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SUPREME COURT OF THE STATE OF WASHINGTON

MATHEW and STEPHANIE McCLEARY, et al.,

Respondents,

v.

STATE OF WASHINGTON,

Appellant.

**SUPERINTENDENT OF PUBLIC INSTRUCTION'S
AMICUS CURIAE BRIEF ADDRESSING ORDER TO SHOW
CAUSE**

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I. INTEREST OF AMICUS CURIAE

Randy Dorn is Washington's Superintendent of Public Instruction, a nonpartisan elected state officer whose constitutional duty is to "have supervision over all matters pertaining to public schools." Const. art. III, § 22. As the State's chief school officer, the Superintendent plays a unique role: He is the sole statewide elected official constitutionally responsible for overseeing public education. He heads up Washington's state education agency, the Office of Superintendent of Public Instruction, whose nearly 400 employees are legally responsible for implementing on behalf of the Superintendent all facets of public education in the State. These responsibilities include, among many other things, designing state learning standards (RCW 28A.655.070), apportioning state and federal funds to school districts (RCW 28A.150.290), administering the state student assessment system (RCW 28A.655.061), and ensuring that local school officials comply with the law (*see, e.g.*, RCW 28A.150.250, RCW 28A.642.050).

The Superintendent's interest in this case is simple. He wants to help ensure that the State's program of basic education is fully funded. Early on, the Superintendent was one of several state officials who testified at the trial in this matter that full implementation and funding for ESHB 2261 will remedy the State's unconstitutional underfunding of

schools. *McCleary v. State*, 173 Wn.2d 477, 543, 269 P.3d 227 (2012). The key, he said at the time, was to find a funding source for revenue that will pay for the State's program of basic education. *Id.* In the five years since, he has submitted budget requests to the Governor that phase-in adequate funding for basic education. He has proposed legislation that reforms local excess levies and identifies new revenue sources. And, using the most up-to-date student caseloads and inflation rates, he issued his own plan earlier this year to fully fund basic education by 2018. (Attached as Appendix A.)

II. ISSUES

1. Should the Court impose sanctions on the Legislature because the legislative report filed with the Court in April 2014 was inadequate?
2. If the State does not make satisfactory progress to address the *McCleary* decision in the 2015 Legislative Session, what should the Court do?

III. ARGUMENT

A. The Court Should Not Impose Sanctions on the Legislature Because the April 2014 Report Was Inadequate

In the Order dated January 9, 2014, this Court ordered "the state [to] submit, no later than April 30, 2014, a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year." Order, January 9, 2014 at 8. The

Legislature submitted a report by the deadline. However, it did not include a complete plan for implementing a program of basic education. Thus, the Legislature did not comply with the Court's order.

In considering the significance of the Legislature's failure, it is important to remember that any plan submitted to the Court would be implemented by the 2015 Legislature. This Court recognizes the "general rule that one legislature cannot abridge the power of a succeeding legislature, and succeeding legislatures may repeal or modify acts of a former legislature." *Washington State Farm Bureau Federation v. Gregoire*, 162 Wn.2d 284, 301, 174 P.3d 1142 (2007). If legislation adopted by the 2014 Legislature could not bind a future legislature, surely a plan adopted by the 2014 Legislature could not bind the 2015 Legislature.

A hypothetical example illustrates the point. First, assume that the Legislature's 2014 report to the Court proposed the passage of a state income tax in the 2015 Legislative Session as a dependable revenue source to fund basic education. Second, assume that even Respondents agreed that the income tax plan adequately funded basic education. Finally, assume that the Legislators who supported the income tax plan were defeated in the November 2014 election by opponents who campaigned against the imposition of an income tax. It is doubtful that the

2015 Legislature would adopt the income tax plan to fund basic education if the newly elected members campaigned against it.

To be sure in this example, the 2015 Legislature would have the same obligation as its predecessor to comply with *McCleary*. But it would be free to adopt a solution that did not involve an income tax. Given this fact, it makes little sense to impose sanctions for failing to set out a plan that may, or may not, be implemented.

Respondents justify the sanctions they seek by comparing the State's response to *McCleary* to George Wallace blocking the school house door.¹ Nothing could be further from the truth. This Court has recognized that article IX, section 1 imposes a "duty on the sovereign body politic or governmental entity which comprises the State [and] contemplates a sharing of powers and responsibilities among all three branches of government as well as state subdivisions, including school districts." *McCleary*, 173 Wn.2d at 515 (citation and internal punctuation omitted). This is not the case of one man or one branch of government being pigheaded. Rather, the solution necessarily involves all elected

¹ This is a particularly ironic and inapt reference because one of Respondents suggested sanctions is to close the schools. Thus, Respondents seek to place the Court in the role of George Wallace blocking the school house door. Respondents' request to close the schools also brings to mind a quotation of an American military officer following the destruction of the Vietnamese Village Ben Tre. Although the quotation may be apocryphal, it applies to Respondents' suggested relief: "It became necessary to destroy the village in order to save it." Peter Arnett, *Major Describes Move*, N.Y. Times, Feb. 8, 1968, at A3. The Court should not be in the business of harming schools.

officials who play an integral role in designing and financing the public education system, including legislators, the Governor, the Superintendent, and local school directors.

