

X

82961-6

FILED
MAY 13 2009
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 MAY -8 PM 3:54

NO. 82961-6

SUPREME COURT OF THE STATE OF WASHINGTON

SCHOOL DISTRICTS' ALLIANCE FOR ADEQUATE FUNDING OF
SPECIAL EDUCATION, ET AL.,

Petitioners,

v.

THE STATE OF WASHINGTON, ET AL.,

Respondents.

RESPONDENTS' OPPOSITION TO PETITION FOR REVIEW

ROBERT M. MCKENNA
Attorney General

WILLIAM G. CLARK
Assistant Attorney General
WSBA #9234
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 389-2794

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2009 MAY 13 AM 7:50
RONALD R. CARPENTER
CLERK

ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ISSUES PRESENTED2

III. STATEMENT OF THE CASE.....4

IV. REASONS WHY REVIEW SHOULD BE DENIED7

A. The Court of Appeals’ Decision Is Consistent With
Supreme Court Precedent, Including *Seattle School
District v. State*.....8

B. The Districts' Other Arguments Do Not Raise Significant
Constitutional Issues11

C. There Is No Substantial Public Interest in Addressing the
Districts’ Unproven Argument That They Are Using
Local Levy Funding.....16

D. The Districts’ Claim That the Court of Appeals
Impermissibly Weighed Evidence Is Wrong and Does
Not Meet RAP 13.4(b).....18

V. CONCLUSION19

TABLE OF AUTHORITIES

Cases

<i>Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guaranty Ass'n</i> , 83 Wn.2d 523, 528, 520 P.2d 162 (1974).....	10
<i>Beck v. Washington</i> , 369 U.S. 541, 550 (1962).....	12
<i>Brown v. State</i> , 155 Wn.2d 254, 266, 119 P.2d 341 (2005)	9, 10
<i>City of Bellevue v. State</i> , 92 Wn.2d 717, 719-20, 600 P.2d 1268 (1979).....	10
<i>Cowiche Canyon Conservancy v. Bosley</i> , 118 Wn.2d 801, 828 P.2d 549 (1992).....	6
<i>Escude v. King County Pub. Hosp. Dist. No. 2</i> , 105 Wn. App. 268, as amended, 19 P.3d 443 (2003).....	13
<i>Falk v. Keene Corp.</i> , 113 Wn.2d 645, 782 P.2d 974 (1989).....	12
<i>Hall v. Am. Nat'l Plastics, Inc.</i> , 73 Wn.2d 203, 205, 437 P.2d 693 (1968).....	12
<i>Hollis v. Garwald, Inc.</i> , 137 Wn.2d 683, 974 P.2d 836 (1999).....	13
<i>In re Detention of Brock</i> , 126 Wn. App. 957, 110 P.3d 791 (2005).....	13
<i>Island County v. State</i> , 135 Wn.2d 141, 146-47, 955 P.2d 377 (1998)	10
<i>King Aircraft Sales, Inc. v. Lane</i> , 68 Wn. App. 706, 716, 846 P.2d 550 (1993).....	6
<i>Retired Pub. Emps. Council of Wash. v. Charles</i> , 148 Wn.2d 602, 623, 62 P.3d 470 (2003).....	9
<i>Roberson v. Perez</i> , 156 Wn.2d 33, 123 P.3d 844 (2005).....	13
<i>Seattle School District v. State</i> 90 Wn.2d 476 (1978), 585 P.2d 771 (1978).....	passim

<i>State v. Myles</i> , 127 Wn.2d 807, 812, 903 P.2d 975 (1995)	10
<i>State v. Perala</i> , 152 Wn. App. 98, 115, 130 P.3d 582, <i>review denied</i> , 158 Wn.2d 1018 (2006)	15
<i>State v. Slaneker</i> , 58 Wn. App. 161, 165, 791 P.2d 575 (1990)	6
<i>Tunstall v. Bergeson</i> , 141 Wn.2d 201, 220, 5 P.3d 691 (2000)	9, 10
<i>Washburn v. Beatt Equipment co.</i> , 120 Wn.2d. 246, 840 P.2d. 860 (1992)	13

Statutes

Laws of 2005, ch. 518	13
Laws of 2005, ch. 518, § 1	13
Laws of 2005, ch. 518, § 507	1, 4, 5
Laws of 2005, ch. 518, § 507(1)	5, 17
RCW 28A.150.250	15
RCW 28A.150.260	15
RCW 28A.150.390	5, 14, 15, 17
RCW 28A.510.250	14

Rules

RAP 10.3(g)	12
RAP 13.4	7
RAP 13.4(b)	2, 16, 18
RAP 13.4(b)(4)	17
WAC 392-140-605(3)	5

Constitutional Provisions

Const. art. VIII, § 4 passim

I. INTRODUCTION

The Petitioner Alliance for Special Education Funding (the Districts) argued a flawed theory to the trial court and Court of Appeals. As both the trial court and the Court of Appeals found, the State provides a basic education allocation (BEA) for every school child based on the total number of students in a district. In addition to the BEA, the State provides a special education allocation for students who require special education. Third, the State appropriates money to be distributed through a “Safety Net” program to provide funding to districts for students with extraordinary special education costs. Petition, App. A at 6-8. All allocations for special education are provided pursuant to annual appropriations statutes like the one challenged in this case: Laws of 2005, chapter 518, section 507.

The Districts’ Petition again ignores how special education funding includes both a basic education and special education appropriation (plus the Safety Net).¹ The BEA is directly provided to the Districts to fund the costs of providing education for special education students, consistent with the appropriations statutes. Application of but a portion of the BEA provided for special education students to the shortfall claimed by the

¹ For example, the Petition claims “[t]he Alliance proved underfunding in special education by totaling the statewide cost of delivering special education services and subtracting” the state special education and Safety Net appropriation. Petition at 6. Conspicuously missing from their calculations, however, are funds provided as the BEA.

Districts eliminated the deficit altogether. Because there is no logical or legal reason to ignore this substantial portion of the State appropriations that fund special education for the Districts, the Petition presents no issues that warrant review by this Court under the criteria of RAP 13.4(b).

II. ISSUES PRESENTED

The Petition does not fairly describe the issues that would be presented if this Court were to accept review. For example, the Districts claim that they use local levy funding to pay for special education, but both the trial court and appeals court rejected this contention because it depended on exclusion of the BEA. As discussed more fully below, the Districts' claimed use of local funds for special education is contrary to the evidence at trial and to Washington law. If review were accepted, the issues presented by the case would be:

1. Does substantial evidence support the trial court's Findings, Conclusions and Judgment that the Districts failed to prove that state law provides inadequate funding for special education when: (a) the Districts deliberately excluded the BEA revenue the State provides for special education students in the calculation of allegedly inadequate funding; (b) the Districts' expert admitted that their methodology for determining, and evidence of, the inadequacy of state funding were incapable of establishing insufficient funding and the Districts' witnesses conceded

that the BEA must be used to defray special education students' costs; and (c) when a portion of the BEA provided for special education students is accounted for, it eliminated all alleged underfunding?

2. Did the Districts fail to present a prima facie case of inadequate funding when the Districts omitted from their calculations the single largest component of the State's special education funding?

3. Did the Court of Appeals and trial court correctly adhere to longstanding Supreme Court precedent that the Districts, which challenged the constitutionality of state statutes, must overcome the statutes' presumed constitutionality by proving unconstitutionality beyond a reasonable doubt?

4. The trial court followed *Seattle School District v. State*² and employed a preponderance burden of proof to resolve factual disputes—which the Districts conceded was correct. Did the Districts fail to prove inadequate funding of special education under a preponderance of the evidence standard?

5. Does Article VIII, section 4 of the state constitution prohibit the BEA from being used to defray the costs of special education when: (a) state statutes appropriating funds for special education and the Basic Education Act require that Districts apply the entire BEA, if

² 90 Wn.2d 476 (1978), 585 P.2d 771 (1978).

necessary, to defray the costs of special education; (b) the Districts' witnesses admitted at trial that the BEA must be used to pay for special education; (c) unchallenged trial court Conclusion of Law 10 provided that the Districts must exhaust the entire BEA the State provides for special education students before the Districts can claim insufficient funding; and (d) the Districts are precluded from raising this issue on appeal because they failed to raise it to the trial court?³

6. Did the Court of Appeals correctly rule that the adequacy of the BEA was not an issue in the case because it was not raised at the trial court level?

III. STATEMENT OF THE CASE

Though two interrelated sections of the State's 2005 annual appropriations statutes for education are relevant to this case, only one, Laws of 2005, chapter 518, section 507,⁴ was challenged as unconstitutional. Petition, App. A at 19. Section 502, the general statute that provides BEA funding, was challenged for the first time at oral argument before Division II. *Id.* at 13.

³ The Respondents also argue that the Article VIII, section 4 issue should not be reached because it was not raised at trial and not raised in the briefing to the court of appeals.

⁴ Section 507 is attached to the Petition as Appendix E. Petitioners included section 502, which provides for the BEA, as Appendix D to their Petition. However, as the Court of Appeals held, section 502 was not challenged in this case. Petition, App. A at 19-20.

State funding for special education has always consisted of three sources: the BEA for the student, an excess cost allocation consisting of an additional .9309 times the student's BEA, and Safety Net funding that the Districts may apply for. Laws of 2005, ch. 518, § 507; Petition, App. A at 7-8. However, the Districts have deliberately excluded the BEA from their funding adequacy calculations, even though the BEA comprises the largest component of the State's special education funding.⁵ Petition, pp. 5-6. This approach not only failed as a "prima facie" case of inadequate funding, it also was rejected by both the Districts' and the State's witnesses. RP 259-60, 771, 2339-42 and 2869. Similarly, excluding the BEA contravened both section 507 and the Basic Education Act, which required the Districts to exhaust the BEA before they could tap the excess cost allocation or the special education Safety Net. RCW 28A.150.390; Laws of 2005, ch. 518, § 507(1).⁶

⁵ Only by excluding the BEA from the state-provided revenues supplied for special education could the Districts claim they used local levy funding to pay for special education. Petition, App. A at 14-16. This improper approach was presented through two documents at trial, the F196 District Finance Report and Worksheet A to the Safety Net Application. The trial court rejected both as evidence of insufficient funding. Appendix 1 at 13, 22-24. The Court of Appeals affirmed. Petition, App. A at 14-16.

⁶ The Safety Net process requires the Districts to establish both that special education funding is exhausted (Worksheet A) and that the BEA for the high cost special education students who are the predicate for accessing Safety Net also has been exhausted (Worksheet C). The Districts focus exclusively on Worksheet A, in violation of section 507(8) and WAC 392-140-605(3).

The rejection of the Districts' method and proof of underfunding became the law of the case⁷ in unchallenged Conclusion of Law 10:

Thus, a district must expend all of the BEA and all of the excess cost allocation received for its special education students before the district can contend the legislature has underfunded its special education program.

Appendix 1 at 10. Indeed, the Districts' own witnesses and documents proved that applying a portion of the special education students' BEA eliminated every underfunding claim. Resps. Br. at 16-18.

The Districts' challenge under state constitution Article VIII, section 4, to section 507's requirement that the Districts use the BEA to defray special education costs, was first raised just prior to oral argument in the Court of Appeals, when they cited Article VIII as an additional authority. Appendix 3. The Districts never made this argument to the trial court and did not brief it. Petition, App. A at 13.⁸

The trial court applied the preponderance standard to all factual issues and the beyond a reasonable doubt standard to the legal issue of constitutionality. Appendix 1 at 5-7. The Districts conceded that this approach was correct and consistent with *Seattle School District v. State*.

⁷ An unchallenged Conclusion of Law becomes the law of the case. *King Aircraft Sales, Inc. v. Lane*, 68 Wn. App. 706, 716, 846 P.2d 550 (1993); *State v. Slaneker*, 58 Wn. App. 161, 165, 791 P.2d 575 (1990).

⁸ The Court of Appeals remarked that the Districts' "appeared" to raise this issue in their appellate Reply Brief. (Ct. App. Op. at 13). If so, the argument is still untimely and not permissible because arguments cannot be raised for the first time in a reply brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 828 P.2d 549 (1992).

Reply Brief at 20. Division II affirmed, in part, based upon the trial courts' application of these standards of proof. As discussed below, the burden of proof applied by the trial court overcame the alleged conflict between the preponderance standard discussed in *Seattle School District v. State* and the beyond a reasonable doubt standard universally applied by this Court to every challenge to the constitutionality of state statutes.

Finally, this Court should consider that its Commissioner previously rejected the Districts' Motion to Transfer the appeal from Division II to this Court on January 17, 2008. That ruling rejected as a basis for direct Supreme Court review the same arguments that the Districts raise in the Petition.

IV. REASONS WHY REVIEW SHOULD BE DENIED

RAP 13.4 mandates that the Districts show that one of the following bases for Supreme Court review exists: a conflict between the Court of Appeals decision and Supreme Court precedent; a significant question of law under the state constitution; or an issue of substantial public interest that should be determined by the Supreme Court. The Districts do not establish any of these grounds.

A. The Court of Appeals' Decision Is Consistent With Supreme Court Precedent, Including *Seattle School District v. State*.

The Districts contend that this Court should accept review because the Court of Appeals affirmed the application of the beyond a reasonable doubt standard. The Districts cite to how this Court upheld application of a preponderance standard in *Seattle School District v. State*. The Districts' claim that this presents a significant constitutional issue or presents a conflict with a prior decision is wrong for a number of reasons.

First, the Districts' arguments overlook how the lower courts applied the preponderance standard to fact issues and applied the beyond a reasonable doubt standard only to the issue of the statute's constitutionality:

For contested issues of fact, the evidentiary burden remains proof by a preponderance even though the standard for reviewing the constitutionality of the statute is that the statute is presumed constitutional unless the court is convinced beyond a reasonable doubt that the statute is unconstitutional.

Petition, App. A at 7. The Districts have admitted that application of this burden of proof to the factual issues was correct. Reply Brief at 20. The Court of Appeals affirmed because the failure to prove the fact of inadequate funding as a matter of fact made it impossible for the Districts to establish the funding statute's unconstitutionality beyond a reasonable doubt. Petition, App. A at 2.

Second, *Seattle School District* does not preclude the application of this Court’s deferential standard for review of legislation because, unlike the Districts in this case, the Seattle School District was not challenging the constitutionality of state laws. Rather, that plaintiff challenged the State’s reliance on local excess levy funding to finance a state obligation, which this Court deemed unconstitutional because that local tax source was not “regular and dependable” as a means of financing education. The Legislature’s failure to enact a statutory scheme was the constitutional defect in *Seattle School District*, not duly enacted state statutes. Accordingly, *Seattle School District* does not hold that the judiciary should review statutory enactments of the legislative branch using a preponderance of evidence standard.

Contrary to the Districts’ argument, the Court of Appeals’ endorsement of the beyond a reasonable doubt standard for review of the statutes at issue in this case followed the many decisions of this Court—both before and following *Seattle School District v. State*—that require challengers to the constitutionality of state laws to prove their case beyond a reasonable doubt. *E.g.*, *Brown v. State*, 155 Wn.2d 254, 266, 119 P.2d 341 (2005); *Retired Pub. Emps. Council of Wash. v. Charles*, 148 Wn.2d 602, 623, 62 P.3d 470 (2003); *Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5 P.3d 691 (2000); *Island County v. State*, 135 Wn.2d 141, 146-47, 955

P.2d 377 (1998); *State v. Myles*, 127 Wn.2d 807, 812, 903 P.2d 975 (1995); *City of Bellevue v. State*, 92 Wn.2d 717, 719-20, 600 P.2d 1268 (1979); *Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guaranty Ass'n*, 83 Wn.2d 523, 528, 520 P.2d 162 (1974). In *Island County* at 147, this Court explained that the higher quantum of proof refers to an “evidentiary standard” only in a criminal case and that, “in contrast,” in a civil challenge to the constitutionality of a state law, “[plaintiff] must, by argument and research, convince the court that there is no reasonable doubt that the statute violates the constitution.” That is the precise standard applied by the trial court and the Court of Appeals.

The consistency of the Court of Appeals’ ruling with prior Supreme Court precedent also is confirmed by this Court’s application of the beyond a reasonable doubt standard to challenges to statutes designed to carry out the Article IX duty to make ample provision for education in the *Tunstall* and *Brown* decisions. Moreover, this Court applied that burden of proof to challenges to the Appropriations Acts for education in *Brown* as well as to challenges to Appropriations Acts for other statutory programs. See *Retired Public Emps.*, *supra*.

In light of the case law, the Petition does not present a substantial constitutional question or an issue involving a conflict when it argues that

its challenge to the system of appropriations acts should not apply the established standard of review for the constitutionality of legislation.

B. The Districts' Other Arguments Do Not Raise Significant Constitutional Issues

The Districts also claim their case presents significant questions of constitutional law because: (1) they claim the trial court and Court of Appeals applied an “equal protection” analysis to this case; and (2) they claim that the BEA cannot be used for special education based on Article VIII, section 4 of the Washington Constitution. Neither argument turns the issues into significant constitutional questions.

As they contended unsuccessfully before the Court of Appeals, the Districts claim that the trial court applied an improper, equal protection analysis in this case. They base this contention on the simple fact that the trial court described the State’s special education funding formula as “rational”, both when it was adopted in 1995 and continuing up to the present day. Petition at 9. A review of both the trial court and Court of Appeals’ Opinions refutes the Districts’ argument that an equal protection analysis was employed. Indeed, both the Districts and the State agree that the case has never raised equal protection claims or issues. In their opening brief before Division II, the Districts conceded “this is not an equal protection case.” Apps. Brief at 42. As to the claim, the Court of

Appeals Opinion did not address their contention that the trial court had applied an equal protection analysis, an appellate court need not address every issue raised by an appellant in order to dispose of an appeal. *See Falk v. Keene Corp.*, 113 Wn.2d 645, 782 P.2d 974 (1989); *Hall v. Am. Nat'l Plastics, Inc.*, 73 Wn.2d 203, 205, 437 P.2d 693 (1968). In this context, the Districts' contention about an equal protection analysis being applied does not present any significant constitutional question requiring review by this Court.

