

6. Colorado Springs Early Colleges. Senator Keith King’s school, Colorado Springs Early Colleges, relies on private grants to run several of its programs. For example, its summer school program and bus transportation are funded by the Daniels Fund. The school receives approximately \$700 per pupil in additional private funding. King Trial Tr. 6777:22-6778:1, 6783:18-6784:1; Ex. 10,504.

## CONCLUSIONS OF LAW

### **I. THE CLAIMS, THE ISSUES, AND THE STANDARD OF PROOF**

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

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

This case is on remand from the Colorado Supreme Court decision in *Lobato v. State of Colorado*, 218 P.3d 358 (CO 2009) (*Lobato*). The Supreme Court summarized the principal points in its ruling as follows:

To be successful, [Plaintiffs] must demonstrate that the school finance scheme is not rationally related to the constitutional mandate of a “thorough and uniform” system of public education. The trial court must give significant deference to the legislature’s fiscal and policy judgments. The trial court may appropriately rely on the legislature’s own pronouncements to develop the meaning of a “thorough and uniform” system of education. If the court finds that the current system of public finance is irrational, then the court must provide the legislature with an appropriate period of time to change the funding system so as to bring the system in compliance with the Colorado Constitution.

218 P.3d at 374-75 [citation omitted].

Therefore, the issue before this Court is whether the Colorado system of public school finance “is not rationally related to the constitutional mandate of a ‘thorough and uniform’ system of public education.”

The Supreme Court also identified the Plaintiffs’ general allegations that constitute an appropriate and justiciable case:

[P]laintiffs allege that the [Public School Finance Act] base funding amount and statutory increases are based on "historical compromise," as opposed to a rational determination of the amount it would cost to implement the "thorough and uniform" mandate or the cost of providing an education that meets the standards and goals mandated by education reform efforts. Citing an independent cost study, plaintiffs allege that the current funding levels do not allow students the opportunity to meet the standards and objectives established in

education reform legislation. In addition, plaintiffs allege that funding for underserved student populations and capital construction is insufficient and irrationally dependent on local property taxes. Plaintiffs further allege that the state's public school financing system is unconstitutionally irrational because it prevents the district from implementing the education clause mandate at a local level.

218 P.3d at 375.

Pertinent to the foregoing, in its Order dated July 14, 2011, this Court has previously ruled that:

In the name of the Education Clause, the General Assembly has established a comprehensive system of educational goals, methods, and measures, all of which it requires school districts to implement successfully. A system intended to finance a constitutional mandate cannot be rationally related to that purpose if it is created and funded without reference to the costs of providing the mandated services.

The Court further held that the “General Assembly has expressly linked its duties under the Education Clause with student performance”, *citing* C.R.S. §22-30.5-30(1), and that, therefore:

Under the standards-based education system adopted by the General Assembly and implemented by the Defendants, educational opportunity is defined *in part* by statutorily mandated academic content standards and measured by student achievement or qualitative outcomes. It is but one factor to consider in determining whether the Defendants have met their constitutional duty.

This Court has previously ruled that the following issues raised by the Defendants are not at issue in this case: (1) that public education is not the only required or important state service; (2) that it is rational for the General Assembly to “control the public debt”; (3) that it is rational for the General Assembly to “further local control over instruction” and (4) that it is rational for the General Assembly to “balance appropriations among public services.”

The Court has also ruled that the TABOR<sup>13</sup> and Gallagher<sup>14</sup> amendments do not conflict with the mandate of the Education Clause; that TABOR was not intended to restrict the growth of government; and that TABOR should not be interpreted to cripple basic government services, such as the constitutional mandate to establish and maintain a thorough and uniform system of free public schools. Given the remedy specified by the Supreme Court, the interpretation of the Education Clause does not need to be harmonized with either TABOR or the Gallagher Amendment, nor does the Court need to reach the issue of the TABOR revenue restrictions.

The Court will analyze the evidence presented at trial in light of the legal standards presented above. The analysis begins with the meaning of the thorough and uniform mandate;

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<sup>13</sup> The “Taxpayers Bill of Rights”, Colo. Const., art. X, §20.

<sup>14</sup> Colo. Const., art. X, §3(1)(b).

the education accountability and standards-based education systems adopted by the General Assembly pursuant to that mandate; the public school finance system, including the Public School Finance Act of 1994 (the PSFA),<sup>15</sup> “categorical” funding programs, and capital construction funding; the relationship between the education system and the school finance system; the cost to fund the education system; the adequacy of the funding for public education; the adequacy of funding for underserved populations of students; the achievement levels of Colorado students as measured by the standards set by the education system; the effect of the current funding system and levels on Colorado school districts; and the effect of the current funding system and levels on the individual Plaintiffs.

