmarks to measure success. Eaton Trial Tr. 1250:10-1252:2.

25. The critical point is that the Unified Improvement Plan process directly impacts the district’s use of financial resources. It requires the district to identify the resources it will use to implement the major improvement strategies. Eaton Trial Tr. 1252:19-1253:7.

26. While he was employed by CDE, Mr. Wenning received frequent complaints from districts about inadequate resources; the “complaint about resources was pretty regular . . . In fact, sometimes improvement plans would note that the barrier was a resource barrier.” Wenning Trial Tr. 4676:10-17.

27. While the State Board may grant waivers to schools and school districts in certain instances, no school or school district may obtain a waiver from the State’s accreditation process, which touches on everything that a school district does. School districts likewise may not waive out of CSAP or the new assessment that will eventually replace the CSAP. The primary focus of waivers is to exempt districts and schools from personnel laws so that they have the authority to hire and fire staff and control the use of time. 8/30/11 Trial Testimony of Robert Schaffer (“Schaffer Trial Tr.”) 5892:13-22, 5893:3-6, 5904:2-5; Wenning Trial Tr. 4674:8-15, 4675:2-6, 4689:13-20.

28. The Education Accountability Act, CAP4K, and Educator Effectiveness Act (discussed in Section II.I below) all impose mandates on school districts that cannot be waived. Other than Kit Carson School District, which is an isolated situation of a district being granted innovation status by the Colorado State Board of Education, all other school districts in the state must meet all of the requirements of these three statutes. Gantz Berman Trial Tr. 5684:17-5685:8; 5685:25-5687:23.

### **I. Education Reform: The Educator Effectiveness Act of 2010 (SB 10-191)**

1. In 2010, the General Assembly adopted SB 10-191, the “Ensuring Quality Instruction through Educator Effectiveness Act” (SB 191), as a comprehensive amendment of the Licensed Personnel Performance Evaluation Act. C.R.S. §§22-9-101 *et seq.*

2. In pertinent part, SB 191 requires school districts to evaluate the employment performance of all teachers, principals, and administrators every year. Among the purposes of the evaluation system is to measure the “level of effectiveness” of all of its licensed personnel based on quality standards to be established by the State Board and the local board. C.R.S. §22-9-106(1), (1)(d).

3. A teacher or principal deemed to be “ineffective” pursuant to these standards and who fails to meet the requirements of a remediation for a period of years is subject to loss of non-probationary status and dismissal from employment. C.R.S. §22-9-106(4.5).

4. District level implementation of SB 191 will involve the development of new assessments and evaluation measures. It will also involve resolution of some complex issues, such as identifying who is the teacher of record to be held responsible for specific students’ academic growth; which content areas the teacher should be responsible for, including content areas for which no assessments exist; and how high stakes tests are to be administered in a way that is fair and uniform across the state. Eaton Trial Tr. 1265:12-1268:23.

5. As with CAP4K, the State did not make sufficient appropriation for implementation of SB 10-191. The estimated costs for initial implementation of SB 10-191 are \$76 million. The primary source of funding was designated as gifts, grants and donations. As of the date of trial (more than a year after SB 10-191 passed) approximately \$7.9 million had been raised. Hammond Trial Tr. 6563: 3-12.

### **J. Summary**

1. As can be seen from 1993, although for practical purposes from 1997, the General Assembly and Defendants have intentionally and rapidly transformed the public education system in the model of standards-based education. Since 2008, the initial transformation has been accelerated by a further, more ambitious expansion upon the initial models. All of this has been specifically designed to implement the constitutional mandate of a thorough and uniform system of public education.

2. This transformation has focused on universal student achievement of defined levels of proficiency measured by standardized assessments. Student achievement has expanded to become the foundation for school and school district accreditation and, most recently, teacher

and principal evaluations. Schools and school districts that are unable to reach and sustain the level of student proficiencies within the time limitations mandated by the State are subject to ascending levels of sanctions, up to and including closure or dissolution.

3. Successful implementation of standards-based education in its entirety demands additional resources, including resources for extra educational time with students, additional staff to ensure appropriate class sizes, additional interventions for under-performing students, and professional development. Hefty Trial Tr. 327:14-329:3.

4. As discussed further hereinafter, the public school finance system has failed to respond to the increasing resource needs driven by standards-based education. “I just think [the school finance system] continued to operate as it did prior to the adoption of new reforms in relation to standards, assessments, accountability, et cetera.” Moses Trial Tr. 694:13-19.

### **III. THE PUBLIC SCHOOL FINANCE SYSTEM**

1. Governmental funding for Colorado school districts is derived from local taxes, state funds, and federal funds. Stipulated Facts ¶10; Ex. 10,174, CDE, Understanding Colorado School Finance and Categorical Program Funding, July 2011.

2. The large majority of state and local funding for public education is provided through the Public School Finance Act of 1994 (PSFA). Stipulated Facts ¶11.

3. In school year 2010-11, PSFA funding totaled approximately \$5.4 billion, of which school district property tax and other local sources contributed \$2.0 billion (thirty-seven percent) and the state contributed \$3.4 billion (sixty-three percent). This total was reduced by 12.97% to some \$5.2 billion by application of a “negative factor” adopted by the General Assembly. Hefty Trial Tr. 270:13-276:1.

4. School districts also receive supplemental state funding through “categorical programs” such as special education, English language proficiency, gifted and talented, transportation, and vocational education. In 2010-11, state funding for all categorical programs totaled \$231 million, somewhat less than 5% of the total PSFA funding. Ex. 10,174.

#### **A. The Public School Finance Act of 1994: Total Program Funding**

1. The PSFA begins with a base amount of funding that is run through a formula that is then used to determine a district’s “total program.” In the simplest terms, a school district’s total program is the product of its pupil population multiplied by its “per pupil funding” level. C.R.S. §22-54-104(1)(a).

2. Calculation of a district’s total program begins with a statutory “statewide base” per pupil funding level. In 2010-11, the statewide base was \$5,529.71 per pupil. C.R.S. §22-54-104(5).

3. The statewide base is adjusted for each school district by application of statutory “factors” related to the variability of costs by district, including a cost-of-living adjustment,

personnel factor, non-personnel factor, and an enrollment size factor, to produce the district's specific "per pupil funding." C.R.S. §22-54-104(3).

4. The district per pupil funding amount is multiplied by the district's "funded pupil count", which is an actual count of students (or full-time equivalents) enrolled and attending school in the district. C.R.S. §22-54-103(7).

5. This total is then adjusted by statutory factors intended to address inter-district cost variability with respect to their student demographics, including concentration of "at-risk" (high poverty) students, online education enrollment, and "ASCENT" (fifth year high school) pupils. C.R.S. §22-54-104(2)(A)(IX); 8/15/11 Trial Testimony of David P. Hart ("Hart Trial Tr.") 2963:23-2964:9.

6. The result is the district's "total program" funding.

7. The factors were intended to create differentiation in school district total program funding levels to address local cost variables. In 2009-10, the "state budget stabilization factor," referred to as the "negative factor" in 2010-11, was added to the formula as the mechanism to implement legislative cuts in the overall level of state funding for public education. The negative factor is a negative number that reduces the total program. In 2010-11, the negative factor reduced each district's total program by 12.97%.

8. In 2010-11, by application of the negative factor, tens of millions of dollars were cut from public education. Further cuts are anticipated for the upcoming budget year. It is difficult for school districts to plan ahead given budget cuts and the timetable by which the State legislature passes the budget. Gantz Berman Trial Tr. 5692:17-22, 5707:15-20; Schaffer Trial Tr. 5909:3-6.

10. The negative factor reduces the State's share of the total program funding not by reducing the statewide base, but by reducing each school district's funding provided by the formula factors, such as cost of living, at-risk and school district size. Hart Trial Tr. 2995:18-2997:21.

11. The negative factor contradicts the intent of the PSFA. By decreasing funding for the factors, the negative factor has a disproportionate impact on districts with large numbers of at-risk students. In small districts with large numbers of at-risk students, the negative factor has an even larger disproportionate impact. In effect, the negative factor has a double ratchet down effect in these districts by reducing or eliminating factor funding for both at-risk and small district size. Hart Trial Tr. 3008:19-22; 9/2/11 Trial Testimony of George S. Welsh ("Welsh Trial Tr.") 6715:10-23.

12. The underlying policy decision on how to design and implement the negative factor was not made based on student outcomes or demographics of students and districts, but rather was a number that was backed into by the State. Hart Trial Tr. 3013:20-25, 8/17/11 Trial Testimony of Jack Pommer ("Pommer Trial Tr.") 3509:23-25, 3510:1-4.

13. When evaluated as a whole, the Colorado school finance system is regressive, yielding lower current operating expenditures per pupil and lower total state and local revenue

per pupil in high needs districts. A regressive system is one in which higher poverty districts have systemically less money. The overall pattern of regressiveness has remained relatively unchanged for over a decade. Ex. 8200, Colorado School Finance, Lobato v. State of Colorado, at 42; 8/5/11 Trial Testimony of Dr. Bruce D. Baker (“Baker Trial Tr.”) 1354:7-11.

## **B. The Public School Finance Act of 1994: State and Local Share**

1. Each school district’s total program is funded by a combination of state and local tax revenues. The “local share” consists of the proceeds from a mill levy upon the assessed valuation of the taxable property within a school district’s boundaries and, to a much lesser degree, “specific ownership tax.” C.R.S. §22-54-106(1)(a)(I); Hefty Trial Tr. 288:23–289:11.

2. School district authority to obtain funding by local property taxation is strictly fixed by statute. No school district may certify a levy for its general fund in excess of its statutory authority. Stipulated Facts ¶12; C.R.S. §22-54-106(5)(a).

3. A school district’s authority to obtain funding by local property taxation is statutorily limited to the lowest of: (a) the number of mills it levied in the preceding year, (b) the number of mills necessary to pay its entire total program, less the minimum state share funding received,<sup>11</sup> (c) the maximum number of mills allowed by Article IX, Section X of the Colorado Constitution (the Taxpayers’ Bill of Rights or TABOR), or (d) twenty-seven mills. Since 2007, this provision has resulted in what is sometimes called the “frozen mill” because school district mill levies are statutorily capped and once they reach the maximum allowable level, they are effectively “frozen.” C.R.S. §22-54-106(2)(a); Hart Trial Tr. 3036:16-3037:7.

4. The “state share” is determined by subtracting the school district’s local share from its total program. The state share comes primarily from the state general fund (eighty-eight percent in 2010-11), the State Education Fund (eight percent), and a portion of the rent from state school lands and federal mineral lease money (four percent). Hefty Trial Tr. 280:6-23.

5. Since the enactment of the PSFA, the state share has increased significantly relative to the local share. This shift has affected the “mix,” but not the total funding level, which is a blend of state and local funding, and bears no relationship to the analysis of the rationality of the school finance system relative to fulfilling the mandate of the Education Clause.

## **C. The Public School Finance Act of 1994: Override Mill Levies**

1. The PSFA permits school districts an option to supplement their total program with additional local revenues by submitting an initiative to the electorate for approval to raise such revenues and authorizing an additional mill levy for that purpose. The total additional local revenues that may be authorized pursuant to such an “override election” cannot exceed the greater of twenty-five percent of the district’s total program or \$200,000. Stipulated Facts ¶14; C.R.S. §22-54-108.

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<sup>11</sup> Every district is entitled to receive a minimum state funding amount. C.R.S. §22-54-106(1)(b).

2. A district's voter approval to raise and expend override revenues does not affect the amount of state share funding that the district is eligible to receive. Override revenues come exclusively from increased property taxes; no additional state funding is provided.

3. Defendants have argued that school districts could increase their funding by use of the override mechanism. This proposal contradicts the purpose of the override funding provisions and is inherently inequitable and irrational.

4. The original intent of the mill levy override was to supplement programs that were to be funded through the school finance act. It is only due to the history of underfunding that mill levy overrides have moved from supporting local efforts and local programs to backfilling state funding. Hart Trial Tr. 3016:10-15, 3018:1-5, 3025:16-22.

5. A school district's fiscal ability to raise override revenues is directly correlated to its local property tax base. There are large differentials in what districts can raise through mill levy override elections as a result of property wealth differences among districts. Reliance on the mill levy override to backfill for the state share causes a tremendous disparity in financial resources among school districts. 8/29/11 Trial Testimony of Voreta Herrmann ("Herrmann Trial Tr.") 5551:11-19; Hart Trial Tr. 3032:5-9.

6. Many school districts, including Plaintiff School Districts and districts where the Individual Plaintiffs reside, are unable to raise money through mill levy override elections because of the socio-economic status of their communities. Some of the school districts praised by Defendants, such as Harrison School District, have been similarly unable to pass mill levy overrides. Miles Trial Tr. 5860:13-19.

7. If the Denver Public Schools were to double its local mill levy override to the statutory maximum, it would raise approximately seventy-eight million dollars, which would only address the funding reductions the State has made in the past three years. If Denver were to pursue this course of action, it would put the district at tremendous risk going forward because it would no longer have the flexibility to go to its voters as needs arise. Hart Trial Tr. 3025:1-5, 3036:4-15.

8. If the State were to require each district to pass overrides to the statutory maximum, it would be the equivalent of a statewide property tax, which is prohibited by the Colorado Constitution. Herrmann Trial Tr. 5552:6-9.

9. Mill levy overrides are not a sustainable way to run a school district. It is challenging, burdensome, and time-consuming to go to the electorate every few years to ask for a tax increase. Programs cannot be sustained based on the possibility that a mill levy override may pass in the future. 8/9/11 Trial Testimony of John Barry ("Barry Trial Tr.") 1843:10-1844:10.

10. Reliance on the mill levy override results in "incredible inequities district to district that don't seem to have any sensitivity for the outputs educationally . . . or for the willingness or ability of school districts to pay." Hart Trial Tr. 3037:13-21.

11. Because assessed valuations vary tremendously district-by-district and the ability of individual taxpayers are widely disproportionate: "[T]here are individual winners and losers



that come when the mill levy override is thought to be anything other than an expression of local behaviors relative to their willingness and their ability and, at a local level, their desire to solve for educational pursuits, back to when it was supplemental to those outcomes that were desired as a local school board as opposed to some sort of fix for the state's revenue shortfalls." Hart Trial Tr. 3038:13-20, 3039:1-6.

**D. Categorical Program Funding.**

1. In addition to PSFA total program funding, the school finance system provides certain state funding for programs designed to serve particular groups of students or particular student needs through "categorical" programs.

2. Total funding through categorical programs in 2010-11 was about \$231.7 million. Categorical programs include funding for special education pursuant to the Exceptional Children's Education Act (\$127.4 million in 2010-11); public school transportation (\$49.5 million); vocational education (\$23.3 million); English language proficiency pursuant to the English Language Proficiency Act (\$12.4 million), gifted and talented students (\$9.1 million); expelled and at-risk services (\$7.5 million); comprehensive health education (\$1.0 million); and small attendance centers (\$0.9 million).

3. Specific findings of fact with respect to certain categorical programs and funding are included in Sections XII.C., XIII.B., XIV.D., hereinafter.

**E. Capital Construction Funding; Bonded Indebtedness.**

1. PSFA and categorical funding do not pay for capital construction. School districts must fund the costs of acquiring buildings or grounds; constructing, remodeling, repairing, or making additions to school buildings or improving school grounds; and equipping and furnishing school buildings by contracting bonded indebtedness through voter approval. C.R.S. §§22-42-101, *et seq.*

2. A school district's bonded indebtedness is repaid solely through a tax levy upon the taxable property within its boundaries. Each school district is limited in the amount of bonded debt it may incur to the greater of twenty-five percent of the assessed value of the taxable property within the district or six percent of the actual value of the taxable value. Thus, like override funding, the ability of a school district to fund capital construction is directly related to its local property tax base. C.R.S. §§22-42-118; 22-42-104(1.3).

3. School districts have radically disparate ability to fund bonded indebtedness as property value disparity is reflected in local bonding capacity. The wealthiest district on a per-pupil basis was Aspen School District with an assessed value over a million. The poorest district was Sanford, with a per-pupil assessed value less than \$20,000. Wickersham Trial Tr. 4267: 4-14, 4266: 7-20.

4. Specific findings of fact with respect to capital construction and capital construction funding are included in Section XVII hereinafter.

## **F. Declining Enrollment**

1. The issue of declining enrollment is faced by the majority of districts in the State. Because funding is based on an annual October pupil count, the number of pupils drives the amount of funding for each district. Each school district counts pupils in membership as of the school day nearest October 1. For most school districts, funding is based on the number of pupils counted in the current school year. However, for a district with an enrollment fluctuating from year to year, funding is based on an average of up to four prior years' October count.

2. District 11 has one of the highest percentages of declining enrollments in the State. The impact on the district has been significant. The district's fixed costs are related to staffing and facilities so when the district loses a student, it does not necessarily get to reduce a teacher or close a school. Thus, the effect of declining enrollment is that the revenue goes away before the costs do. The issue of declining enrollment continues to have a punitive impact on districts with stable or declining enrollment.

## **G. Boards of Cooperative Education Services (BOCES)**

1. Boards of Cooperative Education Services (BOCES) provide cooperative services to school districts that choose to be a member of a certain BOCES. See: CRS Section 22-5-102: The General Assembly declares that this article is enacted for the general improvement and expansion of educational services of the public schools in the state of Colorado; for the creation of boards of cooperative services where feasible for purposes of enabling two or more school districts to cooperate in furnishing services authorized by law if cooperation appears desirable; and for the setting forth of the powers and duties of said boards of cooperative services.”

2. Some districts are required to be a member of a BOCES because it's an administrative unit for special education depending on the size of the district.

3. The BOCES do not have adequate funding to provide the services required of them to their member districts.

4. A study of issues facing rural districts found that, “[n]o one has examined the BOCES structure in 50 years to determine if the BOCES agencies adequately serve the needs of the communities...Moreover, the rural districts lost a huge source of support in 2008 when the number of regional service managers at CDE was reduced from 21 to 2.” This reduction was due to a correction in the allocation of federal funds. Trial Exhibit 166, p. 5, 8.

Herrmann Trial Tr. 5556: 1-9.

## **IV. ANALYSIS OF RELATIONSHIP BETWEEN THE SCHOOL FINANCE SYSTEM AND A THOROUGH AND UNIFORM SYSTEM OF PUBLIC EDUCATION**

1. A rational relationship between the school finance system and the education system requires understanding the resources needed to produce the mandated educational quality and expected achievement results in order to provide the funds necessary to meet the resource needs: Hefty Trial Tr. 330:11-331:13.

2. “No analysis had ever been done. It hadn’t been done for the previous—well, we were on the third—within my lifetime or my political lifetime, the third School Finance Act. I believe there was ’73, ’88, and ’94, and none had ever been done for that. And as far as the ’94, each year was just based on the previous year. So we weren’t operating off any basic information on what it would cost to provide a thorough education.

And that was one of the reasons why we wanted—it seemed like, coming from a business background, we would cost things out how much does it cost to do this. It seemed logical if you were going to be financing a thorough education, you would say how much does that cost, and let’s work from there, but we never did that.”

Pommer Trial Tr. 3493: 5-21

3. The evidence discussed below demonstrates that the public school finance system has never been designed or funded on the basis of the known or knowable cost of providing a constitutionally adequate system of public education. In the absence of an informed estimate of the cost to provide a thorough and uniform system of education, it is impossible to demonstrate a rational relationship between the funding system and the education system.

4. School funding has been based on the amount of funds deemed to be available for appropriations and political compromise. In recent years, comprehensive education reform statutes, such as CAP4K, the Education Accreditation Act of 2009, and SB 191, have been enacted with no provision for funding other than permitting districts to obtain and accept “gifts, grants, and donations.”

5. The “statewide base per pupil funding” (the statewide base) amount is the determining element of the PSFA total program formula. 8/3/11 Trial Testimony of Dr. Edwin Steinbrecher (“Steinbrecher Trial Tr.”) 641:19-642:6, 660:24-661:3; 8/2/11 Trial Testimony of Scott D. Murphy (“Murphy Trial Tr.”) 402-03; Hefty Trial Tr. 275:8–276:1.

6. The principal factors that adjust for variations in district cost of living, at-risk students, and pupil population (district size) are computed as percentages of the statewide base. C.R.S. §§22-54-104 (4)(a) (at-risk funding), -104 (5)(b) (district size); and -104 (5)(c) (cost of living).

7. Prior to enacting the PSFA in 1994, the Legislative Council studied how to set the factors, but it did not study the statewide base. Ex. 30,109, Leg. Council Res. Publ. No. 378, Aug. 1993; Steinbrecher Trial Tr. 640:12–642:6; Murphy Trial Tr. 373:23-375:8.

8. In its report of August 1993, the Legislative Council stated that:

There are two tasks contained in the study charge that we were unable to complete due to time constraints: the determination of funding component values and the submission of recommendations for a method of establishing a base per pupil funding component.

Ex. 30,109 at 11-12.

9. The initial 1994 statewide base was determined by the amount of dollars deemed to be available for appropriation for public education. The process was described as working backwards through the formula from the intended appropriation amount to determine the base funding amount. Ex. 30,109 at 11-12; Steinbrecher Trial Tr. 36:17-638:12; Murphy Trial Tr. 390:19-391:1; 8/2/11 Trial Testimony of Glenn Gustafson (“Gustafson Trial Tr.”) 477:11-22.

10. The 1994 statewide base was not set with reference to the cost of accomplishing any particular level of educational quality or student achievement. Members of the Legislative Council and its committee “suggested that an ideal system of school finance would incorporate measures of outcome and achievement. However, no data exist which reflect student achievement or outcomes.” Steinbrecher Trial Tr. 638:13-20; Murphy Trial Tr. 374, 405-06; Hefty Trial Tr. 277:6–278:2; Ex. 30,109 at 42.

11. The standards-based education system that now serves as the measure of student achievement was adopted in 1993 (HB 93-1313). In 1994, when the PSFA was enacted and the initial statewide base funding amount was established, the standards-based education system was not sufficiently implemented to provide the basis for a financing system tied to educational outcomes. Ex. 30,109 at 5-6.

12. None of the school finance acts adopted from the mid-1960s through the PSFA of 1994 factored in the cost of providing a specific level of educational quality. Steinbrecher Trial Tr. 643:1-12.

13. There is no factual dispute that the initial statewide base amount and factors were set without any relationship to the costs to fulfill the mandates of the comprehensive standards-based education system that has been implemented since 1994.

14. From 1994 to the present, annual adjustment to PSFA funding have been made by incremental flat dollar increases to the statewide base. For example, for the 2006-07 school year, the statewide base was increased by \$146.25 from \$4717.62 per pupil to \$4863.87; for 2010-11, the statewide base was increased by \$22.03 from \$5,507.68 per pupil to \$5,529.71. C.R.S. §§22-54-1-4 (5)(a), (XIII), (XVII).

15. Prior to the implementation of Amendment 23, Colo. Const., art. IX, §17, in 2001, the annual adjustments were based on the amount deemed to be available for appropriation from the state general fund and the impact on local property taxes. Since 2001, the annual adjustment has been no higher than the constitutionally mandated “rate of inflation plus an additional one percentage point”. Steinbrecher Trial Tr. 642:17-25. *See also* C.R.S. §22-54-105(5).

16. Robert Schaffer, the Chairman of Defendant State Board, testified that the amount of money allotted under the school finance formula is arbitrary because it is just an estimate based on the previous year’s allocation and political compromise. Schaffer Trial Tr. 5932:22–5933:15.

17. In September 2005, the School Finance Task Force to the Colorado General Assembly School Finance Interim Committee (the Task Force) issued a report with recommendations concerning needed adjustments to the PSFA. Ex. 26, Final Report of School

Finance Task Force to the Colorado General Assembly School Finance Interim Committee, Sep. 13, 2005; Murphy Trial Tr. 383-87; Gustafson Trial Tr. 474-79.

18. The Task Force found, *inter alia*, that in 1988 and 1994:

Base per pupil funding was set at a dollar figure that represented the amount of money not already dedicated for other purposes. In effect, base per pupil funding became an afterthought in prior Acts. Ex. 26 at 5; Murphy Trial Tr. 390-91.

\* \* \*

[T]he existing School Finance Act needs to fundamentally change so that the funding is based on a combination of adequate resources to meet local, state, and national performance goals and is distributed equitably among all Colorado school districts. . . . [T]he 1994 Act was created in large part to address the distribution of resources equitably across the state. It did not . . . anticipate the federal No Child Left Behind Act (NCLB) and state education reforms. Ex. 26 at 11.

\* \* \*

The Task Force supports a base that is defined as the amount needed for a student with no special needs to meet the expectations implicit in accreditation, school accountability reports and NCLB. The Task Force supports increasing the base amount to an adequate expenditure level as opposed to allocating on the less reliable basis of revenues available.

Ex. 26 at 13; Murphy Trial Tr. 391-94; Gustafson Trial Tr. 474:14-25, 477:1-25.

19. The Task Force made no fundamental or substantial changes to the Public School Finance Act or the way education is funded in Colorado. The only outcome from the 2005 School Finance Interim Committee was to recommend a change to the school finance formula that would allow school districts to impose an additional mill levy to fund the remaining half-day of kindergarten that is not funded by the State. The work of a subsequent Interim School Finance Committee in 2009 similarly did not result in any legislation related to the problems with the inadequate base. Herrmann Trial Tr. 5541:18-5542:4; King Trial Tr. 6766:25-6767:10, 6804:14-23.

20. Voreta Herrmann, the former Assistant Commissioner of the CDE Public Finance Unit, was a member of the 2005 Task Force. She agrees with the conclusions reached by the Task Force. Specifically, Ms. Herrmann agrees that:

[N]either the 1988 nor '94 acts established a base level of per-pupil funding prior to addressing other school finance adjustments that were meant to achieve funding equity. Base per-pupil funding was set by a dollar figure that represented the amount of money not already dedicated for other purposes. In effect, base per-pupil funding became an afterthought in prior Acts.

Ms. Herrmann further agrees the base set in prior school finance acts is inadequate because it was not set based on academic performance expectations. In her opinion, an adequate

foundation for spending should be established through a higher statewide base per pupil spending that reflects academic accountability requirements. Herrmann Trial Tr. 5538:11-5540:1; Ex. 26 at 5.

21. Ms. Herrmann agrees with the Task Force Recommendation that the first priority in a new school finance act should be to identify an adequate level of base per-pupil funding. This amount should include adequate resources for districts to meet all standards. She further agrees that, “adjustments to the base are necessary, but should not take precedence over properly identifying this dollar amount.” Herrmann Trial Tr. 5540: 2-19.

22. The PSFA factors used to adjust the statewide base to address district cost variables are all computed as percentages of the statewide base; therefore, the statewide base remains the driving factor in determining school district funding, and irrationality in the statewide base is not corrected by the factors. Moreover, in the past two school years, application of the “negative factor” to accomplish state-level budget reductions has essentially eliminated the factors from the finance system. Hart Trial Tr. 2963:11-2964:16, 3000:7-18.

23. Although it was intended to account for variations in cost among districts, the cost of living factor was never fully implemented. Gustafson Trial Tr. 474:23-24.

24. In 2007, former Governor Bill Ritter created the P-20 Education Coordinating Council to develop policy recommendations for improving educational outcomes in Colorado from preschool through graduate school. Lieutenant Governor Joe Garcia, then President of CSU-Pueblo, was one of the co-chairs. In the P-20 Education Coordinating Council Report 2007-2010, the Educator subcommittee recommended that:

[The] state increase school funding to a level that fully funds state mandates and adequately meets the needs of districts to attract, retain, and support the high quality educators needed to reach the state’s educational goals. The final amount needed for this funding has not been determined; however, some work towards determining this amount has been done by the Colorado School Finance Project.

Ex. 7504, Colorado’s P-20 Coordinating Council Report: 2007-2010, at 29.

25. This recommendation was accepted by the full P-20 Council, but was never acted on by the legislature. Lieutenant Governor Garcia supported the recommendation and continues to support it today. Garcia Trial Tr. 4553:20-4554:14, 4614:19-4616:6.

26. In order to determine whether the State adequately funds a particular program, it is important to know how much that program costs. Nevertheless, Defendants have not conducted a study to determine the cost of funding all public education programs set forth in statute and regulation. Garcia Trial Tr. 4609:11-16; Stipulated Facts ¶8. *See also* Gantz Berman Trial Tr. 5695:25-5696:4; Andrews Trial Tr. 6376:8-12; Garcia Trial Tr. 4610:5-8; Moloney Trial Tr. 5434:17-5435:9.

27. The General Assembly has never acted to adjust the PSFA statewide base or factors to take into account or otherwise refer to the costs of providing the educational services mandated by the standards-based education and education accountability systems or the

constitutional mandate to establish and maintain a thorough and uniform system of public education. 8/17/11 Testimony of John V. Pommer (“Pommer Trial Tr.”) 3492:25–3493:21; 8/17/11 Testimony of Susan G. Windels (“Windels Trial Tr.”) 3453:15–3455:7; 9/2/11 Trial Testimony of Andrew Romanoff (“Romanoff Trial Tr.”) 6858:7-12.

28. The uncontested evidence establishes that the PSFA statewide base per pupil funding and factors when created in 1994 and as adjusted in every year since then are not now and have never been rationally related to the costs of providing the educational services mandated by the standards-based education system or any other measure of educational quality.

## **V. UNDERFUNDING OF PUBLIC EDUCATION**

1. As a result of the history of irrational funding, Colorado public education is significantly underfunded.

2. School districts do not have the funds necessary to fulfill the mandates of the standards-based system and, thus, the mandate of the Education Clause.

[W]e do not have the money to deliver on [standards-based education]. We don't have the money for those things that I've mentioned that we need. And . . . there simply isn't a way, particularly in these times, to reallocate the money to produce the time, to produce the extended school year, to produce all of the opportunities we've talked about that would deliver on the standards-based education that will get all students to a proficient level.

Hefty Trial Tr. 331:23-332:7; Moses Trial Tr. 691:19-694:19.

The State is currently between \$750-800 million below the funding levels Amendment 23 would require. Cary Kennedy Trial Testimony, 2763: 24-25, 2764: 1-7.

3. Significant underfunding is a further indicator of the absence of a rational relationship between the funding system and the education system.

### **A. The APA Study: General**

1. Rational and thorough methods exist to reasonably estimate the costs to provide the resources necessary to meet the mandates of standards-based education and the thorough and uniform provision.

2. Justin R. Silverstein, Vice President of Augenblick, Palaich and Associates, Inc. (APA), was admitted as an expert in conducting studies of the costs of providing public education that meet standards of educational quality and the analysis of the results of those studies. Mr. Silverstein presented the methodology, analysis, and conclusions of APA in a report titled “Costing Out the Resources Needed to Meet Colorado Education Standards and Requirements (March 2011)”, admitted as Trial Exhibits 8303 and 10213 (the APA Report). 8/8/11 Trial Testimony of Justin Ryan Silverstein (“Silverstein Trial Tr.”) 1477:22-1478:10.

3. APA is a reputable firm that has been hired by CDE many times to cost out discrete educational programs, including aspects of CAP4K. Ms. Herrmann agrees that the APA Report analysis is “credible and defensible.” Gantz Berman Trial Tr. 5695:13-20; Neal Trial Tr. 5479:22-5480:10; Herrmann Trial Tr. 5562:25-5563:5.

4. Costing-out studies developed over the past decade in response to a lack of understanding of the costs of implementation of standards-based reform. A number of states have undertaken costing-out studies to determine if resources were available to actually meet the goals of standards-based reform; and several, including Maryland, Kansas, Pennsylvania, and New Jersey, have incorporated the results of those studies in their school funding statutes. Silverstein Trial Tr. 1479:21-1480:17; Ex. 8303 at 1.

5. Defendants’ expert witness, Dr. Erik Hanushek, believes it is impossible to estimate the cost of an adequate education, but admits it is possible to estimate the cost of particular education programs that comprise an education system and it is possible to estimate implementation of state public education requirements, which is essentially how APA arrived at its cost estimate in this case. 8/25/11 Trial Testimony of Dr. Erik Hanushek (“Hanushek Trial Tr.”) 5040:4-5041:14, 5043:9-21.

6. The objective of the APA Report was to cost out the performance standards and requirements of Colorado and federal law that Colorado school districts must meet, including the most recent additions such as CAP4K, new accountability and accreditation standards, and the SB 191 teacher effectiveness standards:

[W]e were looking at the full implementation costs, the full ongoing costs for districts and schools and educators to actually meet the standards set forth. So that included having the ability to get students up to the performance levels that are expected to fully implement CAP4K

So it’s really the full, ongoing costs, not just the compliance costs of getting things going, but fully implementing it and having the opportunity to succeed under the accreditation system and those sorts of things.

Silverstein Trial Tr. 1481:15-1482:21; Ex. 8303 at 3-4 & App. A.

6. For this purpose, APA used two generally accepted methodologies: the “successful school district” or “SSD” approach and the “professional judgment” or “PJ” approach. The PJ approach also incorporated an element of the “evidence based” approach. Silverstein Trial Tr. 1483:19-25.

7. The SSD approach focuses on an identified group of successful school districts in Colorado and analyzes their actual, current basic expenditures to understand the real cost of meeting state goals. It provides a reasonable estimate of the base cost of meeting the state standards relative to what school districts are accomplishing in 2008-09 and not fully implementing all of the new reforms. Silverstein Trial Tr. 1484:4-8; Ex. 8303 at 2-3.

8. The PJ approach relies on the judgment of panels of Colorado professional educators to estimate the total resources needed to accomplish what school districts are expected



to accomplish at present or will need to accomplish in the future. Professional educators are used on panels to specify resources such as numbers of personnel, regular school programs, extended-day and extended-year programs, professional development, and technology. These resources are then “costed-out” to provide an estimate of the base per pupil cost to meet the state standards as well as the additional costs for serving special needs students or serving students in districts with significantly different numbers of students (district “size”). Silverstein Trial Tr. 1484:9-12; Ex. 8303 at 3.

#### **B. The APA Study: The Successful School District Approach**

1. For the SSD analysis, APA selected the thirteen school districts identified by the state in the fall of 2010 as “accredited with distinction,” the highest performance category, to be the pool of successful school districts. They used these districts’ 2008-09 expenditure data, which was the most recent data available through CDE. Silverstein Trial Tr. 1487:15-1488:15; Ex. 8303 at 5.

2. The SSD approach is based on current levels of demonstrated success, which is not necessarily the same as meeting all state standards and requirements. The SSD approach cannot provide a base cost for programs not currently in effect, including, in this case, the critical post-2008 acts such as CAP4K, the 2009 accreditation standards, and SB 10-191. The SSD approach is also not useful to estimate the costs of educating special needs populations above the basic level. Silverstein Trial Tr. 1486:12-20; 1493:20-18.

3. APA examined successful school district expenditures in the areas of instruction, administration, and maintenance and operations. They applied identified “efficiency screens” to eliminate statistical anomalies and adjusted out expenditures for special education, at-risk students, and English language learners and other factors to reach a basic expenditure level per pupil in each district. APA did not include transportation, food service, or adult education in its analysis. Silverstein Trial Tr. 1485:11-1493:18; Ex. 8303 at 5-9.

4. APA used the data from the pool of successful schools to create per-pupil average expenditures and from that determined that the annual “SSD base cost” was \$6,051 per pupil. This figure represents the “average basic expenditure per pupil for these 13 successful districts from 2008-’09, when they were deemed to . . . the accredited with distinction group of districts, when they . . . were attempting to meet the standards set for ’08-’09.” Silverstein Trial Tr. 1492:21-1493:14.

#### **C. The APA Study: The Professional Judgment Approach**

1. The professional judgment or PJ approach relies on the experience of professional educators to identify the resources they need to fully meet the standards and requirements set by the State. In this context, “resources” refers not to money as such, but to “the people and things you need in a school or in a district to get the job done.” Silverstein Trial Tr. 1494:19-1496:4; Ex. 8303 at 10.

2. The PJ approach also addresses the limitations of the SSD approach. It permits estimating the adjustments necessary to meet the additional costs of educating special needs

students and to implement standards and requirements that were not or have not yet been implemented. Silverstein Trial Tr. 1487:15-1488:15; Ex. 8303 at 5.

3. The PJ process begins by defining representative schools and districts that approximate the configuration of existing schools in the state and address differences among schools at the elementary, middle, and high school levels caused by variations in school district sizes. APA divided Colorado school districts into six enrollment range groups ranging from “very small” to “very large.” They also used state averages to provide percentages of special needs students in each representative school. Silverstein Trial Tr. 1496:7-1501:18; Ex. 8303 at 11-12 & Tables III-1, III-2A & B.

4. APA then formed nineteen PJ panels averaging six educators each, including combinations of classroom teachers, principals, personnel who provide services to special needs students, superintendents, technology, curriculum, and assessment specialists, and school business officials. A total of eighty-nine educators participated in five rounds of panels. The first round of panels were school level; the second round were specific special needs panels; the third round were district-level panels, including a CFO panel; the fourth round looked at resource needs for technology and postsecondary options; and the fifth round included two statewide panels to review the work of all of the preceding panels. Silverstein Trial Tr. 1501:25; 1508:10; Ex. 8303 at 13-14.

5. The panelists worked together collaboratively to identify resource requirements at the school and district levels for all representative school and district sizes for instructional and other personnel necessary to provide a basic education to students without special needs, additional personnel for students with special needs, non-personnel costs, and technology, among other things. The result was a comprehensive analysis of staffing and other needs for elementary, middle, and high schools and districts across the range of representative model districts. Silverstein Trial Tr. 1513:23-1516:22; Ex. 8303 at 19-24 & Tables III-3A to III-11C.

6. The next step was to cost-out the resources identified through the panel process. This process was performed by APA staff and not the panelists. APA used a variety of clearly defined methods to estimate the costs of the personnel and other resources to estimate the school and district level costs for the six classifications of representative school districts, including the additional costs of special student populations. Silverstein Trial Tr. 1515:11-1522:14; Ex. 8303 at 23-27 & Tables III-12 to 14.

7. Using the representative district cost data and after adjusting for cost of living across the state, APA generated a PJ base cost of \$7,738 per pupil. This figure represents a basic cost comparable in nature to the SSD base cost of \$6,051 per pupil and to the PSFA statewide base per-pupil funding level of \$5,529.71. Silverstein Trial Tr. 1525:4-1526:14; C.R.S. §22-54-104(5)(a)(XVII).

#### **D. The APA Study: Conclusions**

1. The PJ and SSD base costs can be adjusted by the student weighting formulas developed through the panel process to provide appropriate “weighting” standards to apply for special needs students. Silverstein Trial Tr. 1525:17-1528:9; Ex. 8303 at 28-31.

2. With this information and CDE pupil population data by school district, APA modeled the financial resources needed for each school district in the state under both the SSD and PJ approaches. Silverstein Trial Tr. 1529:7-17; Ex. 8303 at 31-32; Ex. 10,213, Appendices D and E.

3. Appendix D to the APA Report lists every school district with its SSD per pupil funding and costing out total, current expenditures (less transportation and food service, which are not included in the costing out analysis), and the difference between the SSD total funding and the actual current expenditures. For example, for the Aurora Public Schools (District Code 180, Adams-Arapahoe 28J), the SSD funding level per pupil is \$11,004, and the SSD total funding is \$403,398,804. The actual current expenditure level is \$285,512,072. Therefore, the funding shortfall is \$122,886,279. If the Aurora override funding is removed from its current expenditures, the funding shortfall increases to \$145,223,693. This costing out figure is derived using the SSD base and the PJ weights to calculate the SSD costing out figure. Ex. 10,213, Appendix D at 1.

4. Appendix E lists the same information but using the PJ funding figures. Again looking at Aurora Public Schools, the funding shortfall is \$230,596,663, which increases to \$252,934,077 when the override revenues are removed. This costing out figure is derived from and is different from the SSD in that it assumes full implementation of the reforms and therefore reflects a higher base calculation. Therefore, this figure is calculated by applying the PJ base and the PJ weights to calculate the PJ costing out figure. Ex. 10,213, Appendix E at 7.

5. Appendix D demonstrates that under the SSD approach, only two school districts were sufficiently funded, Steamboat Springs RE-2 (District code 2770) and Silverton 1 (District code 2820). Appendix E demonstrates that under the PJ approach, no school districts are sufficiently funded. Ex. 10213, Appendix D and E

6. Finally, in Tables IV-1 and -2, APA totaled the SSD and PJ cost findings for all school districts to produce a statewide total cost under both methods. Under the SSD approach, using the actual expenditures of the 2010 “highly accredited” school districts, APA concluded that the statewide total costing out funding is \$8,069.6 million dollars, or about \$8.1 billion. Under the PJ approach, the statewide total costing out funding is \$10,284.9 million, or about \$10.3 billion. Ex. 10,213 at 33-34.

7. The SSD total cost figure of \$8.1 billion can be compared to CDE’s record of actual current school district expenditure levels (without regard to source of funding), less transportation and food services of \$6.75 billion. The result is that, in total, school districts would have needed an additional \$1.35 billion to reach the SSD costing out total for 2008-09. The difference of \$1.35 billion includes district override funds that are raised by local initiative outside of the school finance formula. These dollars are not available to all districts nor are they uniformly distributed among all districts. If only those dollars that are raised through the state’s funding process are considered, the difference increases to \$1.94 billion. Silverstein Trial Tr. 1535:18-1536:9; Ex. 8303 at 32.

8. The PJ total cost figure of \$10.3 billion when compared to all available funds results in an annual funding deficit of \$3.58 billion, or \$4.15 billion when the override dollars are taken out. Silverstein Trial Tr. 1536:13-15; Ex. 8303 at 33.

9. In preparing this analysis, APA made no distinction based on the sources of funding, whether state, local, or federal; nor is the funding sources relevant to the conclusion. Silverstein Trial Tr. 1535:5-17; 1536:22-1537:4.

#### **E. Costing-out Estimates by Voreta Herrmann**

1. Voreta Herrmann, while serving as Assistant Commissioner of Education, did not believe there was sufficient money in the school finance system. On October 1, 2009, she made a presentation to the legislative fiscal stability committee that included her analysis of the necessary level of public school funding. Ex. 31, Presentation to the Fiscal Stability Committee, Oct. 1, 2009; Herrmann Trial Tr. 5557:14-24; Heath Trial Tr. 2949:8-2950:21.

2. Ms. Herrmann found that, in 2009-10, there was an additional \$2.8 billion necessary to bring Colorado's expenditure level up to the national average (\$1.2 billion), bring Colorado teachers' pay up to the national average (\$269 million), fully fund categorical programs (\$816 million), and to extend the school year and fund full-day kindergarten. Ex. 31 at 19; Herrmann Trial Tr. 5557:25-5559:16.

3. There have been no efforts by the General Assembly since Ms. Herrmann's presentation to address the shortfall she identified or the base funding amount for education. Heath Trial Tr. 2950:22-2951:6

#### **F. Underfunding of the Colorado Department of Education**

1. The Colorado Department of Education has a critical role in assuring that the mandate of Education Clause is fulfilled.

2. CDE struggles from a lack of adequate funding and does not have sufficient resources to meet its responsibilities. Gantz Berman Trial Tr. 5690:7-15.

3. The State determined in a 2009 internal report that it had insufficient staff to implement and ensure compliance with state program and legal requirements. Specifically, the State concluded that it needed an additional fifty-seven FTE to comply with state regulatory, statutory and constitutional requirements. Boland Trial Tr. 6155:8-11; Ex. 10,501, CDE's 2008-09 Catalog of Requirements (Allocation of Resources), State Statutes, at 382.

4. WestEd, a research company, provided a report to the State in 2008 that concluded that:

- CDE receives relatively little State general fund support or other sources of discretionary funding, and a significant portion of CDE funding is restricted in its use.

- Because CDE has insufficient discretionary funding, the federal government provides a lower indirect cost rate to CDE. With a low indirect cost rate, CDE can recover less for administrative and overhead activities from federal grant programs.
- Because CDE has insufficient discretionary funding, it cannot always spend appropriate amounts for CDE priorities. State general funding is instead used as “mortar to fill the cracks.”
- CDE is among the lowest funded state educational agencies when comparing total spending per student.

8/31/11 Trial Testimony of Patricia Boland (“Boland Trial Tr.”) 6164:7-6167:25, 6198:21-25; Ex. 451, Report of Findings and Recommendations: An Examination of State and Federal Resources Allocated to the Colorado Department of Education, April 2008, at i-ii, 5, 8-14, 16 and C.1.

5. Approximately seventy percent of the funding for CDE’s Office of Performance and Policy comes from federal sources. Wenning Trial Tr. 4682:18-21.

6. The SchoolVIEW web portal on CDE’s website, which enables parents, teachers, administrators, and citizens to view and assess the academic achievement of students, schools, and districts, cost approximately \$4.5 million to design and implement. The majority of those costs were paid through private and federal resources, such as grant money. Mr. Wenning believes the future of SchoolVIEW would be uncertain if federal money were no longer available. Wenning Trial Tr. 4685:15-21, 4686:21-25.

7. CDE knows from experience that additional resources can help it meet federal requirements and enhance its operational capacity. For example, CDE received an additional two FTEs to assist in monitoring districts and schools in recent years, and attributes a reduction in non-compliance with this increase in resources. Boland Trial Tr. 6190:2-6, 6199:22-6200:9.

8. Defendants’ witness Mike Miles, Superintendent of the Harrison School District, owns and operates a consulting firm, called Focal Point, which provides districts with fee-based services not provided by the State, such as curriculum development, leadership training, and coaching. Mr. Miles believes that some of these services should be provided by the State. Miles Trial Tr. 5850:19-5852:25.

9. Several of CDE’s program directors believe their departments have insufficient staff to carry out their mission and responsibilities. 8/31/11 Trial Testimony of Barbara Medina (“B. Medina Trial Tr.”) 6038:19-6040:13, 6306:8-16, 6306:23-6307:1. *See also* 8/31/ Trial Testimony of Edward A. Steinberg (“Steinberg Trial Tr.”) 6243:1-25.

## **G. Gifts, Grants and Donations**

1. The General Assembly has completely failed to provide any funding to address the additional costs of the contemporary amendments and additions to the standards-based education system.

2. Although it was predictable and in fact well known that these initiatives would involve significant resources to implement, the General Assembly made no changes to the public school finance system, but instead repeatedly passed reforms by authorizing the state to accept “gifts, grants, and donations.” Windels Trial Tr. 3443:14-3444:23; Ex. 10086, Colorado Legislative Council Staff Memorandum, November 12, 2009.

3. Critical education legislation funded in this manner include CAP4K, the Education Accountability Act of 2009, the state data reporting system (SchoolView), and numerous other programs. Ex. 10086, Table 1, at 2-17; Windels Trial Tr. at 3445:12-3451:9.

4. Former Senator Windels testified that all of these bills were important to fulfill the thorough and uniform mandate. Windels Trial Tr. 3451:3-9.

5. Private grants are not a reliable source of funding. Herrmann Trial Tr. 5561:1-17.

6. Commissioner Hammond has asked the General Assembly not to pass any more K-12 education legislation that relies on gifts, grants, and donations. The reliance on gifts, grants, and donations has had a negative impact on CDE. He has also asked for a two-year moratorium on new initiatives to allow for time to implement existing standards and mandates. This request has not been honored. Hammond Trial Tr. 6542:2-14, 6540:6-15.

7. The Department of Education has increasingly become reliant on gifts, grants and donations to conduct its work. The Joint Budget Committee addressed this issue in its briefing document in 2009-2010:

Over the last five years, the amount in grants and donations received by the Department has increased significantly. The amount of grants and donations the Department anticipates receiving in FY 2009-2010 will be nearly three times more than was received in FY 2008-09.

\* \* \* \*

As can be interpreted from the trend analysis...the Department has received increasingly more amounts of grants and donations over the last few years to fund selected programs. Staff anticipates even more grants and donations to be received to help offset decreased state support for various Department prioritized programs. However, the General Assembly should consider whether the State wants education programs to be implemented without legislative oversight.

Trial Exhibit 30146, pp. 61, 64.

8. Former Education Commissioner Dwight Jones established a non-profit 501 (c) (3) to raise private funding to assist the department in implementing education reform. This entity is called the Legacy Foundation. Hammond Trial Tr. 6542: 2-14, 6543:1-19

9. In a joint grant application to the Rose Foundation, the Department and the Legacy Foundation state: “The Colorado Legacy Foundation was founded on the premise that all students deserve to receive a high-quality education while constantly evolving. However, the current educational system does not adequately provide for every child.” Trial Exhibit 3906.

Add to paragraph 2 under V Public Education is Underfunded:

The State is currently between \$750-800 million below the funding levels Amendment 23 would require. Cary Kennedy Trial Testimony, 2763: 24-25, 2764: 1-7.

## **H. CAP4K Funding**

1. CAP4K is self-described as the critical new phase of standards-based education. As discussed above, it mandates new content standards and assessments from preschool through elementary and secondary education aligned to accomplish universal student proficiency, defined as postsecondary and workforce readiness.

2. There were no increases in the school finance act to reflect the mandates in CAP4K. Herrmann Trial Tr. 5560:23-25.

3. The State commissioned Augenblick, Palaich and Associates (APA) to conduct a cost study for the implementation of CAP4K. APA found that the first phase of implementation alone would cost approximately \$139 million. The study did not estimate the cost of getting students to proficiency. Ex. 67, Analysis of the Costs of Colorado’s Achievement Plan for Kids (CAP4K): First Interim Report, March 1, 2010, at CDE 6218; O’Brien Trial Tr. 4765:8-4766:23, 4806:2-7.

4. Senator Heath supported increasing standards and assessments as the “right direction” for education. He acknowledges that there was no financial support for CAP4K or any of those legislative measures. Heath Trial Tr. 2951:7-18.

## **I. SB 191 Funding**

1. SB 191 is regarded as an extremely important educational initiative to assure teacher effectiveness. Nevertheless, it was enacted and is being implemented without the necessary funding. The enactment of critical educational legislation without funding is irrational.

2. SB 191 was enacted by the State legislature without appropriations to fund the costs of providing the mandated services. The only state allocation for the implementation of SB 191 was for a part-time CDE position. It did not appropriate any monies for any of Colorado’s 178 school districts to implement the requirements of SB 191, finding that those necessary costs would have to be paid out of existing school and district budgets. The State concurs that funding limitations for the implementation of SB 191 are a serious concern. Lopez Trial Tr. 5237:23-5238:23, 5241:17-22, 5247:10-5248:3, 5262:14-5263:11, 5271:3-20; Ex. 3005, Final Fiscal Note SB10-191; Ex. 3008, April 13, 2011 Report, at 21.

3. No one knows how much district implementation of SB 191 will cost. Estimates are that it will exceed \$70-80 million. The original intent of the State was to fund SB 191 implementation through Race to the Top dollars from the federal government. However, Colorado was not successful in the Race to the Top competition. There is now an initiative underway to raise private foundation dollars to support SB 191 implementation. To date, Colorado has received a grant from the Gates Foundation for approximately \$9 million, leaving a shortfall of at least \$60-70 million. Gantz Berman Trial Tr. 5687:24-5689:1; Garcia Trial Tr. 4520:18-4521:12, 4551:16-20, 4612:5-4613:20; Neal Trial Tr. 5480:11-21.

4. The State Council for Educator Effectiveness estimated the per-student cost of just starting the process of compliance with SB 191 to be approximately fifty-three dollars. The ongoing annual costs to comply with SB 191 will depend somewhat on the teacher or principal involved, but could range from \$343 for a novice teacher to \$3,873 for an ineffective teacher. The Council did not estimate all the costs associated with implementation of SB 191. 8/12/11 Trial Testimony of Dr. Holly Hultgren (“Hultgren Trial Tr.”) 2620:1-24; Ex. 3008, Report & Recommendations of the State Council for Educator Effectiveness submitted to Colorado State Board of Education Pursuant to SB10-191, April 13, 2011 (“April 13, 2011 Report”) at 152-54; Lopez Trial Tr. 5248:4-5249:17, 5254:9-21.

5. The April 13, 2011 Report assumed that the State of Colorado would provide funding for a number of pieces that are important and necessary for the successful implementation of SB 191, including development of a state model system and resource bank with associated tools; providing student, parent and teacher survey results to districts; monitoring the entire system; creating assessment tools in each content area; developing professional development materials; reporting evaluation data; and creation of a student tracking system linking students to teachers. However, to date, no appropriations have been made by the State to fund those requirements. Lopez Trial Tr. 5251:13-5254:4.

6. The evaluation requirements of Harrison School District’s teacher compensation program are similar to those of SB191. Implementation of these requirements cost Harrison approximately \$650,000, which included adding assistant principals to every school building to give regular feedback and on-the-job coaching and developing district assessments and a data management system to track information. Miles Trial Tr. 5816:10-20, 5835:21-5837:2.

7. Denver Public Schools has a system for tying a percentage of teacher compensation to student performance called ProComp. The majority of the money to implement ProComp came from a twenty-five million dollar mill levy increase approved by voters. The pilot project was funded through private foundations, such as the Broad Foundation. Gantz Berman Trial Tr. 5669:8-12, 5689:5-21.

## **VII. SCHOOL FUNDING LEVELS HAVE A SIGNIFICANT EFFECT ON EDUCATIONAL QUALITY**

1. Many witnesses, for both Plaintiffs and Defendants testified that more money makes a difference in public education. Even Defendants’ lead expert witness, Dr. Eric Hanushek, acknowledges that, “money certainly matters”; he testified that if a school district in Colorado efficiently spends its money, additional funds for education could lead to higher



student achievement. Hanushek Trial Tr. 4969 20-4970:18, 5031:6-20, 5076:11-17. *See also* Darling-Hammond Trial Tr. 3928:12-3930:21; Petrone Depo. Tr. 126:8-127:20; Andrews Trial Tr. 6384:21-24; Moloney Trial Tr. 5438:4-6; O'Brien Trial Tr. 4809:22-4810:6; Miles Trial Tr. 5837:23-5839:25, 5843:2-20.