The Court has also recognized the complexity of the problem, pointing out that the Legislature is “the best forum for addressing the difficult policy questions inherent in forming the details of an education system.” *McCleary*, 173 Wn.2d at 517. There are legitimate policy differences in resolving the challenge of fully funding basic education that must be worked out in the political process.

Having said that, the Superintendent recognizes that the Court cannot abdicate its responsibility to enforce the constitutional command of article IX, section 1. Accordingly, the Superintendent suggests a constitutional process to enforce *McCleary*.

B. The Court Should Issue an Order Establishing a Process To Enable Respondents To Move To Enjoin the Operation Of Laws, Enacted By the 2015 Legislature, That Reduce General Fund Dollars Available For Basic Education

Although the Court should not impose sanctions based on the Legislature’s inadequate 2014 report, the Superintendent believes the Court should issue an order at the conclusion of this show cause proceeding establishing a process to enable Respondents to move to enjoin the operation of laws, enacted by the 2015 Legislature, that reduce general

fund dollars available for basic education. This process would be part of this Court's continuing jurisdiction over the case, and Respondents could make use of the process if they conclude that the 2015 Legislature's response to *McCleary* is inadequate. There are two reasons why the Court should delay until 2015. First, both the Legislature and the State seem to agree that the 2015 Session is the most critical session to reach agreement needed to meet the State's article IX, section 1 duty. According to its April 2014 report, the "Legislature recognizes . . . that the remaining enhancement targets must be met by the statutory implementation date of 2018, which means that the pace of implementation must increase. For this reason, the upcoming biennial budget developed in the 2015 Legislative Session must address how the targets will be met." *2014 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation* at 32 (April 30, 2014). According to the State, "the actions of the 2015 Legislature necessarily will constitute the de facto 'complete plan' for meeting the 2018 deadline established in ESHB 2261 and adopted by the Court." *State of Washington's Opening Brief Addressing Order To Show Cause* at 30 (July 11, 2014).

The second reason to wait until after the 2015 Legislative Session is that that session follows the 2014 election. Presumably, adequate funding of basic education will be an issue in the election and the voters

will have had the opportunity to weigh in on the issue. Moreover, the 2015 Legislative Session is a long one, and the Legislature can follow up on progress made in 2015 in the 2016 Legislative Sessions without the uncertainty of an intervening election.

While it will be appropriate and, the Superintendent believes necessary, for the Court to take action if the 2015 Legislature does not adequately address *McCleary*, the Superintendent agrees with the State that the sanctions proposed by Respondents raise very real constitutional concerns. For example, the Court lacks the authority to prohibit the legislature from enacting legislation. As this Court explained in *Minish v. Hanson*, 64 Wn.2d 113, 115, 390 P.2d 704 (1964), “it is the rule in this state that the courts will not enjoin proposed legislative action.”

This appears to be the rule throughout the United States. However, other states that apply this rule draw a distinction between enjoining conduct by the legislature and judging the validity of the law after it has been enacted. As the Colorado Court of Appeals explained, “[a] request that the court enjoin conduct by the legislature generally entails an improper intrusion into legislative affairs, but a request for a declaratory judgment that an action is unconstitutional may be addressed by the court.” *Grossman v. Dean*, 80 P.3d 952, 961 (Colo. App. 2003). *Accord Pospisil v. Anderson*, 527 N.Y.S.2d 819, 820 (N.Y.A.D. 1988) (“it has

long been the rule that, absent extraordinary circumstances, the courts will not enjoin the legislative process on the ground that the proposed legislation may be invalid . . . Rather, the aggrieved party must await adoption of the proposed legislation, and thereafter . . . challenge the validity of the legislation in a declaratory judgment action” (citations omitted)); *Murphy v. Collins*, 20 Ill. App.3d 181, 194, 312 N.E.2d 772 (Ill. App. 1974) (“[The court] may not enjoin the others from doing an unconstitutional act, but by refusing to give effect to such act [the court] may restrain them. . . . The judiciary cannot legislate nor can it enjoin the legislature . . . but the courts can restrain the legislative branch of government from acting in an unconstitutional manner” (citations omitted)).

