

IN THE SUPREME COURT OF OHIO

DALE R. DEROLPH, et al.,

Plaintiffs,

v.

STATE OF OHIO, et al.

Defendants.

:
: **Case No. 99-0570**
:
: **Related Case No. 95-2066**
:
: **Appeal from the Common Pleas**
: **Court of Perry County, Ohio,**
: **Case No. 22043 as Remanded By**
: **The Ohio Supreme Court,**
: **Case No. 95-2066**
:

PLAINTIFFS' FIRST SET OF POST-*DEROLPH II*
REQUESTS FOR PRODUCTION OF DOCUMENTS
TO DEFENDANTS-APPELLANTS

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Plaintiffs, Dale R. DeRolph, et al., (“Plaintiffs”), by and through counsel, hereby request, pursuant to Federal Civil Rule 34, that Defendants, State of Ohio, et al. (“Defendants”), produce for inspection and copying the documents requested below at the law offices of Nicholas A. Pittner, Bricker & Eckler, LLP, 100 South Third Street, Columbus, Ohio 43215-4291, within thirty days of the date of service hereof.

DEFINITIONS

1. The terms “you” and “your,” when used herein, refers to Defendants, and each respective party submitting answers to these discovery requests.
2. The term “person,” when used herein, means an individual, corporation, partnership or association, or any other business or governmental entity.
3. The term “document(s),” refers to all writings of any kind, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, notes or notations, diaries, statistics, letters, materials, invoices, orders, directives, interviews, telegrams, reports, studies, statements, transcripts, checks and canceled checks, summaries, pamphlets, books, interoffice and intraoffice communications, notations and minutes of telephone or any sort of conversations or conferences, or of directors’ meetings, or of committee meetings, or of other meetings, periodicals, requisitions, resolutions, certificates, opinions, analyses, projections, evaluations, contracts, licenses, agreements, ledgers, books or records of account, desk calendars, appointment books, lists, tabulations, bulletins, printed matter, teletype, telefax, worksheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or aural recording or representations of any kind, including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, records, motion pictures, and electronic, mechanical or electrical recordings or representations of any kind, including,

without limitation, e-mail, electronic communications, tapes, databases, cassettes, cartridges, discs, chips and records.

4. The term “concerning” includes referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, or constituting.

5. The term “including” means including, but not limited to.

6. The term “*DeRolph II*” means the decision of the Ohio Supreme Court issued May 11, 2000, in the case of *DeRolph v. State* (2000), 89 Ohio St.3d 1.

7. The term “Unfunded Mandates” means those unfunded mandates referenced and described in *DeRolph II* and as particularly referenced in paragraph (5) in the Conclusion of *DeRolph II* (*Id.* at 37) and in the discussion of unfunded mandates in *DeRolph II* (*Id.* at 31-35).

8. The “State” means the government of the State of Ohio and all of its departments, divisions, and agencies, including, but not limited to the Ohio Legislative Service Commission, the Ohio Legislative Budget Office, the Ohio Department of Education, the Ohio State Board of Education, the Office of the State Superintendent of Public Instruction, the Office of the State Auditor, the Ohio School Facilities Commission, the Ohio Department of Taxation, the Office of Budget and Management, the Office of the Governor, the General Assembly, and any of its members or offices of its members, et cetera.

9. “Relates to,” “related to,” or “relating to,” means in whole or in part constituting, containing, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.

10. “Model Districts” means the “103 model effective school districts” referenced in Senate Bill 345 of the 123rd General Assembly.

INSTRUCTIONS

1. Each request refers to all documents that are either known by any party to exist or that can be located or discovered by reasonably diligent efforts by any party.

2. The documents requested for production include those in the possession, custody, or control of Respondent, its agents, employees, representatives, and attorneys.

3. All documents covered in the request shall be produced in an orderly manner (and with appropriate markings or other identification) so that the party issuing this subpoena will be able to identify the source of the document, the file in which it was maintained, the person to whom such file belonged, and the number of the document request to which it responds.

4. The Respondent is under a duty to supplement or amend a prior response if it obtains information upon the basis of which it knows that the response was incomplete or incorrect when made, or it knows that the response, although complete or correct when made, is now incomplete or incorrect.

5. If any document was but no longer is in your possession or subject to your custody or control or in existence, state if: (a) it is missing or lost; (b) it has been destroyed; (c) it has been transferred, voluntarily or involuntarily, to others; or (d) it has been disposed of otherwise. In each instance, explain the circumstances surrounding each disposition and identify the person(s) directing or authorizing same, and the date(s) thereof. Identify each document by listing its author, and the author's address, type (e.g., letter, memoranda, telegram, chart, photograph, etc.), date, subject matter, present location(s) and custodian(s) and state if the document (or copies) are still in existence.