2. Studies performed throughout the United States, in states ranging from Massachusetts to South Carolina to California, demonstrate a strong relationship between resources and achievement. While expenditures in general make a difference, they make an even bigger difference if you spend them in areas close to instruction, such as on the quality of teachers and teaching. Darling-Hammond Trial Tr. 3928:12-3929:14.

3. In states that have undertaken major school finance reforms, studies have found that those investments radically changed the trajectory of achievement and reduced the size of achievement gaps as a function of those reforms. For example, thirty years of litigation-driven school finance reform has resulted in New Jersey becoming one of the highest-achieving states in the country and one of the top five states in every content area on NAEP even though forty-five percent of its students are students of color and more than one-third are low-income. The achievement gap has been cut almost in half in a period of ten years and is continuing to narrow. Darling-Hammond Trial Tr. 3928:15-3930:21, 3973:3-15.

4. A report on declining enrollment prepared for the Colorado Department of Education in March 2010 by the Pacey Economics Group found that reading and math performance in the state, as measured by CSAP, are both positively related to instructional expenditures per pupil. Ex. 64, Highlights and Recommendations of the Declining Enrollment Study, March 2010, at L1647; Hammond Trial Tr. 6575:14-6576:3.

5. Dr. Hanushek believes that examination of achievement and expenditure levels in Wyoming demonstrates that more money does not make a difference. However, Wyoming is not comparable to Colorado. Colorado has 800,000 students compared to Wyoming's 80,000 and has significantly more African-American and Latino students. Wyoming is extremely sparse. It has to spend significant amounts of its education money on transportation just to get kids to school. Darling-Hammond Trial Tr. 3931:1-23; Hanushek Trial Tr. 4994:4-4995:15; Ex. 7735, Trial Exhibits for Lobato et al. vs. State of Colorado, Eric A. Hanushek, July 2011, at "Colorado versus Wyoming Expenditure and Population Characteristics (2008)".

6. Many school district witnesses – and some State witnesses – also demonstrated anecdotally that money matters. There were countless examples, many of which are described below, of instances in which additional funding for particular programs or interventions resulted in measurable achievement gains.

7. Center School District. In 2010-11, Center School District ("Center") received a \$1.5 million dollar federal turnaround grant for its elementary school. It will receive \$550,000 per year for three years. Until Center received the funding from the federal turnaround grant, it was unable to develop and purchase a curriculum that was aligned with state standards. With the turnaround dollars, Center has been able to purchase a curriculum for the elementary and middle schools. Center also contracted with Lindamood-Bell to provide a literacy program and teacher training at the elementary school. The curriculum for only reading, writing, math, science, and

social studies for K-8 was \$80,000. Welsh Trial Tr. 118:3-7, 128:14-18, 129:13-19, 186:21-24, 195:11-199:12.

As a result of the programs and training funded by the turnaround grant, Center's elementary school has seen great improvement in achievement. The results last year on the DIBELS test for first graders were the best Superintendent Welsh has seen. The third grade CSAP proficiency scores went up 13%. Mr. Welsh attributes these improvements to having the financial resources to be able to provide necessary interventions and supports. The support and training for the teachers was also a key component to improving achievement. Welsh Trial Tr. 200:9-19.

8. Woodlin School District. In 2008, Woodlin School District ("Woodlin") participated in an experimental secondary literacy program, through which it received funding and support from CDE for reading intervention materials and professional development. The program helped the district raise its reading scores. There are no analogous programs or resources available to Woodlin in the other areas in which it struggles, such as secondary math and elementary writing. As a result, the district has been unable to make the same gains in those areas. 5/2/11 Deposition Testimony of Rose Cronk ("Cronk Depo. Tr.") 76:18-79:12, 233:3-235:12; Ex. 10,206, Colorado's Unified Improvement Plan for Schools for 2010-11 for Woodlin R-104, at 7.

9. North Conejos School District. When North Conejos School District ("North Conejos") was able to afford a writing teacher, CSAP writing scores were at their highest. Now that North Conejos is no longer able to afford a writing teacher, CSAP writing scores at the elementary level are some of the lowest ever seen in the district. North Conejos once had a summer school program that was beneficial to its students, as reflected in higher CSAP scores. The district is no longer able to afford summer school and has seen a decline in CSAP scores. 3/24/11 Deposition Testimony of Rick Ivers ("Ivers Depo. Tr.") 187:6-16, 226:5-25, 232:17-25, 233:1; Ex. 10121, District Performance Framework Report 2010 for North Conejos RE-1J.

10. Moffat School District No. 2. Moffat School District No. 2 ("Moffat 2") has seen an increase in its reading scores as a result of an influx of money from a "Reading First" grant. That grant provided significant training on literacy to Moffat 2's staff. It also funded the salaries of interventionists, who were able to provide direct interventions for students with skill deficits who needed more intensive instruction. Moffat 2 will not be able to fund these interventionist positions now that the grant has expired. Superintendent Banghart is concerned that the achievement gap in reading will increase as a result. 4/25/11 Deposition Testimony of Kirk Banghart ("Banghart Depo. Tr.") 28:14-16; 71:3-72:22.

11. Mountain Valley School District. Mountain Valley School District ("Mountain Valley") received a "Reading First" grant, which allowed the district to invest in training its teachers, purchase core reading program materials and assessments, and hire a reading interventionist. Mountain Valley's AYP score in elementary reading -- 97.06% -- is a reflection of the impact of that grant money, which has expired. Ex. 2802, 2008-2009 NCLB District Accountability Data -- AYP Elementary Level; 4/28/11 Deposition Testimony of Cory Doss ("Doss Depo. Tr.") 16:3-19:11.

12. Pueblo City Schools. In 2006, Pueblo City Schools was awarded Colorado Preschool and Kindergarten Program (CPKP) full-day kindergarten funding to improve the quality of kindergarten in five of its Title 1 elementary schools. All of these schools were already providing full-day kindergarten to their communities. With the addition of CPKP funding, resources were provided to make a number of programmatic changes, including limiting class size to fifteen, adding instructional assistants to each classroom, adding developmentally appropriate curriculum, and adding professional development. As a result of these changes, children's performance on the end of year literacy assessments increased in all five Pueblo City Schools elementary schools receiving CPKP full-day kindergarten slots. Ex. 30030 at CDE 6791; Bowers Trial Tr. 6683:10-6684:13.

Under a prior superintendent, Pueblo City School District funneled resources were into the elementary school level to focus on reading instruction. This had a positive impact on the CSAP third-grade reading scores. Without those resources, those scores are now beginning to drop. Krage Trial Tr. 2489:5-19.

13. Jefferson County School District. Jefferson County School District's (Jeffco's) major improvement efforts began after its 1999 mill levy override. The district implemented instructional coaches, reduced class sizes, and focused intensively on curriculum and instruction. Those efforts were ramped up again dramatically after Jeffco passed its 2004 mill levy override. The achievement levels of Jeffco's sixth graders, you can see the benefits of these improvements. Stevenson Trial Tr. 1086:18-1088:25.

14. Aurora Public Schools. Aurora Public Schools ("APS") has implemented a number of programs and initiatives that have successfully increased student achievement. Superintendent Barry refers to these programs as "islands of success" because the district is unable to extend or replicate the programs for all students who need them due to a lack of resources. Examples of the "islands of success" include:

- The "Pathways" program offers students the choice to focus on a certain content area, such as: health sciences; science technology; engineering, math, business; and arts and communications. The goal is to increase student motivation and achievement. The program has been successful for the students able to participate, but the district has been unable to replicate the program for all students because of budget cuts. There is only one school that has all four pathways available. Twenty of fifty-nine schools have at least one of the pathways available. Barry Trial Tr. 1778:4-1781:19.
- The "Fifth Block" program offers twenty-three days of extended instruction in literacy and math during the summer to 4,000 students near or close to proficient levels. The program is successful but limited, and the demand has outstripped APS's capacity. Barry Trial Tr. 1783:17-1785:14.
- The "English Language Learning Center of Excellence" is a demonstration classroom in every school for English language learning. Superintendent Barry testified that this program is successful, but cannot be replicated in a manner to reach all students that need the program to meet state requirements. Barry Trial

Tr. 1790:3-1792:11; 8/9/11 Trial Testimony of Lisa Escarcega (“Escarcega Trial Tr.”) 1883:12-1886:7.

- APS’s truancy program has had some limited success in reducing dropout rates. Superintendent Barry testified that the district’s dropout rate is still unacceptable and could be lowered further if APS had the resources to expand its truancy program. Barry Trial Tr. 1802:4-1805:1.

15. Boulder Valley School District. In recent years, Boulder Valley School District (BVSD) has implemented a number of interventions to raise the achievement of under-performing students. BVSD has only had enough funding to implement these interventions on a small scale or in a limited number of schools. Nevertheless, it has seen significant improvements where it has been able to implement the interventions.

- Several schools in BVSD are now using a “co-teaching” model in at least some classes. In “co-teaching,” a “teacher of access” assists a content teacher in delivering curriculum to all students, including students who may be ELL or in special education or who may have trouble following along or understanding the material. 8/12/11 Trial Testimony of Ellen Miller-Brown (“Miller-Brown Trial Tr.”) 2637:23-2638:10, 2640:10-21.
- In Creekside Elementary School, where “co-teaching” has been used most intensively in the district, CSAP growth scores have increased in reading and math. Special education students saw a strong increase. Creekside Elementary School’s student population is about twenty-five percent ELL, thirty-three percent Hispanic, thirty-eight percent free and reduced lunch, and sixteen percent special education. Miller-Brown Trial Tr. 2641:9-16, 2641:1-7.
- Centaurus High School likewise saw strong results for students who received “co-teaching.” Some students had a growth percentile median score gain of ninety. Centaurus High School’s student population is about eight percent ELL, thirty-one percent Hispanic, thirty-one percent free and reduced lunch, and twelve percent special education. Miller-Brown Trial Tr. 2643:15-24, 2648:2-9.
- Boulder High School has used a “co-teaching” model for its special education students. Previously, sixty special education students would typically fail Algebra I their first semester and drop out of it the second semester. Failing a class in ninth grade correlates with a fifty percent likelihood of dropping out of school and failing to graduate. After using co-teachers, only two students dropped out of Algebra I. Miller-Brown Trial Tr. 2647:25-2649:15.
- Another strategy for closing the achievement gap is extended learning programs, including after-school and summer programs. One BVSD school, Sanchez Elementary School, successfully raised funds and obtained grants to operate a before-school program, an after-school program, and a summer program. Sanchez Elementary offers a summer science program to any child who wants to attend. In the past four years, Sanchez Elementary has experienced a twelve

percent increase in the median growth percentile data in reading and math. Seventy percent of Sanchez Elementary's student population participates in free- or reduced-price lunch programs. Miller-Brown Trial Tr. 2658:22-2660:3, 2661:2-19.

16. Dr. Moloney was the director of upper school at the American School of London, which he describes as the "wealthiest school on the planet." In his opinion, the American School of London was able to offer excellent educational opportunities outside of the core subject areas because of its wealth. Moloney Trial Tr. 5349:8-23.

17. Defendants' expert, Dr. Rob Stein, believes the school he used to run, Graland Country Day School, did well, in part, because it had more resources than public schools. Graland's per pupil operating revenue is approximately \$17,500 compared to about \$6000 in public schools. 6/17/11 Deposition Testimony of Dr. Rob Stein ("Stein Depo. Tr.") 21:17-25, 23:11-14, 176:14-23.

18. As a result of adequacy litigation, Massachusetts has infused large amounts of money into property poor districts. Its achievement rates are now at the top of the country. Moloney Trial Tr. 5425:11-20.

19. Dr. Hanushek's analysis that there is not much relationship in Colorado between spending and achievement contradicts testimony and documentary evidence from dozens of well-respected educators in the State, defies logics, and is statistically flawed. Dr. Hanushek's analysis relies on median growth percentiles rather than proficiency levels, which are not a straightforward measure of achievement. Median growth percentiles are just a measure of the change in achievement from year to year, not the actual achievement of the students in the district. When Dr. Darling-Hammond used the number of students who score proficient on CSAP from the data set provided to Dr. Hanushek by the State, she found a very strong statistical relationship between achievement in reading and math and spending, measuring expenditures in four different ways. Moreover, Dr. Hanushek's analysis relies on the existence of huge inefficiencies within school districts. However, after over 180 depositions and the production of hundreds of thousands of pages of documents, including budgets from almost every school district in the State, the State has been unable to point to any specific inefficiencies or waste in the school districts involved in this case. The only general inefficiency Dr. Hanushek cites is salary schedules, for which there is contrary evidence. Hanushek Trial Tr. 5006:6-5007:16, 5024:8-14, 5050:12-15; 8/29/11 Rebuttal Trial Testimony of Dr. Darling-Hammond ("Darling-Hammond Rebuttal Trial Tr.") 5723:23-5727:9, 5729:6-5731:1, 5736:12-25; Ex. 10,488, Relationship between Expenditures and Achievement (Per pupil Expenditures); Ex. 10,491, Table 1. Estimated OLS Coefficients for the Percent of Students Proficient in Mathematics on Student Characteristics and Expenditures, by Colorado Districts.

### **VIII. COLORADO STUDENT ACHIEVEMENT**

1. Every child has the ability to learn and succeed in the classroom. Moloney Trial Tr. 5438:1-3.

2. Colorado has one of the highest percentages of citizens with college and graduate degrees per capita in the nation. However, a large percentage of the state's highly educated citizens came from other states. They were not educated in Colorado public schools. As a state, we are not educating our own children so that they will be competitive. This phenomenon is known as "the Colorado paradox." Barry Trial Tr. 1763:10-21; King Trial Tr. 6809:4-17.

3. The General Assembly and Defendants have identified several standards by which to measure the accomplishment of the thorough and uniform mandate. These include student achievement levels, closing the "achievement gap," high school graduation rates, and postsecondary and workforce readiness. By each of these measures, the State is failing to fulfill the constitutional mandate.

4. Colorado is losing ground in education as compared to other states and countries. Garcia Trial Tr. 4581:22-4582:6.

5. According to Aurora Public Schools Superintendent Barry, who retired as a two-star general after thirty years of service in the top echelon of our nation's security forces, Colorado's low student achievement poses a threat to national security. Barry Trial Tr. 1812:24-1814:8.

#### **A. Student Achievement Levels**

1. Colorado has fifteen years of CSAP data. That data shows that, generally speaking, academic achievement in the state has remained relatively flat. O'Brien Trial Tr. 4797:10-14.

2. Approximately 400,000 students in Colorado are below proficiency on CSAP tests. The only amount specifically directed towards closing the achievement gap in the budget is \$1.8 million. Hammond Trial Tr. 6545:8-14, 6580:5-19.

3. The 2011 CSAP data reveals that thirty-one percent of the State's students were below proficiency in reading, fifty-three below proficiency in writing, and fifty-five percent below proficiency in math. O'Brien Trial Tr. 4796:8-4797:9.

4. In 2011, proficiency in reading decreased slightly in all grades. Writing proficiency is about the same in 2011 as it was in 2005. Proficiency in mathematics declined in third grade and tenth grade in 2011. Science scores remained flat in 2011 and consistently have been low. Fewer than fifty percent of Colorado students are proficient in science. O'Brien Trial Tr. 4793:2-4795:4.

5. The 2011 academic growth data shows that 81,000 students, or seventy-one percent, are not making sufficient growth and are not likely to "catch up" in reading, (*i.e.*, reach proficiency within three years or by tenth grade). In writing, seventy-two percent did not make sufficient growth to catch up. In mathematics, eighty-seven percent did not make sufficient growth to catch up. O'Brien Trial Tr. 4796:8-4797:14.

6. From 2007-09, fewer than forty percent of ELL students scored proficient or advanced on the CSAP. During that same time, fewer than thirty percent of ELL students scored

proficient or advanced in writing. Ex. 71, Colorado State Achievement Summaries; O'Brien Trial Tr. 4816:11-19.

7. Between 2005 and 2009, approximately fifty percent of low-income students in the state scored proficient or advanced in CSAP reading. In that same time period, only eleven percent of low-income students scored proficient or advanced in mathematics. O'Brien Trial Tr. 4819:3-4820:16; Ex. 73, 2005-2009 CSAP Results by Free-Reduced Price Lunch Status.

8. The National Assessment for Educational Progress (NAEP), also known as "the Nation's Report Card," is a national assessment given to a sample of students across the United States, including Colorado. In 2010, approximately 9000 out of 485,000 Colorado students took the NAEP test. Colorado ranks about twenty-fifth in the nation in reading and writing on NAEP, and Colorado's achievement gap is very large on NAEP. O'Brien Trial Tr. 4768:19-4770:6.

9. The most recent NAEP data shows that sixty percent of all Colorado students were not proficient in fourth grade reading on NAEP. Eighty-two percent of Hispanic students and ninety-six percent of limited English proficient students in Colorado were not proficient according to NAEP. Eighty-one percent of economically disadvantaged and eighty-five percent of children with disabilities was not proficient. The data is similar for fourth grade math and eighth grade reading and math. Garcia Trial Tr. 4588:12-4590:24; Moloney Trial Tr. 5415:2-5416:14; Ex. 10464, 2011 Summer EdFacts State Trends Profile – Colorado.

## **B. Achievement Gap**

1. The "achievement gap" is a term often used to refer to the gap in academic performance of students in certain demographic groups as compared with those who do not share those demographic characteristics. Miller-Brown Trial Tr. 2627:17-24.

2. Colorado has one of the widest achievement gaps in the United States. Gantz Berman Trial Tr. 5694:8-11.

3. There is roughly a thirty percent gap in Colorado between white and minority students and high-income and low-income students with respect to achievement on standardized tests. Garcia Trial Tr. 4584:9-18.

4. Colorado has among the largest achievement gaps on NAEP across all the states. In 2009, over half of the white children in Colorado scored proficient or better in reading, math, and science while few scored below basic (sixteen percent in reading, seventeen percent in math, and eleven percent in science). By contrast, few Hispanic and African-American children scored proficient, and many scored below the basic level (Hispanics below basic: fifty percent reading, thirty-one percent math, forty-four percent science; African-Americans below basic: forty-three percent reading, thirty-three percent math, forty-eight percent science). Achievement gaps by income (Free and Reduced Price Lunch versus others) are similarly large. English Language Learners score especially poorly with only four percent proficient in Reading at grade four and seventy-four percent below basic in reading, forty-seven percent below basic in math, and sixty-eight percent below basic in science. Children with disabilities also fare poorly on the NAEP with the percentage scoring below basic at sixty-six percent for reading, forty-one percent for

math, and fifty percent for science. Ex. 5504, W. Steven Barnett, Report on Preschool Education and Colorado, at 13.

5. The roots of the disparities in achievement and graduation are to a considerable extent evident when children enter kindergarten. Ex. 5504 at 14.

6. Defendants' witness, Jo O'Brien, reported to the State Board that Colorado has gone as far as it can go in teaching the same way, which only works for about fifty percent of the students. She is worried about the other half of the students. O'Brien Trial Tr. 4755:9-4758:20, 4759:7-24, 4798:12-23, 4799:2-6; Ex. 10,464.

### **C. Graduation Rates**

1. The average high school graduation rate in Colorado is seventy-five percent. Garcia Trial Tr. 4583:1-4; Moloney Trial Tr. 5416:15-20. Dr. Moloney believes Colorado's graduation rates are inflated. Moloney Trial Tr. 5355:20-5356:4.1.

2. White students in Colorado have a graduation rate of eighty percent. African-American students in Colorado have a much lower graduation rate of sixty-four percent. Hispanic students in Colorado have a graduation rate of only fifty-five percent, far below the national average for Hispanic students. American Indians in Colorado have a graduation rate of just fifty percent, again far below the national average for this group. Ex. 5504 at 14; Garcia Trial Tr. 4583:5-9, 4591:10-15; Moloney Trial Tr. 5416:15-20; Ex. 10,464.

### **D. Post-secondary and College Readiness**

1. ELL and low-income students graduating from Colorado public schools are not as a whole college-ready. Gantz Berman Trial Tr. 5704:18-22; 5705:3-5.

2. Colorado ACT Results. The Colorado ACT is a standardized test administered to all students in Colorado in their junior year of high school. Garcia Trial Tr. 4597:5-15.

According to the ACT, 77% of all students in Colorado are not college ready in all four subjects measured by the ACT. 93% of Blacks and 92% of Hispanics are not college ready in all four subjects. Garcia Trial Tr. 4600:12-4601:5; Ex. 10,470, ACT Profile Report -- State, at 22.

According to the ACT, 37% of all students in Colorado are not college ready in English. 61% of Blacks and 64% of Hispanics are not college ready in English. Garcia Trial Tr. 4598:5-24; Ex. 10,470, ACT Profile Report -- State, at 18.

According to the ACT, 60% of all students in Colorado are not college ready in Mathematics. 84% of Blacks and 82% of Hispanics are not college ready in Mathematics. Garcia Trial Tr. 4599:6-15; Ex. 10,470, ACT Profile Report -- State, at 19.

According to the ACT, 51% of all students in Colorado are not college ready in Reading. 74% of Blacks and 75% of Hispanics are not college ready in Reading. Garcia Trial Tr. 4599:16-4600:2; Ex. 10,470, ACT Profile Report -- State, at 20.



According to the ACT, 71% of all students in Colorado are not college ready in Science. 90% of Blacks and 89% of Hispanics are not college ready in Science. Garcia Trial Tr. 4600:3-11; Ex. 10,470, ACT Profile Report -- State, at 21.

3. Remediation Rates. Remediation rates refer to the percentage of students entering college as freshman who are not ready to perform in college-level classes. They need additional coursework in order to develop the skills necessary to move into freshman level classes. Students do not earn college credit for completing remedial coursework. Garcia Trial Tr. 4524:10-19, 4593:7-13.

Twenty-nine percent of public high school graduates in Colorado require at least one remedial course to attend post secondary education institutions. At some Colorado colleges, more than fifty percent of incoming students need remedial coursework. Garcia Trial Tr. 4524:20-4525:2; O'Brien Trial Tr. 4737:17-21; 9/1/11 Trial Testimony of Dr. Matt Gianneschi ("Gianneschi Trial Tr.") 6449:25-6450:23, 6451:19-6452:16; Ex. 2404, 2010 Legislative Report on Remedial Education, at 5.

There are minority and income gaps in the remediation rates in Colorado. Students from low-income school districts tend to need remediation at greater rates than students from high-income districts. Garcia Trial Tr. 4537:14:22, 4593:25-4594:4.

The remediation rate for Black students is over fifty percent, for Hispanics is over forty-four percent, and for Native Americans is forty percent. Garcia Trial Tr. 4595:12-4596:4; Ex. 7507, 2010 Legislative Report on Remedial Education, at CDE 94759.

Students requiring remediation have lower graduation rates at both two-year and four-year institutions than students without remedial needs. In fact, students requiring remediation have less than a fifteen percent chance of ever getting a four-year college degree. Ex. 2404 at 2; King Trial Tr. 6748:12-14.

The estimated costs associated with remedial education are approximately twenty-six million dollars. O'Brien Trial Tr. 4808:5-13; Garcia Trial Tr. 4594:24-4595:2; Ex. 7507 at CDE 94742.

Lieutenant Governor Garcia, who is the Executive Director of the Department of Higher Education, believes increased State education funding will help address remediation rates. Garcia Trial Tr. 4525:15-22.

The need for remediation in higher education can be determined as early as the sixth grade. Greater intervention is needed at the elementary school level to reduce remediation rates later. Ex. 68, Shining a Light on College Remediation in Colorado: The Predictive Utility of the ACT for Colorado and the Colorado Student Assessment Program (CSAP), at 2; O'Brien Trial Tr. 4737:15-4739:2, 4809:11-19.

The high remediation rate in Colorado indicates that kids are not being adequately prepared for post-secondary education. King Trial Tr. 6789:12-22.

4. Post-secondary enrollment. Enrollment in post-secondary education programs varies tremendously from district to district. Some districts send virtually all of their students on to post-secondary institutions whereas others send a very low percentage. Garcia Trial Tr. 4543:3-12.

There is a much lower college enrollment and graduate rate for Hispanic students as compared to white students. In 2010, fewer than ten percent of Hispanic males enrolled in college, which was down from eighteen percent in 2000. Garcia Trial Tr. 4585:15-4586:18.

Colorado has one of the highest degree attainment gaps in the country, defined as the percentage of white majority students with a college degree as compared to the largest minority group, which in Colorado is Hispanics. The gap is roughly thirty-six percent. Garcia Trial Tr. 4586:19-4587:4; Gianneschi Trial Tr. 6457:19-6458:10.

5. The state's public education system is not providing all students with the opportunities to gain the type of skills needed for the workplace. Miles Trial Tr. 5856:22-5857:22.

## **IX. FACTORS THAT IMPACT STUDENT ACHIEVEMENT**

### **A. Plaintiffs' Expert Witness, Dr. Linda Darling-Hammond**

1. Dr. Linda Darling-Hammond is one of the leading experts in the country on teacher quality and teacher development and training. In addition to teacher issues, her research includes issues of educational resources and their distribution, equity issues, school reform, school organization, and school improvement policies. She has worked with local school districts, states, and international countries on many policy issues, including standards and implementation of standards, developing professional learning and professional development systems, licensing and certification issues, developing the quality of teaching, and allocating resources. She has been conducting research in these areas for over thirty years and has authored over 300 publications and several books. Darling-Hammond Trial Tr. 3878:3-3880:25, 3882:5-11.

2. Dr. Darling-Hammond is currently the Charles E. Ducommun Professor of Education at Stanford University and the Co-Director of Stanford's Center for Opportunity Policy in Education. The Center looks at ways to enhance opportunities for students to deal with issues of educational equity and quality. It does research that is international, national and local in scope, and advises practitioners and policymakers on the research that pertains to their issues. Darling-Hammond Trial Tr. 3876:23-3877:13; Ex. 6200, C.V. of Dr. Linda Darling-Hammond, at 1.

3. Dr. Darling-Hammond was admitted as an expert in the area of education with a focus on teacher quality, teaching quality, teacher effectiveness, school improvement and reform, and educational equity. She was also admitted as an expert in statistical analysis of student achievement and factors that impact learning and achievement. Darling-Hammond Trial Tr. 3883:16-25; 8/29/11 Rebuttal Trial Testimony of Dr. Linda Darling-Hammond ("Darling-Hammond Rebuttal Trial Tr." 5719:17-24, 5722:3-4.

## **B. Teacher Quality**

1. A quality teacher is one of the most important factors for student achievement. Every aspect of school reform depends on highly skilled teachers for success. This is especially true where, as in Colorado, education standards have been raised and the diversity of the student body is increasing. Ex. 6202 at 1; Gantz Berman Trial Tr. 5693:11-5694:4; Stevenson Trial Tr. 1086:3-10; Darling-Hammond Trial Tr. 3891:19-22.

2. Teaching is a profession that requires a great deal of knowledge and skill that have to be applied in non-routine ways. Darling-Hammond Trial Tr. 3886:6-23.

3. Studies show that teachers spend more than fifty hours per week in school and preparation outside of school. In the United States, teachers teach more hours per day and per year than in any other country in the world with less time for preparation allotted to them in the school day. Darling-Hammond Trial Tr. 3887:19-3888:5.

4. In the Asian and European countries that have high achievement, such as Finland, Singapore, and Korea, between fifteen and twenty-five hours per week are allocated (and compensated) in the school day for planning and preparation, collaboration, and professional learning, whereas teachers in the United States are lucky to get three to five hours per week of individual planning time. Darling-Hammond Trial Tr. 2888:22-3889:7.

5. Several major studies have found that teachers are more effective if they have had strong academic preparation and strong pre-service teacher education before entering the classroom, if they are certified in the field they are teaching, if they have had at least several years of teaching experience, and if they have met the teaching standards for National Board Certification. Ex. 6202 at 2.

6. It is important to distinguish between teacher quality and teaching quality. The former is the bundle of personal traits, skills, and understanding that an individual brings to teaching, including dispositions to treat students fairly and support student learning. Teaching quality has to do with strong instruction that enables a wide range of students to learn. Such instruction meets the demands of the discipline, the goals of instruction, and the needs of students in a particular context. It is important to consider both teacher quality—so that the system recruits the right people and prepares them effectively—and teaching quality—so that effective practices are encouraged and supportive conditions are provided. Ex. 6202 at 2; Darling-Hammond Trial Tr. 3889:13-3890:9.

7. Teaching quality is, in part, a function of teacher quality – teachers’ knowledge, skills, and dispositions – but it is also strongly influenced by the context of instruction, including teaching conditions and “fit.” A high-quality teacher may not be able to offer high quality instruction in a context where there is a mismatch in terms of the demands of the situation and his or her knowledge and skills. Furthermore, if teachers lack useful curriculum materials, necessary supplies and equipment, reasonable class sizes, and the opportunity to plan with other teachers to create a coherent curriculum, the quality of teaching students experience may be sub-optimal, even if the quality of teachers is high. Ex. 6202 at 2; Darling-Hammond Trial Tr. 3889:13-3890:9.

8. Substantial evidence points to the importance of class sizes, curriculum supports, the availability of instructional supports, such as tutoring, and the use of time as strong predictors of student achievement. In addition to the material resources for teaching, which can differ dramatically across schools and districts, teaching quality depends on access to good colleagues and other resources for learning. Ex. 6202 at 2.

9. Teachers must have very high expectations for children. They must believe that every child can be successful. More importantly, they need the resources and support to enable each child to be successful. Stevenson Trial Tr. 1112:9-25.

10. Differentiation of instruction is the set of strategies teachers need to acquire to be able to meet the needs of diverse students across a broader learning continuum in their class. For example, teachers need to learn specialized teaching techniques to address the needs of special education students in their classes. They also need to learn specialized techniques to help English language learners acquire language skills and content skills simultaneously. Darling-Hammond Trial Tr. 3893:19-3897:1.

11. The teaching profession currently is not attracting and retaining the highest quality teachers. Rural districts face considerable challenges both in recruiting and retaining qualified teachers. There are a number of strategies that have been employed across the country and proven effective for recruiting teachers in high needs fields, such as offering salaries competitive with other occupations, offering scholarships or loan forgiveness, and offering housing supports such as mortgage loans. Increasing teacher salaries will allow schools and school districts to attract better teachers. There are some districts that actually have gone from shortages of teachers to surpluses within a few years by having a purposeful set of incentives in certain areas. Factors that matter for retaining teachers are competitive salaries, administrative supports, curricular resources and supports, class size, and strong pre-service preparation, induction, and mentoring programs. Darling-Hammond Trial Tr. 3898:16-3901:2. 3932:3-3933:2; Gantz Berman Trial Tr. 5693:11-5694:4.

12. Many teachers graduate from teacher education programs without the ability to teach reading and other important skills well, thereby requiring intensive professional development training and coaching around literacy and other areas. Miles Trial Tr. 5804:11-5805:14.

13. Teachers in rural school districts have additional challenges. For example, some are the only teacher in the building that teaches a particular subject. Others must teach more than one subject at a time. Many cannot access the kinds of supports that teachers need to teach effectively. Darling-Hammond Trial Tr. 3897:22-3898:21.

14. Many districts must use paraprofessionals instead of certified instructors to reduce costs. However, there is no evidence that the use of paraprofessionals is an effective way to boost student achievement; in fact, there is some evidence that it can be detrimental to student achievement for instructional aides to be given responsibilities that should be in the hands of experienced teachers. Darling-Hammond Trial Tr. 3914:14-3915:5.

15. The State also argued at trial that teachers' unions increase the cost of education without a corresponding increase in student achievement. However, some of the highest performing countries in the world, such as Finland, Singapore, Korea, and Australia, have strong teachers' unions. 98% of the teaching force in Finland is unionized. Darling-Hammond Trial Tr. 3912:11-22.

16. Likewise, the State contended at trial that salary schedules unnecessarily increased education costs. However, salary schedules were a rational system developed in the 1960s to address exploitive labor situations. There still exists a need in some places for such protection, which does not preclude innovation in compensation. Salary schedules can acknowledge the different roles and responsibilities teachers take on. Darling-Hammond Trial Tr. 3913:4-3914:13.

17. The State suggested at trial that a pay-for-performance system would be more efficient. Yet implementation of a pay-for-performance system will certainly have a substantial effect on personnel costs. If done well, it will probably be more expensive than a salary schedule. Stevenson Trial Tr. 1083:1-13.

18. Furthermore, Defendants' expert, Rob Stein, does not believe performance-based pay is effective the way it is typically implemented nor necessary to motivate teachers. Stein Depo. Tr. 133:25-135:18.

19. A significant number of the reforms Dr. Moloney implemented in districts across the country were accomplished with a salary schedule in place. Moloney Trial Tr. 5348:22-5349:4.

### **C. Professional Development**

1. Research has found that effective professional development is intensive, ongoing, and connected to practice; focused on the teaching and learning of specific academic content; connected to other school reforms; and built around collaborative learning relationships among teachers. Ex. 6202 at 5; Darling-Hammond Trial r. 3905:3-3907:9.

2. In today's environment of changing standards and assessments, it is even more critical for states to provide sustainable, ongoing, and responsive professional development to its teachers. High quality professional development is essential to helping teachers become more effective at improving student achievement. Ex. 6202 at 5-6.

3. Research on professional development frequently underscores the importance of teachers working together to improve their collective practice. Economists have found that student learning gains are greater when teachers are more experienced and better qualified, and when they work as teams to improve their practice and the school as a whole. There is evidence that teachers who work in teams produce stronger student achievement collectively than any one of them might be able to produce individually. Darling-Hammond Trial Tr. 3891:9-13; Ex. 6202 at 2.

4. Research suggests that the following elements should be considered in building strong opportunities for professional learning: 1) a clearly articulated vision for professional

development that permeates policy and practice, 2) effective monitoring of professional development quality, 3) mentoring and induction programs that create a foundation or ongoing learning, 4) professional learning communities, which organize teachers within and across schools to focus on improving their practice and on key school improvement initiatives, 5) an infrastructure of organizations that facilitate professional development, and 6) stability of resources. Ex. 6202 at 6; Darling-Hammond Trial Tr. 3909:10-25.

5. Embedded professional development for teachers and principals, which involves on-going coaching and mentoring, is much more effective than traditional professional development opportunities, which are typically a time-limited course or training session. Mentoring should be conducted by trained, expert veterans in the same teaching field, who have released time to provide regular in classroom coaching as well as support with curriculum planning. Ex. 6202 at 6; Miles Trial Tr. 5821:20-5823:7.

6. Even in local control states, the State plays an important role in providing professional development, particularly in the areas of pre-service preparation, induction, and mentoring. Darling-Hammond Trial Tr. 3907:10-3909:9.

7. Effective induction programs have the following features: a trained mentor is assigned to beginning teachers in the same content area or grade level and given release time so that he or she can spend time in the classroom coaching that teacher and the beginning teacher is given a reduced teaching load so that he or she has more planning and professional development time. When an induction program has these features, the attrition rate for teachers decreases substantially and the competency rate of beginning teachers increases significantly. Darling-Hammond Trial Tr. 3901:16-3902:22.

8. Colorado has developed some of the necessary elements of an effective professional development program, but not all of them. In 2008, about ninety percent of Colorado teachers received some form of professional development support, but fewer than half reported receiving the sustained, intensive support that research suggests translates into student learning gains. Fewer than fifteen percent reported that there was substantial collaboration within their schools. Even though Colorado has sought to establish many components of a successful professional development program, professional development in Colorado, especially in rural areas, does not universally appear to meet the level of recommended practices. Ex. 6202 at 7.

9. To enable adequate and equitable opportunities for teacher learning, it is essential that such models be made available to all teachers in all districts, regardless of size and wealth. Implementing a professional development system that supports all teachers requires long-term commitment and significant investment from the State. Recent cuts have eroded the capacity of CDE, the BOCES, and districts to access and manage many professional development programs. Ex. 6202 at 7.

10. Schools that have been successful in restructuring to meet increasing standards and outcome requirements and in increasing graduation rates and college-going rates for traditionally under-achieving students have developed and adopted the following practices: 1) small learning communities and small classes, along with advisory systems that provide

counseling, academic supports, and family connections; 2) college-preparatory curriculum, often in partnership with local colleges, coupled with strong academic supports, including block scheduling, homework help, and tutoring; 3) authentic learning experiences that connect to the world outside school and are linked to performance assessments; 4) organization of teachers into teams that share students and plan curriculum and learning experiences together, and 5) time and resources to support extensive professional development and regular time for teacher collaboration around curriculum, assessments, and school improvement. Virtually all of the schools that achieved these kinds of outcomes were funded at higher levels or received outside private funding to supplement state funding. Ex. 6202 at 9; Darling-Hammond Trial Tr. 3962:14-3964:16.

11. Although raising teacher productivity may take many forms, one straightforward approach is to pay teachers more. Higher pay will have several effects: it will raise the quality of the applicant pool for teaching jobs, it will reduce the quit rate, and it will make teachers more motivated to avoid losing their jobs. There is considerable literature – to complement a basic principle of economic theory – that paying people more will yield these effects. Indeed, the move toward performance-related pay is motivated by the notion that teachers will perform better if there is a reward for so doing. There may be a practical issue in ensuring that higher pay goes to the most effective teachers, but this does not contradict the general principle of economic theory and it is not relevant for the argument that higher pay will attract a better applicant pool. Dr. Hanushek even recognizes that “higher levels of salaries would tend to increase the pool of potential teachers” and this would increase teacher quality (unless we assume that principals recruit based on attributes that are *negatively* associated with teacher quality). Ex. 5603, Expert Report of Dr. Levin, at 26.

#### **D. Class Size**

1. The educational literature overwhelmingly finds that, on average, students who attend schools with smaller classes tend to have higher academic achievement. This is especially true for young children and previously low-achieving students. Class size and pupil-teacher ratios (and sometimes even school size) enable teachers to know the needs of the learners adequately so they can adapt their instruction to those needs. Furthermore, class size, like salary, is a factor that attracts qualified teachers to a school district. Ex. 7710, Economic Considerations and Class Size, at F60; Ex. 6202 at 9-10; Darling-Hammond Trial Tr. 3965:20-3966.

2. The gold-standard study on class size is the Tennessee STAR study, which looked at 300 classrooms (7,000 students from K-3) and followed them longitudinally for many years. The study found that there were strong, sustained effects of reducing class size from between twenty-two to twenty-six students to between thirteen to seventeen students. The study found smaller class sizes not only resulted in higher achievement for the students, but less grade retention and fewer special education placements. Many researchers have replicated the study or re-analyzed the data and these results have repeatedly been affirmed. Even Dr. Hanushek agrees the Star study shows that class size reduction leads to an increase in achievement for kindergarteners. Darling-Hammond Trial Tr. 3966:9-3967:1, 3969:9-13; Hanushek Trial Tr. 4972:12-22, 4981:23-4983:16, 5084:6-15.

3. There is strong research evidence that reducing class sizes, at least in the elementary grades, has powerful long-term benefits. Evidence from Tennessee's Student Teacher Achievement Ratio (STAR) Project shows that students randomly assigned to smaller classes were more likely to graduate from high school than students assigned to larger classes. Ex. 5603, Expert Report of Dr. Levin, at 27.

4. The effect of reducing class size is twice as large for at risk students. Levin Trial Tr. 3320:24-3321:6.

5. Several State witnesses agree that smaller class sizes are better for learning, particularly for low income or under performing students. Garcia Trial Tr. 4574:4-19; Stein Depo. Tr. 150:1-18; King Trial Tr. 6808:19-21.

6. When Dr. Moloney was Commissioner of Education in Colorado, the Governor and State of Colorado mandated that Amendment 23 money be used to lower class size. Moloney Trial Tr. 5430:21-25.

## **X. LOCAL CONTROL OF INSTRUCTION**

1. All of the school district witnesses testified that they are unable to exercise local control over instruction because all of their resources go to meeting state requirements as opposed to the specific needs of their communities. There is no funding left over to provide programs important to their communities. *See, e.g.*, 5/2/11 Deposition Testimony of Rose Cronk ("Cronk Depo. Tr.") 266:16-268:8; 3/22/11 Deposition Testimony of Beverly Maestas ("Maestas Depo. Tr.") 244:12-245:1; 8/4/11 Trial Testimony of Cynthia Stevenson ("Stevenson Trial Tr.") 1116:6-1117:21; Deposition Testimony of Kirk Banghart ("Banghart Depo. Tr.") 89:21-90:5; Deposition Testimony of Christine L. Villard ("Villard Depo. Tr.") 16:1-17:12.

2. As long as districts do not have funding to provide choices and multiple pathways for kids at the local level, they don't have much control over instruction. Local control is about choices to get kids to the right results. The fewer funds a district has, the fewer choices it has. Stevenson Trial Tr. 1116:17-1117:21.

3. Districts no longer have control over what they teach kids at particular grade levels. Nor do they have control over what constitutes workforce or post-secondary skills. Stevenson Trial Tr. 1116:6-16.

4. With SB 09-163, there has been a shift in Colorado from local control to more centralized control. If turnaround districts do not show sufficient progress within five years, the state can restructure or takeover the district. Barry Trial Tr. 1771:19-1773:7; Escarcega Rebuttal Trial Tr. 6518:21-6519:4.

## **XI. SPECIAL STUDENT POPULATIONS: EARLY CHILDHOOD EDUCATION**

### **A. Trial Witnesses**

1. Dr. William Barnett is an economist and educational researcher. He has conducted research on early childhood education and its long-term effects for several decades.



One of his many areas of focus is the economics of preschool education, which includes cost-benefit analysis. He has done consulting work for school districts, states, the federal government, and other nations in the area of early childhood education. He has authored over 160 publications, the vast majority of which relate to early childhood education. Ex. 5504, Report on Preschool Education and Colorado, at 1; 8/16/11 Trial Testimony of Dr. William Steven Barnett (“Barnett Trial Tr.”) 3058:19-3059:24, 3062:2-3065:4.

2. Dr. Barnett is currently a Board of Governors Professor of Education at Rutgers University and a Co-Director of the National Institute for Early Education Research (NIEER). NIEER conducts and disseminates research on the education of young children with a view towards informing public policy. Ex. 5501, CV of William Steven Barnett, at 2; Barnett Trial Tr. 3058:19-3059:24, 3060:15-3061:4.

3. Dr. Barnett is one of the leading experts in the country in early childhood education. Barnett Trial Tr. 3065:5-23; Ex. 5501.

4. Lori Goodwin Bowers is the Supervisor of the Colorado Preschool Program (CPP) at the Colorado Department of Education. Ms. Bowers does not have a doctorate degree. Other than a limited amount of research at Purdue University in the early 1980s, she has not done any scholarly research or writing in the area of early childhood education. 9/1/11 Trial Testimony of Lori Bowers (“Bowers Trial Tr.”) 6604:22-25, 6668:1-14; Ex. 4500, Vita of Lori Goodwin Bowers.

5. Ms. Bowers respects the work of Dr. Barnett and NIEER. She often cites to Dr. Barnett’s research in the materials she prepares for CDE. She also frequently uses NIEER’s website and consults with its staff on issues that come up with CPP. Bowers Trial Tr. 6666:25-6667:25.

## **B. Impacts of Preschool Education**

1. A substantial body of research finds that high-quality preschool education can substantively improve the learning and development of young children. Multiple meta-analyses conducted over the past twenty-five years have found preschool education to produce an average immediate effect of about half a standard deviation on cognitive development. This is the equivalent of seven or eight points on an IQ test, or a move from the thirtieth to the fiftieth percentile on an achievement test. A half standard deviation is enough to reduce by half the school readiness gap between children in poverty and the national average at kindergarten entry. Ex. 5504 at 2.

2. In the long term, high-quality intensive preschool education increases achievement test scores; decreases special education and grade repetition; increases high school graduation; decreases behavior problems, delinquency, and crime; increases employment, earnings, and welfare dependency; decreases risky behaviors like smoking and drug use; and has positive impacts on mental health, thereby reducing problems like depression. All of these impacts have consequences for government. If you reduce special education, grade repetition, and remediation, schooling costs decrease. If you reduce problems like welfare dependency, child abuse, and neglect, you reduce social services costs. Barnett Trial Tr. 3071:20-3073:8; Ex.

10457, Effects of Quality Early Childhood Education, at Impacts of ECD Investments; Ex. 5504 at 6. *See also* Bowers Trial Tr. 6660:13-24; 8/24/11 Trial Testimony of Lieutenant Joseph Garcia (“Garcia Trial Tr.”) 4571:16-21.

3. The impact of preschool on language, literacy, and math achievement are even larger for low income and minority children and tend to be the largest for English language learners. Barnett Trial Tr. 3150:7-3151:13, 3157:4-3158:10; Ex. 5504 at 12. *See also* Bowers Trial Tr. 6660:6-9.

4. Poverty and other risk factors place constraints on a family’s investment in learning materials and positive parenting behaviors, which can affect children’s school readiness skills. Research indicates that before entering kindergarten, the average cognitive scores of preschool-age children in the highest socio-economic

group are sixty percent above the average scores of children in the lowest socio-economic group. At age four, children who live below the poverty line are eighteen months below what is normal for their age group; for children living in the poorest families, the gap is even larger. Poor children are as much as two times more likely to lack proficiency in language development and math skills than children who are not poor. Ex. 3, Colorado Preschool Program 2010 Legislative Report, at CDE 6888; Barnett Trial Tr. 3073:11-22; Garcia Trial Tr. 4573:1-8.

5. High quality preschool programs have been found to close as much as seventy percent of the achievement gaps between higher- and lower-income students and between majority and minority students at kindergarten entry and one quarter to one third of the gaps in the long term. Barnett Trial Tr. 3073:11-22, 3076:1-3077:14; Ex. 5504 at 6; Ex. 10,457 at Meta-Analysis of US Research Since 1960.

6. Preschool programs can be grouped into three categories – private child-care, public preschool programs (either state-funded or local), and Head Start. Ordinary child-care has the smallest effects on children’s learning and development. The estimated effects of Head Start are larger than those for child-care, but considerably smaller than the average in the meta-analyses. The strongest study to date, the Head Start National Impact Study, indicates that Head Start has, at best, very modest impacts on cognitive development and academic achievement. By contrast, high-quality preschool education programs provided by public schools have been found to produce substantially larger improvements in child development, both short- and long-term. Ex. 5504 at 4; Barnett Trial Tr. 3082:4-3084:18.

7. A follow-up study of New Jersey’s *Abbott* preschool program indicates at least a quarter of the achievement gap closed with one year of preschool and forty percent of the gap closed with two years of preschool by the time the students reached the second grade, which is the most recent follow-up. The *Abbott* pre-K program has smaller classes and more extensive supports for teachers than many other state pre-K programs. The *Abbott* pre-K program was also found to reduce grade retention. Barnett Trial Tr. 3086:14-3088:8; Ex. 5504 at 5; Ex. 10,457 at NJ 2<sup>nd</sup> Grade Follow-up.

8. Multiple studies have found that the economic benefits to these positive effects can far exceed the costs to taxpayers of providing such programs as part of public education. For

example, the benefits of the Perry Preschool Program were found to be 16 times greater than the costs. Barnett Trial Tr. 3078:12-3082:3; Ex. 10,457 at Economic Returns to Pre-K for Disadvantaged Children; Ex. 5504 at 6.

9. Positive effects of preschool have been found for children from all socio-economic strata and all major ethnic backgrounds. While the size of some effects varies with children's family background, with the largest effects for economically disadvantaged and minority children, effects are substantial even for children who are not from low-income families. Ex. 5504 at 7. *See also* Bowers Trial Tr. 6621:15-19, 6660:10-12.

10. The school failure problem in America is not only a problem for children in poverty, and much of the problem will remain untouched if solutions focus only on children from low-income families. Offering effective preschool education to *all* children is one response that will help reduce the school failure problem for children who are not in low-income families. Ex. 5504 at 7; Barnett Trial Tr. 3088:9-3089:13.

11. A universal preschool program is preferable to a targeted program for a number of reasons. Targeting is economically inefficient. If the goal is to reach disadvantaged kids, coverage is more complete with a universal than a targeted program. Family income presents a moving target due to the impermanence of poverty for many families. As family incomes change, means-tested programs exclude from enrollment many children who become poor during the school year or who have been poor in the past and will be poor in the future. There is also evidence that preschool program effects on lower-income children are larger when preschool programs serve children from diverse economic backgrounds because children learn from each other. Ex. 5504 at 7-8; Barnett Trial Tr. 3088:9-3091:23.

### **C. Characteristics of Effective Preschool Programs**

1. Research finds that the preschool programs with the largest and longest lasting effects are more educationally intensive and expensive. The programs identified as more effective have had more highly educated, better-paid, and better-trained teachers. They have more supervision and supports for teachers, smaller class sizes and ratios, good curriculum, a continuous improvement process, and more hours of services. Overall, the evidence indicates that starting earlier produces larger long-term gains with two years better than one, and starting prior to age three produces even better results. Ex. 5504 at 8; Barnett Trial Tr. 3091:24-3092:18, 3094:1-11.

2. The National Institute for Early Education Research annually evaluates state funded preschool programs against ten benchmarks for minimum preschool program standards in a state preschool yearbook. Among the most salient of the benchmarks are that teachers have at least a four-year college degree and specialized training in early childhood education and that the staff-child ratio not exceed one to ten. The benchmarks do not guarantee effectiveness by themselves. They are rough indicators of minimum requirements based on what has succeeded in the past. The purpose of the yearbook is to provide accurate and current information on state policies with respect to preschool so that people know what exists in their state and can compare it to other states. Ex. 5504 at 9; Ex. 5505, The State of Preschool 2010, State Preschool Yearbook, at 22, 25; Barnett Trial Tr. 3103:8-3104:7, 3104:11-3106:6.

3. In order to ensure good teaching in preschool there must be adequate support at both the local and state levels, which includes a financial accountability system and a continuous improvement process. School districts do not necessarily have the capacity to do this without support from the state department of education, and this support from the state level goes far beyond simply issuing regulations or even monitoring. States must be able to obtain objective information on children’s learning and development (from standardized assessments and not just teacher reports) and on classroom environment and teacher performance (not just district reports). States also must have the capacity to respond with technical assistance rather than just monitor compliance. Ex. 5504 at 10; Barnett Trial Tr. 3094:20-3100:12; Ex. 10,457 at Continuous Improvement Cycle.

4. Full-day preschool education produces larger effects when teachers use the additional time for learning activities. When only half-day programs are offered (and wrap-around arrangements are not offered), some children in lower-income working families will fail to participate at all because their families cannot manage the multiple arrangements required to accommodate parents’ work schedules. Ex. 5504 at 11; Barnett Trial Tr. 3109:23-3110:25.

5. The number of years of preschool education, or the age at which it begins and continues up to kindergarten entry, is also important. Overall, research finds larger long-term effects from preschool programs that are of longer duration and from preschool programs that are linked with continued intervention beyond the preschool years. New Jersey’s *Abbott* preschool program was found to have effects that were twice as large when two years beginning at age three were provided rather than one year provided at age four. Ex. 5504 at 11; Barnett Trial Tr. 3111:9-3112:2.

#### **D. Colorado’s Preschool Program**

1. Description of Program. The General Assembly created the Colorado Preschool Program (“CPP”) in recognition that there are “substantial number of children in this state entering kindergarten and the primary grades who are not adequately prepared to learn.” The intent was that helping these children at an early age could result in lower dropout rates, less dependence on public assistance, and less involvement with criminal activities. The General Assembly expressly stated that it “intends to fully fund the Colorado preschool program by increasing the number of children who may be served through the program over the 2006-07, 2007-08, and 2008-09 budget years.” Ex. 10,169, Colorado Preschool Program: 2010-11 Handbook, at 3; Bowers Trial Tr. 6609:1-11, 6623:14-20, 6695:9-6696:6; C.R.S. §§22-28-102(1) & (2).

The legislature established the eligibility criteria for children who may be served in CPP. Children must be 3,4, or 5 years old. They must have a significant risk factor in their life to put them at risk of school failure. Risk factors include low family income, foster care, frequent relocation, violence or neglect in the home, parents who have not successfully completed high school, parent drug and alcohol abuse and delays in language and social development. Children are primarily served as four-year-olds, but three-year-olds with three or more risk factors may participate. A limited number of slots (5% statewide) may be used to fund a child to participate in a full-day program. C.R.S. §22-28-106; Ex. 3 at CDE 6886; Ex. 10,169 at 26; Barnett Trial Tr. 3106:17-3107:20; Bowers Trial Tr. 6609:12-15, 6624:3-6625:6.

The number of slots for the Colorado Preschool Program is capped by the legislature at 20,160. In the 2009-10 school year, 19,496 children were served in CPP programs throughout the state. Ex. 5505 at 39; Bowers Trial Tr. 6661:15-19; Stipulated Facts ¶ 13.

CPP programs must operate the equivalent of two and a half hours per day, four days per week. Programs may extend hours and days beyond the minimum requirement of ten hours per week. Barnett Trial Tr. 3109:16-22; Ex. 5505 at 39; Bowers Trial Tr. 6609:1-11.

Each school district that accepts CPP funds must establish a district advisory council. The district advisory councils are responsible for sustaining quality in CPP programs and must make at least two on-site visits per year to programs serving CPP children. Ex. 3 at CDE 6886; Bowers Trial Tr. 6613:10-6615:8.

2. Access. The Colorado Preschool Program does not serve all eligible children in the state. Some eligible children are not being served in any preschool program, such as a Head Start or private child-care facility. Bowers Trial Tr. 6609:18-20, 6663:6-9.

In 2009-10, CPP served twenty percent of the four year-olds and six percent of the three year-olds in the state. Preschool special education brings the percentages enrolled up to twenty-six percent for four year-olds and fourteen percent for three year-olds. Considering the additional children served in Head Start programs, as many as thirty-two percent of four year-olds and fourteen percent of three year-olds might be served across all public education and child development programs in Colorado (depending on the extent to which some children may be counted by more than one program). This leaves approximately sixty-eight percent of four year-olds and eight-six percent of three year-olds un-served by any public preschool program. Ex. 5504 at 14-15; Ex. 5505 at 39; Barnett Trial Tr. 3108:7-3109:15; Bowers Trial Tr. 6660:25-6661:6.

