

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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DEPUTY

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

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

Appellants,

v.

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

Respondents.

BRIEF OF RESPONDENTS

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ORIGINAL

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I. INTRODUCTION

This case concerns the constitutionality of state laws that prescribe the methodology for, and contain the State's funding allocations to, school districts for special education services. The methodology for computing those funding allocations is complex, but the central issue is simple: has the State provided sufficient funding to pay for the costs of educating special education students?

After a three week bench trial, the trial court entered Judgment, dismissing five of appellants' six claims¹ that Washington's annual Appropriations Acts for special education violated Article IX of the state constitution. As demonstrated in this brief, substantial evidence supports the Findings of Fact, Conclusions of Law and this Judgment. This appeal is nothing more than an attempt to retry the case based on the same evidence and legal arguments rejected at trial.

Moreover, appellants would have this Court adopt a novel standard of review in constitutional challenges to legislation that abandons established Supreme Court precedent and, in effect, shifts the burden of proof from the plaintiff to the defendant. Finally, appellants urge this Court to reverse the trial court and remand with instructions to enter

¹ Appellants prevailed on one claim: that a cap on the number of students eligible for special education, as applied, unconstitutionally prevented districts from accessing a portion of state funding. This claim has no bearing on this appeal. Apps. Br. at 18, fn.6.

judgment in their favor, disregarding entirely the dispositive impact of the defense presented at trial; a defense the trial court did not have to consider because the claims were dismissed on the weakness of the appellants' case.

This Court should affirm the trial court's Judgment. Judge McPhee was correct in ruling that the appellants failed to prove the existence of the monumental shortfalls in funding they claimed for special education. Appellants also failed to prove that statutes establishing the funding formula and Safety Net for special education were unconstitutional. The trial court followed well-established standards for deciding constitutional challenges to acts of the state legislature and correctly ruled, as a matter of fact and law, that Washington makes ample provision for special education.

II. RESPONDENTS' STATEMENT OF THE CASE

To understand the factual and legal issues in this case, a discussion regarding four areas is needed: (1) the statutory sources, methodology and amounts of funding for special education; (2) the history and rationale behind the three-tiered special education funding mechanism; (3) the elimination of every funding shortfall claimed for special education when all state revenues are taken into account; and (4) the disqualification of

claimed expenses and funding entitlement due to improper school district practices in conducting their special education programs.

A. State Statutes Dictate the Sources, Amounts and Uses of Funding Provided for Special Education.

In 1977, the Legislature adopted the Basic Education Act, RCW 28A.150.200. RCW 28A.150.250 and RCW 28A.150.260 provide for an annual basic education allocation (BEA) of state funds based upon the average full-time equivalent (FTE) student enrollment in each school district. The BEA is the same for all FTE students within a district. FF 4.² RCW 28A.150.250 and 260 provide the component parts and methodology for computing the BEA and declare: “Basic education shall be considered fully funded by those amounts of dollars appropriated by the legislature pursuant to RCW 28A.150.250 and 28A.150.260.” Appellants have never challenged the constitutionality of the provisions of RCW 28A.150, the Basic Education Act. CP at 318, ll. 5-8.

In 1971, the Washington Legislature recognized the rights of disabled students when it passed the “Education for All Act,” chapter 28A.13 RCW (subsequently recodified as chapter 28A.155 RCW). Each biennium, the Legislature sets the funding formula for special education

² “FF” refers to the trial court’s Findings. “CL” refers to its Conclusions. They are found in CP 296-308.

through its Appropriations Act, Chapter 518, Laws of Washington 2005, § 507. FF 3 (unchallenged).

Funding for special education is provided in three tiers.³ The BEA described above is supplemented by a special education excess cost allocation and a “safety net” mechanism. RCW 28A.150.390 addresses appropriations for special education and mandates that:

Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature...and shall take account of state funds accruing through RCW 28A.150, 28A.150.260, federal medical assistance...and other state and local funds, excluding special excess levies.

The only statute challenged is the annual Appropriations Act for special education. Section 507 of Laws of 2005, ch. 518 and of Laws of 2006, ch. 372. Ex. 550; CP at 318, fn.8. As described in unchallenged Finding of Fact 12, Section 507 provides:

- a. Pursuant to RCW 28A.150.390, funding for special education is provided on an excess cost basis. ¶ 1.⁴
- b. School districts shall ensure that special education students as a class receive their full share of the basic education apportionment. ¶ 1.

³ Appellants erroneously refer to “two tiers” of special education funding. Apps. Brief at 13. There are three tiers: the BEA, the excess cost allocation and the Safety Net. All are found in Section 507 of the annual Appropriations Acts for special education. Ex. 550.

⁴ The paragraphs denote the particular subparagraphs of Section 507 that are the sources for FF 12.

- c. To the extent school districts cannot provide an appropriate education for special education students through the basic education apportionment, services shall be provided using the special education excess cost allocation. ¶ 1.
- d. OSPI shall use the excess cost methodology using the S-275 personnel reporting and other accounting systems to ensure that (a) special education students are basic education students first. (b) as a class, special education students are entitled to the full basic education allocation and (c) special education students are basic education students for the entire school day. ¶ 2(a).
- e. Federal and state funds are distributed based on a headcount of special education students receiving specially designed instruction in accordance with a properly formulated IEP. ¶¶ 4 and 5.
- f. The special education [excess cost] allocation for disabled children ages 3 to 21 is 0.9309 times the average basic education allocation times the “enrollment percent” of special education students to basic education students in that district. ¶ 5(a).
- g. The special education funding is limited to a maximum of 12.7 percent of the general student population for each district. ¶ 6(a).
- h. A Safety Net is provided that serves as a method for districts with demonstrated need for special education funding beyond the amounts provided above to secure that additional funding. ¶ 8.
- i. The Safety Net oversight committee (“Committee”) awards Safety Net funds. ¶ 8.
- j. The Committee first considers unmet needs for districts that can convincingly demonstrate that all legitimate expenditures for special education exceed

all available revenues from state funding formulas.
¶ 8(a).

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

Taking into account all three tiers of funding (BEA, special education excess cost allocation, and safety net), funds provided to local school districts for years 2001 through 2005 are:⁵

2001-02	\$989,386,497
2002-03	\$1,025,818,034
2003-04	\$1,063,973,875
2004-05	\$1,107,762,439
2005-06	\$1,147,647,277
Five Year Total	\$5,334,588,103
Average	\$1,066,917,621

Consistent with Section 507(4), school districts are only entitled to funding for "special education eligible" students, which "means a student receiving specially designed instruction in accordance with a properly formulated individualized education program" (emphasis supplied). An appropriate special education program can only be determined in a properly formulated individualized educational program (IEP). FF 7 (unchallenged). Both State and appellants' witnesses agreed that school

⁵ The trial exhibits providing the source information in this chart are in Appendix A, *infra*.

districts are not entitled to federal or state funding for the costs of providing services to students with improperly formulated or out-of-date IEPs. RP at 1705 (State witness); RP 132-33, 250-52, 861, 2875 (appellants' witnesses).

In addition to state funding, local districts concede the appropriateness of providing local levy support for special education students and programs. RP at 229. They also agree that the State does not have to cover whatever districts expend on special education. RP 271-72.

B. The History of, and Rationale for, the Components of Special Education Funding.

The Washington Legislature has the authority to select the means of discharging its duty to make ample provision for education under Article IX of the state constitution. CL 4 (unchallenged); *Seattle Sch. Dist. v. State*, 90 Wn.2d 476, 520, 585 P.2d 71 (1978) (The general authority to select the means of discharging the Article IX duty should be left to the Legislature). In considering the constitutionality of Section 507's funding mechanism for special education, introduced in 1995 and re-enacted each year since, the Court must take into account the circumstances, research and court decisions that prompted adoption of that mechanism.

1. The Funding Formula: BEA plus (.9309 x BEA).

The current special education funding formula components were adopted in 1995. Prior to 1995, Washington funded special education through a system that was based upon fourteen (14) distinct and separately funded disability categories. FF 14 (unchallenged). One concern prompting the change was the “legitimate interest of curbing the growth rate in students identified as in need of special education [as] the number of special education students was growing at a much greater rate than the overall student population.” *Id.* Another factor influencing the change in funding mechanisms was a 1988 decision of the Thurston County Superior Court: *Washington Special Education Coalition v. State*, Cause No. 85-2-00543-8 (1988). Ex. 723 at 10. Certain principles emerged from that case which guided legislative reform (emphasis supplied):

1.3 ...In order to satisfy the requirement of full funding, sufficient funds must be provided and distributed in a manner that is based as closely as reasonably practicable on the actual cost of the special education needs identified in the properly formulated individualized instruction programs of all handicapped students....

1.4 The handicapped education program that the State must fully fund is determined by the unique needs, individual abilities, and limitations of handicapped students as provided in their properly formulated IEPs.

* * *

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

* * *

1.16 ...if the present formula is to continue as the basis for the allocation of funds for the handicapped programs,⁶ provision would have to be made for the districts that can establish their programs of special education are underfunded to obtain the additional or supplement funds necessary to provide the constitutionally-mandated program of education for their handicapped students.

1.17 In determining a school district's "need" for any additional funds, the State will obviously have to be satisfied, if this option is elected, that the district requesting the funding beyond the funds generated by the formula are in fact operating a reasonably efficient program of education for the handicapped students, that the IEPs are properly prepared and formulated, and the district is otherwise making an effort to provide the program requested with the funds generated by the formula.

7-08 and 1210-11. These principles have continued to guide legislative action concerning special education funding. RP 1564-65.

⁶ The "present" formula referred to a block grant that was not continued as part of the 1995 funding formula reform. Therefore, no "provision" for additional funding sources was required under the new formula. Nonetheless, the Legislature implemented a Safety Net process to make provision for districts to prove that the new formula provided insufficient funds.

The 1995 formula reform was also supported by three studies of special education funding approaches: Exhibits 92, 93 and 94. According to the 1995 Special Education Fiscal Study (Ex. 92 at 1212) (emphasis supplied):

In Washington in 1993-94 the average excess cost to fund a special education student was \$3,109 plus \$3,559 of basic education for each K-12 student. The total average cost of educating a special education student is \$6,668 or 1.87 times the cost of a basic education student. Special education costs are affected by the number of students served, the composition of students in each disability category, and the salaries of teachers and other staff.

