

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, Colorado 80202</p>	<p><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p>
<p>PLAINTIFFS: <b>Anthony Lobato</b>, <i>et al.</i></p> <p>and</p> <p>PLAINTIFFS-INTERVENORS: <b>Armandina Ortega</b>, <i>et al.</i></p> <p>vs.</p> <p>DEFENDANTS: <b>The State of Colorado</b>; <i>et al.</i></p>	
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<p><b>DEFENDANTS' THIRD SUPPLEMENTAL EXPERT WITNESS DISCLOSURES</b></p>	

Pursuant to the Case Management Order, Defendants, by and through their counsel, hereby make their Third Supplemental expert witness disclosures pursuant to Colo. R. Civ. P. 26(a)(2).

Defendants reserve their right to supplement these disclosures as discovery progresses, particularly to disclose additional Rule 26(a)(2)(B)(II) witnesses who may provide both factual and expert opinions. Defendants additionally reserve their right to elicit expert testimony from any fact or expert witness disclosed or proffered at trial by Plaintiffs or Plaintiff-Intervenors.

Finally, Defendants reserve their right to disclose additional experts to rebut matters contained in the expert reports or summaries of opinions of Plaintiffs or Plaintiff-Intervenors' expert witnesses, including without limitation expert witnesses on cost studies, school funding, the economics of education, and Colorado constitutional law. As disclosures of all of Plaintiffs and Plaintiff-Intervenors' expert witness reports or summaries are not yet complete, it is impossible at this time to determine whether, and to what extent, certain rebuttal witnesses will be necessary.

Subject to and without waiving the above reservations, Defendants disclose the following expert witness pursuant to Colo. R. Civ. P. 26(a)(2)(B)(II). This designee is a fact witnesses who may also provide expert opinion:

5. Lori Bowers  
Supervisor, Colorado Preschool Program  
Colorado Department of Education  
201 E. Colfax Ave.  
Denver, CO 80203

The subject matter of Ms. Bowers' testimony is expected to include, without limitation, early childhood education, the Colorado Preschool Program, Kindergarten, and related matters.

Ms. Bowers may provide testimony regarding the implementation of preschool programs in proximate states and how Colorado compares with those states in enrollment, quality standards and resources as reported in the *NIEER State of Preschool 2010 – State Preschool Yearbook*. Ms. Bowers may provide testimony of the intention of the program as defined in statute, the history of the Colorado Preschool Program and the legislative changes that have occurred in the program since its inception. When the Colorado Preschool Program was established in 1988, the legislature determined that investments in the program would be made where it is likely to have the greatest return, which is on the disadvantaged population. Over the last eight years CPP has increased in its ability to serve three-year-olds by 509% and its ability to serve four-year-olds by 77.3%. The Legislature has also provided some flexibility to school districts to fund children to participate in full-day experiences using two slots and Ms. Bowers may provide testimony that over the last two years districts have not requested the full allocation of full-day slots available. Ms. Bowers will also provide testimony regarding how slots have been allocated to districts in recent expansions of the program. In 2008, all districts requesting additional CPP slots were granted their request unless a request was made that exceeded the estimated population in that district.

Ms. Bowers may provide testimony on the development of the Results Matter Assessment system and the \$824,500 grant awarded in September of 2004 from the U.S. Department of Education to develop this assessment system to measure outcomes for preschool children in Colorado. Through work with the Early Childhood Outcomes Center, which is affiliated with the Stanford Research Institute and is funded by the Office of Special Education Programs in the U.S. Department of Education, it was determined that randomized trials would not be needed to study outcomes for preschool children in Colorado. The assessment instruments selected to measure outcomes for preschool children are consistent with national best practice recommendations and the department has put the steps in place to establish and monitor the validity of the child outcomes data being produced. Ms. Bowers may also provide testimony on the multiple measures used to measure the effectiveness of CPP, both short term and long term.

Ms. Bowers may provide testimony on how full-day kindergarten funding has changed over the last four years, the guidance provided by the legislature in the implementation of full-day kindergarten and the program features that are determined at a school district level. Since 2007, the percentage of children participating in full-day kindergarten programs has increased from 41% in 2007, to 64% in 2010. In the current school year 62% of school districts were offering full-day kindergarten to all of their kindergarten students.

