No. 36294-5-II

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

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

Appellants,

v.

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

Respondents.

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I. INTRODUCTION

Thirty years ago, the Washington State Supreme Court held unconstitutional any public education funding system that requires the use of special excess levies to discharge the State's duty to make ample provision for the education of Washington's children. *Seattle Sch. Dist. No. 1 v. Washington*, 90 Wn.2d 476, 526, 585 P.2d 71 (1978). Today's special education funding system does exactly that: It denies Washington's school districts the State funds necessary to provide required special education services. In school year 2002-03, districts spent $101 million in local excess levy funds to meet their legal obligations to Washington's disabled school children. By school year 2004-05, the shortfall in State funding had grown to $134 million.

Education funding is the State's obligation—indeed, its highest priority:

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

Const. art. IX, § 1. Article IX, Section 1 is not merely a statement of moral principle. It sets forth a mandatory and judicially enforceable affirmative duty. *Seattle Sch. Dist.*, 90 Wn.2d at 501-03.

The plaintiffs in this case established that an average-cost special education funding formula requires an additional source of funds, or safety net, for school districts whose student populations are not average. The plaintiffs showed that the State's so-called Safety Net fails to fund school districts' full demonstration of need, both in individual districts and in the aggregate. The trial court, however, refused to make findings on the resulting shortfall; ignored the findings it did make on the nature of the basic education allocation in suggesting that it creates a pot of money that can be used for other purposes; held that a safety net is optional; ignored districts' inability to seek, let alone receive, Safety Net funds that would cover their proven need; and applied the most lax standard known to constitutional law in finding the Legislature's scheme "rational." In all of these respects the court erred.

This Court should reverse the trial court and hold that the State's special education funding system violates its paramount duty to make ample provision for the education of all of Washington's children.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred in its Finding of Fact (FF) 4 that the basic education allocation is the average cost of a basic education for an

average student and in failing to enter the Alliance's proposed FF 226-27 (CP 253).

2. The trial court erred in its FF 5 that the special education excess cost allocation is the additional average cost of educating an average special education student and in failing to enter the Alliance's proposed FF 176-95 (CP 245-48).

3. The trial court erred in its FF 9 that as of 1995 the average cost of educating a special education student was 1.87 times the cost of a basic education student insofar as the court equates "cost" with the basic education allocation.

4. The trial court erred in its Conclusion of Law (CL) 3 regarding the burden of proof, standard of review, deference owed the Legislature, and the courts' role in this matter.

5. The trial court erred in its CL 6 that the special education funding system, and the amount appropriated, are constitutional.

6. The trial court erred in its CL 7 that Plaintiffs failed to carry their burden of proof, that the special education formula is rational, and that the adequacy of the basic education allocation is not an issue in this case.

7. The trial court erred in its CL 8 that Washington's excess cost formula is consistent with current national data and research.

8. The trial court erred in its CL 9 that the evidence of basic education expenditures exceeding the basic education allocation was insufficient for constitutional review of basic education funding.

9. The trial court erred in its CL 15 that the Legislature is not obliged to use a safety net and has the exclusive prerogative to determine how to satisfy its constitutional duty to fund education.

10. The trial court erred in its CL 16 that a safety net is not part of the State's constitutional duty to make ample provision for special education.

11. The trial court erred in its CL 17 that dependable and regular funding is not a constitutional requirement for school funding.

12. The trial court erred in its CL 18 that Section 507 does not limit districts' access to Safety Net funds.

13. The trial court erred in its CL 19 that there is no evidence of a difference between the basic education allocation and basic education expenditures.

14. The trial court erred in its Court's Opinion as reflected in Assignments of Error Nos. 1-13.[1]

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[1] The Alliance is assigning error to the Court's Opinion (CP 310-36), because the trial court incorporated its written opinion into its findings and conclusions. CP 308.

15. The trial court erred if, and to the extent that, it held Individualized Education Programs form any part of basic education as opposed to special education. CP 312 (lines 1-4).

16. The trial court erred when it held that the "special education allocation is the amount required in excess of the BEA to provide a basic education to a student with a disability." CP 312 (lines 9-10).

17. The trial court erred when it held that the Alliance acknowledges that the excess cost formula is consistent with national data. CP 320 (lines 21-24).

18. The trial court erred when it held that the excess cost formula is consistent with Dr. Parrish's opinion. CP 320 (lines 24-27).

19. The trial court erred when it held that the multiplier is consistent with national standards and has remained constant over time. CP 321 (lines 11-13).

20. The trial court erred when it held that the Alliance failed to account for the basic education allocation in its proof of underfunding of special education, CP 322-25, and in failing to enter the Alliance's proposed FF 129-43 (CP 237-40).

B. Issues Pertaining to Assignments of Error

1. If a special education funding system provides a per-student allocation that purports to be the average cost to educate the average student, must the system also provide a second tier of funding for those school districts whose student populations are not average? *See* Assignment of Error (A/E) 9 and 10 and Part V(A)(1) below.

2. Does the special education funding system's second tier of funding, Safety Net, unconstitutionally limit school districts' access to ample State funding? *See* A/E 11 and 12 and Part V(A)(2) below.

3. Does substantial evidence support the trial court's findings, and do the law and the trial court's own findings support the court's conclusions of law, that the Alliance failed to prove that the special education funding system violates Article IX, Section 1's paramount duty to provide ample special education funding? *See* A/E 2, 5, 7, 16 and 20 and Part V(B) below.

4. Is the special education funding system consistent with current research, or does it rely on outdated reports? *See* A/E 3, 7, 17, 18, and 19 and Part V(C)(1) below.

5. Was basic education funding an issue in this case? *See* A/E 6 and Part V(C)(2) below.

6. Did the Alliance prove basic education expenditures exceed the basic education allocation under the appropriate burden of proof and standard of review? *See* A/E 1, 6, 8, and 13 and Part V(C)(3) and V(D) below.

7. Should a reviewing court require proof beyond a reasonable doubt, grant the Legislature excessive deference, and apply a presumption of constitutionality and rational basis scrutiny to laws enacted in fulfillment of the State's paramount duty to make ample provision for the education of all children in Washington? *See* A/E 4 and Part V(D) below.

8. Does the State's paramount duty to make ample provision for the education of all children obligate it to fund the program set out in Chapter 28A.155, RCW and its related regulations, in other words, to fund the cost of each disabled student's individualized education program? *See* A/E 15 and Part V(E) below.

III. STATEMENT OF THE CASE

A. The Parties

The School Districts' Alliance for Adequate Funding of Special Education (the "Alliance") is a coalition of twelve public school districts, both large and small, that serve urban, suburban, and rural communities throughout Washington. CP 46-50. A group of 72 additional school districts joined the Alliance as *amici curiae* in asking the court to declare

Washington's special education funding system unconstitutional. Together, the Alliance and the amicus districts serve 62 percent of Washington's students receiving special education services. CP 91-133.

The Alliance named five defendants. The State of Washington is obligated to make ample provision for the education of Washington's school children. Const. art. IX, § 1. Governor Christine Gregoire shares this constitutional duty with the Legislature, represented in this case by its principal officers, Brad Owen, President of the Senate, and Frank Chopp, Speaker of the House. Finally, Terri Bergeson is the elected Superintendent of Public Instruction and is responsible for implementing education policy in Washington.

