DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street, Room 256 Denver, CO 80202 Telephone: (720) 865-8301	
Plaintiffs: TAXPAYERS FOR PUBLIC EDUCATION; et al. **vs.** **Defendants:** DOUGLAS COUNTY SCHOOL DISTRICT RE-1, et al. **and** **Plaintiffs:** JAMES LaRUE, et al. **vs.** **Defendants:** COLORADO BOARD OF EDUCATION; et al.	**▲ COURT USE ONLY ▲**
Attorneys for Plaintiffs Taxpayers for Public Education, et al.: Michael S. McCarthy, #6688 Colin C. Deihl, #19737 Ll. Rhyddid Watkins, #49156 FAEGRE BAKER DANIELS LLP 1700 Lincoln Street, 3200 Wells Fargo Center Denver, CO 80203 Telephone: (303) 607-3500 E-mail: Michael.mccarthy@faegrebd.com Colin.deihl@faegrebd.com Rhyddid.watkins@faegrebd.com And Attorneys for Plaintiffs James LaRue, et al. Matthew J. Douglas, #26017 Timothy R. Macdonald, #29180 Michelle K. Albert, #40665 ARNOLD & PORTER LLP 370 Seventeenth Street, Suite 4500 Denver, CO 80202-1370 Phone Number: 303.863.1000 Fax: 303.832.0428 Email: Matthew.Douglas@aporter.com Timothy.Macdonald@aporter.com Michelle.Albert@aporter.com	Case No.: 2011CV4424 (Combined with 2011CV4427) Courtroom 259

PLAINTIFFS' CONSOLIDATED REPLY IN SUPPORT OF MOTION FOR ENFORCEMENT OF AUGUST 12, 2011 PERMANENT INJUNCTION RESTRAINING DEFENDANTS' RESUMED FUNDING AND IMPLEMENTATION OF AN UNLAWFUL SCHOOL VOUCHER PROGRAM

Plaintiffs submit the following consolidated reply in support of their motion for an Order enforcing the permanent injunction embodied in this Court's Order of August 12, 2011. Because of the substantial overlap in the responses submitted by the State Defendants, the Douglas County School District and Board of Education, and the Intervenors (collectively "the Defendants"), only a single reply is necessary.

The August 12, 2011 Remains in Effect.

1. All of the Defendants premise their arguments on the contention that the Court's August 12, 2011 permanent injunction (the "Injunction") either is no longer in effect, *see, e.g.*, Douglas County School District Resp. at 7 ("Defendants cannot possibly stand in contempt of an injunction when no injunction has been entered."), or has been modified by the appellate courts, *see, e.g.*, State Defendants' Resp. at 6 ("The Motion is rooted in confusion about how the injunction was modified by subsequent appellate rulings."). Defendants offer no basis in the record for either assertion, and they are wrong as a matter of law and undisputed fact. This Court's injunction has been in effect and intact continuously since August 12, 2011, and it is in effect today, unchanged from its original entry by this Court.

2. This Court entered the injunction at issue on August 12, 2011. On August 18, Defendants moved this Court to stay the injunction during their intended appeal, or in the alternative until the deadline for filing their notice of appeal. *See* Defendants' Joint Motion to Stay Injunction Pending Appeal at 2. On August 29, 2011, this Court denied that motion and declined to stay the injunction. *See* Order (Aug. 29, 2011). The injunction remained in force.

3. Defendants appealed to the Colorado Court of Appeals from the judgment containing the injunction. Defendants did not seek a stay of the injunction from that court, see C.A.R. Rule 8(a) (2), and the injunction remained in force.

4. The Colorado Court of Appeals reversed, *Taxpayers for Public Education v. Douglas County School District*, 356 P.3d 833 (Colo. App. 2013), and Defendants sought further review from the Colorado Supreme Court. After the Colorado Supreme Court granted review, Plaintiffs filed a motion in the Court of Appeals to stay that court's mandate pending the Supreme Court decision. *See* Plaintiffs-Appellees' Unopposed Joint Motion To Stay Issuance Of Mandate (Mar. 31, 2014). The Court of Appeals granted the motion and stayed its mandate until the Colorado Supreme Court proceedings were completed. *See* Order (4/15/2014). As a consequence, the decision of the Colorado Court of Appeals, including its reversal of the injunction, did not go into effect. The injunction remained in force.

5. On June 29, 2015, the Colorado Supreme Court issued its opinion reversing the Court of Appeals and directing reinstatement of the permanent Injunction. 351 P.3d 461, 475. The Supreme Court stated that:

> We reverse the judgment of the court of appeals and remand to that court with instructions to return the case to the trial court so that the trial court may reinstate its order permanently enjoining the CSP [Choice Scholarship Program].