Ms. Bowers may also address matters raised by Dr. Barnett such as the following:

Ms. Bowers may testify on how program funding is determined in the School Finance Formula and how it relates to funding for K-12 students. Ms. Bowers disagrees with the premise that per pupil spending on preschool currently is insufficient to support salaries equivalent to those of K-12 teachers. Each CPP student is funded at .5 per pupil revenue as determined through the School Finance Formula. In 2009-2010, the average funding per CPP child was \$3,757. Typically preschool teachers will have a morning and afternoon half-day session of preschool with 16 children each. Funding provided through the School Finance Formula in 2009-2010 for two sessions was in excess of \$120,000 per year and the average teacher salary in Colorado for that same year was \$49,000. The identified average funding per CPP child only considers funding distributed through the School Finance formula and does not allow for other sources of funding that may be provided to a preschool program, for instance, local monies, special education monies, and Title I monies.

Ms. Bowers agrees with the premise that at this time there is not a uniform collection of data that would provide a good statewide measure of school readiness at kindergarten entry. Ms. Bowers may provide testimony regarding the work currently being done in the state to establish a school readiness assessment to be administered in the kindergarten year beginning in 2013.

Ms. Bowers agrees the standards for teacher qualifications are set a minimum level at a state level. In Colorado, the determination of whether staff will exceed the preparation levels of early childhood educators established for CPP is made at a local level. Ms. Bowers may provide testimony that the actual practice is much higher than the policy requirements. In 2009-2010 in the Creative Curriculum Assessment System, which includes the majority of the CPP children, early childhood educators responding to the question regarding professional preparation levels reported 26% held an associate's degree, over 35% of teachers reported earning a Bachelor's degree, 25% earned a post graduate degree. As further evidence of practice exceeding policies, the CDE Human Resource data

collection indicates that 96% of early childhood educators in public school settings possess a bachelor's or higher degree. Ms. Bowers may also provide testimony on the opportunities, guidance and financial support for preschool teaching staff to access professional development opportunities provided in Colorado through the Office of Professional Development and the department. In addition, Ms. Bowers may provide testimony on the state's system for monitoring implementation of the program and the varying levels of support provided to school districts and district advisory councils based on identified needs.

Ms. Bowers disagrees with some of the assumptions contained in the report made by Dr. Barnett. For example,

- Past national data on child care cannot be used to generalize that all child care programs in Colorado are of low quality.
- The report on Child Outcomes for the Denver Preschool Program cannot be used to provide insight into the validity of the "Results Matter" assessments to provide an evaluation of the Colorado Preschool Program. The Denver Preschool Program is substantially different in program design and uses different tools and methodology to measure outcomes for children.
- The most recent evaluation of Qualistar had too many methodological challenges to make definitive conclusions about the effectiveness of the Qualistar Rating System at improving children's school readiness skills.
- The National Head Start Impact Study is not an effectiveness study of Head Start but instead a value-added comparison. Generalizations made regarding the effectiveness of Head Start programs in Colorado are debatable.

Since 2000, Lori Bowers has administered the Colorado Preschool Program in the Colorado Department of Education. These responsibilities have included:

- Insuring that the Colorado Preschool Program (formerly the Colorado Preschool and Kindergarten Program) complies with the Colorado Revised Statutes both on a state and local level;
- Providing leadership, and technical assistance to school districts in the implementation of the Colorado Preschool Program;
- Providing guidance and support to strengthen the quality of early childhood programs, through regular on-site visits to 172 Colorado school districts and many of their participating programs and classrooms.
- Measuring and reporting on a state and local level the outcomes experienced by children and families who participate in a high quality early childhood programs.

In 2008, Ms. Bowers was named as the Supervisor of the Colorado Preschool Program and currently supervises a staff of five senior consultants. Ms. Bowers had served on the faculty of University of Colorado, Denver, Northeastern Junior College, as well as Purdue University. She has directed early childhood programs, as well as served as a national consultant and early childhood trainer.