## II. THE CONSTITUTIONAL PROVISIONS AT ISSUE

The Education Clause provides that the “general assembly shall . . . provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state.” The “thorough and uniform system” mandate is a substantive guarantee of a constitutionally adequate, quality education for all Colorado residents of school age. *Lobato*, 218 P.2d at 371. The General Assembly adopted this interpretation over a decade ago:

[The Education Clause] requires the general assembly to provide for the establishment and maintenance of a thorough and uniform system of free public schools. The state therefore has an obligation to ensure that every student has a chance to attend a school that will provide an *opportunity for a quality education*.

C.R.S. §22-30.5-301(1) (emphasis added).

As an integral part of its education system, the State must provide sufficient financial resources for the public schools in a manner that is rationally related to the accomplishment of mandate of the Education Clause. *Lobato*, 218 P.3d at 363. A school finance system that fails to provide funding sufficient to establish and maintain a thorough and uniform system of free public schools violates the Education Clause. The Public School Finance Act of 1994 (the PSFA) “is enacted in furtherance of the general assembly’s duty under [the Education Clause] to provide for a thorough and uniform system of public schools throughout the state”. C.R.S. §22-54-102(1); *see Board of County Comm’rs of Douglas County CO v. Bainbridge, Inc.*, 929 P.2d 621, 709 (Colo. 1997) (“The purpose of the Public School Finance Act of 1994 . . . is to further the General Assembly’s constitutional duty to provide a thorough and uniform system of public schools throughout the state.”)

The Local Control Clause directs the general assembly to “provide for the organization of school districts of convenient size”, governed by locally elected boards of education, and invests the directors of the local boards of education with the “control of instruction in the public schools of their respective districts.” Control of instruction by locally elected school boards (often referred to as “local control”) is a necessary element in meeting the substantive mandate of the Education Clause. *Lobato*, 218 P.3d at 275; *see Owens v. Colorado Congress of Parents, Teachers and Student*, 92 P.3d 933, 938-9 (CO 2004). In the School District Organization Act of 1992 the General Assembly declared that:

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<sup>15</sup> C.R.S. §22-54-101, *et seq.* (2011). All citations to C.R.S. hereinafter are to the 2011 edition, unless otherwise specifically stated.

[T]his article is enacted for the general improvement of the public schools in the state of Colorado; for the equalization of the benefits of education throughout the state; *for the organization of public school districts in the state . . . in order to provide for the maintenance of a thorough and uniform system of free public schools throughout the state*; and for a more responsible expenditure of public funds for the support of the public school system of the state.

§22-30-102(1) (emphasis added).

In *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1022-23 (CO 1982) (*Lujan*), the Colorado Supreme Court held that preserving local control of instruction was the legitimizing state purpose for the then-current system of public school finance. A system of public school finance that fails to provide sufficient financial resources to the school districts to permit local boards of education to provide the services, instructional programs, materials, and facilities necessary to meet the substantive mandate of the Education Clause violates the Local Control Clause.

### **III. THE DEFINITION AND MEASURE OF A THOROUGH AND UNIFORM SYSTEM OF PUBLIC SCHOOLS**

The Supreme Court directed the trial court to “develop the meaning” of the Education Clause in light of the legislative pronouncements of the general assembly. As discussed in detail in Section II of the Findings of Fact, the General Assembly has frequently interpreted the “thorough and uniform” mandate both at a general level and in the extensive and detailed provisions of the “standards-based education system” that has revolutionized public education during that time.

Following the General Assembly’s lead, the Court concludes that at a basic level of articulation a thorough and uniform system of public schools must assure that all students graduate with the knowledge and skills necessary to (1) participate effectively as citizens of Colorado and the United States; (2) engage productively and competitively in the workforce; and (3) be successful lifelong learners.

This statement of the purpose of public education is characteristic of the American vision of public education cited in other courts:

In large measure, the explanation for the special importance attached to education must rest, as the Court recognized in *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) on the facts that ‘some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system . . .,’ and that ‘education prepares individuals to be self-reliant and self-sufficient participants in society.’

*San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 112 (1973), Marshall, J., dissenting [footnote omitted].

In service of this purpose, the national government has provided political and material support for public education throughout the development of the nation. Colorado’s admission to the Union was conditioned upon its promise to constitutionally secure the right to an education to

its citizens. *Pauley v. Kelley*, 162 W.Va. 672, 677, 255 S.E.2d 859, 864 (1979).<sup>16</sup> From the beginning of the nation, each state was granted federal lands in trust for the use of the common or public schools. *Brotman v. East Lake Creek Ranch, L.L.P.*, 31 P.3d 886, 887 (Colo. 2001). The Colorado Enabling Act dedicates two sections in every township to that purpose. CO Enabling Act §7.