The injunction remained in force.

6. On July 15, 2015, the Colorado Supreme Court issued its Mandate in this case, stating:

> IT IS ORDERED and adjudged that the judgment of the Colorado Court of Appeals is REVERSED and this case is returned to the Colorado Court of Appeals.

The injunction remained in force.

7. On August 6, 2015, the Colorado Court of Appeals in turn issued its Mandate, stating:

> An opinion was entered by the Supreme Court on June 29, 2015, wherein the judgment of the Colorado Court of Appeals was reversed… IT IS NOW ORDERED that the judgment of the trial court is affirmed. Accordingly, the case is remanded to the District Court, City and County of Denver for further proceedings consistent with this opinion of the Colorado Supreme Court.

Watkins Affidavit, Exhibit 2. The injunction remained in force.

8. Nowhere in this sequence of events does any order from any court stay the August 12, 2011 injunction. Nowhere does any order give effect—even temporarily—to the Court of Appeals' now-reversed decision reversing the trial court judgment that included the injunction. The injunction has been in force since this Court issued it, and it remains in force today. The Defendants' assertions and assumptions to the contrary are unsupported and unsupportable.

Defendants Do Not Dispute that the Revised Private School Voucher Program Falls within the Scope of the August 12, 2011 Injunction

9. None of the Defendants disputes that the School District's revised voucher program violates the terms of the Court's August 12, 2011 injunction. Defendants argue instead that the injunction does not *exist*—erroneously, as discussed above—but none of them actually disputes that if the injunction is still in force, the revised voucher program violates it.

10. Plaintiffs' original motion detailed at length the multitude of similarities between the original 2011 voucher program and the 2016 revised voucher program, including (a) large sections of the revised program that track the original program's language verbatim and (b) the

School Board's own procedural treatment of the 2016 program as a revision rather than a new program. *See* Plaintiff's Motion ¶¶ 14(a)-(k). Neither the Douglas County Defendants nor the State Defendants address any of these similarities or dispute that the original and revised programs are functionally identical in all respects material here.

11. Although the Intervenors assert that the "School Choice Grant Program differs from the Choice Scholarship Program in significant ways," Intervenors' Resp. at 5-6 (citing limitation of program to nonreligious schools, lack of need for enrollment in charter school, and adjustment of formula for grants), the Intervenors likewise do not explain that claimed significance and never claim that those differences take the revised program outside the scope of the August 12, 2011 injunction. And indeed, none of the features of the revised program that the Intervenors cite differ *materially* from the circumstances before the Court when it issued the injunction. Specifically:

—like the revised voucher program, the original voucher program also included private, non-religious schools;

—the elimination of the sham charter school does not affect the constitutional infirmities of the original voucher program; and

—the problems with the original voucher program was not the formula by which the District wanted to funnel money to private schools, it was the District's desire to funnel money to private schools *at all.*

12. In sum, the original injunction barring the District's voucher program is still in force, and the District's revised voucher program undisputedly falls within the scope of that

injunction. Simple logic compels the conclusion that the adoption of the revised voucher program violated the injunction.

The Present Motion Does Not Require the Court to Parse the Appellate Court Holdings or to Analyze the Constitutionality of the Revised Private School Voucher Program

13. Defendants spend a good deal of space in their responses offering esoteric arguments about which appellate courts reached which conclusions concerning which issues in which order. These arguments allude to issues of the voucher program's validity under the Public School Finance Act, Colo. Rev. Stat. § 22-54-101 *et seq*., and the program's constitutionality under Article II, section 4; Article V, section 34; and Article IX, sections 3 and 7 of the Colorado Constitution.

14. None of that discussion has any bearing on the present motion to enforce the August 12, 2011 injunction. What matters in the present motion is ***what*** the appellate courts did, not ***why*** they did it. If an appellate court gives a lower court a direction, the lower court is to obey that direction. *See, e.g., People ex rel. City & Cty. of Denver, By & Through Bd. of Water Comm'rs v. Dist. Court of Fifth Judicial Dist.*, 154 Colo. 84, 87, 388 P.2d 403, 405 (1963) (granting writ of mandamus to compel trial court to comply with supreme court's mandate, noting: "The decree entered by the trial court does not grant to Denver that which it claimed; it does not conform to the order of this court directly that Denver's claim be allowed."). The lower court must comply with the appellate court's direction regardless of whether the lower court believes the appellate court's analysis supports the direction, and indeed even if the lower court does not understand the reason for the direction. *See Matter of Estate of Painter*, 671 P.2d 1331, 1333 (Colo. App. 1983) (holding that in the event of conflict between language used in body of appellate opinion and directions on remand, the directions control).