B. Statutory and Regulatory Framework of Special Education

The Washington State Legislature, in addition to declaring special education a part of the State's constitutional obligation, RCW 28A.155.010, has enacted laws establishing the program throughout the State. Chapter 28A.155, RCW. The Office of the Superintendent of Public Instruction (OSPI) has in turn established a regulatory framework governing special education. Chapter 392-172A, WAC.[2]

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[2] At the time of trial, special education regulations were found at Chapter 392-172, WAC. Effective July 30, 2007, OSPI revised its regulations to make them consistent with their new federal counterparts. This brief cites to the revised version of the regulations, as the changes to the regulations

By law, Washington's school districts must provide special education services to any student with a qualifying disability that adversely affects his or her educational performance and requires special education. RCW 28A.155.020; WAC 392-172A-01035 and -02000; RP 67-68. The special education process begins by identifying students with suspected disabilities and evaluating their needs. WAC 392-172A-03005; RP 76-78. Districts must affirmatively search for such students as well as evaluate students who are referred to them. WAC 392-172A-02040; RP 77.

Districts must provide special education to any eligible resident child, regardless of whether the child is enrolled full- or part-time as a basic education student. WAC 392-134-010; RP 77-78. Part-time students include private school and home school students. WAC 392-172A-01335. Districts must also provide special education services to three- and four-year-olds, even though basic education funding does not start until kindergarten (age five). *Compare* RCW 28A.155.020 *with* RCW 28A.150.220 and .260; WAC 392-172A-02000.

Once an evaluation determines that a student is eligible for special education services, the school district completes an Individualized Education Program (IEP) for that student. WAC 392-172A-03090 and -

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are not material to the Alliance's arguments on appeal.

03105; RP 91. The IEP is a detailed document that, among other things, describes the impact the disability has on the student's educational performance and the services needed to address the student's unique needs. WAC 392-172A-03090; RP 97-116. The IEP team, including at least a special education teacher, a basic education teacher, a district representative, the student's parent or guardian, and the student, as appropriate, determines the necessary services. WAC 392-172A-03095; RP 93-94. The IEP determines every disabled student's appropriate special education program. FF 7.

Districts deliver special education services through specially designed instruction (SDI). WAC 392-172A-01175; RP 66. SDI includes organized and planned instructional activities that adapt, as appropriate, the content, methodology, or delivery of instruction to the needs of an eligible student. WAC 392-172A-01175(3)(c). SDI "[is] not the same as what is done under basic education." RP 66. An example of SDI is using special textbooks written in Braille for a blind student. RP 66-67. For severely disabled students, SDI might include having a paraprofessional assist a student with self-help activities such as toileting and dressing. RP 457-58. SDI may also include services from a physical therapist, occupational therapist, or speech and language pathologist. WAC 392-172A-01035; RP 456-57.

Districts must provide SDI to students in their least restrictive environment (LRE). RP 103-05. Generally, this means educating children with disabilities in the general education setting with children who are non-disabled to the maximum extent appropriate in light of the individual needs of the disabled student. Districts may use special classrooms ("pullout" rooms) separate from the basic education classroom only if that is required by the nature or severity of a student's disability. WAC 392-172A-02050; RP 103-05.

The average special education student in Washington receives 600 minutes of SDI per week. RP 2259. In other words, that student spends 40 percent of each week receiving special education services, either in the basic education classroom or in a pullout room. The average special education student spends the remaining 60 percent of each week in the basic education classroom receiving exclusively basic education services. RP 2259-60.

C. State Education Funding

Each biennium, the Legislature re-enacts the education funding system and appropriates money for basic education and special education programs. For the period relevant to this litigation, the Legislature set out the special education funding system in Laws of 2005, Chapter 518, § 507 (Section 507). *See* Appendix A. The Legislature provides for basic

education in Laws of 2005, Chapter 518, §§ 502 and 504 (Section 502 and Section 504).[3]

1. The Basic Education Allocation

Every child in the public schools is a basic education student first and a basic education student all day. FF 12(d); Section 507(2)(a). The Legislature funds school districts' basic education costs with an annual basic education allocation (BEA) based upon the average full-time equivalent (FTE) student enrollment in a district. FF 4; RCW 28A.150.250 and .260; Section 502; RP 151. The BEA is the same for all qualifying FTE students regardless of their ability or cost to educate. CP 312; Section 502. The trial court found that the BEA is the average cost of a basic education for an average student. FF 4; CP 312.

2. The Special Education Excess Cost Allocation

The Legislature provides special education funding on an "excess cost" basis. RCW 28A.150.390; Section 507(1). The special education allocation is supposed to pay for the excess cost of the student's SDI/special education services over and above the cost of the student's basic education. Trial exhibit (Ex.) 3, p. 219; Ex. 4, p. 825.

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[3] For earlier and the most recent versions of the funding system, see Laws of 2001, 2d Spec. Sess., ch. 7, §§ 502, 504, and 507; Laws of 2003, 1st Spec. Sess., ch. 25, §§ 502, 504, and 507; and Laws of 2007, ch. 522, §§ 502, 504, and 507.

Washington's special education funding system provides revenues to districts in two tiers. First, a funding formula provides districts a flat amount per student receiving SDI that is supposed to cover the excess cost of his or her special education services. Section 507(5)(a)(ii); RP 161. Second, the Legislature appropriates a pool of money for which districts may apply when their approved special education costs exceed funding under the Section 507(5) formula. Section 507(8); Ex. 60; RP 463. This second tier is known as the Safety Net. *Id.*

a. The Formula

The formula portion of the special education funding system is based on the BEA:

0.9309 x BEA =
per-student special education excess cost allocation.

Section 507(5)(a)(ii); RP 157-59, 161. This formula applies to all children eligible for special education ages 3-21.[4] FF 12(f). The State caps the number of students the formula funds at 12.7 percent of a district's overall enrollment. FF 12(g); Section 507(6); RP 155-56.

[4] A different formula applies to children ages birth through two, if districts elect to serve children that young. *See* FF 12(f); Section 507(5)(a)(i). Only the formula applicable to children ages three through 21, those children for whom the law requires that districts provide special education services, is at issue in this case.

As with the BEA, the trial court found that the formula's per-capita special education excess cost allocation is supposed to cover the excess cost to educate an average student with average disabilities. FF 5; CP 330 ("Some students will be educated for less, some will cost more, but the theory of the funding formula approach is that the cost of each student will be funded.").

b. The Safety Net

Theory, of course, does not always comport with reality. Because an average-cost formula may underfund a district whose student population is not average (*see* Part V(A)(1) below), the Legislature created Safety Net, a second tier of funding for those districts that the formula underfunds. Section 507(8); Ex. 60; RP 463. Each biennium, the State appropriates funding

> for safety net awards for districts with demonstrated needs for special education funding beyond the amounts provided in subsection (5) [*i.e.*, the Section 507(5) excess cost formula].

Section 507(8). As the trial court found, "[t]he Safety Net system is designed to provide more monies to districts that are not adequately funded under the formula." FF 15.

The Legislature mandates that the State Safety Net Oversight Committee award Safety Net funds to applicant districts using a two-step process:

> Safety net funds shall be awarded by the state safety net oversight committee subject to the following conditions and limitations:
>
> (a) The committee shall consider unmet needs for districts that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas . . . . Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.
>
> (b) The committee shall then consider the extraordinarily high cost needs of one or more individual special education students.

Section 507(8) (emphasis added); *see also* WAC 392-140-600 to 685.