The Education Clause was not adopted in a societal vacuum. It is inescapably obvious that the drafters of the Colorado constitution were motivated by the same vision as our nation and neighboring states. In discussing their constitution (Wyo. Const. art. 7, §§ 1 and 9), the Wyoming Supreme Court stated that:

At the time these clauses were used in the wording of the education article at Wyoming's constitutional convention in 1889, similar education provision were found in every State constitution, reflecting the contemporary sentiment that education was vital and legitimate state concern, not as an end in itself, but because an educated populace was viewed as a means of survival for the democratic principles of the state.

*Campbell County Sch. Dist. v. State of Wyoming*, 907 P.2d 1238, 1259 (Wyo. 1995) [citations omitted]. From this purpose, the Wyoming court derived the basic mandate of their state's education clauses:

[W]e can conclude the framers intended the education article to provide an education system of a character which provides Wyoming students with a uniform opportunity to *become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually.*

*Id.* [emphasis added; citation omitted].

It is beyond dispute that since at least 1993 the Colorado General Assembly has linked this policy to student achievement of statewide academic content standards as measured by statewide assessments.

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

C.R.S. §22-7-403(2) [emphasis added].<sup>17</sup>

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<sup>16</sup> Citing 1-8 *The Federal and State Constitution, Colonial Charters, and Other Organic Laws of the States, Territories, and the Colonies Now or Heretofore Forming the United States of America* (F. Thorpe ed. 1909).

<sup>17</sup> This provision was originally codified in 1993 as §22-53-403(2).

The General Assembly has also established the standards-based education system as the foundation of the system of statewide “education accountability” by which it measures the performance of public school districts in fulfilling the thorough and uniform mandate:

[An effective system of statewide education accountability] [h]olds the state, school districts, the institute, and individual public schools accountable for performance on the same set of indicators and related measures statewide, ensures that those indicators and measures are aligned through a single accountability system, to the extent possible, that *objectively evaluates the performance of the thorough and uniform statewide system of public education for all groups of students* at the state, school district or institute, and individual public school levels, and, as appropriate, rewards success and provides support for improvement at each level.

C.R.S. §22-11-102(1)(d) (emphasis added).

Thus, the General Assembly has fundamentally linked the Education Clause mandate to the standards-based education system and specifically to student attainment of the academic standards as demonstrated by performance on statewide assessments. The Court in *Lobato* particularly noted that the State’s “education reform statutes with proficiency targets and content standards” may be used to evaluate the constitutionality of the legislature’s actions. *Lobato*, 218 P.3d at 372, fn. 17. At the very least, the public school finance system must be rationally related to accomplishing the requirements of the State’s own standards-based education and education accountability systems, up to and including the most recent enactments, CAP4K, the Education Accountability Act of 2009, and SB 10-191, the teacher effectiveness legislation.

Other state courts have held that accountability standards are a mandatory element of the State’s compliance with its education clause. In *Claremont School District v. Governor*, 147 N.H. 499, 795 A.2d 744, 751-52 (NH 2002), the New Hampshire Supreme Court found that:

Accountability means that the State must provide a definition of a constitutional adequate education, the definition must have standards, and the standards must be subject to meaningful application so that it is possible to determine whether, in delegating its obligations to provide a constitutionally adequate education, the State has fulfilled its duty. . . . If the State cannot be held accountable for fulfilling its duty, the duty creates no obligation and is no longer a duty.

Stating that “[i]t is thus widely accepted that establishing standards of accountability is part of the State’s duty to provide a constitutionally adequate education”, the New Hampshire Court cited numerous other jurisdictions that include standards and accountability in determining a constitutionally adequate education: *McDuffy v. Secretary of Executive Office of Education*, 615 N.E.2d 516 (MA 1993); *DeRolph v. State*, 728 N.E. 993, 1019 (OH 2000); *Abott by Abott v. Burke*, 693 A.2d 417, 428 (NJ 1997); *Tenn. Small School System v. McWhreter*, 894 S.W.2d 734 (TN 1995); *Board of Educ. of Boone County v. Bushee*, 889 S.W.2d 809, 816 (KY 1994).