15. Here, what the appellate courts actually ***did*** was uphold this Court's original injunction, 2015 CO 50, ¶ 2, 52, 351 P.3d at 465, and reaffirm the original judgment and order of this Court, Watkins Aff. Ex. 2. The Colorado Supreme Court directed this Court to "reinstate its order permanently enjoining" the voucher program. 2015 CO ¶¶ 2, 52. This direction leaves little doubt of the court's intention.

16. The rule prioritizing what an appellate court *does* over what it *says* is particularly compelling in the present case. As Defendants note, the Colorado Supreme Court's reversal of the Court of Appeals decision in this case consisted of a plurality opinion that concluded that the voucher program violated Article IX, section 7 of the Colorado Constitution, 2015 CO 50, ¶ 27-32, 351 P.3d at 470-471, (plurality opinion), and a concurring opinion by Justice Marquez that concluded that the program violated the Public School Finance Act, *see id.* at ¶ 76, 351 P.3d at 479 (Marquez, J., concurring in judgment).

17. As Defendants also acknowledge, these two opinions take "distinct approaches" to the issues, meaning that there is no "common denominator of the Court's reasoning." Intervenors' Resp. at 4, n.2 (citations omitted). Any attempt to analyze or piece together the precise view of the supreme court as a whole thus can only involve speculation and guesswork. The one thing that ***is*** completely clear is what the court ***did***: it affirmed and reinforced this Court's original injunction by mandating reinstatement of the Injunction.

18. If Defendants truly believe that the appellate decisions in this litigation require a change in the scope or character of the injunction—despite the Colorado Supreme Court's restatement of that injunction and the Colorado Court of Appeals' ultimate affirmance of the judgment containing it—the burden was on Defendants to move the Court for such a

modification. Trans-W. Express, Ltd. v. Local Union No. 17, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., 43 Colo. App. 158, 161, 603 P.2d 959, 961 (1979) ("Once a permanent injunction has been entered, the decision as to whether that injunction should be modified is discretionary with the trial court.") (citations omitted). Defendants were not free simply to violate or unilaterally modify the Injunction based on their mere belief that such a change might be justified, which is what they did.

The Court of Appeals Opinion is Not Part of the Law of the Case

19. Defendants argue that the doctrine of the "law of the case" dictates that the holdings in the Court of Appeals' now-reversed decision somehow not only continue to have vitality but in fact control this Court's actions and alter the terms of the injunction. Defendants fundamentally misunderstand the law-of-the-case doctrine.

20. The law-of-the-case doctrine is a practical and discretionary doctrine intended to save lower courts from having to relitigate previously decided issues on a remand from an appellate court. The Colorado Supreme Court described the doctrine thus:

> The pronouncement of an appellate court on an issue in a case presented to it becomes the law of the case. *Dando Co. v. Mangini*, 107 Colo. 170, 109 P.2d 1055 (1941). Rulings logically necessary to the holding of the appellate court also become the law of the case. *See Morton v. Laesch*, 52 Colo. 541, 125 P. 498 (1912); Note, *Law of the Case*, 40 Colum.L.Rev. 268, 275 (1940). The law of the case as established by an appellate court must be followed in subsequent proceedings before the trial court. *Cache La Poudre Reservoir Co. v. Water Supply & Storage Co.*, 27 Colo. 532, 62 P. 420 (1900). This serves the dual purpose of protecting against the reargument of settled issues and assuring the adherence of lower courts to the decisions of higher courts. 1B *J. Moore, Federal Practice* ¶ 0.404[1] at 118 (2d ed. 1983).

People v. Roybal, 672 P.2d 1003, 1005 (Colo. 1983) (footnotes omitted).

21. Defendants' effort to use the law of the case here fails for several reasons. First, the "pronouncement[s] of an appellate court" on which Defendants try to rely appear in a decision that the Colorado Supreme Court has *reversed*. Defendants cite no authority from any jurisdiction holding that a reversed decision from an intermediate appellate court provides the law of the case on a subsequent remand to the trial court, and Plaintiffs know of no such authority.

22. Second, Defendants' argument ignores the Court of Appeals' final and ultimately binding "pronouncement" on this Court's original judgment: "the judgment of the trial court is affirmed." Watkins Aff. Ex. 2. Defendants cannot rely on the Court of Appeals' holdings on issues that the Colorado Supreme Court did not need to reach when the Court of Appeals' own subsequent action undercuts its prior holdings.

Whether the Colorado Supreme Court Reversed or Vacated the Court of Appeals Decision Has No Bearing on This Motion

23. The Intervenors argue that because the Colorado Supreme Court reversed the Colorado Court of Appeals decision rather than vacating it, the portions of the court of appeals decision that the supreme court did not address "remain binding on the lower courts." Intervenors' Resp. at 9. The Intervenors cite no support in Colorado law for this argument, and the federal cases they cite are inapposite.

