



Trial set to begin in challenge to state's school finance methods

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A landmark lawsuit that accuses the state of Colorado of failing to provide a quality education to all students is expected to go to trial Monday in Denver District Court.

The manner in which the state finances public schools is not "thorough and uniform and particularly fails to meet the needs of the growing numbers of minorities, English Language Learners, those with severely disabling conditions, special needs and gifted learners and other underserved children," argues Children's Voices, a non-profit school advocacy law firm representing parents and 21 school districts.

The lawsuit asserts that Colorado's school finance system increasingly has fallen behind the level necessary to ensure that all children receive a quality education, and that there is no rational connection between the state's funding system and what it asks schools to accomplish, such as improved student achievement and the new workforce readiness mandate.

The plaintiffs demand that the legislature design a fair funding system.

"It's undoubtedly the most important education litigation of our generation," said Glenn Gustafson, chief financial officer and deputy superintendent of Colorado Springs School District 11, which is one of the litigants. "We hope for a successful resolution."

State officials argue it could cost an additional \$4 billion a year and cause taxes to increase if the plaintiffs prevail. They argue that the state has doubled its investment in education since 1994, and it gets 40 percent of state money. The state spends nearly \$3 billion a year on education.

They contend that funds are distributed among school districts "rationally" and that money alone does not improve achievement.

The suit, *Lobato v. Colorado*, has been winding through appeals and rulings for more than six years.

It has been before the Colorado Supreme Court twice. Shortly after the case was filed in 2005, the state asked the courts to dismiss it, arguing that decisions regarding education funding should be made by the General Assembly and voters. The district court and court of appeals agreed. But in 2009, the Colorado Supreme Court reversed those decisions and ruled that the courts have a role in how the state funds K-12 education, and that the case should proceed.

The court also said that if the school finance system is found to be unconstitutional, it would be the task of the General Assembly to bring it into compliance.

"The case could alter the relationship between the people of Colorado and their government for decades to come," according to official postings on the Colorado Attorney General's website. Officials warn that if the state loses, the court could set aside TABOR mandates and insist on taxes being raised without a vote.

However, Kathleen Gebhardt, attorney for Children's Voices, says they are arguing only for more funding, which lawmakers could seek through a ballot measure.

The plaintiffs argue that students aren't getting the education promised in the state Constitution. The Education

Clause requires the legislature to provide a quality education – that is, preparing students to be contributing and knowledgeable citizens of Colorado, Gebhardt says.

They argue that in failing to adequately fund education, the state is violating the Local Control Clause that gives school boards their decision-making authority. If they don't have the money they can't control instruction in their schools, she says.

"The state holds itself out as a leader in education reform, but it has never looked at the resources needed to implement reform," Gebhardt says.

Gustafson calls the state's funding system "terrible," noting it has refused to adjust the formula to make it equitable among districts.

He uses the analogy of building a highway. "If you widen I-25 to three lanes, an engineer would first figure out what it is going to cost — the price of concrete, paint, labor required — and then it would be funded.

"That is not true in education. The state keeps adding rules on what the expected outcomes of education should be, but never funds it adequately. You can go back historically. They have never cost it out.

"We are going down the road, putting asphalt down and don't know where road going to go and how long it will be."

Colorado's education budget has been cut 13 percent or about a billion dollars in the past three years. There was \$227.5 million in cuts to K-12 education for 2011-2012, and \$260 million the year before.

"What scares me is everyone can use the excuse we don't have the money. But it is unacceptable to deliver that level of student achievement," Gustafson says.

Even before the downturn, Colorado regularly ranked near the bottom in school funding.

In 2004, Colorado ranked 49th among 50 states in expenditures per \$1,000 of personal income for education. Although its average per capita income was seventh highest in the nation and 13 percent higher than the national average, its rate of state tax collection as a factor of personal income was \$44.57 per \$1,000 the lowest in the country and 30 percent below the national average of \$63.70.

At the same time, new state and federal reforms, including the No Child Left Behind Act, increased requirements without funding to implement them, plaintiffs say.