The Kansas Supreme Court has held that a rational school finance formula must be funded to assure student “outputs:”

Without consideration of outputs, any study conducted by post audit is doomed to be incomplete. Such outputs are necessary elements of a constitutionally adequate education and must be funded by the ultimate financing formula adopted by the legislature. [*Montoy v. State of Kansas*, 278 Kan. 769, 773, 120 P.3d 306, 309 (KS 2003)] (quoting K.S.A. 72-6439) (constitutionally suitable education is one in which “schools meet the accreditation requirements and [students are] achieving an ‘improvement in performance that reflects high academic standards and is measurable.’”)

*Montoy v. State of Kansas*, 112 P.3d 923, 939 (KS 2005). See also *Campbell County School District, supra*, 907 P.2d at 1261-63, where the Wyoming Supreme Court cited to school district, school, and student performance standards and assessments in evaluating the “thorough and efficient” public education required by the Wyoming constitution.

This Court concludes that the standards-based education system described in some detail in the Findings of Fact and including the pervasive system of content standards, assessments, school and school district accreditation and accountability, and teacher effectiveness standards constitute the current legislative specification of the thorough and uniform system of public education mandated by the Education Clause. For purposes of this litigation, the Court accepts this legislation as the minimum standard against which the rationality of the system of public school funding must be measured.

#### **IV. THE SCHOOL FINANCE SYSTEM AND THE EDUCATION SYSTEM ARE NOT RATIONALLY RELATED TO EACH OTHER**

The *Lobato* Court used the terms “rational” and “irrational” with respect to the “relationship” between the finance system and the thorough and uniform system of public education. Rational means “based on or in accordance with reason or logic;” irrational by contrast is “not logical or reasonable.” Logic refers to “reasoning conducted or assessed according to strict principles of validity.” Relationship means “the way in which two or more concepts, objects, or people are connected.” Concise Oxford American Dictionary (2006). Thus, the Court must analyze whether the public school finance system is connected to the thorough and uniform education system in a manner that is both logical and reasonable.

Therefore, the public school finance system must at least be rationally related to accomplishing the mandates of the standards-based education system. This alignment must be made in a disciplined and transparent manner. A system of public school finance that is rationally related to meet the mandate of the thorough and uniform clause must (1) identify the standard and measure of the education to be provided; (2) determine the resources needed to accomplish that goal; and (3) institute and fund a finance system that provides the necessary resources.

The standards-based education system addresses the first of these requisites – it sets a highly articulated standard of student achievement as the measure of a thorough and uniform system of public schools. However, no effort has been made to address the second and third. The State and the State Board of Education have defaulted in their constitutional responsibility to

align the school finance system to the mandates of the Education Clause as implemented through the standards-based education and accountability systems.

The Court has found that in 1993 the General Assembly adopted HB 93-1313 that committed the State to develop and implement standards-based education as the anchor to the educational accountability system. HB 93-1313 was the foundation for the transformation of public education in Colorado. In 1994, the General Assembly adopted the Public School Finance Act of 1994 (the PSFA), the centerpiece of the school finance system. The PSFA established the basic funding mechanism for school district general fund (operating) revenues that has been in place since then. From this contemporaneous starting point, the two systems, which were not aligned to begin with, have radically diverged.

The following findings are essentially undisputed: When the PSFA was enacted, the General Assembly set the statewide base funding amount by working backwards from the total funding that it intended to appropriate and carrying forward preexisting school district expenditure levels. There was no effort to analyze the relationship to the actual costs to provide an education of any particular quality. The failure to do any cost analysis and to provide for funding based on such an analysis demonstrates the irrationality of the existing school finance system. *Montoy v. State of Kansas*, 102 P.3d 1160, 1164 (KS 2005).

Since then, the PSFA has been adjusted annually by a marginal dollar increase in the statewide base per-pupil funding amount. The passage of Amendment 23 imposed a minimum annual increase in the statewide base, but was not intended to and did not establish the requisite rational relationship. In short, the PSFA has never been adjusted to address the costs associated with the progressive implementation of the standards-based education and education accountability systems or any other standard of educational quality.

In the past two years, the General Assembly, through the implementation of a negative factor, has actually decreased public school funding by what now totals nearly one billion dollars. The amount of the budget cuts and the method by which they were implemented are completely unrelated to the costs of providing the mandated standards-based education system. The budget cuts have aggravated the irrationality of the finance system by arbitrarily reducing funding with no educational rationale whatsoever.

The General Assembly included “factors” in the PSFA formula to be added to the statewide base to address certain local cost variations among school districts. The dollars provided through the factors were also unrelated to the cost to provide an education of any particular quality. Thus, the factors are irrational in themselves and also due to the absence of any rational basis for the statewide base from which they are determined. *Id.* In any case, application of the “negative factor” has essentially eliminated factor-based funding as a meaningful element of the finance system.

