



## Key Findings in *Lobato v. State* Trial Court Decision

### *Importance of Public Education*

Public education is one of if not the most important functions of Colorado state government. It is critical for individuals, business, and society that we have a well-educated populace . . . In order for Colorado to build a strong and competitive economy, all students must have the opportunity to obtain a quality education.<sup>1</sup>

Spending on education should be viewed as a public investment, yielding a stream of benefits across decades.<sup>2</sup>

The benefits of certain education reforms that have been proven to increase achievement, such as class size reduction, preschool expansion, and teacher salary increases, significantly exceed the costs, thereby justifying investment in these reforms today rather than paying the fiscal and social consequences of inadequate education later. By failing to make sufficient investments in these and other effective educational interventions, Colorado is trading short run budget savings for potentially much larger long run economic burdens.<sup>3</sup>

### *Education Reform Legislation*

The public school finance system has failed to respond to the increasing resource needs driven by standards-based education. Successful implementation of standards-based education demands additional resources, including resources for extra educational time with students, additional staff to ensure appropriate class sizes, additional interventions for under-performing students, and professional development.

Successful standards-based reform needs to be accompanied by alignment of the curriculum, new instructional materials, development of new assessments, and substantial professional development for teachers, administrators, and support staff. Schools have to reorganize the way they use tools, such as computers, to get different outcomes. It is hard to imagine that a district could implement all that is required for standards-based reform without additional financial investment . . . If these resource requests are not met, there will be an impact on the quality of instruction in the classroom and assessment results.<sup>4</sup>

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<sup>1</sup> 12/9/11 *Lobato v. State* Findings of Fact and Conclusions of Law (“Decision”) at 8.

<sup>2</sup> Decision at 9.

<sup>3</sup> Decision at 9.

<sup>4</sup> Decision at 22.



### *Public School Finance System*

The uncontested evidence establishes that the Public School Finance Act (PSFA) statewide base per pupil funding and factors when created in 1994 and as adjusted in every year since then are not now and have never been rationally related to the costs of providing the educational services mandated by the standards-based education system or any other measure of educational quality.<sup>5</sup>

In order to determine whether the State adequately funds a particular program, it is important to know how much that program costs. Nevertheless, Defendants have not conducted a study to determine the cost of funding all public education programs set forth in statute and regulation.<sup>6</sup>

The “costing-out study” performed by Augenblick, Palaich and Associates 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 Voretta Herrmann’s estimate of gross operating underfunding of \$2.8 billion per year.<sup>7</sup>

There is not one school district in Colorado that is sufficiently funded. This is an obvious hallmark of an irrational system.<sup>8</sup>

The problem has been compounded by the fact that 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 . . . 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.<sup>9</sup>

State level budget cuts in the last two years have reduced overall school funding by nearly one billion dollars . . . Current economic conditions, however, are not the source of the

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<sup>5</sup> Decision at 40.

<sup>6</sup> Decision at 39, 40.

<sup>7</sup> Decision at 177.

<sup>8</sup> Decision at 181.

<sup>9</sup> Decision at 181-182.



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.<sup>10</sup>

*Failure to Provide Necessary Services, Programs, Materials, and Facilities*

Due to lack of access to adequate financial resources, the Plaintiff 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.<sup>11</sup>

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.<sup>12</sup>

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 191. All School Districts are unable to provide the classroom time, professional training, and interventions critical to the education of underserved 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.<sup>13</sup>

These problems are not attributable to inefficiency or inability at the school district level . . . 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.<sup>14</sup>

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<sup>10</sup> Decision at 182.

<sup>11</sup> Decision at 178.

<sup>12</sup> Decision at 178.

<sup>13</sup> Decision at 178.

<sup>14</sup> Decision at 178.



### *Relationship Between Funding and Educational Quality*

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.<sup>15</sup>

Even Defendants' lead expert witness, Dr. Eric Hanushek, acknowledges that, "money certainly matters"; he testified that if a school district in Colorado efficiently spends its money, additional funds for education could lead to higher student achievement.<sup>16</sup>

In states that have undertaken major school finance reforms, studies have found that those investments radically changed the trajectory of achievement and reduced the size of achievement gaps as a function of those reforms.<sup>17</sup>

At trial, there were countless examples of instances in Colorado schools and districts in which additional funding for particular programs or interventions resulted in measurable achievement gains.<sup>18</sup>

### *Colorado Student Achievement*

As a state, we are not educating our own children so that they will be competitive . . . Colorado is losing ground in education as compared to other states and countries.<sup>19</sup>

Colorado students are not meeting achievement standards, including proficiency on assessments, high school graduation, and postsecondary and workforce readiness. Approximately 400,000 students in Colorado are below proficiency on CSAP tests. In 2009, over 25% of Colorado high school students did not graduate with a diploma. In addition, Colorado has one of the widest achievement gaps in the United States. There is roughly a thirty percent gap in Colorado between white and minority students and high-income and low-income students with respect to achievement on standardized tests.<sup>20</sup>

Twenty-nine percent of high school graduates in Colorado require at least one remedial course to attend post secondary education institutions. At some Colorado colleges, more than fifty percent of incoming students need remedial coursework . . . The high remediation rate in Colorado indicates that kids are not being adequately prepared for post-secondary education.<sup>21</sup>

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<sup>15</sup> Decision at 179.