The Districts' contention that State laws (and the practices of the Districts themselves) that direct use of the BEA to defray education costs violate the constitution is neither significant nor meritorious. The Districts did not raise this argument at the trial court level. The Complaint and Amended Complaint, for example, contain no claims based upon, or references to, Article VIII, section 4 of the state constitution. CP 5-27 and 43-64. They assigned no error based upon Article VIII, section 4, and provided no briefing on the issue to the Court of Appeals. They raised this issue for the first time just prior to oral argument on April 23, 2008. Appendix 3.

As a threshold matter, the failure to assign error based upon this issue precludes appellate review. *Beck v. Washington*, 369 U.S. 541, 550 (1962); RAP 10.3(g); *In re Detention of Brock*, 126 Wn. App. 957, 110

P.3d 791 (2005); *Escude v. King County Pub. Hosp. Dist. No. 2*, 105 Wn. App. 268, as amended, 19 P.3d 443 (2003). Furthermore, an issue not properly briefed to the Court of Appeals cannot be considered. *See Hollis v. Garwald, Inc.*, 137 Wn.2d 683, 974 P.2d 836 (1999). The failure to raise this issue at all in the trial court proceedings constitutes another, alternative basis for this Court to deny review. *Roberson v. Perez*, 156 Wn.2d 33, 123 P.3d 844 (2005); *Washburn v. Beatt Equipment co.*, 120 Wn.2d. 246, 840 P.2d. 860 (1992).

Even if the Districts had preserved any argument based on Article VIII, section 4, the issue is meritless and thus does not warrant review. First, chapter 518 of Washington's Laws of 2005 is a comprehensive set of appropriations statutes intended to fund state government agencies and programs, including public K-12 schools. Section 1, chapter 518, provides:

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

* * * *

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

Appendix 4 hereto. Part V of chapter 518 pertains to “Education” and includes funding for the state education agency, OSPI (section 501), and for K-12 public schools in sections 502 through 518. Section 502 funds the general apportionment or BEA portion of state funding, for the general purpose of providing “such funds as are necessary to complete the school year.” *Id.*⁹ Section 502 does not state the BEA is “provided solely” for basic education as would be necessary to support the Districts’ argument that the funds cannot be applied to defray special education costs.

Second, there is no basis in either section 502 or 507 for the rigid proscription of using the BEA solely for “basic education” that the Districts advocate. Petition, App. A at 13. Washington law, including section 507 (the only law challenged), further mandates that the BEA be used to defray the costs of special education:

(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

⁹ The Legislature uses the term “general apportionment” in the budget when referring to the basic education allocation. The terminology comes from the process of apportioning basic education dollars to each of the districts after the allocation has been appropriated to the Office of the Superintendent of Public Instruction. RCW 28A.510.250.

cannot provide an appropriate education for special education students...through the general apportionment allocation, it shall provide services through the special education excess cost allocation funded in this section.

Moreover, RCW 28A.150.390, the Basic Education Act, provides as follows:

Appropriations for special education programs.

...Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for special education programs for students with disabilities and shall take account of state funds accruing through RCW 28A.150.250, 28A.150.260,¹⁰ federal medical assistance and private funds accruing under RCW 74.09.5249 through 74.09.5253 and 74.09.5254 through 74.09.5256, and other state and local funds, excluding special excess levies. (Emphasis supplied.)

State law thus includes as special education funding the BEA provided under section 502. The object and amount of this BEA appropriation as the first component of special education funding satisfies Article VIII, section 4, of the state constitution. *See State v. Perala*, 152 Wn. App. 98, 115, 130 P.3d 582, *review denied*, 158 Wn.2d 1018 (2006) (No particular form of expression required by law, the language of a statute may be sufficient to show the legislature's intent to appropriate).

Last, the Districts' reliance on Article VIII, section 4, fails to present an issue requiring review because it is inconsistent with unchallenged Conclusion of Law 10, which ruled that state law requires

¹⁰ RCW 28A.150.250 and .260 provide the components of the funding drivers for the BEA. Appendix 5.

the Districts to apply the entire BEA to the costs of a students' special education. By failing to challenge this conclusion of law, the Districts have waived any argument to the contrary based on Article VIII, section 4. The use of the BEA as a component of funding special education expenses, therefore, does not present a significant issue of constitutional law.

C. There Is No Substantial Public Interest in Addressing the Districts' Unproven Argument That They Are Using Local Levy Funding

The Districts' primary claim is that they use local levy funding for special education, and they argue that their claim presents an issue of broad public interest. The Districts' argument, however, fails because the trial court found, under a preponderance of evidence standard, that the Districts did not show that they used levy money to fund special education. Appendix 1 at 7 and 13. Division II affirmed because substantial evidence—primarily the Districts' deliberate omission of the BEA in their calculation of a funding deficit—supported the trial court's Findings that the Districts failed to prove their case. Petition, App. A at 14. There is no public interest in reviewing funding shortfalls that were alleged but not proven. Thus, the primary issue raised by the Districts cannot meet the criteria of RAP 13.4(b).

Stripped of rhetoric, none of the alleged issues of interest to the public meet the criteria of an issue “that should be determined by this Court.” RAP 13.4(b)(4). As shown in Part A, the burden of proof issues are disposed of by adherence to longstanding precedent about lawsuits claiming that state statutes are unconstitutional. Similarly, the Districts present no significant, colorable legal issues that would excuse their attempt to ignore BEA funding provided for the costs of special education. The Article VIII, section 4 argument was never properly raised and, as discussed *supra*, lacks merit even if appropriate for consideration on appeal because application of the BEA to offset special education costs is mandated by state law, RCW 28A.150.390 and section 507(1). That conclusion also is the law of the case under unchallenged Conclusion of Law 10 and was conceded as the appropriate thing to do by the Districts’ witnesses.

Finally, the numerous newspaper articles quoted in the Petition do not evidence public interest in the issues actually presented by this case. Quite the contrary. Every quoted article (but one) precedes the trial court’s decision in the case. Petition, App. K. The March 6, 2007, Spokane article came five days after that decision, but does not mention it. The March 9, 2009, articles (Petition, App. L) simply report that the Court of Appeals affirmed the trial court and make no editorial or other

comments about the decision. Ironically, the Vancouver Columbia article cited by the Districts, contradicts the claim that direct review is in the public interest. In the article, the Vancouver schools' attorney is quoted as follows:

The court has spoken. We respect the court's opinion.... At this point, we want to put our hope in the Washington Legislature.... The Court does not want to micromanage education in Washington.

The Districts' case does not involve issues of public interest.

D. The Districts' Claim That the Court of Appeals Impermissibly Weighed Evidence Is Wrong and Does Not Meet RAP 13.4(b).

The Districts' last issue for review alleges that the Court of Appeals "weighed" disputed evidence in the absence of a trial court Finding. Petition, p. 3. The Districts do not provide examples or briefing that explains how this issue is presented, nor is there any basis in the Court of Appeals' opinion for claiming this issue is presented.

The Court of Appeals discussed the Districts' evidence of underfunding and the trial court's negative assessment of that evidence; specifically the trial court's evaluation of the ways in which the Districts tried to justify their disregard of the BEA altogether (the F196 and Worksheet A documents) and their incorrect characterization of a cost accounting mechanism known as the "1077 methodology." Petition, App. A at 14-18. The trial court made ten specific Findings that were

unchallenged and that determined this evidence did not establish inadequate funding. Appendix 2 at 6, 7. These Findings and the supporting evidence thus supported both the challenged Conclusions of Law 6-9, which held the Districts did not prove underfunding, and also supported unchallenged Conclusions 10 and 11, which disposed of the claim that the Districts could disregard the BEA or minimize it through the 1077 process. *Id.* at 9-10.

There is no need for this Court to review the Districts' argument that the appellate court weighed evidence. The opinion confirms that the appellate court simply affirmed the trial court because substantial evidence supported the Findings, which in turn supported the Conclusions.

V. CONCLUSION

In other cases, school funding issues might justify review by this Court. In this case, however, the Districts attempted to claim inadequate funding of special education by ignoring a substantial part of the State's funding. Simply put, the Districts could not prove their case. As a result,

the issues raised by the Petition do not meet the criteria for review in RAP
13.4(b).

RESPECTFULLY SUBMITTED this 8th day of May, 2009.

ROBERT M. MCKENNA
Attorney General

A handwritten signature in black ink, appearing to read "William G. Clark". The signature is written in a cursive style with a horizontal line underneath the name.

WILLIAM G. CLARK, WSBA #9234
Assistant Attorney General
Attorneys for Respondent

CERTIFICATE OF SERVICE

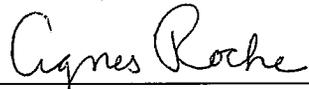
I certify under penalty of perjury in accordance with the laws of the State of Washington that the original of the preceding **Respondent's Opposition to Petition for Review** was filed by legal messenger in the Washington State Supreme Court at the following address:

Court of Appeals of Washington, Division I
One Union Square
600 University St.
Seattle, WA 98101

And that a copy of the preceding **Respondent's Opposition to Petition for Review** was served on appellants' counsel by legal messenger at the address below:

John C. Bjorkman
Christopher L. Hirst
Grace T. Yuan
Gregory J. Wong
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158

DATED this 8th day of May, 2009, at Seattle, Washington.



AGNES ROCHE

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 MAY - 8 PM 3:55

APPENDIX 1

RECEIVED

MAR 5 - 2007

ATTORNEY GENERAL OFFICE
SEATTLE

FILED
MAR 01 2007
SUPERIOR COURT
BETTY J. COULD
THURSTON COUNTY CLERK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

SCHOOL DISTRICTS' ALLIANCE FOR
ADEQUATE FUNDING OF SPECIAL
EDUCATION, et al.,

Plaintiffs,

v.

STATE OF WASHINGTON, et al.

Defendants.

NO. 04-2-02000-7

COURT'S OPINION

Plaintiffs seek a judgment from this court declaring that the State's funding of special education in Washington violates the Washington Constitution, article IX, section 1, which declares that:

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.

No remedy other than a declaratory judgment is sought, so the acts of the State, acting through the legislature and the Office of Superintendent of Public Instruction, that are subject to scrutiny are those acts that reflect the State's current funding approach. The last complete school year when most preparation of this case occurred was sy2005-6. What occurred before may have historical relevance, but is not what is judged here.

1 Plaintiffs have summarized their claims in seven parts,¹ the first, overarching claim contends
2 that the legislature has underfunded support for special education to such a degree that it has failed
3 its paramount duty under article IX, section 1, to make ample provision for education. Hereafter I
4 refer to this overarching claim as the funding formula claim. Plaintiffs contend that the funding
5 formula deficit is so large that proof of the existence of the deficit, without more, is proof that the
6 funding formula is unconstitutional. Following the funding formula claim are five subclaims and a
7 request for retained jurisdiction. I designate the five as subclaims because each challenges the
8 constitutionality of a discrete part of the State's approach for special education funding.

9 The litigants and counsel are very familiar with the background discussed here, but since this
10 case has engendered public interest, a very basic explanation of the process for school funding may
11 be helpful.

12 The legislature's approach to school funding is fairly described as a formula that calculates
13 the cost of educating a student through the application of uniform statewide ratios of students to
14 staff and the state average costs of staff. The product is a basic education allocation (BEA) for each
15 student that, after adjustments unique to each district, is paid to a district for each FTE student²

17 ¹ **Synopsis of plaintiffs' claims**

18 1. The State has been underfunding special education programs over the last four years in at least the following
19 amounts:

20 2002-03 \$101,977,191

21 2003-04 \$108,908,593

22 2004-05 \$134,133,659

23 2005-06 At least \$117,000,000 for those school districts applying for Safety Net funding

24 2. Safety Net is unconstitutional in that it does not provide a sufficient means of access for all school districts' full
25 demonstration of need.

26 3. The 12.7% cap on excess cost funding is unconstitutional without a Safety Net that allows school districts to
27 recover their legitimate demonstration of need.

28 4. The State cannot categorically refuse to fund the indirect costs of special education programs. The State cannot
artificially limit Safety Net demonstration of need based on a lower indirect rate.

5. The State cannot categorically refuse to fund necessary special education supplemental contracts.

6. The State cannot divert federal funds to pay for state obligations for salary increases, as federal funds are no
more dependable and reliable than local levy funding.

7. This Court should retain jurisdiction to satisfy itself that the Legislature takes reasonably prompt action to
correct features of the funding system that the Court has found to be unconstitutional.

² An average full-time equivalent student. RCW 28A.150.260.

1 enrolled in the district. The choices and responsibility for educating are left to the local districts
2 through Individualized Education Programs (IEPs), subject to statewide minimum standards
3 imposed by the legislature pursuant to its constitutional duty in article IX, section 2, to provide a
4 “general and uniform” educational system in Washington.³ The BEA is the same for all students in
5 a district, regardless of grade, gender, or skill at learning. It is based on the average cost of
6 educating an average student. RCW 28A.150.260.

7 The funding formula is expanded for special education students. As with the BEA, a district
8 receives revenue calculated as a per capita allocation for each special education student in the
9 district.⁴ This special education allocation is the amount required in excess of the BEA to provide a
10 basic education to a student with a disability. Like the BEA, this excess cost allocation is based on
11 an average cost – it is the additional cost of educating an average special education student, with
12 average disabilities, in excess of the BEA for that student. Since 1995, the legislature has allocated
13 this excess cost on a formula of 0.9309 times the BEA.

14 This formulaic approach has never been approved by our Supreme Court. Cf. *Brown v.*
15 *State*, 155 Wn.2d 254, 261, 119 P.3d 341(2005) (“But this court has never held, nor do we now
16 hold, that the Basic Education Act defines the scope of the State’s paramount constitutional duty to
17 provide education.”) A formulaic approach for special education was approved generally in *School*
18 *Funding III*⁵ by Judge Doran.

19
20 ³ And also subject to an extensive set of federal regulations imposed on the states as a condition of federal funding for
21 education. Federal funding for Washington is annually around \$200 million. OSPI has promulgated rules that mostly
22 mirror federal regulations.

23 ⁴ Special education population is counted differently; it is a headcount of all students receiving special education services
24 in the district, without conversion to full-time equivalency. A special education student is, “Any student, enrolled in
25 school or not, (i) who has been identified as having a disability, (ii) whose disability adversely affects the student’s
26 educational performance, and (iii) whose unique needs cannot be addressed exclusively through the education in general
27 education classes with or without individual accommodations and is determined to be eligible for special education
28 services; . . .” WAC 392-172-035(2).

⁵ Three school funding cases were decided in this Superior Court by Judge Robert Doran between 1977 and 1988. Only
the first case was appealed to an appellate court; it is reported as *Seattle School Dist. No. 1 v. State*, 90 Wn.2d 476, 458
P.2d 71 (1978). The second and third cases are *Seattle School Dist. v. State*, Thurston County Cause No. 81-2-01713-1
(1983), and *Washington State Special Education Coalition*, Thurston County Cause No. 85-2-00543-8 (1988).

1 A special education student is first and foremost a basic education student all during the
2 school day. Thus, a district must expend all of the BEA and all of the excess cost allocation
3 received for its special education students before the district can contend that the legislature has
4 underfunded its special education program. Because both the BEA and the excess cost formulas are
5 based on average costs and average students (and for the excess cost formula, average disabilities), a
6 district with a large special education population will be able to educate a significant number of its
7 special education students for less than the combined BEA and excess cost allocations, and of
8 course the opposite is true for students who need more than average services; state funding is based
9 on averages.

10 The standards for Judicial Review

11 The process for judicial review in a constitutional challenge to a legislative act begins with
12 an understanding of the power and duty of the court as provided in the Washington Constitution and
13 the separation of powers doctrine.

14 The ultimate power to interpret, construe and enforce the constitution of this State
15 belongs to the judiciary.

16 *Seattle School Dist. No. 1 v. State*, 90 Wn.2d 476, 496, 458 P.2d 71 (1978).

17 Nevertheless, we are sensitive to the fact that our state government is divided into
18 legislative, executive and judicial branches with the sovereign powers allocated
19 among the co-equal branches. We are equally aware that those charged with the
20 exercise of power in one branch must not encroach upon power exercisable by
21 another. But, the compartments of government are not rigid. In fact, the
22 practicalities of government require that each branch take into account the power of
23 the others. None was intended to operate with absolute independence.

24 *Id.* at 505-506

25 Even within the separation of powers doctrine, a court cannot abdicate its duty to interpret,
26 construe, and enforce the constitution, and where the constitution has been violated a court must act

27 Throughout this trial the parties have referred to these three cases as *Doran I*, *Doran II*, and *Doran III*. However, the
28 Supreme Court and Judge Doran himself referred to the cases as *School Funding I*, *School Funding II*, and *School Funding III*. The latter references are used in this opinion.

1 to enforce the constitution regardless of the views of a co-equal branch of government. *Id.* at 508.
2 Nevertheless, the hallmark of judicial review of legislative acts is caution. A court must not
3 encroach upon the legislature's exclusive power to legislate and thereby violate separation of
4 powers in the guise of constitutional review. This hallmark of caution finds expression in several
5 doctrines well engrained in our law:

- 6 • A court should conduct constitutional review of legislative acts with deference to the role of the
7 legislature in the separation of powers doctrine, and in the unique role of the legislature in
8 crafting law, a role totally foreign to the traditional role of courts.

9 In specific area of article IX legislation, the Supreme Court has declared:

10 This court will not micromanage education and will give great deference to the acts
11 of the legislature.

12 *Brown v. State*, 155 Wn.2d 254, 261, 119 P.3d 341(2005). Great deference means great caution, but
13 it does not mean that constitutional review of article IX is less precise or less important.

- 14 • A court should "presume" that an act of the legislature is constitutional.
15 Presumptions in the law normally apply to facts, not the law; and constitutional review is a matter of
16 law. Here the presumption is that the legislature is well aware of its responsibility to craft
17 legislation that is constitutional, has intended to do so, and believes that it has.

- 18 • A court should overturn a legislative act only if the court concludes beyond a reasonable doubt
19 that the act is unconstitutional.