7. Joseph Garcia  
Lieutenant Governor, State of Colorado  
Executive Director, Colorado Department of Education  
200 East Colfax Avenue  
Denver, CO 80203

The subject matter of Lieutenant Governor Garcia's testimony is expected to include, without limitation, issues relating to the importance of P-20 education to Colorado, the importance of education as an essential component in creating the conditions for a strong state economy, a productive society, and a high quality of life for Colorado's citizens and related matters. Pursuant to Colo. R. Civ. P. 26(a)(2)(B)(II), below is the summary of the Lieutenant Governor's expected testimony and his qualifications.

Lieutenant Governor Garcia may testify that education is of vital importance to the state of Colorado and is a necessary component in creating the conditions for a strong state economy, a productive society, and a high quality of life for the people of the state. He is also expected to testify that Colorado school districts have a fundamental role in the delivery of quality education opportunities to K-12 students, particularly given the constitutionally mandated local control of curriculum and the authority of the districts to select and hire instructional and administrative staff via local boards of education.

The Lieutenant Governor may testify that while financial resources are necessary in the delivery of quality education opportunities, other factors also impact the successful delivery of quality education opportunities to K-12 students, such as effective classroom teachers and school building leaders. The Lieutenant Governor may also testify that additional funding for K-12 education does not necessarily equate to improved quality education opportunities, and that additional money alone, may not close achievement gaps or increase graduation rates.

The Lieutenant Governor may testify that the current budgetary limitations on state funding, including K-12 funding, present challenges in the delivery of quality education opportunities, requiring difficult choices at both the state and local level in the prioritization and allocation of those limited resources. The Lieutenant Governor may also testify regarding the importance of a robust dialogue with stakeholders about where the state and local districts invest the taxpayers' money to ensure that the state and local districts are held accountable by the voters.

Lieutenant Governor Garcia may testify that lower property wealth school districts face significant challenges in offsetting cuts in state funding and have a greater difficulty in doing so than higher property wealth districts. He may testify that, even so, the current budgetary limitations on K-12 funding must not excuse districts from delivering quality education opportunities to Colorado's school children. The Lieutenant Governor may testify, to that end, that the efforts to close achievement gaps,

increase graduation rates, and implement Senate Bill 191, i.e. the teacher effectiveness reform legislation, must continue.

The Lieutenant Governor may testify regarding the work of the P-20 Council and the Governor's Education Leadership Council, including but not limited to the following: the interconnections among early childhood, K-12, and postsecondary education systems; meaningful, detailed and constructive measures of accountability; innovative approaches to education; maximizing the effectiveness of the state's investments in education; and aligning the products of the state's educational systems with the expressed needs of current and potential future businesses.

The Lieutenant Governor may testify, in addition to the work that must continue around K-12 education, that in order to develop an educated and competitive workforce and create conditions for a strong economy and productive society, Colorado must provide accessible quality higher education opportunities. He may also testify regarding the importance of state institutions of higher education providing accessible quality higher education opportunities to low income or minority students, given that increased higher education costs tend to have a disproportionate impact on low income or minority students.

The Lieutenant Governor may testify that K-12 education funding must be balanced with other important state interests and needs, in furtherance of a high quality of life for the people of this state. For example, given the budgetary constraints and constitutional restrictions on increasing revenue, critical state interests such as funding for higher education institutions, Colorado Family Medicaid, Colorado CHIP, *i.e.* the provision of health care for low income children, could be adversely impacted by an increase in funding for K-12 education and could adversely impact the quality of life of people in the state who would otherwise have access to these and other critical state services. The Lieutenant Governor may testify that the state puts significant thought into balancing these important priorities when writing the budget and that, while perhaps not perfect, the state budget is sound in a world of limited resources.

15. Ed Steinberg  
Assistant Commissioner for Exceptional Student Leadership  
Colorado Department of Education  
1560 Broadway, Suite 1175  
Denver CO 80202

The subject matter of Dr. Steinberg's testimony is expected to include, without limitation, gifted and talented education, special education, factors impacting student outcomes, and related matters.

