

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

PLAINTIFFS: **Anthony Lobato**, as an individual and as parent and natural guardian of **Taylor Lobato** and **Alexa Lobato**; **Denise Lobato**, as an individual and as parent and natural guardian of **Taylor Lobato** and **Alexa Lobato**; **Janet L. Kuntz and Jack Kuntz**, as individuals and as parents and natural guardians of **Daniel Kuntz** and **Stacey Kuntz**; **Miguel Cendejas and Yuri Cendejas**, individually and as parents and natural guardians of **Natalia Cendejas** and **Selma Cendejas, Pantaleón Villagomez** and **Maria Villagomez**, as individuals and as parents and natural guardians of **Chris Villagomez, Monique Villagomez** and **Angel Villagomez**; **Linda Warsh and David Warsh**, as individuals and as parents and natural guardians of **Adam Warsh, Karen Warsh** and **Ashley Warsh**; **Herbert Conboy and Victoria Conboy**, as individuals and as parents and natural guardians of **Tabitha Conboy**, **Timothy Conboy** and **Keila Barish**; **Terry Hart**, as an individual and as parent and natural guardian of **Katherine Hart**; **Larry Howe-Kerr and Kathy Howe-Kerr**, as individuals and as parents and natural guardians of **Lauren Howe-Kerr** and **Luke Howe-Kerr**; **John T. Lane**, as an individual; **Jennifer Pate**, as an individual and as parent and natural guardian of **Ethan Pate, Evelyn Pate** and **Adeline Pate**; **Robert L. Podio** and **Blanche J. Podio**, as individuals and as parents and natural guardians of **Robert Podio** and **Samantha Podio**; **Tim Hunt** and **Sabrina Hunt**, as individuals and as parents and natural guardians of **Shannon Moore-Hiner, Eris Moore, Darean Hunt** and **Jeffrey Hunt**; **Doug Vondy** and **Denise Vondy**, as individuals and as parents and natural guardians of **Hannah Vondy** and **Kyle Leaf**; **Brad Weisensee** and **Traci Weisensee**, as individuals and as parents and natural guardians of **Joseph Weisensee, Anna Weisensee, Amy Weisensee** and **Elijah Weisensee**; **Stephen Topping**, as an individual and as parent and

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Case Number: 05 CV 4794

Div: 9

natural guardian of **Michael Topping; David Maes**, as an individual and as parent and natural guardian of **Cherie Maes and Jessie Silva III; Debbie Gould**, as an individual and as parent and natural guardian of **Hannah Gould, Ben Gould and Daniel Gould; Lillian Leroux**, as an individual and natural guardian of **Ari Leroux, Lillian Leroux, Ashley Leroux, Alexandria Leroux and Amber Leroux; Theresa Wrangham**, as an individual and natural guardian of **Rachel Wrangham and Deanna Wrangham; Lisa Calderon**, as an individual and natural guardian of **Savannah Smith and Tahj Taylor; Jessica Spangler**, as an individual and natural guardian of **Rider Donovan Spangler**

and

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

and

PLAINTIFF-INTERVENORS: Armandina Ortega, individually and as next friend for her minor children **S. Orgeta** 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 Pina,** individually and as next friend for her minor children **Ma. Pina** and **Mo. Pina; 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;**

vs.

DEFENDANTS: The State of Colorado; the Colorado State Board of Education; Dwight D. Jones, in his official capacity as Commissioner of Education of the State of Colorado; and **Bill Ritter,** in his official capacity as Governor of the State of Colorado.

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| <p>SECOND AMENDED COMPLAINT</p> | |

Plaintiffs, by their counsel, for a Second Amended Complaint against Defendants, allege as follows:

INTRODUCTION

1. This action is brought for declaratory and injunctive relief to enforce Plaintiffs’ rights under the Colorado constitution, article IX, section 2 (the Education Clause), which requires the general assembly to establish and maintain a thorough and uniform system of free public schools throughout Colorado, and section 15 (the Local Control Clause), which empowers local boards of education with control of instruction in the schools within their school districts.

2. Plaintiffs’ children and the children of the State of Colorado have been and are being denied their right to a quality public school education that meets the substantive mandate of the Education Clause, which is at least an education sufficient to prepare them for the workforce and postsecondary education and to take their place in society as informed, active citizens who are ready to both participate and lead in citizenship.

3. The violation of Plaintiffs’ constitutional rights is caused by the Colorado system of public school finance, including the Public School Finance Act of 1994 (PSFA), “categorical” funding programs, and capital construction funding. The system of public school finance is not rationally related to the accomplishment of the qualitative mandate of the Education Clause or the goals of the general assembly as expressed in education reform legislation. The State has persistently failed to fund education in a rational manner and at the levels required to meet constitutional and statutory standards of quality.

4. As a further result of the State's failure to fund public education in a rational and sufficient manner, local boards of education are prevented from effectively exercising local control of instruction in their schools, in violation of the Local Control Clause.

5. A 2008 study conducted by the Colorado School Finance Project (CSFP) found that in the 2005-06 school year none of the 178 Colorado school districts was able to raise and expend general operating funds at a level sufficient to provide an education that meets the goal of universal proficiency in academic performance and other mandates of the public education system established by Colorado's education reform legislation.

6. Using nationally accepted methods of analysis, the CSFP study found that in 2005-06 Colorado's public education system required \$2.9 billion of additional revenue. The CSFP study takes into account the programmatic and other changes necessary to accomplish education reform mandates, including preschool for special needs students; universal full day kindergarten; class size reductions at all grade levels; additional instruction time for students struggling to meet academic expectations; increased staff development; increased computers and technology for students and staff; and additional support for students identified with special needs.

7. In an October 2009 report, the Colorado Department of Education (CDE) found that in 2006-07, Colorado school funding was some \$1.11 billion below the national average. CDE estimated that public school funding would have to be increased by \$2.8 billion in 2009-10 to bring Colorado current expenditures and teacher salaries up to the national average and to fund critical educational priorities.

8. In 2007, Colorado spent \$1919 less per pupil than the national average of \$9,963. Colorado has continually declined in per pupil expenditures in comparison to the national average. In 2005, Colorado spent \$1034 less than the national average and in 2003 the state spent \$551 less than the national average. This steady decline in state funding compared to the national average occurred notwithstanding the annual increases mandated by article IX, section 17 of the Colorado Constitution (Amendment 23).

9. In 2009, Colorado ranked 48th among the fifty states in elementary and secondary school revenues per \$1,000 of personal income and 47th in elementary and secondary school expenditures per \$1,000 of personal income. Although Colorado's average per capita income is 5th highest in the nation, it spends 10.8 percent below the national average for public elementary and secondary education.

10. Education spending in Colorado has declined in the last few years and will continue to decline as the state faces a \$1.5 billion shortfall for the 2010-11 budget. In FY 2009-10, school funding was cut by \$110 million, about 2%, and the general assembly refused to fund an additional \$20 million that districts otherwise would have received that year because of increased overall enrollment and a 10% increase in the number of at-risk students statewide. Cuts to school districts' 2010-11 budgets are

projected to be as high as 10% to 12%. CDE has projected that school funding will not return to 2009-10 levels for four to five years.

11. In addition to the state budget crisis, school funding levels in Colorado will fall substantially in 2011 when the additional funding and protection provided by article IX, section 17 of the Colorado Constitution (Amendment 23), the Colorado State Spending Act (Referendum C), and one-time, short-term federal stimulus dollars all come to an end.