20 A conclusion beyond a reasonable doubt may be reached after consideration of the deference and
21 presumption discussed above; but if that quantum of assurance is reached, a court may not fail to
22 declare the act unconstitutional.

23 I have been guided by these principles in deciding this case.

24 Throughout this trial, the litigants disagreed on the standard of review that this court must
25 apply. Plaintiffs contend that the preponderance standard should apply to my decision making,
26 relying on a passage from *Seattle School Dist. No. 1 of King County v. State*, 90 Wn.2d 476, 528,
27 458 P.2d 71 (1978). Defendant counters that the standard is proof beyond a reasonable doubt and
28

1 that this standard applies to findings of fact that support a court's analysis of constitutional issues.
2 Neither is entirely correct.

3 The standard of review in a case where the constitutionality of a statute is challenged is that
4 the burden is on the party challenging the statute to prove its unconstitutionality beyond a
5 reasonable doubt. A recent statement of these well established principles is found in *Island County*
6 *v. State*, 135 Wn.2d 141, 146-147, 955 P.2d 377 (1998), where the standard of review for
7 constitutional challenges is discussed at length and distinguished from the standard of evidence that
8 requires proof beyond a reasonable doubt in a criminal case.

9 The reasonable doubt standard, when used in the context of a criminal proceeding as
10 the standard necessary to convict an accused of a crime, is an evidentiary standard
11 and refers to 'the necessity of reaching a subjective state of certitude of the facts in
12 issue.' *State v. Smith*, 111 Wn.2d 1, 17, 759 P.2d 372 (1988) (Utter, J., dissenting)
(quoting *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368
(1970)).

13 In contrast, the beyond a reasonable doubt standard used when a statute is
14 challenged as unconstitutional refers to the fact that one challenging a statute must,
15 by argument and research, convince the court that there is no reasonable doubt that
16 the statute violates the constitution.

15 *Id.* at 147

16 Constitutional challenges are questions of law. Perusal of a representative sample of
17 appellate decisions addressing constitutional challenges to statutes shows that they seldom involve
18 disputed issues of fact. This is axiomatic for "facial" challenges to the constitutionality of statutes,
19 and it is usually the case for "as applied" challenges.⁶ Occasionally an as applied challenge involves
20 findings about disputed facts that must be resolved before the constitutional challenge is addressed.
21 When that is the case, it does not follow that the evidentiary standard for disputed facts changes to
22 conform to the standard of review for the constitutional challenge. The two are apples and oranges;
23 the first involves findings of fact, the latter conclusions of law.

24 In civil actions there are several recognized burdens of proof, but the paramount evidentiary
25 standard is proof by a preponderance of evidence. For example, in a civil enforcement action
26

27 ⁶ These challenges are often decided on agreed facts or on summary judgment.
28

1 brought by a government agency against an individual for violation of a statute, the evidentiary
2 standard for proving the violation may be proof by a preponderance. If so, a defense asserting that
3 the statute is unconstitutional as applied against the individual does not change the evidentiary
4 burden of proof required for proving violation of the statute. If the government may prove violation
5 of the statute by a preponderance, that burden does not change to proof beyond a reasonable doubt
6 merely because the constitutionality of the statute is challenged. And in a declaratory judgment
7 action brought under RCW 7.24.020 by an individual challenging the validity of a statute on as
8 applied constitutional grounds, issues of fact are tried and determined in the same manner as issues
9 of fact are tried and determined in other civil actions. RCW 7.24.100. The evidentiary standard for
10 contested issues of fact does not change because the declaratory judgment is sought on
11 constitutional grounds rather than some other asserted ground. For contested issues of fact, the
12 evidentiary burden remains proof by a preponderance even though the standard for reviewing the
13 constitutionality of the statute is that the statute is presumed constitutional unless the court is
14 convinced beyond a reasonable doubt that the statute is unconstitutional.

15 In this case plaintiffs have sought a declaratory judgment that the appropriations of the
16 legislature to fund payment of the special education costs of the districts are unconstitutional on
17 both “facial” and “as applied” grounds. In the as applied challenges there are many disputed factual
18 issues that are material to the questions of law – for example, what number of special education
19 students in the school districts’ accounting actually have current, properly formulated IEPs? Proof
20 of this issue must be determined on a preponderance standard; it does not shift to the evidentiary
21 standard of proof beyond a reasonable doubt.

22 *Seattle School Dist. No. 1 of King County v. State*, supra, is in accord. The Supreme Court
23 addressed the issue of whether a higher evidentiary standard applied and rejected such a contention.

24 Thus, contrary to appellants’ contention, the normal civil burden of proof, i.e.,
25 preponderance of the evidence, applies.
26
27
28

1 *Id.* at 528. The Supreme Court did not specifically address the standard of review because that issue
2 was not raised. However, at the trial court level, and in all the *School Funding* cases, Judge Doran
3 applied the beyond a reasonable doubt standard for constitutional review.

4 In this case I have applied the preponderance standard for questions of fact and the beyond a
5 reasonable doubt standard for review of constitutional issues of law.

6 The “Facial” Constitutional Challenge

7 The task of a court when deciding a facial challenge – *i.e.*, deciding whether a statute or act
8 of the legislature is unconstitutional on its face, without regard to the manner in which enforcement
9 of the statute or act is attempted – is whether the language of the statute or act violates the
10 constitution. In this exercise, a court interprets and construes (“gives legal meaning to”) the
11 language of the constitution, but views the language of the statute or act using the meaning directed
12 by the legislature,⁷ or where the legislature is silent, the plain meaning of the language.

13 In *Tunstall v. Bergeson*, 141 Wn.2d 201, 221, 5 P.3d 691 (2000), the Supreme Court opined:

14 [A] facial challenge must be rejected unless there exists *no set of circumstances* in
15 which the statute can constitutionally be applied.

16 Facial challenges are decided by a two step process, as declared in *Tunstall*, at page 221: First,
17 determine what article IX, section 1 (“the paramount duty to make ample provision [for special
18 education students]”) requires; and second, determine whether there is no set of circumstances in
19 which the acts of the legislature could satisfy article IX, section 1.

20 It is settled law that in fulfilling this broad constitutional duty, the legislature must define
21 basic education and create a basic program of education. *Seattle School Dist. No. 1 v. State*, 90
22 Wn.2d 476, 482, 458 P.2d 71 (1978). Further, the legislature has the authority to select the means
23 to discharge this duty and the judiciary should restrain its role to providing only broad constitutional
24 guidelines within which the legislature may work. *Seattle School Dist. No. 1*, 90 Wn.2d at 518;

25 _____
26 ⁷ “[I]n interpreting a statute it is the duty of the court to ascertain and give effect to the intent and purpose of the
27 Legislature, as expressed in the act. The act must be construed as a whole, and effect should be given to all the language
28 used.” *Tommy P. v. Board of Commissioners*, 97 Wn.2d 385, 391, 645 P.2d 697 (1982).

1 *Tunstall*, 141 Wn.2d at 223. The legislature has addressed its constitutional duty to make ample
2 provision for special education by enacting chapter 28A.150 RCW, the Basic Education Act, and
3 specifically including chapter 28A.155 RCW and RCW 28A.150.370 and .390, and by making
4 annual appropriations for special education that appear in section 507 of the current General
5 Government Appropriation Act.⁸ The plaintiffs do not assert that the codified laws, chapter
6 28A.155 RCW and RCW 28A.150.370 and .390 are facially unconstitutional; rather they contend
7 that section 507 is facially unconstitutional in both the amount appropriated and the funding formula
8 contained in the conditions and limitations of section 507.⁹ In support of these contentions, the
9 plaintiffs assert:

10 Accordingly, if there is no set of circumstances where the disputed [sic] statutory
11 provision amply provides for *all* students in special education programs, the Court
12 must find that the funding formula is facially unconstitutional. Since the State's
13 funding formula does not, and cannot, adequately fund all students in all school
14 districts all of the time, Plaintiffs' facial challenges are valid.

15 *Plaintiffs' Supplemental Trial Brief*, p. 7. Plaintiffs' argument on the facial unconstitutionality of
16 section 507 seems encapsulated in the following exchange at oral argument:

17 The Court: [You seem to contend that] The [12.7 percent] cap is only constitutional
18 if you have a mechanism that eliminates the cap.

19 Ms Abel: Right. To be able to apply, to show that they have a need. . . . And that
20 was the original intention when they created the Safety Net system, as you heard
21 evidence. There was a mechanism to apply for students that were over the cap.

22 ⁸ At trial, Laws of 2005, chapter 518, section 507, was used (Ex. 550, pdf 15); currently it is Laws of 2006, chapter 372,
23 section 507. The sections are the same except that the amount appropriated for FY2007 was increased by about \$7 million
24 in the 2006 appropriation act. Over the past 10 years, the appropriation for special education appears in much the same
25 form in each appropriation act. The language of the special education section contains the amount of the appropriation
26 followed by conditions and limitations that have been mainly consistent from one year to the next. This declaratory
27 judgment action pertains only to the law as it currently exists. In discussion of the issues, I have used the 2005
28 appropriation amount in order to be consistent with the evidence. The conditions and limitations are exactly the same in
both appropriation acts. At trial and in this opinion, the special education appropriation and the conditions and limitations
are referred to as section 507.

⁹ In my research I did not discover any appellate decision that declared an appropriation act (or bill) of the legislature
unconstitutional on its face, as distinguished from a codified statute enacted by the legislature. Defendants did not raise
this issue, so I have proceeded as if this claim is available to plaintiffs. I have not resolved that question.

1 I am not persuaded. Section 507 is not unconstitutional on its face. The test in a facial
2 challenge is whether there is any set of circumstances that permits a conclusion that school districts
3 receive sufficient money from the State to pay the districts' costs of providing a basic education to
4 the districts' special education students. The language of section 507 permits that conclusion. In
5 the language of section 507, there is a limitation (the 12.7 percent cap) and a safety net (with an
6 appropriation for safety net that has not been exhausted). The conditions and limitations in section
7 507 that address the 12.7 percent cap and the safety net do not create the impediment to access of
8 safety net awards that are the core of plaintiffs' argument on this facial challenge. Subsection (8) of
9 section 507 appropriates approximately \$47.5 million for safety net awards and directs the
10 superintendent of public instruction to an additional source if necessary. Subparts (a) and (b) of
11 subsection (8) direct, first, "The committee shall consider unmet needs for districts that can
12 convincingly demonstrate that all legitimate expenditures for special education exceed all available
13 revenues from state funding formulas" and, second, "The committee shall then consider the
14 extraordinary high cost needs of one or more special education students." These provisions do not,
15 on their face, limit districts' access to safety net funds in the manner plaintiffs contended at trial.
16 Those limitations arise from application of the safety net process to the districts' alleged excess
17 need, and should be analyzed under the "as applied" challenge. Subparts (c), (d), and (e) of
18 subsection (8), do potentially restrict safety net awards, but the language of these subparts is not
19 nearly sufficient to convince me beyond a reasonable doubt that they unconstitutionally restrict
20 "ample provision".

21 Subsection (9) of the conditions and limitations in section 507 delegates to the
22 superintendent of public instruction the power to adopt rules and procedures to administer the safety
23 net process – and the effect of some rules are clearly part of this case. However, delegation of this
24 authority and rules promulgated by the superintendent cannot make the challenged act of the
25 legislature facially unconstitutional.

26 Finally, the amount appropriated in section 507 is not on its face so deficient that the
27 appropriation is facially unconstitutional. The evidence in this case is that the fund for safety net
28

1 awards was not exhausted. The reason for that occurrence is properly addressed in the as applied
2 challenge, but not in this facial challenge.

3 The "As Applied" Constitutional Challenges

4 The Funding Formula Claim

5 This claim contends that the State has been underfunding special education programs over
6 the last four years in at least the following amounts:

7 2002-03 \$101,977,191

8 2003-04 \$108,908,593

9 2004-05 \$134,133,659

10 2005-06 At least \$117,000,000 for those school districts applying for safety net
funding.

11 Consistent with the evidence offered at trial, I have focused on the last school year with complete
12 records, sy2005-06, where the deficit is alleged to be \$134 million. Included in that figure is \$21.6
13 million attributed to the 12.7 percent cap on excess cost allocation. This claim is addressed in a
14 following section and so the \$21.6 million can be deducted from the \$134 million to give a more
15 accurate picture of the magnitude of deficit claimed here. This remaining portion, \$112.4 million in
16 sy2005-06, is directly attributable to plaintiffs' claim that the excess cost allocation is so inadequate
17 that it is a violation of the State's paramount duty to make ample provision for special education.

18 I conclude that the claimed amount of excess cost funding deficit does not prove that the
19 legislature's allocation for special education is unconstitutional. For each special education student
20 under the 12.7 percent cap, the State pays a district an excess cost allocation equal to 0.9309 of the
21 BEA. This is in addition to the full BEA for that student. Except for the cap, plaintiffs
22 acknowledge that this excess cost formula is consistent with national data that fixes the cost of
23 educating a special education student at approximately 190 percent of the cost of educating a basic
24 education student. It is also consistent with the opinion of plaintiffs' expert, Dr. Parrish, whose
25 study, according to plaintiffs, "found that nationwide the total excess expenditures for special
26 education in addition to basic education expenditures were about 90% of total basic education
27 expenditures." *Plaintiffs' Proposed Findings of Fact*, No. 207. Nevertheless, plaintiffs argue that
28

1 special education is grossly under funded and rely upon the opinion of Dr. Parrish and statewide
2 accountings of special education expenditures for proof of that contention. Plaintiffs explain that
3 the State's formula is constitutionally deficient because the 0.9309 multiplier is applied against the
4 BEA, not the expenditures for basic education. Plaintiffs also argue that the required cost
5 accounting methodology proves their claim by showing such a large deficit of the excess cost
6 allocation compared to special education costs that the deficit itself is sufficient to prove that the
7 appropriation is constitutionally deficient. I am not persuaded.

8 The 0.9309 multiplier is not an unconstitutional application of the ample provision
9 requirement of article IX, section 1. There is persuasive evidence that the legislature acted
10 rationally in establishing this multiplier. The legislature had before it the 1995 *Special Education*
11 *Fiscal Study*, Exhibit 92, pdf 21, that reported a 0.87 multiplier for Washington education. Further,
12 as noted above, the multiplier is consistent with national standards, and evidence has shown that it
13 has remained relatively constant over time.¹⁰ At the end of the trial, it seems evident that the
14 alleged shortfall in the special education appropriation, if it is found to exist at all, is the product of
15 an inadequate BEA, not an inadequate excess cost multiplier. The adequacy of the BEA is not an
16 issue before this court. I have read reports that other cases in other courts are addressing the
17 constitutionality of basic education funding, but that issue is not here.¹¹

18 Plaintiffs argue that Dr. Parrish's study, and others, applied a multiplier to the actual costs of
19 basic education, while the 0.9309 multiplier in this state has been applied to the BEA, a revenue
20 rather than a cost allocation. I am not persuaded that there is a difference; the BEA is required by
21 law to be the cost of basic education ("fully funded", RCW 28A.150.250), and that issue is not
22 before this court.

23
24
25 ¹⁰ Plaintiffs argue that the 0.9309 multiplier not a rational legislative choice, but rather is a "construct" selected by the
26 legislature to comply with the federal requirement of "maintenance of effort". Carried to the last 9/10,000 of the formula,
that may be so. Still, that does not detract from the rationality of the number for all the reasons identified here.

27 ¹¹ Plaintiffs' proposed findings of fact numbered 226 and 227 address this matter indirectly, but the evidence referred to is
28 peripheral to the issues here and falls well short of that required for constitutional review of basic education funding.

1 Plaintiffs have not shown the funding deficit for special education that they claim. They rely
2 upon the F196 reports of all districts statewide submitted annually to OSPI. These voluminous
3 reports, provided here in Exhibit 501, include an accounting of special education expenditures from
4 Program 21 (Special Ed – Supplemental, State) and Program 24 (Special Ed – Supplemental,
5 Federal). The reports also include an accounting of revenue received by the district, including the
6 BEA, the excess cost allocation, federal IDEA revenue, federal Medicaid reimbursement revenue,
7 and often a small amount received from other districts for transfer students. Plaintiffs compiled
8 these statewide reports of special education expenditures and revenue in Exhibit 131a, totaled
9 expenditures and revenues, and concluded that the deficits reported above are the result.

10 This evidence does not prove the contention that special education is underfunded at a level
11 anywhere near the magnitude claimed. Plaintiffs have not accounted for all the revenue available to
12 pay the cost of educating special education students. While F196 reports include all of the revenue
13 sources identified above, including the BEA, plaintiffs did not include the BEA in Exhibit 131a.
14 For example, the \$134 million deficit shown by the totals for sy2005-06 in Exhibit 131a includes a
15 \$1,305,776 deficit for Bellingham School District. In the accounting for that district, \$8,339,487 is
16 stated as the cost of special education, and is the sum of Program 21 and 24 costs shown in
17 Bellingham's F196. \$7,033,711 is stated as the revenue to pay those costs, and is the sum of four of
18 the five revenue sources listed above, but not including BEA. In Exhibit 131a, plaintiffs have not
19 accounted for any part of the \$5.4 million BEA received that year by Bellingham School District for
20 its 1,279 special education students,¹² or for any other school district.

21 Plaintiffs do contend that the BEA for special education students is used to pay the costs of
22 basic education in the district, including some of the costs for special education students. They
23 offer the State's 1077 methodology as proof of their contention. Plaintiffs misconstrue the law and
24 fail to prove the factual underpinnings of their contention that the 1077 methodology accounts for
25 all special education students' BEA in basic education services.

26
27 ¹² The example of Bellingham School District was explored in the cross examination of Dr. Dale Kinsley, superintendent
28 of that district.

1 The 1077 report is an annual report required by the federal government to show the
2 allocation between basic and special education services by school districts receiving IDEA special
3 education supplemental funds (State Program 24). The State has used the report to develop its 1077
4 methodology for the purpose of providing uniform statewide allocation of basic education support
5 for special education services. The methodology includes two key assumptions relevant to this
6 issue:

- 7 • Special education students receive their appropriate share of basic education support
8 from basic education staff when served in the regular classroom.
- 9 • When special education students are served outside the regular classroom, basic
10 education dollars follow them to partially support special education services they
11 receive.