(1) Step One: Demonstration of Need

The first step in applying for Safety Net funds is to demonstrate that a district needs additional funding beyond that which the Section 507(5) formula provides. To do this, a district completes the Worksheet A portion of the Safety Net Application that the State publishes every year. WAC 392-140-626; Ex. 60, pp. 1777 and 1780-82; RP 378-380 and 463. To demonstrate its need, a district subtracts from the total of its allowed special education expenditures all of its allowed special education

revenues. Ex. 60, pp. 1777 and 1780-82. The Safety Net Oversight Committee reviews the district's Worksheet A calculations and makes adjustments for errors and omissions. WAC 392-140-626(4); RP 381-82, 484-85 and 490-92. The remainder that the Committee allows is the district's "demonstration of need" and is the maximum amount of Safety Net funding the district may apply for that year. WAC 392-140-605(2) and -626(2); Ex 60, p. 1777, Line 27.

Prior to school year 2005-06[5], the calculation of available revenues on Worksheet A required districts to count on Line 25 the local levy funding that they used to pay for special education during the prior year. Ex. 58, pp. 1712 and 15; RP 463-65. Worksheet A required districts to assume that revenues for the year of application included at least this amount of levy funding. Ex. 58; RP 676-77. When the Alliance filed this lawsuit in 2004, it identified this obvious constitutional flaw in its Complaint. CP 22, 60. The Legislature eliminated the Line 25 requirement in the 2005 legislative session. Ex. 60, p. 1769; RP 464. The effect of Line 25 when it was in place prior to 2005-06 was to cause some districts to demonstrate no need at all, thus barring them entirely from

[5] All references in this brief to a period such as 2005-06 describe a school year, which begins on September 1st of the first year and ends on August 31st of the following year. RCW 28A.150.040.

Safety Net, and to significantly reduce the amount of Safety Net funding the remaining districts could request. RP 470-71, 1346-48.

In 2005-06, after the elimination of Line 25, the collective demonstration of need on Worksheet A for those districts that applied for Safety Net funding was approximately $147 million. This is the amount that the Section 507(5) formula underfunded these districts. Ex. 111, 111a, 111b; RP 984-86, 990-1011.

(2) Step Two: Extraordinarily High-Cost Students

Next, a district with demonstrated need completes Worksheet C in the Safety Net Application for each of its individual extraordinarily high-cost students. Section 507(8)(b); WAC 392-140-605(3); Ex. 60, pp. 1784-90; RP 384-85, 490-91. Districts may receive state and, where appropriate, state-administered federal funding for each such eligible student. The threshold for state funding for an extraordinarily high-cost student is about $15,000; for supplemental federal funding the threshold is about $21,000. FF 13; RP 484. A district's total annual Safety Net award for all of its extraordinarily high-cost students may not exceed the district's total demonstration of need on the approved Worksheet A. WAC 392-140-605(2) and -626(2).

At the time of trial, districts could access Safety Net only for their extraordinarily high-cost students.[6] Section 507(8)(b); WAC 392-140-605(2); RP 479. Thus, if a district's demonstration of need results from some cause other than its having one or more extraordinarily high-cost students, there is no way for a district to apply for, let alone receive, full funding. In 2005-06, districts were able to apply for only about $35 million for their extraordinarily high-cost students out of the approximately $147 million in collective demonstrated need. Ex. 111, Line E. The Alliance discusses the impact of the difference between these two numbers in Part V(A)(2) below.

c. History of the Safety Net

The Legislature has changed the Safety Net several times since first creating it in 1995. CP 327-29. Early on, for example, districts could access Safety Net funds if the "Demographics" of their student population ("unusual concentration of disabilities and needs of students in the

[6] The trial court declared unconstitutional the 12.7 percent cap on the number of students the system funds absent a Safety Net or other means to access full funding. CL 13. In the 2007 session, the Legislature attempted to correct this problem by revising the Safety Net to create a funding category for districts with large numbers of families with disabled children. Laws of 2007, ch. 522, § 507(8)(c); Ex. 57, p. 1640. That recent change is outside the scope of this appeal.

district") were such that the formula underfunded them. CP 328; Ex. 53, p. 1434; RP 475. The trial court found that Spokane was an example of such a district: The high quality of medical and social services in the city, FF 23, attracts high-needs students to the Spokane School District from a wide geographic area. RP 145-48; 475-76. The Legislature eliminated the "Demographics" category for accessing Safety Net funds (later called the "Other" category) in 2002. Ex. 57, p. 1640; RP 477-78.

D. Districts' Local Levy Contribution

The Legislature allows school districts to levy additional property taxes to supplement the districts' basic education program. RCW 84.52.053. The State may not require districts to use local levy funds to meet any part of the State's educational obligation under Article IX, Section 1. *Seattle Sch. Dist.*, 90 Wn.2d at 497-510; RCW 28A.150.390. The State's failure to amply fund the mandatory special education program forces districts throughout Washington to use their levy funds to "fill the gap" in funding. *See, e.g.,* RP 212-14 (B. Benzel, Superintendent, Spokane School District); RP 1137 (T. Murphy, Superintendent, Federal Way School District); RP 1348 (D. Kinsley, Superintendent, Bellingham School District).

E. Districts' Financial Accounting and Evidence of Underfunding

School districts account for their finances in accordance with State requirements. FF 24; RP 333. The State publishes a lengthy school district accounting manual (Ex. 3) and a budgeting and financial reporting handbook (Ex. 4) that instruct districts on these requirements. RP 333-44. The F-196 is a state-mandated set of school district financial statements that includes, among numerous other items, all of a district's special education costs and revenues. RP 344-48, 354-59.[7] The State Auditor has a comprehensive auditing program for school districts' finances, including the F-196. *E.g.,* WAC ch. 392-115; RP 372, 1186-88. School districts as well as the State run the business of education in Washington using these financial reports. RP 372-76.

For the three-year period 2002-03 to 2004-05, the Alliance presented extensive evidence of the unfunded difference between districts' special education costs and all available state and federal special education revenues. Exhibits summarizing the relevant expenditures and revenues from the F-196 reports show statewide unfunded special education costs growing from $101 million in 2002-03 to $134 million in 2004-05. Exs.

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[7] The budgeting and financial reporting handbook contains a lengthy chapter on the F-196 explaining how districts are to complete it. Ex. 4, pp. 959-1024. A district's failure to timely submit its F-196 to OSPI is cause for the State to suspend its BEA payments. WAC 392-117-035.

131, 131a, and 131b. The gap between what the State appropriates and what it costs districts to provide the legally required special education program to their students is at the heart of this lawsuit.

F. Procedural History

The Alliance filed its Complaint (CP 5-27) on September 30, 2004, and its Amended Complaint (CP 43-64) on April 1, 2005, seeking a declaratory judgment that the present funding system, including the Section 507(5) formula and the Section 507(8) Safety Net, are unconstitutional. The matter was tried to the court beginning October 30, 2006. The Court entered its Opinion on March 1, 2007 (CP 310-36) and its Findings of Fact and Conclusions of Law (CP 276-87) and Judgment and Order (CP 288-89) on April 12, 2007. The Alliance timely filed its Notice of Appeal (CP 290-336) on May 9, 2007.

IV. STANDARD OF REVIEW

Appellate courts review conclusions of law and questions of law de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003). Findings of fact are reviewed for substantial evidence. Substantial evidence means a quantum of evidence sufficient to persuade a rational and fair-minded person that the premise is true. *Id.* The standard of review and level of scrutiny applicable under Article IX, Section 1, is addressed in Part V(D) below.