12. Despite the public education funding crisis, the general assembly has continued to pass legislation in the name of education reform but without providing for sufficient or, in some cases, any funding. Instead, funding sources are identified as “gifts, grant, or donations” or the State Education Fund. The State Education Fund does not have the resources to meet all the obligations placed on it; and gifts, grants, and donations similarly cannot sustain or in some cases, even establish the programs dependent on them as their source of support.

13. By making important reforms and programs affecting all areas of education, including accountability, standards, curriculum, dropout prevention, professional development, and student achievement, dependent upon the receipt of gifts, grants, or donations, the general assembly has enabled non-elected officials with no constitutional authority to make education policy and to decide which educational programs get implemented in our state.

14. Because of lack of access to adequate financial resources, public school students do not receive and school districts are not able to provide the educational programs, services, instructional materials, equipment, staffing, technology, and facilities needed by their students to obtain a constitutionally adequate, quality education. School districts have been forced to reduce instructional and support staff, administrative staff, programs, services, instructional materials, and supplies and to defer needed facilities and equipment acquisition, maintenance, and renovation, thereby preventing them from providing a constitutionally adequate, quality education to their students.

15. Because of lack of access to adequate financial resources, school districts are not able to provide the educational programs, services, instructional materials, equipment, staffing, and facilities necessary to fulfill critical educational goals, including those identified by the general assembly in education reform legislation.

16. The Colorado public school finance system particularly fails to provide funding sufficient to provide a constitutionally adequate, quality education for the under-served student populations in the state, including students at-risk of academic failure, students whose dominant language is not English, students with disabilities, students of minority racial and ethnic heritages, and students of low-income families.

17. As a result of under-funding, irrational, and unequal funding of public education, Plaintiffs and all school children, parents, taxpayers, local boards of education,

and school districts in the state have been denied their rights and authorities under the Colorado Constitution as more fully set forth hereinafter.

JURISDICTION AND VENUE

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

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

PARTIES

I. Plaintiffs

A. Individual Plaintiffs

20. 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 minor child or children identified hereinafter. Each Individual Plaintiff brings suit on his or her own behalf and on behalf of his or her child or children.

21. Each Individual Plaintiff has 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.

22. Many of the Individual Plaintiffs have children who are eligible for special education, limited English proficient, 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.

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

23. David Maes is a resident of School District No. 14 in the County of Adams. His daughter Cherie Maes is a senior at Lester Arnold High School. His step-son Jessie Silva III is a junior at Lester Arnold High School.

¹ §§13-51-101, *et seq.*, C.R.S. (2009). Unless specifically stated otherwise, all statutory references are to the Colorado Revised Statutes (2009).

24. Lillian Leroux is a resident of School District No. 14 in the County of Adams. Her child Ari is a senior at Adams City High School. Her daughter Lillian is a junior at Adams City High School. Her daughter Ashley is fourteen years old and receives educational services at a day treatment program at the Community Reach Center. Her daughters Alexandria and Amber are seventh grade students at Adams City Middle School.

2. Boulder Valley School District No. Re2

25. Stephen Topping is a resident of Boulder Valley School District No. Re2. His son Michael is a seventh grade student at Southern Hills Middle School.

26. Debbie Gould is a resident of Boulder Valley School District No. Re2. Her daughter Hannah Gould is an eighth grade student at Summit Middle School. Her son Ben Gould is a seventh grade student at Summit Middle School. Her son Daniel Gould is a third grade student at Mesa Elementary School.

27. Theresa Wrangham is a resident of Boulder Valley School District No. Re2. Her daughter Rachel Wrangham is eighteen years old and is in the Bridges Transition program. Her daughter Deanna Wrangham is a student in the Boulder Valley School District No. Re2.

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

28. Anthony Lobato is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa. His child Taylor Lobato is a senior at Center High School. His daughter Alexa Lobato is a freshman at Center High School.

29. Denise Lobato is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa. Her child Taylor Lobato is a senior at Center High School. Her daughter Alexa Lobato is a freshman at Center High School.

30. Maria Villagomez is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa. Her son Chris Villagomez is a graduate of Center High School. Her daughter Monique Villagomez is a senior at Center High School. Her son Angel Villagomez is a sixth grade student at Skoglund Middle School.

31. Pantaleón Villagomez is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa. His son Chris Villagomez is a graduate of Center High School. His daughter Monique Villagomez is a senior at Center High School. His son Angel Villagomez is a sixth grade student at Skoglund Middle School.

32. David Warsh is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa. His son Adam Wash is a graduate of Center High School. His daughter Karen Warsh is a graduate of Center High School. His daughter Ashley Warsh attends Center High School.

33. Linda Warsh is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa. Her son Adam Wash is a graduate of Center High School. Her daughter Karen Warsh is a graduate of Center High School. Her daughter Ashley Warsh attends Center High School.

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

35. Jack Kuntz is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa, Saguache County, Colorado. His son Daniel and daughter Stacey graduated from Center High School.

36. Miguel Cendejas is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa, Saguache County, Colorado. His daughter Natalia is a first grade student at Haskin Elementary and his daughter Selma is a fifth grade student at Haskin Elementary.

37. Yuri Cendejas is a resident of Center Consolidated School District No. 26JT, of the Counties of Saguache and Rio Grande and Alamosa, Saguache County, Colorado. Her daughter Natalia is a first grade student at Haskin Elementary and her daughter Selma is a fifth grade student at Haskin Elementary

4. School District No. 1 in the County of Denver

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

39. Jessica Spangler is a resident of School District No. 1 in the County of Denver. Her son Rider Donovan Spangler is a ninth grade student at Tennyson Center for Children, a private special education placement paid for by the district.

5. Pueblo County School District 70

40. Herbert Conboy is a resident of Pueblo County School District 70. He is the legal guardian of Keila Barish, a senior at Pueblo West High School. His daughter Tabitha Conboy is a junior at Pueblo West High School.

41. Victoria Conboy is a resident of Pueblo County School District 70. She is the legal guardian of Keila Barish, a senior at Pueblo West High School. Her daughter Tabitha Conboy is a junior at Pueblo West High School.

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

43. Kathy Howe-Kerr is a resident of Pueblo County School District 70. Her daughter Lauren Howe-Kerr is a ninth grade student at Pueblo West High School. Her son Luke Howe-Kerr is a sixth grade student at The Connect Charter School.

44. Larry Howe-Kerr is a resident of Pueblo County School District 70. His daughter Lauren Howe-Kerr is a ninth grade student at Pueblo West High School. His son Luke Howe-Kerr is a sixth grade student at The Connect Charter School.

45. John T. Lane is a resident and taxpayer of Pueblo County School District 70. He is a grandfather of students in the district, father of employees of the district, and a former school board member.

46. Jennifer Pate is a resident of Pueblo County School District 70. Her son Ethan Pate is a seventh grade student at The Connect Charter School. Her daughter Evelyn Pate is a sixth grade student at The Connect Charter School. Her daughter Adeline Pate is a second grade student at Sierra Vista Elementary School.

47. Blanche J. Podio is a resident of Pueblo County School District 70. Her son Robert Podio is a senior at Pueblo West High School. Her daughter Samantha Podio is a sophomore at Pueblo West High School.

