

# THE SUPREME COURT OF WASHINGTON

MATHEW & STEPHANIE McCLEARY, )  
et al., )  
Respondents/Cross-Appellants, )  
v. )  
STATE OF WASHINGTON, )  
Appellant/Cross-Respondent. )

**ORDER**  
Supreme Court No.  
84362-7  
King County No.  
07-2-02323-2 SEA

**FILED**  
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WASHINGTON STATE SUPREME COURT  
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In *McCleary v. State*, 173 Wn.2d 477, 539, 269 P.3d 227 (2012), this court unanimously held that the State was not meeting its “paramount duty . . . to make ample provision for the education of all children residing within its borders.” WASH. CONST. art. IX, § 1. Recognizing that the legislature had enacted a promising set of reforms and was making progress toward funding those reforms, the court deferred to the legislature’s chosen means of discharging its constitutional duty. *McCleary*, 173 Wn.2d at 484, 543-44. However, the court retained jurisdiction to help ensure steady and measurable progress in the State’s plan to fully implement reforms by September 1, 2018, a deadline the State itself had set.

Nearly six years have passed, and today, the court must determine whether the State has made the grade. As explained below, over the past several years the State has made significant progress in fully funding the program of basic education, including by amply funding most of its components. Further, the 2017 legislature enacted a funding system that, when fully implemented, will achieve constitutional compliance according to the benchmarks that have consistently guided judicial oversight. However, by its own admission, the State will not meet the established deadline of September 1, 2018, as to all components. Instead, the funding system adopted in Engrossed

House Bill 2242, 65th Leg., 3d Spec. Sess. (Wash. 2017) (EHB 2242) delays by over a year implementation of a constitutionally compliant salary model, a critical part of meaningful reform. While the court can appreciate the political and budgetary challenges that may explain the State's decision to postpone full funding of the salary model, it cannot accept part compliance as full compliance. The court's constitutional responsibility is to the schoolchildren of this state who have an enforceable right under article IX, section 1 to an amply funded education. We cannot erode that constitutional right by saying that the State is now "close enough" to constitutional compliance. The goals have long been clear, the deadline has long been clear, and the meaning of "amply fund" has long been clear. Until the State enacts measures that fully *implement* its program of basic education by the September 1, 2018 deadline, it remains out of compliance. The court will retain jurisdiction, continue to impose daily sanctions, and reserve all enforcement options to compel compliance with its decision and orders.

#### Background

It is helpful to begin by reviewing the history of this case. After issuing its opinion in 2012, the court has retained jurisdiction and directed the State to report on its progress following each legislative session. *McCleary*, 173 Wn.2d at 547. A lack of demonstrated progress led the court to issue an order on January 9, 2014, directing the State to submit by April 30, 2014 "a complete plan for fully implementing its program of basic education for each school year" between then and the deadline, including "a phase-in schedule for fully funding each of the components of basic education." Order, *McCleary v. State*, No. 84362-7, at 8 (Wash. Jan. 9, 2014). The State did not submit a plan as ordered, and as a result, this court found the State in contempt but held any sanctions in abeyance to allow the legislature to act during the 2015 legislative session. Following that session, the court found the State remained in contempt and imposed a remedial sanction in

the amount of \$100,000 per day until the State adopted a complete plan for complying with its constitutional obligation to fully fund public education by 2018, with the funds from the sanction to be held in a segregated account for the benefit of basic education.

Finding that the State was still in contempt after the 2016 legislative session, the court directed the State to file within 30 days after the signing of the 2017-19 biennial budget a report summarizing the actions taken during the 2017 legislative session to implement the State's program of basic education. The court recognized, based on the relevant legislation, a firm deadline of September 1, 2018, to fully implement the State's program of basic education, and it ordered that the remaining details of the program, including necessary appropriations for the 2017-19 biennium, had to be in place by final adjournment of the 2017 session. The governor signed the 2017-18 budget on June 30, 2017, and in accordance with the schedule the court had set, the State submitted its report on what the legislature had accomplished during the session, and plaintiffs filed their answer. Amicus briefs were also filed.<sup>1</sup> The court then heard oral argument from the parties on October 24, 2017.

The court's opinion and orders measure constitutional compliance according to the areas of basic education identified in Engrossed Substitute House Bill (ESHB) 2261 (LAWS OF 2009, ch. 548) and the implementation benchmarks established by Senate House Bill (SHB) 2776 (LAWS OF

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<sup>1</sup> Four amicus briefs were permitted to be filed: (1) by Washington's Paramount Duty; (2) by a group consisting of the Arc of King County, the Arc of Washington State, TeamChild, Washington Autism Alliance & Advocacy, Open Doors for Multicultural Families, Seattle Special Education Parent Teacher Student Association, Bellevue Special Needs Parent Teacher Association, Gary Stobbe, James Mancini, and Representative Gerry Pollet; (3) by a group consisting of National Association for the Advancement of Colored People, Chinese Information Service Center, Multicultural Education Rights Alliance, Rainier Beach Action Coalition, Southeast Seattle Education Coalition, and United Indians of All Tribes Foundation; and (4) by a group consisting of Washington State Budget & Policy Center, Equity in Education Coalition, Senator Jamie Pedersen, Representative Laurie Jenkins, and Representative Gerry Pollet.

2010, ch. 236). It has always been the province of the legislature to define “basic education.” *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 477, 518-20, 585 P.2d 71 (1978); *McCleary*, 173 Wn.2d at 517.

What ESHB 2261 and SHB 2776 provided for is related in detail in *McCleary*. 173 Wn.2d at 505-10. Briefly, ESHB 2261 added programs to the definition of “basic education,” including voluntary all-day kindergarten, and it broadened the instructional program of basic education by adding instruction in the essential academic learning requirements and the program for highly capable students. It also increased the number of instructional hours, increased the minimum number of credits for high school graduation, and changed the system for funding student transportation. The legislation retained the historically recognized basic education components of remediation (through the Learning Assistance Program (LAP)), a transitional bilingual instructional program (TBIP), and special education. *See* RCW 28A.150.220. Further, the legislation created the framework for a new funding allocation formula based on a prototypical school model, which included class size reductions, staffing ratios, and specific allocations for materials, supplies, and operating costs (MSOCs). The legislature commissioned work groups to make recommendations for a new salary model and for improving the system of supplemental funding with local levies. Finally, the statute provided for most enhancements to be phased in by 2018. Subsequently, in SHB 2776, the legislature enacted the specific funding formulas for the new prototypical school model in terms of class sizes, staffing ratios, and specific per-student allocations for MSOCs. *See* RCW 28A.150.260. The legislature also adopted many of the enhancements to funding levels that had been recommended by the Quality Education Council (QEC), a group established by ESHB 2261 to make recommendations for the implementation of

that statute. Among many other things, the legislation further mandated a reduction in class sizes in grades kindergarten through three to 17 pupils by the 2017-18 school year.

Following this court's decision in *McCleary*, the legislature convened the Joint Task Force on Education Funding (JTFEF), which had been established by House Bill (HB) 2824 (LAWS OF 2012, 1st Sp. Sess., ch. 10), to develop and recommend a reliable and dependable funding mechanism to support full implementation of ESHB 2261 and SHB 2776. The task force issued its report in December 2012. By majority vote, it adopted a spending plan for the biennial budgets of 2013-15 through 2017-19 covering designated areas of basic education: transportation; MSOCs; reduction in K-3 class size; voluntary all-day kindergarten; implementation of a career and college ready plan; classified and administrative salary allocations; and accountability, evaluation, and common core requirements. For each of these categories, the JTFEF established a target spending level for each of the three specified biennia. Further, the task force made recommendations for funding these spending levels.<sup>2</sup>

The reason behind this court's order of January 2014 was the legislature's failure to make adequate progress toward the JTFEF funding goals and implementation of the reforms of ESHB 2261 in the initial 2013-15 general budget. The court issued this order just before the beginning of the off-year 2014 legislative session, and it directed the legislature to submit by the end of that session "a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year," including "a phase-in schedule for fully funding

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<sup>2</sup> The court has recognized that the JTFEF report did not present the only constitutionally viable plan, but it noted that the State had measured its progress in accordance with that report and the report's figures "illustrate at a minimum the budgeting priorities that would demonstrate real and measurable progress designed to achieve full compliance with article IX, section 1 by 2018." Order, *McCleary v. State*, No. 84362-7, at 7 n.4 (Wash. Jan. 9, 2014).

each of the components of basic education” “identified in ESHB 2261, as well as the implementation plan called for by SHB 2776.” Order, *McCleary v. State*, No. 84362-7, at 8 (Wash. Jan. 9, 2014). At the end of that session, the State acknowledged that it had failed to comply with the January 2014 order, and this court followed with a finding of contempt, holding any sanction in abeyance to give the State the opportunity to purge the contempt in the 2015 legislative session.

Following the 2015 legislative session, this court found the State still in contempt and imposed a daily monetary sanction of \$100,000. In its sanction order of August 13, 2015, the court observed that the budget adopted in 2015 made significant progress in some key areas, including full funding of student transportation; meeting the per-student expenditure goals of SHB 2776 for MSOCs for that biennium consistent with the prototypical school model; the establishment of all-day kindergarten in all schools by the 2016-17 school year; and the meeting of K-3 class size reduction goals for kindergarten and first grade in lower income schools by the 2016-17 school year. Order, *McCleary v. State*, No. 84362-7, at 5 (Wash. Aug. 13, 2015). But the court noted the legislature was not on track to achieve by 2018 the K-3 reduction goals for the second and third grades in low income schools or for any K-3 classes in other schools. And the court noted that the State did not explain beyond promises how it intended to achieve full compliance by 2018. *Id.*

Further commenting on personnel costs, the court found that the State had wholly failed to offer any plan for establishing and paying the actual cost of recruiting and retaining competent teachers, administrators, and staff necessary to provide the constitutionally required basic education, *id.* at 6-7, a significant shortfall this court had identified in *McCleary*. *McCleary*, 173 Wn.2d at 535-36.