The Defendants also point to the override mill levy as an indicator of the rationality of the finance system. The override provision is entirely dependent on local property tax bases and the willingness of local communities to increase their property taxes, both of which vary widely across the state and without necessary reference to the constitutional mandate of a thorough and uniform education system. Override funding bears no more rational relationship to the

constitutional mandate than the statewide base and the factors. The intent of the override funding provision was to permit local options within the financing formula. Due to the history of underfunding, that intent has been entirely eroded. This further distorts the finance system for no rational, educational reason. *Id.*

Recent amendments to the standards-based education system have substantially increased the costs of public education. In 2008 the General Assembly adopted CAP4K, that mandated a complete revision of state content standards, programs of instruction, and assessments all aligned to accomplish universal student proficiency and postsecondary and workforce readiness. This was followed in 2009 by the Education Accountability Act that established accreditation standards for school districts based upon meeting the goals of CAP4K and imposed sanctions up to and including district closure for failure to meet those goals within fixed time frames. Most recently, the 2010 effective teachers amendments (SB 10-191) imposed new teacher and principal evaluation systems founded in student growth as measured by achievement on CSAP and other standardized tests. These major educational initiatives, and many others during the same time period, were completely unfunded, notwithstanding widespread knowledge that they would be very expensive to implement. The only funding provision was the illusory authorization to accept “gifts, grants and donations” of unknown origin. This further aggravated the systemic underfunding and the absence of any logical connection between the finance system and the education system.

The PSFA was adopted before the implementation of the standards-based education system. If only for that reason, it cannot possibly relate to funding the costs of that system. Neither the statewide base nor the factors have ever been changed to respond to those changing costs. As a result, the PSFA funding levels are now and have since inception been completely disconnected from the real, knowable funding needs of a thorough and uniform system of public education. The Plaintiffs have proved, indeed, it is essentially undisputed, that the PSFA bears no rational relationship to providing funding sufficient to successfully implement the standards-based education system developed by the General Assembly.

The evidence also establishes that funding for categorical programs and for capital construction are completely unrelated to the actual costs of providing the services and facilities necessary to meet the mandate of the Education Clause. Capital construction funding in particular is now and has always been totally dependent on highly unequal local property tax wealth. For many school districts, particularly those in rural, poverty areas this method of funding capital needs has proved to be fundamentally inadequate, inequitable, and irrational. The recently adopted BEST program provides limited assistance, but is not sufficient to overcome generations of statutory underfunding. The deplorable conditions of numerous rural schools bears witness to this proposition.

The Court therefore concludes that the entire system of public school finance, including the PSFA, categorical programs, and capital construction funding, is not rationally related to the mandate of the Education Clause.

## **V. THE PUBLIC EDUCATION SYSTEM IS SIGNIFICANTLY UNDERFUNDED**

The public school finance system falls short of providing sufficient funding to meet the mandate of the Education Clause and standards-based education.

Defendants contend that it is not possible to analyze the costs of meeting the mandates of the Education Clause. If that argument were accepted, the Education Clause and the directives of the Supreme Court would be meaningless. To the contrary, the standards-based education system provides a comprehensively detailed model of education standards, programs, assessments, and achievement goals. The costs of meeting those mandates can be rationally estimated.

The “costing-out study” performed by Augenblick, Palaich and Associates (the APA Report) demonstrates that methods exist to determine a rational relationship between a school finance system and the education system that it serves. APA used as models both successful Colorado school districts and the professional judgment of Colorado educators to analyze the costs to provide the resources necessary to provide an education sufficient to meet the student achievement requirements of the standards-based education system.

The APA Report establishes both that (1) school funding can be analyzed and quantified by rational methods and that (2) the existing finance system is so profoundly underfunded that it cannot be considered rational or adequate. Under the successful schools model, Colorado school district general operating budgets are underfunded in the gross amount of \$1.35 billion to \$1.94 billion per year. Using the professional judgment model, which is a more accurate reflection of the costs of implementing the post-CAP4K system, general operating budgets are underfunded between \$3.58 billion and \$4.15 billion per year. These computations are comparable in dimension to former CDE assistant commissioner Voreta Herrmann’s estimate of gross operating underfunding of \$2.8 billion per year.

Educators from the Plaintiff districts and across the State testified to the substantial increases in the resources and funding necessary to provide an education that meets the requirements of standards-based education and accountability. They testified to the failure of the finance system to address these costs and the impact of that failure on their ability to provide an education that meets the needs of all students. School superintendents, finance officers, principals, and teachers described the obstacles and limitations imposed by an irrational, inadequate, and unplanned finance system on the education they are able to provide to the children entrusted to their care.

