



Washington State Legislature

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August 29, 2013

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Washington State Supreme Court
Temple of Justice
Olympia, WA 98504

Dear Chief Justice Madsen and Honorable Members of the Washington State Supreme Court

Per this Court's order of July 18, 2012, in *McCleary v. State*, No. 84362-7, please find attached the second report of the legislative Joint Select Committee on Article IX Litigation. This report was adopted unanimously by the Committee at its meeting on August 27, 2013. The Committee looks forward to continued dialogue and cooperation with this Court.

Respectfully,

Senator David Frocht, Co-Chair
46th Legislative District

Representative Gary Alexander, Co-Chair
2nd Legislative District

Representative Susan Fagan, 9th Legislative District
Senator Joe Fain, 47th Legislative District
Senator Steve Litzow, 41st Legislative District
Representative Jamie Pedersen, 43rd Legislative District
Senator Christine Rolfes, 23rd Legislative District
Representative Pat Sullivan, 47th Legislative District

Enclosures

ORIGINAL

Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation

Executive Summary

The Joint Select Committee on Article IX Litigation (Committee) has prepared this report as requested by the Washington State Supreme Court (Court) in the Court's exercise of continuing jurisdiction over the landmark *McCleary v. State* school funding case. This is the second report by the Committee, and it follows up on the Committee's report of September 17, 2012. Since the Court's order of December 20, 2012, two legislatively created working groups, the Joint Task Force on Education Funding (Task Force) and the Quality Education Council (QEC), have submitted reports containing recommendations to the Legislature for implementing the program of basic education and the Legislature has enacted the 2013-15 operating budget, which makes investments in K-12 education spending. This report provides specific information on the K-12

basic education funding enhancements appropriated in the operating budget.¹

The 2013-15 operating budget contains \$982.0 million in enhancements to the program of basic education. These investments represent an increase of 6.7 percent over the 2013-15 maintenance level. As compared with the 2011-13 estimated expenditures, the 2013-15 overall K-12 budget represents an 11.4 percent increase.

On the four elements specifically mentioned in the Court's order of December 20, 2012, the Legislature has taken the following actions:

- Full-day kindergarten: \$89.8 million, increasing the percentage of funded enrollment from 22 percent to 43.75 percent.
- Pupil transportation: \$131.7 million, fully funding the expected cost model.
- Materials, supplies, and operating costs (MSOC): \$374.0 million.
- Early elementary class size reduction: \$103.6 million, to reduce K-1 funded class size in high poverty schools to 20.3 students.

¹ All funding amounts in this report reflect biennial totals, unless otherwise stated.

In addition, the Legislature has continued to review, revise, and enhance other components within the basic education formulas and enhanced basic education funding beyond the four elements specified in SHB 2776 by investing an additional \$143.1 million in the Learning Assistance Program, \$24.1 million in formula enhancements for counselors and parent involvement coordinators, \$18.9 million for a new basic education program providing state-funded supplemental instruction following a student's exit from the Transitional Bilingual Instruction Program, and \$97 million in an increase to student instructional hours.

2012 Report of Joint Select Committee

on Article IX Litigation

The Joint Select Committee on Article IX Litigation was established in the 2012 legislative session by House Concurrent Resolution 4410. In HCR 4410, the Legislature acknowledged the unique circumstances that led to the Court's 2012 *McCleary* opinion, and it declared its intent to establish a structure and process for the interbranch dialogue requested by the Court in its ruling.

The purposes of the Committee are threefold:

- to provide a point of contact for the Legislature to communicate with the Court, as indicated by the request for a dialogue in this Court's decision to retain jurisdiction;
- to assist and advise the lawyers who represent the State and the Legislature before the judicial branch in the ongoing *McCleary* proceedings; and

- to inform legislators and the legislative institutions of this Court's communications with the legislative branch.²

In its order of July 18, 2012, the Court agreed to exercise its continuing jurisdiction in the form of a report from the Committee within 60 days after the operating budget is signed into law. The Committee filed its first report with the Court on September 17, 2012. The full text of the report is available at:

<http://www.leg.wa.gov/jointcommittees/AIXLJSC/Pages/default.aspx> .

As the Committee explained in its report, the Legislature did not make changes to basic education funding during the 2012 legislative session, so it provided a baseline description of the K-12 budget and information on recent legislative activities in order to provide context for future reports.