Colorado's public preschool program serves far fewer than half the four year-old children who are at-risk of inadequate preparation for school and later school failure (measured by the percentage of children eligible for free or reduced price lunch). There are other criteria for risk specified by the state of Colorado, including delayed social and emotional development. The State has no information on the incidence of these other risks, making the total population eligible for the program unknown. Conceivably, more than sixty percent of Colorado's children meet one or more of the state's risk criteria. Only a small minority of Colorado's at-risk children is served at age three. Ex. 5504 at 15; Barnett Trial Tr. 3115:8-3116:7.

CDE uses the percentage of students in grades one through eight who is eligible for free or reduced lunch as a proxy to estimate the shortfall in preschool slots to serve all eligible students in the state. In 2008-09, this percentage was approximately forty percent, indicating an estimated shortfall of approximately 13,104 slots. This estimate is conservative because it does not account for the many children who are eligible for the Colorado Preschool Program because of a risk factor other than free or reduced lunch. Ex. 3 at CDE 6886; Barnett Trial Tr. 3112:14-3113:12; Bowers Trial Tr. 6663:13-6664:10, 6697:2-6699:11; Ex. 20,151.

The vast majority of the twenty-one Plaintiff School Districts and five additional districts where Individual Plaintiffs reside reported unmet need for the state preschool program in 2010-

11, as determined by wait lists, needs assessments, and other approaches. Some examples of reported unmet need are 880 children in Denver and 800 in Colorado Springs. In 2008-09, only forty-four percent of Aurora's at-risk population was served in CPP programs. These numbers do not include three year-olds because the State does not collect unmet need information for three year-olds. Ex. 5504 at 151; Ex. 10,455, 2010 Reapplication and Annual Report; Barnett Trial Tr. 3113:21-3114:18; Bowers Trial Tr. 6666:5-7; Ex. 10,460, Estimated Need for CPKP Preschool Slots in FY 2009-09 Considering Kindergarten Enrollment from 2006-07 (data taken from Exhibit 16).

The number of CPP slots has remained consistent at 20,160 since 2008 although the estimated number of four year-olds eligible for free or reduced price lunch has increased by almost none percent. Bowers Trial Tr. 6662:10-16; Ex. 10,182, Colorado Preschool Program Presentation Companion to 2011 Legislative Report, at 4.

CDE does not want to have to shut the doors to any at-risk children who could benefit from preschool. The Lieutenant Governor agrees preschool programs are a wise investment to close achievement gaps and improve educational outcomes and should be accessible to all eligible children. Bowers Trial Tr. 6662:21-24; Garcia Trial Tr. 4538:2-10, 4546:19-22. *See also* 8/26/11 Trial Testimony of William Moloney ("Moloney Trial Tr.") 5345:23-5346:12.

Children who are not economically disadvantaged also could benefit from Colorado's preschool program. Ex. 5504 at 1-2.

3. Program Quality. Colorado received a score of six out of ten on the quality standards checklist in NIEER's 2010 yearbook based on accurate information provided by CDE. The state has some of the lowest standards for teacher and assistant teacher qualifications among the states for preschool programs. Colorado's preschool teachers are not even required to have a two-year degree. Assistant teachers need nothing beyond a high school diploma. Ex. 5504 at 16; Barnett Trial Tr. 3116:20-3118:9; Ex. 5505 at 39; Bowers Trial Tr. 6637:12-14, 6668:22-6669:1, 6673:10-18.

The primary reason states do not require high qualifications of teachers is because they do not want to pay the kinds of compensation that would make that possible. Barnett Trial Tr. 3118:10-3120:6. *See also* Bowers Trial Tr. 6673:23-6674:20.

Colorado has no precise data on the current features of CPP programs. A 2003-04 survey provides some relevant data. A quarter of the teachers had no degree beyond a high school diploma. A majority of teacher assistants had no higher education and no credential in child development. In addition, forty-eight percent of the classrooms exceeded state's maximum class size of fifteen children, and twenty-nine percent had more than twenty children in a classroom. In addition, thirty percent of the teachers reported that lack of transportation was a barrier to attendance resulting in the loss of at least one child from the classroom during the year. These problems still occur to some extent as seen from state reports of site visits to programs. The data indicates a serious lack of state oversight due to a lack of capacity and resources. Ex. 5504 at 16; Barnett Trial Tr. 3133:24-3135:4.

Given the other features of the CPP program, a program that was a full school day for five days per week would be substantially more effective in improving children's learning and development than the current CPP program. Barnett Trial Tr. 3109:23-3111:8.

CPP does not have a continuous improvement process, which is necessary in order to be a highly effective program. The State does not provide the level of oversight of district preschool programs and classrooms that is needed. CDE visits programs as little as once every two years, and when it visits may not actually observe classrooms, but merely interview the district supervisor for the program. District Councils do not appear to have the training and expertise required to adequately support local programs and coach teachers on a regular basis, and the State does not even have the capacity to assess the actual extent of support that currently exists. There is also insufficient data to assess how kids are doing at the beginning of preschool and compare it to how kids are doing at the end of preschool statewide. Dr. Barnett believes the minimal support CDE offers to its preschool programs reflects a lack of resources. Ex. 5504 at 16; Barnett Trial Tr. 3131:18-3133:23, 3234:18-3235:16; Bowers Trial Tr. 6613:10-6615:8, 6688:18-6689:2.

One of the sub-committees of the P-20 Council, the P-3 sub-committee, focused on improving education from birth to grade three. In November 2009, the P-3 sub-committee appointed a special task force to develop a three-year professional development plan. The task force concluded, "Unless our state addresses systemic issues of low pay, lack of benefits and inadequate working conditions for individuals who are working in the early care and education field, we will be unable to recruit and retain the well-qualified and effective workforce needed to prepare our children for future school and career success . . . Additional public investment in early learning services will be necessary to support quality improvements in the workforce." Ex. 10,181, Colorado's Early Learning Professional Development System Plan, at L 5641; Bowers Trial Tr. 6671:7-6673:9.

4. Resources. State spending on preschool in Colorado in 2010 was \$2,321 per child enrolled. Combined state and local spending on preschool was \$3,757 per preschooler. This amount is sufficiently low to call into question the adequacy of funding to support a high-quality, highly effective preschool program, and it is only about a third of what is spent per child on K-12 education in Colorado. It is also far less than what the federal government spends on Head Start. Ex. 5504 at 16; Ex. 5505 at 16, 39; Barnett Trial Tr. 3128:7-3129:3.

Colorado ranks thirty-six out of forty states that offer a state preschool program on state spending and twenty-eight out of forty states if all reported spending on preschool is considered. Ex. 5505 at 16, 38; Barnett Trial Tr. 3130:12-3131:14.

NIEER has estimated that it costs at least \$4,319 per child to meet the ten benchmarks for a ten-hour per week program. That means, in 2010, Colorado would have needed to spend an additional \$562 per child above what it spent from state, local, and federal resources just to meet the minimum benchmarks set by NIEER, which do not represent an ideal program. Ex. 5505 at 17; Barnett Trial Tr. 3129:6-8, 3129:24-3130:12.

Eighty-six percent of school districts indicate they use funding sources other than state funding to support their early childhood programs, such as special education, Head Start, or Title 1 funding. Bowers Trial Tr. 6647:1-15.

The amount of per-pupil funding for preschool is based on per-pupil revenue for K-12 rather than any study of the cost to provide a preschool student with an adequate education. Bowers Trial Tr. 6684:18-24.

Additional resources are needed for preschool if there is a high concentration of English language learners (ELLs) in a classroom, such as smaller class sizes and teacher training on effective practices for ELL students. Barnett Trial Tr. 3161:23-3164:17.

Not only is there too little funding for direct provision of Colorado's preschool program, there is also too little for the infrastructure needed for effective monitoring, evaluation, and a thorough continuous improvement process. Ex. 5504 at 16; Barnett Trial Tr. 3131:18-3133:23.

The Denver Preschool Program is one of the highest quality preschool programs in the state. It has gone beyond the requirements of the CPP quality standards. For example, Denver requires teachers in all of their early childhood classrooms to be certified. The program is supported by a local tax initiative that provides parents with assistance in paying for preschool and assists preschools in improving their quality. The Denver Preschool Program is not typical in Colorado because of the additional local funding source and higher standards. Ex. 5504 at 17; Bowers Trial Tr. 6674:21-6675:10, 6676:4-8.

5. Assessment. Colorado does not collect uniform data that would provide a good statewide measure of school readiness at kindergarten entry or a valid indication of preschool program impact. Ex. 5504 at 14.

The most widely used test in Colorado at kindergarten entry (the DIBELS) is a simple literacy assessment that measures only very discrete and easily taught skills and does not assess broader domains of knowledge and skills that contribute to the achievement gaps at grades three, four, and beyond. Ex. 5504 at 14; Barnett Trial Tr. 3133:3-15.

The data available to Dr. Barnett indicates that there are very large gaps in Colorado in school readiness at kindergarten entry. Barnett Trial Tr. 3102:3-3103:1.

One of the ways CDE measures outcomes for CPP children is by looking at their progress during the preschool year. There are three assessment systems districts use as part of the Results Matter system to measure progress children make during the school year – High Scope Child Observation Record, Work Sampling Assessment System, and Teaching Strategies Gold. The results of these assessments are reported to the legislature annually. Bowers Trial Tr. 6631:12-6632:13.

The “Results Matter” assessments are appropriate for teachers to use to inform their own practice, particularly if teachers receive training and regular guidance in their use. However, they do not provide an adequate basis for a scientific evaluation of program impact or statewide monitoring of performance for accountability purposes. Ex. 5504 at 14; Barnett Trial Tr. 3101:12-3102:2, 3229:10-23, 3231:17-3234:7. *See also* Bowers Trial Tr. 6635:4-6636:12.



On June 20, 2011, one of the three assessment systems, Work Sampling System, was removed from CDE's list of approved assessments, effective immediately. It was removed, in part, because of increasing concerns over the last five years with the reliability of the assessment results. The concerns included inadequate scaling of assessment instruments; with only two levels to describe student progress, the scales proved inadequate for outcomes measurement and reporting. According to the state director of Results Matter, Nan Vendegna, "[t]he individual age protocols are horizontally aligned rather than vertically aligned making it difficult to follow growth patterns and conduct longitudinal analysis . . . Colorado data and national data from these assessments appear unstable and unreliable. This held true even when examining data from programs where teachers have had the benefit of extensive training, coaching, monitoring and other supports." Ex. 10,185, 6/22/11 Email from Nan Vendegna to Colorado Preschool Program listserv, at L 5694; Bowers Trial Tr. 6669:2-6671:6.

Seventy-one percent of districts use district advisory council site visits as compared to other more comprehensive methods, such as the Early Childhood Environment Rating Scale (ECERS) or Qualistar rating systems, to measure the quality of their CPP programs because of the differences in cost. District advisory council visits are done at no cost to the district whereas a Qualistar rating costs about one thousand dollars. Bowers Trial Tr. 6690:25-6694:14

The ECERS measures the quality of the classroom environment being provided to a preschool student. It is scored on a scale of one to seven, where seven is called excellent, five is called good, and three is called minimal. If the program is below a three, it is potentially harmful to children. If it is between a three and five, it is not harmful but is not having much of a positive impact either. Barnett Trial Tr. 3124:25-3125:17.

There is a wide range of classroom quality across the Plaintiff School Districts and the districts where Individual Plaintiffs reside. A number of the districts received an average score of three on the ECERS. Dr. Barnett finds it "terrifying" that a district average could be that low. Ex. 10,453, 2010 Reapplication and Annual Report; Barnett Trial Tr. 3125:24-3126:15.

There is no rigorous and precise data in Colorado that shows the impact of the state preschool program on achievement. Based on the data that is available, Dr. Barnett believes the program likely has some positive benefits on achievement and retention, but could be much more effective. Colorado's preschool program is weaker in terms of standards and funding than many other state preschool programs and falls short of what is necessary to have a widespread, substantial impact on school readiness and achievement. Ex. 5504 at 1-2; Barnett Trial Tr. 3135:5-13; Bowers Trial Tr. 6626:24-6627:17, 6628:3-7.

In key respects, Colorado's preschool program resembles the Head Start program, which has not been found to produce substantive effects on achievement into kindergarten and first grade. Ex. 5504 at 2; Barnett Trial Tr. 3135:5-3136:9.

## **E. Full-Day Kindergarten**

1. The research clearly shows that full-day kindergarten is an effective way to improve a child's academic performance and address achievement gap issues. The most recent comprehensive review of research on the effects of full-day kindergarten finds positive effects on

average of about .25 standard deviations on academic achievement. The largest gains from full-day kindergarten are for disadvantaged children. Ex. 5504 at 12; Barnett Trial Tr. 3140:18-23, 3196:21-3197:19; Bowers Trial Tr. 6676:9-12; C.R.S. §22-32-119.5(1)(a)(I); Ex. 6, Selected Research on Effects of Full-Day Kindergarten.

2. Gains from full-day kindergarten for disadvantaged or at-risk children should be supported by continued intervention or enrichment in subsequent grades in order to maximize the long-term impacts. Ex. 5504 at 13; Barnett Trial Tr. 3138:17-3139:25.

3. When only half-day kindergarten is offered, there are some kids who don't attend kindergarten at all because it is too difficult for their families to arrange transportation and/or child care for the middle of the day. Barnett Trial Tr. 3158:11-3159:22.

4. The General Assembly has declared that “[a]ll children in Colorado deserve the chance to attend a full-day kindergarten, as the benefits of full-day kindergarten continue throughout a child’s educational experience and set the tone for future academic success.” Despite the evidence of the benefits of full-day kindergarten programs, the General Assembly has recognized that it does not provide sufficient funding for every eligible child in the state to attend a full-day kindergarten program. Bowers Trial Tr. 6676:17-6677:4; C.R.S. §22-32-119.5(1)(a)(IV) & (1)(b).

5. The State appropriation for kindergarten in the school finance formula is .58 of a full-time student. Bowers Trial Tr. 6653:6-10, 6677:5-8.

6. In 2008, the General Assembly set forth in statute a schedule for increasing the annual appropriation for full-day kindergarten each year until 2013-14. That schedule has not been followed. Bowers Trial Tr. 6677:9-16; C.R.S. §22-54-131(6).

7. Full-day kindergarten is unevenly provided in Colorado. The State’s most recent and comprehensive survey of districts regarding full-day kindergarten found that forty-one percent of kindergarten children in the state were attending full-day programs. Only 2,454 of the 25,241 children in full-day kindergarten programs, or 9.7%, were fully funded by the State. The rest were funded by a combination of state funding, tuition, Title 1 funds, or general funds. Among the twenty-one Plaintiff School Districts and the five additional districts where Individual Plaintiffs reside, some offered full-day kindergarten to all children and many did not. Some districts, such as Boulder, Moffat, and Pueblo 70, had less than twenty-five percent of kindergarten students in full-day programs. Lack of facilities and the costs of additional staff were cited as needs. All districts offering full day kindergarten indicated one hundred percent participation. District comments indicated an understanding of the value of full-day kindergarten for student achievement. Some indicated that other aspects of the district’s education program suffered because the district allocated funds for full-day kindergarten. Another recurring message was that districts worry from year to year whether they will be able to maintain their full-day kindergarten programs. Ex. 5504 at 17-18; Ex. 7, Full-Day Kindergarten Phase-In Plan Report, February 2008, at CDE 61524, 61529-61534; Ex. 10,454, Chart with 2007-08 Funded Kindergarten Enrollment for Selected Districts (taken from Appendix A of Ex. 7); Barnett Trial Tr. 3141:10-3143:23; Bowers Trial Tr. 6677:17-6678:25.

8. Ms. Bowers believes children in Colorado should have the opportunity to attend full-day kindergarten programs if their families so choose. Bowers Trial Tr. 6676:13-16.

9. There is strong evidence that small class size matters significantly for the effectiveness of kindergarten and that smaller kindergarten class size has a particularly large effect for disadvantaged students. Prior to the 2008-09 school year, when state preschool funds could be used for full-day kindergarten, class size was limited to twenty children. Now that full-day kindergarten is separately funded and preschool funds cannot be used for kindergarten, there is no limit on class size. Ex. 5504 at 17-18; Barnett Trial Tr. 3144:21-3145:18; Bowers Trial Tr. 6679:1-15; Ex. 30030, Colorado Preschool & Kindergarten Program 2008 Legislative Report, at CDE 6790.

10. CDE legislative reports prior to 2009 contain results that demonstrate full-day kindergarten in Colorado has positive effects on school success. Ex. 5504 at 18; Ex.30032, Colorado Preschool Program 2006 Legislative Report, at CDE 6763.

#### **F. Early Childhood Conclusions and Recommendations**

1. Dr. Barnett's expert opinion is that additional investments in intensive, high quality preschool education and full-day kindergarten could make a significant contribution toward closing the large educational achievement and attainment (i.e., graduation and drop-out) gaps in Colorado. Ex. 5504 at 1; Barnett Trial Tr. 3071:1-12.

2. It is entirely possible to close forty to fifty percent of the achievement gaps for disadvantaged kids in Colorado by serving more kids in the Colorado Preschool Program and improving the quality of the program by investing more resources in it. Barnett Trial Tr. 3148:8-15.

3. The costs of school failure in Colorado are ten times more expensive than what it would cost to address the problem on the front end with high quality preschool and full-day kindergarten programs for all eligible children. Barnett Trial Tr. 3148:16-25.

4. The preschool years are the crucial years for language learning and development. If those years pass by without substantial investment in disadvantaged children, it is very hard to close the gaps later. Barnett Trial Tr. 3167:8-25.

5. Access to preschool is necessary for at-risk kids in Colorado to get an adequate education. Nevertheless, the State is not providing sufficient funding for all eligible children to attend Colorado Preschool Program. If there were additional state funding for preschool, more children would be able to be served in the Colorado Preschool Program. Bowers Trial Tr. 6685:7-20.

6. Full-day kindergarten is necessary for at-risk children in Colorado to get an adequate education. Nevertheless, the State is not providing sufficient funding for districts to provide full-day kindergarten to all age-eligible students. The most recent data is that only sixty-four percent of kindergarten students in Colorado are in full-day programs. If there were additional state funding for full-day kindergarten, more children would be able to be served in full-day programs. Bowers Trial Tr. 6685:21-6686:15.

7. Dr. Barnett made a number of recommendations for improving the school readiness and success of Colorado's children. These recommendations include offering intensive high-quality preschool education and full-day kindergarten to all children, raising standards for teachers and teacher assistant qualifications and limiting class size in kindergarten, implementing a strong continuous improvement process for preschool education, assessing and removing barriers to participation in preschool, and supporting comprehensive reforms to adjust K-12 education to maximize progress built upon the learning and development gains provided by more widespread and effective early childhood programs. Ex. 5504 at 2, 18-21; Barnett Trial Tr. 3136:10-3138:10.

## **XII. SPECIAL STUDENT POPULATIONS: SPECIAL EDUCATION**

### **A. Plaintiffs' Witnesses**

1. Lucinda Hundley was the Assistant Superintendent of Student Support Services at Littleton Public Schools for eleven years. In that role, she was the director of special education and oversaw the alternative education, gifted and talented, English language learner, health services, truancy intervention, homebound services, Section 504, and student discipline programs and services. 8/9/11 Trial Testimony of Lucinda Hundley ("Hundley Trial Tr.") 1914:22-1915:12, 1916:13-22, 1916:23-1919:4; Ex. 6101, Curriculum Vitae of Lucinda Hundley.

2. Ms. Hundley has been a member of the State Directors Leadership Team, Special Education Directors Consortium, Special Education Fiscal Advisory Committee, and Governor Ritter's P-20 Council. Hundley Trial Tr. 1920:12-1921:2; Ex. 6101.

3. Ms. Hundley is as an expert in special education in Colorado. Hundley Trial Tr. 1924:15-20.

4. Dr. Margaret McLaughlin has been a professor in special education at the University of Maryland since 1982. She also serves as the Associate Dean for Research and Graduate Education in the College of Education and is the Associate Director of the Institute for the Study of Exceptional Children and Youth at the University of Maryland. 8/9/11 Trial Testimony of Dr. Margaret McLaughlin ("McLaughlin Trial Tr.") 2028:21-2029:13; Ex. 5702, Curriculum Vitae of Margaret McLaughlin.

5. Dr. McLaughlin's research focus is special education policy, with an emphasis on how special education interacts with general education reforms, such as standards, assessment, accountability, governance reforms, and finance reforms. She has served as a consultant on a number of special education cost studies at the state and national levels. McLaughlin Trial Tr. 2029:16-2030:5.

6. Dr. McLaughlin is a national expert in special education finance and policy. McLaughlin Trial Tr. 2037:7-12.

7. Randy K. Boyer has served as the Executive Director and/or Special Education Director of the San Juan Board of Cooperative Services (BOCES) since 2002. Before moving to Colorado in 2002, Mr. Boyer worked for twenty-eight years in a large urban Arizona school district in positions including special education teacher, special education program supervisor,

director of special education, and high school principal. Ex. 6700, Curriculum Vitae of Randy K. Boyer.

8. Mr. Boyer has been a member of the Colorado Educational Data Advisory Committee, the Colorado Special Education Fiscal Advisory Committee, the Colorado Consortium of Special Education Directors, and the Colorado Commissioner's Superintendent Advisory Council. Ex. 6700.

## **B. Background**

1. Special education refers to the process by which a child is identified as having a disability according to prescribed eligibility criteria, his or her educational needs are determined, and a program of specially designed instruction and related services called an Individualized Education Program (IEP) is developed so that he or she can receive educational benefit. Hundley Trial Tr. 1924:21-1935:9, 1929:1-14; 8/31/11 Trial Testimony of Dr. Edward Steinberg ("Steinberg Trial Tr.") 6212:5-25.

2. The federal Individuals with Disabilities Education Act (IDEA) and Colorado's special education law, Exceptional Children's Educational Act (ECEA), require school districts to provide special education programs to all children with disabilities in the state. Stipulated Facts ¶15.

3. Colorado has aligned ECEA with IDEA. Everything required in federal special education law is also required in state special education law. There are a few instances in which Colorado's special education law exceeds federal law, such as the requirement that transition services begin at age fifteen rather than sixteen. If IDEA were repealed, Colorado would still have an interest in assuring that students with disabilities are provided appropriate educational services calculated to lead to educational benefit. Children with disabilities are entitled to the same rights and protections under Colorado's constitution as all other children in the State. Hundley Trial Tr. 1925:16-24, 1926:17-1927:9, 1927:17-20, 2025:23-2026:4; Steinberg Trial Tr. 6207:2-24.

4. All other federal and state education laws, such as the No Child Left Behind Act (NCLB) and the Colorado Achievement Plan for Kids (CAP4K), apply to students with disabilities just like any other students. Hundley Trial Tr. 1927:21-1928:10.

5. Colorado identifies and serves fewer students with disabilities than almost any other state in the country. The percent of students that has been identified with disabilities in Colorado public schools is 10.2% compared to a national average of 13.3%. Ex. 10,045, Spring 2010 EDFacts State Profile—Colorado, at 1; McLaughlin Trial Tr. 2106:9-22; Steinberg Trial Tr. 6267:16-22.

6. In Colorado, special education services are provided by 58 administrative units (AUs), which may be a school district or a group of school districts acting through a Board of Cooperative Educational Services ("BOCES"). Stipulated Facts ¶ 16; *See also* Hundley Trial Tr. 1928:13-25; Steinberg Trial Tr. 6216:13-6217:6.

7. There is a continuum of educational placements for children with disabilities that gets progressively more restrictive as you move from general education to segregated private placements. For example, a child with a mild speech articulation problem may be educated in general education with pull out speech language therapy, whereas a child with more significant disabilities may be educated in a district center-based program, which is a classroom comprised only of students with disabilities. The most restrictive settings are private facilities and residential placements outside of the home. The more restrictive the placement, the more expensive it is because of the increased level of staffing and supports. Hundley Trial Tr. 1932:2-1933:17.

8. The preference in federal and state special education law is that students with disabilities be educated in the least restrictive environment (LRE), which means alongside their general education peers to the greatest extent possible. Hundley Trial Tr. 1931:1-23.

9. Each child with a disability is guaranteed under federal and state special education law a “free appropriate public education” (FAPE), which is defined in terms of compliance with procedural as well as substantive statutory requirements, including outcome requirements. There are a number of potential consequences if a district is not providing FAPE to all of its students with disabilities, including loss of funds, state takeover of special education, and individual or class action legal complaints. Hundley Trial Tr. 1934:14-1935:12; McLaughlin Trial Tr. 2043:6-2044:17; Steinberg Trial Tr. 6212:5-6213:4.

10. The state education agency has ultimate responsibility under IDEA to assure that FAPE is being provided to every eligible child in the state and may delegate certain responsibilities to districts. Part of the State’s responsibility is to assure that AUs have sufficient resources and procedures in place to provide FAPE to all of the students with disabilities in their jurisdictions. McLaughlin Trial Tr. 2044:18-2045:9, 2073:22-2074:13; Steinberg Trial Tr. 6215:20-6216:12, 6244:8-6245:2.

11. In order for a special education or district administrator to determine whether a child is receiving FAPE, he or she would need to look at the child’s IEP, compare the plan to the child’s disability and needs, and then look at the child’s educational outcomes to see whether he or she is demonstrating educational benefit. Hundley Trial Tr. 1935:13-1936:2. *See also* McLaughlin Trial Tr. 2041:1-25.

12. It is important to have objective accountability measures for students with disabilities that go beyond the subjective goals and objectives in the student’s IEP. Districts are therefore held accountable for the achievement of children with disabilities on all measures, including Adequate Yearly Progress (AYP) under NCLB, state accreditation standards, growth measures, post-secondary and workforce readiness, and graduation and drop-out rates, like all other students in the district. Hundley Trial Tr. 1936:3-17, 1986:25-1987:14, 2022:13-2023:14; Steinberg Trial Tr. 6252:1-25.

### C. Special Education Funding

1. There are three main sources of revenue for special education in Colorado: the federal government, state government, and local school district. Hundley Trial Tr. 1937:5-8; Steinberg Trial Tr. 6227:6-11.

2. Colorado law used to provide that administrative units were entitled to reimbursement of up to 80% of approved special education costs. The State has never paid close to that amount. In 1992-93, state funding accounted for 18.51% of total expenditures for special education. The entitlement to 80% of approved costs has since been removed from state law. Steinberg Trial Tr. 6263:18-6264:19; Ex. 30,109, Legislative Council Staff Report on the Senate Bill 93-87 Setting Category Study, August 1993, at 87.

3. Colorado's special education funding model is a tiered system. Districts receive \$1250 for every student with a disability on top of their per pupil revenue, known as Tier A. Students that fit into one of eight specified disability categories qualify for additional funding up to \$6000 per student, known as Tier B. There is an additional pool of \$2 million for high cost out-of-district students and \$2 million for high cost in-district students that is distributed to some school districts based on the impact of their high cost students on their operating budget. The threshold amount for out-of-district high cost students is set by statute at \$40,000 per year and the threshold for in-district high cost placements is \$25,000 per year. Hundley Trial Tr. 1944:1-1945:11, 1945:21-1946:8, 1947:8-1949:12; McLaughlin Trial Tr. 2045:25-2046:18; Steinberg Trial Tr. 6225:3-6256:8.

4. Some students with severe behavioral or mental difficulties are served in high cost out-of-district placements, such as the Tennyson Center for Children, because their districts do not have the resources to meet their intensive educational needs. One of these placements could cost a district anywhere from \$29,000 to \$80,000 per year. In rural areas, where out-of-district facilities are not available, districts are required to create in-district high cost programs to serve students with intensive special education needs. Hundley Trial Tr. 1946:9-1947:25; 6/24/11 Deposition Testimony of Randy K. Boyer ("Boyer Depo. Tr.") 65:10-66:4.

5. The current special education tiered funding system in Colorado was developed quickly in 2006 based on available funding as opposed to the actual costs of serving kids with disabilities and without studying alternative funding models in other states in the country. The change in the special education funding model to a tiered system did not result in any additional state reimbursement for districts' special education costs. With the exception of the addition of the in-district high cost pool, the special education funding formula has not changed significantly since 2006 despite increasing outcome requirements, increasing costs, and changing demographics. Hundley Trial Tr. 1940:24-1941:19, 1942:16-1943:15, 1950:7-21; McLaughlin Trial Tr. 2067:23-2068:12; Boyer Depo. Tr. 141:16-142:19; 8/29/11 Trial Testimony of Voretta Hermann ("Hermann Trial Tr.") 5542:20-22.

6. The special education funding system in Colorado is not a reasoned or rational structure for a number of reasons. First, it was not based on any empirical analysis of actual need, expenditures, or cost of services, or how those costs differ by geographic regions. Second, Tier A does not take into account district demographics, as many states and the IDEA special

education funding formula do. There is no acknowledgement that the cost of special education services and the level of need may differ across districts based on demographics, such as poverty and English language acquisition. Third, there is no basis for the use of disability categories as a proxy for cost for Tier B given the tremendous variability in needs across each of the eight categories. Fourth, there are no tiers within the high cost pool as other states have. It is important to have multiple tiers in a high cost pool so that there is a mechanism for the State to step in and provide financial assistance when the costs of an extraordinarily needy student are going to bankrupt a district. Fifth, the trigger for the out-of-district high cost pool is higher than most other states. Sixth, by benchmarking costs against total expenditures in a district, there is a presumption that high cost kids are spread proportionally across the state, which they tend not to be. McLaughlin Trial Tr. 2046:19-2053:5, 2053:22-2054:20, 2061:20-2064:22; Steinberg Trial Tr. 6275:3-11.

7. The amount of funding for special education in Colorado is insufficient. Tier A is insufficient because it has remained constant at \$1250 per student since 2006 with no adjustment for inflation or recognition that costs have increased significantly since then. Tier B is tremendously underfunded and has never come close to the statutory intent of \$6000 per student. In 2009-10, Tier B students got only 15% of \$6000, or \$917, per child. The high cost pool is also insufficient. In 2009-10, there was at least \$2,237,103 in un-reimbursed costs for out-of-district high cost placements and at least \$8,376,904 in un-reimbursed costs for in-district high cost placements. Several school districts, including Aurora, Denver, and Jefferson County, received no state funding from the high cost pool for their out-of-district placements. Hundley Trial Tr. 1944:24-1945:7, 1952:2-8, 1958:11-23, 1962:3-14, 1963:21-23; Ex. 92, Special Education Fiscal Advisory Committee Report, December 2010, at 4-5, 11-12; McLaughlin Trial Tr. 2065:7-2067:18; Steinberg Trial Tr. 6270:18-25, 6273:1-6274:7; Hermann Trial Tr. 5544:1-18.

8. The costs for serving students with disabilities have continually increased over time for a number of reasons, including increased state and federal legal requirements, the impact of critical judicial decisions, cost shifting from other state agencies, trends of students with increasingly complex and more costly disabilities, a shortage of qualified special education personnel, the effect of charter schools on local district funding, and increasing costs of dispute resolution. As the gap between special education costs and revenue from the state and federal governments widens, schools districts are left to pick up a greater share of the costs. Ex. 4800, Plaintiffs' Expert Disclosure, at 18; Hundley Trial Tr. 1968:7-1979:17; Steinberg Trial Tr. 6271:1-4.

9. Colorado, like other states in the country, has seen a significant increase in the number of students on the autism spectrum. These students often need a vast array of services that typically translate into high costs. Steinberg Trial Tr. 6219:16-6220:10; Hundley Trial Tr. 1975:2-13.

10. According to a July 2009 Colorado Legislative Council Report, the average excess special education cost per student with disability in Colorado is \$9,895 above per pupil revenue. In FY 2007-08, Colorado school districts paid \$523,143,901 in unreimbursed special education costs. Ex. 92 at 5, 28-29.



11. In Littleton, the average cost per child with a disability (on top of per pupil revenue) has increased from \$7,664 in 2005 to \$11,619 in 2010, a fifty-two percent increase. During that time period, total special education costs increased by thirty percent although the pupil-count decreased by fifteen percent. Ex. 10,184, Recent Trends in Special Education Law, Presentation to the Littleton Board of Education May 12, 2011, at L 5689; Hundley Trial Tr. 1983:15-1984:24.

12. In 2000, the Colorado State legislature mandated that the Colorado Department of Education conduct a study of special education funding. CDE contracted with the Mountain Plains Regional Resource Center to perform the study. The contractor used thirteen criteria to rate the effectiveness of Colorado's special education funding system. Colorado's system failed eight of the thirteen criteria, including: the ability to pay for special education services is dependent on local wealth, the amount of ECEA monies distributed to each administrative unit is inadequate, and the amount of money received from state ECEA funds is not linked to actual costs. All of the eight issues identified remain today. The contractor recommended that Colorado increase state funding, which was 18.9% at that time, to reduce local contributions from 69.3% to the national average of 32%. This recommendation has not been implemented. There has been no more recent study of special education funding in Colorado. Ex. 28, Special Education Funding in Colorado, October 1, 2000, at L2993-2994; Hundley Trial Tr. 1954:5-1957:1; Steinberg Trial Tr. 6265:4-6267:12.

13. State funding currently covers approximately seventeen percent of special education costs and the federal government covers fourteen percent, leaving districts responsible for sixty-nine percent of costs. Hundley Trial Tr. 1952:2-15; Ex. 92 at 5; Steinberg Trial Tr. 6267:13-15.

14. In the last national special education expenditure study, Colorado was the third state from the bottom in terms of its state share for special education. The average state share across the nation was forty-five percent, as compared to seventeen percent in Colorado. McLaughlin Trial Tr. 2068:13-2069:5, 2070:4-2071:9; Ex. 10,178, State Special Education Finance Systems, 1999-2000, May 2003, at L4817, L4917.

15. School districts have a legal obligation to provide whatever a child with a disability needs to benefit from his or her education. They cannot refuse to provide special education services based on lack of resources. The net effect of having to fully fund the special education services provided in students' IEPs is that resources are taken from general education programs to backfill the special education shortfall. There is a lack of predictability that comes from reliance on general funds to provide special education services mandated in IEPs because those funds are fungible. Without sufficient targeted dollars from the State, districts cannot confidently and predictably plan and staff their special education programs. Hundley Trial Tr. 1952:16-1953:12, 1959:18-1960:2; McLaughlin Trial Tr. 2071:10-2073:17; Steinberg Trial Tr. 6213:18-6214:3, 6268:6-13; Ex. 4800 at 20.

16. Dr. Steinberg, the State Director of Special Education, is concerned about how the need for districts to fully fund special education students affects the quality of education services being delivered to general education students. Steinberg Trial Tr. 6268:16-20.

17. Colorado ranks 51<sup>st</sup> in a field that includes the District of Columbia for its financial contribution to special education. Steinberg Trial Tr. 6269:21-24; Ex. 93, “Without Funds, Colorado’s Special Ed Often Can Fall Short,” Denver Post, July 12, 2009.

18. By placing the burden on local districts to fund the majority of special education costs, Colorado is abdicating its responsibilities under special education law to assure that FAPE is provided to all students with disabilities in the state. McLaughlin Trial Tr. 2071:10-24.

19. The Special Education Fiscal Advisory Committee (SEFAC), which is made up of special education directors, business representatives, and CDE representatives, including witnesses Lucinda Hundley, Randy Boyer, and Ed Steinberg, is statutorily charged with reviewing AUs’ high cost applications, annually reporting to the State Board and legislature on trends, and making recommendations regarding the future funding of special education. The long-term recommendations of SEFAC in December 2010 were to: 1) increase Tier A funding at the same percentage as the total ECEA allocation is increased or at the rate of inflation, whichever is less; 2) continue to seek additional funding for Tier B so that eligible students will be funded at a higher percentage level, with the goal of reaching the statutory intent of \$6000 for Tier B eligible students; and 3) increase the funding appropriation for high cost students, both out-of-district and in-district. These recommendations are consistent with prior recommendations of the SEFAC committee and have not yet been implemented. In 2008, SEFAC also recommended conducting further study regarding the intensity of special education services by disability to determine any recommended changes to the Tier B funding formula. No such study has been conducted in Colorado. Ex. 92 at 3, 14; Hundley Trial Tr. 1964:20-1965:16, 1966:21-1967:9; Steinberg Trial Tr. 6204:5-16, 6286:3-6287:2; Ex. 91, Special Education Fiscal Advisory Committee Report, An Overview February 2008, at Committee Recommendations.

20. There a number of restrictions on the use of special education funds. They cannot be used to supplant general education funds and must be used solely for children with disabilities. These restrictions sometimes impede the adoption of efficiencies. For example, a special education teacher that is funded by federal American Recovery and Reinvestment Act (ARRA) funds to provide literacy instruction to special education students in a general education classroom cannot also provide support to struggling readers in that class that have not been identified as having a disability. Hundley Trial Tr. 1938:21-1939:22.

21. Dr. McLaughlin’s expert opinion is that Colorado’s current funding structure as well as the level of appropriations for special education puts AUs at significant risk of being able to provide FAPE to each eligible student. The lack of resources will prohibit the AUs from fulfilling their obligations under IDEA and ECEA. Ex. 5700, Expert Report of Dr. Margaret J. McLaughlin, at 3; McLaughlin Trial Tr. 2042:15-22.

22. Mr. Boyer testified that Colorado’s current funding structure makes it difficult for rural districts to provide FAPE to each eligible student. Boyer Depo. Tr. 100:8-22, 103:3-104:5.

23. IEP teams in Colorado operate within the framework of what they have. Due to limited funding for special education, they are forced to write IEPs based on what they know they can provide rather than what the child needs. This practice is known as “rationing” of services. For example, if an IEP team knows it has two full time special education employees in

a building of 900 children, it is unlikely to give a child one-to-one intervention for any period of time despite his or her needs, because it does not have the staff to provide the service. McLaughlin Trial Tr. 2075:2-2078:4; Boyer Depo. Tr. 133:10-24.

24. For example, Woodlin School District must write IEPs based on the amount of time it has with service providers rather than on the students' needs. A student may need speech therapy every day, but the district can only offer it once a week. The IEP for that student will consequently be written to provide speech one time per week. The IEP process therefore becomes a question of how can the district meet this student's needs with the resources it has. 5/2/11 Deposition Testimony of Rose Cronk ("Cronk Depo. Tr.") 97:8-99:13, 242:25-243:17, 268:9-269:6.

25. Dr. Steinberg agrees districts could benefit from additional funding for special education. Steinberg Trial Tr. 6266:25-6267:3.

#### **D. Achievement of Students with Disabilities**

1. The needs of all students with disabilities are not currently being met in Colorado. The achievement levels of these students indicate they are neither growing nor receiving education benefit. In fact, growth for Colorado students with disabilities was actually negative from 2004-08, whereas other states saw positive growth in the proficiency of students with disabilities. Hundley Trial Tr. 1986:14-17, 2016:20-2017:3; McLaughlin Trial Tr. 087:5-2088:4, 2107:14-2108:7, 2110:1-14.

2. The State Director of Special Education, Dr. Steinberg, testified he is concerned about the achievement of students with disabilities in Colorado, as well as graduation rates, dropout rates, and post secondary outcomes for students with disabilities. Steinberg Trial Tr. 6209:10-24, 6240:10-13, 6241:13-16.

3. Achievement in reading and math for students with disabilities has remained flat for years and is starting to decline. Steinberg Trial Tr. 6235:18-25, 6240:14-20.

4. Dr. Steinberg also has concerns about the percent of districts meeting AYP targets for students with disabilities. Steinberg Trial Tr. 6241:9-11.

5. There is a huge achievement gap in Colorado between children with IEPs and children without IEPs that is widening rather than closing. The gaps are the widest among all of the disaggregated sub-groups. Given that most students with disabilities have average intellectual ability, as wide an achievement gap should not exist. McLaughlin Trial Tr. 2087:5-2088:4, 2104:22-2106:8, 2108:14-2109:25; Ex. 10,045 at 1; Steinberg Trial Tr. 6241:24-6242:10.

6. The achievement of students with disabilities in Littleton is flat. Achievement could be improved with more resources for embedded staff development, ongoing coaching, and ongoing mentoring for general and special education staff working with kids with disabilities. Hundley Trial Tr. 1989:1-1990:6.

7. The majority of students with disabilities are included in general education settings, which Dr. Steinberg believes are, by and large, not meaningful or effective because general education teachers are not sufficiently trained in how to meet the needs of students with disabilities in their classrooms or how to differentiate instruction. They rely primarily on untrained paraprofessionals to support the students with disabilities in their classes. A co-teaching model would be more effective and efficient if done well. Steinberg Trial Tr. 6254:11-6255:14.

8. Dr. Steinberg believes special education teachers do not have the training and skills required to deliver quality reading and math instruction to students with disabilities. He believes the achievement of student with disabilities would increase with literacy coaches in each district, more one-to-one group and small group remedial tutoring, and more in-service professional development focused on the science of reading and math instruction. Steinberg Trial Tr. 6242:19-6243:22.

9. There are a number of research-based interventions that have been shown to have large effects on the achievement of students with disabilities. These interventions need to be implemented in small group settings or one-to-one, which is resource intensive. McLaughlin Trial Tr. 2110:15-2113:6.

#### **E. State and District Compliance with IDEA Requirements**

1. The State must monitor the implementation of Part B of IDEA. The primary focus of the State's monitoring activities must be on: (1) improving educational results and functional outcomes for all children with disabilities; and (2) ensuring that school districts meet IDEA program requirements, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities. 34 CFR §§300.600(a); 300.600(b).

2. Every six years, the State is required to submit a State Performance Plan (SPP) to the federal Office of Special Education Programs (OSEP), in which it evaluates its efforts to implement the requirements of IDEA and describes how the State will improve implementation. 34 CFR §300.601(a).

3. Each year, the State must issue an Annual Performance Report (APR) on twenty specific indicators, including graduation and dropout rates, performance on statewide assessments, preschool outcomes, post school outcomes, and secondary transition. Ex. 10,459, An Introduction to the State Performance Plan/Annual Performance Report, at CDE 55577-55578; McLaughlin Trial Tr. 2088:22-2094:19; Steinberg Trial Tr. 6208:11-21.

4. There are no national standards for the twenty indicators. Each state develops its own targets for the indicators. In Colorado's most recent update to its State Performance Plan, the State lowered its achievement targets for math and reading proficiency for students with disabilities because examination of trend data showed performance of these students has been declining. The State also lowered its target for the percent of districts meeting the State's AYP objectives for the sub-group of students with disabilities from twenty-nine to twenty-three percent. Rather than maintain the targets and provide more resources for instructional support

and interventions to increase the growth rate of students with disabilities, the State lowered its expectations for these students, an action Dr. Steinberg is not excited or proud about. Ex. 5106, Colorado FFY 2005-2010 State Performance Plan for Special Education, Updated April 18, 2011, at 26-27; McLaughlin Trial Tr. 2095:4-2099:15; Steinberg Trial Tr. 6241:17-22.

5. Many of the Plaintiff School Districts are not meeting state targets for children with disabilities in a number of areas, including graduation and dropout rates, achievement on state assessments, parental involvement, early childhood transition, preschool and post-secondary outcomes. For example, the graduation rate for students with disabilities in Aurora in 2009-10 was 25.43% compared to the state target of 63%. The proficiency rate on reading assessments in Aurora that year was 35.44% compared to the state target of 59% at that time. The proficiency rate on math assessments was 35.62% compared to a target of 53.5%. Ex. 10,188, Administrative Unit State Performance Plan Indicators 2009-10, at 5-8; McLaughlin Trial Tr. 2099:16-2104:9.

6. The increased focus on compliance by the federal government and the State takes resources away from districts' ability to meet students' needs. Additional resources would enable districts to purchase data collection systems and train more staff to collect and manage data. More importantly, it would free up local resources to create necessary programs to address the educational needs and outcomes of children with disabilities. Hundley Trial Tr. 1972:13-1973:6.

7. The United States Department of Education, Office of Special Education Programs (OSEP) monitors Colorado's compliance with the Individuals with Disabilities Education Act. Every year, OSEP makes a determination about Colorado's compliance with the requirements of IDEA based on the totality of the State's data in its State Performance Plan and Annual Performance Report, using the categories Meets Requirements, Needs Assistance, Needs Intervention, and Needs Substantial Intervention. Correspondingly, the State makes determinations about the fifty-eight AUs in Colorado using the same four categories. Steinberg Trial Tr. 6210:6-19, 6245:3-14, 6247:8-11, 6249:8-13.

8. In 2001, OSEP identified a number of areas of non-compliance in Colorado, finding that services and supports to meet the needs of children with disabilities are not always provided. In subsequent years, Colorado failed to address some of these issues of non-compliance, thereby resulting in special conditions being placed on its IDEA grant award. For three consecutive years, in 2007, 2008, and 2009, Colorado received a determination from OSEP of "Needs Intervention." For the last two years – 2010 and 2011 – Colorado has been in the "Needs Assistance" category. Steinberg Trial Tr. 6210:20-6211:5, 6247:1-6249:7; Ex. 99, 6/15/07 Letter from OSEP to Commissioner Jones; Ex. 100, 6/5/08 Letter from OSEP to Commissioner Jones; Ex. 102, 6/1/09 Letter from OSEP to Commissioner Jones; Ex. 98, 6/3/10 Letter from OSEP to Commissioner Jones; Ex. 10,202, 6/20/11 Letter from OSEP to Commissioner Hammond.

9. In 2007-08, of the fifty-seven Colorado AUs, twenty were in the "Needed Assistance" category and ten received a determination of "Needs Intervention". Steinberg Trial Tr. 6249:14-18; Ex. 96, Local IDEA Determinations.

## **F. Response to Intervention**

1. Response to Intervention (RTI) is a tiered model of intervention designed to assist students who are showing signs of academic difficulty before they are identified for special education. The basic educational program is called the universal level or Tier 1 and is designed to meet the needs of approximately eighty percent of students. Typically, fifty percent of students need some level of intervention in general education that is short-term and targeted to their specific needs, which is called Tier 2. About five percent of kids need more intensive and expensive targeted intervention at the Tier 3 level. Hundley Trial Tr. 1991:13-1992:9; 8/4/11 Trial Testimony of Cynthia Stevenson (“Stevenson Trial Tr.”) 1109:3-23. *See also* McLaughlin Trial Tr. 2082:17-2085:9.

2. RTI is required in Colorado prior to identifying a child with a specific learning disability. It is strongly recommended by CDE for all other students. Hundley Trial Tr. 1992:10-1993:1; Steinberg Trial Tr. 6233:1-5.

3. Significant resources are needed to effectively implement an RTI model. RTI assumes that all general education teachers can meet the needs of eighty percent of the students, which is often not the case. Professional development is needed to give general education teachers the tools to differentiate instruction to meet the diverse learning styles and needs of eighty percent of students. Professional development on continual progress monitoring is also needed. The RTI model also assumes that districts have identified and purchased research-based interventions and have sufficient staff trained to deliver those interventions at the Tier 2 and Tier 3 levels. In Littleton, Tier 2 and 3 interventions are being implemented by special education staff on top of their special education caseloads because all of the district’s interventionists have been cut. Districts receive little to no financial support from the State to implement RTI models. Hundley Trial Tr. 1994:14-1995:6; McLaughlin Trial Tr. 2085:10-2086:5; Steinberg Trial Tr. 6256:12-15; Ex. 4800 at 21.

4. Dr. Steinberg’s belief that RTI will be cost neutral or result in cost savings for districts over time is hypothetical and not grounded in any data. CDE has not done an analysis or examined school district budgets to determine the cost of RTI implementation across the state. Steinberg Trial Tr. 6235:11-17, 6255:15-6256:1, 6276:18-23.

## **G. Personnel Shortages**

1. In Colorado and across the country, there is a significant shortage of special education and related services providers, such as speech and language pathologists, occupational therapists, and deaf and hard of hearing interpreters. The shortages have increased since 2007 and are particularly acute in rural areas. The shortages exist, in part, because of competition that districts face with hospitals and private clinics that are often able to pay higher salaries. Almost all of the effective strategies to address personnel shortages, such as loan forgiveness programs, different salary schedules, and hiring bonuses, require additional resources. Hundley Trial Tr. 1975:14-1976:12; Steinberg Trial Tr. 6221:9-6222:5, 6223:22-6224:20, 6260:4-13, 6262:3-6; Boyer Depo. Tr. 32:5-16, 106:18-107:3, 134:6-137:11; Ex. 4800 at 21.

2. Teacher retention is also a big issue with respect to special education teachers. Special education teachers are leaving the field to go into other areas or professions. Dr. Steinberg believes that if special education teachers received more training and professional development, they might be more inclined to stay in the field. Steinberg Trial Tr. 6261:4-19.

3. CDE partnered with the Colorado BOCES Association to form a task force charged with looking at data on special education personnel shortages and developing recommendations to address shortages. The key recommendation of the task force was increased funding for loan forgiveness programs, which has not been implemented. Steinberg Trial Tr. 6224:12-6225:2, 6263:7-17; Ex. 5111, Special Education Teacher Shortages in Colorado, A Road Map to Eliminating the Shortage, July 29, 2010, at CDE 104,360.

#### **H. Charter Schools**

Charter schools have the same obligations as traditional public schools to serve students with disabilities, but tend to serve only mildly disabled children, leaving districts to serve the kids with more profound disabilities. Charter schools that admit students with disabilities sometimes “counsel” them out of the charter school when their full needs become known, suggesting they would be better served in a traditional school. This issue has existed for years and continues today. Hundley Trial Tr. 1976:24-1978:16; Steinberg Trial Tr. 6256:16-6257:3, 6259:12-6260:3.

#### **I. CDE Support**

CDE reported to OSEP in 2008 that there were several barriers impeding the State’s ability to correct non-compliance with IDEA in a timely manner, including data collection, staff, time, and resources. Since then, the Department has not hired any new staff in the special education department. It did, however, reorganize its staff to focus more on monitoring than technical assistance. As a result, CDE has not been able to put sufficient focus on student achievement. Hundley Trial Tr. 1996:8-18; Steinberg Trial Tr. 6253:1-25.

#### **J. Other Special Needs Issues**

1. There is insufficient state funding to adequately plan for and meet the needs of children with significant health needs, such as children with juvenile diabetes or severe allergies. These children are required by law to have a health care plan written by a nurse. The nurse is required to consult with the child’s physician, identify his or her health needs, and determine how those needs are going to be addressed in school. Littleton has less than four full-time nurses for 15,500 students, 900 of whom have health care plans. Each nurse is assigned to five to six schools. Hundley Trial Tr. 1918:14-18.

2. Children with disabilities that impact a major life activity, such as eating, walking, breathing, or learning, are entitled to accommodations under Section 504 of the Rehabilitation Act of 1974 (Section 504). The State provides no funding stream to districts for training, development, implementation, or monitoring of Section 504 plans. As a result, districts must write the plans around accommodations and modifications to a child’s educational program rather than around direct services to the child. Hundley Trial Tr. 1999:4-2000:17.

3. There is insufficient state funding for alternative education programs and services for students with discipline problems. Districts are required to educate students that have been expelled. These students are best served in alternative settings as opposed to traditional schools. The State provides no funding stream for such services, requiring districts to fund them through grant money or their general fund. For example, Littleton has a Redirection Program that attempts to keep students at-risk of expulsion on track. When the grant for that program ran out, the district had to raise class sizes at its comprehensive schools in order to staff its alternative education programs. Hundley Trial Tr. 2000:18-2002:3.

### **XIII. SPECIAL STUDENT POPULATIONS: GIFTED AND TALENTED EDUCATION**

#### **A. Background**

1. Gifted and talented (GT) education is the instruction of students whose abilities, exceptionalities, and potential are so outstanding that they require special provisions within the public K-12 system, such as different instruction, programming, and attention to their social and emotional needs. C.R.S. §22-20-202(6); 8/31/11 Trial Testimony of Jacquelin Medina (“J. Medina Trial Tr.”) 6289:12-20, 6313:8-11; Steinberg Trial Tr. 6228:10-21.

2. Colorado administrative units serve over 56,000 GT students in Colorado public schools, representing about six percent of the student population. Ex. 10,174, Understanding Colorado School Finance and Categorical Program Funding, July 2011, at 13.

3. There a number of state mandates around GT education. Administrative units are required to identify and serve gifted students. They must develop and submit a program plan that describes how they are delivering gifted education and contains goals for improvement. An advanced learning plan (ALP) must be developed for every student identified as GT. J. Medina Trial Tr. 6289:21-6290:13; Steinberg Trial Tr. 6228:22-6229:6; 8/12/11 Trial Testimony of Dr. Holly Hultgren (“Hultgren Trial Tr.”) 2586:4-19.

#### **B. Gifted and Talented Funding**

1. Gifted education gets an annual allocation from the legislature, which is distributed to AUs based on a formula that is not written in state law or regulation. In fiscal year 2009-10, total state categorical funding for school district GT programs was approximately \$9 million, or \$150 per student. Stipulated Facts ¶17; J. Medina Trial Tr. 6300:18-6301:5, 6302:16-23.

2. In 2008-09, 17.8% of total GT expenditures were funded by the State, 81% by local revenue, and 1.2% by the federal government. J. Medina Trial Tr. 6316:22-6317:7, 6320:16-22; Ex. 4107, Gifted and Talented Student Education Funds FY 2009 (2008-2009) End-of-Year Report, at 5.

3. AUs used to be required to match the state funding they requested for GT education. That requirement was recently removed. With the elimination of the matching requirement, funding for GT education decreased by six million dollars in 2010-11. J. Medina Trial Tr. 6304:17-6305:4; Ex. 5112, FY 2009 G-Ed Allocation.



4. State funding for GT students is not based on the actual cost of GT programs. Jacquelin Medina, the State Director of Gifted and Talented Education, believes it is important to quantify the cost of an adequate education for GT students. J. Medina Trial Tr. 6317:19-6318:5.

5. The provision of gifted education has significant resource implications. For teachers to provide adequate services to GT students, they need to be trained in how to develop and adapt curriculum. Teachers also need training, additional classroom time, and materials to provide differentiated instruction to GT students. Hultgren Trial Tr. 2610:2-25.

