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1 DISTRICT, CITY AND COUNTY OF DENVER, COLORADO
 2 Case No. 2005CV4794, Division 9

3 REPORTER'S TRANSCRIPT: Trial - Day 1
 4 August 1, 2011

5 ANTHONY LOBATO, et al.,
 6 Plaintiffs,
 7 and
 8 ARMANDINA ORTEGA, et al.,
 9 Plaintiff-Intervenors,
 10 v.
 11 THE STATE OF COLORADO, et al.,
 12 Defendants.

13 The trial in the above-entitled matter
 14 commenced on Monday, August 1, 2011, at 1437 Bannock
 15 Street, Courtroom 424, Denver, Colorado 80202, before
 16 the Honorable Sheila A. Rappaport, Judge of the
 17 District Court.
 18 This transcript is a partial transcription of
 19 the proceedings that were had in the above-entitled
 20 matter on the aforesaid date.
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1 MORNING SESSION, MONDAY, AUGUST 1, 2011
 2 WHEREUPON, the court convened at 8:26 a.m.,
 3 and the following proceedings were had:
 4 * * * * *
 5 THE COURT: Calling up Case 05CV4794,
 6 Anthony Lobato, et al., and plaintiff-intervenors
 7 Armandina Ortega, et al., versus the State of Colorado,
 8 et al. And will counsel enter their appearances for
 9 the record, please.
 10 MR. KAWANABE: Your Honor, Kenzo Kawanabe,
 11 Davis Graham & Stubbs, on behalf of the plaintiffs. If
 12 I may introduce the rest of the plaintiffs' counsel at
 13 the table. Kathleen Gebhardt, Alex Halpern, Jennifer
 14 Bezosa. We have other numerous counsel in the gallery
 15 today.
 16 THE COURT: Thank you.
 17 MR. HINOJOSA: Your Honor, David Hinojosa
 18 and Marisa Bono from MALDEF for the plaintiff-
 19 intervenors.
 20 THE COURT: Thank you.
 21 MR. HEINKE: Good morning, Your Honor.
 22 Nic Heinke for the State of Colorado, the Governor of
 23 Colorado, the State Board of Education, the
 24 Commissioner of Education. With me at counsel table
 25 are Erica Weston, Carey Markel, and Jonathan Fero.

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1 THE COURT: Thank you. Good morning. Are
 2 the parties ready to proceed?
 3 MR. KAWANABE: Yes, Your Honor.
 4 MR. HEINKE: We are.
 5 THE COURT: All right. Opening
 6 statements.
 7 MR. KAWANABE: Yes, Your Honor. May it
 8 please the Court. Your Honor, the case begins with the
 9 constitution and ends with our children, children like
 10 Taylor and Alexa Lobato, with their parents in the jury
 11 box today. Children like Natalia and Salma Cendejas,
 12 all of whom grew up in the small town of Center,
 13 Colorado, in the San Luis Valley in the southern part
 14 of our state.
 15 Center has a population of approximately
 16 2,000 people, and while one of the prettiest parts of
 17 the state, it is also one of the most poor. 90 percent
 18 of the children in Center School District are on free
 19 and reduced lunch, 90 percent of the students are
 20 students of color, 50 percent are English language
 21 learners, and 30 percent are migrant students, Your
 22 Honor.
 23 And while Superintendent George Welsh and
 24 the Center School District is doing the best it can,
 25 what it has is insufficient. It is constitutionally

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1 insufficient, and as a result, the students in Center
 2 School District do not receive a constitutionally
 3 adequate, thorough and uniform education that should be
 4 part of a thorough and uniform system.
 5 But this isn't just about Center or Taylor
 6 or Alexa, it is about the Taylors and the Natalias from
 7 our small towns to our large cities. This is about a
 8 systemic failure, an unconstitutional system, and
 9 defendants' failure to establish a thorough and uniform
 10 system of free public schools as required by the
 11 constitution.
 12 Plaintiffs bring two claims, Your Honor,
 13 both constitutional in nature. First, that the
 14 defendants are violating their constitutional duty to
 15 establish a thorough and uniform system of free public
 16 schools. And second, in doing so, they are also
 17 violating the constitutional duty to allow local
 18 control by our local communities and school districts.
 19 And the general assembly has helped define
 20 what a thorough and uniform system of free public
 21 schools is, Your Honor. Through its requirements,
 22 through its mandates, it requires opportunities for our
 23 children's children, as well as outcomes established by
 24 standards and the accountability act, which we will get
 25 to shortly.

7

1 However, the defendants' public school
 2 finance system is not rationally related to the
 3 mandates, the requirements that it puts forth on school
 4 districts and our children. Your Honor, public school
 5 finance decisions are made despite of, not because of
 6 those requirements and mandates upon our kids and upon
 7 our schools, and as a result, school districts, because
 8 of inadequate funding and resources from the State
 9 defendants, must use local moneys that they would
 10 otherwise use for local control to help pay for and
 11 meet the state requirements and mandates. And even
 12 using local funds, Your Honor, it is simply not enough.
 13 It is constitutionally insufficient.
 14 So because there is no rational
 15 relationship between the way the State defendants fund
 16 the system that they require and that the constitution
 17 requires, there is no rational relationship. And
 18 because local communities and school districts must use
 19 local funds that they should be able to use for local
 20 control and instead use those funds to try and meet
 21 those mandates and requirements, local control is a
 22 myth.
 23 Plaintiffs in this case are 21 school
 24 districts from our rural fields to our city streets.
 25 They include the 14 school districts in the San Luis

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1 Valley in southern Colorado as well as Montezuma-Cortez
 2 in the southwestern part of the state, Moffat-Craig in
 3 the northwest part of the state, Bethune on the eastern
 4 plains. And if you were to drive up I-25, plaintiffs
 5 also include Pueblo 60, Colorado Springs, Aurora, and
 6 our largest school district in this state, Jefferson
 7 County. Plaintiffs also include numerous students and
 8 families from six school districts, including Pueblo
 9 70, Woodlin, Denver, Boulder, Adams 14, and the Center
 10 School District.
 11 And over the next five weeks, plaintiffs
 12 will show that the State defendants failed to maintain
 13 a thorough and uniform system of free public schools,
 14 and those witnesses may include the most prominent
 15 local and national education -- education experts and
 16 educators from around the state, including George
 17 Welsh, superintendent of Center; Scott Murphy,
 18 superintendent of Littleton; Monte Moses, the most
 19 recent superintendent of Cherry Creek, who was named
 20 national superintendent of the year; and Glenn
 21 Gustafson, former CFO, or chief financial officer, of
 22 the Colorado Springs School District.
 23 Also included are John Barry and Cindy
 24 Stevenson, superintendents of two of the largest school
 25 districts in this state. Our witnesses also include

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1 those with boots on the ground, teachers and principals
 2 who will describe an inadequate system with inadequate
 3 resources for our children, as well as former state
 4 legislators like Ed Steinbrecher and Sue Windels, who
 5 will testify that there is no rational basis for the
 6 base per-pupil amount, there is no rational basis in
 7 how the State defendants calculate and fund schools as
 8 required by a thorough and uniform system, and these
 9 inadequacies have led to constitutional failures.

10 The witnesses will testify as to a lack of
 11 proper coursework, a lack of quality teachers, a lack
 12 of resources, including textbooks that are over ten
 13 years old, and not enough textbooks that kids can
 14 actually take home and do homework. They have to check
 15 out and share textbooks in certain classes from across
 16 the state. And while studies show that increasing
 17 class time or seat time actually increases achievement,
 18 we have the opposite; shrinking instruction time for
 19 our kids in our schools.

20 The state's own study found that schools'
 21 capital needs were \$18 billion short, and there are
 22 insufficient programs to meet the needs of our most
 23 struggling learners, like special ed -- those children
 24 with special education needs.

25 Our witnesses will also include national

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1 experts, including teacher quality expert Linda
 2 Darling-Hammond, Professor Levin from Columbia, who
 3 will describe the cost of high school dropouts, the
 4 cost to society of not properly educating our children.
 5 And plaintiffs' counsel, I -- I will not name each of
 6 them individually, but plaintiffs' counsel include
 7 lawyers from ten different law firms, Your Honor.

8 So over the next 20 minutes, I would like
 9 to go over four topics: First, the applicable
 10 standards for this trial; second, the education clause
 11 set forth in the constitution; third, the three primary
 12 issues for this Court's determination; and finally, the
 13 remedy which plaintiffs seek.

14 First, the applicable standards. This
 15 case has already been heard by the Colorado Supreme
 16 Court, who set forth the various standards to be
 17 applied by this Court in this trial. The Supreme Court
 18 stated in Lobato v. State back in 2009, "On remand, the
 19 trial court must give substantial deference to the
 20 legislature's fiscal and policy judgments. It may rely
 21 on the legislature's own pronouncements concerning the
 22 meaning of a thorough and uniform system of education."
 23 And the Supreme Court stated that that
 24 thorough and uniform system includes opportunities as
 25 well as outcomes for our students. Since Lujan, the

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1 general assembly has enacted additional education
 2 reform statutes, with proficiency targets and content
 3 standards which the plaintiffs in this case assert, and
 4 we agree, may also be used to help evaluate the
 5 constitutionality of the legislature's actions.

6 A thorough and uniform system of free
 7 public schools is defined in part by the general
 8 assembly itself, through its statutes and its mandates,
 9 which require opportunities as well as outcomes. The
 10 Supreme Court went on to say that to be successful,
 11 plaintiffs must demonstrate that the school finance
 12 scheme is not rationally related to the constitutional
 13 mandate of a thorough and uniform system of public
 14 education.

15 The question for this Court, Your Honor,
 16 is whether or not the public school finance system is
 17 rationally related to a thorough and uniform system of
 18 free public schools as defined in part by the general
 19 assembly itself. And while -- and no party, no person
 20 disputes the paramount importance of public education
 21 for our children.

22 Back in 1861, Colorado was a territory,
 23 and in 1875, the United States Congress passed an
 24 enabling act actually requiring Colorado establish a
 25 system of common schools to become a state

12

1 Establishing public schools was a requirement for
 2 statehood for the state of Colorado. And the framers
 3 knew that they must establish public education for our
 4 children, and adequate public education, not only to
 5 become a state, because that was vital, for
 6 citizenship, to teach our children how to vote, how to
 7 become members of a jury, how to participate in our
 8 constitutional republic.

9 It was also critical for our economy. To
 10 teach our children how to become -- how to become --
 11 how to adapt into our society and how to thrive in our
 12 economy. Because if our children grew up to become
 13 adults to thrive in our economy, our economy itself
 14 would thrive. And they set forth in Article IX 15
 15 separate clauses to establish a public education for
 16 our children.

17 Article IX, Section 2 provides that the
 18 general assembly shall provide for the establishment
 19 and maintenance of a thorough and uniform system of
 20 free public schools throughout this state. And that is
 21 our first claim, Your Honor.

22 Article 15 -- Article IX, Section 15
 23 directs the general assembly to empower locally elected
 24 boards of education with the control of instruction in
 25 the public schools of their respective districts. That

13

1 is our second claim, Your Honor, Section 15 of
 2 Article IX of the Colorado Constitution, local control.
 3 And back when they were framing the
 4 constitution, a citizens group stated: "Belief that
 5 free, non-sectarian common schools are essential to the
 6 life and perpetuity of our form of government and
 7 constitute the only security for a free, untrammled
 8 ballot." Our first territorial superintendent of
 9 common schools, before we were a state, stated, quote,
 10 "Developing an education system among us, for the
 11 future, is of greater value than gold, gold of our
 12 mountains, and a better safeguard to society than the
 13 elected franchise and standing armies."
 14 A hundred years later, our Supreme Court
 15 stated in Lujan versus State back in the 1980s: "We
 16 recognize unequivocally that public education plays a
 17 vital role in our free society. It can be a major
 18 factor in an individual's chances for economic as well
 19 as social success and a unique influence on a child's
 20 development as a good citizen and on his future
 21 participation in political and community life."
 22 And the general assembly itself, through
 23 its pronouncements and its statutes, has affirmed,
 24 consistently affirmed its duty to provide a thorough
 25 and uniform system for all children in Colorado. And

14

1 despite these pronouncements, despite knowing the
 2 importance of education, this is what we have done as a
 3 state: Over the past several decades, the general
 4 assembly has enacted numerous requirements and mandates
 5 on school districts, while at the same time
 6 consistently decreased funding per pupil for each of
 7 our -- each of our students in the Colorado public
 8 school systems.
 9 In the 1980s, we were approximately \$200
 10 above the national average. Since that time, we have
 11 dropped below the national average, the middle of what
 12 this country spends on each student, to near the
 13 bottom. In 2008, we were \$1,809 per student below the
 14 national average, and that was in 2008. Since 2008,
 15 we've been hit by a recession, and we know that the
 16 state, the general assembly, has slashed hundreds of
 17 millions of dollars, additional dollars from public
 18 education budgets, nearly a billion dollars to this
 19 day, and we expect more cuts in the future.
 20 The Supreme Court in Lobato v. State in
 21 2009 cited the census bureau study, which found that
 22 Colorado, one of the wealthier states in the nation, if
 23 you consider per \$1,000 in personal income, or per
 24 capita income, we are 49th, 49th out of 50 states on
 25 what we spend on each of our students. And even if you

15

1 don't consider the relative wealth of Colorado, the
 2 Supreme Court stated that Colorado ranked 40th in
 3 overall spending per pupil in 2007.
 4 This has led to unacceptable achievement
 5 rates by our students, and this has led to unacceptable
 6 graduation rates. 70 percent of our students in the
 7 public school systems in Colorado graduate. That means
 8 30 percent don't. Over 200,000 students of our
 9 approximately 800,000 public school kids will not
 10 graduate from high school. It's approximately
 11 78 percent of white students, and it's much worse for
 12 students of color. Black students, Hispanics, native
 13 Americans have a 50 to 60 percent chance of graduating
 14 from high school. If you have a disability or if you
 15 are poor, a 60 percent chance of graduating from high
 16 school.
 17 And even if you graduate from high school,
 18 the remediation rates are nearly 30 percent. That
 19 means those Colorado kids that graduate from high
 20 school and attend Colorado colleges and universities
 21 are not ready for college. They have to take
 22 remediation classes not for college credit, but just to
 23 catch up. Just to be ready for day one of college or
 24 university classes in Colorado.
 25 And despite the fact that Colorado leads

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1 the country in the number of kids going into poverty,
 2 there are arbitrary and irrational decisions as to how
 3 the State defendants fund and implement a system for
 4 at-risk or poor youth, English language learners, and
 5 there isn't -- there aren't enough resources to
 6 implement individual plans for those students with
 7 special education needs, who are gifted and talented.
 8 There is a shortfall in school -- proper schools and
 9 adequate buildings to teach our children and a
 10 shortfall in transportation.
 11 Our third issue, Your Honor. The three
 12 primary issues for this Court's determination. First,
 13 what is a thorough and uniform system of free public
 14 schools? And the U.S. Supreme Court stated in Brown
 15 versus Board of Education that we shall not turn the
 16 clock back; we must consider public education in light
 17 of its full development and its present place in life.
 18 In other words, Your Honor, it is not what
 19 a public education -- a proper public education was
 20 back in 1875 or 1876. It was -- it is what an adequate
 21 education is defined by the legislature today. And the
 22 Supreme Court of our own state stated that the trial
 23 court may rely upon the legislature, to look at the
 24 legislature's own pronouncements, its statutes, and its
 25 requirements.

17

1 So a thorough and uniform system of free
 2 public schools is defined in part by the state itself.
 3 And two decades ago, the state, the general assembly
 4 enacted, or began to enact, a comprehensive educational
 5 accountability system anchored by the standards-based
 6 education that, one, set student academic performance
 7 standards. We require every student to be universally
 8 proficient to meet those standards, Your Honor. Two,
 9 provides objective student achievement results with
 10 respect to those standards. We require that students
 11 meet the standards, we report those standards to the
 12 public. Three, compare student performance levels
 13 against state and federal achievement goals. That is
 14 universal proficiency. And, four, we hold the state
 15 school districts and schools accountable for failure to
 16 meet these goals.

17 It started back in 1991, when the general
 18 assembly enacted the Colorado Achievement Program that
 19 established as a goal of public education all students
 20 must learn to use their minds well, so that they may be
 21 prepared for responsible citizenship, further learning,
 22 and productive employment in our modern economy. These
 23 three elements, responsible citizenship, productive
 24 employment, and ability to continue learning, were
 25 restated in 1993.

18

1 The Education Accountability Act from 1993
 2 found that every student has a fundamental right to a
 3 free public education that assures that such residents
 4 shall have the opportunity to achieve the content
 5 standards at a performance level which is sufficient to
 6 allow such resident to become an effective citizen of
 7 Colorado and the United States, a productive member of
 8 the labor force, and a successful lifelong learner.

9 And in 2008, the general assembly enacted
 10 the Colorado Achievement Plan for Kids, we refer to
 11 that, Your Honor, as CAP4K, which set forth education
 12 standards from preschool through postsecondary and
 13 workforce readiness. And they stated that it must be
 14 sufficiently relevant and rigorous to ensure that each
 15 student who receives public education in Colorado is
 16 prepared to compete academically and economically
 17 within the state or anywhere in the nation or the
 18 world.

19 The legislature defined postsecondary
 20 workforce readiness as requiring a student to
 21 demonstrate skills critical to preparing students for a
 22 21st century workforce and for active citizenship. A
 23 thorough and uniform system of free public schools must
 24 provide students with knowledge and skills, one, to
 25 become an effective citizen. That was true in 1876,

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1 and it is true today. Two, to become a productive
 2 member of the current workforce. And, three, to have
 3 access and be able to succeed in higher education and
 4 lifelong learning.

5 And CAP4K sets forth three primary areas
 6 for our kids and our schools. School readiness.
 7 Schools must be ready to teach our children.
 8 Postsecondary and workforce readiness. Our schools
 9 must teach our children and prepare them for
 10 postsecondary life or college. And content standards.
 11 It defines what our schools must teach our children.

12 And the Education Accountability Act from
 13 2009 expressly ties together the standards-based
 14 system, the CAP4K goals, and the very accountability
 15 system to the constitutional obligation, the
 16 qualitative guarantee set forth in the education
 17 clause. And finally, last year the general assembly
 18 passed Senate Bill 191, which requires schools to
 19 ensure that their teachers are effective. It's the
 20 teacher effectiveness -- effectiveness bill that will
 21 be implemented the following -- next year.

22 State defendants argue that these are
 23 simply aspiration. They are not aspirational goals.
 24 These are the requirements of the general assembly.
 25 These help define a thorough and uniform system of free

20

1 public schools, and if schools and school districts do
 2 not meet these goals, the State defendants shut them
 3 down. They are not aspirational.

4 And the legislature itself has recognized
 5 its constitutional duty. Its own pronouncements state
 6 that a single accountability system -- this concerns
 7 the Education Accountability Act of 2009 -- to the
 8 extent possible, that objectively evaluates the
 9 performance of the thorough and uniform statewide
 10 system of public education for all groups of students.

11 In the Charter Schools Act back in 2000,
 12 the general assembly itself stated: "The general
 13 assembly hereby finds that Section 2 of Article IX of
 14 the state constitution requires the general assembly to
 15 provide for the establishment and maintenance of a
 16 thorough and uniform system of free public schools."
 17 The State therefore has an obligation to
 18 ensure that student has a chance to attend a school
 19 that will provide an opportunity for a quality, a
 20 quality, education. And if that school is not
 21 providing a thorough and adequate education, the
 22 general assembly stated that the State has an
 23 obligation to those students enrolled in that school to
 24 make changes to ensure that they have such an
 25 opportunity, such a constitutional opportunity

21

1 A thorough and uniform system is defined
 2 in part by the legislature, but a thorough and uniform
 3 system is not what we have today. It is not
 4 insufficient coursework and teachers, it is not
 5 inadequate resources and facilities, it is not
 6 unacceptable graduation rates, unacceptable achievement
 7 gaps, or 28 percent remediation rates. And it
 8 certainly should not be dependent on gifts, grants, and
 9 donations, which is how the general assembly attempts
 10 to partially fund education today. And when they apply
 11 to Race to the Top and lose such funds, that money is
 12 not coming in.

13 Once the Court defines a thorough and
 14 uniform system of free public schools, the next
 15 question is whether or not the public school finance
 16 system is rationally related to the thorough and
 17 uniform system required by the constitution. Your
 18 Honor, the elements of public school finance at issue
 19 are primarily in three buckets: First, the Public
 20 School Finance Act of 1994.

21 We rely upon a formula designed back in
 22 1994, and there have been some tweaks and changes to
 23 that formula, but primarily it is the Public School
 24 Finance Act of 1994, which includes moneys from the
 25 general fund as well as local -- local property tax

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1 dollars. Secondly, there is categorical funding
 2 programs for certain categories of students. And
 3 thirdly, a public school capital construction fund that
 4 is separate from those other two categories, Your
 5 Honor.

6 And in determining whether or not there is
 7 a rational relationship, the plaintiffs will show that
 8 the State defendants have never conducted a study to
 9 determine or estimate the cost of the very requirements
 10 and mandates that it imposes. In other words, public
 11 school finance decisions are not made in connection --
 12 in rational basis -- in a rational relationship to the
 13 very state requirements that it imposes on school
 14 districts. There is no rational relationship. If
 15 anything, public school finance decisions are made
 16 despite them, not because of a thorough and uniform
 17 system of free public schools.

18 Defendants have admitted that they have
 19 not conducted a study to determine the cost of funding
 20 of all public education programs set forth in statute
 21 and regulation. This is not in dispute. Defendants
 22 have never studied or estimated the cost of funding
 23 their very requirements on our schools and our kids.

24 And while the state legislature has
 25 studied the public school finance, it has ignored what

23

1 the studies have informed them. For example, a 1993
 2 report to the Colorado General Assembly, when the
 3 general assembly was actually enacting and calculating
 4 the 1994 School Finance Act, told the legislature there
 5 are two tasks contained in the study charts that we
 6 were unable to complete, they ran out of time: The
 7 determination of funding component values and the
 8 submission of recommendations for a method to establish
 9 a base per-pupil funding component.

10 The base per-pupil funding component, Your
 11 Honor, is the key to the School Finance Act. And in
 12 1993, the general assembly was informed that the task
 13 force ran out of time to rationally figure out what
 14 that base per-pupil funding component should be.

15 A school finance task force in 2005 told
 16 the general assembly the same thing. The school
 17 finance task force in 19 -- in 2005 cited to a study,
 18 not conducted by the State, but based on 2002 data,
 19 estimating that funding back in 2005 must increase in a
 20 range of 800 million to 1.5 billion to be adequate.
 21 And they informed the general assembly that the base
 22 per-pupil funding from the 1994 act was set at a dollar
 23 figure that represented the amount of money not already
 24 dedicated for other purposes. In effect, base
 25 per-pupil funding became an afterthought in prior acts.

24

1 No rational basis for the base per-pupil funding
 2 amount.

3 In 2010, a report to the Colorado
 4 Department of Education found that Colorado has not
 5 provided the resources believed necessary by
 6 professionals to meet student performance expectations,
 7 and that one of the key factors that impact student
 8 performance is instructional expenditures per pupil.
 9 And student performance should be considered when
 10 funding levels are determined.

11 These are not reports by plaintiffs'
 12 experts, these are reports from the State defendants or
 13 to the State defendants themselves. There is no
 14 rational relationship, there never has been, there
 15 certainly is not now, between the public school finance
 16 system and the constitutionally required thorough and
 17 uniform system of free public schools.

18 Plaintiffs' experts in this case have
 19 confirmed that the state system is hundreds of millions
 20 of dollars short. Augenblick, Palaich and Associates,
 21 which has been hired by the State on other projects,
 22 Your Honor, found -- conducted a costing out study to
 23 determine the cost of providing a thorough and uniform
 24 system of public education using nationally accepted
 25 methodologies. And the Augenblick firm found that the

25

1 system does not have sufficient resources, including
 2 local property tax.
 3 The Augenblick costing out study, using
 4 the successful schools methodology, found a
 5 \$1.35 billion deficit. Using the professional judgment
 6 methodology, which is apart from successful schools,
 7 found a \$3.58 billion deficit for an adequate
 8 education. And Voreta Herrmann, who recently retired,
 9 but was the chief financial person at the Colorado
 10 Department of Education, herself found that there is a
 11 \$2.7 billion deficit for an adequate public education
 12 for our children.
 13 But it's important to note, Your Honor, we
 14 are not asking the Court order funding at these
 15 amounts. We are not asking the Court to order funding
 16 at any amounts per pupil. We are asking the Court to
 17 find that the public school finance system is not
 18 rationally related to the thorough and uniform system
 19 of public schools as required by the constitution and
 20 to defer to the legislature to actually study the
 21 system to find and determine a rational basis for the
 22 way it funds public schools today.
 23 State defendants will argue that our
 24 schools are actually succeeding. Our system is working
 25 for some, maybe not all. But those are on our islands

26

1 of success. Our superintendent from the largest
 2 schools to the smallest schools will say we know what
 3 works. We don't have enough resources to actually make
 4 that systemically work for all children, as required by
 5 the constitution. Some school districts are catching
 6 up. They need to catch up to levels of achievement
 7 required by the State defendants. Other school
 8 districts are having problems keeping up. While some
 9 of their students at the top of the class are achieving
 10 and are achieving well, and we are proud of those
 11 students, there is an achievement gap between those
 12 students and our poor students and our students of
 13 color, and across the board, the systemic failure
 14 applies to small districts as well as our large
 15 districts.
 16 State defendants have pointed to
 17 Amendment 23. But the Colorado Supreme Court has
 18 already informed us that Amendment 23 does not set the
 19 funding levels for a thorough and uniform system of
 20 free public schools. And even if it did, the evidence
 21 will show that the State defendants are \$700 million
 22 short of even funding Amendment 23, which is a separate
 23 constitutional obligation.
 24 State defendants will argue that money
 25 does not matter or does not increase student

27

1 achievement. Plaintiffs would actually agree. You
 2 cannot just take money and throw it at the schools.
 3 Money must be wisely spent. But plaintiffs will assert
 4 that if there's not enough money or resources for
 5 public schools, you will not obtain that achievement,
 6 you will fail. And State defendants will point to
 7 other states where litigation or other increases in
 8 budgets have not necessarily linked to student
 9 achievement, and that is true in some states and
 10 certainly not true in others. As I've said before, it
 11 depends how you spend the money. But if there is not
 12 enough -- if there aren't enough resources, you do
 13 guarantee failure.
 14 For rational basis, the State defendants
 15 will state or argue that the 1994 Public School Finance
 16 Act itself said it was constitutional. But just
 17 because it said it was constitutional doesn't mean it
 18 is constitutional. And the State defendants will point
 19 to various factors, additional moneys given per pupil
 20 for our students. But those factors are based on the
 21 base per-pupil amount that never had a rational basis.
 22 Those factors are built on that base per-pupil amount
 23 back from 1994.
 24 And the State defendants finally will
 25 argue that although it's never studied the cost of the

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1 system, it has studied school finance. But, again,
 2 when it studied school finance, it ignored the results.
 3 That's the 1993 study that stated we didn't have time
 4 to figure out a rational basis for the base per-pupil
 5 amount. That's the 2005 study that said the base
 6 per-pupil amount was really an afterthought, no
 7 rational basis. And that's the 2010 study that said
 8 the State defendants are providing an inadequate
 9 education, inadequate resources for our school systems.
 10 It's also the State's own capital construction study
 11 that found that our schools, our capital needs for our
 12 capital education system, is \$18 billion short. So
 13 yes, the state has studied the school finance system
 14 and ignored those reports and recommendations.
 15 And finally, Your Honor, local control.
 16 Because the school finance system is woefully
 17 inadequate to support a thorough and uniform system of
 18 free public schools which is defined in part by the
 19 state mandates, its requirements, again, local
 20 communities must use local property tax dollars it
 21 would otherwise use for local control to actually try
 22 and fill the gap and meet state requirements. Local
 23 control is a myth, because the state does not
 24 adequately fund a thorough and uniform system of free
 25 public schools.

29

1 Finally, Your Honor, the plaintiffs'
 2 remedy that they seek. The Supreme Court also set
 3 forth the standard applicable to the remedy. That if
 4 the trial court finds that the current system of public
 5 school finance is irrational and unconstitutional, then
 6 the Court must permit the legislature a reasonable
 7 period of time to change the funding system so as to
 8 bring the system into compliance with the Colorado
 9 Constitution.

10 The plaintiffs do not seek a monetary
 11 judgment. They do seek declaratory relief. First,
 12 that the Court declare that the public school finance
 13 system is not rationally related to a thorough and
 14 uniform system of free public schools. Second, that
 15 the public school finance system violates the local
 16 control clause. Finally, that the defendants have
 17 violated and are violating the constitutional rights of
 18 each and all of the plaintiffs.

19 Plaintiffs also seek an injunction. That
 20 the Court enjoin defendants from implementing a school
 21 finance system that is not in full compliance with the
 22 education clause. And if successful, plaintiffs would
 23 seek a stay of that injunction. The Court -- we would
 24 ask the Court to retain jurisdiction until defendants
 25 have complied with the constitution, but allow the

30

1 general assembly, the legislature, an opportunity to
 2 fix a broken system.

3 But we are not seeking -- plaintiffs are
 4 not seeking any determination or any order of a
 5 particular amount from this Court with regard to
 6 per-pupil funding. Plaintiffs are not asking the Court
 7 to legislate. Plaintiffs are not asking the Court to
 8 decide education policy. That properly belongs within
 9 the realm of the general assembly.

10 Your Honor, for decades, while the state
 11 has required and mandated numerous standards,
 12 achievement and accountability on our schools and
 13 school districts, they have not rationally related the
 14 way they fund those requirements. There is no rational
 15 relationship between the public school finance system
 16 and the constitutionally required system. And as a
 17 result, school districts do not have local control,
 18 because they use their local dollars to try and meet
 19 the state requirements themselves.

20 But the Colorado Constitution requires
 21 more. We must fulfill the framers' intent to provide a
 22 thorough and uniform system of free public schools for
 23 all children and ensure that local control is not a
 24 myth, that it exists in reality for our local
 25 communities.

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1 Remember our first territorial
 2 superintendent. He stated that developing an education
 3 system among us for the future is more valuable than
 4 gold and a better safeguard than our standing armies.
 5 We knew that was true in the 1880s, we know that is
 6 true today. Without an adequate public education, our
 7 constitutional democracy dies, and it is for that
 8 democracy we must do better.

9 For our children in the state of Colorado,
 10 we shall do better, because that is exactly what the
 11 state constitution requires. Thank you.

12 THE COURT: Thank you. On behalf of the
 13 intervenors.

14 (Pause in the proceedings.)

15 MR. HINOJOSA: May it please the Court.
 16 This is a case about lost opportunities. Lost
 17 opportunities for the low-income and the ELL children
 18 who want to achieve their full potential in school, but
 19 instead are denied appropriate programs because of a
 20 lack of resources. Lost opportunities for the school
 21 districts serving those students, who are stretching
 22 their dollar as far as it can go, and in the end are
 23 forced to rob Peter to pay Paul or rob Paul to pay
 24 Peter.
 25 Lost opportunities for their communities

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1 and greater Colorado, who will forgo the benefits from
 2 a well-educated workforce and will instead have to pay
 3 the price for an ill-educated workforce. But finally
 4 our clients will have their day in court to ensure that
 5 their children's future is not all lost to an
 6 irrational funding scheme. They will have their day in
 7 court to prove the defendants have not fulfilled
 8 obligations under the education and local control
 9 clauses of the Colorado Constitution.

10 Your Honor, it is with our distinct
 11 pleasure, as counsel for plaintiff-intervenors, that we
 12 introduce to you some of our clients who are here in
 13 court today. First we have Ms. Armandina Ortega, her
 14 spouse, and two of her children, who attend high school
 15 in Rocky Ford, where they've attended school since the
 16 very first day that they started. They, like all of
 17 our clients, don't make much money, but they share the
 18 same dreams and aspirations for their children's
 19 future, as many other parents do across Colorado.

20 Mr. Ortega was a trash collector for the
 21 City of Rocky Ford until he became disabled as a result
 22 of an injury on the job. Ms. Ortega, she works as a
 23 housekeeper in a hotel. As you will hear later in
 24 trial, both of their children hope to graduate from
 25 high school and compete for college admission slots and

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1 scholarships with children all across the state of
 2 Colorado and beyond. Their daughter hopes to go to
 3 college and then go to law school. She wants to become
 4 an immigration lawyer one day. Their son, he also
 5 wants to go to college, although he's not sure what he
 6 wants to do.

7 We also have with us Ms. Abigail Diaz and
 8 her four children, three of whom attend schools in
 9 Greeley and one who is almost there. Ms. Diaz cleans
 10 houses and does a variety of jobs to help make ends
 11 meet, such as cooking and selling food on the weekend.
 12 Ms. Diaz will later testify also about her involvement
 13 with her children's school.

14 She will testify about her children's
 15 aspirations. The oldest daughter is a big fan of CSI
 16 and wants to become a forensic scientist one day. The
 17 next oldest daughter, she wants to go to college also
 18 and become a fashion designer one day. The other
 19 children maybe not quite old enough to know exactly
 20 what they want to do, but their mother knows that she
 21 wants them all to go to college, all to be prepared
 22 when they go to college so they don't have to undergo
 23 remediation and so that they can be successful not just
 24 in college, but in life.

25 We also represent six other families who

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1 were not able to make it here because of conflicts with
 2 work or other conflicts. Mr. Gabriel Guzman resides in
 3 Rocky Ford with his wife and their three children.
 4 Mr. Roberto Pizano resides in Rocky Ford also with his
 5 wife and their two children. Maribel Payan resides
 6 here in the Denver area, near Sheridan, with her
 7 husband and their four children, who attend Sheridan
 8 schools. Ms. Celia Leyva, her husband, and their two
 9 children live in the Mapleton School District area, and
 10 their children attend school there. Ms. Maria Pina
 11 lives in Denver, but within the Sheridan School
 12 District boundaries, with three of her children, two of
 13 which attend Sheridan schools. And Ms. Martha Lopez,
 14 who lives with her two children in the Sheridan School
 15 District.

16 Each of our clients who are expected to
 17 testify in this case will talk about their hopes and
 18 dreams for their children and how the quality of their
 19 children's education is affected as a result of the
 20 lack of resources, the lack of adequate promises for
 21 their children to -- to meet the state standards that
 22 they put in place. The evidence will bear out that
 23 these four school districts, Mapleton, Rocky Ford,
 24 Sheridan, and Greeley, are among the poorest in
 25 property values per pupil in this state, but also that

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1 they have some of the most challenging student
 2 populations.

3 They're not alone, as more and more school
 4 districts, urban, suburban, mountain, rural, are all
 5 confronted with the task of educating the growing
 6 number of English language learner and low-income youth
 7 and helping them achieve the very same standards that
 8 the state has set in place for all children.

9 It's important to remember that in this
 10 case that the same standards that apply for the
 11 children in Aspen, that apply for the children in
 12 Telluride, apply in Greeley, they apply in Sheridan.
 13 And our clients don't want it any other way. They want
 14 their children to be able to reach the same standards,
 15 to achieve at the same level as the other children
 16 across Colorado. The only problem is is that their
 17 learning is being strangled by increasing mandates and
 18 decreasing funds.

19 Now, getting to the substantive legal
 20 claims that are at issue in this case. According to
 21 the Colorado court, Supreme Court's, earlier decision,
 22 to prevail on an education clause, plaintiff-
 23 intervenors must prove that the school finance system
 24 is not rationally related to the constitutional mandate
 25 of thorough and uniform system. As plaintiffs' counsel

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1 pointed out, and all parties agree, the definition of a
 2 thorough and uniform system is essential to determining
 3 the claim on the education clause.

4 But that's where the parties disagree, at
 5 least the plaintiff-intervenors and the plaintiffs --
 6 the plaintiffs' and plaintiff-intervenors' position
 7 differs from that of defendants. Defendants want to
 8 urge the Court to look to the type of education
 9 expected at the time the education clause was created
 10 and adopted in 1876. Open the doors, have a free
 11 school, it could be a one-room schoolhouse, and you're
 12 fine, because that's all that thorough and uniform
 13 education clause requires.

14 But in an early opinion in this case, as
 15 the Court knows, the Supreme Court gave this Court
 16 guidance in determining what is meant by the
 17 qualitative point of uniform system and stated the
 18 Court may rely on the legislature's own pronouncements
 19 to develop the meaning of a thorough and uniform
 20 system.