State funding for special education as a percent of total expenditures has increased from 73 percent in 1985-86 to 79 percent in 1993-94. State funding is less than total expenditures due to the presence of local levy and federal revenues expended for special education. However, state funding covers the full cost of the state definition of basic education.

At trial, the State's Director of Special Education confirmed that the basic education amount in this report reflected the cost of basic education then and that the BEA since that time, adjusted periodically and appropriated annually, is the cost of basic education today. RP 2349-52. He also confirmed that the "1.87" multiplier identified in this report, multiplied by the BEA, was, in fact, the cost of a special education. RP 1559-60. This determination of actual cost was also consistent with both local and national data. *Id.* Thus, the more generous funding

formula adopted in 1995 (1.9309 times the BEA) for every eligible special education student represented the best calculation of anticipated cost to educate a special education student, both locally and nationally. RP 2281.

The formula of BEA plus (.9309 x BEA) for every special education student remains consistent with “current national data [that establishes] the total average cost of educating a student receiving special education services at approximately 190 percent of the total average cost of the basic education of a student.” FF 10 (unchallenged). Appellants’ expert agreed. FF 11 (unchallenged).

2. The Safety Net.

The third tier of funding is the Safety Net. The Safety Net system has been re-enacted in the special education appropriations acts since 1995. FF 15 (unchallenged). The Safety Net system is designed to provide additional funds to districts that can establish they are not adequately funded under the first and second tiers of the formula. *Id.* Equally important, however, the Safety Net process “gives the State the opportunity to analyze the district’s entire special education program, to assure before an award of safety net funds that the district’s special education students are eligible and have current, properly formulated IEPs, that the district is accessing all available revenue, and that it is operating a reasonably efficient special education program.” CL 14 (unchallenged).

Washington was the first to develop a safety net for special education funding. RP 1545. In 1992, the State's principal witness had studied and reported to the Legislature on what this process could entail. Ex. 94. Taking the 1988 *Washington Special Education Coalition* case to heart, this Report advised:

The legislature followed closely the language of the court in its passage of Laws of 1991, Chapter 16, Sec. 501(4). This statute directs OSPI to "propose procedures and standards to meet the demonstrable funding needs [of local school districts] beyond the level provided in the state funding program for children with disabilities...The procedures and standards shall permit relief for a school district only if a district can demonstrate that:

- (a) Student characteristics and costs of providing program services in the district differ significantly from the assumptions of the state handicapped funding formula;
- (b) Individualized Education Plans are properly and efficiently prepared and formulated;
- (c) The district is making a reasonable effort to provide program services within funds generated by the state funding formula;
- (d) District programs are operated in a reasonably efficient manner;
- (e) No indirect costs are charged against the handicapped programs; and

- (f) Any available federal funds are insufficient to address the actual needs.

Ex. 94 at pp. 1851-52. These six conditions to safety net awards became part of the process of applying for Safety Net funding adopted in 1995. RP 1563-64. With one exception not pertinent to this case, these parameters for Safety Net awards have remained the same since 1995. RP 1564-65; Ex. 723 at 14-15.

From 1995 until 2002, the Safety Net underwent changes, until the exclusive means of access to additional funding became “High Cost Individuals.” FF 16 and 17 (unchallenged). The State determined, through experience with school district Safety Net applications based on other grounds, that focusing on these students was

the most accurate reflection of the policy associated with special education in the State and the most accurate representation of the conditions associated with Safety Net funding as expressed by the [1988] decision, as well as the Appropriations Act language....the only mechanism that accounts for the full 1.9309 and also actually costs out an individual student’s IEP to determine what level of funding is provided and what level of funding is necessary to provide those services.

RP 1654-55.

Over its several year history, the amounts appropriated by the Legislature for the Safety Net have never been exhausted. FF 20 (unchallenged). For school year 2005-06, State Safety Net awards grew to

\$23,770,152 from \$14,643,023. Ex. 588, pp. 533 and 527, respectively. If awards exceed appropriated amounts, the Superintendent of Public Instruction is directed to fund these awards out of discretionary funds available for such purposes. Ex. 550, § 507(8).

C. Appellants Relied on Inadequate and Invalid Evidence of a Funding Deficit.

Throughout this case, appellants have contended that financial and accounting documents “conclusively establish” a shortfall in special education funding that violates Article IX. Apps. Br. At 29. They offered three types of documents to support their claims: (1) the F-196 annual district reports of revenues and expenditures; (2) the Worksheet A accounting of revenue and expenditures submitted by districts as one part of an application for Safety Net funding; and (3) Exhibit 61, an accounting of revenues and district reported expenditures charged to basic education.

In addition, appellants cited the “1077 process”: an accounting exercise that reallocates some costs of special education instructional staff (certificated teachers) to basic education. Appellants offered 1077 as “proof” that the entire BEA supplied for each special education student is exhausted.

The trial court concluded that the F-196s, Worksheet A and 1077 documents and related testimony “have not shown the funding deficit for special education that [appellants] claim.... This evidence does not prove

the contention that special education is underfunded at anywhere near the magnitude claimed.” CP 322, ll. 10-12.

1. F-196s cannot prove a funding deficit.

F-196 reports are annual financial documents that school districts submit to the State. FF 24 (unchallenged); Ex. 501. They list revenues for education by source and account for expenditures by program. *Id.* For example, the state general apportionment (basic education) revenues are in account “3100” and special education excess cost revenues are in account “4121”. Ex. 501 at 15, 16. District education expenditures are coded by district personnel to “Program 01”-Basic Education, while “Program 21” contains the district’s reported special education expenditures. *Id.* at 228. However, the reports do not show which “01” (basic education) expenditures were incurred on behalf of special education students. FF 25-27 (unchallenged). Similar revenue and expense accounting entries summarize federal and local programs. Exhibits 131, 131a and 131b were appellants’ summaries of how these reports “prove” a special education funding deficit. Apps. Br. at 20-21.

One fundamental problem with this “proof” is that appellants have left out entirely the substantial revenues provided by the State in the BEA supplied for every special education student. Several of appellants’ witnesses confirmed that these revenues were intentionally left out in

computing the alleged shortfalls. RP 234, 421-23, 1360-61 and 1168-70. Appellants conceded that BEA revenues for special education students were needed to show the full extent of state support for special education, RP 411-13,⁷ and confirmed that local districts understand that state law requires that special education students as a class receive their full share of basic education revenues. RP 260, 2869. Unchallenged FF 26 and 27 confirmed that the F-196s do not prove that the school districts are applying the BEA for special education students as state law directs.

Application of the BEA supplied for special education students, as required by Section 507, eliminates completely every funding shortfall claimed for special education in this case, as demonstrated by the following charts.⁸

⁷ Indeed, one witness confirmed that school districts do not even know, or keep track of, the amounts of BEA they get for their special education students. RP 428. If appellants truly do not know how much total special education funding the State provides, how can they claim that what is provided is insufficient?

⁸ The computations and trial exhibits supporting these charts are in Appendix B. The trial exhibits that are the source of all entries in these charts are plaintiffs' (appellants') Trial Exhibits. BEA revenues are understated in the chart so the surpluses are actually much higher than represented.

STATEWIDE:

	Statewide 2002-03	Statewide 2003-04	Statewide 2004-05	Worksheet A 2005-06
Special Ed Excess Cost Revenues	\$594,063,512	\$623,323,769	\$654,182,721	\$606,619,616
Special Ed Expenditures	\$696,040,701	\$732,140,801	\$788,316,380	\$730,747,815
Claimed Deficit	(\$101,977,191)	(\$108,902,593)	(\$134,133,659)	(\$147,898,351)
BEA for Special Ed Students	\$431,754,522	\$440,650,106	\$453,579,718	\$406,595,923
Actual Surplus w/ 1077 Process	\$329,777,333	\$331,833,074	\$319,446,059	\$282,467,724
Actual Surplus w/o 1077 Process	\$239,006,585	\$238,352,245	\$222,566,939	\$192,213,003

The ultimate statewide surplus column reflects reversing the impact of the 1077 process. Cumulative surpluses for 2002-06 exceed \$800 million.

In every year, the appellant Alliance School Districts also had a surplus of revenues over expenditures. The cumulative surpluses for appellants exceed \$136 million.

ALLIANCE SCHOOL DISTRICTS:

	Alliance Districts 2002-03	Alliance Districts 2003-04	Alliance Districts 2004-05	Alliance Districts Worksheet A 2005-06
Special Ed Excess Cost Revenues	\$107,943,810	\$113,633,497	\$119,929,221	\$127,744,178
Special Ed Expenditures	\$135,509,987	\$142,756,128	\$152,294,631	\$158,774,504
Claimed Deficit	(\$27,566,177)	(\$29,122,630)	(\$32,365,408)	(\$34,534,845)
BEA for Special Ed Students	\$78,722,800	\$80,494,890	\$84,193,188	\$88,993,044
Actual Surplus w/ 1077 Process	\$51,156,623	\$51,372,259	\$51,827,778	\$57,962,718
Actual Surplus w/o 1077 Process	\$33,184,280	\$32,724,762	\$32,781,141	\$37,829,614

2. Worksheet A is also incapable of proving a funding shortfall.

Appellants posit a statewide funding deficit of \$147 million (*see* “Worksheet A 2005-06” column on page 17’s chart) for school year 2005-06 based solely on one part of the Safety Net applications, Worksheet A, submitted by 142 school districts that year. Apps. Br. at 25; Exs. 111 and 111a. Worksheet A is a partial accounting of a district’s special education revenues and expenditures that constitutes the first step in applying for Safety Net funding. It is incomplete without Worksheet C, which accounts fully for all revenues (BEA and excess cost allocation) and

expenses as to high cost individual students for whom Safety Net funding may be provided. E.g., Exs. 56 and 60.

The Worksheet A analysis is based largely on revenue and expenditure data taken from the F-196s. RP 378, 995, 1520-21. Worksheet A does not include the BEA that the State has provided districts for their special education students. RP 696, 1383-84, 2864-65. As proven by the charts on pages 17-18, addition of the BEA to the Worksheet A analysis proves that the alleged deficit is actually a surplus.