<sup>16</sup> Decision at 49-50.

<sup>17</sup> Decision at 50.

<sup>18</sup> Decision at 50.

<sup>19</sup> Decision at 55.

<sup>20</sup> Decision at 55-57, 179.

<sup>21</sup> Decision at 58.



### *Special Student Populations*

Additional investments in intensive, high quality preschool education and full-day kindergarten could make a significant contribution toward closing the large educational achievement and attainment gaps in Colorado . . . The costs of school failure are ten times more expensive than what it would cost to address the problem at the front end with high quality preschool and full-day kindergarten programs for all eligible children.<sup>22</sup>

The amount of funding for special education in Colorado is insufficient . . . By placing the burden on local districts to fund the majority of special education costs, Colorado is abdicating its responsibilities under special education law to assure that FAPE [free appropriate public education] is provided to all students with disabilities in the state . . . As a result, the needs of all students with disabilities are not currently being met in Colorado.<sup>23</sup>

The State's gifted and talented allocation is insufficient to provide adequate gifted and talented programs and services for GT students.<sup>24</sup>

There is insufficient funding in Colorado to provide the types of effective instructional and support programs for English language learners (ELLs) mandated by the No Child Left Behind Act, supported by research, and recommended by CDE in its own guidebook so that ELLs can meet language acquisition and state standards . . . It is arbitrary and irrational to provide only two years of funding for ELL instruction.<sup>25</sup>

### *Capital Construction*

Colorado's system for funding capital construction is broken. In Colorado, capital construction is left almost entirely to local school districts with little or no state assistance . . . Relying on local district finding is inequitable, is inadequate, and has produced an enormous backlog of school capital needs across the State, resulting in serious health and safety problems in school buildings across Colorado.<sup>26</sup>

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.<sup>27</sup>

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<sup>22</sup> Decision at 76.

<sup>23</sup> Decision at 81, 83, 84.

<sup>24</sup> Decision at 90.

<sup>25</sup> Decision at 94-95.

<sup>26</sup> Decision at 103-104.

<sup>27</sup> Decision at 176.



### *Technology*

School districts in Colorado do not possess the necessary technology and resources to provide a thorough twenty-first century education. No school district has adequate technology to fully implement and sustain the new state academic standards.<sup>28</sup>

### *Thorough and Uniform*

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.<sup>29</sup>

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.<sup>30</sup>

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 Court concludes that the entire system of public school finance, including the PFSA, categorical programs, and capital construction funding, is not rationally related to the mandate of the Education Clause.<sup>31</sup>

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.<sup>32</sup>

### *Local Control of Instruction*

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.<sup>33</sup>

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<sup>28</sup> Decision at 108.

<sup>29</sup> Decision at 171.

<sup>30</sup> Decision at 170.

<sup>31</sup> Decision at 176.

<sup>32</sup> Decision at 179.

<sup>33</sup> Decision at 171.



Local control does not exist due to irrational underfunding of public education.<sup>34</sup>

### *The State's Case*

The State introduced testimony from several members of the State Board of Education and other witnesses for its case-in-chief. However, the Court notes that much of the State's testimony actually bolstered Plaintiffs' arguments in this case, and certain other contrary testimony lacked factual support . . . Although some of the State's witnesses' testimony could at first blush suggest support for the State's case, much of that testimony was questionable.<sup>35</sup>

Dr. Hanushek's analysis that there is not much relationship in Colorado between spending and achievement contradicts testimony and documentary evidence from dozens of well-respected educators in the State, defies logic, and is statistically flawed. Dr. Hanushek's analysis relies on median growth percentiles rather than proficiency levels, which are not a straightforward measure of achievement . . . Moreover, Dr. Hanushek's analysis relies on the existence of huge inefficiencies within school districts. However, after over 180 depositions and the production of hundreds of thousands of pages of documents, including budgets from almost every school district in the State, the State has been unable to point to any specific inefficiencies or waste in the school districts involved in this case or in any school district in the State.<sup>36</sup>

The limited number of schools and school districts cited by Defendants' witnesses as successful received additional funding above per pupil operating revenue and/or has not yet met state standards and requirements.<sup>37</sup>

### *Conclusion*

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 Individuals 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.<sup>38</sup>

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<sup>34</sup> Decision at 180.

<sup>35</sup> Decision at 158, 163.

<sup>36</sup> Decision at 54, 163.

<sup>37</sup> Decision at 165.

<sup>38</sup> Decision at 182.



### *Remedy*

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.<sup>39</sup>

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 . . . 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 Local Control Clause.<sup>40</sup>

The Court stays the enforcement of the injunctive relief 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. If appeal is not perfected to the Colorado Supreme Court, the Court shall review the stay . . . no earlier than the conclusion of the 2012 legislative session. While this stay is in place . . . , the present financing formula and funding may remain in effect.<sup>41</sup>

*Children's Voices is a non-profit law firm that advocates on behalf of school-age children in Colorado for equal access to a high quality public education. Since 2005, we have led the fight in the courts to affirm and enforce the constitutional right to a "thorough and uniform" system of free public education and to assure the funding necessary to uphold that guarantee. In addition to litigation, we use a variety of strategies, including education, legislative advocacy, research, and communication to fulfill our mission.*

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<sup>39</sup> Decision at 183.

<sup>40</sup> Decision at 183.

<sup>41</sup> Decision at 183.