21 And this is not something foreign for
 22 courts to do. It's not something extraordinary that
 23 courts have been called upon to do. In fact, in 2005,
 24 in Texas, in conservative Texas, the Texas Supreme
 25 Court ruled in the case Neeley versus West Orange-Cove

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1 that it was appropriate for the trial court to apply
 2 the state's missions and goals stated in statute and
 3 other places to the definition of an adequate education
 4 under the Texas Constitution.
 5 But the defendants want the Court to
 6 simply ignore all of the legislative language, all of
 7 the mandates surrounding the thorough and uniform
 8 system, characterizing it as aspirational language.
 9 But the evidence will show that the general assembly
 10 statutes are not aspirational, not on their face and
 11 not in their meaning.
 12 The plaintiffs provided this Court with a
 13 series of statutes, and I won't necessarily go through
 14 all of those, but I do want to point the attention -- I
 15 apologize, Your Honor; I am inept when it comes to
 16 technology.
 17 THE COURT: No problem.
 18 MR. HINOJOSA: Maybe it is my upbringing
 19 in a public school district in Texas. There we go.
 20 Magic.
 21 MS. BONO: I went to private school.
 22 MR. HINOJOSA: She went to private school.
 23 So the Colorado Revised Statute
 24 22-7-403(2) states that every resident of the state has
 25 a fundamental right to free public education that

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1 assures such residents shall have the opportunity to
 2 achieve at a performance level to become an effective
 3 citizen of Colorado and the U.S., a productive member
 4 of the labor force, and a successful lifelong learner.
 5 This applies to every child attending free public
 6 schools in the state of Colorado, including the
 7 children of Mr. Guzman in Colorado that can be seen
 8 here in this picture.
 9 Regarding the content standards that the
 10 State has put forth in statute that the state board of
 11 education has adopted, the Court will hear testimony
 12 about these lofty and rigorous standards that were
 13 adopted in 12 different subject areas. Defendants have
 14 stipulated that public school districts must adopt at a
 15 minimum the Colorado academic standards, which include
 16 the common core standards for English language, arts,
 17 and math.
 18 They have also stipulated that the common
 19 core standards are designed to be robust and relevant
 20 to the real world, reflecting the knowledge and skills
 21 that our young people need for success in college and
 22 careers. That's stipulation No. 14. And furthermore,
 23 pursuant to statutory requirements, the Colorado
 24 Department of Education and the Colorado Department of
 25 Higher Education developed the definition for

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1 postsecondary workforce readiness.
 2 This definition was developed after a
 3 series of meetings and collaborations between CDE, the
 4 Colorado Department of Higher Education, and other
 5 stakeholders. And they described the postsecondary
 6 workforce readiness definition as the knowledge,
 7 skills, and behaviors essential for high school
 8 graduates to be prepared to enter college and the
 9 workforce and to compete in the global economy.
 10 Postsecondary education and workforce
 11 readiness assumes that students are ready and able to
 12 demonstrate the following without the need for
 13 remediation. And I won't go through all of these, Your
 14 Honor, but I do want to give the Court an idea that
 15 this is what the State expects students to meet. As
 16 the commissioner of education, Robert Hammond, has
 17 stated, these are not aspirations, these are
 18 expectations, that when children graduate from the
 19 public schools, they will have these knowledge, skills,
 20 and behaviors.
 21 Such as being able to use knowledge and
 22 rhetoric to analyze and critique ideas. In
 23 mathematical sciences they will be able to think
 24 critically, analyze evidence, read graphs, understand
 25 logical arguments, detect logical fallacies, test

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1 conjectures, evaluate risk, and appreciate the role
 2 mathematics plays in the modern world.
 3 I don't know whether or not the State
 4 intends that the students graduate and be able to
 5 actually understand exactly what this description
 6 means, but these do list the knowledge and skills.
 7 They go into science. Understanding the core
 8 scientific concepts, principles, laws, and vocabulary
 9 and how scientific knowledge is extended, refined, and
 10 revised over time. Social sciences. Build conceptual
 11 frameworks based on understanding themes and the
 12 overall flow of events.
 13 These are the knowledge areas that the
 14 State itself has developed and is requiring school
 15 districts to bring their children to. Critical
 16 thinking and problem solving. It's no longer simple
 17 math and simple algebra. They will have to discern
 18 bias, pose questions, marshal evidence, and present
 19 solutions. They'll have to find and use information
 20 and information technology, which, of course, would
 21 require them to have sufficient and updated technology.
 22 They will have to have global and cultural
 23 awareness. So it goes beyond the three R's of reading,
 24 writing, and arithmetic, to where they will have to
 25 learn to appreciate the arts, culture, and humanities.

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1 interact effectively with and respect the diversity of
 2 different individuals, groups, and cultures, which will
 3 be especially important in the state of Colorado as
 4 Colorado continues to diversify.

5 Civic responsibilities. You can't just
 6 learn how to read and write and do simple math. You
 7 need to put it into practice with civic responsibility
 8 and citizenship, balance personal freedoms with the
 9 interest of a community. And, of course, not all of
 10 these will just be developed through the basic core
 11 courses, these are also skills -- and you'll hear
 12 testimony, and there's already been designations of
 13 testimony from the former commissioner, Dwight Jones,
 14 who testified under oath that many of these learning
 15 and life skills can also be developed through
 16 extracurricular and co-curricular activities.

17 So to the extent that the State argues
 18 well, they're doing extra stuff such as
 19 extracurricular, co-curricular activities, debate clubs
 20 and so forth, well, those still serve a purpose when it
 21 comes to meeting the State's own definition for
 22 postsecondary and workforce readiness.

23 To make one point on rational basis,
 24 defendants in their trial brief urge the Court to
 25 conclude that defendants have fulfilled the rational

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1 test by the mere existence of a debate on whether and
 2 how much money matters. That because there is an
 3 ongoing debate, that itself indicates that there is a
 4 rational relationship between the funding scheme and a
 5 thorough and uniform. That makes absolutely no sense.
 6 If that was true, we wouldn't be here today, because
 7 that's the same argument that they made with respect to
 8 their justiciability arguments in the first round
 9 before the Supreme Court.

10 The Supreme Court could have easily held,
 11 because that research existed then and they made those
 12 same arguments then, but the Supreme Court did not
 13 believe that. The Supreme Court instead, like we've
 14 continued to say, requires that we prove -- that we
 15 demonstrate -- that we disprove the rational
 16 relationship between the funding scheme and a thorough
 17 and uniform system.

18 And, in fact, we expect to elicit the
 19 testimony from their own expert, Dr. Eric Hanushek,
 20 consistent with his deposition testimony, that of
 21 course money matters. You know, some money does
 22 matter, and it depends on how well it is spent. We
 23 intend to proffer evidence that our districts are
 24 spending their money well, it's just that they don't
 25 have enough money to spend to meet all of their

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1 educational needs of their students.

2 Under the local control clause claim, this
 3 Court will be called upon to decide whether defendants
 4 have interfered with or failed to carry out their
 5 mandate to assure that local school districts remain in
 6 control of their instruction. As defendants point out
 7 in their trial brief, the term "instruction" doesn't
 8 just mean directly teaching kids in a class, it also
 9 pertains to matters related to instruction, matters
 10 such as the hiring, firing of teachers, matters such as
 11 the adoption of curriculum and textbooks.

12 Of course, these are affected, the
 13 adoption of curriculum and textbooks is affected
 14 whenever the State changes its standards, because there
 15 are new standards, there are more rigorous standards
 16 that have to be incorporated into the new curriculum,
 17 into the new textbooks.

18 And certainly this is not an exhaustive
 19 list. The Court will also be asked to consider how the
 20 under-funding of programs for English language learners
 21 that I'll get to in a little bit, at-risk funding, the
 22 overall minimum total program fund, how all of that
 23 funding forces districts to use their local funds in
 24 fulfilling state mandates, effectively usurping the
 25 power of school districts to exercise any meaningful

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1 discretion over their programs. Because certainly just
 2 because you say that school districts have the money in
 3 their pocket and they have the discretion to send it,
 4 whether or not -- to spend it, whether or not they have
 5 meaningful discretion in being able to spend those
 6 local funds on instruction and to make those
 7 instructional decisions, that is where the heart of the
 8 matter lies.

9 And the Court will also be asked to look
 10 at the mandates. Mr. Kawanabe mentioned those more in
 11 depth than I'll go in. And our point is not to infer
 12 that defendants have no authority to adopt educational
 13 mandates or to second-guess their policy decisions.
 14 Should the State be looking more or less at student
 15 growth, for instance, they don't -- they don't want you
 16 to look at achievement levels, they want to see whether
 17 students are growing. Whether or not they actually
 18 achieve proficiency remains in doubt, but we're not
 19 going to necessarily second-guess their policy
 20 decisions, but we do expect to present evidence of
 21 increasing mandates and their effects on superseding
 22 school districts' local control as prohibited by the
 23 court opinions in Owens versus Colorado Congress of
 24 Parents, Teachers, and Students.

25 And in order to prove our claim, set forth

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1 the legal standards in order to prove our claim that
 2 there is no rational relationship between the funding
 3 scheme and a thorough and uniform system, we'll present
 4 evidence on the total program funding. And we'll
 5 present evidence on the additional funding such as
 6 categorical funding. And you'll hear testimony from
 7 the State that will say well, sure, ELPA funding isn't
 8 maybe enough; sure, at-risk funding maybe isn't enough,
 9 but you can dip back into total program funding.
 10 There's so many hands in that cookie jar that there's
 11 no more cookies left. There weren't too many to begin
 12 with, because total program funding is only so much
 13 money.
 14 So that's the predicament that school
 15 districts are left with. As an example, the -- and the
 16 State is going to proffer evidence of the handful of
 17 additional funding mechanisms beyond the total program
 18 funding. But as an example of how this additional
 19 funding does not rationally relate to a thorough and
 20 uniform system, let's take the ELPA funding, funding
 21 under the English Language Proficiency Act. At the
 22 very least, a thorough and uniform system has to entail
 23 academic proficiency in the English language. I think
 24 that even defendants would be hard-pressed to argue
 25 with that point.

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1 Dr. Kathy Escamilla, a national expert
 2 that is actually out of UC-Boulder here in Colorado, on
 3 the English language learner programs, as well as other
 4 experts, including the State's ELL program expert, is
 5 going to testify that on average, it takes about four
 6 to seven years for English language learners to become
 7 academically proficient. They're not just learning a
 8 foreign language. They're not going to be a tourist
 9 for a couple days or couple of weeks in some foreign
 10 country. They have to take tests. They have to take
 11 algebra tests, they have to take science tests, they
 12 have to take English language arts tests, all in the
 13 English language. They're going to have to take the
 14 ACT, which is in English.
 15 So for them to become academically
 16 proficient, it takes four to seven years. And until
 17 that time, the experts will each testify that you have
 18 to provide them supplemental programs. It's a
 19 requirement under the state statute, and it's a
 20 requirement under even federal law. But for no reason
 21 whatsoever, the State limits English Language
 22 Proficiency Act funding to two years. You will not
 23 hear the testimony of any expert that says that
 24 there -- that that is rational. That it is rational to
 25 limit English language learner program funding to two

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1 years.
 2 And when you have students coming in as
 3 new immigrants, many in Greeley are coming in as new
 4 immigrants, those students require those services, of
 5 course, immediately. But beyond the two years, there's
 6 still the services. And even Kathy Escamilla will talk
 7 about how the most critical point in trying to bring
 8 the student to English proficiency, academic English
 9 proficiency, is when they've already been in the
 10 program four or five years, and not just taking them
 11 from simple phonics, but you're going to take them to
 12 another level of understanding of the English language
 13 and an application of the English language.
 14 But nevertheless, ELPA funding is limited
 15 to two years. How is that rationally related to a
 16 thorough and uniform system? At-risk funding. Talk
 17 about, well, we provide at-risk funding. At-risk
 18 funding. The proxy for at-risk funding is students on
 19 the free lunch program. Not the free and reduced price
 20 lunch program, just the free lunch program.
 21 You will hear testimony after testimony in
 22 this case that there's no rational reason to exclude
 23 students on the reduced price lunch program, that
 24 there's no difference in learning, there's no
 25 difference in services that students on the reduced

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1 price lunch program need as opposed to students on the
 2 free lunch program. That there's no difference in the
 3 resources that they might not have in the home. That
 4 there's no differences in some of the familial issues
 5 that might arise in low-income families. But
 6 nevertheless, the State has limited at-risk funding, at
 7 least the proxy for it, to students on the free lunch
 8 program alone.
 9 Another point of consideration for the
 10 Court in determining how the funding for English
 11 language learner programs is rational to achieving a
 12 thorough and uniform system is the funding for gifted
 13 and talented compared to the funding for English
 14 language learners.
 15 Now, I'm not saying that gifted and
 16 talented is overfunded. Certainly not. I think the
 17 testimony will bear out that it's not. I'm not saying
 18 that gifted and talented funding is not necessary for
 19 those gifted and talented students, 'cause you'll hear
 20 testimony that it's the gifted and talented students
 21 who often grow bored in the regular classroom setting
 22 who will end up dropping out, just as the English
 23 learner children may if they don't receive appropriate
 24 language services.
 25 But as opposed to the funding for English

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1 language learners that's limited to two years, gifted
 2 and talented has no limit. So long as the student
 3 remains identified as gifted and talented, the school
 4 district will receive gifted and talented funds. Even
 5 when you look at the funding per pupil, the funding
 6 amount, whether or not it's sufficient to cover the
 7 additional supplemental programs for English language
 8 learners, the funding for GT per pupil is greater than
 9 the funding for English language learners. It's going
 10 to be up to the Court to decide exactly how or what
 11 rationale is applied in those circumstances. But we
 12 can't find any at this time.

13 You'll also hear testimony about Colorado
 14 Preschool Program funding. Certainly earlier the State
 15 wanted to argue, well, Colorado Preschool Program
 16 funding, that's not a part of thorough and uniform
 17 education, only applies to kids 6 years and older. As
 18 the Court's well aware, that even their experts say
 19 that if you don't help these students with -- the
 20 English language learner students and low-income
 21 students, experts on both sides in this case will
 22 testify that if you don't get to them early, you're
 23 going to lose them.

24 And that means high-quality preschool
 25 programs. That means funding to support high-quality

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1 preschool programs. That means providing quality
 2 preschool programs and the funding needed not just for
 3 a limited number of students, as the State does. The
 4 State arbitrarily caps its CPP funding for 20,180
 5 part-time students.

6 You'll see the evidence in this court,
 7 Your Honor, of the growing number of low-income
 8 students, the growing number of English language
 9 learner students, and there will be evidence of the
 10 approximate number of eligible 4-year-olds in this
 11 state. And it grossly outweighs the 20,180 limited
 12 number provided in statute by the State.

13 You will hear testimony about kindergarten
 14 funding that's by and large limited to half-day
 15 funding. Even their experts, even the State's experts,
 16 testify that for English language learners and
 17 low-income learners in particular, but it certainly
 18 still applies to all children, that full-day
 19 pre-K -- quality, full-day kindergarten programs is
 20 what needs to help close the achievement gap early and
 21 keep that achievement gap closed for those students.
 22 But nevertheless, the State still, for the only reason
 23 that can be seen as a funding issue, that's the only
 24 reason that they limit the funding to half day for
 25 kindergarten.

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1 Regarding facilities. The Public School
 2 Finance Act does not provide state funds for capital
 3 construction in Colorado. Instead, the state funds for
 4 capital construction come primarily from the Building
 5 Excellent Schools Today program, the BEST program.

6 The initial assessment -- there was an
 7 initial assessment and study by the State back in March
 8 of 2009, and it was completed in the spring of 2010.
 9 8,419 facilities in 178 school districts were assessed
 10 in person for health and safety -- health and safety
 11 issues, education, technology requirements, energy
 12 performance, and capacity. At the end of this
 13 assessment, it was shown at that time that there was
 14 approximately \$17.9 billion in total unmet statewide
 15 capital needs.

16 You will hear from the State that the BEST
 17 program provides an annual amount in funding, that it's
 18 helping some school districts. But that's very
 19 sporadic. For instance, Mapleton. You will hear about
 20 Mapleton building a couple of new schools as a result
 21 of finally passing voter approval to their match.
 22 Because it's not total state funding that is provided
 23 to these districts. Districts have to match the funds.
 24 Not a one-to-one match, necessarily, but there is a
 25 formula for the matching of those. And so Mapleton's

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1 received it, but their outstanding need is still so
 2 much greater, and there's no other way for them to try
 3 and get that, because they can't afford it as a
 4 property-poor school district.

5 And even the BEST -- there are other
 6 limitations that you will hear about the BEST program
 7 as well. In the most recent cycle, there were 73
 8 applications for \$372 million in state aid. Of those,
 9 only 136 projects were granted.

10 So where do I -- our facilities sit today?
 11 Where are we at with the facilities? It's not coming
 12 up quite too clearly up on the slide, but here we have
 13 a school in Greeley. It's a high school in Greeley, a
 14 sign of pride there, of course, and there's a trash can
 15 that's catching rainwater coming from the ceiling
 16 there. Here we have fire alarms and asbestos in a
 17 Greeley middle school. Of course you can't see the
 18 asbestos, because it's, you know, in the ceiling. And
 19 they can't afford the abatement that they have to do at
 20 this school.

21 You have outdated fire alarms. You have
 22 an outdated system in this middle school in Greeley.
 23 This is the same middle school where it was designed
 24 way back in the 19 -- well, not way back, but in the
 25 1960s it was designed, and now the middle of the

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1 floors, the way that it was built, are kind of like
 2 collapsing together down the middle there, creating a
 3 safety hazard for the students.
 4 We have a science lab. Not the best
 5 picture quality, but one thing that you can see that is
 6 missing is science equipment. You would think that you
 7 would have science equipment in a science lab, but
 8 there's not much of it -- much of it there. We have a
 9 dangerous wood shop at Sheridan High School. This is
 10 plastic covering some rainwater that drips through
 11 there. And you can't say well, why don't they just fix
 12 the hole, why don't they just fix the issue or fix
 13 that. It's because these issues are all across the
 14 school districts.
 15 You'll hear testimony from the
 16 superintendents coming in. And every time they fix
 17 something, 'cause they have to just do patch work, they
 18 can only do the Band-Aid approach. But that approach
 19 is only so effective. They have foundational problems
 20 also. A lot of these schools in the Sheridan -- in the
 21 Sheridan district were built in valleys, and they have
 22 flooding and foundational problems resulting now.
 23 Here's another Sheridan classroom. This
 24 is where kids -- this is the environment that kids are
 25 learning. Learning to achieve those knowledge, skills,

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1 and behaviors that the State is requiring of them.
 2 These facility issues are all over. There's -- there
 3 is a library inside a gym in the Mapleton Early College
 4 High School. Here we have Exhibit 5621, which is
 5 exposed electrical wiring at the Mapleton Early College
 6 School. Plaintiff-Intervenor Exhibit 5710 is a
 7 deteriorating science lab. Once again, science is a
 8 real big issue now, coming up under the new state
 9 standards, and these are the kinds of conditions the
 10 kids will be called upon to work.
 11 We have exposed insulation in Rocky Ford,
 12 Rocky Ford High School, where they ended up having to
 13 consolidate students because of funding issues. So
 14 they had to move the students, the middle school
 15 students, with the high school students, which created
 16 a lot of disruption in that community. It wasn't
 17 something that they wanted, but it was something that
 18 they were forced to do.
 19 Plaintiff-Intervenor Exhibit 5795 is
 20 improper drainage at Jefferson High School. And you'll
 21 hear that. And here we have what's affectionately
 22 known as a cafetorium, which serves both as the
 23 auditorium and the cafetorium for all events at the
 24 school. With very limited capacity. You have limited
 25 capacity for students, you definitely have limited

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1 capacity for parents to attend their -- their
 2 children's events as well.
 3 So what does the future hold for our
 4 clients and other ELL and low-income students across
 5 the state? We expect to call three leading national
 6 experts who will testify regarding the loss of
 7 opportunities for children, particularly low-income and
 8 English language learner children. SB-191 has been
 9 adopted, and you will hear from our joint expert with
 10 the plaintiffs, Dr. Linda Darling-Hammond, the tenured
 11 professor, national expert on teacher quality and
 12 teaching quality, and she will talk about how student
 13 learning will be affected and what some of the costs
 14 and consequences are that must be considered with the
 15 passage of SB-191.
 16 Once again, we're not arguing that SB-191
 17 should not be passed, that it should not be
 18 implemented, but it should be supported with essential
 19 resources, resources that even Commissioner Hammond
 20 recognizes have not been provided by the State in order
 21 to fully implement that program.
 22 You will hear from Dr. Steve Murdock, the
 23 former U.S. Census director and Texas state
 24 demographer. He will testify about the changing
 25 demographics, what is the forecast for the state of

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1 Colorado if things don't change. He'll talk about
 2 the -- the children to -- the growth rate here in the
 3 state of Colorado. And as for children, how Hispanic
 4 children account for 92 percent of the new growth rate.
 5 As Anglo children go down in public schools, Hispanics
 6 and other students of color are going up in the number.
 7 He will talk about the relationship between educational
 8 attainment and some economic factors such as household
 9 income and cost of housing, certainly a concern for
 10 everybody in Colorado.
 11 You'll hear testimony from Dr. Hank Levin.
 12 Kenzo talked about this a little earlier. He's an
 13 economist and national education expert. He'll testify
 14 on the economic and social consequences of failing to
 15 educate adequately students in Colorado's public
 16 system, including the difference in the payment and
 17 non-payment of taxes.
 18 What's in the interest of not just those
 19 students, but in the interest of Colorado, for them to
 20 become high school graduates, for them to become
 21 college graduates? It's related to the income that
 22 they might generate and the taxes they can then
 23 contribute to the state. Otherwise -- you will hear
 24 testimony of this from Dr. Levin. Otherwise we're
 25 going to have not just decreased taxes, we're going to

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1 have increased costs for health care, we're going to
 2 have increased costs as a result of crime.
 3 You will also hear the testimony of school
 4 officials, that they're doing the best they can. You
 5 will hear about the -- you will hear about the input
 6 such as teacher recruitment and hiring and retention
 7 issues for a property-poor school district,
 8 particularly Sheridan and Mapleton, who end up having
 9 to compete with the surrounding urban and suburban
 10 school districts that are wealthier in the Denver area.
 11 You will hear about building and equipment
 12 facilities, like I said before, libraries and
 13 technology to implement the 21st century learning
 14 programs desired by defendants. You'll also hear about
 15 outputs. Stipulation No. 7 says the primary purpose of
 16 the Colorado Student Assessment Program is to determine
 17 the level at which Colorado's students meet Colorado's
 18 content standards. Of course the CSAP only tests in a
 19 certain number of those areas, the subject areas, but
 20 for those that exist, you can look at the CSAP in order
 21 to determine, well, are children achieving these
 22 standards.
 23 Stipulation No. 8 also talks about the
 24 ACT, that it's a standardized test used to measure high
 25 school achievement. Defendants' language assessment

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1 program, the CELApro, is used to determine the level at
 2 which Colorado ELL students meet Colorado's English
 3 language development standards. These outputs such
 4 as -- and as well as graduation rates and dropout rates
 5 are used by the State to gauge educational programs.
 6 They're used by the State in order to
 7 describe generally and even sometimes more specifically
 8 what a thorough and uniform system is. So certainly it
 9 must be appropriate for the Court to look at these
 10 outputs. Even as the -- the prior Lobato ruling
 11 intimated, that it's appropriate for the Court to look
 12 at proficiency targets and to see the results of those.
 13 But the defendants don't want you to look
 14 at those results. They don't really want you to look
 15 at those results because of what they show. Here's a
 16 demonstrative showing the achievement gaps. These are
 17 statewide numbers. So the red line indicates
 18 non-English language learners on the 2010 CSAP reading
 19 test. These are not numbers that we made up. We
 20 didn't control them for any -- any specific reason.
 21 These are the actual achievement results
 22 produced by the State. And the lighter blue line
 23 indicates for LEP students, those are limited English
 24 proficient students identified in accordance with state
 25 statute. The dark blue line is any non-English

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1 proficient. And then, of course, the red line is
 2 non-ELLs. Substantial gaps all across grade levels.
 3 And even when you look at how students are -- are
 4 performing the non-ELLs, you still have 25 percent to
 5 30 percent who are not meeting the minimum proficiency
 6 standards.
 7 Let's look at math. You might think well,
 8 reading might be a little different for English
 9 language learners; they're not yet proficient. Math
 10 should be an international language. And certainly
 11 even when you look at the non-ELLs, how are they
 12 performing? 33 percent. 33 percent of tenth-graders,
 13 non-English language learners. So you're taking out
 14 one of the key under-performing groups. Even with them
 15 out of the equation, two out of three Colorado
 16 tenth-grade students are not meeting the minimum
 17 proficiency standards set by the State.
 18 And, of course, it's even more dismal for
 19 English language learners. 2 percent of ninth-graders
 20 that are identified as NEP, even when you put them
 21 together with the LEP, 7 percent in the ninth grade,
 22 and only 5 percent in the tenth grade.
 23 Science. It's only been tested for a few
 24 years now. Science, we have incredible gaps. But once
 25 again, even when you look at non-ELLs, you have almost

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1 half of the state at these three different grade levels
 2 not meeting the minimum proficiency levels. And it's
 3 certainly even appalling, could be described as
 4 appalling, about how the English language learners are
 5 performing on these tests.
 6 When we look at income levels, the gaps
 7 close a little. You still have 29 percent -- I think
 8 29 percent might be the smallest gap at the grade
 9 levels. No, 28 percent in ninth grade, if my math is
 10 good. No, 27 percent. Okay. 27 percent is the
 11 smallest gap between those on the free and reduced
 12 price lunch program versus those not on the free and
 13 reduced lunch program. Math doesn't get much better,
 14 and as you can see, the proficiency levels collapse.
 15 Now, I will say that one of these -- that
 16 one of the reasons that will be proffered in the trial
 17 about why do the math results look even worse than the
 18 reading results is because there was a huge influx of
 19 dollars targeted at reading programs in this state. So
 20 certainly they're not commendable, but they are better
 21 than the math results and science results. Once again,
 22 neither one of these groups are performing very well,
 23 but certainly not the free and reduced price lunch
 24 programs.
 25 When we look at how they're graduating,

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1 once again in 2008, from 2008 to 2010, it's not getting
 2 any better. Not for the state average, which would
 3 include English language learners, so that would bring
 4 the average down. But certainly not for English
 5 language learners. It was 52 percent a couple years
 6 ago, now it's less than one-half of the students are
 7 graduating.

8 Low-income students, not much better
 9 either. You have more than -- excuse me -- more than
 10 two out of five students that are not graduating who
 11 are low income. ACT scores. ACT scores are important,
 12 because, for instance, UC-Boulder, I think you have to
 13 have a 22 in order to qualify for admission there. Not
 14 even an average student in the state can -- with a
 15 non-English language learner average student can even
 16 get into Boulder. And if you're an English language
 17 learner, you can just about forget about it. You're
 18 going to community college. Less than 15.8 all three
 19 years across. And things aren't getting any better.
 20 Free and reduced price lunch program, not much better
 21 there either.

22 So what are we seeking in this case? Our
 23 relief we seek, that the plaintiff-intervenors seek, is
 24 relief that's focused on the harms. That we believe we
 25 will present evidence sufficient showing the lack of a

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1 rational relationship between the funding for English
 2 language learner and at-risk students and a thorough
 3 and uniform system.

4 We ask that the Court declare the Colorado
 5 school system for funding the education of at-risk and
 6 ELL students unconstitutionally inadequate and in
 7 violation of Article IX, Section 2. That the Court
 8 declare that the Colorado school finance system for
 9 funding facilities unconstitutionally inadequate and in
 10 violation of Article IX, Section 2. That the Court
 11 declare that due to the inadequate funding of at-risk
 12 and ELL students in Colorado, in the Colorado school
 13 finance system, as a result of the State's fail -- of
 14 defendants' failure to adequately fund capital
 15 construction, as a result of the increasing mandates
 16 that are placed on students, on these districts,
 17 especially the property-poor school districts, that the
 18 defendants have essentially stripped away local
 19 community discretion and the taxpayers' ability, in
 20 violation of Article IX, Section 15, the local control
 21 clause.

22 And we ask that the Court enjoin
 23 defendants from giving force and effect to any school
 24 finance system, similar to what the plaintiffs have
 25 offered.

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1 And so we've talked about lost
 2 opportunities. And what does this hold for the future
 3 of Colorado? Dr. Murdock, who will testify in this
 4 case, stated, "As indicated in data for free and
 5 reduced lunch program, English as a second language,
 6 and similar programs, the rapidly growing minority,
 7 particularly Hispanic, populations will need assistance
 8 to become better educated." It makes sense. Maybe not
 9 politically, but it definitely makes sense in the real
 10 world, certainly the education world.

11 Although the cost of improving their
 12 educational success may be substantial, the results
 13 provided here suggest that the costs of failing to do
 14 so are even more extensive, resulting in a poor and
 15 less competitive Colorado.

16 In sum, it is evident that the future of
 17 Colorado is increasingly tied to its minority
 18 populations. That their economic future, the economic
 19 future of the Ortega children, the economic future of
 20 the Diaz children, the economic future of the Payan
 21 children, the economic future of every one of our
 22 clients, every one of the plaintiffs' clients,
 23 everybody's child who falls in these categories, that
 24 their economic future matters also to the future of
 25 Colorado. And how well they do socioeconomically is

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1 increasingly how well Colorado does as well.

2 We ask that -- we ask that this Court, you
 3 know, kindly consider the evidence, which we certainly
 4 have full faith in the Court's ability to do so. And
 5 we ask the Court that if it does find that the system
 6 is not rationally related to a thorough and uniform
 7 education for these at-risk and ELL students and that
 8 if the Court finds that the local control clause has
 9 not been respected and abided by defendants, that the
 10 Court enter the appropriate declaratory and injunctive
 11 relief. Thank you, Your Honor.

12 THE COURT: Thank you. We'll go ahead and
 13 take the morning recess. The court reporter says about
 14 15 minutes should be okay. So maybe 10, 15. I go by
 15 the clock here in the courtroom. Everybody might have
 16 a different time. And please, from here on out, when
 17 we start court and recess, do not stand. There's just
 18 too many people and the configuration of the courtroom.
 19 So just remain seated. Not a problem. Okay. We'll be
 20 in recess, then, until 10:15. Thank you.

21 (Recess taken, 9:57 a.m. to 10:15 a.m.)

22 THE COURT: Thank you. We're back on the
 23 record in 05CV4794, and I believe the defense was going
 24 to present their opening.

25 MR. HEINKE: Thank you, Your Honor. May

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1 it please the Court. Anyone who sat in the courtroom
 2 so far this morning would think the State doesn't care
 3 about educating its children. But anyone who sits in
 4 the courtroom over the next five weeks will learn
 5 that's just not true. You'll certainly hear stories of
 6 challenges, but you'll also hear incredible success
 7 stories from all across our state.

8 You'll hear the lieutenant governor, Joe
 9 Garcia, talk about the critical role that education
 10 plays in Colorado. You'll hear from Kristin Waters,
 11 who was recognized by the president of the United
 12 States in his state of the union address for her work
 13 turning around Bruce Randolph Middle School right here
 14 in Denver.

15 You'll hear from Mike Miles, the
 16 superintendent at Harrison School District, about the
 17 impressive growth in its students' performance. He'll
 18 tell you that he did this by putting the focus back
 19 where it belongs, on classroom instruction and on
 20 teacher effectiveness. You'll hear about students
 21 graduating high school with all or part of their
 22 college degree. You'll hear from Senator Keith King
 23 and other legislative leaders, who will tell you that
 24 there is no more important public policy issue in the
 25 state today than education.

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1 This case is not about whether Colorado's
 2 leaders care about education, about students, about
 3 schools. They do. This case, simply put, is about
 4 money.

5 The plaintiff groups will tell you how
 6 Colorado has invested the taxpayers' money in education
 7 is constitutionally irrational. Not true. You heard
 8 Mr. Hinojosa say that the State has argued one-room
 9 schoolhouses will be okay. But, in fact, the State
 10 invests billions of dollars every year in public
 11 education. Mr. Kawanabe talked about the Public School
 12 Finance Act of 1994. But since 1994, the investment in
 13 education has almost doubled.

14 Mr. Kawanabe talked about the fact that
 15 local districts have to use local funds to pay for
 16 schools. But as a matter of fact, when the
 17 constitution was written, and until 1939, about
 18 95 percent of schools were paid for by local funds.
 19 That's no longer the story. Beginning in the late
 20 '80s, we've seen a shift, and, in fact, today the State
 21 now picks up nearly two-thirds of the cost of funding
 22 what was historically a local issue.

23 The plaintiff groups will also tell you
 24 that there are problems with school buildings across
 25 the state. But again, you'll hear that the State has

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1 stepped in to address this historically local issue.
 2 The State has a grant program in which they've invested
 3 hundreds of millions of dollars to help school
 4 districts across Colorado build or repair their
 5 schools.

6 Since this case was filed, you'll hear
 7 evidence that plaintiff Alamosa School District got two
 8 new elementary schools through this state program.
 9 Plaintiff Center School District just broke ground on a
 10 new pre-K through 12th grade campus. Mapleton School
 11 District, where some of the intervenor plaintiffs live,
 12 received major renovations to its schools.

13 Plaintiff Sangre de Cristo received a
 14 grant to pay for its own pre-K through 12th grade
 15 campus. Plaintiff Centennial School District got a
 16 pre-K through 12th grade campus. Plaintiff Sargent
 17 School District got a new junior and senior high school
 18 and major renovations for its elementary.

19 You heard the plaintiff groups also tell
 20 you that preschool is critical. Now, as we all know,
 21 the constitution talks about students beginning at age
 22 6. But the general assembly, exercising their fiscal
 23 and policy judgment, has recognized the importance of
 24 early childhood education. They funded a program that
 25 last year sent more than 20,000 needy kids to

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1 preschool.

2 The evidence in this case will show that
 3 the State of Colorado makes a tremendous investment in
 4 public education, and that investment is yielding
 5 results. You heard the plaintiff groups talk about how
 6 much Colorado spends compared to the national average.
 7 But if this case is really about students and how those
 8 students perform, isn't a better measure how Colorado
 9 does, how Colorado performs compared to the national
 10 average?

11 You'll see evidence of something called
 12 the nation's report card, which is the metric for
 13 judging one state's students against another. Now,
 14 under the plaintiff group's theory, because Colorado
 15 spends near the bottom, students ought to be performing
 16 near the bottom. They're not. On almost every
 17 measure, Colorado's students are performing above the
 18 national norm.