In its order dated December 20, 2012, the Court stated that 2018 remained a firm deadline for constitutional compliance, and that the Committee's 2013 report must explain the state's plan in sufficient detail to allow

² The Committee consists of the following legislators: Senator David Frockt, co-chair; Representative Gary Alexander, co-chair; Senator Joe Fain; Senator Steve Litzow; Senator; Christine Rolfes; Representative Susan Fagan; Representative Jamie Pedersen
Representative Pat Sullivan

progress to be measured according to periodic benchmarks. The Court explained that the phase-in plan should address all aspects of K-12 education identified in Engrossed Substitute House Bill 2261, including pupil transportation, MSOCs, full-day kindergarten, and class size reduction.

Legislative Policy-Making Activities

As part of its ongoing duty to review and revise the program of basic education, the Legislature and legislatively established committees and task forces are actively engaged in K-12 policy development.

Several standing committees of the House and Senate are assigned the tasks of developing policy and budgets for K-12 education. These include: Senate Early Learning & K-12 Education Committee; Senate Ways & Means Committee; House Education Committee; House Education Appropriations Committee, and House Appropriations Committee.

The Quality Education Council (QEC) was established by Engrossed Substitute House Bill 2261 in 2009. The purpose of the QEC is “to

recommend and inform the ongoing implementation by the Legislature of an evolving program of basic education and the financing necessary to support such program."

The Joint Task Force on Education Funding (Task Force) was established in House Bill 2824, which was enacted in the 2012 legislative session. The legislation directed the Task Force to make recommendations on how the Legislature may meet the requirements established in Chapter 548, Laws of 2009 (ESHB 2261) and chapter 236, Laws of 2010 (SHB 2776).

The full text of the Task Force report is available at:

<http://www.leg.wa.gov/jointcommittees/EFTF/Pages/default.aspx>.

The full text of the QEC recommendations, including supporting documents, is available at www.k12.wa.us/qec.

2013 Legislative Session:

Overview of the Enacted Operating Budget

The 2013-15 enacted omnibus operating budget bill appropriates \$33.6 billion for the operations of state government and school districts from the Near General Fund-State (NGF-S) plus Opportunity Pathways (OP). This represents an increase of \$2.1 billion over 2011-13 appropriations of \$31.5 billion. This increase is the net change in the appropriations from the last biennium to the current biennium and includes maintenance level adjustments as well as policy level changes. NGF-S and OP resources (including beginning fund balance) for the 2013-15 fiscal biennium are projected to be \$33.5 billion, after the deposits into the Budget Stabilization Account.³

The enacted budget assumed redirection of certain resources and funds to the operating budget. This included, but was not limited to: (1) \$521

³ The enacted budget leaves \$625 million (after Governor's vetoes) in projected total reserves (\$48 million in NGF-S and OP ending fund balances and the remainder in the Budget Stabilization Account). The reserves are used to guard against future economic downturn or unanticipated spending pressures. In the case of the Budget Stabilization Account, the Legislature can only spend money from the account with a three-fifths vote unless the following scenarios occur: (1) forecasted state employment growth is less than one percent; or (2) the Governor declares an emergency set forth in a separate piece of legislation.

million in various fund transfers and revenue redirection for fiscal years 2013, 2014, and 2015 and the redirection of certain Public Works Assistance Account revenue sources through fiscal year 2019; and (2) elimination of the \$204 million Opportunity Pathways/School Construction statutory transfer requirement. The \$204 million for school construction are currently backfilled with state bonds in the 2013-15 biennium.

(See, Appendix A for a chart illustrating operating budget appropriations.)

The 2013 Legislative Session:

K-12 Appropriations

The 2013-15 K-12 operating budget, which represents an increase of 11.4 percent over the estimated 2011-13 expenditure level, provides appropriations for \$1.03 billion in total K-12 funding enhancement (\$982 million for basic education and \$47 million for non-basic education). As compared with the 2012-13 school year, the increased funding results in policy-level increases to per-pupil funding of 8.2 percent for the 2013-14 school year and 13.6 percent for the 2014-15 school year, counting both basic and non-basic education spending.

Additionally, the 2013-15 operating budget assumed \$381.6 million in savings and reductions in non-basic education. Of this amount, K-12 savings from the suspension of I-732 totaled \$295.5 million. The remaining savings in other non-basic education totaled \$86.1 million.