Worksheet A's utility as proof of a funding deficit is further undermined by its role in the Safety Net process. By definition, it is only part of the process of applying for Safety Net funding. Exs. 56 (p. 1588) and 60 (p. 1770). The instructions for Worksheet A caution:

Financial need shown on Worksheet A determines maximum funding eligibility; however, it does not entitle a district to safety net funding. Safety net funding will only be awarded for direct special education and related services identified in appropriate, properly prepared and formulated IEPs. Safety net awards may be less than the amount of need demonstrated on Worksheet A.

Ex. 60 (p. 1770); *accord*, Ex. 56 (p. 1588) (Financial need on Worksheet A does not entitle a district to additional funding). This same qualification appears below the last line on the 2005-06 Worksheet A (which appellants have mischaracterized as "demonstration of need") to

put into context exactly what the worksheet is intended to show: “maximum funding eligibility.” Ex. 60 (pp. 1770-71).

Worksheet A is incomplete without Worksheet C, which must accompany every Safety Net application. Ex. 60 (p. 1775); RP 384-85, 490. It is through Worksheet C that the district establishes entitlement to Safety Net funding for high cost individuals based upon a “maximum individual need demonstrated for this student.” Ex. 60 (p. 1785). Both State and appellants’ witnesses agreed that only Worksheet C involves determining whether IEPs are properly formulated and includes the BEA (in the threshold amount that high cost students must exceed),⁹ as mandated by state law. Exs. 56 (p. 1608) and 60 (p. 1785, l. 18); RP 561, 1384-85, 1462, 1654-55.

3. Exhibit 61 cannot prove a funding deficit for basic education.

Exhibit 61 contained interrogatories and responses that summarized for the years 1999-2004 the revenue and expenditure data for the State’s “general education students.” (Interrogatories 15 and 19). The State’s principal witness, who verified the discovery responses, testified in

⁹ Worksheet C used to factor in the individual student’s BEA in determining whether that student was “high cost.” Exs. 718 (p. 79530, l. 25) and 719 (p. 79318, l.25). As Ex. 60 demonstrates, that approach was changed for the 2005-06 school year, with the implementation of a threshold amount that includes the total of BEA and excess cost funding. Ex. 60, p. 1769. Appellants concur that Worksheet C’s “threshold” was designed to take the BEA into account. CP 230 (Plaintiffs’ Proposed Finding of Fact 88).

detail about why these documents (like the F-196s and Worksheets A) cannot establish a deficit in state education funding.

First, school districts include substantial expenditures for non-instructional costs and locally funded programs for which local school districts, not the State, are responsible. RP 1737-39, 2339-40, 2494 and 2861-63. Similarly, the F-196s (upon which these responses were based) do not break down expenditures, or link them to revenues, to isolate state-funded responsibility from local responsibility. RP 2343-47, 2389 and 2861-63. The commingling of costs that the State should bear with those the districts are supposed to fund grossly overstates special education costs. RP 1753-54 and 2345-47.

4. The 1077 cost reallocation process does not show exhaustion of the BEA supplied for special education students.

As part of the school district accounting process, they are required to reallocate a portion of special education expenditures to basic education. The 1077 procedure is limited to a portion of certificated special education teachers and a small portion of non-staff special education costs. At trial, examples were offered to show that special education teacher costs were, on average, allocated 38% to basic education and 62% to special education. FF 33 (unchallenged).

The State's principal witness testified that the 1077 process establishes the minimum support that the special education students' BEA is supposed to provide, with the maximum being the special education students' entire BEA. RP 1595-97. The 1077 process does not prove that the BEA for special education students is actually spent on them. Ex. 520 at 3613; RP 1661-62 and 2326. To the contrary, as the charts *supra* at pages 17-18 demonstrate, undoing the 1077 process for the years at issue still leaves a huge surplus for special education in every year.

Appellants claim that the 1077 process proves that some BEA for special education students is spent in the special education classroom, with the balance "consumed for basic education." Apps. Br. at 34-35. However, appellants' own witnesses confirmed the exact opposite: 1077 does not ensure that special education students as a class receive their full share of the BEA. RP 229, 2866-67. Those same witnesses conceded further that state law requires school districts to devote all BEA for special education students on those students "as a class," but that the 1077 process does not do so. RP 2868-69. A 2006 report to the Legislature concurred. Ex. 520 at 3613.

5. Appellants' expert conceded that the F-196s, Worksheets A and Exhibit 61 cannot prove underfunding.

Appellants' underfunding claim was entirely based upon a comparison of expenditures to revenues, with the excess of expenditures over revenues deemed "conclusive proof" of a deficit. Appellants' expert testified, however, that such evidence was insufficient to prove underfunding of special education:

Q. Now, you would agree, would you not, that simply finding a disparity about what districts spend on special education and what revenues they say they are provided does not suggest inadequacy of funding. You would agree with that, would you not?

A. It does not provide a clear answer to the question of overfunding or underfunding, correct.

Q. You would agree that it does not suggest an [sic] [in]adequacy of funding; correct?

A. Whether it might suggest it, it certainly doesn't confirm it.

Q. And that's why you went to the analysis that you did, to discern a national standard and apply Washington's practices and expenditures against what you discern to be a national standard;¹⁰ correct?

A. Correct.

¹⁰ Appellants' expert's "national standard" that tried to convert "expenditures" into "costs" was found "not persuasive" by the trial court. FF 45 (unchallenged). Oddly enough, appellants abandoned this expert's report and conclusions in this appeal. Instead, they advocate an approach that their expert found untenable!

Q. You had to go to that level of analysis, because simply taking a comparison of revenues against expenditures and finding red ink is insufficient to conclude that there's inadequate funding of special ed; correct?

A. Yes.

RP 771, ll. 2-25. Indeed, appellants' expert rejected using reported school district "expenditures" as a proxy for the "costs" of special education. RP 771. Expenditures literally track what one spends, while "cost" is what amount is needed to get a desired educational result. *Id.* Expenditures cannot determine funding adequacy; only costs are appropriate. *Id.* All of appellants' underfunding evidence is based on "expenditures," not costs.

The State's principal witness agreed that expenditures are not a valid basis for determining funding adequacy. RP 1728-29; 2339-42.

D. The State Established That School Districts' Special Education Expenditures Include Substantial Amounts Spent on Ineligible Students.

The trial court noted in its Opinion that the defense in this case involved more than contending that appellants had failed to prove their claims. CP 324, fn.13. Though the court did not need to reach the State's defense, the court did observe that a portion of that defense—in and of itself—raised "significant issues" about the validity of the deficits appellants claimed existed for special education. *Id.* For example, the

effect of this part of the defense reduces the amount of claimed deficit for year 2005-06 by an additional \$90 million. *Id.*

The defense was also presented through two experts, Drs. Dan Reschly and Eric Hanushek.¹¹ Their expert reports are Exs. 523 and 529. State witnesses also analyzed school district practices, taking issue with the efficacy of district IEPs and their accounting practices regarding special education. Exhibits supporting the testimony of these witnesses included Exs. 511a, 523, 530, 531 and 722.

Dr. Reschly opined that some 75% of the IEPs he reviewed as part of a statistically valid sample for 2001-04 were “improperly formulated” in material ways that adversely affected the special education provided to students. Ex. 529; RP 1908-10. He also confirmed what many of appellants’ witnesses conceded: school district entitlement to state and federal funding for special education depends upon IEP’s being properly formulated and up-to-date. RP 132-33, 250-52, 1883-85 and 2875.

Dr. Reschly’s conclusions were verified by appellants’ IEP expert, who conceded that 37% of the IEPs were deficient, with a substantial number of flaws affecting “quality” areas. RP 2666-70. To appellants’ expert, deficiencies in over 20% of reviewed IEPs would make her “very

¹¹ Dr. Hanushek opined that Washington provided sufficient funding for special education, in part, because Washington students performed so well in national testing; outperforming many states that spend much more to achieve less favorable results. Ex. 523 at 3686.

concerned.” *Id.* This testimony undermined the validity of between 37% and 75% of the special education expenditures claimed by school districts in those years. Exhibits 511A, 530 and 531 raised similar, substantial doubts about IEPs and school district accounting practices which jeopardize entitlement to special education funding.

III. STANDARDS OF REVIEW

The standards for review that govern this appeal concern three areas: (1) appellate review of bench trials; (2) judicial review of the constitutionality of statutes and legislative acts; (3) standards governing facial and as applied constitutional challenges. As discussed *infra*, the adoption of higher or different standards of review advocated by appellants is unnecessary, contrary to established precedent and would constitute error.

A. Appellate Review of Judgments From Trials to the Court.

This case was tried to the court. In such cases, appellate review is limited to determining whether the Findings of Fact are supported by substantial evidence and, if so, whether the Findings support the Conclusions of Law and the Judgment. *SAC-Downtown Ltd. Partnership v. Kahn*, 123 Wn.2d 197, 202, 867 P.2d 605 (1994). Challenged findings of fact are supported by “substantial evidence” if there is sufficient evidence to persuade a rational, fair-minded person of the truth of the

finding. *Hilltop Terrace Homeowners Ass'n v. Island County*, 126 Wn.2d 22, 34, 89, P.2d 29 (1995).

Unchallenged findings are treated as verities on appeal. *Dickson v. Kates*, 132 Wn. App. 724, 730, 133 P.3d 498 (2006). When error is assigned to conclusions of law, they are reviewed *de novo*. *Hegwine v. Longview Fibre Co.*, 132 Wn. App. 546, 556, 132 P.3d 789 (2006). In this appeal, only three of forty-five Findings and ten of twenty-five Conclusions are challenged.¹² Moreover, appellants assign error to the trial court's failure to adopt many of their proposed Findings. The court's decision not to make such findings is tantamount to findings against appellants, who bore the burden of proof on those issues. *Smith v. King*, 106 Wn.2d 443, 451, 722 P.2d 796 (1986); *Barker v. Advanced Silicon Materials, L.L.C.*, 131 Wn. App. 616, 627, 128 P.3d 633 (2006).

As most of this appeal concerns whether there was evidence to support the court's findings and judgment, of critical importance is the burden of proof, at trial and on appeal. The burden of proof is divided into two tasks—a burden of production and a burden of persuasion. *N.W. Pipeline Corp. v. Adams County.*, 136 Wn. App. 314, 322, 148 P.3d 1092 (2006). The latter defines the degree of certainty with which the trier of fact must decide issues. *Id.* However:

¹² Specific discussion of each of these challenged Findings and Conclusions is included *infra*.