In light of the Court’s ability to address the validity of actions the Legislature has taken, the Superintendent suggests that the Court issue an order that authorizes Respondents to seek injunctive relief with regard to laws passed by the Legislature and approved by the Governor in 2015 that reduce the general fund dollars available for education. Such laws would include new tax exemptions or credits that reduce the general fund.² It

² For example, in 2013 the Legislature extended the expiration date of aerospace tax preferences and expanded the sales and use tax exemption for construction of new facilities used to manufacture superefficient airplanes. Laws of 2013, ch. 2. The cost of this package was estimated to be \$9,004,000 during the 2015-17 biennium. Fiscal Note SB 5952 (2013).

would also include the 2015-17 operating budget to the extent the budget spends money on programs that are not essential or constitutionally mandated. This process would be part of the Court's continuing jurisdiction over the case and would only be available if the State does not satisfactorily address *McCleary* in 2015.³ Under this process, Respondents would have to identify which tax exemptions or credits or parts of the budget they seek to enjoin.

To obtain a temporary injunction, a party must show “[1] a clear legal or equitable right, [2] a well-grounded fear of immediate invasion of that right, and [3] that the acts complained of have or will result in actual and substantial injury.” *Rabon v. City of Seattle*, 135 Wn.2d 278, 284, 957 P.2d 621, 623 (1998). In addition, “since injunctions are within the equitable powers of the court, these criteria must be examined in light of equity, including the balancing of the relative interests of the parties and the interests of the public, if appropriate.” *Id.*

To understand how this process would work, assume the Legislature did not satisfactorily address *McCleary* in the 2015 Legislative

³ The Superintendent's Plan to Fund Basic Education by 2018 (Appendix A) illustrates one method the Court could employ to measure the State's success in determining whether it has made satisfactory progress toward implementing ESHB 2261 and fully complying with article IX, section 1. Using the Quality Education Council's adopted staffing allocations, technical working group reports, and cost estimate calculations, the plan specifies the expenditures that must be made for each area of basic education provided for in ESHB 2261, and it shows how those expenditures can be phased in for the 2016, 2017, and 2018 school years to achieve full funding of the State's program of basic education.

Session. If Respondents then seek to enjoin the granting of a tax exemption or credit, or the implementation of a spending program that is not essential or constitutionally mandated, the first question for the Court would be whether the tax exemption, tax credit, or spending program violates article IX, section 1. In the view of the Superintendent, they plainly would. We know from *McCleary* that the current system of funding basic education violates the constitution. For “30 years [the State’s] education system [has fallen] short of the promise of article IX, section 1[.]” *McCleary*, 173 Wn.2d at 541. This Court affirmed the trial court’s definition of “paramount” in article IX, section 1 as “having the highest rank that is superior to all others, having the rank that is preeminent, supreme, and more...important to all others. [T]he State must amply provide for the education of all Washington children as the State’s first and highest priority before any other State programs or operations.” *McCleary*, 173 Wn.2d at 520. In light of this holding, in the judgment of the Superintendent, a new tax exemption or credit or spending on programs that are not essential or constitutionally mandated violates article IX, section 1. Paramount means that funding the State’s program of basic education is more important than cutting taxes or spending general fund dollars on nonessential programs that do not have the constitutional priority of article IX, section 1.

However, to date the Court has not extended the holding in *McCleary* to new laws that reduce general fund dollars available to fund basic education, and the Superintendent does not believe the Court needs to resolve the issue at this time. Rather, the Court can resolve the issue after full briefing in the event Respondents seek an injunction.

The second injunctive criterion is whether there is a well-grounded fear of the invasion of that right. This criterion would seem to be automatically satisfied if the Court rules that a reduction in the general fund violates article IX, section 1.

The third injunctive criterion is whether the plaintiff has suffered actual and substantial injury. This criterion also seems to be satisfied. If the State is cutting taxes or spending general fund dollars on other nonessential programs, the State is harming children by not adequately funding basic education. Again, however, the Court cannot reach a conclusion on this point until it has the appropriate case before it.

In addition to the three injunctive criteria, the Court must also balance the relative interests of the parties and the interests of the public in deciding whether to issue an injunction. For example, if Respondents seek to enjoin *all* spending in the 2015-17 operating budget that does not go to essential services and programs that are constitutionally mandated, the Court may conclude that the public interest requires some spending that

does not go to essential services or programs that are constitutionally mandated. Or, perhaps, the Court may conclude that the public interest demands that all nonessential, non-constitutionally mandated spending in the operating budget must be enjoined until the State achieves full compliance with article IX, section 1. This balancing must await a case in which Respondents seek injunctive relief.

This suggestion provides a constitutional way for the Court to enforce *McCleary*.

IV. CONCLUSION

In the last five years, the State enacted two laws, ESHB 2261 and SHB 2776, defining a program of basic education that is to be fully funded by 2018. Those laws were passed by the Legislature, not the Court. The political branches of the State continue to be in the best position to make the key spending and funding reforms necessary to comply with *McCleary* in the upcoming critical legislative session. The Court, therefore, should act now to make sure the Legislature, the Governor, and all state officials work together in 2015 to fully fund ESHB 2261 and SHB 2776, as they must under the Constitution.