24. Defendants' attempt to parse a material difference between the reversal and the vacation of a judgment is wishful thinking. To "reverse" a judgment means to "overthrow, ***vacate***, set aside, make void, annul, repeal, or revoke it." Black's Law Dictionary 1319 (6th ed. 1990) (emphasis added). Similarly, to "vacate" means "[t]o nullify or cancel; make void; invalidate." Black's Law Dictionary 1546 (7th ed. 1999). Regardless of which word an appellate

court uses, the affected decision is of no further force. "A judgment reversed by a higher court is 'without any validity, force or effect, and ought never to have existed.'" *Wheeler v. John Deere Co.*, 935 F.2d 1090, 1096 (10th Cir. 1991) (quoting *Butler v. Eaton,* 141 U.S. 240, 244, 35 L. Ed. 713, 11 S. Ct. 985 (1891)).

25. The federal cases that the Intervenors cite at page 9 of their response are inapposite here. First, those cases deal with the *precedential* effect in other cases of a decision that is reversed on fewer than all the grounds on which the lower court relied, *not* the effect of that reversal on subsequent proceedings in the *same* case. *See Cent. Pines Land Co. v. United States*, 274 F.3d 881, 893 (5th Cir. La. 2001) ("we are foreclosed from considering the constitutionality of Act 315 as discriminatory against the United States by *our prior decision* in *United States v. Little Lake Misere Land Co.* (emphasis added)); *States v. Hernandez*, 216 F.3d 1088, 2000 WL 797332, at *4 n.6 (10th Cir. 2000) (unpublished order) (addressing precedential effect of circuit panel decision vacated by court *en banc*).

26. Second, with respect to the effect of a reversal or vacation on subsequent proceedings *in the same case*, however, there is no distinction between reversing and vacating. Indeed, the *Hernandez* case that the Intervenors cite observes: "A judgment that has been vacated, reversed, or set aside on appeal is thereby deprived of all conclusive effect, both as res judicata and as collateral estoppel." *Hernandez*, 216 F.3d 1088, 2000 WL 797332, at *4 n.6 (quoting *Franklin Sav. Ass'n. v. Office of Thrift Supervision*,35 F.3d 1466, 1469 (10th Cir.1994)).

27. The Intervenors' argument based on the Court of Appeals reversal of this Court's holdings on multiple issues ignores the fact that the Court of Appeals' last act in this case was to ***affirm*** this Court's judgment. Watkins Aff. Ex. 2 ("IT IS NOW ORDERED that the judgment of

the trial court is affirmed."). The Court of Appeals did not limit its affirmance, as Defendants might have wished it would; the court did not affirm "insofar as the trial court held that the Colorado Constitution bars payments of public money to religious schools." The Court of Appeals affirmed the judgment of this Court ***in its entirety***. Defendants thus seek to rely, not only on a Court of Appeals decision that the Colorado Supreme Court has reversed, but on a Court of Appeals decision that the Court of Appeals itself has conclusively invalidated by affirming *in toto* this Court's original judgment.

The State Defendants are Proper Subjects of This Motion

28. The State Defendants, against whom the August 11, 2011 Injunction was also issued, incorrectly claim that they have had no material involvement in the actions of the District and the Board to implement a revised voucher program. On the contrary, representatives of the Colorado Board of Education have been in communication with the Board and the district regarding satisfaction of a key regulatory prerequisite to funding the revised program.

29. Responses supplied to Colorado Open Records Act requests from Plaintiffs, together with the attachments to the Response of the State Defendants demonstrate that representatives of the State Defendants have been advised of the intent to initiate the revised program and have been requested to give approval to the assignment of a "school code" to the revised voucher program. See Ex. A., March 31, 2016 letter to Commissioner Crandall from Eric V. Hall; Ex. B, April 13, 2016 letter to Mr. Hall from Jan Rose Petro; Ex. C, text messages between Commissioner Crandall and Superintendent Fagen; Ex. D, Definition of a Colorado Public School ; and Ex. E, Request for a New School Code. Both Exhibits D and E were printed from the Colorado Department of Education website.

30. The assignment of a "school code" by the State Defendants is a prerequisite to obtaining per pupil funding from the State. Unless a student is enrolled in a school to which a "school code" has been assigned, no state per pupil funding can be awarded for that student.

31. The correspondence between counsel for the Board and the District and the State Defendants attached to their Response, plus the CORA response documents show that the State (a) knew that Douglas County was rolling out a revised voucher program while the injunction was still in place, and (b) was being asked to put in place the regulatory prerequisite that would permit state funding for the new voucher program from public school monies.

