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NO. 84362-7

SUPREME COURT OF THE STATE OF WASHINGTON

MATHEW and STEPHANIE McCLEARY, et al.,

Respondents,

v.

STATE OF WASHINGTON,

Appellant.

**STATE OF WASHINGTON'S MEMORANDUM TRANSMITTING
THE LEGISLATURE'S 2018 POST-BUDGET REPORT**

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I. INTRODUCTION

The 2018 Legislature committed \$969 million to public schools for School Year 2018-19 to fully fund K-12 basic education salaries by September 1, 2018. The action responds to the Order issued by this Court in November 2017, wherein the Court made a careful, detailed assessment of the new funding system and found only one flaw: state funding for salaries was phased in over two school years and thus not completed until September 2019. Order, *McCleary v. State*, No. 84362-7 (Wash. Nov. 15, 2017), at 28-42. The Court specifically concluded that the 2017 Legislature “enacted a funding system that, when fully implemented, will achieve constitutional compliance according to the benchmarks that have consistently guided judicial oversight.” *Id.* at 1.

As demonstrated in the accompanying *2018 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation* (Apr. 3, 2018) (*2018 Report*), and explained in this brief, the 2018 Legislature enacted legislation and provided funding that meets the last benchmark for full constitutional compliance.

The 2018 Legislature also established a separate account dedicated to basic education into which it deposited funds to pay the contempt sanction that has accrued since August 13, 2015. *See Order, McCleary v.*

State, No. 84362-7 (Wash. Aug. 13, 2015), at 9-10. The account contains sufficient funds to pay the sanction through June 30, 2018.

The Court should hold that the State has achieved full compliance with article IX, section 1 of the Washington Constitution and with the Court's 2012 *McCleary* decision. The Court should find that the State has purged contempt and paid the sanction, that the sanction should end, and that the sanction funds now may be expended to support basic education in Washington. And, finally, the Court should relinquish its retained jurisdiction and terminate review.

II. STATEMENT OF THE ISSUES

(1) The 2018 Legislature provided for full state funding of compensation for staff providing the State's program of basic education, thus correcting the only remaining item of constitutional noncompliance this Court identified in its November 15, 2017 Order. Is the State now in full compliance with article IX, section 1 of the Washington Constitution?

(2) The State has fully implemented and funded its program of basic education by the 2018 deadline, and the 2018 Legislature has deposited funds sufficient to pay the accumulated contempt sanction into a segregated account to be spent on basic education. Should the Court lift its contempt order, stop the sanction, and allow the funds to be spent?

(3) Should the Court relinquish its retained jurisdiction and terminate review?

III. STATEMENT OF THE CASE

In 2012, the Court held the State's 30-year-old system for funding basic education did not comply with its duty under article IX, section 1 of the Washington Constitution to make ample provision for K-12 education. *McCleary v. State*, 173 Wn.2d 477, 539, 269 P.2d 227 (2012). However, as the Court recognized, the Legislature already had begun implementing funding reforms that were enacted in ESHB 2261 (Laws of 2009, ch. 548) and SHB 2776 (Laws of 2010, ch. 236). *McCleary*, 173 Wn.2d at 543-46. The Court endorsed the reforms enacted in ESHB 2261 and the implementation schedule in SHB 2776, *McCleary*, 173 Wn.2d at 484, 543, but retained jurisdiction to "foster[] dialogue and cooperation between coordinate branches of state government" and "help ensure progress in the State's plan to fully implement education reforms by 2018." *Id.* at 546-47.

The State began implementing the reforms in ESHB 2261 even before the 2012 *McCleary* decision, but the early pace of reform concerned the Court. The Court took incremental steps to ensure that the State made adequate progress toward the 2018 deadline; those steps, including the Court's orders finding the State in contempt and imposing sanctions, are

summarized in the Court’s November 2017 Order. Order (Nov. 15, 2017), at 2-8.

