

82961-6

No. 36294-5-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

SCHOOL DISTRICTS' ALLIANCE FOR ADEQUATE FUNDING OF SPECIAL EDUCATION; BELLINGHAM SCHOOL DISTRICT NO. 501; BETHEL SCHOOL DISTRICT NO. 403; BURLINGTON-EDISON SCHOOL DISTRICT NO. 100; EVERETT SCHOOL DISTRICT NO. 2; FEDERAL WAY SCHOOL DISTRICT NO. 210; ISSAQUAH SCHOOL DISTRICT NO. 411; LAKE WASHINGTON SCHOOL DISTRICT NO. 414; MERCER ISLAND SCHOOL DISTRICT NO. 400; NORTHSHORE SCHOOL DISTRICT NO. 417; PUYALLUP SCHOOL DISTRICT NO. 3; RIVERSIDE SCHOOL DISTRICT NO. 416; and SPOKANE SCHOOL DISTRICT NO. 81,

Appellants,

v.

THE STATE OF WASHINGTON; CHRISTINE GREGOIRE, in her capacity as Governor of the State of Washington; TERRY BERGESON, in her capacity as Superintendent of Public Instruction; BRAD OWEN, in his capacity as President of the Senate; and FRANK CHOPP, in his capacity as Speaker of the House of Representatives,

Respondents.

BRIEF OF AMICI CURIAE TACOMA SCHOOL DISTRICT NO. 10,
ET AL.

TACOMA SCHOOL DISTRICT No. 10
Susan Schreurs, WSBA # 16191
601 South 8th Street
Tacoma, Washington 98401-1357
Telephone: (253) 571-1000
Facsimile: (253) 571-2550

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction.....	2
II. Identity and Interest of the Amicus Districts	3
III. Statement of the Case.....	5
IV. Argument	
A. Amicus Districts statewide support the Alliance's efforts.	6
B. Even though the State does not fully fund education, Washington State school districts outperform own national counterparts.	7
V. Conclusion	8

Table of Authorities

	<u>Page</u>
Statutes and Constitutional Provisions	
Wash. Const. Art. IX, §1.....	5
RCW 28A.150.200.....	6
RCW 28A.150.220.....	6
RCW 28A.150.250.....	6
RCW 28A.150.260.....	6
RCW 28A.150.390.....	6
Chapter 28A.155 RCW.....	6
RCW 28A.155.010.....	5
RCW 28A.155.020.....	2
RCW 28A.155.050.....	2
RCW 28A.155.080.....	2
Other Sources	
Melissa McCabe, <i>State of the States: Overview</i> , Education Week, Jan. 5, 2006.....	7

I. Introduction

The State of Washington does not amply fund special education. The seventy-two amicus curiae school districts (“Amicus Districts”) join together with the School Districts’ Alliance for Adequate Funding of Special Education (“Alliance”) and ask this Court to reverse the trial court and to fairly apply Article IX, section 2 of the Washington Constitution.

The State’s underfunding of special education affects all Washington school children. In addition to their moral duties, the law compels school districts to provide special education services to qualified students. *E.g.*, RCW 28A.155.020 and .050. Students and parents may enforce their right to these services through litigation. *E.g.*, RCW 28A.155.080. Thus, when the State underfunds special education, districts must divert local excess levy funding to fill the gap, thus reducing or eliminating other school programs and activities that benefit all students.

For example, in the 2005-06 school year, amicus curiae Tacoma School District No. 10 faced a \$13.6 million funding shortfall, the largest budget deficit in its history. CP 93-94. In the 2006-07 school year, the District had to cut another \$5.5 million from its budget, on top of the over \$5.59 million in unfunded costs Tacoma incurred to provide the legally required special education services in 2004-05. *Id.* Year in and year out, school districts throughout Washington face similar funding shortfalls.

Even though chronically underfunded, Washington’s school districts and their students continue to out-perform their peers nationwide. in reading, science, and math. CP 123-32. During trial, the State of

Washington's own expert witness confirmed this fact during his testimony. RP 2087-92. Washington State school districts are doing their job, and the State should fund their good work as the Constitution requires.

The Amicus Districts, therefore, join with the Alliance to urge the Court to reverse the trial court and to remand for entry of new findings and conclusions consistent with the law and the evidence.