19 The nation's report card in 2009 looked at
 20 fourth grade mathematics and showed that in Colorado,
 21 we scored higher than 25 other states. Fourth grade
 22 reading, we scored higher than 28 other states. Eighth
 23 grade writing, we scored higher than 31 other states
 24 and jurisdictions. This evidence shows that there are
 25 only a handful of states that out-perform Colorado when

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1 it comes to student performance averages.
 2 When you compare Colorado to other states,
 3 it's hard to see how we're providing our students with
 4 a sub-par education. But you don't have to look just
 5 at the national report card. We can look at what the
 6 plaintiffs and plaintiff-intervenors themselves have
 7 said and done.
 8 Plaintiff Jefferson County has high
 9 schools that are among the nation's best. One of the
 10 elementary schools in plaintiff school district North
 11 Conejos was named Title I school of the year for
 12 exceptional school performance for getting almost all
 13 of its students proficient in reading and math.
 14 Plaintiff Pueblo City Schools routinely wins awards,
 15 including national Blue Ribbon recognition, Title I
 16 distinguished schools, and the John Irwin School of
 17 Excellence, which recognizes schools with the highest
 18 achievement in Colorado.
 19 Plaintiff Aurora School District is
 20 showing tremendous academic growth, topping state
 21 averages three years running. Plaintiff Center School
 22 District's high school was named a school of
 23 excellence, which recognizes schools for improving
 24 their students even though they have more than
 25 75 percent of their students considered at risk As a

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1 matter of fact, the year this article was written,
 2 72 percent of Center's seniors went on to college.
 3 Plaintiff Sargent School District told The
 4 Denver Post we have always had an excellent level of
 5 education in our district. Plaintiff Moffat County
 6 School District in northwest Colorado tells visitors to
 7 its website that students receive a quality education.
 8 And the other Moffat School District, the one in the
 9 San Luis Valley, tells its visitors that students --
 10 that it provides an exceptional education for all of
 11 its students.
 12 Now, the State does not argue that the
 13 system is perfect. We don't argue that there isn't
 14 room for growth or room for improvement. But the
 15 question before this Court is not whether the system is
 16 perfect. As the Lobato Supreme Court said when sending
 17 this case back for trial, this Court's task is not to
 18 determine whether a better financing system could be
 19 devised, but merely to determine whether the system
 20 passes constitutional muster.
 21 The Supreme Court said that significant
 22 and substantial deference is owed to the legislature's
 23 judgment. As a new parent, that standard reminds me of
 24 the story of the kid who wants something, a raise in
 25 allowance or a new toy, and they go to one parent and

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1 they ask the question. And the parent thinks about it,
 2 considers it, and gives an answer. And what do we know
 3 that child does if he doesn't like the answer? He goes
 4 to his other parent and asks for the same question,
 5 hoping for a different answer.
 6 That is precisely what's happening in this
 7 case. And just like the parents, that other parent,
 8 when they are asked the question, they say well, what
 9 did mom say or what did dad say? And as long as the
 10 decision that the first parent made is reasonable,
 11 rational, the other parent defers.
 12 Your Honor, each year school districts
 13 across Colorado are at the table in the legislature.
 14 They give testimony around school finance. You'll hear
 15 legislators, including Keith King, talk about this.
 16 They participate in the process. In fact, some of the
 17 plaintiffs' own witnesses have sat on the study
 18 committees that the legislature has done. The
 19 plaintiff groups just don't like the results of the
 20 process.
 21 They're here to ask you to make a
 22 different decision. But again, just like the story of
 23 the parents, a different decision is only appropriate
 24 if what the general assembly did fails to pass what the
 25 Lobato Supreme Court called minimally intrusive

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1 rational basis standard.
 2 The evidence will show that the elected
 3 representatives of the people of the state of Colorado
 4 have acted rationally. How do we know? Let's start by
 5 looking at the act itself. The 1994 Public School
 6 Finance Act, which the plaintiffs group talked to you
 7 about this morning, contains a clear legislative
 8 designation. The reason the financing scheme was
 9 enacted was in furtherance of the legislature's
 10 constitutional duty to create and provide a thorough
 11 and uniform system.
 12 But even if more than this is required,
 13 let's look at how the public school finance system
 14 actually works in Colorado. Over the next few weeks,
 15 you'll hear witnesses tell you that certain groups of
 16 students cost more to educate, students who are
 17 non-native English speakers, students who come from
 18 impoverished backgrounds, students who live in small
 19 communities or rural school districts. But you'll hear
 20 from Vody Herrmann, the former assistant commissioner
 21 of public school finance, that those are precisely the
 22 student groups that the funding system adjusts for.
 23 The funding sets a base amount per student
 24 and adds on top of that additional funding for at-risk
 25 students, additional funding for students in small

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1 places, places where there's a higher cost of living,
 2 additional funding to adjust for economies of scale.
 3 Ms. Herrmann will also talk to you about
 4 what are called categorical funds, and these provide
 5 additional money for students who are English language
 6 learners, students with disabilities, students who are
 7 considered gifted and talented. The school finance
 8 system carefully and systemically adjusts for precisely
 9 those students and student groups that the plaintiff
 10 groups tell you cost more to educate.
 11 You'll also hear from current and former
 12 legislative leaders about the time, the thought, and
 13 the effort they put each year into the debate about
 14 public school finance. You'll hear former senate
 15 president John Andrews tell you that the School Finance
 16 Act is the single most intricate statute on the books.
 17 You'll hear Senator Keith King and other
 18 legislative leaders tell you it is the only budget bill
 19 in Colorado that has its own special legislative
 20 approval process. These legislators will tell you
 21 about the open hearing process each year, that the
 22 general assembly hears testimony from interested
 23 parties across the state, including many of the school
 24 districts that will be in the courtroom. They listen
 25 and they make decisions

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1 The plaintiff groups are here because they
 2 don't like the decisions the general assembly has made.
 3 Despite the testimony you'll hear about the countless
 4 hours and billions of dollars the State invests each
 5 year in our public education system, the plaintiff
 6 groups will tell you that the legislature's decisions
 7 are constitutionally irrational because the general
 8 assembly has never done the sort of cost study that the
 9 plaintiffs in this case paid an outside consultant
 10 \$150,000 to run.
 11 Let's set aside the fact that you'll hear
 12 evidence that these cost studies have serious problems.
 13 You'll hear that from Dr. Eric Hanushek of Stanford
 14 University. Let's set aside the fact that the evidence
 15 will show that one of the methods for this study is to
 16 ask employees of school districts how much additional
 17 funds they want.
 18 Let's set aside the fact that the author
 19 of the study will tell you that even though they do
 20 these studies across the country and recommend
 21 increased spending in schools across the country, they
 22 never go back to actually see if the increased spending
 23 they recommend leads to better results. They never
 24 check their work.
 25 But setting all of that aside, if the only

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1 way to meet the rational basis test was to use
 2 precisely the process that plaintiff groups did, you
 3 could enter judgment for them right now. We admit, as
 4 Mr. Kawanabe told you, that we have not done that
 5 precise cost study. But that's not rational basis.
 6 What the general assembly did do, and what the evidence
 7 will show, is repeatedly study the system of public
 8 school finance.
 9 In 1990, there was the Colorado commission
 10 on school finance. In 1993, studies examining the
 11 finance structure. Also in 1993, a comprehensive study
 12 by the committee on school finance that was tasked with
 13 conducting a complete and thorough examination of the
 14 system.
 15 As a result of the 1994 Public School
 16 Finance Act, another comprehensive study that looked at
 17 things like factors affecting educational costs, the
 18 circumstances of students becoming at risk, the ability
 19 of schools to meet their capital demands.
 20 Since the passage of the '94 act, every
 21 two years the general assembly looks at the cost of
 22 living in 178 school districts and adjusts that factor
 23 in the formula. In 1996, a study by the general
 24 assembly's committee on K-12 capital construction
 25 finance. In 2000, a study of at-risk funding in

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1 Colorado. In 2005, a interim committee on school
 2 finance again tasked with ensuring that all students
 3 are receiving a thorough and uniform education.
 4 In 2009, another interim committee again
 5 asked to look at whether students are receiving a
 6 thorough and uniform education. The plaintiff groups
 7 told you that the general assembly didn't necessarily
 8 study every issue or act on every recommendation made
 9 in these studies. But, again, that's not the test for
 10 rational basis review.
 11 Witnesses will tell you that changes were
 12 made based on these studies, that the system was looked
 13 at, reviewed, and adjusted. Were all the adjustments
 14 made that plaintiff and plaintiff-intervenors would
 15 like? No. But, again, that is not the rational basis
 16 test.
 17 Now, you also heard specifically from the
 18 intervenor plaintiffs, who are parents and students and
 19 not school districts, who were talking about not only
 20 the funding system in general, but specific funding for
 21 English language learner and at-risk students. But
 22 just like the system generally, the legislature has
 23 looked at these groups of students.
 24 The intervenors told you that additional
 25 funds provided for English language learners isn't

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1 sufficient to meet all of those costs of taking those
 2 students to proficiency. But the legislature never
 3 intended the funding to cover all of the cost. In
 4 enacting the law that provided for English language
 5 learner funding, the legislature stated that the money
 6 was to help defray the costs to the districts of
 7 providing these programs.
 8 Similarly, the intervenors talked to you
 9 about at-risk students and the fact that the proxy for
 10 at-risk students were only based on free lunch, and
 11 that that was irrational. But the legislature has
 12 looked at this issue. In 1993, part of their study,
 13 the legislature looked for a proxy for the at-risk
 14 index, examining several options.
 15 In 1993 -- excuse me, in 1995, they
 16 considered the issue again, looking specifically at
 17 issues related to at-risk pupils. In that study, the
 18 legislature concluded that eligibility for the free
 19 lunch program was selected as the definition because
 20 it's available on an annual basis, it's verifiable, and
 21 it provides a fair, relative representation of the
 22 population.
 23 In fact, in 2000, the legislature
 24 conducted a full study on at-risk funding in Colorado.
 25 Now, the intervenors may disagree with the

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1 legislature's decision. They may think they have a
 2 better proxy for at-risk students. But, again, that is
 3 not the rational basis test. The question isn't
 4 whether there's a better proxy, the question is whether
 5 the legislature had a reason to do what it did.
 6 The legislature has studied these issues.
 7 They've spent countless hours thinking about, debating,
 8 and discussing the ins and outs of public school
 9 finance. The plaintiff groups want you to substitute
 10 the Court's judgment for the judgments of the general
 11 assembly.
 12 In addition to arguing just about what
 13 study the general assembly should use, the plaintiff
 14 groups have also told you that the system cannot be
 15 constitutionally rational because certain statutory
 16 requirements aren't fully paid for. You'll hear this
 17 theme again and again from the plaintiffs' witnesses.
 18 It's important to note that you'll also
 19 hear generally that the school districts are in favor
 20 of the policies laid out in the statutes. They just
 21 want more money because they argue they need it to
 22 implement them. There are a couple of problems with
 23 this argument, Your Honor. First, many of the statutes
 24 you'll hear about aren't Colorado statutes at all.
 25 You'll hear testimony from witnesses about the

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1 challenge of meeting the goals in what's called the No
 2 Child Left Behind Act. And that goal generally is full
 3 student proficiency by 2014. That's a laudable goal,
 4 but it's a federal goal. No Child Left Behind is a
 5 federal statute.
 6 You'll also hear districts talk about the
 7 challenges of recruiting teachers that meet the
 8 definition of highly qualified. Again, that is a
 9 federal requirement. Another example, you'll hear
 10 districts tell you about the costs of educating
 11 students with disabilities. Again, a noble goal, but
 12 it's a federal requirement.
 13 If the plaintiff groups have issues with
 14 the costs of meeting federal requirements, they should
 15 take it up with the federal government. You'll also
 16 hear from witnesses like Rich Wenning, a former
 17 assistant education commissioner, and Bob Schaffer, the
 18 chairman of the state board of education, that Colorado
 19 has an extensive waiver process for districts to seek
 20 relief from requirements they don't think they can meet
 21 or that are too burdensome.
 22 Now, you can't waive out of all
 23 requirements, witnesses will tell you that, but you can
 24 waive out of many of them. In fact, Mr. Schaffer will
 25 tell you that he can't remember any district ever

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1 asking for a waiver that didn't get it. You'll hear
 2 evidence of one school district that's waived out of
 3 Senate Bill 191, the teacher effectiveness requirements
 4 that you heard the plaintiff groups tell you about.
 5 That witness will also talk about the fact that their
 6 district has waived out of some of the requirements of
 7 the No Child Left Behind Act.
 8 But from the school district witnesses in
 9 this case, you'll hear that many of them have never
 10 even considered seeking a waiver. They're suing over
 11 the cost of requirements without asking to be relieved
 12 from these requirements themselves. It's like suing
 13 someone for being locked out of the house when you have
 14 the key.
 15 Maybe most importantly, though, Your
 16 Honor, you'll hear evidence that districts have
 17 extraordinary flexibility in meeting the requirements
 18 that the State does set. You'll hear evidence of the
 19 fact that Colorado is what's called a local control
 20 state.
 21 Now, the plaintiff groups have talked to
 22 you about that term in the context of what they
 23 consider a constitutional violation. But what being a
 24 local control state means is that the decisions that
 25 everyone agrees are the most important for a student's

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1 education, the teacher in the classroom, the curriculum
 2 that's used, textbook that's purchased, those are
 3 decisions that are made by school districts just like
 4 the plaintiffs in this case.

5 The State does not have the authority to
 6 make those decisions. The State provides money,
 7 two-thirds of the total cost, as we talked about
 8 earlier, but it's the districts that make decisions
 9 about how to spend it. And the evidence in this case
 10 will show that different local decisions yield to
 11 different local results. Even though all districts in
 12 Colorado are part of the same school finance system,
 13 some districts meet the state's requirements and some
 14 don't.

15 Another critical aspect of local control
 16 is that under the Public School Finance Act, districts
 17 have the authority to go to their local voters and ask
 18 for additional money. Remember that the local voters
 19 are the traditional source of funding for public
 20 schools. And even though the State now picks up an
 21 increasing share of the cost, the law still says you
 22 can go to your local citizens and seek additional
 23 funds.

24 You'll see and hear evidence that in this
 25 case, there are tens of millions of dollars that just

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1 the plaintiff school districts in this case could go to
 2 their local voters and ask for. But in many cases,
 3 instead of going to the voters, the school districts
 4 have decided to sue the State.

5 Your Honor, you've heard a lot today about
 6 the nuances of school finance and education reform.
 7 You'll hear a lot more about that over the next five
 8 weeks. But at the end of the day, when you peel back
 9 all of the arguments, all of the evidence, all of the
 10 witnesses, this case comes down to a simple issue. The
 11 plaintiff group's claim stands or falls on the simple
 12 idea that with more money, students will get a better
 13 education; that with more money, students will be able
 14 to better meet statutory goals; that with more money,
 15 student achievement will improve.

16 Your Honor, no one in this room would
 17 argue that improving student achievement isn't
 18 critical. The State's own witnesses, including the
 19 lieutenant governor, will tell you that education is
 20 crucial to the future of Colorado. The problem is what
 21 the United States Supreme Court recognized recently in
 22 the Horne v. Flores case, which is the growing
 23 consensus in education research that increased funding
 24 alone does not improve student achievement.

25 Mr. Hinojosa, when talking to you about

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1 the postsecondary workforce standards, talked about
 2 logical fallacies. This argument is a logical fallacy,
 3 that with more money, you'll see performance improve.
 4 You'll hear about the research that the Supreme Court
 5 was talking about from Dr. Eric Hanushek at Stanford
 6 University. He'll explain to you that even though
 7 there have been huge increases in spending nationally
 8 over the last half century, results have basically
 9 remained flat.

10 Dr. Hanushek will talk to you about
 11 Colorado specifically and will tell you that the trends
 12 here mirror the trends nationally. But more than just
 13 talking about the research, Dr. Hanushek will also tell
 14 you that this case is one of a long line of public
 15 school funding cases across the country, and
 16 Dr. Hanushek will talk to you about the tragic results
 17 of this national experiment.

18 For example, Dr. Hanushek will talk to you
 19 about Wyoming. And he'll talk about Wyoming for a
 20 couple of reasons. One, it's similar demographically
 21 to the state of Colorado. But more importantly, it had
 22 a school finance case recently, and after the
 23 plaintiffs won that case, spending in Wyoming increased
 24 dramatically, particularly as compared to Colorado. As
 25 the graph on the screen shows, the blue lines represent

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1 Colorado and the red lines Wyoming. And you can see
 2 that since '89-'90, Wyoming's spending has increased
 3 dramatically, and the gap between Wyoming and Colorado
 4 has grown.

5 So under the plaintiff group's theory,
 6 since spending in Wyoming has increased dramatically
 7 after a court order, we would expect to see that
 8 performance in Wyoming has increased dramatically. It
 9 hasn't. When you look at 2005, the fourth-graders that
 10 took the national reading test, Colorado, again, in the
 11 red bar and Wyoming in the green, were pretty close to
 12 each other.

13 But four years later, when that same group
 14 of students now in eighth grade took the reading test,
 15 and after tens of thousands of dollars per kid were
 16 invested in Wyoming, Colorado is near the top and
 17 Wyoming fell to the middle. You'll see the same thing
 18 in math. In fourth grade math in 2005, Wyoming was
 19 well out-performing Colorado. Wyoming in the green
 20 bar, Colorado in the red. But in 2009, when that same
 21 group of students now in eighth grade took the math
 22 test, Wyoming has fallen back to the middle and
 23 Colorado is moving to the front. Wyoming may be the
 24 clearest example that the national experiment in school
 25 finance litigation hasn't produced the results it

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1 expected.

2 Over the next five weeks, you'll hear some

3 remarkable stories, some remarkable successes, some

4 remarkable challenges. But this case may be most

5 remarkable because of what the Court does not have to

6 decide. In sending this case back for trial, the

7 Lobato Supreme Court was clear that the question is

8 whether the general assembly's decisions are

9 constitutionally irrational.

10 Under that standard, the Court does not

11 have to decide whether the current system is the best

12 system or even if a better one might be devised. The

13 Court does not have to decide whether the studies the

14 general assembly did were the right ones or the best

15 ones or better than the studies that plaintiffs and

16 plaintiff-intervenors will offer.

17 The Court does not have to decide whether

18 Dr. Hanushek is right or even whether he's more likely

19 right than the experts that the plaintiff groups will

20 offer. That's because under a rational basis review,

21 if the question is even debatable, judgment has to be

22 entered for the State.

23 Now, Mr. Hinojosa told you that this was

24 defendants' argument and that it didn't make sense.

25 But it's not defendants' argument, it's the law

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1 Mr. Hinojosa also suggested that if that were really

2 the rule, when the Supreme Court sent this case back,

3 it would have resolved it. But the case was in front

4 of the Supreme Court on -- solely on the question of

5 whether it was justiciable. The Supreme Court did not

6 purport to weigh in on the merits of the case.

7 Your Honor, at the end of the day, you

8 only have to find that in light of what is at least a

9 debate over the relationship between spending and

10 student achievement, in light of the general assembly's

11 repeated studies, in light of the countless hours and

12 billions of dollars the State invests in its public

13 education system, that the general assembly's

14 decisions, in the words of the Supreme Court, pass

15 constitutional muster.

16 After hearing all the evidence, we're

17 certain you'll find that they will.

18 THE COURT: Thank you. First witness for

19 the plaintiff.

20 MR. KAWANABE: Your Honor, may I?

21 THE COURT: Yes.

22 MR. KAWANABE: Before we call

23 Superintendent George Welsh, may I go over just a

24 couple timing issues with the Court?

25 THE COURT: Yes.

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1 MR. KAWANABE: Your Honor, we have had

2 conversations with counsel for plaintiff-intervenors

3 and defendants, and we wanted to note at least initial

4 plan timing, when we plan to transition the case to

5 plaintiff-intervenors. On -- by August 17, we plan to

6 transition it to plaintiff-intervenors' counsel, who

7 plan to finish their case and transition it to the

8 defendants approximately around August 24.

9 Please, Mr. Hinojosa, if I'm wrong,

10 correct me. Then the defendants will take the

11 remainder of the time, hopefully with a day left for

12 rebuttal and closing. Obviously, this depends on

13 cross-examinations and other examinations. But that is

14 our initial framework for the next five weeks, Your

15 Honor.

16 We've also submitted various stipulations

17 for the Court's review. We're happy to talk about

18 those if you like. As well as preserved testimony.

19 And perhaps after our first witness, if you'll allow me

20 to read into the record the witnesses we've submitted

21 by preserved testimony.

22 THE COURT: That would be fine. Thank

23 you.

24 MR. KAWANABE: If you'll give us just a

25 moment, I just need to set up the laptop again for

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1 Mr. Welsh.

2 THE COURT: Yes.

3 (Pause in the proceedings.)

4 MS. GEBHARDT: Your Honor, while they're

5 setting up, we have one exhibit that you don't have in

6 your trial notebook yet that the defendants have

7 stipulated that you don't have in your notebook.

8 THE COURT: Yes.

9 MS. GEBHARDT: I'll read the number. It's

10 10441.

11 THE COURT: Thank you.

12 (Pause in the proceedings.)

13 MS. GEBHARDT: All right.

14 THE COURT: Yes.

15 MS. GEBHARDT: The plaintiffs would call

16 Mr. George Welsh, superintendent from Center Public

17 Schools.

18 THE COURT: If you'd come forward, sir, to

19 the witness stand over here. If you'd raise your right

20 hand.

21 GEORGE STEPHEN WELSH,

22 having been first duly sworn to state the whole truth,

23 testified as follows:

24 THE COURT: Thank you, sir. Please be

25 seated. And if you could state, sir, your full name

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1 and spell your last name for the record.
 2 THE WITNESS: George Stephen Welsh,
 3 W-e-l-s-h.
 4 THE COURT: Thank you.
 5 DIRECT EXAMINATION
 6 BY MS. GEBHARDT:
 7 **Q. Good morning, Mr. Welsh. Can we start off**
 8 **talking about your background and your qualifications,**
 9 **please. And as a help, I think we will start with**
 10 **Plaintiffs' Exhibit 10441, which I just handed to the**
 11 **Court, which I will put up on the Elmo, which is a copy**
 12 **of Mr. Welsh's resume. Could you start, Mr. Welsh, and**
 13 **talk about your education background?**
 14 A. Yeah. I graduated with a bachelor of arts
 15 in secondary education, emphasis in social studies and
 16 math -- I'm sorry, social studies and science in 1986.
 17 I have -- I taught nine years at Tortolita Middle
 18 School in Tucson, Arizona, eighth grade social studies.
 19 Completed a master's program in 1995 from Northern
 20 Arizona University in educational leadership.
 21 **Q. We're testing the microphone to see if it**
 22 **works. I think it works. Have you done any work since**
 23 **you received your master's degree from Northern Arizona**
 24 **University?**
 25 A. Yes. I -- I moved to Center, Colorado. in

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1 spring 1996 to be middle-high school principal. And in
 2 fall of 1997, I became superintendent of schools, and
 3 I've been superintendent of schools there since then.
 4 **Q. Can you explain a little bit to the Court**
 5 **what it means to be the -- the superintendent in**
 6 **Center -- in Center School District in Colorado,**
 7 **please.**
 8 A. Being a rural superintendent means you
 9 wear a lot of hats. Of course, you're in charge of the
 10 finances, the -- the educational program, the
 11 facilities for the district. But often time you also
 12 have to supervise principals, you supervise a lot of
 13 staff within the district to make sure that they're
 14 doing their jobs in various ways, and sometimes it
 15 means using a snow shovel on the track to -- to get it
 16 ready for a track meet. So we do quite a bit.
 17 **Q. Does your job also involve working with**
 18 **your -- the parents in the community of Center?**
 19 A. Yes. We directly engage with parents,
 20 whether it's at a district accountability meeting or at
 21 the grocery store.
 22 **Q. Can you explain, what was -- what was the**
 23 **decision that led you to come to Center, please.**
 24 A. When I completed my master's program and
 25 achieved certification as an administrator, I -- I kind

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1 of did a shotgun approach to applying for some jobs.
 2 And -- and I was offered several. But my feeling was
 3 that Center was a place that I could -- they could
 4 really use help, and I could really make an impact.
 5 **Q. Can you please explain some of the other**
 6 **leadership roles that you had while you've been a**
 7 **superintendent at Center Schools, please.**
 8 A. Yeah. As superintendent of schools, you
 9 participate in regional superintendents' councils.
 10 I've been part of the San Luis Valley Regional
 11 Superintendents' Council since I became superintendent.
 12 I chaired that group in 2000-2001, I believe. I've
 13 been a member of CASE.
 14 **Q. Can you tell the Court what CASE is,**
 15 **please.**
 16 A. You bet. Colorado Association of School
 17 Executives. It's an association for teacher -- for
 18 administrators all over the state. I served on the
 19 Colorado Association of Senior School Administrators
 20 Board, it's a department within CASE, for a period of
 21 about six years. And I also chaired that board. Last
 22 year I served as the president-elect of CASE, and I'm
 23 currently the standing president of CASE.
 24 **Q. Have you received any awards in your**
 25 **position as superintendent in Center?**

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1 A. I was honored last December with a Demont
 2 Award. The Demont Award is recognized as the Colorado
 3 Rural Superintendent of the Year Award.
 4 **Q. Have you had opportunity to teach any**
 5 **classes?**
 6 A. Since about 2000, I've been teaching
 7 graduate level classes for Adams State College in
 8 educational leadership. I've taught school finance,
 9 school law, data-driven decision making, the politics
 10 of education. And probably several that I can't
 11 remember.
 12 **Q. In working as the CASE incoming president,**
 13 **the SAC position, and the other positions you've talked**
 14 **about, have you had opportunities to meet with other**
 15 **superintendents from rural districts around the state?**
 16 A. Absolutely. We have many opportunities
 17 through CASE to meet with and network with
 18 administrators from all over the state,
 19 superintendents especially. And having been a
 20 superintendent for 15 years, there's not many I don't
 21 know anymore.
 22 **Q. And have you had a chance to travel around**
 23 **to some of those other rural school districts in the**
 24 **state?**
 25 A. I have. I did a little bit of work on the

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1 other side of Wolf Creek during the time I served on a
 2 board there. I've been to the eastern plains. I've
 3 been to the Denver metro area. I've been out on the
 4 west slope.
 5 MS. GEBHARDT: At this time I would move
 6 for the admission of Deposition Exhibit 10441,
 7 Mr. Welsh's resume. No objections.
 8 THE COURT: That would be admitted.
 9 MS. GEBHARDT: And at this time also, Your
 10 Honor, I would move for the admission of Mr. Welsh as
 11 expert in Colorado rural education issues, including
 12 finance, operations, instruction, and curriculum.
 13 MS. MARKEL: No objection, Your Honor.
 14 THE COURT: No objection?
 15 MS. MARKEL: No objection.
 16 THE COURT: Thank you.
 17 **Q. (BY MS. GEBHARDT) Now, Mr. Welsh, as part**
 18 **of your work in this case, did you have an opportunity**
 19 **to write up a summary of your expert opinions?**
 20 A. Yes, I did.
 21 MS. GEBHARDT: Your Honor, I'm going to
 22 put the cover sheet on, because this is plaintiffs'
 23 exhibit -- trial Exhibit 4800.
 24 **Q. (BY MS. GEBHARDT) And I will turn to**
 25 **page 23. So, Mr. Welsh, have you seen this document**

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1 **before?**
 2 A. Yes.
 3 **Q. And does it represent the opinions that**
 4 **you have rendered -- your expert opinions that you've**
 5 **rendered in this case?**
 6 A. Yes.
 7 MS. GEBHARDT: Your Honor, at this point
 8 in time we would move for the admission, at least as it
 9 relates Mr. Welsh's testimony, of Exhibit 4800.
 10 THE COURT: Any objection?
 11 MS. MARKEL: No objection, Your Honor.
 12 THE COURT: All right. 4800 will be
 13 admitted.
 14 **Q. (BY MS. GEBHARDT) So, Mr. Welsh, so we**
 15 **have a sense of what Center is like, we saw some**
 16 **pictures in opening argument, but I was hoping you**
 17 **could explain to the audience and to the Court a little**
 18 **about Center. And maybe start by just describing where**
 19 **it's located.**
 20 A. Center's in the center of the San Luis
 21 Valley. It's a large alpine valley in south central
 22 Colorado. I've heard, and I don't know for sure, but
 23 some people say it's the -- the largest alpine valley
 24 in the world. Distance across the valley is pretty
 25 much an hour-and-a-half drive from -- from one end to

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1 the other north and south.
 2 We are a small community of about 2500
 3 residents in Center, 3500 residents in the district.
 4 And kind of remote, in that we don't have a lot of the
 5 typical services a lot of communities have.
 6 **Q. Can you tell us what the economics are of**
 7 **the region, the primary source of employment is,**
 8 **please.**
 9 A. For the Center community, it's
 10 agricultural. We grow a lot of potatoes, barley,
 11 lettuce, hay, alfalfa, some carrots, and such. And
 12 then we also have some ranchers in our area.
 13 **Q. Can you talk about how close the nearest**
 14 **hospital is to Center?**
 15 A. There's a limited services hospital
 16 15 miles away in Del Norte, and there's a more
 17 extensive services hospital in Alamosa, which is about
 18 30, 35 miles away. And if something serious happens,
 19 you're probably going to get flown to Pueblo or Springs
 20 or Denver.
 21 **Q. Do you happen to know what the median**
 22 **income is of Center, Colorado?**
 23 A. I believe it's just below 20,000 per
 24 capita.
 25 **Q. And what are the socioeconomic**

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1 **demographics of Center?**
 2 A. Not a very rich community. I can relate
 3 it to the school best, 'cause I'm not sure of the
 4 demographics for the entire community. But typically
 5 between 85 percent and 90 percent of our students'
 6 families qualify for free or reduced lunch.
 7 **Q. And what percent of Center are minority**
 8 **population?**
 9 A. About 90 percent.
 10 **Q. Do you know what the percent of the parent**
 11 **population in your school are that have advanced or**
 12 **college degrees?**
 13 A. Yeah. The 2010 census said just over
 14 10 percent.
 15 **Q. How important is the school to the Center**
 16 **community?**
 17 A. It is the center of the community. We
 18 don't have a community center. We don't have a lot of
 19 restaurants, great facilities. So if somebody's going
 20 to hold a birthday party or a baby shower, they're very
 21 likely to use our school facilities. If there's going
 22 to be a recreation event going on, they're going to use
 23 our school facilities.
 24 **Q. Do you know what the -- how the community**
 25 **feels about education in Center?**

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1 A. My belief is there's a high value for
 2 education in Center, especially from families who
 3 understand that that's their best way to get out of the
 4 situation they're in.
 5 **Q. Can you do a description of the physical
 6 layout of the school in Center? Are there different
 7 sites, or is there one site?**
 8 A. We're all -- we're on one piece of
 9 property, and the way I like to describe it, you can
 10 walk in the north doors at Haskin Elementary School,
 11 which is a two-story facility built in 1918, and you
 12 can progress through the system and come out the Fyock
 13 Library, which is at the far end of the high school.
 14 They're two separate facilities built at different
 15 times, but all on the same property.
 16 MS. GEBHARDT: Your Honor, we would like
 17 to show a video of the Center School District. And for
 18 defense counsel, it's just the video without any
 19 narrations, without any text.
 20 THE REPORTER: I'm sorry, Counsel, I can't
 21 hear you.
 22 MS. GEBHARDT: I'm sorry. It's just the
 23 video without any text, without any music or any
 24 narration. Mr. Welsh will provide the narration. Do
 25 you have any objection?

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1 MS. MARKEL: We have no objection.
 2 THE COURT: Do we have it marked or
 3 designated as a number?
 4 MS. GEBHARDT: I have the exhibit number,
 5 Your Honor.
 6 THE COURT: Okay.
 7 MS. GEBHARDT: It's deposition -- or trial
 8 Exhibit 8603.
 9 THE COURT: And there's no objection; is
 10 that correct. Thank you.
 11 MS. GEBHARDT: So we move for admission.
 12 THE COURT: 8603 will be admitted.
 13 MS. GEBHARDT: Get the volume up. So with
 14 the Court's permission, we're going to start this
 15 video, and Mr. Welsh will stop it along the way a
 16 couple times, and he'll narrate just the scenes from
 17 Center and the school so we have some context for his
 18 testimony today. So where are we on -- can we start
 19 there. Okay. Go ahead.
 20 **Q. (BY MS. GEBHARDT) So, Mr. Welsh, can you
 21 explain to the audience and the Court what we're
 22 looking at right here?**
 23 A. The video starts with some scenes of the
 24 surrounding area around Center. You can obviously see
 25 the agricultural economy base. That's actually the

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1 school road that leads out of town. That's a shot of
 2 the town from the north, looking off to the Sangre de
 3 Cristos. That's our world-famous water tower.
 4 Starting to move in to town now. That's a shot of our
 5 playground.
 6 If you don't mind stopping there. Prior
 7 to receiving a BEST grant, and we're kind of in flux
 8 between facilities right now, we've always kind of
 9 struggled with upgrading playground equipment. The
 10 expense that you -- that you entail doing that can be
 11 pretty steep. You see that we call that merry-go-round
 12 there our -- the thing that keeps our nurse in
 13 business.
 14 **Q. Where are we now?**
 15 A. We're on the main street, and you're
 16 seeing some closed businesses. That's our former
 17 pharmacy.
 18 **Q. We're back at school now?**
 19 A. Yes.
 20 **Q. Where are we now, Mr. Welsh?**
 21 A. This is not untypical in the area
 22 surrounding Center. There are many mobile home parks.
 23 I've been to this area several times to visit students
 24 and their families. Not untypical of where some of our
 25 kids live.

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1 **Q. And tell us where we're traveling now,
 2 please.**
 3 A. It's a shot of Main Street as well. Our
 4 one grocery store.
 5 **Q. You can continue telling us what we're
 6 looking at.**
 7 A. These are some more of the residential
 8 areas around Center. I think I would like to say that,
 9 you know, that's not atypical. It's -- the median
 10 house in Center is not of typically high value.
 11 **Q. Now where are we?**
 12 A. That's Haskin Elementary School,
 13 originally built as the K-12 school in 1918.
 14 **Q. And where are we now?**
 15 A. We're viewing inside the hallways at
 16 Haskin.
 17 **Q. So where are we going to now?**
 18 A. We're going to the library at Haskin
 19 Elementary School.
 20 **Q. And what are we looking at?**
 21 A. At some shots of our collection. That's
 22 our newest dictionary in the Haskin Elementary library.
 23 **Q. And this?**
 24 A. You'll note the Soviet Union still exists.
 25 **Q. Where are we looking at now?**

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1 A. This is a class taking place during
 2 library time. You'll note that a kid has a coat on.
 3 And the issues we've had in Haskin Elementary School,
 4 you can come dressed for summer all times of the year
 5 on the east side of the building, and you might best
 6 dress for winter on the west side of the building,
 7 depending on where your class is.
 8 **Q. And now where are we?**
 9 A. That's one of our more modern encyclopedia
 10 series.
 11 **Q. In which library?**
 12 A. In the Haskin Elementary library.
 13 **Q. Continue, please.**
 14 A. Some of our reference section.
 15 **Q. And what is this picture of?**
 16 A. The picture illustrates that this library
 17 is closed three days a week. We only operate it on
 18 Friday and parts of two other days a week.
 19 **Q. And why is that, Mr. Welsh?**
 20 A. We don't have the staffing for it.
 21 **Q. And you can't really see that, can you?**
 22 **It's kind of dark. Are those -- can you tell us what**
 23 **we're looking at, please.**
 24 A. That's still the library.
 25 **Q. Okay.**

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1 A. While closed down. At least we're saving
 2 some energy costs, I notice. A student going through
 3 our literacy collection, take home there. Now we're
 4 moving over to the middle school.
 5 **Q. What are we looking at now, please.**
 6 A. That's a hallway to the middle -- middle
 7 school and the one cafeteria that serves the whole
 8 district.
 9 **Q. Where are we looking at now?**
 10 A. I like to point those out. Those are
 11 lockers that -- we actually spent some money on them
 12 about five years ago to refurbish. The paint job came
 13 out pretty good. They are so old the hinges are worn
 14 out. About three of every four, if you pull up real
 15 hard on the lock, it just pops open.
 16 **Q. Can you tell us what we're looking at now?**
 17 A. Students working in a math class. I would
 18 like to note that they're -- they're surrounding some
 19 laptop computers, doing some cooperative work. We
 20 provide the laptop computers for the students.
 21 **Q. Okay. And now where are we?**
 22 A. That's the outside view of Center High
 23 School. I -- this is worth pointing out. If you go to
 24 a modern high school, there's places for students to
 25 gather socially, and you can see the benches along the

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1 hallway there. We've always had trouble with students
 2 being able to actually sit and visit it at any point.
 3 It's kind of like running an obstacle course when you
 4 go through it.
 5 I'd like to point out that what you see
 6 there is two students sharing one textbook. The
 7 textbook is a high school math textbook. The high
 8 school math textbook we bought on Amazon.com because we
 9 couldn't afford a new \$120 one.
 10 **Q. And what are we looking at here?**
 11 A. It's worth pointing out here. This is the
 12 newest facility we have in the school prior to the
 13 award of our BEST grant, which is in process. But
 14 you'll notice the fancy window coverings. That's a
 15 south-facing window. This was a \$500,000 classroom
 16 facility that we built, and when the budget ran short
 17 at the end, we weren't able to afford window coverings.
 18 **Q. So what's covering the windows that?**
 19 A. Looks like aluminum foil to me.
 20 **Q. Continue, please. What are we looking at**
 21 **now?**
 22 A. Just a view down the hallway towards the
 23 south. This is the Fyock Library. I think I mentioned
 24 that. And then also doubles as the Saguache County
 25 Public Library. This is a view of our collection.

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1 **Q. Thank you.**
 2 A. I would like you to notice the timeliness
 3 of it and when your -- in just a moment -- well, one
 4 thing about this is we have a very large home Spanish
 5 population, and so we, of course, do our best to
 6 provide books, literature in the home language. The
 7 green tags indicated on those materials are based on
 8 typical librarian standards, books that should be
 9 discarded. And if you were to walk around the library,
 10 at least half of the books have a green tag.
 11 **Q. And why have you not gotten rid of them?**
 12 A. We'd have pretty empty shelves.
 13 **Q. We're still in the same library?**
 14 A. Yes.
 15 **Q. Now where are we?**
 16 A. We're still in the same library. We --
 17 our goal is to have 24 lap -- desktop computers
 18 available for community and student use when needed.
 19 They really come in handy when it's time to do some
 20 student assessments. When you're looking at there is a
 21 bank of, I believe, 12 of the computers that we have
 22 that my estimate is they were bought in the early
 23 2000s.
 24 **Q. And are they functional?**
 25 A. On occasion.