Increased Funding for the Program of Basic Education

The 2013-15 operating budget contains \$982.0 million in enhancements to basic education allocation formulas. Funding is provided to address the

four elements specifically mentioned in the Court's order of December 20, 2012: full-day kindergarten; early elementary class size reduction; pupil transportation; and materials, supplies, and operating costs (MSOC). Also, funding is provided to address the enhancement to instructional hours for grades 7 through 12 specified in RCW 28A.150.220 (ESHB 2261). In addition, the Legislature, in the exercise of its authority to review, revise, and enhance the program of basic education, funded additional enhancements to basic education formulas and programs: an increase in the Learning Assistance (LAP) allocation; a new program providing state-funded supplemental instruction following a student's exit from the Transitional Bilingual Instructional Program (TBIP); and new funding formula allocations for parent involvement coordinators and middle school and high school guidance counselors.⁴

In addition to the above enhancements, funding is provided to restore the 1.9 percent and 3 percent reduction in state-funded salary allocations. (See, Appendix B)

⁴ These enhancements are similar to the recommendations made by the QEC.

Increased Funding for Materials, Supplies and Operating Costs

Funding totaling \$374.0 million is provided to continue implementation of the enhancement to the Materials, Supplies and Operating Costs component of the prototypical school funding formula. The allocation per full-time equivalent student is increased from \$560.67 to \$737.02 in school year 2013-14 and \$781.72 in school year 2014-15. The school year 2013-14 and 2014-15 allocations achieve approximately 28 percent and 33 percent of the additional total funding required to achieve full implementation, as required by RCW 28A.150.260(8)(b) (SHB 2776). Based on the target in current law, the estimated cost in the 2015-17 biennium is approximately \$857 million⁵ to reach full implementation of MSOC by school year 2015-2016.

Full Implementation of the Expected Cost Pupil Transportation

Funding Model

Funding in the amount of \$131.7 million is provided to complete implementation of the expected cost pupil transportation funding model. Allocations are phased in such that funding in school year 2013-14 is sufficient to achieve approximately 40 percent of full implementation and

⁵ Estimated full implementation targets required in current law are estimated from the June 2013 Caseload Forecast.

funding in school year 2014-15 is sufficient to achieve full implementation, as required by RCW 28A.160.192 (SHB 2776). Upon full implementation in school year 2014-15, districts will receive state allocations as calculated under the Student Transportation Allocating Reporting System (STARS).

Increased Funding for Early Elementary Class Size Reduction

Funding is provided to continue implementation of reduced early elementary class sizes, as required by RCW 28A.150.260(4)(b) (SHB 2776). Current law requires that, beginning with schools with the highest poverty, the class size in grades K through 3 be reduced until the average class size is no more than 17.0 full-time equivalent students per teacher beginning in the 2017-18 school year. In the 2013-15 operating budget, kindergarten and first grade class sizes in high-poverty schools are reduced to 20.85 full-time equivalent students in school year 2013-14 and 20.30 full-time equivalent students in school year 2014-15. Allocations for the reduced class size in school year 2014-15 is provided to the extent, and proportionate to, the eligible school's demonstrated actual average class size, but will be no less than a class size of 24.10. Funding for this enhancement to the program of basic education, totaling \$103.6 million, includes an assumption that all eligible schools will demonstrate the

reduced, funded class size of 20.30 full-time equivalent students. Based on the target in current law, the estimated cost in the 2017-19 biennium is approximately \$1,096 million⁶ to reach full implementation for grades K-3 in all schools by school year 2017-2018.

Funding for Expansion of Full-Day Kindergarten

Funding in the amount of \$89.8 million is provided to expand the percentage of state funded full-day kindergarten classes. In school year 2012-13, allocations for state-funded voluntary full-day kindergarten were sufficient to cover 22 percent of kindergarten enrollment. In school years 2013-14 and 2014-15, state-funded voluntary full-day kindergarten is increased to 43.75 percent of kindergarten enrollment. New recipients of the allocations are determined by school high poverty levels. RCW 28A.150.315 (SHB 2776) requires full implementation of statewide funding for voluntary full-day kindergarten by school year 2017-18. Based on the target in current law, the estimated cost in the 2017-19 biennium is approximately \$316 million⁷ to reach full implementation.

⁶ Estimated full implementation targets required in current law are estimated from the June 2013 Caseload Forecast.