II. Identity and Interest of the Amicus Districts

The Amicus Districts are local school districts whose special education programs the State underfunds. Though we differ in total student populations, geographic location, and in the types of communities we serve, the law applies equally to each: we must provide appropriate special education services to qualified students. These services cost more than the funding that the State provides to us. The Amicus Districts are Tacoma School District No. 10, Aberdeen School District No. 5, Anacortes School District No. 103, Arlington School District No. 16, Asotin-Anatone School District No. 420, Bainbridge Island School District No. 303, Battle Ground School District No. 119, Blaine School District No. 503, Central Kitsap School District No. 401, Central Valley School District No. 356, Centralia School District No. 401, Cheney School District No. 360, Chimacum School District No. 49, Clarkston School District No. J250-185, Concrete School District No. 11, Deer Park School District No. 414, Dieringer School District No. 343, Evergreen School District No. 114, Ferndale School District No. 502, Fife School District

No. 417, Granite Falls School District No. 332, Highline School District No. 401, Kent School District No. 415, Lake Stevens School District No. 4, Lakewood School District No. 306, Liberty School District No. 362, Lynden School District No. 504, Mary M. Knight School District No. 311, Marysville School District No. 25, Mead School District No. 354, Meridian School District No. 505, Monroe School District No. 103, Montesano School District No. 66, Moses Lake School District No. 161, Mount Baker School District No. 507, Mount Vernon School District No. 320, Nine Mile Falls School District No. 325, Nooksack Valley School District No. 506, North Thurston School District No. 3, Oak Harbor School District No. 201, Orcas Island School District No. 137, Orting School District No. 344, Port Angeles School District No. 121, Prescott School District No. 402-37, Raymond School District No. 116, Renton School District No. 403, Republic School District No. 309, Ridgefield School District No. 122, Riverview School District No. 407, Rosalia School District No. 320, San Juan Island School District No. 149, Seattle School District No. 1, Sedro-Woolley School District No. 101, Shelton School District No. 309, Shoreline School District No. 412, South Kitsap School District No. 402, South Whidbey School District No. 206, Steilacoom Historical School District No. 1, Sultan School District No. 311, Taholah School District No. 77, Tahoma School District No. 409, Toledo School District No. 237, Tukwila School District No. 406, Union Gap School District No. 2, University Place School District No. 83, Vancouver School District No. 37, Waitsburg School District No. 401-

100, Washougal School District No. 112-6, White River School District No. 416, Winlock School District No. 232, Yakima School District No. 7, and Yelm School District No. 2.

The combined enrollment of the Amicus Districts and the districts in the Alliance comprise 62.91 percent of the students receiving special education services in Washington State.¹

Exhibit A sets forth information regarding each Amicus District's location, total number of students, the number of those students who received special education services in 2004-05, and the amount that the State underfunded its special education programs based on the F-196 reporting data. The 2004-05 F-196 data are in Exhibit 501.

III. Statement of the Case

The Washington State Constitution declares that “[i]t is the paramount duty of the state to make ample provision for the education of all children residing within its borders.” Wash. Const. Art. IX, § 1. The Washington State Legislature has codified this duty and has affirmatively declared that all children with disabilities shall have the opportunity for an appropriate education at public expense as guaranteed to them by the State Constitution. RCW 28A.155.010.

IV. Argument

A. Amicus Districts statewide support the Alliance's efforts.

¹ Total student enrollment and number of students who receive special education services are set out in Ex. 502 for each school district statewide.

The underfunding of special education programs is not limited to the twelve members of the Alliance. The State's failure to meet its constitutional obligations affects large and small districts serving urban, suburban, and rural communities. Together with the Alliance districts, the Amicus Districts represent a cross-section of Washington's educational service community and serve almost two-thirds of Washington's students receiving special education services.

The Amicus Districts join with the Alliance in support of this appeal. The trial court erroneously concluded that the Alliance failed to prove underfunding of special education because it failed to account for the basic education allocation the state provides for each student. CP 322, lines 10-13 (“[p]laintiffs have not accounted for all the revenue available to pay for the cost of educating special education students ... [p]laintiffs did not include the BEA ...”). The trial court's decision is erroneous because the State provides the basic education allocation to pay for basic education, not special education. *Compare* RCW 28A.150.200, .220, .250, and .260 *with* RCW 28A.150.390 and Chapter 28A.155, RCW. Every student who also receives a special education *first* receives a basic education. FF 12(d). Districts pay for that basic education with the basic education allocation. They try to pay for the extra cost of students' special education services with the special education excess cost allocation that the Legislature appropriates under RCW 28A.150.390. The insufficiency of that excess cost allocation is the heart of this lawsuit.