During the 2016 session, the legislature enacted essentially one piece of legislation, in which it committed itself “to provide state funding for competitive salaries and benefits that are

sufficient to hire and retain competent certificated instructional staff, administrators, and classified staff.” LAWS OF 2016, ch. 3, § 1. But expressing the need for more study, the legislature established an “Education Funding Task Force” to gather information and formulate recommendations. *Id.* § 2. To assist the task force in this job, the legislation directed the hiring of an independent consultant to conduct specified tasks based on information provided by the superintendent of public instruction. *Id.* § 3. Based on this information, the task force was to make recommendations for compensation “sufficient to hire and retain the staff funded under the statutory prototypical school funding model and an associated salary allocation model.” *Id.* § 2(2). The recommendations had to include provisions on whether a system for future salary adjustments should be incorporated into the salary allocation model and the method for providing such adjustments, and a local labor market adjustment formula, with considerations for rural and remote districts and economically distressed districts where challenges to recruitment and retention exist. *Id.* Further, the task force was to make recommendations on local maintenance and operation levies and local effort assistance; school district collective bargaining; clarification of the distinction between services provided as part of the state’s statutory program of basic education and services that may be provided as local enrichment; required district reporting, accounting, and transparency of data and expenditures; the provision and funding method for school employee health benefits; and sources of state revenue to support the state’s statutory program of basic education. *Id.* § 2(5). The legislature committed itself to take action “by the end of the 2017 session to eliminate school district dependency on local levies for implementation of the state’s program of basic education.” *Id.* § 4.

Again finding the legislature still in contempt following the 2016 legislative session, the court maintained the monetary sanctions, and it ruled that the State had “until September 1, 2018,

to fully implement its program of basic education, and that the remaining details of that program, including funding sources and the necessary appropriations for the 2017-19 biennium, are to be in place by final adjournment of the 2017 legislative session.” Order, *McCleary v. State*, No. 84362-7, at 13 (Wash. Oct. 6, 2016).

During the 2017 session, the legislature ultimately went into three special sessions, and on the eve of the end of the biennium on June 30, 2017, a budget was signed into law along with an enactment setting forth the final form of the program for fully funding basic education.<sup>3</sup>

#### 2017 Legislation

Aside from the budget itself, the details of the State’s final program are embodied in EHB 2242. LAWS OF 2017, 3d Spec. Sess., ch. 13. By introduction, the legislature notes that in ESHB 2261 and SHB 2276 it “established a comprehensive plan for enhancing the state’s program of basic education,” and that with the current enactment, it “intends to realize the promise of these reforms and to improve student outcomes by increasing state allocations for school staff salaries, by revising state and local education funding contributions, and by improving transparency and accountability of education funding.” *Id.* § 1. First and foremost, the act modifies the salary allocation model of the prototypical school, amending RCW 28A.150.410, and it expressly provides for the first time that statewide salary allocations necessary to hire and retain qualified staff for the program of basic education are part of the statutory basic education program, amending RCW 28A.150.200. For certified instructional staff in particular, beginning in the 2018-19 school year, the legislation dispenses with the salary grid that established salary allocation values that increased based on educational credit and years of service. Instead, the new method allocates salary

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<sup>3</sup> The legislature failed to pass a 2017-19 capital budget during the 2017 session.

funding to districts based on minimum allocations designed to reach statewide average allocations. For instructional staff, for instance, the minimum salary allocation must be increased to provide a statewide average salary of \$64,000 by the 2019-20 school year (adjusted for inflation from the 2017-18 school year). *Id.* § 101(5). For administrative staff and classified staff, the minimums are, respectively, \$95,000 and \$45,912. *Id.* § 101(6), (7). As can be seen, the target minimum salary is to be reached in the 2019-20 school year, though a partial increase, roughly half, begins in the 2018-19 school year. If the increase in the minimum salary in 2018-19 results in a salary less than that for the 2017-18 school year adjusted for inflation, the allocation must be based on the greater amount. *Id.* § 101(8). And beginning in 2018, salary allocations must be adjusted for regional differences in the cost of hiring staff based on factors tied to single family residential values. *Id.* § 101(9); *see also id.* § 104.<sup>4</sup> Further, employees must be provided an annual salary “inflationary increase” (replacing the previous “cost of living increase”). *Id.* § 102.

The State estimates that with adjustments for regionalization and inflation, statewide average basic education salary allocations in 2019-20 will be \$72,694 for instructional staff, \$107,354 for administrative staff, and \$51,935 for classified staff. 2017 REPORT TO THE WASHINGTON SUPREME COURT BY THE JOINT SELECT COMMITTEE ON ARTICLE IX LITIGATION 22 (July 27, 2017) (2017 REPORT). State-funded salary ranges for 2018-19 will be \$59,333 to \$73,573 for instructional staff, \$39,975 to \$49,569 for classified staff, and \$79,127 to \$98,118 for administrative staff. *Id.* Planned funded ranges in 2019-20 will be \$66,194 to \$82,081 for

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<sup>4</sup> Regionalization factors have been established by the Legislative Evaluation and Accountability Program Committee. For instance, with a base of 1.00, the factor for Seattle is 1.18. *See* 2017 REPORT TO THE WASHINGTON SUPREME COURT BY THE JOINT SELECT COMMITTEE ON ARTICLE IX LITIGATION app. C (July 27, 2017).

instructional staff, \$47,486 to \$58,882 for classified staff, and \$98,257 to \$121,839 for administrative staff. *Id.*

Beginning with the 2023-24 school year and every six years thereafter, EHB 2242 provides that minimum state salary allocations and regionalization factors must be reviewed and rebased to ensure allocations continue to meet staffing costs for basic education. LAWS OF 2017, 3d Spec. Sess., ch. 13, § 101(10). But in the reviewing and rebasing of salary allocations, no district may receive less funding for the minimum salary allocation than it received the prior year as a result of adjustments reflecting updated regionalized salaries. *Id.* § 104(4).

Aside from the minimum allocation averages established by the EHB 2242, absolute minimums are set for certificated instructional staff. Specifically, beginning in 2019-20, the full-time salary for teachers may not be less than \$40,000, adjusted for regionalization and inflation. *Id.* § 103(2)(c)(i) (amending RCW 28A.400.200). A maximum is also set at \$90,000 (again with the adjustment), but both the minimum and the maximum apply only to services provided for basic education and exclude supplemental contracts for services beyond the basic program. *Id.* § 103(2)(c)(iii), (iv). And a district may pay a basic education salary exceeding the maximum by up to 10 percent for teachers in science, technology, engineering, and math, and for those in special education and bilingual instruction. *Id.* § 103(2)(c)(v).

Next, EHB 2242 deals with local levies. It first renames the former “maintenance and operations” levies as “enrichment levies.” *Id.* § 201(1) (amending RCW 84.52.053). Then, in a new provision, it states that beginning September 1, 2019, school districts may use enrichment levies and transportation vehicle enrichment levies solely to enrich the statutory basic education program. *Id.* § 201(4). Further, propositions for such levies for collections in 2020 and thereafter may not be submitted to the voters without first obtaining the superintendent of public instruction’s

approval of an enrichment levy spending plan. *Id.* § 204. Beginning with property taxes levied for collection in 2019, the maximum that may be levied by a district for enrichment is the lesser of \$1.50 per \$1,000 in assessed value or the maximum per-pupil limit, meaning \$2,500 multiplied by the number of average annual resident full-time equivalent students enrolled in the district the previous school year. *Id.* § 203(1), (2)(b) (amending RCW 84.52.0531). This maximum replaces the former lid limiting local levies to 28 percent of a district's education expenses. The legislature further will continue to provide property-poor districts local effort assistance funding for enrichment programs. *Id.* § 205.

