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No. \_\_\_\_\_

SUPREME COURT OF THE STATE OF WASHINGTON

No. 36294-5-II

COURT OF APPEALS  
THE STATE OF WASHINGTON  
DIVISION II

School Districts' Alliance for Adequate Funding of Special Education,  
et al.,

Petitioners,

v.

The State of Washington, et al.

Respondents.

PETITION FOR REVIEW

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## **I. IDENTITY OF PETITIONERS**

The School Districts' Alliance for Adequate Funding of Special Education, together with its member school districts Bethel School District No. 403, Everett School District No. 2, Issaquah School District No. 411, Northshore School District No. 417, Riverside School District No. 416, and Spokane School District No. 81 ("Alliance")<sup>1</sup> ask this Court to accept review of the Court of Appeals decision designated in Part II of this Petition.

## **II. COURT OF APPEALS' DECISION**

The Court of Appeals entered its decision terminating review in the above captioned case on March 10, 2009. A copy of the decision appears as Appendix A.

## **III. ISSUES PRESENTED FOR REVIEW**

- A. Whether the State meets its Constitutional and "paramount duty to make ample provision for the education of all children," when school districts must use local levy funding to provide legally required special education services to students with disabilities?

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<sup>1</sup> We will further inform the Court about individual district participation in the Petition after all Alliance members have had an opportunity to meet to consider the matter.

- B. Whether a challenge to the constitutionality of a law based on violation of Article IX, § 1, which mandates that the State’s “paramount duty [is] to make ample provision for the education of all children,” should be reviewed with more than the lowest level of judicial scrutiny, where the plaintiffs present a *prima facie* case that the State is requiring school districts to spend their local levy money to provide required services?
- C. Whether it is consistent with this Court’s decision in *Seattle School District No. 1 v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978), to require plaintiffs who challenge the constitutionality of a law based on violation of Article IX, § 1, which mandates that the State’s “paramount duty [is] to make ample provision for the education of all children,” to carry their burden of proof beyond a reasonable doubt?
- D. Whether it is proper for a reviewing court, when determining if the State makes ample funds available to school districts to provide legally required special education services, to consider the basic education appropriation the State provides, in addition to the separate special education appropriation, given that all

appropriations must distinctly specify both the amount and the object to which they are to be applied under Article VIII, § 4?

- E. Whether it is proper for a reviewing court, when determining if the State makes ample funds available to school districts to provide legally required special education services, to consider the basic education appropriation the State provides, given that the Legislature declares and the trial court found that the basic education appropriation covers only the cost of basic education, not special education as well?
- F. Whether an appellate court may weigh disputed evidence in support of its decisions, where the trial court made no finding of fact on the issue?

#### **IV. STATEMENT OF THE CASE**

Educating our children is the State of Washington's highest priority:

It is *the paramount duty* of the state to make ample provision for the education of all children residing within its borders....

Const. art. IX, § 1 (emphasis added) (attached as Appendix B). Thirty years ago, this Court held that Article IX, § 1 is not a mere preamble.

*Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 497-500, 585 P.2d 71 (1978). The State’s “paramount duty” is affirmative, mandatory, and judicially enforceable. *Id.* at 500-01. The duty falls not only on the Legislature, but on all three branches of government. *Id.* at 505-09.

All of the words in Article IX are important to understanding the State’s duty: “Paramount” means that the Constitution places no other claim to the State treasury on equal footing. *Id.* at 523. “Ample” means liberal and unrestrained. *Id.* at 516. And “all children” includes qualifying children with disabilities. The State concedes that the provision of special education services is part of the State’s Article IX paramount duty. RCW 28A.155.010; Appellants’ Br., pp. 45-47; Reply Br., p. 20.

The State must also “provide for a general and uniform system of public schools.” Const. art. IX, § 2. To meet its duties, the State must first define the system of education. *Seattle Sch. Dist.*, 90 Wn.2d at 519-20. The Legislature outlines the special education program in Chapter 28A.155 RCW and WAC 392-172 (2005), and then legally compels school districts to provide special education services to students with qualifying disabilities that adversely affect their educational performance and require specially designed instruction. RCW 28A.155.020; WAC 392-172-030 (2005) (attached as Appendix C); RP 67-68.

After defining the system, the State must then amply fund it with dependable and regular tax sources. *Seattle Sch. Dist.*, 90 Wn.2d at 519-20, 526-27. Local levies are not dependable and regular, and the State may not require that local school districts fund any portion of the State's constitutional obligation with local money. *Id.* at 524-26.

Two separate appropriation laws are relevant to the decision in this case. The State provides a basic education allocation to districts on an average per-student basis to pay for each student's basic education (the "BEA"). Laws of 2005, ch. 518, §§ 502 and 504 (attached as Appendix D); CP 278. For those students requiring special education services in addition to their basic education, the State provides a separate special education allocation that it again bases upon average per-student special education costs. Laws of 2005, ch. 518, § 507(5)(a)(ii) (hereinafter "Section 507") (attached as Appendix E); Appellant's Br., pp. 11-14. If the Section 507 special education allocation does not fully fund a district's cost to provide special education services to its eligible students, the State makes available a limited amount of supplemental funding called the "Safety Net." Laws of 2005, ch. 518, § 507(8); CP 280; Appellants' Br., pp. 14-17.

The Alliance filed its Complaint (CP 5-27) on September 30, 2004, and its Amended Complaint (CP 43-64) on April 1, 2005, seeking a declaratory judgment that the present special education funding system (Section 507 and the Safety Net) is unconstitutional. The Alliance claimed that together Section 507 and the Safety Net do not fully fund the cost of special education. In order to meet their legal obligations to their students, school districts are being forced to spend their local levy money to pay for these services in violation of Article IX, §§ 1 and 2, and *Seattle School District*, 90 Wn.2d 476, 526-27. *See e.g.*, RP 1348-49.

The Alliance proved underfunding in special education by totaling the statewide cost of delivering special education services and subtracting all of the available federal and state (Section 507 and Safety Net) special education funding. *See e.g.*, Ex. 131a. This is the same method of calculation that the State requires individual districts to use when applying for Safety Net supplemental funding: Special education expenditures minus special education revenues (state Section 507 funds plus federal revenues related to services for special education-eligible students) equals “demonstration of need” (special education underfunding). Laws of 2005, ch. 518, § 507(8); WAC 392-140-626(1) (2005) (attached as Appendix F); Ex. 111 and 111a; RP 984-86, 990-1011. This method of calculation automatically takes into account all of the BEA the State provides for

special education students because the portion not used to pay for their time in a basic education classroom pays for a substantial portion of the cost of the students' special education teachers using the legally mandated "1077" method. Laws of 2005, ch. 518, § 507(2); Appellant's Br., pp. 32-35.

The Court of Appeals, however, disregarded the evidence that the State requires a full accounting for the BEA in its calculation and held that this proof was insufficient. Appendix A (hereinafter "Opinion"), pp. 2, 14-18. Because the amount of BEA is more than the deficit in special education funding, the Court of Appeals incorrectly concluded that the Alliance's proof failed.

The parties tried this case between October 30 and November 20, 2006. The trial court entered its opinion on March 1, 2007 (CP 310-36) and its Findings of Fact and Conclusions of Law (CP 276-87) and Judgment and Order (CP 288-89) on April 12, 2007, finding a portion of the funding system unconstitutional and upholding the balance. The Alliance timely filed its Notice of Appeal (CP 290-336) on May 9, 2007, the parties argued the case on May 6, 2008, and the Court of Appeals issued its Opinion on March 10, 2009. The Alliance timely filed this Petition within 30 days pursuant to RAP 13.4(a).

## V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Alliance asks this Court to accept review under RAP 13.4(b)(1), (3) and (4). The Court of Appeals decision presents significant questions of law under the Constitution of the State of Washington, is inconsistent with this Court's decision in *Seattle School District v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978), and involves issues of substantial public interest.

### A. This Case Presents Significant Questions of Law Under the Washington State Constitution.

This case presents important constitutional issues regarding the proper burden of proof and standard of review that apply when challenging the State's compliance with its Article IX paramount duty. This Court should take the opportunity to clarify its own jurisprudence on these issues and adopt a burden of proof, standard of review, and set of presumptions appropriate to the significance of the issues before it.

Washington's Article IX, §1 is unique in all of American constitutional law. Nowhere else in the Washington Constitution do the people assign to their government a "paramount duty," let alone "the" paramount duty.

None of the other 49 states make education or any other duty "the paramount duty." *See* Appellants' Br., Appendix B.

Article IX is a constitutional imperative with no equal anywhere in all of the United States, and requires closer judiciary scrutiny of legislative actions. Unfortunately, the trial court and the Court of Appeals required the Alliance to meet the highest burden of proof, and the courts applied the lowest level of judicial scrutiny. The Court of Appeals applied the burden of proof of “beyond a reasonable doubt,” rather than a “preponderance of the evidence.” This error, as argued below, is in itself sufficient as a ground for review. Further, the trial court accepted the State’s invitation to borrow from this Court’s equal protection jurisprudence and applied “rational basis” scrutiny to its review of the Alliance’s Article IX claims. CP 305, 306, 321, 325, 329, 330, and 331 (multiple instances where the trial court characterized the Legislature’s action as “rational” in its opinion); Appellants’ Br., pp. 40-45; Reply Br., pp. 19-21. Although the Alliance assigned error and briefed the matter, the Court of Appeals did not address the proper standard of review in its decision. Instead, the Court of Appeals ignored this Court’s ruling in *Seattle School District*, applied a “beyond a reasonable doubt” burden of proof, and let stand the trial court’s application of rational basis scrutiny. Opinion, p. 5.

Finally, the Court of Appeals based its decision upon a constitutionally invalid premise, that the Legislature appropriates the BEA to districts to use to pay for special education services and, therefore, a

court reviewing special education underfunding must consider the BEA in its calculation of available special education funding, too. Opinion, pp. 2, 14-18. This was error. The Constitution requires that for each appropriation the Legislature must “distinctly specify” both its amount and “the object to which it is to be applied.” Const. art. VIII, § 4 (attached as Appendix G). The BEA does not “distinctly specify” special education in name, substance or amount. *See* Laws of 2005, ch. 518, § § 502 and 504. In fact, it does not mention special education at all. Each biennium, the Legislature makes a separate appropriation for the cost of special education in Section 507. Consistent with Article VIII, the Legislature expressly designates the amount of the appropriation and its purpose for special education. The Court of Appeals’ decision inherently violates Article VIII, § 4, and its reasoning and will invite other courts that hear an Article IX, § 1 challenge to special education funding to do the same.

This Court has never before addressed the constitutionality of the special education funding system. But for the erroneous legal conclusion that districts must spend their basic education allocation to fill the gap in special education funding, this case presented substantial evidence of underfunding. The Alliance used the same method of proof that the Legislature and State themselves prescribe in the law and regulations: special education expenditures minus federal and state special education

funding equals the amount of special education underfunding. Laws of 2005, ch. 518, § 507(8)(a); WAC 392-140-626(1) (2005); Ex. 60, pp. 1777, and 1780-82; Ex. 111 and 111a. Today, districts are compelled to fill in the gap in special education funding by using their local levy money in violation of the Constitution and this Court's decision in *Seattle School District*.

**B. The Court of Appeals Applied a Burden of Proof Inconsistent with this Court's Decision in *Seattle School District*.**

In its leading decision concerning the adequacy of public education funding, *Seattle School District*, this Court held that in reviewing an Article IX, § 1 challenge, “we are concerned with legislative compliance with a specific constitutional mandate.... Thus, contrary to [the State’s] contention, the normal civil burden of proof, i.e., ‘preponderance of the evidence,’ applies.” 90 Wn.2d at 528 (emphasis added). The Court of Appeals did not apply a “preponderance of the evidence” burden of proof. Instead, the Court of Appeals relied on *Tunstall v. Bergeson*, 141 Wn.2d 201, 219, 5 P.3d 691 (2000), in which the Court held that childhood ends at 18 years old for purposes of Article IX. Opinion, p. 4. In *Tunstall*, the Court applied a burden of proof of “beyond a reasonable doubt” to the plaintiffs’ claim that a statute was facially unconstitutional by providing a separate system of education for prison inmates. *Tunstall*, 141 Wn.2d at

220. The Court, however, did not address the proper standard of review for plaintiffs' as-applied challenge<sup>2</sup> because, unlike the Alliance, the *Tunstall* plaintiffs presented no evidence to support their claim. *Id.* at 223-24. Nor did the Court address the plaintiffs' claim related to Article IX and special education because, unlike the Alliance, the plaintiffs failed to cite any legal authority in support of their claims. *Id.* at 224. Because the Court of Appeals decision applies a standard of proof of beyond a reasonable doubt, it is inconsistent with this Court's decision in *Seattle School District*.

**C. This Case Involves Issues of Substantial Public Interest.**

Levy funding is intended to enhance educational opportunities for all students whether or not they receive special education services. When the State underfunds legally mandated special education services, it compels school districts to fill the gap with their levy dollars and short change everyone. Because this issue affects the families of every student in Washington, more than 70 additional school districts serving urban, suburban, and rural communities from east and west of the Cascades joined as *amici curiae*, both at the trial court (CP 91-133) and on appeal. Together with the original 12 Alliance districts, over 61 percent of

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<sup>2</sup> The Alliance has brought an "as-applied" challenge to the constitutionality of the special education funding statute. *See Appellants' Br.*, p. 45.

Washington's students receiving special education services are represented in this lawsuit, or about 75,184 students and their families.<sup>3</sup>

Concern for the underfunding of special education is not limited to school boards and educational professionals; it is a matter of broad public concern for all citizens. The editorial boards of our State's major newspapers have followed this litigation and repeatedly called the public's attention to the problem that it highlights. The following is a sampling of editorials since the case began:

Schools receive too little money from the state.... The shortcomings are well known. Districts routinely supplement state and federal money with their own property taxes, approved by local voters.

As a practical matter, the existing practice routinely undercuts the school improvements that taxpayers, teachers and students are trying so hard to make. As a matter of law, the skimping conflicts with the state's constitutional duties.

That's the accusation of the [Alliance], and it appears to be well-founded.... Wherever the discussions go, the suit brings a longstanding problem to public attention. The challenge will be to find better outcomes for special education students, and all students.

Seattle Post-Intelligencer, October 4, 2004, attached as Appendix H.

A lawsuit by school districts over special-education funding has done part of its job, which was to get the attention of lawmakers. Sen. Rosemary McAuliffe, D-Bothell, and other lawmakers are working to tweak rules and add zeros to budget line items to benefit special education.... These are important modifications.

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<sup>3</sup> Representative numbers are from the 2006-07 school year.

They are also a good sign that lawmakers took seriously the lawsuit by [the Alliance].

But no cigar yet. The only way the Legislature can make this go away is to completely overhaul the special-education funding model. Anything short of that doesn't accurately reflect the reality of special-education needs.

Seattle Times, March 17, 2005, attached as Appendix I.

Over the years, legislators have perfected the ability to live in a state of denial about how they finance schools....

School districts spend anywhere from \$100 million to \$230 million extra per year to provide special education. As a Seattle P-I story earlier this year reported, Spokane, Shoreline, Seattle and other large urban areas tend to be hit especially hard. Families move to those districts to use their well-developed education programs and nearby health-care providers....