B. Even though the State does not fully fund education, Washington state school districts outperform their national counterparts.

Washington ranks near the bottom nationally – 42nd out of 50 states and the District of Columbia – on per-pupil expenditures as adjusted for regional cost differences. Melissa McCabe, State of the States: Overview, Education Week, Jan. 5, 2006. Despite this comparatively low level of funding, Washington students score higher than the average national public school student at the 4th and 8th grade levels. According to the National Assessment of Educational Progress (for 2005), also known as the Nation’s Report Card, Washington’s average scores in 4th and 8th grade reading, science, and math were all higher than the average public school student.

Washington’s performance is detailed in the table below:

School Year 2004-05	Washington (average score)	Nation (average score)
4 th Reading	223 out of 500	217 out of 500
8 th Reading	265 out of 500	260 out of 500
4 th Science	153 out of 300	149 out of 300
8 th Science	154 out of 300	147 out of 300
4 th Math	242 out of 500	237 out of 500
8 th Math	285 out of 500	278 out of 500

The State’s own expert witness, Dr. Erick Hanushek from the Hoover Institute at Stanford University, confirmed this in his testimony at trial:

Washington's overall spending per pupil is slightly below the national average. More relevant for this analysis is that Washington does this with much higher pupil-to-teacher ratios than the national average so that it has fewer – you can think of it as larger classes, but essentially fewer teachers for the students and achieves these above-average performance on the tests.

RP 2091.

Even with less money than other states provide, by our performance Washington school districts prove that we run efficient and effective programs. The Amicus Districts and school districts statewide deliver results. The State and the public can be assured that Washington school districts are efficiently providing educational services. If we are providing above-average results for below-average funding, then the State ought at least to fund what we are doing. It does not. We deserve to have our special education programs fully funded as the Constitution requires.

V. Conclusion

The Amicus Districts join in the Alliance's position. The funding shortfall in special education programs touches not only the twelve members of the Alliance, but also most other school districts statewide. Washington State school districts outperform our national counterparts, even though we receive significantly less State money. The Amicus Districts respectfully request that this Court order the State to honor its constitutionally mandated obligation to fully fund special education programs so that all school districts across the State can continue to provide the education that our children deserve.

RESPECTFULLY SUBMITTED this 1st day of April,

2008.

TACOMA SCHOOL DISTRICT NO. 10

By *Susan Schreurs*
Susan Schreurs, WSBA # 16191
General Counsel

On behalf of the Amicus Districts

EXHIBIT A

Profile of Amicus Districts

School District	County	Student FTE in 2004-05	Students in Special Education Programs in 2004-05	Underfunding in 2004-05 (F-196 Reports)
Aberdeen	Grays Harbor	3,727	558	\$ 515,228
Anacortes	Skagit	2,980	360	\$ 564,451
Arlington	Snohomish	5,240	700	\$ 600,171
Asotin-Anatone	Asotin	568	109	\$ 190,145
Bainbridge Island	Kitsap	4,044	551	\$ 1,295,716
Battle Ground	Clark	12,146	1,420	\$ 85,621
Blaine	Whatcom	2,143	254	\$ 165,177
Central Kitsap	Kitsap	12,354	1,811	\$ 1,760,414
Central Valley	Spokane	11,531	1,472	\$ 1,341,073
Centralia	Lewis	3,219	449	\$ 242,687
Cheney	Spokane	3,270	509	\$ 442,239
Chimacum	Jefferson	1,249	156	\$ 317,741
Clarkston	Asotin	2,656	450	\$ 136,789
Concrete	Skagit	758	126	\$ 83,138
Deer Park	Spokane	2,135	283	\$ 15,454
Dieringer	Pierce	1,135	81	\$ 273,592
Evergreen (Clark)	Clark	23,509	3,039	\$ 3,284,187
Ferndale	Whatcom	5,094	677	\$ 700,107
Fife	Pierce	3,127	304	\$ 280,595
Granite Falls	Snohomish	2,311	379	\$ 78,857
Highline	King	16,623	2,148	\$ 3,465,617
Kent	King	26,040	3,044	\$ 2,126,024
Lake Stevens	Snohomish	7,171	928	\$ 921,114
Lakewood	Snohomish	2,423	330	\$ 214,629
Liberty	Spokane	504	71	\$ 64,583
Lynden	Whatcom	2,632	242	\$ 238,617
Mary M. Knight	Mason	200	20	\$ 1,087
Marysville	Snohomish	10,914	1,629	\$ 1,050,969
Mead	Spokane	8,595	954	\$ 1,008,428
Meridian	Whatcom	1,479	222	\$ 337,938
Monroe	Snohomish	6,234	733	\$ 628,833
Montesano	Grays Harbor	1,223	150	\$ 6,407
Moses Lake	Grant	6,480	884	\$ 1,895,940