48. Robert L. Podio is a resident of Pueblo County School District 70. His son Robert Podio is a senior at Pueblo West High School. His daughter Samantha Podio is a sophomore at Pueblo West High School.

6. Woodlin School District No. R-104

49. Tim Hunt is a resident of Woodlin School District No. R-104 in Washington County. His child Darean Hunt is a junior at Woodlin Undivided High School. His child Jeffrey Hunt is a third grade student at Woodlin Elementary School.

50. Sabrina Hunt is a resident of Woodlin School District No. R-104. Her child Darean Hunt is a junior at Woodlin Undivided High School. Her child Jeffrey Hunt is a third grade student at Woodlin Elementary School.

51. Doug Vondy is a resident of Woodlin School District No. R-104. His child Kyle Leaf is a seventeen year-old student at Woodlin Undivided High School. His child Hannah Vondy is a seven year-old student at Woodlin Elementary School.

52. Denise Vondy is a resident of Woodlin School District No. R-104. Her child Kyle Leaf is a seventeen year-old student at the Woodlin School. Her child Hannah Vondy is a seven year-old student at the Woodlin School.

53. Brad Weisensee is a resident of Woodlin School District No. R-104. His son Joseph is a sixth grade student at the Woodlin School. His daughter Anna is a third grade student at the Woodlin School. His daughter Amy is a second grade student at the Woodlin School and his son Elijah Weisensee is in kindergarten at the Woodlin School.

54. Traci Weisensee is a resident of Woodlin School District No. R-104. Her son Joseph is a sixth grade student at the Woodlin School. Her daughter Anna is a third grade student at the Woodlin School. Her daughter Amy is a second grade student at the Woodlin School and her son Elijah Weisensee is in kindergarten at the Woodlin School.

B. School District Plaintiffs

55. 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. .

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

II. Defendants

57. The State of Colorado is a body politic.

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

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

60. Bill Ritter, 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.

GENERAL ALLEGATIONS

I. The Education Clause and Local Control Clause

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

62. The Education Clause is a judicially enforceable constitutional mandate to the general assembly to provide a thorough and uniform system of free public education.

63. The Education Clause guarantees to each and every school-age resident of Colorado the fundamental right to attend free public schools that provide an opportunity to obtain a public education that meets qualitative constitutional standards. To meet this mandate, public education must at least prepare residents to participate meaningfully in the civic, political, economic, social and other activities of our society and the world, and to exercise the basic civil and other rights of a citizen of the State of Colorado and the United States of America. An education that fails to fulfill this purpose is constitutionally inadequate.

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

65. Article IX, section 15 of the Colorado Constitution (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 empowers the directors of the local boards of education with the "control of instruction in the public schools of their respective districts." Control of instruction by locally elected school

boards is an integral component of a thorough and uniform system of public education and a constitutional system of public school finance.

66. A system of public school finance that is not rationally related and in fact fails to providing sufficient financial resources to the school districts of the state to permit local boards of education to provide the services, materials, and facilities necessary to meet the qualitative mandate of the Education Clause is unconstitutional under both the Education and Local Control Clauses.

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

[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.²

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

69. The general assembly has acknowledged the constitutional role of local school districts in the system of public education and has provided for the establishment of school districts by legislation, including the School District Organization Act of 1992, the stated purposes of which include “to maintain a thorough and uniform system of free public schools throughout the state”.⁵

II. Education Reform Legislation

70. Beginning in the 1990s, in the name of education reform, the State of Colorado has undertaken a comprehensive legislative transformation of the public education system. Key provisions within education reform legislation currently include the “Education Reform” provisions of part 4 of title 22, article 7,⁶ the Preschool to

² §22-30.5-301(1).

³ §§22-54-101, *et seq.*

⁴ §22-54-102(1).

⁵ §§22-30-102(1).

⁶ §§22-7-401, *et seq.* (most recently amended in 2008)

Postsecondary Education Alignment Act (Colorado Achievement Plan for Kids or “CAP4K”),⁷ and the Education Accountability Act of 2009.⁸

71. Education reform is based upon legislative findings of the purposes to be accomplished by and contents of a constitutional thorough and uniform system of public education. For example, in CAP4K, the general assembly stated that:

From the inception of the nation, public education was intended both to prepare students for the workforce and to prepare them to take their place in society as informed, active citizens who are ready to both participate and lead in citizenship. In recent years, the emphasis in public education has been squarely placed on the areas of reading, writing, mathematics, and science, but it is important that education reform also emphasize the public education system’s historic mission of education for active participation in democracy.⁹

72. Since 1993, the “anchor for education reform” has been the statewide “standards-based” education system that states as its ultimate goal “to ensure that Colorado’s schools have standards which will enable today’s students of all cultural backgrounds to compete in a world economy in the twenty-first century.”¹⁰

73. Key elements of the state-wide “standards-based” education system include mandatory adoption of state and school district model “content standards” in multiple areas of curriculum; alignment of school curriculum and programs of instruction with the adopted content standards; and state and local “assessments” of all students’ progress toward and achievement of those content standards by the use of standardized testing, principally the Colorado student assessment program or “CSAP”.

74. In 2008, CAP4K was adopted as a “new generation of standards-based education”, intended, among other things, to ensure that all high school graduates achieve “postsecondary and workforce readiness”. The Colorado Department of Education (CDE) and the Colorado Department of Higher Education define “postsecondary and workforce readiness” 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.” Postsecondary and workforce readiness is today’s legislative statement of the quality and content of the public education mandated by the Education Clause.

75. CAP4K requires the development, adoption, and implementation of state and local standards that identify the knowledge and skills that a student should acquire as he or she progresses from preschool through elementary and secondary education, and a system of assessments aligned with those standards that is designed to measure student attainment of the standards and progress toward attaining postsecondary and workforce

⁷ §§22-7-1001, *et seq.* (adopted in 2008)

⁸ §§22-11-101, *et seq.*

⁹ §22-7-1002(1)(c).

¹⁰ §22-7-401.

readiness. School districts are required to adopt curricula aligned with the standards and to ensure that each student receives a program of study that will enable him or her to demonstrate attainment of each of the standards.

76. The general assembly directly correlates student achievement of the content standards with accomplishing the mandate of the Education Clause:

Every resident of the state six years of age or older but under twenty-two years of age has a fundamental right to a free public education that assures that such resident shall have the opportunity to achieve the content standards adopted pursuant to this part 4 at a performance level which is sufficient to allow such resident to become an effective citizen of Colorado and the United States, a productive member of the labor force, and a successful lifelong learner.¹¹

77. The 2001 amendments to the federal Elementary and Secondary Education Act of 1965 (ESEA), known as the No Child Left Behind Act of 2001 (NCLB), were signed into law on January 8, 2002. The stated congressional purpose for NCLB is “to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.”¹²

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

79. NCLB particularly seeks to meet 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.

80. Colorado elected to conform to the requirements of NCLB, and, in furtherance thereof, the State Board adopted the Colorado Consolidated State Plan (the

¹¹ §22-7-403(2).

¹² 20 U.S.C. §6301.

State Plan) in 2002. In 2008, CAP4K incorporated NCLB and the State Plan into the Colorado education reform system.

81. The State Plan obligates the state and all school districts to meet the requirements of NCLB by, among other things, accomplishing comprehensive performance goals, including attaining 100% student proficiency in reading/language arts, writing, and mathematics by 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. Accomplishment of these goals is one measure of compliance with the mandate of the Education Clause.