The Defendants offered no evidence or even information to rebut the conclusion that the finance system is completely divorced from the reality of the education system enacted by the General Assembly in the name of the Education Clause.

It is not this Court’s function to determine at this time the amount necessary to provide adequate funding for public education. However, the Court does find that public education is very significantly underfunded and that any legislative response of necessity must address the level of funding necessary to meet the mandate of the Education Clause and the standards-based system and should provide funding consistent with that standard.

## **VI. SCHOOL DISTRICTS ARE FINANCIALLY UNABLE TO PROVIDE NECESSARY SERVICES, PROGRAMS, MATERIALS AND FACILITIES**

Due to lack of access to adequate financial resources, the Plaintiff School Districts and the school districts where Individual Plaintiffs reside (collectively, the “School Districts”) are unable to provide the educational programs, services, instructional materials, equipment, technology, and capital facilities necessary to assure all children an education that meets the mandates of the Education Clause and standards-based education.

The Court finds that due to the irrational funding system and significant underfunding, rural and urban poverty School Districts are unable to hire, compensate, and retain effective, highly qualified teachers and administrators; to provide the curriculum, technology, textbooks, and other instructional materials necessary to meet student performance expectations; and to construct, maintain, renovate school buildings and facilities. Many of these School Districts are relegated to obsolete textbooks and materials, lack of necessary computers and internet connectivity, and dilapidated and unsafe classroom and other facilities. These School Districts have been for many years and are today unable to respond effectively to the changing demands of standards-based education.

The impact of irrational and inadequate funding is not, however, limited to rural and urban poverty School Districts. The Court finds that all School Districts are unable to provide the early childhood and kindergarten programs that are critical to student achievement. All School Districts are unable to provide the classroom time, professional training, and instructional interventions that are critical to meet the expectations of CAP4K, the Education Accountability Act, and SB 10-91. All School Districts are unable to provide the classroom time, professional training, and interventions critical to the education of under-served student populations, including students at-risk of academic failure, non-English speaking students, students with disabilities, students of minority racial and ethnic heritages, students of low-income families, and gifted and talented students. All School Districts lack the funding necessary to meet the increased expectations of the current revisions to standards-based education, and particularly CAP4K, the Education Accountability Act, and SB 191.

Many of the School Districts, including Aurora Public Schools and Pueblo City Schools, are categorized as “turnaround” or “priority improvement” under CDE’s district performance framework; and all of the School Districts operate schools that are categorized as “turnaround” or “priority improvement” under their school performance frameworks. These School Districts and schools must meet ambitious student achievement and student growth goals pursuant to turnaround or priority improvement plans within five years or face restructuring or closure. According to the APA Report, none of Colorado’s school districts has access to sufficient funding to provide the instructional programs necessary to meet the expectations and deadlines of the Education Accountability Act.

These problems are not attributable to inefficiency or inability at the school district level. There is no evidence that any School District is managing its finances ineffectively. There is no evidence that any School District lacks the knowledge necessary to improve student achievement. On the contrary, several of the School Districts have implemented short term, innovative programs that significantly improved student achievement, particularly among the

under-served populations. These programs are not, however, sustainable either because they depend on short-term federal or other grants or because of cuts imposed by the General Assembly's reduction in school funding. In short, the School Districts have the knowledge necessary to improve performance and meet the constitutional and statutory standards, but they are prevented from doing so by the deficiencies in the school finance system.

As a result of the irrational and inadequate school finance system, Colorado students are not meeting achievement standards, including proficiency on assessments, high school graduation, and postsecondary and workforce readiness. Taken as a whole, the achievement and growth data indicates that hundreds of thousands of Colorado students are not reaching proficiency and are not on a course to reach proficiency in reading, writing, mathematics, and science. In 2009, over 25% of Colorado high school students did not graduate with a diploma. These problems are particularly, but not exclusively, true of under-served student populations. Disaggregated achievement data proves that these students are not achieving at levels even approaching those of white, English speaking, middle class, students – and they are not closing the achievement gaps. Students whose achievement is below proficient are not meeting the levels of growth necessary for them to catch-up in three years or by tenth grade. Finally, substantial numbers of Colorado students are not ready for postsecondary education upon graduation, and many of those who enter postsecondary education require remediation.

All of the evidence demonstrates a systemic failure to provide all students with the knowledge and skills mandated by the Education Clause and standards-based education. This failure is directly correlated to inadequate and irrational funding. The overwhelming evidence supports the conclusion that with sufficient funding, school districts can meaningfully improve all students' achievement. Unquestionably, additional financial resources appropriately applied can improve student achievement, which, under the standards-based system, is the ultimate measure of the success of a thorough and uniform system of public education.