V. ARGUMENT

A. The Trial Court Erred When it Ruled That the Current Safety Net is Constitutional.

The trial court concluded that the State's current funding system does not require the Safety Net. CL 15-16; CP 331-32. The court also ruled that Section 507(8) does not unconstitutionally limit districts' access to ample Safety Net funding, CL 18 and CP 319, and that dependable and regular funding is not part of the State's constitutional obligation. CL 17; CP 332. These rulings are erroneous. The trial court also erred in refusing to enter the Alliance's proposed findings regarding these issues. CP 245-48 (Alliance's proposed FF 176-91).

1. The Current System Requires a Safety Net.

The State's Section 507(5) average-cost special education funding formula necessarily presumes a certain distribution of low-, medium-, and higher-cost students. To meet the Article IX imperative of ample funding, a system that relied exclusively on such a formula, with no Safety Net, would require that the actual enrollment of students receiving SDI at each of the 296 school districts throughout Washington precisely mirror this presumed

statewide distribution. Both the evidence and common sense demonstrate that the opposite is true.

In response to Requests for Admission, the State admitted that "each district does not have the same percentage of more severely disabled and relatively higher cost students." Ex. 64, p. 46 (Request for Admission No. 18) (emphasis added). The trial court found one of the reasons for an uneven distribution: Districts such as Spokane have more severely disabled students, because the City of Spokane's medical facilities and social services attract families to the district from the surrounding geographic area. FF 23; RP 145-48, 475-76. Until 2002, the State allowed districts to access Safety Net for this very problem, the unique demographics of a district ("unusual concentration of disabilities and needs of students in the district"). FF 17 and 23; CP 328; RP 475; Ex. 53, p. 1434. The State has not challenged these findings, and hence they are verities. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

A district's funding gap can be due to an excess of "medium-cost" students (for example, students whose cost of service exceeds the total available funding but is below the State Safety Net extraordinarily high-cost student threshold of about

$15,000). FF 13; RP 693-94, 1348. At trial, the State did not contest that the distribution of low-, medium-, and higher-cost disabled students in each of Washington's 296 school districts is not the same, nor is it always the exact average. This Court reviews undisputed evidence as a matter of law. *Kim v. Lee*, 145 Wn.2d 79, 85-86, 31 P.3d 665 (2001).

The State has a mechanism to recover funds from districts that the average-cost funding formula overfunds and that do not spend all of their special education excess cost allocation. WAC 392-122-900(7)(c); Ex. 4, p. 795. So, too, an average-cost formula must have a second tier of available funding for those districts that the formula underfunds.

It is impossible to reconcile the trial court's decision with its own findings. "The Safety Net system is designed to provide more monies to districts that are not adequately funded under the formula." FF 15. If the formula is underfunding some districts, then Article IX requires a Safety Net. The trial court erred when it held a Safety Net is not a constitutional requirement of the present funding system. CL 15 and 16.

2. Defects in the Safety Net Deny Districts Ample State Funding for Special Education.

The evidence showed that Section 507(8), by limiting Safety Net funding to districts' extraordinarily high-cost students, denies districts ample funding. This structural defect renders the funding system unconstitutional.

As the trial court found, Safety Net exists "to provide more monies to districts that are not adequately funded under the formula [Section 507(5)]." FF 15. The State has developed a method for districts to calculate the amount that the formula underfunds them – Worksheet A demonstration of need.

In 2005-06, 142 of Washington's 296 school districts applied for Safety Net funding. Collectively, these districts established "demonstration of need" of approximately $147 million.[8] Exs. 111 and 111a; RP 984-86, 990-1011. By contrast, these 142 districts could together apply for only about $35 million in Safety Net funding. Ex. 111, Line E. The reason they applied for relatively little Safety Net funding is that the law limits access

[8] The Legislature appropriated about $47 million in state and federal funds for Safety Net for the 2005 biennium. Section 507(8). Against a 2005-06 demonstration of need of $147 million by the 142 applicant districts, the Legislature appropriated about $60 million for Safety Net in the 2007 biennium ($30 million per year). Laws of 2007, ch. 522, § 507(8).

to Safety Net to the cost of a district's extraordinarily high-cost students. FF 12(k); Section 507(8)(b). The remainder, or approximately $112 million, reflects formula underfunding for students whose cost of service is below the Safety Net extraordinarily high-cost threshold of about $15,000. Because the formula underfunds these "medium-cost" students, and the Legislature has limited Safety Net access solely to extraordinarily high-cost students, the Safety Net system denies districts the ability even to apply for approximately $112 million in demonstrated need, let alone receive funding to cover that need. This is patently unconstitutional.

The experience of individual districts reflects the same result that the statewide data show. In 2005-06, the Safety Net Committee approved over $2.5 million in demonstrated need for the Issaquah School District, yet the district could ask for only about $475,000. The reason is that Issaquah only had ten extraordinarily high-cost students, and $475,000 is all they cost. The underfunding of its "medium-cost" students caused over $2 million of Issaquah's funding shortfall. RP 674-76, 693-94. Similarly, Lake Washington School District had about $2.9 million in Committee-approved demonstration of need, yet only about $1

million in costs for its 38 extraordinarily high-cost students. RP 378-87. Federal Way School District had over $4 million in demonstrated need, but only about $660,000 in extraordinarily high-cost students. RP 1138-39. Bellingham School District had $1.6 million in Committee-approved demonstration of need, but the cost for its extraordinarily high-cost students totaled only $618,000. The balance of about $1 million was due to the underfunding of its "medium-cost" students. Bellingham made up this unfunded amount with its levy money. RP 1348-49.

This Worksheet A evidence is tantamount to the State's admission that the Section 507(5) formula underfunds districts. Worksheet A is the State's form, annually published with the Safety Net application. Ex. 60, pp. 1777 and 1780-82. The State developed the method of calculation set out on Worksheet A in response to the Legislature's directive in Section 507(8) to address formula underfunding. The regulations compel districts to use this method of calculation and the Worksheet A form. WAC 392-140-605. The Safety Net Oversight Committee reviews and adjusts the districts' calculations for errors and omissions. WAC 392-140-626(4); RP 381-82.

The present Safety Net unconstitutionally denies districts access to ample State funding, because it denies them the ability to ask for the total amount of their formula underfunding. The trial court erred when it held otherwise. CL 15-18 and CP 319. The court further erred in refusing to enter the Alliance's proposed findings of fact on these critical issues. CP 245-48 (Alliance's proposed FF 176-91). The Legislature must devise a system that amply funds special education for all children with IEPs, rather than forcing the school districts that serve them to make up the shortfall through local levies.

B. The Trial Court Erred When it Concluded the Alliance Did Not Prove the State Underfunds Special Education.

To claim underfunding, the trial court held, districts must first exhaust the BEA and all of the special education excess cost allocation. CL 10. At pages 13-16 of its Opinion, the trial court concluded that the Alliance did not account for the exhaustion of all of the BEA that the State provides for students receiving SDI and, therefore, did not prove underfunding of special education. CP 322-25. The trial court's own findings, as well as the evidence presented at trial, disprove this conclusion. The trial court erred in failing to enter the Alliance's proposed FF 129-43 and 176-95 (CP 237-40 and 245-48).