"Ample" isn't really a hard concept. The state has just avoided thinking about it.

Seattle Post-Intelligencer, November 5, 2006, attached as Appendix J.

Washington state's perennial remedy for insufficient, inequitable funding of schools can be best described as pain avoidance. But by fleeing discomfort, lawmakers have inflicted it on schools and students.

About 21 months ago, the Legislature commissioned a study on improving secondary-school education.... Last Friday, the state Senate called for yet another study. While the bill is laudable, it should be noted that it has taken multiple lawsuits and the threat of more to get to this point. The Legislature had little choice but to finally face up to the problem.

In the meantime, school districts have had to scrape by with creative management and tapping levy-raised "enhancement" funds for basic education. Spokane Public Schools was one of

many districts that joined a lawsuit against the state for not providing sufficient funds for special education.

Unfortunately, this latest development is too late for districts that will be crippled by impending cuts. Spokane Public Schools, which faces a \$10.5 million shortfall, will soon release details on the pain it couldn't avoid. The district had to scramble to fill a \$9 million hole in 2003.

Spokesman Review, March 6, 2007, attached as Appendix K.

Further, in March 2009, media outlets throughout the State, including Seattle, Spokane, Yakima, Bellingham, and Vancouver/Clark County reported on the Court of Appeals' decision in this case. *See* Appendix L.

The education of our State's children consistently is at the forefront of social, political, and economic discussions. The basic issue addressed in this case, and on appeal, is whether or not the State adequately funds the education of its students with special needs. Vast media coverage and the interest of other *amici curiae* representing the majority of students in this state demonstrate that the public interest in the issues presented could hardly be higher.

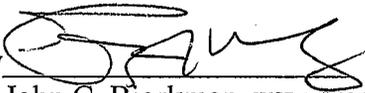
## VI. CONCLUSION

Petitioners respectfully request that the Court grant review, reverse the Court of Appeals, and remand to the trial court with instructions to enter new findings and conclusions in the Alliance's favor. In the

alternative, this Court should grant review, vacate the trial court's decision and remand for entry of new findings and conclusions consistent with the record and the appropriate evidentiary and constitutional standard.

RESPECTFULLY SUBMITTED this 8th day of April,  
2009.

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# APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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

Appellants,

v.

THE STATE OF WASHINGTON; GARY LOCKE, in his 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 principal legislative authority of the State of Washington; FRANK CHOPP, in his capacity as Speaker of the House of Representatives and principal legislative authority of the State of Washington,

Respondents.

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PUBLISHED OPINION

Quinn-Brintnall, J. — The School Districts’ Alliance for Adequate Funding of Special Education (“the Alliance”)<sup>1</sup> sought to have the courts declare statutes governing Washington State’s special education funding process unconstitutional both facially and as applied. The trial court agreed with the Alliance that the 12.7 percent cap on the number of funded students was unconstitutional,<sup>2</sup> but it held that the Alliance had improperly excluded the basic education allocation (BEA) in calculating the amount of funding available to school districts for special education and, therefore, had not proven beyond a reasonable doubt that Washington’s special education funding process violated article IX, section 1 of the Washington State Constitution. The Alliance appeals.<sup>3</sup>

We agree with the trial court that the Alliance failed to meet its burden to prove beyond a reasonable doubt that the statutes governing Washington’s special education funding process are unconstitutional and affirm.

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<sup>1</sup> The Alliance is made up of the following school districts: 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.

<sup>2</sup> The State has not appealed this ruling. Moreover, in the 2007 session, the legislature revised the Safety Net provisions to create a funding category for districts with large numbers of families with disabled children. Laws of 2007, ch. 522, § 507(8)(c). Thus, the trial court’s ruling eliminating the 12.7 percent cap is not an issue in this appeal.

<sup>3</sup> A group of 72 additional school districts join the Alliance as amicus curiae in asking this court to declare Washington’s special education funding system unconstitutional. Together, the Alliance and the amicus districts serve 62 percent of Washington’s students receiving special education services.

ANALYSIS

Washington State's Framework For Special Education

The Washington State Constitution in article IX, section 1 provides that “[i]t is the paramount duty of the [S]tate to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.” Article IX, section 1 is not merely a statement of moral principle but, rather, sets forth a mandatory and judicially enforceable affirmative duty. *Seattle Sch. Dist. No. 1 of King County v. State*, 90 Wn.2d 476, 500, 585 P.2d 71 (1978).

In 1971, the legislature declared special education a part of the State's constitutional obligation and established a state-wide special education program. Former ch. 28A.13 RCW (1990).<sup>4</sup> The Office of the Superintendent of Public Instruction (OSPI), in turn, established a regulatory framework governing special education. Former ch. 392-172 WAC. As a result, Washington's school districts are constitutionally required to provide special education services to any student with a qualifying disability that adversely affects his or her educational performance and requires special education. Former RCW 28A.155.020 (1995); former WAC 392-172-030, -035(2) (2001). And article IX requires the State to create and “provide for a general and uniform system of public schools,” Wash. Const. art. IX, § 2, and must make “ample provision for the education of *all* children residing within its borders.” Wash. Const. art. IX, § 1 (emphasis added).

Although the Alliance urges us to actively assert a paramount duty to educate children and “do more than review the Legislature's acts under a highly deferential standard,” Br. of

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<sup>4</sup> Former ch. 28A.13 RCW has been recodified as ch. 28A.155 RCW.

Appellant at 43, it is well established that courts have no such authority. “[W]here the constitutionality of a statute is challenged, that statute is presumed constitutional and the burden is on the party challenging the statute,” here, the Alliance, “to prove its unconstitutionality beyond a reasonable doubt.” *Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000), *cert. denied*, 532 U.S. 920 (2001). Unless a court is fully convinced that a statute violates the constitution, it lacks the authority to override a legislative enactment. *Tunstall*, 141 Wn.2d at 220 (citing *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998) (striking down statute authorizing creation of community counsel because the statute violated the state constitution as “special legislation” prohibited by article II, section 28(6)); *State v. Clinkenbeard*, 130 Wn. App. 552, 560, 123 P.3d 872 (2005) (upholding statute making it a class C felony for any school employee to have sexual intercourse with a registered student of the school who is at least 16 years old if there is an age difference of 5 years or more between the employee and the student).

Whenever possible, a court must construe a statute as constitutional. *State v. Farmer*, 116 Wn.2d 414, 419-20, 805 P.2d 200, 812 P.2d 858 (1991). Notwithstanding the Alliance’s argument to the contrary, there is no exception for challenges to the constitutionality of statutes designed to carry out article IX’s “paramount duty.” See *Brown v. State*, 155 Wn.2d 254, 266, 119 P.3d 341 (2005). Nor is there an exception for constitutional challenges to the appropriations act. See, e.g., *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d 602, 623, 62 P.3d 470 (2003).

The practical effect of a court ruling that a statute is unconstitutional on its face is to render it “utterly inoperative.” *Tunstall*, 141 Wn.2d at 221 (quoting *In re Det. of Turay*, 139 Wn.2d 379, 417 n.27, 986 P.2d 790 (1999), *cert. denied*, 531 U.S. 1125 (2001)). When

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addressing facial challenges to the constitutionality of a statute, our focus is on whether the statute's language violates the constitution, not whether the statute would be unconstitutional "as applied" to the facts of a particular case. *Tunstall*, 141 Wn.2d at 220-21 (citing *JJR Inc. v. City of Seattle*, 126 Wn.2d 1, 3-4, 891 P.2d 720 (1995)). "[A] facial challenge must be rejected unless . . . *no set of circumstances* [exist] in which the statute can constitutionally be applied." *Tunstall*, 141 Wn.2d at 221 (quoting *Turay*, 139 Wn.2d at 417 n.27).

In evaluating the Alliance's challenge that these statutes are unconstitutional on their face, we must determine first what article IX, section 1 requires and then decide whether the Alliance has provided sufficient evidence to prove beyond a reasonable doubt that there is no set of circumstances under which the legislature's statutory special education funding process could satisfy the minimum due under article IX, section 1.

Under an "as applied" challenge, the party challenging the statute contends that the statute, as actually applied, violated the constitution. *Tunstall*, 141 Wn.2d at 223 (citing *Turay*, 139 Wn.2d at 417 n.27). Thus, under an "as applied" challenge, the Alliance must prove beyond a reasonable doubt that the legislature failed to adequately fund special education in their districts, forcing them to rely on levy funds. *See Seattle Sch. Dist.*, 90 Wn.2d at 497-510 (holding that the State may not require districts to use local levy funds to make "ample provisions" for education because it is not a dependable and regular tax source).

On September 30, 2004, the Alliance sued the State, seeking judgment that the special education funding system, including the excess cost allocation and the Safety Net, is unconstitutional because it fails to provide sufficient funding and the school districts are forced to use local levy funds to cover special education costs in violation of article IX, section 1 of the

Washington State Constitution.

Educational Funding Sources

A. Basic Education Act

In 1977, the legislature adopted the Washington Basic Education Act of 1977, RCW 28A.150.200, which provides for an annual BEA of state funds based on the average full-time equivalent student enrollment in each school district. The BEA is the same for all full-time equivalent students within a district, regardless of their ability or cost to educate. The component parts and methodology for computing the BEA are found in RCW 28A.150.250 and former RCW 28A.150.260 (1997), and declare: “Basic education shall be considered to be fully funded by those amounts of dollars appropriated by the legislature pursuant to RCW 28A.150.250 and 28A.150.260.”<sup>5</sup> RCW 28A.150.250.

B. Special Education Funding System and Funding Formula

1. The Special Education Excess Funding Formula: BEA Plus

The special education process begins by identifying students with suspected disabilities and evaluating their needs. Former WAC 392-172-108 (2000). Districts may affirmatively search for such students or may simply evaluate students who are referred to them. Former WAC 392-172-10900 (2001).

The legislature provides special education funding on an “excess cost” basis. RCW 28A.150.390; Laws of 2005, ch. 518, § 507(1). As with the BEA, a district receives revenue

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<sup>5</sup> The Alliance does not challenge ch. 28A.150 RCW or the special education laws, ch. 28A.155 RCW.

calculated on a per capita allocation for each special education student in the district.<sup>6</sup> Like the BEA, the special education excess funding formula is based on an average cost: it is the additional cost of educating an average special education student, with average disabilities, in excess of the BEA for that student. The special education excess funding allocation is designed to pay for the excess cost of the student's specially designed instruction and any special education services over and above the cost of the student's basic education.

The legislature adopted the current special education funding formula in 1995 and has re-enacted it every subsequent budget. Three studies regarding special education funding also support the 1995 formula. According to the 1995 Special Education Fiscal Study, during the 1993-94 academic school year, the average *excess* cost to fund a special education student was \$3,109, in addition to the \$3,559 each K-12 student received as the basic education allocation. Thus, the total average cost of educating a special education student was \$6,668 or 1.87 times the cost of a basic education student.

Under the 1995 funding system, the legislature provides funds for special education through budget appropriations. Currently, section 507 of Laws of 2005, chapter 518, provides in relevant part:

- a. Pursuant to RCW 28A.150.390, funding for special education is provided on an excess cost basis. ¶ 1.
- b. School districts shall ensure that special education students as a class receive their full share of the basic education apportionment. ¶ 1.
- c. To the extent school districts can not [sic] provide an appropriate education for special education students through the basic education apportionment, services shall be provided using the special education excess cost allocation. ¶ 1.

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<sup>6</sup> The population of students receiving special education services is calculated differently; it is a head count of all students in the district receiving special education services, without conversion to full-time equivalency.

- d. OSPI shall use the excess cost methodology using the S-275 personnel reporting and other accounting systems to ensure that (a) special education students are basic education students first, (b) as a class, special education students are entitled to the full basic education allocation and (c) special education students are basic education students for the entire school day. ¶ 2(a).
- e. Federal and state funds are distributed based on a headcount of special education students receiving specially designed instruction in accordance with a properly formulated [Individualized Education Program]. ¶¶ 4 and 5.
- f. The special education allocation for disabled children birth through two is the average headcount of those children multiplied by the districts average basic education allocation per each basic education [full-time equivalent], multiplied by 1.15. For disabled children ages 3 to 21 the multiplier is 0.9309 times the average [BEA] times the “enrollment percent” of special education students to basic education students in that district. ¶ 5(a).
- g. The special education funding is limited to a maximum of 12.7 percent of the general student population for each district. ¶ 6(a).<sup>7]</sup>

2 Clerk’s Papers (CP) at 300-01; *see* Laws of 2005, ch. 518, § 507.

## 2. The Safety Net

In addition to the BEA and the standard special education funding allocation, the legislature provided a funding procedure for those special education students whose educational needs exceed approximately \$15,000 per academic year. Laws of 2005, ch. 518, § 507. This funding is referred to as the Safety Net. The Safety Net system is designed to provide more money to districts that are not adequately funded under the standard formula.

Also, under the 1995 funding system, the legislature laid out provisions for the Safety Net.

Specifically, section 507 provides in relevant part:

- h. A Safety Net is provided [and it] serves as a method for districts with demonstrated need for special education funding beyond the amounts provided above to secure that additional funding. ¶ 8.
- i. The Safety Net oversight committee . . . awards Safety Net funds. ¶ 8.
- j. The [Safety Net oversight c]ommittee first considers unmet needs for

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<sup>7</sup> *See* note 2, *supra*.

districts that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas. ¶ 8(a).

- k. The [Safety Net oversight c]ommittee then considers the extraordinarily high cost needs of one or more of a district's special education students. ¶ 8(b).

2 CP at 301; *see* Laws of 2005, ch. 518, § 507.

The Safety Net system provides additional funds to districts that can demonstrate that they are not adequately funded under the BEA and the special education excess cost allocation tiers of the formula. Presently, Safety Net funds are available for students whose excess cost of special education services exceeds approximately \$15,000 and federal funds are available for excess costs above \$21,000.

a. Applying for Safety Net Funds

The legislature mandates that the Safety Net Oversight Committee award Safety Net funds to applicant districts using a two-step process. First, the district must “convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas” by completing Worksheet A, one portion of the Safety Net application. Laws of 2005, ch. 518, § 507(8)(a); *see* WAC 392-140-626. Financial need on Worksheet A does not entitle a district to additional funding. Worksheet A is a partial accounting of a district's special education revenues and expenditures; it does not account fully for all revenues, such as the BEA. WAC 392-140-626. Completion of Worksheet A does not entitle a district to Safety Net funding; the committee will only award a district Safety Net funding for direct special education and related services identified in an appropriate, properly prepared and formulated Individualized Education Program. But the committee must also consider additional available revenues from

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federal sources. Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for Safety Net awards. Laws of 2005, ch. 518, § 507(8)(a); *see* WAC 392-140-605.

Next, the committee considers the extraordinarily high-cost need of one or more individual special education students. Laws of 2005, ch. 518, § 507(8)(b); WAC 392-140-600 through -685. A district with demonstrated need, or maximum eligibility, under Worksheet A must then complete Worksheet C for each extraordinary high-cost student. Laws of 2005, ch. 518, § 507(8)(b); WAC 392-140-605(3). Worksheet C is a required part of every Safety Net application. Laws of 2005, ch. 518, § 507(8)(b); WAC 392-140-605(3). Worksheet C accounts fully for all revenues (the BEA and the special education excess cost allocation) as well as the expenses for high-cost individual students for whom Safety Net funding may be provided. A district establishes entitlement to Safety Net funding for a particular student based on the “[m]aximum [i]ndividual [n]eed [d]emonstrated for [that] [s]tudent.” Ex. 60, p. 1785.

