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**MEMORANDUM**

**TO:** Committee on Legal Services

**FROM:** Office of Legislative Legal Services

**DATE:** December 14, 2011

**SUBJECT:** Summary of District Court Findings of Fact and Conclusions of Law in *Lobato v. Colorado, Denver District Court Case No. 2005CV4794*

The plaintiffs in this case, a group of parents, students, and school districts, brought suit claiming that the General Assembly has failed to establish and maintain a "thorough and uniform system" of public education, as required by section 2 of article IX of the state constitution (the "Education Clause"), because the funding system for public schools is irrational and inadequate. The plaintiffs are also claiming that the funding system for public education fails to provide school districts enough money to enable them to exercise local control as granted in section 15 of article IX of the state constitution (the "Local Control Clause").

In its order dated December 9, 2011, the District Court concludes that the school finance system is unconstitutional because it is not rationally related to the Education Clause. The Court also concludes that the school finance system fails to provide sufficient financial resources to school districts to permit them to provide the services, instructional programs, materials, and facilities that are necessary to meet statutory requirements and therefore violates the Local Control Clause. The Court bases its order on the following facts and conclusions drawn from those facts:

- Since 1993, and especially during the past five years, the General Assembly enacted legislation that requires the State Board of Education and school district boards of education to adopt content standards in a variety of areas, to adopt curriculum that is aligned with those content standards, and to assess students at least annually to determine their mastery of the content standards. Specifically, the State Board has adopted state model content standards in reading, writing,

mathematics, science, and other areas, and each school district annually administers statewide tests in reading, writing, and mathematics to students in grades three through 10; statewide tests in science to students in grades five, eight, and ten; and the ACT to students in grade 11.

- In 2009, the General Assembly enacted statutes requiring each school district and each public school to meet performance targets in the areas of student achievement, student academic growth, closing the achievement gap, and demonstration of postsecondary and workforce readiness. The Department of Education may hold school districts and schools that do not meet the performance targets accountable through the accreditation process. After five consecutive years of very low performance, a school district or public school may be subject to significant restructuring.
- In 2010, the General Assembly enacted legislation requiring school districts to adopt an evaluation system for licensed educators that measures educator effectiveness. Whether an educator is "effective" will be based largely on the educator's students' academic achievement and growth, as measured by statewide assessments and other assessments created, adopted, and implemented by school districts.
- The General Assembly has not appropriated funds to school districts and public schools specifically to implement these requirements. School districts and charter schools have continued to receive funding calculated under the "Public School Finance Act of 1994", article 54 of title 22, C.R.S. (PSFA), but this funding has not increased with the adoption of the new education reform and accountability requirements. In fact, in the last two fiscal years, the General Assembly has decreased funding under the PSFA due to budgetary restrictions.

The standard the Court applies in making its determination in this case is whether the school finance system provides sufficient funding to establish and maintain a thorough and uniform system of free public schools. If it does not, then the school finance system violates the Education Clause.

The Court finds that the standards-based education and accountability

requirements enacted by the General Assembly define what a "thorough and uniform" system of public education is in Colorado. To be constitutional, the public school finance system must be rationally related to maintaining the thorough and uniform public education system, which the Court interprets as being adequate to enable school districts and public schools to meet the requirements of the standards-based education and accountability statutes.

The Court finds that the public school finance system is not rationally related to maintaining Colorado's thorough and uniform public education system because the school finance system bears no relation to how much it costs a school district or public school to meet the requirements of the standards-based education and accountability statutes. Not only does the school finance system not consider the general costs of meeting the standards, it does not take into account the changing demographics of school districts that have resulted in more students who are English language learners, more students with disabilities, and more students living in poverty, all of whom require more services and are more expensive to educate. Because the school finance system was not originally written, and has not been adjusted, to account for these costs and because of recent budget cuts, the Court finds that the public school finance system is severely underfunded.

The Court also finds that the current amount of funding for categorical programs to provide services for students and for capital construction is unrelated to the cost of the services to be provided and the cost of providing facilities and severely underfunded. 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 constitutional mandate of maintaining a thorough and uniform public education system." The Court estimates that Colorado school districts and public schools are underfunded by between \$1.35 billion and \$4.15 billion per year.

The Court next finds that this irrational public school finance system and the significant degree by which schools are underfunded prohibits school district boards of education from exercising the local control that is granted them in the constitution. The Court finds that the school districts are unable to exercise local control in implementing the standards-based education and accountability statutes or in implementing other programs that communities may desire for their public schools because they are so significantly underfunded by the state.

In its order, the Court prohibits the state, including the Department of Education, the State Board of Education, and the Governor, from

implementing, administering or enforcing the PSFA, the categorical funding programs, and the capital construction funding laws and regulations and from adopting a new finance system that does not meet the requirements of the Education Clause, as interpreted by the Court.

The Court also requires the state to design, enact, fund, and implement a system of public school finance that will provide to school districts and charter schools adequate, necessary, and sufficient funds in a manner rationally related to accomplish the purposes of the Education Clause and the Local Control Clause.

The Court then stays the enforcement of these orders until final action of the Colorado Supreme Court upon an appeal of the District Court's decision, but the District Court will review the stay at the end of the 2012 legislation session if an appeal is not filed. While the stay is in place, the existing PSFA and funding remains in effect.

The defendants in this case are expected to appeal the District Court's order. To preserve the right to appeal, the Attorney General's office must file the notice of appeal within forty-six days after the date of the District Court's order.