82. Attainment of the goal of 100% proficiency by 2013-14 is measured by student results on statewide assessments. Schools and school districts are held accountable for “adequate yearly progress” or “AYP”, defined as continuous and substantial annual improvement pursuant to annual performance targets that progressively lead to attainment of the goal of 100% proficiency by 2013-14. State, school district, and school AYP results are published for all students by school level (elementary, middle, and high school) and disaggregated to show the results by key student cohorts, including “free or reduced price lunch status” (a measure of poverty), English language proficiency, special program status (students with disabilities), ethnicity (Native American, Asian, Black, Hispanic, and White), migrants, and gender.

83. AYP results provide one measure of the constitutional adequacy of Colorado’s public education system. In 2008-09, Colorado did not meet its state AYP targets in math or reading/language arts. Only 85 of 184 school districts and boards of cooperative educational services (BOCES) (46%), made AYP, and 60% of schools made AYP targets, a drop from 75% of schools in 2007. The districts that did not make AYP include the large majority of students enrolled in Colorado’s public schools.

84. At the elementary and middle levels, the following groups of students did not meet the reading/language arts and math proficiency targets: Native Americans, Asians, Blacks, Hispanics, English language learners, economically disadvantaged students, migrants, and students with disabilities. In addition, male students did not meet the reading/language arts proficiency target at both the elementary and middle levels. Native Americans, Blacks, Hispanics, English language learners, and economically disadvantaged students at the middle level made AYP in math – but not reading – through a 10% improvement “safe harbor.”

85. At the high school level, Blacks, Hispanics, English language learners, economically disadvantaged students, migrants, and students with disabilities did not meet proficiency targets in reading/language arts and math. In addition, Native Americans, males, and females did not meet math proficiency targets. Blacks, Hispanics, English language learners, economically disadvantaged students, and students with disabilities at the high school level made AYP in reading – but not math – through the 10% improvement safe harbor.

86. There are currently 182 schools in Colorado on School Improvement. Schools on Improvement are those that receive federal Title I funds but do not reach AYP targets in the same content area for two consecutive years. Forty-five of the 182 schools on School Improvement, or 25%, have not met AYP targets for six or more years.

87. In 2009, the general assembly adopted the Education Accountability Act of 2009 (“SB 163”), which repealed and substantially revised preexisting systems of “educational accountability” and school district “accreditation”. SB 163 holds the state, school districts, and individual public schools accountable for student performance through a single system that “objectively evaluates the performance of the thorough and uniform statewide system of public education for all groups of students”. The system of accountability and accreditation mandated by SB 163 is today’s legislative measure of the ability of the public education system to accomplish the qualitative mandate of the Education Clause.

88. Pursuant to SB 163, the State Board has adopted the “Colorado Growth Model” to calculate and display students’ individual and group academic progress year-to-year toward reaching state proficiency objectives, as measured by student scores on CSAP and other assessments. The Colorado Growth Model has been incorporated into the State Plan as the method for assessing state, school district, and school accomplishment of adequate yearly progress toward the 100% proficiency goals.

89. SB 163 mandates a comprehensive system of performance evaluations for the state, school districts, and public schools based on “performance indicators” including student academic growth and achievement levels on statewide assessments, progress toward closing “achievement and growth gaps,” high school degree endorsements (beginning in 2010-11), and graduation and drop-out rates. These performance indicators are a legislated measure of the ability of the public school system to fulfill the qualitative mandate of the Education Clause.

90. SB 163 mandates a system of state level accreditation of school districts and district level accreditation of individual schools that includes district and school “accreditation contracts” addressing, among other things, the attainment of four “key performance indicators”: student longitudinal academic growth, student achievement levels on statewide assessments, progress made in closing achievement and growth gaps, and postsecondary and workforce readiness. A school district or school that fails to meet annual requirements specified in its accreditation contract must adopt and implement an improvement plan, priority improvement plan, or turnaround plan. Failure to make substantial progress under a priority improvement or turnaround plan results in loss of accreditation and reorganization, management takeover by private or public entity, conversion to a charter school, or other remedial action.

91. Education reform legislation has substantially expanded the role of the state and the State Board in areas of instruction, program, and educational policy historically controlled by school districts; significantly increased the testing and

administrative tasks of school districts; and has mandated substantial increases in the costs of providing a constitutionally adequate, quality education.

92. Education reform legislation has established goals, objectives, standards, and methods that assist in defining, without limiting, the qualitative mandate of the Education Clause; measuring whether the state has fulfilled its constitutional responsibilities; and determining whether there are sufficient financial resources to establish and maintain a thorough and uniform system of free public education in Colorado.

93. Education reform legislation has established instructional and other substantive goals and mandates without analyzing the cost to attain those goals or providing the means to fund the accomplishment of those mandates. The general assembly has enacted education reform legislation without corresponding reform to the system of school finance.

94. The cost of providing a constitutionally adequate, quality education exceeds the maximum amount of funding that is available to school districts under the Colorado system of public school finance. The system of public school finance is not rationally related to the accomplishment of the purposes, methods, and requirements of education reform legislation and violates the Education and Local Control Clauses.

III. The System of Public School Finance

A. The Public School Finance Act of 1994 (PSFA)

95. Governmental funding for Colorado school districts is derived from local taxes, state funds, and, to a significantly lesser degree, federal funds. In 2008-09, total state funding for elementary and secondary education, including PSFA and categorical programs, was approximately \$3.64 billion, and federal funding totaled approximately \$480 million.

96. The large majority of state and local funding for public education is provided through the PSFA. In school year 2008-09, state and local PSFA funding totaled some \$5.35 billion, of which local school district property tax and other sources contributed \$1.96 billion (36.6%) and the state contributed \$3.39 billion (63.4%).

1. Total Program Funding

97. The PSFA sets a financial base of support for each school district by a formula with two basic components, the district “funded pupil count” and the district “per pupil funding” amount, which when multiplied together produce the district’s “total program” funding.

98. A district’s funded pupil count is the actual number of pupils enrolled in its schools during a specified period of time, adjusted to account for special factors such

as on-line pupil funding, the Colorado Preschool Program (CPP) pupil count, expelled students, half-day kindergarten programs, and certain pupils with disabilities. In 2008-09, the statewide total funded pupil count was approximately 778,000. School district funded pupil counts ranged from under 100 to over 80,000.

99. District per pupil funding begins with a statutory statewide base funding amount, stated as a certain number of dollars per pupil. Base funding in 2008-09 was \$5,250 per pupil. The base funding is increased to recognize district-by-district variances due to factors such as cost of living, enrollment size, “at-risk” students, and personnel costs. Thus, per pupil funding levels vary substantially among the school districts. In 2008-09, per pupil funding ranged from the statutory minimum of \$6,350 per pupil to over \$14,000 per pupil, with a statewide average of \$6,874 per pupil.

100. Each school district’s total program is funded by a combination of state and local tax revenues. The school district or local share consists primarily of the proceeds from a mill levy upon the assessed valuation of the taxable property within the school district’s boundaries. The state share equals the difference between the school district’s total program and the school district’s local share.

101. School district authority to obtain funding by local property taxation is strictly fixed by statute. Each year, CDE informs the school districts exactly what their required mill levy will be for the next year.