A separate part of EHB 2242 (Part V) more comprehensively addresses local levy reform in an effort to ensure local funding sources are not used to pay for basic education, a feature of the former funding system that this court held to be unconstitutional. *McCleary*, 173 Wn.2d at 539. The legislation adds a new section to chapter 28A.150 RCW. First, echoing earlier provisions, the act states that beginning September 1, 2019, districts "may use local revenues only for documented and demonstrated enrichment of the state's statutory program of basic education." LAWS OF 2017, 3d Spec. Sess., ch. 13, § 501(1)(a). The legislation explains that enrichment activities are permitted mainly if they provide supplementation beyond the minimal instructional offerings of the basic education program or provide class size reductions or staffing ratios beyond those allocated in the prototypical school model. *Id.* § 501(2)(a). The act specifies what permitted "enrichment activities" are, including extracurricular activities, extended school days or school year, additional course offerings beyond the basic education program, activities associated with early learning programs, and additional salary costs attributable to these activities. *Id.* § 501(2)(b). The superintendent of public instruction may develop recommendations to expand the "nonexhaustive" list of permitted activities, which may include existing district enrichment programs that are

consistent with the requirements of the statute, and during the 2018 legislative session, the legislature must consider the superintendent's recommendations and may codify additional specific examples of permitted enrichment activities. *Id.* § 502. The act also provides for the auditing of districts' use of local revenues, beginning with the 2019-20 school year, to ensure they are used only for enrichment, and districts must report annually to the superintendent on supplemental contracts for enrichment activities. *Id.* §§ 503-505. By the 2019-20 school year, the superintendent must adopt rules requiring districts to provide separate accounting of state and local revenue expenditures. *Id.* § 602(1). Further, district budgets must specify state-funded salary amounts, locally funded salary amounts, total salary, and full-time equivalency for each certificated instructional staff, administrative staff, and classified staff. *Id.* § 603(2)(b). Districts must also develop four-year budget plans. *Id.* § 604. The superintendent must consider these four-year plans when determining districts' financial health for the purpose of assisting them in avoiding financial difficulties, insolvency, or binding conditions. *Id.*

The next major subject EHB 2242 takes up is revision of the state property tax. Under the law before EHB 2242, the state property tax for the support of public schools was set at \$3.60 per \$1,000 of assessed value. Former RCW 84.52.065 (1991). But due to another statute (RCW 84.55.010) that limits the yearly growth rate of state property tax revenue to the lesser of one percent or the annual growth rate of inflation, the effective state property tax rate by 2017 was \$1.89 per \$1,000 in assessed value. EHB 2242 amends RCW 84.52.065 by providing that in the years 2018 through 2021, state property taxes are to be collected at a rate necessary to bring the rate to \$2.70 per \$1,000 of assessed value, with the one percent yearly growth limit suspended for 2019 through 2021. LAWS OF 2017, 3d Spec. Sess., ch. 13, § 301. These funds, as before, must be deposited in the state general fund for the support of the common schools. *Id.* § 313. The lifting of

the limit on yearly growth in state property tax lasts only through 2021, and thereafter is reinstated.

*Id.* § 301(2)(a)(ii).

Next, EHB 2242 makes amendments to the program of basic education (amending RCW 28A.150.200 and .260). First, as indicated above, it expressly makes statewide salary allocations necessary to hire and retain qualified staff a part of the program of basic education. *Id.* § 401(2)(e) (adding RCW 28A.150.200(e)). And to promote transparency, the legislature directs the superintendent to report per-pupil allocations for each school district for all of the components of basic education, employing a user friendly format on the main page of the superintendent's website (and links to the superintendent's report) that also must be included in school district websites. *Id.* § 402(2)(b). The legislation further revises the prototypical school model by completing the reduction in K-3 class size to 17 for all schools. *Id.* § 402(4)(a)(i) (amending RCW 28A.150.260(4)(a)(i)). For career and technical education in middle and high school, class size is reduced from 26.57 to 23 students, and class size for skill center programs is reduced to 20 students from 22.76. *Id.* § 402(4)(c)(i) (amending RCW 28A.150.260(4)(c)(i)). Per pupil allocations for MSOCs are specified for the 2017-18 school year, and after that year are adjusted annually for inflation. *Id.* § 402(8)(a). As before, additional amounts are provided for high school students. *Id.* § 402(8)(b). Supplemental instruction and services for students "who are not meeting academic standards" (replacing the term "underachieving" students) under LAP is increased from a minimum additional instruction of 1.5156 hours per week to 2.3975 hours per week. *Id.* § 402(10)(a)(i) (amending RCW 28A.150.260(10)(a)(i)). And for schools where at least half of the students are eligible for free and reduced-price meals, an average additional time of 1.1 hours per week with a class size of 15 LAP students per teacher must be provided. *Id.* § 402(10)(a)(ii) (amending RCW 28A.150.260(10)(a), adding subsection (ii)).

For bilingual education, the act continues to allocate an extra 4.7780 hours per week in instruction for grades kindergarten through 6 in TBIP, but it increases the extra weekly hours for students in grades 7 through 12 to 6.7780 hours. *Id.* § 402(10)(b)(i) (amending RCW 28A.150.260(1)(b)(i)). For students who have left TBIP, allocations are based on the number of students in each school who have exited the program within the past two years based on the English proficiency assessments and are eligible for the transitional instruction program under RCW 28A.180.040(1)(g), with a minimum statewide average allocation of an additional 3 hours per week. *Id.* § 402(10)(b)(ii).<sup>5</sup>

The basis of the allocation for highly capable students is increased from 2.314 percent to 5 percent of each district's full-time basic education enrollment. *Id.* §§ 402(10)(c) (amending RCW 28A.150.260(10)(c)), 412(1). Districts are directed to identify through objective criteria those students most highly capable and eligible to receive accelerated learning and enhanced instruction, and the identification process must prioritize equitable identification of low-income students. *Id.* § 412(1).

Prior to the current legislation, the allocation for special education students consisted of the basic education allocation provided to all students plus the basic allocation multiplied by 0.9309, nearly twice the basic allocation. *See* RCW 28A.150.390(2)(b). This excess allocation is applied to the district's "funded enrollment percent," meaning the percent of the district's full-time students in special education. Before EHB 2242, that percent was the lesser of a district's actual special education enrollment or 12.7 percent. Former RCW 28A.150.390(2)(b), (3)(d) (2010).

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<sup>5</sup> The referenced statute requires school boards to make available programs of instructional support for up to two years after students leaving transitional bilingual instruction to those who need assistance in achieving grade-level performance in academic subjects even though they have achieved English proficiency for purposes of bilingual instruction. RCW 28A.180.040(1)(g).

Under EHB 2242, the excess allocation amount remains the same but the specified percentage of student enrollment to which the excess allocation applies is increased to 13.5 percent of the student population. LAWS OF 2017, 3d Spec. Sess., ch. 13, § 406(3)(d) (amending RCW 28A.150.390(3)(d)). The legislation continues to make “safety net” awards available to districts with a demonstrated need for additional special education funding. *Id.* § 407(2). Further, the superintendent of public instruction is now required (not just permitted) to adopt rules and procedures to administer the special education and safety net award process. *Id.* § 407(3). The superintendent also must submit to the governor and the legislature by November 1, 2018 recommendations on improving the safety net process and the appropriate funding levels necessary to ensure that the process results in sufficient funding to districts with demonstrated needs for additional funding. *Id.* § 408.

EHB 2242 repeals the all-grades class size reductions called for by Initiative 1351 (LAWS OF 2015, ch. 2). *Id.* § 906. But the legislation establishes aspirational enhanced staffing levels and class size reductions for the program of basic education outside grades K-3, requiring the superintendent to allocate funds to these enhancements *if* the legislature appropriates funds for them. *Id.* § 904. The expressed intent here is “to review and prioritize future staffing ratio increases to focus on reducing the opportunity gap, assisting struggling students, enhancing the educational outcomes for all students, and strengthening support for all schools and school district staff.” *Id.* § 903. The act recognizes that these enhanced levels are beyond the program of basic education at this time, but it states that if any of them are specifically funded, they will become part of the prototypical school funding formulas deemed necessary to support the program of basic education. *Id.* § 904(2). The superintendent is also directed to form a work group to make recommendations for possible phase-in of these reductions. *Id.* § 905.

In a feature not required by the program of basic education, EHB 2242 establishes a new School Employees' Benefits Board, modeled on the Public Employees' Benefits Board and designed to provide a uniform statewide system for administering insurance benefit plans for school employees. *Id.* §§ 801-819. EHB 2242 also contains new and amended provisions governing school employee collective bargaining. *Id.* §§ 701-707.

As noted, EHB 2242 provides revenue for schools by temporarily lifting the lid on the annual growth of the state property tax and increasing the effective state property tax rate. To generate additional revenue, the legislature in a separate enactment (EHB 2163, 65th Leg., 3d Spec. Sess. (Wash. 2017)) repealed the retail sales tax exemption for bottled water, repealed a state use tax exemption for self-produced fuels and replaced it with a new phased-in use tax rate, expanded the nexus for the business and occupations tax to businesses engaged in retail sales, and instituted measures to capture retail sales taxes on Internet sales to Washington residents. LAWS OF 2017, 3d Spec. Sess., ch. 28, §§ 101(2), 102(2), 107-109, 201-214, 301-303. The State estimates that all of these enhancements will generate additional revenues in the amount of about \$2.058 billion in the 2017-19 biennium and about \$3.25 billion in the 2019-21 biennium. 2017 REPORT, *supra*, at 51-52.

Turning to 2017-19 budget itself, the general apportionment to the superintendent's office from the general fund is \$14,941,671,000, divided roughly in half for each fiscal year of the biennium (2018 and 2019), with each fiscal year appropriation including such funds as are necessary to complete the school year ending in that fiscal year. Substitute Senate Bill (SSB) 5883 (LAWS OF 2017, 3d Spec. Sess., ch. 1, § 502(1)(a)). This appropriation is intended to include the funds necessary to fully fund the prototypical school formulas and salary allocations for reduced K-3 class sizes, all-day kindergarten, and MSOCs, as well as other matters not part of the

prototypical program of basic education. For MSOCs in particular, the basic education allocation for the 2018-19 school year is \$1,264.07 per full-time equivalent student. *Id.* § 502(8)(a)(i). This amount is consistent with prototypical school model formula as amended in EHB 2242. *Id.* ch. 13, § 402(8)(a). An additional amount of \$173.64 per student is provided to high school students, again reflecting the prototypical school model. *Id.* ch. 1, § 502(8)(d); *see id.* ch. 13, § 402(8)(b). Salary allocations for the 2018-19 school year are to be based on the new statewide minimum salary allocations, which in that year are to be funded at half the full amount scheduled to take effect in the 2019-20 school year: \$59,333.55 for instructional staff; \$79,127.50 for administrative staff; and \$39,975.50 for classified staff. *Id.* ch. 1, § 503(c). To cover salary increases (including fringe benefits), the budget in a separate section appropriates \$216,086,000 for fiscal year 2018 and \$1,360,536,000 for fiscal year 2019, for a total of \$1,576,622,000 for the biennium. *Id.* § 504. The State breaks down increases in compensation expenditures for the biennium as follows: (1) \$1,098,981,000 for the new state salary allocations; (2) \$349,712,000 for Initiative 732 (LAWS OF 2000, ch. 4) cost of living adjustments; (3) \$110,356,000 for increased health benefit allocations; and (4) \$184,629,000 for pension increases. 2017 REPORT, *supra*, at 12.