1. The Alliance Conclusively Proved Underfunding.

a. *The F-196 Evidence for 2002-03 through 2004-05.*

Demonstration of need on Worksheet A is the amount the formula underfunds a district. Section 507(8). Prior to 2005-06, however, collective demonstration of need on Safety Net applications would not even begin to approximate statewide formula underfunding because of the pernicious effect of Line 25, which counted districts' local levy contributions against them. *See* Part III(C)(2)(b)(1) above. Consequently, for the years prior to 2005-06, the Alliance made a simplified presentation of special education underfunding for every district in the State. Exhibit 131a shows the excess of special education expenditures over special education revenues from the F-196. In essence, Exhibit 131a shows demonstration of need, per Worksheet A, without Line 25.[9] It shows statewide special education underfunding in 2002-03 of $101 million, growing to $134 million in 2004-05.

b. Safety Net Demonstration of Need for 2005-06.

The evidence of $147 million in collective demonstration of need for Safety Net applicants in 2005-06 conclusively proves underfunding.

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[9] For simplicity of presentation, the Alliance eliminated several minor line items that do not materially affect the proof of the fact of statewide under-funding of special education. RP 2688-99; *compare* Ex. 131a *with* Ex. 60, p. 1777.

Worksheet A requires districts to total up their allowed special education expenditures and subtract "all revenue available for special education" with the balance being the amount that the formula has underfunded them. WAC 392-140-626(1)(b) (emphasis added); Ex. 60, pp. 1777, 1780-82; RP 378-87. The Legislature has declared that Safety Net funding is only for those districts "that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas." Section 507(8) (emphasis added).

Despite these declarations, nowhere does the State require districts to count their BEA in calculating demonstration of need. The Safety Net regulations do not tell districts to count their BEA. WAC 392-140-600 to 685. The State's Worksheet A has no place for districts to include BEA revenue in calculating special education formula underfunding. *E.g.*, Ex. 60, p. 1777. In its instructions for completing the calculation of demonstration of need, OSPI does not instruct districts to count their BEA revenue. Ex. 60, pp. 1780-82. There is nothing anywhere that requires a district to count students' BEA as additional revenue against demonstrated need in order to receive additional special education funding. The reason is that, as discussed next, the BEA pays for students' basic education.

2. *The Trial Court's Own Findings Prove that Districts Exhaust the BEA on Basic Education.*

The trial court found that the BEA is the average cost to provide a basic education to the average child. "The BEA is the same for all students in a district, regardless of grade, gender, or skill at learning. It is based on the average cost of educating an average student." FF 4; CP 312. The theory of the system is that the money saved on the less expensive students helps fund the more expensive students. *Cf* CP 330.

The law does not recognize any distinction between or among basic education students. There are only basic education students, some of whom also receive SDI. The Alliance proved, and the trial court found, that students receiving SDI are first basic education students and are basic education students all day. FF 12(d); Section 507(2)(a). By law, therefore, these basic education students who also receive SDI are part of the basic education student population for whom the state funds a basic education through the BEA.

If, as the trial court held, the BEA is the average cost to provide a basic education, then districts necessarily consume that average amount providing a basic education to their students. Whatever money they save educating the less costly students, they spend providing a basic education to the more costly students. Even if the basic education for every student

receiving SDI cost less than average, the average cost system presumes the savings go to pay for the basic education of those students who cost more. An average cost system is just that. Districts do not get to use the extra money they save educating the less expensive students to pay for other services for those students.

Inherent in the trial court's decision is the supposition that there is a pot of leftover BEA money for students who receive SDI that districts could use to fill the annual funding gap of $101 to $134 million in their special education. There was no such evidence in this case. For the BEA to create extra funds that could fill the gap in special education, the BEA would have to be above the average cost to provide a basic education. It is not. FF 4; *see* Part V(C)(2) below. By definition, districts necessarily use the BEA to pay the costs of basic education.

3. The State Mandates How Districts are to Account for the BEA.

Students receiving SDI spend, on average, 60 percent of their day in the basic education classroom receiving exclusively basic education services. RP 2259-60. As the trial court held, students receiving SDI, like all other students, presumptively receive the support of their BEA when in the basic education classroom receiving a basic education. FF 30, *citing* Ex. 4, p. 825. Therefore, districts spend the majority of the BEA the State

provides for students who receive SDI in the basic education classroom, exclusively on their basic education services.

During the remaining 40 percent of the average student's day, the State requires districts to charge part of the cost of the special education teacher to the basic education program rather than to the special education program. The State requires districts to make this allocation of charges using the State's 1077 method. *E.g.*, CP 323, *citing* Section 507(2)(a). *See* Ex. 4, p. 825. The purpose of the 1077 method, as the trial court found, is to ensure that students receiving SDI get the full benefit of their BEA even when these students are out of the basic education classroom and are receiving SDI from special education teaching staff. CP 323, *citing* Ex. 4, p. 167, and Section 507(2)(a).

Using the 1077 method, districts charge on average about 38 percent of special education teacher costs to basic education. FF 33; CP 323.[10] And the purpose of doing so is to reflect the legislative requirement that "[w]hen special education students are served outside the regular classroom, basic education dollars follow them to partially support special education services they receive." CP 323, *citing* Ex. 4, p. 825, and Section

[10] In addition to 38 percent of teacher costs, districts "split code" between basic education and special education all other special education costs, further to reflect BEA support of students who receive special education services. *See* Ex 4, p. 828; RP 2483-84.

507(1). Use of the 1077 method thus ensures that all students who receive SDI get the full benefit of their BEA all day long.

To support its dismissal of the conclusive importance of the 1077 method, the trial court stated:

> The 38 percent allocated to basic education costs is significantly less than the percentage of state support for a special education student that is BEA ... The 1077 methodology does not prove that school districts expend all BEA for special education students in the basic education classrooms.

CP 323-24. The trial court's analysis is flawed. The 38 percent of special education teaching staff charged to basic education results in a dollar charge that is less than a student's full BEA, because students receiving SDI spend 60 percent of their day receiving strictly basic education in the basic education classroom. Most of the BEA for these students pays for their basic education in the basic education classroom. As the trial court held, "[s]pecial education students receive their appropriate share of basic education support from basic education staff when served in the regular classroom." FF 30, *citing* Ex. 4, p. 825.

Further, the Alliance did not offer evidence of the 1077 method to prove that "all BEA for special education students [is spent] in the basic education classroom," as the trial court wrongly believed. CP 324. Instead, the 1077 method proves that <u>some</u> of that BEA is spent in the

special education classroom. Thus, students receiving SDI receive the benefit of their BEA all day long even while out of the basic education classroom in a special education pullout room.

Every student's average-cost BEA is consumed paying for basic education, even if the student also receives SDI. No BEA is available to fill the gap in the State's special education funding. The trial court erred in failing to enter the Alliance's proposed FF 129-43 (CP 237-40).

C. The Court Erred in Concluding that the Special Education Formula Is Rational.

The trial court concluded the 0.9309 multiplier in Washington's special education funding formula was rational.[11] CL 7; CP 320-21. The trial court held that the BEA is the same as basic education expenditures. CL 19. The trial court next suggested that, if there is an underfunding problem in special education, it exists because the BEA is inadequate, but that the BEA was not an issue in the case. CL 7. CP 321. This was all error.