A district’s total annual Safety Net award for all of its extraordinarily high-cost students may not exceed the district’s maximum funding eligibility, or demonstrated need, on Worksheet A. WAC 392-140-605(2), -626(2).

b. F-196 Reports

The Worksheet A analysis is based largely on revenue and expenditure data taken from the F-196 reports. The F-196 reports are annual financial documents that school districts submit to the State that list education revenues by source and account for expenditures by program.<sup>8</sup> For example, the state basic education revenues are in account “3100” and special education excess

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<sup>8</sup> Similar revenue and expense accounting entries summarize federal and local programs.

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cost revenues are in account "4121." District education expenditures are coded by district personnel and, while the F-196 reports code basic education expenditures and special education expenditures separately, the F-196 reports do not show which of the basic education expenditures were incurred on behalf of special education students.

c. 1077 Process

The purpose of the 1077 accounting methodology is to provide a uniform statewide allocation of basic education support for special education and it is limited to a portion of certified special education teachers and a small portion of non-staff special education costs. The 1077 methodology allocates costs; it does not allocate revenue or identify sources of revenue. The 1077 worksheet is a series of complicated calculations that allocate the cost of special education teachers whose duties are part basic education and part special education. Typically, special education teacher costs are allocated 38 percent to basic education and 62 percent to special education. The 1077 methodology establishes the minimum support that the special education students' BEA is supposed to provide, with the maximum being the special education students' entire BEA. When a special education student moves out of the basic education classroom, the BEA follows that student into the special education classroom and is applied to special education costs.

### The Alliance's Challenge

As it did below, on appeal, the Alliance argues that the F-196 reports demonstrate the unfunded difference between districts' special education costs and all available state and federal special education revenues. Specifically, the Alliance contends that, for the 2004-05 school year, the F-196 reports show statewide underfunded special education costs of \$147 million.

The State responds that the F-196 reports did not demonstrate a special education funding deficit because the Alliance failed to include the BEA revenues that every special education student receives in its calculations. The Alliance concedes that simply finding a disparity between what districts spend on special education and what revenues the State provides those districts is insufficient to prove underfunding and it acknowledges that it did not include the BEA in its calculations. Nevertheless, the Alliance argues that, because Safety Net funding is only available for extraordinarily high-cost students, when a district's demonstration of need results from a cause other than having extraordinarily high-cost students, that district is precluded from applying for and receiving full funding. *See* Laws of 2005, ch. 518, § 507(8)(b); *see also* WAC 392-140-605(2). Because of this, during the 2005-06 academic year, the Alliance contends that districts were able to apply for only about \$35 million for their extraordinarily high-cost students out of the approximately \$147 million in collective demonstrated need.

The Alliance contends that it appropriately excluded the BEA from its calculations using Worksheet A and the F-196 reports because the 1077 methodology proves that all BEA funds are consumed by each student's basic education costs. And, under the 1077 accounting methodology, the Alliance contends, districts are required to reallocate a portion of the special education expenditures to basic education. The 1077 methodology assumes that special

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education students (1) receive their appropriate share of basic education support from basic education staff when served in the regular classroom and (2) basic education dollars follow them to partially support special education services they receive when they are served outside their regular classroom. Thus, the Alliance argues, because each student's BEA is consumed by basic education, both in the basic education classroom and the special education classroom, it can be properly excluded from special education funding calculations.

For the first time in its reply brief, the Alliance appears to argue that the BEA should not be considered when calculating the deficit in special education funding because article VIII, section 4 of the Washington State Constitution requires that the legislature specify both the amount and the object of any appropriation. And during oral argument, the Alliance indicated that, because section 502 funds basic education and section 507 funds special education, school districts cannot use basic education funds, such as the BEA, toward a student's specially designed instruction. But the purpose of the BEA is to educate all of the children in the State of Washington and "to fund those program requirements identified in RCW 28A.150.220." RCW 28A.150.250. And the BEA allocated to one child can be used to pay for the education of that child, both in the basic education classroom and the special education classroom. To require itemization of each dollar of each child's BEA is not feasible and there is no constitutional requirement for such an accounting.

In addition, the Alliance has not proved that the special education cost multiplier, 0.9309, is inadequate. The evidence below clearly established that this multiplier is consistent with current national data on the total average excess cost of educating a student receiving special education.

The Alliance's Evidence of Underfunding

The Alliance argues that substantial evidence does not support the trial court's findings that Worksheet A, the F-196 reports, and the 1077 methodology do not show the funding deficit for special education that the Alliance claims. We disagree.

The Alliance's arguments do not establish beyond a reasonable doubt that the special education funding scheme is unconstitutional on its face or as applied. The F-196 reports, Worksheet A, 1077 methodology, and related testimony do not show the funding deficit for special education that the Alliance claims. The Alliance's funding deficit calculations based on Worksheet A and the F-196 reports failed to account for all the revenue available to pay the cost of educating special education students. As an initial matter, we note that the Alliance did not challenge the adequacy of the BEA and no evidence in the record before us supports the bringing of such a challenge. In addition, the Alliance improperly excludes the BEA from its calculations. And the Alliance's reliance on the 1077 methodology is misplaced because it is solely an allocation of costs and does not allocate costs or identify sources of revenue.

Moreover, under the statutory funding plan, the Safety Net is not the only approach to address the constitutional imperative to fund special education. And the Safety Net does not unconstitutionally limit districts' access to ample Safety Net funding.

A. F-196

The Alliance argues that the trial court erred when it found that the F-196 reports did not show underfunding at the level the Alliance alleged because the Alliance did not take into account the BEA that all students are entitled to or the special education excess cost allocation that all students receiving special education are entitled to. Substantial evidence supports the trial court's

finding that the F-196 reports do not demonstrate underfunding.

The F-196 reports at issue include an accounting of special education expenditures from the state and federal government. In addition, the reports include an accounting of revenue the district received, including the BEA, the special education cost allocation, the federal Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400, federal Medicaid reimbursement revenue, and often a small amount received from other districts for transfer students. The Alliance compiled these statewide reports of special education expenditures and revenue, totaled expenditures and revenues, and concluded that the resulting figures represented the funding deficit. But because the Alliance failed to account for all the revenue it had available to pay the cost of educating special education students, this evidence does not prove that special education is underfunded at the level the Alliance claims. While the F-196 reports include all of the above information, the Alliance failed to include the BEA in its calculations.

For example, the Alliance claimed that it experienced a \$147 million deficit during the 2004-05 school year and this number includes a \$1,305,776 deficit for the Bellingham School District. But the accounting for that district lists \$8,339,487 as the cost of special education and that number is the sum of both the state and supplemental federal funding shown on the Bellingham School District's F-196 report. The Alliance's report lists \$7,033,711 as the revenue to pay those same costs and is the sum of four of the five revenue sources listed above but not the \$5.4 million in BEA that the Bellingham School District received that year for its 1,279 special education students. Thus, the accounting methodology on which the Alliance relies to demonstrate the underfunding is incomplete and misleading. Furthermore, the Alliance's expert, Dr. Tom Parrish, testified that the F-196 reports alone cannot establish underfunding of special

education. Thus, substantial evidence supports the trial court's finding that the F-196 reports do not establish underfunding and the Alliance has not met its burden to prove that the statutes governing Washington's special education funding process are unconstitutional beyond a reasonable doubt.

B. Worksheet A

Next, the Alliance argues that Worksheet A's \$147 million "demonstration of need" for Safety Net applicants for the school year 2005-06 "conclusively proves underfunding." Br. of Appellant at 29. Specifically, the Alliance argues that, because Worksheet A requires districts to total up their allowed special education expenditures and subtract "all revenue available for special education," the remaining balance is the amount that the formula has underfunded them. Br. of Appellant at 30. Furthermore, the Alliance argues that its failure to include the BEA in its calculations is not fatal because the State does not "require districts to count their BEA in calculating demonstration of need."<sup>9</sup> Br. of Appellant at 30. Again, we disagree.

Here, Worksheet A is only the first step in applying for Safety Net funding. Although the Alliance correctly argues that Worksheet A does not require it to take the BEA into account, Worksheet C, which is required to apply for Safety Net funds, does. In addition, a showing of financial need on Worksheet A does not automatically entitle a district to Safety Net funding; the district must also submit accounting for improperly prepared individual education plans for each high-cost student. Because the Alliance calculated its alleged deficit based on only one portion of the Safety Net application and failed to take into account incorrectly prepared individual

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<sup>9</sup> The State argues that inclusion of the BEA in Worksheet A actually results in a \$37,829,614 surplus for the Alliance.

education plans, substantial evidence supports the trial court's finding that Worksheet A fails to demonstrate underfunding. Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for Safety Net awards. Laws of 2005, ch. 518, § 507; *see* WAC 392-140-605.

C. 1077 Methodology

Next, the Alliance argues that it properly excluded the BEA contributions from the State's 1077 methodology accounts for all special education students and that the 1077 methodology proves that the entire BEA is consumed by basic education. We disagree.

The Alliance's argument regarding why the 1077 methodology permits it to properly exclude the BEA from its calculations is unclear. It appears that the Alliance is arguing that, because all students are basic education students, with some receiving special education, the BEA is necessarily consumed providing these students with their basic education—regardless of whether that basic education occurs in the basic education classroom or in special education classrooms. As a result, the Alliance seems to argue that the BEA is always entirely consumed before a student's special education costs are incurred.

But when a student leaves the basic education classroom in order to receive special education, that student may be receiving his or her "basic education," but that student is undeniably also receiving "special education." The Alliance fails to indicate why the classroom placement eliminates the need to address the BEA in its calculations. The child receiving special education instruction cannot be in two classrooms at once. While in the special education classroom, he is not receiving services in the former classroom. Furthermore, the 1077 methodology identifies special education costs in the district's F-196 reports, but it does not

allocate revenue or identify sources of revenue and, thus, it is not evidence that the Alliance properly excluded the BEA from its calculations. Substantial evidence supports the trial court's finding that the Alliance could not properly exclude the BEA from its calculations.

#### The Constitutionality of the Special Education Funding Scheme

##### A. The Adequacy of the Excess Special Education Cost Multiplier (0.9309) and the BEA

The Alliance argues that the trial court erred when it held that the special education excess cost multiplier, 0.9309, was "rational" because (1) the multiplier is applied against the BEA rather than basic education expenditures and (2) the research the trial court relied on was outdated. We disagree.

##### 1. The Adequacy of the Special Education Excess Cost Multiplier (0.9309)

First, the Alliance argues that the research on which the trial court based its decision is outdated and meaningless because "the current educational research shows that the total excess cost of special education is 90 percent of basic education expenditures, not 90 percent of what the Legislature chooses to fund for basic education with the BEA." Br. of Appellant at 35-36. We disagree.

The Alliance has not challenged the BEA's adequacy. Moreover, it ignores that the BEA does, in fact, represent the cost of basic education and, as it is adjusted annually, continues to be the cost of basic education. Furthermore, this formula reflects both local and national experience regarding the total average cost of special education. In addition, a 2006 study employing a derivative of the BEA for special education funding supports the BEA. The Alliance suggests that the State failed to prove that the special education excess cost multiplier actually produces

funds equal to today's average cost of providing special education services to a student with average disabilities; but it is the Alliance, not the State, that bears the burden of proving by a preponderance of the evidence that the BEA multiplier is inadequate. *See Tunstall*, 141 Wn.2d at 220. Substantial evidence supports the trial court's finding that the special education cost multiplier is an adequate funding calculation to allocate for average special education costs.

## 2. The Adequacy of the BEA

Next, the Alliance argues that the trial court erred when it found that "the adequacy of the BEA [was] not an issue before [it]" because the difference between basic education expenditures and the BEA was a factual issue relevant at trial. Br. of Appellant at 38. Specifically, the Alliance argues that its challenge to the special education funding scheme necessarily includes a challenge to the BEA because the special education formula is a multiple of the BEA, rather than basic education expenditures. We disagree.

Here, the Alliance's only evidence that it challenged the adequacy of the BEA at trial is an exhibit it introduced regarding the 1077 methodology and testimony by district personnel that the BEA is exhausted by basic education costs. But in its complaint, the Alliance admittedly did not seek declaratory relief with respect to the BEA; instead, it sought relief regarding only the constitutionality of the special education funding scheme and, thus, a challenge to the adequacy of the BEA is outside the scope of its complaint. *See In re Marriage of Leslie*, 112 Wn.2d 612, 617, 772 P.2d 1013 (1989) (a court has no jurisdiction to grant relief beyond that sought in the complaint). Because Alliance did not challenge the adequacy of the BEA below, it may not do so on appeal.<sup>10</sup> *Martin v. Johnson*, 141 Wn. App. 611, 617, 170 P.3d 1198 (2007) (holding that,

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<sup>10</sup> Although the Alliance alleges in its brief that it "proved the fact that the BEA does not cover districts' basic education expenditures by a preponderance of undisputed evidence," it fails to

generally, appellate courts will not review an issue raised for the first time on appeal); *see* RAP 2.5(a).

B. The Safety Net

1. Constitutionality of the Safety Net on its Face

Next, the Alliance argues that the Safety Net unconstitutionally limits districts' access to ample Safety Net funding because it is limited to funding districts' extraordinarily high-cost students. Here, the Alliance argues that this "structural defect renders the funding system unconstitutional" on its face. Br. of Appellant at 25. Specifically, the Alliance argues that the Safety Net denies districts ample state funding as article IX, section 1 requires because it denies them the ability to ask for additional funding for "medium-cost" students who fall above the special education excess cost allocation but below the Safety Net minimum of approximately \$15,000. We disagree.

Although the Alliance argued extensively in its briefing that the special education funding scheme was unconstitutional on its face, it appeared to abandon that argument during oral arguments, focusing instead on an "as applied" challenge as to "medium-cost" students whose expenses fall below the minimum Safety Net amount of approximately \$15,000 but above the BEA plus the special education excess funding award. We address this argument below.

In order to determine if the Safety Net violates article IX, section 1, we must first examine what article IX, section 1 requires and then determine whether there is any set of circumstances under which the acts of the legislature could satisfy article IX, section 1. Article IX, section 1

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point us to any place in the voluminous record where it challenged the adequacy of the BEA. Br. of Appellant at 39. Furthermore, as stated above, it admittedly did not seek declaratory relief with respect to basic education underfunding.

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states that the State's "paramount duty" is to make "ample provision for the education of all children . . . without distinction or preference on account of race, color, caste, or sex," and this substantive provision of our constitution imposes a judicially enforceable affirmative duty. *Seattle Sch. Dist.*, 90 Wn.2d at 499, 513. As a result, *all* children in Washington, including those requiring a special education, "have a 'right' to be amply provided with an education. That 'right' is constitutionally paramount and must be achieved through a 'general and uniform system of public schools.'" *Seattle Sch. Dist.*, 90 Wn.2d at 513, 537; *see also Newman v. Schlarb*, 184 Wash. 147, 153, 50 P.2d 36 (1935) (duty imposed upon legislature to provide "a general and uniform system of public schools") (quoting *Sch. Dist. No. 20, Spokane County v. Bryan*, 51 Wash. 498, 502, 99 P. 28 (1909)).