Additional specific biennial general fund appropriations beyond the superintendent's general apportionment include \$1,000,539,000 for pupil transportation; \$2,000,033,000 for special education (excluding \$470,673,000 in federal funds but including \$54,694,000 from the state Education Legacy Trust Account), with \$62,111,000 reserved for safety net awards; \$904,684,000 for local effort assistance; \$27,254,000 for institutional education programs; \$45,571,000 for highly capable student programs; \$305,692,000 for TBIP (excluding \$92,244,000 in federal

funds); and \$681,866,000 for LAP (excluding \$505,487,000 in federal funds). LAWS OF 2017, 3d Spec. Sess., ch. 1, §§ 505, 507, 509, 510, 511, 514, 515.<sup>6</sup>

All told for the 2018-19 school year, the average allocation per full-time student is \$8,037 from the general apportionment, \$485 for transportation, \$7,875 for special education, \$15,369 for institutional education programs, \$525 for highly capable students, \$1,163 for TBIP, and \$849 for LAP. *Id.* § 516. The budget specifies that of the total appropriations in the bill, \$164,287,000 in fiscal year 2018 and \$1,200,417,000 in fiscal year 2019 are appropriated solely to implement EHB 2242. *Id.* § 517. These amounts, the budget bill explains, “exclude amounts attributable to formula enhancements in staffing ratios in the prototypical school model, materials supplies and operating costs, the learning assistance program, the transitional bilingual instruction program, if those enhancements are newly codified in [EHB] 2242 (fully funding the program of basic education) but are funded in maintenance level in the appropriations in this act.” *Id.* LEAP (Legislative Evaluation & Accountability Program) documents indicate that the total Near General Fund appropriation for public schools in the 2017-19 biennium is \$21,968,576,000, a figure that represents the total expenditures for public schools, not just the basic education program.<sup>7</sup> This amount increases funding for K-12 schools in the amount of \$1.8 billion over the last biennium,

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<sup>6</sup> Although these figures exclude federal funds for some of these components, this court in *McCleary* found “tenable” the State’s argument that it may rely on federal funding to the extent it defrays the cost of certain offerings in the basic education program, but the court cautioned “that the State retains the ultimate responsibility for fully funding its basic education program.” 173 Wn.2d at 529.

<sup>7</sup> WASH. STATE SENATE WAYS & MEANS COMM., PROPOSED FINAL 2017-19 OPERATING BUDGET: STATEWIDE SUMMARY & AGENCY DETAIL 9 (2017), [http://leap.leg.wa.gov/leap/Budget/Detail/2017/soAgyDetail\\_0630.pdf](http://leap.leg.wa.gov/leap/Budget/Detail/2017/soAgyDetail_0630.pdf). [<https://perma.cc/78G5-SXVK>].

in addition to \$1.4 billion in increased maintenance level costs to maintain already implemented basic education components.<sup>8</sup>

### Compliance

Before considering the State's compliance, it is useful to review several points from this court's decision in *McCleary*, most of which were summarized by the court at the outset of its opinion:

- The judiciary has the primary responsibility for interpreting article IX, section 1 of the Washington Constitution to give it meaning and legal effect.
- The legislature has the responsibility to augment the broad educational concepts under article IX, section 1 by providing the specific details of the constitutionally required "education."
- Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education.
- The word "education" under article IX, section 1 means the basic knowledge and skills needed to compete in today's economy and meaningfully participate in this state's democracy.
- The current substantive content of the requisite knowledge and skills for "education" comes from three sources: the broad educational concepts outlined in *Seattle School District [No. 1 v. State]*, 90 Wn.2d 476, 585 P.2d 71 (1978); the

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<sup>8</sup> WASH. STATE SENATE WAYS & MEANS COMM., PROPOSED FINAL 2017-19 OPERATING BUDGET: OVERVIEW (2017), [http://leap.leg.wa.gov/leap/Budget/Detail/2017/soSummary\\_0630.pdf](http://leap.leg.wa.gov/leap/Budget/Detail/2017/soSummary_0630.pdf) [<https://perma.cc/3HKU-KGDD>]. This document also states that over the next four years, the total increase in spending is projected to be \$7.3 billion, with about \$6 billion related to compensation.

four learning goals in Engrossed Substitute House Bill (ESHB) 1209, 53d Leg., Reg. Sess. (Wash. 1993); and the State’s essential academic learning requirements (EALRs).

- The “education” required under article IX, section 1 consists of the *opportunity* to obtain the knowledge and skills described in *Seattle School District*, ESHB 1209, and the EALRs. It does not reflect a right to a guaranteed educational outcome.
- The program of basic education is not etched in constitutional stone. The legislature has an obligation to review the basic education program as the needs of students and the demands of society evolve.
- The word “ample” in article IX, section 1 provides a broad constitutional guideline meaning full[], sufficient, and considerably more than just adequate [funding].
- Ample funding for basic education must be accomplished by means of dependable and regular tax sources.

....

- The . . . promising reform package under ESHB 2261, 61st Leg., Reg. Sess. (Wash. 2009), . . . if fully funded, will remedy deficiencies in the K-12 funding system.
- This court defers to the legislature’s chosen means of discharging its article IX, section 1 duty but retains jurisdiction over the case to help facilitate progress in the State’s plan to fully implement the reforms by 2018.

*McCleary*, 173 Wn.2d at 483-84. Further, the court reiterated the principle from *Seattle School District* that the “paramount” duty to amply fund public education means “supreme, preeminent or dominant,” and that the obligation to provide basic education to “all” children means that no

child is excluded. *Id.* at 520 (quoting *Seattle Sch. Dist.*, 90 Wn.2d at 511). Noting that the right established by article IX, section 1 is a positive one requiring the State to take action to fulfill, the court articulated the measure of compliance as whether the State’s action “achieves or is reasonably likely to achieve ‘the constitutionally prescribed end.’” *Id.* at 519 (quoting Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 HARV. L. REV. 1131, 1137 (1999)); *see also Gannon v. State*, 305 Kan. 850, 854, 390 P.3d 461 (2017) (noting Kansas Supreme Court remanded matter to lower court panel to determine whether modified public education finance system was “reasonably calculated” to provide required basic education). Finally, in its order of October 6, 2016, the court ruled that the State had until September 1, 2018, to “fully implement” its program of basic education, and that the remaining details of the program, including funding sources and necessary appropriations, had to be in place by the end of the 2017 legislative session. Order, *McCleary v. State*, No. 84362-7, at 13 (Wash. Oct. 6, 2016).

It bears reemphasizing the last point in the list quoted above. This court in retaining jurisdiction has not purported to take over public education. Rather, the court is fulfilling its constitutional obligation as a member of the judicial branch of the state to determine whether the legislative branch, which controls the State’s purse strings, is complying with its positive constitutional duty to make ample provision for the basic education of all children in the state; it must order compliance if it finds the legislature is falling short. *McCleary*, 173 Wn.2d at 524-30. The court has consistently emphasized its deference to the legislature as to the proper means by which to fulfill the State’s constitutional duty, and it has refused to dictate specific guidelines for components of the basic education system. *Id.* at 517.

With these points in mind, we consider the parties' arguments. The State argues that with the current budget and the enactment of EHB 2242, it has fulfilled its constitutional obligation as ordered by this court in three ways: (1) by fully funding all of the components of basic education as set forth in ESHB 2261 according to the schedule and the prototypical school formulas established in SHB 2776, (2) by providing full state funding of basic education salaries, and (3) by ensuring that local funds are not expended on the program of basic education. The State urges that these measures "achieve or are reasonably likely to achieve" full state funding of basic education, meeting the standard this court set forth in *McCleary*. The State asserts, as it has in the past, that in previous budgets it fully funded the prototypical school formulas for transportation, MSOCs, all-day kindergarten, and the opportunity for students to earn 24 credits for high school graduation, and it asserts that the current budget maintains this full funding and increases the allocations for MSOCs. The State further claims that the current budget completes the phase-in of reduced K-3 classes, extending to all schools the prototypical school reduction to 17 students per class. And the State asserts that in accordance with the promise made in 2016, the legislature has instituted a system of full state funding of basic education salaries adequate to attract and retain sufficient teachers and administrators to implement the program of basic education. And while recognizing it is not constitutionally required to do so, the State claims it has enacted local levy reform to ensure that local levy funds are not expended on basic education programs and salaries. Further, the State contends that it has enacted revenue enhancements to ensure a stable and adequate funding supply, including temporarily increasing the state property tax rate and the lid on annual growth in state property tax revenues.