1. The State's Formula is not Rational.

The formula is not rational because it applies the 0.9309 multiplier against the BEA rather than basic education expenditures. All of the

[11] As demonstrated in Part V(D) below, rational basis scrutiny is the wrong standard.

current educational research shows that the total excess cost of special education is 90 percent of basic education expenditures, not 90 percent of what the Legislature chooses to fund for basic education with the BEA. The State's principal witness testified extensively about this research. He served on the President's 2002 Commission on Special Education and chaired the finance committee. The Commission's final report adopted this research. Ex. 706, p. 35 (90 percent of average per-pupil expenditures "represents our best estimate of excess cost, or those costs above the costs to educate a non-disabled student with no special needs"); RP 2276-86. The trial court entered a finding that Dr. Parrish's recent 2002 study found that the excess cost of special education was 90% of basic education expenditures. FF 11. The State has not challenged this finding, and therefore it is a verity. *Cowiche Canyon*, 118 Wn.2d at 808.

In holding that the 0.9309 multiplier standing alone is rational, the trial court cited a 1995 study that, based on 1993-94 data, claimed the total average "cost to fund" a special education student was 1.87 times the BEA for each student. CP 321, *citing* Ex. 92, p. 1212; *see* FF 9. The "cost to fund" is not the same as the cost to educate. The report unequivocally states that the "cost to fund" a special education student did not include the 13 percent of special education expenditures districts funded with local

levy money. Ex. 92, p. 1212. Neither the evidence that the trial court cited, nor any other evidence, supports its holding.

In any event, the 1995 report and its 1993-94 data have no continuing relevance. As the trial court found, the current research shows that the excess cost of special education is 90 percent of basic education expenditures. FF 11. The State presented no evidence that, after twelve years of revisions to the BEA, 93.09 percent of the BEA actually produces funds equal to today's average cost of providing special education services to a student with average disabilities. The State cannot justify, and the courts cannot condone, continuing to enact the same funding formula when the evidence shows it is underfunding the cost of special education.

2. The BEA does not Fund Basic Education Expenditures.

The State's own calculations showed that basic education in Washington costs districts much more than the State provides with the BEA. For example, in 2002-03 the statewide average school district expenditure per general education student was $7,436.15, whereas state and federal general education per-student revenues to districts totaled only $5,985.22. Ex. 61 (Answers to Interrogatory Nos. 15 and 19). There was no evidence disputing these figures.[12]

[12] The impact on special education funding is dramatic. 90 percent of 2002-03 per-student basic education expenditures is $6,692.53 (0.9 x

The trial court dismissed the evidence on basic education expenditures because, it said, "the adequacy of the BEA is not an issue before this Court." CL 7. This was an error of law. Although the Alliance did not seek declaratory relief with respect to basic education underfunding, the difference between basic education expenditures and the BEA was a factual issue relevant to a decision on special education underfunding. The Alliance challenged all components of the Section 507(5) special education funding formula: 0.9309 x BEA = per-student special education excess cost allocation. CP 19 (Complaint, ¶¶ 4.32 and 4.33); CP 58 (Amended Complaint, ¶¶ 4.32 and 4.33); CP 140-42, 156. The Alliance's challenge to the special education funding system includes the excess of basic education expenditures over the BEA, because the special education formula funding is a multiple of the BEA rather than basic education expenditures.

All facts are relevant if they tend to establish a party's theory or if they qualify or disprove the testimony and evidence of an adversary. *Fenimore v. Donald M. Drake Const. Co.*, 87 Wn.2d 85, 89, 549 P.2d 483 (1976). The Court admitted substantial evidence about the BEA and basic

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$7,436.15). Per-student special education revenues (state and federal) were only $5,067.21. Ex 61 (Answer to Interrogatory No. 21). The difference of $1,625.32 multiplied by the 121,697 students receiving SDI, Ex. 137, p. 50, is over $190 million.

education expenditures and made findings about them. FF 4; CP 311-12. The BEA is part of the Section 507(5) special education funding formula, and the formula was a central issue in this case. The Court erred as a matter of law in concluding otherwise and in failing to enter the Alliance's proposed FF 226-27 (CP 253).

3. The Trial Court Imposed the Wrong Burden of Proof.

When the trial court rejected the undisputed evidence of the excess of basic education expenditures over the BEA, it also stated that the evidence was "peripheral to the issues here" and that it "falls well short of that required for constitutional review of basic education funding." CL 9; CP 321, fn. 11. The Alliance did not seek "constitutional review" of basic education funding; it presented this evidence as part of the factual underpinnings of its constitutional challenge to special education funding. The trial court applied its declared burden of proof for constitutional review (beyond a reasonable doubt), rather than the evidentiary standard applicable to proof of a foundational fact (preponderance of the evidence). CL 3; CP 317. The Alliance proved the fact that the BEA does not cover districts' basic education expenditures by a preponderance of undisputed evidence.

In deciding to ignore the Alliance's proof, the trial court simply defaulted to the Legislature's declaration that it *intends* the BEA to be

ample funding. CL 19; CP 321 *citing* RCW 28A.150.250. But a declaration of intent is not proof of the accomplished act. Indeed, if the trial court were correct that legislative intent alone decides such issues, no challenge to the adequacy of public education funding would ever be possible. *Seattle School District* holds otherwise. 90 Wn.2d at 526. Here, the evidence proved that the Legislature's actions have not fulfilled its stated intent. The BEA is does not cover basic education expenditures. The special education formula, in turn, does not meet the ample funding requirement.

D. The Court Erred in Applying a "Rational Basis" Level of Scrutiny to the State's Duty under Article IX, Section 1.

The trial court applied the lowest level of scrutiny known to the law in its review of the State's compliance with its paramount duty under Article IX, Section 1. It presumed Section 507 was constitutional, applied a "beyond a reasonable doubt" standard, granted the Legislature excessive deference, and borrowed "rational basis" scrutiny from equal protection jurisprudence. CL 3; CP 313-17. Review of the State's mandatory compliance with its paramount duty under the Constitution requires more.

Article IX is unique in American constitutional law. It imposes on the State an unqualified duty, rather than granting a limited power. The Washington Supreme Court has observed that our Constitution nowhere

makes any other duty paramount. *Seattle Sch. Dist.*, 90 Wn.2d at 510. Beyond our own borders, "[n]o other state has placed the common school on so high a pedestal." *Id.* at 511, *citing* T. Stiles, *The Constitution of the State and its Effects Upon Public Interests*, 4 Wash. Hist. Q. 281, 284 (1913). Indeed, none of the other 49 state constitutions make the provision of education to children the paramount duty of the state. *See* Appendix B. The duty that Washington's Article IX imposes stands alone.

Particularly in light of this uniqueness, it was error for the trial court to apply "rational basis" scrutiny to Section 507.[13] Equal protection analysis focuses on protection of the individual from the State's use of impermissible distinctions to abridge retained rights. This case does not concern whether the State has overstepped its limited powers and, in doing so, drawn statutory classifications with insufficient precision. Instead, this Court must determine whether the State has fully complied with the paramount duty that the citizens of Washington specifically assigned to their State government.

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[13] For example: CL 7 ("The Legislature's approach of using a multiplier to couple special education funding to BEA funding is rational . . ."); "There is persuasive evidence that the legislature acted rationally in establishing this multiplier." CP 321; and, "The State's funding formula approach to special education funding (the excess cost methodology) is rational (and constitutional)..." CP 330.

The current case differs from *Tunstall v. Bergeson*, 141 Wn.2d 201, 5 P.3d 691 (2000), because this is not an equal protection case. *Tunstall* rejected plaintiffs' challenge to a law that denied incarcerated youth ages 18-21 the same education available to non-incarcerated youth. 141 Wn.2d at 216-17. "Children" under Article IX do not include 18-21 year olds, and so the claim failed on its face. *Id.* Only in refusing an Article I, Section 12 equal protection challenge to the same law did the Court apply rational basis scrutiny, holding that incarcerated 18-21 year olds do not have a fundamental right to an education (because they are not "children"), nor are they a suspect class. *Id.* at 224-27.