2. PSFA Formula Factors

102. The PSFA formula also incorporates limited supplemental funding for certain recognized sources of increased costs of education (“factors”), including, for example, local cost of living variations and personnel costs, district size (low enrollment), and educating “at-risk” student populations. Funding for these factors is not based on a rational analysis of actual costs and need, does not reflect the true costs to school districts, and is inadequate to provide for the intended purposes.

a. PSFA Funding for At-Risk Pupils

103. Supplemental funding is necessary to educate pupils who due to family poverty are identified as “at-risk” of performing poorly in or dropping out of school. At-risk funding is computed as a percentage increase to district per pupil funding, beginning at 11% for eligible pupils. At-risk funding is limited to pupils whose families are eligible for “free lunch” under the National School Lunch Act and does not extend to children whose families are eligible for “reduced price lunch”. Free lunch eligibility is an exceptionally narrow definition of poverty (130% of the national poverty level) and is not an accurate measure of academic performance or ability to perform.

104. The number and concentration of at-risk (*i.e.*, free lunch eligible) pupils in Colorado has increased dramatically over the past 18 years. In 1992-93, there were approximately 123,500 at-risk students, representing 21.1% of the total student

population. By 2002-03, the number had increased to 218,500 pupils, representing 23.0% of the total pupil population. In 2007-08, the total number of at-risk pupils reached 224,100, representing 29.5% of the state's pupil population. Between 2007-08 and 2008-09, the "free and reduced-price lunch" student population increased from 34.84% (271,000 students) to 35.78% (283,000 students).

105. The growth in at-risk pupil numbers and concentration has not been uniform throughout the state. For example, between 2000 and 2007, in the Adams 12 Five Star School District, at-risk students increased from 14% to 23%; in Mapleton School District No. 1 the increase was from 22% to 52%; and in the Aurora Public Schools the increase was from 28% to 48%.

106. The growth and changing distribution of at-risk children in Colorado presents a major challenge to the system of public education. PSFA at-risk factor funding is not based upon the actual costs of providing a constitutionally adequate educational opportunity for at-risk pupils. The PSFA fails to provide sufficient resources and to allocate resources rationally in order to meet the educational needs and rights of Colorado's at-risk pupil population.

107. Due to irrational under-funding of the cost of providing educational opportunities for at-risk pupils and the irrational formula used for calculating and distributing the minimal at-risk dollars, school districts either spend less per at-risk pupil than is necessary, use additional general operating funds for that purpose, or both, thereby adversely impacting their ability to provide adequate educational opportunities for all students.

b. PSFA Funding for Preschool Education

108. The Colorado Preschool Program Act,¹³ (CPP) provides funding through the PSFA formula for certain preschool children (ages three, four, or five years) by adding each eligible CPP child as a half-day pupil to a school district's funded pupil count. The CPP serves preschool children who lack overall learning readiness due to significant family risk factors, are in need of language development, or are neglected or dependent children. In 2008-09, the number of children statutorily permitted to participate in the CPP was limited to a state-wide total of 20,160.

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

110. Preschool and full-day kindergarten programs are necessary to assure all at-risk students the opportunity for a quality education guaranteed by the Education

¹³ §§22-28-101, *et seq.*

Clause and education reform. The number of funded CPP “slots” is arbitrary and inadequate to serve the needs of a large majority of preschool children. The numbers of CPP funded participants and the amount of funding provided per participant as a whole is grossly inadequate, bears no rational relationship to actual need, and has fluctuated irrationally over time.

111. Due to under-funding of the cost of adequate preschool and full-day kindergarten programs, school districts cannot provide necessary programs and must either spend less per pupil than is necessary, use additional general operating funds for preschool and kindergarten purposes, or both, thereby adversely impacting the ability to provide adequate educational opportunities for all students.

c. PSFA Cost of Living Funding

112. The PSFA includes a “cost of living factor” to permit increases in per pupil funding to compensate for differences in the cost of living for each school district. Despite the fact that local cost of living is a recognized and determinable cost variable that must be addressed in a school finance system that seeks to assure a uniform opportunity for a quality education throughout the state, the general assembly has not adequately funded or implemented the cost of living formula.

3. Override Funding

113. The PSFA permits school districts a limited 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 25% of the district’s total program or \$200,000. Additional revenues approved by this process are funded exclusively by increasing the local property tax levy. The state share is neither reduced nor increased by the approval of local override revenues.

114. The purpose of override funding is to provide educational services above those required to meet the requirements of the Education Clause. Due to under-funding of the PSFA total program, school districts that are able to pass override elections use the additional revenues to assist in providing basic education services. Due to variations in local property tax bases, the override option fails to provide “property-poor” school districts with an effective opportunity to meet their obligation to provide a constitutionally adequate public education, much less to enhance the educational opportunities of their students.

4. Summary Allegations Concerning the PSFA

115. The PSFA formula and spending levels are not based upon a rational determination of the actual costs to provide every student with an opportunity for a constitutionally adequate, quality education or an education that meets the standards and

goals set by education reform. When adopted in 1994, PSFA base funding was determined by historical school funding levels and political compromise and not on the actual costs to provide a constitutionally adequate, quality education.

116. The PSFA formula, factors, and funding levels have never been studied, much less increased, to account for the additional costs to meet the mandates of education reform legislation. Neither the PSFA funding formula nor the funding levels it dictates provide school districts with sufficient funds or funding ability to meet the actual and foreseeable costs of educating their students in accordance with the requirements of the Education Clause and education reform.

117. As a result of irrational and inadequate funding of the PSFA, the Individual Plaintiffs, their children, and all Colorado school children are denied their substantive educational rights guaranteed by the Education Clause.

B. Categorical Program Funding

118. In addition to PSFA total program funding provided, school districts may receive state funding for “categorical” programs designed to serve particular groups of students, particular student needs, or local school district conditions that are known to require substantial additional financial resources beyond the total program. Categorical programs include English language proficiency education, special education, gifted and talented education, and funding for small attendance centers, transportation, and vocational education. In 2008-09 categorical funding totaled \$219 million, of which \$127 million was expended for the education of disabled children.

119. The state has failed to provide adequate funding through categorical programs to meet the actual costs incurred by school districts to provide a constitutionally adequate, quality education to non-English proficient students, students with disabilities, and gifted and talented students, and to meet the costs of vocational education and transportation.

1. The English Language Proficiency Act

120. School districts face known educational challenges and significant additional expense in providing a quality education to children whose dominant language is not English and whose academic achievement is impaired due to inability to comprehend or speak English. These students are one of the fastest growing populations in the public schools, more than tripling in the past ten years. CDE estimates that there are 100,000 Colorado public school students (12% of total statewide enrollment) whose dominant language is not English and who are functioning below grade level. While Spanish-speaking students constitute the majority of these students, Colorado school children come from families with some 200 different native languages. Providing an adequate education for these students, specifically including rapidly bringing them to English language proficiency is within the mandate of the Education Clause and is required by education reform.

121. The general assembly adopted the English Language Proficiency Act (ELPA) “to improve educational and career opportunities for every student in this state,” “to provide for the establishment of an English language proficiency program in the public schools . . . and to provide for the distribution of moneys to the several school districts to help defray the costs of such program.”¹⁴

122. ELPA requires school districts to identify all students whose dominant language may not be English, to assess such students, and to administer and provide programs for those students. School districts are required to meet the state’s 100% proficiency goals for all ELPA students. ELPA classifies eligible students in three categories: category A students who speak languages other than English and do not comprehend or speak English; category B students who comprehend or speak some English, but their predominant comprehension or speech is in a language other than English; and category C students who comprehend and speak English and at least one other language and their dominant language is difficult to determine.