Dr. Steinberg is expected to testify that many of the issues relating to special education raised by the plaintiffs and plaintiff-intervenors in this case arise from federal mandates around special education. For example, the emphasis on compliance is the product of decisions at the federal level. Dr. Steinberg has advocated to federal authorities that more emphasis should be placed on performance indicators rather than compliance indicators, and continues to advocate for such a focus. However, Colorado must follow the rules laid down by the federal government. Colorado lacks discretion to determine on what indicators the state, and therefore schools and school districts, are measured.

Dr. Steinberg is also expected to testify that, in a local control state, it is difficult for the state to assure that services and programs, such as professional development around issues involving special education students, are provided in a systemic, targeted way. Although Dr. Steinberg and his staff may identify good programs or best practices, in Colorado each of the 58 administrative units (AUs), and indeed each of the 178 school districts, retains discretion to choose whatever programs or services they wish. In Dr. Steinberg's experience, the culture of local control means that sometimes school districts may choose programs that are different from programs offered at neighboring districts simply to prove that they are independent, rather than truly looking at best practices or systemic implementation of effective programs. The state's authority is limited to recommending programs; it cannot mandate programs or activities that it believes could lead to greater student achievement. In Dr. Steinberg's experience, it is not often that school districts or AUs contact experts at the state to ask for recommendations on programs supported by research or best practices.

Dr. Steinberg is also expected to testify that, while the ultimate responsibility for providing FAPE lies with the state, the AUs have significant responsibility for serving special education students. At the extreme, if an AU is not providing FAPE to students, the state would have the obligation to take over provision of services in that AU. That has not happened in Dr. Steinberg's time with the state. Short of such a takeover, it is the AU that is charged with the responsibility of assuring it is providing FAPE.

Dr. Steinberg is also expected to explain that, unlike other state funding formulas, Colorado's formula does not incent identification of special education students. This does not mean, however, that Colorado is under-identifying students in need of special education services. Rather, this means that the culture in Colorado is to focus on pre-referral interventions. This focus is not only a positive practice, it is required by the law, as students are not permitted to be staffed into special education simply because they are behind academically, e.g., they are from a low socio-economic background or are migrant and move schools often. Colorado focuses on pre-referral intervention to attempt to be sure that students are appropriately staffed in to special education. Dr. Steinberg has not seen students who truly need special education services being excluded.

Dr. Steinberg is also expected to testify that many of the issues relating to special education raised by the plaintiffs and plaintiff-intervenors in this case are national issues not unique to Colorado. For example, there has been a nationwide increase in children with autism, which places additional burdens on the states and schools and school districts. Another national issue involves charter schools and their provision of services to special education students. Although there were some concerns 4-5 years ago, when charters were first beginning to proliferate, that charters may have misunderstood the rules regarding provision of services to special education students, those issues are quite rare today. There is a much greater understanding today that charter schools, like other public schools, are required to serve special education students and provide free appropriate public education (FAPE).

Dr. Steinberg is also expected to testify that many of the issues relating to special education stem from insufficient literacy instruction. Students are sometimes staffed in to special education simply because they are behind in reading. Dr. Steinberg believes that this problem is due in large part to a lack of focus on the science of literacy instruction in higher education teacher programs. Further, Dr. Steinberg believes that some districts do not optimally prioritize or focus their professional development

dollars on literacy instruction; because Colorado is a local control state, the state cannot mandate such a professional development focus.

Dr. Steinberg is also expected to discuss the resources CDE provides AUs around special education. For example, given the federal focus on compliance monitoring, if compliance issues emerge in an AU, CDE provides technical assistance through a corrective action plan. CDE seeks to help the AU correct any compliance issues. On performance measures, while CDE cannot mandate a particular approach, CDE works with AUs and school districts around improvement activities. For example, CDE may offer professional development to AUs and districts around certain critical issues, such as literacy or autism. Further, last year, CDE took federal set-aside funds that it was permitted to retain and spend on centralized administrative matters and distributed \$10 million directly to the school districts. CDE is getting ready to release additional funds soon.