Here, the Alliance never claimed that the State wrongly abridged the rights of special education students by treating them differently from others. The problem here is that the State has shifted the obligation to pay for much of a student's special education to school districts, which must fund using their local excess levies. The State has failed in its Article IX duty, not wrongly differentiated between persons in violation of Article I.

The Washington Supreme Court has never ruled squarely upon the level of scrutiny applicable under Article IX, Section 1.[14] In fashioning a

[14] *Seattle School District* held that the preponderance of evidence standard applied, 90 Wn.2d at 528, though the trial court here limited this to evidentiary issues. CL 3. In *Leonard v. Spokane*, 127 Wn.2d 194, 197-98, 897 P. 2d 358 (1995), the Court applied a presumption of constitutionality

rule, the courts should bear in mind what Article IX does and to whom it applies. *Seattle School District* held that the State's paramount duty does not fall exclusively upon the Legislature. 90 Wn.2d at 506. The "State" means all three co-equal branches of government. *Id.* The courts of this State share, with the Legislature and the Governor, the paramount duty to amply provide for the education of all children. The courts, therefore, must do more than review the Legislature's acts under a highly deferential standard.

When examining its paramount duty from the perspective of the corresponding right, the Court in *Seattle School District* articulated the State's burden as follows: "Since the children residing within the State's borders possess this 'right,' the State may discharge its 'duty' only by performance . . . . Thus, the State's only answer is . . . compliance . . . ." 90 Wn.2d at 513, 514 and n. 13. The State must act, and its actions must comply with the Constitution.

Even if this Court were to look to equal protection jurisprudence for the analogous standard, "rational basis" scrutiny is ill-suited to judicial review of the State's paramount duty. The Washington Supreme Court

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to a challenge based upon Article IX, Section 2's requirement that the common school fund be used solely for school support.

has developed an intermediate level of scrutiny in appropriate equal protection cases.[15] *E.g., State v. Phelan*, 100 Wn.2d 508, 671 P.2d 1212 (1983) (statute denying credit for time served against discretionary minimum sentence held a violation of Article I, Section 12 under intermediate scrutiny), *citing Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed.2d 786 (1982) (applying intermediate scrutiny to invalidate Texas law denying a free public education to children of illegal immigrants).

In applying intermediate scrutiny, the U.S. Supreme Court has required a close fit between the legislative act and the stated goal. *E.g., Craig v. Boren*, 429 U.S. 190, 209, 97 S. Ct. 451, 50 L. Ed.2d 397 (1978) (rejecting gender-based rule regulating sale of beer to 18- to 20-year-olds based on "statistically measured but loose-fitting generalities"); *Williams v. Vermont*, 472 U.S. 14, 23 and n. 8, 105 S. Ct. 2465, 86 L. Ed.2d 11 (1985) (rejecting a use tax that gave a credit for taxes paid elsewhere to residents but not non-residents. "[T]he choice of a proxy criterion . . . cannot be so casual as this, particularly when a more precise and direct classification is easily drawn"). A heightened level of assurance that the

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[15] In surveying the cases, scholars have commented that courts have, and should, apply intermediate scrutiny to many laws drawing distinctions based upon age as well as disability. L. Tribe, *American Constitutional Law,* §§ 16-31 (2nd ed. 1988). Two touchstones of special education are

Legislature's action complies with the State's paramount duty should be part of this Court's test.

The duty set out in Article IX, Section 1 calls for a closer standard of review than rational basis. In an as-applied challenge such as this one, where plaintiffs present a *prima facie* case that the State has required districts to use levy funds to meet legislatively defined minimum educational requirements under Article IX in violation of *Seattle School District*, the courts should not allow the State to continue to rely upon the presumption that the Legislature's acts are constitutional. The State must in turn come forward with evidence that it has complied with its paramount duty. The reviewing court, which shares this paramount duty with the other branches of government, must be confident that the State has demonstrated a close fit between the Legislature's actions and its duty, that State funding is ample, and that districts are not, in fact, being forced to use excess levy funding to meet their State-mandated educational obligations.

E. Special Education is Part of the State's Constitutional Obligation.

The trial court held that "[t]he choices and responsibility for educating are left to the local districts through [IEPs], subject to statewide

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age and disability.

minimum standards imposed by the legislature pursuant to its constitutional duty in article IX, section 2, to provide a 'general and uniform' educational system in Washington." CP 312; FF 6-8.[16] Although the Legislature has declared special education to be part of the State's Constitutional mandate, the courts retain the ultimate responsibility to construe the meaning of Article IX. *See Brown v. Washington*, 155 Wn.2d 254, 261, 119 P.3d 341 (2005) ("it is uniquely within the province of this court to interpret the state's constitution and laws").

"All children" under Article IX plainly includes disabled children. Our society's policy is to level the playing field for people with disabilities. *See* 42 U.S.C. 12101(b) and RCW 49.60.010 (prohibiting disability discrimination); *see also* RCW 70.84.080 (prohibiting employment discrimination against the disabled). The United States has enacted and partially funded a substantial special education program, the Individuals with Disabilities Education Act, 20 U.S.C 1400 *et seq.*, and has provided the State of Washington with about $200 million in annual funding. CP 312, fn. 3.

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[16] The trial court's oblique ruling came within a paragraph discussing basic education. CP 311-12. The court's intent seems clear, but its words and their context merit elucidation.

The Legislature has declared that its special education program is part of the constitutional minimum education owed to all children in this State:

> It is the purpose of RCW 28A.155.010 through 28A.155.100, 28A.160.030, and 28A.150.390 to ensure that all children with disabilities as defined in RCW 28A.155.020 shall have the opportunity for an appropriate education at public expense as guaranteed to them by the Constitution of this state.

RCW 28A.155.010.

This Court should affirm that, when Article IX says "all" children, it includes disabled children; when it says "ample provision for the education" of those children, it includes special education. The Legislature, having given substantive content[17] to the required program of special education through Chapter 28A.155 RCW, now must amply fund that program. The Constitution requires the State to fund the cost of each student's IEP.

VI. CONCLUSION

This Court should reverse the trial court and remand with instructions to enter findings and conclusions and a judgment in favor of

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[17] "While the judiciary has the duty to construe and interpret the word 'education' by providing broad constitutional guidelines, the legislature is obligated to give specific substantive content to the word and to the program it deems necessary to provide that 'education' within the broad guidelines." *Seattle Sch. Dist.*, 90 Wn.2d at 518.

the Alliance. The State's funding system set out in Section 507 violates Article IX, Section 1. The State has consistently underfunded special education in Washington since 2002-03. In 2005-06, the formula in Section 507(5) underfunded the 142 Safety Net applicants by approximately $147 million, and the Section 507(8) Safety Net denied them the ability to access full funding. The Legislature must fully fund districts' cost of providing special education services according to each student's IEP.

In the alternative, the Court should vacate the trial court's decision and remand for entry of new findings and conclusions based upon the record in this case. The trial court's findings and conclusions should

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reflect application of the appropriate evidentiary and constitutional standard.

RESPECTFULLY SUBMITTED this 20th day of September, 2007.

KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP

By _____
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Appendix A

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

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

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

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

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

(i) Special education students are basic education students first;

(ii) As a class, special education students are entitled to the full basic education allocation; and

(iii) Special education students are basic education students for the entire school day.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) One staff from the office of superintendent of public instruction;

(b) Staff of the office of the state auditor who shall be nonvoting members of the committee; and

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

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

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

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

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

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

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

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

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

Appendix B

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State	Constitution	Citation
Alabama	It is the policy of the state of Alabama to foster and promote the education of its citizens in a manner and extent consistent with its available resources, and the willingness and ability of the individual student, but nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense, nor as limiting the authority and duty of the legislature, in furthering or providing for education, to require or impose conditions or procedures deemed necessary to the preservation of peace and order....	AL Const. Art. 14, § 256
Alaska	The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public education institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.	AK Const. Art. 7, § 1
Arizona	A. The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include: 1. Kindergarten schools. 2. Common schools. 3. High schools. 4. Normal schools. 5. Industrial schools. 6. Universities, which shall include an agricultural college, a school of mines, and such other technical schools as may be essential, until such time as it may be deemed advisable to establish separate state institutions of such character. B. The legislature shall also enact such laws as shall provide for the education and care of pupils who are hearing and vision impaired.	AZ Const. Art. 11, § 1
Arkansas	Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education. The specific intention of this amendment is to authorize that in addition to existing constitutional or statutory provisions the General Assembly and/or public school districts may spend public funds for the education of persons over twenty-one (21) years of age and under six (6) years of age, as may be provided by law, and no other interpretation shall be given to it.	AR Const. Art. 14, § 1

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State	Constitution	Citation
California	A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement. ... The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.	CA Const. Art. 9, §§ 1 and 5
Colorado	The general assembly may require, by law, that every child of sufficient mental and physical ability, shall attend the public school during the period between the ages of six and eighteen years, for a time equivalent to three years, unless educated by other means. ... The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously.	CO Const. Art. 9, §§ 2 and 11
Connecticut	There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.	CT Const. Art. 8, § 1
Delaware	The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools, and may require by law that every child, not physically or mentally disabled, shall attend the public school, unless educated by other means.	DE Const. Art. 10, § 1
Florida	(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provisions for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. To assure that children attending public schools obtain a high quality education, the legislature shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms so that:....	FL Const. Art. 9, § 1

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State	Constitution	Citation
Georgia	The provisions of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to the college or postsecondary level shall be free and shall be provided for by taxation. The expense of other public education shall be provided for in such manner and in such amount as may be provided by law.	GA Const. Art. 8, § 1, P 1
Hawaii	The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or nonsectarian private educational institution, except that proceeds of special purpose revenue bonds authorized or issued under section 12 of Article VII may be appropriated to finance or assist: 1. Not-for-profit corporations that provide early childhood education and care facilities serving the general public; and 2. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities.	HI Const. Art. 10, § 1
Idaho	The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.	ID Const. Art. 9, § 1
Illinois	A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law. The State has the primary responsibility for financing the system of public education.	IL Const. Art. 10, § 1
Indiana	Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.	IN Const. Art. 8, § 1
Iowa	The educational and school funds and lands shall be under the control and management of the general assembly of the state.	IA Const. Art. 9 2nd, § 1

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State	Constitution	Citation
Kansas	The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.	KS Const. Art. 6, § 1
Kentucky	The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.	KY Const., § 183
Louisiana	The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.	LA Const. Art. 8, § 1
Maine	A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools; and it shall further be their duty to encourage and suitably endow, from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the State; provided, that no donation, grant or endowment shall at any time be made by the Legislature to any literary institution now established, or which may hereafter be established, unless, at the time of making such endowment, the Legislature of the State shall have the right to grant any further powers to alter, limit or restrain any of the powers vested in any such literary institution as shall be judged necessary to promote the best interests thereof.	ME Const. Art. 8, Pt.1, § 1
Maryland	The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide taxation, or otherwise, for their maintenance.	MD Const. Art. 8, § 1

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State	Constitution	Citation
Massachusetts	Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.	MA Const. Pt. 2, C. 5, § 2
Michigan	Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. ... The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law.	MI Const. Art. 8, §§ 1 and 2
Minnesota	The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.	MN Const. Art. 13, § 1
Mississippi	The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.	MS Const. Art. 8, § 201
Missouri	A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law.	MO Const. Art. 9, § 1(a)

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State	Constitution	Citation
Montana	(1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state. (2) The state recognizes the distinct and unique cultural heritage of the American Indian and is committed in its educational goals to the preservation of their cultural integrity. (3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.	MT Const. Art. 10, § 1
Nebraska	The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof.	NE Const. Art. 7, § 1
Nevada	The legislature shall encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements, and also provide for a superintendent of public instruction and by law prescribe the manner of appointment, term of office and the duties thereof.	NV Const. Art. 11, § 1
New Hampshire	Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people....	NH Const. Pt. 2, Art. 83
New Jersey	No Constitutional Provision.	
New Mexico	A uniform system of free public schools sufficient for the education of, and open to, all children of school age in the state shall be established and maintained.	NM Const. Art. 12, § 1

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State	Constitution	Citation
New York	The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.	NY Const. Art. 11, § 1
North Carolina	Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.	NC Const. Art. 9, § 1
North Dakota	A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota. ... The legislative assembly shall provide for a uniform system of free public schools throughout the state, beginning with the primary and extending through all grades up to and including schools of higher education . . .	ND Const. Art. 8, §§ 1 and 2
Ohio	The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools through the State ... Religion, morality, and knowldege, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.	OH Const. Art. 1, §§ 2 and 7
Oklahoma	The Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated.	OK Const. Art. 13, § 1
Oregon	The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools.	OR Const. Art. 8, § 3
Pennsylvania	The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.	PA Const. Art. 3, § 14
Rhode Island	The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services.	RI Const. Art. 12, § 1

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State	Constitution	Citation
South Carolina	The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.	SC Const. Art. 11, § 3
South Dakota	The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.	SD Const. Art. 8, § 1
Tennessee	The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as it determines.	TN Const. Art. 11, § 12
Texas	A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.	TX Const. Art. 7, § 1
Utah	The Legislature shall provide for the establishment and maintenance of the state's education systems including: (a) a public education system, which shall be open to all children of the state; and (b) a higher education system. Both systems shall be free from sectarian control.	UT Const. Art. 10, § 1
Vermont	Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth. All religious societies, or bodies of people that may be united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the general assembly of this state shall direct.	VT Const. Ch. II, § 68
Virginia	The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.	VA Const. Art. 8, § 1

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State	Constitution	Citation
Washington	It is the paramount duty of the state to make ample provisions for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.	WA Const. Art. 9, § 1
West Virginia	The legislature shall provide, by general law, for a thorough and efficient system of free schools.	WV Const. Art. 12, § 1
Wisconsin	The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours.	WI Const. Art. 10, § 3
Wyoming	The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary.	WY Const. Art. 7, § 1

No. 36294-5-II

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

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

Appellants,

v.

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

Respondents.

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DIVISION II
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STATE OF WASHINGTON
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CERTIFICATE OF DELIVERY

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I hereby certify that I served the foregoing Brief of Appellants on:

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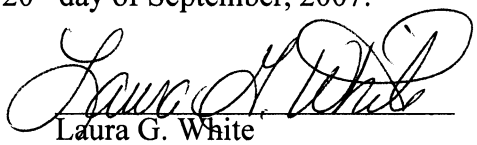
by legal messenger, hand delivery, on September 20, 2007.

Dated this 20th day of September, 2007.



Laura G. White
Legal Secretary

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