12 Exhibit 4, pdf 167. These assumptions are consistent with the law, as provided in Section
13 507(2)(a):

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

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

21 Exhibit 86.

22 The 1077 methodology is solely for allocation of costs; it does not allocate revenue or
23 identify sources of revenue. Its primary purpose is to uniformly identify special education costs in
24 the districts' F196 reports. (It is also for use in preparing safety net applications, but in recent past
25 that has been limited to high cost individual students.) The 1077 worksheet is a series of reasonably
26 complex calculations that allocates the cost of a special education teacher whose duties are part
27 basic education and part special education. In the examples offered at trial, the average (rounded
28 off) allocation of cost was 38 percent to basic education and 62 percent to special education. 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. And when a special education student moves out of the
basic education classroom, by law the BEA follows that student and is applied to special education

1 costs. The 1077 methodology does not prove that school districts expend all BEA for special
2 education students in the basic education classrooms. The 1077 methodology does not prove that
3 BEA can be omitted from the calculation of alleged funding formula deficit.

4 Plaintiffs also attempted to show even larger funding formula deficits using first, the opinion
5 of Dr. Thomas Parrish and second, a formula that applies the 0.9309 multiplier to the average per
6 pupil expenditures (APPE) calculated by OSPI.¹³ Dr. Parrish's conclusions concerning the need to
7 change staffing ratios for special education were not persuasive. The APPE is a federally directed
8 calculation of expenditures that includes more than basic education. It includes costs for
9 supplemental contracts, class size reductions, local choice programs, and undefined extracurricular
10 activities. The APPE calculation brings me full circle to the point first made in this section: that it
11 seems evident that the alleged deficit in the special education appropriation, if it exists, is the
12 product of an inadequate BEA, not an inadequate excess cost multiplier. As before, adequacy of the
13 BEA is not an issue before this court.

14 Plaintiffs' contention addressed in this section of the court's opinion, that the funding
15 formula deficit is so large that the deficit itself is evidence of constitutionally inadequate funding,
16 seeks in essence to decouple special education funding from BEA funding. This coupling¹⁴ of the
17 excess cost allocation to the BEA allocation is a basic feature of the legislature's funding approach;
18 and the coupler, the 0.9039 multiplier, is acknowledged as a reasonable approach supported by
19

20 ¹³ Just as plaintiffs assert more than one basis for their claim, the State's challenge to plaintiffs' accounting of revenue is
21 not the only defense asserted against the funding formula claim. A substantial defense was offered by Dr. Douglas Gill,
22 State Director of the Special Education Section of OSPI, in his testimony and Exhibit 722. In testimony and the exhibit,
23 Dr. Gill identified 7 broad categories where he contends plaintiffs improperly account for expenditures or fail to account
24 for revenue; and he assigns a dollar amount to each. In each of the three school years addressed by plaintiffs where
25 records are complete, Dr Gill's dollar totals exceed the amount of deficit claimed by plaintiffs. For example; in sy2005-
26 06, where plaintiffs claim a deficit of \$134 million (or \$112.5 million excluding the cap impact), Dr Gill identifies \$310.6
27 million to offset that claim. Four of the largest categories identified by Dr. Gill, "2(c) Undeclared Revenue Acct 7121," "5
28 State Levy Equalization Funding," "6 Inconsistent Indirect Cost Calculation," and "7 Over ID of Sp. Ed. Students by
15%," comprise \$217 million of his total. I was not persuaded by the evidence on these categories; nevertheless, the
remaining amounts for the other categories raise significant issues about plaintiffs' claim. I have not addressed this
defense in detail because it was not necessary to my decision.

¹⁴ In his testimony, Dr. Gill of OSPI spoke of the legislature's changes to funding in 1995 as "decoupling". Dr. Gill's
decoupling was of a different relationship than is discussed here.

1 national experience and expert opinion. However, because the BEA is so inadequate in plaintiffs'
2 view, they ask this court to decouple the multiplier from the BEA allocation and instead couple it to
3 a school district's expenditures for its special education students. This would create a funding
4 approach to special education independent of the funding approach to basic education and would
5 permit me to consider the legislature's funding of special education separate and apart from basic
6 education funding.

7 Such a course is permitted only if I conclude beyond a reasonable doubt that the coupled
8 funding approach is unconstitutional. I cannot reach that conclusion. As developed above, the
9 legislature's approach of using the multiplier to couple special education funding to BEA funding is
10 rational.¹⁵ Of the two principal variables in this approach, the BEA allocation and the multiplier,
11 only the adequacy of the multiplier is part of this case – and plaintiffs have not proved it inadequate.
12 There is no basis here for me to declare the legislature's approach unconstitutional. To do so would
13 be an unwarranted usurpation of the legislature's prerogatives in the field of education. *Brown v.*
14 *State*, 155 Wn.2d 254, 261, 119 P.3d 341 (2005) (“This court will not micromanage education and
15 will give great deference to the acts of the legislature.”)

16 Application and History of Safety Net

17 Parts two and three of plaintiff's claims address the safety net in special education funding.
18 Before deciding those issues, I here address the safety net generally, as it currently exists and as it
19 has existed in the past.
20
21
22

23 ¹⁵ Indeed, the finance subcommittee report of the K-12 Advisory Committee of Washington Learns recommended,
24 “Students eligible for special education services should be allocated additional funding; the formula should continue to be
25 a derivative of Basic Education Funding.” Exhibit 69, pdf 20. Mike Merlino, a member of the finance subcommittee,
26 testified to various tweaks recommended in the report that would increase the amount of the BEA allocation to which the
27 0.9309 multiplier would be applied. The tweaks were mainly recognized enhancements to the BEA allocation. While the
28 inclusion of these enhancements would be significant (about \$40 million) and may be wise, they do not rise to the level of
constitutional significance. To declare that the legislature's present approach is unconstitutional because of failure to
include the enhancements in its current funding formula is precisely the type of micromanagement cautioned against in
Brown v. State, Id. at 261.

1 Counsel often referred to Judge Doran's decision in *School Funding III* on the issue of safety
2 net. As noted earlier, *School Funding III* does not have preclusive effect. Nevertheless, in his
3 closing, Mr. Bjorkman urged the court to:

4 Remember in *Doran III*, the judge said, if you are going to fund based on averages, you
5 have to have a system in place where a district can go get more money. The state set up
6 a system to allow districts to do that.

7 I conclude that *School Funding III* does not support such a broad characterization of the State's
8 obligation to provide a safety net. *School Funding III* addressed the use of averaged populations of
9 special education students to determine the levels of special education support from the State.
10 Judge Doran concluded that a safety net was necessary for that plan. The current excess cost
11 methodology depends on average costs, not average population. Further, I find that the State has
12 never had a safety net program of broad application; rather it has had an inconsistent history of
13 narrowly focused safety nets.

14 In *School Funding III*, the court considered a special education funding plan that awarded
15 excess cost allocations to districts based on a presumed average population of special education
16 students in four specific learning disability (SLD) categories, A-B-C-D. Excess cost allocation for a
17 fifth SLD, category E (the least disabled students), was paid on a per capita basis up to four percent
18 of the district's total population of students. Above this four percent cap, the State provided
19 reduced allocations for "E" students on a diminishing scale.

20 Judge Doran decided the SLD-E category case apart from the other categories, and declared
21 that its four percent cap and sliding scale of allocation violated ("is inconsistent with") the State
22 Education for All Act, chapter 28A.13 RCW. He also declared, somewhat enigmatically, that it
23 "Fails to satisfy to some extent the full funding mandate of Article IX, Sections 1 and 2, . . ."
24 *Conclusion of Law 1.20*. In regard to safety net for SLD-E, he said nothing at all.

25 The complaint of *School Funding III* plaintiffs about the other four categories of SLD was
26 that allocation was based on average populations of special education students. If a district had
27 more students in a category than the average permitted, the district got no excess cost allocation for
28 those students. In *School Funding III*, this was called the A-B-C-D formula. Judge Doran did not

1 declare that formula unconstitutional. Instead he opined that the legislature could use the formula if
2 it had a safety net. His conclusions, including his view of deference to the legislature, are provided
3 here:

4 1.14. There is no perfect formula and the formula must necessarily evolve and
5 undergo change in order to reflect changing public policy and factual patterns. No
6 formula or element of the formula should be set in constitutional concrete as long as the
7 formula selected and the public policy determined provides fully sufficient funds to
8 districts which permit districts then to offer handicapped students, who are eligible for
9 the program, the education that is constitutionally required.

10 1.15. Whether the State devises another formula or restructures the A-B-C-D
11 formula is for the Legislature to decide.

12 1.16. However, if the present formula is to continue as the basis for the
13 allocation of funds for the handicapped programs, provision would have to be made for
14 the districts that can establish their programs of special education are underfunded to
15 obtain the additional or supplemental funds necessary to provide the constitutionally-
16 mandated program of education for their handicapped students.

17 ...
18 1.18. There is no constitutional requirement that all costs be recognized in a
19 single formula for funding the handicapped program, and School Funding II Conclusion
20 of Law 6 does not so hold. The Legislature may, but is not Constitutionally required to,
21 fund the handicapped program by means of a single formula. . . .

22 The limitation of the A-B-C-D formula in *School Funding III* is similar to the 12.7 percent cap in
23 this case because both categorically exclude some special education students from excess cost
24 allocation if a population ceiling is exceeded; but it has no direct relationship to plaintiffs' claim
25 that there must be safety net access to protect from a funding formula deficit. *School Funding III* is
26 not binding precedent, but even if it was, it would not compel a safety net on what plaintiffs
27 characterize as "their demonstrated unmet need"¹⁶ – i.e., the funding formula issue.

28 After *School Funding III* was decided in 1988, the legislature did not create a safety net until
1995. At some point not made clear by this record, the legislature scrapped the A-B-C-D formula
and instituted an approach that provided special education funding for all special education students.
In 1995, the legislature overhauled the system and instituted the methodology that is before the

¹⁶ *Plaintiffs' Supp'l Trial Brief*, p 10.

1 court today. Since 1995, safety net has had a limited but still discernable role in excess cost
2 funding.

3 The overhaul of the special education funding plan reflected, in significant part, the
4 legislature's intention to connect the growth in cost of special education more closely to the growth
5 in cost of basic education. A key to accomplishing that goal was to control growth in special
6 education by capping excess cost allocations at 12.7 percent of the basic education population. The
7 cap was phased in gradually, in part because of the federal restriction against using federal funds to
8 supplant state funds. A safety net category, called MOESR (maintenance of effort – state revenue)
9 was created for sy1995-96, and as shown below in Exhibit 710, paid out safety net awards in
10 decreasing amounts over the seven year phase-in of the 12.7 percent cap. In 1995 there was an
11 additional category, Special Characteristics, that morphed into the Percentage and Demographics
12 categories for sy1997-98. Demographics was a category to relieve school districts that attract
13 special education students because of the high quality of medical and social services available to the
14 disabled in the area encompassed by the district. Spokane is an example of such a district.
15 Beginning in sy2000-01, the legislature eliminated the funding for the Demographics category.

16 High Cost Individual Students (HCI) has been a safety net category from the beginning. It is
17 available only after costs exceed a minimum established by the State. Until sy2005-06, the State
18 minimum has been the same as (or exceeded) the federal minimum for a concurrent federal safety
19 net program. Accordingly, federal funds have been used exclusively to pay those needs until last
20 year when the federal minimum was raised to about \$21,000, while the state minimum remained at
21 about \$15,000.

22 Although MOESR was designed to soften the blow of the 12.7 percent cap, the Percentage
23 category was intended to directly address the impact of the cap on school districts whose special
24 education population exceeded the cap. Within a few years of applying the Demographics category,
25 it became evident that this category was serving the same need as Percentage. Demographics was
26 eliminated, and by sy2001-02, Percentage safety net awards totaled approximately \$5.4 million. For
27 sy2002-03, Percentage was essentially eliminated by the legislature's decision to withhold funding
28

1 for that category. Since sy2001-02, the State has not awarded any money for safety net, except the
 2 past year for HCI. Although Exhibit 710 shows appropriations of \$8.5 million for safety net after
 3 sy2001-02, that appropriation was for HCI only.

4 Exhibit 710 shows the history of safety net categories and awards.

SAFETY NET HISTORY											
	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
Maintenance of Effort	\$0,632,406	\$7,796,003	\$5,218,884	\$4,113,800	\$2,334,732	\$1,585,435	\$1,428,599	\$0	\$0	\$0	\$0
Special Characteristics	\$84,000	\$38,291	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Percentages	\$0	\$0	\$1,032,277	\$2,391,177	\$4,157,059	\$6,131,521	\$5,388,852	\$0	\$0	\$0	\$0
Demographics	\$0	\$0	\$275,000	\$388,642	\$1,160,771	\$0	\$0	\$0	\$0	\$0	\$0
Other Factors	\$0	\$0	\$0	\$0	\$0	\$610,704	\$113,936	\$0	\$0	\$0	\$0
High-Cost Individuals	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$9,043,010
Total Awards	\$9,687,005	\$7,834,294	\$7,120,161	\$7,383,510	\$7,652,562	\$8,207,660	\$8,930,387	\$0	\$0	\$0	\$9,043,010
Available State Funds	\$14,600,000	\$12,000,000	\$12,000,000	\$12,000,000	\$12,000,000	\$12,000,000	\$8,500,000	\$8,500,000	\$8,500,000	\$8,500,000	\$10,743,750
Balance	\$4,902,995	\$4,165,706	\$4,873,839	\$4,606,491	\$4,347,438	\$3,792,340	\$1,569,609	\$8,500,000	\$8,500,000	\$8,500,000	\$1,700,740
	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
High-Cost Individuals	\$794,626	\$214,600	\$626,099	\$1,568,168	\$1,842,166	\$4,264,609	\$4,708,946	\$11,924,437	\$10,448,259	\$14,643,023	\$14,727,142
Available Federal Funds	\$2,250,000	\$2,250,000	\$2,250,000	\$2,250,000	\$2,750,000	\$2,750,000	\$2,750,000	\$12,873,000	\$12,873,000	\$12,873,000	\$11,349,000
Balance	\$1,455,374	\$2,035,391	\$1,623,901	\$683,832	\$807,834	-\$1,514,509	-\$2,048,946	\$948,563	\$2,428,741	-\$1,770,023	-\$378,142

The 12.7 Percent Cap

16 I conclude that the cap in Section 507 that denies payment of excess cost allocation for that
 17 portion of a school district's special education population over 12.7 percent of the district's FTE
 18 student population is unconstitutional as applied because there is no safety net or other alternative
 19 that permits affected school districts to seek redress from the limitations of the cap. In the manner
 20 in which the cap is currently applied, it violates the State's duty to make ample provision for the
 21 education of all special education students, as required by article IX, section 1 of the constitution.
 22 As a result of application of the cap in sy2005-06, excess cost allocation was denied to school
 23 districts for 5,464 special education students, and the districts affected experienced a loss of \$21.6
 24 million of excess cost allocation.

25 Conversely, I conclude that a cap on the population eligible for excess cost allocation is
 26 constitutional if (1) the cap is imposed for a rational legislative purpose, (2) the level of the cap has
 27
 28

1 been established rationally, and (3) there is a safety net process that permits a school district the
2 opportunity to show that without additional allocation its special education program cannot be fully
3 funded. The 12.7 percent cap in Section 507 passes the first two tests, but as presently applied, fails
4 the third.

5 The 12.7 percent cap was created as a way to control the growth of special education
6 population as a percentage of total student population by compelling school districts to confront
7 over-identification of special education students. The cap was a rational choice by the legislature to
8 meet a significant problem. When the cap was created in 1995, special education population was
9 growing at a rate of 10 percent per year, or about twice as fast as the basic education population. It
10 was growing about twice as fast as the revenue limitations of I-601 would permit. The legislature
11 had before it three studies, Exhibits 92, 93, and 94, that each concluded the then current approach
12 encouraged over-identification of special education students. Setting 12.7 percent as the level for
13 imposition of the cap was also a rational choice. It was, and is today, supported by similar
14 percentages nation wide, and at the time of enactment the 12.7 percent level was higher than the
15 percentage of special education population in Washington.

16 The State's funding formula approach to special education funding (the excess cost
17 methodology) is rational (and constitutional) because while it is based on average services and
18 costs, those averages are computed on a whole spectrum of disabilities and needs. For each eligible
19 special education student, a school district receives an average basic education allocation and an
20 average excess cost allocation based upon the 0.9309 multiplier. Some students will be educated
21 for less, some will cost more, but the theory of the funding formula approach is that the cost of each
22 student will be funded. This applies whether the special education population of the district is 10
23 percent or 15 percent; the funding for the district is based on a per capita amount for each eligible
24 student. A cap without a safety net changes that. It assures that districts whose special education
25 population exceed 12.7 percent will not receive any excess cost allocation for those students above
26 the cap. As noted above, the funding formula approach is based on averages that provide the same
27 excess cost allocation whether the cost of educating the student is above or below average.

28

1 However, no evidence in this case suggests that the cost of educating a special education student
2 above the cap is averaged into the allocation paid for students below the cap – and neither party
3 contended that it was. Accordingly, it is clear that while the State’s funding formula approach can
4 amply provide for a special education student even if the costs of educating that student exceed
5 1.9309 times BEA, the same formula does not amply provide for a student above the cap who is
6 simply excluded from the funding formula.

7 A safety net is not the only approach to addressing the constitutional imperative to provide
8 for students above the cap. It is addressed here because it was the solution originally implemented
9 by the legislature when the cap was created, before it was eliminated by lack of funding in sy2002-
10 03.

11 A cap with a safety net permits a school district to seek the excess cost allocation for its
12 students over the cap, but gives the State the opportunity to analyze the district’s entire special
13 education program, to assure before payment of safety net funds that the district’s special education
14 students are eligible and have current, properly formulated IEPs, that the district is accessing all
15 available revenue, and that it is operating a reasonably efficient special education program. Such
16 close scrutiny for every district every year would not be practical, so a cap with a safety net is a very
17 rational alternative; it addresses the State’s interest in preventing over-identification of special
18 education students by permitting close scrutiny of districts that exceed the cap, while at the same
19 time providing ample funding for all eligible special education students.