123. ELPA allocates \$256 per student per year for category A and B students, and \$37 per student per year for category C students. ELPA supplemental funding is limited to a total of only two years per student beginning in first grade. Total ELPA funding in school year 2008-09 was \$8.6 million. These funding amounts and the two year limit are arbitrary and bear no rational relationship to the actual costs of providing the instruction and materials necessary to enable these students to gain the English language literacy skills necessary to learn course content.

124. In 2008-09, state ELPA funding was provided for 48,000 of the 101,000 students whose dominant language is other than English and who are functioning below grade level. The cost of educating the remaining 52,000 was borne entirely by school district total program funding. The failure of the state to provide adequate ELPA funding particularly impacts school districts with rapidly growing and diversifying populations of non-English proficient students.

125. ELPA fails to provide sufficient resources and to allocate resources in a manner rationally designed to meet the educational needs and rights of Colorado’s ELPA pupil population. Due to under-funding of the cost of providing adequate educational opportunities for ELPA pupils, school districts must spend less per ELPA pupil than is necessary, use additional general operating funds for this purpose, or both, thereby adversely impacting the ability to provide adequate educational opportunities for all students.

¹⁴ §22-24-102

2. Education of Children with Disabilities

126. The Exceptional Children's Educational Act¹⁵ (ECEA) and the federal Individuals with Disabilities Education Act (IDEA) require school districts to provide special education programs to all children with disabilities regardless of the cost. The general assembly enacted ECEA in recognition of "the obligation of the state of Colorado to provide educational opportunities to all children which will enable them to lead fulfilling and productive lives."¹⁶

127. IDEA and ECEA require school districts to provide all children with disabilities with a free, appropriate education in the least restrictive environment. A free appropriate public education includes special education and related services provided pursuant to an individualized education plan. The State Board has found that "Special Education represents at once our high obligation to our most vulnerable children and the ultimate in unfunded mandates" and recommended "accelerated funding of this critical need area." Providing adequate special education services for children with disabilities is within the mandate of the Education Clause.

128. Special education services are provided by "administrative units," which may be a school district or a group of school districts acting through a Board of Cooperative Educational Services (BOCES). In fiscal year 2009-10, Colorado administrative units serve approximately 82,000 children with disabilities (10.5% of the total pupil enrollment).

129. In 2009, CDE estimated the total cost of providing special education to be \$700 million per year. In 2009-10, state funding will provide about 16% of that total; federal funding will provide 21%; and the balance of 63% will be paid by school district general operating funds, twice the national average of 32% funding from local general operating funds.

130. A study of special education prepared for the State Board in 2000 found that the state's contribution to ECEA funding was inadequate and recommended that Colorado increase state funding for special education to reduce the local costs much closer to the national average. The study found that the formula failed to link the amount of money distributed by the state to the actual costs of providing special education services and created an inequitable dependency on local taxation as a source of funding such services.

131. Funding for students with disabilities is not based upon the actual costs of providing an adequate educational opportunity for those students. The majority of ECEA funding is allocated among districts on the basis of 1994 student population ratios, which are not an accurate measure of specific district current actual funding needs. ECEA

¹⁵ §§22-20-101, *et seq.*

¹⁶ §22-20-102.

funding fails to provide sufficient resources and to allocate resources rationally in order to meet the educational needs and rights of Colorado's students with disabilities.

132. Due to under-funding and irrational funding of the cost of providing adequate educational opportunities for students with disabilities, school districts must spend less than is necessary, use additional general operating funds for this purpose, or both, thereby depriving school districts of the ability to provide adequate educational opportunities for all students.

3. Gifted and Talented Education

133. Education services for gifted and talented students are identified as necessary components of a quality education by both the ECEA and the provisions of §§22-26-101 *et seq.* The general assembly has recognized an obligation to provide educational opportunities to students identified as gifted and talented that will "challenge them and enable them to lead fulfilling and productive lives."¹⁷

134. Colorado administrative units serve over 56,000 gifted and talented students, representing 7% of the student population. In fiscal year 2008-09, total state categorical funding for school district gifted and talented programs was approximately \$8.4 million, or \$150 per student. These funds are to be used for salaries for teachers who work with gifted and talented students; staff development and training needed by personnel to address their educational needs; and activities, materials, and equipment associated with the education of gifted and talented students.

135. Categorical funding provided for gifted and talented students is inadequate to provide the educational programs and services needed by these students. Due to under-funding of the cost of providing adequate educational opportunities for gifted and talented students, school districts must spend less than is necessary, use additional general operating funds, or both, thereby adversely impacting the ability to provide adequate educational opportunities for all students.

4. Transportation Costs

136. Costs for student transportation vary significantly among school districts and have a significant impact on the general operating funds provided through the PSFA. The general assembly has established a categorical program for partial reimbursement of current operating expenditures for pupil transportation.¹⁸ The general assembly has not fully funded this program, and, notwithstanding the fact that transportation costs have increased substantially, funding has progressively decreased over the years.

137. In fiscal year 2008-09, total transportation expenses were projected to be \$200 million; of this amount, \$81.2 million were eligible for state reimbursement.

¹⁷ §22-26-102

¹⁸ §§22-51-101, *et seq.*

However, transportation was not fully funded, but was limited to \$49.6 million, or 55.2% of total reimbursement claims. The balance of eligible transportation costs are paid by local school districts from PSFA total program revenues.

138. Due to under-funding of transportation costs, school districts must spend less than is necessary and/or use additional general operating funds, thereby adversely impacting the ability to provide adequate educational opportunities for all students.

C. Capital Construction Funding

139. All Colorado school children are constitutionally entitled to adequate physical school facilities, equipment, and classrooms as an integral part of their right to a constitutionally adequate, quality education. Facilities that are unsafe, deteriorating, or overcrowded impair students' abilities to learn and threaten their health and well-being.

140. School districts must fund the costs of acquiring or purchasing buildings or grounds; constructing, improving, enlarging, remodeling, repairing, or making additions to school buildings or improving school grounds; and equipping and furnishing newly constructed school buildings by contracting bonded indebtedness following voter approval.

141. A school district's bonded indebtedness is repaid solely through a local tax levy upon the taxable property within its boundaries. The state does not provide equalization or other funds for the payment of school district bonded indebtedness. The assessed value of real property per pupil varies widely in different school districts. Accordingly, property taxes yield substantially different revenues per pupil from district to district within the state, ranging from a high of \$1,990 million of assessed value per pupil at Primero School District in Las Animas County to \$12,800 of assessed value per pupil at the Vilas School District in Baca County.

142. The amount of bonded indebtedness that a school district may contract is limited to the greater of 20% of the valuation for assessment of the taxable property in such district or 6% of the actual value of the taxable property in the district. This limitation is unrelated to the actual capital construction funding needs of school districts and, because of the wide variations the assessed value and actual value of taxable property among school districts, particularly impacts low property wealth school districts and their taxpayers, parents, and students.