6. If any document is withheld on the basis of a claim of privilege, state with respect thereto: the privilege relied upon, the holder of the privilege, the type of the document (e.g., letter, memorandum, etc.), the date, the author, the addressee or

addressees, the subject matter, and the identity of each person to whom the document has been disclosed.

7. Unless otherwise indicated below, the time period for which documents are sought is the period from August 1, 1998 to the date of Respondent's final production of records in response to this request.

[END OF INSTRUCTIONS]

DOCUMENTS TO BE PRODUCED

1. Any and all documents in any way related to any studies, surveys, or analyses which in any way quantify or otherwise estimate the cost of the Unfunded Mandates.

ANSWER:

2. Any and all documents in any way related to any analysis, study, or effort to quantify the amount of money Ohio school districts are or have been required to expend annually or set aside annually as a result of the enactment of Ohio Revised Code Section 3315.17(A) and as required by Ohio Administrative Code Section 117-2-23(A) (the "Textbook And Instructional Material Set-Aside").

ANSWER:

3. Any and all documents in any way related to any analysis, study, or effort to quantify the amount of money Ohio school districts are or have been required to expend annually or to set aside annually as a result of the enactment of Ohio Revised Code Section 3315.18(A) and as required by Ohio Administrative Code Section 117-2-23(B) (the “Capital Improvements And Maintenance Set-Aside”).

ANSWER:

4. Any and all documents in any way related to any analysis, study, or effort to quantify the amount of money Ohio school districts are or have been required to expend annually or to set aside annually as a result of the enactment of Ohio Revised Code Section 5705.29(H) and as required by Ohio Administrative Code Section 117-2-24(B) (the “Budget Reserve Set-Aside”).

ANSWER:

5. Any and all documents in any way related to any study, survey, or analysis to determine how many dollars Ohio school districts are spending or have been required to spend annually as a result of the enactment of Amended Substitute Senate Bill 55.

ANSWER:

6. Any all documents in any way related to efforts taken by the State to comply with DeRolph II that “the Unfunded Mandates in H.B. 412 and S.B. 55,..., must be addressed and immediately funded.”

ANSWER:

7. Any and all fiscal notes and local impact statements concerning House Bill 1 of the 124th General Assembly.

ANSWER:

8. Any and all fiscal notes and local impact statements concerning House Bill 2 of the 124th General Assembly.

ANSWER:

9. Any and all fiscal notes and local impact statements concerning Senate Bill 1 of the 124th General Assembly.

ANSWER:

10. Any and all fiscal notes and local impact statements concerning Senate Bill 2 of the 124th General Assembly.

ANSWER:

11. Any and all fiscal notes and local impact statements concerning House Bill 94 of the 124th General Assembly.

ANSWER:

12. Any and all fiscal notes and local impact statements concerning House Bill 345 of the 123rd General Assembly.

ANSWER:

13. Any all studies, analyses, or surveys relating to budgets submitted by Ohio school districts, including five-year budget projections.

ANSWER:

14. Any and all surveys, studies, analyses, or simulations conducted at the request of any member or the office of any member of the Ohio General Assembly relating to the enactment or proposed enactment of any legislation in response to DeRolph II, or otherwise relating to legislation concerning funding of Ohio school districts after DeRolph II.

ANSWER:

15. Any and all surveys, studies, analyses, or simulations provided to any member or the office of any member of the Ohio General Assembly relating to the enactment or proposed enactment of any legislation in response to DeRolph II, or otherwise relating to legislation concerning funding of Ohio school districts after DeRolph II.

ANSWER:

16. Any and all surveys, studies, analyses, or simulations relating to the enactment or proposed enactment of any legislation in response to DeRolph II, or otherwise relating to legislation concerning funding of Ohio school districts after DeRolph II.

ANSWER:

17. Any and all documents which in any way identify school districts which have received funds from the School Solvency Assistance Program Fund, established pursuant to Ohio Revised Code Section 3316.20 (the "School Solvency Assistance Program Fund").

ANSWER:

18. Any and all documents which in any way show the amounts each school district has received from the School Solvency Assistance Program Fund over any period of time.

ANSWER:

19. Any and all documents which in any way relate to the determination that any Ohio school district has been, is, or will be placed into the designation of fiscal caution, fiscal watch, or fiscal emergency. As to such districts, also produce:

- (a) Any and all such documents which in any way reveal the reasons why such districts have been or will be placed in fiscal caution, fiscal watch, or fiscal emergency.
- (b) Any and all documents in any way related to the fiscal recovery plans of any district placed in fiscal watch or fiscal emergency, including drafts of any plans.
- (c) Any and all documents in any way related to any direction, advice, or recommendations from the State to any district as to how to emerge from fiscal watch or fiscal emergency, including any proposals from the State as to the content or terms of any district's fiscal recovery plan.