6. State funding for gifted and talented education may only be used for salaries of licensed, endorsed teachers who work with gifted and talented students. It cannot be used for tutors, teacher's aides, or unlicensed teachers who typically assist with assessment, ALP paperwork, and enrichment activities. Hultgren Trial Tr. 2589:25-2591:8.

7. The provision of adequate gifted and talented education includes programs and activities specific to GT students' strengths. The State's GT allocation is insufficient to provide these types of services for GT students. Hultgren Trial Tr. 2595:5-13, 2595:22-2596:10, 2611:1-13.

8. Ms. Medina has stated publicly on more than one occasion that she believes more funding for GT education in Colorado is needed. For example, she has reported to the state advisory committee for gifted and talented education that GT education is underfunded at both the state and local levels. J. Medina Trial Tr. 6319:24-6320:8; Ex. 10,498, 2008-2009 State of the States in Gifted Education, Impact of Forces on Delivery of Gifted Education Services – Colorado's Response.

9. Ms. Medina is not aware of any district in the state that is not using its GT funds effectively. J. Medina Trial Tr. 6317:8-11.

### **C. Achievement of Gifted and Talented Students**

1. The state accreditation system holds districts accountable for the performance and growth of all students, including GT students. Growth for gifted students statewide is flat compared to other groups. More professional development and curriculum materials are needed to address the achievement of gifted students. J. Medina Trial Tr. 6312:3-21.

2. In places in the State where there is comprehensive GT programming, there is data that shows significant achievement gains for GT students. Comprehensive GT instruction also can be beneficial to the entire school, not just GT students. Strong provision of GT services can change the academic culture of the school to promote learning for all students. J. Medina Trial Tr. 6293:20-6294:4; Hultgren Trial Tr. 2614:1-10.

3. There are GT students in Colorado who are not receiving sufficient programming to reach their potential and are therefore not getting an adequate education. J. Medina Trial Tr. 6313:24-6314:2.

4. The failure to identify and adequately serve GT students could result in underachievement; disengagement from learning; a manifestation of behavioral problems;

impacts on mood, depression, and socialization, or dropout. J. Medina Trial Tr. 6313:12-23; Hultgren Trial Tr. 2611:14-2612:9.

#### **D. Results of State Monitoring**

1. AUs in Colorado are not fully complying with the State's gifted and talented mandates and regulations. The State conducts a peer review of each AU approximately every four years to assess the AU's progress in meeting the elements of the GT state performance plan. Of the thirty-one AUs that have been reviewed, only three met state standards for gifted education as defined by state regulation. J. Medina Trial Tr. 6310:2-8, 6311:1-4, 6311:24-6312:2.

2. AUs cannot waive out of any of the mandates around gifted and talented education. J. Medina Trial Tr. 6321:7-10.

3. Quality gifted education requires full implementation of the goals and indicators in the state performance plan. AUs in the State are not currently meeting all of the goals and indicators. For example, fourteen out of fifty-eight AUs did not make progress towards their locally determined reading targets. Only 66% of AUs are implementing ALPs for every gifted student despite the state mandate that every gifted student have an ALP. J. Medina Trial Tr. 6308:7-23, 6309:8-6310:1; Ex. 198, Colorado - Gifted Education Review: C-GER, Appendix C, at CDE 51856-51859; Ex. 4104, Gifted and Talented State Performance Plan FY 2009 (2008-2009) Results, at 7, 33, 36.

4. It is important for schools to address the social, emotional, and behavioral needs of gifted students, which are known as affective needs. The ability to address students' affective needs is an area of weakness in our State. J. Medina Trial Tr. 6312:22-6313:7.

#### **E. Personnel**

1. The Colorado GT regulations express a preference that resource teachers and teachers in specialized classrooms of gifted students be qualified. "Qualified personnel" is defined in the regulations as an educator with an endorsement or advanced degree in gifted education. Few educators in Colorado have an endorsement or higher degree in gifted education. J. Medina Trial Tr. 6314:7-15, 6315:6-8; Ex. 4106, 2220-R-12.00, Gifted and Talented Student Programming, at 12.01(18), 12.02(1)(f)(i).

2. It is important for gifted students to be taught by teachers who have some training or coursework in gifted education. Research shows that teachers with training in gifted education have a higher academic effect on gifted learner achievement than other teachers. In Colorado, very few teachers come out of teacher education programs prepared to work with gifted students. A student could graduate from a teacher preparation program in this state without having received any course content in gifted and talented education. J. Medina Trial Tr. 6315:23-6316:21.

3. More professional development is needed in gifted and talented education to help teachers differentiate instruction, understand the academic, social and emotional needs of gifted students, and impact student achievement. Only twenty percent of general education teachers in

Colorado receive annual professional development in gifted and talented education. J. Medina Trial Tr. 6324:2-12; Ex. 4116, 2008-09 State of the States in Gifted Education, National Policy and Practice Data, at 248.

#### **F. CDE Support**

The GT unit at CDE has only one person, Jacquelin Medina, who is funded at half time for gifted and talented education. Ms. Medina would like more resources in order to better achieve the Department's goals with respect to Gt education. J. Medina Trial Tr. 6306:8-16, 6306:23-6307:1.

### **XIV. SPECIAL STUDENT POPULATIONS: ENGLISH LANGUAGE LEARNERS**

#### **A. Background**

1. The term "English language learner" (ELL) is an umbrella term that generally encompasses three sub-categories of students: 1) non-English proficient students (NEP); 2) limited-English proficient students (LEP); and 3) fully English proficient students (FEP), which are students who were formerly identified as ELLs but who have acquired fluent English proficiency in listening, speaking, reading, and writing. 8/18/11 Trial Testimony of Dr. Kathy Escamilla ("Escamilla Trial Tr.") 3705:4-14; 8/30/11 Trial Testimony of Dr. Barbara Medina ("B. Medina Trial Tr.") 5970:1-17.

2. Colorado has over 100,000 (12%) students in grades K-12 who are labeled English language learners, representing over 164 languages. 156 of the 178 school districts in Colorado serve ELL students. The ELL population in Colorado has grown by 250% since 1995 while the overall K-12 population has grown by only 12%. Some communities in Colorado have had over 800% growth in their ELL population in the last ten or twelve years. Colorado is one of only twelve states that have had over 200% growth in the ELL student population in the last decade. Ex. 154, Guidebook on Designing, Delivery, and Evaluating Services for English Learners (ELLs), at CDE 83351; B. Medina Trial Tr. 5986:21-24, 5987:14-21, 6032:15-22, 6034:13-16.

3. Eighty percent of the ELL students in the state are classified as either NEP (thirty-six percent) or LEP (forty-four percent). Only fourteen percent of these students are new to Colorado, meaning the vast majority of ELL students in second grade or higher have been in the school system longer than two years. Ex. 5401, Expert Report of Dr. Kathy Escamilla, at 7.

4. There is a high correlation between second language learners and free or reduced lunch status. In Aurora Public Schools, for example, seventy-five percent of ELLs are on the free or reduced lunch program. 8/9/11 Trial Testimony of Dr. Lisa Escarcega ("Escarcega Trial Tr.") 1869:22-1870:3.

#### **B. Legal Requirements Regarding English Language Learning**

1. The Colorado English Language Proficiency Act (ELPA) requires that school districts have a process in place for the identification of English language learners using a state screener test and assess the students' level of English proficiency. Districts must track and

certify the number to the State for purposes of funding. They must also implement and provide a research-based program to serve English language learners. Districts are also required to assess all of their ELL students annually using the Colorado English Language Assessment, referred to as CELApro. Escarcega Trial Tr. 1865:13-1866:9; Escamilla Trial Tr. 3707:5-17; Ex. 42, English Language Proficiency Act, at INV 1630.

2. Title III of NCLB requires that local educational agencies develop and implement language instructional programs for early childhood, elementary, and secondary school programs based on methods and approaches that are scientifically-researched and proven to be the best in teaching ELLs. According to NCLB, basic elements and programs must: 1) ensure that ELLs attain English proficiency, develop high levels of academic content knowledge, and meet state achievement standards; 2) focus on the development of skills in the core academic subjects; 3) develop high quality, standards based language program; 4) focus on professional development that builds capacity to provide high quality instructional programs for ELLs; 5) promote parental and community participation in language instruction for the parents of ELLs; 6) effectively chart the improvement in English proficiency and core academic content knowledge of ELLs; and 7) create effective structures for charting adequate yearly progress for ELLs. Ex. 5401 at 2; Escarcega Trial Tr. 1867:20-1868:5.

3. Districts must meet language proficiency targets known as Annual Measurable Achievement Objectives (AMAO) under Title III. Students are expected to move through five levels in a six-year period. Escarcega Trial Tr. 1866:10-14, 1867:1-19.

4. Colorado does not require school districts to hire teachers who are certified to teach English language learners. Certification in bilingual education or English as a second language is important for teachers of ELL students because it gives teachers familiarity with the types of students they will teach and the skills needed to teach those students. Colorado has 2026 certified ELL teachers to serve 100,000 ELL students in the state. Escamilla Trial Tr. 3707:25-3708:7, 3709:14-18; B. Medina Trial Tr. 5992:23-5993:11, 6089:10-14, 6089:25-6090:25.

5. An ELL program is an essential part of a “thorough and uniform” education system. ELL programs are becoming increasingly more important because of the large number of new immigrants coming to our state. B. Medina Trial Tr. 6061:10-14; Garcia Trial Tr. 4573:16-21.

### **C. Research on Effective English Language Learning Programs**

1. Learning a second language is a long and complex process. Research clearly shows that English language learning programs cannot be “short-term” or “quick fix” in nature. It takes ELLs between four to seven years to fully develop “academic English.” It is not simply enough to be communicative in English. English language learners need to know how to use English to learn and acquire the knowledge and skills required for post-secondary education and workforce readiness. Ex. 5401 at 2-3; Escarcega Trial Tr. 1878:18-25; Escamilla Trial Tr. 3711:25-3712:14, 3716:7-3718:1; Ex. 154 at 14.

2. The most effective programs for ELLs are those that make use of children's native languages in the instructional program, such as dual language programs. Five recent meta-analyses of effective programs for bilingual learners have come to the conclusion that teaching children to read in their native language enhances subsequent acquisition of literacy in English. Ex. 5401 at 2; Escamilla Trial Tr. 3722:15-3723:19.

3. Effective programs for ELLs provide access to core academic subjects while ELLs are learning English and also provide professional development to teachers so that they can provide high quality instruction. Ex. 5401 at 6; Escarcega Trial Tr. 1878:3-8.

4. Effective programs must address the cognitive, linguistic, psychological, emotional, and social needs of ELLs. They must also include parental involvement components and have procedures for evaluating program effectiveness. They must also have seamless and thorough processes for identifying students, as well as a method for monitoring movement toward content and language proficiency standards. Ex. 5401 at 3; Escarcega Trial Tr. 1877:23-25, 1881:12-21.

#### **D. English Language Learner Funding**

1. There are three sources of funding for ELLs in addition to the regular per pupil expenditures available to all children in the state. Supplemental ELL funds include: 1) ELPA -- \$12,121,200; 2) Title III of NCLB -- \$11,214,892; and 3) Title I-C of NCLB, which can only be used for migrant students -- \$5,753,018. (There are 6,323 ELLs in Colorado that are officially counted as migrant students.) This means that there is about \$29,089,110 of supplemental federal and state support for ELL programs and students in Colorado. Ex. 5401 at 5-6; Escarcega Trial Tr. 1873:14-1874:5; B. Medina Trial Tr. 5975:5-13.

2. If one divides the total number of state ELPA dollars by the number of NEP and LEP students (94,758), the state support level is about \$127 per student. Further, if the entire ELL population of 110,500 students (NEP+LEP+FEP) is included in the number of students receiving ELPA money, then the per pupil support level drops to about \$110 per student. Combining the state and federal dollars available to support ELL students does not dramatically improve the picture. If one only counts the NEP/LEP population, then there is about \$307 per pupil of support. If one includes the NEP/LEP/FEP students in the count, the total support falls to \$263 per child. Ex. 5401 at 6.

3. Title III and migrant monies are meant to supplement basic programs for ELLs. The funding should not supplant services and programs that the State is providing. Ex. 5401 at 6.

4. In short, there is insufficient funding in Colorado to provide the types of effective instructional and support programs for ELLs mandated by NCLB, supported by research, and recommended by CDE in its own guidebook so that ELLs can meet language acquisition and state standards. State funds barely cover the costs of administering the Colorado English Language Assessment (CELA) test. Ex. 5401 at 6-7; Escarcega Trial Tr. 1906:5-16; Escamilla Trial Tr. 3740:2-25; B. Medina Trial Tr. 6080:10-19, 6082:15-20.

5. For example, the Sheltered English Instructional Protocol (SIOP) is a popular professional development program for teachers. The SIOP protocol is a program to help content area teachers (e.g. math, science, social studies) teach English and content subjects simultaneously. It is meant to give students access to core academic content while they learn English. The SIOP training program costs range from \$250-\$800 per teacher, not including instructional materials. SIOP is one of the least expensive training programs of its type. Ex. 5401 at 6-7; Escamilla Trial Tr. 3742:12-3744:14.

6. State ELPA money is only available to a student for the first two years he or she is in the state (not the district), which is far short of the four to seven years that research has established for acquisition of full proficiency. It is arbitrary and irrational to provide only two years of funding for ELL instruction. It is clear from research and practice that English language learners need additional support and services beyond two years. Ex. 5401 at 2; Escarcega Trial Tr. 1874:8-1875:5, 1890:12-23; Escamilla Trial Tr. 3719:8-19; B. Medina Trial Tr. 5975:21-23, 5985:3-21, 6084:5-6085:2, 6085:20-6087:10, 6105:11-14; 8/30/11 Trial Testimony of Robert Schaffer (“Schaffer Trial Tr.”) 5932:3-13.

7. The Executive Director of CDE’s Office of Language, Culture, and Equity, Dr. Barabra Medina, has questioned the rationality of the two-year limit on ELPA funding and advocated for increased ELPA funding, particularly in light of the increase in the number of ELL students in the state. She is often told by school districts that ELPA funding is insufficient. B. Medina Trial Tr. 5982:20-5983:23, 5986:3-5987:21, 5990:19-5991:18.

8. ELPA funding is available only for grades K-12. There is currently no state funding for English language learners in preschool programs although the greatest percentage of ELLs (15%) are in preschool and their numbers have grown from about 10,000 in 2007 to over 14,000 in 2010. Ex. 5401 at 3.

9. ELPA funding is not based on any consideration of a student’s background or educational history, either individually or as a group in a school or district. B. Medina Trial Tr. 6108:18-6109:13.

10. The level of funding provided for ELLs in Colorado bears no relationship to the cost of meeting the standards and requirements mandated by the State. In fact, the State has no information on the total costs of ELL programs in Colorado. Escarcega Trial Tr. 1890:8-11; B. Medina Trial Tr. 6089:3-6.

#### **E. ELL Programs in Colorado**

1. The majority of programs for ELLs in Colorado are targeted at beginning level ELLs (NEP) with some support for intermediate ELLs (LEP). There is little support in the form of programs, highly qualified teachers, or adequate assessment practices for ELLs at the mid-high intermediate levels and yet research has established that this is where the students need the most support. Intermediate and advanced ELL students are students who know the basics of English, but have not yet mastered the more

complex structures of English including the multiple meanings of words depending on context. Intermediate ELLs still struggling with acquiring the more complex aspects of English are

additionally challenged by core academic content that is increasingly more difficult across grade levels. For this reason, the research indicates that intermediate ELL students (LEP) need the most support in their school programs. Ex. 5401 at 7-8; Escamilla Trial Tr. 3745:16-22.

2. Eighty-seven percent of ELLs in Colorado are in programs where English is the sole medium of instruction with little or no academic support in their native languages. There are very few dual language programs in Colorado. Ex. 5401 at 2; Escamilla Trial Tr. 3739:6-21.

3. In the twelve years that Plaintiffs' expert Dr. Escarcega has been working with districts across the state on their English language learner programs, she has not heard of a district that has a successful ELL program that is meeting its goals, including her own district (Aurora). Escarcega Trial Tr. 1886:8-1887:2.

4. Districts have to consider available resources when selecting and implementing English language learner programs. ELL programs in the state often fail because educators have too few resources to accomplish their goals. B. Medina Trial Tr. 6069:16-6070:8.

#### **F. Achievement of ELL Students**

1. ELL students are held to the same academic standards as other students. Moreover, schools and teachers are held accountable for the achievement of NEP and LEP students in the same ways that they are held accountable for Native English speakers. Ex. 5401 at 8; Escarcega Trial Tr. 1866:10-20, 1872:12-1873:1; Escamilla Trial Tr. 3715:13-18, 3810:23-3811:1.

2. There are significant and large achievement gaps between ELL students and native English speakers across all content areas that tend to widen as students get older. Escarcega Trial Tr. 1888:19-24; Escamilla Trial Tr. 3745:10-15.

3. The largest discrepancies in ELL achievement on CSAP start in sixth grade and continue through twelfth grade. This is not surprising as it is in these grades where the content of the curriculum is more difficult and where there is little ELPA money allocated. Ex. 5401 at 7.

4. At all grade levels and in all content areas tested, fewer than ten percent of NEP students scored proficient on CSAP in reading, writing, and math in 2009. The gaps in achievement between NEP and all Colorado students increase in higher grades. Ex. 5401 at 8-9 & Table 1; Escamilla Trial Tr. 3746:8-3747:2.

5. With regard to reading, the percent of Colorado students scoring at the proficient range is fairly stable across grade levels. The achievement of LEP students in reading declines sharply across grade levels and in middle and high school fewer than twenty percent of LEP students is proficient in reading at any grade level. Achievement in reading for LEPs is at a high in third grade (forty-one percent) and steadily decreases in subsequent grades indicating very low levels of achievement. Ex. 5401 at 10 & Table 2.

6. The same trend continues when examining the writing scores on the CSAP across grade levels. For all Colorado students, the percent of children who are proficient in writing is fairly stable from grades three to ten with percentages ranging from thirty-eight to forty-five.

However, for LEP students, the percentage of students scoring proficient in writing decreases dramatically from grades three to ten with only five to eight percent of children scoring at proficient levels in writing from grades seven to ten. As with reading, achievement in writing for LEP students is greatest at third grade and decreases dramatically in subsequent grades again indicating very low level of achievement. Ex. 5401 at 10 & Table 2.

7. The very same trend exists for math achievement. Math achievement for all Colorado students is rather low; however, it is stable across grade levels with between twenty-two and thirty-seven percent of all Colorado students scoring at the level of proficient. Across grade levels, the percent of LEP students scoring proficient declines significantly, with less than ten percent of LEP students scoring in the proficient range in grades seven to ten. Ex. 5401 at 10 & Table 2.

8. The ELL graduation rate in 2009 was fifty-three percent as compared to the state average of seventy-five percent. Ex. 5401 at 8; Escarcega Trial Tr. 1888:25-1889:6.

9. The average ACT score of a LEP student in 2009 was 13.8, while the state average was 19.4. Ex. 5401 at 8.

10. As a state, we are not moving many children from the ranks of LEP to the ranks of FEP. Escamilla Trial Tr. 3745:3-9.

11. Dr. Medina has described the achievement of ELL students in Colorado as “abysmal, disappointing, frustrating, and challenging.” B. Medina Trial Tr. 6050:13-19.

12. The education community knows what it takes to bring all English language learner students in Colorado up to mandated proficiency levels; it requires comprehensive programs across many grade levels; in-school and out-of-school experiences, trained teachers, a good curriculum, instructional materials, and good parent involvement. Escamilla Trial Tr. 3780:14-3781:4.

13. Research shows that effective strategies to accelerate the academic growth of ELLs do exist. For example, it is clear that dual language programs accelerate and enhance academic achievement for ELLs; however, these programs are not widely implemented in Colorado. In addition, there is research that supports after school and summer programs to enhance opportunities to learn English for ELLs. There are also computer-assisted instructional programs, native language tutorial programs, and parent training programs that have been proven effective. All of these programs are suggested in the CDE guidebook, but require financial resources that the State is not currently providing. Ex. 5401 at 9; Escamilla Trial Tr. 3748:16-3750:1; B. Medina Trial Tr. 6073:17-6075:6.

14. Colorado is not providing adequate funding for basic instructional programs for English language learners and no funding for supplementary programs, thereby making it unlikely the achievement gap will close in the foreseeable future. Ex. 5401 at 9; Escamilla Trial Tr. 3747:3-9, 3782:9-12.



## **G. CDE Support**

1. Dr. Medina believes that, with only two and a half full-time staff, CDE has insufficient staff to serve the 100,000 English language learner students in the state. B. Medina Trial Tr. 6038:19-6040:13.

## **XV. SPECIAL STUDENT POPULATIONS: LOW-INCOME STUDENTS**

### **A. Background**

1. Colorado has the nation's fastest growing rate of childhood poverty. Garcia Trial Tr. 4578:1-5; 8/17/11 Trial Testimony of Dr. Henry Levin ("Levin Trial Tr.") 3307:16-18; Ex. 5401 at 4.

2. The percent of Colorado schools that are majority low-income (below 130% poverty level or qualifying for free lunch) has risen from about seven percent to nearly twenty-five percent in less than twenty years. The percent of Colorado school children attending majority low-income schools similarly has risen. These dramatic changes in demography mean that the cost of maintaining even the same quality of education provided only ten years ago has changed dramatically. Ex. 8200, Colorado School Finance, Lobato v. State of Colorado, at 2, 28-29.

3. Low-income children are often concentrated in certain schools, which creates significant challenges for those schools. Levin Trial Tr. 3309:23-3310:13.

### **B. Challenges Faced by Low-Income Students**

1. Many low-income children face significant impediments and barriers to school success and therefore require considerable educational supports to compensate for these impediments to learning. Ex. 5603, The Fiscal and Social Burden of Inadequate Education in Colorado, at ii.

2. There is considerable literature on differences in home environments across socio-economic status, as well as on how these differences translate into gaps in degree attainment and academic achievement. The most obvious home environment difference is in parental resource: many low-income children are in families with only one parent (more than one-third of Hispanic households and more than two-thirds of African-American households). Lower parental resource has a direct effect in reducing family income. It is also associated with behaviors and practices that undermine educational development, including fewer or weaker parent-child interactions related to language and literacy, more conflict in the home, and less of a 'school-like' home (e.g., with a desk, learning materials, and a regular daily routine). Children in low-income families also receive poorer nutrition, have less access to pre-natal care (leading to low birth weight), and are less likely to have access to health insurance; as such, they typically exhibit worse health status, which in turn affects their ability to learn in school. Ex. 5603 at 23-24.

3. Low-income families also experience out-of-school time that is less educative. In terms of quantity, low-income families have less access to preschool, summer schools (camps),

and after-school activities than more affluent families. In terms of quality, low-income children read less, visit fewer educational amenities (such as museums), and spend more time watching television. Ex. 5603 at 24.

4. A third way that family circumstances impact educational outcomes is through parent-school interactions. Low-income parents are less likely to be involved in their children's school, less likely to have chosen the school specifically, and less likely to monitor their children's performance in school (e.g., through checking homework). Ex. 5603 at 24.

5. In terms of social capital, there are also significant differences in the educational resources available in the community for low-income children. Here there are two critical factors: the school resources and the community resources. Low-income students typically attend schools that have fewer resources for learning, which manifests itself in the quality of teaching, the age of the facilities, and the availability of supports (libraries, health counseling, and mentoring). The second factor is the community itself: low-income children generally reside in neighborhoods with higher crime rates and violence and fewer cultural resources. Ex. 5603 at 23; Levin Trial Tr. 3305:12-20.

### C. Funding for Low-Income Students

1. At-Risk Funding. Total program funding in the public school finance formula includes additional funding for at-risk students, defined as students in poverty at-risk of not graduating or having difficulties achieving. At-risk funding is considered a factor within the formula. Eligibility for participation in the federal free lunch program is used as a proxy for each school district's at-risk student population. Increased funding is provided to recognize that expenses among districts vary, as student populations vary, especially at-risk populations. For each at-risk student, a district receives funding equal to at least twelve percent, but no more than thirty percent, of its total per-pupil funding. As a district's percentage of at-risk population increases above the statewide average (roughly 35.44%), an increased amount of at-risk funding is provided. At-risk populations are projected to range between 4.2% and 92%, as a percentage of the total student population by school district in budget year 2010-11. Ex. 30,012, Understanding Colorado School Finance and Categorical Program Funding, at 4; Hermann Trial Tr. 5498:3-7, 5498:12-17..

A district receives funding for the greater of: (1) each actual student eligible for the federal free lunch program; or (2) a calculated number of students based on the number of students in grades one to eight eligible for the federal free lunch program as a percent of the district's entire population. Beginning in FY 2005-06, the definition of at-risk students was expanded to include students whose CSAP scores are not included in calculating a school's performance grade because the student's dominant language is not English and who are also not eligible for free lunch. Ex. 30,012 at 4.

The at-risk factor is inadequate and irrational for several reasons. First, the at-risk factor provides a weight of only twelve percent per at-risk child for districts under the state average at-risk share. That weight then scales upward toward thirty percent for districts well above the state average at-risk share. A weight of twelve percent is small by any standards, but must also be considered in conjunction with the base funding by which it is multiplied. The thirty percent

weight for high poverty concentration districts is also low with respect to research literature on the costs of providing equal opportunity for low-income children, which suggest additional costs on the order of double the average expenditure. There is no valid educational reason to cap at-risk funding at thirty percent. Ex. 8200 at 44-45; 8/5/11 Trial Testimony of Dr. Bruce (“Baker Trial Tr.”) 1390:20-1391:4; Hermann Trial Tr. 5559:17-25.

Second, it is arbitrary and irrational to exclude students who qualify for reduced-price lunch from the “at risk” category in the Public School Finance Act. Students who qualify for reduced lunch face the same challenges to learning as students who qualify for free lunch and likewise require additional funding to meet their educational needs. 8/30/11 Trial Testimony of Robert Schaffer (“Schaffer Trial Tr.”) 5932:14-17; 9/2/11 Trial Testimony of Sen. Keith King (“King Trial Tr.”) 6829:13-19; Levin Trial Tr. 3309:9-22; Hermann Trial Tr. 5560:4-21.

Third, there are many different risk factors facing low-income children. Therefore, it is unlikely that a single metric – or a narrow metric such as free lunch status – will adequately encompass all these challenges. Children face multiple, sometimes compound, challenges. They often move into and out of poverty and may vary in their resilience to economic or personal disadvantages. Low-income is not necessarily the single best indicator, in part, because the effect of income on child development is not linear and depends on the duration of poverty. Ex. 5603 at 25; Levin Trial Tr. 3308:12-24.

As Dr. Bruce Baker, a national school finance expert, explained at trial, Colorado has a low set of weights, a low count method because it only counts free lunch as opposed to free and reduced lunch, and a low base. “So if you take low times low times low, what you get is really low . . . when we have all three of these set arbitrarily low, then we end up with a system that really doesn't drive substantively any additional resources into the higher-need districts.” Baker Trial Tr. 1390:20-1391:6.

According to Dr. Baker, the at-risk weight in Colorado’s school finance formula is “wide off a reasonable mark for what one considers the additional costs associated with poverty.” When you combine the low weight with the student count that only includes free lunch, “it makes it wider off a reasonable mark. It’s hard to conceive of a . . . non-arbitrary basis by which one would come up with combining that low weight with the more stringent pupil count and then, expecting, if we multiply it times the base figure, which is more or less a political determination of the availability of resources to fund the formula, that that would bear any relation to the actual costs associated with meeting these kids’ needs.” Baker Trial Tr. 1393:5-15.

Robert Schaffer, the Chairman of the Colorado State Board of Education, agrees that the at-risk factor in the Public School Finance Act is just a function of some number that the legislature invented arbitrarily. Schaffer Trial Tr. 5921:23-5922:1.

Dr. Baker was a co-author of a national report card on school funding fairness that evaluated, among other things, whether states have developed school finance systems that provide appropriate levels of resources to districts with higher concentrations of children in poverty. In this report, Colorado received a score of “D” for funding distribution and an “F” for effort. Funding distribution shows whether a state provides more or less funding to schools

based on their poverty concentration. Effort measures differences in state spending for education relative to state fiscal capacity. It is defined as the ratio of state spending to state per-capita gross domestic product. Dr. Baker summarized his findings as follows: “States can achieve more adequate funding with more effort, and they can achieve fairer funding with more equitable school finance formulas, but Colorado has chosen to do neither.” Ex. 8201, *Is School Funding Fair? A National Report Card*, September 2010, at 8; Baker Trial Tr. 1348:4-19, 1351:5-11, 1376: 8-14.

2. Title 1. Title IA of the Elementary and Secondary Education Act, as amended, provides supplemental services for disadvantaged students. It can provide additional staff and interventions to students most at-risk of not meeting state standards in reading and math. It also can be used to provide additional supplies and materials, professional development to help teachers improve their skills in meeting the needs of disadvantaged students, and programs to help engage parents of such students.

8/31/11 Trial Testimony of Patricia Boland (“Boland Trial Tr.”) 6130:7-19.

Federal Title I funds are insufficient to provide funding to all schools with high poverty rates. Although districts make the decision about how to allocate Title I funds to their schools, often districts do not receive enough Title I funds to distribute to all schools needing such funds. Indeed, there are schools with fifty percent or more of their student population living in poverty that do not receive Title I funds because there simply is not enough Title I money to fund all eligible schools. Boland Trial Tr. 6160:7-25, 6161:6-21, 6197:14-6198:3.

Through a study requested and paid for by CDE, CDE has learned that schools spending \$900 or more in Title I dollars per student generally are experiencing higher academic growth for those students than schools spending less than \$900 of Title I funds per student. However, only between eleven and twenty percent of Title I students are in schools that have Title I allocations of \$900 or more per student. The vast majority of Title I students do not benefit from the level of Title I funding needed to make a difference in their academic growth. Boland Trial Tr. 6168:1-6171:5, 6188:9-13; Ex. 6903, *Evaluating the Impact of Title I, Part A in Colorado*, May 2011, at 8-9.

Federal law does not prohibit a state from supplementing federal Title I funds and adding state resources to assist disadvantaged students. Boland Trial Tr. 6162:2-8, 6172:1-9.

#### **D. Interventions Proven Effective For At-Risk Children**

1. Dr. Levin identified a number of education reforms and interventions that have been proven to increase high school graduation rates. These reforms include, but are not limited to: increasing teacher pay; reducing class size; providing publicly funded preschool; expanding Head Start; providing middle school interventions, such as the Achievement for Latinos through Academic Success (ALAS) program, which assigns counselors to monitor attendance, behavior, and achievement; and providing high school interventions, such as Career Academies, which are school-within-school programs geared towards improving employment readiness through work experience, and I Have a Dream, which offers financial incentives for inner-city low-income children who enroll in college. He then evaluated the return on investment of each of these

reforms and found that almost all of them have fiscal benefits to the taxpayer that exceed their costs. The more these programs target at-risk students, the higher the return on investment in terms of more additional graduates. Ex. 5603 at 25-32; Levin Trial Tr. 3310:22-3330:22.

#### **E. Achievement of At-Risk Students**

1. In every area tested by CSAP, in every grade level, students who qualify for free or reduced lunch score much lower than students who are not free or reduced lunch eligible. For example, in 2009, on third grade reading, only fifty-six percent of students who qualify for free or reduced lunch scored advanced or proficient as compared to eighty-four percent for students who are not eligible for free or reduced lunch. For third grade math, the results are similar; only fifty-three percent of students who qualify for free or reduced lunch scored advanced or proficient as compared to eighty-one percent for non-free or reduced lunch students. Ex. 73, 2005-2009 CSAP Results by Free-Reduced Price Lunch Status.

2. The 2009 tenth grade math and reading results show similar gaps. Only forty-nine percent of students qualifying for free or reduced lunch were proficient in reading compared to seventy-eight percent of non-qualifying students. In math, the advanced or proficient rate for students who qualify for free or reduced lunch was only eleven percent as compared to thirty-eight percent for students who do not qualify. Ex. 73.

3. Students on the free and reduced lunch program generally require a significant amount of remediation once they get to higher education institutions. Gantz Berman Trial Tr. 5704:23-5705:2.

#### **XVI. SPECIAL STUDENT POPULATIONS: NATIVE AMERICAN STUDENTS**

1. Colorado requires that American Indian culture and history be taught in public schools, but does not provide any additional funding to teach that curriculum. Garcia Trial Tr. 4577:15-25.

2. Native American students come into school with no dominant language; they are not dominant in Ute or English. Eighty percent of first graders in Montezuma-Cortez were tested as not being language ready for first grade. School districts receive no additional funding for these students as they do not fit into any traditional criteria. 6/9/11 Deposition Testimony of Lori Haukeness (“Haukeness Depo. Tr.”) 39:20-25, 40:1-25, 41:1-5; 6/10/11 Deposition Testimony of Stacy Houser (Houser Depo. Tr.) 33:15-25, 34:1-11; Garcia Trial Tr. 4576:24-4577:6.

3. Based on cultural differences, Native American students typically learn more effectively through small groups and with hands-on or experiential activities, which is very different from the model generally used in public schools and more costly. 8/10/11 Trial Testimony of Matthew Keefauver (“Keefauver Trial Tr.”) 2308:9-2309:1.

4. Vocabulary learning also presents a unique challenge for Native American students. Native American students raised on a reservation often have no understanding or reference point for common, every-day words that are used in CSAP questions, such as “garage.” Keefauver Trial Tr. 2309:2-2310:7.

## **XVII. CAPITAL CONSTRUCTION**

### **A. Conditions of School Buildings**

1. School buildings around Colorado are in various states of disrepair. 8/23/11 Trial Testimony of Mary Wickersham (“Wickersham Trial Tr.”) 4258:5-4259:8.

2. A 2003 report by the State Auditor revealed that fifty-three percent of the school buildings in the State were between twenty-one and fifty years old and that another nineteen percent were more than fifty years old. Fifty year-old buildings are not designed to provide a 21<sup>st</sup> century education. 8/29/11 Trial Testimony of William Edward Hughes (“Hughes Trial Tr.”) 5621:24-5622:4; 5/2/11 Deposition Testimony of Rose Cronk (“Cronk Depo. Tr.”) 231:16-232:15.

3. Every public school facility should be free from basic health and safety defects and sufficient for purposes of meeting state content and academic accountability standards, yet the conditions of school building today are “surprising,” and fail under these standards. Hughes Trial Tr. 5621:4-7, 5623:17-21.

4. Despite the fact that the Americans with Disabilities Act (ADA) was enacted in 1990, there are still schools today in Colorado that violate the accessibility requirements of the ADA. Hughes Trial Tr. 5633:15-20.

5. The deteriorating conditions of school buildings in Colorado are not the result of bad faith, intentional neglect, or other neglect by school districts. School districts do their best to maintain their buildings provided the resources they are given. Hughes Trial Tr. 5628:6-12, 5630:12-13.

6. The condition of school facilities has a direct impact on the academic and social success of students and the quality of education provided. Wickersham Trial Tr. 4262:18-23; Hughes Trial Tr. 5622:18-22; Cronk Depo. Tr. 231:11-15; 8/3/11 Trial Testimony of Kevin Edgar (“Edgar Trial Tr.”) 851:2-4.

7. There is no logical interpretation of a “thorough and uniform” system of free public schools that does not include school buildings. Wickersham Trial Tr. 4319:2-20.

### **B. Funding for Capital Construction**

1. Colorado’s system for funding capital construction is broken. In Colorado, capital construction is left almost entirely to local school districts with little or no state assistance. Outside of the competitive BEST grant program (described in Section XVII.D hereafter), the State of Colorado does not provide school districts with any capital construction funding. Wickersham Trial Tr. 4305:6-17, 4306:12-24; Ex. 1105, Recommendation for a State School Capital Funding Program in Colorado, The Donnell-Kay Foundation August 2005, at Executive Summary.

2. The primary way Colorado school districts address their capital needs is through bond measures. A school district’s bonding capacity is statutorily tied to the assessed property

value within the district. Because a school district's ability to address its capital needs is based entirely on local property wealth, there is a tremendous disparity across the state. For example, some wealthy districts have a per-pupil assessed value of over a million dollars per student, while some poor districts have a per-pupil assessed value of under \$20,000 per student. Wickersham Trial Tr. 4264:22-4265:3, 4266:7-4267:14, 4272:19-21.

3. Approximately half of all Colorado school districts lack the bonding capacity to build even a single new school. Wickersham Trial Tr. 4265:4-14, 4306:25-4307:4.

4. Colorado is one of only a few states that funds school district capital needs almost exclusively through local district property taxes. Unlike most states, Colorado does not invest a significant amount of state funds in district capital needs. Ex. 1105 at Executive Summary.

5. Relying on local district funding is inequitable (the wealthiest district has 20,000% more capital capacity than the poorest), is inadequate (there are seventy school districts that do not have the total capital capacity to build one new school), and has produced an enormous backlog of serious school capital needs across the State, resulting in serious health and safety problems in school buildings across Colorado. Ex. 1105 at Executive Summary.

### **C. Assessments of Capital Construction Needs**

1. In 1996, a legislative committee, the K-12 Capital Construction Finance Committee, concluded that, "school districts in Colorado face roughly \$2.5 billion in capital construction needs over the next five years." Despite the report, no state action was taken. Ex. 30,102, K-12 Capital Construction Finance Committee Report to the Colorado Legislative Council, at 3; Hughes Trial Tr. 5621:17-23.

2. In 2003, a report by the State Auditor estimated approximately \$4.7 billion in unmet school facility needs. Despite the report, no state action was taken. Ex. 1100, Report of the State Auditor – Public School Capital Construction Program Colorado Department of Education ("Report of the State Auditor"), at 21; Wickersham Trial Tr. 4309:5-25.

3. Among the findings in the Report of the State Auditor was that CDE's approach to the Capital Construction Grant Program has been largely short-term and reactive. It found the Department lacks statewide data on public school construction needs necessary to develop a strategic plan. A plan will ensure that grant moneys are allocated efficiently and effectively to the projects with the most serious needs. Ex. 1100 at 2.

4. In 2005, a study by the Donnell-Kay Foundation found, in the sixteen site assessments performed, the capital needs totaled \$121,877, 401. When compared to the student enrollment in each of those schools, that comes to \$13,790 per student. This per pupil amount, if applied to the entire state enrollment, would mean over \$10 billion of unmet capital construction need statewide. The study also concluded that one third of Colorado high schools have inadequate science facilities. When asked to rate the overall physical condition, facilities managers rated thirty-seven percent of the facilities as less than "good," and rated the overall functional adequacy of twenty-five percent of the facilities as "inadequate." Hughes Trial Tr. 5622:14-17; Ex. 1102, K-12 Capital Needs Assessment Project, at Executive Summary; Ex. 1104, Capital Requirements Survey, Report of Results, April 2005, at 1.

5. Despite the report and specific recommendations made by the Donnell-Kay Foundation, no state action was taken at that time. Ex. 1102 at 2; Wickersham Trial Tr. 4270:21-4271:4.

6. In 2010, a school capital needs study conducted by the State concluded that Colorado school districts face \$17.9 billion in unmet capital needs for instructional buildings statewide. The deficiencies identified include deferred maintenance needs, suitability needs, energy audit needs, and future capital renewal needs for school facilities. Ex. 1106, State Financial Assistance Priority Assessment, at 5; Wickersham Trial Tr. 4288:2-7, 4300:21-25.

#### **D. Building Excellent Schools Today (BEST)**

1. William (“Ted”) Hughes is the Director of the Division of Public School Capital Construction Assistance, commonly called Building Excellent Schools Today (BEST). Mary Wickersham is the chair of the Capital Construction Assistance Board, which is also known as the BEST Board. Hughes Trial Tr. 5591:18-19; Wickersham Trial Tr. 4283:23-4284:17.

2. Building Excellent Schools Today (BEST) is a competitive grant program established by the legislature in 2008 to assist school districts, charter schools, BOCES, and the Colorado School for the Deaf and Blind with facilities needs. School districts can compete for two types of BEST grants: (1) lease purchase grants, which are used for large projects like new school construction, and (2) cash grants, which are generally used for smaller projects like roof repairs and boiler replacements. Lease purchase grants are funded with twenty year Certificates of Participation. Wickersham Trial Tr. 4276:4-22, 4313:24-4314:17; Hughes Trial Tr. 5598:13-5599:7.

3. The BEST program also provides school districts with assistance with facilities management. More than half of the school districts and charter schools in the state do not have the internal capacity or the internal staff to manage their facilities. Facilities management is typically done by a school principal, a custodian, or a superintendent whose primary background is in education, not facilities operations. Hughes Trial Tr. 5600:15-21.

4. Although every school district that applies for a BEST grant has “legitimate needs,” a majority of BEST applications are not granted. Wickersham Trial Tr. 4291:4-9, 4291:17-21.

5. A successful BEST application is not 100% state funded; the BEST program is a matching grant program. The criteria used to calculate a school district’s match includes per-pupil assessed value, average household income compared to the state average, free and reduced lunch percentage compared to the state average, and bond history over the last ten years. Hughes Trial Tr. 5604:11-16, 5605:1-7.

6. The matching component is a minimum matching percentage; an applicant that is awarded a grant must pay the calculated matching percentage unless a waiver is granted. If the applicant feels it cannot pay the minimum matching percentage, it can apply for a waiver by writing a “hardship letter” requesting a reduction and providing the reasons for the request. Waivers are discretionary; every waiver is considered, but not every waiver is granted. Hughes Trial Tr. 5606:2-25, 5607:9-15.



7. There is a statutory cap on the amount of annual lease payments the State can incur for lease purchase grants. Once the statutory cap is hit, lease purchase grants will no longer be available for new school construction or other large capital projects. The BEST program likely has only one cycle of large capital project grant funding capacity left before the statutory cap is reached, which is likely to occur in 2012. Colorado school districts will continue to have a need for large capital projects even after the statutory cap is hit. Wickersham Trial Tr. 4276:4-22, 4281:12-14, 4283:17-22.

8. Ms. Wickersham anticipates that the BEST program will help fund approximately \$1 billion in capital construction costs out of approximately \$17.9 billion in capital construction needs. Thus, there are over \$16 billion in unmet school capital needs that will not be addressed by the BEST program. Wickersham Trial Tr. 4299:10-14, 4300:21-4301:4, 4317:20-4318:1.

9. The BEST program has not solved Colorado's capital construction needs, nor is it adequate to address those needs. Wickersham Trial Tr. 4301:12-17; 9/2/11 Trial Testimony of Andrew Romanoff ("Romanoff Trial Tr.") 6857:3-6858:2.

## **XVIII. TECHNOLOGY**

1. Dr. Dan Maas is the chief information officer for Littleton Public Schools. He is an expert in technology in education issues, including the technology necessary to provide an adequate twenty-first century education, the effect of technology on achievement, and the state of technology in districts around the state. 8/5/11 Trial Testimony of Dr. Dan Maas ("Maas Trial Tr.") 1284:18-21, 1292:19-1293:2.

2. Technology is absolutely essential to providing a thorough education today. To be ready for college and the workforce, students must have a very strong working knowledge of modern technologies. Maas Trial Tr. 1294:6-11.

3. CDE recently acknowledged the critical importance of technology for an adequate education. In discussing the new state academic standards, CDE explained:

Technology proficiency **is** important. However, technology supports the teaching and learning process and is therefore embedded within the standards. For example, an inquiry question for the World Languages standards asks "What communication strategies help maintain communication?" While this question does not explicitly suggest the use of social media, electronic devices (e.g., smart phones, iPads, or netbook computers) and online conferencing, these are the communication tools of the 21st century and therefore should be used to develop postsecondary and workforce ready students. Because technology is necessary to apply much of the content in any discipline in the 21st century, many technology-related statements can be found in the "Relevance and Application" section on the right hand [side] of the standards document.

Ex. 10,079, Frequently Asked Questions about Standards Implementation – What are the Most Significant Changes in the Colorado Standards, at 15 (emphasis in original); Maas Trial Tr. 1296:10-1297:5.

4. The new Colorado academic standards strongly endorse the use of technology in the classroom. The standards embed technology through all subject areas at almost every grade level and specifically reference the Internet, online databases, on-line shared work spaces, blogs, and wikis. Maas Trial Tr. 1294:17-1295:5, 1299:3-7. Some specific examples include:

- “With some guidance and support from adults, use technology, including the Internet, to produce and publish writing as well as to interact and collaborate with others...” Ex. 10,070, Colorado Academic Standards – Reading, Writing, & Communicating, at 123.
- “Students can locate experts in the field of their research using online resources and use technology tools such as Skype, email, and wikis to communicate with them to ask questions and seek answers.” Ex. 10,070 at 142.
- “Use social networking tools to create and share your information.” Ex. 10,070 at 158.

5. It will not be possible for school districts to implement the new state academic standards without adequate technology. At a minimum, school districts need adequate computing devices, reliable broadband Internet access, and an adequate network. Due to the new academic standards’ pervasive dependence on modern technology, school districts need one-to-one computer access for all students beginning at fourth grade in order to fully implement the new standards. Teachers need a computer and projector in each classroom, as well as sufficient professional development in order to effectively use technology in the classroom. Maas Trial Tr. 1304:9-1, 1304:21-1305:1-5, 1309:4-18.

6. Former CDE Associate Commissioner and Director of the Office of Performance and Policy, Richard Wenning, agrees that the ability to use technology is necessary and essential for a high-quality education and for post-secondary and workforce readiness. He believes Internet connectivity is a very important dimension for fluid delivery of the education system contemplated by Colorado’s new standards and assessments and is aware that Internet connectivity is inconsistent throughout the State. Mr. Wenning believes greater personalization of education through online courses will provide a thorough and uniform education, but agrees that online courses require reliable and consistent Internet connectivity. Wenning Trial Tr. 4690:15-4692:12, 4694:1-13.

7. Technology can improve student achievement, as shown by the success of Littleton Public Schools’ Inspired Writing program. Maas Trial Tr. 1319:15-17, 1320:6-8.

8. Colorado school districts are generally forced to rely on gifts, grants, donations, and other one-time, non-renewing funds for their technology needs. Sustainability is a major concern for school districts. Maas Trial Tr. 1330:19-1331:3.

9. The types of technology that are now embedded in the new state academic standards did not exist in 1994 when the current public school funding system was developed. Maas Trial Tr. 1331:12-16.

10. School districts in Colorado do not possess the necessary technology and resources to provide a thorough twenty-first century education. No school district has adequate technology to fully implement and sustain the new state academic standards. Maas Trial Tr. 1331:4-11.

11. Rural school districts often face serious technology challenges. Rural Internet access is often limited, unreliable, and expensive. Maas Trial Tr. 1322:11-1324:14.

## **XIX. SCHOOL DISTRICTS**

### **A. Urban School Districts: Jefferson County School District No. R-1**

1. Background. Jefferson County School District No. R-1 (“Jeffco”) has the largest pupil enrollment in the state. Approximately 86,000 students representing between ten and eleven percent of the state total student population attend Jeffco schools. 8/4/11 Trial Testimony of Cynthia Stevenson (“Stevenson Trial Tr.”) 1054:11-23.

Jeffco has 154 schools. Neighborhood schools are organized into their own K-12 systems called articulation areas. Among the neighborhood schools, there are seventeen high schools, nineteen middle schools, and ninety-two elementary schools. There are ten option schools that serve the whole county. Jeffco’s central organization is lean. There are four community superintendents who each supervise from thirty to thirty-eight schools each. Stevenson Trial Tr. 1055:11-25, 1057:2-10.

Jeffco’s demographics mirror those of the State. Over the years, the demographics have changed dramatically. The district is currently sixty-eight percent white, twenty-three percent Hispanic, one percent African-American, three percent mixed race, and three percent Asian. In 2001, the district was eighty-one percent white and thirteen percent Hispanic. Since 2006, the poverty rate has grown by six percent to a current rate of thirty percent poverty, measured by federal free and reduced lunch guidelines. That totals over 25,000 children of poverty. The district had 5,200 English language learners in 2010-11. Stevenson Trial Tr. 1058:11-1060:11.

In 2010-11, Jeffco had 7,800 special education students. The absolute numbers have declined slightly over the years, but the intensity of needs is increasing. Stevenson Trial Tr. 1061:19–1062:24.

2. Programs. In 2010-11, Jeffco had 3,000 children in preschool and over 6,000 in kindergarten. Preschool is not available for all applicants. Kindergarten is available for everyone. Free full-day kindergarten programs are offered at forty-eight of the ninety-two elementary schools, half of which are Title I funded. At the other schools, full-day kindergarten is tuition-based. Stevenson Trial Tr. 1063:11–1064:19.

Jeffco offers a fifth year option and ASCENT programs, as well as post-secondary options and concurrent enrollment. Stevenson Trial Tr. 1065:3-19.

3. Facilities. Jeffco has twelve million square feet of physical facilities, including 168 school campuses; overall, it has about 350 buildings. Stevenson Trial Tr. 1090:8-21.

Jeffco contracted with a private firm to study its facilities. The firm provided three figures: maintenance of the existing facilities totals \$499 million; facilities improvements for educational adequacy total \$107 million; and deferred maintenance is around \$300 million. The total is \$850 million in maintenance, projects, and deferred maintenance. The district is unable to meet these facilities needs. Stevenson Trial Tr. 1091:14-1092:15.

4. Technology. Jeffco has a technology master plan. Technology is funded from the general fund. The district is constantly striving to stay up-to-date with technology both at the school and the system level, but there are constant gaps in funding. Reductions in the district's technology budget make it even more difficult to stay up-to-date. Stevenson Trial Tr. 1093:18-1094:10.

As expectations increase and 100% proficiency is expected, teachers need the technology tools to help students get there. The district has implemented a variety of data systems so that teachers can see the strengths and weaknesses of their students in particular skills, standards, and benchmarks. There must also be a robust data warehouse for teachers to look at their students' achievement levels and track their progress over time so that they can intervene early and appropriately with best practices. Stevenson Trial Tr. 1094:17-1097:19, 1098:11-19, 1099:1-3.

5. Personnel. Jeffco has 14,000 employees, which equates to 9,100 full-time equivalents. Of these, 5,000 are licensed teaching positions. In addition to teachers, there are principals, central administrators, coaches, bus drivers, and information technology (IT) staff. Jeffco is the largest employer in Jefferson County. Stevenson Trial Tr. 1076:11-24, 1077:14-24.

Jeffco teachers have been organized as a bargaining unit for over forty years. The teachers association is a strong advocate for public education and has a very good working relationship with district leadership. There is no alternative that would work as well. Stevenson Trial Tr. 1077:25-1079:7.

Jeffco teachers are paid on a salary schedule. The salary schedule was originally implemented in the late 1960s or early 1970s in part as a way to respond to gender-based pay inequities in the profession. Stevenson Trial Tr. 1079:8-1080:1.

Jeffco is sponsoring a strategic compensation pilot program, which is a pay-for-performance plan funded by a five year, \$38 million federal teacher incentive fund grant. Stevenson Trial Tr. 1080:2-25.

Alternative options for paying teachers must be adequately funded, fair, and good for students. Jeffco is looking at best practices for teacher training, professional development, and classroom instructional support combined with specific targets around student achievement and teacher evaluation to see what make a difference in student achievement. Stevenson Trial Tr. 1080:15-1081:25.

More effective teachers and principals are created through context-based staff training. The most effective support for principals is on-going peer coaching about the problems of practice. Stevenson Trial Tr. 1110:25-1112:3.

6. Budget. The general fund budget for 2011-12 is about \$586 million; operations will cost \$619 million. The deficit will be paid from general fund reserves. Eighty to eighty-three percent of the dollars go to salary and benefits. Of that eighty percent, seventy-five percent is allocated to licensed staff (teachers). The balance of the twenty percent is for materials, supplies, technology, and all other operating expenses. Stevenson Trial Tr. 1066:1-1068:5.

Jeffco receives \$6,300 per student in Public School Finance Act (PSFA) funding. There are many children who are more expensive to educate. For example, a “challenge child” is a child with a very low IQ who is educated in a classroom of five to seven children with a single teacher and paraprofessional support. The cost of educating a challenge child is \$17,000. An autistic child costs roughly \$15,000 and a child with emotional disabilities costs approximately \$11,000, all depending on the level of the handicapping condition and the student’s needs. Stevenson Trial Tr. 1100:2-1101:5.

In 2004, Jeffco passed a mill levy override that raised about \$35 million for operating expenses and a bond issue that raised \$317 million for capital needs. The operating funds went into classroom instruction and building reserves. In 2008, Jeffco again asked the voters for a mill levy override to offset budget reductions to avoid classroom impacts, but that effort failed. Stevenson Trial Tr. 1068:11-1069:14.

Over the last three years, Jeffco’s general fund budget has been cut by fifty-eight million dollars, or approximately ten percent. The reduction from last year to this year was \$335 per pupil. Over the last three years, including the current year, there have been extensive reductions in the number of employees, buildings, training, and supplies. Jeffco closed three schools, let 430 employees go, reduced employee salaries, reduced instructional and supply budgets, and reduced staff training and the number of days worked. Every department is doing more with fewer people and less time. Stevenson Trial Tr. 1070:2-1071:23.

The budget reductions have absolutely impacted the school district’s ability to provide necessary educational services to its students. Stevenson Trial Tr. 1073:3-7.

The first impact of the cuts is that teachers have to deal with more students, which is particularly problematic in the primary grades and for children with special needs. Second, materials and technology have decreased. Third, curricular upgrades have been delayed. Fourth, teachers have four less days of planning time. Fifth, there are fewer assistant principals and teacher librarians. Sixth, custodial staff has been cut, which means rooms are being cleaned every three days instead of every two days. It doesn’t matter where you cut. Wherever cuts are made, the supports for teachers are dismantled in some way. Stevenson Trial Tr. 1073:3-1075:14.

Superintendent Stevenson believes more money in the right places makes a difference. If Jeffco had more dollars, it would begin with the very youngest kids, making sure they all have places in preschool and full-day kindergarten programs. Ms. Stevenson also knows that well-trained teachers and capable principals are the key variable for student success. With more funding, Jeffco would train all staff to deal with different kinds of children. Stevenson Trial Tr. 1107:16-1109:2.