⁷ Estimated full implementation targets required in current law are estimated from the June 2013 Caseload Forecast.

Increase State-Funded Instructional Hours

Beginning with fiscal year 2015, funding totaling \$97.0 million is provided, which is sufficient to increase student instructional hours from a district-wide average of 1,000 hours to 1,080 hours in each of grades 7 through 12, as provided in RCW 28A.150.220(2)(a) (ESHB 2261). The prototypical formula for public schools is revised to provide an additional 2.2222 hours of instruction per week for students in grades 7 through 12, beginning September 1, 2014.

Increased Funding for Instructional Support in Learning Assistance Program

Funding in the amount of \$143.1 million is provided to increase the number of state-funded instructional hours in the Learning Assistance Program from 1.5156 hours per week per full-time equivalent student to 2.3975 hours per week. In addition, Chapter 18, Laws of 2013, 2nd sp.s., Partial Veto (ESSB 5946) broadens the permitted uses of the Learning Assistance Program by school districts. Additional policy changes were made to the LAP program and are described in greater detail in the "Basic Education Policy Reforms" section.

Enhancement to the Prototypical School Funding Formula for
Counseling and Coordinators

Funding is provided to support an enhancement to the prototypical school model, increasing the Parent Involvement Coordinator allocation by 0.0825 full-time equivalent staff for each prototypical elementary school, and increasing the Guidance Counselor allocations for the prototypical middle and high schools by 0.1 full-time equivalent staff. In total, \$24.1 million is provided, of which \$11.9 million supports the increase in the Parent Involvement Coordinator formula change and \$12.2 million supports the Guidance Counselor revision to the prototypical formula.

New Program of Supplemental Instruction for Students Who Exit the
Transitional Bilingual Program

Funding in the amount of \$18.9 million is provided to add state-funded supplemental instruction following a student's exit from the transitional bilingual program. The additional hours of instruction are phased in over a two-year period. In the 2013-14 school year, 3.0 hours per week are provided for each student who has exited the transitional bilingual program in the immediate prior year. The exited student supplemental instruction is fully implemented in the 2014-15 school year with 3.0 additional hours of instruction per week for each student that exited the

transitional bilingual program in the immediate prior two years, as provided in Chapter 9, Laws of 2013 (ESHB 2051).

Compensation Restoration

The state restored the 1.9 percent salary reduction in state allocations for certificated instructional and classified salaries and the 3.0 percent reduction in state allocations for certificated administrator salaries. No additional policy increases were made to the existing salary allocation model in the 2013-15 operating budget.

Revisions to Prototypical School Funded Ratios

These enhancements to basic education funding resulted in new funding ratios for the prototypical school formula. (*See*, Appendices C and D)

Basic Education Policy Reforms

In addition to the increased funding for portions of the program of basic education, the Legislature also enacted policy reforms to the basic education program.

ESHB 2051 (2013) Implementing Basic Education Expenditures

The Transitional Bilingual Instruction Program is redefined to require school districts to make instructional support available for students for up to two years immediately after they exit the program if they need assistance in other academic subjects. Certain revenues are redirected.