ANSWER:

20. Any and all documents which in any way reveal or identify the history and status of debt owed by any school district to the Emergency School Assistance Loan Program.

ANSWER:

- (a) Any and all documents which in any way indicate the purpose for which the State has loaned monies from the Emergency School Assistance Loan Program.

ANSWER:

21. Any and all documents which in any way reveal or identify the history and status of debt owed by any school district to the School Solvency Assistance Program Fund.

ANSWER:

- (a) Any and all documents which in any way indicate the purpose for which the State has loaned monies from the School Solvency Assistance Program Fund.

ANSWER:

22. Any and all documents which in any way reveal or identify the history and status of debt owed by any school district to the Spending Reserve Loan Program.

ANSWER:

23. Any and all documents which in any way provide summary information concerning tax levies or bond issues placed on the ballot by school districts in Ohio since August 1, 1998, including the number of levies, the pass or failure of the levies, the millage or amounts sought to be raised by such levies, and the like.

ANSWER:

24. Any all studies, analyses, surveys, or simulations which in any way reveal or relate to sources of funding of Ohio school districts, such as reports which would show either at the school district level and/or on the statewide level the percentage of funding from local property taxes, from the State, or from the United States government. This request is intended to expressly include any simulations projecting percentages of sources of funding in future years.

ANSWER:

- (a) Any and all comparisons of per pupil state and local revenue performed by the State, including the Ohio Department of Education Office of Policy Research & Analysis.

ANSWER:

- (b) Any and all comparisons of state and local revenue performed by the State, including the Ohio Department of Education Office of Policy Research & Analysis.

ANSWER:

25. Any and all simulations performed by or for the State, including, but not limited to, the Ohio Department of Education, including its office of policy research & analysis – simulation unit, simulating state funding amounts for Ohio school districts for any future fiscal years.

ANSWER:

- (a) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils to receive a thorough and efficient education.

ANSWER:

- (b) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils to receive an adequate education.

ANSWER:

26. Any and all simulations or comparisons performed by or for the State, including, but not limited to, the Ohio Department of Education, including its office of policy research & analysis – simulation unit, or any other State agency concerning DPIA funding. This request is intended to include comparisons from fiscal year to fiscal year in any order or grouping and is also intended to include any simulations or projections of DPIA funding for future fiscal years.

ANSWER:

- (a) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils in conditions of poverty to receive a thorough and efficient education.

ANSWER:

- (b) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils in conditions of poverty to receive an adequate education.

ANSWER:

27. Any and all simulations or comparisons performed by or for the State, including, but not limited to, the Ohio Department of Education, including its office of policy research & analysis – simulation unit, or any other State agency concerning transportation funding. This request is intended to include comparisons from fiscal year to fiscal year in any order or grouping and is also intended to include any simulations or projections of transportation funding for future fiscal years.

ANSWER:

- (a) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of school-related transportation resources needed by Ohio public school pupils.

ANSWER:

28. Any and all simulations or comparisons performed by or for the State, including, but not limited to, the Ohio Department of Education, including its office of policy research & analysis – simulation unit, or any other State agency concerning special education funding. This request is intended to include comparisons from fiscal year to fiscal year in any order or grouping and is also intended to include any simulations or projections of special education funding for future fiscal years.

ANSWER:

- (a) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils with special education needs to receive a thorough and efficient education.

ANSWER:

- (b) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils with special education needs to receive an adequate education.

ANSWER:

29. Any and all simulations or comparisons performed by or for the State, including, but not limited to, the Ohio Department of Education, including its office of policy research & analysis – simulation unit, or any other State agency concerning vocational education funding. This request is intended to include comparisons from fiscal year to fiscal year in any order or grouping and is also intended to include any simulations or projections of vocational education funding for future fiscal years.

ANSWER:

- (a) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils with vocational education needs to receive a thorough and efficient education.

ANSWER:

- (b) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils with vocational education needs to receive an adequate education.

ANSWER:

30. Any and all simulations or comparisons performed by or for the State, including, but not limited to, the Ohio Department of Education, including its office of policy research & analysis – simulation unit, or any other State agency concerning gifted education funding. This request is intended to include comparisons from fiscal year to fiscal year in any order or grouping and is also intended to include any simulations or projections of gifted education funding for future fiscal years.