It is well settled law that, in order to fulfill this broad constitutional duty, the legislature must provide sufficient funds "to permit school districts to provide 'basic education' through a basic program of education in a 'general and uniform system of public schools.'" *Seattle Sch. Dist.*, 90 Wn.2d at 482, 522 (emphasis omitted). Local levies cannot fund basic education but can be used to fund programs other than basic education. *Seattle Sch. Dist.*, 90 Wn.2d at 526. But our Supreme Court has ruled that it is the legislature's duty to determine what constitutes basic education and the legislature has the authority to select the means to discharge this duty and the judiciary, including the trial court and this court, should restrain its role to providing only broad constitutional guidelines within which the legislature may work. *Seattle Sch. Dist.*, 90 Wn.2d at 518-20.

The constitutional test here is whether there is any set of circumstances that permits a conclusion that school districts receive sufficient money from the State to pay the districts' costs

of providing a basic education to the districts' special education students. The language of the Safety Net permits that conclusion. The conditions and limitations in the Safety Net do not create the impediment to access of the Safety Net awards that the Alliance claims. First, the Safety Net Committee "shall consider unmet needs for districts that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas," Laws of 2005, ch. 518, § 507(8)(a), and, second, "[t]he committee shall then consider the extraordinarily high cost needs of . . . special education students." Laws of 2005, ch. 518, § 507(8)(b). These provisions do not, on their face, unconstitutionally limit districts' access to Safety Net funds as the Alliance alleges.

Here, the special education funding statute makes ample provisions for educational services for children who require special education and, through use of the BEA, the special education excess cost formula, and the Safety Net, there are circumstances under which the funding statute can and is being constitutionally applied. And, as our Supreme Court has often held, "it is not this court's role to micromanage education in Washington." *Tunstall*, 141 Wn.2d at 223 (citing *Tommy P. v. Bd. of County Comm'rs of Spokane County*, 97 Wn.2d 385, 398, 645 P.2d 697 (1982) (legislature's need to customize education programs recognized)); *Seattle Sch. Dist.*, 90 Wn.2d at 520 ("While the Legislature must *act* pursuant to the constitutional mandate to discharge its duty, the general authority to select the *means* of discharging that duty should be left to the Legislature."). Consequently, we exercise judicial restraint and hold that, under article IX's broad constitutional guidelines, the Safety Net is constitutional on its face. *See Seattle Sch. Dist.*, 90 Wn.2d at 518 (judiciary required to provide broad constitutional guidelines regarding education within which legislature may work).

2. Constitutionality of the Safety Net: As Applied

The Alliance contends that the Safety Net, as applied, is unconstitutional because Worksheet A produces a “demonstration of need” of \$147 million while it could only apply for \$35 million in Safety Net funding. It alleges that the remainder, approximately \$112 million, reflects underfunding for those medium-cost students whose cost of service is below the Safety Net extraordinarily high-cost threshold of approximately \$15,000 but whose services are more expensive than the BEA plus the special education excess cost allocation. Because the Alliance did not offer evidence that the Safety Net’s limitation to high-cost students actually creates a funding deficit, its “as applied” challenge fails.

An “as applied” challenge to the constitutionality of a statute is “characterized by a party’s allegation that application of the statute in the specific context of the party’s actions or intended actions is unconstitutional”; but this does not totally invalidate that statute, only future application of the statute in a similar context. *City of Redmond v. Moore*, 151 Wn.2d 664, 668-69, 91 P.3d 875 (2004). We presume that a statute is constitutional and the party challenging the statute as applied bears the burden of proving its unconstitutionality beyond a reasonable doubt. *Madison v. State*, 161 Wn.2d 85, 92, 163 P.3d 757 (2007) (quoting *State v. Hughes*, 154 Wn.2d 736, 769-70, 921 P.2d 514 (1996)).

The Alliance did not present reports or analyses to support its contention that medium-cost students account for the alleged deficit. Under the present special education funding process, a district must expend all of the BEA and all of the excess cost allocation received for its special education students before the district can contend that the legislature has underfunded its special education program. But the evidence on which the Alliance relies, Worksheet A and the F-196

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reports, do not demonstrate such underfunding. The documents are incomplete because they do not adequately take into account the BEA or the excess cost allocation and, as a result, substantial evidence supports the trial court's findings that the evidence does not demonstrate underfunding. Furthermore, Dr. Parrish testified that evidence that expenditures exceed revenues alone is insufficient to prove a shortfall or inadequate funding because, in order to determine whether special education is underfunded, one must first discern a national standard and then apply Washington's practices and expenditures against that national standard. Thus, the Alliance failed to demonstrate, beyond a reasonable doubt, that Washington's special education funding program underfunds special education and that the statutes governing access to and allocation of special education funds to individual school districts are unconstitutional.

Although we may direct *that* it act, the general authority to select the means of discharging its duty to fund education rests with the legislature. Moreover, it is not our role to micromanage education in Washington. *Tunstall*, 141 Wn.2d at 223. Because the Alliance has not met its burden to prove beyond a reasonable doubt that the special education funding *process* the legislature enacted to fund special education in Washington violated article IX, section 1, we affirm.

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QUINN-BRINTNALL, J.

We concur:

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HOUGHTON, P.J.

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BRIDGEWATER, J.

# APPENDIX B

against the structure benefited or a security interest in the equipment benefited. Any financing authorized by this article shall only be used for conservation purposes in existing structures and shall not be used for any purpose which results in a conversion from one energy source to another. [AMENDMENT 82, 1988 House Joint Resolution No. 4223, p 1552. Approved November 8, 1988.]

**Amendment 70 (1979) — Art. 8 Section 10 RESIDENTIAL ENERGY CONSERVATION** — Notwithstanding the provisions of section 7 of this Article, until January 1, 1990 any county, city, town, quasi municipal corporation, municipal corporation, or political subdivision of the state which is engaged in the sale or distribution of energy may, as authorized by the legislature, use public moneys or credit derived from operating revenues from the sale of energy to assist the owners of residential structures in financing the acquisition and installation of materials and equipment for the conservation or more efficient use of energy in such structures. Except as provided in section 7 of this Article, an appropriate charge back shall be made for such extension of public moneys or credit and the same shall be a lien against the residential structure benefited. Except as to contracts entered into prior thereto, this amendment to the state Constitution shall be null and void as of January 1, 1990 and shall have no further force or effect after that date. [AMENDMENT 70, Substitute Senate Joint Resolution No. 120, p 2288. Approved November 6, 1979.]

**SECTION 11 AGRICULTURAL COMMODITY ASSESSMENTS — DEVELOPMENT, PROMOTION, AND HOSTING.** The use of agricultural commodity assessments by agricultural commodity commissions in such manner as may be prescribed by the legislature for agricultural development or trade promotion and promotional hosting shall be deemed a public use for a public purpose, and shall not be deemed a gift within the provisions of section 5 of this article. [AMENDMENT 76, 1985 House Joint Resolution No. 42, p 2402. Approved November 5, 1985.]

## ARTICLE IX EDUCATION

**SECTION 1 PREAMBLE.** It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

**SECTION 2 PUBLIC SCHOOL SYSTEM.** The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

**SECTION 3 FUNDS FOR SUPPORT.** The principal of the common school fund, as the same existed on June 30, 1965, shall remain permanent and irreducible. The said fund shall consist of the principal amount thereof existing on June 30, 1965, and such additions thereto as may be derived after June 30, 1965, from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which pro-

vision has not been made by law; the proceeds of the sale of stone, minerals, or property other than timber and other crops from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating stone, minerals or property other than timber and other crops from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be granted to the state for the support of common schools. The legislature may make further provisions for enlarging said fund.

There is hereby established the common school construction fund to be used exclusively for the purpose of financing the construction of facilities for the common schools. The sources of said fund shall be: (1) Those proceeds derived from the sale or appropriation of timber and other crops from school and state lands subsequent to June 30, 1965, other than those granted for specific purposes; (2) the interest accruing on said permanent common school fund from and after July 1, 1967, together with all rentals and other revenues derived therefrom and from lands and other property devoted to the permanent common school fund from and after July 1, 1967; and (3) such other sources as the legislature may direct. That portion of the common school construction fund derived from interest on the permanent common school fund may be used to retire such bonds as may be authorized by law for the purpose of financing the construction of facilities for the common schools.

The interest accruing on the permanent common school fund together with all rentals and other revenues accruing thereto pursuant to subsection (2) of this section during the period after the effective date of this amendment and prior to July 1, 1967, shall be exclusively applied to the current use of the common schools.

To the extent that the moneys in the common school construction fund are in excess of the amount necessary to allow fulfillment of the purpose of said fund, the excess shall be available for deposit to the credit of the permanent common school fund or available for the current use of the common schools, as the legislature may direct. [AMENDMENT 43, 1965 ex.s. Senate Joint Resolution No. 22, part 1, p 2817. Approved November 8, 1966.]

**Original text — Art. 9 Section 3 FUNDS FOR SUPPORT** — The principal of the common school fund shall remain permanent and irreducible. The said fund shall be derived from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, minerals, or other property from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating timber, stone, minerals or other property from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of pub-

lic lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be granted to the state for the support of common schools. The legislature may make further provisions for enlarging said fund. The interest accruing on said fund together with all rentals and other revenues derived therefrom and from lands and other property devoted to the common school fund shall be exclusively applied to the current use of the common schools.

**SECTION 4 SECTARIAN CONTROL OR INFLUENCE PROHIBITED.** All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

**SECTION 5 LOSS OF PERMANENT FUND TO BECOME STATE DEBT.** All losses to the permanent common school or any other state educational fund, which shall be occasioned by defalcation, mismanagement or fraud of the agents or officers controlling or managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the particular fund sustaining such loss, upon which not less than six per cent annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized and limited elsewhere in this Constitution.

*Investment of permanent school fund: Art. 16 Section 5.*

#### ARTICLE X MILITIA

**SECTION 1 WHO LIABLE TO MILITARY DUTY.** All able-bodied male citizens of this state between the ages of eighteen (18) and forty-five (45) years except such as are exempt by laws of the United States or by the laws of this state, shall be liable to military duty.

**SECTION 2 ORGANIZATION — DISCIPLINE — OFFICERS — POWER TO CALL OUT.** The legislature shall provide by law for organizing and disciplining the militia in such manner as it may deem expedient, not incompatible with the Constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the legislature shall from time to time direct and shall be commissioned by the governor. The governor shall have power to call forth the militia to execute the laws of the state to suppress insurrections and repel invasions.

**SECTION 3 SOLDIERS' HOME.** The legislature shall provide by law for the maintenance of a soldiers' home for honorably discharged Union soldiers, sailors, marines and members of the state militia disabled while in the line of duty and who are *bona fide* citizens of the state.

**SECTION 4 PUBLIC ARMS.** The legislature shall provide by law, for the protection and safe keeping of the public arms.

**SECTION 5 PRIVILEGE FROM ARREST.** The militia shall, in all cases, except treason, felony and breach of

the peace, be privileged from arrest during their attendance at musters and elections of officers, and in going to and returning from the same.

**SECTION 6 EXEMPTION FROM MILITARY DUTY.** No person or persons, having conscientious scruples against bearing arms, shall be compelled to do militia duty in time of peace: *Provided*, such person or persons shall pay an equivalent for such exemption.

#### ARTICLE XI COUNTY, CITY, AND TOWNSHIP ORGANIZATION

**SECTION 1 EXISTING COUNTIES RECOGNIZED.** The several counties of the Territory of Washington existing at the time of the adoption of this Constitution are hereby recognized as legal subdivisions of this state.

**SECTION 2 COUNTY SEATS — LOCATION AND REMOVAL.** No county seat shall be removed unless three-fifths of the qualified electors of the county, voting on the proposition at a general election shall vote in favor of such removal, and three-fifths of all votes cast on the proposition shall be required to relocate a county seat. A proposition of removal shall not be submitted in the same county more than once in four years.

*Governmental continuity during emergency periods: Art. 2 Section 42.*

**SECTION 3 NEW COUNTIES.** No new counties shall be established which shall reduce any county to a population less than four thousand (4,000), nor shall a new county be formed containing a less population than two thousand (2,000). There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefor and then only under such other conditions as may be prescribed by a general law applicable to the whole state. Every county which shall be enlarged or created from territory taken from any other county or counties shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken: *Provided*, That in such accounting neither county shall be charged with any debt or liability then existing incurred in the purchase of any county property, or in the purchase or construction of any county buildings then in use, or under construction, which shall fall within and be retained by the county: *Provided further*, That this shall not be construed to affect the rights of creditors.

**SECTION 4 COUNTY GOVERNMENT AND TOWNSHIP ORGANIZATION.** The legislature shall establish a system of county government, which shall be uniform throughout the state except as hereinafter provided, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county voting at a general election shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein, shall be

# APPENDIX C

# 2005 WASHINGTON ADMINISTRATIVE CODE



## OFFICIAL AGENCY RULES

### Volume 11

- |     |  |     |   |
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*Published by The Statute Law Committee  
under authority of Chapter 34.05 RCW*

12101 et seq.) that apply to students who have a disability regardless of the student's eligibility for special education and related services. If a student has a physical, sensory, or mental impairment which substantially limits one or more major life activities, the district or other public agency has an obligation to provide that student appropriate educational services. Such services must be designed to meet the needs of the student with a disability to the same extent the needs of students without disabilities are met. A school district and other public agency's obligation to provide appropriate educational services to meet the needs of a student who has a disability exists separate and apart from the obligation to provide a free appropriate public education to a student who qualifies for special education and any necessary related services under these regulations.

[Statutory Authority: 20 U.S.C. 1400 et seq., chapter 28A.155 RCW and RCW 28A.300.070. 01-24-049, § 392-172-020, filed 11/29/01, effective 12/30/01. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-020, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-020, filed 10/11/95, effective 11/11/95.]

### STUDENT'S RIGHTS—GENERAL

**WAC 392-172-030 Students' rights to special education programs.** (1) Each school district, other public agency, and residential schools operated pursuant to chapters 28A.190 and 72.40 RCW shall provide every eligible special education student between the age of three and twenty-one years, a free appropriate public education program, including special education for students who have been suspended or expelled from school. A free appropriate public education is also available to any eligible student even though the student is advancing from grade to grade. The right to special education for eligible students commences on their third birthday with an individualized education program (IEP) in effect by that date. If an eligible student's third birthday occurs during the summer, the student's individualized education program team shall determine the date when services under the individualized education program will begin.

(2) Every eligible special education student residing in a state education correctional facility is eligible for special education and related services pursuant to chapter 28A.193 RCW. The department of corrections is the agency assigned supervisory responsibility by the governor's office for any student not served pursuant to chapter 28A.193 RCW.

(3) School districts or other public agencies may provide early intervention services to eligible children with a disability. If school districts opt to serve eligible children in this age group, they must do so in the birth through two years age group under regulations implementing Part C of the IDEA. The department of social and health services is the lead state agency responsible for early intervention services to children with a disability in the birth through two years age group. Eligibility criteria for early intervention services is contained in Part C of the IDEA and WAC 392-172-114(1).