20 **Application of the Safety Net to the Funding Formula Deficit**

21 In part two of their Summary of Claims,¹⁷ plaintiffs contend:

22 Safety Net is unconstitutional in that it does not provide a sufficient means of access for
23 all school districts’ full demonstration of need.

24 As explained in their *Supplemental Trial Brief*, p 9-10, plaintiffs’ argument has two parts:
25 first, the safety net is inadequate because it does not address the gap “between overall demonstrated
26 need” and State funding; and second, safety net funding of any kind is unconstitutional because it is

27 ¹⁷ Plaintiffs’ Closing Argument Rebuttal, p 5.
28

1 not sufficiently dependable and regular to serve as an adequate funding source, citing *Seattle School*
2 *Dist. No. 1 v. State*, 90 Wn.2d 476, 524-27, 458 P.2d 71 (1978). The apparent inconsistency in
3 these two parts is difficult to address, so I will not try. I reject the second part and will address the
4 first.

5 I reject the second part because the case cited by plaintiffs does not make dependable and
6 regular funding a constitutional requirement. Rather, *Seattle School Dist.* required that revenue for
7 schools come from a dependable and regular tax source. The court rejected special levies as a
8 taxing source. *Seattle School Dist.*, 90 Wn.2d at 526. Dependable and regular funding by the
9 legislature has never been a constitutional test.

10 As regards the first part, I am not persuaded that safety net must be part of the State's
11 constitutional duty of ample provision for special education, and therefore am not persuaded that
12 inadequate access to safety net revenue violates the constitution. This claim is denied. Safety net is
13 not any part of a constitutionally mandated duty of the legislature, it is a tool available to the
14 legislature to use as it chooses. It is a tool that may in some instances be used by the legislature to
15 save a feature of its education funding program that might otherwise violate the constitution – for
16 example, a feature that caps the number students for whom excess cost allocation will be paid and
17 categorically excludes those over the cap, as in this case with the 12.7 percent cap, or in *School*
18 *Funding III*, with the A-B-C-D formula. In constitutional review of an education funding approach,
19 a court may consider the legislature's choice to include a safety net when determining whether the
20 funding approach satisfies the constitution; but a court cannot declare that the legislature's decision
21 to forgo safety net unconstitutional. Courts must defer decisions about the details of a funding
22 approach to the legislature; courts must avoid micromanaging policies that are clearly the province
23 of the legislature. In addressing the constitutionality of the 12.7 percent cap, I declared that feature
24 of the legislature's approach unconstitutional. I further opined that the safety net for that feature,
25 authorized in section 507 but unfunded, could save the cap. I did not declare that the legislature
26 must have a safety net for the cap. Such a declaration is beyond my power, it is a decision for the
27 legislature. Here, in the second part of the safety net claim, plaintiffs contend that safety net is
28

1 underfunded and too restrictive to meet the districts' demonstrated unmet need. That is an issue to
2 defer to the legislature. My judicial responsibility is to consider the funding approach as
3 implemented by the legislature and to consider whether the approach is so inadequate that it violates
4 article IX, section 1. I have done that in the Funding Formula section of this opinion and declared
5 against the plaintiffs.

6 **Indirect Costs**

7 This claim fails for lack of proof. All school district indirect expenditures are accounted for
8 in Program 97 of the State's program of accounting for expenditures and revenue. Program 97
9 includes all indirect costs. It does not matter which program generates the cost, it can be basic
10 education, special education, or any other program operated by a school district. The school
11 districts report Program 97 expenditures on their annual F196 reports, but do not allocate these
12 indirect expenditures to the programs that generate them. The State pays most of these costs, and no
13 attempt is made to break out the payments into allocation among basic education, special education
14 or other programs. For example, the Lake Washington School District F196 report for sy2004-05
15 shows Program 97 expenditures of \$20,084,105. In the accounting of Program 97 revenue for these
16 costs, state revenue paid \$15,106,206, federal revenue paid \$152,860, and the balance of \$4,824,968
17 was paid by other resources, which witnesses identified as local levy money. Plaintiffs contend they
18 should receive additional excess cost allocation to pay for special education related indirect
19 expenditures, but at trial no attempt was made to show how reported Program 97 expenditures
20 should be broken out. In the Lake Washington School District example, about 24% of indirect
21 expenditures were paid for by local levy money, but it is impossible to determine what proportion of
22 this money was used to pay special education related indirect expenditures, if any. Exhibit 50, pdf
23 49.

24 In the safety net applications for districts with high cost individual students (HCI safety net
25 category), the demonstration of need application permits a school district to show indirect costs of
26 approximately 4% in making application for additional safety net excess cost allocation. This is
27 reasonable because Program 97 expenditures and payments are not otherwise reflected in the
28

1 application. The fact that additional indirect costs can be included in a safety net application does
2 not prove that State payment of Program 97 indirect expenditures is constitutionally inadequate.

3 Plaintiffs also contend that the 4% indirect cost rate permitted by the State for safety net
4 applications should be higher. They point to the 16.7% rate for indirect expenditures that school
5 districts are permitted to deduct from the reimbursement they must make to the State for unspent
6 federal IDEA funds. The basis for this difference is not explained in the evidence; but in any event,
7 judicially compelled higher rates would be a micromanaging education. *Brown v. State*, 155 Wn.2d
8 254, 261, 119 P.3d 341 (2005) (“This court will not micromanage education and will give great
9 deference to the acts of the legislature.”)

10 Supplemental Contracts

11 Plaintiffs contend that it is unconstitutional to exclude supplemental contracts from the
12 State’s obligation to fund basic education for special education students. The prohibition against
13 State payment of supplemental contracts is not limited to special education, it encompasses all basic
14 education. RCW 28A.400.200(4) provides, in relevant part:

15 Salaries and benefits for certificated instructional staff may exceed the limitations in
16 subsection (3) of this section only by separate contract for additional time, additional
17 responsibilities, or incentives. Supplemental contracts shall not cause the state to incur
any present or future funding obligation.

18 This statute directs that supplemental contracts cannot be part of the State’s funding obligation, and
19 so by implication they are not part of basic education. Although the proposition is not stated
20 directly, plaintiffs contend that the statute is unconstitutional, at least for special education. At trial
21 they demonstrated that most special education programs offer supplemental contracts and TRI pay
22 in order to attract and retain special education teachers and administrators, but plaintiffs did not
23 show why such contracts and extra pay are a component of basic education.

24 Basic education is not specifically defined in the Basic Education Act, instead the legislature
25 has enacted a set of goals and declared that the purpose of the Act, “shall be to provide
26 opportunities for all students to develop the knowledge and skills essential to” accomplish those
27 goals. RCW 28A.150.210. The Act is a plan to provide administration and revenue to accomplish
28

1 the goals, with the actual delivery of services left to local school boards. The focus of the Act is
2 clearly on students and the services necessary to educate them.

3 In addition to the Basic Education Act, the legislature has enacted a myriad of other
4 education related laws. The authority to enact these additional education laws falls within the
5 general power and constraints granted the legislature in the constitution, but they are not governed
6 by article IX, section 1. The provision for supplemental contracts, including TRI pay, is such a law.
7 It is included in chapter 28A.400 RCW, which addresses education employees. Given the
8 invaluable service they provide, the level of pay for teachers and staff and the manner in which they
9 are paid are matters of great concern for citizens and the legislature. Nevertheless, those issues are
10 not part of an article IX, section 1, analysis. There is no basis here for declaring RCW
11 28A.400.200(4) unconstitutional.

12 Federal IDEA Funds Diversion

13 In this part, plaintiffs contend:

14 The State cannot divert federal funds to pay for state obligations for salary increases, as
15 federal funds are no more dependable and reliable than local levy funding.

16 *Plaintiffs' Closing Argument Rebuttal*, p 5. The only evidence of this issue offered at trial was the
17 cryptic testimony of Dr. Brian Benzel, superintendent of the Spokane School District, who testified
18 that the district's excess cost allocation for sy2004-05 was reduced by \$127.35 per student because
19 federal IDEA funds were used to offset teacher salary and benefit increases, thereby reducing the
20 BEA and consequently the excess cost allocation. No explanation of why this occurred was offered,
21 except a single short paragraph in the State's *Administrative Budgeting and Reporting Handbook* . .
22 ., Exhibit 4, pdf 79, where it is noted, "The Legislature assumes that the districts will obtain funding
23 for these increases from the district's increase in IDEA funding for 2004-05. This integration will
24 not impact the amount of IDEA funding received by a district." This evidence is wholly inadequate
25 to prove violation of the constitution beyond a reasonable doubt.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

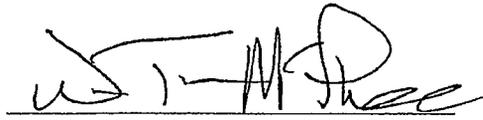
Retained Jurisdiction

I decline to retain jurisdiction in this case.

[A] trial court's decision to retain jurisdiction is inconsistent with the assumption that the Legislature will comply with the [court's] judgment and its constitutional duties.

Seattle School Dist. No. 1 v. State, 90 Wn.2d 476, 538, 458 P.2d 71 (1978)

Dated March 1, 2007



Thomas McPhee, Judge

APPENDIX 2

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

<input type="checkbox"/> EXPEDITE <input type="checkbox"/> No Hearing is Set <input checked="" type="checkbox"/> Hearing is Set: Date: April 10, 2007 Time: 1:30 p.m. Judge Wm. Thomas McPhee
--

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

SCHOOL DISTRICTS' ALLIANCE
FOR ADEQUATE FUNDING OF
SPECIAL EDUCATION, et al.,

Plaintiffs,

v.

THE STATE OF WASHINGTON, et al.,

Defendants.

NO. 04-2-02000-7

FINDINGS OF FACT AND
CONCLUSIONS OF LAW (CR 52)
[PROPOSED]

This matter came on for trial before the Honorable William Thomas McPhee, Judge of the Superior Court of Washington in Thurston County. Trial commenced on October 30, 2006 and fact-finding concluded on November 20, 2006. The parties presented their closing arguments on December 1, 2006. The Court issued a written Court's Opinion on March 1, 2007. The Opinion is attached hereto and incorporated by reference herein.

Kirkpatrick & Lockhart Preston Gates Ellis L.L.P. and attorneys John Bjorkman and Cabrelle Abel represented plaintiffs in this case. The Washington Attorney General's Office, through Assistant Attorneys General William Clark, Newell Smith and Drew Zavatsky, represented defendants.

ORIGINAL

1 The Court, having heard the testimony presented by the parties, having reviewed all
2 exhibits and deposition excerpts admitted into evidence, having considered the legal
3 memoranda and closing argument by the parties, and having issued its written Opinion in this
4 case on March 1, 2007, enters the following:

5 **I. FINDINGS OF FACT**

6 **A. Parties**

7 1. The plaintiffs are an Alliance of public school districts of the State of
8 Washington, and Bellingham School District No. 501, Bethel School District No. 403,
9 Burlington-Edison School District No. 100, Everett School District No. 2, Federal Way School
10 District No. 210, Issaquah School District No. 411, Lake Washington School District No. 414,
11 Mercer Island School District No. 400, Northshore School District No. 417, Puyallup School
12 District No. 3, Riverside School District No. 416, Spokane School District No. 81 ("Plaintiffs"
13 or the "Alliance").

14 2. Defendants are the State of Washington, representatives of the two political
15 branches of government, and the agency bearing overall responsibility for education in
16 Washington State: for the Executive, Governor Christine Gregoire; for the legislature, Brad
17 Owen, President of the Senate, and Frank Chopp, Speaker of the House; and Terry Bergeson,
18 the Superintendent of Public Instruction. The Office of the Superintendent of Public
19 Instruction (OSPI) is responsible for, among other things, allocating special education funding
20 to the school districts, receiving financial reports and enrollment data for special education
21 from the districts, interfacing with the federal government regarding special education funding
22 and reporting requirements and monitoring special education compliance with the requirements
23 of federal and state special education laws and regulations.

24 **B. Basic Framework: Special Education Law**

25 3. In 1971, the Washington legislature recognized the rights of disabled students
26 when it passed the "Education for All Act," chapter 28A.13 RCW (subsequently recodified as

1 chapter 28A.155 RCW). Each biennium, the legislature sets the funding formula for special
2 education through its Appropriations Act, Chapter 518, Laws of Washington 2005, § 507
3 (hereinafter, "Section 507).

4 4. In 1977, the legislature adopted the Basic Education Act, RCW 28A.150.200, *et*
5 *seq.* RCW 28A.150.250 and 28A.150.260 provide for an annual basic education allocation
6 ("the BEA") of state funds based upon the average full-time equivalent (FTE) student
7 enrollment in each school district. The BEA is the same for all FTE students in a district. It is
8 based on the average cost of a basic education for an average student.

9 5. Funding is expanded for special education students. As with the BEA, a district
10 receives revenue calculated as a per capita allocation for each special education student in the
11 district. The population of students receiving special education services, however, is counted
12 differently; it is a headcount of all students in the district receiving special education services,
13 without conversion to full-time equivalency. Like the BEA, this excess cost allocation is based
14 on an average cost—it is the additional cost of educating an average special education student,
15 with average disabilities, in excess of the BEA for that student. Since 1995, the legislature has
16 allocated this excess cost on a formula of 0.9309 times the BEA. Thus, the total allocation for
17 each FTE special education student is 1.9309 X BEA.

18 6. Under state and Federal law, school districts must create an Individualized
19 Education Program ("IEP") for each disabled child.

20 7. A properly formulated IEP determines every handicapped student's appropriate
21 special education program.

22 8. The choices and responsibility for educating children are left to the local
23 districts through the students' IEPs subject to statewide minimum standards.

1 **C. Washington State Special Education Financing System and Funding Formula**

2 9. The legislature selected the 0.9309 times BEA funding formula as part of a new
3 financing system in 1995, and has re-enacted it in every subsequent budget. Washington's
4 experience as of 1995 had demonstrated that the total average cost of educating a special
5 education student was 1.87 times the cost of a basic education student.

6 10 Current national data fixes the total average cost of educating a student
7 receiving special education services (basic education plus special education) at approximately
8 190 percent of the total average cost of the basic education of a student.

9 11. Plaintiffs' expert, Dr. Parrish, found in his 2002 study that nationwide the
10 average total excess expenditures for special education services were about 90% of average
11 total basic education expenditures.

12 12. Pursuant to the funding system initiated in 1995, the legislature provides funds
13 for special education through its budget appropriations acts. Currently, Section 507 provides
14 in relevant part:

- 15 a. Pursuant to RCW 28A.150.390, funding for special education is provided on an
16 excess cost basis. ¶ 1.
- 17 b. School districts shall ensure that special education students as a class receive
18 their full share of the basic education apportionment. ¶ 1.
- 19 c. To the extent school districts can not provide an appropriate education for
20 special education students through the basic education apportionment, services
21 shall be provided using the special education excess cost allocation. ¶ 1.
- 22 d. OSPI shall use the excess cost methodology using the S-275 personnel
23 reporting and other accounting systems to ensure that (a) special education
24 students are basic education students first, (b) as a class, special education
25 students are entitled to the full basic education allocation and (c) special
26 education students are basic education students for the entire school day.
¶ 2(a).
- e. Federal and state funds are distributed based on a headcount of special
education students receiving specially designed instruction in accordance with
a properly formulated IEP. ¶¶ 4 and 5.
- f. The special education allocation for school districts for disabled children birth
through two is the average headcount of those children multiplied by the

1 districts average basic education allocation per each basic education FTE,
2 multiplied by 1.15. For disabled children ages 3 to 21 the multiplier is 0.9309
3 times the average basic education allocation times the "enrollment percent" of
4 special education students to basic education students in that district. ¶ 5(a).

5 g. The special education funding is limited to a maximum 12.7 percent of the
6 general student population for each district. ¶ 6(a).

7 h. A Safety Net is provided that serves as a method for districts with demonstrated
8 need for special education funding beyond the amounts provided above to
9 secure that additional funding. ¶ 8.

10 i. The Safety Net oversight committee ("Committee") awards Safety Net funds. ¶
11 8.

12 j. The Committee first considers unmet needs for districts that can convincingly
13 demonstrate that all legitimate expenditures for special education exceed all
14 available revenues from state funding formulas. ¶ 8(a).

15 k. The Committee then considers the extraordinary high cost needs of one or more
16 of a district's special education students. ¶ 8(b).

17 13. Presently, state Safety Net funds are available for students whose excess cost of
18 special education services exceeds about \$15,000 and federal Safety Net funds are available for
19 excess costs above about \$21,000.

20 **D. Washington State Special Education Financing System: Safety Net**

21 14. The 1995 financing system emerged as a substitute for an earlier system based
22 upon 14 disability categories. The 12.7% cap served, among other interests, the legitimate
23 interest of curbing the growth rate in students identified as in need of special education. At
24 that time, the number of special education students was growing at a much greater rate than the
25 overall student population.

26 15. The Safety Net system has been re-enacted in the special education
appropriations acts in each budget since 1995. The Safety Net system is designed to provide
more monies to districts that are not adequately funded under the formula.

16. Initially, there were two categories of Safety Net funds reimbursable from the
state and one category of Safety Net funds reimbursable from the federal government.

1 17. In 2002, the State eliminated state-funded Safety Net categories. The Safety
2 Net for High Cost Individual Students remained in place.

3 18. The 2002 Safety Net changes eliminated the districts' ability to apply for Safety
4 Net or other additional funding for their special education population above 12.7%.

5 19. By statute, districts applying for Safety Net may not include supplemental
6 contracts in their calculation of demonstration of need. In addition, Section 507 limits the
7 calculation of indirect costs in Safety Net to 4 percent of direct expenditures.

8 20. Prior to the 2004-05 school year, the total amount of Safety Net relief provided
9 by the legislature was never exhausted.