7. Student Outcomes. Jeffco generally has seen slow, steady improvement in test scores. The district's strengths include good growth in math scores, strong graduation rates, and low dropout rates. Stevenson Trial Tr. 1084:1-8, 1084:11-22.

The major area requiring improvement in Jeffco is achievement gaps -- gaps between boys and girls, minority and white students, poor and more affluent students, and special needs and non-special education students. Stevenson Trial Tr. 1085:4-1086:2.

Jeffco's strategic plan reflects two major goals: 1) all kids will be college and career-ready and continuous learners; and 2) all employees will be accountable for a high-performing organization. More specific goals include increasing CSAP results for specific groups of children, as well as maintaining the culture and climate, safety, security, norms of behavior, and levels of parent participation in all schools. The plan completely aligns with CAP4K, which requires 100% of students leave secondary school career and college-ready. It also aligns with Jeffco's budget so that there is consistency with what the district is expecting from schools, departments, and children. Stevenson Trial Tr. 1103:24-1104:17, 1104:24-1106:20.

Jeffco knows how to spend its money to advance achievement. The key variables to improving achievement are great teachers, great leaders, reliable data systems, great curriculum, parental involvement, sufficient resources, integrated technology, constant training, growth and learning. In order for students to achieve at a higher level, there needs to be a longer school year and more instructional time with teachers. For Jeffco to extend its contract by one month would cost approximately fifty million dollars. Stevenson Trial Tr. 1109:24-1110:19, 1110:20-24, 1115:17-1118:5.

8. State Requirements. The impact of new standards without increased funding has been trade-offs. For example, Jeffco dropped its graduation requirements, which is inconsistent with CAP4K. Stevenson Trial Tr. 1114:12-1115:16.

First-year implementation of Senate Bill 191, the teacher effectiveness law, will cost Jeffco approximately \$4.8 million. After the first year, the costs are expected to go down to at least \$3 million per year. Stevenson Trial Tr. 1117:22-1118:10.

## **B. Urban School Districts: Aurora, Joint District No. 28 of the Counties of Adams and Arapahoe**

1. Background. Aurora, Joint District No. 28 of the Counties of Adams and Arapahoe ("Aurora Public Schools" or "APS") is the sixth largest school district in the state; it spans two counties – Arapahoe and Adams County. It has approximately 39,000 students and fifty-nine schools. 8/9/11 Trial Testimony of John Barry ("Barry Trial Tr.") 1746:10-17, 1764:6-9.

APS is a diverse school district with high levels of poverty, racial minorities, and English language learners. Over 100 languages are spoken, representing over 125 countries. Over eighty percent of the students are of color. The specific demographic breakdown is as follows: fifty-three percent Latino, twenty-two percent White, nineteen percent African-American, four percent Asian, and one percent Native American. Barry Trial Tr. 1759:20-1761:8; 8/9/11 Trial Testimony of Lisa Escarcega ("Escarcega Trial Tr.") 1854:16-1855:11.

About fifty percent of the high school students, forty-five percent of middle school students, and forty percent of elementary school students in APS are at-risk. Approximately sixty-eight percent of students across the district are on the free or reduced lunch program. English language learners make up thirty-eight percent of the population. 3/21/11 Deposition Testimony of William M. Stuart (“Stuart Depo. Tr.”) 166:8-167:1, 189:8-12; Barry Trial Tr. 1760:6-9; Escarcega Trial Tr. 1854:16-1855:6.

The number of ELL students in APS has increased by over one hundred percent since 2002. Escarcega Trial Tr. 1891:10-19.

The APS mobility rate is close to forty percent, which means four out of ten students move from one school to another, creating significant issues for the district. Barry Trial Tr. 1760:9-13.

2. Programs. APS has three broad strategic goals for the district: (1) to increase student achievement and close learning gaps; (2) to provide professional learning for the entire district; and (3) to develop and implement its program for academic and career pathways. The career pathways program is designed to help students make connections between their education and career opportunities. Stuart Depo. Tr. 18:19-20:19.

APS is not able to provide the types of programs its low-income students need to succeed. With more resources, APS would provide family literacy centers, which are critical to the APS community because parent education would increase student proficiency. APS would also provide small group instruction for low-income, English language learner, and special needs students and supplemental instructional materials that students could borrow so learning could continue at home where such resources are scarce. Stuart Depo. Tr. 193:19-194:20.

APS is not meeting the needs of its students with disabilities, as measured by federal and state requirements, such as NCLB and CAP4K. Barry Trial Tr. 1806:20-1807:7.

APS has 1368 Colorado Preschool Program (CPP) slots, which are spread over twenty-two locations, including elementary schools, preschool centers, and community centers. An additional 100 students attend preschool in APS through its small tuition-based program. The majority of facilities do not offer fee-based slots because of lack of physical space and the inability of many families to pay the fees. There are over 480 students on the waiting list for CPP programs and the list is growing each year. Stuart Depo. Tr. 128:6-131:3; Barry Trial Tr. 1808:1-1809:12.

APS’s supplemental literacy support program, Achieve 3000, which serves students in need of intervention, was eliminated due to budget cuts. Stuart Depo. Tr. 123:16-19.

APS is unable to impart to its ELL students the knowledge and skills required by the State with the time and resources it has available. APS receives state ELPA funding for only one-third of its English language learner students; the rest are funded through the general fund. APS believes more “sheltering”, or English language learning in every classroom in every content area, is needed but does not have the resources to implement this part of its strategic plan. Other ELL issues include lack of a curricular framework that supports English instruction for identified ELLs and lack of teacher content knowledge regarding explicit language

instruction and how to implement it effectively. Barry Trial Tr. 1791:25-1792:11; Escarcega Trial Tr. 1875:6-16; 1889:20-1890:1; Ex. 10,059, 2010-11 Unified Improvement Plan for Adams-Arapahoe 28J, at 11.

3. Facilities. APS has a \$250 million deficit to meet its capital construction needs. The \$215 million bond it passed covered less than fifty percent of the capital needs identified by a long-range facilities committee in 2008. Barry Trial Tr. 1835:17-1836:1, 1841:6-1842:10.

APS has reduced the amount in its capital reserve fund due to reductions in its budget. Essentially, it has increased its maintenance backlog to use those funds for non-capital needs. 3/23/11 Deposition Testimony of Dr. Casey Wardynski (“Wardynski Depo. Tr.”) 82:23-83:18.

4. Personnel. APS faces significant difficulties in retaining and developing its teachers due, in part, to low pay and a challenging student population. Teacher turnover is about ten percent per year. Stuart Depo. Tr. 73:14-24, 97:24-98:23, 149:17-25; Wardynski Depo. Tr. 97:23-98:7.

APS employs district coaches and instructional coordinators to help build the capacity of its teachers and support school principals. Budget cuts have forced APS to reduce the number of instructional support staff it had previously employed. Stuart Depo. Tr. 119:21-120:19, 122:2-16, 143:3-144:25.

APS is unable to provide sufficient teachers per school to run its English language learner programs, which involves identifying, screening, placing, and re-designating English language learners. State funding covers only half of the teacher’s time. Many of the district’s elementary schools have fifty percent ELLs. The most impacted high school has 800 ELL students and only one and a half teachers to support the entire ELL program. Escarcega Trial Tr. 1876:4-1877:11.

5. Budget. Aurora’s general fund budget for 2010-11 was about \$279 million. \$249 million of that came from the State and \$30 million from mill levy overrides. Wardynski Depo. Tr. 37:5-19; Ex. 10,083, FY 2010-11 Summary Budget.

For 2010-11, APS received \$7,071 per student in PSFA funding. APS needs additional money to meet state requirements. Wardynski Depo. Tr. 36:19-37:4, 135:9-136:9.

To raise local funds, APS has passed bonds and mill-levy overrides, leased land and mineral rights to land it owns, and participated in numerous grant programs. The district’s \$14.7 million mill levy override in September 2008 did not fully offset the budget cuts that year. APS can no longer raise funds through bonds because it is at its debt capacity. Wardynski Depo. Tr. 112:13-115:17, Barry Trial Tr. 1800:15-1801:21.

APS has cut its budget every year for the last six years. It cut seventeen million dollars from its budget last year and twenty-four million dollars this year despite rising energy costs, higher Public Employees Retirement Association (PERA) costs, and higher health care costs. The total cuts during Superintendent Barry’s tenure have been approximately seventy million dollars. These cuts have made it extremely difficult to sustain programs that work, implement a five-year systemic improvement plan, and make good management and resource allocation decisions. Barry Trial Tr. 1782:6-11, 1794:2-1795:23.



The biggest impediment to APS's ability to reach the goals in its strategic plan is the reduction in its budget. In March 2011, APS was anticipating a thirty-five percent budget cut, which would impact its ability to implement and develop its career pathways program as well as its core curriculum. Stuart Depo. Tr. 41:22-43:21, 61:13-62:3.

APS is a good steward of public monies and has cut its budget to the bone. Additional cuts will necessitate a reduction in force, which can be devastating to a large organization. Barry Trial Tr. 1797:21-1798:17.

APS has made a concerted effort to partner with non-profit organizations and corporations to make up for funding gaps. Barry Trial Tr. 1829:5-17, 1834:12-1835:7.

6. Student Outcomes. Although APS has been making gains in closing academic growth gaps in recent years, the district remains out of compliance with many federal and state outcome requirements. For example, APS does not meet requirements related to overall academic achievement or achievement for students with disabilities and English language learners, adequate yearly progress, post-secondary and workforce readiness, graduation rates, and ACT composite scores. Barry Trial Tr. 1768:13-1771:18; Ex. 10,059, Ex. 10,059, 2010-11 Unified Improvement Plan for Adams-Arapahoe 28J.

APS's graduation rate is fifty-four percent, which is below state and national averages. The state requirement is eighty percent. The dropout rate in APS is almost seven percent, which means the district is losing approximately 1200 students per year. Barry Trial Tr. 1769:14-1770:17, 1788:3-1789:7; Ex. 10,059 at 2.

APS's mean ACT score is seventeen and has declined in recent years. An eighteen is required for admission to Metropolitan State College of Denver ("Metro") and a twenty-three to twenty-five is needed for universities like Colorado State University or University of Colorado at Denver. The state average is a twenty. Barry Trial Tr. 1770:18-24, 1789:12-20; Ex. 10,059 at 2, 10.

APS's accreditation status is "accredited with an improvement plan". In 2010, Aurora was initially considered a turnaround school district based on low student achievement, falling growth, and the high rate of growth needed. For 2011, APS technically qualifies as a turnaround district based on one-year data because it does not meet the state cut-off, but was given priority improvement status based on three-year averages. Ex. 10,057, 1-Year District Performance Framework Report 2010 for Adams-Arapahoe 28J; Ex. 10,058, 3-Year District Performance Framework Report 2010 for Adams-Arapahoe 28J; Ex. 10,503, Draft 1-Year District Performance Framework Report 2011 for Adams-Arapahoe 28J; 9/1/11 Rebuttal Trial Testimony of Lisa Escarcega ("Escarcega Rebuttal Trial Tr.") 6492:21-6495:14, 6511:15-6512:11.

On average, across all levels (elementary, middle, and high school), CSAP proficiency scores for APS students are fifteen to twenty points, or twenty percent, below the state average in reading, writing, math, and science. Barry Trial Tr. 1759:5-10, 1823:7-8; Stuart Depo. Tr. 14:2-15.

In elementary reading, less than forty-seven percent of APS students in grades three to five were proficient on CSAP, scoring lower than ninety-seven percent of the districts in the

state. In math and writing, APS students in grades three to five scored worse than ninety-four percent of districts in the state. In science, APS students in grades three to five scored worse than ninety percent of districts in the state. APS did not make adequate growth for elementary grades in math or writing. Escarcega Rebuttal Trial Tr. 6496:23-6498:8, 6502:21-6503:16; Ex. 10,057 at 2.

Only twenty percent of APS ninth and tenth graders scored proficient or advanced on the math CSAP. Escarcega Rebuttal Trial Tr. 6505:25-6506:14; Ex. 10,057 at 4.

Academic growth in APS generally has been incremental, but dropped in the last two years. It is not at the level or speed necessary to meet state growth or catch-up requirements or the district's goals, which include graduating every student with the choice to attend college without remediation. In order to do that, APS needs to "get off the velocity vector and get on an acceleration vector." Barry Trial Tr. 1775:13-1777:5; Escarcega Rebuttal Trial Tr. 6505:6-12, 6512:12-6513:11; Ex. 10,057 at 2; Ex. 10,503, Adams Arapahoe 28J District Growth Summary.

The number of schools in APS on priority improvement and turnaround status has doubled from 2010 to 2011. There are currently four turnaround schools and fourteen priority improvement schools in APS, which is approximately one third of the schools in the district. Escarcega Rebuttal Trial Tr. 6514:7-6515:4.

Superintendent Barry believes every student – including low-income students and English language learners -- can learn, which is essential when working in a diverse and challenging environment, such as Aurora Public Schools. Barry Trial Tr. 1785:18-1787:6.

APS knows what it needs to do to improve student achievement and prevent further declines in growth, but does not have sufficient funding. It needs extended instructional time, greater access to preschool for more students, greater access to interventions for more students, and additional professional development. These strategies have resulted in growth on state assessments where they have been implemented. Escarcega Trial Tr. 1892:21-1893:16, 1894:3-19; Escarcega Rebuttal Trial Tr. 6519:14-6521:11.

7. State Requirements. Aurora is not providing a "thorough and uniform" education to all of its students because it is leaving kids behind. It cannot replicate the programs it knows are working so that every child in every school in the district can benefit. Without replication of those programs, the district cannot accelerate student achievement and close achievement gaps. Barry Trial Tr. 1809:12-1810:11, 1839:2-12.

Superintendent Barry believes the Education Accountability Act (SB 09-163) is an excellent piece of legislation, but is concerned with the lack of resources to implement this and other unfunded mandates. Barry Trial Tr. 1831:11-20.

Aurora has considered opting out of federal programs such as NCLB, but can't afford to give up the fourteen million dollars it receives in federal Title 1 funding, which it would have to do in order to get a waiver. Escarcega Trial Tr. 6522:2-12.

**C. Urban School Districts: Colorado Springs School District No. 11**

1. Background. Colorado Springs School District No. 11 (“District 11”) has experienced extremely large increases of students in poverty and ELL students. In the past five years, the ELL population in District 11 has doubled. There are over 100 different languages spoken by students and families in District 11. While the number of special education students has not increased significantly, the overall needs of the students have increased; the district is providing education for more students with autism and other higher cost disabilities. 8/2/11 Trial Testimony of Glenn Gustafson (“Gustafson Trial Tr.”) 481:15-25, 489:21-24, 490:6-7, 491:1-10; 4/27/11 Deposition Testimony of Dr. Christina Clayton (“Clayton Depo. Tr.”) 18:1-11.

2. Programs. District 11 does not have sufficient resources to meet the needs of its ELL students, at-risk students, or special education students, including a lack of sufficient resources to provide the necessary interventions for many of these students. The district lacks sufficient staff to close the achievement gap for ELL students. Gustafson Trial Tr. 490:16-20, 491:1-10, Ex. 8414, Unified Improvement Plan for Colorado Springs 11 for 2010-11.

Dr. Clayton, the Multilingual Department Facilitator for District 11, believes that ELL student performance could be improved with more full-time staff. When she first got to District 11 five years ago, there were thirty-six ELL FTEs and the outcomes were better. She has not gotten any more FTEs since then for non-charter schools despite the significant increase in the district’s ELL population. Clayton Depo Tr. 85:20-87:11.

D11 has waiting lists for children to attend preschool. 8/4/11 Trial Testimony of Michael Poore (“Poore Trial Tr.”) 997:21-24.

3. Facilities. District 11 recently closed nine schools. It has passed two bond elections but still cannot meet its facility needs. It should be investing sixteen million dollars per year in its facilities, but can only afford to invest two million dollars, thus losing ground every day in the challenge of maintaining its facilities. The district currently has over \$200 million in facility needs. Gustafson Trial Tr. Tr. 492:4-11, 492:16-25, 493:11-12, 520:12-15, 520:24-521:2, 521:11-14.

4. Personnel. The starting salary for a teacher in District 11 is \$32,000. The district has great difficulty recruiting teachers, particularly in the areas of special education, science, and math, because other districts and states start teachers off at a much higher salary and can offer stipends. Low pay and insufficient professional development are the most common reasons for teachers to leave the district. 4/27/11 Deposition Testimony of Nicholas Gledich (“Gledich Depo. Tr.”) 54:2-7, 54:17-22; 4/6/11 Deposition Testimony of Dr. Mary Thurman (“Thurman Depo. Tr.”) 41:2-13, 42:17-25, 47:1-8.

Curriculum maps and pacing guides for the standards-based education system are not consistently followed throughout the district due to insufficient professional development. District 11 is only able to offer three district-wide days of professional development. Three days is insufficient to allow planning time for teachers to learn and incorporate new standards and assessments. Ex. 8414, Unified Improvement Plan for Colorado Springs 11 for 2010-11; Poore Trial Tr. 950:1-17, 951:7-12.

5. Budget. District 11 has faced budget cuts six out of the last eight years. It has cut summer school, counseling positions, and administrative positions, including the position of Chief Academic Officer. Poore Trial Tr. 991:21-25, 992:1-4, 992:11-25, 993:9-14, 993:25-994:4.

Superintendent Gledich believes that more time in the classroom will improve instruction, but has not been able to find the dollars to increase instructional time because of budget reductions. Gledich Depo. Tr. 51:6-52:23.

Many of the costs District 11 faces are rising more quickly than inflation. The City of Colorado Springs has imposed a sixteen percent annual increase in water rates for the next six years. Textbooks, instructional supplies, energy and fuel costs, and employee benefits are other examples of costs that are increasing faster than inflation, thus adding pressure to the district's budget. Gustafson Trial Tr. 497:1-9, 497:17-24.

District 11 is also experiencing declining enrollment: a fifteen percent decline over the last ten to twelve years. This has a significant economic impact on the district; while per pupil revenue has declined, fixed costs and staffing requirements have remained constant. Gustafson Trial Tr. 482:1-15, 483:1-3, 484:5-15.

Despite a steady increase in poverty, the district has seen Title I allocations decrease over the past four years, which has required the district to raise the funding threshold for Title I schools to those with seventy-five percent free or reduced lunch students. The highest percentages of racial/ethnic minority students and ELL students are clustered in Title I schools. Ex. 8414 at 15.

The breakdown of ELL funding in District 11 in 2010 was as follows: \$235,000 in federal funds, \$197,000 in state funds, and roughly \$3 million in local funds. Clayton Depo. Tr. 42:25-43:11.

6. Student Outcomes. District 11's graduation rate is approximately sixty-eight percent, which is well below the State average of seventy-five to eighty percent. The district has seen declines in student achievement in writing, math, and reading over the past several years. It has also seen a decline in growth in all content areas and virtually all groups. Moreover, the "[g]aps among groups in all content areas are widening in addition to growth of all groups slowing." Three out of ten students do not graduate and over forty percent are not proficient in reading, writing, math, and science. The district is accredited with an improvement plan. Gustafson Trial Tr. 507:1-17; Trial Ex. 8414 at 11.

7. State Requirements. District 11 cannot effectively implement CAP4K with existing resources. CAP4K impacts every area of education for the district, including human resources, finance, and operations. Poore Trial Tr. 933:5-14, 949:14-18, 950:1-17.

District 11 is not providing a "thorough and uniform" system of free public education to all of its students. Poore Trial Tr. 1003:24-25, 1004:1-11, 1004:13-25, 1005:1-6, 1005:23-25, 1006:1-13; Gustafson Trial Tr. 507:10-17.

District 11 does not have sufficient resources to exercise meaningful local control. If the district had true local control, the local school board could select curriculum, hire staff, set budgets, and provide innovative programs in accordance with the desires of the community. Instead, it spends all of its resources trying to meet state requirements. Gustafson Trial Tr. 505:19-25; 506:1-18.

**D. Urban School Districts: Pueblo School District No. 60 in the County of Pueblo and State of Colorado**

1. Background. There are approximately 18,100-18,400 students enrolled in grades preschool through twelve in Pueblo School District No. 60 (“Pueblo City Schools”). The district has four high schools, six middle schools, nineteen elementary schools, and three charter schools. Pueblo City Schools also has an on-line program. 8/11/11 Trial Testimony of Brenda Krage (“Krage Trial Tr.”) 2379:25-2380:6.

Enrollment has been declining in Pueblo City Schools over the last eight to ten years. Krage Trial Tr. 2380:15-25.

The socioeconomic make-up of the City of Pueblo is largely low income. Krage Trial Tr. 2380:12-14.

Pueblo City Schools has an approximately seventy percent minority population with the Hispanic population making up a large part of that percentage. The African-American population makes up approximately two percent of the seventy percent, while Native Americans and Asian Americans make up approximately one percent each. Approximately thirty percent of the student population in Pueblo City Schools is White. Around sixty-eight percent of students in the district are on free or reduced lunch. Approximately five percent of students are gifted and talented and six to eight percent are English language learners. Krage Trial Tr. 2381:19-2382:14.

The English language learner population in Pueblo City Schools, while not significant in size, speaks approximately nineteen different languages. Krage Trial Tr. 2382:15-2383:1.

2. Programs. Pueblo City Schools does not offer after-school programming at the high school level to assist students who are not at grade level. Some of the middle schools are able to provide some after-school programming, which is funded by grants. Krage Trial Tr. 2430:9-2431:14.

Elective courses, co-curricular activities, and extra-curricular activities are often what keep kids in school. However, Pueblo City Schools is unable to provide programming that meets student interest and is consistent for all students across grade levels. This lack of programming affects achievement. Krage Trial Tr. 2421:22-2423:16.

The high schools in Pueblo City Schools have varying degrees of career and technical education programs and could benefit from an increase in programs of interest. For example, the district has seen high interest in computer-aided drafting, which is offered in each of the high schools. The demand for the program far outweighs the available slots, requiring students to be placed on a first-come, first-served basis. Krage Trial Tr. 2426:5-2428:11.

3. Instructional Materials. The textbooks in Pueblo City Schools do not align to the current state education standards. In most subject areas, the district does not have enough textbooks for each child to have his or her own. The books are maintained in the classroom, which presents challenges for the teachers and students. The inability to adopt textbooks on a more frequent basis has had a negative impact on student achievement. Krage Trial Tr. 2412:4-2414:23.

4. Facilities. The average age of a school building in Pueblo City Schools is between fifty and fifty-two years old. Many of the schools do not have air conditioning. Approximately eight years ago, the district sought bond funding to address brick and mortar needs. In connection with the bond election, the district identified a list of facilities needs totaling approximately \$320 million. The district determined, however, that the bond request needed to stay below \$100 million in order to gain community support. The bond passed, but only addressed one-third of the district's needs. Thus, the district was not able to put air conditioning in all of its schools. The district sought a subsequent bond specifically focused on air conditioning, but that bond did not pass. Krage Trial Tr. 2419:10-2421:21.

5. Technology. While students within Pueblo City Schools technically have access to computers, there are over 4,000 computers in the district that are so old that the technology department can no longer support them. Each of the high schools within the district has a media center with approximately twenty-five to thirty-five computers. There are, however, an average of 1,000 students in each high school. In addition, teachers do not have sufficient training on how to incorporate technology appropriately into instruction. Krage Trial Tr. 2416:23-2418:21.

Many homes within the district do not have Internet access. Krage Trial Tr. 2418:22-2419:9.

6. Personnel. Pueblo City Schools pays teachers based on a contract that has steps and lanes. Steps are incremental increases in pay for every year worked. Lanes are pay increases teachers receive when they go to school to continue their education. The district has not been able to honor step or lane increases for at least the past three years. Krage Rebuttal Trial Tr. 6887:21-6888:15.

7. Budget. Pueblo City Schools has experienced budget cuts in the last four to five years due in large part to reductions in State funding. The district's general fund budget for the 2011-12 school year is approximately \$95 million. Because of reductions in funding provided by the State, the general fund budget for 2011-12 was cut by approximately \$7.4 million. Krage Trial Tr. 2449:1-2451:13.

Pueblo City Schools attempted to raise local funds by passing a mill levy override. The primary goal was to raise money to bring the district's teacher salary schedule in line with Brighton School District, which has a similar demographic to Pueblo. The district's attempt was unsuccessful. The election occurred right when the economy started taking a downturn. Krage Trial Tr. 2451:14-2452:20.

While Pueblo City Schools has obtained large grants, the use of grant money to fund initiatives is problematic since the district cannot sustain the initiatives once the grant expires.

For example, the Safe and Healthy Schools grant is in its third and final year in Pueblo City Schools. The district used money from that grant to address early childhood socio-emotional development, safe culture and climate, bully prevention and mental health supports. Among other things, the district will not be able to continue to provide staff professional development in these areas once the grant expires. Krage Trial Tr. 2452:21-2455:17.

There are schools within Pueblo City Schools that do not qualify for federal Title I funding that would qualify as Title I schools in another district. This is because such a high percentage of the student population in Pueblo City Schools is at-risk. There are schools within the district that have a seventy-five percent free or reduced lunch population. Because Pueblo City high schools are not Title I schools, they do not receive grant funding and rely solely on the general fund. Krage Trial Tr. 2383:16-2385:9.

Extracurricular activities receive a small stipend from the district's general fund. Parents and students must rely on fund-raising efforts to support extracurricular activities. Krage Trial Tr. 2428:20-2430:8.

8. Student Outcomes. The objectives of the Pueblo City Schools' strategic plan have not been met because of a lack of funding. Krage Trial Tr. 2385:20-2388:2.

In 2010, Pueblo City Schools was accredited with a priority improvement plan. The initial draft of the 2011 District Performance Framework indicates that the district will be on turnaround status. The designation of turnaround status means that Pueblo City Schools is in the bottom five percent of districts in the State. Krage Trial Tr. 2389:25-2390:12; 9/02/11 Rebuttal Trial Testimony of Brenda Krage ("Krage Rebuttal Trial Tr.") 6875:11-22; Ex. 10,373, 1-Year District Performance Framework Report 2010 for Pueblo City 60; Ex. 10,508, District Performance Framework 2011 for Pueblo School District 60 – Initial Draft for District Review.

The graduation rate for the class of 2011 was approximately sixty-five percent, which is lower than the state graduation rate. Krage Trial Tr. 2385:13-19.

Pueblo City Schools' mean ACT score is around nineteen. A score in the mid-twenties is needed for entry into a university like the University of Colorado. Krage Trial Tr. 2439:18-2440:20.

Pueblo City Schools knows what to do to improve student growth and achievement, but it lacks the resources to implement those reforms. Krage Rebuttal Trial Tr. 6885:23-6886:24.

9. State Requirements. The State has not provided any funding to Pueblo City Schools to implement the new standards and assessment systems. It will cost Pueblo City Schools several million dollars just to implement the new assessment requirements. Krage Trial Tr. 2405:9-2406:20.

Pueblo City Schools is obligated to provide its students with a "thorough and uniform" education, but it is not able to do so. Krage Trial Tr. 2456:4-9.

Because of the number of state mandates placed on school districts, the Pueblo City School Board does not have control over how things are run in the district. Krage Trial Tr. 2456:10-22.

**E. Rural School Districts: Center Consolidated School District No. 26JT in the Counties of Saguache and Rio Grande and Alamosa**

1. Background. Eighty-five to ninety percent of the students who attend Center Consolidated School District No. 26JT (“Center”) schools qualify for free or reduced lunch. Fifty percent are English Language Learners. One-third of the students are migrant and five percent are homeless. Just over ten percent of the adult population in Center has a college degree. Ninety percent of the town of Center is minority. 8/1/11 Trial Testimony of George Welsh (“Welsh Trial Tr.”) 96:9, 96:13-14, 130 19-25, 131:1-3.

2. Programs. Center cannot offer any advanced placement or international baccalaureate (IB) classes. The only foreign language that is taught is Spanish and it is only offered for two years. The district purchased Rosetta Stone to teach French. The only electives offered are music, physical education, and basic art. The only vocational offerings are graphic arts and a building trades class. The district has had to cut its other vocational programs, including welding, vocational business, and agriculture. Welsh Trial Tr. 123:21-23, 124:2-6, 18-22, 158:8-11,17-18; Ex. 8600, Center School District 2011-12 High School Course Descriptions.

Center lacks sufficient resources to retain appropriate personnel to meet the needs of its special education students. Center, along with the other districts in the San Luis Valley, coordinates many special education services through the San Luis Valley BOCES, but cannot meet the needs of its special education students. The funding Center receives from the State does not cover the costs of educating the special needs students in Center. Center also lacks the financial resources to effectively implement Response to Intervention (RTI). Welsh Trial Tr. 149:6-13, 149:20-23, 150:16-19.

Center does not receive sufficient resources to provide an adequate program to gifted and talented students. Welsh Trial Tr. 153:18-22.

The district cannot provide preschool services to all of the children who qualify for the program. The preschool facility is a doublewide trailer. The district receives .58 percent funding for each kindergarten student, and relies on the general fund to provide the remainder of the funding to provide full-day kindergarten. Charging for preschool or full-day kindergarten is not a viable option. Welsh Trial Tr. 156:2-10, 156:13-18, 156:20-24, 6723:13-15.

3. Instructional Materials. The district cannot afford textbooks for each student to have one in class or to take home. The textbooks that the district does have are not aligned with the most recent change in standards. Welsh Trial Tr. 119:14-17, 122:6-9.

The majority of books in the library are outdated and should be removed. The district shares the high school library with the county, which allows it to stay open longer for both the community and the school. The elementary school library is closed three days per week. Superintendent Welsh has applied for many grants for the school library, but was unsuccessful



on three out of four grants. He holds bake sales to buy books for the library. Welsh Trial Tr. 100:17-24, 101:16-18, 103:20-104:12, 165:10-15; Ex. 10,408, Video – Center Visuals.

4. Personnel. Center has difficulty attracting and retaining highly qualified teachers. Often when a position is open, the district does not receive many applications from highly qualified teachers. Welsh Trial Tr. 191:12-192:9.

Center does not have any teachers qualified to teach advanced placement coursework or any teachers trained in gifted and talented education. Welsh Trial Tr. 123:18-20, 153:5-7.

The starting salary for a teacher in Center is approximately \$30,000. The top salary for a teacher is \$53,000. The teachers pay for supplies for their classrooms out of their own pocketbooks. Welsh Trial Tr. 190:9-13, 192:12-14, 6725:11-16.

5. Budget. The budget cuts in Center have been so extensive that it is impossible for the district to just “re-align” or re-prioritize to be able to meet current state mandates. Welsh Trial Tr. 6723:22-6725:10.

Center has applied for multiple grants, including reading grants. However, these grants are not sustainable and often do not provide resources for even the full term of the grant. For example, Center applied for and received a Colorado Reading Excellency grant, which was to run for three years, but was eliminated after two years. Welsh Trial Tr. 186:1-2, 4-15.

6. Student Outcomes. Center’s graduation rate is sixty-five percent. The graduation rate from the alternative high school is twenty-five percent. Center has an achievement gap in every area: math, science, reading, and writing. The district is accredited with a priority improvement plan. Welsh Trial Tr. 112:9-23, 174:18-19, 176:2-4; Ex. 10,088, 1-Year District Performance Framework Report 2010 for Center 26 JT; Ex. 10,089, 3-Year District Performance Framework Report 2010 for Center 26 JT.

Center High School received the Center of Educational Excellence Award for 2009 and 2010. This award is given for growth greater than fiftieth percentile in each of the tested categories for the three years prior to the award. Despite this growth, only ten percent of high school students scored proficient in math. The middle school showed declining growth and achievement. Prior to the turnaround grant for the elementary school, the elementary CSAP scores demonstrated below average growth and flat achievement. Welsh Trial Tr. 106:9-17, 108:24-109:8; Ex. 10,087, Unified Improvement Plan for Center for 2010-11; Ex. 10,088.

7. State Requirements. The State has not provided material assistance in developing curriculum that would align with state standards. Center received funding through a federal turnaround grant to develop its elementary and middle school curricula. Its high school curriculum is not aligned with the newest state standards. The district is working with other districts in the San Luis Valley to purchase a high school curriculum from Focal Point for a cost of \$120,000. Welsh Trial Tr. 117:3-118:7, 118:15-119:6.

The achievement results in Center are evidence that it is not providing a “thorough and uniform” education to all of its students. Welsh Trial Tr. 208:25-209:15.

The district does not have the option to provide the programs and classes that are important to the community and is not able to meaningfully exercise local control of instruction. Everything the district does is geared towards meeting state standards. Welsh Trial Tr. 209:19-210:8.

**F. Rural School Districts: Creede Consolidated School District No. 1**

1. Background. Creede, Colorado is a remote town that sits approximately forty miles from the closest towns of Del Norte, Colorado and Lake City, Colorado. CDE classifies Creede School District No. 1 (“Creede School District”) as one of thirteen remote school districts in the State. 8/10/11 Trial Testimony of Buck Stroh (“Stroh Trial Tr.”) 2223:22-2224:2, 2225:13-16.

Creede is the sole town in Mineral County. Ninety-six percent of the land in Creede belongs to the federal Forest Service; commercial development is prohibited on that land. Currently, over sixty percent of Creede’s working population works in the construction industry. The remaining forty percent are employed by the school district, the tourism industry, or the Forest Service. Stroh Trial Tr. 2225:23-2226:7, 2226:13-16.

Creede began as a mining town in the 1890s and remained a mining town until 1984, when mining operations shut down. Currently, there are between 400 and 425 people who live in Creede. The Creede School District has between sixty-nine and seventy-five students for the 2011-12 academic year. When mining was still occurring in Creede, the Creede School District had approximately 185 students. Stroh Trial Tr. 2224:5-11, 2224:14-20.

Creede’s school is extremely important to the community; it is the hub of the town. The school’s library is also the regional library for Mineral County. The school opens its doors to Creede’s senior citizens for a hot lunch program. Stroh Trial Tr. 2237:19-23, 2238:14-21, 2239:2-10.

The student population in Creede is approximately ninety-five percent Caucasian. Currently, fifty-two percent of Creede’s students are on the free or reduced lunch program. Stroh Trial Tr. 2224:24-2225:2, 2225:9-12.

2. Programs. Approximately three years ago, Creede School District cut its industrial arts program. As a result, Creede can no longer offer vocational training in woodshop, automotive, or metal shop. This cut was based on budget constraints and the belief that Creede School District must focus on the “core” subjects — social studies, reading, writing, math, and science — to meet State standards, as measured by CSAP and federal AYP requirements. Stroh Trial Tr. 2236:16-25, 2245:19-24.

As a result of cutting the industrial arts program, Creede School District is unable to prepare its students to be “work force ready,” as required by the new state standards, for Creede’s employment needs, which are mainly in construction. Stroh Trial Tr. 2246:11-16.

3. Facilities. Creede School District has facility and capital problems that it cannot currently address due to budget constraints. For example, the weight room is in a storage closet, and the gym floor needs to be replaced because it has dangerous bubbles and divots. The second

floor of the elementary school cannot be used until the staircase for entry and egress is brought up to code. Stroh Trial Tr. 2233:13-21, 2234:8-2235:9.

Creede School District owns a separate building that is used to house its preschool, but had to close that building last year to save money; the preschool students now use a modular unit. Stroh Trial Tr. 2235:17-2236:2.

4. Technology. Because Creede's teacher pool is so small, Creede must offer on-line courses to its high school students. However, Creede's Internet bandwidth is "horrendous" and cannot sustain live streaming of video. Stroh Trial Tr. 2277:25-2278:7.

5. Personnel. Creede School District cut five teachers between the 2010-11 school year and the 2011-12 school year, taking the number of teachers from eighteen to thirteen. The district previously had two principals – one for the preschool through fifth grade and another for the sixth through twelfth grades. Due to budget constraints, Creede now has one principal for preschool through twelfth grade, who also serves as a full time English teacher. Beginning in the 2011-12 school year, Superintendent Stroh is working on a reduced contract against his wishes, the result of which is a twenty-five percent pay cut. Creede's principal is earning the salary of a first-year teacher despite having taught for thirty years in Creede. All of these cuts, consolidations and sacrifices were made by the employees of Creede School District to help save one or two teachers from being let go due to budgetary constraints. Some teachers in Creede teach two classes simultaneously during the same class period and in the same classroom, but receive no additional compensation. Stroh Trial Tr. 2227:8-10, 2227:14-19, 2229:11-21, 2227:22-2228:1, 2265:2-2266:12, 2275:22-25.

No one employed by the Creede School District will receive an increase in salary this year; all salary steps have been frozen as part of the budget-cutting effort. Stroh Trial Tr. 2276:18-20.

6. Budget. Creede School District's operating budget for the 2011-12 school year is \$1.6 million. Twenty-two percent of that budget is from federal grants. Approximately thirty-four percent of the budget comes from the local share and approximately thirty-six percent represents the state share. Creede School District must cut \$197,000 from its budget. The district will accomplish this by cutting approximately \$70,000 over the next three years. Stroh Trial Tr. 2245:13-18, 2272:17-24, 2274:5-12.

Creede School District has declining enrollment. This has a "major impact" on Creede's revenue and budget; for each student that leaves the district, the district loses approximately \$13,000 from the State. Stroh Trial Tr. 2272:25-2273:6, 2273:18-2274:4.

As part of the budget-cutting process, Creede will combine the kindergarten and first-grade classes against best practices. Stroh Trial Tr. 2277:19-25.

7. Student Outcomes. For the 2010-11 academic year, Creede's seventh grade math scores on the CSAP did not meet proficiency. For that same year, the middle school science achievement scores were "approaching" the State-mandated achievement levels, but had not yet reached them. In addition, the academic growth for the middle school in reading, mathematics, and writing were either "approaching" or "does not meet" under the State's District Performance

Framework. Also, at the high school level, Creede is “approaching” in the category of growth gap for writing. Superintendent Stroh believes that additional resources would make a difference in the “approaching” and “does not meet” areas. Stroh Trial Tr. 2251:17-22, 2263:3-25, 2264:15-25; Ex. 2605, 3-Year District Performance Framework Report for Creede School District for 2010.

Creede School District satisfied the federal requirements for AYP for 2008-09. However, those results were before Creede had made any cuts to its budget in core academic areas. In addition, Creede School District receives a federal grant specifically for boosting and maintaining AYP. Superintendent Stroh sees a direct connection between this grant and Creede’s attainment of AYP. Stroh Trial Tr. 2248:20-2251:7, 2252:3-12, 2255:2-11, 2258:2-20; Ex. 2601, 2008-2009 NCLB District Accountability Data – AYP Elementary Level; Ex. 2602, 2008-2009 NCLB District Accountability Data – AYP Middle School Level; Ex. 2603, 2008-2009 NCLB District Accountability Data – AYP High School Level.

The cuts made by the Creede School District have resulted in fewer meaningful educational opportunities for Creede’s students. Superintendent Stroh believes that Creede School District is failing in its goal of enabling all students to reach their learning potential. Stroh Trial Tr. 2258:21-2259:14, 2259:21-2260:14, 2267:16-20, 2268:4-10.

8. State Requirements. In order for Creede School District to implement the new content standards, it will need additional resources. Stroh Trial Tr. 2242:25-2243:6.

Superintendent Stroh believes the state content standards force Creede’s schools to teach to the state assessment, thereby effectively creating a state curriculum. He believes the state standards and related achievement requirements are unfunded mandates from the State. Stroh Trial Tr. 2244:14-22, 2248:9-19.

To Superintendent Stroh, “local control” means that a local school board can decide what to do with its money. He does not believe that the Creede school board has local control. Stroh Trial Tr. 2246:17-24, 2247:2-20.

**G. Rural School Districts: Sanford School District No. 6 in the County of Conejos**

1. Programs. Sanford School District No. 6 (“Sanford School District”) is severely limited in its ability to offer elective courses, sports, and extra-curricular activities to its students. Such offerings are important because they encourage attendance and graduation, help keep students engaged, and provide students with leadership opportunities. 8/3/11 Trial Testimony of Kevin Edgar (“Edgar Trial Tr.”) 846:21-847:1, 847:12-848:1.

Sanford School District lacks resources to meet the needs of its English language learner students, students with disabilities, and gifted and talented students. Edgar Trial Tr. 856:21-25, 857:24-858:24, 859:13-20, 860:23-861:1, 861:10-862:9.

2. Instructional Materials. Sanford School District’s textbooks are outdated and not aligned with state standards. Some of the district’s textbooks are over thirty years old. The

district does not have sufficient resources to buy new textbooks that align with state standards. Edgar Trial Tr. 839:11-19, 840:14-25, 841:4-14.

3. Facilities. Sanford School District's school building is in poor condition and has numerous health and safety problems, including mold spores, elevated CO<sup>2</sup> levels, inadequate lighting, a leaking roof, and a partial roof collapse. Edgar Trial Tr. 850:7-25.

4. Technology. Sanford School District does not have adequate technology to provide its students with a twenty-first century education. Edgar Trial Tr. 846:9-12.

5. Personnel. Due to inadequate funding, teachers are forced to perform multiple jobs, which results in low morale, larger class sizes, inability to focus on specific subjects, and fewer class offerings for students. Edgar Trial Tr. 874:9-20, 876:14-877:24.

6. Budget. State funding for Sanford School District has decreased by approximately \$400,000 over the past two years. Edgar Trial Tr. 866:15-18.

Despite his years of experience, Superintendent Edgar cannot figure out any relationship between the amount of funding the Sanford School District receives from the State and the district's needs. Edgar Trial Tr. 882:18-22.

Sanford School District has the fifth lowest assessed valuation of any district in the State of Colorado, which limits the amount of local share the district receives as well as the district's ability to raise funds through bond measures or mill levy overrides. Edgar Trial Tr. 853:14-20, 868:24-869:11.

Due to inadequate funding and recent budget cuts, the Sanford School District has been forced to cut teaching positions, summer school, paraprofessionals, sports, electives, and band. The district cannot afford adequate staff. The district does not have a curriculum specialist or an interventionist, and is limited to only one special education teacher for thirty students with disabilities and only one counselor for the entire district. Edgar Trial Tr. 873:21-874:11, 874:21-875:8, 876:14-877:6, 878:13-879:5.

7. Student Outcomes. Sanford School District is not meeting academic growth gap requirements in several areas. In fact, Sanford School District's growth gaps are widening. Ex. 10,125, 3-Year District Performance Framework Report 2010 for Sanford 6J, at 2-4; Edgar Trial Tr. 829:18-830:12, 21-24, 831:6-832:1, 832:9-833:10.

Sanford School District lacks the resources necessary to close growth gaps, such as interventionists, a viable curriculum, and after-school programming. Edgar Trial Tr. 833:24-835:12.

Sanford School District is concerned about its ability to maintain its current level of achievement due to inadequate funding. Edgar Trial Tr. 872:23-873:2.

8. State Requirements. Sanford School District does not have a curriculum that is tied to the state standards. The district does not have adequate funding to hire someone to help develop an adequate curriculum. Edgar Trial Tr. 836:12-14, 836:20-22.

#### **H. Rural School Districts: Alamosa School District No. RE-11J**

1. Facilities. Alamosa School District No. RE-11J (“Alamosa School District”) has grave concerns regarding its facilities, particularly the middle school roof and bus fleet. 3/21/11 Deposition Testimony of Robert J. Alejo (“Alejo Depo. Tr.”) 284:12-285:24.

2. Personnel. Alamosa School District has had to cut teaching positions and staff. Remaining staff and teachers have been asked to take on additional responsibilities with no increase in pay. The district is now asking teachers to forego a step increase in pay and to consider a pay cut or reduction in force. Alejo Depo. Tr. 283:1-285:11, 285:20-288:9.

3. Budget. Funding cuts have also resulted in increased class sizes, fewer electives, outdated textbooks, a dilapidated bus fleet, and outdated technology. Alejo Depo. Tr. 81:2-83:5.

4. Student Outcomes. Alamosa School District is accredited with an improvement plan. Alejo Depo. Tr. 105:18-25.

Students in Alamosa School District are not receiving an education sufficient to prepare them for the workforce, post-secondary education, and active citizenship. Superintendent Alejo believes that additional funding decreases will further harm student achievement. Alejo Depo Tr. 277:10-278:3.

#### **I. Rural School Districts: Centennial School District No. R-1**

1. Programs. Centennial School District No. R-1 (“Centennial School District”) cannot provide Advanced Placement (AP) courses or other advanced level courses. The vocational offerings are limited, as are foreign language offerings. Centennial School District lacks the resources for full-time counseling or literacy coaches. 3/22/11 Deposition Testimony of Beverly Maestas (“Maestas Depo. Tr.”) 253:12-21, 256:11-24, 260:1-6.

Centennial cannot offer targeted programs or services for its ELL, at-risk, gifted or special education students. Nor can it meet the requirements of RTI. Maestas Depo. Tr. 17:16-25, 18:1-8, 235:21-24, 257:1-16, 236: 1-2, 247:2-25, 248: 1-12.

2. Instructional Materials. Centennial School District does not have sufficient resources to provide even basic instructional materials, such as calculators for math in the elementary and middle school. Centennial does not have other basic classroom supplies, such as paper and dry-erase markers. Maestas Depo. Tr. 251:25, 252:1-18, 268:2-20.

3. Facilities. Centennial School District is concerned about its ability to maintain its facilities due to inadequate funding. Maestas Depo. Tr. 121:18-24.

4. Personnel. Centennial School District has a difficult time recruiting and retaining highly qualified teachers due in part to lack of funding for competitive salaries. Maestas Depo. Tr. 16:9-17.

The district has been forced to consolidate staff positions due to inadequate funding. Maestas Depo. Tr. 98:4-16, 118:11-13.

5. Budget. Centennial School District does not receive sufficient funding to provide its students with an adequate education. The district lacks resources to provide its students with a variety of electives courses, adequate supplies, technology, summer school, mentoring, and other resources that are necessary to help the district meet state proficiency levels, grade level expectations, and post workforce readiness requirements. Maestas Depo. Tr. 224:9-11, 224:17-20, 246:21-24, 251:19-252:18, 253:12-22.

6. Student Outcomes. Centennial School District is not meeting the state proficiency requirements. Maestas Depo. Tr. 249:6-9, 251:7-11.

7. State Requirements. Centennial School District does not have adequate funding to align its curriculum with state requirements. Maestas Depo. Tr. 16:20-17:5, 17:16-25.

Centennial School District is not able to exercise meaningful local control. It lacks resources to fund items that are important to the community. Maestas Depo. Tr. 244:12-245:1.

#### **J. Rural School Districts: Del Norte Consolidated School District No. C-7**

1. Background. Approximately sixty percent of the students in Del Norte Consolidated School District No. C-7 (“Del Norte”) are free or reduced lunch recipients. 4/27/11 Deposition Testimony of Brenda Atencio (“Atencio Depo. Tr.”) 77:1-7.

2. Programs. Historically, truancy has been a problem in Del Norte. Five years ago, Del Norte hired a truancy officer, which was funded through a grant. The anti-truancy program has been “significantly effective.” However, the grant has expired and the program will not continue unless a new grant is found. 4/27/11 Deposition Testimony of Chris Vance (“Vance Depo. Tr.”) 8:22-9:14, 10:16-15:8.

Del Norte schools need more resources to meet the needs of special education students. They need paraprofessional support, as well as more time for one-to-one instruction. They also need access to technology to fully serve their special education students. Del Norte had to cut a paraprofessional position due to budget constraints. Atencio Depo. Tr. 177:25-181:24.

3. Facilities. Some of Del Norte’s school buildings are not ADA compliant. Ventilation is a problem in some of the schools, as is plumbing and electrical systems. There is no air conditioning in the high school or middle school. Atencio Depo. Tr. 125:8-126:22.

4. Technology. Del Norte has problems with Internet bandwidth and connectivity. In December 2010, a math teacher resigned. Because there was no one to replace that teacher, Del Norte tried an on-line format, which “failed miserably.” Del Norte did not have the resources to accommodate the type of electronic platform necessary. It had to pull computers out of storage and fix them. In addition, the Internet connection is slow, making it difficult to stream video. Both students and parents became frustrated as students fell further and further behind. Vance Depo. Tr. 24:6-25:6; Atencio Depo. Tr. 124:16-125:7.

5. Personnel. In the past five years, salary schedules for teachers have been frozen. Atencio Depo. Tr. 83:23-84:21.

Del Norte has significant challenges recruiting teachers, particularly mathematics and science teachers, because of the low pay it can offer. Atencio Depo. Tr. 85:25-87:10.

6. Budget. Del Norte will lose approximately \$600,000 in the coming years and has to make cuts in instructional areas. Atencio Depo. Tr. 227:10-17; 4/27/11 Deposition Testimony of Angela Velasquez (“Velasquez Depo. Tr.”) 15:15-17.

If Del Norte had additional resources, it would increase access to and use of technology for its students, provide experiential learning opportunities, such as field trips, to its students, and modernize its facilities. Atencio Depo. Tr. 31:25-32:20.

7. Student Outcomes. Del Norte is below state expectations in reading. At one time, Del Norte had a secondary reading interventionist, which it no longer has because of budget constraints. As a result of this cut, Del Norte has had to change its high school reading program. Del Norte would like to be able to bring back the position of the secondary reading interventionist to help improve its reading scores. Atencio Depo. Tr. 31:13-24.

8. State Requirements. The state has imposed a lot of unfunded mandates on districts. This lack of state funding means that Del Norte cannot adequately support teachers in the classroom or provide sufficient interventions for students. Atencio Depo. Tr. 73:16-19, 75:12-76:25.

#### **K. Rural School Districts: Moffat School District No. 2 in the County of Saguache**

1. Background. Moffat School District No. 2 in the County of Saguache (“Moffat 2”) has two schools: Moffat K-12 and the Crestone Charter School. Seventy-five percent of Moffat K-12’s students are on free or reduced lunch and twenty-five percent of Crestone Charter School’s students are on free or reduced lunch. 4/25/11 Deposition Testimony of Kirk Banghart (“Banghart Depo. Tr.”) 148:23-25.

2. Programs. In the elementary and middle schools, Moffat 2 cannot offer any elective classes even though there are state standards that address such electives. Banghart Depo. Tr. 26:12-20.

In the last three years, Moffat 2 has had to cut its business vocational program and has decreased funding for its programs in art, music, and foreign language. Banghart Depo. Tr. 84:7-15.

Moffat 2 is able to provide only courses that meet the bare minimum state standards, and specifically the areas that the State assesses. It cannot offer advanced classes in the core curriculum, such as math, science, or English. Banghart Depo. Tr. 24:11-26:8.

Gifted and talented students in Moffat 2 are not receiving opportunities for a quality education. Banghart Depo. Tr. 180:12-15.

3. Services. The reimbursement from the State for transportation does not meet Moffat 2’s needs. The wear and tear on the district’s vehicles on rural, dirt roads is different than



paved-road driving in most urban districts. Moffat 2 also cannot provide transportation for after-school programming. Banghart Depo. Tr. 163:9-16, 164:21-22.

4. Instructional Materials. While there is a policy for replacing textbooks in Moffat 2, the district has not followed that policy due to lack of resources. It has been more than ten years since Moffat has been able to purchase new textbooks for most of its courses. It falls on individual teachers to supplement classroom materials from the teachers' own personal items. Moffat 2 does not allow students to take home textbooks because it cannot afford to replace any books that are lost or not returned by students. In addition, students have to share textbooks within the classroom. Banghart Depo. Tr. 165:2-167:2.

5. Facilities. There are problems with the facility of the Moffat K-12 school. The oldest part of the building was built in 1922 and its structural integrity is not sound. The building also has a crumbling foundation. There is an aging wiring system, aging HVAC components, problems with insulation and ventilation, and lighting concerns. The building does not meet disability access codes and regulations. Moffat 2 may need to take resources away from educational programs to address some of these facilities problems. Banghart Depo. Tr. 156:9-157:7, 159:13-24.

6. Technology. Moffat 2 has one T-1 line for approximately 150 computers, which severely limits teachers' ability to use online resources. Banghart Depo. Tr. 32:12-33:23.

7. Personnel. Due to budget cuts, Moffat 2 has been forced to reduce the size of its staff. In the 2010-11 school year, the district cut three instructional staff. This year, it has cut two support staff, and there is a possibility that it will cut up to four more positions in the 2011-12 school year. Banghart Depo. Tr. 20:8-21:7.

8. Budget. Superintendent Banghart does not believe that Moffat 2 provides its students with an education sufficient to prepare them for the workforce or for post-secondary education. The remoteness of the district and lack of funding restrict its access to resources, such as bandwidth for the Internet, as well as opportunities for expeditionary learning. Banghart Depo. Tr. 11:23-12:15.

Moffat 2 lost approximately \$300,000 in funding in 2010-11 and will lose another \$300,000 in 2011-12. The district has been forced to make decisions about class size based on budgetary constraints rather than best practices. Banghart Depo. Tr. 18:1-17, 98:18-20.

The budget cuts have also meant that Moffat 2 is unable to utilize research-based instructional practices, and cannot provide necessary staff development in areas such as Response to Intervention ("RTI"). Banghart Depo Tr. 31:19-32:11.

9. Student Outcomes. Moffat 2 has seen a decrease in scores in upper level math, which Superintendent Banghart believes is a result of decreases in funding. Banghart Depo. Tr. 28:4-11, 29:4-17.

Students from Moffat 2 who go on to post-secondary education are not ready for college. Banghart Depo. Tr. 206:12-16.

Moffat 2 has achievement gaps based on socio-economic status. Banghart Depo. Tr. 69:20-70:3.

10. State Requirements. Superintendent Banghart is concerned about Moffat's ability to develop a strong curriculum that is aligned with the new state standards because it does not have the resources to do it on its own, and has not received resources from the State to do so. Banghart Depo. Tr. 62:11-63:12.

Moffat has limited control over the allocation of the money in its budget. State mandates control the allocation of money. In Moffat, "everything is state-mandated". The district does not have any local initiatives. If funding from the State were to increase, districts would have more local control. Banghart Depo. Tr. 89:21-90:5, 231:17-232:18.