Accordingly, the Superintendent respectfully suggests that the Court's Order with regard to this show cause proceeding should deny Respondents' request for sanctions based on the inadequate 2014

Legislative Report and, instead, establish a process that authorizes Respondents to seek injunctive relief with regard to reductions in the general fund passed by the 2015 Legislature.

RESPECTFULLY SUBMITTED this 4th day of August 2014.



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Appendix A



Plan to Fully Fund Basic Education by 2018

On January 5, 2012, the Supreme Court released *McCleary, et. al. v. State of Washington*, a historic case in education funding. The Court unanimously ruled that Washington isn't meeting its Constitutional duty:

"The State has failed to meet its duty under article IX, section 1 by consistently providing school districts with a level of resources that falls short of the actual costs of the basic education program."

Two years later, in response to a report by the state Legislature detailing its progress on *McCleary*, the Court issued an order requiring a complete plan from the Legislature, by April 30, 2014, "for fully implementing its program of basic education." The plan must:

- Include details for each school year between now and 2017-18;
- Address each of the areas of K-12 education identified in ESHB 2261;
- Address the implementation plan of SHB 2776; and
- Include a phase-in schedule for fully funding each component of basic education.

As the state superintendent, Randy Dorn oversees public K-12 education. In that role he has consistently spoken about the need for ample basic education funding. This document represents Supt. Dorn's plan to meet the requirements outlined in *McCleary*.

The Superintendent's plan can be divided into three main topics:

1. His implementation plan, including specific recommendations on staffing and compensation for each year until 2018;
2. Accountability systems, which include student testing, teacher evaluations and financial consistency; and
3. Other outstanding issues.

Supt. Dorn's plan follows the staffing and compensation values proposed by the Quality Education Council, which was created by ESHB 2261. His plan does not include, however, a specific *funding* recommendation. Supt. Dorn continues to believe that the Legislature needs to address inequities in property taxes and it needs to create a new stream of dedicated revenue to satisfy our constitutional obligation to fully fund education.

1. Plan for Full Funding of Basic Education

The concept of “basic education” in Washington State was defined in the 1970s after a series of court cases. In *McCleary*, the Supreme Court affirmed those earlier cases, writing that the Judicial branch “has the primary responsibility for interpreting article IX, section 1 (of the state Constitution) to give it meaning and legal effect.”

The Court explained that it “defers to the legislature’s chosen means of discharging its article IX, section 1 duty but retains jurisdiction over the case to help facilitate progress in the State’s plan to fully implement the reforms by 2018.”

In providing background on *McCleary*, the Court cited four major basic education statutes:

- **Basic Education Act of 1977:** The Legislature broadly defines “basic education” and creates funding formulas based on staff-to-full-time-student ratios.
- **HB 1209 (1993):** The definition of basic education is updated with new learning goals and accountability that grew out of the Governor’s Council on Education Reform and Funding.
- **ESHB 2261 (2009):** Basic education is further redefined (increasing instructional hours and providing for an opportunity to complete 24 credits for high school graduation; and adding to and from transportation, full-day kindergarten and highly capable programs). In addition, the funding system is fundamentally altered and now based on a “prototypical school” model. The model describes the resources needed to operate a school of a specific size using common terms.
- **SHB 2776 (2010):** Allocations for staff-to-student ratios are given for the prototypical school model.

The staffing and compensation components of Supt. Dorn’s plan provide annual details for each funding item outlined in ESHB 2261 and SHB 2776. It also includes a specific recommendation on how to transition away from the reliance on local levies. Finally, it recommends the creation of a new entity made up of representatives from both the legislative and executive branches of state government to oversee the implementation.

Cost estimate calculations were done the same way the Legislature, the Office of Superintendent of Public Instruction and the Office of Financial Management estimate the costs of legislation. The calculations also are the same as those to the Supreme Court in *McCleary*.

Expenditure categories and levels

ESHB 2261 and SHB 2776 breaks down costs into eight categories. In 2014-15, funding for student transportation is fully funded. For each year until 2018, the state funding levels for the other seven categories are as follows:

Expenditure category	School year		
	2015-16	2016-17	2017-18
Early elementary class sizes	\$197,705,030	\$431,971,930	\$728,715,188
Later grades class sizes	152,377,454	345,212,696	527,356,311
Materials, Supplies & Oper. Costs	399,311,789	405,245,793	411,381,872
School/District support staff	360,415,667	718,885,504	1,078,501,720
Program hours	103,173,518	242,540,664	472,358,338
Professional development	105,901,790	237,026,250	398,792,466
Compensation	2,169,173,799	2,585,447,107	3,076,062,912
Grand total	\$3,488,059,048	\$4,966,329,944	\$6,693,168,806

Early elementary class size

Many studies have shown the importance of low class sizes, especially in early grades and especially with students living in poverty.