10 21. There was no evidence presented that the cost of educating a special education
11 student above the 12.7% cap is averaged into the allocation paid for students below the cap.

12 22. A cap without a Safety Net assures that districts whose special education
13 populations exceed 12.7 percent will not receive any excess cost allocation for those students
14 above the cap.

15 23. The former Safety Net "Demographics" category was designed to relieve school
16 districts that attract special education students because of the high quality of medical and social
17 services available to the disabled in the area encompassed by the district. Spokane is an
18 example of such a district.

19 **E. Findings Regarding Alleged Underfunding**

20 **F196 Analysis**

21 24. Districts provide annual financial reports (F196 reports) to the Office of the
22 Superintendent of Public Instruction (OSPI) that contain the districts' revenues and
23 expenditures pursuant to OSPI accounting rules.

24 25. The F196 reports do not separate the amounts of basic education revenues that
25 arise due to the special education students residing in each school district.

26

1 26. Special education revenues on the F196 Report do not contain the BEA to
2 which each special education student is entitled.

3 27. The F196 reports do not demonstrate that districts, in fact, are applying the BEA
4 as directed.

5 28. Plaintiffs' expert, Dr. Tom Parrish, also confirmed that the F196-based
6 comparison of excess costs over 4121 revenues cannot establish underfunding of special
7 education.

8 **F. 1077 Cost Accounting Methodology**

9 29. The purpose of the 1077 methodology is to provide a uniform statewide
10 allocation of basic education support for special education services.

11 30. The 1077 methodology includes two key assumptions relevant to this case:

- 12 • Special education students receive their appropriate share of basic education
13 support from basic education staff when served in the regular classroom.
- 14 • When special education students are served outside the regular classroom, basic
15 education dollars follow them to partially support special education services
16 they receive

17 31. The 1077 methodology is solely for allocation of costs; it does not allocate
18 revenue or identify sources of revenue.

19 32. The 1077 worksheet is a series of reasonably complex calculations that allocates
20 to special education and basic education the cost of each special education teacher.

21 33. Examples offered at trial demonstrated that the average (rounded off) allocation
22 of such teacher costs was 38 percent to basic education and 62 percent to special education.

23 **G. Indirect Costs**

24 34. The school districts report all of the district-wide indirect costs (overhead) in
25 Program 97 expenditures on their annual F196 reports.

26 35. The State pays most of these costs.

1 36. No attempt is made on the F-196 to allocate the payments for indirect costs
2 among basic education, special education, or other programs.

3 37. For example, the Lake Washington School District F196 report for sy2004-05
4 shows Program 97 expenditures of \$20,084,105.

5 38. In Lake Washington's accounting of Program 97 revenue for these costs, state
6 revenue paid \$15,106,206, federal revenue paid \$152,860, and the balance of \$4,824,968 was
7 paid by other resources.

8 39. It is impossible to determine what proportion of this money was used to pay
9 special education related indirect expenditures, if any.

10 **H. Supplemental Contracts**

11 40. Most special education programs offer supplemental contracts and time,
12 responsibility, and incentive (TRI) pay in order to attract and retain special education teachers
13 and administrators.

14 41. There was no evidence why such contracts and extra pay are a component of
15 basic education.

16 **I. Federal IDEA Funds**

17 42. The only evidence of this issue at trial was that Spokane's excess cost allocation
18 for sy2004-05, for example, was reduced by \$127.35 per student because federal IDEA funds
19 were used to offset teacher salary and benefit increases, thereby reducing the BEA and
20 consequently the excess cost allocation. No evidence of why this occurred was offered.

21 **J. Plaintiffs' Expert Testimony**

22 45. Dr. Parrish's conclusions concerning the need to change staffing ratios for
23 special education were not persuasive

24 **CONCLUSIONS OF LAW**

25 1. This Court has jurisdiction over the parties and the subject matter of this
26 dispute. Venue in this county is appropriate.

1 2. The acts of the State, acting through the legislature and the Office of
2 Superintendent of Public Instruction, that are subject to scrutiny are those acts that reflect the
3 State's current funding approach. What occurred beforehand may have historical relevance,
4 but is not what is judged here.

5 3. With respect to a challenge under Wash. Const. Art. IX, §§ 1 and 2, a court
6 should presume that an act of the legislature is constitutional; a party challenging a legislative
7 act or statute must prove it unconstitutional beyond a reasonable doubt; the preponderance of
8 evidence standard is applicable to questions of fact and the beyond a reasonable doubt standard
9 is applicable to review of constitutional issues of law; and, the judiciary should defer to the
10 legislature, and restrain its role to providing only broad constitutional guidelines within which
11 the legislature may work.

12 4. The legislature has the authority to select the means to discharge its duty under
13 Wash. Const. Art. IX, § 1 and 2.

14 5. The task of the Court when deciding a facial challenge to legislation is to
15 determine whether the statute or act is unconstitutional on its face without regard to the manner
16 in which it is enforced. A facial challenge must be rejected unless there is no set of
17 circumstances in which the law can constitutionally be applied.

18 6. Section 507 of the appropriations act is not unconstitutional beyond a
19 reasonable doubt on its face or as applied. The amount appropriated in Section 507 is not on
20 its face or as applied so deficient that the appropriation is unconstitutional.

21 7. Plaintiffs also have failed to carry their burden of proving that the special
22 education multiplier of .9309 violates Article IX of the Washington Constitution. The
23 legislature's approach of using a multiplier to couple special education funding to BEA
24 funding is rational and constitutional. The adequacy of the BEA is not an issue before this
25 Court.

26

1 8. Washington's excess cost formula is consistent with current national data on the
2 total average cost of educating a student receiving special education services (Finding of Fact
3 No. 10), and Dr. Parrish's 2002 study (Finding of Fact No. 11).

4 9. Plaintiffs' evidence of the excess of basic education expenditures over the BEA
5 and the testimony of the State's CR 30(b)(6) witness falls well short of that required for
6 constitutional review of basic education funding.

7 10. A special education student is first and foremost a basic education student all
8 during the school day. Thus, a district must expend all of the BEA and all of the excess cost
9 allocation received for its special education students before the district can contend that the
10 legislature has underfunded its special education program.

11 11. The 38% of the BEA for students receiving special education services that the
12 1077 method allocate to basic education in the examples offered at trial (Finding of Fact No.
13 33) is significantly less than the percentage of state support for special education that is BEA.

14 12. The 12.7 percent cap was created as a way to control the growth of the special
15 education population as a percentage of the total student population by compelling school districts
16 to confront over-identification of special education students. The cap was a rational choice by the
17 legislature to meet a significant problem.

18 13. Though the 12.7 percent cap is rational and constitutional, its application in
19 Section 507, without allowing districts over the cap to apply for additional funding, through
20 Safety Net or otherwise, is unconstitutional and in violation of Article IX, Section 1, of the
21 State Constitution.

22 14. A cap with a safety net permits a school district to seek the excess cost
23 allocation for its students over the cap, but gives the State the opportunity to analyze the
24 district's entire special education program, to assure before an award of safety net funds that
25 the district's special education students are eligible and have current, properly formulated IEPs,
26

1 that the district is accessing all available revenue, and that it is operating a reasonably efficient
2 special education program.

3 15. A safety net is not the only approach to addressing the constitutional imperative
4 to fund special education. The legislature can, but is not obliged to, use a Safety Net. The
5 means of satisfying the constitutional duty to fund education remains the legislature's
6 exclusive prerogative.

7 16. A safety net is not part of the State's constitutional duty to make ample
8 provision for special education.

9 17. Dependable and regular funding has never been a constitutional requirement.
10 Rather, revenue for schools must come from a dependable and regular tax source.

11 18. The conditions and limitations in Section 507 do not, on their face or as applied,
12 limit districts' access to Safety Net funds beyond a reasonable doubt.

13 19. There is no persuasive evidence of a difference between the BEA and basic
14 education expenditures; the BEA is required by law to be the cost of basic education ("fully
15 funded", RCW 28A.150.250).

16 20. Districts applying for Safety Net funding may not include indirect costs of 16.7
17 percent (the average state recovery rate) in computing eligibility for Safety Net funds. The State
18 currently allows indirect costs of approximately 4 percent for such applications. This is
19 reasonable. The fact that a higher rate could be used or that additional indirect costs could be
20 included in Safety Net applications does not prove that the failure to use another rate is
21 constitutionally inadequate.

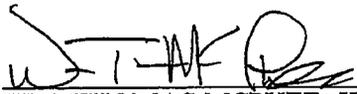
22 21. Supplemental contracts and TRI pay are not part of an article IX, section 1,
23 constitutional analysis. There is no basis here for declaring RCW 28A.400.200(4)
24 unconstitutional.

25 22. Plaintiffs' evidence regarding the alleged diversion of Federal IDEA funds is
26 wholly inadequate to prove a constitutional violation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

23. Finally, there is no basis to retain jurisdiction in this case.

DATED this 12 day of April, 2007.


WM. THOMAS MCPHEE, JUDGE

Presented by:

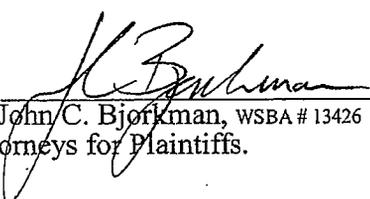
ROBERT M. MCKENNA
Attorney General



WILLIAM G. CLARK, WSBA # 9234
Assistant Attorney General
Attorneys for Defendants

Approved as to form;
Approved for entry:

KIRKPATRICK & LOCKHART PRESTON
GATES ELLIS LLP

By 
John C. Bjorkman, WSBA # 13426
Attorneys for Plaintiffs.

The above findings and conclusions are prepared by defendant (and approved for entry by plaintiff) from the court's 27 page written opinion on file herein. I intend that the written opinion be incorporated into my findings and conclusions.



COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<input type="checkbox"/>	EXPEDITE (if filing within 5 court days of hearing)
<input checked="" type="checkbox"/>	Hearing is set:
	Date: <u>April 10, 2007</u>
	Time: <u>1:30 pm</u>
	Judge/Calendar <u>Hon. Wm. Thomas McPhee</u>

RECEIVED

APR 16 2007

ATTORNEY GENERAL OFFICE
SEATTLE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

SCHOOL DISTRICTS' ALLIANCE FOR
ADEQUATE FUNDING OF SPECIAL
EDUCATION, et al.,

Plaintiffs,

v.

STATE OF WASHINGTON; et al.,

Defendants.

No. 04-2-02000-7

JUDGMENT AND ORDER

This matter came on for trial before the Hon. William Thomas McPhee, Thurston County Superior Court Judge, beginning October 30, 2006, and concluding on November 20, 2006, with closing argument to the Court on December 1, 2006. The Court issued its Court's Opinion on March 1, 2007 ("Opinion") and its Findings of Fact and Conclusions of Law this day. Based upon the Opinion and the Findings of Fact and Conclusions of Law:

NOW, therefore, it is hereby ADJUDGED and DECREED:

1. The 12.7% cap contained in Chapter 518, Laws of Washington 2005, § 507 and subsequently re-enacted in Chapter 372, Laws of Washington 2006, Section 507, is

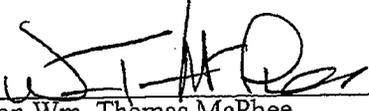
ORIGINAL

1 unconstitutional as applied, insofar as there is no provision, such as Safety Net, for
2 districts over the cap to apply for or to receive full funding.

3 2. Plaintiffs' remaining claims are dismissed with prejudice.

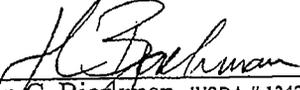
4 3. By the parties' agreement, each side bears its own costs.

5 DONE IN OPEN COURT this 12 day of April, 2007.

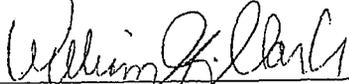
6
7
8 
9 _____
Hon Wm. Thomas McPhee
Thurston County Superior Court Judge

10
11 Approved as to Form;
12 Approved for Entry:

13 KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP

14 By 
15 _____
John C. Bjorkman, WSBA # 13426
16 Attorneys for Plaintiff School Districts'
Alliance for Adequate Funding
17 of Special Education, et al.

18 ROB MCKENNA
19 Attorney General

20 By 
21 _____
William G Clark, WSBA # 9234
22 Newell Smith, WSBA # 11974
Assistant Attorneys General,
Attorneys for Defendants

23
24
25

APPENDIX 3

RECEIVED

APR 23 2008

ATTORNEY GENERAL'S OFFICE
COMPLEX LITIGATION
SEATTLE

No. 36294-5-II

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

SCHOOL DISTRICTS'
ALLIANCE FOR ADEQUATE
FUNDING OF SPECIAL
EDUCATION, et al.,

Appellants,

v.

THE STATE OF
WASHINGTON, et al.,

Respondents.

APPELLANTS' RAP 10.8
STATEMENT OF ADDITIONAL
AUTHORITIES

Pursuant to RAP 10.8, the School Districts' Alliance for Adequate Funding of Special Education, together with its twelve member districts, respectfully submits the following additional authorities. These authorities relate to Assignment of Error No. 5 (the trial court erred in its CL 6 that the special education funding system, and the amount appropriated, are constitutional.) and Assignment of Error No. 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):

1. Washington Constitution, art. VIII, § 4.

2. *State ex rel. Day v. Martin*, 64 Wn.2d 511, 516-19, 392
P.2d 435 (1964).

3. *State of Washington ex rel. Bloedel-Donavan Lumber Mills*
v. Clausen, 122 Wash. 531, 533-34, 211 P. 281 (1922).

RESPECTFULLY SUBMITTED this 23rd day of April,
2008.

KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP

By 
John C. Bjorkman, WSBA # 13426
Christopher L. Hirst, #06178
Grace T. Yuan, WSBA # 20611
Robert B. Mitchell, WSBA # 10874

925 Fourth Avenue
Suite 2900
Seattle, WA 98104-1158
(206) 623-7580

No. 809101

(Court of Appeals No. 36294-5-II)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SCHOOL DISTRICTS'
ALLIANCE FOR ADEQUATE
FUNDING OF SPECIAL
EDUCATION, et al.,

Appellants,

v.

THE STATE OF
WASHINGTON, et al.,

Respondents.

CERTIFICATE OF SERVICE

I, Katie Melchior, state as follows:

I am an employee of Kirkpatrick & Lockhart Preston Gates Ellis LLP, a citizen of the United States and a resident of the County of King, State of Washington and am over 18 years of age and not a party to this action.

On April 23, 2008, I caused true and correct copies of Appellants' RAP 10.8 Statement of Additional Authorities to be hand delivered to:

Bill Clark, Assistant Attorney General Washington State
Office of the Attorney General
800 5th Ave, Suite 2000
Seattle, WA 98104

Susan Schreurs
Tacoma School District No. 10
PO Box 1357
Tacoma, WA 98401-1357

DATED this 23rd day of April, 2008.

Katie Melchior
Katie Melchior

APPENDIX 4

date of the notice, additional interest shall be computed until the date of payment.

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the calendar year in which a Washington return is due under this chapter, including any extension of time for filing, except upon a showing of fraud or of misrepresentation of a material fact by the taxpayer or as provided under subsection (4) or (5) of this section or as otherwise provided in this chapter.

(4) For persons liable for tax under RCW 83.100.120, the period for assessment or correction of an assessment shall extend an additional three years beyond the period described in subsection (3) of this section.

(5) A taxpayer may extend the periods of limitation under subsection (3) or (4) of this section by executing a written waiver. The execution of the waiver shall also extend the period for making a refund as provided in RCW 83.100.130.

Sec. 15. RCW 83.100.210 and 1996 c 149 s 18 are each amended to read as follows:

(1) The following provisions of chapter 82.32 RCW have full force and application with respect to the taxes imposed under this chapter unless the context clearly requires otherwise: RCW 82.32.110, 82.32.120, 82.32.130, 82.32.320, and 82.32.340. The definitions in this chapter have full force and application with respect to the application of chapter 82.32 RCW to this chapter unless the context clearly requires otherwise.

(2) The department may enter into closing agreements as provided in RCW 82.32.350 and 82.32.360.

NEW SECTION. Sec. 16. A new section is added to chapter 83.100 RCW to read as follows:

All receipts from taxes, penalties, interest, and fees collected under this chapter must be deposited into the education legacy trust account.

NEW SECTION. Sec. 17. The following acts or parts of acts are each repealed:

(1) RCW 83.100.030 (Residents—Estate tax imposed—Credit for tax paid other state) and 1988 c 64 s 3 & 1981 2nd ex.s. c 7 s 83.100.030; and

(2) RCW 83.100.045 (Generation-skipping transfers—Tax imposed—Credit for tax paid to another state) and 1988 c 64 s 5.

NEW SECTION. Sec. 18. The repealed sections in section 17 of this act do not affect any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order adopted under those statutes nor do they affect any proceeding instituted under them.

Sec. 19. RCW 83.100.010 and 1988 c 64 s 1 are each amended to read as follows:

This chapter may be cited as the "Estate and Transfer Tax Act ((of 1988))."

NEW SECTION. Sec. 20. This act applies prospectively only and not retroactively. Sections 2 through 17 of this act apply only to estates of decedents dying on or after the effective date of this section.

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

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

Passed by the Senate April 19, 2005.

Passed by the House April 22, 2005.

Approved by the Governor May 17, 2005.

Filed in Office of Secretary of State May 17, 2005.

CHAPTER 517

[Engrossed Senate Bill 6121]

FISCAL MATTERS—DEPARTMENT OF AGRICULTURE

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

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

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

FOR THE DEPARTMENT OF AGRICULTURE

General Fund—State Appropriation (FY 2006) \$1,500,000

General Fund—State Appropriation (FY 2007) \$500,000

TOTAL APPROPRIATION \$2,000,000

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

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

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

Passed by the Senate April 23, 2005.

Passed by the House April 24, 2005.

Approved by the Governor May 17, 2005.

Filed in Office of Secretary of State May 17, 2005.

CHAPTER 518

[Engrossed Substitute Senate Bill 6090]

FISCAL MATTERS

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

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

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

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

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

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

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

(c) "FTE" means full time equivalent.