(4) Any student referred for special education and related services shall qualify pursuant to eligibility criteria set forth in this chapter.

(5) A special education student shall remain eligible for special education and any necessary related services until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation determines the student is no longer in need of special education; or

(b) The special education student has met high school graduation requirements established by the school district or other public agency pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. Graduation from high school with a regular diploma constitutes a change in placement, requiring written notice in accordance with WAC 392-172-302; or

(c) The special education student enrolled in the common school system or receiving services pursuant to chapter 28A.190 or 72.40 RCW has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education. The student whose twenty-first birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year.

[Statutory Authority: 20 U.S.C. 1400 et seq., chapter 28A.155 RCW and RCW 28A.300.070. 01-24-049, § 392-172-030, filed 11/29/01, effective 12/30/01. Statutory Authority: RCW 28A.155.090(7), 28A.300.070 and 20 U.S.C. 1400 et seq. 99-24-137, § 392-172-030, filed 12/1/99, effective 1/1/00. Statutory Authority: Chapter 28A.155 RCW. 95-21-055 (Order 95-11), § 392-172-030, filed 10/11/95, effective 11/11/95.]

### STUDENTS—GENERAL—DEFINITIONS

**WAC 392-172-035 Definitions of "free appropriate public education," "adult student," "special education student," "parent," and "public agency."** As used in this chapter:

(1) "Free appropriate public education" or FAPE means special education and related services which:

(a) Are provided at public expense, under local school district or other public agency supervision and direction, and without charge to parents;

(b) Meet the standards of the state educational agency and the state board of education, including the requirements of this chapter;

(c) Include preschool, elementary school, or secondary school education in the state; and

(d) Are provided in conformance with individualized education program (IEP) requirements of this chapter.

(2) "Special education student" means:

(a) Any student, enrolled in school or not, (i) who has been identified as having a disability, (ii) whose disability adversely affects the student's educational performance, (iii) and whose unique needs cannot be addressed exclusively through education in general education classes with or without individual accommodations and is determined to be eligible for special education services; including

(b) A student who qualifies under (a) of this subsection who is served in a residential school because of adjudication or medical necessity, in accordance with chapter 28A.190 RCW; residential and day students receiving education services at the state schools for the deaf and blind in accordance with chapter 72.40 RCW; and students who are juvenile inmates, receiving education services in accordance with chapter 28A.193 RCW.

(3) If it is determined through an appropriate evaluation that a student has one of the disabilities identified in WAC

# APPENDIX D

2005

SESSION LAWS  
OF THE  
STATE OF WASHINGTON

REGULAR SESSION  
FIFTY-NINTH LEGISLATURE  
Convened January 10, 2005. Adjourned April 24, 2005.



Published at Olympia by the Statute Law Committee under  
Chapter 6, Laws of 1969.

DENNIS W. COOPER  
Code Reviser

<http://www1.leg.wa.gov/codereviser>

NEW SECTION. Sec. 21. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 22. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate April 19, 2005.  
Passed by the House April 22, 2005.  
Approved by the Governor May 17, 2005.  
Filed in Office of Secretary of State May 17, 2005.

**CHAPTER 517**

[Engrossed Senate Bill 6121]

**FISCAL MATTERS—DEPARTMENT OF AGRICULTURE**

AN ACT Relating to fiscal matters; adding a new section to chapter ... (ESSB 6090), Laws of 2005 (uncodified); and making appropriations.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter ... (ESSB 6090), Laws of 2005 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF AGRICULTURE**

General Fund—State Appropriation (FY 2006).....	\$1,500,000
General Fund—State Appropriation (FY 2007).....	\$500,000
<b>TOTAL APPROPRIATION.....</b>	<b>\$2,000,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,000,000 of the general fund—state appropriation for fiscal year 2006 is provided solely to extend and expand the department of agriculture's asparagus automation and mechanization program under chapter 16-730 WAC in an effort to strengthen the asparagus post-harvest industry.

(2) \$500,000 of the general fund—state appropriation for fiscal year 2006 and \$500,000 of the general fund—state appropriation for fiscal year 2007 are provided solely to research and develop new hop harvesting technologies and for associated pilot projects.

Passed by the Senate April 23, 2005.  
Passed by the House April 24, 2005.  
Approved by the Governor May 17, 2005.  
Filed in Office of Secretary of State May 17, 2005.

**CHAPTER 518**

[Engrossed Substitute Senate Bill 6090]

**FISCAL MATTERS**

AN ACT Relating to fiscal matters; amending RCW 28A.160.195, 28A.305.210, 28A.500.030, 28A.600.110, 28A.600.150, 28B.76.660, 41.05.050, 41.05.065, 41.05.120, 41.50.110, 41.50.110, 43.07.130, 43.08.190, 43.08.250, 43.10.180, 43.30.305, 43.43.944, 43.72.900, 43.135.045, 50.20.190, 66.16.010, 67.40.040, 69.50.520, 70.83.040, 70.93.180, 70.146.030, 70.146.080, 70.148.020, 72.11.040, 74.46.431, 79.64.040, 79.90.245, 86.26.007, 43.185.050, 43.185.070, and 43.185A.030; amending 2004 c 276 ss 106, 107, 108, 110, 111, 115, 117, 118, 120,

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121, 123, 124, 126, 129, 131, 132, 201, 202, 203, 204, 205, 206, 207, 208, 209, 211, 212, 213, 214, 215, 217, 218, 219, 301, 302, 304, 306, 307, 308, 402, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 513, 514, 515, 516, 603, 701, 702, 703, 709, 802 (uncodified); amending 2003 1st sp.s. c 25 ss 119, 152, 617, and 706 (uncodified); reenacting and amending RCW 28B.102.040, 43.320.110, and 50.16.010; adding new sections to 2003 1st sp.s. c 25 (uncodified); creating new sections; making appropriations; providing an effective date; providing expiration dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION. Sec. 1.** (1) A budget is hereby adopted and, subject to the provisions set forth in the following sections, the several amounts specified in parts I through VIII of this act, or so much thereof as shall be sufficient to accomplish the purposes designated, are hereby appropriated and authorized to be incurred for salaries, wages, and other expenses of the agencies and offices of the state and for other specified purposes for the fiscal biennium beginning July 1, 2005; and ending June 30, 2007, except as otherwise provided, out of the several funds of the state hereinafter named.

(2) Unless the context clearly requires otherwise, the definitions in this section apply throughout this act.

(a) "Fiscal year 2006" or "FY 2006" means the fiscal year ending June 30, 2006.

(b) "Fiscal year 2007" or "FY 2007" means the fiscal year ending June 30, 2007.

(c) "FTE" means full time equivalent.

(d) "Lapse" or "revert" means the amount shall return to an unappropriated status.

(e) "Provided solely" means the specified amount may be spent only for the specified purpose.

Unless otherwise specifically authorized in this act, any portion of an amount provided solely for a specified purpose which is unnecessary to fulfill the specified purpose shall lapse.

**PART I  
GENERAL GOVERNMENT**

**\*NEW SECTION. Sec. 101. FOR THE HOUSE OF REPRESENTATIVES**

General Fund—State Appropriation (FY 2006) .....	\$30,411,000
General Fund—State Appropriation (FY 2007) .....	\$30,900,000
<b>TOTAL APPROPRIATION .....</b>	<b>\$61,311,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$150,000 of the general fund—state appropriation for fiscal year 2006 is provided solely for the committee on fiscal stability.

(a) The committee on fiscal stability is created, consisting of six members as follows: Three members shall be appointed by the leader of each of the two largest caucuses of the house of representatives. The governor shall appoint an additional person to serve as the chair of the committee. The chair may vote on procedural questions, but may not vote on substantive questions concerning the research or recommendations of the committee.

(viii) \$1,000,000 of the general fund—state appropriation for fiscal year 2006 and \$1,000,000 of the general fund—state appropriation for fiscal year 2007 are provided solely for the Washington state achievers scholarship program. The funds shall be used to support community involvement officers that recruit, train, and match community volunteer mentors with students selected as achievers scholars.

(ix) \$1,521,000 of the general fund—federal appropriation is provided for the advanced placement fee program to increase opportunities for low-income students and under-represented populations to participate in advanced placement courses and to increase the capacity of schools to provide advanced placement courses to students.

(x) \$8,292,000 of the general fund—federal appropriation is provided for comprehensive school reform demonstration projects to provide grants to low-income schools for improving student achievement through adoption and implementation of research-based curricula and instructional programs.

(xi) \$19,587,000 of the general fund—federal appropriation is provided for 21st century learning center grants, providing after-school and inter-session activities for students.

(xii) \$383,000 of the general fund—state appropriation for fiscal year 2006 and \$294,000 of the general fund—state appropriation for fiscal year 2007 are provided solely for the Lorraine Wojahn dyslexia pilot reading program in up to five school districts.

(xiii) \$75,000 of the general fund—state appropriation for fiscal year 2006 and \$75,000 of the general fund—state appropriation for fiscal year 2007 are provided solely for developing and disseminating curriculum and other materials documenting women's role in World War II.

**NEW SECTION. Sec. 502. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR GENERAL APPORTIONMENT**

General Fund—State Appropriation (FY 2006) . . . . .	\$4,180,957,000
General Fund—State Appropriation (FY 2007) . . . . .	\$4,243,010,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$8,423,967,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) Allocations for certificated staff salaries for the 2005-06 and 2006-07 school years shall be determined using formula-generated staff units calculated pursuant to this subsection. Staff allocations for small school enrollments in (d) through (f) of this subsection shall be reduced for vocational full-time equivalent enrollments. Staff allocations for small school enrollments in grades K-6 shall be the greater of that generated under (a) of this subsection, or under (d) and (e) of this subsection. Certificated staffing allocations shall be as follows:

(a) On the basis of each 1,000 average annual full-time equivalent enrollments, excluding full-time equivalent enrollment otherwise recognized for certificated staff unit allocations under (c) through (f) of this subsection:

(i) Four certificated administrative staff units per thousand full-time equivalent students in grades K-12;

(ii) 49 certificated instructional staff units per thousand full-time equivalent students in grades K-3;

(iii) Forty-six certificated instructional staff units per thousand full-time equivalent students in grades 4-12; and

(iv) An additional 4.2 certificated instructional staff units for grades K-3 and an additional 7.2 certificated instructional staff units for grade 4. Any funds allocated for the additional certificated units provided in this subsection (iv) shall not be considered as basic education funding;

(A) Funds provided under this subsection (2)(a)(iv) in excess of the amount required to maintain the statutory minimum ratio established under RCW 28A.150.260(2)(b) shall be allocated only if the district documents an actual ratio in grades K-4 equal to or greater than 53.2 certificated instructional staff per thousand full-time equivalent students. For any school district documenting a lower certificated instructional staff ratio, the allocation shall be based on the district's actual grades K-4 certificated instructional staff ratio achieved in that school year, or the statutory minimum ratio established under RCW 28A.150.260(2)(b), if greater;

(B) Districts at or above 51.0 certificated instructional staff per one thousand full-time equivalent students in grades K-4 may dedicate up to 1.3 of the 53.2 funding ratio to employ additional classified instructional assistants assigned to basic education classrooms in grades K-4. For purposes of documenting a district's staff ratio under this section, funds used by the district to employ additional classified instructional assistants shall be converted to a certificated staff equivalent and added to the district's actual certificated instructional staff ratio. Additional classified instructional assistants, for the purposes of this subsection, shall be determined using the 1989-90 school year as the base year;

(C) Any district maintaining a ratio in grades K-4 equal to or greater than 53.2 certificated instructional staff per thousand full-time equivalent students may use allocations generated under this subsection (2)(a)(iv) in excess of that required to maintain the minimum ratio established under RCW 28A.150.260(2)(b) to employ additional basic education certificated instructional staff or classified instructional assistants in grades 5-6. Funds allocated under this subsection (2)(a)(iv) shall only be expended to reduce class size in grades K-6. No more than 1.3 of the certificated instructional funding ratio amount may be expended for provision of classified instructional assistants;

(b) For school districts with a minimum enrollment of 250 full-time equivalent students whose full-time equivalent student enrollment count in a given month exceeds the first of the month full-time equivalent enrollment count by 5 percent, an additional state allocation of 110 percent of the share that such increased enrollment would have generated had such additional full-time equivalent students been included in the normal enrollment count for that particular month;

(c)(i) On the basis of full-time equivalent enrollment in:

(A) Vocational education programs approved by the superintendent of public instruction, a maximum of 0.92 certificated instructional staff units and 0.08 certificated administrative staff units for each 19.5 full-time equivalent vocational students; and

(B) Skills center programs meeting the standards for skills center funding established in January 1999 by the superintendent of public instruction, 0.92 certificated instructional staff units and 0.08 certificated administrative units for each 16.67 full-time equivalent vocational students;

(ii) Vocational full-time equivalent enrollment shall be reported on the same monthly basis as the enrollment for students eligible for basic support, and payments shall be adjusted for reported vocational enrollments on the same monthly basis as those adjustments for enrollment for students eligible for basic support; and

(iii) Indirect cost charges by a school district to vocational-secondary programs shall not exceed 15 percent of the combined basic education and vocational enhancement allocations of state funds;

(d) For districts enrolling not more than twenty-five average annual full-time equivalent students in grades K-8, and for small school plants within any school district which have been judged to be remote and necessary by the state board of education and enroll not more than twenty-five average annual full-time equivalent students in grades K-8:

(i) For those enrolling no students in grades 7 and 8, 1.76 certificated instructional staff units and 0.24 certificated administrative staff units for enrollment of not more than five students, plus one-twentieth of a certificated instructional staff unit for each additional student enrolled; and

(ii) For those enrolling students in grades 7 or 8, 1.68 certificated instructional staff units and 0.32 certificated administrative staff units for enrollment of not more than five students, plus one-tenth of a certificated instructional staff unit for each additional student enrolled;

(e) For specified enrollments in districts enrolling more than twenty-five but not more than one hundred average annual full-time equivalent students in grades K-8, and for small school plants within any school district which enroll more than twenty-five average annual full-time equivalent students in grades K-8 and have been judged to be remote and necessary by the state board of education:

(i) For enrollment of up to sixty annual average full-time equivalent students in grades K-6, 2.76 certificated instructional staff units and 0.24 certificated administrative staff units; and

(ii) For enrollment of up to twenty annual average full-time equivalent students in grades 7 and 8, 0.92 certificated instructional staff units and 0.08 certificated administrative staff units;

(f) For districts operating no more than two high schools with enrollments of less than three hundred average annual full-time equivalent students, for enrollment in grades 9-12 in each such school, other than alternative schools:

(i) For remote and necessary schools enrolling students in any grades 9-12 but no more than twenty-five average annual full-time equivalent students in grades K-12, four and one-half certificated instructional staff units and one-quarter of a certificated administrative staff unit;

(ii) For all other small high schools under this subsection, nine certificated instructional staff units and one-half of a certificated administrative staff unit for the first sixty average annual full time equivalent students, and additional staff units based on a ratio of 0.8732 certificated instructional staff units and 0.1268

certificated administrative staff units per each additional forty-three and one-half average annual full time equivalent students.