#### **L. Rural School Districts: Monte Vista School District No. C-8**

1. Facilities. Monte Vista School District No. C-8 ("Monte Vista School District") has grave concerns about its facilities, including overcrowding, air quality, security and accessibility problems. It is also concerned that its buildings are being used for purposes for which they were not designed. For instance, elementary school students are taking physical education on the stage of the auditorium with orange snow fencing strung across the edge in an attempt to keep children from falling or running off. Music class is held on one end of the auditorium basement while gifted-and-talented enrichment classes are simultaneously held on the other end. Monte Vista School District will gain a new elementary school from the BEST program, but this will not address all of the district's facilities concerns, even though it has left the district bonded to capacity and without another source for capital improvement funding. 4/19/11 Deposition Testimony of Dwayne Newman ("Newman Depo. Tr.") 86:17-93:15.

2. Budget. Falling enrollment in Monte Vista has reached the point where the district is forced to drop certain class offerings to every other year or every third year, or cut them altogether (along with all or part of the associated teacher's time). In fact, the district condensed staff, shared staff among buildings, and laid off three teachers last year due to budget cuts. In Superintendent Newman's opinion, these layoffs have had a negative effect on student achievement. Newman Depo. Tr. 31:6-32:23, 33:18-34:2.

Superintendent Newman identified a wide range of other concerns from overburdened staff to obsolete textbooks and computer hardware and software to an inability to provide students with opportunities to visit places outside Monte Vista or the San Luis Valley. Newman Depo Tr. 109:5-115:1.

3. Student Outcomes. The district believes that its current funding does not provide Monte Vista students with the same opportunities as other children in the state and conversely, that additional resources would lead to increases in student achievement. Newman Depo. Tr. 107:19-108:8.

**M. Rural School Districts: North Conejos School District No. RE-1J**

1. Programs. North Conejos School District No. RE-1J (“North Conejos School District”) does not have a preschool program. 3/24/11 Deposition Testimony of Rick Ivers (“Ivers Depo. Tr.”) 198:19-21.

2. Facilities. The State pointed at trial to North Conejos School District’s new wrestling facility as an example of inefficiency. However, the facility was exclusively paid for with federal dollars. Furthermore, the new facility was required as the prior facility was old and much too small, such that the crowding led to unsafe conditions and even injuries. In addition to providing a newer, safer place for wrestling, the new facility is also used for testing and other classroom activities. Ivers Depo Tr. 48:5-25, 49:1-2.

The district’s alternative high school is located in the transportation facility. Diesel fumes circulate in the building, making it an unsafe location for these students. However, North Conejos School District does not have the resources to move the alternative high school. Ivers Depo. Tr. 232:1-10.

3. Personnel. North Conejos School District has a difficult time recruiting and retaining highly qualified teachers. Ivers Depo. Tr. 17:8-24.

4. Budget. North Conejos School District experienced an approximately \$500,000 cut in funding last year. As a result, the district had to cut an elementary teaching position, leave other staff positions open, freeze pay steps for staff, cut keyboarding classes and the dance program, and eliminate summer school. Ivers Depo. Tr. 43:8-9, 49:20-21, 55:17-22, 56:2-21, 225:22-226:3.

5. Student Outcomes. None of the schools in North Conejos School District are meeting State requirements for academic growth gaps. The district’s ACT scores are below the state average. Ivers Depo. Tr. 182:19-21, 185:15-17.

Due to inadequate funding, North Conejos School District is concerned about its ability to maintain its current achievement levels in the future. Ivers Depo. Tr. 228:21-229:25, 230:7-232:10.

**N. Rural School Districts: South Conejos School District No. RE-10**

1. Facilities. South Conejos School District No. RE-10 (“South Conejos School District”) has grave concerns regarding its facilities, which are dilapidated, outdated, and crumbling. 4/29/11 Deposition Testimony of Marcella Garcia (“M. Garcia Depo. Tr.”) 143:24-144:7.

2. Technology. Due to inadequate funding, South Conejos School District has concerns about sustaining its limited technology, which was received through grants. M. Garcia Depo. Tr. 159:19-160:8.

3. Budget. South Conejos School District has had to cut teaching positions and staff. The district is now limited to one teacher per grade, one physical education and one

special education teacher for the entire district, and minimal interventionists and paraprofessionals. Funding cuts have also resulted in increased class sizes, fewer electives, outdated textbooks, and outdated technology. M. Garcia Depo. Tr. 36:21-25, 37:20-38:4, 38:9-12, 41:18-42:11, 80:17-81:4, 163:2-24, 225:11-226:8.

Students in the South Conejos School District are not receiving a quality education because of limited resources, crumbling buildings, lack of current technology, and outdated textbooks, all of which are due to lack of funding. M. Garcia Depo. Tr. 16:5-13, 17:5-18:13, 227:11-21.

4. Student Outcomes: South Conejos School District is accredited with a priority improvement plan. M. Garcia Depo. Tr. 21:6-14.

Superintendent Garcia attributes the district's difficulty raising test scores to increasing class sizes, inadequate assistance in the classroom from interventionists and paraprofessionals, and an inability to purchase updated research-based programs and materials. M. Garcia Depo. Tr. 43:11-20.

Superintendent Garcia believes that additional funding decreases will further harm student achievement. M. Garcia Depo. Tr. 81:14-16.

5. State Requirements.

South Conejos School District's curriculum is not properly aligned with state standards. The district does not have adequate funding to develop or obtain an adequate curriculum. M. Garcia Depo. Tr. 64:6-9, 66:12-17.

Superintendent Garcia does not believe that local control exists because of the number of mandates handed down from the State. M. Garcia Depo. Tr. 221:12-20.

#### **O. Rural School Districts: Mountain Valley School District No. RE-1**

1. Background. Between sixty-five and seventy-five percent of the students in Mountain Valley School District No. RE-1 ("Mountain Valley") are on the free and reduced lunch program. 4/28/11 Deposition Testimony of Cory Doss ("Doss Depo Tr.") 213:18-214:20, 217:2-5.

2. Programs. Because of budget cuts, Mountain Valley does not provide programs specifically intended for students who do not want to go to college. Those Mountain Valley students who have gone to college have been inadequately prepared. Doss Depo. Tr. 226:19-24, 230:16-25.

Mountain Valley purchased an on-line Spanish class. It was "a complete failure" because foreign languages are not well-suited to being taught virtually and Mountain Valley's computers and technical system were not able to sustain the program. Doss Depo. Tr. 43:1-44:2.

When Mountain Valley received a Reading First grant, it offered a summer school program. That program consisted of effective small reading and writing groups. If the district

had additional funds, it would reinstate this summer school program. Doss Depo. Tr. 245:5-246:9.

Mountain Valley used to have after-school programs in music appreciation, band, and orchestra, but had to cut those programs due to budget constraints. Doss Depo. Tr. 246:13-247:2.

3. Services. Mountain Valley has had to reduce the number of its bus routes due to budget constraints. Doss Depo. Tr. 111:4-10.

4. Instructional Materials. Mountain Valley uses antiquated textbooks in its classrooms; many of the core subject area textbooks are from the 1980s. Some teachers spend their own money to supplement classroom materials. The lack of updated textbooks negatively impacts the quality of education that is provided. Doss Depo. Tr. 194:11-197:5.

5. Facilities. The Mountain Valley school needs a new plumbing system and a new electrical system. The sprinkler system over the school's stage is non-functional. Doss Depo. Tr. 101:16-22.

6. Technology. The lack of computers and Internet connectivity in the district is "a huge barrier" to student achievement. Doss Depo. Tr. 54:17-56:16.

7. Personnel. Mountain Valley faces challenges recruiting new teachers because it is one of the lowest paying districts in Colorado. Doss Depo. Tr. 154:24-155:16.

Because of teacher shortages, the district only has one highly qualified math teacher, whose schedule is full because he also teaches a foreign language. The district does not have sufficient staff to offer remedial mathematics classes. Doss Depo. Tr. 39:11-40:16.

Mountain Valley is considering lowering its graduation requirements, such as removing one of the English credit requirements, so that it can free up a teacher to teach English in the middle school. Doss Depo. Tr. 46:8-24.

8. Budget. Mountain Valley lacks sufficient funding to provide adequate professional development, summer school, tutoring, after-school programs, art, physical education, field trips, college courses, and on-line courses. Doss Depo. Tr. 248:13-249:2.

For 2011-12, the district expects a \$278,000 shortfall, which includes a cut to the music program. Doss Depo. Tr. 88:15-89:18.

Due to budget cuts, Mountain Valley has a "skeletal" budget and typically has relied on its reserves and grants to survive. However, the grants have expired, and there are no new grants to meet the district's needs. As a result, the district is considering cutting teachers and programs. Ex. 2808, 2010-2011 Budget Summary; Doss Depo. Tr. 75:6-82:9.

9. Student Outcomes. Mountain Valley is accredited with a priority improvement plan. Ex. 2801, 3-Year District Performance Framework Report 2010 for Mountain Valley Re 1; Doss Depo. Tr. 13:19-14:11.

10. State Requirements. Superintendent Doss is concerned about state and federal requirements on school districts because there is not enough funding to implement the requirements. Specifically, he considers the new teacher effectiveness law and content standards to be unfunded mandates. Doss Depo. Tr. 186:10-187:12.

Mountain Valley cannot afford to purchase a new curriculum that is aligned with the new state standards. Instead, Mountain Valley is forced to create its own curriculum, which takes the time and resources of its teachers. The district is not confident in its ability to develop its own aligned curriculum because of a lack of resources. Doss Depo. Tr. 27:8-28:14.

Superintendent Doss does not believe that “anybody in Colorado has true local control” because “the state tells us the content standards to teach, many times tell us how to teach it based upon the money we’re receiving, [and] what kind of teachers we can have. Local control is kind of reduced.” If Mountain Valley had more resources, it could implement local control and provide a better education. Doss Depo. Tr. 191:11-192:1, 193:18-194:10.

**P. Rural School Districts: Sargent School District No. RE-33J**

1. Programs. Sargent School District No. RE-33J (“Sargent”) has very limited electives for the high school: art, shop, physical education, weight lifting, and Spanish. There is no music class. Many electives are taught by teachers’ aides, which offer little educational benefit. The district can only offer one AP class in English. The district does not offer preschool. 4/13/11 Deposition Testimony of Lauren Sheldrake (“Sheldrake Depo. Tr.”) 170:18-22, 212:3-5, 218:2, 136:14-19, 213:2-6, 264:15-17.

Sargent had to cut its summer school program. The only tutoring is from teachers or national honor students who volunteer. Sheldrake Depo. Tr. 212:18-20, 206:16-24.

Sargent does not have sufficient resources to provide necessary services to its students with disabilities, ELL students, and at-risk students. Sheldrake Depo. Tr. 203:23-25, 204:1-2, 204:25, 205:1-20, 230:17-25.

2. Instructional Materials. The science curriculum in Sargent is ten to twelve years old and the district cannot afford to update it. In the 2010-2011 budget, the textbook budget was reduced from \$20,000 to \$2,000 at the high school level and from \$20,000 to \$10,000 at the elementary level. Sheldrake Depo. Tr. 170:18-22, 212:3-5, 218:2, 136:14-19, 213:3-6, 264:15-17.

3. Technology. Sargent tried to offer AP Calculus online, but the Internet connection was so slow that the class could not connect to the instruction; therefore, Sargent had to drop the course offering. Sheldrake Depo Tr. 216:12-217:4.

4. Personnel. Teachers have had a salary freeze for the last two years. The district does not have sufficient resources to bring in outside professional development. Teachers need additional professional development to help with interpreting data and learning the new standards. The district has to use paraprofessionals, as opposed to certified teachers, to teach gifted and talented students and help with special education students. Funding for these positions came from ARRA funding and once that ends, so too will the positions. ARRA funding

is expiring, so the positions will also terminate. Sheldrake Depo Tr. 29:5-14, 44:13-14, 64:5-12, 65:13-14, 75:6-76:10, 110:1-7, 114:13-25.

5. Budget. Sargent declared a fiscal emergency last year. Sheldrake Depo. Tr. 186:1-3.

Former superintendent Lauren Sheldrake was responsible for performing the duties of two full time positions due to budget constraints: superintendent and principal. She resigned from the district as it was too difficult to perform two full time positions at the same time. Sheldrake Depo. Tr. 15:19-23; 255:12-17.

In light of the need to make budget cuts, the district conducted a survey asking for community input. The survey indicated that the most important priority for the community is class size. Sheldrake Depo. Tr. 141:24-25.

The district has no more bonding capacity, having passed a bond as a BEST match. The district also passed a mill levy override to support technology. Sheldrake Depo. Tr. 55:12-15, 117:11-12.

6. Student Outcomes. Sargent is struggling with math achievement. The district did not make AYP in reading and language arts for its students with disabilities, ELL students, or economically disadvantaged students. Sheldrake Depo Tr. 58:12-19; Ex. 1507, 2008-2009 NCLB District Accountability Data – AYP Elementary Level; Ex. 1508, 3-Year District Performance Framework Report 2010 for Sargent RE-33J.

**Q. Rural School Districts: Sierra Grande School District No. R-30**

1. Background. Sierra Grande School District No. R-30 (“Sierra Grande”) enrolls 250 students. It is located between the towns of Fort Garland and Blanca in the San Luis Valley. Approximately eighty percent of its students qualify for free or reduced lunch and are ELL students. Eighty-five percent are minority students. Sierra Grande is located in one of the poorest counties in the State. 8/10/11 Trial Testimony of Ty Ryland (“Ryland Trial Tr.”) 2181:1-2, 2181:8-9, 2181:12, 2181:15-17, 2194:1-8.

2. Programs. Sierra Grande cannot offer any upper level math or language classes. The district only has one teacher for each of these content areas. The district attempted to teach two separate English classes at the same time to accommodate students who needed more advanced classes. It eventually had to drop the upper level English class. There is only one teacher per classroom, leaving no one to provide pull-out or support services for struggling students. Ryland Trial Tr. 2189:4-25, 2191:16-22.

Despite being located in the middle of an agricultural community, the district cannot offer any vocational classes in agriculture as it does not have the resources for this program. Ryland Trial Tr. 2194:17-25.

3. Budget. Sierra Grande is struggling financially. The district’s reserves have decreased by \$200,000 over the past four to five years as a result of having to rely on those dollars. The district has cut \$250,000 from its budget and cannot add any new programs. It is

struggling to just maintain its existing programs. Because of poverty in the district, it cannot charge fees to supplement its programs. The district has struggled with being able to sustain programs that are funded by grants. When the grant funding ends, the district cannot continue to fund the program. Ryland Trial Tr. 2203:15-17, 2205:17-25, 2193:12-21, 2216:19-25, 2217:1-13.

4. Student Outcomes. There are achievement gaps in all areas in the Sierra Grande School District. The district is accredited with an improvement plan. It has not met state expectations for the performance indicators. For example, in the middle school, zero students have demonstrated high growth in math. Fewer than twenty percent of students are demonstrating growth in writing that will lead to proficiency in three years. In the elementary one-year trends, students in all sub-groups are not meeting state expectations for growth gaps in reading and writing. Overall academic achievement has fallen from thirty-nine to thirty-six percent for minority students and from forty-one to thirty-five percent for ELLs. For those students qualifying for free and reduced lunch status, the statistics show a decline of almost twenty percentage points from forty-seven percent to twenty-seven percent. Ryland Trial Tr. 2184:8-18; Ex. 10,099, Unified Improvement Plan for Sierra Grande R-30 for 2010-11; Ex. 10,100, 3-Year District Performance Framework Report 2010 for Sierra Grande R-30.

5. State Requirements. Sierra Grande cannot exercise local control of instruction. It does not have the funding needed to meet state mandates. It also is unable to provide each of its students with a “thorough and uniform” education. Ryland Trial Tr. 2207:21-25, 2208:4-15.

#### **R. Rural School Districts: Sangre de Cristo School District Re-22J**

1. Background. More than seventy percent of the student population at Sangre de Cristo School District Re-22J (“Sangre de Cristo”) is considered at-risk. 4/14/11 Deposition Testimony of Brady Stagner (Stagner Depo. Tr.) 76:18-23.

2. Programs. The district is unable to offer physical education, art, or music programs at an appropriate level. Stagner Depo. Tr. 82:21-25.

ELL services are provided through an unlicensed teacher, and the district has had difficulty attracting and retaining a highly qualified ELL teacher. Stagner Depo. Tr. 144:15-18, 146:4-8.

There are very few programs or classes available for gifted and talented students. The district does not have a teacher trained in gifted and talented instruction. Stagner Depo. Tr. 175:20-25, 172:10.

The district cannot afford to offer concurrent enrollment, which limits its academic offerings. The district also has very limited vocational programs. It cannot offer classes in auto mechanics, welding, or building trades. Stagner Depo. Tr. 176:16-23, 179:1-11, 182:16-20.

Despite the fact that the district believes that summer school is important for its students and can improve its graduation rate, it lacks sufficient funding to provide summer school. The district is also unable to provide after-school tutoring. Stagner Depo. Tr. 188:6-9, 188:16-22, 186:1-5.



The district is unable to provide an appropriate education to many of its special education students due to lack of funding. Stagner Depo. Tr. 200:16-22.

3. Instructional Materials. The math textbooks are eight to nine years old and are not aligned with state standards. Stagner Depo. Tr. 140:22-141:12.

4. Technology. Technology is another challenge for Sangre de Cristo. The technology is old and there is insufficient bandwidth to administer computerized assessments and run other educational programs at the same time. Stagner Depo. Tr. 143:1-18.

5. Personnel. Sangre de Cristo is not able to provide sufficient professional development for its teachers. The professional development is described as “catch as catch can.” The district has a difficult time recruiting highly qualified staff. It does not have sufficient staff to provide the appropriate interventions for its students. Without adequate staffing, the district cannot meet the needs of its students. Staff morale is also a challenge for the district. Stagner Depo. Tr. 13:19-25, 14:1-3, 61:7-62:2, 68:1-3, 111:12-25.

6. Budget. Superintendent Stagner serves as superintendent, principal, district assessment coordinator, and maintenance worker. He must depend on one-time or short-term grant moneys to run his district, which is not sustainable. Just writing the grant applications takes Superintendent Stagner away from time with his students. Once the funding for these short-term grants expires, the district is unable to sustain the programs funded by the grants. Stagner Depo. Tr. 107:8-16, 141:1-12, 201:15-202:7.

7. Student Outcomes. Sangre de Cristo struggles with student achievement. In math, there is consistently low performance by students in grades three to ten across all disaggregated groups. Several of the identified root causes for these low scores are the lack of alignment between district math course sequences and content that is assessed on CSAP. In writing, there is persistent low performance among ELL students across all grades in the elementary school. Again, lack of alignment between the district curriculum and content tested on CSAP was identified as a root cause. Ex. 10,104, Unified Improvement Plan for Sangre de Cristo RE-22J for 2010-11.

8. State Requirements. The district is unable to exercise local control of instruction. Due to inadequate funding, the district is unable to offer the courses its community wants to provide. The limited courses the district is able to offer are because of state mandates. Stagner Depo. Tr. 195:16-21, 200:25-201:14.

Superintendent Stagner believes that a thorough and uniform system is one that provides students with the skills to successfully compete in the job market or in colleges and universities and to lead productive lives. Given this definition of thorough and uniform, Superintendent Stagner does not believe Sangre de Cristo is providing a thorough and uniform education to all of its students. Stagner Depo. Tr. 202:7-21.

#### **S. Rural School Districts: Montezuma-Cortez School District No. RE-1**

1. Programs. In Montezuma-Cortez School District No. RE-1 (“Montezuma-Cortez”), only fifty percent of incoming kindergartners have attended preschool. Montezuma-

Cortez does not receive sufficient funding for all the children that qualify for state-funded preschool and the district has a waiting list. The district is unable to expand the number of preschool offerings due to lack of adequate funding. The district also cannot afford to offer full-day kindergarten to all students. 6/9/11 Deposition Testimony of Lori Haukeness (“Haukeness Depo. Tr.”) 47:25, 48:1-4, 48:12-15, 49:5-7, 49:15-23; 6/9/11 Deposition Testimony of Stacy Houser (“Houser Depo. Tr.”) 55:24-25, 56:1-2.

Special education and gifted and talented students are not receiving the services they are entitled to receive. Houser Depo. Tr. 126:22-25, 127:2-11.

2. Facilities. The district does not have the financial capacity to keep up with all of its facility needs. Some of the schools still have asbestos issues and many have leaking roofs. There is limited capacity for the use of technology. Houser Depo. Tr. 130:3-9, 133:2-17.

3. Personnel. The district is in its fourth year of no salary increases and two furlough days due to fiscal constraints. The average teacher salary is approximately fourteen percent below the state average and average administrator salary is more than twenty-five percent below the state average. Teachers who work in New Mexico have much higher salaries. Haukeness Depo. Tr. 60:11-12; 6/11/11 Deposition Testimony of Melissa Brunner (“Brunner Depo. Tr.”) 55:9-21; Houser Depo. Tr. 61:1-25.

4. Budget. Montezuma-Cortez has made a number of budget cuts. It is no longer able to maintain support for the Lindamood-Bell reading program that had proven successful. It is cutting counselors in the elementary school. The district also now offers only a four-day school week due to budget constraints. Houser Depo Tr. 35:1-13, 39:15-20, 58:11-19, 88:4-14, 136:15-22; Haukeness Depo. Tr. 26:10-20.

5. Student Outcomes. The district is accredited with a priority improvement plan. It is not meeting any of its achievement targets for its elementary students. Its graduation rate is approximately fifty-nine percent and it has a drop out rate of approximately nine percent. Houser Depo. Tr. 126:22-25, 127:2-11; Ex. 10,107, District Performance Framework Report 2010 for Montezuma Cortez Re-1.

#### **T. Rural School Districts: Moffat County School District Re. No. 1**

1. Programs. Moffat County School District Re. No. 1 (“Moffat 1”) is unable to provide any after-school programs. It is unable to offer advanced and enrichment courses for students, such as calculus, AP classes, and other extended electives. Such courses are being whittled away because of budget cuts. 5/6/11 Deposition Testimony of Christine L. Villard (“Villard Depo. Tr.”) 80:23-82:15, 83:22-84:4; 5/5/11 Deposition Testimony of Joseph M. Petrone (“Petrone Depo. Tr.”) 120:11-17.

2. Instructional Materials. Moffat 1 has insufficient instructional materials and supplies because of lack of funding. Recently, Moffat 1 was unable to purchase new materials for social studies because of budget cuts, leaving teachers with new standards to teach and no new materials with which to do so. Similarly, Moffat 1 does not have the funds to purchase

materials it believes necessary to provide effective interventions for students. Villard Depo. Tr. 77:4-19, 77:21-25.

3. Technology. Moffat 1 is unable to provide the technology that is needed for the students and staff to have access to twenty-first century classrooms, including the hardware as well as the accompanying training and staff development. As such, the district does not have the funds to fully teach students who are used to accessing content and learning through technology. Villard Depo. Tr. 78:22-80:10; Petrone Depo. Tr. 56:17-25.

4. Personnel. Moffat 1 has a hard time recruiting teachers. Being in a rural district makes recruiting even more difficult. Because of lack of funding and budget limitations, Moffat 1 is unable to offer higher salaries, which Assistant Superintendent Villard believes based on her experience would help solve the problem of recruitment. However, it is cost prohibitive to make exceptions to the salary schedule to recruit qualified teachers. Villard Depo. Tr. 45:25-46:10, 46:25-47:6, 47:7-48:19, 51:8-52:18; Petrone Depo. Tr. 98:12-99:3, 101:11-102:1.

Moffat 1 is unable to provide ongoing support for teachers by hiring sufficient literacy coordinators and instructional coaches in writing, math, and science. The district is also unable to provide necessary professional development. Villard Depo. Tr. 68:22-72:17, 75:4-14, 76:2-77:3.

Moffat 1 does not have sufficient funding to provide itinerant staff support for its students, such as speech and language pathologists, occupational therapists, physical therapists, psychologists, and nurses, at the recommended caseloads for such specialists. Villard Depo. Tr. 84:9-85:3.

5. Student Outcomes. Inadequate funding and budget cuts are impacting student achievement scores because of the loss of literacy and instructional coordinators. Villard Depo. Tr. 29:2-11.

#### **U. Rural School Districts: Bethune School District No. R-5**

1. Background. Bethune School District No. R-5 (“Bethune School District”) is a small, rural school district located on the eastern plains of Colorado, approximately eighteen miles from the Kansas border. There are 133 students in the district. 8/8/11 Trial Testimony of Shila Adolf (“Adolf Trial Tr.”) 1585:12-16, 1590:19-22.

Bethune School District has forty-four percent English Language Learners, seventy-three percent of its students on free or reduced lunch, and forty-four percent of its students on individual literacy plans (ILPs). Eighty-nine percent of Bethune students dropout after the first year of college. Adolf Trial Tr. 1591:10-12, 1624:14-17, 1651:18-21.

Superintendent Shila Adolf works as the superintendent, principal, and district assessment coordinator for Bethune School District. She is responsible for evaluation of all staff, professional development, data analysis, budget preparation, and compliance with all state statutes and regulations. Adolf Trial Tr. 1586:4-20.

2. Programs. Bethune can only offer art once a week and music twice a week. The district cannot offer any AP classes. Adolf Trial Tr. 1614:13-15, 1614:17-18, 1624:1-10.

Bethune has seven special education students and can only afford one quarter of a teacher (.25 FTE) for these students. State reimbursement for special education does not even cover the cost of that teacher. Superintendent Adolf participates in all IEP meetings to make sure that services are not included in IEPs that the district cannot provide. Adolf Trial Tr. 1631:2-15, 1633:17-1635:5.

Bethune does not receive sufficient funding for its ELL students. Two years of funding is insufficient to meet their proficiency needs. The district also cannot afford to buy sufficient supplies for its ELL program. Adolf Trial Tr. 1630:7-15, 1675:24-25, 1676:1-23.

Bethune only receives funding for three Colorado Preschool Program (CPP) slots, but needs funding for eleven slots. The district only receives .58 funding per student from the State for kindergarten, but provides full-day kindergarten to all of its students because it believes it is important. Adolf Trial Tr. 1640:1-8, 1642:1-6, 1641:19-25.

3. Services. Bethune shares a single school nurse with eight other districts by contract. The nurse is only on site as needed. Adolf Trial Tr. 1623:24-25.

4. Facilities. Bethune does not have adequate facilities to serve all of its students who need intervention services or pull-out services and has to provide psychotherapy services to students in a closet. Adolf Trial Tr. 1649:19-20.

5. Personnel. Salaries for teachers have been frozen for the past three years. Superintendent Adolf needs to hire a full time special education teacher, a full time Title I teacher, and a full time ELL teacher, but cannot afford the salaries, so these positions are going unfilled. Adolf Trial Tr. 1654:19-22, 1673:8-11.

6. Student Outcomes. Bethune students are not performing academically where they need to be in order to keep progressing. The district is accredited with an improvement plan. Trial Ex. 10,093, 3-Year District Performance Framework Report 2010 for Bethune R-5.

#### **V. Non-Party School Districts: Woodlin School District R-104**

1. Background. Woodlin School District R-104 (“Woodlin”) is a single-campus district, housing grades preschool to twelve, located on the Eastern Plains of Colorado in western Washington County. The total enrollment in 2009-10 was 105. Three small communities surround Woodlin: Lindon, Woodrow, and Last Chance. All of these communities combined have a population of less than 250. The people of the Woodlin area shop in the larger towns about forty miles away. Nearly all of the students attending Woodlin live in a rural setting. Most of their parents farm or ranch for a living. School is in session Tuesday through Friday on extended school hours, 8:00 AM -4:00 PM. Woodlin has strong community support for its school. The community uses the school building for functions after hours. The school is the center of all activities in the area. 5/2/11 Deposition Testimony of Rose Cronk (“Cronk Depo. Tr.”) 13:3-22, 22:4-19; Ex. 3210, Woodlin School District.

2. Programs. Woodlin has cut many of its programs, such as art, music, physical education, and business education, to half time in the last few years. Cronk Depo Tr. 14:10-15:15.

The district has concerns about the sustainability of its agriculture program, which is extremely important to this agrarian community. The district has had four agriculture teachers in four years. Given recent cuts to the program and the district's low salary schedule, it is hard to retain teachers in this area. Superintendent Cronk also has concerns about the sustainability of the business program given reductions in career and technical education (CTE) reimbursement rates. Cronk Depo. Tr. 182:2-14, 188:12-22, 189:23-190:19.

Woodlin does not have a summer school or after-school tutoring program. It cannot afford the staff and transportation that would be required to offer such services. Superintendent Cronk believes she could accomplish the goals in the district's unified improvement plan if she had additional resources to offer summer school or after school intervention. Cronk Depo. Tr. 246:16-248:25.

Woodlin does not offer any AP courses on site. The lack of AP classes impacts students' ability to receive scholarships and gain admission to some post-secondary institutions. Cronk Depo. Tr. 269:24-270:25.

Woodlin has combined classes in the elementary school; first and second grades are taught together, third and fourth grades together, and fifth and sixth grades together. The benefit of this arrangement is that it saves three teachers. The downsides are that there is less staff support for students and a greater range of skill levels in one classroom, which is challenging for one teacher to address. Cronk Depo. Tr. 97:8-99:13, 100:19-25, 101:9-12, 101:19-102:11.

Woodlin does not have a teacher on site to teach foreign language. The classes are taught exclusively through the VNET (a computer networking system) or online. Students are sometimes precluded from taking VNET classes by their score on the Accuplacer placement test, which is a prerequisite. The VNET system does not function when the weather is below twenty degrees or there is a strong rainstorm. Cronk Depo. Tr. 135:8-11, 137:17-138:19, 153:2-23, 156:23-157:19.

Woodlin is not meeting all of the needs of its special education students. The district knows what services it needs to provide to its students with disabilities, but is limited in its ability to provide those services by insufficient access to special education providers. Cronk Depo. Tr. 97:8-99:13, 242:25-243:17, 268:9-269:6.

Woodlin recognizes that it does not provide adequate services to its GT students because of insufficient funding. The district cannot hire a GT coordinator and does not have enough funding for curricular materials or professional development in this area. It cannot implement all of the Advanced Learning Plans (ALPs) it develops because of lack of time and trained personnel. Cronk Depo. Tr. 85:17-87:20, 175:25-176:12, 264:9-20.

Woodlin serves fifteen students in its preschool program, but is only funded by the State for four students. Woodlin has considered eliminating its preschool program as a result of budget constraints, but to do so would be, in Superintendent Cronk's opinion, "academic

suicide.” Research shows that preschool is one of the best ways to improve academic achievement for at-risk students. It is also not feasible to charge tuition for preschool. More than fifty percent of Woodlin’s population is on free and reduced lunch. To charge fees for preschool would eliminate the very kids the program is designed to help. Cronk Depo. Tr. 97:8-99:13, 257:21-258:3, 262:18-263:20.

3. Facilities. Although there has been a lot of repair work done on Woodlin’s facilities in the last five years because of damage from a fire and hail storm that exposed asbestos, those repairs were largely funded by grants and insurance money, and those resources were insufficient to build back all that was lost. There are still a number of outstanding facilities issues, such as ADA compliance, sidewalk lighting, parking lot potholes, playground equipment, HVAC issues, and fire code compliance. Cronk Depo. Tr. 207:12-208:23, 219:7-221:15, 222:1-224:15, 229:25-231:3, 274:18-275:10.

4. Technology. The technology in Woodlin is very minimal and outdated. Not all classrooms have computers. In the high school wing, all the classes compete for the use of a dozen computers in the library extension. Only two classrooms in the district have clickers. A few classrooms have SMART boards. Only two to three classes have projectors. Attempts to apply for technology grants have been unsuccessful. Cronk Depo. Tr. 208:24-210:8, 212:15-17, 213:1-3.

5. Personnel. Woodlin has a low salary schedule. It tends to attract young teachers who come to be trained and then move on to larger districts, such as Aurora, that can pay more or offer them a full time position. Cronk Depo Tr. 14:10-15:15.

The recent budget cuts have made it harder to hire and retain teachers in certain program areas. For example, Woodlin was unable to find a licensed teacher for the part-time physical education position. It had to hire a long-term substitute with no training. Cronk Depo Tr. 19:23-20:17, 143:24-144:9.

6. Student Outcomes. Not every graduate of Woodlin schools is college or workforce ready when he or she walks out the door. Cronk Depo. Tr. 53:6-13.

Woodlin did not make AYP in all target areas in 2008-09. Cronk Depo. Tr. 64:6-17; Ex. 3204, 2008-2009 NCLB District Accountability Data – AYP Elementary Level for Woodlin R-104.

Woodlin does not meet state expectations for academic achievement in math and academic growth in math and writing at the elementary school level. It does not meet state expectations for math achievement at the middle school level and writing achievement at the high school level. Ex. 3203, District Performance Framework Report 2010 for Woodlin R-104, 2-4.

Superintendent Cronk believes if she had more state funding, she could do a better job educating her students. Cronk Depo. Tr. 97:2-7.

8. State Requirements. The biggest challenge for Woodlin is being able to meet the increasing state requirements, such as new standards, post secondary workforce readiness, and teacher evaluations, with decreasing financial support. Cronk Depo. Tr. 22:20-24:6.

Superintendent Cronk has considered seeking waivers of some of the more onerous state requirements, but has found that waivers are not available in the areas she needs them most. The attempts she has made in the past to secure waivers have been unsuccessful. Cronk Depo. Tr. 37:23-38:23; Ex. 3202, Waiver of State Law and Regulation.

Superintendent Cronk does not believe Woodlin can meet state requirements without additional resources. Cronk Depo. Tr. 123:11-14.

Additional resources would help alleviate the paperwork burden associated with increasing federal and state requirements. Cronk Depo. Tr. 67:8-69:1.

Woodlin cannot exercise local control over instruction. It is a priority of the Woodlin community to have a strong agriculture program, but the program continues to be cut as a result of budget issues. The community has mitigated the impact of the cuts by raising money locally to support the program. Nevertheless, the program is not as strong as the community would like. The community also supports strong interventions for at-risk students, which the district is unable to provide due to budgetary constraints. Cronk Depo. Tr. 266:16-268:8.

#### **W. Non-Party School Districts: Boulder Valley School District No. Re2**

1. Programs. In recent years, Boulder Valley School District No. Re2 (“BVSD”) has experienced an increase in the number of students with severe special needs. The number of students diagnosed with autism, which frequently requires more resources to accommodate than other types of learning disabilities, has increased by fifty percent. Miller Brown Trial Tr. 2656:5-2656:14.

BVSD participates in the State’s “high cost pool,” which is designed to provide additional State funds to districts serving special education students who require very costly services. However, this pool of funds is capped at two million dollars, which is inadequate to meet these students’ needs. In 2009-10, BVSD requested \$1,517,782 from the State for in-district high cost placements, but received nothing. 8/12/11 Trial Testimony of Dr. Ellen Miller-Brown (“Miller-Brown Trial Tr.”) 2652:23-2653:12, 2655:19-23; Ex. 92, Special Education Fiscal Advisory Committee Report, December 2010, at 11-12.

2. Budget. BVSD recently experienced budget cuts of thirteen percent at the district administration level and two and a quarter percent in each school. BVSD was forced to cut several specialist positions that had previously served the entire district and that had provided district-wide “consulting” on behavioral issues, ELL, special education and other matters. BVSD also had to eliminate its director of equity position. Miller-Brown Trial Tr. 2657:13-25; 2673:13-25, 2690:22-23, 2701:7-14.

3. Student Outcomes. BVSD has one of the largest achievement gaps in Colorado. In tracking the achievement gap, BVSD includes students participating in free and reduced price lunch programs, ELLs, Latino students who speak English at home, and students identified for

special education programs. Achievement gaps are evident in BVSD in a number of areas, including graduation rates, CSAP scores, non-CSAP scores, ACT scores, and school attendance. Miller-Brown Trial Tr. 2627:4-12, 2628:3-8, 2691:24-2692:25; Exhibit 3110, BVSD Annual Report, November 2010, at 8-10.

BVSD has had some success with interventions aimed at reducing the achievement gap. However, it does not have the resources needed to implement the measures in every school or for all students who need them, or to even continue the interventions that have been initiated. Many of the interventions were funded with “one time” grant monies or other limited funding sources instead of permanent sources of funding. For example, BVSD has trained its educators in “co-teaching,” but relied on ARRA funds to do that, which have now expired. Miller-Brown Trial Tr. 2639:8-2640:6, 2660:22-24, 2641:17-2642:8, 2642:16-2643:7.

As another example, BVSD implemented a summer enrichment program and extended learning science program for student with special needs, ELL students, and homeless students. In the short period of time this program was in place, students demonstrated significant improvements in their engagement in learning. This program also relied on ARRA funds, which have been eliminated. Miller-Brown Trial Tr. 2663:2-20.

Similarly, BVSD received an Expelled and At-Risk Student Services grant, which it used to hire three “attendance advocates.” These advocates, who go to students’ homes to meet with them and their parents, already have had a positive impact on attendance rates, which is expected to improve graduation rates. However, the grant expires after five years, and BVSD is currently in its third year. Miller-Brown Trial Tr. 2665:16-2666:20.

## **X. Non-Party School Districts: School District No. 14 in the County of Adams**

1. Background. School District No. 14 in the County of Adams (“Adams 14”) serves an urban, low-income community. Ninety-two percent of Adams 14 students are considered at-risk of academic failure. Approximately fifty-percent of the district’s students are English language learners, eight-five percent are on free or reduced lunch, ten percent are homeless, and eleven percent are special education. 8/15/11 Trial Testimony of Dr. Susan Marie Chandler (“Chandler Trial Tr.”) 2863:21-2864:25, 2838:7-15.

2. Programs. Adams 14 receives approximately \$1.8 million from the federal government and \$1.8 million from the State to meet the needs of its special education students. The district must use an additional \$5 million from its general fund, which includes local funds, to meet the needs of its special education population. And still, only thirty-six percent of special education students in the district are proficient in reading and only thirty seven percent are proficient in math. Chandler Trial Tr. 2851:9-17, 2852:13-25.

Adams 14 needs more resources for special education students to reach proficiency. Because special education students are predominantly in general education classrooms, general education teachers need support and professional development to build the skills necessary to meet these students’ needs. Smaller groups, more one-to-one services, and more instructional time are also critical, which will require additional special education teachers and paraprofessionals. Chandler Trial Tr. 2853:1-2854:10.



Due to the language and poverty issues the Adams 14 community faces, preschool is of particular importance to the success of students in the district. However, Adams 14 does not have the physical space or resources to accommodate all of the students in the district who qualify for its preschool program. There are approximately 150-200 students on the waiting list each year. Chandler Trial Tr. 2849:20-2851:8.

3. Budget. The decline in state funding has forced Adams 14 to increase class sizes, decrease central administration, eliminate transportation for a number of students, and reduce the time and resources spent on professional development and instructional support for teachers. With lower teacher salaries than other urban districts, and the difficulties attendant to teaching a predominately at-risk student population, Adams 14 faces constant teacher retention problems. Chandler Trial Tr. 2844:23-2845:19, 2838:7-15, 2862:5-12.

Like other districts in Colorado, Adams 14 has raised local funds through mill levies and bonds. Adams 14 passed a mill levy in 1996 to support a number of programs that had been cut, including physical education, art, and music, as well as to support literacy and dropout prevention programs. A bond was passed in 2006 to build a new high school, provide full-day kindergarten, and install air-conditioning in the district's schools. However, with the economic downturn, the ability of the district to raise local funds has dramatically declined. Commerce City has an aging population of seniors on fixed incomes and an influx of low-income families that simply cannot afford to support the district through additional mill levies or bonds. Chandler Trial Tr. 2846:13-2847:24, 2838:24.

4. Student Outcomes. Because it falls well below state proficiency standards, Adams 14's accreditation status is "Accredited with a Turnaround Plan." Dr. Chandler attributes the district's low proficiency scores to the challenges the community faces and the lack of resources from the state to address those challenges. Despite having to educate a student population with increasing risk factors, Adams 14 has seen a decline in revenue. Chandler Trial Tr. 2839:12-2840:13, 2845:9-2846:12, 2844:20-22, 2863:21-2864:25.

Adams 14 has an eight percent dropout rate compared to a state expectation of three and a half percent. Only sixty-five out of the 325 high school seniors (twenty percent) went on to higher education in 2010, and thirty to thirty-five of those students needed remediation. Chandler Trial Tr. 2858:10-17, 2859:2-12, 2866:5-11.

5. State Requirements. Dr. Chandler believes, and the district's achievement data shows, that Adams 14 is not providing a thorough and uniform education to all of its students. Chandler Trial Tr. 2862:23-2863:6.

#### **Y. Non-Party School Districts: Pueblo County School District 70**

1. Programs. Some Pueblo County School District 70 ("Pueblo 70") schools are no longer offering physical education every day. Other schools have cut music programs to half time. A few schools have talked about eliminating music altogether. There are no art programs in any of the elementary schools. These cuts are significant because research shows that when students are active and engaged, they do better in the classroom. The new standards for physical education underscore the importance that nutrition and wellness play in developing well-rounded

children. 4/11/11 Deposition Testimony of Ginger Andenucio (“Andenucio Depo. Tr.”) 33:17-35:10.

Pueblo 70 charges tuition for its summer school program to students that do not qualify for Title 1 or migrant status. There is a waitlist for Pueblo 70’s Title 1 extended year program. Andenucio Depo. Tr. 69:24-70:5, 70:23-71:2.

Pueblo 70 recently moved to a four-day school week for budgetary rather than programmatic reasons. One of the problems with the four-day week has been that, with the longer school days, administrators and teachers do not have enough time for paperwork and data analysis. Andenucio Depo. Tr. 39:22-40:14, 44:19-45:9.

Pueblo 70 does not have the resources to implement the literacy plans it develops. It does not have any literacy coaches, its instructional materials are old, and its general education teachers are not adequately trained in literacy. Andenucio Depo. Tr. 73:13-74:1.

Pueblo 70’s GT program is inadequate. The district does a decent job of identifying kids, but is not able to meet the needs of those identified because of lack of funding. The district does not offer any pull out gifted and talented instruction because there are no GT teachers in the district. The biggest struggle in gifted and talented education in Pueblo 70 is differentiation of instruction in the classroom so that all students’ needs are met. There are insufficient resources to provide staff training on differentiation. It has also been a great challenge in Pueblo 70 to make sure every GT student has an ALP because teachers do not have the time to meet with students and parents and collect and input the necessary data. Andenucio Depo. Tr. 55:5-56:14, 58:9-17, 60:5-15, 62:2-10.

Pueblo 70 has one CPP class at every one of its schools. It cannot accommodate nearly all of the students who qualify for the program. There are some years the district has enough qualifying students to fill another preschool class at each school. Andenucio Depo. Tr. 96:8-97:1.

2. Services. Pueblo 70 reduced bus routes in the last few years to save money. As a result, some students spend up to an hour on a school bus each way. Bus stops can be miles from a student’s home. 4/11/11 Deposition Testimony of Ryan Elarton (“Elarton Depo. Tr.”) 73:15-23, 102:7-16, 104:16-105:3.

Pueblo 70 used to provide a bus to take kids to Pueblo Community College for concurrent enrollment classes. That service was cut several years ago. There has been a decline in enrollment in the concurrent enrollment program since then. More students could take advantage of the program if transportation were not an issue. Andenucio Depo. Tr. 38:14-39:6.

3. Instructional Materials. The textbooks at Pueblo 70 schools are very outdated. The language arts books are at least twelve years old and the social studies books are about ten years old. Many of these books are out of print now, making it impossible to replace a missing or damaged book. The result is that students often are not allowed to take their books home. Andenucio Depo. Tr. 24:15-25:5, 28:9-16.

4. Facilities. There are a number of facilities and safety concerns at Pueblo 70 schools. At Sierra Vista Elementary School, there are safety issues with the security of the front entrance, which is located on a main thoroughfare. There are also safety concerns related to the four modular classrooms, which are detached from the main building. People can come and go from the modulars without a school administrator knowing. Similar concerns with the security of front entrances and the use of modular buildings exist at many other Pueblo 70 schools. Pueblo West Middle School has mechanical and air quality issues. There are capacity and maintenance concerns at Skyview Middle School. The Connect Charter School facility serves only core classroom needs; there is no facility for athletics or extra curricular activities. Pueblo West High School has not kept up with growth, is not physically accessible to individuals with disabilities, has no auditorium, and has inadequate and unfinished athletics facilities. As a result, the school's teams need to practice elsewhere, which creates safety and cost issues. Elarton Depo. Tr. 86:22-87:13, 88:1-15, 89:23-90:14, 91:9-22, 94:15-25, 95:15-20, 97:25-98:19, 99:19-100:25, 101:18-20.

5. Technology. While Pueblo 70's laptop initiative might at first blush seem to be an indicator of success in technology, such success has been limited, because the district has been unable to provide sufficient training to teachers and has poor wireless connectivity. Andenucio Depo. Tr. 16:8-24, 21:18-22:2.

6. Budget. Pueblo 70 is a floor-funded district, which means that it gets the least amount of per pupil revenue from the State. Elarton Depo. Tr. 10:19-11:6.

The Pueblo 70 budget committee has recognized a need for legislative advocacy to change the School Finance Act. Its main concern is that the funding formula does not contain a factor related to geographic size. The size factor in the current formula relates only to enrollment as opposed to geography. The expansive geography of District 70 provides many challenges in terms of the provision of support services, such as special education, transportation, and maintenance, because those services typically cost more than they do in a contiguous district. Ex. 1309, Budget Committee Notes and Recommendations, March 18, 2008 for Fiscal Year 2008-09 Budget, at Maximize Resources; Elarton Depo. Tr. 58:19-59:25.

7. State Requirements. Assistant Superintendent Andenucio believes the new standards are philosophically a great idea, but worries about the district's ability to implement the new common core standards due to lack of resources. Andenucio Depo. Tr. 32:22-33:6.

## **XX. INDIVIDUAL PLAINTIFFS**

1. The Individual Plaintiffs have been injured by the lack of sufficient funding to meet the costs of educating their children in accordance with the requirements of the Education Clause and state and federal education reform legislation. Their children's schools lack adequate educational programs, services, instructional materials, equipment, staffing, and facilities. *See* Ex. 10,236-10,250; 10,267-10,278; 10,280 (Individual Plaintiffs' Combined Responses to Defendants' First Discovery Requests to Individual Plaintiffs).

2. Many of the Individual Plaintiffs have children who are eligible for special education, at-risk, or gifted and talented programs and are not receiving adequate services to

meet their needs due to the lack of sufficient funding for these programs. *See* Ex. 10,236, B. Podio Discovery Response, at ¶18; Ex. 10,237, Calderon Discovery Response, at ¶18; Ex. 10,238, Pate Discovery Response, at ¶18; Ex. 10,239, Hart Discovery Response, at ¶18; Ex. 10,240, K. Howe-Kerr Discovery Response, at ¶18; Ex. 10,241, L. Howe-Kerr Discovery Response, at ¶18; Ex. 10,242, S. Hunt Discovery Response, at ¶¶14, 18; Ex. 10,243, Leroux Discovery Response, at ¶¶14, 16, 18; Ex. 10,244, T. Hunt Discovery Response, at ¶¶14, 18; Ex. 10,246, R. Podio Discovery Response, at ¶18; Ex. 10,247, D. Leaf Vondy Discovery Response, at ¶¶16, 21; Ex. 10,248, D. Vondy, at ¶¶16, 21; Ex. 10,249, B. Weisensee Discovery Response, at ¶18; Ex. 10,250, T. Weisensee Discovery Response, at ¶18; Ex. 10,267, Spangler Discovery Response, at ¶¶14, 16, 21; Ex. 10,268, H. Conboy Discovery Response, at ¶¶14, 16, 21; Ex. 10,269, A. Lobato Discovery Response, at ¶18; Ex. 10,270, P. Villagomez Discovery Response, at ¶¶16, 18, 21; Ex. 10,271, M. Villagomez Discovery Response, at ¶¶16, 18, 21; Ex. 10,272, M. Cendejas Discovery Response, at ¶15; Ex. 10,273, Warsh Discovery Response, at ¶18; Ex. 10,274, V. Conboy Discovery Response, at ¶¶14, 16, 21; Ex. 10,275, Y. Cendjas Discovery Response, at ¶15; Ex. 10,276, Topping Discovery Response, at ¶18; Ex. 10,277, Gould Discovery Response, at ¶18; Ex. 10,278, D. Lobato Discovery Response, at ¶18; Ex. 10,280, Wrangham Discovery Response, at ¶¶14, 19.

3. All of the Individual Plaintiffs are actively involved in their children's education. *See, e.g.*, 8/4/11 Trial Testimony of Traci Weisensee ("Weisensee Trial Tr.") 1193:1-1194:4; 8/3/11 Trial Testimony of Miguel Cendejas ("Cendejas Trial Tr.") 802:10-19; 8/3/11 Trial Testimony of Taylor Lobato ("Lobato Trial Tr.") 791:5-20; 8/11/11 Trial Testimony of Theresa Wrangham ("Wrangham Trial Tr.") 2504:13-2505:8; 8/10/11 Trial Testimony of Jessica Spangler ("Spangler Trial Tr.") 2148:18-2149:2; 8/15/11 Trial Testimony of Lillian Leroux Sr. ("Leroux Trial Tr.") 2914:6-2915:3; 8/12/11 Trial Testimony of Herbert Conboy ("Conboy Trial Tr.") 2707:11-2708:2.

#### **A. Taylor Lobato**

1. Taylor Lobato believes she received an inadequate education at Center schools. She was behind her classmates when she got to college, particularly in writing, grammar, and knowledge of history and current events, and had to catch up. Lobato Trial Tr. 789:3-23, 792:3-9.

2. Taylor Lobato quit the history fair when she realized she could not compete with the presentations of students from other parts of the state because they had access to more sophisticated technology, such as video technology and editing. Lobato Trial Tr. 782:15-784:2.

3. Center does not have many of the programs or courses offered at other schools around the state, such as AP or IB classes, business classes, speech and debate, Future Business Leaders of America (FBLA), and Future Farmers of America (FFA). Lobato Trial Tr. 764:11-14, 774:1-775:3.

4. Taylor Lobato had exhausted Center's math class offerings by her senior year, as there were no more math courses available in Center at her level. She was unable to take math

classes at Adams State College because the distance would have required her to miss too much of the school day. Lobato Trial Tr. 765:5-766:8.

5. Taylor Lobato was never formally identified as a gifted and talented (GT) student but was generally regarded as such. Other than acceleration in math in seventh grade and a few honors courses, she received no GT programming. She had an Advanced Learning Plan (ALP) for only one year. Her honors government class was held in the same room as the regular government class. The only difference between the two was the length of the term paper the students had to write. Lobato Trial Tr. 762:1-17, 763:12-22.

6. The Internet is so slow in Center that it could take twenty minutes to get onto a web page during an online assessment. Lobato Trial Tr. 770:14-771:12.

7. Students who play sports at Center sometimes have to spend three-quarters of a school day at an away game because there is only one bus to transport all the teams to competitions, and so they cannot arrive and leave at times that would maximize their instructional day. In the 2011-12 school year, students will no longer receive a meal stipend when they travel for sports, due to budget cuts. Lobato Trial Tr. 778:13-779:16.

8. Less than one third of Taylor Lobato's graduating class went to college. At least fifty percent of her classmates that started college dropped out by their sophomore year. Lobato Trial Tr. 760:11-24.

## **B. Miguel Cendejas**

1. Miguel Cendejas does not believe his children are getting an adequate education at Center public schools, but is proud that the district is doing the best it can with what it has. Cendejas Trial Tr. 814:24-815:8.

2. His children, Natalia and Salma Cendejas, have not had the opportunity to participate in before and after school or summer school programs or full-time music, arts, and physical education programs. Ex. 10,272 at ¶8.

3. Salma received limited bilingual instruction and support during her first few years at Haskins Elementary School. There was no bilingual program available to Natalia. The literacy supports that are available to Natalia were not available to Salma due to funding reductions. Ex. 10,272 at ¶8.

4. Mr. Cendejas went to Center public schools like his daughters. He did not feel he was adequately prepared for college, particularly with respect to study skills and time management. He dropped out of Adams State College after one year and a half. Cendejas Trial Tr. 795:14-20, 797:20-798:11.

## **C. Traci Weisensee**

1. Traci Weisensee is both an elementary school principal for Woodlin School District and a school counselor, and has children being educated in the district. She believes her children are not getting a well-rounded education and will not be adequately prepared for college

or competitive for scholarships because of the limited course offerings in Woodlin. Woodlin has no honors classes, limited foreign language instruction, limited electives, and limited access to Advanced Placement courses. Weisensee Trial Tr. 1189:23-1190:5; 1195:10-17, 1197:8-22, 1200:16-1201:13, 1202:1-13, 1205:10-23, 1211:9-13.

2. Ms. Weisensee's son, Joe, has not gotten adequate GT services. He has not had an ALP for each year that he was identified as a GT student. When he did have an ALP, it was not fully implemented. There is no staff at the school that is trained in gifted and talented education. When Joe was accelerated in math, he had to teach himself Algebra 1 in the library because there was no teacher available to teach the course. If Joe continues to be accelerated in math, he will run out of math courses to take by his junior year. Weisensee Trial Tr. 1196:1-22, 1197:8-22, 1199:7-1200:10.

3. Many students at Woodlin cannot take advantage of concurrent enrollment courses offered at Morgan Community College because they do not score high enough on the Accuplacer or ACT tests to qualify for those courses. Weisensee Trial Tr. 1202:14-1203:9.

4. Woodlin students tend to go to two-year rather than four-year colleges, in part, because they cannot meet the pre-requisites of four-year colleges, particularly with respect to foreign language. Weisensee Trial Tr. 1210:12-1211:5.