As required by HB 2261 and HB 2776, the plan phases in smaller class size in kindergarten through 3rd grade. Classrooms with relatively high proportions of students receiving free and reduced-price meals will be given additional resources beginning in 2015-16.

Full-day kindergarten, which was added as a part of basic education in ESHB 2261, is funded by the state for about 44 percent of kindergarten students in 2014-15. By 2017-18, state funding for full-day kindergarten will be provided for all students.

Later elementary, middle and high school class sizes

Increased learning expectations in general and increased high school course work standards in particular will require added effort by teachers in the later elementary, middle and high school years. For allocation purposes, the state assumes a class size in those grades of about 28 students. The plan phases in reductions to a class size of 25 by 2017-18.

Materials, supplies and operating costs

Less than half (48 percent) of school building and district basic education materials, supplies and operational costs (MSOC) are funded by the state. The plan phases in full state support by 2015-16.

Classrooms with relatively high proportion of students who are eligible for free and reduced-priced meals will be allocated resources beyond standard classrooms beginning in 2015-16. By 2017-18, the targets will be: grades K-3, 15 students per class; grade four, 22 students per class; all other grades, 23 students per class by.

School and districtwide support staff

Of course, teachers aren't the only staff in schools. Support staff includes guidance counselors, nurses, custodians and others. The plan increases allocations for support staff to the prototypical school models shown below. His plan fully funds this category by 2017-18:

		School level staffing per base enrollment		
	Staff Type	Elem (K-6)	Middle (7-8)	High (9-12)
Base Enrollment	Student	400	432	600
Principals	CAS	1.30	1.40	1.90
<i>Current allocation</i>		<i>1.25</i>	<i>1.35</i>	<i>1.88</i>
Teacher Librarians	CIS	1.00	1.00	1.00
<i>Current allocation</i>		<i>0.663</i>	<i>0.519</i>	<i>0.523</i>
Guidance Counselors	CIS	0.50	2.00	3.50
<i>Current allocation</i>		<i>0.493</i>	<i>1.216</i>	<i>2.009</i>
Health & Social Services				
School Nurses	CIS	0.585	0.888	0.824
<i>Current allocation</i>		<i>0.076</i>	<i>0.060</i>	<i>0.096</i>
Social Workers	CIS	0.311	0.088	0.127
<i>Current allocation</i>		<i>0.042</i>	<i>0.006</i>	<i>0.015</i>
Psychologists	CIS	0.104	0.024	0.049
<i>Current allocation</i>		<i>0.017</i>	<i>0.002</i>	<i>0.007</i>
Teaching Assistants	CLS	1.195	1.295	1.121
<i>Current allocation</i>		<i>0.936</i>	<i>0.700</i>	<i>0.652</i>
Office Support	CLS	3.220	3.029	3.382
<i>Current allocation</i>		<i>2.012</i>	<i>2.325</i>	<i>3.269</i>
Custodians	CLS	3.524	3.454	4.512
<i>Current allocation</i>		<i>1.657</i>	<i>1.942</i>	<i>2.965</i>
Student & Staff Safety	CLS	0.099	0.506	0.723
<i>Current allocation</i>		<i>0.079</i>	<i>0.092</i>	<i>0.141</i>
Parent Involvement Coordinators	CLS	0.676	0.676	0.676
<i>Current allocation</i>		<i>0.0825</i>	<i>0</i>	<i>0</i>

Program hours

ESHB 2261 requires an increase in instructional hours for three categorical programs. This plan calls for increases in staff to accommodate that requirement.

	Staff Type	Hours per week
Class size	Student	15
Learning Assistance Program	CIS	3.75 (K-6) ¹ 5.00 (7-12)
<i>Current allocation</i>		2.3975
Transitional Bilingual Program	CIS	4.778 (K-6) 6.00 (7-8) 8.00 (9-12)
<i>Current allocation</i>		4.778
Highly Capable Program	CIS	6.50 (K-6) 3.10 (7-12)
<i>Current allocation</i>		2.1590

1. Assumes class size of 6 students; other categorical program hourly recommendations assume a class size of 15.

Professional development

Teachers need professional development, in part to hone the skills they've acquired, and in part to learn new skills. Currently, school days used to support professional development are not funded by the state. The plan phases in 10 state-funded professional development days per year by 2017-18. It also adds two new state funded resources: instructional coaches and teacher mentors. By 2017-18, full-time equivalent positions for instructional coaches would be funded, as would two hours per week with a mentor teacher for first-year and probationary teachers, 1.5 hours per week with a mentor teacher for second-year teachers and one hour per week with a mentor teacher for third-year teachers starting in 2017-18.

Compensation

Salary allocation levels are based on analysis and recommendations of the Compensation Work Group established in ESHB 2261.