ANSWER:

- (a) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils with gifted education needs to receive a thorough and efficient education.

ANSWER:

- (b) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils with gifted education needs to receive an adequate education.

ANSWER:

31. Any and all simulations or comparisons performed by or for the State, including, but not limited to, the Ohio Department of Education, including its office of policy research & analysis – simulation unit, or any other State agency concerning technology funding. This request is intended to include comparisons from fiscal year to fiscal year in any order or grouping and is also intended to include any simulations or projections of technology funding for future fiscal years.

ANSWER:

- (a) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils with technology education needs to receive a thorough and efficient education.

ANSWER:

- (b) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed by Ohio public school pupils with technology education needs to receive an adequate education.

ANSWER:

32. Any and all simulations or comparisons performed by or for the State, including, but not limited to, the Ohio Department of Education, including its office of policy research & analysis – simulation unit, or any other State agency concerning facilities funding. This request is intended to include comparisons from fiscal year to fiscal year in any order or grouping and is also intended to include any simulations or projections of facilities funding for future fiscal years.

ANSWER:

- (a) Any and all studies, analyses, surveys, or simulations performed by or for the State, including the Ohio School Facilities Commission, as part of any effort to determine any or all of (1) the physical condition of Ohio school buildings, (2) the rate of decay of Ohio school buildings, (3) the handicap accessibility of Ohio school buildings, (4) the asbestos content or asbestos abatement needs of any Ohio school building, (5) the building code compliance of Ohio school buildings, (6) the educational suitability of Ohio school buildings, (7) the technology capacity of Ohio school buildings, *e.g.*, the capacity of a building to support internet or intranet technology, computer stations, etc., (8) the capacity of Ohio school buildings to support all-day, everyday kindergarten, (9) the cost of annual maintenance of Ohio school buildings, and (10) the capacity to implement class size reduction.

ANSWER:

- (b) Any and all studies, analyses, surveys, or simulations performed by or for the State, including the Ohio School Facilities Commission, as part of any effort to determine whether current or planned funding levels for construction, renovation, or repair of Ohio school facilities meet or exceed the rate of decay and deterioration of Ohio school buildings.

ANSWER:

- (c) Any and all studies, analyses, surveys, or simulations performed by or for the State, including the Ohio School Facilities Commission, as part of any effort to determine the ability of Ohio school districts to raise matching funds through bond issues in view of a district's existing debt or debt capacity.

ANSWER:

33. Any and all simulations or comparisons using the SF-3 format performed by the Ohio Department of Education, including its office of policy research & analysis – simulation unit. This request is intended to include comparisons from fiscal year to fiscal year in any order or grouping and is also intended to include any simulations or projections of SF-3 funding for future fiscal years.

ANSWER:

34. Any and all simulations performed by the State which are simulations of state funding amounts for Ohio primary and secondary schools, including any such simulations performed by the Department of Education Office of Policy Research & Analysis – simulation unit.

ANSWER:

35. Any and all charts, diagrams, or other summary information indicating growth or changes in state agency budgets.

ANSWER:

36. Any simulation or comparison of base cost estimates, such as, by way of example and not by limitation, the type of simulation attached hereto as Exhibit A.

ANSWER:

37. Any and all simulations, comparisons, analyses, or projections of the cost of any version of class size reduction (or, put differently, the cost of reducing the pupil/teacher ratio) in primary and secondary schools at any or all grade levels.

ANSWER:

- (a) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources needed to achieve effective class size reduction.

ANSWER:

38. Any and all simulations, comparisons, analyses, or projections relating to the cost of funding all-day, everyday kindergarten either statewide or by any variation of selected districts.

ANSWER:

- (a) Any and all studies, analyses, surveys, or simulations performed by or for the State as part of any effort to determine the nature, extent, and cost of resources necessary to implement all-day, everyday kindergarten.

ANSWER:

39. Any and all documents which in any way support, contradict, are inconsistent with, or otherwise relate to the General Assembly's finding "that the costs of the set-aside requirements of sections 3315.17 and 3315.18 are not unfunded to the extent the required set-asides are percentages of the base cost formula amount," as stated in Senate Bill 345.

ANSWER:

40. Any and all documents relating to the reanalysis of the “fiscal year 1996 fiscal data of the 103 model effective school districts, described in sections 3317.012 of the Revised Code, which served as the basis for the fiscal policies contained in AM. SUB. H.B. 650,” as set forth in Senate Bill 345.

ANSWER:

41. Any analysis performed by the General Assembly or any other department or office of the State analyzing data for fiscal years following fiscal year 1996 concerning amounts spent by the Model Districts for textbooks and instructional materials and capital and maintenance costs. This request includes any analysis of amounts spent as percentages either of the “base cost amount” (as that term is used in Senate Bill 345) or as a percentage of school district annual general operating revenue.