On appeal we are concerned with the burden of production (i.e., the substantial evidence test). The finder of fact determines whether the burden of persuasion has been met. [T]he application of the substantial evidence test is not influenced by the burden of persuasion. Here, we must affirm if we find substantial evidence in the record supporting the trial court's findings....

Welch Foods, Inc. v. Benton County, 136 Wn. App. 314, 322-23, 148 P.3d 1092 (2006). Thus, the issue on appeal is, simply, was there evidence to support the trial court, not how persuasive was that evidence.

Appellants bear the burden of showing that the three challenged findings are not supported by substantial evidence. *Grein v. Cavano*, 61 Wn.2d 498, 507, 379 P.2d 209 (1963); *Nordstrom Credit Inc. v. Dep't of Revenue*, 120 Wn.2d 935, 940, 845 P.2d 1331 (1993). Individual findings must be read in the context of other findings and conclusions. *Ellensburg v. Larson Fruit Co.*, 66 Wn. App. 246, 251, 835 P.2d 225 (1992). A judgment will be upheld based upon allegedly contradictory findings, if one or more inconsistent findings support the judgment. *Wash. State Dep't of Revenue v. Sec. Pacific Bank of Wash.*, 109 Wn. App. 795, 807, 38 P.3d 354 (2002).

The appellate court must view the evidence in a light most favorable to the prevailing party and defers to the trial court regarding conflicting testimony and witness credibility. *Hegwine*, 132 Wn. App. at 556; *Weyerhaeuser v. Tacoma-Pierce County Health Dep't*, 123 Wn. App.

59, 65, 96 P.3d 460 (2004). The appellate court will not substitute its judgment for that of the trial court, even though the appellate court might have resolved disputed facts differently. *Sunnyside Valley Irrigation Dist. v. Dicke*, 149 Wn.2d 873, 73 P.3d 369 (2003); *Croton Chem. Corp. v. Birkenwald, Inc.*, 50 Wn.2d 684, 314 P.2d 622 (1957). The appellate court will not retry factual disputes or supplant the trial court's resolution of conflicting evidence. *Ferree v. The Doric Co.*, 62 Wn.2d 561, 568, 383 P.2d 900 (1963). If the trial court has reached the correct result, the appellate court will affirm even when the trial court's reasoning or analysis was incorrect. *In re Estate of Jones*, 152 Wn.2d 1, 10, 93 P.3d 147 (2004).

Finally, where, as in this case, the trial court rendered an Opinion which is incorporated into its Findings and Conclusions, that Opinion also will have binding effect. *Welch Foods, Inc.*, 136 Wn. App. at 322. Where consistent with the findings and judgment, statements in the Opinion may be used to interpret them; alleged inconsistencies in the Opinion, however, cannot be used to impeach the findings or judgment. *Ferree*, 62 Wn.2d at 567.

B. Standards of Judicial Review of Constitutional Challenges to Statutes and Legislative Acts.

This case is a challenge to the constitutionality of duly enacted Appropriations Acts designed to fund Washington's special education programs.¹³ The standards of review in such cases are well-established:

Where the constitutionality of a statute is challenged, that statute is presumed constitutional and the burden is on the party challenging the statute to prove its unconstitutionality beyond a reasonable doubt.

Tunstall v. Bergeson, 141 Wn.2d 201, 220, 5 P.3d 691 (2000). Indeed, in *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998), the court held:

[T]he beyond a reasonable doubt standard used when a statute is challenged as unconstitutional refers to the fact that one challenging a statute must, by argument and research, convince the court that there is no reasonable doubt that the statute violates the constitution.

Challenges to the constitutionality of statutes designed to carry out Article IX's "paramount duty" are no exception. *Tunstall* considered a challenge to just such a statute. Moreover, constitutional challenges to Appropriations Acts are evaluated under this rigorous standard. *E.g.*, *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d 602, 623, 62 P.3d 470 (2003). The Supreme Court applied this standard to a

¹³ Although the Basic Education Act (RCW 28A.150) and Special Education Laws (RCW 28A.155) are part of the background and circumstances of the case, their constitutionality is not at issue. Only the Appropriations Acts are claimed to be invalid. CP at 318, ll. 5-8, fn.8.

challenge to an appropriations statute funding Article IX duties in *Brown v. State*, 155 Wn.2d 254, 266, 119 P.2d 341 (2005):

Brown...has not shown beyond a reasonable doubt that the legislature violated the constitution by reducing the number of days it was willing to fund [in the basic education Appropriations Act].

The cases discussed above are the legal principles that prove the correctness of Conclusion of Law 3: that courts defer to legislative acts and “presume” statutes constitutional, even when funding the “paramount duty” and that the challenger to such legislation has a burden of proving constitutional claims beyond a reasonable doubt. Moreover, deferring to the Legislature and “restraining” the role of the courts comes directly from *Seattle Sch. Dist.*, 476 Wn.2d at 515, 518 and 520.

Appellants have urged this Court to abandon these standards in favor of a more rigorous burden, requiring the State to prove the constitutionality of legislation that carries out Article IX. Apps. Brief at 43-45. As discussed *infra*, ignoring Supreme Court precedent in favor of a standard never yet applied to constitutional challenges is not necessary or appropriate in this case.

C. Standards of Review Governing Constitutional Causes of Action.

Constitutional challenges to legislation are either “facial” or “as applied.” In a “facial” challenge, the issue is whether the statute’s

language violates the constitution, not whether the statute would be unconstitutional as applied to the facts of a particular case. *Tunstall*, 141 Wn.2d at 221. A facial challenge must be rejected unless the plaintiff proves that there are no set of circumstances under which the statute can be constitutionally applied. *Id.* In a facial challenge to a statute under Article IX, the court simply determines “whether we are convinced beyond a reasonable doubt that there are no circumstances which [the Appropriations Act] could satisfy Article IX. *Id.*”

An “as applied” challenge requires appellants to prove beyond a reasonable doubt that application of the provisions or amounts in Section 507 produces a result that violates the Article IX duty to make ample provision for education. The trial court below ruled that a preponderance of the evidence standard governed disputed factual issues, while the legal issue of unconstitutionality required the beyond a reasonable doubt standard. CL 3.

IV. ARGUMENT

A. **Appellants Failed to Prove That Special Education Funding Violates Article IX.**¹⁴

The appellants bore the burden of proving that Section 507 of the Appropriations Acts for special education was unconstitutional. The trial

¹⁴ The evidence and authorities in this Section IV.A provide the facts and law that support CL 6 and 7: that appellants failed to prove that Section 507, the multiplier of .9309 and the amounts of special education funding were unconstitutional.

court ruled that this burden meant that appellants must show factually that there was underfunding of special education and legally that the statute was unconstitutional beyond a reasonable doubt. CL 3. Appellants failed on both counts.

1. The Appropriations Act for special education is constitutional on its face.

Appellants' burden in any "facial" challenge is to prove that there exists "no set of circumstances in which the statute can constitutionally be applied." *Tunstall, supra*, 141 Wn.2d at 221. Conversely, if there are any circumstances that permit the conclusion that school districts receive sufficient funds from the state to provide special education to eligible students, then the facial challenge fails. CL 5 (unchallenged).

a. The funding formula of BEA (plus .9309 x BEA) for every special education student was a rational choice.

On its face, Section 507's funding formula of providing state funds in the form of the BEA plus .9309 times BEA for every special education student is unimpeachable. The formula was enacted after an exhaustive study in 1995 that demonstrated that the BEA was the cost of a basic education and that 1.87 times that cost was the demonstrated cost of educating a student in need of specially designed instruction. Ex. 92.¹⁵

¹⁵ Exhibit 92, p. 1212, confirmed that the BEA in 1995 (\$3,559 per student) was the cost of basic education for 1994. The State's Director of Special Education also testified that this amount represented the cost of basic education then and, as adjusted in

The State's principal witness confirmed that 1.8 times BEA was the cost of special education then and, with the adoption of a more generous multiplier of 1.9309 and adjustments in funding since then, 1.9309 times BEA is the cost of special education today. RP 1559-60. He further confirmed that this formula reflected both local and national experience regarding the cost of special education.¹⁶ RP 2281. The trier-of-fact found unpersuasive any countervailing evidence and that determination must be upheld on appeal. *Ferree*, 62 Wn.2d at 568; *Hegwine*, 132 Wn. App. at 556. This evidence supports FF 4, 5 and 9: that BEA is the cost of basic education; that 1.9309 times BEA is the cost of special education; and both are based on local and national research.¹⁷

The actual amounts appropriated for special education, the BEA under Section 502, plus the amount produced under Section 507 by multiplying the BEA times .9309, on their face, are not deficient. Nothing about the funding formula itself or the amounts appropriated provided "proof" that Section 507 is unconstitutional.

years since 1995, the BEA continues to be the cost of basic education. This substantial evidence supports FF 4 that the BEA is the "average cost" of a basic education.

¹⁶ The testimony at RP 1559-60 and 2281 and unchallenged FF 10 and 11 support the challenged CL 8: that the special education formula for the excess cost (.9309 x BEA) component of special education funding is "consistent" with current national research on the "total average cost" of special education. This current national endorsement of the rationale for a multiplier employing a "derivative" of the BEA as a basis for special education funding was also supported by a 2006 study, Ex. 69 at p. 20.

¹⁷ In fact, appellants' proposed FF 131 confirmed that appellants believed the excess cost allocation is the average excess cost over and above the cost of a student's basic education. CP at 237. This proposed FF is virtually identical to challenged FF 5.

b. Section 507, on its face, provides for a Safety Net and fully funds it.

As with the funding formula, the Safety Net was enacted in 1995 and has continued ever since. Washington was the first state to develop Safety Net as a means to fund special education. RP 1545. The Safety Net was developed after careful study and evaluation. Ex. 94.

The Safety Net was designed to provide access to additional funding for students whose special education expenditures were proven to exceed revenues provided under the funding formula. Ex. 550, § 507(8). Implementing a 1988 Thurston County Superior Court decision, access to Safety Net funding focused on the high cost individuals and required districts to demonstrate that they have used all available funds, have properly formulated IEPs and operate reasonably efficient special education programs. *Id.*; Ex. 723. As demonstrated by the State's principal witness, the High Cost Individual requirement for access to Safety Net was the only means of addressing special education needs above the funding formula that was consistent with these criteria. RP 1654-55.¹⁸

¹⁸ This evidence supports CL 18—that the text of § 507(8) limiting Safety Net funding awards to districts both showing unmet needs and students whose properly formulated IEPs have produced extraordinary, high costs is constitutional. Appellants have never exhausted Safety Net appropriations and special education students without high cost needs receive sufficient funding (chart, p. 17, *supra*), providing substantial evidence that supports the legal conclusion that appellants' constitutional challenges failed.