Group	Current average state funded salary allocations	Average actual/ market rates
Instructional Staff	\$53,280	\$61,498
Administrators	\$59,953	\$103,028
Classified Staff	\$32,328	\$36,971

The plan fully funds the salaries of basic education staff at market-rate levels by 2018. In the transition to full funding, state funds appropriated for reducing the funding gap to market rates will replace local funds that are currently used for salaries above the state salary allocation levels. Salary amounts paid by districts may exceed the state allocation up to 10 percent, which may be paid for by local levies.

Cost estimates

The following four pages show in detail Supt. Dorn's cost estimates for each funding item in the prototypical school.

Superintendent of Public Instruction's proposed implementation schedule
 Cost and value estimates

School Year	2014-15 (Current Law)	2015-2016		2016-2017		2017-2018	
	Values ¹	Values	Dollars	Values	Dollars	Values	Dollars
Early elementary class sizes							
Full Day Kindergarten	43.75% ²	62.50%	\$ 47,930,161	81.25%	\$90,635,475	100%	\$133,578,134
Grades K-3 Class Size	25.23	22.49	90,730,071	19.74	235,198,993	17.00	476,463,007
Poverty Grades K-1 Class Size	20.30	18.53	37,813,520	16.77	72,098,408	15.00	63,105,327
Pov. Gr. 2-3 Class Size	24.10	21.07	21,231,277	18.03	34,039,053	15.00	55,568,720
Subtotal			\$197,705,030		\$ 431,971,930		\$ 728,715,188
Later grades class sizes							
Grade 4 Class Size	27.00	26.33	7,296,153	25.67	14,907,516	25.00	22,999,341
Pov. Gr. 4 Class Size	27.00	25.33	5,195,865	23.67	11,417,594	22.00	18,921,278
Grades 5-6 Class Size	27.00	26.33	14,714,444	25.67	29,957,480	25.00	46,255,815
Pov. Gr. 5-6 Class Size	27.00	25.67	6,500,424	24.33	14,279,090	23.00	23,153,990
Grades 7-8 Class Size	28.53	27.35	24,070,143	26.18	50,080,070	25.00	78,776,105
Pov. Gr. 7-8 Class Size	28.53	26.69	5,832,266	24.84	13,292,381	23.00	22,439,785
Gr. 9-12 Class Size	28.74	27.49	33,350,824	26.25	70,029,179	25.00	111,089,579
Pov. Gr. 9-12 Class Size	28.74	26.83	8,603,584	24.91	39,776,047	23.00	32,889,778
Career and Technical Education Class Size	26.57	24.05	21,454,741	21.52	48,048,092	19.00	81,577,953
Skill Center Class Size	22.76	20.51	1,984,450	18.25	4,470,467	16.00	7,642,533
Lab Science Class Size	28.74	25.49	23,374,560	22.25	48,954,779	19.00	81,610,154
Subtotal			\$152,377,454		\$ 345,212,696		\$ 527,356,311

1. Unless otherwise specified, values refer to:

A. class size (e.g., 25.23 for "Grades K-3 class size"), or

B. FTE staff per students in a prototypical school. For example, Principal allocations call for "1.253 | 1.353 | 1.880."

The first number refers to FTE principals per 400 students in an elementary school, the second to FTE principals per 432 students in a middle school and the third to FTE principals per 600 students in a high school.

2. Refers to percentage of program funded.

School Year	2014-15 (Current Law)		2015-2016		2016-2017		2017-2018		
	Values ¹		Values	Dollars	Values	Dollars	Values	Dollars	
Materials, Supplies, and Operating Costs									
MSOC (fully funded in 2015-16 in current law) ³	\$781.72		\$1,082.76	\$399,311,789	\$1,099.00	\$ 405,245,793	\$1,115.49	\$ 411,381,872	
School level and districtwide support staff									
Principal Allocations	1.253 1.353 1.880	1.269 1.369 1.887	2,880,444	1.284 1.384 1.893	5,555,914	1.300 1.400 1.900	8,435,340		
Librarian Allocations	0.663 0.519 0.523	0.775 0.679 0.682	23,628,125	0.888 0.840 0.841	45,642,520	1.000 1.000 1.000	69,362,154		
Guidance Counselor Allocations	0.493 1.216 2.009	0.495 1.477 2.506	25,321,762	0.498 1.739 3.003	50,792,906	0.500 2.000 3.500	76,252,242		
Health Services Alloc. (School Nurse, Social Worker, Psychologist)	0.135 0.068 0.118	0.424 0.378 0.412	52,636,240	0.711 0.690 0.706	105,123,574	1.000 1.000 1.000	156,701,207		
Teaching Assistant Allocations	0.936 0.700 0.652	1.022 0.898 0.808	15,921,680	1.109 1.097 0.965	31,971,891	1.195 1.295 1.121	47,894,147		
Office Support Allocations	2.012 2.325 3.269	2.415 2.560 3.307	38,319,988	2.817 2.794 3.344	76,507,184	3.220 3.029 3.382	114,825,413		
Custodian Allocations	1.657 1.942 2.965	2.279 2.446 3.481	76,177,615	2.902 2.950 3.996	152,405,725	3.524 3.454 4.512	228,585,365		
Student and Staff Safety Allocations	0.079 0.092 0.141	0.086 0.230 0.335	9,491,156	0.092 0.368 0.529	18,901,778	0.099 0.506 0.723	28,391,731		
Family Engagement Coordinator Alloc.	0.083 0.000 0.000	0.280 0.225 0.225	26,152,812	0.478 0.451 0.451	52,389,642	0.676 0.676 0.676	78,579,515		
District Technology Staff Allocations	0.628 ⁴		1.089	27,441,474		1.549	54,825,101	2.010	82,265,228