In all, the State emphasizes the following features: (1) state funding for K-12 education is increased by \$3.8 billion dollars over that of the 2015-17 biennium, with \$1.7 billion for increased

salary allocations, about \$500 million to complete K-3 class size reductions, and \$400 million for additions to the program of basic education; (2) state funding for K-12 education is increased from \$13.4 billion in the 2011-13 biennium to \$22 billion in the current biennium; (3) the 2017 legislation and the four-year balanced budget requires total expenditures of \$26.6 billion in the 2019-21 biennium, an increase from 2011-13 of 98 percent; (4) as a percent of total Near General Fund expenditures, K-3 expenditures will make up just over 50 percent of the state budget compared to 43.5 percent in 2011-13, with the share of the budget expected to increase to 53.3 percent in 2019-21; (5) per pupil spending has increased from \$6,655 in 2010 to \$9,344 in 2018 and \$10,563 in 2019, with an anticipated increase to \$12,202 by 2021; (6) the State has increased funding for specialized learning programs such as special education, TBIP, LAP, highly capable students, and career and technical education; (7) the State has established a system of full state funding of competitive market-based basic education salaries, with adjustments for inflation and regional economic differences and required periodic review to ensure salaries remain at a level necessary to attract and retain sufficient staff; (8) the State has now assured that local levy funds will not be used for the program of basic education; and (9) the legislature has enacted revenue measures that will generate over \$5 billion in additional revenue over the next four years.

The State argues that it has now fully funded the prototypical school model of basic education, has put the State on the path to fully funding basic education salaries within the next two years, and has enacted revenue measures to ensure ample funds to support the basic education system. Accordingly, the State urges the court to relinquish jurisdiction over this appeal and dissolve the order of contempt.

Plaintiffs counter that regardless of how impressive the State's funding figures may seem, those figures mask a continued failure to sufficiently fund K-12 basic education consistent with its

constitutional obligation. Stressing that funding must be “ample,” meaning “fully, sufficient, and considerably more than just adequate,” *McCleary*, 173 Wn.2d at 484, and further that the funding must cover the “actual cost” of the basic education program, *id.* at 532, plaintiffs contend that the State has failed to show that its current appropriations cover the actual costs of the components of basic education. As they have in the past, plaintiffs claim that fully funding the prototypical school model formulas is insufficient if those formulas fail to account for actual costs, which they claim is the case.

Addressing the State’s claims about increased state spending more specifically, plaintiffs contend that several of the State’s figures come from proposed increases projecting over the next four years, even though the deadline for full implementation of the State’s program of basic education is September 1, 2018. Plaintiffs also urge that the State’s alteration of the state and local property tax and levy systems effectively takes \$2.5 billion of local levy property tax revenues away from districts and simply redistributes those funds back to districts in the form of state property tax dollars. Plaintiffs reason this is not an “increase” in funding. Further, plaintiffs claim that the entire increase in spending this biennium compared to the last biennium is not much of an increase because a large portion of increased spending is “maintenance level funding” to cover the increased costs of paying for components required in the prior biennium.

Further, plaintiffs contend that the State’s focus on measures to reform the local levy system is misdirected and legally irrelevant, since levy reform was not part of what the State was ordered to do to bring itself into constitutional compliance. Also irrelevant in plaintiffs’ view are the State’s revenue enhancement measures, since the only constitutional obligation is to fund public education with state dollars, which the legislature can do without enacting any particular

funding sources or revenue enhancements; it simply needs to make the necessary appropriations consistent with its “paramount” duty to give priority to basic education.

Taking several components of the prototypical school model in turn (transportation, MSOCs, all-day kindergarten, K-3 class size reduction, special education, LAP, TBIP, highly capable students, increased high school credit hours for students, and personnel costs), plaintiffs argue as to each that the State has not shown it is paying for the actual cost of that component but only that it is funding the formula it established for that component. They urge that this approach simply repeats the tautology that this court said was the flaw in the State’s previous funding formulas: “If the State’s funding formulas provide only a portion of what it actually costs a school to pay its teachers, get kids to school, and keep the lights on, then the legislature cannot maintain that it is fully funding basic education through its funding formulas.” *Id.* As to all-day kindergarten and K-3 class size reductions in particular, plaintiffs contend that the State has not shown it is paying for the capital costs of the increased classroom space needed to implement these components. And as to staff salaries, plaintiffs note that under EHB 2242, the new salary system will not be fully funded until the 2019-20 school year, contrary to the September 1, 2018, deadline the legislature established and that this court last year admonished was a firm deadline.<sup>9</sup>

Having summarized the parties’ contentions, the court offers some general observations. First, the court disagrees with plaintiffs’ approach to measuring the State’s constitutional compliance. In disputing the adequacy of state funding of the components of the basic education program, plaintiffs, as indicated, urge that the State has done no more than fund its prototypical school model formulas, contrary to this court’s admonition that merely funding formulas is a

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<sup>9</sup> Amici echo many of plaintiffs’ claims of inadequate funding, particularly as to special education, learning assistance, bilingual instruction, and assistance to high poverty schools.

tautology that does not answer the question of whether the State is funding the actual costs of basic education components. *See id.* at 531-32. But in the portion of *McCleary* to which plaintiffs refer, the court was addressing 1970 formulas, which by the time of the court's decision did not represent the actual costs of the basic education program. In light of that fact, the court made the obvious point that funding of formulas that do not represent the actual costs of education is inadequate. *Id.* at 532. In other words, the court rejected the notion that full funding is whatever the legislature says it is. *Id.* at 531-32. But the court, as indicated, found ESHB 2261 to be "a promising reform package . . . which[,] if fully funded, will remedy deficiencies in the K-12 funding system." *Id.* at 484. Further, the court's order of January 2014 required the State to comply with the implementation plan of SHB 2776 in light of the areas of basic education identified in ESHB 2261. Order, *McCleary v. State*, No. 84362-7, at 8 (Wash. Jan. 9, 2014). And the court disapproved of the trial court's order to conduct more cost studies because that order ignored the efforts that had gone into ESHB 2261. *McCleary*, 173 Wn.2d at 541-42. Thus, this court has approved the prototypical school model formula and has consistently used it as a benchmark. If the State is appropriating funds to fully implement that model by the deadline date, the court cannot say it is not meeting its constitutional obligation or complying with this court's mandate.

Second, the court generally agrees with the State as to the framework of the prototypical school model and what the State must do to fulfill its constitutional duty. ESHB 2261 is not designed to dictate reimbursements to school districts for their actual expenditures on the components of basic education. Rather, the prototypical school is a prospective allocation model encompassing evidence-based formulas that take account of the actual costs of supporting the program of basic education. It is designed to calculate the amount of state funding necessary to provide for the program of basic education while maintaining the ability of individual school

districts to decide how best to spend the allocations to meet local needs. Being only an allocation model, it is not prescriptive, and thus, for instance, the allocation for any one component, such as MSOCs, neither limits nor mandates the amount each school district must spend on that component. In other words, districts receive funds based on staff and nonstaff cost assumptions, but they have the ultimate authority to decide how to use those funds. *See* FUNDING FORMULA TECH. WORKING GRP. FINAL REPORT 5 (Dec. 1, 2009), [https://www.ofm.wa.gov/sites/default/files/public/legacy/reports/k12/2009\\_K12\\_Funding\\_Formula\\_technical\\_Working\\_Group.pdf](https://www.ofm.wa.gov/sites/default/files/public/legacy/reports/k12/2009_K12_Funding_Formula_technical_Working_Group.pdf); WASH. STATE JOINT TASK FORCE ON BASIC EDUC. FIN., FINAL REPORT OF THE JOINT TASK FORCE ON BASIC EDUCATION FINANCE 7 (Jan. 14, 2009), <http://leg.wa.gov/JointCommittees/Archive/BEF/Documents/finalreport.pdf> [<https://perma.cc/L3UY-N9SR>]. Indeed, districts are not bound to adhere to the prototypical school model at all. *See* RCW 28A.150.260(2) (distribution formulas are for allocation purposes only; districts are not required to use funds to implement particular instructional approach or service, to maintain a particular teacher-to-student ratio, or to pay for particular types of classifications or staff), (3)(a) (use of prototypical schools for distribution formula does not require schools to be operated or structured similar to prototypes; prototypical schools illustrate only level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs, such as class size, hours of instruction, and categories of school staff). The only exceptions to complete flexibility are for categorical programs such as special education and bilingual instruction, but while the allocations for those programs must be spent on those programs, no specific structure for the delivery of those programs is mandated, and the allocations do not limit what districts may spend on those programs. FUNDING FORMULA TECH. WORKING GRP., *supra*, at

iv. This court has never held that to meet its constitutional obligation, the State must precisely account for every school district's actual expenditures in providing basic education.

Finally, we agree with the State that increased funding for staff compensation drives increased funding into almost all parts of the prototypical school model and into categorical education programs. This is so because funding levels for the various programs are based on instructional time, and the State uses the salary schedules for the prototypical school funding model to allocate funding for these forms of instruction. Increased salary allocations, in other words, have a "ripple" effect, increasing funding for these programs.

With these points in mind, the court must examine the discrete components of the program of basic education.