Focusing Safety Net on high cost individuals also makes sense because, as the charts on pages 17-18 confirm, the first two tiers of the funding formula—BEA plus $(.9309 \times \text{BEA})$ —provide sufficient funding to pay for the costs of special education students whose needs are under the \$14,902 threshold for accessing Safety Net. Exhibit 60 at 1769 confirms that the threshold amount is a product of costs that are proven to exhaust the BEA, the excess cost allocation and the federal funding provided for that student. This type of Safety Net is designed to fund “outliers” whose high cost needs (as established in a properly formulated IEP) are well above the average.

Unchallenged FF 20 confirmed that Safety Net funds have never been exhausted. Even if they were, Section 507(8) directs the Superintendent of Public Instruction to an additional source of funding, if needed. Nothing in the language of Section 507(8), or in the amounts appropriated therein for Safety Net, amounts to proof beyond a reasonable doubt that the Safety Net is unconstitutional.¹⁹

¹⁹ Appellants challenge CL 15 and 16, that hold a Safety Net, in and of itself, is not constitutionally required. The challenge is a moot one since there has been a Safety Net in place since 1995. However, the point of these conclusions is that Safety Net is but one option that the Legislature may pursue to satisfy Article IX. Appellants’ proposed Finding 144 (CP at 240) supports the principle that the Legislature can preserve, modify or replace the special education system, consistent with the constitution. CL 15 and 16 also are supported by the Supreme Court ruling in *Seattle Sch. Dist. v. State*, 476 Wn.2d at 420, that “the general authority to select the means of discharging that [Art. IX] duty should be left to the Legislature.”

2. The Appropriations Act for special education is constitutional as implemented.

Unchallenged Conclusion of Law 10 states “a district must expend all of the BEA and all of the excess cost allocation received for its special education students before the district can contend that the legislature has underfunded its special education program.” This comports with Section 507(1) of the Appropriations Act, which further says districts must use the full BEA first and then the .9309 x BEA allocation before they seek additional funding.

a. Funding formula.

Appellants’ evidence of shortfalls in special education funding consisted of demonstrating that school district financial or accounting documents (F-196s and Worksheet A’s) showed an excess of reported expenditures over revenues. However, appellants’ own expert opined that this superficial analysis of underfunding was not proof that education was underfunded. RP 771. The State’s witnesses agreed. RP 1728-29; 2339-42.

Even without this concession, the charts on pages 17-18 prove that application of only some of the BEA for special education students

The same case supports CL 17: the Supreme Court held that education funding must be provided through a “regular and dependable tax source.” 476 Wn.2d at 526. No Washington court has required “regular and dependable funding” to satisfy Article IX.

eliminates every claimed deficit in every year. As applied, the funding formula of BEA plus (.9309 x BEA) fully funds special education.

b. Safety Net.

Appellants contend that the Safety Net, as applied, is unconstitutional because Worksheet A produces a “demonstration of need” that is more than the Safety Net funds. The specific example offered is that the Worksheet A analysis of Safety Net applications in 2005-06 indicated a “demonstration of need” of \$147 million, while Safety Net appropriations totaled only \$35 million. Apps. Brief at 25. They ascribe the \$112 million balance to the cost of “medium cost students,” whose education costs exceed the average amount of special education funding.²⁰

This argument is flawed in several respects. First, appellants’ witnesses conceded they had no reports or analyses to support the conclusion that “medium cost” students account for the alleged deficit. RP 1394-95. Federal Way’s Superintendent, in fact, admitted that the difference between Worksheet A and the Safety Net funds awarded his

²⁰ The trial court found that \$21.5 million of the deficit claimed for 2005-06 was due to the unconstitutional application of the cap on special education funding. Deducting that sum yields a claimed deficit, based on Worksheet A, of \$90.5 million. However, the court found that over \$90 million of the claimed 2005-06 deficit was in substantial doubt due to school district improper practices that jeopardized their entitlement to funding. (Part C, *infra*). Thus, the deficit claimed for 2005-06 disappears before the BEA is taken into account.

district was not due to “medium cost” students, but instead was caused by the fact that the district considered only the excess cost allocation (.9309 x BEA) as its special education funding. RP 1139-1142. Inclusion of the BEA received for these students in addition to the excess cost allocation, more than covers this alleged unmet need. As with all districts, simply applying Section 507’s requirement that the BEA and the excess cost allocation be used to cover the costs of special education proves there is no deficit in special education.

The contention is also flawed because Worksheet A, by definition, is only one part of the Safety Net application process. Ex. 60. Worksheet A determines “maximum funding eligibility” and does not “entitle a district to safety net funding.” *Id.*, p. 1769. It does not include the BEA supplied for any special education students and, as appellants’ expert admitted, evidence that expenditures exceed revenues is insufficient to prove a shortfall or inadequate funding. Worksheet A cannot constitute proof of underfunding.

B. The Trial Court Correctly Ruled That the Adequacy of the BEA Was Not an Issue.

Appellants assigned error to CL 7, 9 and 19 in which the trial court concluded that the inadequacy of the BEA was neither proven nor really an issue in the case. The conclusion was correct because appellants have never challenged the constitutionality of the substantive laws

(RCW 28A.150) or Appropriations Acts (Section 502) that define and fund the State's program of basic education. Nor did they provide credible evidence demonstrating that there is a shortfall of basic education funding to cover either basic education or special education costs.

Appellants' evidence of an alleged BEA deficit consisted of Exhibit 61, the 1077 cost reallocation process and opinion testimony by district personnel that the BEA is exhausted by basic education costs. Applying a preponderance of the evidence standard to this evidence, the trial court found it unpersuasive and insufficient to support a constitutional challenge to the BEA. CL 9 and 19.

With regard to Exhibit 61, the testimony of the State's Special Education Director was undisputed: Exhibit 61 provides an "apples and oranges" comparison of state-supplied basic education revenues and commingled expenditures for federally funded, state funded and locally funded programs. RP 1756-57. The expenditures summarized in Exhibit 61, taken from F-196s, grossly overstate expenditures chargeable to the State. No other witness testified about Exhibit 61. However, appellants' expert agreed with the State that proof of a funding deficit cannot be provided by simply applying program expenditures against revenues. RP 771. Thus, Exhibit 61 does not establish that the "adequacy" of the BEA was an issue.

The same problems exist with regard to using the 1077 process to show that the BEA was inadequate. Appellants' Rule 30(b)(6) designee on 1077 conceded that 1077 has nothing to do with the application or use of revenues and that 1077 neither proves the BEA is exhausted nor proves that school districts have followed Section 507(1)'s directive that the "full amount" of BEA supplied for special education students be applied to the costs of their education. RP 2866-69.

The State's evidence also established that 1077 does not prove that the BEA provided for special education students is actually spent on their education. Ex. 520 at 3613; RP 1661-62 and 2326. Indeed, the charts on pages 17-18, *supra*, show that there is a substantial surplus left over for every year at issue in this case (statewide and in appellants' districts), even with the 1077 process. Unchallenged CL 11 confirms this: the BEA that 1077 could account for is "significantly less" than the total amount of BEA the State provides for special education students.

The charts on pages 17-18 also prove that there is more than enough BEA left over to fund the basic education costs incurred on behalf of special education students. In each year of claimed deficit, 50 to 55% of the BEA provided for special education students remains to apply to basic education costs. The percentage (and amounts) of residual BEA is actually much higher because the charts, *infra*, are conservative and did

not include the BEA supplied by the State for children under age six. For 2004-05, this amounts to over \$11.7 million in additional BEA that was available to offset basic education costs. App. B at 10 (notes 1 and 2). Simply put, appellants' evidence "conclusively proves" there is no shortfall in special education funding.

Appellants offered no evidence linking basic education costs to special education students, either individually or as a class. Unchallenged FF 27, 36. They conceded that the only instances where districts even attempt to do so is on Worksheet C. RP 1465-1467. Districts do not account for the basic education costs attributable to the special education students. *Id.* The F-196 reports do not do so, either. *Id.*

In sharp contrast, the State provided undisputed evidence that appellants' claim that the BEA was "exhausted" on basic education attributes to special education students "two students' worth of expenditures versus one students' worth of revenue"; in effect, reaching the untenable conclusion that special education students attend school twice as long as regular students:

- A. ...If you were applying this particular model, what you are saying is that one student is counted twice, once as a general education student, as if they were there full-time, all day, plus the non-instructional-related expenditures, and again as if the student were full-time, all day in a special education

program. And we know that's not the state of practice.

The average amount of time special education students get in a week statewide is about 600 minutes of instruction per week.

Q. How does that compare to a basic ed student?

A. About 1,500 minutes per week.

Q. That a basic ed student gets?

A. That's right.

Q. And for a special education student, wouldn't the basic ed total of minutes include the amount of time spent on special ed?

A. Yes, it would.

THE COURT: I didn't understand your statement, Dr. Gill. The average amount of time special education students get in a week statewide is about 600 minutes of instruction per week. Did you mean basic education instruction, or did you mean a combination of basic education instruction and special education instruction that equals, then, 600 minutes per week?

THE WITNESS: I mean they get 600 minutes per week of what's known as specially designed instruction via an IEP.

Q. (By Mr. Clark) Does that not mean, Doctor, that the other 900 minutes those special ed students spend during their class week is spent in basic education?

A. That's essentially what it means, yes.

Q. In other words, special education students don't have a longer school day than the general education students.

A. No. Their school day is not 12 hours.

RP 1758-59. This undisputed evidence supports the court's finding that appellants failed to show underfunding of basic education. Thus, the trial court was correct in CL 7, 9 and 19 that the adequacy of the BEA was not an issue in this case.

C. The State's Defense Further Undermined Appellants' Claims of a Funding Deficit.

The charts, *infra* at 17-18, show that, based on appellants' case-in-chief, there was a complete failure of proof on the constitutional claims. Without considering the defense case, special education funding was more than ample.