32. Under these circumstances, which track closely with the involvement of the State Defendants in the 2011 version of the voucher program, it is entirely fair and appropriate that the State Defendants are included in the enforcement remedy that this motion seeks.

WHEREFORE, Plaintiffs respectfully move the Court for entry of an Order in the form attached, granting this Motion for Enforcement of August 12, 2011 Permanent Injunction Restraining Defendants' Resumed Funding and Implementation of an Unlawful School Voucher Program.

Respectfully submitted this 21st day of June, 2016.

FAEGRE BAKER DANIELS LLP

By: *s/ Michael S. McCarthy*
Michael S. McCarthy

Attorneys for Plaintiffs Taxpayers for Public Education, et. al.

ARNOLD & PORTER LLP

By: *s/ Matthew J. Douglas*
Matthew J. Douglas

Attorneys for Plaintiffs LaRue, et. al.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June, 2016, a true and correct copy of the foregoing **PLAINTIFFS' CONSOLIDATED REPLY IN SUPPORT OF MOTION FOR ENFORCEMENT OF AUGUST 12, 2011 PERMANENT INJUNCTION RESTRAINING DEFENDANTS' RESUMED FUNDING AND IMPLEMENTATION OF AN UNLAWFUL SCHOOL VOUCHER PROGRAM** was electronically filed and served via ICCES on the following:

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March 31, 2016

Our File Number: 228395-00103

Commissioner Richard Crandall
Commissioner of Education
Colorado Department of Education
201 East Colfax Avenue, Room 500
Denver, CO 80203

Dear Commissioner Crandall:

On behalf of Douglas County School District, I am requesting a school code for the School Choice Grant Program adopted by the District's board of education on March 15, 2016. Receiving a school code will permit the District to keep track of the students who enroll in the SCG Program for purposes of student count under the Public School Finance Act, C.R.S. 22-54-101 *et seq.*, and assessments under articles 7 (Educational Accountability) and 11 (Accreditation) of Title 22. Historically, the Department has granted school codes to districts in similar circumstances, for instance, when operating contract schools pursuant to C.R.S. 22-32-122.

Please contact me if you have any questions.

Sincerely yours,

Eric V. Hall
Lewis Roca Rothgerber Christie LLP

cc: Jan Rose-Petro
Antony Dyl
Robert Ross

ATTACHMENT 2 TO EXHIBIT B

EXHIBIT A

COLORADO
Department of Education

Data Services Unit
201 East Colfax Avenue
Denver, CO 80203-1799

Eric V. Hall
Lewis Roca Rothgerber Christie LLP
90 South Cascade Avenue, Suite 1100
Colorado Springs, CO 80903

April 13, 2016

Dear Mr. Hall:

Thank you for your request for a new school code on behalf of Douglas County School District's School Choice Grant Program. The commissioner asked me to address your inquiry. The Colorado Department of Education (CDE) has a formal process to obtain a code for a new school. The school code request form can be found at http://www.cde.state.co.us/apps/formcenter/SchoolChangeForms under 'Request for New School Code'. First and foremost, an entity must meet Colorado's definition of a public school in order for a new code to be generated. Current requirements and responsibilities for the school as well as CDE's review procedures can be found at http://www.cde.state.co.us/datapipeline/definition-of-colorado-public-school. This document will inform and guide CDE's decision as to whether a new school code can be generated for your new program, and therefore CDE recommends that you accept these documents as guidance as you determine how the 'School Choice Grant Program' school will be structured.

For instance, you will note that a "program," as such, is not eligible to obtain a school code. An entity must satisfy the criteria of a Colorado public school and, once a code is granted, is obligated to execute specified responsibilities. In order for the school code review process to move forward, CDE must have enough information demonstrating that the entity does meet public school criteria, can fulfill the obligations to report mandated student and staff information, as well as comply with accountability and assessment requirements.

CDE will look forward to receiving an official 'Request for New School Code' for the School Choice Grant Program School, accompanying information about how the entity conforms to the definition of a Colorado public school, and how it will address its obligations if a code is issued. CDE will be happy to provide you with assistance and to answer any questions regarding the process and the criteria. Please contact me at petro_j@cde.state.co.us with any questions regarding the school code review process. Thank you.