143. Almost a decade ago, the Colorado State Auditor found that an additional \$4.7 billion was needed for capital construction funding for public education. More recently, the actual outstanding need was estimated to be between \$5.7 billion and \$10 billion. There are no statewide standards for public school facilities. As required in the BEST legislation, the state has recently completed but not yet released an evaluation of the condition of public school facilities, but it is believed that the cost of meeting current capital construction needs has doubled again.

144. School buildings and facilities are an essential component of a quality education and a thorough and uniform system of free public schools. The public school finance system fails to provide adequate funds or a means for school districts to raise and expend sufficient funds to provide all students with an equal opportunity for a constitutionally adequate, quality education. This failure is evidenced by conditions such as over-crowded facilities, use of temporary structures, unsafe facilities, antiquated facilities, inadequate access for the disabled, inadequate facilities and grounds to meet gender equity standards, excessive maintenance and repair costs for antiquated facilities, inadequate technology infrastructure, inadequate heating and cooling systems, inadequate fire security systems, leaking and failing roofs; substandard plumbing, substandard wiring, and hazardous building materials.

145. Due to exclusive reliance on local property taxes as a funding source, 40% of Colorado school districts do not have sufficient bonding capacity to raise the revenue needed to build a single new school. Other school districts do not have sufficient bonding capacity to meet capital needs.

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

147. The Building Excellent Schools Today Act (BEST)¹⁹ enacted in 2008 provides limited and conditional state-level financial assistance to address the inability of some school districts to meet the need for capital construction projects and renovate and maintain existing facilities. BEST does not remedy the underlying structural and statutory deficiencies in the system of capital construction funding, nor does it provide sufficient funding to meet public school capital construction needs.

IV. Constitutional Provisions Affecting School Finance

148. Two provisions in the Colorado constitution impose procedural restrictions that frustrate the efforts of the state and school districts to raise and expend the funds necessary to establish and maintain a thorough and uniform system of free public schools: the Taxpayer's Bill of Rights (TABOR),²⁰ effective as of December 31, 1992; and the "Gallagher Amendment,"²¹ approved in 1982.

¹⁹ §§22-43.7-101, *et seq.*

²⁰ COLO. CONST., art. X, §20.

²¹ COLO. CONST., art. X, §3(1)(b).

149. TABOR and the Gallagher Amendment have fundamentally compromised the legislature's ability to exercise its constitutional authority to fund essential state services and to provide sufficient funding for public education in a manner that is rationally related to fulfilling the mandate of the Education Clause. The effect of these provisions over time has been to deprive Colorado parents and school children of their substantive rights under the Education Clause and to prevent local boards of education from exercising their authority and fulfilling their responsibilities under the Local Control Clause.

150. A third provision, Amendment 23,²² adopted by initiative on November 7, 2000, sets a mandatory minimum level of annual increases in public school funding based generally on the annual inflation rate and changes in student population. Although the funding requirements of Amendment 23 do not define the level or method of funding necessary to comply with the substantive mandate of the Education Clause, the general assembly has applied them as the maximum level of public school funding.

151. Because the inflation rate is projected to be negative 0.6% in state fiscal year 2008-09, Amendment 23 is being interpreted to require no more than a 0.4% increase in public school funding for 2009-10. This change in funding is not based on an analysis or even consideration of the actual cost of meeting the mandates of the Education Clause or education reform. This nominal increase is substantially below the actual increase in costs experienced by school districts and will fail to provide sufficient funding to provide all Colorado students with the opportunity to obtain a constitutionally adequate, quality education.

A. The Taxpayers Bill of Rights (TABOR)

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

153. TABOR limits the state to a maximum annual percentage change in fiscal year spending that does not exceed the percentage change in the Denver-Boulder inflation rate (inflation) in the prior calendar year plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by state voters.

154. TABOR limits school districts to a maximum annual percentage change in fiscal year spending equal to inflation plus the annual percentage change in their respective student enrollments (local growth), adjusted for revenue changes approved by local voters. School districts are also limited to a maximum annual percentage change in property tax revenues equal to the annual percentage change in inflation and local growth, adjusted for property tax revenue changes approved by voters.

²² COLO. CONST., art. IX, § 17.

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

156. Prior to the adoption of TABOR, school districts were able to collect and spend the same amount of property tax revenue each year. School districts were able to adjust their mill levies each year in response to changes in the total value of local taxable property and the revenues required to support educational services. The property tax provided a stable source of revenue relatively unaffected by changes in economic conditions.

157. Under TABOR, school districts may levy no more than the same number of mills each year, unless that mill levy would raise more property tax revenue than TABOR permits, in which case, the school district must reduce its mill levy. An increase in the total assessed valuation in a school district forces a mill levy reduction to avoid receiving property tax revenues in excess of the TABOR limit. However, if for any reason the mill levy subsequently produces lower revenues, it cannot be increased even to its former level without a taxpayer vote. In school districts with increasing property values, TABOR has steadily driven mill levy rates down over time, except in districts with lower property values which have not seen mill levy decreases.

158. Due to TABOR's self-executing reduction in school district mill levies in combination with the Gallagher Amendment and the mill levy limitations of the PSFA, the uniformity of property tax burden achieved in 1991 no longer exists and continues to deteriorate, frustrating the express intention of the legislature when it adopted the PSFA in 1994. In 2008-09, school district mill levies for their PSFA total program ranged from 1.68 to the statutory maximum of 27, with a statewide average of 20.817, about one-half of the 1994 average.

160. These mill levy reductions and disparities have occurred on the educationally irrelevant basis of change in local property values. The progressive decline in school district mill levies and local revenues bears no relationship to the costs of providing educational services and has substantially deprived the state and the school districts of the most important historical source of education revenues.

161. The decline in school district mill levies has caused the local share of PSFA revenues to grow at a slower rate than total program funding, forcing a greater contribution from state funds every year. As a result, the state share has displaced local

property tax revenues as the primary source of education revenues. During the 23 years up to 2009, the state share of public education revenues grew from 44% to 65% and the local share dropped correspondingly from 56% to 35%.

162. Since 1994, the forced reduction in local property tax revenues has reduced local source revenues for school funding by approximately \$1.65 billion per year. Thus, although state public education funding increased during this time, that increase has not resulted in an equivalent increase in total funding but has merely funded the loss of local property tax revenues. This has resulted in a decline in overall school funding that is completely unrelated to the cost of providing a constitutionally adequate, quality education.

163. As a result, and because the state itself suffers from a similar downward “ratcheting” effect on its revenue and expenditure levels, TABOR has frustrated the general assembly’s provision of the level of funding necessary to fulfill the mandate of the Education Clause.

164. TABOR precludes school districts from withdrawing from or refusing to participate in programs mandated by state or federal law. School districts do not have the option to either obtain the funding necessary to comply with the mandates of education reform legislation or to decline to expend the limited funds available to comply with those mandates. School districts are statutorily and constitutionally limited in their ability to generate revenues from local resources, but are dependent upon the state, which has consistently failed to adopt, implement, and fund a school finance system rationally designed to meet the qualitative mandate of the Education Clause and the requirements of education reform.

165. TABOR does not define or limit the substantive rights guaranteed by the Education Clause or the funding necessary to fulfill that guarantee. TABOR does not authorize or excuse the failure to provide adequate funds pursuant to a rational system of public school finance.