The Court therefore concludes that Colorado public school children are not receiving the thorough and uniform educational opportunities mandate by the Education Clause.

## **VII. LOCAL CONTROL OF INSTRUCTION**

The *Lobato* Court held that Education Clause analysis must determine both that “thorough and uniform educational opportunities are available through state action in each school district” and that “each school district must be given the control necessary to implement this mandate at the local level”. 218 P.3d at 371 (citations omitted); *see also Owens v. Colorado Cong. of Parents, Teachers & Students*, 92 P.3d 933, 947-48 (CO 2004) (Kourlis, J. dissenting). Colorado is one of only six states with an express local control provision in its constitution, underscoring the importance of that concept in this state. *Board of Ed. of Sch. Dist. No. 1 v. Booth*, 984 P.2d 639, 646 (CO 1999). Thus, compliance with the Education Clause incorporates local control of instruction, as mandated by the Local Control Clause (article IX, section 15). This should be particularly obvious here, since local control is the “legitimate state purpose” upon which the school finance system depends. *Lujan*, 649 P.2d at 1022-23.

The Colorado constitution allocates governing authority over the public schools between local boards of education with authority to “control instruction” and the State Board, which

exercises “general supervision” of the public schools under article IX, section 1. In *Board of Educ. of Sch. Dist. No.1 v. Booth*, 984 P.2d 639, 648 (CO 1999) (*Booth*), the Supreme Court held that “control of instruction requires power or authority to guide and manage both the action and practice of instruction as well as the quality and state of instruction.” The Local Control Clause is a constitutional grant of “undeniable authority” to local boards of education to control instruction in the public schools within their respective districts. *Id.*, 984 P.2d 639, 646. A “generally applicable law triggers control of instruction concerns when applied to specific local board decisions likely to implicate important education policy.” General statutes “must not have the effect of usurping the local board’s decision-making authority or its ability to implement, guide, or manage the educational programs for which it is ultimately responsible.” *Id.*, 984 P.2d at 649.

The Public School Finance Act and the other funding statutes are generally applicable laws subject to these constitutional limitations. Local control and school finance are inseparably linked. In *Lujan*, the Supreme Court held that for purposes of equal protection analysis:

We find that utilizing local property taxation to partly finance Colorado's schools is rationally related to effectuating local control over public schools. The use of local taxes affords a school district the freedom to devote more money toward educating its children than is otherwise available in the state-guaranteed minimum amount. It also enables the local citizenry greater influence and participation in the decision making process as to how these local tax dollars are spent. . . . Finally, local control provides each district with the opportunity for experimentation, innovation, and a healthy competition for educational excellence.

*Lujan*, 649 P.2d 1023 [citation omitted].

The school finance system dictates the total amount of funds available to each school district and the methods by which those funds may be obtained. Local school boards have no discretion in determining the amount or the sources of their funding. Inadequate funding prevents school districts from offering their children the public education mandated by standards-based education. The additional goals of local control described in *Lujan* are beyond the reach of even the most successful school districts. Local control in that sense does not exist due to irrational underfunding of public education. This is true of all of the School Districts, but most significantly for the rural and urban poverty School Districts.

Insufficient funding prevents the School Districts from accomplishing the ambitious goals of educational accountability. Present school district funding levels bear no intentional relationship to the costs of meeting state imposed performance goals. Failure to accomplish these goals leads to regulatory consequences of the most profound concern to local boards of education, including state administered “major restructuring” impacting at least local curriculum, school staffing, school schedules, and student assessment and training, but also school closure, privatization, or conversion to charter status. C.R.S. §22-7-609.3(3). Further, failure to meet state performance standards results in state administered school district reorganization or closure. C.R.S. §§22-11-204(3), 22-30-105(1)(c).

This implicates two of the guiding principles of local control identified in *Booth*: (1) The generally applicable school finance laws impose statutory constraints that “have the effect of usurping the local board’s decision-making authority [and] its ability to implement, guide or manage the educational programs for which it is ultimately responsible;” and, (2) By failing to fund public education adequately or rationally, those laws interfere with specific local board decisions affecting important education policy at the local level. *Booth*, 984 P.2d at 649.

In the name of the Education Clause, the State has revolutionized public education over the past twenty years. However, there has been no corresponding reform of school finance. School districts are left to meet 21<sup>st</sup> century education standards with 1980s funding, and it cannot be done. As a result, the beneficiaries of public education, all Colorado school children, but including the State itself, are and have been for decades denied the opportunities intended by the Education Clause.