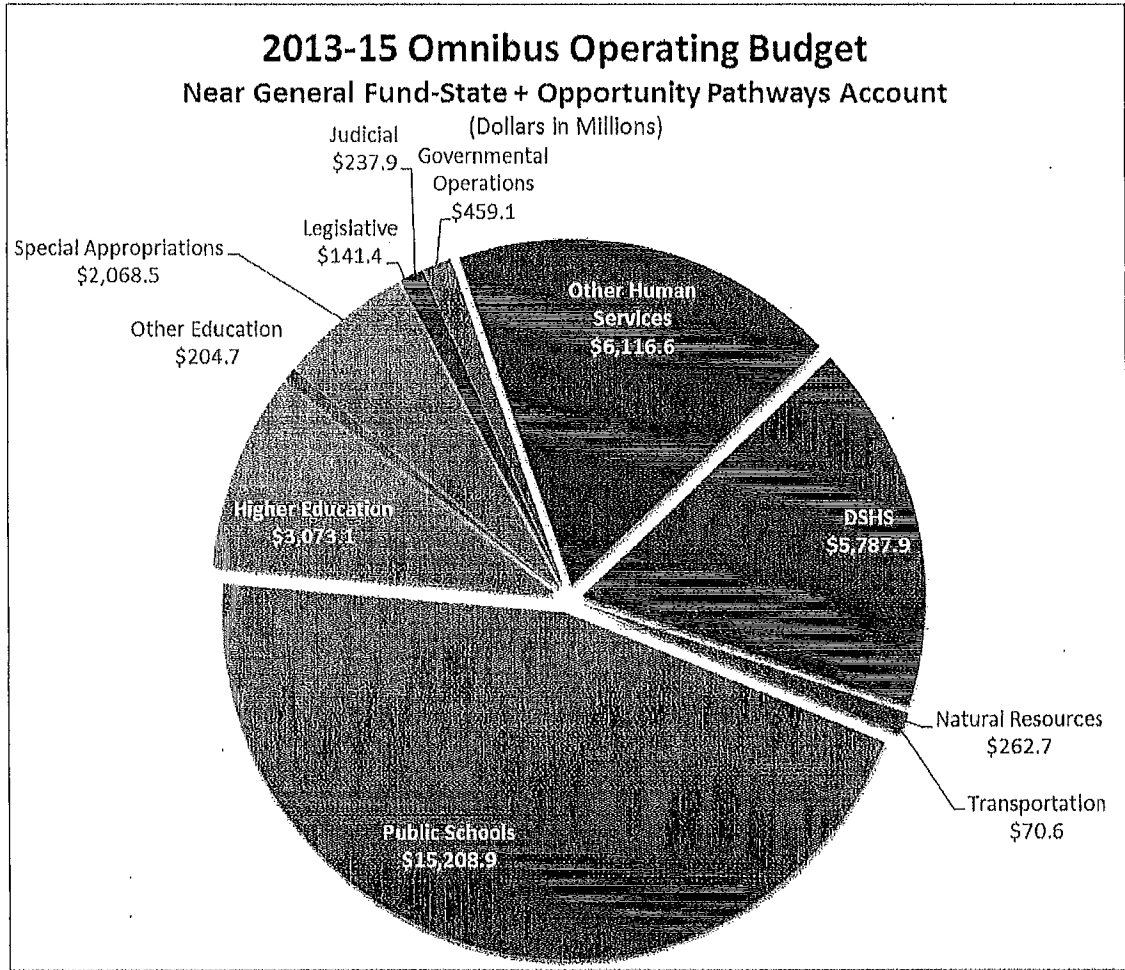
ESSB 5946 (2013): Strengthening Student Educational Outcomes

This bill incorporated several policy bills, which were originally introduced separately addressing several policy changes. The following summarizes only the changes made to the program of basic education:

Learning Assistance Program

School districts are required to focus the Learning Assistance Program (LAP) funds first on reading improvement for K-4 students. The state-approved LAP plans are replaced with annual reports on student academic growth and progress. The Office of the Superintendent of Public Instruction must convene a panel of experts to develop state menus of best practices for K-4 reading improvement and use of LAP funds. School districts are required to use the practices from the menus under certain circumstances. The LAP program was expanded to include parent and family engagement coordinators and Readiness to Learn activities.

Appendices



Appendix B

Enhancements to State Funded Program of Basic Education

Basic Education Program	Maint. Level	SY 2013-14 Policy Level	SY 2014-15 Policy Level	2013-15 State Appropriation
State Funded Full Day Kindergarten (% of Enrollment)	22.0%	43.75%	43.75%	\$89.8 M
Early Elementary Class Size (High Poverty Schools - Students/FTE)	24:10	Gr K-1 - 20:85 Gr 2-3 - 24:1	Gr K-1 - 20:3 Gr 2-3 - 24:1	\$103.6 M
Pupil Transportation* (SY Funding Expected Cost Model & % of Total Est.)	\$2.8 M 2.6%	\$43.9 M 40.0%	\$109.7 M 100%	\$131.7 M
Materials, Supplies & Op. Costs (\$/FTE Student & % of Target)	\$560.67	\$737.02 28%	\$781.72 33%	\$374.0 M
Learning Assistance Program (Hours of Additional Instruction)	1.5156 hrs	2.3975 hrs	2.3975 hrs	\$143.1 M
Bilingual Instruction -- Exited Student (Hours of Additional Instruction)	N/A	3.0 hrs	3.0 hrs	\$18.9 M
Parent Involvement Coordinators (FTE/Prototypical Elementary School)	0.00	0.0825	0.0825	\$11.9 M
Guidance Counselor (FTE/Prototypical Middle & High Schools)	1.116 1.909	1.216 2.009	1.216 2.009	\$12.2 M
Instructional Hours (Hours of Additional Instruction per Week)	0.00 hrs	2.2222 hrs	2.2222 hrs	\$97.0 M

*Note the school year appropriations differ from the state fiscal year appropriations for pupil transportation due to the difference in the fiscal years. The state's fiscal year begins July 1 while the school fiscal year begins September 1.