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1 **Q. Where are we looking at now?**
 2 A. That's the main entry of the high school.
 3 I think the video wraps up there.
 4 MS. GEBHARDT: Your Honor, I have one
 5 correction to make. The video is trial Exhibit 10408.
 6 So I gave you the wrong number. I apologize.
 7 THE COURT: 10408.
 8 MS. GEBHARDT: Correct.
 9 THE COURT: Thank you.
 10 MS. GEBHARDT: Okay.
 11 **Q. (BY MS. GEBHARDT) Mr. Welsh, are you**
 12 **familiar with the mission statement for Center School**
 13 **District?**
 14 A. It's "Focused on the future."
 15 **Q. And do you believe you're able to**
 16 **implement this mission statement?**
 17 A. In developing the statement, we sort of
 18 developed 15 major goals to have -- things to have kids
 19 be able to know and do by the time they graduate. A
 20 lot of them look like 21st century skills. Be
 21 problem-solvers, self-directed learners, critical
 22 thinkers, savvy with technology. And in reestablishing
 23 that mission in about 2007-2008, we were hopeful that
 24 by 2012 we could put out that kind of product, but I
 25 hate to admit that I don't think we are putting out

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1 that kind of product.
 2 **Q. And why not?**
 3 A. We struggle with offering students the
 4 programs and instruction they need to get there.
 5 **Q. Did -- you heard in the defense, the**
 6 **State's opening that Center High School received**
 7 **awards. Can you talk about the awards that Center High**
 8 **School received, please.**
 9 A. Sure. It was pointed out that we received
 10 a Center of Educational Excellence Award for 2009 and
 11 2010. That's based on the CSAP growth model. That
 12 means that the Center High School has had growth
 13 greater than the 50th percentile in each of the tested
 14 categories for the past three years. And actually
 15 receiving the award two years in a row means we've had
 16 that growth over four years, 'cause it would go back
 17 the previous three years.
 18 We also received an honor, our high school
 19 principal, Kevin Jones, received an honor, Colorado
 20 Legacy Foundation leadership honor, I believe it was
 21 commissioner's leadership award for that growth.
 22 **Q. You're using the term "growth," which I**
 23 **think I understand has a unique interpretation and**
 24 **definition in education. Can you explain to the Court**
 25 **and to the audience what the term "growth" means as**

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1 **you're using it, please.**
 2 A. Sure. The growth model as -- as developed
 3 by CDE tries to take a look at a group of students, say
 4 third grade math students, how they performed last
 5 year, then how they perform again on fourth grade math
 6 tests. And it sets up a continuum as to compared to
 7 the rest of the state, how much did this set of
 8 students grow.
 9 And basically what happens is if you can
 10 think of a graph that has a quadrant down the middle,
 11 are you to the right of the 50th percentile, meaning
 12 getting greater than 50 percentile growth, or to the
 13 left, meaning you're kind of falling behind the rest of
 14 the state.
 15 **Q. I'm going to put on the Elmo Plaintiffs'**
 16 **Trial Exhibit 10088. Mr. Welsh, if you -- do you**
 17 **recognize this document?**
 18 A. Yeah. It's a district performance
 19 framework from CDE if -- I'm not sure what's in the
 20 upper right-hand corner. It's either year one -- it's
 21 the one-year view of how Center did in terms of -- it's
 22 basically our accreditation determination.
 23 **Q. And who prepares this report?**
 24 A. CDE puts this report together for us.
 25 Based on CSAP results

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1 **Q. And can you talk us through what this**
 2 **tells us about the Center School District CSAP results,**
 3 **please.**
 4 A. Sure. There are levels -- I don't see the
 5 whole page real well, but there are levels that you're
 6 graded on. Either you are -- you're not meeting,
 7 you're approaching, you're meeting, or you're exceeding
 8 certain standards regarding, as you can see in the
 9 middle of the chart, academic achievement, academic
 10 growth, academic growth gaps, and postsecondary and
 11 workforce readiness.
 12 And what you see on our report card is we
 13 don't meet the academic achievement standard, we are
 14 approaching academic growth, we're approaching the
 15 growth gap standard, and we do not meet postsecondary
 16 workforce readiness. And if you go to the far upper
 17 left-hand corner, we were given accreditation with a
 18 requirement to create a priority improvement plan by
 19 CDE.
 20 **Q. Can you explain what the difference is as**
 21 **it looks on here between academic achievement and**
 22 **academic growth? You've talked about growth. Can you**
 23 **talk about achievement?**
 24 A. Yeah. Here's the way I'd like to put it.
 25 We had four years of above 50th percentile growth in

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1 math performance at Center High School, and after four
 2 years, our average actual academic proficiency in math
 3 was around 10 percent of our students scoring
 4 proficient. And so even though we've been growing
 5 faster than the rest of the state, we're nowhere near
 6 the state average performance for math. I think one
 7 chart that was put up there earlier showed that was
 8 about 33 percent.

9 **Q. We'll turn now to page 2 of Exhibit 1088.**
 10 **Can you tell us what that is, please.**

11 A. Can you pull it down a little bit? I want
 12 to read what the top line says. So these are
 13 performance indicators for academic achievement. This
 14 means what percent of your kids are scoring proficient,
 15 and what you've got as an entire district, reading,
 16 math, writing, and science, every one has scored does
 17 not meet. On growth, you'll see that reading, math,
 18 writing we have approaching, a meets in math, an
 19 approaching in writing, and an approaching in reading.
 20 And then if you go further down, you've got the various
 21 categories of students are poverty kids, free and
 22 reduced lunch, minority students, students with
 23 disabilities, English language learners, and students
 24 needing to catch up.

25 **Q. And who sets those categories?**

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1 A. CDE.

2 **Q. And just to be complete, we're looking at**
 3 **the third page of this exhibit. Can you tell us what**
 4 **we're looking at here, please.**

5 A. Let me see. So these are the -- these are
 6 the ultimate final scores for each category, academic
 7 achievement, academic growth, academic growth gaps,
 8 postsecondary workforce readiness, and what total
 9 points possible are listed in the second-to-right
 10 column. If you go to the far right column, I think it
 11 will actually show the points that we got. Are you
 12 able to show that far right? Thank you. In the -- in
 13 the far right corner it will show -- I'm sorry, it
 14 shows how -- the -- the 16, 12, 60, and 12, I believe,
 15 show the points we were -- that are totally possible
 16 for those areas.

17 And if you go back to the front page, by
 18 the way, it says that out of the possible 15 points in
 19 academic achievement, we received 3.8. Out of the
 20 possible 35 points in academic growth, we received
 21 21.4. Out of the possible 15 in academic growth gaps,
 22 only 9. And out of the possible 35 in postsecondary
 23 workforce readiness, we received 11.7.

24 MS. GEBHARDT: Your Honor, at this time I
 25 would move for the admission of Exhibit 10088.

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1 MS. MARKEL: No objection, Your Honor.
 2 THE COURT: 10088 will be admitted.

3 **Q. (BY MS. GEBHARDT) Now, Mr. Welsh, I've**
 4 **put on the Elmo trial Exhibit 10089. Can you tell us**
 5 **what this is, please.**

6 A. Yes. This is the same exact report, but
 7 CDE also produces it over a three-year window to see if
 8 your trend -- it gives a district the opportunity to
 9 see if the trend is better over three years than over
 10 one.

11 **Q. And can you tell us how your trend has**
 12 **been in academic achievement based on this document,**
 13 **please.**

14 A. It's the same. Does not meet.

15 **Q. And for academic growth?**

16 A. It's the same, approaching.

17 **Q. And growth gaps?**

18 A. Approaching, once again. The same.

19 **Q. And postsecondary and workforce readiness?**

20 A. With that one, it was approaching as
 21 opposed to does not meet. We had some better ACT
 22 scores about three years back.

23 **Q. And, again, the -- the back pages are the**
 24 **same as the exhibit we just put on, only for three**
 25 **years?**

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1 A. Correct.

2 MS. GEBHARDT: Your Honor, at this time I
 3 would move for admission of Exhibit 10089.

4 MS. MARKEL: No objection, Your Honor.
 5 THE COURT: 10089 will be admitted.

6 **Q. (BY MS. GEBHARDT) Now, Mr. Welsh, are you**
 7 **familiar with the term the "achievement gap"?**

8 A. Yes.

9 **Q. And what is the achievement gap, as you**
 10 **see it, in Center, Colorado?**

11 A. We struggle getting our English language
 12 learners to perform at the same level or a level close
 13 to our non-English language learner students, and it's
 14 the same for special education students, it's the same
 15 for Hispanic students versus Anglo students. We have
 16 identified by CDE a gap in bringing about somewhat
 17 equivalent achievement in groups of students.

18 **Q. And do the Exhibits 10,088 and 10,089**
 19 **demonstrate that achievement gap that exists in Center?**

20 A. Yes.

21 **Q. And are there any areas in which you do**
 22 **not have an achievement gap?**

23 A. Not that I can think of.

24 **Q. And are these achievement gaps a concern**
 25 **to you, as the superintendent of Center Schools?**

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1 A. When 90 -- roughly 90 percent of your
 2 students fit into one of these at-risk categories, the
 3 answer's yes.

4 **Q. And are you familiar with what the stated
 5 expectations are for those students?**

6 A. Same as for all other students. And what
 7 you're seeing in front of you is our determined
 8 accreditation. And if we're not accredited, leaves our
 9 community very little confidence in sending their kids
 10 to our school.

11 **Q. And what is the goal for -- by the State
 12 set for you for the expectations for all students?**

13 A. Proficiency. 100 percent.

14 **Q. For all, not some?**

15 A. For all.

16 **Q. And what happens if you continue to fail
 17 to be able to meet those proficiency goals?**

18 A. In terms of what the State will do, we've
 19 been struggling with being placed on academic watch,
 20 accredited with priority improvement plan. It is my
 21 belief in the statute that the State could, in essence,
 22 come and reorganize my district and -- and make our
 23 local education decisions for us.

24 **Q. So the district as a whole right now, what
 25 is its accreditation status again?**

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1 A. We're priority improvement plan.

2 **Q. And what does that mean you have to do?**

3 A. We must put together a comprehensive plan
 4 for how we're going to improve student achievement.

5 **Q. And have you put together such a plan?**

6 A. We have, yes.

7 **Q. Can we talk a little about what we'll hear
 8 in the court through the next five weeks, what a
 9 standards-based education is? Can you explain to us
 10 what a standards-based education is as you understand
 11 it?**

12 A. Yeah. To the best of my ability, there's
 13 a list of things a student must be able to know and do,
 14 and they're listed by subject area. There are reading,
 15 writing, math, science, social studies standards, as
 16 well as arts, music, and such. And the goal is in the
 17 progress of teaching that at certain benchmark areas,
 18 you're showing that students are able to achieve or
 19 display knowledge of those standards based on testing
 20 or assessment.

21 **Q. And who sets those standards, Mr. Welsh?**

22 A. The legislature and the State of Colorado,
 23 CDE.

24 **Q. And how often have those standards changed
 25 since you've been superintendent in Center?**

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1 A. Well, we -- we worked with the '9 -- the
 2 early 1990s standards for -- for quite a few years, but
 3 in the last three-year window, we've gone from what I
 4 called old standards to new Colorado standards to
 5 common core plus Colorado standards. So just in a
 6 three-year window, we have changed standards three
 7 times.

8 **Q. Can -- is there a difference between
 9 standards and curriculum?**

10 A. Yes. I believe so.

11 **Q. Do you want some water? Go ahead and have
 12 some water.**

13 A. No. I . . .

14 **Q. What is the difference between standards
 15 and curriculum?**

16 A. I'd say a standard is more of a
 17 broad-based goal, what you want a student to be able to
 18 know and do. And the curriculum is -- is what specific
 19 things about that standard you need a child to be able
 20 to perform at various levels.

21 And, for example, if Wordsense as a -- as
 22 a math student, it's a -- it's a standard throughout.
 23 Wordsense as a third-grader means something -- I'm
 24 sorry, Number Sense as a third-grader means something
 25 different than Number Sense as a tenth-grader.

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1 **Q. And can you describe the -- have you
 2 developed a curriculum in Center?**

3 A. Upon the adoption of the state standards
 4 in the 1990s, up until just last fall, we had attempted
 5 numerous times to codify those standards into some form
 6 of curriculum.

7 **Q. And can you describe the challenges in
 8 trying to turn those standards into curriculum in
 9 Center, please.**

10 A. Sure. Our resources are the people we
 11 have. And I can give you an example. If you're
 12 scoring 20 percent proficiency in third grade reading
 13 and you then go to the third grade reading teachers and
 14 say let's look more closely at the standards and what
 15 do you think are the most important things to teach
 16 here and how should we focus on them and how should we
 17 measure them, well, you're asking a pool of folks who
 18 have achieved 20 percent proficiency to make those key
 19 determinations, and I just felt we never had that
 20 expertise.

21 And in addition, teaching's hard, and
 22 spending multiple days and lots of free time going back
 23 through this process to try to decide what are the most
 24 important things to teach can be a difficult process.

25 **Q. And during that same time period that**

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1 **you've described, did you receive any assistance from**
 2 **the State in developing the curriculum?**
 3 A. Only once that I can actually truly
 4 verify, and that was when CDE, back in the day when we
 5 had regional CDE directors, came down to the San Luis
 6 Valley and actually worked with the valley on some math
 7 curriculum alignment.
 8 **Q. And these challenges that you've talked**
 9 **about for curriculum, do those apply across all**
 10 **curricular areas?**
 11 A. Reading, writing, math, science, social
 12 studies. Even knowing what to teach in elementary
 13 music.
 14 **Q. And recently how have you been able to**
 15 **develop a curriculum?**
 16 A. Because of our accreditation standing, and
 17 most specifically performance at the elementary level
 18 that resulted in our elementary school becoming a
 19 turnaround school, meaning it was bottom 5 percent
 20 performing in the state, we were eligible for a grant
 21 that allowed us to actually purchase an already aligned
 22 curriculum to the standards in the state assessment.
 23 **Q. And how much did it cost to purchase that**
 24 **curriculum?**
 25 A. Excuse me?

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1 **Q. How much did it cost to purchase the**
 2 **curriculum?**
 3 A. It was \$80,000 for a K-8 package.
 4 **Q. And did it encompass all areas of the**
 5 **curriculum that you're required to teach?**
 6 A. No. It was only reading, writing, math,
 7 science, and social studies.
 8 **Q. And how do you develop the curriculum,**
 9 **then, in the other areas?**
 10 A. The same way we always attempted.
 11 **Q. Could you explain that again?**
 12 A. That is trying to get teachers time set
 13 aside to determine what the most important things are
 14 to teach based on the standards.
 15 **Q. And do you currently have a high school**
 16 **curriculum that's aligned with the new state standards?**
 17 A. We -- we don't even have one that's
 18 aligned with the old state standards.
 19 **Q. And why not?**
 20 A. That's a level of expertise we haven't had
 21 the opportunity to get together in Center.
 22 **Q. Have you worked with any of the other**
 23 **districts in the San Luis Valley to try to pull**
 24 **together a curriculum for the high school?**
 25 A. We -- we have. We've been working with

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1 Focal Point for the last several months to try to pool
 2 together our money as the San Luis Valley to purchase a
 3 curriculum.
 4 **Q. And do you have an estimated cost for what**
 5 **it would be to purchase that curriculum?**
 6 A. \$120,000.
 7 **Q. Can you tell us what Focal Point is?**
 8 A. They're a company pretty much led by Mike
 9 Miles, whose focus is standards-based aligned
 10 curriculum, aligned instruction for teachers. Knowing
 11 what to teach.
 12 **Q. Do the textbooks that you currently have**
 13 **align with the standards?**
 14 A. It would be safe to say I don't know, but
 15 I think I can comfortably say no. We've changed
 16 curriculum three times in the last three years,
 17 and -- no.
 18 **Q. Can you explain what else you need in a**
 19 **classroom to be able to teach to the curriculum? Are**
 20 **there materials that you need in the classroom?**
 21 A. Yeah. I'll use high school math as an
 22 example again. If I'm teaching ninth grade math and
 23 ninth grade math based on the Colorado curriculum,
 24 I've -- I need some textbook support, the place where
 25 it explains how to do a problem, the place where

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1 there's some practice problems to do, and the way
 2 Colorado's curriculum is lined up, it's not like when
 3 we went to high school. You don't take algebra, you
 4 don't take geometry, you don't take algebra II and on
 5 down the line. There's a splash of everything in
 6 there, and there truly is not a textbook lined up to
 7 teach ninth grade math in Colorado.
 8 And what we've found we've had to do is
 9 purchase two, sometimes three textbooks to cover the
 10 skills that -- to be available to students to cover the
 11 skills they're going to need to be successful.
 12 **Q. What other instructional materials do you**
 13 **need to be able to teach to the standards that are set**
 14 **by the State?**
 15 A. Well, I think there's teacher technology
 16 and student technology.
 17 **Q. Anything else?**
 18 A. A strong teacher. A -- a curriculum that
 19 is well aligned to what the State expectations are.
 20 **Q. What would be good practice for**
 21 **replacement of textbooks and instructional supplies?**
 22 A. Well, first of all, to have them aligned
 23 to your current curriculum, and then I think it's
 24 prudent to go through a renewal every five or six
 25 years, if possible. Maybe even more often, because

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1 things change. If you're dealing with history
 2 curriculum, you're going to want to get more updated
 3 material. And things wear out. A textbook doesn't
 4 last forever.

5 **Q. How much would it cost to buy all the new**
 6 **textbooks for any single subject?**

7 A. I can give you one prime example from this
 8 spring already. We're adopting a new textbook series
 9 for science that aligns as best we can find for -- for
 10 elementary science for about 270 students, kinder
 11 through fifth grade. That's a \$30,000 purchase.

12 **Q. And have you been able to buy replacement**
 13 **textbooks as you believe are necessary?**

14 A. No.

15 **Q. And what process have you engaged in to**
 16 **buy textbooks?**

17 A. Well, traditionally it's been to budget
 18 money from our general fund on an annual basis to try
 19 to renew a particular grade level subject area.
 20 Unfortunately, we have resorted to buying a lot of used
 21 texts because we can afford them. A brand-new text can
 22 cost in the range of 100 to \$120. You can get some
 23 things off Amazon for 8 to 10 bucks.

24 **Q. Do you have enough textbooks in your core**
 25 **classes for each child to at least have a classroom**

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1 **set?**

2 A. Though our lockers don't lock very well,
 3 you won't find a whole lot of textbooks in them,
 4 because we don't have enough textbooks to give each
 5 child one.

6 **Q. And if a child wanted to be able to do**
 7 **homework or study from a textbook, are there enough for**
 8 **each child to take one home?**

9 A. Not for each child, no.

10 **Q. What about E-textbooks? Have you explored**
 11 **the availability and use of E-textbooks?**

12 A. We have. They're as expensive as a
 13 regular textbook. A good thing about an E-textbook is
 14 you can't lose it, although we've had a lost computer
 15 or two.

16 **Q. Are all children able to access the**
 17 **Internet at home to be able to use an E-textbook?**

18 A. That's the big problem with an E-text. If
 19 you're going home to do homework to pull up the
 20 problems with the E-text, that depends on you having an
 21 Internet connection at home.

22 **Q. And approximately what percentage of your**
 23 **families have Internet access at home sufficient to**
 24 **access these textbooks?**

25 A. I'm only going to guess here, because we

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1 haven't done a formal survey, but I would be fairly
 2 comfortable saying that no more than half of our
 3 students have that access.

4 **Q. I'm going to put on the screen Trial**
 5 **Exhibit 8600. Do you recognize that document,**
 6 **Mr. Welsh?**

7 A. Yeah. This is the -- the coming school
 8 year's high school course description handbook.

9 **Q. And what's contained in this curricular**
 10 **high school -- or the high school course offering**
 11 **descriptions?**

12 A. It describes the requirements for
 13 graduation for an academic or an honors diploma, and it
 14 also describes to the best of our ability the classes
 15 we offer and some we'd like to offer.

16 **Q. So are there classes listed in here that**
 17 **you're not actually able to offer?**

18 A. Yeah. It says that we have some AP
 19 offerings, but we don't have a single teacher who's
 20 qualified to teach advanced placement coursework.

21 **Q. So at the high school level you have no**
 22 **advanced placement classes, that's what AP is?**

23 A. Correct.

24 **Q. Can you talk a little about the electives**
 25 **that you're able to offer to students at the high**

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1 **school level, please.**

2 A. Pretty much comes to music, P.E., basic
 3 art. We have a vocational technology track
 4 that -- that includes graphic arts design, kind of our
 5 yearbook class. And then we have a building trades
 6 class. That's it.

7 **Q. Do you have an opinion as to whether**
 8 **electives play any kind of role in the overall**
 9 **curricular offerings?**

10 A. I have no doubt some kids graduate from
 11 high school because of the offerings outside of
 12 reading, math, and science and social studies that they
 13 might have the opportunity to pursue.

14 **Q. So do you believe that the ability to**
 15 **offer these electives is important to the educational**
 16 **program at Center?**

17 A. Absolutely.

18 **Q. What languages are you able to offer?**

19 A. We have a Spanish, foreign language
 20 teacher, high school only. We don't offer that in any
 21 lower grades. And we actually teach one section of
 22 French by using Rosetta Stone.

23 **Q. How much did it cost to buy the Rosetta**
 24 **Stone?**

25 A. \$5,000 for enough licenses.

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1 **Q. Are there other ways that students at**
 2 **Center, Center High School, can take classes that**
 3 **aren't offered at Center High School?**
 4 A. We do participate in the concurrent
 5 enrollment program, where we have students take classes
 6 mainly at Adams State College -- well, not at Adams
 7 State College, but from Adams State College, to gain
 8 some college graduate.
 9 **Q. What percentage of your kids are able to**
 10 **avail themselves of that opportunity?**
 11 A. It depends year to year as to their
 12 capability. We've had some years where as many as half
 13 of the seniors were able to take a shot at one of the
 14 courses, but we've had some years where it's been quite
 15 fewer.
 16 **Q. And can you explain how that process**
 17 **works?**
 18 A. If a student, based on certain testing, is
 19 showing they're capable of completing the class, and
 20 Adams State does that evaluation. We register them,
 21 but what they're doing is they're taking the class
 22 completely online. I would call it more of a
 23 correspondence class, where the student goes into the
 24 web page, finds lessons, completes the lessons in an
 25 orderly fashion, turns them in, and gets a final grade.

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1 The problem we find, and maybe other
 2 people find this, is sometimes 16-, 17-year-olds aren't
 3 that responsible keeping up on those courses. So we
 4 actually -- in order to support these students, we
 5 assign them to a teacher and a classroom. So we give
 6 up another teaching section to support them.
 7 **Q. Is there a difference between these online**
 8 **classes and correspondence classes?**
 9 A. Well, I mean, it's a traditional mail
 10 correspondence class, would be you fill out paperwork,
 11 you send it in. You got to have technology skills to
 12 use the online class.
 13 **Q. Do some of your students take what you**
 14 **just described as a correspondence class? And explain**
 15 **how that would work, please.**
 16 A. I'm not aware of anyone taking them simply
 17 by -- by paper.
 18 **Q. Are there some that are a blend of the**
 19 **two?**
 20 A. Yes.
 21 **Q. And explain how that works.**
 22 A. Well, maybe there's a paper you're
 23 assigned to write, and so you've got a -- you got to
 24 create that in some form, or a -- it might be a lab, a
 25 science lab that you're required to execute. But you

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1 would then need the personnel to supervise that, to
 2 make sure it was getting done.
 3 **Q. Does Center School District offer any**
 4 **extracurricular offerings?**
 5 A. Yeah. We have the traditional bank of
 6 activities, football, volleyball, cross country,
 7 soccer, basketball for boys and girls, wrestling, track
 8 and baseball. Cheerleading on occasion.
 9 **Q. And do you have an opinion as to whether**
 10 **the extracurricular offerings you have are important to**
 11 **the academic program at Center?**
 12 A. Yeah. I think it's safe to say that some
 13 kids continue coming to school because of the
 14 experiences they have in those programs.
 15 **Q. How important is the issue of time in**
 16 **delivering the instructional program that you wanted**
 17 **delivered to the students in Center?**
 18 A. I believe the research shows that students
 19 who are performing below grade level, below benchmark,
 20 that one of the best things we can offer for them to
 21 become more successful is more time.
 22 **Q. And what does that look like?**
 23 A. Well, the only time we have that's not
 24 a -- what's already being paid for in our general
 25 program would be after school and summer.

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1 **Q. And before school?**
 2 A. We've done a little of that too.
 3 **Q. Do you currently have sufficient**
 4 **after-school programming to assist those students who**
 5 **are below grade level?**
 6 A. No.
 7 **Q. And why not?**
 8 A. And, actually, I guess maybe I should
 9 qualify that answer. No at the middle and the high
 10 school level. I don't have -- I can't pay the
 11 personnel enough to attract highly qualified personnel
 12 who are trained in good, strong interventions to do
 13 that work at middle school and high school.
 14 In the elementary, I actually have a
 15 pretty good program going right now. Through our
 16 turnaround grant, we have Lindamood-Bell reading
 17 interventions and Lindamood-Bell math interventions
 18 taking place after school and during the summer.
 19 **Q. Can you explain to the Court what**
 20 **Lindamood-Bell is, please.**
 21 A. It's a -- I would call it a reading
 22 development process in which students are asked to be
 23 quick at identifying sight words. There's a lot of
 24 phonics involved with that. And also to visualize
 25 what -- what a word is that they might be struggling

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1 with.

2 For example, if I were to say the word

3 "penguin" to you, you'd probably have something pop

4 right into your head. Research shows some kids,

5 and especially some language learner kids, when you say

6 penguin to them, it means nothing. And until you get

7 to describing to them and having them describe back to

8 you what a penguin is, until you do that, it doesn't

9 kind of become stuck in their brain. And when they

10 confront that word again, both in sight and in hearing

11 it, they're going to become more fluent in their

12 comprehension of reading.

13 **Q. And did you tell us where the**

14 **Lindamood-Bell program is being implemented at Center?**

15 A. It's -- we're fully implementing it K-5

16 through our turnaround grant. And that means every

17 teacher was trained in how to use it in the class and

18 every teacher was trained in how to use it as an

19 intervention.

20 **Q. Are you able to offer summer school to**

21 **middle and high school students that would need it?**

22 A. We do a very limited middle school summer

23 school, and we -- all we can offer to high school

24 students is a chance to re-take that class that they

25 failed.

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1 **Q. Mr. Welsh, are you familiar with the term**

2 **of at risk of academic failure, shorthand, at risk?**

3 A. Yes.

4 **Q. How is at risk defined in Colorado?**

5 A. Well, I -- I would believe it's any

6 student for whatever reason who's in a situation where

7 they may not be able to achieve the standards or

8 achieve proficiency on -- on the state test.

9 **Q. And how does the State define at risk?**

10 A. There's many categories established, such

11 as poverty, such as language learners. Sometimes

12 ethnic background is considered that. Special

13 education.

14 **Q. What percentage of the students in the**

15 **Center School District are considered at risk, using**

16 **the State definition?**

17 A. I could tell you by category.

18 **Q. Okay.**

19 A. Is that what you'd like to hear?

20 Typically 85 to 90 percent are defined as poverty

21 students based on free or reduced lunch count. About

22 50 percent of our students we define as English

23 language learners. That means they go home to a

24 household where the primary language is not English.

25 About a third of our students are migrant, meaning

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1 they're moving in and out of the community at various

2 times, typically for agricultural work. About

3 10 percent of our students are special education. We

4 even have about 5 percent of our students qualify as

5 homeless, according to Title I standards.

6 **Q. Why is it important to identify the**

7 **different kinds of categories of these students?**

8 A. Education research shows that students who

9 fall into these categories are more difficult to bring

10 up to grade level.

11 **Q. Let's focus on the 85 percent of students**

12 **that are considered at risk because of their poverty**

13 **status. What services do you believe these students**

14 **need to be able to help them catch up to proficiency**

15 **standards?**

16 A. You're asking me what they need or what we

17 provide?

18 **Q. What they need first.**

19 A. Okay. They need after-school tutoring

20 time or intervention time in their specific subjects of

21 struggle. They need extended learning time during the

22 summer to address areas where they specifically

23 struggle.

24 When you are dealing with students who

25 have a wide spectrum of ability, smaller class sizes is

132

1 nice. And sometimes they just need supports such as

2 waived fees for participating in programs at school,

3 because they probably can't afford it.

4 **Q. Are you familiar with the term "targeted**

5 **interventions"?**

6 A. Yes.

7 **Q. Can you explain what those are, please.**

8 A. Yeah. In fact, my daughter just went

9 through one this summer. She's a little slow on her

10 reading fluency, and through our Lindamood-Bell summer

11 reading academy, she was brought in not to work on

12 comprehension, not to do art projects, not to do -- to

13 work on her fluency, reading faster, and understanding

14 what she reads faster. And there are many of those, if

15 you can identify what the needs are, might do for

16 students.

17 **Q. So can you talk about, then, what of those**

18 **services that you identified that these students need**

19 **that you're actually able to provide? And you can**

20 **break it out by -- by grade level.**

21 A. Sure. In the elementary school we've

22 become much better at that because of our turnaround

23 grant. We have been able to do after-school

24 interventions in reading, and now we're starting in

25 math. And we have been able to do that during the

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1 summer.

2 Our class sizes we struggle with at the

3 upper elementary. We don't have the same capacity for

4 keeping them lower. At the middle school, we have very

5 few resources for those interventions, and at the high

6 school we have none.

7 **Q. Do you provide meals to the students who**

8 **qualify for -- qualify as poverty status?**

9 A. Yes.

10 **Q. What meals do you provide?**

11 A. Breakfast and lunch.

12 **Q. And do you believe that providing**

13 **breakfast and lunch is an important part of what you**

14 **provide to those students?**

15 A. Hard to teach a kid who's worried about

16 being hungry. So yes.

17 **Q. Do you offer something called Compass**

18 **Learning?**

19 A. Yes.

20 **Q. Can you tell us about Compass Learning?**

21 A. Sure. CDE became engaged with this

22 company that has -- it's an intervention for math.

23 It's a very expensive intervention for math. That we

24 jumped in as a pilot site at the Center Schools mainly

25 at the middle school level. It's to help students who

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1 are performing below grade level with the use of

2 technology. It's basically a technology tutor.

3 **Q. And how long did you have that for?**

4 A. We just finished up our third year this

5 year.

6 **Q. Do you provide any kind of health services**

7 **for your students who are at risk?**

8 A. We have a school nurse for -- that covers

9 K-12.

10 **Q. And what does that school -- what are the**

11 **job responsibilities for that school nurse?**

12 A. Everything. Communicating health, public

13 health issues to the staff and the students. Handling

14 the bloody nose, the earache, vomit.

15 **Q. Child that falls off the merry-go-round?**

16 A. The kid falling off the merry-go-round.

17 **Q. Do you have any social workers?**

18 A. No.

19 **Q. In your population, do you believe -- do**

20 **you have an opinion as to whether a social worker would**

21 **be an important component of the services that you**

22 **provide to your students and families?**

23 A. Absolutely. If a child raised in poverty,

24 kids who were defined as homeless, they've got issues

25 that we can't even imagine when they come to school.

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1 And so a person who could go in and settle things down

2 at the home could make it much easier for the school to

3 address the needs of the kids there. Counseling

4 service -- services would be wonderful as well for

5 children to deal with some of the issues they're

6 dealing with so they could focus on academics.

7 **Q. What do you do if you have a mental health**

8 **emergency?**

9 A. We call SLV Mental Health. It's an

10 organization in the San Luis Valley. We used to have a

11 contract with them for \$6,000 a year. We -- that

12 stream of funding is no longer available to us, so

13 we're not under contract with them for that. They have

14 offered us some courtesy services in the past year.

15 **Q. Does that meet the need of the students in**

16 **your opinion?**

17 A. No. Having someone consistently on campus

18 would be much better.

19 MS. GEBHARDT: Your Honor, I'm about to

20 move into a new subject matter area, and I notice it's

21 noon. We still have a considerable time to go for this

22 witness.

23 THE COURT: All right. We can take the

24 recess then. Let's say 1 o'clock. Okay. We'll

25 reconvene at 1 o'clock. Did you want to read, Counsel,

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1 the stipulation into the record? Or do you want to do

2 that at 1:00?

3 MR. KAWANABE: If I may, at 1:00, Your

4 Honor.

5 THE COURT: That would be fine. Thank

6 you.

7 MS. GEBHARDT: Your Honor, I have one -- I

8 forgot to move to admission of Exhibit 8600.

9 THE COURT: Any objection?

10 MS. MARKEL: No objection.

11 THE COURT: 8600 will be admitted.

12 MS. GEBHARDT: Thank you.

13 (Recess taken, 11:56 a.m. to 1:00 p.m.)

14 THE COURT: Calling now Case 05CV4794.

15 And, Mr. Welsh, you're on the stand still on direct

16 examination. Still under oath, of course.

17 MS. GEBHARDT: Thank you, Your Honor.

18 **Q. (BY MS. GEBHARDT) I have one follow-up**

19 **question from the questions I was asking before lunch,**

20 **Mr. Welsh, and that is, do you have an opinion as to**

21 **what benefit your students would have if you were able**

22 **to have a social worker on campus?**

23 A. At times in the past, we've dealt with

24 situations where students have displayed suicidal

25 behavior. In fact, just this past year we had a

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1 student who needed to be disciplined and reacted in a
 2 way where he threatened to kill himself. And that was
 3 about 1:00 or 2:00 in the afternoon, and not having
 4 anyone on campus to deal with such a matter, we did our
 5 best we could to contain the student in the building
 6 until we could get hold of a mental health counselor,
 7 and it wasn't until about 6:00 p.m. that evening that
 8 we finally heard from one. We couldn't get ahold of
 9 the family as well to address the matter. It was
 10 harvest time, I believe, and folks weren't able to get
 11 loose, and we ended up staying until 10 p.m. that night
 12 until the student finally got assessed and some
 13 support. So . . .

14 **Q. So what percentage of your kids and of**
 15 **your students in Center, Mr. Welsh, need English**
 16 **language learner services?**

17 A. Half of them. I -- and maybe that's not
 18 completely accurate. There's a point at which five,
 19 six, seven years into transitioning to a new language,
 20 we -- we're able to back off. But we don't -- we don't
 21 get a kid to full proficiency in English in two years.

22 **Q. And what services are available in Center**
 23 **to help those students obtain English proficiency?**

24 A. The -- the model we're able to afford is
 25 having a pull-out English language learner teacher at

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1 the elementary and the combination middle-high level.
 2 What that looks like is for a kid who's -- who's just
 3 embarking on learning the English language, they
 4 probably get about two hours of English language, we
 5 call it newcomer instruction, to be functional. And
 6 then the reality that we face is a kid needs to go to
 7 math, needs to go to science, P.E., or whatever else
 8 they go to, they've just got to function. Our -- our
 9 main strategy is using kids who might have a little bit
 10 of Spanish language ability as well as English to kind
 11 of shelter and support the students who are going
 12 through that.

13 **Q. So are you using children as opposed to**
 14 **certified teacher staff to help those students?**

15 A. Correct.

16 **Q. And why is that?**

17 A. We can't provide the additional staff.

18 **Q. How long do you receive funding from the**
 19 **State to provide services to those English language**
 20 **learners?**

21 A. We get two years.

22 **Q. And what does the funding from the State**
 23 **cover in your expenses in educating the ELL students?**

24 A. It's my contention that the money we get
 25 from the State barely covers the identification process

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1 of an English language learner to even submit for
 2 receiving the money, and then the translation services
 3 we need with all the messages going home,
 4 communications we have to send home in the student's
 5 home language.

6 **Q. Can you explain how the translation**
 7 **program or translation services, how you work with that**
 8 **in Center?**

9 A. Report card needs to go home in a language
 10 that the family can understand. If it's a letter
 11 regarding a school event, that needs to occur. Even if
 12 it's one of those automated phone calls, we've got to
 13 do that kind of translation. Our biggest expense is
 14 our newsletters and IEPs, especially, when we have --

15 **Q. Can you explain what an IEP is, please.**

16 A. Individualized education plan for a
 17 student who's identified as special education. And by
 18 the way ILPs, individualized literary plans, must be
 19 translated into Spanish as well.

20 **Q. Who does those translation services?**

21 A. On occasion we have staff who do it. We
 22 pay them for that extra time, because it becomes time
 23 outside of our work. Sometimes we contract it out
 24 through our BOCES as well.

25 **Q. How much do you pay?**

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1 A. We pay \$15 an hour for that translation
 2 service.