Sincerely,

Jan Rose Petro

Jan Rose Petro
Director of Data Services

cc: Janece Rogers

ATTACHMENT 1 TO EXHIBIT B

EXHIBIT B

From: Richard Crandall [mailto:RCrandall@consultingrd.com]
Sent: Wednesday, May 04, 2016 9:47 AM
To: Schold, Jane
Subject: CORA -Douglas County

3/14/26 8:50 AM

FAGEN - I wanted to give you a heads up...my board is going to consider modifying our scholarship program to put it in compliance with the Colorado Supreme Court ruling. This would eliminate the religious schools. CDE has long said they would fund the students since they are district students receiving a scholarship. CDE helped us craft it in Jan 2011. Let me know if you have any concerns.

CRANDALL - OK. Thank you. I'm in disneyland today for AZ spring break. Let me know if you need anything

FAGEN - Have fun!

3/28/16 3:26 PM

FAGEN - Heads up -- My new board members questioning me about recently approved student grant program. I'm sure you are in sync with your legal folks :)

FAGEN - I'm pointing to conversations between our attorneys

FAGEN - I sent this to you when you were in Disney :)

EXHIBIT C

FAGEN - I wanted to give you a heads up...my board is going to consider modifying our scholarship program to put it in compliance with the Colorado Supreme Court ruling. This would eliminate the religious schools. CDE has long said they would fund the students since they are district students receiving a scholarship. CDE helped us craft it in Jan 2011. Let me know if you have any concerns.

Sent from my Verizon, Samsung Galaxy smartphone

CRANDALL - I'll follow up tomorrow. Thanks

Definition of a Colorado Public School

Colorado Requirements:

A Colorado public school is an institution that receives the majority of its funding from moneys raised by a general state, county, or district tax and whose property is operated by a political subdivision of the state and:

- Is an autonomous entity of a preschool through grade 12 district, the Charter School Institute or Board of Cooperative Educational Services (BOCES) which includes preschool through grade 12 grades within.
- Has its own principal who is not under the supervision of a principal of another public school,
- Has a budget separate from any other public school,
- Provides a complete instructional program that allows students to proceed to the next grade level or if a high school with twelfth grade, to graduate students. General Educational Development (GED) preparation programs do not meet this requirement. Has one or more core content teachers* if any grade between K and 12 is being served. In schools serving only preschoolers, there must be at least one individual qualified as a Teaching Assistant as described in the Human Resources Job Classification Code 415(see below.)

415 Teaching Assistant, Regular Education – Performs the day-to-day activities of teaching students while under the supervision of a teacher, program director or principal and may or may not be licensed by Colorado Department of Education (CDE). In preschool settings, this includes individuals who are functioning as assistants to a preschool lead teacher or are actually functioning as the preschool lead teacher. The teaching assistant does not make diagnostic or long-term evaluative decisions; however, individuals functioning as a preschool lead teacher are participants in teams of professionals making these types of determinations.

Colorado Teacher - Provides learning experiences and care to students during a particular time period or in a given discipline.

****Core Content*** - All K-12 core content teachers must be Highly Qualified (HQ). This means that regular and special education teachers that are the primary provider of instruction must be HQ in their particular content area(s), including English, reading or language arts; mathematics; science; foreign languages; social studies (civics, government, history, geography, economics); the arts (visual arts, music).

Colorado Public School Responsibilities:

Entities which meet the above Colorado requirements, and thus are granted a school code, are obligated to 1) report mandated student and staff information and 2) meet accountability and assessment requirements as identified below.

EXHIBIT D

Reporting to CDE

Data Pipeline: Local education agencies (LEAs) must report every school within applicable collections.

Interchanges:
Discipline
Special Education Individualized Education Program (IEP)
Staff
Student
Teacher/Student Data Link
Title I

Snapshots:
11th Grade Alternate Assessment
End of Year
Human Resources
Math and Science Partnership
Reading to Ensure Academic Development Act (READ)
Special Education December Count
Special Education Discipline
Special Education End of Year
Student October

Year Round Collections:
Directory
Educator Identification System (EDIS)
Record Integration Tracking System (RITS)

Periodic Collections:
Assessing Comprehension in English State to State for English Language Learners (ACCESS for ELL) – Student Biographical Data (SBD)
Colorado Alternate Assessment (CoALT) – SBD
Colorado Measures of Academic Success (CMAS) – SBD
Dynamic Learning Maps (DLM) - SBD
Finance December
Report Card March
School Discipline and Attendance

Accountability and Assessment

Accountability: All Local Education Agencies (LEAs) with schools will be accredited by the Colorado Department of Education (CDE). All schools serving grades 1-12 must be accredited through the LEA accreditation process. These schools receive plan assignments based upon the School Performance Frameworks (SPFs). Every school serving grades 1-12 and LEAs with schools must complete a Unified Improvement Plan (UIP). If the LEA has fewer than 1,000 students it may complete a district-wide UIP instead of separate school and district UIPs.