3. MSOC values for 2015-16 and forward are increased by estimated annual inflation using IPD.

4. Staff per 1,000 FTE students.

School Year	2014-15	2015-2016		2016-2017		2017-2018	
	(Current Law)	Values	Dollars	Values	Dollars	Values	Dollars
School level and districtwide support staff (cont'd)							
Districtwide Facilities, Maintenance, Grounds Staff Allocations	1.813	2.782	57,681,008	3.750	115,304,183	4.719	172,983,093
Districtwide Warehouse, Laborers, Mechanics Staff Allocations	0.332	0.412	4,763,364	0.491	9,465,086	0.571	14,226,285
Subtotal			\$360,415,667		\$ 718,885,504		\$1,078,501,720
Program hours							
Highly Capable Program (Grades K-6 Grades 7-12)	2.1590 2.1590	3.6060 2.4727	4,140,284	5.0530 2.7863	8,281,270	6.5000 3.1000	12,421,204
Learning Assistance Program Hours Per Week (Grade K-6 Grade 7-12)	2.3975 2.3975	2.8483 3.2650	89,958,239	3.2992 4.1325	216,109,176	3.7500 5.0000	432,712,942
Learning Assistance Program Class Size (Grade K-6 Grade 7-12)	15.00 15.00	12.00 15.00		9.00 15.00		6.00 15.00	
Transitional Bilingual Program (Grades 7-8 Grades 9-12)	4.7780 4.7780	5.1853 5.8520	9,074,996	5.5927 6.9260	18,150,218	6.0000 5.0000	27,224,192
Subtotal			\$103,173,518		\$ 242,540,664		\$ 472,358,338

School Year	2014-15 (Current Law)		2015-2016		2016-2017		2017-2018	
	Values ¹		Values	Dollars	Values	Dollars	Values	Dollars
Professional development								
Instructional Coach Allocations	0.000 0.000 0.000		0.367 0.367 0.367	66,287,296	0.733 0.733 0.733	132,348,597	1.100 1.100 1.100	198,587,933
New Teacher Training Mentors (Hours/week for first-year, second-year and third-year)	0.000 0.000 0.000		0.667 0.500 0.333	14,871,654	1.333 1.000 0.667	29,744,876	2.000 1.500 1.000	44,614,046
Funding for Prof. Devel. Days for Cert. Instructional Staff	0		3.3	24,742,840	6.7	74,932,777	10.0	155,590,487
Subtotal				\$105,901,790		\$ 237,026,250		\$ 398,792,466
Compensation								
Increase Funded Salary Levels for Cert. Instructional Staff	\$ 34,048		48,687	1,630,026,212	\$48,687	1,845,353,405	\$ 48,687	2,091,446,477
Increase Funded Salary Levels for Cert. Administrative Staff	57,986		101,860	238,774,447	103,517	261,377,724	105,374	286,111,381
Increase Funded Salary Levels for Classified Staff	31,865		54,571	295,180,703	55,473	467,369,273	56,374	679,655,136
Increase Daily Funding Amount for Substitutes	151.86		175.03	5,192,436	198.19	11,346,704	221.36	18,849,918
Subtotal				\$2,169,173,799		\$2,585,447,107		\$3,076,062,912
Grand Totals				\$3,488,059,048		\$4,966,329,944		\$6,693,168,806

2. Accountability systems

The primary legislation that established education reform and that redefined basic education and education funding (SB 1209, ESHB 2261 and SHB 2776) includes provisions for accountability systems for student learning. Implicit in those systems is the expectation of increased student learning, increased professional skills of teachers and further development of means to account for efficient and effective expenditure of state funding allocations.

Supt. Dorn's basic education funding plan includes resources for an effective accountability system by dividing that system into three components:

Student learning accountability

Measuring student learning at the state level chiefly is accomplished through state tests: the Measurements of Student Progress, for students in grades 3-8, and the High School Proficiency Exam for students in grade 10. Since HB 1209 in 1993, the Legislature has increased the expectations of student learning from skills for all students to receive a high school diploma to skills necessary to be college and career ready.