Revisions to the Prototypical School Ratios: 2013-15 Biennium

<u>Elementary School</u>		<u>Middle School</u>		<u>High School</u>	
400 FTE students		432 FTE students		600 FTE students	
<i>SY 2013-14 K-1 class size*</i>	<i>25.2/20.85</i>	Class size in grades 7-8	28.5	Class size in grades 9-12*	28.7
<i>SY 2014-15 K-1 class size*</i>	<i>25.2/20.30</i>	<hr/>		<hr/>	
Class size in grades 4-6	27.0				
Librarians	0.66	Librarians	0.52	Librarians	0.52
Guidance Counselors	0.49	<i>Guidance Counselors</i>	1.22	<i>Guidance Counselors</i>	2.01
<i>Parent Involvement Coordinators</i>	0.0825				
Health/Social Services (Nurses/Social Workers)	0.14	Health/Social Services (Nurses/Social Workers)	0.07	Health/Social Services (Nurses/Social Workers)	0.12
Administrative Staff (Principals/Vice Principals)	1.25	Administrative Staff (Principals/Vice Principals)	1.35	Administrative Staff (Principals/Vice Principals)	1.88
Non-Instructional Classified Staff (Office Aids, Custodians, Security Guards, etc.)	3.75	Non-Instructional Classified Staff (Office Aids, Custodians, Security Guards, etc.)	4.36	Non-Instructional Classified Staff (Office Aids, Custodians, Security Guards, etc.)	6.37
Instructional Aides (Non-certified Classroom Aides)	0.93	Instructional Aides (Non-certified Classroom Aides)	0.70	Instructional Aides (Non-certified Classroom Aides)	0.65

*Smaller class sizes are funded by the state for the Vocational & Skills Centers and high poverty schools. Grades 2 and 3 each continue to be reduced to 24.1 FTE students in high poverty schools. Staff ratios are expressed as an FTE per prototypical school

Revisions to the Prototypical School Ratios: 2013-15 Biennium

<u>Additional Time</u> <small>(Additional hours of supplemental instruction per week)</small>	<u>Materials, Supplies & Operating Costs</u>	<u>Additional Support</u> <small>(BEA Funding Enhancement)</small>
	<i>Technology</i>	\$77.46 \$82.16
	<i>Utilities & Insurance</i>	\$210.46 \$223.23
<i>Learning Assistance (LAP)</i>	2.40 hrs.	Special Education 93.09%
	<i>Curriculum & Textbooks</i>	<u>Central Office & Other Support</u>
<i>Translational Bilingual (TBIP)</i>	4.78 hrs.	Central Office 5.3% <small>(% of school staff units)</small>
<i>TBIP Exited Students (NEW)</i>	3.00 hrs.	<u>District Wide Support</u> <small>(Per 1,000 Students)</small>
<i>Instructional hrs. grades 7-12 (NEW)</i>	2.22 hrs.	Technology Support Staff 0.63
<i>Highly Capable</i>	2.16 hrs.	Facilities, Maintenance & Grounds 0.34
	<i>Security & Central Office</i>	Warehouse, Laborers, & Mechanics 1.80
	<i>School Year Totals:</i>	\$737.02 \$781.72

OFFICE RECEPTIONIST, CLERK

To: Balliett, Tammy (ATG)
Cc: Stolier, Dave (ATG)
Subject: RE: McCleary v. State of Wash. (No. 84362-7)

Rec'd 8-29-13

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: Balliett, Tammy (ATG) [<mailto:TammyG@ATG.WA.GOV>]
Sent: Thursday, August 29, 2013 10:31 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Stolier, Dave (ATG); Balliett, Tammy (ATG)
Subject: McCleary v. State of Wash. (No. 84362-7)

Attached for filing is the State of Washington's Response in the below listed case. Please conform the top page of each document and return to this email address. Thank you.

McCleary v. State of Wash. (No. 84362-7)
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