The Court concludes that the irrational and inadequate school funding system prevents school districts from implementing the Education Clause mandate at a local level in violation of the local control mandates of Article IX, sections 2 and 15.

## **VIII. CONCLUSION**

Although the standards-based education system intentionally established standards of educational achievement and a method to measure accomplishment of those standards, the finance system has never been adjusted to address the costs of meeting those standards. Although one of the primary purposes of standards-based education was to provide objective measures of achievement that could be costed-out and funded, the two systems have remained out of touch and actually diverging, with no meaningful effort to analyze and align funding levels with educational costs.

In recent years, new educational goals linked to school readiness and postsecondary and workforce readiness were mandated, and measurements of school and school district performance with sanctions for failures have been implemented as part of educational accountability. Again, these changes in the education system have added and will continue to add significantly to the costs of education, but the finance system has been completely unresponsive. As a result, there is not enough money in the system to permit school districts across the State to properly implement standards-based education and to meet the requirements of state law and regulation. This is true for districts of every description – rural, suburban, urban and those with small or large student populations. There is not one school district that is sufficiently funded. This is an obvious hallmark of an irrational system.

The problem has been compounded by the fact that during this same time Colorado and virtually every school district have experienced significant demographic changes, particularly in the number and concentrations of English language learners, ethnic minorities, and children of poverty. The number of children with severely disabling conditions has also grown. There are now significantly larger percentages of students with more expensive educational needs. The educational achievement requirements for these students are the same as for general education students, but the cost to achieve proficiency and growth requirements among these students is much higher. This represents a major source of additional expense that has not been taken into

account in the finance system. Once again, the State has not attempted to quantify and fund the costs of providing educational services to these and similarly situated students with special needs.

Finally, state level budget cuts in the last two years have reduced overall school funding by nearly one billion dollars without any reference to the costs to provide a thorough and uniform system of public schools. Current economic conditions, however, are not the source of the school finance crisis. They have made an unworkable situation unconscionable. But Colorado's history of irrational and inadequate school funding goes back for over two decades.

Based upon all of the foregoing, and applying the standard enunciated by the Supreme Court, the Court concludes that the Colorado public school finance system is not rationally related to the mandate to establish and maintain a thorough and uniform system of free public schools. On the contrary, the public school finance system is irrational, arbitrary, and severely underfunded. This results in the denial of the rights of the Individual Plaintiffs guaranteed by Article IX, section 2 of the Colorado constitution and the rights and powers of the School Districts pursuant to Article IX, sections 2 and 15.

## **IX. REMEDY**

The Court finds that the Colorado public school finance system is unconstitutional. Evidence establishes that the finance system must be revised to assure that funding is rationally related to the actual costs of providing a thorough and uniform system of public education. It is also apparent that increased funding will be required. These are appropriately legislative and executive functions in the first instance. Thus, the Supreme Court has directed that this Court shall "provide the legislature with an appropriate period of time to change the funding system so as to bring the system in compliance with the Colorado Constitution." *Lobato*, 218 P.3d at 375. Taking these directions into account, the Court enters Judgment and Orders as follows:

Injunctive relief enters in favor of the Plaintiffs, and all of them, and against the Defendants, and all of them, as follows:

1. Defendants are enjoined from adopting, implementing, administering, or enforcing any and all laws and regulations that fail to establish, maintain, and fund a thorough and uniform system of free public schools throughout the state that fulfills the qualitative mandate of the Education Clause and the rights guaranteed to the Plaintiffs thereunder and that is in full compliance with the requirements of the Local Control Clause; including, without limitation the Public School Finance Act of 1994 in its entirety, categorical funding programs, and capital construction funding laws and regulations;

2. Defendants are further enjoined to design, enact, fund, and implement a system of public school finance that provides and assures that adequate, necessary, and sufficient funds are available in a manner rationally related to accomplish the purposes of the Education Clause and the Local Control Clause;

3. The Court hereby stays the enforcement of the injunctive relief set forth hereinabove in order to provide the State with a reasonable time to create and implement a system of public school finance that meets the mandates of the Education Clause and the Local

Control Clause. This stay shall continue in effect until final action by the Colorado Supreme Court upon appeal of the Court's decision; provided that if appeal is not perfected to the Colorado Supreme Court, this Court shall review the stay upon application of either party submitted no earlier than the conclusion of the 2012 legislative session. While this stay is in place and until further action by the Supreme Court or this Court, the present financing formula and funding may remain in effect.

**SO ORDERED** this 9th day of December, 2011.

BY THE COURT

*Sheila A. Rappaport*

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Sheila A. Rappaport  
District Court Judge