The newest version of student accountability measurement system, known as the Washington State Achievement Index – a joint project between OPSI and the State Board of Education – provides a snapshot of Washington's schools based on state test results.

Teacher quality accountability

For two decades, the evaluation system for teachers and principals didn't change. The ratings were simple: either satisfactory or unsatisfactory. A survey of the 2009-10 school year showed that 99.2 percent of teachers and 98.6 percent of principals were rated as satisfactory.

The passage of E2SB 6696 in 2010 overhauled the evaluation system for teachers and principals. The new system serves two crucial purposes. It holds teachers and principals accountable while also providing a way for them to grow professionally.

The bill's four most important points about the new system are:

1. **Tiers:** The new system will have four tiers, not two.
2. **Criteria:** It will describe effective teaching and leading developed by experts.
3. **Provisional status** (the time before a teacher achieves tenure): Three years (currently it is two).
4. **Data:** The new system requires evaluation data submitted to OSPI for all employee groups beginning in 2010-11; currently, data is not required to be submitted.

Financial System Accountability

In addition to students and teachers, accountability is also required financially. Added resources will mean added scrutiny to make sure those resources are properly spent. With that in mind, the plan calls for consistent financial accountability in the form, including compensation, where resources will be allocated and data collected by each school building.

3. Remaining issues

Local funds used for basic education

A central issue continues to be the use of local property tax revenues, through maintenance and operation (M&O) levies, to fund basic education. State courts have consistently held (*Seattle v. Washington*, 1977; *McCleary v. Washington*, 2012) that that practice violates the state constitution's requirement of a "general and uniform" means to provide a basic education for all resident school children.

The plan assumes the state will replace local funds currently being expended on state basic education costs with state funds by 2018. In return, the local property taxes used for state purposes will be phased out.

The simplest way to achieve this is to lower the levy rate in proportion to the additional revenues that districts are receiving. As local levies are reduced, the current 28 percent levy lid will be lowered, as will the levy lid for grandfathered districts that are currently authorized to have a levy percentage that exceeds 28 percent. The plan proposes a 15 percent lid on local levies, with districts having the ability to pay staff salary amounts up to 10 percent above the state allocation. Additionally levy equalization funds will be reduced to a maximum of 7.5 percent.

Salary Compliance

The state is responsible for fully funding the salaries of staff performing basic education activities. Once the state adequately funds basic education salary allocations, a 10 percent limit should be put into place that limits locally funded salary enhancements. This addresses the fact that local school districts may have unique circumstances that lead to difficulties recruiting and retaining staff.

Capital

Class sizes assumed in the plan will require additional classrooms/school buildings. That could include new or remodeled buildings (e.g., to satisfy requirements for all-day kindergarten, lower class sizes or science labs). His plan assumes 100 percent state funding of buildings built to state standards if the new building is required by *McCleary*.

Implementation management

Every element of this plan has the potential for unanticipated issues. With that in mind, the plan establishes a successor to the Quality Education Council established in ESHB 2261.

The Basic Education Oversight Committee (BEOC) would meet up to 12 times per year to specifically address the phase in of full support for K-12 basic education. The Committee will have a professional staff with assistance from OSPI, OFM and non-partisan legislative staff. Membership would include the chairs of the policy and fiscal committees of the House and Senate, OSPI, the Governor and the chair of the State Board of Education.

A second committee, the OSPI District Operations Committee (DOC), would collect implementation information about the increases in state resources from school districts. Membership of the DOC includes a representative sample by size of the state's school districts. The DOC would provide reports, on a regular basis as determined by OSPI, to the BEOC on the status of implementation of the increased state revenues associated with this plan.

Bausch, Lisa

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, August 04, 2014 3:24 PM
To: Bausch, Lisa
Subject: FW: Mathew and Stephanie McCleary, et al. v. State of Washington, No. 84362-7

Rec'd 8/4/2014

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Roni Pettit [<mailto:Roni.Pettit@k12.wa.us>]
Sent: Monday, August 04, 2014 2:57 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'billc2@atg.wa.gov'; 'daves@atg.wa.gov'; 'alanc@atg.wa.gov'; 'ahearne@foster.com'; 'emchc@foster.com'; 'winda@foster.com'; 'lennk@foster.com'; 'eugster@eugsterlaw.com'
Subject: Mathew and Stephanie McCleary, et al. v. State of Washington, No. 84362-7

Dear Clerk of the Supreme Court of the State of Washington:

RE: Mathew and Stephanie McCleary, et al. v. State of Washington, No. 84362-7

Please find attached the Superintendent of Public Instruction's Motion to File an Amicus Brief Addressing the Court's Order to Show Cause, Amicus Curiae Brief Addressing the Court's Order to Show Cause, and Certificate of Service to be filed with the Washington State Supreme Court.

William B. Collins
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