Units calculated under (f)(ii) of this subsection shall be reduced by certificated staff units at the rate of forty-six certificated instructional staff units and four certificated administrative staff units per thousand vocational full-time equivalent students;

(g) For each nonhigh school district having an enrollment of more than seventy annual average full-time equivalent students and less than one hundred eighty students, operating a grades K-8 program or a grades 1-8 program, an additional one-half of a certificated instructional staff unit; and

(h) For each nonhigh school district having an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty students, operating a grades K-6 program or a grades 1-6 program, an additional one-half of a certificated instructional staff unit.

(3) Allocations for classified salaries for the 2005-06 and 2006-07 school years shall be calculated using formula-generated classified staff units determined as follows:

(a) For enrollments generating certificated staff unit allocations under subsection (2)(d) through (h) of this section, one classified staff unit for each three certificated staff units allocated under such subsections;

(b) For all other enrollment in grades K-12, including vocational full-time equivalent enrollments, one classified staff unit for each sixty average annual full-time equivalent students; and

(c) For each nonhigh school district with an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty students, an additional one-half of a classified staff unit.

(4) Fringe benefit allocations shall be calculated at a rate of 10.90 percent in the 2005-06 school year and 11.90 percent in the 2006-07 school year for certificated salary allocations provided under subsection (2) of this section, and a rate of 14.57 percent in the 2005-06 school year and 15.82 percent in the 2006-07 school year for classified salary allocations provided under subsection (3) of this section.

(5) Insurance benefit allocations shall be calculated at the maintenance rate specified in section 504(2) of this act, based on the number of benefit units determined as follows:

(a) The number of certificated staff units determined in subsection (2) of this section; and

(b) The number of classified staff units determined in subsection (3) of this section multiplied by 1.152. This factor is intended to adjust allocations so that, for the purposes of distributing insurance benefits, full-time equivalent classified employees may be calculated on the basis of 1440 hours of work per year, with no individual employee counted as more than one full-time equivalent.

(6)(a) For nonemployee-related costs associated with each certificated staff unit allocated under subsection (2)(a), (b), and (d) through (h) of this section, there shall be provided a maximum of \$9,112 per certificated staff unit in the 2005-06 school year and a maximum of \$9,285 per certificated staff unit in the 2006-07 school year.

(b) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(A) of this section, there

shall be provided a maximum of \$22,377 per certificated staff unit in the 2005-06 school year and a maximum of \$22,802 per certificated staff unit in the 2006-07 school year.

(c) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(B) of this section, there shall be provided a maximum of \$17,362 per certificated staff unit in the 2005-06 school year and a maximum of \$17,692 per certificated staff unit in the 2006-07 school year.

(7) Allocations for substitute costs for classroom teachers shall be distributed at a maintenance rate of \$531.09 for the 2005-06 and 2006-07 school years per allocated classroom teachers exclusive of salary increase amounts provided in section 504 of this act. Solely for the purposes of this subsection, allocated classroom teachers shall be equal to the number of certificated instructional staff units allocated under subsection (2) of this section, multiplied by the ratio between the number of actual basic education certificated teachers and the number of actual basic education certificated instructional staff reported statewide for the prior school year.

(8) Any school district board of directors may petition the superintendent of public instruction by submission of a resolution adopted in a public meeting to reduce or delay any portion of its basic education allocation for any school year. The superintendent of public instruction shall approve such reduction or delay if it does not impair the district's financial condition. Any delay shall not be for more than two school years. Any reduction or delay shall have no impact on levy authority pursuant to RCW 84.52.0531 and local effort assistance pursuant to chapter 28A.500 RCW.

(9) The superintendent may distribute a maximum of \$7,621,000 outside the basic education formula during fiscal years 2006 and 2007 as follows:

(a) For fire protection for school districts located in a fire protection district as now or hereafter established pursuant to chapter 52.04 RCW, a maximum of \$513,000 may be expended in fiscal year 2006 and a maximum of \$523,000 may be expended in fiscal year 2007;

(b) For summer vocational programs at skills centers, a maximum of \$2,035,000 may be expended for the 2006 fiscal year and a maximum of \$2,035,000 for the 2007 fiscal year;

(c) A maximum of \$365,000 may be expended for school district emergencies;

(d) A maximum of \$485,000 each fiscal year may be expended for programs providing skills training for secondary students who are enrolled in extended day school-to-work programs, as approved by the superintendent of public instruction. The funds shall be allocated at a rate not to exceed \$500 per full-time equivalent student enrolled in those programs; and

(e) \$394,000 of the general fund—state appropriation for fiscal year 2006 and \$787,000 of the general fund—state appropriation for fiscal year 2007 are provided solely for incentive grants to encourage school districts to increase enrollment in vocational skills centers. Up to \$500 for each full-time equivalent student may be proportionally distributed to a school district or school districts increasing skills centers enrollment above the levels in the 2004-05 school year. The office of the superintendent of public instruction shall develop criteria for awarding incentive grants pursuant to this subsection. The total amount

allocated pursuant to this subsection shall be limited to \$1,181,000 for the 2005-07 biennium.

(10) For purposes of RCW 84.52.0531, the increase per full-time equivalent student is 5.2 percent from the 2004-05 school year to the 2005-06 school year and 3.4 percent from the 2005-06 school year to the 2006-07 school year.

(11) If two or more school districts consolidate and each district was receiving additional basic education formula staff units pursuant to subsection (2)(b) through (h) of this section, the following shall apply:

(a) For three school years following consolidation, the number of basic education formula staff units shall not be less than the number of basic education formula staff units received by the districts in the school year prior to the consolidation; and

(b) For the fourth through eighth school years following consolidation, the difference between the basic education formula staff units received by the districts for the school year prior to consolidation and the basic education formula staff units after consolidation pursuant to subsection (2)(a) through (h) of this section shall be reduced in increments of twenty percent per year.

**NEW SECTION. Sec. 503. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—BASIC EDUCATION EMPLOYEE COMPENSATION.** (1) The following calculations determine the salaries used in the general fund allocations for certificated instructional, certificated administrative, and classified staff units under section 502 of this act:

(a) Salary allocations for certificated instructional staff units shall be determined for each district by multiplying the district's certificated instructional total base salary shown on LEAP Document 12E by the district's average staff mix factor for certificated instructional staff in that school year, computed using LEAP Document 1Sb; and

(b) Salary allocations for certificated administrative staff units and classified staff units for each district shall be based on the district's certificated administrative and classified salary allocation amounts shown on LEAP Document 12E.

(2) For the purposes of this section:

(a) "LEAP Document 1Sb" means the computerized tabulation establishing staff mix factors for certificated instructional staff according to education and years of experience, as developed by the legislative evaluation and accountability program committee on March 18, 2005, at 10:00 hours; and

(b) "LEAP Document 12E" means the computerized tabulation of 2005-06 and 2006-07 school year salary allocations for certificated administrative staff and classified staff and derived and total base salaries for certificated instructional staff as developed by the legislative evaluation and accountability program committee on April 6, 2005, at 10:00 hours.

(3) Incremental fringe benefit factors shall be applied to salary adjustments at a rate of 10.26 percent for school year 2005-06 and 11.26 percent for school year 2006-07 for certificated staff and for classified staff 11.07 percent for school year 2005-06 and 12.32 percent for the 2006-07 school year.

(4)(a) Pursuant to RCW 28A.150.410, the following state-wide salary allocation schedules for certificated instructional staff are established for basic education salary allocations:

(b) As used in this subsection, the column headings "BA+(N)" refer to the number of credits earned since receiving the baccalaureate degree.

(c) For credits earned after the baccalaureate degree but before the masters degree, any credits in excess of forty-five credits may be counted after the masters degree. Thus, as used in this subsection, the column headings "MA+(N)" refer to the total of:

- (i) Credits earned since receiving the masters degree; and
- (ii) Any credits in excess of forty-five credits that were earned after the baccalaureate degree but before the masters degree.

(5) For the purposes of this section:

- (a) "BA" means a baccalaureate degree.
- (b) "MA" means a masters degree.
- (c) "PHD" means a doctorate degree.
- (d) "Years of service" shall be calculated under the same rules adopted by the superintendent of public instruction.

(e) "Credits" means college quarter hour credits and equivalent in-service credits computed in accordance with RCW 28A.415.020 and 28A.415.023.

(6) No more than ninety college quarter-hour credits received by any employee after the baccalaureate degree may be used to determine compensation allocations under the state salary allocation schedule and LEAP documents referenced in this act, or any replacement schedules and documents, unless:

- (a) The employee has a masters degree; or
- (b) The credits were used in generating state salary allocations before January 1, 1992.

(7) The certificated instructional staff base salary specified for each district in LEAP Document 12E and the salary schedules in subsection (4)(a) of this section include two learning improvement days. A school district is eligible for the learning improvement day funds only if the learning improvement days have been added to the 180-day contract year. If fewer days are added, the additional learning improvement allocation shall be adjusted accordingly. The additional days shall be limited to specific activities identified in the state required school improvement plan related to improving student learning that are consistent with education reform implementation, and shall not be considered part of basic education. The principal in each school shall assure that the days are used to provide the necessary school-wide, all staff professional development that is tied directly to the school improvement plan. The school principal and the district superintendent shall maintain documentation as to their approval of these activities. The length of a learning improvement day shall not be less than the length of a full day under the base contract. The superintendent of public instruction shall ensure that school districts adhere to the intent and purposes of this subsection.

(8) The salary allocation schedules established in this section are for allocation purposes only except as provided in RCW 28A.400.200(2) and subsection (7) of this section.

**NEW SECTION. Sec. 504. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SCHOOL EMPLOYEE COMPENSATION ADJUSTMENTS**

General Fund—State Appropriation (FY 2006)	\$73,981,000
General Fund—State Appropriation (FY 2007)	\$186,968,000

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Education Legacy Trust Account—State Appropriation . . . . .	\$470,000
General Fund—Federal Appropriation . . . . .	\$864,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$262,283,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$135,669,000 is provided for a cost of living adjustment of 1.2 percent effective September 1, 2005, and another 1.7 percent effective September 1, 2006, for state formula staff units. The appropriations include associated incremental fringe benefit allocations at rates of 10.26 percent for the 2005-06 school year and 11.26 percent for the 2006-07 school year for certificated staff and 11.07 percent for the 2005-06 school year and 12.32 percent for the 2006-07 school year for classified staff.

(a) The appropriations in this section include the increased portion of salaries and incremental fringe benefits for all relevant state-funded school programs in part V of this act. Increases for general apportionment (basic education) are based on the salary allocation schedules and methodology in sections 502 and 503 of this act. Increases for special education result from increases in each district's basic education allocation per student. Increases for educational service districts and institutional education programs are determined by the superintendent of public instruction using the methodology for general apportionment salaries and benefits in sections 502 and 503 of this act.

(b) The appropriations in this section provide cost of living and incremental fringe benefit allocations based on formula adjustments as follows:

	School Year	
	2005-06	2006-07
Pupil Transportation (per weighted pupil mile)	\$0.28	\$0.68
Highly Capable (per formula student)	\$2.96	\$7.26
Transitional Bilingual Education (per eligible bilingual student)	\$7.92	\$19.44
Learning Assistance (per formula student)	\$1.69	\$4.14

(c) The appropriations in this section include \$251,000 for fiscal year 2006 and \$676,000 for fiscal year 2007 for salary increase adjustments for substitute teachers.

(2) \$126,614,000 is provided for adjustments to insurance benefit allocations. The maintenance rate for insurance benefit allocations is \$582.47 per month for the 2005-06 and 2006-07 school years. The appropriations in this section provide for a rate increase to \$629.07 per month for the 2005-06 school year and \$679.39 per month for the 2006-07 school year. The adjustments to health insurance benefit allocations are at the following rates:

	School Year	
	2005-06	2006-07
Pupil Transportation (per weighted pupil mile)	\$0.42	\$0.88
Highly Capable (per formula student)	\$2.89	\$5.97

Transitional Bilingual Education (per eligible bilingual student)	\$7.54	\$15.69
Learning Assistance (per formula student)	\$1.49	\$3.11

(3) The rates specified in this section are subject to revision each year by the legislature.

**NEW SECTION. Sec. 505. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR PUPIL TRANSPORTATION**

General Fund—State Appropriation (FY 2006)	\$242,170,000
General Fund—State Appropriation (FY 2007)	\$248,575,000
<b>TOTAL APPROPRIATION</b>	<b>\$490,745,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) A maximum of \$796,000 of this fiscal year 2006 appropriation and a maximum of \$812,000 of the fiscal year 2007 appropriation may be expended for regional transportation coordinators and related activities. The transportation coordinators shall ensure that data submitted by school districts for state transportation funding shall, to the greatest extent practical, reflect the actual transportation activity of each district.

(3) \$5,000 of the fiscal year 2006 appropriation and \$5,000 of the fiscal year 2007 appropriation are provided solely for the transportation of students enrolled in "choice" programs. Transportation shall be limited to low-income students who are transferring to "choice" programs solely for educational reasons.

(4) Allocations for transportation of students shall be based on reimbursement rates of \$41.51 per weighted mile in the 2005-06 school year and \$42.01 per weighted mile in the 2006-07 school year exclusive of salary and benefit adjustments provided in section 504 of this act. Allocations for transportation of students transported more than one radius mile shall be based on weighted miles as determined by superintendent of public instruction multiplied by the per mile reimbursement rates for the school year pursuant to the formulas adopted by the superintendent of public instruction. Allocations for transportation of students living within one radius mile shall be based on the number of enrolled students in grades kindergarten through five living within one radius mile of their assigned school multiplied by the per mile reimbursement rate for the school year multiplied by 1.29.

(5) For busses purchased between July 1, 2005, and June 30, 2007, the office of superintendent of public instruction shall provide reimbursement funding to a school district only after the superintendent of public instruction determines that the school bus was purchased from the list established pursuant to RCW 28A.160.195(2) or a comparable competitive bid process based on the lowest price quote based on similar bus categories to those used to establish the list pursuant to RCW 28A.160.195. The competitive specifications shall meet federal motor vehicle safety standards, minimum state specifications as established by rule by the superintendent, and supported options as determined

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by the superintendent in consultation with the regional transportation coordinators of the educational service districts.

(6) Beginning with the 2005-06 school year, the superintendent of public instruction shall base depreciation payments for school district buses on the five-year average of lowest bids in the appropriate category of bus. In the final year on the depreciation schedule, the depreciation payment shall be based on the current state price. The superintendent may include a weighting or other adjustment factor in the averaging formula to ease the transition from the current-price depreciation system to the average depreciation system. Prior to making any depreciation payment in the 2005-06 school year, the superintendent shall notify the office of financial management and the fiscal committees of the legislature of the specific depreciation formula to be used. The replacement cost shall be based on the lowest bid in the appropriate bus category for that school year. A maximum of \$50,000 of the fiscal year 2006 appropriation may be expended for software programming costs associated with the implementation of this subsection.

**NEW SECTION. Sec. 506. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SCHOOL FOOD SERVICE PROGRAMS**

General Fund—State Appropriation (FY 2006) .....	\$3,147,000
General Fund—State Appropriation (FY 2007) .....	\$3,159,000
General Fund—Federal Appropriation .....	\$288,774,000
<b>TOTAL APPROPRIATION .....</b>	<b>\$295,080,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$3,000,000 of the general fund—state appropriation for fiscal year 2006 and \$3,000,000 of the general fund—state appropriation for fiscal year 2007 are provided for state matching money for federal child nutrition programs.