B. The Gallagher Amendment

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

167. In 1983, when the Gallagher Amendment became effective, residential property taxes were approximately 45% of all property taxes in the state. During the next

20 years, statewide residential property values, particularly in the Front Range counties, grew significantly in absolute terms and by comparison to nonresidential property values. In order to maintain the Gallagher Amendment proportionality requirement, residential assessment rates across the state were forced down from 21% to 7.96% of actual value. The effect has been to significantly reduce property tax revenues as a source of education funding and to shift the property tax burden away from residential to nonresidential properties.

168. The Gallagher Amendment was intended to provide stability and uniformity in the level of assessed valuations across Colorado's counties and protect the tax base of local governments. The effect, however, has been the opposite: it has deteriorated local tax bases and destroyed property tax and mill levy stability and uniformity. Particularly in school districts with predominantly residential property, the Gallagher Amendment has depressed the assessed valuation of their property tax base and the revenues that can be raised by their mill levies.

169. The Gallagher Amendment has progressively reduced local property tax as an actual and potential source of school funding and has resulted in unequal and inequitable differences in school district mill levy rates across the state. In combination with TABOR, the Gallagher Amendment frustrates the ability of the general assembly and the local school districts to fulfill the mandate to meet the substantive rights of the parents, school children, and local boards of education under the Education Clause and the Local Control Clause.

C. Amendment 23

170. Article IX, section 17 of the Colorado Constitution, "Amendment 23," was adopted by initiative on November 7, 2000. Amendment 23 includes a mandatory minimum level of annual increases to public school funding. During state fiscal years 2001-02 through 2010-11, statewide base per pupil funding under the PSFA and state funding for categorical programs are required to grow annually by at least the rate of inflation plus an additional one percentage point; and after 2010-11, by a rate at least equal to the rate of inflation.

171. The purpose of Amendment 23 was to begin to reverse a trend of more than ten years of declining real funding of Colorado public education by gradually restoring education funding to the equivalent of 1988 levels, as adjusted for inflation, by 2010-11, and to prevent further erosion of education finance from the effects of TABOR and the Gallagher Amendment. The general assembly, however, has effectively adopted the Amendment 23 formula as the standard for setting the funding levels for public education. In 2009-10, the general assembly changed its interpretation of Amendment 23, in order to facilitate the reduction of school funding by \$110 million, and it proposes to continue that practice in 2010-11.

172. The general assembly has used the income from the public school lands to meet the minimum funding levels of Amendment 23 in violation of the Colorado Enabling Act, article IX of the Colorado constitution, and its implementing statutes.

173. In November 2005, Colorado voters passed the Colorado State Spending Act, "Referendum C", which allows the state to retain all revenues collected above the TABOR limit for a period of five years and to spend those revenues on public education and other priorities. Referendum C did not result in any increase in public education funding above the levels mandated by Amendment 23.

174. Amendment 23 does not address, amend, supplant, or diminish the qualitative mandate of the Education Clause; nor does it define or limit the level or method of funding necessary to fulfill that mandate. The 1988 funding levels were not based upon a valid analysis of the actual costs of providing a constitutionally adequate, quality education; and there is no rational basis to conclude that merely restoring the 1988 funding level will provide funding sufficient to meet the mandates of the Education Clause or education reform legislation.

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

175. Plaintiffs incorporate herein all of the preceding averments.

176. The system of public education established by the general assembly fails to provide Colorado children the opportunity to obtain a constitutionally adequate, quality public education as mandated by the Education Clause.

177. The critical cause of this failure is the Colorado public school finance system, including the PSFA, categorical program funding, and capital construction funding.

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

179. The Colorado public school finance system fails to provide sufficient funding and other resources to permit public schools and school districts to meet the standards and goals established by the state and federal laws to which they and their students are held accountable. The levels and allocation of public school funding are irrational, arbitrary, and unrelated to meeting the mandates of state education reform legislation. Legislative and regulatory standards such as these represent a minimum but not a sufficient measure of the qualitative mandate of the Education Clause, and the failure to provide funding sufficient to meet these requirements violates the rights

guaranteed by the Education Clause.

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

181. Because of lack of access to adequate financial and other resources, school districts are not able to provide and school children do not receive the educational programs, services, instructional materials, equipment, and facilities necessary to assure a constitutionally adequate, quality education.

182. Highly qualified administrators, teachers, and paraprofessionals are critical to meeting the qualitative mandate of the Education Clause and the requirements of education reform legislation. Because of lack of access to adequate financial resources, school districts are unable to hire, retain, and compensate the instructional staff needed to provide the opportunity for a constitutionally adequate, quality education for their students.

183. As a result, school district programs are inadequate, and students do not receive the instruction they require to meet the academic and other programs guaranteed to them by the Education Clause. Student populations that are becoming increasingly diverse in terms of learning ability, racial and ethnic background, dominant languages, and socio-economic levels, and students at-risk of academic failure in particular are not provided with the programs they need to be successful and to obtain an adequate education.

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

185. The Colorado public school finance system particularly fails to provide funding sufficient to provide a constitutionally adequate, quality education for the under-served student populations in the state, including students at-risk of academic failure, students whose dominant language is other than English, students with disabilities, students of minority racial and ethnic heritages, and students of low-income families.

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

187. Because of lack of access to financial and other resources, many school districts are not able to offer the courses and curriculum needed and sought by many students, including those identified as gifted and talented. Advanced courses in core academic subjects, college-preparatory, and advanced placement programs are limited, over-crowded, or have been eliminated because school districts do not have the resources to provide such programs to all who need them. As a result, many Colorado students are not prepared to enter, compete, and succeed in post-secondary education and business and professional careers.

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

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

190. The school funding system fails to provide adequate funding or the means to obtain adequate funding to construct, maintain, and renovate the school buildings and facilities to which many children are consigned, particularly in Colorado's poorest communities. The state has failed to study the capital needs of Colorado schools and to provide adequate funding to address those needs.

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

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

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

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

194. Plaintiffs incorporate herein all of the preceding averments.

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

196. As a result of all of the foregoing, the Colorado system of public school finance and Colorado education reform legislation violate the rights of the Plaintiffs guaranteed by the Local Control Clause.

PRAYER FOR RELIEF

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

1. Declare that the Colorado system of public school finance, including the Public School Finance Act, categorical funding programs, and capital construction funding, is not rationally related to meeting the constitutional mandate to establish and maintain a thorough and uniform system of free public school and, therefore, violates the rights of Plaintiffs and the public school students and school districts of the state under the Education Clause.

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

3. Declare that the existing system of public school finance violates the rights, powers, and authority of the boards of education of the school districts of the state to the control of instruction in the public schools of their respective districts as provided in the Local Control Clause.

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

5. Enter interim and permanent injunctions compelling Defendants to establish, fund, and maintain a thorough and uniform system of free public schools throughout the state that fulfills the qualitative mandate of the Education Clause and the rights guaranteed to the Plaintiffs thereunder and that is in full compliance with the requirements of the Local Control Clause;

6. Enter interim and permanent injunctions compelling Defendants to design, enact, fund, and implement a system of public school finance that provides and assures that adequate, necessary, and sufficient funds are available to accomplish the purposes of the Education Clause and to do so promptly within a specified, reasonable period of time;

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

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

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

Dated: July 28, 2010

/s/ Terry R. Miller

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing **SECOND AMENDED COMPLAINT** by Lexis Nexis File and Serve, this 28th day of July, 2010, upon:

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Fern O. Spangler

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