3 **Q. So are the costs that you provide for**
 4 **incurring the translation services you believe are**
 5 **necessary for ELL students, are those covered by the**
 6 **reimbursement from the State?**

7 A. I'm not sure they're completely covered.

8 **Q. And where does the rest of the resources,**
 9 **the financial resources, come from to provide those**
 10 **services?**

11 A. Comes out of our -- the rest of our pool
 12 of money, the general fund.

13 **Q. What services do you believe you need to**
 14 **provide that you are unable to provide currently?**

15 A. For English language learners?

16 **Q. For English language learners.**

17 A. More intense newcomer instruction would be
 18 good, a longer period of time. Once again, smaller
 19 classroom. If you're working as a teacher with a
 20 spectrum of students, some who are fluent in English,
 21 some that are not very, that would be nice. A real
 22 important thing on this front would be to have someone
 23 you can have in the classroom to support and shelter
 24 the student. You know, if it's a math concept being
 25 taught, we need to be sure they're getting the math

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1 content as well as work -- growing in the English
 2 language. These kids need after-school support. Might
 3 be targeted assistance. And they need summer support
 4 as well.
 5 **Q. Do you have sufficient instructional**
 6 **materials to be able to assist ELL students?**
 7 A. It's not research-based, but we pretty
 8 much use what we use for any other kid. We don't have
 9 any special materials that are geared at ELL generally.
 10 **Q. And why are you not able to provide these**
 11 **services and materials you just identified to your ELL**
 12 **students?**
 13 A. They cost money.
 14 **Q. And do you have those resources?**
 15 A. No.
 16 **Q. So what percentage of your students are**
 17 **special education, identified as needing special**
 18 **education services?**
 19 A. We're about 10 percent.
 20 **Q. Do you know where that tracks for the**
 21 **state average?**
 22 A. That's in the ballpark of the typical
 23 school.
 24 **Q. Can you describe the range of needs that**
 25 **your special education students show or need?**

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1 A. Yeah. Some students might be very slow
 2 learners, to the point that they need a lot more
 3 repetition and a lot more time on task. Some students
 4 might have processing issues. They might get something
 5 visually, but not be able to pass that information back
 6 to you. Some students might struggle with verbally
 7 bringing information back to you. But the typical
 8 situation we're dealing with is learning disabilities.
 9 We've also had kids over the 15 years I've
 10 been in Center who are emotionally disturbed, and
 11 that's a whole other level of service that you need to
 12 provide when that's the case.
 13 **Q. Are you able to provide those students who**
 14 **are emotionally disturbed a sufficient program at**
 15 **Center?**
 16 A. We actually have to cooperate with other
 17 school districts in the area to provide that. But it
 18 still comes out of ours and their pocket.
 19 **Q. Can you explain to the Court and to the**
 20 **audience here what a BOCES is and what that stands for?**
 21 A. Sure.
 22 **Q. BOCES. B-O-C-E-S.**
 23 A. It's Board of Cooperative Education
 24 Services. And it's a concept where school districts
 25 that are a little bit too small to provide particular

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1 services for themselves group together for the purpose
 2 of, I guess, making more economies of scale. And San
 3 Luis Valley BOCES, probably its biggest role is
 4 offering special education services to districts in the
 5 San Luis Valley.
 6 **Q. And so how does Center's relationship with**
 7 **the BOCES work in providing services to special needs**
 8 **children?**
 9 A. We're one of 14 participating districts.
 10 A big -- a big issue for us is distance. So a lot of
 11 time is spent in a vehicle between places as opposed to
 12 in the place providing services.
 13 We -- we get school psychologist services
 14 through the BOCES. We don't have anyone on campus full
 15 time. We pretty much get about a day a week of
 16 services. My opinion is it's not enough. The
 17 identification for need for special education services
 18 to the point of education -- special education services
 19 being delivered can take more than a year. And if your
 20 kid is in that need, I think you'd get pretty
 21 frustrated with that.
 22 SLV BOCES provides us speech therapist
 23 services. And we have typically three, four, five kids
 24 who need some kind of speech therapist services. And
 25 that's a come-once-every-two-week proposition to get

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1 those services.
 2 In addition, the SLV BOCES struggles
 3 hiring qualified people to those positions because our
 4 pay scale is not very strong.
 5 **Q. Are there any other resources the BOCES**
 6 **provide? Are there other types of therapy that you**
 7 **receive?**
 8 A. We get occupational therapy. If there's a
 9 kid who needs some kind of physical therapy based on a
 10 handicapping condition, we'll get an itinerant to come
 11 in and do that once in a while. Outside of that, a
 12 little bit of the record keep -- special education
 13 record keeping is supported through the BOCES. And
 14 that's really it.
 15 **Q. Can you explain, so we have some context,**
 16 **of what a special education classroom would look like**
 17 **either at the -- tell us whether you're describing**
 18 **elementary or middle-high special education classroom?**
 19 A. Is this what it should look like or --
 20 **Q. No, what it looks like now.**
 21 A. My middle -- middle-high school special ed
 22 teacher, and you'll notice that's a dual role, in a
 23 school of all together close to 300 kids, she has a
 24 special education caseload of over 30 students, and
 25 she's it. It's her job to track those students through

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1 the rest of their classes and to provide interventions
 2 for those students as -- as those interventions are
 3 needed.
 4 What you'll typically see when she's got
 5 students in her class for specific instruction, you're
 6 looking at sometimes as many as 15 students broken up
 7 at multiple tables, and she's moving around to the
 8 various tables. Or we might have a paraprofessional
 9 free to support her in some way at those tables in the
 10 class. But my opinion is 15 kids in one special ed
 11 classroom at one time is too much, and 30 kids for one
 12 special ed teacher to track throughout the system is
 13 too much as well.
 14 **Q. You used term "paraprofessional." Can you**
 15 **describe what a paraprofessional is?**
 16 A. This is a person who at least has an
 17 associate's level education or enough credits to
 18 qualify based on highly qualified status who supports
 19 teachers in classroom instruction.
 20 **Q. And how many paraprofessionals do you**
 21 **currently have in Center?**
 22 A. We have four active ones in the elementary
 23 school and three active ones in middle-high school.
 24 **Q. And what's the salary range for a**
 25 **paraprofessional?**

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1 A. Starting salary is \$13,000 a year.
 2 **Q. Are you familiar with the term "IDEA"?**
 3 A. Yes.
 4 **Q. And what is that?**
 5 A. Individuals with Disabilities Education
 6 Act.
 7 **Q. Excuse me. Is that a state or federal, if**
 8 **you know?**
 9 A. I believe that's federal.
 10 **Q. What does IDEA require for you as a**
 11 **district for special education kids?**
 12 A. It requires us to identify needs and then
 13 to develop a plan by which services to treat that need
 14 are rendered, communicating with the parents all along
 15 the way in terms of what the -- what services are being
 16 provided.
 17 **Q. In that classroom that you described for**
 18 **the middle-high for the teacher, in your expert**
 19 **opinion, what do you believe that classroom should look**
 20 **like to be able to meet the needs of the students that**
 21 **she's educating?**
 22 A. Every one of those students should get
 23 educated in a regular classroom as much as possible.
 24 In fact -- oh, I don't know if I can name drop. Can I
 25 name drop?

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1 **Q. I don't know.**
 2 A. I'm going to say. We received a lot of
 3 training from Mike Miles this last year, and his
 4 feeling is a special ed kid is better off in a regular
 5 classroom setting with support as opposed to pulled out
 6 in a -- in a regular -- a special education pull-out
 7 class, because they're missing curriculum that would be
 8 delivered in that teacher's class.
 9 And so some kids, many kids, if you could
 10 have a -- another adult in a classroom, preferably a
 11 trained classroom paraprofessional to support them with
 12 their needs, and sometimes that special education
 13 teacher in that classroom to observe what they're
 14 learning, how that process is going, to support the
 15 teacher with how they might reach the kid, those -- to
 16 me, that'd be a better system than pulling them all
 17 into one class to give them the services that they're
 18 required.
 19 **Q. And why are you not providing those kinds**
 20 **of services to your special education students?**
 21 A. I don't have enough funding to have enough
 22 personnel to do it right.
 23 **Q. Are you familiar with the term "RtI"?**
 24 A. That's Response to Intervention.
 25 **Q. And can you explain briefly what RtI is,**

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1 **please.**
 2 A. Yeah. Learned most of what I know about
 3 RtI from the Colorado Department of Education.
 4 It's -- it plays into the gifted and talented and
 5 special education process. And what it's about is
 6 identifying students who have specific needs, learning
 7 needs, and might need interventions. It's -- if you
 8 can think of a pyramid, it's the -- the foundation of
 9 RtI is good first instruction.
 10 What are you doing in the regular
 11 classroom first, and if based on what you're doing in
 12 the regular classroom a student is still falling below
 13 benchmark in their growth, then you want to go to
 14 level II intervention and that level II intervention
 15 might look something like bringing an extra staff
 16 member in the class or pulling the kid out and
 17 intervening in a certain way, and then goes to level
 18 III. Full -- more intense, might be a full-blown
 19 learning academy, might be the Compass Learning program
 20 pulled out of an elective perhaps to address that. So
 21 the process for RtI is to address the individual needs
 22 of students who aren't being successful.
 23 **Q. Do you, in your expert opinion, support**
 24 **the RtI model?**
 25 A. We've done our best in Center. At one

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1 time we were actually able to afford an RtI coordinator
 2 in the elementary as well as in the middle-high. We
 3 are now down to one position in the district. It's --
 4 you know, when money's going away, it's hard to justify
 5 cutting a classroom teacher as opposed to that.
 6 **Q. So are you, in your opinion, Mr. Welsh,**
 7 **able to effectively implement the RtI model?**
 8 A. No. But in addition, I know there are
 9 many schools, especially in the San Luis Valley, that
 10 their attempt to implement RtI is assign it to a
 11 teacher during a preparation period one period a day,
 12 and in my opinion there's no way to do that effectively
 13 if that's the way you're doing it.
 14 **Q. And why is that?**
 15 A. There isn't enough time to track the
 16 students. There isn't enough free time in your
 17 schedule to actually go into a classroom to see if
 18 intervention that's promised to a student has taken
 19 place, on and on.
 20 **Q. In your expert opinion, Mr. Welsh, do you**
 21 **believe the BOCES can provide sufficient services to**
 22 **meet the needs of your special needs children?**
 23 A. No.
 24 **Q. In your expert opinion, Mr. Welsh, does it**
 25 **cost more to provide an adequate education to a student**

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1 **with special needs?**
 2 A. Yes. Absolutely.
 3 **Q. And why is that?**
 4 A. Well, if it's going to be done right, you
 5 need more staff than we currently have both at the
 6 paraprofessional and the certified level. Sometimes
 7 you need special materials that are out of the normal
 8 what you purchase. Time is an issue. For a kid who's
 9 a special education child, is struggling learning to
 10 read, and they're falling behind and falling behind and
 11 falling behind based on the regular time and
 12 instruction that they're offered, they need that
 13 additional time, and that can only take place outside
 14 of the school day and the school year, and that costs
 15 money.
 16 **Q. Does the funding that you receive from the**
 17 **State cover your costs that you have in educating**
 18 **special need children?**
 19 A. No.
 20 **Q. Do you know approximately what percent is**
 21 **covered?**
 22 A. I would just be wagering a guess, if
 23 that's what you would like me to do.
 24 **Q. No, I don't want you to guess.**
 25 A. Okay. I won't.

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1 **Q. What do you use the funding that you**
 2 **receive from the State to cover?**
 3 A. The specific funding for special
 4 education, for special education students? Well, what
 5 happens is that actually gets blended into our entire
 6 general fund. But ultimately it covers special
 7 education teachers. And my bet is it doesn't even
 8 cover that. And then if you're lucky, you can maybe
 9 buy a paraprofessional or two in a district my size.
 10 **Q. How do special education students do in**
 11 **their growth and achievement in the chart that we**
 12 **looked at --**
 13 A. According to our -- no. According to our
 14 accreditation, they're not making -- they're not
 15 closing the gap, based on achievement or growth.
 16 **Q. Do you have an opinion as to whether you**
 17 **were able to provide the services that you've**
 18 **identified, that that would improve their achievement**
 19 **in growth?**
 20 A. The ones that I think they should have?
 21 **Q. Yes.**
 22 A. I believe they would. Especially the
 23 extra time and intervention.
 24 **Q. Do you have any students in your -- in**
 25 **Center School District who are identified as gifted and**

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1 **talented?**
 2 A. Yes.
 3 **Q. And can you -- can you define what a**
 4 **gifted and talented student is?**
 5 A. Yeah. I believe the intent of the gifted
 6 and talented programs are to identify a student who has
 7 a specific skill or interest that they're, you know,
 8 like top 90 percentile talented in, and that could be
 9 math, it could be language, but it could be art, it
 10 could be sports. And so students who are in
 11 that -- who fall into that category have special
 12 education needs as well.
 13 **Q. What types of programs and services do you**
 14 **believe are necessary to support these types of**
 15 **children, gifted and talented children?**
 16 A. General research-based models out there.
 17 You would have someone who is trained in providing
 18 gifted and talented services and also providing
 19 teachers with support, how to address gifted and
 20 talented students in the regular classroom. The --
 21 sometimes -- and I've seen good programs where
 22 there -- where gifted and talented students come
 23 together with one teacher for a period of time and then
 24 filter back out in the classes, and I've seen some
 25 pretty good models where that gifted and talented

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1 trained staff member is advisory to teachers, say okay,
 2 this kid's got a specific talent in art, how are you
 3 incorporating this into your science curriculum that
 4 can keep them interested in what they're doing.
 5 **Q. Do you have any staff that are trained in**
 6 **gifted and talented education?**
 7 A. Not a single one.
 8 **Q. Do you know what it means to differentiate**
 9 **instruction?**
 10 A. Yes.
 11 **Q. Can you explain that, please.**
 12 A. That is just what it sounds like.
 13 It -- it's a way for teachers to plan to instruct
 14 students in differing ways to meet their specific
 15 needs, whether it's a gifted and talented need or a
 16 special education need or any other unique situation,
 17 circumstances they may have.
 18 **Q. So when you're talking about trying to**
 19 **help a general education classroom teacher, is that**
 20 **what you're referring to, is differentiated**
 21 **instruction?**
 22 A. Yes. Yes.
 23 **Q. What would you provide to your gifted and**
 24 **talented students that you are unable to provide?**
 25 A. It would be wonderful to have someone who

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1 was familiar with how to address their needs on staff
 2 or even shared with some -- some other perhaps school
 3 districts. It would be nice to have comprehensive
 4 training for my teachers as to how to differentiate.
 5 But training, there are costs bringing training in, and
 6 I don't know about you guys, but teachers don't work
 7 for free either. So if we do this on July 10 and 11, I
 8 feel it's right to pay the teacher to -- to receive
 9 that training.
 10 In addition, I think my administrators
 11 need training into how to model and implement that as
 12 well.
 13 **Q. Do you know how much financial resources**
 14 **you receive from the State to support your gifted and**
 15 **talented students?**
 16 A. After the BOCES takes its chunk off for
 17 managing our -- our program, I get between 8 and \$9,000
 18 for a year.
 19 **Q. And is that sufficient resources to meet**
 20 **the needs of your gifted and talented students?**
 21 A. If I were trying to do some of the things
 22 I said I would like to do, it's not even close.
 23 **Q. Mr. Welsh, do you have an opinion as to**
 24 **whether preschool is an important facet or aspect of a**
 25 **program that would be developed to improve student**

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1 **achievement?**
 2 A. I think there's lots of research out there
 3 that says it is. It prepares students, especially
 4 low-income, at-risk students. It helps them be more
 5 prepared for regular school when it starts.
 6 **Q. What does the research to your -- in your**
 7 **opinion show about the importance of preschool for kids**
 8 **from poverty?**
 9 A. It's most important. 'Cause many kids
 10 grow up in a home where language is not as enriching,
 11 there are not as many resources to -- to grow in
 12 literacy. Even conversation isn't as common because of
 13 work schedules and such.
 14 **Q. And is that experience borne out, in your**
 15 **experience, in Center Schools?**
 16 A. Yes.
 17 **Q. In your opinion, Mr. Welsh, do you believe**
 18 **that full-day kindergarten is an essential component of**
 19 **your education program?**
 20 A. If a kid comes in your door starting
 21 behind, what's the sense of -- of addressing their
 22 needs for half the day and sending them home? And
 23 90 percent or more of our kids come in already behind
 24 when they enter the doors in kindergarten. And if we
 25 didn't begin trying to catch them up immediately, I

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1 don't think we'd be doing our job.
 2 **Q. How much does the State provide to you for**
 3 **what is termed full funding of kindergarten?**
 4 A. Each kindergarten child is funded at
 5 58 percent of a per-pupil allocation.
 6 **Q. How do you pay for the rest for full-day**
 7 **kindergarten?**
 8 A. We pull that out of the rest of the pool
 9 of money that we would be addressing the needs of other
 10 students with.
 11 **Q. Why don't you charge the families a fee**
 12 **for attending the other half day of kindergarten?**
 13 A. Because I have 90 percent poverty in my
 14 district.
 15 **Q. Can you provide preschool services to all**
 16 **the children who need such services, all at-risk**
 17 **children in your school district?**
 18 A. No.
 19 **Q. And why not?**
 20 A. Well, our capacity is 15 kids. The
 21 typical kindergarten class has between 45 and 50 kids
 22 entering, and our Colorado Preschool Program slots
 23 limit to us what we can afford.
 24 **Q. Can you explain about the -- real briefly**
 25 **what the Colorado Preschool Program is, CPP, and slots.**

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1 **those terms?**
 2 A. Yeah. It's a program by which districts
 3 all over the state can apply for funding to fund
 4 preschool programs for needy students, at-risk or
 5 high-risk students. And it's a limited number of
 6 slots. So you can't necessarily get everything you
 7 need as a district.
 8 **Q. So you receive funding for only 15 --**
 9 A. Yes.
 10 **Q. -- preschool children?**
 11 A. Yes.
 12 **Q. Can you explain what vocational education**
 13 **services are?**
 14 A. Yes. At the high school level
 15 specifically, it's programs that might cause a child
 16 walking out of high school, if they've gone through it,
 17 completely to be career-ready. You could be ready to
 18 weld on a job. You could be a carpenter. You could
 19 work in business. An office worker. You could be a
 20 cosmetologist. There are many programs at high schools
 21 that set students up for a career opportunity once they
 22 leave high school.
 23 **Q. Can you explain which -- what vocational**
 24 **education programs you are currently able to offer?**
 25 A. We have a building trades program. We

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1 have a vocational technology program that includes a
 2 little bit of video production and graphic art design.
 3 We used to have a business program --
 4 **Q. Have you had --**
 5 A. -- here.
 6 **Q. Have you had to cut any of your vocational**
 7 **programs?**
 8 A. Yes. We once had welding; we no longer
 9 have it. We once had vocational business; we no longer
 10 have it. We once had auto; we no longer have it. We
 11 once had agriculture; we no longer have it.
 12 **Q. In a community where what's the primary**
 13 **base of economics?**
 14 A. Farming.
 15 **Q. And why are you not offering these**
 16 **programs?**
 17 A. We don't have the facilities nor
 18 the -- the dollars to keep them operating.
 19 **Q. You talked in --**
 20 A. It's hard to cut a math teacher and keep
 21 your ag teacher.
 22 **Q. Those are the choices you had to make?**
 23 A. Sometimes.
 24 **Q. You talked in response to some of the**
 25 **earlier questions that some of your students qualify as**

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1 **migrants. Can you tell us what migrant -- what the**
 2 **definition is to become qualified as a migrant student?**
 3 A. Yes. As best I understand, any student or
 4 student's family that has moved into your community
 5 within the last three years in seek of -- of employment
 6 through agricultural industries. It can be working in
 7 a warehouse, it can be working in a field, in any
 8 agricultural-related industry.
 9 **Q. What percentage of your children are**
 10 **considered migrant?**
 11 A. Typically between 30 and 33 percent per
 12 year.
 13 **Q. And can you identify some of the**
 14 **challenges that Center School District faces in trying**
 15 **to provide a quality education to migrant children?**
 16 A. We have some kids that come and go,
 17 and especially a kid that moves from district to
 18 district, school to school, they pose problems in terms
 19 of academic gaps in their learning, maybe sometimes
 20 because the different districts they've been in don't
 21 line up curriculum-wise, sometimes for other reasons.
 22 We often find that kids will be there at
 23 the beginning of the year, disappear during the middle
 24 of the year, come back at the end of the year. So
 25 that's, you know, a situation there that can be

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1 different. Sometimes kids just show up for the last
 2 two weeks of school and are only going to be there for
 3 the summer, and can we or do we provide summer programs
 4 for those students. We -- we get a lot who I think as
 5 they get older finally commit to settling down. And
 6 that's still a challenge, because if you bounced around
 7 through five or six schools through your elementary
 8 grades and you're finally settling in, there are some
 9 gaps in learning that we need to fill that become a
 10 pretty big challenge.
 11 **Q. Mr. Welsh, when a migrant family shows up**
 12 **in Center, are you able to say we simply can't take**
 13 **your children?**
 14 A. No. And we -- I think we would never.
 15 **Q. Say that to a family?**
 16 A. Right.
 17 **Q. What programs do you believe are necessary**
 18 **for these children?**
 19 A. Sometimes it's health care that's --
 20 that's a matter. Sometimes it's nutrition. Very often
 21 these are not high-paying jobs that they're -- the
 22 parents are moving to. Each time sometimes it's waiver
 23 of fees or supporting students, getting them involved
 24 in our programs, getting a physical so they can play a
 25 sport that they can't necessarily afford. But I also

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1 believe that extra time after school, extra time during
 2 the summer would be a big help as well, because if
 3 you're behind in learning, you need time to catch up.
 4 **Q. And what funding do you receive to provide
 5 these programs and services?**
 6 A. This past year our total dollar amount for
 7 migrant students was about \$20,000 through a -- kind of
 8 a sliver grant through the San Luis Valley BOCES.
 9 **Q. And was that sufficient resources to
 10 provide the services you've identified?**
 11 A. Not even close.
 12 **Q. Are you able to provide all the services
 13 that in your expert opinion you believe are necessary
 14 for migrant children?**
 15 A. No.
 16 **Q. And why not?**
 17 A. We don't have the funds to do so.
 18 **Q. You also, I think in some of your opening
 19 responses, identified that a certain percentage of your
 20 children would qualify as homeless. What percentage of
 21 your children qualify as homeless in Center School
 22 District?**
 23 A. We had 34 homeless kids last year, and
 24 that was over 5 percent of our student body.
 25 **Q. And again, can you identify some of the**

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1 **challenges that Center faces in trying to provide a
 2 quality education to homeless children?**
 3 A. A homeless child has more on their mind
 4 when they come to school than learning. The -- when
 5 you don't have that family structure at home and that
 6 safety net of even a bedroom or a place to call your
 7 own, there are some issues that need to be addressed
 8 for students before you can address learning.
 9 And my opinion is if we could support
 10 homeless students with counseling, with social support
 11 wherever they're staying, so that they cannot have to
 12 worry about clothes and food and -- and where they're
 13 going to be spending tomorrow night or next week, that
 14 they can focus on learning, that we'd have a better
 15 shot at doing that.
 16 **Q. What are the winters like in Center?**
 17 A. I hate them. From December, January, and
 18 February, it's not unusual -- Mr. Kawanabe is smiling
 19 over there. It's not very unusual to be below zero as
 20 a low temperature. In January, it's not unusual to be
 21 below zero as a high temperature.
 22 **Q. So can you define the conditions? 'Cause
 23 I think homeless in rural Colorado might look a little
 24 different than homeless in a place you might think of
 25 in California or even in Colorado.**

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1 A. I think it needs to be said that homeless
 2 doesn't mean you're living in a box or under an
 3 overpass, too. It may mean that you're staying at a
 4 relative's house short term because for whatever reason
 5 your last option for housing wasn't working. In Center
 6 it might mean you're staying in temporary migrant
 7 housing.
 8 You saw some pictures of places, and
 9 people live in those places. And I'm not talking it's
 10 like, you know, there's a guy working in the field
 11 living in those places, it's families of five. We've
 12 been in situations where we've had to find a way to get
 13 heat into a family's house before we could ever worry
 14 about teaching them to read.
 15 **Q. Do you believe you have adequate funding
 16 to be able to provide the programs and services to your
 17 homeless students?**
 18 A. No.
 19 **Q. And why are you not -- what services would
 20 you provide -- you've talked about counseling and
 21 social. Are there any other services you'd provide to
 22 these children?**
 23 A. I think wrap-around services for the
 24 family. There may be some financial counseling, there
 25 might be just some family structure counseling. But

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1 once again, if -- if a child has had gaps in their
 2 learning because sometimes a homeless child misses a
 3 lot of school for various reasons, and once again you
 4 need the time to catch up, and time comes after school
 5 and during the summer.
 6 **Q. And are you able to provide these
 7 services?**
 8 A. Not to the level we would like, no.
 9 **Q. And why not?**
 10 A. We don't have the money.
 11 **Q. We saw pictures, Mr. Welsh, of the
 12 libraries in Center. Can you explain the relationship
 13 that you have with the high school library in the Town
 14 of Center and Saguache County?**
 15 A. Yes. It goes back about five years ago.
 16 Saguache County was going to close the Center branch of
 17 its public library. I engaged in conversations with
 18 the town -- the county commissioners about how we could
 19 keep it open, and the agreement was well, you guys have
 20 a library, and how about if we give you what money we
 21 can afford to support that and you open it to -- to our
 22 public.
 23 And so we get about \$25,000 a year from
 24 Saguache County, which pays \$25,000 of the \$40,000 we
 25 need to invest in salaries just to keep the library

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1 open as a public library. But we have a public
 2 library. We brought in their collection, which you can
 3 see between theirs and ours is very outdated. The Town
 4 of Center has committed in our new building to paying
 5 for the utilities for the library, so that would be a
 6 contribution on their part to keep our library open.
 7 **Q. Can you describe the efforts you go to
 8 be able to purchase new books and resources for the
 9 library?**
 10 A. We write grant after grant after grant.
 11 Typically three of every four grants we write get
 12 turned down. We've had a little bit of luck with El
 13 Pomar, not so much with the Barbara Bush Foundation.
 14 We've even gone so far as to hold bake sales to buy
 15 books.
 16 **Q. Who writes those grants, Mr. Welsh?**
 17 A. Typically me.
 18 **Q. You also are responsible for
 19 transportation for your children. What are the major
 20 issues you face in providing transportation?**
 21 A. We have some pretty good distances to go.
 22 But there are some districts that have greater
 23 challenges than us. The challenge is only about
 24 25 percent of our costs for transportation are
 25 reimbursed for the state. Another big issue we have is

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1 we have a fleet of vehicles, smaller vehicles. Our
 2 buses are, I'm going to say, okay. We've maintained
 3 our bus fleet I think to a standard that's safe for
 4 kids.
 5 It's a struggle. But we have a smaller
 6 vehicle fleet, where if we're going to send teachers to
 7 a curriculum training in Denver, we'd have them use a
 8 vehicle like that. And we've got four of those
 9 vehicles. Not one of them has fewer than a hundred
 10 thousand miles on them.
 11 **Q. Are there other transportation
 12 requirements for special education students?**
 13 A. Through our BOCES, we -- for students who
 14 are mildly mentally retarded or have severe needs, we
 15 transport those students to different school districts
 16 that host the programs that are funded by BOCES, and
 17 that requires transportation by the home district. And
 18 it -- as an example, it can cost \$14,000 a year to
 19 transport one kid to the extended services in Del Norte
 20 for the year. That's more than we bring in for that
 21 kid.
 22 **Q. Mr. Welsh, do you have an expert opinion
 23 as to whether technology helps improve student
 24 achievement?**
 25 A. That -- yes, I believe it's -- in the year

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1 2011, every student we graduate should be able to
 2 function on a computer, on the Internet, and use
 3 technological devices.
 4 **Q. Can you explain what the current situation
 5 is in Center as being able to provide -- well, first of
 6 all, what do you believe is necessary to be able to
 7 provide those students with those opportunities to
 8 learn the technology skills you just described?**
 9 A. Access to the technology. And depends on
 10 where you live as to what access you have. The one
 11 formal survey we ever have done about technology was
 12 about four or five years ago, polled -- polled parents,
 13 and we had about 80 percent participation in this, as
 14 to what access does your child have to a computer at
 15 home and what access does your child have to Internet
 16 at home, and our response back was 15 percent.
 17 **Q. One five?**
 18 A. One five. And our reaction to that was
 19 we've got to find a way to get technology in our
 20 students' hands, and that was the reason why we
 21 embarked on an attempt to put a one-to-one technology
 22 device program into our schools.
 23 **Q. Can you explain what that program was and
 24 how you implemented it?**
 25 A. Yeah. We've got classroom laptops

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1 available for fourth and fifth-graders, and we've got
 2 take-home netbooks available for sixth, seventh, and
 3 eighth-graders, take-home laptops available for ninth
 4 through 12th-graders. We actually were able to finish
 5 that off through ARRA funding from the federal
 6 government. The big stimulus funding was where we got
 7 the bulk of our computers. And I served a year as
 8 superintendent and principal so we could save some
 9 money and fill out the purchases.
 10 **Q. Has that program been successful?**
 11 A. I think it's a great part of why Center
 12 High School's having some success.
 13 **Q. Are you able to maintain that program?**
 14 A. We have cut our technology replacement
 15 lines in half in the last two years by 50 percent. In
 16 half.
 17 **Q. So are you able to maintain?**
 18 A. My answer to you there is we're purchasing
 19 devices. They are not as high-quality devices as we
 20 once got, and we're worried that the long-term
 21 maintenance cost of these may outweigh what we were
 22 doing before.
 23 **Q. Have you ever tried to provide any
 24 classrooms over the Internet?**
 25 A. Yes. We had a year back about three years

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1 ago where we had five or six students who wanted to
 2 take physics, and we had nobody on campus capable of
 3 teaching physics. And we worked with Littleton Public
 4 Schools, Heritage High School, a teacher from there who
 5 taught their physics class to our students over Skype.
 6 **Q. And how did that work for the students in**
 7 **Center?**
 8 A. On the one hand it was a pretty exciting
 9 experience because of that whole distance issue. On
 10 the other hand it was tough, because sometimes
 11 Littleton would have network issues, sometimes we would
 12 have network issues. We had difficulties matching up
 13 schedules. They didn't have the same calendar as we
 14 did, they didn't have the same time slots as we did.
 15 And in addition to that, because of those issues, I had
 16 to bring in a high-level science teacher, a high-level
 17 math teacher to come in and support those students as
 18 well. I think in the end it probably cost more to do
 19 it than if somehow I'd had one section of physics able
 20 to be taught.
 21 **Q. Do you have videoconferencing available to**
 22 **you in Center?**
 23 A. We do not have two-way videoconferencing
 24 available. Outside of something like Skype.
 25 **Q. Are you aware of whether it's even**

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1 **available in the San Luis Valley?**
 2 A. I believe Trinidad State College has a
 3 pretty high-quality two-way videoconferencing setup.
 4 And once when I went to attend a construction meeting
 5 at Sargent Schools, they had a real sweet setup in a
 6 construction trailer there for Neenan.
 7 **Q. Do they have videoconferencing inside the**
 8 **school?**
 9 A. No, they do not.
 10 **Q. Just in the construction trailer?**
 11 A. Just in the construction trailer.
 12 **Q. Are you familiar with the data-driven**
 13 **instruction and training?**
 14 A. Yes.
 15 **Q. And is technology important to that**
 16 **component?**
 17 A. If as a teacher you're going to sort
 18 information about what students are successful at and
 19 what they're lacking in, you better be pretty good at
 20 handling programs like Alpine or basic spreadsheets and
 21 such.
 22 **Q. And can you explain what data-driven**
 23 **instruction is?**
 24 A. It's to target the specific needs that
 25 students have. I used my daughter as an example

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1 before. If -- if you are assessing properly and you
 2 realize that -- that what's causing this child not to
 3 be at benchmark is a specific skill, and for my
 4 daughter it was fluency, well, then you can target your
 5 intervention or you can provide extra support in a
 6 regular classroom for fluency. You need to know what
 7 the child is lacking in to address those issues for
 8 them during the instructional day.
 9 **Q. And how does technology play into**
 10 **data-driven instruction?**
 11 A. Once again it's the way we collect
 12 information, sort information, communicate information
 13 to the teachers. It's the way that -- it's access to
 14 that information for teachers to make their
 15 instructional decisions.
 16 **Q. We heard from the State that you recently**
 17 **were awarded a BEST grant, and we saw the conditions of**
 18 **your facilities currently. Can you tell us, have you**
 19 **broken ground on your new facility?**
 20 A. Yes, we have. We broke ground in late
 21 May. Footers are in, stem walls are starting to go up,
 22 and the community is very excited.
 23 **Q. How are you able to -- to fund and build**
 24 **this new facility?**
 25 A. The BEST program required that a very

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1 extensive grant process be completed, where you submit
 2 your proposal, you explain what your needs are based on
 3 current facility conditions, and upon being -- it also
 4 requires a promise that the local district applying for
 5 the grant would match the grant to some extent.
 6 Our State-required match was 21 percent of
 7 the total cost of the facility. But when we went
 8 through our master planning process, we discovered that
 9 we had \$31 million worth of needs, and the most our
 10 community could come up with legally in a bond election
 11 was \$4.7 million, and so that all we could meet was a
 12 15 percent match. But we committed to that. That was
 13 our maximum ability to match. And we submitted that
 14 with our proposal. We were awarded the grant, and then
 15 we went to our community for the election, and we won
 16 the election 69 percent to 31 percent.
 17 **Q. How many mills did you have to decrease to**
 18 **be able to meet your match?**
 19 A. I'm a local taxpayer, and I may not have
 20 this exactly right, and I should, because I actually
 21 have to pay this, but between 14 and 16 mills is what
 22 our taxes went up. From 27 to start.
 23 **Q. So where are they now?**
 24 A. 30 -- 41, 42.
 25 **Q. What could you have built with your**

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1 **4.7 million?**
 2 A. We -- we had actually looked at that in
 3 our master planning process. \$4.7 million would not
 4 have done a complete remodeling of our current
 5 facilities. It definitely wouldn't have brought them
 6 up to current codes. Wouldn't have made them any
 7 safer. Could have made them look a little nicer.
 8 That's about it. You couldn't build a single school
 9 with that.
 10 **Q. What were some of the facility issues that**
 11 **caused you to apply for the BEST grant?**
 12 A. That building that you saw in the film,
 13 built in 1918, it was built before reinforced concrete
 14 was invented, and an issue that really hit home in
 15 Center was after that earthquake in Haiti, people
 16 started saying what would happen in Center if there was
 17 a shaker like that, and the answer is the second floor
 18 would come down on top of the first floor.
 19 The heating and cooling issues that I
 20 talked about, that you saw on the video, are to a big
 21 extent the current practice by my director of
 22 maintenance is to go up on top of Haskin Elementary
 23 School once a week and pull in all the bricks along the
 24 outer edge, because weather has continually loosened
 25 those bricks, and fear is one will fall out instead of

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1 in. And typically every time he goes up there, he
 2 pulls a few more down onto the roof.
 3 **Q. When is it scheduled to be completed, your**
 4 **new facility?**
 5 A. August 2012.
 6 **Q. Do you believe that graduation is an**
 7 **important goal for Center students?**
 8 A. For every Center student, yes.
 9 **Q. And why?**
 10 A. There are studies out there that show the
 11 difference in potential career earnings for a person
 12 who's dropped out of high school versus a simple
 13 graduate of high school. And then there's no
 14 opportunity to go on to college if you haven't
 15 graduated from high school. Can't even serve in the
 16 military.
 17 **Q. What is the graduation rate in Center?**
 18 A. For the district this past year, I believe
 19 it was around 65 percent.
 20 **Q. And how is the graduation rate calculated?**
 21 A. This is the amount of students that enter
 22 ninth grade as freshmen, and short of the calculation
 23 of where else they might filter out into other systems,
 24 how many of them actually complete at the end of four
 25 years. Something I need to add, though, is when you

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1 get a kid come into a high school as a freshman or a
 2 sophomore as a level I English language learner,
 3 they're not graduating in four years. We hope, of
 4 course, they are graduating, and we work our best at
 5 that, but very often that child has to stay around for
 6 five, sometime six years.
 7 **Q. What's the completion rate?**
 8 A. Are you asking dropout rate?
 9 **Q. Well, if they go past the four years, but**
 10 **they still graduate?**
 11 A. Right. That figures into a completion
 12 rate that's based on a five-year formula or a six-year
 13 formula, so on.
 14 **Q. Does Center School District have an**
 15 **alternative high school?**
 16 A. Yes, we do. We --
 17 **Q. What's an alternative high schools?**
 18 A. Alternative high school is a way to offer
 19 education for students who for one reason or another
 20 may have fallen through the cracks and can't attend a
 21 traditional school. Our setup is a 10 a.m. to 7 p.m.
 22 instructional program, most of it online or
 23 computer-based instruction. Requirement to get into
 24 our alternative school as a full-time student is that
 25 you have dropped out. So anyone that's in our program

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1 has already dropped out of school.
 2 **Q. And what's the graduation rate from your**
 3 **alternative high school?**
 4 A. I believe it's about 25 percent.
 5 **Q. Do you happen to know what the mean ACT**
 6 **score is of your students in Center?**
 7 A. The most recent results we have finalized
 8 for spring 2010, and that was 15.6 percent.
 9 **Q. Do you know what ACT score you would need**
 10 **to have to get into Metro?**
 11 A. I believe an 18.
 12 **Q. And do you know what kind of score you'd**
 13 **need to get into the University of Colorado?**
 14 A. Is it 22 or 24?
 15 **Q. And how many of your students last year**
 16 **scored around a 24 or 25?**
 17 A. Two.
 18 **Q. What programs are effective in keeping**
 19 **kids in school in Center?**
 20 A. Extracurricular programs, clubs,
 21 organizations. We started to develop, mainly because
 22 of the herculean effort of some staff members, a pretty
 23 strong science fair program. These are what I'm
 24 talking about. These are things that -- that follow
 25 individual interests of students, that help them kind

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1 of seek their potential in various areas.
 2 Let me tell you another thing, though.
 3 How about good strong first instruction, where you're
 4 performing at grade level. If -- if a kid's performing
 5 at the eighth grade level in eighth grade, they're most
 6 likely to graduate than the kid that's performing at
 7 the fifth grade level in eighth grade, and all the
 8 struggles that come after that.
 9 **Q. Is graduation rate one of the criteria**
 10 **that the State looks at in looking at your**
 11 **accreditation?**
 12 A. Yes.
 13 **Q. And looking at the graduation rate, are**
 14 **there asterisks where you can say we have kids at risk**
 15 **or kids in special ed, so you don't need to meet the**
 16 **same level of standards with them?**
 17 A. No.
 18 **Q. And are you familiar with the term "root**
 19 **causes"?**
 20 A. Yes.
 21 **Q. What is a root cause?**
 22 A. The way it applies to education, and I
 23 became way more familiar -- I've become way more
 24 familiar with this through the unified planning process
 25 for the district, but also with the completion of a

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1 turnaround plan for Haskin Elementary School.
 2 The idea is to conduct some kind of
 3 analysis in your building that determines why you're
 4 not getting the student -- growth in student
 5 achievement that you need. Of course, one option as to
 6 why is not money. So it's all the systems within your
 7 district that are bringing about that result.
 8 **Q. Are you able to identify poverty or**
 9 **homelessness or migrant status as a root cause?**
 10 A. No. No.
 11 **Q. And the State requires you yet to identify**
 12 **root causes that don't include any of those?**
 13 A. Right.
 14 **Q. I'm going to turn now to your budget. I**
 15 **am looking at Plaintiffs' Trial Exhibit 10376. This**
 16 **time, Mr. Welsh, we'll give you a copy to look at.**
 17 A. Yea.
 18 **Q. Can you identify this document, please.**
 19 A. Yeah. This is our 2010-'11 summary budget
 20 report to CDE.
 21 **Q. Who prepares this budget?**
 22 A. Myself and my business manager -- my -- my
 23 half-time business manager.
 24 MS. GEBHARDT: I at this time would move
 25 for admission of Exhibit 10376.