Assessments: Each school must administer the assessments appropriate to their student population including but not limited to Colorado Measures of Academic Success (CMAS), Colorado Alternate (CoAlt), Dynamic Learning Maps (DLM), Colorado American College Test (CO ACT), Assessing Comprehension in English State to State (ACCESS), Reading to Ensure Academic Development (READ), SCHOOL READINESS and Results Matter assessments.

Guidance/Restrictions on Adding School Codes

The Request for a New School Code may be found at:
http://www.cde.state.co.us/DataPipeline/download/Snapshots/Student%20October/School%20Code%20Changes/Request_for_New_School_Code.pdf

- Once the Student October collection is complete no new school codes will be assigned or no school grade range changes will be granted.
- If a school reopens after it was closed or remained inactive for several years, that existing school code will be used and a new school code will not be assigned.
- Schools in Priority Improvement or Turnaround will be closely examined. CDE will review existing school Performance Framework data to determine if a new school code will be granted.

A local education agency may be eligible for a new school code if one or more of the following criteria are met:

- The grade span of the school changes by more than three grades, not including Preschool or Kindergarten as grades. For example: A school shifting from a K-5 to K-8 cannot request a new code because it is not changing more than 3 grades. A school changing from a K-5 to a K-12 can request a new code.
- The school's physical location changes and the attendance area changes by more than 50%.
- If two schools of about the same size merge, the school code committee will carefully consider which of the codes to maintain or if a new school code should be issued. In certain situations
- One school splits into two or more schools. If a K-12 school requests new codes for K-5, 6-8, and 9-12, the high school grade levels will retain the old school

code, in order to ensure continuity of graduation rates. New codes may be issued for the K-5 and 6-8 schools, however, accountability attributions may follow all three codes.

- If more than 50% of the student population is new and does not come from a single existing entity (sending school may or may not be closed). This does not include students in grades with natural progression of students in and out of the school.
- A new single district online school has been recognized through CDE's Blended and Online Learning Office.
- A new multi-district online school has been certified with CDE's Blended and Online Learning Office and the State Board of Education.

When submitting a request for a new school code, please keep in mind the following implications:

- The new school may not be eligible for certain grants or awards.
- Trend data might be impacted (this includes assessment, growth, enrollment, demographics, graduation rate, dropout rate, mobility rate, etc.)
- Reporting of data follows the school code. If an existing school code remains, the prior data will be applied to the existing school code. If one or more previously existing schools is granted a new school code, the data associated with the previous codes will not follow the new code for accountability or reporting purposes.
    - CDE will be unable to automatically produce a 3-year School Performance Framework report based on three years of historical data until the new school code has been in operation for three years.
    - A 3-year School Performance Framework for merged schools will contain the historical data for the original school code only.

A new school code will not be assigned if (not all inclusive):

- The definition of a public school is not met.
- The grade span of the school changed by three grades or less, not including Preschool or Kindergarten.
- The school's physical location or address changed, but the attendance area did not change significantly (the student population changes less than 50%).
- A high school merges with a middle (or elementary/middle) school. In this case the high school code will be retained for the new entity in order to ensure accurate graduation rate reporting.
- A smaller school merges with a larger entity that serves essentially the same grade span, the code of the school with the larger population will be used (the historical data for the smaller school will not be connected to the new school code).
- When a school splits, the one that retains the most characteristics of the original school retains the code. Characteristics include student population, grades offered, and attendance area.
- A school changes status (i.e., charter, magnet, innovation.)

- A school undergoes restructuring through Priority Improvement/Turnaround consequences under provisions of C.R.S. 22-11-101 *et seq.* or under provisions in the Elementary and Secondary Education Act (ESEA).
- The name of a school changes.
- A school changes local education agencies.
- A school code is being requested for a program (i.e. GED, vocational, etc.)
- A school is created only to provide college funding for students, through a dual enrollment program.

Accountability History:

- Even if a new school code is granted, the accountability history may continue to follow a school.
- For example, if a K-12 school has been required to implement a Turnaround Plan, and a request is approved to separate into a K-5, 6-8 and 9-12 school, the Turnaround status and years on the accountability clock will continue for all three schools, even though only the 9-12 will retain the school code. If the new schools are no longer identified as Priority Improvement or Turnaround, the school will come off the accountability clock.
- Another example: if the population of the new school consists of 50% or more of the population of a previous school, **or** if 50% or more of the population of the new school came from a single previous school, **and** the previous school is/was on the accountability clock, then the accountability history and status will carry over to the new school.