5. In her role as the school counselor, Ms. Weisensee can spend only four hours per week on counseling because of her administrative responsibilities as principal. Her counseling budget is \$250 per year. She does not have enough time or resources to provide the counseling services the children need. Weisensee Trial Tr. 1209:17-1210:11.

6. Woodlin lacks sufficient technology. Most of the computers were donated used over eight years ago. No classrooms have overhead projectors to display information from the Web. The lack of adequate technology has not only affected instruction in the classroom, but also has impacted the ability of the district to apply for certain grants. For example, Woodlin was not able to apply for a literacy grant because it lacked the required technology to implement the grant program. Weisensee Trial Tr. 1204:13-1205:9, 1206:13-1207:23.

#### **D. Teresa Wrantham**

1. Teresa Wrantham's daughter Rachel, who has an autism spectrum disorder, is aging out of a Boulder Valley School District transition program for eighteen to twenty-one year olds without the skills to live on her own, even though she is legally entitled to those services. Wrantham Trial Tr. 2502:10-14.

2. Rachel Wrantham's transition program, which had thirty to forty students, was taught in half a portable classroom. The purpose of the program is to teach independent living skills. The classroom had only a toaster oven, microwave, and a hot plate. Someone like Rachel cannot generalize from a hot plate to a stove. She needs to see examples of what she will encounter in the real world. Wrantham Trial Tr. 2515:24-2517:7.

3. Rachel has always been college bound. Her goal is to get a college degree in multimedia. When Rachel reached tenth grade, she was no longer making progress in reading.

Ms. Wrangham had to make a choice for Rachel to give up math for a few years so that she could improve her skills in English. Now, Rachel does not have the math skills to place into remedial math on the Accuplacer placement test. If she does not improve her math score in the next few months, she will not be able to pursue an associate's degree. With a certificate as opposed to an associate's degree, she will have fewer career options, lower earning power, and less ability to support herself. Wrangham Trial Tr. 2500:13-18, 2510:24-2512:7, 2518:21-2519:20, 2521:16-24, 2522:19-2523:9.

4. Rachel Wrangham did not receive sufficient social skills support, mental health services, or speech therapy at BVSD schools. As a result, her family had to pay for private services to supplement what was provided by the school district. Wrangham Trial Tr. 2507:2-2508:8, 2510:24-2511:9, 2509:25-2510:6, 2514:8-2515:14.

### **E. Jessica Spangler**

1. Jessica Spangler's son, Rider, has multiple disabilities, including pervasive developmental delay, impaired cognitive functioning, and unilateral hearing loss. His condition is chronic. Spangler Trial Tr. at 2146:3-2147:4.

2. Rider has attended twelve schools in Denver Public Schools (DPS) over the last fourteen years. Most of the schools have been unable to meet his educational needs. Spangler Trial Tr. 2150:6-19, 2154:17-25, 2171:9-20, 2172:17-2173:4, Ex. 10,425, Schooling Demonstrative Chart.

3. Rider needs a small classroom environment with a low student-teacher ratio, access to a trained social worker or psychologist on a regular basis, and teachers and staff that are trained to work with students with emotional and behavioral disabilities. He also needs modified assignments and adaptive physical education. Rider has rarely been educated in an environment with these characteristics. On the few occasions when he has been educated in such an environment, he is happier, more willing to go to school, and better behaved. When Rider is successful in a school setting, the district suggests moving him to a less restrictive placement. The bouncing around from school to school each year has negatively impacted Rider's self esteem and ability to form lasting friendships. Spangler Trial Tr. 2151:10-2152:6, 2163:24-2164:9, 2150:6-19, 2154:17-25, 2171:9-20, 2172:17-2173:4.

4. Most of Rider's special education placements have been in general education classrooms with minimal support. General education is not an appropriate placement for Rider because there are too many students and the teachers are not specially trained to deal with his disabilities. He has severe behavioral problems and tends to shut down in such settings. Rider does much better in an autism center-based program or day treatment program, where he receives more individualized attention and more social-emotional support from teachers with experience with his types of disabilities. Spangler Trial Tr. 2153:22-2154:16, 2155:1-16.

5. Rider's current IEP provides that he will receive homebound instruction, which consists of five hours per week of instruction with a tutor. This placement is not appropriate for Rider because he does not do well with homework and needs social interaction with peers. Ms. Spangler and Rider's doctor believe he needs to be in a day treatment or center-based program.

As of trial, the district had not approved such placements, which would be more expensive than a general education placement with tutoring. Spangler Trial Tr. 2165:24-2166:7, 2169:11-20.

6. Ms. Spangler has considered sending Rider to several charter schools but never applied because she believed the schools would be unable to accommodate Rider's needs. Spangler Trial Tr. 2170:15-2171:8.

7. Ms. Spangler believes resources have played a huge role in the special education services that Rider has received from Denver Public Schools. Rider's teachers know what works for him and want him to be successful. The only logical explanation for why he has repeatedly been denied appropriate special education placements and services is cost containment. Spangler Trial Tr. 2173:10-2174:3.

8. In 2009-10, Denver Public Schools received no reimbursement from the State for high cost out-of-district placements like Tennyson Center for Children. Ex. 92 at 11.

**F. Lillian Leroux, Sr.**

1. Lillian Leroux Snr.'s four adopted children have received free and reduced lunch throughout their schooling in Adams 14. Her granddaughter, Lillian Leroux III, sometimes qualified for reduced price lunch. Leroux Trial Tr. 2917:21-2918:8; Ex. 10434, 8/17/10 Letter to Ms. Leroux from Adams 14 Nutrition Services Department.

2. Lillian Leroux III never attended preschool because she did not qualify for the district program and her family could not afford a private preschool program. All of the Leroux children attended half-day kindergarten programs, because half-day rather than full-day programs were the only kindergarten offered by the district at the time. Leroux Trial Tr. 2916:14-2917:14.

3. Lillian Leroux III struggled with reading and math throughout school starting in kindergarten. In tenth grade, she was reading at a third grade level and doing math at a fifth grade level. Despite her low proficiency levels, her special education services were decreased from five hours per week in tenth grade to thirty minutes per week in twelfth grade. When Lillian graduated, she was still reading at a third grade level and doing math at a fifth grade level. She received a score of eleven on the ACT. Ex. 10,439, 10/9/08 Triennial Re-evaluation of Lillian Leroux III, at Leroux 793, 802, 803; 10,435, 10/6/10 IEP for Lillian Leroux III, at Leroux 761; 10,451, 5/16/11 Summary of Performance for Lillian Leroux III; Leroux Trial Tr. 2919:2-16; 2928:2-11.

4. Lillian Leroux III would like to attend college to become an art teacher. However, she was denied admission to the two community colleges to which she applied and is currently working part time at King Soopers supermarket. Leroux Trial Tr. 2918:24-2919:1, 2928:12-2929:3.

5. Ashley Leroux has behavioral and emotional problems due to her family history. She has always needed a small class setting and individual instruction. When she was in a general education class at Adams City Middle School, she had poor academic performance and attendance, having as many as ninety absences in one marking period. Ashley did better with the



small class sizes at Community Reach Day Treatment Center. She is now transitioning to Adams City High School but without adequate support services and Ms. Leroux fears she will revert to her former behaviors. Leroux Trial Tr. 2929:23-2930:19, 2931:8-12, 2932:11-16, 2934:6-17; Ex. 10440, 11/10/10 IEP for Ashley Leroux, at Leroux 1005.

6. Alixandra (Ali) Leroux has difficulties with speech, math, and writing. She runs words together when she is excited and does not pronounce many words correctly. She was receiving speech services at school, but those services were discontinued when her speech teacher's position was cut. Ms. Leroux believes Ali continues to need speech services because she still has a speech impediment. Leroux Trial Tr. 2935:16-2936:19.

7. Amber Leroux was identified as a GT student in fourth or fifth grade. She has received minimal GT services and has never had an ALP. The lack of GT services has caused Ashley to be bored and apathetic about school. Leroux Trial Tr. 2937:8-24.

8. The Leroux children have had limited ability to take advantage of after-school tutoring opportunities and to participate in extra curricular sports programs due to cutbacks in after-school transportation services. Leroux Trial Tr. 2938:3-17.

#### **G. Herbert Conboy**

1. Herbert Conboy resides in Pueblo County School District 70. His daughter, Tabitha Conboy, never attended preschool because she did not qualify for the district program and her family could not afford a private preschool program. She and her brother Timothy attended half-day kindergarten programs. Conboy Trial Tr. 708:24-2709:20.

2. Timothy Conboy struggled in math and English beginning in fourth or fifth grade. He got Cs, Ds, and Fs in math in second through eighth grades. His scores on the math CSAP were partially proficient in fifth to seventh grades and unsatisfactory in grades eight to ten. Timothy received minimal tutoring in math with a group of ten to fifteen students from a parent volunteer rather than a teacher. He never attended summer school because his parents could not afford the fee. Ex. 10,189; 10,424; Conboy Trial Tr. 2714:12-2715:12.

3. Timothy Conboy was not adequately prepared for college or the workforce by Pueblo 70 schools. He began an online college program after high school but dropped out after the first semester because he did not pass any of his entry-level classes. In the two years since high school graduation, he has had five different jobs, the longest of which lasted about three months. There was a long period of time during which Timothy was unemployed and played computer games obsessively. Conboy Trial Tr. 2717:7-12.

4. Tabitha Conboy has had reading difficulties since third or fourth grade. She got limited assistance with reading after-school. She was unable to attend summer school because the Conboys could not afford it. She had an Individual Literacy Plan (ILP) for at least two years. The services on the plan were provided by her classroom teacher rather than a literacy specialist and Tabitha never met the goals in the literacy plan. Her reading issues did not improve much through the years and she continues to struggle with reading comprehension today. Conboy Trial Tr. 2731:6-2735:20.

5. Tabitha received a composite score of fourteen on the ACT, which indicates that she is not college ready for first year college courses by ACT's or Colorado's standards. When she starts community college, Tabitha will need to take six remedial courses. Ex. 10,195, Act Score Report for Tabitha Conboy; Conboy Trial Tr. 2736:8-16.

6. Keila Barish lived with the Conboys from eighth grade until she graduated from Pueblo West High School. Herbert Conboy had power of attorney to make medical and educational decisions for Keila during that time. Keila has diastrophic dysplasia, commonly known as dwarfism. She is three feet tall and uses a scooter for basic mobility. Conboy Trial Tr. 2705:19-2706:5, 2706:14-17, 2719:10-17.

7. Keila experienced a number of physical accessibility issues at Pueblo West High School. She could not independently open several of the doors in the school, including the ones to the modular classrooms and to the special education room where she stored her scooter at night. The elevator would break once or twice a week, requiring students to carry her and her scooter up to the second floor, where she had several classes. In order to get to her choir classroom, she had to go through the boys' weight and wrestling rooms, which were kept locked and had heavy mats that were hard to navigate on a scooter. Keila could not reach the sink in any of the school bathrooms. As a senior, she could not eat lunch with her classmates because there was no ramp to get up the steps to the senior lunch area. She had to leave every class five minutes early in order to make it through the hallways without being trampled by crowds and never had the opportunity to make up the missed instructional time. The accessibility problems at Pueblo West High School affected Keila both socially and emotionally. She felt isolated and lacked independence. The school administration was receptive to the accessibility complaints made by Keila and her family, but could only fix those issues that fit within the school's limited maintenance budget. Conboy Trial Tr. 2720:7-2729:8.

8. There were not enough textbooks at Pueblo West schools for all the students. In order for Timothy to bring a biology textbook home to study or complete an assignment, he would have to stay after school to check out the book and have one of his parents pick him up because there was no late bus. There were times when the Conboy children received extra credit for buying a textbook. Conboy Trial Tr. 2737:15-2738:17, 2739:16-24.

9. Mr. Conboy has incurred many expenses related to his children's participation in school activities. For cheerleading, he had to pay \$1500 for Tabitha's uniform and provide transportation to competitions. Conboy Trial Tr. 2740:8-2741:8.

## **XXI. TEACHER TESTIMONY**

### **A. Matthew Keefauver**

1. Matthew Keefauver has been a teacher for fifteen years and has taught in the Buena Vista School District and the Montezuma-Cortez School District. Mr. Keefauver currently teaches fourth grade at Kemper Elementary School in Cortez. 8/10/11 Trial Testimony of Matthew Keefauver ("Keefauver Trial Tr.") 2302:20-2303:13.

2. About sixty-five to seventy percent of the student population at Kemper Elementary School is on free or reduced lunch program status. For many students, the meals

provided at school are the only meals they eat. Mr. Keefauver purchases snacks to keep in the classroom to give his students when they are hungry. Keefauver Trial Tr. 2303:18-21, 2304:4-16.

3. Of the twenty-one students in Mr. Keefauver's incoming fourth grade class, only two are proficient in writing, six are proficient in mathematics, and seven are proficient in reading. As a result, Mr. Keefauver will not be able to start with a normal fourth-grade curriculum this academic year. Keefauver Trial Tr. 2305:1-20.

4. Kemper Elementary School is on a turnaround plan. It is not currently meeting state academic growth or growth gap requirements. Ex. 10461, School Performance Framework 2010 for Kemper Elementary School.

5. None of the Native American third and fourth grade students at Kemper Elementary School who took the CSAP was proficient or advanced in writing or mathematics. Keefauver Trial Tr. 2308:1-8.

6. Mr. Keefauver has experienced low student engagement among his Native American students, which he believes is attributable, at least in part, to the lack of cultural relevance in the curriculum. To address this, he has taken his students on field trips to Crow Canyon Archeological Center, which is close to Cortez, to help them appreciate and understand their cultural and historical background. Because teachers are not provided a budget for field trips, Mr. Keefauver pays for such trips himself using money he earns through a second job. Keefauver Trial Tr. 2310:8-2312:19.

7. Although the Montezuma-Cortez school district has tried to address some of the issues experienced by Native American students by training teachers on how to differentiate instruction in the classroom, the district does not have a budget to purchase materials needed to effectively differentiate instruction. To make up for this shortfall, Mr. Keefauver has used donorschoose.org to obtain materials for differentiation or has made such materials himself. Keefauver Trial Tr. 2312:20-2313:24.

8. Mr. Keefauver does not have a classroom budget for everyday school supplies, such as pencils, paper, markers, or erasers. During the 2010-11 school year, the district asked students to supplement the school's supplies by bringing in a ream of copy paper to class. Of Mr. Keefauver's twenty-two students, only five were able to afford to do so. In order to make sure his students have pencils, crayons, and other necessary supplies in the classroom, Mr. Keefauver uses his own money to purchase basic supplies. Keefauver Trial Tr. 2314:1-2315:5, 2315:10-24.

9. Mr. Keefauver has not received a pay raise in four years. This year, Mr. Keefauver (and other teachers) was asked to take two furlough days for budgetary reasons, reducing his pay by another \$540. Keefauver Trial Tr. at 2316:24-2317:10.

10. Although he believes that teaching is his calling, Mr. Keefauver is considering leaving the profession because he cannot make ends meet on his current salary. Keefauver Trial Tr. 2317:17-2318:8.

**B. Justine Bayles**

1. Justine Bayles teaches eight-grade science at Cortez Middle School. She also coaches the middle-school basketball team and is the head coach of the high school basketball team. 8/10/11 Trial Testimony of Justine Bayles (“Bayles Trial Tr.”) 2320:15-17, 2322:2-7.
2. Most of the students at Cortez Middle School fall below the proficiency standards set by the State. Bayles Trial Tr. 2322:20-24.
3. Ms. Bayles does not have sufficient support staff in her classes to meet the diverse needs of her students; she has many English language learners, special needs students, and advanced students all in one class. In one of Ms. Bayles’s classes, she had students at four different levels—students at grade level, students who needed some guidance, students who needed significant intervention, and one student who needed someone to read and scribe for him. Ms. Bayles had one paraprofessional in this class who worked with the students who needed some guidance. Ms. Bayles had to address the differing needs of the remaining students alone, including the student who needed full-time attention. Ms. Bayles feels that she was not able to meet the individualized needs of her students in this class and that they were not prepared for the next grade level. Bayles Trial Tr. 2323:9-2325:24.
4. Ms. Bayles does not have sufficient classroom supplies to teach science adequately. For example, Ms. Bayles cannot offer lab experiences to her students so that they can learn and apply the scientific method. Bayles Trial Tr. 2325:25-2327:3.
5. The textbooks at Cortez Middle School are outdated and in poor condition. The district cannot afford to purchase new materials. The school’s use of outdated textbooks contributes to the lack of student engagement because students do not find the material to be relevant to their lives. Bayles Trial Tr. 2327:4-2329:5.
6. Students at Cortez Middle School are required to share textbooks, not only in the classroom, but also across grade levels. The teachers have to stagger the curriculum for each class and grade level in order to coordinate use of textbooks. As a result of the shortage of textbooks, Ms. Bayles is not able to assign homework, which, in turn, impairs Ms. Bayles’s ability to finish the necessary curriculum in one year so that her students are prepared to advance to the next grade level. Bayles Trial Tr. 2329:6-16, 2329:23-2330:6.
7. Cortez Middle School also lacks sufficient technology. The school has two computer labs for 600 students. Additionally, the science department has a portable cart with twenty-four net-books that is shared across sixth, seventh, and eighth grades. This limited access to technology makes it very difficult to meet state standards, which are technology-based. More importantly, Ms. Bayles does not believe that her students have the technological skills needed to be prepared for college or to enter the work force. Bayles Trial Tr. 2331:2-15, 2331:21-2333:2.
8. Due to budget cuts, the Montezuma-Cortez school district offers only a limited number of extracurricular activities for students. Many of the academic extracurricular programs, such as knowledge bowl, have been cut entirely. Participation fees in the remaining extracurricular activities have increased, placing further financial burdens on parents. Bayles Trial Tr. 2333:5-14, 2333:23-2334:8.

9. Ms. Bayles feels that she is not able to be an effective teacher due to the very limited resources at her disposal, which makes her unable to provide students the education they need to break out of the cycle of poverty. Bayles Trial Tr. 2337:2-2339:19.

**C. Anastasia Campbell**

1. Anastasia Campbell teaches high school English and social studies at Nikola Tesla Educational Opportunity Center (“Tesla”) in Colorado Springs School District No. 11. Tesla is an alternative high school with a very high ELL and at-risk population. 8/11/11 Trial Testimony of Anastasia Campbell (“Campbell Trial Tr.”) 2349:9-11, 2352:20-23, 2353:8-25.

2. Ms. Campbell has difficulty meeting state standards and requirements with the level of resources she has. She finds it particularly difficult to prepare students who do not speak English for the CSAP and to meet twenty-first century technology standards, given there is not much technology at the school and most of the students do not have computers at home. Campbell Trial Tr. 2357:15-2358:9, 2362:8-2363:1.

4. Tesla has one computer lab with outdated computers and, although it recently received a grant for a mobile laptop lab with seventeen computers, those computers must be shared among twenty-two teachers and 250 students. Many students get access to a computer at school only twice per month. Campbell Trial Tr. 2361:24-2363:1

5. There are not enough resources for support staff at Ms. Campbell’s school. Last year, Tesla had a half time teacher for ELL. The school has 250 students, 33 percent of whom are English language learner students. Tesla needs more resources for professional development in differentiated instruction. Ms. Campbell is the only ESL, SIOP certified instructor. Campbell Trial Tr. 2363:17-21, 2365:9-14, 2358:12-18, 2365:9-14; 2353:16-24.

6. Some of the textbooks at Tesla are very outdated. Teachers have to borrow books from other classrooms in order to teach certain classes. Campbell Trial Tr. 2359:16-2360:3.

7. There are not enough resources at Tesla for school supplies. Ms. Campbell has to collect old notebooks and pens. Campbell Trial Tr. 2361:7-23.

8. With a high low-income and ELL population and little support staff, Tesla will not meet adequate yearly progress. Campbell Trial Tr. 2365:9-14.

**XXII. THE STATE’S CASE**

1. The State introduced testimony from several members of the State Board of Education and other witnesses for its case-in-chief. However, the Court notes that much of the State’s testimony actually bolstered Plaintiffs’ arguments in this case, and certain other contrary testimony lacked factual support.

**A. Colorado State Board of Education**

1. Duties and Responsibilities. The Colorado State Board of Education (“State Board”) is a group of elected members who exercise the duty of general supervision over public

schools in Colorado. 8/29/11 Trial Testimony of Elaine Gantz Berman (“Gantz Berman Trial Tr.”) 5681:5-11; 8/30/11 Trial Testimony of Robert Schaffer (“Schaffer Trial Tr.”) 5887:9-12.

The State Board’s standing functions include interacting with the Commissioner of Education, providing professional support and guidance to local school districts, addressing issues concerning charter schools, and assessing the impact of state standards. Schaffer Trial Tr. 5883:13-25.

The State Board has the authority to promulgate rules as defined in the Colorado Constitution and by the state legislature. Schaffer Trial Tr. 5888:18-24.

2. Mission and Legislative Priorities. The mission of the State Board is to provide all of Colorado’s children equal access to quality, thorough, uniform, well-rounded educational opportunities in a safe, civil learning environment. Ex. 171, Colorado State Board of Education Strategic Plan 2007-2009, at 4; Gantz Berman Trial Tr. 5681:12-5682:4; Schaffer Trial Tr. 5923:10-14; 8/26/11 Trial Testimony of Dr. Angelika Schroeder (“Schroeder Trial Tr.”) 5182:13-23.

For over the past five years, one of the top legislative priorities of the State Board has been to improve the long-term financial stability of education funding and to develop a comprehensive school finance solution. *See, e.g.*, Ex. 3017, 2006 Legislative Priorities of the Colorado State Board of Education; Ex. 25, The Colorado State Board of Education 2008 Legislative Priorities; Ex. 22, The Colorado State Board of Education 2011 Legislative Priorities; Schaffer Trial Tr. 5894:12-23, 5895:1-10, 5895:20-5896:6, 5898:1-7, 5898:16-21, 5899:20-25, 5900:1-4; Gantz Berman Trial Tr. 5691:25-5692:5.

3. State Board Witnesses: Four members of the State Board testified for Defendants: Angelika Schroeder, Marcia Neal, Elaine Gantz Berman, and Chairman Robert Schaffer.

Ms. Gantz Berman has spent her entire career working on behalf of children, predominantly low-income children. She has been involved in many community organizations, including Colorado Children’s Campaign, the Adoption Exchange, Colorado Common Good, Children’s Health Foundation, and Democrats for Education Reform. In addition to being a member of the State Board, she is on the board of the Colorado Legacy Foundation and provides training and mentoring to school board presidents through the Broad Foundation. Gantz Berman Trial Tr. 5667:14-5668:11, 5670:1-9, 5670:25-5671:8, 5675:13-25.

Ms. Gantz Berman served on the Denver School Board from 1997-2005 and was president of the Denver School Board for four of those years. She believes Denver Public Schools did not have sufficient resources to do its job during those years. Gantz Berman Trial Tr. 5668:12-18, 5690:2-6.

Ms. Gantz Berman believes there is inadequate funding in Colorado’s public school system, particularly for rural school districts. Gantz Berman Trial Tr. 5690:16-22, 5692:23-5693:1.

Ms. Gantz Berman believes a “thorough and uniform” system of free public schools is one in which all students throughout the State have access to the same quality of education whether they are in rural, suburban, or urban settings. She admits that students in Colorado are not getting a “thorough and uniform” education because resources vary significantly from school district to school district based on the ability of the district’s voters to supplement through local taxes the money the district gets from the State. Gantz Berman Trial Tr. 5677:15-5678:12, 5696:9-14.

Ms. Gantz Berman believes that one of the many reasons why Colorado needs to rewrite the School Finance Act is to improve the equity among school districts. Gantz Berman Trial Tr. 5691:14-18.

Ms. Gantz Berman believes the role of the State in education is to define outcomes for students and provide the necessary supports and resources to school districts so that students can meet those outcomes. Gantz Berman Trial Tr. 5707:6-14. *See also* 8/24/11 Trial Testimony of Lieutenant Governor Joseph Garcia (“Garcia Trial Tr.”) 4547:10-12.

Ms. Gantz Berman believes higher salaries and increased professional development are needed to address teacher quality issues. Gantz Berman Trial Tr. 5693:19-5694:7.

Prior to joining the State Board of Education, Angelika Schroeder was a college professor and CPA and member of the Boulder Valley School District Board of Education. She has three degrees from the University of Colorado: a BA in mathematics, an MBA, and a Ph.D. in business administration and accounting. Schroeder Trial Tr. 5176:8-12.

When Dr. Schroeder was a member of the BVSD Board of Education, the Board was asked whether it would provide financial support to the Plaintiffs in the *Lobato* lawsuit. Dr. Schroeder testified she does not remember how she voted, but believes she would have voted in favor of providing funding for the *Lobato* litigation. Schroeder Trial Tr. 5180:17-5181:19.

Dr. Schroeder agrees with the 2011 legislative priority of the State Board to “[s]upport efforts to prevent further cuts to k-12 education funding.” She believes cutting budgets wrecks chaos on school districts; they must provide fewer services to students and cannot give raises to teachers and staff, which impacts student achievement. Schroeder Trial Tr. 5183:25-5184:8, 5186:7-5187:9; Ex. 22.

Mr. Schaffer served in the United States House of Representatives from 1997 until 2003. While in Congress, Mr. Schaffer served on the education committee. He proposed a standing series of amendments to the Individuals with Disabilities Education Act (IDEA), in which he proposed shifting billions of federal dollars into IDEA. Mr. Schaffer sought these additional funds because he believes IDEA is the largest unfunded mandate by the federal government. Schaffer Trial Tr. 5878:11-13, 5878:18-21, 5879:9-5880:18.

Mr. Schaffer believes that the current system of public education funding in Colorado is “through and uniform” merely because the School Finance Act passed through the regular legislative process. Mr. Schaffer’s perspective is unpersuasive and not shared by the vast majority of witnesses at trial. Schaffer Trial Tr. at 5890:18-5891:15.

Mr. Schaffer believes that, regardless of the dollar amount allocated to education, the thorough and uniform requirement is met so long as the funds are distributed according to the Public School Finance Act. In fact, Mr. Schaffer believes that if there were only \$1 million allocated to the school finance system (an average of approximately \$1.25 per pupil), there would be a thorough and uniform system as long as the million dollars was distributed equitably through the school finance formula. Schaffer Trial Tr. 5925:4-8, 5925:9-5926:11.

Mr. Schaffer does not believe well-rounded educational opportunities, educational outcomes, or compliance with state mandates, such as content standards and accreditation requirements, are relevant to the determination of whether the State is providing a thorough and uniform education. Schaffer Trial Tr. 5923:15-5924:1-6.

Mr. Schaffer believes that, if a parent felt her child's educational needs were not being met, the parent would move to a place where those needs could be met if she loves her child. Schaffer Trial Tr. 5916:1-25.

#### **B. Key Admissions by Other Witnesses for Defendants**

1. Many of the State's witnesses agree that, while quality educational opportunities are necessary for a thorough and uniform education, results or outcomes are equally if not more important in assessing whether a thorough and uniform education is being provided. It is simply not enough to enroll children in school. The important thing is to graduate those students remediation free. 9/1/11 Trial Testimony of John Andrews ("Andrews Trial Tr.") 6369:10-6370:22; Garcia Trial Tr. 4567:2-15, 4569:4-20; 8/26/11 Trial Testimony of William Moloney ("Moloney Trial Tr.") 5413:20-5414:6, 5433:8-12; 9/2/11 Trial Testimony of Senator Keith King ("King Trial Tr.") 6773:14-22, 6804:24-6805:3.

2. Lieutenant Governor Garcia does not believe we have a thorough and uniform system of education for *all* students in the State, particularly for at-risk and English language learner students. Garcia Trial Tr. 4529:3 -14, 4532:11-21, 4533:10-15.

3. Mike Miles, the only superintendent to testify for State, believes a "thorough and uniform" system of public schools is one in which every school district has the resources it needs to provide an adequate education to all of its students. Mr. Miles does not believe we have a "thorough" system. 8/30/11 Trial Testimony of Mike Miles ("Miles Trial Tr.") 5858:6-13, 5859:4-6.

4. According to former state Senator Andrews, a "uniform" education means that any child in Colorado, regardless of his or her family background or geographic location, receives the same learning opportunities and is within reach of the same educational outcomes as any other child in the state. Andrews Trial Tr. 6369:10-25.

5. Lieutenant Governor Garcia believes Colorado's system of public schools is not "uniform" because not every student has access to the same opportunities. Garcia Trial Tr. 4608:24-4609:2.

6. Former CDE Associate Commissioner Richard Wenning agrees that just because a school district meets all of the performance indicators on a district performance framework



does not mean that the district is providing a thorough and uniform education. Likewise, CSAP results alone do not indicate that a student has received a thorough and uniform education. 8/24/11 Trial Testimony of Richard Wenning (“Wenning Trial Tr.”) 4694:14-4695:6.

7. In March 2010, the Colorado Legacy Foundation and Colorado Department of Education (CDE) jointly applied for a grant to develop and implement CDE’s educator effectiveness initiative. In the application, they noted, “the current educational system does not adequately provide for every child.” 8/26/11 Trial Testimony of Nina Lopez (“Lopez Trial Tr.”) 5244:23-5245:12; Ex. 3004, Joint Proposal of the Colorado Department of Education and the Colorado Legacy Foundation to the Rose Community Foundation, March 17, 2010, at 2.

8. Several of the State’s witnesses acknowledged that there are significant inequalities in opportunities and outcomes in our State. Poor kids in poor areas often receive a different quality of education than wealthy kids in wealthy areas. As a result, low-income children and children from ethnic minorities are not doing as well as their white peers or as well as they should. *See, e.g.*, Andrews Trial Tr. 6353:16-6354:16; Garcia Trial Tr. 4532:16-21, 4534:13-17, 4567:21-4568:1, 4608:7-18; 9/2/11 Trial Testimony of Andrew Romanoff (“Romanoff Trial Tr.”) 6856:2-6857:2.

9. Several State witnesses also admitted there is insufficient funding for public schools in Colorado. Even Dr. Moloney admitted there are underfunded school districts in the state of Colorado. *See e.g.*, Gantz Berman Trial Tr. 5692:23-5693:1, Garcia Trial Tr. 4527:3-8; Schroeder Trial Tr. 5189:22-25; Moloney Trial Tr. 5437:23-25.

10. Lieutenant Governor Garcia believes financial resources are critical in the delivery of quality education opportunities for all students. He believes increased funding for education could improve educational opportunities depending upon how the money is spent. If the additional money is spent appropriately, it could lead to a better quality education. Garcia Trial Tr. 4526:17-22, 4538:14-23, 4607:11-21.

11. Lieutenant Governor Garcia further believes it is the obligation of the State to ensure there is sufficient funding for public education. The State also has an obligation to help close the achievement gap by setting policy and providing funding to implement those policies. Garcia Trial Tr. 4507:22-4508:7, 4513:1-14, 4516:3-11.

12. Colorado Commissioner of Education Robert Hammond acknowledged student achievement in the State is not where it should be and that the current situation needs to change. He believes the Colorado public education funding system should adequately, reliably, and equitably meet the education needs of those students served by the system. Hammond Trial Tr. 6578:10-18, 6579:5-9.

13. Defendants’ expert, Rob Stein, testified by deposition that the State of Colorado is not providing an adequate education to all public school children. He believes the following resources are necessary to improve the performance of low-performing students in urban school districts: more instructional time, more pull-out or targeted support, more social and emotional health services, and more truancy prevention. All of these resources require additional money.

6/17/11 Deposition Testimony of Dr. Rob Stein (“Stein Depo. Tr.”) 29:14-16, 30:13-15, 149:5-20.

14. Dr. Stein believes that we are never going to reach satisfactory proficiency rates in our state unless we address the entire school finance system. Stein Depo. Tr. 166:17-167:14.

### **C. Important Weaknesses in the Testimony of Defendants’ Witnesses**

1. Although some of the State’s witnesses’ testimony could at first blush suggest support for the State’s case, much of that testimony was questionable.

Many of the State’s witnesses offering such testimony are unfamiliar with the funding or programs available in the Plaintiff School Districts or the districts where the Individual Plaintiffs reside. Andrews Trial Tr. 6383:19-23; Garcia Trial Tr. 4542:19-4543:6; Moloney Trial Tr. 5405:14-5407:17; 8/25/11 Trial Testimony of Dr. Erik Hanushek (“Hanushek Trial Tr.”) 5155:18-5156:10.

2. Not one State witness was able to identify specific inefficiencies in the Plaintiff School Districts or any school district in the State that is wasting money. Commissioner Hammond is unaware of any district expenditure that is not related to fulfilling the principles of the “thorough and uniform” clause. Gantz Berman Trial Tr. 5692:11-14; 8/31/11 Trial Testimony of Dr. Edward Steinberg (“Steinberg Trial Tr”) 6244:3-7; Garcia Trial Tr. 4554:23-4555:4, 4608:1-6; King Trial Tr. 6799:8-16; Hammond Trial Tr. 6559:17-23.

3. Some of the State’s witnesses hold extreme views on education and school funding that are inconsistent with the Colorado Constitution and/or state reform legislation. For example, Senator Andrews’ vision for the future is a separation of schools and state similar to the separation of church and state in our nation. He has signed a pledge calling for the end of government involvement in education. He reveres the educational system we had in this country in the 1700s because there were few government operated schools. He fails to mention that our schools did not educate whole segments of the population, including women and people of color, at that time. Senator Andrews also believes that students should be taught exclusively in English. Andrews Trial Tr. 6357:12-6360:14, 6376:13-6377:1, 6382:15-6383:3, 6387:1-6; Ex. 7404, Proclamation of the Alliance for the Separation of School and State.

4. Moreover, Senator Andrews was not in the state legislature when the 1994 Public School Finance Act (PSFA) was designed and enacted. He has never carried the PSFA. He admits he is not an expert on the PSFA, never learned the intricate workings of the PSFA, and has only general familiarity with it by virtue of being in the General Assembly for six years. His opinions on the PSFA are based on his impressions about the work that went into its creation five years prior to his becoming a legislator. Andrews Trial Tr. 6361:12-17, 6361:23-6362:2, 6362:20-6363:24, 6375:7-20.

5. Robert Schaffer believes that the CSAP assessment is an incomplete measure of student progress because it is designed to measure the performance of an institution; it is not particularly centered on the performance of a child or the preparation of a child. According to Mr. Schaffer, parental satisfaction with their children’s education outcomes is the “first and best” measure of student achievement outcomes. Schaffer Trial Tr. 5902:15-23, 5903:3-10.

6. Jo O'Brien, CDE's Assistant Commissioner of Standards and Assessment, is aware that school districts, particularly those in rural areas, need faster Internet connectivity and newer hardware, but does not think that technology is necessary to accomplish the new standards or to prepare a student to be workforce ready. Yet, Ms. O'Brien testified that if she were a hedge fund manager, she would invest in high-speed Internet access so that all students, regardless of where they come from, have even faster access to experiences, information, words, and decoding opportunities. She further believes that states that have invested deeply in technology, such as Wyoming and Utah, have an advantage. 8/24/11 Trial Testimony of Josephine O'Brien ("O'Brien Trial Tr.") 4801:1-4802:1, 4771:11-16, 4803:6-20.

7. Dr. Moloney believes high school diplomas are arbitrary measures that have little value. He also believes standardized testing is a disaster and educational failure. Dr. Moloney additionally believes the Colorado Growth Model is a tragedy of good intentions. He further believes the postsecondary workforce readiness definition adopted by the Colorado Department of Education and Department of Higher Education after convening a task force has no meaning and represents shoddy thinking. Moloney Trial Tr. 5354:22-5355:13, 5380:15-17, 5381:1-3, 5383:7-9, 5385:18-5387:8.

8. Dr. Moloney's testimony is questionable. His trial testimony was based in large part on a policy brief he wrote for the Centennial Institute. The arguments in the policy brief are not based on research or data. For example, his opinions about Utah's funding levels, achievement, and teacher quality are based on what "reputable people" have told him rather than an examination of any data. He does not know how the teacher quality system or the student demographics in Utah compare to that of Colorado. Nor can he cite to any NAEP data that supports his opinion about achievement in the two states. His opinions about Catholic schools are also based on no specific data or research. The policy brief was not peer-reviewed or subject to any scientific rigor. Moloney Trial Tr. 5326:7-5327:15, 5350:20-22, 5362:20-5363:13; 5365:8-16, 5371:9-12, 5395:15-23, 5397:7-13, 5421:5-13; Ex. 5004, Much Better Schools on Much Lower Budgets: A Primer for Colorado Policymakers.

9. Dr. Moloney does not know whether any of the examples he cites in his policy brief of schools doing "more with less" have actually resulted in any achievement gains. Moloney Trial Tr. 5397:14-5400:21.

10. Dr. Moloney believes schools should be reconstituted along the lines of parochial or Kipp schools, which he considers to be among the most successful schools. Kipp schools are distinguishable for two reasons. First, a recent national study on KIPP found that its schools serve fewer students with disabilities and students classified as English language learners. Second, Colorado Kipp schools report that public funding does not cover all the costs of running its schools, leaving a significant shortfall that is covered by private philanthropy. On average, Colorado Kipp schools receive \$1600 more per student than the state per pupil revenue. Parochial students do not take the same standardized tests as public school students, which means there is no comparative data on how well they achieve. Moloney Trial Tr. 5340:21-5341:11, 5430:7-14; Ex. 6518, Kipp: Colorado Schools; Ex. 7720, What Makes Kipp Work? A Study of Student Characteristics, Attrition, and School Finance, March 2011, at i.

11. Dr. Moloney has strong opinions on class size, but has engaged in very modest analysis of class size studies himself. Lieutenant Governor Garcia believes Dr. Moloney's arguments regarding class size are counter-intuitive. Garcia Trial Tr. 4574:4-19; Moloney Trial Tr. 5372:8-5373:5.

12. Defendants' national expert, Dr. Erik Hanushek, has testified for the defendants in approximately nineteen school finance cases and never on behalf of the plaintiffs. In each of the cases, he has testified that there is no consistent relationship between spending on schools and student achievement. In many of the cases, the courts disagreed with Dr. Hanushek's expert opinion and found for the plaintiffs. In some of the cases, the courts actually found the data underlying Dr. Hanushek's opinions to be questionable or problematic and found him to lack credibility. Hanushek Trial Tr. 5069:4-5, 5106:3-5114:14, 5115:3-5; Ex. 7702, Curriculum Vitae of Eric A. Hanushek, at 24; Ex. 7721, *Claremont School District v. Governor*; Ex. 7722, *Committee for Educational Equity v. State of Missouri*; Ex. 7723, Opinion of the Justices of the Supreme Court of Alabama; Ex. 7724, *Campaign for Fiscal Equity v. State of New York*; Ex. 7726, *Montoy v. State*; Ex. 7729, *McCleary v. State of Washington*.

13. Dr. Hanushek arrived at his conclusion that achievement across Colorado school districts bears little relationship to spending differences before he did any review or statistical analysis of Colorado data and before he spoke to any education officials in Colorado. In fact, his expert opinion in this case is essentially the same as the one he rendered for the State of Colorado in a public education case ten years ago. Hanushek Trial Tr. 5058:5-5059:6, 5059:23-5060:3, 5160:9-21.

14. Dr. Hanushek did not visit any Colorado school districts or speak with any administrators, school board members, teachers, students, or family members in any school district in the State in connection with his work in this case. Nor did he review any Colorado school district budget or specific district policy. Hanushek Trial Tr.5048:13-5050:2.

#### **D. Schools/Districts Cited by Defendants' Witnesses as Successful**

1. The limited number of schools and school districts cited by Defendants' witnesses as successful received additional funding above per pupil operating revenue and/or has not yet met state standards and requirements.

2. Harrison School District. Mike Miles, the Superintendent of Harrison School District No. 2 ("Harrison"), is the only school district administrator who testified at trial for Defendants. Interestingly, Mr. Miles has a personal, financial interest in maintaining the current school funding system because he owns and operates a company that depends on districts' paying for services the State cannot afford to provide. Miles Trial Tr. 5788:10-13, 5851:18-21, 5852:5-5853:17; 5/16/11 Deposition Testimony of Dan Gerken ("Gerken Depo Tr.") 65:3-66:16, 81:20-84:25.

Harrison has a high population of at-risk students, and has been making some progress in growth since Mr. Miles became the superintendent. However, Harrison is still not meeting state requirements in many areas, including academic achievement, academic growth gaps, and post-secondary and workforce readiness, and in Mr. Miles's words, has "a long way to go." The

district is accredited with an improvement plan and continues to have significant achievement gaps. Miles Trial Tr. 5799:18-22, 5844:19-5850:18, 5826:24-5827:3, 5845:19-23; Ex. 10446, One-Year District Performance Framework Report 2010 for Harrison 2; Ex. 10447, Three-Year District Performance Framework Report 2010 for Harrison 2.

Mr. Miles testified that he believes he can come close to meeting the goals in his district's strategic plan with the current level of funding assuming no additional budget cuts. His district's goal is notably a seventy percent college and career readiness rate, which falls short of the goal in CAP4K that *all* students graduate workforce and college ready. Mr. Miles did *not* testify that he is able to meet all state requirements with the current level of state funding; his district is not currently doing so. Nor did he testify that he would be able to meet the limited goals in his district's strategic plan if there are more budget cuts, which are expected. On the contrary, he testified that further budget cuts would adversely impact instruction and the district's ability to get all kids prepared for post-secondary education or the workplace. Miles Trial Tr. 5806:10-21, 5808:10-24, 5839:22-25, 5843:10-20; Ex. 10446; Ex. 10447.

Harrison School District pays its teachers significantly more than most districts in the State, particularly rural districts. A proficient teacher makes \$48,000, which in the Pikes Peak region, typically takes a teacher twelve years to make. Miles Trial Tr. 5814:22-5815:9.

Harrison School District needs better technology in order for kids to be prepared for the 2020 workplace and has significant capital improvement needs. Miles Trial Tr. 5861:20-25, 5862:7-21.

3. Fountain Fort Carson School District. Lieutenant Garcia cited Fountain Fort Carson School District as an example of a district that has been able to address achievement gaps well without additional funding. In fact, Fountain Fort Carson received almost \$14 million in federal impact aid because of its military installation. Garcia Trial Tr. 4518:23-4519:25, 4603:6-15; Miles Trial Tr. 5794:18-25.

4. Bruce Randolph School. Kristin Waters, the former principal of the Bruce Randolph School in Denver, testified -- and Defendants have argued -- that she made the gains she did at Bruce Randolph with no additional funding. Bruce Randolph's budget from FY 04-05 to FY 08-09 indicates otherwise. During her tenure, Bruce Randolph received fifteen percent more than the per pupil revenue from the State from other funding sources. For example, in 2008, Bruce Randolph received a \$100,000 private grant from the Piton Foundation, as well as smaller private grants from the Daniels Fund and Colorado Succeeds. Ex. 10,509, Bruce Randolph Budget Summary FY 04-05 - FY 08-09; 8/25/11 Trial Testimony of Kristin Waters ("Waters Trial Tr.") 4875:6-25. *See also* 9/2/11 Rebuttal Trial Testimony of David Hart, 6801:9-8802:24, 4875:6-4876:12, 4878:9-12; 9/2/11 Closing Statement of Jon Fero, 6966:25-6967:10.

While Dr. Waters was principal of Bruce Randolph School, the school's student achievement and proficiency rates never met state standards. When Dr. Waters left Bruce Randolph School in 2009, student academic achievement was below both state and district standards for academic achievement and post-workforce readiness and continues to be below state expectations. Waters Trial Tr. 4876:16-21, 4917:25-4918:12, 4925:3-7, 4930:25-4931:2;

Exhibit 6605, Colorado's Unified Improvement Plan for Bruce Randolph Middle School for 2010-11.

After President Obama recognized Bruce Randolph School in his January 2011 State of the Union Address, Diane Ravitch of the New York Times, a person with a great deal of experience in education research, questioned and criticized the actual student achievement levels at Bruce Randolph School. Waters Trial Tr. 4848:8-4849:3.

Although 140 students started as ninth graders at Bruce Randolph in 2006, only about seventy graduated in 2010. The first graduating class of Bruce Randolph was not at the state mandated proficiency level. Bruce Randolph has no way to track the graduation rates or success of students who leave or transfer out of the school. Waters Trial Tr. 4889:11-17, 4891:19-4892:2, 4920:17-4921:23.

As a high school, Bruce Randolph does not have many of the things that keep students enrolled in more traditional high schools, such as sports and clubs. Waters Trial Tr. 4884:23-4885:7.

The State argued at trial that more schools should seek innovation status under the Innovation Schools Act<sup>12</sup>, which would give them autonomy from collective bargaining agreements, and that by doing so, they could make the types of achievement gains made at Bruce Randolph School. However, the majority of Dr. Waters' work at Bruce Randolph took place before the school obtained autonomy in 2008 and while the school was still participating in the Denver Classroom Teachers Association collective bargaining agreement. Moreover, Dr. Waters does not believe innovation status is appropriate for all schools in the state. In fact, she believes that schools can succeed without innovation status. She herself was willing to take a job as the principal of South High School knowing that innovation status is not an option at that school. Waters Trial Tr. 4896:9-23, 4903:5-8, 4923:1-4924:11, 4924:17-23.

Dr. Kristen Waters' professional experience in Colorado is limited to the Denver Public School District ("DPS"). She has no knowledge of the state funding or budget decisions associated with any school district other than DPS. Waters Trial Tr. 4838:17-22, 4905:24-4906:2, 4911:21-4913:18, 4915:11-24.

5. Manual High School. Dr. Rob Stein, the former principal of Manual High School, was not able to achieve success at Manual based only on the per pupil revenue he received from the State. He raised more than one million dollars over three years, an unprecedented fundraising amount for a Denver high school. Ex. 6609, CV of Rob Stein.

Under Dr. Stein's leadership, Manual High School students were doing better than state averages in terms of growth. However, he is not satisfied with the educational outcomes of Manual's students and acknowledges that they have a long way to go until they are universally proficient and ready for college and/or a career. Stein Depo. Tr. 94:20-96:6.

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<sup>12</sup> The Innovation Schools Act provides districts and schools with some autonomy from rules and regulations outside of those that address safety, disabilities, and civil rights. Wenning Trial Tr. 4672:1-4673:5.

6. Colorado Springs Early Colleges. Senator Keith King's school, Colorado Springs Early Colleges, relies on private grants to run several of its programs. For example, its summer school program and bus transportation are funded by the Daniels Fund. The school receives approximately \$700 per pupil in additional private funding. King Trial Tr. 6777:22-6778:1, 6783:18-6784:1; Ex. 10,504.

## CONCLUSIONS OF LAW

### **I. THE CLAIMS, THE ISSUES, AND THE STANDARD OF PROOF**

This is an action for declaratory and injunctive relief brought pursuant to C.R.C.P. 57 and 65 and the Uniform Declaratory Judgments Law, C.R.S. §§13-51-101, *et seq.*

Plaintiffs claim that as a result of irrational and inadequate funding of public education, the Defendants are failing to establish and maintain a "thorough and uniform system" of public education and that the public school finance system fails to provide the financial resources necessary for local boards of education to exercise control of instruction in their schools. Therefore, Plaintiffs claim that Colorado's public school finance system violates their rights guaranteed by article IX, sections 2 and 15 of the Colorado constitution.

This case is on remand from the Colorado Supreme Court decision in *Lobato v. State of Colorado*, 218 P.3d 358 (CO 2009) (*Lobato*). The Supreme Court summarized the principal points in its ruling as follows:

To be successful, [Plaintiffs] must demonstrate that the school finance scheme is not rationally related to the constitutional mandate of a "thorough and uniform" system of public education. The trial court must give significant deference to the legislature's fiscal and policy judgments. The trial court may appropriately rely on the legislature's own pronouncements to develop the meaning of a "thorough and uniform" system of education. If the court finds that the current system of public finance is irrational, then the court must provide the legislature with an appropriate period of time to change the funding system so as to bring the system in compliance with the Colorado Constitution.

218 P.3d at 374-75 [citation omitted].

Therefore, the issue before this Court is whether the Colorado system of public school finance "is not rationally related to the constitutional mandate of a 'thorough and uniform' system of public education."

The Supreme Court also identified the Plaintiffs' general allegations that constitute an appropriate and justiciable case:

[P]laintiffs allege that the [Public School Finance Act] base funding amount and statutory increases are based on "historical compromise," as opposed to a rational determination of the amount it would cost to implement the "thorough and uniform" mandate or the cost of providing an education that meets the standards and goals mandated by education reform efforts. Citing an independent cost study, plaintiffs allege that the current funding levels do not allow students the opportunity to meet the standards and objectives established in

education reform legislation. In addition, plaintiffs allege that funding for underserved student populations and capital construction is insufficient and irrationally dependent on local property taxes. Plaintiffs further allege that the state's public school financing system is unconstitutionally irrational because it prevents the district from implementing the education clause mandate at a local level.

218 P.3d at 375.

Pertinent to the foregoing, in its Order dated July 14, 2011, this Court has previously ruled that:

In the name of the Education Clause, the General Assembly has established a comprehensive system of educational goals, methods, and measures, all of which it requires school districts to implement successfully. A system intended to finance a constitutional mandate cannot be rationally related to that purpose if it is created and funded without reference to the costs of providing the mandated services.

The Court further held that the “General Assembly has expressly linked its duties under the Education Clause with student performance”, *citing* C.R.S. §22-30.5-30(1), and that, therefore:

Under the standards-based education system adopted by the General Assembly and implemented by the Defendants, educational opportunity is defined *in part* by statutorily mandated academic content standards and measured by student achievement or qualitative outcomes. It is but one factor to consider in determining whether the Defendants have met their constitutional duty.

This Court has previously ruled that the following issues raised by the Defendants are not at issue in this case: (1) that public education is not the only required or important state service; (2) that it is rational for the General Assembly to “control the public debt”; (3) that it is rational for the General Assembly to “further local control over instruction” and (4) that it is rational for the General Assembly to “balance appropriations among public services.”

The Court has also ruled that the TABOR<sup>13</sup> and Gallagher<sup>14</sup> amendments do not conflict with the mandate of the Education Clause; that TABOR was not intended to restrict the growth of government; and that TABOR should not be interpreted to cripple basic government services, such as the constitutional mandate to establish and maintain a thorough and uniform system of free public schools. Given the remedy specified by the Supreme Court, the interpretation of the Education Clause does not need to be harmonized with either TABOR or the Gallagher Amendment, nor does the Court need to reach the issue of the TABOR revenue restrictions.

The Court will analyze the evidence presented at trial in light of the legal standards presented above. The analysis begins with the meaning of the thorough and uniform mandate;

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<sup>13</sup> The “Taxpayers Bill of Rights”, Colo. Const., art. X, §20.

<sup>14</sup> Colo. Const., art. X, §3(1)(b).



the education accountability and standards-based education systems adopted by the General Assembly pursuant to that mandate; the public school finance system, including the Public School Finance Act of 1994 (the PSFA),<sup>15</sup> “categorical” funding programs, and capital construction funding; the relationship between the education system and the school finance system; the cost to fund the education system; the adequacy of the funding for public education; the adequacy of funding for underserved populations of students; the achievement levels of Colorado students as measured by the standards set by the education system; the effect of the current funding system and levels on Colorado school districts; and the effect of the current funding system and levels on the individual Plaintiffs.

## II. THE CONSTITUTIONAL PROVISIONS AT ISSUE

The Education Clause provides that the “general assembly shall . . . provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state.” The “thorough and uniform system” mandate is a substantive guarantee of a constitutionally adequate, quality education for all Colorado residents of school age. *Lobato*, 218 P.2d at 371. The General Assembly adopted this interpretation over a decade ago:

[The Education Clause] 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*.

C.R.S. §22-30.5-301(1) (emphasis added).

As an integral part of its education system, the State must provide sufficient financial resources for the public schools in a manner that is rationally related to the accomplishment of mandate of the Education Clause. *Lobato*, 218 P.3d at 363. A school finance system that fails to provide funding sufficient to establish and maintain a thorough and uniform system of free public schools violates the Education Clause. The Public School Finance Act of 1994 (the PSFA) “is enacted in furtherance of the general assembly’s duty under [the Education Clause] to provide for a thorough and uniform system of public schools throughout the state”. C.R.S. §22-54-102(1); *see Board of County Comm’rs of Douglas County CO v. Bainbridge, Inc.*, 929 P.2d 621, 709 (Colo. 1997) (“The purpose of the Public School Finance Act of 1994 . . . is to further the General Assembly’s constitutional duty to provide a thorough and uniform system of public schools throughout the state.”)

The Local Control Clause directs the general assembly to “provide for the organization of school districts of convenient size”, governed by locally elected boards of education, and invests the directors of the local boards of education with the “control of instruction in the public schools of their respective districts.” Control of instruction by locally elected school boards (often referred to as “local control”) is a necessary element in meeting the substantive mandate of the Education Clause. *Lobato*, 218 P.3d at 275; *see Owens v. Colorado Congress of Parents, Teachers and Student*, 92 P.3d 933, 938-9 (CO 2004). In the School District Organization Act of 1992 the General Assembly declared that:

<sup>15</sup> C.R.S. §22-54-101, *et seq.* (2011). All citations to C.R.S. hereinafter are to the 2011 edition, unless otherwise specifically stated.

[T]his article is enacted for the general improvement of the public schools in the state of Colorado; for the equalization of the benefits of education throughout the state; *for the organization of public school districts in the state . . . in order to provide for the maintenance of a thorough and uniform system of free public schools throughout the state*; and for a more responsible expenditure of public funds for the support of the public school system of the state.

§22-30-102(1) (emphasis added).

In *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1022-23 (CO 1982) (*Lujan*), the Colorado Supreme Court held that preserving local control of instruction was the legitimizing state purpose for the then-current system of public school finance. A system of public school finance that fails to provide sufficient financial resources to the school districts to permit local boards of education to provide the services, instructional programs, materials, and facilities necessary to meet the substantive mandate of the Education Clause violates the Local Control Clause.