**MSOCs.** The 2012 JTFEF report estimated necessary expenditures for MSOCs this biennium to be about \$1.55 billion. The current budget does not specify a specific dollar appropriation for MSOCs; rather, MSOC allocations are to be made from the superintendent's general fund apportionment of about \$14.5 billion. LAWS OF 2017, 3d Spec. Sess., ch. 1, § 502(8). Nonetheless, the goal of MSOC funding is more frequently expressed in terms of expenditures per student, and that is how it is expressed in the budget and in SHB 2776. In a former version of the prototypical school model, the legislature, consistent with the schedule established by SHB 2276, established a total allocation for MSOCs for the school year 2015-16 of \$1,082.76 per student, which was to be adjusted annually for inflation. Former RCW 28A.150.260(8)(b) (2014). EHB 2242 increases the per-student allocation for the 2017-18 school year to \$1,244.16. LAWS OF 2017, 3d Spec. Sess., ch. 13, § 402(8)(a) (amending RCW 28A.150.260(8)(a)). The 2017-19 budget reflects this amount, and it increases the allocation to \$1,264.07 per student in the 2018-19 school year, increasing by about 2.3 times the per-student allocation that existed when this court

issued its decision in this case in January 2012 (\$546). *Id.* ch. 1, § 502(8)(a)(i). As with past budgets and in accordance with the prototypical model, additional per-students funds totaling \$170.91 (2017-18) and \$173.64 (2018-19) are allocated to high school students. *Id.* § 502(8)(d).

The court concludes that the legislature has met the formulas for MSOCs called for by SHB 2776, and thus it is adequately funding that component of basic education.

**Transportation.** The 2012 JTFFEF report had estimated a necessary expenditure of \$232.8 million during this biennium. The current budget allocates about \$1 billion. *Id.* § 505. This amount appears to reflect a further comment in the JTFFEF report in which the task force recommended transferring the school transportation budget to the state transportation budget. The task force explained that then-current student transportation options cost about \$280 million per year, that enhancements under the revised transportation formula would cost up to \$115 million per year, and that the State additionally provides \$50 million per year for bus replacement. The task force estimated that, when fully enhanced, total transportation expenditures would be about \$900 million per biennium. In a plan for fully funding basic education that the Office of the Superintendent of Public Instruction had presented in an amicus brief in this case in 2014, that office acknowledged that transportation was being fully funded as of the 2014-15 school year, and it did so again in 2015. The court concludes that the State is adequately funding student transportation according to the formula of SHB 2776.

Plaintiffs argue that the State's formula does not fund current transportation costs but is determined on the basis of the previous year's costs. But again, they are challenging the statutory formula that this court approved of in *McCleary*. Plaintiffs do not explain how an allocation of \$1 billion falls short. Furthermore, to the extent questions remain about the adequacy of the current formula, the budget appropriates \$100,000 to the superintendent of public instruction to contract

for a study of the formula, to include whether it accurately corresponds to districts' costs. *Id.* § 501(45). Thus, the legislature is satisfying its obligation “to review the basic education program as the needs of students and the demands of society evolve.” *McCleary*, 173 Wn.2d at 484. Also, the budget authorizes the superintendent to use up to \$20 million for an alternative funding grant program for districts with unique geographic transportation constraints. LAWS OF 2017, 3d Spec. Sess., ch. 1, § 505(3).

The State is funding pupil transportation in accordance with the statutory formula, and thus it is in compliance with the requirements of *McCleary*.

***All-Day Kindergarten.*** The budget does not specify a raw figure for this component, but within the general fund apportionment of \$14.5 billion for the superintendent's office, the budget states that “[f]unding in this section is sufficient to fund all day kindergarten programs in all schools in the 2017-18 school year and 2018-19 school year.” *Id.* § 502(12). The State previously claimed to have reached the goal of all-day kindergarten in all schools in the 2015-17 biennium, and it continues to so urge. A summary of the public schools operating budget for that biennium stated that the specific level of new funding was \$179.8 million. That total figure appeared to cover the superintendent's estimates as reflected in his funding proposal of 2014. For the 2015-17 biennium, the superintendent's office estimated a total expenditure over two school years of about \$139 million, but its proposal did not anticipate full conversion to all-day kindergarten until the 2017-18 school year, at which time the office estimated the cost for that year would be about \$134 million. The conversion schedule in the 2015-17 budget was ahead of the schedule of SHB 2776, which mandated achieving full statewide all-day kindergarten by the 2017-18 school year. RCW 28A.150.315(1). Again, plaintiffs claim the State is funding only its formula, without specifying how the formula falls short.

Plaintiffs additionally urge that the State has not accounted for the capital costs of additional class space needed for all-day kindergarten, both as to all-day kindergarten and reduced K-12 class sizes, discussed below. But in *McCleary*, this court did not address capital costs or suggest that capital expenditures are a component of basic education for purposes of article IX, section 1, such that the State must fully fund capital costs attendant to the basic education program. Though classroom space is obviously needed to maintain all-day kindergarten and reduced class sizes, capital costs have never been part of the prototypical school allocation model, and it is not solely a state obligation under the constitution. For example, article VII, subsections 2(a) and (b) of the Washington Constitution permit school districts to levy additional local property taxes for up to six years to support the construction, remodeling, or modernization of school facilities, and permit levies to exceed the limit of one percent of the value of property for the purpose of making required payments of principal and interest on general obligation bonds issued for capital purposes. Further, article IX, section 3 of the state constitution establishes the common school construction fund, which includes timber revenue, rental and other revenues, and interest on the permanent school construction fund as sources of revenue. And in chapter 28A.525 RCW, the legislature established the state school construction assistance program, the express purpose of which is “establishing and providing for the operation of a program of state assistance to school districts in providing school plant facilities.”<sup>10</sup> RCW 28A.525.010.

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<sup>10</sup> As indicated, the 2017 legislature did not pass a 2017-19 capital budget. However, a proposed budget contains about \$1 billion for school construction projects. The 2015-17 capital budget initially provided \$611 million for the school construction assistance program generally, and the legislature allocated \$200 million specifically for grants for K-3 class size reduction and all-day kindergarten in connection with a pilot program administered by the superintendent of public instruction. The 2016 supplemental budget appropriated an additional \$34.8 million to the school construction assistance program and an additional \$34.5 million for the K-3 class size reduction grant program. The legislature also provided \$5.5 million for K-3 modular classrooms, and a bill was

Based on the standards recognized in the court's decision and order, the State is adequately funding this component of basic education in accordance with SHB 2776 and ESHB 2261.

***K-3 Class Size Reductions.*** One of the components of the basic education program that was not scheduled to be fully implemented until the current biennium is reduced K-3 class sizes. The goal is 17 students per teacher, and previous phases of the implementation process funded reductions to this size for lower income schools and for kindergarten and first grade. The 2017-19 budget completes this process, requiring the superintendent to "base allocations for each level of prototypical school" on specified average class sizes of full-time equivalent students per teacher, and specifying in particular class sizes of 17 students for all schools for grades K-3. LAWS OF 2017, 3d Spec. Sess., ch. 1, § 502(2)(c)(i). The statutory basic education program is also amended to specify this class size for these grades in all schools. *Id.* ch. 13, § 402(4)(a)(i) (amending RCW 28A.150.260(4)(a)(i)). This represents the maximum funding formula. Beginning with the 2018-19 school year, the superintendent is to provide funding only to the extent of, and proportionate to, a school district's demonstrated actual class size, up to the maximum funded class size. *Id.* § 402(4)(b).

Again, no raw money figure is specified in the budget, but the mandate to provide funding to the school districts for the mandated class sizes is contained with the \$14.5 billion general apportionment appropriated to the superintendent. Nonetheless, the State says in its report that appropriated funding to support this last increment of class size reductions is \$492.7 million in this biennium, with a planned expenditure in the next biennium of \$582.5 million. 2017 REPORT, *supra*,

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enacted designed to improve access to construction assistance program funds by changing eligibility criteria as districts implement all-day kindergarten and class size reductions, such that districts may use all space necessary for those purposes without penalizing their ability to obtain funding through the construction assistance program.

at 44. These figures do not wholly square with those of 2012 JTFFEF report, which then anticipated expenditures for K-3 class size reductions in 2017-19 of about \$1.15 billion. But as indicated, the superintendent's office is mandated within its general apportionment of \$14.5 billion to base its allocations to school districts on 17 students per teacher for all of K-3.

In disputing that the State has fully funded class size reductions, plaintiffs again focus on capital expenditures for the necessary additional space. But as discussed, the State is correct that full state funding of school capital costs is not part of the program of basic education constitutionally required by article IX, section 1. Plaintiffs also contend that the State offers no "constitutionally permissible reason" for repealing Initiative 1351, which required reduced class sizes in all grades. But this court in *McCleary* did not hold that reduction in all class sizes is constitutionally required; it noted approvingly that in SHB 2776, the legislature enacted many of the recommendations of the QEC, including reduced K-3 class sizes. *McCleary*, 173 Wn.2d at 509-10. When it came to class size reductions, the council recommended reduction only in K-3 class sizes, in accordance with a phase-in schedule the legislature later actually adopted.<sup>11</sup> The QEC also recommended class sizes of 15 students for K-3, whereas the legislature settled on a class size of 17, but this court did not suggest in *McCleary* that the State was constitutionally bound to strictly adhere to the council's recommendations.

The court concludes the State has implemented K-3 class size reductions in accordance with the formulas and benchmarks of ESHB 2261 and SHB 2776.

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<sup>11</sup> WASH. OFFICE OF SUPERINTENDENT OF PUB. INSTRUCTION QUALITY EDUC. COUNCIL, INITIAL REPORT TO THE GOVERNOR & LEGISLATURE 8-9 (Jan. 13, 2010), <http://www.k12.wa.us/QEC/pubdocs/QEC2010report.pdf> [<https://perma.cc/9DJ9-G4HX>].