Dr. Steinberg is also expected to testify about his opinions regarding the sufficiency of resources in special education. Federal mandates require AUs and schools to meet special education students' needs. Lack of resources cannot be a reason not to meet those needs. Just as the state must give the federal government assurance that it will provide FAPE to special education students, AUs must give the same assurance to the state. It is certainly true that there may be honest disagreements about how to meet a specific student's needs, as there is not one objective way of defining how a need should be met, Dr. Steinberg has not seen AUs fail to provide FAPE for lack of funds. In general, educators get involved in special education because they have a passion for, and are advocates for, students with disabilities. In his experience, AUs, school districts, and Individual Education Plan (IEP) teams do not cut services that a student actually needs for lack of resources. Dr. Steinberg's opinion is that, between the appropriate sources of federal, state, and local dollars, Colorado has sufficient resources to provide FAPE to the special education population.

Dr. Steinberg is also expected to testify about the Response to Intervention (RtI) process. Colorado was a national leader in embracing RtI. The genesis for the process was that students used to be placed in special education based on a "discrepancy formula" – there had to be a significant discrepancy between aptitude, typically measured by IQ, and achievement. As a result, students who had slight gaps at early ages were not given additional interventions until that gap grew over time. This became known as the "wait to fail" approach. Many students were not receiving quality literacy instruction in the early years of school – which relates back to issues of insufficient training in the science of literacy in higher education teacher programs – these students were being lumped in with students with bona fide learning disabilities. This was an inefficient way to deliver services and interventions to students. The RtI model was designed to be a "catch them before they fail" model. Using an RtI process, students are identified early and interventions provided in a timely manner. Moreover, the model moves away from a heavy reliance on IQ testing, which has validity concerns in that it may misidentify true aptitude of minority students. Colorado has now eliminated the discrepancy formula and, under an RtI model, now looks at a fuller body of evidence when identifying a student's needs. Needs are identified, interventions provided, and progress is measured. RtI is continuing to evolve, but Dr. Steinberg believes that it is a much better system for identifying what works for students.

Dr. Steinberg is also expected to testify that funding RtI is not a matter of needing additional resources. He believes some confusion has arisen because RtI was born in special education, but is really

a model for identifying and intervening with all students. Special education dollars may not be used to fund general education programs. However, in funding the systematic (school- or district-wide) implementation of RtI, districts should be looking to reallocate existing resources. For example, dollars need not be “taken away” from professional development and “put into” RtI, because RtI is professional development. On the whole, Dr. Steinberg expects RtI to be cost neutral, if not a cost savings in that it should decrease the amount of time professionals spend simply testing students. School districts report that RtI isn’t costing more money, and that it is making the system more efficient.

Dr. Steinberg is also expected to testify that RtI is not a mandate. The only current requirement is that districts no longer use the discrepancy formula, and that they evaluate a body of evidence. However, each of the 178 school districts has chosen to implement RtI as an overall, systemic framework and approach to interventions. Not all districts are implementing the process in the same way, nor are they all at the same point in implementing, but all are using the process in some way. RtI is common sense, and so districts want to use the process.

Dr. Steinberg is also expected to testify to issues relating to gifted education. Unlike special education, there is no individual mandate to provide services to specific students. Rather, the state’s rules around gifted and talented students are more of a general framework. As with special education, the state cannot mandate what programs and services districts should use for gifted students, so it is difficult for the state to assure that best practices are being used or that programs and services are provided in a targeted, systemic way. Further, like special education, CDE provides resources, such as technical assistance and collaboration, to school districts around gifted education.

Dr. Steinberg is also expected to testify that a major concern in gifted education is that, given historic biases, there is an underrepresentation in school districts’ identification of underserved minorities. The issue is not one of lack of resources, but rather raising awareness around this underrepresentation issue. Finally, Dr. Steinberg is expected to testify that he does not believe there will be a major reallocation of gifted education dollars in light of the recent rule change that districts do not have to match the state’s funding for gifted students. In Dr. Steinberg’s experience, gifted education programs are well ensconced in districts, and he does not believe districts’ funding will significantly decrease.

DATED: May 9, 2011

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**CERTIFICATE OF SERVICE**

This is to certify that I have duly served the within **DEFENDANTS' THIRD SUPPLEMENTAL EXPERT WITNESS DISCLOSURES** upon all parties herein electronically through LexisNexis File & Serve or U.S. Mail this 9<sup>th</sup> day of May, 2011, addressed as follows:

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