If this Court were to conclude that the rejection of appellants' case was in error, the defense case must still be taken into account. Exhibit 722, for example, created additional "significant issues" (CP at 324, fn.13) about the deficit claimed for 2005-06: over \$90 million. Additionally, the districts' dismal performance of IEP formation—an absolute barrier to entitlement to special education funding—was confirmed by Exhibit 511a and the expert work of Dr. Reschly. His report (Exhibit 529) undermines the validity up to 75% of special education expenditures in years 2001, 2002, 2003 and 2004.

The State's defense is independent proof that the deficit in special education funding is illusory. On this alternative basis, this Court can still affirm the trial court judgment. *In re Estate of Jones*, 152 Wn.2d at 10.

D. A Higher Standard of Review for Challenges to Statutes Implementing Article IX Is Unnecessary and Would Constitute Reversible Error.

Appellants contend that the trial court's use of the term "rational" to describe the funding formula for special education, the excess cost component of that formula and the Safety Net means that the trial court applied a rational basis equal protection analysis to this case. However, at no point in its Opinion, Findings and Conclusions or Judgment, did the court apply equal protection principles. Both appellants and the State agree that this case does not raise equal protection issues.

The standards of review discussed *supra* at Part III(B) governed the trial court's Judgment. Appellants challenged the constitutionality of state statutes. Without exception, duly enacted legislation survives constitutional attack unless the party challenging it overcomes the presumption of constitutionality and meets the heavy burden of proving unconstitutionality beyond a reasonable doubt. *Amunrud v. Bd. of Appeals*, 158 Wn. 208, 143 P.3d 571 (2006); *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 120 P.3d 56 (2005); *State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 982 P.2d 611 (1999).

Appellants' contention that the Article IX "paramount duty to make ample provision" for education requires the invention of a novel standard that departs from well-established precedent is erroneous. As made clear by the *Brown* (155 Wn.2d at 266) and *Tunstall* (141 Wn.2d at 220) decisions, our Supreme Court has applied the same presumption of constitutionality and elevated quantum of proof requirements to challenges to statutes that implement the Article IX duty. Indeed, the Supreme Court has applied this same standard to challenges to state appropriations statutes, *Ret. Public Emps. of Wash.*, *supra*, 148 Wn.2d at 602, including appropriations acts that fund education pursuant to Article IX. *Brown*, *supra*. Abrogating those Supreme Court decisions in favor of a new standard that, in effect, presumes the statute is unconstitutional is unnecessary.

However, if this Court were to apply the standard of review advocated by appellants, affirming the trial court would still be the outcome. At trial, the appellants presented what they felt (erroneously) was a *prima facie* case of underfunding. Exhibits 111, 111a, 111b, 131, 131a and 131b were "rolled up" summaries of selected revenue and expenditure entries on annual F-196s. Exhibit 61 was also based on the F-196 summary of revenues and expenditures for basic education. To the extent this constituted a *prima facie* case of underfunding of special

education, the case falls apart due to appellants' expert's admission that these exhibits cannot prove underfunding. The State also rebutted that showing by confirming through the very same exhibits and witnesses that more than ample funding was provided in the BEA for special education students. Inclusion of the BEA, which appellants failed to do despite the statutory requirement that they do so (Section 507(1)), eliminated every claimed shortfall and confirmed there was actually a surplus of special education funding available for use. No excess levy funding was needed.

The need for a novel standard of review is as insubstantial as the paper deficits appellants claim have existed in special education funding. The evidence at trial confirmed that the State has fulfilled its paramount duty to special needs children in Washington. No heightened standard of judicial scrutiny will alter that conclusion.

V. CONCLUSION

The trial court was correct in dismissing appellants' claim that the State fails to make ample provision for special education. Factually, appellants' evidence established that inclusion of but a portion of the BEA furnished for special education students eliminates every claimed shortfall. The failure to establish the fact of inadequate funding necessarily meant that appellants could not establish the legal proposition that the Appropriations Acts for special education were unconstitutional.

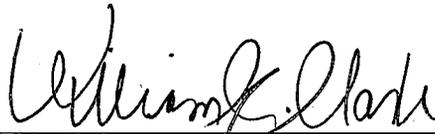
The adequacy of the BEA as part of special education funding was conclusively established—again, by appellants’ exhibits and witnesses. Appellants’ claim that the BEA was consumed—by the 1077 process or otherwise—was similarly disproven by appellants’ evidence. The BEA’s inadequacy to cover basic education costs was neither proven nor put in issue in this case.

Well-established legal standards of review govern this case. They require judicial deference and a presumption of validity to legislative acts that implement constitutional duties, including the Article IX duty to make ample provision for education. Other well-established principles require that the appellate court defer to the trial court’s weighing of the evidence, assessment of witnesses’ credibility and resolution of disputed facts. No other legal standards apply; nor is there a need to invent new ones.

The trial court Judgment is supported by substantial evidence, the Findings of Fact and Conclusions of Law. This Court should so affirm.

RESPECTFULLY SUBMITTED: November 21, 2007.

ROBERT M. MCKENNA
Attorney General



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

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 **Brief of Respondents** was filed by legal messenger in Division II of the Court of Appeals at the following address:

Court of Appeals of Washington, Division II
950 Broadway #300
Tacoma, WA 98402

And that a copy of the preceding **Brief of Respondents** was served on appellants' counsel by legal messenger at the address below:

John C. Bjorkman
Christopher L. Hirst
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Robert B. Mitchell
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158

DATED this 21st day of November, 2007 at Seattle, Washington.



AGNES ROCHE

APPENDIX A

2001-02 ¹	\$989,386,497
2002-03 ²	\$1,025,818,034
2003-04 ³	\$1,063,973,875
2004-05 ⁴	\$1,107,762,439
2005-06 ⁵	\$1,147,647,277
Five Year Total	\$5,334,588,103
Average	\$1,066,917,621

¹ Exhibits 38, 112f, 113h

² Exhibits 39, 45, 113i

³ Exhibits 40, 45, 113j

⁴ Exhibits 41, 45, 113k

⁵ Exhibits 42, 112j, 113a

APPENDIX B

2002-2003

District	Total Special Ed Population Ages 6-21 ¹	Basic Ed Allocation ²	BEA for Special Education Students ³	Special Education Excess Cost Revenues ⁴	Total Revenue Available for Special Ed Students ⁵	F-196 Reported Program 21 Expenditures ⁶	F-196 Reported Program 24 Expenditures ⁷
Statewide	110039	\$3,924	\$431,754,522	\$594,063,512	\$1,025,818,034	\$558,046,455	\$137,994,246
Bellingham	1202	\$3,919	\$4,711,059	\$6,258,602	\$10,969,661	\$5,952,097	\$1,566,782
Bethel	2049	\$3,859	\$7,906,825	\$10,700,445	\$18,607,270	\$9,361,624	\$2,754,853
Burlington Edison	392	\$3,916	\$1,534,888	\$2,047,862	\$3,582,750	\$2,241,159	\$359,987
Everett	1883	\$4,113	\$7,745,683	\$11,067,262	\$18,812,945	\$11,271,018	\$2,175,843
Federal Way	2442	\$3,783	\$9,237,549	\$12,563,862	\$21,801,411	\$12,758,642	\$2,656,219
Issaquah	1493	\$3,815	\$5,695,198	\$7,555,858	\$13,251,056	\$8,321,093	\$2,012,159
Lake Washington	2000	\$3,945	\$7,889,820	\$11,855,652	\$19,745,472	\$10,947,088	\$3,043,276
Mercer Island	353	\$3,897	\$1,375,616	\$1,787,099	\$3,162,715	\$1,869,433	\$399,496
Northshore	2257	\$4,094	\$9,240,045	\$12,309,432	\$21,549,477	\$13,431,973	\$2,756,326
Puyallup	2084	\$3,962	\$8,256,787	\$11,535,389	\$19,792,176	\$14,207,411	\$2,309,434
Riverside	222	\$4,030	\$894,747	\$1,238,199	\$2,132,946	\$1,263,093	\$268,495
Spokane	3589	\$3,966	\$14,234,584	\$19,024,148	\$33,258,732	\$19,029,314	\$4,553,172

2002-2003

District	Total Reported Special Education Expenditures ⁸	Surplus of Revenue Over Reported Special Education Expenditures ⁹	Program 21 Expenditures Subject to 1077 Reallocation ¹⁰	Previous Column Increased by Eliminating Effect of 1077 Process ¹¹	Total Program 21 Expenditures After Eliminating Effect of 1077 Process ¹²	Total Surplus After Eliminating Effect of 1077 Process ¹³
Statewide	\$696,040,701	\$329,777,333	\$148,099,642	\$238,870,391	\$648,817,203	239,006,585
Bellingham	\$7,518,879	\$3,450,782	\$1,577,306	\$2,544,041	\$6,918,833	2,484,046
Bethel	\$12,116,477	\$6,490,793	\$2,480,830	\$4,001,339	\$10,882,133	4,970,284
Burlington Edison	\$2,601,146	\$981,604	\$593,907	\$957,915	\$2,605,167	617,596
Everett	\$13,446,861	\$5,366,084	\$2,986,820	\$4,817,451	\$13,101,649	3,535,452
Federal Way	\$15,414,861	\$6,386,550	\$3,381,040	\$5,453,291	\$14,830,892	4,314,299
Issaquah	\$10,333,252	\$2,917,804	\$2,205,090	\$3,556,596	\$9,672,600	1,566,297
Lake Washington	\$13,990,364	\$5,755,108	\$2,900,978	\$4,678,997	\$12,725,107	3,977,089
Mercer Island	\$2,268,929	\$893,786	\$495,400	\$799,032	\$2,173,065	590,154
Northshore	\$16,188,299	\$5,361,178	\$3,559,473	\$5,741,085	\$15,613,585	3,179,566
Puyallup	\$16,516,845	\$3,275,331	\$3,764,964	\$6,072,522	\$16,514,970	967,773
Riverside	\$1,531,588	\$601,358	\$334,720	\$539,870	\$1,468,244	396,207
Spokane	\$23,582,486	\$9,676,246	\$5,042,768	\$8,133,497	\$22,120,043	6,585,517