ANSWER:

42. Any and all documents in any way supporting, contradicting, or otherwise related to the General Assembly’s finding “that the base cost formula amount reflects the cost of providing nineteen and sixth-tenths high school academic units” as set forth in Senate Bill 345.

ANSWER:

43. Any and all analyses, surveys, simulations, or studies of the costs incurred by districts *other than* the Model Districts to implement of the requirements of Ohio Revised Code Section 3313.603, enacted by Senate Bill 55.

ANSWER:

44. Any and all models, simulations, studies, analyses, schedules, charts, or graphs in any way indicating any base cost of funding primary and secondary education.

ANSWER:

45. Any and all models, simulations, studies, analyses, schedules, charts, or graphs in any way relied upon or considered in connection with identifying the base cost of funding primary and secondary education, including, but not limited to, any documents concerning the 127 Ohio school districts which met 20 of the 27 performance indicators specified in law in fiscal year 1999.

ANSWER:

46. Any and all documents in any way revealing any methodology considered by the State to determine the base cost funding for fiscal year 2002 and beyond.

ANSWER:

47. Any and all documents in any way relating to any base cost funding model considered by the State for fiscal year 2002 and beyond.

ANSWER:

48. All legislative proposals for the determination of the base cost funding model for primary and secondary education.

ANSWER:

49. Any and all surveys conducted by the State, including the Legislative Service Commission, concerning school districts which met at least 20 of 27 performance indicators specified in law in FY1999, including, but not limited to, any surveys relating to such districts required credits for graduation or the fiscal impact of the set-asides referenced in Senate Bill 345.

ANSWER:

50. Any and all surveys conducted by the State, including the Legislative Service Commission, concerning school districts which met at least 20 of 27 performance indicators specified in law in FY1999, identifying educational programs, opportunities, or services provided by such districts.

ANSWER:

51. Any and all documents which in any way relate to the formulation of “parity aid” enacted into law or considered for enactment into law, including, but not limited to, any documents which reveal how the “parity aid” formula was arrived at, any versions of the formula other than the final version, any fiscal note and local impact statement which addresses or considers “parity aid,” or any document which contains any simulation or projection of the cost of “parity aid.”

ANSWER:

52. Any documents which in any way compare the cost of implementing “parity aid” to the phase-out of equity aid.

ANSWER:

53. Any and all documents which in any way support the State’s position that it has addressed the Court’s concern in DeRolph II that “continued reliance on local property taxes as the primary means to fund Ohio’s school has not been specifically addressed and may in fact be compounded by H.B. 283’s phase-out of the inventory tax, which may result in even greater reliance on local contributions in the future.”

ANSWER:

54. Any and all documents which in any way support the State’s position that it has complied with the Court’s direction in DeRolph II that “continuing attention must be given to the mechanism implemented to fund the construction of new school facilities and to repair older, decaying school buildings, until the task is complete.”

ANSWER:

55. Any and all documents which in any way support the State's position that it has complied with the Court's direction in DeRolph II that "additionally, requiring school districts to pass levies as a prerequisite for obtaining state funding should be reviewed."

ANSWER:

56. Any and all documents which in any way support the State's position that it has complied with the Court's direction in DeRolph II that "the School Solvency Assistance Fund established by H.B. 412 must be reevaluated, so that funds are available and used only in case of extreme emergencies and not for unfunded mandates or day-to-day expenses."

ANSWER:

57. Any and all documents which in any way support the State's position that it has complied with the Court's direction in DeRolph II that "the unfunded mandates in H.B. 412 and S.B. 55, which will necessitate either increased reliance on local property taxes or additional borrowing from the School Solvency Assistance Fund, must be addressed and immediately funded."

ANSWER:

58. Any and all documents which in any way support the State's position that it has addressed the Court's concern in DeRolph II that "the phenomenon known as phantom revenue has not been eliminated and may increase as a consequence of H.B. 650."

ANSWER:

59. Any and all documents which in any way support the State's position that it has complied with the Court's direction in DeRolph II that "strict, statewide academic guidelines must be develop and rigorously followed throughout all of Ohio's public school districts."

ANSWER:

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CERTIFICATE OF SERVICE

I do hereby certify that a true copy of the foregoing document was served upon the following counsel by hand-delivery this 19th day of April, 2001, addressed as follows:

Mary Lynn Readey
Assistant Attorney General
30 East Broad Street, 15th Floor
Columbus, Ohio 43215-3428

Quintin F. Lindsmith (0018327)