**Categorical Programs.** As related above, additional approximate appropriations for other components (categorical programs) outside the \$14.5 billion general apportionment include about \$45.5 million for highly capable students, \$306 million for TBIP (excluding \$92 million in federal funds), \$2 billion for special education (excluding \$470 million in federal funds), and \$682 million for LAP (excluding \$500 million in federal funds).<sup>12</sup> Some of the funding of these programs reflects enhanced funding allocation formulas. For instance, as indicated, the portion of the district student population to which the excess funding formula for special education applies has been increased from 12.7 percent (or the actual percentage of special education students if less than 12.7 percent) to 13.5 percent. LAWS OF 2017, 3d Spec. Sess., ch. 13, § 406(3)(d) (amending RCW 28A.150.390(3)(d)). The minimum allocation for LAP was previously a statewide average of 1.5156 hours per week in additional instruction in a class size of 15 students. The hourly figure is increased to 2.3975 hours per week. Further, for high-poverty schools, an additional 1.1 hours are added to the model formula. For TBIP, a statewide average of 4.7780 hours in extra instruction with a class size of 15 was required, with phased-in funding for 3 additional hours for up to 2 years for students who have exited the program. Now, this number of hours is maintained for grades K-6, but the minimum is increased to 6.778 hours of additional instruction for grades 7-12. The prototypical school model includes an extra 3 hours of instruction per week in a class size of 15 for students who have exited TBIP within the previous two years. According to the State, funding for this extra two hours amounts to \$26.9 million for this biennium. For highly capable students, the state allocation increases from 2.324 percent of a district's full-time enrollment to 5 percent,

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<sup>12</sup> One additional recognized component of basic education is institutional learning for juveniles in detention. *See McCleary*, 173 Wn.2d at 505-06; RCW 28A.150.200(2)(b). It has not been argued in this case that funding of this component is insufficient. The appropriation for this biennium is \$27,254,000. LAWS OF 2017, 3d Spec. Sess., ch. 1, § 510.

and districts are required to prioritize equitable identification of low-income students. The State indicates that funding for this increase is \$26 million this biennium.

As related above, all told, the statewide average allocations per full-time student in the 2018-19 school year will be as follows: \$8,037 in general apportionment funds, \$485 for transportation, \$7,875 for special education, \$15,369 for institutional education, \$525 for highly capable students, \$1,163 for TBIP, and \$849 for LAP. *Id.* ch. 1, § 516.

As to the categorical programs, plaintiffs again challenge the adequacy of the formulas, and amici also dispute the adequacy of funding for these components. Amici led by the Arc of King County, for instance, contend the increase of spending for special education of \$22.6 million will not close what they claim to be a \$266 million gap between state spending and the actual costs of providing special education, a problem they say will become worse when local levy restrictions take effect. They also urge, as do plaintiffs and other amici, that the limit on the percentage of student population to which the enhanced special education funding formula applies (now 13.5 percent) necessarily falls short for those districts with higher percentages of special education students. But the State notes that the increase in spending of \$22.6 million represents only the amount necessary to implement the increase in the basis of the excess cost allocation from 12.7 percent to 13.5 percent of each district's student population. The State points to the three tiers of special education allocation: the basic education allocation for all students, which goes equally to special needs students; the 93 percent excess allocation applied to 13.5 percent of a district's enrollment; and the special safety net fund designed to provide districts additional funds for legitimate excess special education costs. And if a student's needs do not cost the full allocated amount, the allocation is not returned to the state but may be spent on other students. Further, increases in spending for compensation, smaller class sizes, and additional staffing in the

prototypical model increases the basic education allocation, which in turn increases the 93 percent excess allocation for special education. Compared to the 2015-17 budget, the current budget increases state appropriations for special education by \$266 million without considering compensation increases. *See* LAWS OF 2015, 3d Spec. Sess., ch. 4, § 507 (\$1,733,950,000); LAWS OF 2017, 3d Spec. Sess., ch. 1, § 507 (\$2,000,033,000).

With respect to this component and others, plaintiffs and amici again misapprehend the prototypical school model. To use special education as an example, some districts have special education student populations in excess of 13.5 percent, and for some students the basic and excess allocation will not be enough. But it does not follow that these districts will necessarily be left with insufficient funds to meet the actual costs of the basic education needs of all of their special education students. The allocation is calculated on a per-pupil basis, but the actual cost necessary to meet each individual student's needs will vary from student to student, some requiring less assistance than others, and within the allocation the district has the flexibility to spend the funds as it deems best meets its students' needs. Further, the special education allocation is not the only pool of funds the district may use for the basic education of its special education students, nor does it mark the limit of what the district may spend on these students' basic education needs. The same, for instance, can be said of the highly capable student allocation, the formula for which is applied to five percent of a district's student population. That more than five percent of a district's student population may be highly capable does not mean the allocation will necessarily underfund the costs of serving the needs of all of the district's highly capable students.

The court concludes that the State is adequately funding categorical components of the basic education program in accordance with ESHB 2261 and SHB 2776.

In sum, with respect to the components of basic education addressed above, the State has satisfied the court's mandate to fully fund the program of basic education established by ESHB 2261 in accordance with the formulas and benchmarks set forth in SHB 2276 and this court's orders.<sup>13</sup> The legislature's actions as to these components are not perfect, but the legislature has acted within the broad range of its policy discretion in a manner that "achieves or is reasonably likely to achieve" the constitutional end of amply funding K-12 basic education. *McCleary*, 173 Wn.2d at 519. At this point, the court is willing to allow the State's program to operate and let experience be the judge of whether it proves adequate.

**Revenue.** This court's order of October 6, 2016, included the directive that the remaining details of program to be enacted during the 2017 legislative session had to include "funding sources." Order, *McCleary v. State*, No. 84362-7, at 13 (Wash. Oct. 6, 2016). As discussed, the legislature in EHB 2242 addressed one revenue source, the state property tax, temporarily lifting the one percent limit on annual growth in state property tax revenues (from years 2019 to 2021) and mandating that during that time, state property tax levies be collected at a rate necessary to bring the rate to \$2.70 per \$1,000 of assessed value. LAWS OF 2017, 3d Spec. Sess., ch. 13, § 301. In another enactment, the legislature eliminated a sales tax exemption for bottled water, repealed a state use tax exemption for self-produced fuels and replaced it with a new phased-in use tax rate, expanded the nexus for business and occupations taxes to persons engaged in retail sales, and instituted measures to capture retail sales taxes on Internet sales to Washingtonians. *Id.* ch. 28, §§ 101(2), 102(2), 107-109, 201-214, 301-303.

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<sup>13</sup> The funding of staff salaries is a different matter, as discussed below.

Plaintiffs do not specifically address these revenue measures, and the court agrees with plaintiffs that for constitutional purposes, it is not necessary to measure their adequacy. Neither in the court's latest order nor in any other order has the court suggested that the State must establish specific revenue sources dedicated only to K-12 public education, and neither did the court so hold in *McCleary*. This court's analysis of the principle of "dependable and regular tax sources" was directed at the constitutional necessity of making "ample" provision for basic education solely through state funds. It found constitutional infirmity not in the State's failure to set aside particular revenue sources for basic education but in its reliance on local excess levies to meet basic education requirements, which the court deemed neither dependable nor regular, reiterating the same conclusion it had reached in *Seattle School District. McCleary*, 173 Wn.2d at 527-28. The State has dealt with this shortcoming in EHB 2242 by reforming the local levy system to ensure local levy funds are used to pay only for "enrichment" programs beyond the basic education program.

The court thus does not address the argument of amici led by the Washington State Budget & Policy Center, who urge that the mere temporary lifting of the lid on annual growth of the state property tax will eventually leave that source of funding inadequate. That revenue source is not the only one from which the State may draw. The State has explained that the temporary lift of the lid is meant to jump-start the increased funding of basic education required by full implementation of the State's funding program. The parties agree that under the State's revenue forecasts, adequate funds will be available to fully fund basic education after the limit on the state property tax is restored. Indeed, the State acknowledges that there is sufficient money in the General Fund now to fully pay for basic education if the legislature chooses to make the necessary appropriations. While the existing legislation provides no guarantee that the State will continue to adequately fund basic education from existing revenue sources, such is the nature of the legislative process. The

court presumes the legislature will do its job until it demonstrates otherwise. The court therefore will not further evaluate whether the legislature has enacted sufficient revenue sources.

**Salaries.** The one component of basic education that remained wholly unresolved entering the 2017 legislative session was that of staff salaries. As discussed above in detailing EHB 2242, the legislature addressed this matter comprehensively, instituting a new basic education salary model with new salary ranges and minimum average statewide salaries along with provisions to ensure adjustments to salaries based on inflation and regional factors, and establishing a new uniform statewide benefits system for school employees. LAWS OF 2017, 3d Spec. Sess., ch. 13, §§ 101-108, 801-819. And the legislature for the first time made statewide salary allocations necessary to hire and retain qualified staff an express component of the statutory program of basic education. *Id.* § 401(2)(e). The 2017-18 budget provides for the first phase of these increased salaries. As related above, the 2017-19 budget appropriates \$1,576,622,000 for increased compensation adjustments this biennium. *Id.* ch. 1, § 504. But this amount includes benefits. The allocation for salaries alone in the 2017-19 budget appears to be about \$1.1 billion.<sup>14</sup> And the State notes that additional funds are appropriated for required cost of living adjustments for the 2017-18 school year. 2017 REPORT, *supra*, at 27.