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1 MS. MARKEL: No objection, Your Honor.
 2 THE COURT: 10376 will be admitted.
 3 **Q. (BY MS. GEBHARDT) Mr. Welsh, in looking**
 4 **at Exhibit 10376, have you prepared a more current**
 5 **budget?**
 6 A. Yes. Yes.
 7 **Q. What would be the -- are there any**
 8 **significant changes between this budget and the one you**
 9 **recently worked on?**
 10 A. Yes. Fortunately, beginning fund balance
 11 is going to be about twice that -- that \$250,000.
 12 Local sources remains pretty close to the same. State
 13 sources has dropped by \$300,000. Federal sources
 14 dropped by about \$60,000.
 15 **Q. Can you explain the different sources of**
 16 **funding that Center School District receives?**
 17 A. Yes. The local sources are local property
 18 taxes collected in Saguache, Alamosa, and Rio Grande
 19 County. The state sources or state equalization,
 20 that's our per-pupil operating revenue from the State.
 21 And federal sources are typically through the federal
 22 title programs, the lion's share of that coming through
 23 Title I. In addition, we -- we apply for and compete
 24 for many grants all year long.
 25 **Q. Can you explain what Title I is just**

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1 **briefly?**
 2 A. Title I, folks will more than likely
 3 understand the terminology No Child Left Behind.
 4 It's -- it's funding that comes to high poverty schools
 5 like Center that is geared at supporting programs for
 6 high poverty students. As -- high poverty students who
 7 are falling below benchmark or grade level in
 8 performance in specifically reading and math.
 9 **Q. At what point did you receive a**
 10 **did-not-meet requirement for your financial status with**
 11 **the State?**
 12 A. Yeah. Going back about four or five years
 13 ago, I'd like to call it a little bit of a perfect
 14 storm. We had a -- because of tighter enforcement of
 15 immigration policy, we lost a lot of families in our
 16 community. We can argue that right or wrong. But we
 17 had a far greater drop in students than we anticipated,
 18 and we also had -- you might remember it was a pretty
 19 tough energy year, and our local utility department
 20 increased utility expenses on our part by 50 percent.
 21 And so between -- we're always cutting it
 22 close to the line on our budget with -- with our
 23 balance, because we've got to keep moving forward. And
 24 so by having a low reserve balance to start with and
 25 kind of having a catastrophic loss of students for that

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1 year, we went into the red at the end of the year.
 2 **Q. Can you explain why the number of students**
 3 **impacts your budget?**
 4 A. Yeah. We get funded for each child,
 5 basically, that we count on October 1, and then there
 6 are formulas, including a multi-year formula average if
 7 you have lost a significant number of students. But
 8 that year just hit it far beyond what we could
 9 anticipate.
 10 **Q. And when you set your budget, do you**
 11 **actually know how many students you'll have coming?**
 12 A. I have to submit a budget to CDE by
 13 July 1, and I don't really know how many kids I have,
 14 I'm going to formally be able to count, till October 1.
 15 **Q. If students come in after October 1, do**
 16 **you receive funding for them?**
 17 A. No.
 18 **Q. So what did you do to fix this perfect**
 19 **storm for the budget?**
 20 A. I would like to say I'm a financial
 21 genius. But what happened is we advocated at the state
 22 level when we found out, through the federal stimulus
 23 program, that our county was getting a whole lot more
 24 money for a program called Secure Rural Schools funding
 25 from the federal government. Our county was only

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1 turning 5 percent of those dollars over to us. And
 2 advocating at the legislature for a more fair split, we
 3 were able to -- in fact, this year we negotiated
 4 49 percent of the dollars that went to the county. And
 5 that was an infusion of \$640,000 to our district this
 6 past year.
 7 **Q. And despite its name, Secure Rural**
 8 **Schools, do you know if there will be funding coming**
 9 **next year?**
 10 A. I'm going to guess based on what was done
 11 last night, that it won't.
 12 **Q. Is that state or federal funding?**
 13 A. State -- federal funding. Sorry.
 14 **Q. So what's your fund balance now?**
 15 A. We expect going into this year that will
 16 be around \$550,000.
 17 **Q. Mr. Welsh, in your time as being**
 18 **superintendent in Center, have you experienced any**
 19 **rescissions?**
 20 A. Yes.
 21 **Q. And what is a rescission?**
 22 A. It's money that you've been allocated by
 23 the State to begin the budget year that is -- it's not
 24 so much taken back as -- as the State never really
 25 gives it to you in the end.

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1 **Q. Can you explain the difference between a**
 2 **mill levy override and a bond, please.**
 3 A. Yeah. I've learned a lot about this
 4 recently. Bond election -- or bond -- when a school
 5 district goes for a bond, you're looking at building
 6 facilities, repairs, perhaps. And so you have a limit
 7 to which you can ask your community for to do such
 8 projects based on state law, and the limit is
 9 20 percent of your total assessed property value. And
 10 in our BEST election, we were -- a maximum we could go
 11 for was \$4.7 million, which is what we did.
 12 A mill levy override can be for a shorter
 13 period of time, might be one year, might be three
 14 years. It's typically aimed at operating costs for a
 15 school district. And if you were to go to your
 16 community and say we need to raise our taxes this much
 17 so that we can create this new program or maybe keep
 18 this program from going away, that's -- that might
 19 typically be why you run a mill election.
 20 **Q. Do you know how much you can raise -- what**
 21 **your maximum would be in a mill levy election?**
 22 A. Per year would be about \$300,000. If we
 23 raised it to the maximum.
 24 **Q. And have you asked your community for a**
 25 **mill levy override?**

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1 A. I don't have the guts to after raising our
 2 bond mill levy to the maximum. I -- I'd be looking for
 3 my next job, I think.
 4 **Q. You've talked about how you've had to**
 5 **reduce your budget. Can you talk about what you've**
 6 **done to reduce your budget, Mr. Welsh?**
 7 A. Yes. Just this spring, all classroom
 8 supply lines, textbook lines, technology lines were cut
 9 in half. Most maintenance and repair lines were
 10 virtually eliminated. And we're just leveraging the
 11 fact that we're going to be between buildings. We're
 12 going to tear down our old ones and be in a new one
 13 next year. I'm not quite sure how we'll rebuild those
 14 maintenance and repair lines. We don't even know,
 15 can't even anticipate what those costs would be, but
 16 our philosophy in Center was let's get through this
 17 year. We have a reserve that maybe we can fall back on
 18 next year for the -- for some of those things we'd
 19 need. Not much. But we -- we just couldn't bring
 20 ourselves to cut into human resources that our students
 21 need any further.
 22 **Q. Have you had to cut any staff,**
 23 **paraprofessionals, any staff?**
 24 A. Well, over the last ten years, we
 25 have -- I'm sure we've dropped eight or so certified

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1 teachers out of an entire staff right now currently of
 2 36. And we have half the paraprofessionals we once
 3 had. We have less secretary support than we once had.
 4 We have smaller custodial staff than we once had. We
 5 even run one or two fewer bus routes than we once did
 6 to save money. We also eliminated cafeteria staff this
 7 year.

8 **Q. Can we talk a little bit about the grants**
 9 **that you've applied for? Can you -- can you identify**
 10 **some of the grants that you've applied for in relation**
 11 **to literacy to start with, please.**

12 A. Sure. The true advantage of being a
 13 highly challenging, high poverty, low-performing school
 14 is you qualify for a lot of these. And I have an
 15 opinion about this, and it's run the course of my
 16 career, where I've arrived at a particular point. And
 17 that is, grants come available, either federal or
 18 state, through the Colorado Department of Education to
 19 address needs such as poor reading performance at your
 20 school. And we, of course, feel compelled to apply for
 21 them, 'cause we need the help. We needed the financial
 22 help, but we also need the expertise help. And in the
 23 time I've been in Center, we participated in the
 24 Colorado Reading Excellency Act grant that was supposed
 25 to be a three-year, \$450,000 grant.

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1 I believe that was a State grant, and I
 2 believe it was eliminated after two years. So there
 3 was a lot of promises up front. We got going, and we
 4 didn't really get to see it to the end. We
 5 participated in Read to Achieve, and that was a one
 6 year at a grant time, where it brought in a reading
 7 specialist to our elementary school, and after two
 8 successful years of growth, it didn't get funded.

9 We participated in a Reading First grant,
 10 which is a federal grant program, and it was supposed
 11 to be a three-year grant, but things were kind of slow
 12 coming out of the CDE getting the grant running that
 13 the first year was sort of bundled into the second
 14 year, so it really became a two-year process. We never
 15 got three years to work on the growth.

16 We apply for just about every health,
 17 student health, counseling, grants like that that are
 18 out there. We actually bring in adult family literacy
 19 grants through -- through Title I through El Pomar.
 20 It's been a wonderful contributor to our programs.

21 And currently we're in the midst of a
 22 turnaround grant, which is 550,000 per year for three
 23 consecutive years, which is by far the biggest grant
 24 we've ever received outside of the BEST grant.

25 **Q. You listed several literacy grants. Are**

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1 **the programs consistent from grant to grant?**

2 A. No. No. In fact, you want to talk about
 3 root causes. One of the root causes when we -- when we
 4 went through the turnaround grant process, a root cause
 5 that was identified in Center Schools was there is no
 6 comprehensive way to teach literacy, and what the folks
 7 who did a CADI review and --

8 **Q. Can you explain what a CADI review is?**

9 A. Comprehensive Assessment for District
 10 Improvement.

11 **Q. Who conducts that?**

12 A. A team of folks hired by CDE come in
 13 to -- I mean, they interview virtually every teacher,
 14 lots of community members, lots of board members, and
 15 they're trying to figure out why you can't raise your
 16 achievement. That was followed up by an expedited
 17 diagnostic review which was very similar to CADI, but
 18 just a lot of quick interview questions, and they both
 19 came up with the same conclusion about our literacy
 20 issue. And our literacy issue was we don't have a
 21 comprehensive, uniform way to teach literacy in our
 22 elementary school.

23 And I track that back to this grant taught
 24 teachers to do this, and some of them stayed, some of
 25 them went. This grant taught teachers to do this, some

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1 of them stayed, some of them went. Some of them held
 2 on to the old stuff. And when you do that three or
 3 four times, you confuse the heck out of a kid. What
 4 are we doing here, whole language phonics, or, you
 5 know, what's going to be our focus? Which series are
 6 we using, so on, so forth.

7 **Q. Have you tried to coordinate services with**
 8 **other districts in the San Luis Valley?**

9 A. Yes. Yes.

10 **Q. Can you talk about those attempts, please.**

11 A. Especially in the last couple years, with
 12 a lot of budget cuts, we've been looking to each other
 13 as to how can we save some money. I have a neighboring
 14 district just 5 miles down the road named Sargent, and
 15 their former superintendent and I sat down last spring
 16 to find ways to share transportation services,
 17 vocational instruction, music instruction, and some
 18 other things. And I think we came up with about
 19 \$70,000 in potential savings after -- after that
 20 coordination session. It didn't work out, though.

21 **Q. Why not?**

22 A. My opinion is Colorado, with its open
 23 enrollment law, has set up a system of competition
 24 between school districts, and it can sometimes be very
 25 hard for schools to cooperate to save money because

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1 they're competing for kids. And that district would
 2 gladly pluck any one of my kids to make more money, to
 3 provide their programs, as I would with them. And I
 4 think the boards couldn't get past that.

5 **Q. And what was the concern of the boards, if**
 6 **you know?**

7 A. It gives the public appearance that we
 8 can't provide for our own kids, we need help from this
 9 other district. And if -- and that other district
 10 takes a lot of our kids, and I don't think they want
 11 the impression that they needed our help, because why
 12 would those kids be going to that district then anyway.

13 **Q. We talked about fees in relation to**
 14 **kindergarten. Are you able to charge fees to make up**
 15 **for some of these other shortfalls in revenue?**

16 A. We don't believe that's a viable option.

17 **Q. So do you charge any fees?**

18 A. No.

19 **Q. How do the cuts impact staff morale, if**
 20 **you know?**

21 A. My teachers' salaries were frozen for the
 22 '10-'11 school year at the same level as they were
 23 '9-'10. They will be frozen for the '11-'12 school
 24 year. Center's a hard place to work. You're going to
 25 come and be professionally challenged like you can't

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1 believe. And in addition, with pressures like
 2 turnaround accreditation and such, you're probably
 3 going to work harder than you are going to work
 4 anywhere else. And -- and then even when you do get
 5 rewarded for it in some way, like our high school
 6 received that Center for Educational Excellence Award,
 7 it doesn't feel so good to be awarded with the same pay
 8 you got the last year and the year before.

9 **Q. What's the starting salary for a teacher**
 10 **in Center?**

11 A. Our base salary's right about \$30,000. We
 12 got there because we eliminated the bottom lines of the
 13 base.

14 **Q. Can you explain what that means?**

15 A. That means that a third-year teacher gets
 16 paid the same as a first-year teacher in Center. But
 17 our hope is that we can attract new teachers by having
 18 a little bit of a higher base.

19 **Q. Are you aware of what the forecast is for**
 20 **the upcoming budget year for education funding?**

21 A. The impression I got at last year's CASE
 22 Conference, the Colorado Association of School
 23 Executives, was we could expect about the same level of
 24 cuts next year that we got this year.

25 **Q. And what will impact -- if that ends up**

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1 **being an accurate forecast, what impact would that have**
 2 **on Center?**

3 A. There's no place left to cut except people
 4 and --

5 **Q. What does that mean?**

6 A. Well, if I wanted to take it off of
 7 teaching staff, that would easily be eight certified
 8 teachers. I'm more likely to spread it all over
 9 departments. But that would be a lot of
 10 paraprofessionals, secretarial staff, custodial staff,
 11 so on. Administration.

12 **Q. So you talked a few minutes ago about**
 13 **raising your salary so that you increased your ability**
 14 **to attract teachers. Can you talk about are there**
 15 **challenges in attracting highly qualified teachers to**
 16 **Center?**

17 A. Yes. Once again, if you have a classroom
 18 of 24 kids, you have kids in such a range of need, it's
 19 incredible. With concentrated poverty and language
 20 needs and such, it's not the same job as the average
 21 kid -- the average teacher who works in an average
 22 suburban school district.

23 **Q. Do you receive -- how many applicants**
 24 **would you get for an average position?**

25 A. Most recent example I could share with

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1 you, we hired a high school social studies teacher this
 2 year, had an opening. And common knowledge for an
 3 administrator out there would be boy, there's a lot of
 4 social studies teachers dying for jobs. We got four
 5 applicants. Only two meet the statutory highly
 6 qualified requirement. Though we interviewed all four.
 7 Fortunately, we think we got one who might be able to
 8 do the job. That's to me typical. You know. It's not
 9 a deep pool to pluck from.

10 **Q. And where did that teacher come from?**

11 A. Mississippi.

12 **Q. Do teachers have to purchase supplies on**
 13 **their own, out of their own pocket, for their students?**

14 A. I know they do.

15 **Q. Can you talk a little bit about -- do you**
 16 **have a professional opinion, Mr. Welsh, as to the**
 17 **importance of professional development for your**
 18 **teachers?**

19 A. Yeah. It's an absolute must.

20 **Q. And why is that?**

21 A. I think we've learned so much more about
 22 what effective instruction is, what effective planning
 23 is, what effective use of curriculum is, that it's
 24 changed to an extent the way we teach. There's a lot
 25 of great information. I -- a lot of people say, and I

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1 believe it, I think we know what we need to do. But
 2 not all of our teachers, through their programs and
 3 through their experience, were trained to do it that
 4 way, and because of that, we need to spend a lot of
 5 time in their development.
 6 And the general impression of that is
 7 that's kind of a blanket staff development. But the
 8 reality is the P.E. teacher needs a certain type of
 9 staff development, so does the music teacher, so does
 10 the technology teacher, and so on and so forth. And
 11 those are the things we don't even touch anymore. It's
 12 all about reading and math.
 13 **Q. How did the changing standards environment**
 14 **affect the need for professional development for your**
 15 **teachers?**
 16 A. My teachers this year will be teaching a
 17 different curriculum than they taught last year and
 18 teaching a different curriculum than they taught the
 19 year before. So they need help with resources and help
 20 with exactly what it is that's important.
 21 **Q. And how -- do you believe you're able to**
 22 **meet the professional development needs of your**
 23 **teaching staff?**
 24 A. Half yes. And I say that because in our
 25 turnaround process at Haskin Elementary School, we've

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1 been getting a lot of the help we need. We have the
 2 dollars to do the staff. We were able to adopt a new
 3 science resource and train teachers in it. We were
 4 able to adopt a new math resource and train teachers in
 5 it. We've been able to train teachers in
 6 Lindamood-Bell and interventionists in Lindamood-Bell.
 7 We've been able to teach -- to train teachers in
 8 alignment to the new curriculum. I don't know where
 9 we'd be without that, and at the secondary level, we
 10 don't have those resources. What we're trying to do is
 11 piggyback on that as much as possible.
 12 **Q. I expect that there will be testimony in**
 13 **this case that if you just fired the bottom 5 to**
 14 **8 percent of your teachers and didn't replace them,**
 15 **that you would be able to meet your budgetary**
 16 **constraints. What would happen, Mr. Welsh, if you**
 17 **fired the -- assuming you could determine who the**
 18 **bottom 5 to 8 percent of your teachers were, what**
 19 **programmatic impact would that have?**
 20 A. I'm not sure I'm allowed to, but I suppose
 21 I'd have to decide what do I want to keep, math or
 22 science or social studies.
 23 **Q. How many high school math teachers do you**
 24 **have?**
 25 A. One and a guy that teaches another

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1 section.
 2 **Q. And how many high school science teachers**
 3 **do you have?**
 4 A. One and a person that teaches two
 5 sections.
 6 **Q. So if they were to be, hypothetically, in**
 7 **the bottom 5 percent and you were to fire them, what**
 8 **would you do?**
 9 A. Start training Ms. Parker how to teach
 10 science.
 11 **Q. So you've talked some throughout your**
 12 **testimony today, Mr. Welsh, about this turnaround**
 13 **grant. Can you explain in a little more detail what**
 14 **the turnaround grant is?**
 15 A. Yeah. Qualifications for turnaround start
 16 with being a bottom 5 percent performing school in the
 17 state of Colorado. And the good news and the bad news
 18 in that is that Haskin qualified. Root causes need to
 19 be identified. What are the reasons why you're not
 20 growing in performance? And I think I'd like to talk
 21 about what those root causes were.
 22 The root causes were you don't have a
 23 curriculum, which, you know, has always been a
 24 financial issue for us, I think. You don't have the
 25 resources to teach the curriculum. You struggle with

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1 administrative leadership. You don't have
 2 administrative leaders who know how to go into
 3 classrooms and offer effective feedback for teachers.
 4 And you don't have a comprehensive way to teach
 5 literacy. You've got a bunch of different programs
 6 you're trying to implement, and you're confusing the
 7 kids.
 8 And my statement about that is those are
 9 fundamental things that need to be in a school.
 10 Those -- those are where you should start. And, in
 11 fact, I think we've confused the heck out of CDE with
 12 our unified improvement plan, because in our unified
 13 improvement plan is we're going to have a curriculum.
 14 And their assumption is we already would. You know.
 15 And we're going to have a unified way to teach
 16 literacy. But what are you going to do for the male
 17 Hispanic English language learner? Well, we're going
 18 to start by knowing what the curriculum is to teach
 19 them and having the resources to do that.
 20 **Q. How much -- is this a federal or a state**
 21 **grant?**
 22 A. It's a federal grant. I believe it's ARRA
 23 money. And we've been awarded -- last year we received
 24 550,000, this year we anticipate receiving 550,000, and
 25 we hope that it continues through the year three that

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1 we've been promised.

2 **Q. And were you able to pick any program that**

3 **you wanted to implement at the school?**

4 A. We were. We were --

5 **Q. Were you given a choice?**

6 A. Yeah. Well, so I guess yes and no. The

7 CDE vetted programs and then presented them to us at a

8 provider fair. So, in other words, if -- if an

9 organization applied for and was approved by CDE to

10 serve one of the turnaround schools, they were allowed

11 to come to this provider fair. We then shopped the

12 providers, and we chose Focal Point and Lindamood-Bell.

13 **Q. And so can you explain? The**

14 **Lindamood-Bell is at what level?**

15 A. Elementary. It's K through 5. It

16 involves training for teachers in how to teach literacy

17 in the classroom as part of the good first instruction.

18 And then every teacher was trained in how to provide

19 interventions for students either after school, even

20 for a chunk of pull-out time during the school day and

21 during the summer, and if you go -- if you call up a

22 Lindamood-Bell provider out in the community, you're

23 probably paying \$300 a week for what we're providing

24 our students by having received that training.

25 **Q. And was there -- were you able to provide**

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1 **additional time for those students through the grant?**

2 A. Yeah. The grant paid for our after-school

3 reading academy. It paid for a five-week summer

4 reading academy both last year and this year.

5 **Q. Any other programs you've been able to**

6 **provide as a result of the turnaround grant dollars?**

7 A. The biggest thing was getting a

8 coordinated curriculum, one aligned to as best we know

9 the current state standards. It's the best curriculum

10 product we've ever had access to.

11 **Q. And again, that was only K through 8?**

12 A. That was K through 8.

13 **Q. And how does Focal Point play into this**

14 **then?**

15 A. Focal Point created the curriculum.

16 And -- and I think the best thing they offer is the

17 administrative training to support the implementation

18 of the curriculum.

19 **Q. And you had to purchase the curriculum?**

20 A. From Focal Point.

21 **Q. And, again, for what -- what grade levels**

22 **did you purchase the curriculum?**

23 A. Well, the grant only allowed us to

24 purchase a K through 5. Our contract agreement was

25 they'd throw in 6, 7, and 8. Kind of got it for free.

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1 **Q. Have you seen -- so what have you been**

2 **able to provide with the turnaround grant dollars that**

3 **you could not have provided without them?**

4 A. A curriculum. Teacher training and

5 implementing it. Administrative training to support

6 the -- the good instruction of that curriculum. A

7 coordinated way to teach literacy. Teacher training in

8 that. Extra time for students after school. Extra

9 time for students during the summer. It even purchased

10 a -- an instructional coach to support my elementary

11 principal, who I felt was very overworked in trying to

12 support the -- the development of our teachers.

13 **Q. I have a question I forgot to ask you**

14 **earlier. How many administrators do you have in Center**

15 **School District?**

16 A. There's me, there's -- I have a director

17 of instruction, assessment, and vocational programs,

18 it's one person does all three of those. I have an

19 elementary school principal, a middle school principal,

20 and a high school principal. And we went out on the

21 limb getting the middle school principal. We haven't

22 traditionally had that.

23 **Q. Any other administrators?**

24 A. That's it.

25 **Q. So have you been able to have the**

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1 **Lindamood-Bell program in place long enough to see any**

2 **results?**

3 A. Our benchmarking tests through DIBELS.

4 **Q. Can you explain -- just quickly.**

5 A. It's -- it -- I may need help on this one.

6 It identified reader fluency, reader comprehensive, and

7 sight word ability. I think it's our --

8 **Q. Can you explain what a benchmark test is?**

9 A. Benchmark would be here's the level where

10 the average kid at this grade should be. Never had

11 this happen before in my career in Center, but my

12 first-graders, if you've ever been in a school where

13 you'll often see a data wall, and it has kids labeled

14 green, yellow, and red, and red means they're

15 performing below benchmark, yellow means they're kind

16 of approaching benchmark, green means they're above

17 benchmark. First grade class coming to second grade

18 next year, based on all DIBELS results, there's only

19 one red out of 45 kids. I've never seen that.

20 **Q. And --**

21 A. And I believe that has a direct

22 relationship to the intensive intervention that they

23 received.

24 **Q. And we'll get the rest of the CSAP results**

25 **on Wednesday, but did you receive any third grade CSAP**

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1 **results before today?**
 2 A. Yeah. Our third grade CSAP proficiency
 3 performance went up 13 percent.
 4 **Q. And in your expert opinion, to what do you**
 5 **attribute that?**
 6 A. Knowing what reading skills to teach
 7 through our curriculum and having the intervention
 8 supports we need for the kids who are behind and the
 9 time to do it.
 10 **Q. And, Mr. Welsh, in your expert opinion, do**
 11 **you believe you would have been able to get these**
 12 **results you just described without the turnaround grant**
 13 **dollars?**
 14 A. No.
 15 **Q. Let's talk a little about CDE. And we**
 16 **heard in opening argument that another potential**
 17 **solution to your budget issues was to seek a waiver of**
 18 **certain requirements. Is it your understanding that**
 19 **you would be able to waive out of accountability?**
 20 A. I don't believe I'm allowed to waive the
 21 accreditation process that CDE conducts.
 22 **Q. And by not being able to waive out of**
 23 **accreditation, what parts of your program does that**
 24 **touch?**
 25 A. Well, it's the curriculum we teach, the

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1 resources we need to teach them, the quality and number
 2 of teachers we have available to teach that. All the
 3 supports that are required. It's everything we do.
 4 It's the end -- it's the end result.
 5 **Q. What support has CDE provided to you since**
 6 **you've been at Center?**
 7 A. In regards to anything in specific or --
 8 **Q. Well, let's start with helping you**
 9 **implement a standards-based education.**
 10 A. My recollection of this process
 11 was especially in rural areas, regionally people kind
 12 of tried to pull things together to create curriculum
 13 out of the standards, and that's -- I feel it was some
 14 great effort, but a sloppy process, and most rural
 15 schools ended up without a definitive curriculum
 16 document.
 17 **Q. Did you receive any support from CDE to**
 18 **help you develop your curriculum?**
 19 A. No.
 20 **Q. Has -- has CDE assisted you with providing**
 21 **professional development?**
 22 A. In regards to curriculum, or just in
 23 general?
 24 **Q. Let's start with in regards to curriculum**
 25 **and standards.**

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1 A. In regard to curriculum, the most
 2 prevalent help is usually web-based. Go to this
 3 website and look this up and see these examples and
 4 such. And that's pretty extensive, but it's not real
 5 user-friendly. I encourage anyone to actually find
 6 something on the CDE website. It's sort of tough.
 7 **Q. What -- how often have you seen an actual**
 8 **CDE representative in your district in the**
 9 **last -- since you've been a superintendent?**
 10 A. Used to be on a yearly basis. In the last
 11 five or six years, with the elimination of regional
 12 representatives, never, unless it was for a specific
 13 reason like the turnaround grant that we qualified for.
 14 **Q. Until recent --**
 15 A. Once in a while at the regional
 16 superintendents' council meetings. Sorry.
 17 **Q. Until recently was there a position at**
 18 **CDE, to your knowledge, that was targeted for**
 19 **assistance with rural schools and rural school issues?**
 20 A. No. And I've an opinion about that. I
 21 still don't believe there is, because it was --
 22 **Q. Why not?**
 23 A. -- assigned to a person who already has a
 24 full-time job, and I think being a true liaison to
 25 rural schools would be a full-time job in itself

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1 **Q. Mr. Welsh, how much of your day is taken**
 2 **up in just complying with CDE requirements and**
 3 **mandates?**
 4 A. Let me just kind of explain a typical day.
 5 I'm an up at 5:30 or 6:00 in the morning kind of guy,
 6 it's a cup of coffee and it's probably address, you
 7 know, 30 e-mails, probably five or six of them from CDE
 8 asking for information, reminding you about various
 9 things that you have to do as a superintendent.
 10 We deal, of course, with budget reports,
 11 with requests for funds on a monthly basis. We deal
 12 with things like the unified improvement plan,
 13 accreditation reports, accountability reports to the
 14 public. I would estimate on a daily basis, within my
 15 eight-hour workday, that's about two hours a day
 16 addressing things that need to be addressed for CDE.
 17 **Q. Now, Mr. Welsh, do you only work eight**
 18 **hours a day as a superintendent?**
 19 A. No. If you've checked e-mail from me,
 20 you're probably receiving it at 6:00 in the morning or
 21 10:00 at night.
 22 **Q. What else do you do during your day to**
 23 **fulfill your job as a superintendent?**
 24 A. The best use of my time would be working
 25 with my principals to be sure that teachers are

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1 teaching our curriculum, are measuring kids' learning
 2 on a daily basis, that the principals are supporting my
 3 teachers to get better at what they do.
 4 **Q. Do you spend any individual time with**
 5 **students?**
 6 A. I have on occasion. I make it a habit to
 7 try to start my day in a hallway, so I can at least
 8 touch base there. But I also do classroom walk-through
 9 observations myself as well. And my tactic, and I
 10 learned it from the folks at Focal Point, is ask the
 11 kid what they're learning and ask the kid how they're
 12 going to prove it to the teacher that they learned. So
 13 on a weekly basis, at least 20 times I'm questioning
 14 kids with that.
 15 **Q. Do you provide any after-school support**
 16 **yourself to students?**
 17 A. We have a senior mentoring program on an
 18 annual basis through our senior seminar, and staff
 19 members and community members mentor kids typically,
 20 and my wife and I invite -- we'll each take on a kid,
 21 which usually takes on another kid. So we sort of have
 22 weekly tutoring sessions at our house and help kids
 23 apply for college, colleges, scholarships, do their
 24 FAFSA.
 25 **Q. What's a FAESA?**

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1 A. I don't know what FAFSA means, but you
 2 need to fill it out in order to get a college loan or a
 3 college scholarship at a typical college, or even to
 4 get admitted into college.
 5 **Q. Do you have a sense of how many school**
 6 **districts in Colorado would be considered rural, maybe**
 7 **not by number, but whether it's more than urban and**
 8 **suburban?**
 9 A. I seem to have heard the number of 110
 10 kicked around, 110 of the 176 districts that you
 11 could -- you could clearly define as rural.
 12 **Q. Are you familiar with the plaintiffs, the**
 13 **Lobato family in this case?**
 14 A. Yes, I am.
 15 **Q. And can you just describe Taylor -- Taylor**
 16 **as a student when she was at Center?**
 17 A. She's the -- I think the best kid we've
 18 ever produced in Center in the 15, 16 years I've been
 19 there.
 20 **Q. And what about Alexis?**
 21 A. That still --
 22 **Q. Alexa.**
 23 A. -- remains to be seen. And I don't mean
 24 that in a negative way. I mean --
 25 **Q. What year is Alexa?**

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1 A. Alexa's going to be a junior.
 2 **Q. She has big shoes to fill, apparently?**
 3 A. She sure does.
 4 **Q. And the Cendejas family, can you tell us**
 5 **about those children?**
 6 A. Yes. Salma Cendejas is a sixth-grader
 7 going into seventh grade. Very smart and capable kid,
 8 and to a great extent because of wonderful family
 9 involvement. Natalia is a second-grader. She's in my
 10 daughter's grade level and a good friend of my
 11 daughter. Going into third.
 12 **Q. And does Miguel hold any positions in the**
 13 **district?**
 14 A. Miguel is a board of education secretary
 15 for us.
 16 **Q. Mr. Welsh, you've heard the terms kind of**
 17 **talked about today in the courtroom "thorough and**
 18 **uniform." Do you have an understanding, sir, what**
 19 **thorough and uniform means to you?**
 20 MS. MARKEL: Objection, Your Honor. Calls
 21 for a legal conclusion.
 22 MS. GEBHARDT: I'm asking for his
 23 interpretation.
 24 THE COURT: He can give his
 25 interpretation. Overruled.

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1 MS. GEBHARDT: Thank you.
 2 **Q. (BY MS. GEBHARDT) Mr. Welsh, can you tell**
 3 **us what your interpretation is? We're not asking for**
 4 **anything legal, just how you understand it.**
 5 A. Sure. I mean, thorough and uniform,
 6 they've certain meanings themselves, but I think when
 7 you apply it to education, I think the intent is that
 8 you want to graduate kids who can function in our
 9 society, and that includes the citizenship end of
 10 things. You want to graduate kids who can function in
 11 our society economically, meaning that they're able to
 12 be productive members, work -- work a good job,
 13 contribute to our society.
 14 And -- and I think -- and it comes back to
 15 our mission, focused on the future. You've got to
 16 prepare kids to adapt to anything in the future.
 17 Something we always kick around in Center is we're
 18 preparing kids for jobs that don't exist yet. So you
 19 need to be a lifelong learner. You know, I guarantee
 20 you, as superintendent of schools, it was one thing
 21 15 years ago; it's a very different thing now. And
 22 even in the same career, you might need to be a
 23 lifelong learner. Maybe we can all learn to run that
 24 Elmo thing at some point.
 25 **Q. Mr. Welsh, do you have an expert opinion**

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1 as to whether Center, given your definition, is able to
 2 provide a thorough and uniform education to its
 3 students?
 4 A. For some. Not for all.
 5 **Q. And what's the basis for your opinion?**
 6 A. I think our academic achievement results
 7 and our history of what we've produced shows that.
 8 **Q. And do you believe your mission requires**
 9 **that you provide it for all?**
 10 A. That's what it was shooting for.
 11 **Q. And is that the State expectation?**
 12 A. I believe so, based on the accreditation
 13 model.
 14 **Q. And is that your expectation?**
 15 A. Absolutely.
 16 **Q. And, again, do you have an understanding,**
 17 **your own personal understanding, of what it means to**
 18 **have local control of instruction?**
 19 A. That we have options to do things that are
 20 important to us. And I have such a hard time getting
 21 there anymore. I've been involved for 15 years as a
 22 superintendent. There was a time where we had an ag
 23 program because we wanted an ag program, and we could
 24 have chosen not to have it, and now we can't even
 25 choose to have it because we're so busy focusing on

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1 doing the basic things that the legislature's passed on
 2 for us to do.
 3 **Q. Mr. Welsh, do you have an opinion as to**
 4 **whether Center is able to meaningful exercise local**
 5 **control of instruction today?**
 6 A. The answer's no. Everything we do is
 7 geared at meeting the standards that have been set down
 8 to us by the State.
 9 **Q. Now, Mr. Welsh, there are benefits to**
 10 **living in rural Colorado? Are there benefits to living**
 11 **in rural Colorado?**
 12 A. Except for January, February, and, you
 13 know, December, yes, there are.
 14 **Q. And can you explain what some of those**
 15 **benefits are?**
 16 A. Yeah. That everyone knows you when you go
 17 around town. The wide-open spaces are just fabulous.
 18 The family ties that tend to take place in rural
 19 Colorado are just wonderful. I mean, you know,
 20 everyone in some way is related to everyone or knows
 21 someone or knows someone who did, what have you. The
 22 pace is different. Though at the administrative level,
 23 I -- I venture to say it's just as hectic.
 24 You know, it's a -- it's a -- it's a
 25 lifestyle that a lot of people choose to have, a fact

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1 that I think this country was built on.
 2 **Q. Are there trade-offs for living in rural**
 3 **Colorado?**
 4 A. Yeah. I -- you know, I've thought about
 5 that a lot as an administrator that could work in other
 6 places. And Priscilla has some interests --
 7 **Q. Who's Priscilla?**
 8 A. Priscilla is my daughter, 8-year-old
 9 daughter. She has interests that don't fit into what
 10 happens in rural Colorado. We understand we can't have
 11 her be on a swim team or, you know, in a -- have a
 12 school that has an orchestra. Those are things we're
 13 not going to be able to offer her. But there is so
 14 much that we can offer her. I believe we should not be
 15 in a position to not be able to offer her a quality
 16 education.
 17 MS. GEBHARDT: All right. That's all the
 18 questions I have, Your Honor, for my direct. Thank
 19 you, Mr. Welsh.
 20 THE COURT: Thank you. Why don't we go
 21 ahead and take the afternoon break, if that's okay.
 22 'Cause we started about 1:00, and it's 20 to 3:00.
 23 Let's take the break until 3 o'clock. Is that all
 24 right? All right. Thank you.
 25 (Recess taken, 2:37 p.m. to 3:01 p.m.)