School District	County	Student FTE in 2004-05	Students in Special Education Programs in 2004-05	Underfunding in 2004-05 (F-196 Reports)
Mount Baker	Whatcom	2,294	345	\$ 267,842
Mount Vernon	Skagit	5,488	847	\$ 1,435,501
Nine Mile Falls	Spokane	1,592	215	\$ 61,547
Nooksack Valley	Whatcom	1,684	271	\$ 270,305
North Thurston	Thurston	12,460	1,699	\$ 3,822,743
Oak Harbor	Island	5,661	687	\$ 243,562
Orcas Island	San Juan	486	64	\$ 159,653
Orting	Pierce	1,924	296	\$ 327,562
Port Angeles	Clallam	4,485	764	\$ 879,420
Prescott	Walla Walla	242	38	\$ 28,723
Raymond	Pacific	533	94	\$ 72,002
Renton	King	12,594	1,658	\$ 4,344,300
Republic	Ferry	487	37	\$ -
Ridgefield	Clark	1,848	203	\$ -
Riverview	King	2,836	349	\$ 316,176
Rosalia	Whitman	236	19	\$ 62,025
San Juan Island	San Juan	947	106	\$ 23,300
Seattle	King	44,234	5,936	\$ 20,232,015
Sedro Woolley	Skagit	4,242	674	\$ 870,264
Shelton	Mason	3,962	597	\$ 366,817
Shoreline	King	9,502	1,309	\$ 2,294,722
South Kitsap	Kitsap	10,521	1,517	\$ 268,675
South Whidbey	Island	2,065	238	\$ 174,726
Steilacoom Historical	Pierce	2,101	311	\$ 116,208
Sultan	Snohomish	2,121	324	\$ 753,266
Tacoma	Pierce	29,541	4,377	\$ 5,594,113
Taholah	Grays Harbor	223	34	\$ 142,429
Tahoma	King	6,345	821	\$ 1,373,295
Toledo	Lewis	963	146	\$ 19,082
Tukwila	King	2,473	290	\$ 272,861
Union Gap	Yakima	552	92	\$ 45,423
University Place	Pierce	5,126	626	\$ 353,651
Vancouver	Clark	21,174	2,756	\$ 123,172
Waitsburg	Walla Walla	351	52	\$ 37,186
Washougal	Clark	2,730	296	\$ 328,820
White River	Pierce	4,028	584	\$ 214,996
Winlock	Lewis	766	82	\$ 42,950

School District	County	Student FTE in 2004-05	Students in Special Education Programs in 2004-05	Underfunding in 2004-05 (F-196 Reports)
Yakima	Yakima	13,331	1,810	\$ 1,754,568
Yelm	Thurston	4,680	570	\$ 762,266

CERTIFICATE OF SERVICE

I hereby certify under penalty of the laws of the State of Washington that on the 1st day of April, 2008, I filed the Tacoma School District's Brief of *Amici Curiae* with the Court of Appeals and mailed copies of the Tacoma School District's Brief of *Amici Curiae* affixing proper postage thereon and mailing the same in a United States Post Office mailbox, to the following at the address(es) listed below:

Appellants, School Districts' Alliance for Adequate Funding of Special Education

John C. Bjorkman
Christopher L. Hirst
Grace T. Yuan
Cabrelle M. Abel
Robert B. Mitchell
925 Fourth Ave, Suite 2900
Seattle, WA 98104-1158

Respondents

William G. Clark
Newell Smith
Assistant Attorneys General
Washington State Office of the Attorney General
800 5th Avenue, Suite 2000
Seattle, WA 98104


Cynthia L. Hayes