2003-2004

District	Total Special Ed Population Ages 6-21 ¹	Basic Ed Allocation ²	BEA for Special Education Students ³	Special Education Excess Cost Revenues ⁴	Total Revenue Available for Special Ed Students ⁵	F-196 Reported Program 21 Expenditures ⁶	F-196 Reported Program 24 Expenditures ⁷
Statewide	110,663	\$3,982	\$440,650,106	\$623,323,769	\$1,063,973,875	\$569,269,295	\$162,871,506
Bellingham	1,211	\$3,975	\$4,813,580	\$6,491,865	\$11,305,445	\$6,090,589	\$1,733,882
Bethel	2,109	\$3,916	\$8,259,139	\$11,197,639	\$19,456,778	\$9,498,323	\$2,879,379
Burlington Edison	379	\$3,964	\$1,502,481	\$2,258,116	\$3,760,597	\$2,173,389	\$514,568
Everett	1,877	\$4,178	\$7,841,412	\$11,776,595	\$19,618,007	\$11,284,268	\$2,933,854
Federal Way	2,407	\$3,832	\$9,222,445	\$13,205,100	\$22,427,545	\$13,330,285	\$3,180,972
Issaquah	1,464	\$3,862	\$5,653,822	\$7,680,669	\$13,334,491	\$8,408,188	\$1,906,764
Lake Washington	2,041	\$3,980	\$8,123,772	\$12,788,232	\$20,912,004	\$11,341,991	\$3,779,616
Mercer Island	364	\$3,962	\$1,442,102	\$1,950,399	\$3,392,501	\$1,868,911	\$519,933
Northshore	2,359	\$4,137	\$9,759,867	\$12,832,363	\$22,592,230	\$14,087,261	\$3,299,193
Puyallup	2,119	\$4,019	\$8,516,918	\$12,538,060	\$21,054,978	\$14,287,639	\$2,867,952
Riverside	209	\$4,054	\$847,328	\$1,277,853	\$2,125,181	\$1,315,847	\$323,374
Spokane	3,608	\$4,022	\$14,512,025	\$19,636,606	\$34,148,631	\$19,838,923	\$5,291,027

2003-2004

District	Total Reported Special Education Expenditures ⁸	Surplus of Revenue Over Reported Special Education Expenditures ⁹	Program 21 Expenditures Subject to 1077 Reallocation ¹⁰	Previous Column Increased by Eliminating Effect of 1077 Process ¹¹	Total Program 21 Expenditures After Eliminating Effect of 1077 Process ¹²	Total Surplus After Eliminating Effect of 1077 Process ¹³
Statewide	\$732,140,801	\$331,833,074	\$152,521,354	\$246,002,184	\$662,750,125	\$238,352,245
Bellingham	\$7,824,471	\$3,480,974	\$1,632,278	\$2,632,706	\$7,091,017	\$2,480,545
Bethel	\$12,377,702	\$7,079,076	\$2,545,551	\$4,105,727	\$11,058,499	\$5,518,900
Burlington Edison	\$2,687,957	\$1,072,640	\$582,468	\$939,465	\$2,530,386	\$715,643
Everett	\$14,218,122	\$5,399,885	\$3,024,184	\$4,877,716	\$13,137,800	\$3,546,352
Federal Way	\$16,511,257	\$5,916,288	\$3,572,516	\$5,762,123	\$15,519,892	\$3,726,681
Issaquah	\$10,314,952	\$3,019,539	\$2,253,394	\$3,634,507	\$9,789,301	\$1,638,426
Lake Washington	\$15,121,607	\$5,790,397	\$3,039,654	\$4,902,667	\$13,205,004	\$3,927,383
Mercer Island	\$2,388,844	\$1,003,657	\$500,868	\$807,852	\$2,175,895	\$696,674
Northshore	\$17,386,454	\$5,205,776	\$3,775,386	\$6,089,332	\$16,401,207	\$2,891,830
Puyallup	\$17,155,591	\$3,899,387	\$3,829,087	\$6,175,947	\$16,634,499	\$1,552,527
Riverside	\$1,639,221	\$485,960	\$352,647	\$568,785	\$1,531,985	\$269,821
Spokane	\$25,129,950	\$9,018,681	\$5,316,831	\$8,575,534	\$23,097,626	\$5,759,978

2004-2005

District	Total Special Ed Population Ages 6-21 ¹	Basic Ed Allocation ²	BEA for Special Education Students ³	Special Education Excess Cost Revenues ⁴	Total Revenue Available for Special Ed Students ⁵	F-196 Reported Program 21 Expenditures ⁶	F-196 Reported Program 24 Expenditures ⁷
Statewide	110,961	4087.74	\$453,579,718.14	\$654,182,721.00	\$1,107,762,439.14	\$597,187,338.00	\$191,129,042
Bellingham	1,177	4081.68	\$4,804,137.36	7,033,711.00	\$11,837,848.36	\$6,071,314.00	\$2,268,172
Bethel	2,217	4031.71	\$8,938,301.07	11,906,682.00	\$20,844,983.07	\$10,131,102.00	\$3,410,543
Burlington Edison	401	4088.08	\$1,639,320.08	2,474,785.00	\$4,114,105.08	\$2,190,173.00	\$676,870
Everett	1,879	4272.8	\$8,028,591.20	12,235,280.00	\$20,263,871.20	\$12,087,833.00	\$3,294,043
Federal Way	2,497	3936.45	\$9,829,315.65	13,990,874.00	\$23,820,189.65	\$14,421,495.00	\$3,729,449
Issaquah	1,521	3976.51	\$6,048,271.71	8,544,196.00	\$14,592,467.71	\$8,594,782.00	\$2,438,636
Lake Washington	2,011	4072.2	\$8,189,194.20	13,446,280.00	\$21,635,474.20	\$11,786,094.00	\$4,428,351
Mercer Island	354	4057.67	\$1,436,415.18	2,020,390.00	\$3,456,805.18	\$1,866,659.00	\$639,420
Northshore	2,405	4258.65	\$10,242,053.25	13,526,307.00	\$23,768,360.25	\$14,844,301.00	\$3,717,047
Puyallup	2,192	4133.49	\$9,060,610.08	12,967,428.00	\$22,028,038.08	\$14,530,348.00	\$3,283,639
Riverside	211	4123.39	\$870,035.29	1,317,142.00	\$2,187,177.29	\$1,344,549.00	\$404,001
Spokane	3,660	4127.58	\$15,106,942.80	20,466,146.00	\$35,573,088.80	\$19,843,820.00	\$6,291,990

2004-2005

District	Total Reported Special Education Expenditures ⁸	Surplus of Revenue Over Reported Special Education Expenditures ⁹	Program 21 Expenditures Subject to 1077 Reallocation ¹⁰	Previous Column Increased by Eliminating Effect of 1077 Process ¹¹	Total Program 21 Expenditures After Eliminating Effect of 1077 Process ¹²	Total Surplus After Eliminating Effect of 1077 Process ¹³
Statewide	\$788,316,380	\$319,446,059.14	\$158,065,933.60	\$254,945,054.19	\$694,066,458.59	\$222,566,938.55
Bellingham	\$8,339,486	\$3,498,362.36	\$1,602,826.90	\$2,585,204.67	\$7,053,691.77	\$2,515,984.59
Bethel	\$13,541,645	\$7,303,338.07	\$2,674,610.93	\$4,313,888.59	\$11,770,379.67	\$5,664,060.40
Burlington Edison	\$2,867,043	\$1,247,062.08	\$578,205.67	\$932,589.79	\$2,544,557.12	\$892,677.96
Everett	\$15,381,876	\$4,881,995.20	\$3,191,187.91	\$5,147,077.28	\$14,043,722.37	\$2,926,105.83
Federal Way	\$18,150,944	\$5,669,245.65	\$3,807,274.68	\$6,140,765.61	\$16,754,985.93	\$3,335,754.72
Issaquah	\$11,033,418	\$3,559,049.71	\$2,269,022.45	\$3,659,713.63	\$9,985,473.18	\$2,168,358.53
Lake Washington	\$16,214,445	\$5,421,029.20	\$3,111,528.82	\$5,018,594.86	\$13,693,160.05	\$3,513,963.15
Mercer Island	\$2,506,079	\$950,726.18	\$492,797.98	\$794,835.45	\$2,168,696.47	\$648,688.71
Northshore	\$18,561,348	\$5,207,012.25	\$3,918,895.46	\$6,320,799.14	\$17,246,204.67	\$2,805,108.58
Puyallup	\$17,813,987	\$4,214,051.08	\$3,836,011.87	\$6,187,115.92	\$16,881,452.05	\$1,862,947.03
Riverside	\$1,748,550	\$438,627.29	\$354,960.94	\$572,517.64	\$1,562,105.70	\$221,070.59
Spokane	\$26,135,810	\$9,437,278.80	\$5,238,768.48	\$8,449,626.58	\$23,054,678.10	\$6,226,420.70

2005-2006

District	Worksht A 3-21 Special Ed Population ¹⁴	Worksht A Special Ed Population Ages 6-21 ¹⁵	Basic Ed Allocation ¹⁶	BEA for Special Education Students ³	Special Education Excess Cost Revenues ¹⁷	Total Revenue Available for Special Ed Students ⁵	Reported Program 21 Expenditures ¹⁸
Worksht A Districts	107,789	96,159	4,228	406,595,923	606,619,616	1,013,215,539	559,915,217
Bellingham	1,255	1,120	4,231	4,737,414	7,669,792	12,407,206	6,717,094
Bethel	2,427	2,165	4,153	8,991,273	12,850,615	21,841,888	10,948,321
Burlington Edison	461	411	4,192	1,724,015	2,637,768	4,361,783	2,272,317
Everett	2,299	2,051	4,414	9,052,573	13,407,075	22,459,648	12,827,346
Federal Way	2,884	2,573	4,080	10,498,146	14,916,093	25,414,239	15,298,558
Issaquah	1,679	1,498	4,099	6,140,154	9,197,172	15,337,326	9,041,078
Lake Washington	2,508	2,237	4,203	9,404,833	14,459,540	23,864,373	12,825,010
Mercer Island	382	341	4,210	1,434,850	2,147,928	3,582,778	2,022,643
Northshore	2,650	2,364	4,406	10,416,567	14,188,628	24,605,195	15,862,130
Puyallup	2,442	2,179	4,272	9,305,890	14,046,038	23,351,928	14,707,372
Riverside	270	241	4,254	1,024,547	1,443,517	2,468,064	1,384,858
Spokane	4,267	3,807	4,272	16,262,783	20,780,012	37,042,795	20,993,463