Particularly hard hit are rural districts that have limited resources and small residential and business property tax bases. While a funding formula provides such districts extra money, it doesn't do the job, administrators say.

The funding crisis has been exacerbated by that state's changing demographics, educators say. Large suburban and urban districts are seeing dramatic increases in the numbers of impoverished children who are at risk of dropping out of school. There are many more English language learners, and special needs and gifted children, too, who have more expensive educational needs, the Lobato suit says.

It also maintains that the funding formula for charter schools further deprives districts of money in that charters in general serve a low percentage of those under-served students.

The defendants, which include the state, the State Board of Education, the commissioner of education and the governor, argue that the funding formula addresses disparities. They point out that the state determined the constitutionally-required minimum state-level contribution for public education by enacting Amendment 23.

"Putting more money into a broken system won't get a better results. There are improvements that could be made without money," says Deputy Attorney General Geoffrey Blue. "Money has nothing to do with quality teachers, parental involvement, leadership in schools, security."

He points to a Cato Institute study that showed spending on education across the country has skyrocketed but test scores didn't improve.

"That would mean that potentially every cent of the state budget would be shifted over to K-12 education," says

Blue, who heads the office's legal policy and government affairs.

He notes that education receives 45.6 percent of the general fund, or about \$3.2 billion. "If they win, the state will have to raise taxes or devote 89 percent of the general fund budget to K-12 funding, leaving nothing for Medicaid, unemployment, public safety and higher education," Blue says.

"Where would the \$3 billion come from?" asks Ben DeGrow, senior education policy analyst for Boulder-based Independence Institute.

He said the court has no business ordering the legislature what to do. "What makes a judge in a courtroom more qualified? This is throwing the state Constitution out the window."

Under the Taxpayer Bill of Rights, state and local governments cannot raise tax rates without voter approval and cannot spend revenues collected under existing tax rates if revenues grow faster than the rate of inflation and population growth.

"They should leave it up to the voters if they want a tax increase to pay for education."

If the state loses, one of three things could happen, Blue says: TABOR funding would give way to the Education Clause of the Constitution, meaning the court could order the legislature to raise taxes; the court could take all funding out of the budget and put it in education, or it could shift money among the districts.

It could also open the door to many lawsuits, he says.

"Any disgruntled student or parent or district could bring a case. One group might say they want vouchers. Everybody's pet project would be cited as the way to go," Blue says.

He said that there have been similar cases across the country. In only one instance have resulting changes shown any noticeable improvement in test scores.

Blue notes that a similar case in New Jersey is in its 17th appeal to the state Supreme Court.

"I predict this will happen with this case," he said. "This will go on for years and years."

The Lobato suit is supported by the Colorado Association of School Boards, Colorado Association of School Executives, and 21 districts, which have provided at least \$1 per student to help with legal fees. More than \$600,000 has been raised so far. Attorneys are donating their time.

"We are glad the case is getting started. It's the most important opportunity we have had in education to address the school finance system and we hope that it will have a good outcome," said Brad Stauffer, CASB spokesman.

Locally, Colorado School District 11 has provided \$75,000, to the cause. The district has about 29,000 students.

D-11 has cut more than \$23 million from its budget in the past four years.

"Colorado is one of the worst funded states in the nation, and it isn't getting better, said D-11 Board President Tom Strand. "The reductions in school funding over the last four years certainly hasn't helped our ability to advance student achievement. And we can't ignore the needs of the small rural districts that have so few resources."

School districts that joined as plaintiffs in the Lobato lawsuit:

Alamosa School District RE-11J; Aurora Public Schools; Bethune School District; Centennial School District; Center Consolidated School District 26JT; **Colorado Springs School District 11**; Creede School District; Del Norte Consolidated School District C-7; Jefferson County Public Schools; Moffat County School District RE1; Moffat Consolidated School District 2; Monte Vista School District; Montezuma-Cortez School District Re-1; Mountain Valley School District Re 1; North Conejos School District RE-1J; Pueblo School District 60; Sanford School District 6-J; Sangre de Cristo School District Re-22J; Sierra Grande School District R-30; South Conejos School District Re-10, and Sargent School District RE-33J.

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