(2) \$100,000 of the general fund—state appropriation for fiscal year 2006 and \$100,000 of the 2007 fiscal year appropriation are provided for summer food programs for children in low-income areas.

(3) \$47,000 of the general fund—state appropriation for fiscal year 2006 and \$59,000 of the general fund—state appropriation for fiscal year 2007 are provided solely to reimburse school districts for school breakfasts served to students enrolled in the free or reduced price meal program pursuant to House Bill No. 1771 (requiring school breakfast programs in certain schools). If House Bill No. 1771 is not enacted by June 30, 2005, the amounts provided in this subsection shall lapse.

**NEW SECTION. Sec. 507. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SPECIAL EDUCATION PROGRAMS**

General Fund—State Appropriation (FY 2006) .....	\$460,032,000
General Fund—State Appropriation (FY 2007) .....	\$471,961,000
General Fund—Federal Appropriation .....	\$435,464,000
<b>TOTAL APPROPRIATION .....</b>	<b>\$1,367,457,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) Funding for special education programs is provided on an excess cost basis, pursuant to RCW 28A.150.390. School districts shall ensure that special education students as a class receive their full share of the general apportionment allocation accruing through sections 502 and 504 of this act. To the extent a school district cannot provide an appropriate education for special education students under chapter 28A.155 RCW through the general apportionment allocation, it shall provide services through the special education excess cost allocation funded in this section.

(2)(a) The superintendent of public instruction shall use the excess cost methodology developed and implemented for the 2001-02 school year using the S-275 personnel reporting system and all related accounting requirements to ensure that:

- (i) Special education students are basic education students first;
- (ii) As a class, special education students are entitled to the full basic education allocation; and
- (iii) Special education students are basic education students for the entire school day.

(b) The S-275 and accounting changes in effect since the 2001-02 school year shall supercede any prior excess cost methodologies and shall be required of all school districts.

(3) Each fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(4) The superintendent of public instruction shall distribute state and federal funds to school districts based on two categories: The optional birth through age two program for special education eligible developmentally delayed infants and toddlers, and the mandatory special education program for special education eligible students ages three to twenty-one. A "special education eligible student" means a student receiving specially designed instruction in accordance with a properly formulated individualized education program.

(5)(a) For the 2005-06 and 2006-07 school years, the superintendent shall make allocations to each district based on the sum of:

(i) A district's annual average headcount enrollment of developmentally delayed infants and toddlers ages birth through two, multiplied by the district's average basic education allocation per full-time equivalent student, multiplied by 1.15; and

(ii) A district's annual average full-time equivalent basic education enrollment multiplied by the funded enrollment percent determined pursuant to subsection (6)(b) of this section, multiplied by the district's average basic education allocation per full-time equivalent student multiplied by 0.9309.

(b) For purposes of this subsection, "average basic education allocation per full-time equivalent student" for a district shall be based on the staffing ratios required by RCW 28A.150.260 and shall not include enhancements, secondary vocational education, or small schools.

(6) The definitions in this subsection apply throughout this section.

(a) "Annual average full-time equivalent basic education enrollment" means the resident enrollment including students enrolled through choice (RCW 28A.225.225) and students from nonhigh districts (RCW 28A.225.210) and

excluding students residing in another district enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(b) "Enrollment percent" means the district's resident special education annual average enrollment, excluding the birth through age two enrollment, as a percent of the district's annual average full-time equivalent basic education enrollment.

Each district's general fund—state funded special education enrollment shall be the lesser of the district's actual enrollment percent or 12.7 percent.

(7) At the request of any interdistrict cooperative of at least 15 districts in which all excess cost services for special education students of the districts are provided by the cooperative, the maximum enrollment percent shall be calculated in accordance with subsection (6)(b) of this section, and shall be calculated in the aggregate rather than individual district units. For purposes of this subsection, the average basic education allocation per full-time equivalent student shall be calculated in the aggregate rather than individual district units.

(8) To the extent necessary, \$18,940,000 of the general fund—state appropriation and \$28,698,000 of the general fund—federal appropriation are provided for safety net awards for districts with demonstrated needs for special education funding beyond the amounts provided in subsection (5) of this section. If safety net awards exceed the amount appropriated in this subsection (8), the superintendent shall expend all available federal discretionary funds necessary to meet this need. Safety net funds shall be awarded by the state safety net oversight committee subject to the following conditions and limitations:

(a) The committee shall consider unmet needs for districts that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas. In the determination of need, the committee shall also consider additional available revenues from federal sources. Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

(b) The committee shall then consider the extraordinary high cost needs of one or more individual special education students. Differences in costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

(c) The maximum allowable indirect cost for calculating safety net eligibility may not exceed the federal restricted indirect cost rate for the district plus one percent.

(d) Safety net awards shall be adjusted based on the percent of potential medicaid eligible students billed as calculated by the superintendent in accordance with chapter 318, Laws of 1999.

(e) Safety net awards must be adjusted for any audit findings or exceptions related to special education funding.

(9) The superintendent of public instruction may adopt such rules and procedures as are necessary to administer the special education funding and safety net award process. Prior to revising any standards, procedures, or rules, the superintendent shall consult with the office of financial management and the fiscal committees of the legislature.

(10) The safety net oversight committee appointed by the superintendent of public instruction shall consist of:

(a) One staff from the office of superintendent of public instruction;  
 (b) Staff of the office of the state auditor who shall be nonvoting members of the committee; and

(c) One or more representatives from school districts or educational service districts knowledgeable of special education programs and funding.

(11) A maximum of \$678,000 may be expended from the general fund—state appropriations to fund 5.43 full-time equivalent teachers and 2.1 full-time equivalent aides at children's orthopedic hospital and medical center. This amount is in lieu of money provided through the home and hospital allocation and the special education program.

(12) A maximum of \$1,000,000 of the general fund—federal appropriation is provided for projects to provide special education students with appropriate job and independent living skills, including work experience where possible, to facilitate their successful transition out of the public school system. The funds provided by this subsection shall be from federal discretionary grants.

(13) A maximum of \$100,000 of the general fund—federal appropriation shall be expended to create a special education ombudsman program within the office of superintendent of public instruction. The purpose of the program is to provide support to parents, guardians, educators, and students with disabilities. The program will provide information to help families and educators understand state laws, rules, and regulations, and access training and support, technical information services, and mediation services. The ombudsman program will provide data, information, and appropriate recommendations to the office of superintendent of public instruction, school districts, educational service districts, state need projects, and the parent and teacher information center.

(14) The superintendent shall maintain the percentage of federal flow-through to school districts at 85 percent. In addition to other purposes, school districts may use increased federal funds for high-cost students, for purchasing regional special education services from educational service districts, and for staff development activities particularly relating to inclusion issues.

(15) A maximum of \$1,200,000 of the general fund—federal appropriation may be expended by the superintendent for projects related to use of inclusion strategies by school districts for provision of special education services.

(16) \$1,400,000 of the general fund—federal appropriation shall be expended for one-time grants to school districts for the start-up costs of implementing web-based programs that assist schools in meeting state and federal requirements regarding individualized education plans.

(17) The superintendent, consistent with the new federal IDEA reauthorization, shall continue to educate school districts on how to implement a birth-to-three program and review the cost effectiveness and learning benefits of early intervention.

(18) A school district may carry over from one year to the next year up to 10 percent of the general fund—state funds allocated under this program; however, carry over funds shall be expended in the special education program.

**NEW SECTION. Sec. 508. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR EDUCATIONAL SERVICE DISTRICTS**

General Fund—State Appropriation (FY 2006) . . . . .	\$3,694,000
General Fund—State Appropriation (FY 2007) . . . . .	\$3,724,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$7,418,000</b>

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amount shall be reduced to three-quarters of the full amount. The state safety net oversight committee may set a lower threshold for small school districts.

(c) The total cost of educational services must exceed any carryover of federal flow-through special education funding as of August 31 of the prior school year.

(d) The cost of providing special education services, as directed in the IEP, for this student would be detrimental to the school district's ability to provide necessary services to the other students being provided special education in the district.

(3) The state safety net oversight committee shall adapt the high cost individual student application as appropriate for applications prepared by the Washington state school for the blind and the Washington state school for the deaf.

[Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 03-02-053, § 392-140-616, filed 12/26/02, effective 1/26/03. Statutory Authority: RCW 28A.150.290. 02-05-036, § 392-140-616, filed 2/12/02, effective 2/13/02; 01-04-023, § 392-140-616, filed 1/30/01, effective 1/30/01. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). 98-08-013 (Order 98-05), § 392-140-616, filed 3/18/98, effective 4/18/98. Statutory Authority: RCW 28A.150.290 and 1995 2nd sp.s. c 18 as modified by 1996 c 283. 96-19-095 (Order 96-15), § 392-140-616, filed 9/18/96, effective 10/19/96.]

**WAC 392-140-626 Special education safety net—Worksheet A—Demonstration of need.** Applications for high-cost individual students shall demonstrate district financial need as follows:

(1) Application worksheet "A" shall demonstrate a fiscal need in excess of:

(a) Any previous safety net awards for the current school year; and

(b) All other available revenue for special education, including all carryover of state and federal special education revenue.

(2) Awards shall not exceed the amount of need demonstrated on the worksheet "A."

(3) Worksheets submitted with safety net applications are to reflect the state adopted excess cost method of accounting, consistently applied for both years presented.

(4) The safety net oversight committee may revise the district's worksheet "A" submitted for errors or omissions or more current information.

(5) The school district shall provide clarifying information as requested by the state oversight committee.

(6) After the close of the school year, the safety net oversight committee may review the worksheet "A" used to determine need for a district's award against the actual final school year enrollments, revenues, and expenditures reported by the district. Based upon the results of this review:

(a) The safety net allocation for the school year may be adjusted or recovered; or

(b) If the committee finds that a portion of the safety net allocation was not needed to balance revenues and expenditures, the committee may consider that portion of the allocation available to meet the needs of the ensuing school year.

(7) The state safety net oversight committee shall adapt the worksheet "A" - Demonstration of Need as appropriate for applications prepared by districts participating in the pilot program according to the provisions of RCW 28A.630.015 (4).

[Title 392 WAC—p. 168]

(8) In accordance with the state of Washington *Accounting Manual for Public School Districts* and proposed federal language, demonstrated need shall not include legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child to ensure a free appropriated public education.

[Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 04-08-118, § 392-140-626, filed 4/6/04, effective 5/7/04; 03-02-053, § 392-140-626, filed 12/26/02, effective 1/26/03. Statutory Authority: RCW 28A.150.290. 01-04-023, § 392-140-626, filed 1/30/01, effective 1/30/01. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 507(7). 00-03-015, § 392-140-626, filed 1/7/00, effective 2/7/00.]

**WAC 392-140-630 Special education safety net—Special education program audit team—Purpose, procedures.** Special education program audits by staff of the state auditor's office may be requested to assist the special education safety net committee. When reviewing a school district's special education program, the auditors may review and verify any certifications and supporting information provided by the district in a safety net application. The auditors may provide the results of the review to the state oversight committee. The results of the auditor's review may be considered by the oversight committee in determining, adjusting, or recovering safety net awards.

[Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 04-08-118, § 392-140-630, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 28A.150.290. 02-05-036, § 392-140-630, filed 2/12/02, effective 2/13/02. Statutory Authority: RCW 28A.150.290(2) and 1999 c 309 § 507(7). 00-03-015, § 392-140-630, filed 1/7/00, effective 2/7/00. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). 98-08-013 (Order 98-05), § 392-140-630, filed 3/18/98, effective 4/18/98.]

**WAC 392-140-640 Special education safety net—State oversight committee—Membership, structure.** Membership of the state oversight committee shall consist of: Staff of the office of superintendent of public instruction, staff of the office of state auditor, one or more representatives from a school district(s), and one or more representatives from an educational service district.

(1) The state oversight committee members will be appointed by the office of superintendent of public instruction.

(2) The state director of special education shall serve as an ex officio, nonvoting committee member and act as the state oversight committee manager.

(3) Members of the state oversight committee from school districts and/or educational service districts will be appointed based on their knowledge of special education program service delivery and funding, geographical representation, size of district(s) served, and other demographic considerations which will guarantee a representative state committee.

(4) Alternate members shall be appointed. In the event a member is unable to attend a committee meeting, an alternate member shall attend.

(5) Membership appointments shall be made for a period of one year. The oversight committee manager may replace a portion of the committee each year in order to enhance representation.

[Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 507(7). 04-08-118, § 392-140-640, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 28A.150.290 and 1997 c 149 § 507(8). 98-08-013 (Order 98-05), §

(2005 Ed.)

# APPENDIX G

the treasurer shall determine and advise the legislature, any appropriate agency, officer, or instrumentality of the state as to the available debt capacity within the limitation set forth in this section. The legislature may delegate to any state officer, agency, or instrumentality any of its powers relating to the contracting, funding or refunding of debt pursuant to this section except its power to determine the amount and purposes for which debt may be contracted.

(i) The full faith, credit, and taxing power of the state of Washington are pledged to the payment of the debt created on behalf of the state pursuant to this section and the legislature shall provide by appropriation for the payment of the interest upon and installments of principal of all such debt as the same falls due, but in any event, any court of record may compel such payment.

(j) Notwithstanding the limitations contained in subsection (b) of this section, the state may issue certificates of indebtedness in such sum or sums as may be necessary to meet temporary deficiencies of the treasury, to preserve the best interests of the state in the conduct of the various state institutions, departments, bureaus, and agencies during each fiscal year; such certificates may be issued only to provide for appropriations already made by the legislature and such certificates must be retired and the debt discharged other than by refunding within twelve months after the date of incurrence.

(k) Bonds, notes, or other obligations issued and sold by the state of Washington pursuant to and in conformity with this article shall not be invalid for any irregularity or defect in the proceedings of the issuance or sale thereof and shall be incontestable in the hands of a bona fide purchaser or holder thereof. [AMENDMENT 60, part, 1971 House Joint Resolution No. 52, part, p 1836. Approved November, 1972.]

**Original text — Art. 8 Section 1 LIMITATION OF STATE DEBT** — The state may to meet casual deficits or failure in revenues, or for expenses not provided for, contract debts, but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed four hundred thousand dollars (\$400,000), and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained or to repay the debts so contracted, and to no other purpose whatever.

**SECTION 2 POWERS EXTENDED IN CERTAIN CASES.** In addition to the above limited power to contract debts the state may contract debts to repel invasion, suppress insurrection, or to defend the state in war, but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised and to no other purpose whatever.

**SECTION 3 SPECIAL INDEBTEDNESS, HOW AUTHORIZED.** Except the debt specified in sections one and two of this article, no debts shall hereafter be contracted by, or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein. No such law shall take effect until it shall, at a general election, or a special election called for that purpose, have been submitted to the people and have received a majority of all the votes cast for and against it at such election. [AMENDMENT 60, part, 1971 House Joint Resolution No. 52, part, p 1836. Approved November, 1972.]