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

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

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

**PART I
GENERAL GOVERNMENT**

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

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

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

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

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

(b) *The committee shall develop recommendations for specific statutory and constitutional provisions to establish or revise the following: (i) Spending limitations; (ii) tax limits; (iii) emergency reserve accounts; and (iv) tax reforms necessary to create a sustainable system of state and local finance, improve the fairness of state and local taxation, and improve the competitiveness of the state's economy.*

(c) *The committee shall conduct a series of public hearings on these topics and its proposed recommendations. The hearings shall be held in locations by across the state and shall be structured to encourage full participation by persons who represent a balance of perspectives and constituencies. The committee shall submit its findings and recommendations in a report to the fiscal committees of the legislature by January 1, 2006.*

(d) *The committee shall use legislative facilities and staff from the office of program research. The department of revenue shall provide necessary support and information to the committee. The chair of the committee shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. All expenses of the committee, including travel, shall be paid by the house of representatives.*

(2) \$25,000 of the general fund—state appropriation for fiscal year 2006 is provided solely for the children's and family services task force established in Engrossed Substitute Senate Bill No. 5872 (family/children's department). If the bill is not enacted by June 30, 2005, the amount provided in this subsection shall lapse.

*Sec. 101 was partially vetoed. See message at end of chapter.

NEW SECTION. Sec. 102. FOR THE SENATE

General Fund—State Appropriation (FY 2006)	.....	\$23,253,000
General Fund—State Appropriation (FY 2007)	.....	\$25,368,000
TOTAL APPROPRIATION	.....	\$48,621,000

The appropriations in this section are subject to the following conditions and limitations: \$25,000 of the general fund—state appropriation for fiscal year 2006 is provided solely for the children's and family services task force established in Engrossed Substitute Senate Bill No. 5872 (family/children's department). If the bill is not enacted by June 30, 2005, the amount provided in this subsection shall lapse.

NEW SECTION. Sec. 103. FOR THE JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

General Fund—State Appropriation (FY 2006)	.....	\$2,531,000
General Fund—State Appropriation (FY 2007)	.....	\$1,953,000
TOTAL APPROPRIATION	.....	\$4,484,000

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

(1) Notwithstanding the provisions in this section, the committee may adjust the due dates for projects included on the committee's 2005-07 work plan as necessary to efficiently manage workload.

(2)(a) \$100,000 of the general fund—state appropriation for fiscal year 2006 is provided solely for a study of the basic health plan. Part 1 of the study shall examine the extent to which basic health plan policies and procedures promote

(2) \$222,000 of the aquatic invasive species prevention account—state appropriation is provided solely for the implementation of Engrossed Substitute Senate Bill No. 5699 (aquatic invasive species). If the bill is not enacted by June 30, 2005, the amount provided in this subsection shall lapse.

(3) \$250,000 of the general fund—state appropriation for fiscal year 2006 is provided solely for the implementation of Engrossed House Bill No. 1241 (vehicle licensing and registration). If the bill is not enacted by June 30, 2005, the amount provided in this subsection shall lapse.

PART V EDUCATION

NEW SECTION. Sec. 501. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

(1) STATE AGENCY OPERATIONS

General Fund—State Appropriation (FY 2006)	\$12,946,000
General Fund—State Appropriation (FY 2007)	\$12,870,000
General Fund—Federal Appropriation	\$30,248,000
TOTAL APPROPRIATION	\$56,064,000

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

(a) \$10,836,000 of the general fund—state appropriation for fiscal year 2006 and \$10,910,000 of the general fund—state appropriation for fiscal year 2007 are provided solely for the operation and expenses of the office of the superintendent of public instruction. Within the amounts provided in this subsection, the superintendent shall recognize the extraordinary accomplishments of four students who have demonstrated a strong understanding of the civics essential learning requirements to receive the Daniel J. Evans civic education award. The students selected for the award must demonstrate understanding through completion of at least one of the classroom-based civics assessment models developed by the superintendent of public instruction, and through leadership in the civic life of their communities. The superintendent shall select two students from eastern Washington and two students from western Washington to receive the award, and shall notify the governor and legislature of the names of the recipients.

(b) \$428,000 of the general fund—state appropriation for fiscal year 2006 and \$428,000 of the general fund—state appropriation for fiscal year 2007 are provided solely for the operation and expenses of the state board of education, including basic education assistance activities.

(c) \$509,000 of the general fund—state appropriation for fiscal year 2006 and \$504,000 of the general fund—state appropriation for fiscal year 2007 are provided solely for the operation and expenses of the Washington professional educator standards board. Within the amounts provided in this subsection, the Washington professional educator standards board shall pursue the implementation of recent study recommendations including: (i) Revision of teacher mathematics endorsement competencies and alignment of teacher tests to the updated competencies, and (ii) development of mathematics specialist endorsement.

(d) \$100,000 of the general fund—state appropriation for fiscal year 2006 is provided solely for increased attorney general fees related to *School Districts' Alliance for Adequate Funding of Special Education et al. v. State of Washington et al.*, Thurston County Superior Court Cause No. 04-2-02000-7.

(e) \$950,000 of the general fund—state appropriation for fiscal year 2006 and \$950,000 of the general fund—state appropriation for fiscal year 2007 are provided solely for replacement of the apportionment system, which includes the processes that collect school district budget and expenditure information, staffing characteristics, and the student enrollments that drive the funding process.

(f)(i) \$45,000 of the general fund—state appropriation for fiscal year 2006 is provided solely for the office of the superintendent of public instruction and the department of health to collaborate and develop a work group to assess school nursing services in class I school districts. The work group shall consult with representatives from the following groups: School nurses, schools, students, parents, teachers, health officials, and administrators. The work group shall:

(A) Study the need for additional school nursing services by gathering data about current school nurse-to-student ratios in each class I school district and assessing the demand for school nursing services by acuity levels and the necessary skills to meet those demands. The work group also shall recommend to the legislature best practices in school nursing services, including a dedicated, sustainable funding model that would best meet the current and future needs of Washington's schools and contribute to greater academic success of all students. The work group shall make recommendations for school nursing services, and may examine school nursing services by grade level. The work group shall assess whether funding for school nurses should continue as part of basic education; and

(B) In collaboration with managed care plans that contract with the department of social and health services medical assistance administration to provide health services to children participating in the medicaid and state children's health insurance program, identify opportunities to improve coordination of and access to health services for low-income children through the use of school nurse services. The work group shall evaluate the feasibility of pooling school district and managed care plan funding to finance school nurse positions in school districts with high numbers of low-income children.

(ii) The office of superintendent of public instruction shall report the work group's findings and plans for implementation to the legislature by February 1, 2006.

(g) \$78,000 of the general fund—state appropriation for fiscal year 2006 and \$78,000 of the general fund—state appropriation for fiscal year 2007 are provided solely to provide direct services and support to schools around an integrated, interdisciplinary approach to instruction in conservation, natural resources, sustainability, and human adaptation to the environment. Specific integration efforts will focus on science, math, and the social sciences. Integration between basic education and career and technical education, particularly agricultural and natural sciences education, is to be a major element.

(2) STATEWIDE PROGRAMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) For the purposes of this section:

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

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

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

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

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

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

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

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

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

- (1) \$3,000,000 of the general fund—state appropriation for fiscal year 2006 and \$3,000,000 of the general fund—state appropriation for fiscal year 2007 are provided for state matching money for federal child nutrition programs.
- (2) \$100,000 of the general fund—state appropriation for fiscal year 2006 and \$100,000 of the 2007 fiscal year appropriation are provided for summer food programs for children in low-income areas.
- (3) \$47,000 of the general fund—state appropriation for fiscal year 2006 and \$59,000 of the general fund—state appropriation for fiscal year 2007 are provided solely to reimburse school districts for school breakfasts served to students enrolled in the free or reduced price meal program pursuant to House Bill No. 1771 (requiring school breakfast programs in certain schools). If House Bill No. 1771 is not enacted by June 30, 2005, the amounts provided in this subsection shall lapse.

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

General Fund—State Appropriation (FY 2006)	\$460,032,000
General Fund—State Appropriation (FY 2007)	\$471,961,000
General Fund—Federal Appropriation	\$435,464,000
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:

[2600]

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

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

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

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

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

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

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

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

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

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

NEW SECTION. Sec. 508. FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR EDUCATIONAL SERVICE DISTRICTS
 General Fund—State Appropriation (FY 2006) \$3,694,000
 General Fund—State Appropriation (FY 2007) \$3,724,000
TOTAL APPROPRIATION \$7,418,000

[2601]

28A.150.240

COMMON SCHOOL PROVISIONS

(f) Give careful attention to the safety of the student in the classroom and report any doubtful or unsafe conditions to the building administrator.

(g) Evaluate each student's educational growth and development and make periodic reports thereon to parents, guardians, or custodians and to school administrators.

Failure to carry out such requirements as set forth in subsection (2) (a) through (g) above shall constitute sufficient cause for discharge of any member of such teaching or administrative staff.

Formerly § 28A.58.760, enacted by Laws 1977, Ex.Sess., ch. 359 § 19, eff. Sept. 1, 1978. Amended by Laws 1979, Ex.Sess., ch. 250, § 5, eff. Aug. 15, 1979. Recodified as § 28A.150.240 by Laws 1990, ch. 33, § 4.

Historical and Statutory Notes

Effective date—Severability—Laws 1979, Ex.Sess., ch. 250: See Historical and Statutory Notes following § 28A.150.220.
Effective date—Severability—Laws 1977, Ex.Sess., ch. 359: See Historical and Statutory Notes following § 28A.150.200.

Library References

Schools ⇨ 147.
WESTLAW Topic No. 345.

C.J.S. Schools and School Districts
§§ 237, 238.

28A.150.250. Annual basic education allocation of funds according to average FTE student enrollment—Student/teacher ratio standard

From those funds made available by the legislature for the current use of the common schools, the superintendent of public instruction shall distribute annually as provided in RCW 28A.510.250 to each school district of the state operating a program approved by the state board of education an amount which, when combined with an appropriate portion of such locally available revenues, other than receipts from federal forest revenues distributed to school districts pursuant to RCW 28A.520.010 and 28A.520.020, as the superintendent of public instruction may deem appropriate for consideration in computing state equalization support, excluding excess property tax levies, will constitute a basic education allocation in dollars for each annual average full time equivalent student enrolled, based upon one full school year of one hundred eighty days, except that for kindergartens one full school year shall be one hundred eighty half days of instruction, or the equivalent as provided in RCW 28A.150.220.

Basic education shall be considered to be fully funded by those amounts of dollars appropriated by the legislature pursuant to RCW 28A.150.250 and 28A.150.260 to fund those program requirements identified in RCW 28A.150.220 in accordance with the formula and

116

GENERAL PROVISIONS

28A.150.250

ratios provided in RCW 28A.150.260 and those amounts of dollars appropriated by the legislature to fund the salary requirements of RCW 28A.150.100 and 28A.150.410.

Operation of a program approved by the state board of education, for the purposes of this section, shall include a finding that the ratio of students per classroom teacher in grades kindergarten through three is not greater than the ratio of students per classroom teacher in grades four and above for such district: *Provided*, That for the purposes of this section, "classroom teacher" shall be defined as an instructional employee possessing at least a provisional certificate, but not necessarily employed as a certificated employee, whose primary duty is the daily educational instruction of students: *Provided further*, That the state board of education shall adopt rules and regulations to insure compliance with the student/teacher ratio provisions of this section, and such rules and regulations shall allow for exemptions for those special programs and/or school districts which may be deemed unable to practicably meet the student/teacher ratio requirements of this section by virtue of a small number of students.

If a school district's basic education program fails to meet the basic education requirements enumerated in RCW 28A.150.250, 28A.150.260, and 28A.150.220, the state board of education shall require the superintendent of public instruction to withhold state funds in whole or in part for the basic education allocation until program compliance is assured: *Provided*, That the state board of education may waive this requirement in the event of substantial lack of classroom space.

Formerly § 28A.41.130, enacted by Laws 1969, Ex.Sess., ch. 223, § 28A.41.130, eff. July 1, 1970. Amended by Laws 1969, ch. 138, § 2, eff. July 1, 1970; Laws 1971, Ex.Sess., ch. 294, § 19, eff. May 21, 1971; Laws 1972, Ex.Sess., ch. 105, § 2, eff. July 1, 1973; Laws 1972, Ex.Sess., ch. 124, § 1, eff. July 1, 1973; Laws 1973, ch. 46, § 2, eff. July 1, 1973; Laws 1973, 1st Ex.Sess., ch. 195, §§ 9, 136, 137, 138, 139, eff. Jan. 1, 1975; Laws 1973, 2nd Ex.Sess., ch. 4, § 1, eff. Jan. 1, 1975; Laws 1975, 1st Ex.Sess., ch. 211, § 1, eff. July 1, 1976; Laws 1977, Ex.Sess., ch. 359, § 4, eff. Sept. 1, 1978; Laws 1979, Ex.Sess., ch. 250, § 2; Laws 1980, ch. 154, § 12, eff. Sept. 1, 1981; Laws 1982, ch. 158, § 2; Laws 1982, ch. 158, § 3, eff. Sept. 1, 1982; Laws 1983, ch. 3, § 30; Laws 1986, ch. 144, § 1, eff. Sept. 1, 1987; Laws 1987, 1st Ex.Sess., ch. 2, § 201, eff. Sept. 1, 1987. Recodified as § 28A.150.250 and amended by Laws 1990, ch. 33, §§ 4, 107.

Historical and Statutory Notes

Intent—Severability—Effective date—Laws 1987, 1st Ex.Sess., ch. 2: See Historical and Statutory Notes following § 84.52.0531.

September 1, 1987." [Laws 1986, ch. 144, § 2.]

Severability—Laws 1982, ch. 158: See Historical and Statutory Notes following § 28A.150.220.

Section 1 of this act shall be effective

117

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—Laws 1980, ch. 154: See Historical and Statutory Notes preceding § 82.45.010.

Effective date—Severability—Laws 1979, Ex.Sess., ch. 250: See Historical and Statutory Notes following § 28A.150.220.

Effective date—Severability—Laws 1977, Ex.Sess., ch. 359: See Historical and Statutory Notes following § 28A.150.200.

Emergency—Effective date—Laws 1973, 2nd Ex.Sess., ch. 4: See Historical and Statutory Notes following § 84.52.043.

Severability—Effective dates and termination dates—Construction—Laws 1973, 1st Ex.Sess., ch. 195: See Historical and Statutory Notes following § 84.52.043.

Effective date—Laws 1972, Ex.Sess., ch. 124: "This 1972 amendatory act is necessary for the immediate preservation of the public peace, health and safety and the support of the state government and its existing public institutions, and sections 2, 3, 4, 6, 7 and 11 shall take effect immediately [February 25, 1972]; sections 1, 8, 9 and 10 hereof shall take effect July 1, 1973; and section 5 hereof shall take effect July 1, 1974." [1972 ex.s. c 124 § 12.] For codification of

Cross References

Basic Education Act of 1977, see § 28A.150.200.
Distribution of forest reserve funds, effect on basic education allocation, see § 28A.520.020.

Excused temporary absences, students claimed as full time equivalent students, see § 28A.225.010.

Administrative Code References

Waivers from minimum one hundred eighty-day school year requirement, see WAC 180-18-040.

Law Review and Journal Commentaries

Constitutionality of taxation for financing Washington public schools; state financing Washington public schools; state financing for local district educational programs. 10 Gonzaga L.Rev. 32 (1975).

Library References

Schools ¶19(1).
WESTLAW Topic No. 345.

Laws 1972, Ex.Sess., ch. 124, see Parallel Reference Tables volume.

Severability—Laws 1972, Ex.Sess., ch. 124: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [Laws 1972, Ex.Sess., ch. 124, § 13.]

Effective date—Laws 1972, Ex.Sess., ch. 105: "This act except for section 4 will take effect July 1, 1973." [Laws 1972, Ex.Sess., ch. 105, § 5.] Section 4 was codified as § 28A.41.170.

Severability—Laws 1972, Ex.Sess., ch. 105: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [Laws 1972, Ex.Sess., ch. 105, § 6.]

Source:

Laws 1909, ch. 97, §§ 7 to 10.
Laws 1911, ch. 118, § 1.
Laws 1923, ch. 96, § 1.
Laws 1945, ch. 141, §§ 4, 5.
RRS §§ 4940-4, 4940-5.
Laws 1949, ch. 212, §§ 1, 2.
Laws 1965, Ex.Sess., ch. 154, § 2.
Laws 1965, Ex.Sess., ch. 171, § 1.
Laws 1967, Ex.Sess., ch. 140, § 3.
Former § 28.41.130.

Notes of Decisions

In general 1
Discretion of superintendent 2
Injunction 4
National forest funds 3
Rules and regulations 5

1. In general

Variations in the assessed valuation per pupil of property utilized in the funding of the school system do not deprive taxpayers or pupils of equal protection of the laws. *Northshore School Dist. No. 417 v. Kinnear* (1974) 84 Wash.2d 685, 530 P.2d 178.

The purpose of the "assumed money" technique, as noted in statute was to equalize state education support by applying an inverse relationship between that support and the amount of a given school district's wealth or taxing capacity, and to encourage local taxing units to assess and tax property at the full, statutory rates in order to obtain full education support. *Island County Committee on Assessment Ratios v. Department of Revenue* (1972) 81 Wash.2d 193, 500 P.2d 756.

The only practical application of the "assumed money" technique set forth in statute within the statewide taxing system wherein counties were the assessing units, was on a county-by-county basis despite the fact that a single school district could be only a part of a county or could be part of two or more counties. *Island County Committee on Assessment Ratios v. Department of Revenue* (1972) 81 Wash.2d 193, 500 P.2d 756.

Computation, grant, and payment of increased salaries of school district employees pursuant to 1965 legislative appropriation. *Op.Atty.Gen. 65-66, No. 22.*

2. Discretion of superintendent

While the Superintendent of Public Instruction is not free to arbitrarily withhold distribution of public funds to the various school districts, some discretion and leeway must be entrusted to the superintendent to avoid a potential deficiency in the latter months of a biennium, and he is not required to expend the total amounts appropriated for school support. *Island County Committee on Assessment*

Ratios v. Department of Revenue (1972) 81 Wash.2d 193, 500 P.2d 756.