### **III. THE DEFINITION AND MEASURE OF A THOROUGH AND UNIFORM SYSTEM OF PUBLIC SCHOOLS**

The Supreme Court directed the trial court to “develop the meaning” of the Education Clause in light of the legislative pronouncements of the general assembly. As discussed in detail in Section II of the Findings of Fact, the General Assembly has frequently interpreted the “thorough and uniform” mandate both at a general level and in the extensive and detailed provisions of the “standards-based education system” that has revolutionized public education during that time.

Following the General Assembly’s lead, the Court concludes that at a basic level of articulation a thorough and uniform system of public schools must assure that all students graduate with the knowledge and skills necessary to (1) participate effectively as citizens of Colorado and the United States; (2) engage productively and competitively in the workforce; and (3) be successful lifelong learners.

This statement of the purpose of public education is characteristic of the American vision of public education cited in other courts:

In large measure, the explanation for the special importance attached to education must rest, as the Court recognized in *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) on the facts that ‘some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system . . .,’ and that ‘education prepares individuals to be self-reliant and self-sufficient participants in society.’

*San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 112 (1973), Marshall, J., dissenting [footnote omitted].

In service of this purpose, the national government has provided political and material support for public education throughout the development of the nation. Colorado’s admission to the Union was conditioned upon its promise to constitutionally secure the right to an education to

its citizens. *Pauley v. Kelley*, 162 W.Va. 672, 677, 255 S.E.2d 859, 864 (1979).<sup>16</sup> From the beginning of the nation, each state was granted federal lands in trust for the use of the common or public schools. *Brotman v. East Lake Creek Ranch, L.L.P.*, 31 P.3d 886, 887 (Colo. 2001). The Colorado Enabling Act dedicates two sections in every township to that purpose. CO Enabling Act §7.

The Education Clause was not adopted in a societal vacuum. It is inescapably obvious that the drafters of the Colorado constitution were motivated by the same vision as our nation and neighboring states. In discussing their constitution (Wyo. Const. art. 7, §§ 1 and 9), the Wyoming Supreme Court stated that:

At the time these clauses were used in the wording of the education article at Wyoming's constitutional convention in 1889, similar education provision were found in every State constitution, reflecting the contemporary sentiment that education was vital and legitimate state concern, not as an end in itself, but because an educated populace was viewed as a means of survival for the democratic principles of the state.

*Campbell County Sch. Dist. v. State of Wyoming*, 907 P.2d 1238, 1259 (Wyo. 1995) [citations omitted]. From this purpose, the Wyoming court derived the basic mandate of their state's education clauses:

[W]e can conclude the framers intended the education article to provide an education system of a character which provides Wyoming students with a uniform opportunity to *become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually.*

*Id.* [emphasis added; citation omitted].

It is beyond dispute that since at least 1993 the Colorado General Assembly has linked this policy to student achievement of statewide academic content standards as measured by statewide assessments.

Every resident of the state six years of age or older but under twenty-two years of age has a fundamental right to a free public education that assures that such resident shall have the opportunity to achieve the content standards adopted pursuant to this part 4 [Education Reform] 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) [emphasis added].<sup>17</sup>

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<sup>16</sup> Citing 1-8 *The Federal and State Constitution, Colonial Charters, and Other Organic Laws of the States, Territories, and the Colonies Now or Heretofore Forming the United States of America* (F. Thorpe ed. 1909).

<sup>17</sup> This provision was originally codified in 1993 as §22-53-403(2).

The General Assembly has also established the standards-based education system as the foundation of the system of statewide “education accountability” by which it measures the performance of public school districts in fulfilling the thorough and uniform mandate:

[An effective system of statewide education accountability] [h]olds the state, school districts, the institute, and individual public schools accountable for performance on the same set of indicators and related measures statewide, ensures that those indicators and measures are aligned through a single accountability system, to the extent possible, that *objectively evaluates 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, and, as appropriate, rewards success and provides support for improvement at each level.

C.R.S. §22-11-102(1)(d) (emphasis added).

Thus, the General Assembly has fundamentally linked the Education Clause mandate to the standards-based education system and specifically to student attainment of the academic standards as demonstrated by performance on statewide assessments. The Court in *Lobato* particularly noted that the State’s “education reform statutes with proficiency targets and content standards” may be used to evaluate the constitutionality of the legislature’s actions. *Lobato*, 218 P.3d at 372, fn. 17. At the very least, the public school finance system must be rationally related to accomplishing the requirements of the State’s own standards-based education and education accountability systems, up to and including the most recent enactments, CAP4K, the Education Accountability Act of 2009, and SB 10-191, the teacher effectiveness legislation.

Other state courts have held that accountability standards are a mandatory element of the State’s compliance with its education clause. In *Claremont School District v. Governor*, 147 N.H. 499, 795 A.2d 744, 751-52 (NH 2002), the New Hampshire Supreme Court found that:

Accountability means that the State must provide a definition of a constitutional adequate education, the definition must have standards, and the standards must be subject to meaningful application so that it is possible to determine whether, in delegating its obligations to provide a constitutionally adequate education, the State has fulfilled its duty. . . . If the State cannot be held accountable for fulfilling its duty, the duty creates no obligation and is no longer a duty.

Stating that “[i]t is thus widely accepted that establishing standards of accountability is part of the State’s duty to provide a constitutionally adequate education”, the New Hampshire Court cited numerous other jurisdictions that include standards and accountability in determining a constitutionally adequate education: *McDuffy v. Secretary of Executive Office of Education*, 615 N.E.2d 516 (MA 1993); *DeRolph v. State*, 728 N.E. 993, 1019 (OH 2000); *Abott by Abott v. Burke*, 693 A.2d 417, 428 (NJ 1997); *Tenn. Small School System v. McWhereter*, 894 S.W.2d 734 (TN 1995); *Board of Educ. of Boone County v. Bushee*, 889 S.W.2d 809, 816 (KY 1994).

The Kansas Supreme Court has held that a rational school finance formula must be funded to assure student “outputs:”

Without consideration of outputs, any study conducted by post audit is doomed to be incomplete. Such outputs are necessary elements of a constitutionally adequate education and must be funded by the ultimate financing formula adopted by the legislature. [*Montoy v. State of Kansas*, 278 Kan. 769, 773, 120 P.3d 306, 309 (KS 2003)] (quoting K.S.A. 72-6439) (constitutionally suitable education is one in which “schools meet the accreditation requirements and [students are] achieving an ‘improvement in performance that reflects high academic standards and is measurable.’”)

*Montoy v. State of Kansas*, 112 P.3d 923, 939 (KS 2005). See also *Campbell County School District, supra*, 907 P.2d at 1261-63, where the Wyoming Supreme Court cited to school district, school, and student performance standards and assessments in evaluating the “thorough and efficient” public education required by the Wyoming constitution.

This Court concludes that the standards-based education system described in some detail in the Findings of Fact and including the pervasive system of content standards, assessments, school and school district accreditation and accountability, and teacher effectiveness standards constitute the current legislative specification of the thorough and uniform system of public education mandated by the Education Clause. For purposes of this litigation, the Court accepts this legislation as the minimum standard against which the rationality of the system of public school funding must be measured.

#### **IV. THE SCHOOL FINANCE SYSTEM AND THE EDUCATION SYSTEM ARE NOT RATIONALLY RELATED TO EACH OTHER**

The *Lobato* Court used the terms “rational” and “irrational” with respect to the “relationship” between the finance system and the thorough and uniform system of public education. Rational means “based on or in accordance with reason or logic;” irrational by contrast is “not logical or reasonable.” Logic refers to “reasoning conducted or assessed according to strict principles of validity.” Relationship means “the way in which two or more concepts, objects, or people are connected.” Concise Oxford American Dictionary (2006). Thus, the Court must analyze whether the public school finance system is connected to the thorough and uniform education system in a manner that is both logical and reasonable.

Therefore, the public school finance system must at least be rationally related to accomplishing the mandates of the standards-based education system. This alignment must be made in a disciplined and transparent manner. A system of public school finance that is rationally related to meet the mandate of the thorough and uniform clause must (1) identify the standard and measure of the education to be provided; (2) determine the resources needed to accomplish that goal; and (3) institute and fund a finance system that provides the necessary resources.

The standards-based education system addresses the first of these requisites – it sets a highly articulated standard of student achievement as the measure of a thorough and uniform system of public schools. However, no effort has been made to address the second and third. The State and the State Board of Education have defaulted in their constitutional responsibility to

align the school finance system to the mandates of the Education Clause as implemented through the standards-based education and accountability systems.

The Court has found that in 1993 the General Assembly adopted HB 93-1313 that committed the State to develop and implement standards-based education as the anchor to the educational accountability system. HB 93-1313 was the foundation for the transformation of public education in Colorado. In 1994, the General Assembly adopted the Public School Finance Act of 1994 (the PSFA), the centerpiece of the school finance system. The PSFA established the basic funding mechanism for school district general fund (operating) revenues that has been in place since then. From this contemporaneous starting point, the two systems, which were not aligned to begin with, have radically diverged.

The following findings are essentially undisputed: When the PSFA was enacted, the General Assembly set the statewide base funding amount by working backwards from the total funding that it intended to appropriate and carrying forward preexisting school district expenditure levels. There was no effort to analyze the relationship to the actual costs to provide an education of any particular quality. The failure to do any cost analysis and to provide for funding based on such an analysis demonstrates the irrationality of the existing school finance system. *Montoy v. State of Kansas*, 102 P.3d 1160, 1164 (KS 2005).

Since then, the PSFA has been adjusted annually by a marginal dollar increase in the statewide base per-pupil funding amount. The passage of Amendment 23 imposed a minimum annual increase in the statewide base, but was not intended to and did not establish the requisite rational relationship. In short, the PSFA has never been adjusted to address the costs associated with the progressive implementation of the standards-based education and education accountability systems or any other standard of educational quality.

In the past two years, the General Assembly, through the implementation of a negative factor, has actually decreased public school funding by what now totals nearly one billion dollars. The amount of the budget cuts and the method by which they were implemented are completely unrelated to the costs of providing the mandated standards-based education system. The budget cuts have aggravated the irrationality of the finance system by arbitrarily reducing funding with no educational rationale whatsoever.

The General Assembly included “factors” in the PSFA formula to be added to the statewide base to address certain local cost variations among school districts. The dollars provided through the factors were also unrelated to the cost to provide an education of any particular quality. Thus, the factors are irrational in themselves and also due to the absence of any rational basis for the statewide base from which they are determined. *Id.* In any case, application of the “negative factor” has essentially eliminated factor-based funding as a meaningful element of the finance system.

The Defendants also point to the override mill levy as an indicator of the rationality of the finance system. The override provision is entirely dependent on local property tax bases and the willingness of local communities to increase their property taxes, both of which vary widely across the state and without necessary reference to the constitutional mandate of a thorough and uniform education system. Override funding bears no more rational relationship to the

constitutional mandate than the statewide base and the factors. The intent of the override funding provision was to permit local options within the financing formula. Due to the history of underfunding, that intent has been entirely eroded. This further distorts the finance system for no rational, educational reason. *Id.*

Recent amendments to the standards-based education system have substantially increased the costs of public education. In 2008 the General Assembly adopted CAP4K, that mandated a complete revision of state content standards, programs of instruction, and assessments all aligned to accomplish universal student proficiency and postsecondary and workforce readiness. This was followed in 2009 by the Education Accountability Act that established accreditation standards for school districts based upon meeting the goals of CAP4K and imposed sanctions up to and including district closure for failure to meet those goals within fixed time frames. Most recently, the 2010 effective teachers amendments (SB 10-191) imposed new teacher and principal evaluation systems founded in student growth as measured by achievement on CSAP and other standardized tests. These major educational initiatives, and many others during the same time period, were completely unfunded, notwithstanding widespread knowledge that they would be very expensive to implement. The only funding provision was the illusory authorization to accept “gifts, grants and donations” of unknown origin. This further aggravated the systemic underfunding and the absence of any logical connection between the finance system and the education system.

The PSFA was adopted before the implementation of the standards-based education system. If only for that reason, it cannot possibly relate to funding the costs of that system. Neither the statewide base nor the factors have ever been changed to respond to those changing costs. As a result, the PSFA funding levels are now and have since inception been completely disconnected from the real, knowable funding needs of a thorough and uniform system of public education. The Plaintiffs have proved, indeed, it is essentially undisputed, that the PSFA bears no rational relationship to providing funding sufficient to successfully implement the standards-based education system developed by the General Assembly.

The evidence also establishes that funding for categorical programs and for capital construction are completely unrelated to the actual costs of providing the services and facilities necessary to meet the mandate of the Education Clause. Capital construction funding in particular is now and has always been totally dependent on highly unequal local property tax wealth. For many school districts, particularly those in rural, poverty areas this method of funding capital needs has proved to be fundamentally inadequate, inequitable, and irrational. The recently adopted BEST program provides limited assistance, but is not sufficient to overcome generations of statutory underfunding. The deplorable conditions of numerous rural schools bears witness to this proposition.

The Court therefore concludes that the entire system of public school finance, including the PSFA, categorical programs, and capital construction funding, is not rationally related to the mandate of the Education Clause.

## V. THE PUBLIC EDUCATION SYSTEM IS SIGNIFICANTLY UNDERFUNDED

The public school finance system falls short of providing sufficient funding to meet the mandate of the Education Clause and standards-based education.

Defendants contend that it is not possible to analyze the costs of meeting the mandates of the Education Clause. If that argument were accepted, the Education Clause and the directives of the Supreme Court would be meaningless. To the contrary, the standards-based education system provides a comprehensively detailed model of education standards, programs, assessments, and achievement goals. The costs of meeting those mandates can be rationally estimated.

The “costing-out study” performed by Augenblick, Palaich and Associates (the APA Report) demonstrates that methods exist to determine a rational relationship between a school finance system and the education system that it serves. APA used as models both successful Colorado school districts and the professional judgment of Colorado educators to analyze the costs to provide the resources necessary to provide an education sufficient to meet the student achievement requirements of the standards-based education system.

The APA Report establishes both that (1) school funding can be analyzed and quantified by rational methods and that (2) the existing finance system is so profoundly underfunded that it cannot be considered rational or adequate. Under the successful schools model, Colorado school district general operating budgets are underfunded in the gross amount of \$1.35 billion to \$1.94 billion per year. Using the professional judgment model, which is a more accurate reflection of the costs of implementing the post-CAP4K system, general operating budgets are underfunded between \$3.58 billion and \$4.15 billion per year. These computations are comparable in dimension to former CDE assistant commissioner Voreta Herrmann’s estimate of gross operating underfunding of \$2.8 billion per year.

Educators from the Plaintiff districts and across the State testified to the substantial increases in the resources and funding necessary to provide an education that meets the requirements of standards-based education and accountability. They testified to the failure of the finance system to address these costs and the impact of that failure on their ability to provide an education that meets the needs of all students. School superintendents, finance officers, principals, and teachers described the obstacles and limitations imposed by an irrational, inadequate, and unplanned finance system on the education they are able to provide to the children entrusted to their care.

The Defendants offered no evidence or even information to rebut the conclusion that the finance system is completely divorced from the reality of the education system enacted by the General Assembly in the name of the Education Clause.

It is not this Court’s function to determine at this time the amount necessary to provide adequate funding for public education. However, the Court does find that public education is very significantly underfunded and that any legislative response of necessity must address the level of funding necessary to meet the mandate of the Education Clause and the standards-based system and should provide funding consistent with that standard.



**VI. SCHOOL DISTRICTS ARE FINANCIALLY UNABLE TO PROVIDE NECESSARY SERVICES, PROGRAMS, MATERIALS AND FACILITIES**

Due to lack of access to adequate financial resources, the Plaintiff School Districts and the school districts where Individual Plaintiffs reside (collectively, the “School Districts”) are unable to provide the educational programs, services, instructional materials, equipment, technology, and capital facilities necessary to assure all children an education that meets the mandates of the Education Clause and standards-based education.

The Court finds that due to the irrational funding system and significant underfunding, rural and urban poverty School Districts are unable to hire, compensate, and retain effective, highly qualified teachers and administrators; to provide the curriculum, technology, textbooks, and other instructional materials necessary to meet student performance expectations; and to construct, maintain, renovate school buildings and facilities. Many of these School Districts are relegated to obsolete textbooks and materials, lack of necessary computers and internet connectivity, and dilapidated and unsafe classroom and other facilities. These School Districts have been for many years and are today unable to respond effectively to the changing demands of standards-based education.

The impact of irrational and inadequate funding is not, however, limited to rural and urban poverty School Districts. The Court finds that all School Districts are unable to provide the early childhood and kindergarten programs that are critical to student achievement. All School Districts are unable to provide the classroom time, professional training, and instructional interventions that are critical to meet the expectations of CAP4K, the Education Accountability Act, and SB 10-91. All School Districts are unable to provide the classroom time, professional training, and interventions critical to the education of under-served student populations, including students at-risk of academic failure, non-English speaking students, students with disabilities, students of minority racial and ethnic heritages, students of low-income families, and gifted and talented students. All School Districts lack the funding necessary to meet the increased expectations of the current revisions to standards-based education, and particularly CAP4K, the Education Accountability Act, and SB 191.

Many of the School Districts, including Aurora Public Schools and Pueblo City Schools, are categorized as “turnaround” or “priority improvement” under CDE’s district performance framework; and all of the School Districts operate schools that are categorized as “turnaround” or “priority improvement” under their school performance frameworks. These School Districts and schools must meet ambitious student achievement and student growth goals pursuant to turnaround or priority improvement plans within five years or face restructuring or closure. According to the APA Report, none of Colorado’s school districts has access to sufficient funding to provide the instructional programs necessary to meet the expectations and deadlines of the Education Accountability Act.

These problems are not attributable to inefficiency or inability at the school district level. There is no evidence that any School District is managing its finances ineffectively. There is no evidence that any School District lacks the knowledge necessary to improve student achievement. On the contrary, several of the School Districts have implemented short term, innovative programs that significantly improved student achievement, particularly among the

under-served populations. These programs are not, however, sustainable either because they depend on short-term federal or other grants or because of cuts imposed by the General Assembly's reduction in school funding. In short, the School Districts have the knowledge necessary to improve performance and meet the constitutional and statutory standards, but they are prevented from doing so by the deficiencies in the school finance system.

As a result of the irrational and inadequate school finance system, Colorado students are not meeting achievement standards, including proficiency on assessments, high school graduation, and postsecondary and workforce readiness. Taken as a whole, the achievement and growth data indicates that hundreds of thousands of Colorado students are not reaching proficiency and are not on a course to reach proficiency in reading, writing, mathematics, and science. In 2009, over 25% of Colorado high school students did not graduate with a diploma. These problems are particularly, but not exclusively, true of under-served student populations. Disaggregated achievement data proves that these students are not achieving at levels even approaching those of white, English speaking, middle class, students – and they are not closing the achievement gaps. Students whose achievement is below proficient are not meeting the levels of growth necessary for them to catch-up in three years or by tenth grade. Finally, substantial numbers of Colorado students are not ready for postsecondary education upon graduation, and many of those who enter postsecondary education require remediation.

All of the evidence demonstrates a systemic failure to provide all students with the knowledge and skills mandated by the Education Clause and standards-based education. This failure is directly correlated to inadequate and irrational funding. The overwhelming evidence supports the conclusion that with sufficient funding, school districts can meaningfully improve all students' achievement. Unquestionably, additional financial resources appropriately applied can improve student achievement, which, under the standards-based system, is the ultimate measure of the success of a thorough and uniform system of public education.

The Court therefore concludes that Colorado public school children are not receiving the thorough and uniform educational opportunities mandate by the Education Clause.

## VII. LOCAL CONTROL OF INSTRUCTION

The *Lobato* Court held that Education Clause analysis must determine both that “thorough and uniform educational opportunities are available through state action in each school district” and that “each school district must be given the control necessary to implement this mandate at the local level”. 218 P.3d at 371 (citations omitted); *see also Owens v. Colorado Cong. of Parents, Teachers & Students*, 92 P.3d 933, 947-48 (CO 2004) (Kourlis, J. dissenting). Colorado is one of only six states with an express local control provision in its constitution, underscoring the importance of that concept in this state. *Board of Ed. of Sch. Dist. No. 1 v. Booth*, 984 P.2d 639, 646 (CO 1999). Thus, compliance with the Education Clause incorporates local control of instruction, as mandated by the Local Control Clause (article IX, section 15). This should be particularly obvious here, since local control is the “legitimate state purpose” upon which the school finance system depends. *Lujan*, 649 P.2d at 1022-23.

The Colorado constitution allocates governing authority over the public schools between local boards of education with authority to “control instruction” and the State Board, which

exercises “general supervision” of the public schools under article IX, section 1. In *Board of Educ. of Sch. Dist. No.1 v. Booth*, 984 P.2d 639, 648 (CO 1999) (*Booth*), the Supreme Court held that “control of instruction requires power or authority to guide and manage both the action and practice of instruction as well as the quality and state of instruction.” The Local Control Clause is a constitutional grant of “undeniable authority” to local boards of education to control instruction in the public schools within their respective districts. *Id.*, 984 P.2d 639, 646. A “generally applicable law triggers control of instruction concerns when applied to specific local board decisions likely to implicate important education policy.” General statutes “must not have the effect of usurping the local board’s decision-making authority or its ability to implement, guide, or manage the educational programs for which it is ultimately responsible.” *Id.*, 984 P.2d at 649.

The Public School Finance Act and the other funding statutes are generally applicable laws subject to these constitutional limitations. Local control and school finance are inseparably linked. In *Lujan*, the Supreme Court held that for purposes of equal protection analysis:

We find that utilizing local property taxation to partly finance Colorado's schools is rationally related to effectuating local control over public schools. The use of local taxes affords a school district the freedom to devote more money toward educating its children than is otherwise available in the state-guaranteed minimum amount. It also enables the local citizenry greater influence and participation in the decision making process as to how these local tax dollars are spent. . . . Finally, local control provides each district with the opportunity for experimentation, innovation, and a healthy competition for educational excellence.

*Lujan*, 649 P.2d 1023 [citation omitted].

The school finance system dictates the total amount of funds available to each school district and the methods by which those funds may be obtained. Local school boards have no discretion in determining the amount or the sources of their funding. Inadequate funding prevents school districts from offering their children the public education mandated by standards-based education. The additional goals of local control described in *Lujan* are beyond the reach of even the most successful school districts. Local control in that sense does not exist due to irrational underfunding of public education. This is true of all of the School Districts, but most significantly for the rural and urban poverty School Districts.

Insufficient funding prevents the School Districts from accomplishing the ambitious goals of educational accountability. Present school district funding levels bear no intentional relationship to the costs of meeting state imposed performance goals. Failure to accomplish these goals leads to regulatory consequences of the most profound concern to local boards of education, including state administered “major restructuring” impacting at least local curriculum, school staffing, school schedules, and student assessment and training, but also school closure, privatization, or conversion to charter status. C.R.S. §22-7-609.3(3). Further, failure to meet state performance standards results in state administered school district reorganization or closure. C.R.S. §§22-11-204(3), 22-30-105(1)(c).

This implicates two of the guiding principles of local control identified in *Booth*: (1) The generally applicable school finance laws impose statutory constraints that “have the effect of usurping the local board’s decision-making authority [and] its ability to implement, guide or manage the educational programs for which it is ultimately responsible;” and, (2) By failing to fund public education adequately or rationally, those laws interfere with specific local board decisions affecting important education policy at the local level. *Booth*, 984 P.2d at 649.

In the name of the Education Clause, the State has revolutionized public education over the past twenty years. However, there has been no corresponding reform of school finance. School districts are left to meet 21<sup>st</sup> century education standards with 1980s funding, and it cannot be done. As a result, the beneficiaries of public education, all Colorado school children, but including the State itself, are and have been for decades denied the opportunities intended by the Education Clause.

The Court concludes that the irrational and inadequate school funding system prevents school districts from implementing the Education Clause mandate at a local level in violation of the local control mandates of Article IX, sections 2 and 15.

## VIII. CONCLUSION

Although the standards-based education system intentionally established standards of educational achievement and a method to measure accomplishment of those standards, the finance system has never been adjusted to address the costs of meeting those standards. Although one of the primary purposes of standards-based education was to provide objective measures of achievement that could be costed-out and funded, the two systems have remained out of touch and actually diverging, with no meaningful effort to analyze and align funding levels with educational costs.

In recent years, new educational goals linked to school readiness and postsecondary and workforce readiness were mandated, and measurements of school and school district performance with sanctions for failures have been implemented as part of educational accountability. Again, these changes in the education system have added and will continue to add significantly to the costs of education, but the finance system has been completely unresponsive. As a result, there is not enough money in the system to permit school districts across the State to properly implement standards-based education and to meet the requirements of state law and regulation. This is true for districts of every description – rural, suburban, urban and those with small or large student populations. There is not one school district that is sufficiently funded. This is an obvious hallmark of an irrational system.

The problem has been compounded by the fact that during this same time Colorado and virtually every school district have experienced significant demographic changes, particularly in the number and concentrations of English language learners, ethnic minorities, and children of poverty. The number of children with severely disabling conditions has also grown. There are now significantly larger percentages of students with more expensive educational needs. The educational achievement requirements for these students are the same as for general education students, but the cost to achieve proficiency and growth requirements among these students is much higher. This represents a major source of additional expense that has not been taken into

account in the finance system. Once again, the State has not attempted to quantify and fund the costs of providing educational services to these and similarly situated students with special needs.

Finally, state level budget cuts in the last two years have reduced overall school funding by nearly one billion dollars without any reference to the costs to provide a thorough and uniform system of public schools. Current economic conditions, however, are not the source of the school finance crisis. They have made an unworkable situation unconscionable. But Colorado's history of irrational and inadequate school funding goes back for over two decades.

Based upon all of the foregoing, and applying the standard enunciated by the Supreme Court, the Court concludes that the Colorado public school finance system is not rationally related to the mandate to establish and maintain a thorough and uniform system of free public schools. On the contrary, the public school finance system is irrational, arbitrary, and severely underfunded. This results in the denial of the rights of the Individual Plaintiffs guaranteed by Article IX, section 2 of the Colorado constitution and the rights and powers of the School Districts pursuant to Article IX, sections 2 and 15.

## **IX. REMEDY**

The Court finds that the Colorado public school finance system is unconstitutional. Evidence establishes that the finance system must be revised to assure that funding is rationally related to the actual costs of providing a thorough and uniform system of public education. It is also apparent that increased funding will be required. These are appropriately legislative and executive functions in the first instance. Thus, the Supreme Court has directed that this Court shall "provide the legislature with an appropriate period of time to change the funding system so as to bring the system in compliance with the Colorado Constitution." *Lobato*, 218 P.3d at 375. Taking these directions into account, the Court enters Judgment and Orders as follows:

Injunctive relief enters in favor of the Plaintiffs, and all of them, and against the Defendants, and all of them, as follows:

1. Defendants are enjoined from adopting, implementing, administering, or enforcing any and all laws and regulations that fail to establish, maintain, and fund a thorough and uniform system of free public schools throughout the state that fulfills the qualitative mandate of the Education Clause and the rights guaranteed to the Plaintiffs thereunder and that is in full compliance with the requirements of the Local Control Clause; including, without limitation the Public School Finance Act of 1994 in its entirety, categorical funding programs, and capital construction funding laws and regulations;

2. Defendants are further enjoined to design, enact, fund, and implement a system of public school finance that provides and assures that adequate, necessary, and sufficient funds are available in a manner rationally related to accomplish the purposes of the Education Clause and the Local Control Clause;

3. The Court hereby stays the enforcement of the injunctive relief set forth hereinabove in order to provide the State with a reasonable time to create and implement a system of public school finance that meets the mandates of the Education Clause and the Local

Control Clause. This stay shall continue in effect until final action by the Colorado Supreme Court upon appeal of the Court's decision; provided that if appeal is not perfected to the Colorado Supreme Court, this Court shall review the stay upon application of either party submitted no earlier than the conclusion of the 2012 legislative session. While this stay is in place and until further action by the Supreme Court or this Court, the present financing formula and funding may remain in effect.

**SO ORDERED** this 9th day of December, 2011.

BY THE COURT

*Sheila A. Rappaport*

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Sheila A. Rappaport  
District Court Judge

# **APPENDIX B**

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER,          COLORADO          1437 Bannock Street          Denver, Colorado 80202</p>	<p><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p>
<p>PLAINTIFFS: <b>Anthony Lobato, et al.</b></p> <p>and</p> <p>PLAINTIFFS-INTERVENORS: <b>Armandina Ortega, et al.</b></p> <p>vs.</p> <p>DEFENDANTS: <b>The State of Colorado, et al.</b></p>	
<p><b>Attorneys for Defendants:</b>          JOHN W. SUTHERS, Attorney General</p> <p>NANCY J. WAHL, 31890*          First Assistant Attorney General          E-mail: nancy.wahl@state.co.us</p> <p>ANTONY B. DYL, 15968*          Senior Assistant Attorney General          E-mail: tony.dyl@state.co.us</p> <p>CAREY TAYLOR MARKEL, 32987*          Senior Assistant Attorney General          E-mail: carey.markel@state.co.us</p> <p>NICHOLAS P. HEINKE, 38738*          Assistant Attorney General          E-mail: nicholas.heinke@state.co.us</p> <p>JONATHAN P. FERO, 35754*          Assistant Attorney General          E-mail: jon.fero@state.co.us</p> <p>ERICA WESTON, 35581*          Assistant Attorney General          E-mail: erica.weston@state.co.us</p> <p>Office of the Colorado Attorney General          1525 Sherman Street, 7th Floor          Denver, CO 80203          Telephone: (303) 866-2383          Fax: (303) 866-5671          * Counsel of Record</p>	<p>Case Number: 05 CV 4794</p> <p>Div: 9</p>
<p align="center"><b>DEFENDANTS' MOTION FOR DETERMINATION OF QUESTIONS OF LAW          PURSUANT TO C.R.C.P 56(h)</b></p>	



C.R.C.P. 121 § 1-15 ¶ 8 Certification

Defendants' counsels have conferred in good faith with respective counsel for Plaintiffs and Plaintiff-Intervenors, Kenzo Kawanabe and David G. Hinojosa, respectively. Plaintiffs and Plaintiff-Intervenors oppose this motion.

**INTRODUCTION**

Education is of paramount importance to the State of Colorado. The Governor, Board of Education, and Department of Education work every day to provide all Colorado children an opportunity for a free public education. Colorado is a national leader in education reform efforts and continues to provide substantial financial support to its public school system. As the traditional base of local financial support for public schools has eroded, the State has taken on an increasingly larger share—now nearly two-thirds of the total funding for K–12 education. Indeed, the State dedicates almost half of its constitutionally constrained general fund budget to the public school system, leaving the remainder to be shared by all other state services such as higher education, health and human services, corrections, and the courts.

Unsatisfied with the State's efforts, Plaintiffs, a group of school districts and parents, filed suit alleging the General Assembly's funding decisions were irrational. (Pls.' 2d Am. Compl. ¶¶ 3–4.) An additional group of parents subsequently joined as Plaintiff-Intervenors. According to both Plaintiffs and Plaintiff-Intervenors, the allegedly irrational funding of public schools precludes Colorado school children from receiving a constitutionally adequate education and infringes on school districts' constitutional guarantee of local control over instruction. (Pls.' 2d Am. Compl. ¶¶ 2–3; Pl.-Intervenors' Compl. at 4–5.) What Plaintiffs and Plaintiff-Intervenors do not acknowledge, however, is that the Constitution guarantees opportunities—not outcomes, and that the actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. Moreover, Plaintiffs seek either a dramatic reallocation of funds to public education and away from constitutionally mandated public services, or a massive spending increase despite the fact that Colorado's citizens have enacted strict constitutional revenue limitations, including the TABOR Amendment. Plaintiffs and Plaintiff-Intervenors' claims ignore the deference owed to the General Assembly's budgetary decisions, made within these constitutional constraints, and seek to impose a qualitative educational standard not found in, or sanctioned by, the Colorado Constitution.

Pursuant to C.R.C.P. 56(h), Defendants move this Court to determine the questions of law set forth below. Resolution of these threshold issues, which set the legal standards by which this case must be judged, is critical to enable an efficient trial for both this Court and the parties.

**STANDARD OF REVIEW**

“At any time after the last required pleading, with or without supporting affidavits, a party may move for determination of a question of law. If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order

deciding the question.” C.R.C.P. 56(h). “The purpose of Rule 56(h) is, ‘to allow the court to address issues of law which are not dispositive of a claim (thus warranting summary judgment) but which nonetheless will have a significant impact upon the manner in which the litigation proceeds.’ Resolving such issues ‘will enhance the ability of the parties to prepare for and realistically evaluate their cases . . . and allow the parties and the court to eliminate significant uncertainties on the basis of briefs and argument, and to do so at a time when the determination is thought to be desirable by the parties.’” *Matter of Bd. of County Comm’rs of County of Arapahoe*, 891 P.2d 952, 963 n.14 (Colo. 1995) (quoting 5 Robert Hardaway & Sheila Hyatt, Colorado Civil Rules Annotated § 56.9 (1985)).

### QUESTIONS PRESENTED

Defendants present the following questions of law for determination:

1. Plaintiffs and Plaintiff-Intervenors must prove their allegations beyond a reasonable doubt.
2. Plaintiffs and Plaintiff-Intervenors must establish the General Assembly’s education funding decisions are not rationally related to the constitutional mandate of a through and uniform system of free public schools and protection of local control over instruction.
3. The Education Clause guarantees individuals aged six to twenty-one years an opportunity to receive a free public education.
4. The Education Clause does not guarantee any qualitative educational outcome.
5. The Education Clause must be harmonized with all other constitutional provisions, including TABOR.
6. Any appropriations required by the Education Clause are constrained by TABOR’s revenue restrictions.
7. The rational basis standard requires that significant deference be afforded to the General Assembly’s fiscal and policy judgments.
8. Elementary and secondary education is not the only required or important state service.
9. It is rational for the General Assembly to control the public debt.
10. It is rational for the General Assembly to further local control over instruction.
11. It is rational for the General Assembly to balance appropriations among public services.

12. TABOR authorizes the General Assembly to impose unfunded educational mandates on local school districts.

13. This Court may neither coerce nor restrain the General Assembly through injunctive relief.

## ARGUMENT

### **A. Plaintiffs and Plaintiff-Intervenors Must Prove Beyond a Reasonable Doubt that the General Assembly Has Acted Irrationally.**

Both Plaintiffs and Plaintiff-Intervenors seek to have the General Assembly's funding decisions declared unconstitutional. (*See, e.g.*, Pls.' 2d Am. Compl. ¶ 3; Pl.-Intervenors' Am. Compl. at 4.) As they ask this Court to undertake "one of the gravest duties impressed upon" it, *Mesa County Bd. of County Comm'rs v. State*, 203 P.3d 519, 527 (Colo. 2009) (quoting *City of Greenwood Vill. v. Petitioners for the Proposed City of Centennial*, 3 P.3d 427, 440 (Colo. 2000); *Meyer v. Lamm*, 846 P.2d 862, 876 (Colo. 1993)), the proper standard of review must be definitively established before trial.

"The presumption of a statute's constitutionality can be overcome only if it is shown that the enactment is unconstitutional beyond a reasonable doubt." *Barber v. Ritter*, 196 P.3d 238, 247 (Colo. 2008) (citing *Colo. Ass'n of Pub. Employees v. Bd. of Regents of the Univ. of Colo.*, 804 P.2d 138, 142 (Colo. 1990)), *accord Mesa County*, 203 P.3d at 523, 527. Under this burden, "the conflict between the law and the constitution [must be] clear and unmistakable." *Greenwood Vill.*, 3 P.3d at 440 (quoting *People v. Goddard*, 7 P. 301, 304 (Colo. 1885)). "A reviewing court must assume that the "legislative body intends the statutes it adopts to be compatible with constitutional standards.'" *Mesa County*, 203 P.3d at 527 (quoting *Meyer*, 846 P.2d at 876).

Plaintiffs and Plaintiff-Intervenors' challenges are subject to rational basis review. *Lobato v. State*, 218 P.3d 358, 374 (Colo. 2009) (citing *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1024–26 (Colo. 1982)). As the Supreme Court explained in this case, "[t]o be successful, [Plaintiffs and Plaintiff-Intervenors] must demonstrate that the school finance scheme is not rationally related to the constitutional mandate of a 'thorough and uniform' system of public education." *Lobato*, 218 P.3d at 374 (quoting Colo. Const. art. 9, § 2). Thus, to prevail, Plaintiffs and Plaintiff-Intervenors must prove beyond a reasonable doubt that the General Assembly's education funding decisions are not rationally related to the constitutional mandate requiring it to establish a thorough and uniform system of free public schools and the constitutional protection of local control over instruction.

Under this "minimally-intrusive" rational basis standard, a "court must give significant deference to the legislature's fiscal and policy judgments." *Lobato*, 218 P.3d at 373–75, *accord Lujan*, 649 P.2d at 1018, 1025 (emphasizing establishment of school finance system properly lies within legislative domain and declining judicial intrusion to devise "better" system); *see also New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (cautioning rational basis review does not

authorize “judiciary [to] sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations”). “If any conceivable set of facts would lead to the conclusion that a classification serves a legitimate purpose, a court must assume those facts exist.” *HealthONE v. Rodriguez*, 50 P.3d 879, 893 (Colo. 2002) (quoting *Christie v. Coors Transp. Co.*, 933 P.2d 1330, 1333 (Colo. 1997)), accord *Lujan*, 649 P.2d at 1022. Indeed, the challenging party bears the burden of “negat[ing] every conceivable basis,” *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973), “[a] State . . . has no obligation to produce evidence to sustain the rationality,” *Heller v. Doe*, 509 U.S. 312, 320 (1993), and “a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data,” *Fed. Communications Comm’n v. Beach Communication, Inc.*, 508 U.S. 307 at 315 (1993). “The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted.” *Vance v. Bradley*, 440 U.S. 93, 97 (1979). Accordingly, this “court’s task is not to determine ‘whether a better system could be devised,’ but rather to determine whether the system passes constitutional muster.” *Lobato*, 218 P.3d at 374 (quoting *Lujan*, 649 P.2d at 1025).

Therefore, Defendants request this Court determine that:

1. Plaintiffs and Plaintiff-Intervenors must prove their allegations beyond a reasonable doubt; and
2. Plaintiffs and Plaintiff-Intervenors must establish the General Assembly’s education funding decisions are not rationally related to the constitutional mandate of a through and uniform system of free public schools and protection of local control over instruction.

### **B. The Education Clause Guarantees Opportunities Rather Than Qualitative Outcomes.**

The Education Clause of the Colorado Constitution, article IX, section 2, requires the General Assembly to “provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state.” “On its face, [this provision] merely mandates action by the General Assembly—it does not establish education as a fundamental right, and it does not require that the General Assembly establish a central public school finance system restricting each school district to equal expenditures per student.” *Lujan*, 649 P.2d at 1017. Although the General Assembly must establish “guidelines” for a system of free public education, it need not effectuate any particular qualitative experience or outcome. *See id.* As the Colorado Supreme Court has made clear, the Education Clause merely “mandates the General Assembly to provide to each school age child the *opportunity* to receive a free education.” *Id.* at 1018–19 (emphasis added). While recognizing this opportunity standard (*see, e.g.*, Pls.’ 2d Am. Compl. ¶ 63), both Plaintiffs and Plaintiff-Intervenors repeatedly suggest the Education Clause guarantees outcomes, and significant ones at that (*see, e.g.*, Pls.’ 2d Am. Compl. ¶ 2; Pl-Intervenors’ Am. Compl. ¶ 21). This suggestion is wrong.

The actual delivery, adequacy and quality of education are dependent upon the constitutionally-empowered choices and decisions of local boards of education. *See Lujan*, 649 P.2d at 1022–23, 1025. The Local Control Clause of the Colorado Constitution, article IX, section 15, vests in local school boards—not the General Assembly—“power or authority to guide and manage both the action and practice of instruction as well as the quality and state of instruction.” *Bd. of Educ. of Sch. Dist. No. 1 v. Booth*, 984 P.2d 639, 648 (Colo. 1999). As the Supreme Court emphasized in *Lujan*, evaluating opportunities is difficult enough; interpreting the Education Clause to guarantee outcomes would prove even more unmanageable: “courts are ill-suited to determine what equal educational opportunity is, especially since fundamental disagreement exists concerning the extent to which there is a demonstrable correlation between educational expenditures and the quality of education.” 649 P.2d at 1018 (citing, *inter alia*, *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 43 n.86 (1973)).

Nor can the Education Clause be construed to create any individual right to receive a thorough and uniform education. Courts interpret constitutional language according to its common and ordinary meaning. *E.g.*, *Washington County Bd. of Equalization v. Petron Dev. Co.*, 109 P.3d 146, 149 (Colo. 2005). Where the Colorado Constitution guarantees individual rights, it does so in plain terms. *Cf.* Colo. Const. art. II, § 3 (“All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.”). The words “thorough and uniform” in the Education Clause refer, not to the specific educational program of each individual student, but to the overall “system of free public schools.” *See Lujan*, 649 P.2d at 1017–19. The only reference to individuals is in the succeeding clause, which provides that “all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously.” Colo. Const. art. IX, § 2. Thus, although the Education Clause entitles all residents aged six to twenty-one to a free education, *People ex rel. Vollmar v. Stanley*, 255 P. 610, 614 (Colo. 1927), *overruled on other grounds*, *Conrad v. City and County of Denver*, 656 P.2d 662, 670 n.6 (Colo. 1982), it does not guarantee to individuals that this gratuitous education be through and uniform.

As already stated, a contrary construction of the Education Clause would overburden the courts with determinations they are ill suited to make. If individuals are constitutionally entitled to a particular educational experience, then they potentially could seek a judicial forum for any number of complaints—ranging from the failure to secure admittance to an Ivy League college or the right to have Advanced Placement physics taught to a single interested child to any number of purported “individual educational rights.” *See Lujan*, 649 P.2d at 1018. In sum, Plaintiffs and Plaintiff-Intervenors’ suggestion of a fundamental qualitative right to a particular educational experience for a given individual student redrafts the Education Clause. The constitutional right at issue in this case is the mandate that the General Assembly provide a thorough and uniform *system* of education that provides Colorado’s six- to twenty-one-year-olds the *opportunity* to attend free public schools.

Therefore, Defendants request this Court determine that:

3. The Education Clause guarantees individuals aged six to twenty-one years an opportunity to receive a free public education; and

4. The Education Clause does not guarantee any qualitative educational outcome.

**C. Any Funding Required By The Education Clause Is Constrained By TABOR.**

Whatever the meaning of the Education Clause as originally adopted, its reach has been limited by the People's subsequent actions. It is well established "the Constitution, including all amendments thereto, must be construed as one instrument, and as a single enactment." *People v. Field*, 181 P. 526, 527 (Colo. 1919), *accord, e.g., Town of Frisco v. Baum*, 90 P.3d 845, 847 (Colo. 2004) ("[I]t is essential that we take the Constitution as it is, including every part thereof relating to the subject-matter under consideration, and construe the instrument as a whole, causing it, including the amendments thereto, to harmonize, giving to every word as far as possible its appropriate meaning and effect."); *Colo. State Civil Serv. Employees Ass'n v. Love*, 448 P.2d 624, 630 (Colo. 1968) ("Each clause and sentence of either a constitution or statute must be presumed to have purpose and use, which neither the courts nor the legislature may ignore."). This maxim precludes reading the Education Clause in isolation; rather, it must be construed in concert with not just the Local Control Clause, but also the TABOR amendment, article X, section 20, the Gallagher Amendment, article X, section 3, and all other constitutional provisions. Thus, to the extent the Education Clause, Local Control Clause, or Amendment 23, article IX, section 17, require allocation of monies to the public education system, harmonization means the level of that allocation is restricted by the strict revenue limitations imposed by TABOR. The General Assembly cannot be constitutionally required to expend revenue the Constitution does not allow it to obtain.

Even if this Court were to find an irreconcilable conflict between these constitutional provisions, TABOR prevails. First, TABOR is an amendment rather than an original provision like the Education or Local Control Clauses. "Where an amendment to a constitution is anywise in conflict or in any manner inconsistent with a prior provision of the constitution, the amendment controls." *In re Interrogatories by Gen. Ass., H. Joint Res. No. 1008*, 467 P.2d 56, 59 (Colo. 1970) (citing cases). Second, TABOR states that it "supersede[s] conflicting state constitutional . . . provisions." Colo. Const. art. X, § 20(1). Thus, if Plaintiffs and Plaintiff-Intervenors' vision of the Education and Local Control Clause cannot be reconciled with the subsequently adopted TABOR amendment, it is the Education and Local Control Clauses, not TABOR, that must yield. *See, e.g., City of Wheat Ridge v. Cerveny*, 913 P.2d 1110, 1124 (Colo. 1996) (recognizing TABOR's purpose "is to place in the electorate, not government officials, control over state and local government finance, spending, and taxation").

Therefore, Defendants request this Court determine that:

5. The Education Clause must be harmonized with all other constitutional provisions, including TABOR; and

6. Any appropriations required by the Education Clause are constrained by TABOR's revenue restrictions.

**D. The General Assembly's Budget Allocations Are Owed Significant Deference.**

Despite the General Assembly's significant financial allocations to public schools and its obligation to satisfy other constitutionally-imposed mandates, Plaintiffs contend the public K–12 education system should receive nearly \$3 billion additional dollars, as well as billions more for capital funding, in order to be “adequate.” (*See* Pls.' 2d Am. Compl. ¶¶ 6–7, 143.) Plaintiffs make this request even though TABOR precludes the General Assembly from either raising new general fund revenue without the People's approval or spending beyond any annual inflation and population growth. Colo. Const. art. X, § 20(4), (7)–(8). Thus, Plaintiffs seek either a judicial repeal of TABOR (*see* Pls.' 2d Am. Compl. ¶ 192) or to usurp the role of the General Assembly by urging the reallocation of almost the entire general fund to public education, without regard to the effect such a reallocation would have on other crucial state services such as higher education, health and human services, corrections, and the courts (*see* Plaintiffs' Reply in Further Support of Motion to Strike Affirmative Defense at 3).

This repeal or reallocation argument suffers from three fundamental flaws. First, as already discussed, in the event of an irreconcilable conflict, it is the Education and Local Control Clauses which must yield to the subsequently adopted TABOR amendment—not vice versa. *See* Colo. Const. art. 10, § 20(1); *Interrogatories*, 467 P.2d at 59. Second, Plaintiffs erroneously assume education is the only constitutional mandate borne by the General Assembly. For example, article VIII, section 1 provides that “[e]ducational, reformatory, and penal institutions, and those for the benefit of insane, blind, and mute, and such other institutions as the public good may require, shall be established and supported by the state, in such a manner as may be prescribed by law.” The Constitution also vests the judicial power of the state in a number of courts, requires compensation of judges, and guarantees the courts shall be open to every person. Colo. Const. art. II, § 6, art. VI, §§ 1, 10, 18. Moreover, the Constitution declares several named educational institutions to be state institutions of higher learning and authorizes the establishment of other such institutions. Colo. Const. art. VIII, § 5. These are just a few of the many areas of constitutional or public policy import the General Assembly must consider when allocating the State's constitutionally limited revenues.

Third, Plaintiffs criticize the General Assembly for making “political” decisions (Pls.' 2d Am. Compl. ¶ 115), but the legislature is a political body, composed of representatives elected by the People, and empowered by the Constitution “to make laws and to appropriate state funds,” *MacManus v. Love*, 499 P.2d 609, 610 (Colo. 1972). Colo. Const. arts. III, V, § 1. “It is the peculiar and exclusive province of the legislature, so far, at least, as the judiciary is concerned, to judge of the necessity or desirability *from a political or economic* stand-point of each and every act proposed.” *In re Senate Res. Relating to S. Bill No. 65*, 21 P. 478, 479 (Colo. 1889) (emphasis added). Accordingly, “it is incumbent upon the legislature to balance myriad competing interests and to allocate the State's resources for the performance of those services important to the health, safety, and welfare of the public.” *Lienhard v. State*, 431 N.W.2d 861,

867 (Minn. 1988); *see also Barone v. Dep't of Human Servs.*, 526 A.2d 1055, 1063 (N.J. 1987) (“State funds available for public assistance programs are limited. It is the Legislature that has the duty to allocate the resources of the State.”). “The problems of government are practical ones and often justify, if not require, a rough accommodation of variant interests.” *Dawson By and Through McKelvey v. Public Employees’ Retirement Ass’n*, 664 P.2d 702, 708 (Colo. 1983) (citing *Mathews v. Lucas*, 427 U.S. 495 (1976)), *accord Heller*, 509 U.S. at 321. Recognizing that this case rests upon inherently political decisions, the Colorado Supreme Court instructed that when determining whether the General Assembly rationally established and maintains a system providing an opportunity to attend free public schools, “significant deference” must be given “to the legislature’s fiscal *and policy* judgments.” *Lobato*, 218 P.3d at 374–75 (emphasis added).

Exercising “legislative power,” Colo. Const. art V, sec. 1, to appropriate limited funds among important state priorities is not irrational. Controlling the public debt, furthering local control over education, and balancing appropriations among public services are all legitimate state purposes evidencing rational legislative action. In *Lujan*, the Court held the use of local property taxation to partly finance Colorado’s schools is rationally related to effectuating local control over the public schools of the state. 649 P.2d at 1023. The Court upheld statutory limits on local districts’ taxing power because “[t]he purpose of such limitations is essentially to prevent the present pledging of future public funds,” and “controlling the public debt” is a “legitimate state purpose.” *Lujan*, 649 P.2d at 1024; *see also City and County of Broomfield v. Farmers Reservoir and Irrigation Co.*, 239 P.3d 1270, 1279 (Colo. 2010) (holding “classification between governmental and non-governmental entities under Rule 54(d) is rationally related to the goal of protecting the public treasury because the rule prohibits a water court from awarding costs to a party who prevails against the government”). Thus, deciding to fund prisons, courts, human services, and higher education as well as public K–12 education embodies rationality and demands judicial deference.

Therefore, Defendants request this Court determine that:

7. The rational basis standard requires that significant deference be afforded to the General Assembly’s fiscal and policy judgments;
8. Elementary and secondary education is not the only public service required by the Constitution;
9. It is rational for the General Assembly to control the public debt;
10. It is rational for the General Assembly to further local control over instruction; and
11. It is rational for the General Assembly to balance appropriations among public services.



### **E. TABOR Authorizes Unfunded Educational Mandates.**

In addition to challenging the General Assembly's fiscal and policy discretion, Plaintiffs attack the General Assembly's decision to pass legislation without an accompanying appropriation. Plaintiffs allege the General Assembly's "failure to provide funding sufficient to meet [its own legislative and regulatory] requirements violates the rights guaranteed by the Education Clause." (Pls.' 2d Am. Compl. ¶ 179.) Article X, Section 20(9), however, provides that "[e]xcept for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration." This provision "expressly contemplates the state's separate constitutional obligation to provide a uniform system of free public schools throughout the state and acknowledges the state's ability to impose unfunded mandates on local districts to accomplish this goal." *Mesa County*, 203 P.3d at 528. Consequently, the General Assembly may enact education statutes requiring local district action without providing attendant funding.

Therefore, Defendants request this Court determine that:

12. TABOR authorizes the General Assembly to impose unfunded educational mandates on local school districts.

### **F. This Court May Not Enjoin the General Assembly.**

Plaintiffs' complaint requests "interim and permanent injunctions compelling Defendants to establish, fund, and maintain a thorough and uniform system of free public schools" that fulfills the qualitative mandate of the Education Clause and the requirements of Local Control and that "provides and assures that adequate, necessary and sufficient funds are available to accomplish" those purposes. (Pls.' 2d Am. Compl., Prayer for Relief.) In later briefing, Plaintiffs contend they are requesting nothing more than an injunction to "compel Defendant to exercise the discretion delegated to them by the General Assembly to supervise, accredit, and manage public school funds in a manner consistent with the Education and Local Control Clauses." (Pls.' Reply to Defs.' Resp. to Mot. to Strike at 13.) These positions are contradictory; either Plaintiffs seek to compel legislative action or they do not.

To the extent Plaintiffs do, injunctive relief may not be granted. To respect the fundamental boundary between the legislature and the judiciary, it has been long established that a mandatory injunction may not issue against the General Assembly. *E.g.*, *Colo. Common Cause v. Bledsoe*, 810 P.2d 201, 208–09, 11 (Colo. 1991). As the Colorado Supreme Court explained, "[i]t is a general principle in the governmental system of this country that the judicial department has no direct control over the legislative department," and "[l]egislative action by the general assembly cannot be coerced or restrained by judicial process." *Lewis v. Denver City Waterworks Co.*, 34 P. 993, 994 (Colo. 1893), *quoted in Common Cause*, 810 P.2d at 208. Given this precedent and Plaintiffs' contradictory positions, it is imperative that this Court make clear no injunction may issue to compel the "establish[ment]" or "fund[ing]" of the public school system.

The power to fund, granted by the Constitution and constrained by its strict revenue limitations, lies with the General Assembly alone and not with any of the Defendants.

Therefore, Defendants request this Court determine that:

13. This Court may neither coerce nor restrain the General Assembly through injunctive relief.

### CONCLUSION

The qualitative debate over public education is properly left to the legislative and executive branches of government and the People of the State of Colorado. As instructed by the Supreme Court, then, Plaintiffs and Plaintiff-Intervenors must prove beyond a reasonable doubt that the General Assembly's chosen school finance scheme is irrational. Significant deference is owed to the legislature's fiscal and policy judgments, and this Court's task is not to determine whether a better financing system could be devised, but rather to determine whether the system passes minimal constitutional muster. Resolution of the presented questions of law is critical to the efficient resolution of this case and will enable all parties and this Court to focus on the substantially deferential and narrow legal standards at issue.

Dated: February 25, 2011

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**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the within **DEFENDANTS' MOTION FOR DETERMINATION OF QUESTIONS OF LAW PURSUANT TO C.R.C.P 56(h)** upon all parties herein electronically through LexisNexis File & Serve or U.S. Mail this 25th day of February 2011, addressed as follows:

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