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1 THE COURT: We're back on the record in
 2 05CV7494, and I believe the plaintiff-intervenor
 3 counsel wanted to inquire. Thank you.
 4 MR. HINOJOSA: Thank you, Your Honor.
 5 DIRECT EXAMINATION
 6 BY MR. HINOJOSA:
 7 **Q. Good afternoon, Mr. Welsh. Earlier you**
 8 **were talking about the students being held to the same**
 9 **standards all across the state; is that correct?**
 10 A. Yes.
 11 **Q. And so when it comes to measuring**
 12 **performance, the CSAP, for example, proficiency rates**
 13 **that are set by the State, those apply to all**
 14 **students; is that correct?**
 15 A. Yes, I believe so.
 16 **Q. So in comparing the performance of**
 17 **students in your district on the CSAP, would it be fair**
 18 **to compare the performance of your students on the free**
 19 **or reduced price lunch program versus the state's**
 20 **performance of students that are not identified as**
 21 **on -- being on the free or reduced price lunch program?**
 22 A. Last year, 90 percent of my students
 23 qualified for free or reduced lunch, so that's really
 24 all we can compare.
 25 **Q. Okay. So you don't have another**

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1 **comparator? In other words, there aren't sufficient**
 2 **numbers of students that are not identified on the free**
 3 **and reduced price lunch program to report under CSAP?**
 4 A. Correct. That wouldn't be reliable.
 5 **Q. Let me ask you to turn towards the screen**
 6 **here. I'm showing you what's been marked as Plaintiff-**
 7 **Intervenor's Exhibit -- this is Demonstrative Exhibit**
 8 **20134. This is a comparison of the state's non-free**
 9 **and reduced price lunch performance versus Center's**
 10 **free lunch program. And this is for the year 2008.**
 11 **And does this -- do these numbers seem to accurately**
 12 **reflect the performance of Center's students in 2008?**
 13 A. I can't say unequivocally yes, but
 14 it -- they don't look unreasonable.
 15 **Q. Okay. And looking at these gaps, for**
 16 **instance, in the third grade, there were 33 percent of**
 17 **Center's students on the free lunch program who were**
 18 **achieving proficiency versus 84 percent on the state's**
 19 **non-free and reduced price lunch program. It's about a**
 20 **51 percent gap, if my math is correct. Is that -- is**
 21 **that right?**
 22 A. That would be correct.
 23 **Q. And then if you look -- it looks like**
 24 **maybe one of the smallest gaps might be in the tenth**
 25 **grade, where there were 3 percent on the free lunch**

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1 **program in Center scoring proficient and 37 percent**
 2 **statewide for the non-free and reduced price lunch**
 3 **program; is that correct?**
 4 A. Correct.
 5 **Q. And what can you tell me about the -- the**
 6 **significant -- would you describe this as being**
 7 **significant achievement gaps?**
 8 A. The answer's yes. I mean, that -- what
 9 you've got is an illustration of what the achievement
 10 gap is.
 11 **Q. And I want to go now from 2008 to 2009**
 12 **now. And this, once again, is comparing the**
 13 **performance of students in Center on the free lunch**
 14 **program in math for 2009 versus the state's non-free**
 15 **and reduced price lunch program. And looking at the**
 16 **third grade, there looks like there's about a 46**
 17 **percentage point gap between Center and state**
 18 **average; is that correct?**
 19 A. Correct.
 20 **Q. Then looking at tenth grade, it was about**
 21 **zero percent in 2009 in Center that met the proficiency**
 22 **standard; is that correct?**
 23 A. We had a zero percent proficient in math
 24 for all students in ninth grade in 2009, and it should
 25 be pointed out that that's one of the years for which

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1 we also received the Center of Excellence Award,
 2 because even though we had zero percent proficient,
 3 we -- we had great improvement.
 4 **Q. And just for the -- for the record, this**
 5 **is Plaintiff-Intervenor Demonstrative Exhibit 20136.**
 6 **If we go now to 2010, CSAP math**
 7 **performance, free lunch program in Center versus the**
 8 **state non-free and reduced price lunch program. And**
 9 **here it looks like the third-grade gap climbed to about**
 10 **56 percentage points; is that correct?**
 11 A. Correct.
 12 **Q. And in the ninth grade, it looks like you**
 13 **have 5 percent performing proficiency; is that correct?**
 14 A. Correct.
 15 **Q. And then zero percent still in the tenth**
 16 **grade; is that correct?**
 17 A. Correct.
 18 **Q. And so if we look at these three years, it**
 19 **looks like there's not much improvement on the math**
 20 **scores; is that fair to say, on the -- on the**
 21 **proficiency, the meeting the proficiency standards?**
 22 A. Correct.
 23 **Q. But you have had some growth --**
 24 **A. Yes.**
 25 **Q. -- of these students?**

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1 A. During those years you're talking about,
 2 at the high school level, we would have had greater
 3 than 50 percent -- 50th percentile growth performance,
 4 I believe, all through middle school and high school
 5 and still got that result.
 6 **Q. And is it your testimony that these**
 7 **students on the free lunch program in Center just can't**
 8 **perform?**
 9 A. No.
 10 **Q. You believe that if these students were**
 11 **provided effective educational programs, that they**
 12 **could meet the proficiency standards set by the State?**
 13 A. I believe so.
 14 **Q. So why aren't you able to provide those**
 15 **types of programs for these kids?**
 16 A. And let's just talk math, for example.
 17 It's hard, in rural Colorado, to secure a strong math
 18 teacher. In fact, in the 15 years I've been in Center,
 19 I'll bet -- and we typically have one main, especially
 20 the upper level, math teacher, I've got to believe
 21 we've probably had six or seven different math
 22 instructors.
 23 Someone with a math degree can get a
 24 pretty good job, and -- and not necessarily teaching
 25 math to a very difficult, challenging group of students

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1 in rural Colorado. And so one issue we've had is
 2 attracting good, quality teachers. We -- you know,
 3 still, if you're right out of college, a hot-shot math
 4 teacher, we're going to pay you \$30,000. That's part
 5 of it. The other part of it is we have -- we -- we
 6 have been very confused in what the State was asking
 7 for curriculum-wise and instruction-wise for
 8 math, especially at the higher levels for middle school
 9 to high school.

10 Once again, having many of our math
 11 teachers growing up in a world where, you know, you
 12 taught algebra, you taught geometry and such, it was a
 13 big move for them to go to you're teaching these
 14 standards and there's a mix of these things. So
 15 between the understanding of what they should be
 16 teaching and the -- even the access to resources to do
 17 that, those are some difficult things.

18 But you can imagine a person with a
 19 language issue in a math class and no support in that
 20 math class would probably find it difficult to
 21 keep -- keep along with you to follow out how to, you
 22 know, solve a -- an equation.

23 **Q. Are your English language learners**
 24 **performing similarly on these CSAP tests as your**
 25 **students on the free lunch program?**

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1 A. Yes. In fact, very likely 50 percent or
 2 so of those students are English language learners, on
 3 the charts you put up.

4 **Q. Let me show you just one more. I won't**
 5 **belabor the point. This is the Center achievement gaps**
 6 **in CSAP science on the free lunch program in Center**
 7 **versus the non-free and reduced price lunch for the**
 8 **state in 2010. Once again, we have here where Center's**
 9 **at 18 percent scoring proficiency; is that correct?**

10 A. Correct.

11 **Q. And these are rounded numbers, just for**
 12 **the record. And this is Demonstrative Exhibit 20130.**
 13 **And the state is at 62 percent, correct?**

14 A. Correct.

15 **Q. So that's a 46 percentage point -- or**
 16 **sorry, 44 percentage point gap, correct?**

17 A. Correct.

18 **Q. So my path was a little off there. I'm**
 19 **actually okay in math for a lawyer. So -- but please**
 20 **feel free to correct me. And in the eighth grade,**
 21 **it's -- the Center students on the free lunch program**
 22 **were scoring at 18 percent versus the statewide**
 23 **61 percent, correct?**

24 A. Correct.

25 **Q. And then by the time we reach the tenth**

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1 **grade -- and these are the only three grades that are**
 2 **tested on the CSAP for science; is that correct?**

3 A. That's correct.

4 **Q. And are you aware of whether or not**
 5 **the -- your district can opt out of taking the CSAP or**
 6 **have your students opt out of taking the CSAP?**

7 A. I don't believe we can. It's part of our
 8 accreditation process.

9 **Q. And so in the tenth grade, you have**
 10 **13 percent of the students in the free lunch program**
 11 **scoring proficient versus the state 57 percent on the**
 12 **non-free and reduced price lunch, correct?**

13 A. Correct.

14 **Q. And so do you have similar concerns about**
 15 **these gaps on the science test as you do on the math**
 16 **test that we just went over?**

17 A. Absolutely.

18 MR. HINOJOSA: No further questions, Your
 19 Honor.

20 THE COURT: Thank you.

21 MR. HINOJOSA: Thank you.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MS. MARKEL:
 25 **Q. Good afternoon, Mr. Welsh. My name is**

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1 **Carey Markel, and I'm here on behalf of the State of**
 2 **Colorado. I just have a few questions for you. You've**
 3 **been on the stand all afternoon, so I'll try to keep it**
 4 **brief.**

5 **When you were talking with Ms. Gebhardt**
 6 **earlier, you mentioned that the median salary at Center**
 7 **is around \$20,000. Did I hear you correctly on that?**

8 A. The per capita income is high \$19,000
 9 range. I believe based on 2010 census data.

10 **Q. And you also testified, I believe, that**
 11 **the starting salary in Center is around 30,000; is that**
 12 **correct?**

13 A. For a teacher, yes.

14 **Q. What's the average salary in Center?**

15 A. I wouldn't know right off the top of my
 16 head, but at the secondary level, we have a pretty
 17 experienced staff. So I wouldn't be surprised if it
 18 was up in the \$40,000 range.

19 **Q. And when you were mentioning the recent**
 20 **social studies teacher that you hired recently, do you**
 21 **recall in your deposition when you talked about having**
 22 **hired one of the best high school science teachers in**
 23 **the San Luis Valley?**

24 A. Yes.

25 **Q. Is that person -- is that teacher still**

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1 **employed with the San Luis Valley?**
 2 A. He is, yes.
 3 **Q. And as you testified, I believe, in your**
 4 **deposition in this case, it's your personal opinion**
 5 **that what you called a fantastic high school science**
 6 **teacher is -- in a sense should be compensated more**
 7 **than a fantastic kindergarten teacher. Do you remember**
 8 **that testimony?**
 9 MS. GEBHARDT: Your Honor, this is an
 10 improper use of depositions. There's nothing
 11 inconsistent that she's using the depositions for. So
 12 I think it's an improper use of the deposition
 13 testimony.
 14 THE COURT: All right. Sustained. You
 15 want to just ask the question. 'Cause he hasn't said
 16 anything to contradict the deposition.
 17 MS. MARKEL: Thank you, Your Honor.
 18 **Q. (BY MS. MARKEL) I'll just ask the**
 19 **question. As I understand it, it's your personal**
 20 **opinion that a fantastic -- I'm using your words -- a**
 21 **fantastic high school science teacher should be**
 22 **compensated at a higher level than a fantastic**
 23 **kindergarten teacher, but culturally in Center, that's**
 24 **not a practice that you're able to follow; is that**
 25 **correct?**

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1 A. I think -- I think what I tried to say is
 2 that a person with a very strong science background,
 3 and I would even agree perhaps a very strong math
 4 background, who's capable of teaching at the upper
 5 levels, that we might do a better job of attracting
 6 better ones if we did pay a higher salary. So I guess
 7 in essence, yes.
 8 **Q. When you were talking earlier about highly**
 9 **qualified teacher requirement, is it your understanding**
 10 **that that's a federal requirement under the No Child**
 11 **Left Behind Act?**
 12 A. Correct.
 13 **Q. How many children are enrolled in Center**
 14 **Schools?**
 15 A. We hover right around 550.
 16 **Q. And when we were looking at Exhibit 10376**
 17 **earlier with Ms. Gebhardt, that was the Center budget.**
 18 **Do you remember that exhibit?**
 19 A. Yes. Yes.
 20 **Q. And if we could just put 10376 up. Do you**
 21 **still have that document in front of you,**
 22 **Superintendent Welsh?**
 23 UNIDENTIFIED WOMAN SPEAKER: I got it.
 24 THE WITNESS: Thank you.
 25 **Q. (BY MS. MARKEL) There was a lot of**

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1 **discussion around the different funding streams that**
 2 **you -- that the district receives. What's the total**
 3 **amount of funding that Center receives from the State,**
 4 **or received from the State this last school year?**
 5 A. On this summary budget, 2010-'11,
 6 \$3.8 million.
 7 **Q. You've been serving the Center School**
 8 **District since 1996, first as the -- I believe a middle**
 9 **school principal; is that correct?**
 10 A. Middle school and high school principal.
 11 **Q. And then since 1977, you've been -- 1997,**
 12 **you've been serving the district as the superintendent,**
 13 **correct?**
 14 A. Correct.
 15 **Q. If we could, I'd like to take a look at a**
 16 **letter, a superintendent's letter from 2007. It's**
 17 **Exhibit 1904. Do you recall writing this letter,**
 18 **Superintendent Welsh, the letter from 2007,**
 19 **superintendent's letter?**
 20 A. Yes, I do.
 21 **Q. In this letter, you recount the history at**
 22 **that time of your tenure in 1996, when you arrived in**
 23 **Center. As you state in this letter, the school**
 24 **district had a graduation rate of 33 percent; is that**
 25 **correct?**

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1 A. Correct.
 2 **Q. And it also had a 12 percent dropout rate,**
 3 **correct?**
 4 A. Correct.
 5 **Q. And then in 2007, what you were relaying**
 6 **to your community in Center was that the overall**
 7 **graduation rate at that time was approximately 97 --**
 8 **90 percent; is that correct?**
 9 A. What I believe I was referring to was the
 10 Center High School graduation rate.
 11 **Q. And the alternative high school has a much**
 12 **lower graduation rate?**
 13 A. Correct.
 14 **Q. And there was also some improvement in the**
 15 **dropout rate. It had -- the dropout rate was around**
 16 **3 percent, correct?**
 17 A. Correct.
 18 **Q. And as I understand it, and I just want to**
 19 **clarify, the testimony that you gave earlier when we**
 20 **were -- when you were talking with Ms. Gebhardt about**
 21 **graduation rates, and you mentioned that the graduation**
 22 **rate currently is around 65 percent?**
 23 A. For the district.
 24 **Q. For the district. But Center High School**
 25 **continues to have approximately a 90 percent graduation**

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1 **rate?**

2 A. No. I think it was the in 70-some-odd

3 percent range this past year.

4 **Q. If we'd look further, at the bottom of**

5 **this letter that you wrote to the community in Center,**

6 **the paragraph that begins, "Still my personal**

7 **opinion" -- "my personal measure of the success of**

8 **Center Consolidated School District." Do you see that**

9 **last paragraph?**

10 A. Yes. Yes.

11 **Q. And it concludes with Center provided your**

12 **children, in your opinion, with outstanding educational**

13 **experiences and excellent academic skills that allow**

14 **them to compete with the level of anyone they may**

15 **encounter. Is that a statement that you stand by**

16 **today?**

17 A. We compete with other districts for

18 students because of open enrollment. And, I mean, I

19 feel my kids got a pretty good deal. But they also had

20 parents who were very capable of supporting them in

21 many ways. But also, ask any superintendent in the

22 state of Colorado, is you got to put the positive spin

23 on things to make your community feel comfortable that

24 I can get my kid a good education here. If I really

25 want financial problems, I tell the truth, and I might

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1 struggle keeping some of the kids that -- that we

2 attract.

3 And you know who the first kids are to

4 leave Center? The high-performing ones. Because they

5 see -- those parents see they don't want their kids in

6 an environment where there are so many challenges that

7 take away from educating their kids. That was -- that

8 was my role in writing that letter, and I'd do it again

9 today if I had to.

10 **Q. So help me understand that, Superintendent**

11 **Welsh. In your letter to the community in Center,**

12 **you're stating there that you believe that your kids**

13 **received a high level of academic achievement and**

14 **received a good education that would allow them to**

15 **compete on any level. And my question is simply do you**

16 **stand by that statement today?**

17 A. Do they receive the best education we

18 could have possibly offered them? No. Did they

19 receive a pretty darn good education? Yes.

20 **Q. Did they receive an outstanding**

21 **educational experience?**

22 A. I -- not based on what I know now, having

23 traveled further around the state since 2007 to see

24 what else is going on.

25 **Q. And did they acquire excellent academic**

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1 **skills? I'm quoting from your letter, Dr. --**

2 **Superintendent Welsh.**

3 A. Define excellent academic skills.

4 **Q. That was your language, sir.**

5 A. Yes.

6 **Q. I'm simply asking you --**

7 A. What I was doing was telling the community

8 that for all the options you have, this is a good place

9 to send your kids. And I need to do that as the chief

10 executive officer of the district.

11 **Q. And do you stand by those words today?**

12 A. So you're asking me did my kids get an

13 excellent education at Center Schools?

14 **Q. Yes, sir.**

15 A. No.

16 **Q. And when did you come to the conclusion**

17 **that the statements made in that letter to the**

18 **community were not accurate?**

19 A. When my kids went to college.

20 **Q. So at the time you made the statement in**

21 **2007, you believed that what you were saying was true?**

22 A. Yeah. I had a daughter who just entered

23 college, a son who was going to be graduating from high

24 school, and a son that was a -- probably a junior.

25 **Q. Earlier, in questioning with Ms. Gebhardt,**

228

1 **you mentioned that Center had won the Center of**

2 **Excellence in Education Award in 2009 and then again in**

3 **2010 at Center High School?**

4 A. Correct.

5 **Q. You also indicated that it had been**

6 **difficult to get, I believe, anyone from CDE to come to**

7 **the district; is that a fair characterization of your**

8 **testimony?**

9 A. For supporting our progress, yes.

10 **Q. Do you recall the former commissioner**

11 **Dwight Jones coming to the district when Center first**

12 **won the Center for Excellence Award in 2009?**

13 A. I begged him to.

14 **Q. And he came?**

15 A. Yes.

16 **Q. He also helped with the bond campaign for**

17 **the BEST program, correct?**

18 A. Well, we viewed it as a wonderful

19 opportunity to have him present us with the award then,

20 in mid-October, before November election. And I

21 thought it was a good strategy.

22 **Q. Let's talk about class size,**

23 **Superintendent Welsh. What is the class size in**

24 **kindergarten through third grade in Center School**

25 **District?**

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1 A. We shoot for keeping it 15 or below.
 2 **Q. And how are you doing for shooting for 15**
 3 **and below?**
 4 A. We have done well.
 5 **Q. Except for --**
 6 A. We generally don't have to go above 15. I
 7 mean, 16, maybe 17.
 8 **Q. And if I'm not mistaken, for fourth and**
 9 **fifth grade, the class sizes are 25 or below; is that**
 10 **correct?**
 11 A. We try to keep them below 25.
 12 **Q. And at the middle school level, other than**
 13 **science and math, it's my understanding that the**
 14 **classes are generally between 15 and 20 students; is**
 15 **that correct?**
 16 A. If you understand rural schools, that can
 17 just depend year to year. If you got a bubble of
 18 students or not -- I mean, you can range from 15 to 30.
 19 **Q. What are you ranging -- what was the range**
 20 **this year?**
 21 A. In some grade levels we had from 25 to 30,
 22 in some we had down around 15.
 23 **Q. And the same would hold true for the high**
 24 **school level, class sizes differ based on --**
 25 A. Correct. I can give you an example. If I

230

1 have 60 freshmen, I'm going to probably try to cover
 2 freshman English in two sections, so I'd have 30 kids
 3 per class. If I have 50 freshman, I can perhaps pull
 4 off 25 per class. You know, it just all -- I can't
 5 like offer half a class. They're one section or two.
 6 **Q. And in some instances, for example, for**
 7 **calculus, you've had -- you would offer calculus, I**
 8 **believe, for a class as small as three or ten**
 9 **students; is that correct?**
 10 A. I offered once calculus for one.
 11 **Q. What's the average class size for English**
 12 **language learner students in your district, sir?**
 13 A. Well, for an English -- and define that.
 14 An English language learner pull-out class or when
 15 they're in the regular class sections?
 16 **Q. The pull-out class.**
 17 A. At the elementary, we try to do pull-out
 18 in the form where you have no more than eight kids at
 19 once in a group. In the middle-high, I've seen classes
 20 as high as 15.
 21 **Q. In the 15 years that you've been with**
 22 **Center Consolidated District, have you ever asked the**
 23 **voters in the district to seek -- to have a mill levy**
 24 **override election?**
 25 A. We've never gone to the voters for a mill

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1 levy override.
 2 **Q. So that would -- that would mean that with**
 3 **regard to a transportation mill levy override, that**
 4 **request has never been made to the voters?**
 5 A. No.
 6 **Q. Nor a technology request for a mill levy**
 7 **override?**
 8 A. No.
 9 **Q. Or a full-day kindergarten request for a**
 10 **mill levy override?**
 11 A. No.
 12 **Q. When you were talking about the BEST grant**
 13 **that you received, it's my understanding the annual**
 14 **taxes for the -- what the homeowners experienced was**
 15 **\$12 per \$10,000 of home value; is that correct?**
 16 A. That's -- i'm pretty sure that's correct.
 17 **Q. So for a hundred thousand dollar home, it**
 18 **was a \$120 increase on an annual basis in taxes?**
 19 A. Correct.
 20 **Q. You were talking about the BEST program.**
 21 **And if we could, I'd like to look at Exhibit 1903.**
 22 **Actually, it's the -- I apologize, Superintendent**
 23 **Welsh, I don't have the numbers memorized. There's so**
 24 **many exhibits in this case. Exhibit 30021, what does**
 25 **that depict?**

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1 A. Those are elevation drawings. I'm not
 2 sure if there's a date on them. 5/4. So pretty close
 3 to the final outside design of the -- our new PK-12
 4 facility.
 5 **Q. And it's my understanding that once that**
 6 **facility is opened in the fall of next year, that the**
 7 **facility needs, the current facility needs for Center**
 8 **will be assessed; is that correct?**
 9 A. Yeah, I believe so.
 10 MS. MARKEL: Your honor, we've stipulated
 11 to the admission of exhibits in this case. At this
 12 time, I'd like to have the 2007 letter of the
 13 superintendent admitted, unless there's an objection
 14 from counsel.
 15 MS. GEBHARDT: There's no objection.
 16 THE COURT: And what was the number on
 17 that one?
 18 MS. MARKEL: It was 1904.
 19 THE COURT: 1904.
 20 MS. MARKEL: I would also like to move for
 21 the admission of 30021.
 22 MS. GEBHARDT: Again, no objection, Your
 23 Honor.
 24 THE COURT: 30021 will be admitted.
 25 MS. MARKEL: I have no further questions

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1 for Superintendent Welsh.
 2 THE COURT: Redirect.
 3 REDIRECT EXAMINATION
 4 BY MS. GEBHARDT:
 5 **Q. Mr. Welsh, you testified about how your**
 6 **own children going to school made you realize some of**
 7 **the deficiencies in the education program. Could you**
 8 **explain that a little bit further, please.**
 9 A. My daughter, Annie, graduated spring of
 10 2005 from Center High School, went to college at the
 11 University of Arizona and struggled. And she's at the
 12 point where she's only completed her sophomore year and
 13 has floundered a bit since then. My son Stefan,
 14 he -- he recently graduated from Hastings College. But
 15 I have a third son, Adam, who graduated spring of 2008
 16 and really wasn't ready for college. And -- and when I
 17 say -- when I -- what I mean when I say not ready for
 18 college, I think the writing rigor, the math rigor, the
 19 just general expectation of a college student wasn't
 20 quite there.
 21 **Q. And all three of your children graduated**
 22 **from Center High, is where they were, correct?**
 23 A. Correct. Annie started in the fourth
 24 grade, Stefan started in the second, and Adam started
 25 in first.

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1 **Q. As concerns highly qualified, even if**
 2 **there wasn't a requirement under No Child Left Behind,**
 3 **you would still want to hire for your students teachers**
 4 **that are certified in their content area?**
 5 A. Yeah. We've -- we've had to hire people
 6 in the alternative licensure process on occasion to
 7 teach outside of their skill base. And if there's
 8 anything we've learned in the last several years, it
 9 doesn't matter what your teaching pedagogy is, if you
 10 don't know your subject, you're not going to be much
 11 help to the kids.
 12 **Q. So even without the highly qualified**
 13 **mandate from No Child Left Behind, do you have an**
 14 **opinion as to whether it's in the student's best**
 15 **interest to try to hire teachers who are knowledgeable**
 16 **in their content area?**
 17 A. Absolutely.
 18 **Q. And for special education students, even**
 19 **in the absence of IDEA, what do you believe the best**
 20 **practices would be for meeting the needs of special**
 21 **education students?**
 22 A. Just as I described before.
 23 **Q. What role did the fact that the State was**
 24 **contributing the majority of the money towards building**
 25 **the new school have in your community's willingness to**

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1 **pass the bond?**
 2 A. It made all the difference. The -- the
 3 community was willing to go -- I believe the community
 4 was willing to go to the limit of what it could provide
 5 because there was such a return in support.
 6 **Q. And if you were to go for your total mill**
 7 **levy that you'd be allowed to pass, how much of a**
 8 **difference would that make in your budget?**
 9 A. If we were to do that this fall, the
 10 maximum we can bring in would be \$300,000, and we -- we
 11 cut that out of this year's budget. But in addition,
 12 it would turn a 41 or 42 mill levy into a almost 60.
 13 **Q. And while \$12 a month may not sound like a**
 14 **lot to a middle-level income earner in the Front Range,**
 15 **what does that look like to a family who's trying to**
 16 **support their children earning \$20,000?**
 17 A. You know, if you're living in a \$40,000
 18 house, that makes -- that makes a difference to you.
 19 You already qualify for free or reduced lunch.
 20 MS. GEBHARDT: I don't have any further
 21 questions. Thank you, Mr. Welsh.
 22 THE COURT: Thank you. Anything
 23 additional, Counsel?
 24 MR. HINOJOSA: No, Your Honor.
 25 THE COURT: Cross-examination?

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1 MS. MARKEL: No, Your Honor.
 2 THE COURT: Thank you, sir. You may step
 3 down. Thank you. Next witness for the plaintiff.
 4 MR. HALPERN: Your Honor, the plaintiffs
 5 call Dr. John Hefty.
 6 THE COURT: Thank you. Raise your right
 7 hand, please.
 8 JOHN CHARLES HEFTY,
 9 having been first duly sworn to state the whole truth,
 10 testified as follows:
 11 THE COURT: Thank you. Please be seated,
 12 sir. And if you could state your full name for the
 13 record, spell your last name.
 14 THE WITNESS: John Charles Hefty,
 15 H-e-f-t-y.
 16 THE COURT: Thank you.
 17 MR. HALPERN: That was eminently clear,
 18 Dr. Hefty. If I may, we have four exhibits that have
 19 been stipulated to we talked about. One of them is
 20 Exhibit 8900, Dr. Hefty's resume. One of them is
 21 Exhibit 7000, which I think is also Exhibit 4800, which
 22 is that -- includes Dr. Hefty's expert statement. The
 23 other is Exhibit 10050, which is CDE's 2010 district
 24 rankings by pupil membership, and the final one is
 25 Exhibit 10174, which is CDE's 2011-'12 -- 2011

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1 brochure, Understanding School Finance and
 2 Categoricals. And I wonder if rather than interrupting
 3 the testimony we could just --
 4 MR. FERRO: No objection, Your Honor. The
 5 defendants have stipulated to the admissibility of
 6 those documents.
 7 THE COURT: Thank you. Those exhibits
 8 will be admitted then.
 9 DIRECT EXAMINATION
 10 BY MR. HALPERN:
 11 Q. Dr. Hefty, would you please describe your
 12 postsecondary education background.
 13 A. I graduated from the University of
 14 Wisconsin-Platteville in 1964 with a bachelor's degree
 15 in science with an emphasis in chemistry. I completed
 16 a master in science education, master's degree in
 17 science education from the University of
 18 Wisconsin-Platteville in 1967. I completed a Ph.D. in
 19 educational administration at the University of
 20 Wisconsin-Madison in 1971.
 21 Q. Thank you. And could you please give us a
 22 description of your education-related employment.
 23 A. I started teaching in Platteville,
 24 Wisconsin, in 1964. Taught two years of junior high
 25 school science followed by two years of chemistry, then

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1 assistant principal for two years, on a sabbatical from
 2 Platteville. Back to Platteville as high school
 3 principal for three years. Left Platteville and
 4 Wisconsin in 1974, went to the St. Vrain Valley School
 5 District in Longmont.
 6 Q. That's in Colorado?
 7 A. Yeah, in Longmont, Colorado. As Longmont
 8 High School principal. Served in that role for
 9 two-and-a-half years, followed by two-and-a-half years
 10 as assistant superintendent for instruction in St.
 11 Vrain Valley.
 12 Q. While you were the assistant
 13 superintendent for instruction, what sort of duties did
 14 you have?
 15 A. I supervised building principals. There
 16 were 30-some in Longmont at that time. Supervised the
 17 instructional program, including the curriculum
 18 department, professional development and the like.
 19 Q. And after that employment?
 20 A. I then was at the University of Denver as
 21 an associate professor of school administration for
 22 three years, '79 to '82.
 23 Q. And in summary form, what did you teach as
 24 an associate professor?
 25 A. Taught many classes. Introduction to

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1 school administration, seminar on the superintendency,
 2 seminar on principalship, an administrative problem
 3 seminar, school finance. Someplace in there school
 4 public relations. That's probably it, as I recall,
 5 while at the University of Denver.
 6 Q. Who were you teaching?
 7 A. Teaching students, school administration
 8 students, students in a principal licensure program,
 9 students in a superintendent licensure program,
 10 students in master's degree programs, and students in
 11 the school administration Ph.D. program.
 12 Q. And then I believe that you worked in the
 13 central administration in the Jefferson County Schools
 14 from 1982 to '94?
 15 A. That is correct. I went to Jefferson
 16 County as assistant superintendent for planning. Did
 17 that for about four years. Was north area
 18 superintendent for two years and was deputy
 19 superintendent for four years. Might have been six
 20 years. 12 years all together.
 21 Q. As north area superintendent at Jefferson
 22 County Schools, what did you -- what were you
 23 responsible for?
 24 A. I was supervising 30 -- probably 33
 25 schools in the north area of Jefferson County.

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1 Principals reporting to me at that time.
 2 Q. At that time how big was Jeffco?
 3 A. Between 75 and 80,000 students, as I
 4 recall.
 5 Q. And in your years as deputy
 6 superintendent, what were your responsibilities?
 7 A. I had --
 8 Q. Is that the No. 2 position in the
 9 district?
 10 A. Yes. I had the instruction department
 11 reported through me. There was an assistant
 12 superintendent for instruction. Personnel reported
 13 through me. Special ed reported through the deputy
 14 position, as well as risk management and safety, as
 15 well as employee assistance.
 16 Q. Following your years at Jefferson County
 17 Schools, what was your educational employment?
 18 A. I -- I went from Jefferson County to
 19 superintendent in Eagle County. I was there for four
 20 years.
 21 Q. And what kind of a school district was
 22 Eagle County at that time?
 23 A. Well, Eagle County, it's a resort
 24 district. It encompasses the towns of Vail, Minturn,
 25 Edwards, Avon, Gypsum, Eagle, and then some other tiny

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1 places up the Colorado River.
 2 It was actually a very diverse district,
 3 with very many high wealth people, but also many
 4 English language learners. The diversity -- the great
 5 diversity is actually typified by a single day I had as
 6 Eagle County superintendent that started with a meeting
 7 of leaders of Vail Associates and other entities
 8 related to the operation of the Vail Valley and ended
 9 with a meeting at an old school no longer used by the
 10 district up the Colorado River Road, and they called me
 11 and they said you may want to go to the bathroom before
 12 you come to that meeting; we don't have any plumbing.
 13 And -- and that kind of typifies the
 14 diversity in lifestyle, the diversity in where and how
 15 people lived in the district.
 16 **Q. How many students in that school district?**
 17 A. At that time there were between 4,000 and
 18 5,000.
 19 **Q. How long were you at the Eagle County**
 20 **Schools?**
 21 A. Four years.
 22 **Q. And what was your employment after that?**
 23 A. I went to Brighton as superintendent of
 24 the Brighton School District.
 25 **Q. And can you give us a little description**

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1 **of the qualities of the Brighton School District?**
 2 A. Brighton was a very rapidly growing school
 3 district. It was about 5,000 students when I went to
 4 Brighton. It was 8,000 or more by the time I left,
 5 after six -- I was there for six years. Much diversity
 6 in terms of income, much diversity, much ethnic
 7 diversity. Significant free and reduced lunch
 8 population. High mobility, in that many people were
 9 moving in, some moving out. But overall a growth
 10 district.
 11 **Q. In general, what -- what is the**
 12 **superintendent's job in these districts?**
 13 A. The superintendent oversees all aspects of
 14 the operation of the district. That includes the
 15 education program, that's the development of
 16 curriculum, the instruction that occurs in schools,
 17 supervises principals. Superintendent also oversees
 18 other support services, both student support services
 19 and support services such as operations and
 20 maintenance, transportation, and the like.
 21 In other words, ultimately all functions
 22 in the district report through the superintendent
 23 position.
 24 **Q. Following your years at the Brighton**
 25 **Public Schools, what was your employment?**

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1 A. I was the executive director of the
 2 Colorado Association of School Executives.
 3 **Q. And executive director, is that the**
 4 **primary administrative position?**
 5 A. Yes. The CEO.
 6 **Q. What is the Colorado Association of School**
 7 **Executives?**
 8 A. It is a membership organization for school
 9 administrators in Colorado. Has seven departments, one
 10 for superintendents and senior school administrators,
 11 one for secondary principals, another for elementary
 12 principals, another for business officials, another for
 13 human resource leaders, one for technology leaders, and
 14 one for education specialists that would include
 15 leaders such as special ed directors and curriculum
 16 specialists.
 17 **Q. And maybe you said this. But it's a**
 18 **statewide organization?**
 19 A. It is a statewide organization with now a
 20 little less than 2,000 members statewide.
 21 **Q. And as the executive director, what were**
 22 **your principal responsibilities?**
 23 A. Overseeing the operation of the entire
 24 organization that usually included three professional
 25 staff and six or eight -- six or seven support staff,

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1 and three primary functions of the association include
 2 advocacy work, professional development work for
 3 members, and networking or connecting members with one
 4 another, connecting expertise with members throughout
 5 the state.
 6 **Q. When you say advocacy, in what context**
 7 **would you advocate?**
 8 A. Well, multiple contexts. Part of that is
 9 advocating for the entire P-12 educational enterprise,
 10 advocating for educational leadership, certainly
 11 advocating for students in the state of Colorado. It
 12 also includes lobbying efforts and advocacy work in the
 13 state-level policy-making activities.
 14 **Q. As the executive director, was part of**
 15 **your role to come to understand the issues that affect**
 16 **districts throughout the state?**
 17 A. Yes.
 18 **Q. And how did you go about doing that?**
 19 A. Well, in multiple ways. But -- but all of
 20 the departments that I previously mentioned hold
 21 regular meetings, and that is a place where we learn
 22 about the interests and the needs of the various
 23 departments.
 24 In addition, regular superintendent
 25 meetings occur around the state in superintendent

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1 groups. And just to give a sense of those meetings,
 2 there's a group called the Northern Superintendents,
 3 it's kind of like drawing a line from Denver up I-25,
 4 out I-70. And it doesn't quite include all of that,
 5 because the Denver area you take out of that, and,
 6 actually, those right on I-70 you'd take out.
 7 Another group called East Central
 8 Superintendents Group goes out I-70 and is centered in
 9 Limon. The third group is called the Denver Area
 10 School Superintendents Council, that's 16, 17, 18
 11 districts in the Denver area.
 12 Another group is called the Southern Supes
 13 Association. That would be somewhat centered in Pueblo
 14 and would go east to Kansas, south to New Mexico.
 15 Another group is the San Luis Valley that Mr. Welsh had
 16 mentioned. There is a west slope group that is
 17 generally west of the Continental Divide. Inside the
 18 West slope group is a group called the Southwest
 19 Superintendents. And then I think I mentioned, but the
 20 Denver area school superintendents would be in there.
 21 **Q. And you're part --**
 22 A. And some of those groups meet on a
 23 monthly, close to monthly basis, and I attended most of
 24 those meetings. Some meet on a less frequent basis,
 25 but I attended most of those meetings. That was a way

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1 of staying in touch with superintendents and with
 2 activities occurring throughout the district.
 3 In addition, CASE has a legislative
 4 committee that has representatives from each of the
 5 departments that meet on a regular basis and help
 6 design the legislative agenda for the organization.
 7 Further, there are at least two major conferences each
 8 year, one called the CASE Conference is held in the
 9 last week of July, just occurred last week, and
 10 feedback is obtained there. A second is called the
 11 Winter Leadership Conference in the end of January,
 12 beginning of February. And again, an opportunity to
 13 interact with the school administrators from across the
 14 state.
 15 **Q. And how long did you serve as executive**
 16 **director at CASE?**
 17 A. I started in June of 2004, and I retired
 18 January 1, 2011.
 19 **Q. What has been your employment since**
 20 **January of 2011?**
 21 A. Well, I'm retired.
 22 **Q. I know.**
 23 A. So . . . So I'm -- I'm doing various work
 24 for -- some for school districts on a contract basis.
 25 I'm doing leadership coaching with principals and

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1 superintendents. I'm doing some teaching in the
 2 administrator preparation program at the University of
 3 Northern Colorado. And that's about it.
 4 **Q. During this period of time, did you also**
 5 **continue teaching at the university level? Over the**
 6 **years.**
 7 A. During the -- if we go back to the last
 8 time we talked about the university level was in 1982,
 9 when I left the University of Denver. I actually
 10 continued to teach at least one class a quarter at the
 11 University of Denver until 2004, when I went to CASE.
 12 I did not teach at the university level during the time
 13 that I was at CASE, and now I've started to do it
 14 again.
 15 **Q. So between '82 and 2004, what did you**
 16 **teach at the University of Denver?**
 17 A. Very many courses. And I taught the
 18 principalship, I taught personnel, I taught school
 19 improvement, I taught intro to school administration, I
 20 taught school finance, I taught the seminar on
 21 administrative problem solving. And I'm sure I'm
 22 forgetting some.
 23 **Q. In general terms, can you typify the**
 24 **knowledge base you have of the development and**
 25 **implementation of the Colorado public school finance**

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1 **system over the years that you have been a professional**
 2 **educator?**
 3 A. Well, my knowledge would come along two
 4 paths, I would say. One, I was serving as a school
 5 administrator. And if I go back to the beginning in
 6 Jefferson County, we didn't talk about it, but when I
 7 was assistant superintendent for planning, I also had
 8 responsibility for budget development. The budget
 9 office reported through me. And it was necessary to
 10 have an understanding of the finance act during that
 11 period of time. So I had the understanding as a school
 12 administrator. And then going to Eagle County,
 13 followed by Brighton, again, as a superintendent, was
 14 experiencing the -- particularly the Public School
 15 Finance Act of '94.
 16 During the time I was teaching, I was also
 17 paying attention to it and watching it and actually
 18 teaching it when teaching school finance. And while at
 19 CASE, paying attention to all state-level policy,
 20 included being -- being knowledgeable of the Public
 21 School Finance Act, just as I had as a superintendent.
 22 **Q. And can you generalize your knowledge**
 23 **about the methods and development and implementation of**
 24 **standards-based education in Colorado?**
 25 A. I -- I followed somewhat the same path as

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1 with the finance. In other words, as a school
 2 administrator, I was paying attention, learning about
 3 being knowledgeable about standards-based education and
 4 the accountability process, starting particularly in
 5 Jefferson County. Maybe I'd have to even go back to
 6 the St. Vrain. I think I remember that I was the
 7 administrative liaison to the district accountability
 8 committee. I know that I was for part of the time I
 9 was in Jefferson County. And obviously I was paying
 10 attention to the development of standards-based
 11 education and the development of accountability process
 12 as super -- as -- well, as deputy superintendent in
 13 Jefferson County, then as superintendent in Eagle
 14 County, and then as superintendent in Brighton.
 15 And while at CASE, the same thing;
 16 continuing to pay attention to and learn about and
 17 actually weigh in on the development of standards-based
 18 education and the accountability process.
 19 **Q. Final question in that little group is if**
 20 **you have developed knowledge or how have you developed**
 21 **knowledge about the impact on Colorado school districts**
 22 **of the implementation of standards-based education over**
 23 **the years?**
 24 A. Firsthand impact, as a superintendent, I
 25 think all superintendents have been. are impacted by

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1 the implementation of standards-based education and the
 2 accountability process.
 3 MR. HALPERN: Your Honor, at this time we
 4 would offer Dr. Hefty as an expert in the methods,
 5 development, and implementation of the Colorado school
 6 finance system, of standards-based education in
 7 Colorado, and of the effects of both on school district
 8 operations and resources.
 9 MR. FERRO: May I voir dire, Your Honor?
 10 THE COURT: Yes.
 11 VOIR DIRE EXAMINATION
 12 BY MR. FERRO:
 13 **Q. Dr. Hefty, you are not a lawyer; is that**
 14 **right?**
 15 A. That is correct.
 16 **Q. You do not hold a juris doctorate degree,**
 17 **correct?**
 18 A. That is correct.
 19 **Q. You've never practiced law?**
 20 A. That is correct.
 21 **Q. You're not an expert in legal analysis?**
 22 A. That is correct.
 23 **Q. You wrote a summary of testimony in this**
 24 **case, did you not?**
 25 A. Yes.