2005-2006

District	Wksht A Expenditures Not in Program 21 ¹⁹	Worksht A Reported Special Education Expenditures ²⁰	Surplus of Revenue Over Reported Special Education Expenditures ²¹	Program 21 Expenditures Subject to 1077 Reallocation ²²	Previous Column Increased by Eliminating Effect of 1077 Process ¹¹	Program 21 Expenditures After Eliminating Effect of 1077 Process ²³	Worksht A Surplus After Eliminating Effect of 1077 Process ²⁴
Worksht A Districts	170,832,598	730,747,815	282,467,724	147,257,702	237,512,423	650,169,938	192,213,003
Bellingham	2,026,771	8,743,865	3,663,341	1,766,596	2,849,348	7,799,846	2,580,589
Bethel	3,304,530	14,252,851	7,589,037	2,879,408	4,644,207	12,713,120	5,824,238
Burlington							
Edison	963,525	3,235,842	1,125,941	597,619	963,902	2,638,600	759,658
Everett	2,869,190	15,696,536	6,763,112	3,373,592	5,441,277	14,895,031	4,695,427
Federal Way	3,891,733	19,190,291	6,223,948	4,023,521	6,489,550	17,764,587	3,757,919
Issaquah	2,481,557	11,522,635	3,814,691	2,377,804	3,835,167	10,498,441	2,357,327
Lake Washington	4,001,512	16,826,522	7,037,851	3,372,978	5,440,287	14,892,319	4,970,542
Mercer Island	786,993	2,809,636	773,142	531,955	857,992	2,348,680	447,105
Northshore	3,769,077	19,631,207	4,973,988	4,171,740	6,728,613	18,419,003	2,417,115
Puyallup	3,121,598	17,828,970	5,522,958	3,868,039	6,238,772	17,078,105	3,152,224
Riverside	518,461	1,903,319	564,745	364,218	587,448	1,608,088	341,515
Spokane	6,139,367	27,132,830	9,909,965	5,521,281	8,905,292	24,377,474	6,525,954

	BEA for Special Education Students ³	Special Education Excess Cost Revenues ^{4,17}	Special Education Expenditures ^{8,20}	Claimed Deficit ²⁵	Actual Surplus With 1077 Process ^{9,21}	Actual Surplus Without 1077 Process ^{13,24}
Statewide 2002-03	\$431,754,522	\$594,063,512	\$696,040,701	(\$101,977,191)	\$329,777,333	\$239,006,585
Statewide 2003-04	\$440,650,106	\$623,323,769	\$732,140,801	(\$108,902,593)	\$331,833,074	\$238,352,245
Statewide 2004-05	\$453,579,718	\$654,182,721	\$788,316,380	(\$134,133,659)	\$319,446,059	\$222,566,939
Wksht A 2005-06	\$406,595,923	\$606,619,616	\$730,747,815	(\$147,898,351)	\$282,467,724	\$192,213,003
Alliance Districts 2002-03	\$78,722,800	\$107,943,810	\$135,509,987	(\$27,566,177)	\$51,156,623	\$33,184,280
Alliance Districts 2003-04	\$80,494,890	\$113,633,497	\$142,756,128	(\$29,122,630)	\$51,372,259	\$32,724,762
Alliance Districts 2004-05	\$84,193,188	\$119,929,221	\$152,294,631	(\$32,365,408)	\$51,827,778	\$32,781,141
Alliance Districts 2005-06	\$88,993,044	\$127,744,178	\$158,774,504	(\$34,534,845)	\$57,962,718	\$37,829,614

- ¹ Source: Exhibits 39, 40, 41 - Statewide December 1 Child Count Data; Exhibit 712 - School District December 1 Child Count Data. For simplicity of presentation, only special education students aged 6-21 have been included. The Basic Education Allocation (BEA) for each student is distributed to school districts based on Full Time Equivalencies (FTE) rather than headcount. RP 157. A small number of students in the 6-21 age group attend school less than full time and do not generate a full 1.0 FTE BEA. In order to compensate for this, five-year old students, who are typically in kindergarten and receive a 0.5 FTE BEA, have not been included in this analysis. RP 160. If they had been included, the surplus of revenues over expenditures shown in this chart would have been even greater.
- ² Source: Exhibit 45 - BEA Rates from Reports 1220. For simplicity of presentation, the unenhanced BEA has been used for this column. Most students generate an additional amount reflected in an enhanced general apportionment called the enhanced BEA. RP 157. Were the enhanced BEA to be used in this calculation, the surplus of revenues over expenditures shown in this chart would have been even greater.
- ³ The amounts in this column are derived from multiplying the Unenhanced BEA by the age 6-21 total special education population.
- ⁴ Source: Exhibits 113j, 113j, 113k - State Summary School District Financial Reports, Accts. 4121, 6121, 6124, 7121; Exhibit 132b, Accts. 4121, 6121, 6124, 7121.
- ⁵ The amounts in this column are derived by adding the Total Special Education Excess Cost Revenues to the BEA for special education students.
- ⁶ Source: Exhibits 113i, 113j, 113k - State Summary School District Financial Reports, Program 21; Exhibit 132b, Program 21.
- ⁷ Source: Exhibits 113i, 113j, 113k - State Summary School District Financial Reports, Program 24; Exhibit 132b, Program 24.
- ⁸ The amounts in this column are derived by adding the F-196 Reported Program 21 Expenditures to the F-196 Reported Program 24 Expenditures.
- ⁹ The amounts in this column are derived by subtracting the F-196 Reported Program 21 and Program 24 Expenditures from the Total Revenue Available for Special Education Students.
- ¹⁰ Source: Exhibits 114j, 114k - 114l - duty roots 31, 32, 33, 52 and 63 for statewide amounts. The school district amounts are estimated by applying the statewide average of expenditures for duty roots 31, 32, 33, 52 and 63 as compared to total statewide Program 21 expenditures to each school district's Program 21 expenditures. Exhibit 520 explains in detail the 1077 process and its application to duty roots 31, 32, 33, 52 and 63. A small number of teachers in duty roots 31, 32, 33, 52 and 63 comprise preschool special education teachers whose expenses are charged entirely to Program 21. For simplicity of presentation, no adjustment was made to account for these teachers. Had such an adjustment been made, the surplus of revenues over expenditures shown in this chart would have been even greater.
- ¹¹ Source: FF 33. On average, the 1077 Process allocates 62% to Special Ed (Program 21) and 38 % to Basic Ed (Program 01). To reverse the effect of the 1077 accounting system, the Program 21 Expenditures Subject to 1077 Reallocation can be divided by 62% or 0.62. The resulting amount represents an estimate of the dollar amounts attributable to teachers in duty roots 31, 32, 33, 52 and 63 that could have allocated to Program 21 had the 1077 process never been applied.
- ¹² The amounts in this column are derived by adding the amounts in the previous column to the difference between the F-196 Reported Program 21 Expenditures and the Program 21 Expenditures Subject to 1077 Reallocation.
- ¹³ The amounts in this column are derived from subtracting the sum of the Total Program 21 Expenditures After Eliminating Effect of 1077 Process and the F-196 Reported Program 24 Expenditures from the Total Revenue Available for Special Ed Students.
- ¹⁴ Source: Exhibit 111, 111a - Alliance Districts' Worksheet A Analysis.
- ¹⁵ Source: Exhibit 42. Statewide December 1 Child Count was used as the basis to determine the relative percentage of 3-5 year-old special education students as compared to the total 3-21 year-old special education student population. This percentage was applied to the total 3-21 enrollment from the Worksheet A Districts to arrive at an estimate of the age 6-21 population. Exhibit 111a is the source for the district totals listed in this column. The BEA for each student is distributed to school districts based on Full Time Equivalencies (FTE) rather than headcount. RP 157. A small number of students in the 6-21 age group attend school less than full time and do not generate a full 1.0 FTE BEA. In

order to compensate for this, five-year old students, who are typically in kindergarten and receive a 0.5 FTE BEA, have not been included in this analysis RP 160. If they had been, the surplus of revenues over expenditures shown in this chart would have been even greater.

¹⁶ Exhibit 112j - Statewide BEA Rate for 2005-2006. For simplicity of presentation, the statewide average BEA rate was used in place of the average BEA rate for the Worksheet A districts. Using the Worksheet A Districts' Average BEA rate would not make a material difference to the final amounts appearing in the chart. Exhibit 45 - 1220 Reports. BEA rates for individual districts can be found in the 1220 Reports. For simplicity of presentation, the unenhanced BEA has been used for this column. Most students generate an additional amount reflected in an enhanced general apportionment called the enhanced BEA. RP 157. Were the enhanced BEA to be used in this calculation, the surplus of revenues over expenditures shown in this chart would have been even greater.

¹⁷ Source: Exhibit 111a.

¹⁸ Source: Exhibit 111a.

¹⁹ Source: Exhibit 111a - Total Special Education Expenditures outside of Program 21.

²⁰ Source: Exhibit 111a - Total Special Education Expenditures outside of Program 21 added to Reported Program 21 Expenditures.

²¹ The amounts in this column are derived by subtracting the Worksheet A Reported Special Education Expenditures from the Total Revenue Available for Special Education Students in Exhibit 111a.

²² Amounts in this column are estimated by using Exhibits 114j, 114k and 114l to determine the statewide average of expenditures for duty roots 31, 32, 33, 52 and 63 from 2002-2003 through 2004-2005 as compared to total statewide Program 21 expenditures for the same years. This average was then applied to the Worksheet A Districts' Program 21 expenditures for 2005-2006. A small number of teachers in duty roots 31, 32, 33, 52 and 63 are preschool special education teachers whose expenses are charged entirely to Program 21. For simplicity of presentation, no adjustment was made to account for these teachers. Had such an adjustment been made, the surplus of revenues over expenditures shown in this chart would have been even greater.

²³ The amounts in this column are derived by adding the amounts in the previous column to the difference between the Exhibit 111a Reported Program 21 Expenditures and the Program 21 Expenditures Subject to 1077 Reallocation.

²⁴ The amounts in this column are derived from subtracting the sum of the Total Program 21 Expenditures After Eliminating Effect of 1077 Process and Worksheet A Expenditures Not in Program 21 from the Total Revenue Available for Special Ed Students in all Worksheet A Districts and the individual Alliance districts.

²⁵ Exhibits 111, 111a, 131a, 132a.