CDE Review Process

- A cross-department CDE team will review each request. Considerations may include request justification, enrollment, attendance areas, federal and state program participation, and school plan type assignment.
- CDE will take into consideration any implications for accountability consequences, including a school's Priority Improvement or Turnaround status and the number of years in this status. For requests involving schools assigned Priority Improvement or Turnaround ratings, closer examination will be given. In these circumstances new school codes may not be granted, even if they meet the outlined criteria in this document. Even if new school codes are granted, the accountability history of the previous school may be maintained.
- School codes issued by CDE may be changed after the beginning of the school year if the US Department of Education requests CDE to revert to a previous code.

Grade Level Change

The Request for a Grade Change may be found at:
http://www.cde.state.co.us/DataPipeline/download/Snapshots/Student%20October/School%20Code%20Changes/Request school grade change.pdf

Districts must submit any changes to schools' grade level ranges to the Colorado Department of Education. The superintendent of a preschool-12 school district or executive director of a BOCES or the Charter School Institute must certify grade level configurations of their schools when altered. While CDE acknowledges that school grade ranges may sometimes shift from time to time as district student populations fluctuate, grade configurations should not be vacillating year after year. Assessment, accountability and achievement tracking can be impacted as this occurs. A static grade level range within a school over a period of years assists in accountability determinations. It is also understood that some schools may have a plan to systematically implement an expansion or contraction of grade levels over a period of years until a specified range is reached. Such plans should be recorded on the "Request for a School Grade Change."

CDE has the discretion to approve or deny requests for grade changes. Changes to school grades configurations may impact accountability.

Multi-district oline schools that request grade level changes will need to amend their online certifications with CDE's Blended and Online Learning Office by April 1st of the year prior to implementation of the intended grade change.

Special Section

Online:

- Online multi-district schools must be certified by CDE's Blended and Online Learning Office prior to receiving a school code.
- Single district online programs with more than 100 students must have a school code. Both single-district online schools and online programs are recognized by CDE's Blended and Online Learning Office. Online multi-district schools seeking to change authorizers must amend their online certification with CDE's Blended and Online Learning Office by April 1st of the year prior to implementation of the intended authorizer change.

Private School:

- A non-public school may not convert into a public charter school. C.R.S. 22-30.5-106(2)

COLORADO
Department of Education

Mandatory
FORM # DAR-108
EDAC APPROVED
Approved 3/18/2016 for 2016-2017

Request for New School Code

Instructions

In order for CDE to assign a 4-digit code number to a new school, a district must submit the following information using this online form and in writing, signed by the superintendent or BOCES executive director.

Note on Schools Merging

If two or more schools are merging and requesting a new school code, the 50% population change spreadsheet must be filled out and included with the new school code request.
Download Population Change Spreadsheet

Definition of a Colorado Public School

CDE has provided guidance around the definition of a public school. Please review the definition prior to requesting a new school code. A school code may not be issued if CDE determines the school does not meet the requirements.

View Full Definition of a Colorado Public School

New School submissions for 2016-17 are due by ***June 30th 2016.***

Warning: District/BOCES failure to submit a request for a new school code may result in a loss of State and Federal funding. It may also create problems with accountability, assessment and data collection.

It is imperative that all districts/BOCES ensure that all schools have a CDE-issued school code by the beginning of a new school year, as of June 30.

EXHIBIT E

Rzepa, Stephanie

From: ICCES Courtesy Notices <DoNotReply@judicial.state.co.us>
Sent: Tuesday, June 21, 2016 1:46 PM
To: Rzepa, Stephanie
Subject: Submission Receipt: 2011CV004424 - Larue, James et al v. Colo Bd Of Education et al

Court: Denver County - District
Case Caption: Larue, James et al v. Colo Bd Of Education et al
Case Number: 2011CV004424
Filing ID: 11AE41288B449
Date Filed: June 21, 2016 at 01:40 PM

E-File Fee: $6.00
Service Fees: $19.06
Billing Reference: 486214.399810

Document ID: E5E16B883AD82
Document Type: Reply
Document Title: Plaintiffs' Consolidated Reply in Support of Motion for Enforcement of August 12, 2011 Permanent Injunction Restraining Defendants' Resumed Funding and Implementation of an Unlawful School Voucher Program

Document ID: 56AF4A79EB3CA
Document Type: Exhibit - Attach to Pleading/Doc
Document Title: Exhibits A through E to Plaintiffs' Consolidated Reply in Support of Motion for Enforcement of August 12, 2011 Permanent Injunction Restraining Defendants' Resumed Funding and Implementation of an Unlawful School Voucher Program

View details online at
https://www.jbits.courts.state.co.us/icces/web/filingInformation/filingInfo.htm?fid=11AE41288B449.

For questions about this case, please contact the court. For assistance with ICCES, call the ICCES Customer Support Center at 1-855-CO-ICCES or e-mail iccessupport@judicial.state.co.us.

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