**Amendment 48 (1966) — Art. 8 Section 3 SPECIAL INDEBTEDNESS, HOW AUTHORIZED** — Except the debt specified in sections one and two of this article, no debts shall hereafter be contracted by, or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within twenty years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for and against it at such election, and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and notice that such law will be submitted to the people shall be published at least four times during the four weeks next preceding the election in

every legal newspaper in the state: Provided, That failure of any newspaper to publish this notice shall not be interpreted as affecting the outcome of the election. [AMENDMENT 48, 1965 ex.s. House Joint Resolution No. 39, p 2822. Approved November 8, 1966.]

**Original text — Art. 8 Section 3 SPECIAL INDEBTEDNESS HOW AUTHORIZED** — Except the debt specified in sections one and two of this article, no debts shall hereafter be contracted by, or on behalf of this state, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within twenty years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for and against it at such election, and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, if one be published therein, throughout the state, for three months next preceding the election at which it is submitted to the people.

**SECTION 4 MONEYS DISBURSED ONLY BY APPROPRIATIONS.** No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within one calendar month after the end of the next ensuing fiscal biennium, and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum. [AMENDMENT 11, 1921 p 80 Section 1. Approved November, 1922.]

**Original text — Art. 8 Section 4 MONEYS DISBURSED ONLY BY APPROPRIATIONS** — No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years from the first day of May next after the passage of such appropriation act, and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.

**SECTION 5 CREDIT NOT TO BE LOANED.** The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.

**SECTION 6 LIMITATIONS UPON MUNICIPAL INDEBTEDNESS.** No county, city, town, school district, or other municipal corporation shall for any purpose become indebted in any manner to an amount exceeding one and one-half per centum of the taxable property in such county, city, town, school district, or other municipal corporation, without the assent of three-fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness at any time exceed five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness, except that in incorporated cities the assessment shall be taken from the last assessment for city purposes: *Provided*, That no part of the indebtedness allowed in this section shall be incurred for any purpose other than strictly county, city, town, school district, or other municipal purposes: *Provided*

# APPENDIX H

## **SEATTLE POST-INTELLIGENCER**

[http://seattlepi.nwsourc.com/opinion/193411\\_speced.html](http://seattlepi.nwsourc.com/opinion/193411_speced.html)

### **Constitutional conflicts**

*Monday, October 4, 2004*

#### **SEATTLE POST-INTELLIGENCER EDITORIAL BOARD**

Schools receive too little money from the state. In a reflection of that reality, 11 districts are suing Washington for failing to provide adequate special education funding.

The shortcomings are well known. Districts routinely supplement state and federal money with their own property taxes, approved by local voters.

As a practical matter, the existing practice routinely undercuts the school improvements that taxpayers, teachers and students are trying so hard to make. As a matter of law, the skimping conflicts with the state's constitutional duties.

That's the accusation of the 11 districts, and it appears to be well-founded. A 1983 court ruling held that the state's obligation to pay for basic education expenses covers special education. Under a previous court ruling, the state was told that local levy money to pay for basic education failed to satisfy the constitutional mandate.

If Federal Way, Lake Washington, Everett and the other districts win in court, a judge could order state remedies. There certainly could be better resolutions through voluntary action by the Legislature and the governor. Whenever possible, it's better for elected officials to retain control of decisions, rather than having judges step in.

But schools have long sought more money. Many feel they face too many unfunded mandates to keep covering costs the state ought to pick up.

Legislators face a variety of needs, in education, social services and corrections, to name a few. Still, the filing of legal action might serve to focus their minds mightily.

Spokane Superintendent Brian Benzel, whose district is part of the suit, pointed to a request to legislators from state Superintendent of Public Instruction Terry Bergeson for an added \$200 million in special education funding during the 2005-2007 biennium. "It's a very good start at a conversation that we very much hope to have this legislative session," Benzel told a reporter last week.

Wherever the discussions go, the suit brings a longstanding problem to public attention. The challenge will be to find better outcomes for special education students, and all students.

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# APPENDIX I

2005 03-17 Seattle Times

## **Finally confronting special-ed realities**

A LAWSUIT by school districts over special-education funding has done part of its job, which was to get the attention of lawmakers.

Sen. Rosemary McAuliffe, D-Bothell, and other lawmakers are working to tweak rules and add zeros to budget line items to benefit special education. They are smart to work to avoid ending up on the losing end of a battle over education funding. And if they are successful, the state's Safety Net Fund, which provides special-education relief to school districts, will get an additional \$20 million.

Legislators are also working on regulatory relief for special education. They plan to stop requiring school districts to use up local levy dollars before applying for the safety net. Another move by lawmakers would remove 3- and 4-year-old students from special-education head counts. The pre-schoolers would still receive special-education funding, but they would no longer add to the enrollment cap placed on all school districts. This would create more funded slots for older children.

These are important modifications. They are also a good sign that lawmakers took seriously the lawsuit by 11 Washington school districts.

But no cigar yet. The only way the Legislature can make this go away is to completely overhaul the special-education funding model. Anything short of that doesn't accurately reflect the reality of special-education needs.

The reality is this: Federal spending on special education has risen every year but still falls short of a 1970s-era promise to bring it up to 40 percent of the need.

The state hasn't done much better. While the courts have ruled that special-education programs must be part of a basic education and schools must treat each disability with individual education plans, the state continues to fund this branch of education with a flat rate. This one-size-fits-all model is inadequate.

A report by the Washington Association of School Administrators spotlights the gap in special-education funding and the reality of expenditures. For example, Seattle Public Schools spent \$51.6 million in the 2002-03 school year on its special-education program, but received only \$29.4 million from state and federal sources. Nearly one-quarter of local tax revenue was used to cover the rest, even though the local levy is meant to supplement basic education.

This fiscal dilemma isn't unique to Seattle. The 35 districts in the Puget Sound region spent about \$233 million on special education last year, but almost 30 percent wasn't covered by the state, according to a Seattle Times report.

Facing a multibillion-dollar deficit, it is unrealistic to expect the Legislature to write a check big enough to fix the inequities in special-education spending. But lawmakers must do more than show they are sympathetic to school districts grappling with high special-education costs. They must sow the seeds of a long-term workable solution.

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H:\GTY\News Articles\2005 03-17 Seattle Times Finally confronting special-ed realities

# APPENDIX J



*Sunday, November 5, 2006*

#### **SEATTLE POST-INTELLIGENCER EDITORIAL BOARD**

The state of Washington's special education funding system is on trial. While the outcome could have large consequences for the Legislature's work on future budgets, there's no reason to assume lawmakers are losing sleep.

Over the years, legislators have perfected the ability to live in a state of denial about how they finance schools. The case could help bring legislators and everyone else back to the realities of the prime directive from the state constitution. Article IX reads: "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders."

A Thurston County Superior Court judge began hearing arguments brought by a dozen school districts. Dozens of other districts have come forward supporting accusations that the state systematically underfunds special education.

School districts spend anywhere from \$100 million to \$230 million extra per year to provide special education. As a Seattle P-I story earlier this year reported, Spokane, Shoreline, Seattle and other large urban areas tend to be hit especially hard. Families move to those districts to use their well-developed education programs and nearby health-care providers.

In our minds, the most legitimate objection to the suit has come from some special-education parents, who fear their children are being singled out within a financing system that is broken in numerous ways. Although we think districts have avoided any scapegoating, the parents are right about a dysfunctional funding system. But other parts of the system face legal challenges, too.

A lawsuit later this month will question the wide variances in state money from one district to the next. A larger, statewide lawsuit over the inadequacy of funding has been brewing for years.

Gov. Chris Gregoire's Washington Learns panel could come up with financing recommendations that resolve the issues. The best option might be for the Legislature to commit to reducing funding complexities, creating transparency and writing a schedule for phasing in genuinely ample funding.

The special education suit is expected to take three weeks. The verdict and strong Washington Learns recommendations might just nudge the Legislature and all the rest of us toward a new honesty. "Ample" isn't really a hard concept. The state has just avoided thinking about it.

# APPENDIX K

Spokesman Review (Spokane)  
Tuesday, March 6, 2007

**Our View: State must address inequities in school funding**  
Editorial

Washington state's perennial remedy for insufficient, inequitable funding of schools can be best described as pain avoidance. But by fleeing discomfort, lawmakers have inflicted it on schools and students.

About 21 months ago, the Legislature commissioned a study on improving secondary-school education. To be included in that study was a funding mechanism to cover basic education.

The result was Washington Learns, which in November produced a lengthy wish list and a call for another funding study. Last Friday, the state Senate called for yet another study, but this time it appears that significant changes are afoot.

Senate Bill 5627 establishes a firm deadline and specific expectations for the latest group to look at the funding conundrum. By Jan. 1, the task force must provide two to four options. In the interests of accountability, one option must be outcome-based, which is to say it must call for specific levels of achievement. In the interest of frugality, one option must stay within the confines of current spending.

The task force will study the definition of "basic education" and what it is meant to encompass under the state's constitution. It also will look at the complicated funding formulas in use and recommend improvements.

The bill wisely guides the committee to include long overlooked areas, such as special education, teacher pay, professional development, optimum class sizes and voluntary all-day kindergarten.

While the bill is laudable, it should be noted that it has taken multiple lawsuits and the threat of more to get to this point. The Legislature had little choice but to finally face up to the problem.

In the meantime, school districts have had to scrape by with creative management and tapping levy-raised "enhancement" funds for basic education. Spokane Public Schools was one of many districts that joined a lawsuit against the state for not providing sufficient funds for special education.

Unfortunately, this latest development is too late for districts that will be crippled by impending cuts. Spokane Public Schools, which faces a \$10.5 million shortfall, will soon

release details on the pain it couldn't avoid. The district had to scramble to fill a \$9 million hole in 2003.

"We've been avoiding it and solving it so well that people think we're going to keep being able to do that. But where we're at now is we're out of options," said Superintendent Brian Benzel, who moves on to a college job in August.

There is no quick fix that addresses the fundamental unfairness of funding formulas that haven't changed since 1977. A crisis that's been 30 years in the making can't be undone without careful consideration.

The encouraging news is that at this time next year, lawmakers will debate serious options to fulfill the state's paramount duty \* educating children \* and then selecting one.

No pain, no gain.

# APPENDIX L

## **THE SPOKESMAN-REVIEW**

March 11, 2009 in City, Region

# **Court reaffirms ruling on special ed funding**

Sara Leaming / The Spokesman-Review

**Tags:** Alliance for Adequate Funding of Special Education Court of Appeals riverside school district school districts schools spokane public schools

The state Court of Appeals on Tuesday upheld a lower court's decision denying a request by a consortium of Washington school districts to declare the system of funding special education unconstitutional.

The School Districts' Alliance for Adequate Funding of Special Education unsuccessfully sued the state in 2004, declaring consistent failure to fully fund special education programs.

Among the 12 districts named in the lawsuit were Spokane Public Schools and the Riverside School District. An additional 70 school districts also submitted briefs to the court in support of the alliance.

"While the decision is disappointing, the Alliance is committed to honoring the rights and dignity of all students," Spokane superintendent Nancy Stowell said in a press release. "On behalf of all the parents and children who attend our schools, we will continue to raise the issue of inadequate funding."

In Spokane — the state's second largest school system — more than \$37 million is budgeted this year for state required special education programs.

Get more news and information at [Spokesman.com](http://Spokesman.com)

# The Seattle Times

Wednesday, March 11, 2009 - Page updated at 04:10 PM

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## Appeals court upholds Wash. special ed spending

The Washington Court of Appeals has upheld a lower court decision that the state is not shortchanging school districts by more than \$100 million a year for special education.

The appeals court agreed with a Thurston County Superior Court Judge in his ruling on the lawsuit brought by a dozen school districts across the state.

In the ruling filed Tuesday, the Appeals Court said the alliance of school districts failed to prove the laws governing Washington's special education financing are unconstitutional.

The Alliance says it is disappointed with the decision. The group's attorney, Chris Hirst, said Wednesday that they haven't decided whether to appeal to the Washington Supreme Court.

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On the Net:

Appeals Court Decision: <http://www.courts.wa.gov/opinions/index.cfm?faopinions.showOpinion&filename362945MAJ>

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# Seattle Post-Intelligencer

[http://www.seattlepi.com/local/6420ap\\_wa\\_special\\_ed\\_lawsuit.html](http://www.seattlepi.com/local/6420ap_wa_special_ed_lawsuit.html)

Last updated March 11, 2009 3:55 p.m. PT

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THE ASSOCIATED PRESS

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On the Net:

Appeals Court Decision: <http://www.courts.wa.gov/opinions/index.cfm?faopinions.showOpinion&filename362945MAJ>

## **KIMA 29 - Yakima, Washington 29**

[Print this article](#)

# **Appeals court upholds state special ed spending**

by Associated Press

*Originally printed at <http://www.kimatv.com/news/local/41121937.html>*

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# THE BELLINGHAM HERALD

Mar, 11, 2009

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The Associated Press

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## Local News

# Special education spending levels upheld

## Washington Court of Appeals rejects schools' claim

Thursday, March 12 | 7:48 p.m.

**BY HOWARD BUCK**  
**COLUMBIAN STAFF WRITER**

The Washington State Court of Appeals has upheld state spending levels for special education students in grades K-12, a disappointment for 12 school districts that brought the original lawsuit and five more in Clark County that signed on as allies.

School leaders now say the solution for what they claim is chronic underfunding for special ed is to beef up the state's per-pupil spending on basic education, and thus raise support for all students.

"The court has spoken. We respect the court's opinion," said Kathryn Murdock, attorney for Vancouver Public Schools, among 72 districts to sign an amicus brief in support of the petitioners.

Chris Hurst, attorney for the 12-member alliance of school districts that sued, said no decision had been made whether to request a state Supreme Court review. The group has 30 days to act, he said.

Originally filed in 2004, the lawsuit centered on complex funding formulas devised in Olympia by the state education department and state legislators.

The petitioners claim the state is shortchanging districts statewide by more than \$100 million each year for the true costs of special education.

Ultimately, the appeals court sided with an earlier finding by Thurston County Judge Thomas McPhee that there was nothing unconstitutional about the formulas, and deferred to legislator control, Murdock said.

"At this point, we want to put our hope in the Washington Legislature" to improve basic education funding, Murdock said. "The court does not want to micromanage education in Washington," she said.

Acting on recommendations of a statewide basic education funding task force, legislators are pushing new reform legislation through Olympia this year. But there's little chance of pushing spending higher anytime soon, given massive state budget troubles.

The appeals court noted federal and state grants are used to supplement special education funding where shortfalls have hit hardest.

But most school districts must rely on voter-approved local operating levy dollars to make up the difference.

Next year, Evergreen Public Schools will tap between \$5.5 million and \$6 million from operating levy dollars to pay for special education, said Mike Merlino, district finance director. He previously testified on behalf of the petitioning districts.

"It's a big number, and the number grows every year," Merlino said. That's despite Evergreen

identifying its special education population at about 12.1 percent of its nearly 26,000 students, and the state's maximum special ed funding is 12.7 percent.

Besides Vancouver and Evergreen, the Battle Ground, Ridgefield and Washougal school districts also supported the case.

Howard Buck: 360-735-4515 or [howard.buck@columbian.com](mailto:howard.buck@columbian.com).