The new salary allocation system, as explained, will no longer be based on a salary grid but on statewide minimum average salaries for each of the three staffing categories, with the averages by the 2019-20 school year required to be \$64,000 for certificated instructional staff, \$95,000 for administrative staff, and \$45,000 for classified staff, figures that are to be adjusted regionally and adjusted for inflation from the 2017-19 school year. The State estimates that with

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<sup>14</sup> WASH. STATE SENATE WAYS & MEANS COMM., *supra*, at 179.

these adjustments, by the 2019-20 school year, the statewide average salary allocations will be \$72,694 for certificated staff, \$107,354 for administrative staff, and \$51,935 for classified staff. *Id.* at 22. The new salary figures, according to the State, are derived from evidence based, market rate salary levels, with figures derived from total salaries consisting of the current state allocations and supplemental salaries provided by school districts. For instance, the study commissioned by the legislation in 2016, LAWS OF 2016, ch. 3, § 2(2), shows an average total salary of \$66,869 for certificated instructional staff, \$52,613 consisting of the state allocation, and \$14,256 consisting of district supplemental compensation. THIRD SECTOR INTELLIGENCE INC., FINAL REPORT TO THE EDUCATION FUNDING TASK FORCE K-12 PUBLIC SCHOOL STAFF COMPENSATION ANALYSIS 16 (submitted Nov. 15, 2016 and updated Dec. 20, 2016) (FINAL REPORT).<sup>15</sup> This total figure is comparable to the statewide minimum average salary of \$64,000 that the state must fully fund under EHB 2242 by the 2019-20 school year, and is less than the estimated statewide average of \$72,764 for that year when adjustments are made for regionalization and inflation. (The total average salaries shown by the report for administrative staff and classified staff are, respectively, \$114,713 and \$42,449. *Id.*) And EHB 2242 still permits school districts to supplement that amount for instructional programs and activities beyond the program of basic education.

The court is satisfied that the new salary model established by EHB 2242 provides for full state funding of basic education salaries sufficient to recruit and retain competent teachers, administrators, and staff. This is consistent with the standards established for constitutional compliance.

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<sup>15</sup> The report states that this total salary for teachers is 102 to 104 percent of the national average teacher salary. FINAL REPORT, *supra*, at 79.

But EHB 2242 and the 2017-19 budget fund only half of the salary increase called for by the new model by the 2018-19 school year, deferring full funding until the 2019-20 school year. As previously noted, approximately 1.1 billion has been appropriated this biennium for the new salary allocations, which is the sum necessary to fund half of the total salary increases in the 2018-19 school year. Thus, the amount necessary to fully fund the increases in the 2019-20 school year would be approximately twice that amount, or about 2.2 billion. This is roughly consistent with the State's estimate of the amount it will take to complete the phase-in of the new salary allocations in the 2019-21 biennial budget, which would include funds for the 2019-20 school year. Specifically, the State estimates an appropriation of \$4,211,780,00 for the new salary allocations in the 2019-21 biennium, which presumably would be split approximately in half for each of the school years 2019-20 and 2020-21. The State acknowledged in oral argument that funding half the salary increases for the 2018-19 would cost about \$1 billion, and that this amount constitutes the difference between what is appropriated for the 2018-19 school year and what must be appropriated for the 2019-20 school year (about \$2 billion) to provide full funding of the increases. And plaintiffs acknowledged at argument that the State's current estimates align, at least on the low end, with the \$2.1 to 2.7 billion per year estimated in the JTFFEF report. Thus, by all relevant estimates, it appears EHB 2242 and the 2017-19 budget fall short by about a billion dollars in fully funding the salary increases by the 2018-19 school year.

The court in its order of October 6, 2016, was clear: "the State has until September 1, 2018, to fully *implement* its program of basic education." Order, *McCleary v. State*, No. 84362-7, at 13 (Wash. Oct. 6, 2016) (emphasis added). That deadline, representing the start of the 2018-19 school

year, is firm.<sup>16</sup> The court agrees with the State that with this year's legislation, the "remaining details" of the program for full State funding of basic K-12 are in place as required by the court's October 2016 order. However, by the terms of the legislation, the program will not be "fully implement[ed]" by September 1, 2018, but rather by September 1, 2019. The State urges us to nonetheless hold that EHB 2242 and the 2017 budget satisfy the State's constitutional obligation because the State has set into motion the sequence of steps that, when followed as required, will result in full state funding of K-12 basic education. The court is not persuaded by this reasoning. The program of basic education cannot be said to be "fully implemented" by September 1, 2018, when it puts off full funding of basic education salaries until the 2019-20 school year. If compliance by 2019-20 is close enough, why not 2020-21 or the following year? Further, the argument that the current legislation establishes the steps that will automatically result in full funding of salaries by the 2019-20 school year is undermined by the State's acknowledgment that funding for that year will depend on the legislature making the necessary appropriation in the 2019-21 biennial budget. However confident the court may be that the legislature will fulfill its duty to make the appropriation, a program that depends on action being taken in 2019 is necessarily not "fully implemented" by September 1, 2018.

The State argues that the delay is unavoidable because the enhanced revenue sources the legislature has enacted will not phase in until 2018, necessitating that calendar year 2018 be a "transitional" year. Counsel for the State urged at oral argument that EHB 2242 is a major piece of legislation with "lots of moving parts that have to occur in a choreographed sequence," which cannot be accomplished "all of a sudden" without undue disruption. But, the need to act "all of a

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<sup>16</sup> It bears recalling that the legislature itself originally set the September 1, 2018, deadline. LAWS OF 2009, ch. 548, § 114(5)(b)(iii).

sudden” is of the legislature’s own doing, and if its hands are tied, it tied them. In prior orders, the court has reminded the State of the firm September 2018 deadline and the need to act with dispatch. The opportunity to take timely action did not suddenly present itself in the 2017 legislative session. The court is not insensitive to the political considerations and compromises that necessarily characterize the legislative process, but there is the political question and there is the constitutional question. It is the court’s responsibility to give meaning to constitutional rights and ensure the State complies with its constitutional duties, particularly its paramount duty to amply fund K-12 public education. *McCleary*, 173 Wn.2d at 515-16, 519-20. The State does not dispute, indeed it concedes, that there is enough money in the state’s Near General Fund to fully pay for the program of basic education, including salaries. Nor does it dispute that sufficient revenue will be collected to provide full funding. Whether that is achieved by September 1, 2018, is wholly within the legislature’s discretion in making taxing and spending decisions. The court has been clear and consistent that while the constitution empowers the legislature alone to write the budget, in doing so it must meet its “paramount” obligation first. *Id.* at 520.

As things stand today, the salary allocation model enacted in EHB 2242 complies with the State’s obligation to fully fund K-12 basic education salaries, but it will not be implemented by September 1, 2018. The State thus remains out of full compliance with its constitutional duty under article IX, section 1. Accordingly, the court will retain jurisdiction to ensure full constitutional compliance by the established deadline, and it will maintain the sanction of \$100,000 per day<sup>17</sup> with the expectation that the State will enact measures to achieve full compliance during

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<sup>17</sup> The court notes with respect to sanctions that the State has also failed to comply with the court’s order to establish a separate account dedicated to public education into which sanctions are to be deposited, and it has failed to appropriate any funds for sanctions. The State urges that since those funds would have been allocated to the support of basic education in any event, they may be

the *regular* 2018 legislative session. If such measures are not enacted by the end of the regular session, the court will immediately address the need to impose additional remedial measures. Of course, the most natural remedy lies with the legislature, which can fulfill its constitutional obligation by fully implementing the program of basic education by the beginning of the 2018-19 school year.

Now, therefore, the court concludes that the State remains out of compliance with the court's January 9, 2014 order and is therefore in contempt of court for failing to enact a plan that fully implements its program of basic education by the deadline of September 1, 2018. It is hereby

ORDERED:

(1) The monetary penalty of \$100,000 per day shall remain in place and continue to accrue until the State purges its contempt by enacting measures to fully implement the program of basic education, including to fully fund the new salary allocation model effective for the 2018-19 school year.

(2) The State through the Joint Select Committee on Article IX Litigation shall file in this court and serve on plaintiffs' counsel its report detailing the actions taken during the 2018 regular session. The State shall also file and serve a brief addressing the adequacy of its compliance with this court's orders and *McCleary*. The report and brief shall be filed and served by April 9, 2018. Within 20 days after receipt of the State's report and brief, plaintiffs may file and serve a response

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deemed subsumed within the increased funds appropriated to public education this year, reasoning that to demand further accounting would elevate form over substance. The court disagrees. As the court has said throughout, it expects its directives to be obeyed. And since the court has ordered the payment of sanctions into a dedicated account, the State may not expend the funds in that account without the court's authorization, even if up to this point the State has kept only an accounting of the accumulating sanctions rather than actually establishing an account. Sanctions must remain separate and unexpended in the event the court reduces the sanctions to judgment, which it reserves the right to do.

brief addressing the report and answering the State's brief. The State may file and serve a reply within 10 days after the filing and service of plaintiffs' response. Any amicus briefs may be filed and served when plaintiffs' response is due, subject to the Chief Justice's ruling on any motion to submit an amicus brief under RAP 10.6, and any answer shall be filed and served 10 days after the filing and service of any amicus briefs.

(3) Upon reviewing the parties' submissions, the court will determine what, if any, additional actions to take.

DATED at Olympia, Washington this 15<sup>th</sup> day of November, 2017.

Fairhurst, C.J.  
CHIEF JUSTICE

WE CONCUR:

Johnson, J.

Neggers, J.

Madsen, J.

Conzález, J.

Overs, J.

Hon. McCall, J.

Stephens, J.

Jr., J.