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1 **Q. You wrote it with Mr. Halpern's help?**
 2 A. Yes.
 3 **Q. In that summary you used the word**
 4 **"rational;" is that right?**
 5 A. Yes, I believe it did.
 6 **Q. And you did not use the word "rational"**
 7 **with any legal meaning; is that right?**
 8 A. Yes.
 9 **Q. You did not know that the word "rational"**
 10 **had a legal meaning when you drafted your summary,**
 11 **correct?**
 12 A. I'm -- I -- I'm not certain about that.
 13 Because it would be difficult to teach school finance
 14 starting in '79 and not pay attention -- not as a
 15 lawyer, but not pay attention to the word "rational"
 16 and how it applies in school finance.
 17 MR. FERRO: May I approach the witness,
 18 Your Honor.
 19 THE COURT: Yes.
 20 **Q. (BY MR. FERRO) Mr. Hefty, I have an**
 21 **official copy of the transcript to look at. Today is**
 22 **not the first time that you and I have spoken; is that**
 23 **right?**
 24 A. That is correct.
 25 **Q. And you actually appeared at the Attorney**

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1 **General's Office for a deposition on July 5, 2011; is**
 2 **that right?**
 3 A. Yes. I -- I know I appeared there.
 4 **Q. All right. And I was the one that asked**
 5 **questions of you; is that correct?**
 6 A. Yes.
 7 **Q. And if you see before you, you will see**
 8 **the -- excuse me. During that time, there was a**
 9 **reporter present to record my questions and your**
 10 **answers; is that right?**
 11 A. Yes.
 12 **Q. You took an oath to tell the truth that**
 13 **day; is that correct?**
 14 A. Yes.
 15 **Q. You're under the same oath today, are you**
 16 **not?**
 17 A. Yes.
 18 **Q. If you would, do you see in front of you**
 19 **official transcript of the reporter's transcript of**
 20 **that deposition that day?**
 21 A. Yes.
 22 **Q. And have you reviewed that transcript**
 23 **before?**
 24 A. I have not.
 25 **Q. Were you not provided a copy of that**

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1 transcript? Not this particular copy, but a copy?

2 A. No.

3 Q. If you would, look at page 123, please.

4 A. Is that under the -- give me a hint about

5 what part.

6 Q. Sure. I'm sorry.

7 MR. FERRO: May I approach, Your Honor.

8 THE COURT: Yes.

9 Q. (BY MR. FERRO) All right. Have you found

10 page 123, Dr. Hefty?

11 A. Yes.

12 Q. And do you see there's a line No. 4?

13 A. Yes.

14 Q. And there's a question there?

15 A. Yes.

16 Q. Would you read that question, please.

17 A. It says, "Are you aware that there is a

18 kind -- a very legal, specific term of art meaning for

19 rational"?

20 Q. Do you see an answer following that?

21 A. I said, "No. What is it?"

22 Q. And then would you read --

23 MR. HALPERN: Your Honor, I fail to see

24 what this has to do with his expertise.

25 MR. HINOIOSA: Your Honor, I'm going to

254

1 object on the improper use of a deposition. He needs

2 to establish a foundation first.

3 MR. FERRO: Your Honor -- sorry.

4 THE COURT: No, go ahead.

5 MR. FERRO: Just your brief indulgence. I

6 need this foundation for my voir dire.

7 THE COURT: Well, I believe it goes beyond

8 voir dire at this point. So . . .

9 MR. FERRO: Okay. Your Honor, my response

10 would be that Dr. Hefty, in his summary, has issued

11 opinions on the rationality of legislative action, and

12 I'm trying to establish that he more recently testified

13 that he did not use that term in any legal meaning,

14 that he applied his own personal definition of the term

15 "rational."

16 THE COURT: So noted. And you can

17 certainly develop that during cross-examination. Any

18 other objection to his qualifications?

19 Q. (BY MR. FERRO) Dr. Hefty, you last taught

20 a high school course in 1968; is that correct?

21 A. The question again, please.

22 Q. You last taught a high school --

23 A. Taught a high school -- yes, that would

24 be -- that would seem right.

25 Q. And that was 33 years ago, correct?

255

1 A. Yes.

2 Q. And since that time, you have not taught a

3 course in high school?

4 A. I have not.

5 Q. You have not taught a course in middle

6 school?

7 A. I have not.

8 Q. And you have not taught a course in

9 elementary school in the last 33 years?

10 A. I have not.

11 MR. FERRO: Defendants have no objection to

12 the qualification on the areas offered.

13 THE COURT: Thank you. He'll be accepted

14 as an expert in those areas. Thank you.

15 MR. HALPERN: Thank you, Your Honor.

16 DIRECT EXAMINATION (Continued)

17 BY MR. HALPERN:

18 Q. Dr. Hefty, I'd like to ask you some

19 questions about Colorado school districts in general.

20 And if you could, please begin, and can you identify

21 the -- this is -- I don't remember what the numbers of

22 these are. But this is a demonstrative exhibit,

23 10,235,323. Can you identify this?

24 A. Yes. This is a map that shows 178 school

25 districts in Colorado

256

1 Q. And could you provide the Court with some

2 information about the nature and diversity of the

3 school districts in the state of Colorado?

4 A. Well, if we think about education policy

5 or the operation of education in Colorado, I think we

6 might start by thinking about the fact that we have

7 over 800,000 students, P through 12, and we have those

8 students educated in 178 school districts, as shown on

9 the map. And educated in almost 1800 schools. And

10 that there would be somewhere between 40 and 50,000

11 professionals working in those schools.

12 The reason I mentioned that is -- is that

13 it's actually often a struggle, to develop policy that

14 will work well in districts that are so different, so

15 diverse, and have so many differences. We have size

16 shown here, but there are other differences that I

17 think are -- are important to note.

18 Q. Could you identify some of those?

19 A. Yes. I said size. More correctly, it

20 would be -- be enrollment as we go through these

21 exhibits. But geographic size is vastly different.

22 You can see that from looking at the map. Moffat far

23 up in the upper left-hand corner --

24 Q. Wait a minute. I did something. Okay.

25 A. -- far up in the upper left-hand corner is

257

1 the largest district in the state, I believe, and I
 2 think it has over 4700 square miles. Other large
 3 districts that you can see on the map would be
 4 Gunnison. Mesa is a large one. And Meeker. Those are
 5 all in the northwest quadrant.
 6 Small districts, Sheridan, I believe, has
 7 4 square miles, Englewood, next to Sheridan, has 6
 8 square miles. Mapleton School District has 11 square
 9 miles. So there are great differences in terms of
 10 size.
 11 **Q. Where are Sheridan and Mapleton School**
 12 **Districts generally?**
 13 A. Sheridan is southwest of Denver.
 14 Englewood is actually adjacent to it, south of Denver.
 15 Mapleton is north of Denver.
 16 There are significant differences in
 17 wealth in the school districts. One of the measures of
 18 wealth is the amount of assessed value per pupil.
 19 DeBeque, I think, has an assessed value of
 20 2 million -- more than \$2,700,000 per pupil.
 21 And Edison has -- Edison, which is a
 22 district southeast of Colorado Springs, has an assessed
 23 value of 13,000, a little more than \$13,000 per
 24 pupil.
 25 **Q. So what's the relevance of assessed value**

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1 **as a wealth measure relative to school districts?**
 2 A. Well, the ability to raise money locally
 3 from a local mill levy. The capacity is vastly
 4 different. Obviously the districts with the very high
 5 assessed value per pupil would have a much greater
 6 capacity to raise money locally through a levy, and
 7 whether that's for an override or a bond redemption
 8 fund mill levy, the capacity is much, much greater.
 9 Generally, the districts with the highest
 10 assessed value are oil and gas districts or recreation
 11 districts. But there are vast differences in assessed
 12 value.
 13 **Q. Just for complete clarity, what's a mill?**
 14 A. A mill is one one-thousandth. In other
 15 words, if you take the 13,000 assessed value per pupil,
 16 one mill would raise \$13 per pupil. If you take the
 17 2,700,000, one mill would raise \$2700 per pupil. So
 18 there's a vast difference there.
 19 **Q. Are there other important distinguishing**
 20 **characteristics that relate to student population and**
 21 **size?**
 22 A. Yes.
 23 **Q. I mean physical size.**
 24 A. And, actually, we see that on this -- on
 25 this map, where -- where we're starting out by looking

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1 at a set of very large school districts of 20,000
 2 population, student population, that is, or greater.
 3 And you'll notice that most of those are in the Denver
 4 area. They're hard to read on that map. But -- but
 5 the one up at the top is Poudre in the Fort Collins
 6 area, and you can see St. Vrain in the Longmont area,
 7 Boulder Valley, Jefferson County, Denver, Douglas
 8 County, Cherry Creek, Aurora, Academy, Colorado Springs
 9 11, and Mesa County are some of those districts that
 10 are in the very large category.
 11 **Q. Here's a pointer.**
 12 A. Seems dangerous. Okay.
 13 **Q. Now you got the pointer. Keep going.**
 14 A. And -- and we have another map. Do I have
 15 the ability to move the slides also?
 16 **Q. No. I do.**
 17 A. Okay. And these are the large school
 18 districts. According to this way, they're -- they're
 19 divided with an enrollment of between 7,500 and 20,000.
 20 I think there are about 12, maybe 13 on here, and we
 21 see districts on here like Pueblo, two districts,
 22 actually, down there, Pueblo and Pueblo County. Pueblo
 23 is the little one in the middle, and then that's like
 24 the doughnut hole, and then the doughnut is Pueblo
 25 County. And then moving up to the north, Fountain-Fort

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1 Carson, Widefield would be in this range. Falcon would
 2 be in this range. Littleton, Brighton, Thompson
 3 Valley, Greeley, and I think Westminster 50 would all
 4 be in this range of districts with 7500 to 20,000.
 5 **Q. Dr. Hefty, taking into account that group**
 6 **of very large districts that we were looking at**
 7 **before --**
 8 A. Yeah.
 9 **Q. -- do you know how many -- what percentage**
 10 **of the pupil population of the state are educated in**
 11 **those districts?**
 12 A. I think between 60 and 65 percent would be
 13 in the largest group of 12. And I think it's 75 to
 14 80 percent, if I'm recalling, if we put both of these
 15 groups together.
 16 **Q. So that would be 80 percent of the**
 17 **school -- of the --**
 18 A. I think it gets close to 80 percent at
 19 that point, yes.
 20 **Q. Would you like another one?**
 21 A. Yes, please. And these are called
 22 moderate large, and I think what we're trying to do is
 23 give a sense just of the vast difference in student
 24 population in districts. These have from 3,124 to 6400
 25 students. I see districts on here like Durango and

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1 Montrose and Garfield 2, which is Rifle and Roaring
 2 Fork, and Eagle County and Summit. Canyon City is on
 3 here. Lewis-Palmer is on here. Fort Morgan must be.
 4 Windsor and Johnstown, Milliken are some of the
 5 districts that are on that grouping.
 6 Here are the -- what are called the
 7 moderate-sized, from 1,000 to almost 3,000. More
 8 districts in this category. I can see Moffat and
 9 Cortez and Gunnison just as some examples. I think
 10 Steamboat is on here. East Grand, which is up in
 11 Granby and those communities. Brush. Sterling.
 12 Julesberg. East Otero, which would be in La Junta.
 13 Lamar, Trinidad, Florence are some of the examples of
 14 districts of that size on this map.
 15 Here are small districts. Enrollment 257
 16 to 989.
 17 **Q. Mr. Welsh's district would be in this?**
 18 A. I think it is. I actually, on mine, can't
 19 read through that dark color. But I think Center is
 20 one that is in this range. As well as Las Animas, and
 21 I think Rocky Ford. Crowley County are some examples.
 22 And then to the north, Ault, Highland Ault, it's
 23 called, and Ault. Those are some of the districts that
 24 are in this range.
 25 **Q. Okay. Last map.**

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1 A. Well, the last map has all of the colors
 2 of -- of -- that we just looked at, as well as a large
 3 number of districts that are actually smaller than 257,
 4 and those are the districts in white.
 5 One of the things we can learn from
 6 looking at all of these maps is that we have very, very
 7 many small districts in Colorado. I think we have over
 8 a hundred districts with fewer than 1,000 enrollment.
 9 It seems to me we have close to 70, maybe 68 districts
 10 with fewer than 400 students in the state. So
 11 great -- great variation in the student enrollment. In
 12 districts as well as geographic size.
 13 **Q. Now, between those two, does that impact**
 14 **the issues that are faced by these different schools,**
 15 **school districts?**
 16 A. Yes. The -- the issues associated with
 17 delivering a standards-based education are impacted by
 18 size of districts. There -- there are both advantages
 19 and disadvantages that result from size. It is
 20 difficult in the smallest districts to develop the
 21 capacity to implement all aspects of a standards-based
 22 education. There is some advantage to personalizing
 23 and individualizing education, because the small
 24 enrollment sometimes provides no choice but to
 25 personalize and individualize.

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1 So size does have an impact on problems,
 2 challenges associated with implementing standards-based
 3 education.
 4 **Q. Are there other, for example, local cost**
 5 **of living or that sort of impacts that you see across**
 6 **the state?**
 7 A. Cost of living are different. When we
 8 talk about the finance act, we'll actually talk about a
 9 cost-of-living factor that -- that provides some
 10 recognition that there are differences in cost of
 11 living across the state. I most certainly have
 12 experienced that in my career as superintendent. Cost
 13 of living is a challenge, a problem in a place like
 14 Eagle County. The cost of living is extremely high,
 15 and it is very much of a challenge to retain
 16 outstanding teachers, because of cost-of-living
 17 problems.
 18 **Q. And finally, can you talk a little bit**
 19 **about some of the student need issues that vary across**
 20 **the state and impact the ability to provide a quality**
 21 **education and the funding needs of these districts?**
 22 A. Well, if we -- if we -- we've heard
 23 conversations today about free -- free lunch and free
 24 and reduced lunch, and those -- the percentage of free
 25 lunch students would vary greatly across the state.

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1 Some districts more than 80 percent. Center is one of
 2 those. Adams 14, Commerce City, is another one of
 3 those. And then if you go to the other end of the
 4 scale, you find some districts with less than
 5 10 percent free lunch in the district, and you'd find
 6 places like the Air Academy District, the Lewis-Palmer
 7 District, the Douglas County District, and the Aspen
 8 District come to mind as districts that have a very low
 9 free and reduced lunch count.
 10 English language learners vary greatly
 11 across the state, with some districts into the
 12 40 percent of the students or higher being of English
 13 language learners. Commerce City would be one of
 14 those. I think Center probably falls in that category.
 15 I think Aurora does.
 16 Then you can find many districts with zero
 17 percent of English language learners. Those are mostly
 18 very small rural districts that would have a local
 19 percentage. So those student characteristics vary
 20 substantially.
 21 **Q. Do you have knowledge about -- when we**
 22 **talk about English language learners, the kind and**
 23 **number of languages that are involved?**
 24 A. You know, off the top of my head, I don't
 25 know. But Aurora -- I'm remembering the story of

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1 places like the Aurora School District, and
 2 particularly Aurora Central High School. And I think
 3 we have well over a hundred different languages, and
 4 just in the Aurora School District, there is a very
 5 high number of languages, and Aurora Central is often
 6 pointed to as a single school that has a very high
 7 number.
 8 **Q. How about in a rural school district like**
 9 **Fort Morgan?**
 10 A. They would have a number, a high number of
 11 English language learners. Districts often end up with
 12 a particular impact in English language learning. Fort
 13 Morgan has a number of people from Somalia who have
 14 come to the district to work in the packing plant, or a
 15 meat plant of some type in Fort Morgan, and so classes
 16 in Fort Morgan have a number of English language
 17 learners that -- that have a particular situation being
 18 from Somalia.
 19 **Q. Do you see variations or have you heard of**
 20 **variations of impact of special education students**
 21 **across the state?**
 22 A. Yes. I don't have specific numbers, but
 23 there are certainly differences in numbers of special
 24 ed students, and the severity of the disabilities vary
 25 substantially from district to district

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1 **Q. What is a Board of Cooperative Educational**
 2 **Services?**
 3 A. Those are BOCES. Boards of Cooperative
 4 Educational Services are sometimes thought of as
 5 intermediate units, something between the state and the
 6 local school district. Primary function of BOCES in
 7 Colorado, or a common function, I should say, is to
 8 serve as a special education administrative unit. An
 9 additional function is to provide other services that
 10 member school districts of the BOCES would request,
 11 professional development being a common one. There are
 12 21 BOCES across -- across the state.
 13 **Q. Is that something that particularly rural**
 14 **school districts use to pool their resources?**
 15 A. Yes. The delivery of special education
 16 occurs -- we talked about 178 districts. There is a
 17 number of special ed administrative units that is not
 18 equal to 178, because special ed is administered in
 19 small districts through the BOCES. So special ed
 20 administrative units, that number ends up being
 21 somewhere in the 40s or 50s, as I recall. It would
 22 include the large districts in that number of 40 to 50,
 23 because they are their own special ed administrative
 24 unit.
 25 But when you get to small rural districts,

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1 they almost always combine with other small rural
 2 districts through the BOCES structure to deliver
 3 special education.
 4 **Q. How big are the student population, the**
 5 **couple of largest school districts?**
 6 A. Such as in Jefferson County --
 7 **Q. Yeah.**
 8 A. -- with 85,000 students? Denver, with, I
 9 think, close to 70, or in the 70s now. Other large
 10 ones would be Cherry Creek and Douglas County. And
 11 Adams 12, the Northglenn-Thornton school district,
 12 would be the other very large ones.
 13 **Q. How are all of these school districts**
 14 **governed?**
 15 A. There is a board of education that is
 16 elected. The board has either five, six, or seven
 17 members. And elected during odd years. And elected
 18 for four-year terms. Some are elected at large,
 19 districts choose to have at-large members. Some are
 20 elected for identified director districts.
 21 **Q. And how are they administered?**
 22 A. Boards of education employ a
 23 superintendent, and boards have a policy function and
 24 develop policies. Superintendents carry out those
 25 policies. The boards, obviously, because of the

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1 structure, are clearly connected to the community. And
 2 it's through the board that the wishes, the desires,
 3 the hopes of the community are expressed, and then the
 4 superintendent leads the staff, the professional staff,
 5 in carrying out those desires, those policies.
 6 **Q. In one of these very small white shaded**
 7 **school districts, what kind of a administrative -- what**
 8 **kind of administrative structure would you find?**
 9 A. Well, a very small administrative
 10 structure. Probably the smallest school district right
 11 now is Agate, and the superintendent in Agate is also
 12 the principal in Agate and is also the counselor in
 13 Agate, and is really the only administrator in Agate.
 14 And then the -- the next order in slightly larger
 15 districts probably would have a superintendent -- I'm
 16 thinking now of districts of around a hundred.
 17 Probably would have a superintendent that also served
 18 as principal. There may be somebody called a business
 19 manager in those districts.
 20 Then as you move up toward 200 to 300,
 21 you'd probably find a superintendent and one person
 22 called the principal. Probably only one principal and
 23 a business manager. Then you get up to 300 to 400, you
 24 might find -- not always, might find two principals, an
 25 elementary and a secondary principal, but very few

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1 administrators in those very smallest districts.
 2 **Q. Can you contrast that with a very large**
 3 **district?**
 4 A. A very large district would have a
 5 superintendent with assistance, and there --
 6 there -- there may be different titles. Like in the
 7 largest district, it would be common to have an
 8 assistant who was called the chief academic officer,
 9 another one called the chief financial officer,
 10 sometimes a chief operational officer. Sometimes those
 11 were and still are called assistant superintendent for
 12 instruction, assistant superintendent for business and
 13 finance, assistant superintendent for operations, and
 14 others.
 15 And then under, say, in a very large
 16 district, under an assistant superintendent for
 17 instruction would be people who have instructional
 18 expertise in content areas, instructional expertise in
 19 professional development, instructional expertise
 20 in -- or expertise in assessment, and -- and other
 21 expertise related to the education program.
 22 And, of course, under chief financial
 23 officer, there would be additional -- additional people
 24 who would carry out the business functions, the
 25 accounting, the finance, the purchasing and so forth

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1 **Q. How about at the school level?**
 2 A. The school level, because the schools are
 3 larger, you would find a principal and assistant
 4 principal frequently. Most frequently. And in larger
 5 schools. However, the -- the common activity in the
 6 last two years, and actually beyond, has been to reduce
 7 a number of those positions due to budget
 8 considerations.
 9 **Q. Thank you, Dr. Hefty. Let's talk about**
 10 **the Public School Finance Act of 1994. And let's see.**
 11 **I'm now informed that the first map was Exhibit 10053,**
 12 **and serial after that.**
 13 **Dr. Hefty, are you knowledgeable about the**
 14 **basic formula that is part of the Public School Finance**
 15 **Act?**
 16 A. Yes.
 17 **Q. This is the act that was enacted in 1994?**
 18 A. Yes.
 19 **Q. Okay. Would you please describe in**
 20 **general terms how they -- how the finance act works to**
 21 **determine a school district's financial support.**
 22 A. Yes. And I should say that my description
 23 of it, because of where I've been, as -- at CASE and as
 24 a superintendent, looks primarily through
 25 superintendent eyes and how this appears and is

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1 experienced by a superintendent.
 2 At the top of this display, you see
 3 something called total program calculation. And you'll
 4 see that it says funded pupil count times total
 5 per-pupil funding plus at-risk funding plus online and
 6 ASCENT funding. There's actually something missing
 7 there. There should be one more plus sign, and it
 8 should say plus negative factor, because this, for this
 9 current budget year, because of State budget problems,
 10 there is a negative factor, and that enters this
 11 calculation by being added just to the right of ASCENT
 12 funding in the calculation. A year ago, that was
 13 called the budget stabilization factor. The name was
 14 changed this year.
 15 Superintendents -- as you look at this
 16 form, the superintendents are always concerned about
 17 their pupil count, and they're concerned about their
 18 total per-pupil funding, because that obviously --
 19 those two items will be the major drivers of funding in
 20 the school district.
 21 Funded pupil count -- we have a
 22 special -- a special case regarding funded pupil count.
 23 We have very many declining enrollment districts in the
 24 state. That is a serious problem from a budget
 25 perspective, because when you lose students, you lose

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1 revenue, but you can't reduce expenditures along the
 2 same path.
 3 It's kind of like when you have a family
 4 with two parents and three kids and one of those kids
 5 goes away to college, I notice you can't reduce your
 6 household expenses by one-fifth at that point.
 7 Somewhat the same thing operates in the school
 8 district.
 9 So schools are always concerned -- or
 10 superintendents are always concerned with the funded
 11 pupil count. There is a mechanism to blunt that,
 12 because you can use the count of the current year and
 13 four other years, five-year count. Up to a five-year
 14 count, if that improves your funding.
 15 The total per-pupil funding --
 16 **Q. Before you go on, just let me make a real**
 17 **simplistic statement. Basically funded pupil count**
 18 **means how many kids are there in your school district,**
 19 **right?**
 20 A. Yes.
 21 **Q. Is that too simple?**
 22 A. That's almost too simple. But I think we
 23 can think about it that way. My reason for hesitating
 24 is funded pupil count actually produces an FTE count
 25 that is not the same as a head count. For -- for

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1 example, you have some students, secondary school
 2 students, that ended up not being full-time students,
 3 they can't be counted as full-time students if they
 4 don't go the requisite hours. And kindergarten
 5 students are counted, I think -- I think we get to
 6 count them at 0.58 now, with changes in the counting
 7 and in the finance act. So there are nuances in -- in
 8 that count.

9 I know how to find it and I know where the
 10 information is. I don't have all those nuances in my
 11 head at this moment.

12 **Q. Go ahead.**

13 A. Then the total per-pupil funding is
 14 calculated via a formula that you see at the bottom of
 15 the page. And you'll notice that the statewide base is
 16 multiplied by the personnel cost factor by the
 17 cost-of-living factor, and the personnel cost factor
 18 for school districts generally ranges from about 0.8,
 19 80 percent, slightly less than that, to about 0.9, or
 20 90 percent, very slightly more than that.

21 That generally represents -- there's
 22 actually a formula for calculating it in the finance
 23 act. But it generally represents the percent of your
 24 budget that is in personnel cost. And then there is a
 25 cost-of-living factor that is actually determined

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1 through a study, a statewide cost-of-living study that
 2 the Colorado Department of Education commissions that
 3 occurs every two years and produces a factor. Seems to
 4 me those factors range from about 1 to about 1.6.

5 They are designed to reflect differences
 6 in cost of living in school districts throughout the
 7 state. And then you'll see the next part of the
 8 formula is the statewide base times the non-personnel
 9 costs, and generally the non-personnel costs is the
 10 percentage opposite the personnel costs. Like if your
 11 personnel cost factor is 85 percent, your non-personnel
 12 cost factor is about 15 percent. Why that happens that
 13 way is to get that cost-of-living factor applied only
 14 to the personnel costs and not applied to the other
 15 costs.

16 Finally, it is multiplied by a district's
 17 size factor. And the district size factor --

18 **Q. What do you mean, "size," in that one?**

19 A. Size means student, student population.
 20 Student size. And the size factor is larger for the
 21 smallest districts, generally; smallest for the largest
 22 districts. And is designed to address economy of scale
 23 or lack of economy of scale.

24 We heard Mr. Welsh, for example, in a
 25 smaller district, talk about the fact if you're going

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1 to offer a full program, you can't -- you end up
 2 with -- with very small classes. You'll offer some
 3 classes with very few students. On one level
 4 that's -- that's an efficiency issue, but in a small
 5 district, you have little opportunity.

6 I think those -- as I recall those size
 7 factors, going from a little more than 1 up to about
 8 2.6, I think. The majority -- I'm trying to recall
 9 from the legislative council document, Colorado school
 10 finance that I think is an exhibit someplace. But I
 11 think that document indicates that about 80 percent of
 12 the dollars in the finance act are driven by the base.

13 And I think about 16 percent are driven by
 14 the cost of living, and I think about 4.7 percent are
 15 driven by the size factor.

16 **Q. So you --**

17 A. And -- and I was going to go -- I was
 18 actually going to go back to a part I didn't talk about
 19 up on top.

20 **Q. Before you do that, I wanted to see, make
 21 sure I understood what you just said about the -- when
 22 you said that the statewide base represented 80 percent
 23 of what?**

24 A. 80 percent of the funding in the finance
 25 act. In other words, 80 percent of your total

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1 per-pupil funding would be driven by the base.

2 **Q. Okay. Where does the statewide base come
 3 from?**

4 A. Well, that's an interesting question.
 5 It's set by the legislature. There is -- I think I
 6 recall that in that legislative council document,
 7 there's a statement that says it's constitutionally
 8 set. I found that, actually, curious. I assumed that
 9 would refer to Amendment 23, where since the passage of
 10 Amendment 23, there was a ten-year requirement to
 11 increase funding by the rate of inflation plus
 12 1 percent and then rate of inflation beyond that.

13 But unless I have missed something, the
 14 legislature, quite frankly, could go beyond anything
 15 that's in the constitution. So if I read that
 16 correctly, I was curious about why it would have said
 17 that.

18 **Q. Statewide basis set by the legislature?**

19 A. The statewide basis set by the
 20 legislature. And because it's increased by a
 21 percentage amount each year. In my experience, again,
 22 I'm thinking how I experienced it as a superintendent,
 23 and then also as executive director of CASE. The
 24 percentage increases up until the passage of
 25 Amendment 23, as I recall, were often less than the

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1 rate of inflation. In other words, we were losing
 2 ground during those years. Obviously, since the
 3 passage of Amendment 23, it's been the rate of
 4 inflation plus 1 percent and then adjusted for the last
 5 two years through a negative factor.
 6 There's another part associated with the
 7 base that people talk about, and that is -- so it
 8 increased by a percentage amount during each year.
 9 Well, where did it come from originally? My
 10 understanding is that it was essentially backed into.
 11 As the transition was occurring from the
 12 Public School Finance Act of '88, work was occurring on
 13 the act and occurring around the factors, from my
 14 understanding, and ultimately there was a question,
 15 well, exactly how much money are we going to spend for
 16 schools? And so from looking at how much we're going
 17 to spend for schools and how much we're putting in the
 18 factors, that determined how much we're ultimately
 19 going to put in the base.
 20 So they essentially, from my
 21 understanding, backed in to that number in the
 22 original '94 finance act. That is important. The base
 23 is important. The base is extremely important.
 24 Because you'll notice that the factors play off the
 25 base. If the base were a larger base, the factors

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1 would be driving more dollars. That's an important
 2 aspect of the finance act.
 3 **Q. See, I think I interrupted you. You were**
 4 **going to go back to something.**
 5 A. I was. I'm looking again at the top part
 6 of the display, where -- where it -- it talks about
 7 at-risk funding. That's -- that's an important
 8 calculation that -- that feeds into how much money
 9 you're going to get via the finance act.
 10 And you can increase the finance act
 11 12 percent of your per-pupil funding for each
 12 percentage of at-risk students, and then there's an
 13 opportunity -- this will be a test. There's an
 14 opportunity to increase it more than 12 percent if you
 15 exceed the state average at-risk number. For each
 16 percentage you exceed the average state at-risk number,
 17 you may increase it by three-tenths of a percentage
 18 point. I think I'm remembering that right. And it may
 19 not go above 30 percent.
 20 **Q. Is it correct that --**
 21 A. In total.
 22 **Q. -- that at-risk funding is also -- keys**
 23 **off of the statewide base?**
 24 A. It essentially does, because the base is
 25 in the calculation, yes.

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1 **Q. And then how about the two other ones,**
 2 **online and ASCENT funding?**
 3 A. Well, online and ASCENT students are
 4 funded at a lower per-pupil rate, and that is a set
 5 per-pupil rate. Online refers in this case to students
 6 that are enrolled in a multi-district online program.
 7 ASCENT funding refers to students enrolled in the
 8 ASCENT program, which is a fifth-year program.
 9 Students are remaining in high school for a fifth year,
 10 but are taking essentially a full load of college
 11 courses while still enrolled in high school. And you
 12 may count those students, but you're funded at a lower
 13 per-pupil dollar.
 14 **Q. So would it be correct to say that**
 15 **basically online and ASCENT funding are pupils that the**
 16 **district's -- ASCENT kids are people that the district**
 17 **is responsible for, but don't get counted in the funded**
 18 **pupil count because they're not on site?**
 19 A. Yes. I think that is correct to say it
 20 that way. And the reason they don't is because they're
 21 funded at a lower amount. So you can't put them in
 22 there and apply them to the higher base and have them
 23 drive all of the dollars.
 24 **Q. Could you also take a moment just to**
 25 **review the concept of categorical funding?**

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1 A. And to do that, it would be most -- I
 2 understand we have an exhibit someplace. If it
 3 is -- did you want to review the -- the different
 4 categories, the different categorical funds, or do you
 5 want to just --
 6 **Q. Yeah. For immediate purposes, can you**
 7 **describe what the concept of a categorical fund program**
 8 **is? Not even what they are --**
 9 A. Okay.
 10 **Q. -- but what's the concept?**
 11 A. The concept is that there -- there could
 12 be groups of students with similar conditions or
 13 similar needs, and programs are set up that have
 14 dollars attached to have some reflection of the
 15 additional costs driven by those additional needs.
 16 You said say not even what they are, but I
 17 would say examples would include special education,
 18 English language learning, gifted and talented. And
 19 then another part of categorical would be to reflect
 20 SPISHs (ph). Not student needs, but special conditions
 21 that exist in districts, and that could include things
 22 like small attendance centers, could include
 23 transportation costs and the like.
 24 **Q. In your experience and to your knowledge,**
 25 **has the -- the statewide funding base that we've been**

1 **speaking about ever been analyzed by the state to**
 2 **determine if it provides sufficient funds to meet the**
 3 **actual costs of providing any level of educational**
 4 **quality?**
 5 A. To the best of my knowledge, no.
 6 **Q. And do you know if that State funding base**
 7 **has ever been adjusted based on a determination of**
 8 **whether it provides sufficient funds to meet the actual**
 9 **costs of providing any particular level of educational**
 10 **quality?**
 11 A. To the best of my knowledge, no.
 12 MR. HALPERN: Your Honor, it's -- I'm
 13 ready to move into another topic, which will take more
 14 than -- it'll take a little while, more than 15
 15 minutes. I don't mind going ahead, but --
 16 THE COURT: It will take a while? All
 17 right. We'll go ahead and take the recess, then. I'm
 18 sure the court reporter won't mind.
 19 THE REPORTER: I won't mind.
 20 THE COURT: All right. We'll be in
 21 recess, then, until 8:30 tomorrow morning. Thank
 22 you.
 23 MR. HALPERN: 8:30, Your Honor?
 24 THE COURT: 8:30.
 25 WHEREUPON, the within proceedings were

REPORTER'S CERTIFICATE
 STATE OF COLORADO)
) ss.
 CITY AND COUNTY OF DENVER)
 I, CAROL M. BAZZANELLA, Registered
 Professional Reporter, Certified Realtime Reporter,
 and Notary Public, State of Colorado, do hereby certify
 that the within proceedings were taken in machine
 shorthand by me at the time and place aforesaid and was
 thereafter reduced to typewritten form; that the
 foregoing is a true transcript of the proceedings had.
 I further certify that I am not employed by,
 related to, nor of counsel for any of the parties
 herein, nor otherwise interested in the outcome of this
 litigation.
 IN WITNESS WHEREOF, I have affixed my
 signature this 8th day of August, 2011.
 My commission expires February 10, 2012.

1 adjourned at the approximate hour of 4:46 p.m. on the
 2 1st day of August, 2011.
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