3. National forest funds

The Superintendent of Public Instruction, acting under the provisions of statute, is empowered to consider national forest funds as a part of the monies available to school districts prior to distribution of state equalization funds. *Carroll v. Bruno* (1972) 81 Wash.2d 82, 499 P.2d 876.

The distribution of national forest funds allocated to the state government under the provisions of 16 U.S.C.A. § 500 as a contribution in lieu of taxes, is a matter within the discretion of the legislature so long as the funds are used for either public schools or public roads or both. *Carroll v. Bruno* (1972) 81 Wash.2d 82, 499 P.2d 876.

4. Injunction

School district and others did not establish prerequisites for injunction restraining governor from enforcing executive order instituting across-the-board expenditure reduction program to meet state's financial crisis, where, although petitioners had right to ample provision for education, they did not show that they had clear legal right to particular dollar amount of funding. (*Per Brachtenbach, C.J., with three Judges concurring.*) *Seattle School Dist. No. 1 of King County v. State* (1982) 97 Wash.2d 534, 647 P.2d 25.

5. Rules and regulations

Notwithstanding that school district had advance notice that Superintendent of Public Instruction intended to deduct from district's allocation of state basic education funds, revenue received by school district from timber sale from county-owned tax title parcel, Superintendent was required to adopt a rule under the Administrative Procedure Act (ch. 34.04) authorizing that specific deduction before doing so, and postdeduction rule identifying the deduction was not sufficient to cure the deficiency. *Ocosta School Dist. No. 172 v. Brouillet* (1984) 38 Wash.App. 785, 689 P.2d 1382, review denied.

28A.150.260. Annual basic education allocation of funds according to average FTE student enrollment—Procedure to determine distribution formula—Submittal to legislature—Enrollment, FTE student, certificated and classified staff, defined—Minimum classroom contact hours—Waiver

Text of section effective until Sept. 1, 2000, upon conditions. See Historical and Statutory Notes following § 28A.150.205

The basic education allocation for each annual average full time equivalent student shall be determined in accordance with the following procedures:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula based on a ratio of students to staff for the distribution of a basic education allocation for each annual average full time equivalent student enrolled in a common school. The distribution formula shall have the primary objective of equalizing educational opportunities and shall provide appropriate recognition of the following costs among the various districts within the state:

- (a) Certificated instructional staff and their related costs;
 - (b) Certificated administrative staff and their related costs;
 - (c) Classified staff and their related costs;
 - (d) Nonsalary costs;
 - (e) Extraordinary costs of remote and necessary schools and small high schools, including costs of additional certificated and classified staff; and
 - (f) The attendance of students pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district.
- (2)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature. The formula shall be for allocation purposes only. While the legislature intends that the allocations for additional instructional staff be used to increase the ratio of such staff to students, nothing in this section shall require districts to reduce the number of administrative staff below existing levels.

(b) The formula adopted by the legislature shall reflect the following ratios at a minimum: (i) Forty-nine certificated instructional staff to one thousand annual average full time equivalent students enrolled in grades kindergarten through three; (ii) forty-six certificated in-

structional staff to one thousand annual average full time equivalent students in grades four through twelve; (iii) four certificated administrative staff to one thousand annual average full time equivalent students in grades kindergarten through twelve; and (iv) sixteen and sixty-seven one-hundredths classified personnel to one thousand annual average full time equivalent students enrolled in grades kindergarten through twelve.

(c) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect: *Provided*, That the distribution formula developed pursuant to this section shall be for state apportionment and equalization purposes only and shall not be construed as mandating specific operational functions of local school districts other than those program requirements identified in RCW 28A.150.220 and 28A.150.100. The enrollment of any district shall be the annual average number of full time equivalent students and part time students as provided in RCW 28A.150.350, enrolled on the first school day of each month and shall exclude full time equivalent students with disabilities recognized for the purposes of allocation of state funds for programs under RCW 28A.155.010 through 28A.155.100. The definition of full time equivalent student shall be determined by the rules of the superintendent of public instruction: *Provided*, That the definition shall be included as part of the superintendent's biennial budget request: *Provided, further*, That any revision of the present definition shall not take effect until approved by the house appropriations committee and the senate ways and means committee: *Provided, further*, That the office of financial management shall make a monthly review of the superintendent's reported full time equivalent students in the common schools in conjunction with RCW 43.62.050.

(3)(a) Certificated instructional staff shall include those persons employed by a school district who are nonsupervisory employees within the meaning of RCW 41.59.020(8): *Provided*, That in exceptional cases, people of unusual competence but without certification may teach students so long as a certificated person exercises general supervision: *Provided, further*, That the hiring of such noncertificated people shall not occur during a labor dispute and such noncertificated people shall not be hired to replace certificated employees during a labor dispute.

(b) Certificated administrative staff shall include all those persons who are chief executive officers, chief administrative officers, confidential employees, supervisors, principals, or assistant principals within the meaning of RCW 41.59.020(4).

(4) Each annual average full time equivalent certificated classroom teacher's direct classroom contact hours shall average at least twenty-five hours per week. Direct classroom contact hours shall be exclusive of time required to be spent for preparation, conferences, or any other nonclassroom instruction duties. Up to two hundred minutes per week may be deducted from the twenty-five contact hour requirement, at the discretion of the school district board of directors, to accommodate authorized teacher/parent-guardian conferences, recess, passing time between classes, and informal instructional activity. Implementing rules to be adopted by the state board of education pursuant to RCW 28A.150.220(4) shall provide that compliance with the direct contact hour requirement shall be based upon teachers' normally assigned weekly instructional schedules, as assigned by the district administration. Additional record-keeping by classroom teachers as a means of accounting for contact hours shall not be required. Waivers from contact hours may be requested under RCW 28A.305.140.

Formerly § 28A.41.140, enacted by Laws 1969, Ex.Sess., ch. 223, § 28A.41.140, eff. July 1, 1970. Amended by Laws 1969, ch. 130, § 7, eff. July 1, 1970; Laws 1969, Ex.Sess., ch. 217, § 3, eff. July 1, 1970; Laws 1969, Ex.Sess., ch. 244, § 14; Laws 1977, Ex.Sess., ch. 359, § 5, eff. Sept. 1, 1978; Laws 1979, ch. 151, § 12, eff. March 29, 1979; Laws 1979, Ex.Sess., ch. 250, § 3, eff. Aug. 15, 1979; Laws 1983, ch. 229, § 1; Laws 1985, ch. 349, § 5; Laws 1987, 1st Ex.Sess., ch. 2, § 202, eff. Sept. 1, 1987. Recodified as § 28A.150.260 and amended by Laws 1990, ch. 33, §§ 4, 108. Amended by Laws 1991, ch. 116, § 10; Laws 1992, ch. 141, § 303; Laws 1995, ch. 77, § 2.

For text of section effective Sept. 1, 2000, upon conditions, see § 28A.150.260, post

28A.150.260. Annual basic education allocation of funds according to average FTE student enrollment—Procedure to determine distribution formula—Submittal to legislature—Enrollment, FTE student, certificated and classified staff, defined

Text of section effective Sept. 1, 2000, upon conditions. See Historical and Statutory Notes following § 28A.150.205.

The basic education allocation for each annual average full time equivalent student shall be determined in accordance with the following procedures:

- (1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula based on a ratio of students to staff for the distribution of a basic education allocation for each annual average full time equivalent student enrolled in a common school. The distribution formula shall have the primary

objective of equalizing educational opportunities and shall provide appropriate recognition of the following costs among the various districts within the state:

- (a) Certificated instructional staff and their related costs;
- (b) Certificated administrative staff and their related costs;
- (c) Classified staff and their related costs;
- (d) Nonsalary costs;
- (e) Extraordinary costs of remote and necessary schools and small high schools, including costs of additional certificated and classified staff; and

(f) The attendance of students pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district.

(2)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature. The formula shall be for allocation purposes only. While the legislature intends that the allocations for additional instructional staff be used to increase the ratio of such staff to students, nothing in this section shall require districts to reduce the number of administrative staff below existing levels.

(b) The formula adopted by the legislature shall reflect the following ratios at a minimum: (i) Forty-nine certificated instructional staff to one thousand annual average full time equivalent students enrolled in grades kindergarten through three; (ii) forty-six certificated instructional staff to one thousand annual average full time equivalent students in grades four through twelve; (iii) four certificated administrative staff to one thousand annual average full time equivalent students in grades kindergarten through twelve; and (iv) sixteen and sixty-seven one-hundredths classified personnel to one thousand annual average full time equivalent students enrolled in grades kindergarten through twelve.

(c) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect: *Provided*, That the distribution formula developed pursuant to this section shall be for state apportionment and equalization purposes only and shall not be construed as mandating specific operational functions of local school districts other than those program requirements identified in RCW 28A.150.220 and 28A.150.100. The enrollment of any district shall be the annual average number of full time equivalent students and part time students as provided in RCW 28A.150.350, enrolled on the first school

day of each month and shall exclude full time equivalent students with disabilities recognized for the purposes of allocation of state funds for programs under RCW 28A.155.010 through 28A.155.100. The definition of full time equivalent student shall be determined by rules of the superintendent of public instruction: *Provided*, That the definition shall be included as part of the superintendent's biennial budget request: *Provided, further*, That any revision of the present definition shall not take effect until approved by the house appropriations committee and the senate ways and means committee: *Provided, further*, That the office of financial management shall make a monthly review of the superintendent's reported full time equivalent students in the common schools in conjunction with RCW 43.62.050.

(3)(a) Certificated instructional staff shall include those persons employed by a school district who are nonsupervisory employees within the meaning of RCW 41.59.020(8): *Provided*, That in exceptional cases, people of unusual competence but without certification may teach students so long as a certificated person exercises general supervision: *Provided, further*, That the hiring of such noncertificated people shall not occur during a labor dispute and such noncertificated people shall not be hired to replace certificated employees during a labor dispute.

(b) Certificated administrative staff shall include all those persons who are chief executive officers, chief administrative officers, confidential employees, supervisors, principals, or assistant principals within the meaning of RCW 41.59.020(4).

Formerly § 28A.41.140, enacted by Laws 1969, Ex.Sess., ch. 223, § 28A.41.140, eff. July 1, 1970. Amended by Laws 1969, ch. 130, § 7, eff. July 1, 1970; Laws 1969, Ex.Sess., ch. 217, § 3, eff. July 1, 1970; Laws 1969, Ex.Sess., ch. 244, § 14; Laws 1977, Ex.Sess., ch. 359, § 5, eff. Sept. 1, 1978; Laws 1979, ch. 151, § 12, eff. March 29, 1979; Laws 1979, Ex.Sess., ch. 250, § 3, eff. Aug. 15, 1979; Laws 1983, ch. 229, § 1; Laws 1985, ch. 349, § 5; Laws 1987, 1st Ex.Sess., ch. 2, § 202, eff. Sept. 1, 1987. Recodified as § 28A.150.260 and amended by Laws 1990, ch. 33, §§ 4, 108. Amended by Laws 1991, ch. 116, § 10; Laws 1992, ch. 141, § 303; Laws 1992, ch. 141, § 507, eff. Sept. 1, 1998; Laws 1995, ch. 77, § 3, eff. Sept. 1, 2000.

For text of section effective until Sept. 1, 2000, upon conditions, see § 28A.150.260, ante

Historical and Statutory Notes

Contingent effective date—Laws 1995, academic assessment system is not in ch. 77, § 3: "Section 3 of this act shall place." [Laws 1995, ch. 77, § 33.] take effect September 1, 2000. However, section 3 of this act shall not take effect if, by September 1, 2000, a law is enacted stating that a school accountability and

124

Findings—Part headings—Severability—Laws 1992, ch. 141: See Historical and Statutory Notes following § 28A.410.040.

Intent—Severability—Effective date—Laws 1987, 1st Ex.Sess., ch. 2: See Historical and Statutory Notes following § 84.52.0531.

Severability—Laws 1985, ch. 349: See Historical and Statutory Notes following § 28A.320.200.

Cross References

Allocation of appropriation for construction, modernization of school plant facilities, see § 28A.525.162.

Basic Education Act, see § 28A.150.200.

Distribution of forest reserve funds, as affects basic education allocation, see § 28A.520.020.

Excused temporary absences, students claimed as full time equivalent students, see § 28A.225.010.

Law Review and Journal Commentaries

Constitutionality of taxation for financing for local district educational programs. 10 Gonzaga L.Rev. 32 (1975).

Library References

Schools ⇒19(2).
WESTLAW Topic No. 345.

C.J.S. Schools and School Districts § 21.

28A.150.270. Annual basic education allocation of funds according to average FTE student enrollment—Procedure for crediting portion for school building purposes

The board of directors of a school district may, by properly executed resolution, request that the superintendent of public instruction direct a portion of the district's basic education allocation be credited to the district's capital projects fund and/or bond redemption fund. Moneys so credited shall be used solely for school building purposes.

Formerly § 28A.41.143, enacted by Laws 1980, ch. 154, § 13, eff. Sept. 1, 1981. Amended by Laws 1985, ch. 7, § 89. Recodified as § 28A.150.270 by Laws 1990, ch. 33, § 4.

Historical and Statutory Notes

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—Laws 1980, ch. 154: See Historical

and Statutory Notes preceding § 82.45.010.

Cross References

School funds enumerated, deposits in use, see § 28A.320.330.

125

APPENDIX 5

28A.150.370

COMMON SCHOOL PROVISIONS

GENERAL PROVISIONS

28A.150.400

Cross References

Basic Education Act, see § 28A.150.200.

Library References

Schools ⇨93.
WESTLAW Topic No. 345.
C.J.S. Schools and School Districts
§§ 326, 339 to 343.

28A.150.380. Appropriations by legislature

The state legislature shall, at each regular session in an odd-numbered year, appropriate from the state general fund for the current use of the common schools such amounts as needed for state support to the common schools during the ensuing biennium as provided in this chapter, RCW 28A.160.150 through 28A.160.210, 28A.300.170, and 28A.500.010.

Formerly § 28A.41.050, enacted by Laws 1969, Ex.Sess., ch. 223, § 28A.41.050, eff. July 1, 1970. Amended by Laws 1980, ch. 6, § 3. Recodified as § 28A.150.380 and amended by Laws 1990, ch. 33, §§ 4, 115. Amended by Laws 1995, ch. 335, § 103.

Historical and Statutory Notes

Part headings, table of contents not

law—Laws 1995, ch. 335: See Historical and Statutory Notes following § 28A.150.360.

Severability—Laws 1980, ch. 6: See Historical and Statutory Notes following § 28A.515.320.

Source:

Laws 1945, ch. 141, § 2.
RRS § 4940-2.
Former § 28.41.050.

Law Review and Journal Commentaries

Constitutionality of taxation for financing Washington public schools; state financing for local district educational programs. 10 Gonzaga L.Rev. 32 (1975)

Library References

Schools ⇨16.
States ⇨131.
WESTLAW Topic Nos. 345, 360.
C.J.S. Schools and School District
§ 17.
C.J.S. States §§ 230, 234 to 239.

28A.150.390. Appropriations for special education programs

The superintendent of public instruction shall submit to each regular session of the legislature during an odd-numbered year a programmed budget request for special education programs for students with disabilities. Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for special education programs for students with disabilities and shall take account of state funds accruing through RCW 28A.150.250, 28A.150.260, federal medical assistance and private funds accruing under RCW 74.09.5249 through

136

74.09.5253 and 74.09.5254 through 74.09.5256, and other state and local funds, excluding special excess levies.

Formerly § 28A.41.053, enacted by Laws 1971, Ex.Sess., ch. 66, § 11, eff. July 1, 1973. Amended by Laws 1980, ch. 87, § 5; Laws 1989, ch. 400, § 2. Recodified as § 28A.150.390 and amended by Laws 1990, ch. 33, §§ 4, 116. Laws 1993, ch. 149, § 9; Laws 1994, ch. 180, § 8; Laws 1995, ch. 77, § 6.

Historical and Statutory Notes

Conflict with federal requirements—Title XIX of the social security act. The legislature intends to establish a process for school districts to obtain reimbursement for eligible services from medical assistance funds. In this way, state dollars for handicapped education can be leveraged to generate federal matching funds, thereby increasing the overall level of resources available for school districts' special education programs. [Laws 1989, ch. 400, § 1.]

Severability—Effective date—Laws 1993, ch. 149: See Historical and Statutory Notes following § 74.09.5241.

Intent—Laws 1989, ch. 400: "The legislature finds that there is increasing demand for school districts' special education programs to include medical services necessary for handicapped children's participation and educational progress. In some cases, these services could qualify for federal funding under § 28A.155.010.

Severability—Effective date—Laws 1971, Ex.Sess., ch. 66: See Historical and Statutory Notes following § 28A.155.010.

Cross References

Special education, division for handicapped children, see § 28A.155.010 et seq.

Library References

Schools ⇨92(3).
WESTLAW Topic No. 345.
C.J.S. Schools and School Districts
§ 345.

28A.150.400. Apportionment factors to be based on current figures—Rules and regulations

State and county funds which may become due and apportionable to school districts shall be apportioned in such a manner that any apportionment factors used shall utilize data and statistics derived in the school year that such funds are paid: *Provided*, That the superintendent of public instruction may make necessary administrative provision for the use of estimates, and corresponding adjustments to the extent necessary: *Provided further*, That as to those revenues used in determining the amount of state funds to be apportioned to school districts pursuant to RCW 28A.150.250, any apportionment factors shall utilize data and statistics derived in an annual period established pursuant to rules and regulations promulgated by the superintendent of public instruction in cooperation with the department of revenue.

Formerly § 28A.41.055, enacted by Laws 1969, Ex.Sess., ch. 223, § 28A.41.055, eff. July 1, 1970. Amended by Laws 1972, Ex.Sess., ch. 26, § 3, eff. Feb. 19, 1972. Recodified as § 28A.150.400 and amended by Laws 1990, ch. 33, §§ 4, 117.

137