Building on educational reforms and funding increases enacted in preceding biennia, the 2017 Legislature enacted a funding system that this Court concluded would be in compliance with article IX, section 1 “when fully implemented.” Order (Nov. 15, 2017), at 1. The Court carefully and thoroughly reviewed the 2017 legislation and concluded the new funding system had been fully implemented by the September 1, 2018, deadline, with a single exception: although the “new salary model established by EHB 2242 provides for full state funding of basic education salaries sufficient to recruit and retain competent teachers, administrators, and staff . . . consistent with the standards established for constitutional compliance,” state funding of the new salary allocations was phased in over two years, and thus not implemented until September 1, 2019. *Id.* at 40-42. The Court retained jurisdiction and continued the daily sanction to ensure that last funding component was implemented by September 1, 2018. *Id.* at 43-44.

The *2018 Report* describes the actions taken by the 2018 Legislature to fully implement full state funding for staff compensation by September 1, 2018, and to pay the accumulated contempt sanction into a dedicated account for basic education. This legislation and funding corrects the last

remaining constitutional deficiency identified in the Court's November 2017 Order. *2018 Report* at 24.

IV. STANDARD OF REVIEW

This Court has established three principles as the framework for its analysis of whether the State has complied with its obligation under article IX, section 1.¹

First, it is the State's implementation and funding of the basic education reform package enacted in ESHB 2261 and SHB 2776 that is the benchmark for determining the State's compliance. *McCleary*, 173 Wn.2d at 517; Order (Nov. 15, 2017), at 26.

Second, the State must fully fund its basic education program with state revenues. The State cannot rely on local levies to support the basic education program. *McCleary*, 173 Wn.2d at 527-28; Order (Nov. 15, 2017), at 38.

Third, the State's compliance with article IX, section 1 is to be determined by whether the State's action achieves or is reasonably likely to achieve the constitutionally prescribed end, with deference given to the Legislature's determination as to the proper means by which to fulfill the

¹ These three principles were summarized in more detail at pages 6-8 in the *State of Washington's Memorandum Transmitting the Legislature's 2017 Post-Budget Report* (July 31, 2017).

State's constitutional duty. *McCleary*, 173 Wn.2d at 518-19, 541; Order (Nov. 15, 2017), at 21, 37.

V. ARGUMENT

The 2018 Legislature enacted legislation to amend the new salary model established by EHB 2242 (Laws of 2017, 3d Spec. Sess., ch. 13); provide state funding to fully implement the amended model by September 1, 2018; and fully pay the contempt sanction that has accrued since August 2015. The Court should find that the State is in full compliance with article IX, section 1 and the 2012 *McCleary* decision; find that the State has purged contempt and paid the sanction; lift the sanction and allow the sanction funds to be expended to support K-12 education in Washington; and terminate review.

A. **After Reviewing the Legislation Enacted in 2017, the Court Required Only the Timely Implementation of the New Salary Model to Achieve Compliance with Washington Constitution, Article IX, Section 1**

In its November 2017 Order, the Court reviewed the 2017 legislation implementing the State's program for basic education, together with the 2017-19 Biennial Operating Budget, to measure the State's constitutional compliance "according to the areas of basic education identified in [ESHB 2261] and the implementation benchmarks established by [SHB 2776]." Order (Nov. 15, 2017), at 3-4.

The Court first reviewed EHB 2242, which amended the State’s program for basic education. The Court began by summarizing the compensation provisions in EHB 2242, Order (Nov. 15, 2017), at 8-10 (*see also* 39-40), explaining that EHB 2242 “expressly provides for the first time that statewide salary allocations necessary to hire and retain qualified staff for the program of basic education are part of the statutory basic education program.” *Id.* at 8. The Court noted that full state funding for salaries was to be phased in in two steps, half in School Year 2018-19 and full funding in School Year 2019-20. *Id.* at 9.

The Court then summarized the provisions in EHB 2242 that were intended to eliminate reliance on local levies to fund basic education, and that revised the state property tax to provide additional state funding for basic education. *Id.* at 10-13. As the Court noted, EHB 2242 “comprehensively addresses local levy reform in an effort to ensure local funding sources are not used to pay for basic education, a feature of the former funding system that this court held to be unconstitutional.” *Id.* at 11. EHB 2242 specifically provided that school districts would be permitted to use local revenues “only for documented and demonstrated enrichment of the state’s statutory program of basic education,” defined permissible “enrichment activities,” and included accountability provisions. *Id.* at

11-12. The Court held that these provisions remedied the unconstitutionality of the former system.

After summarizing other provisions in EHB 2242 and rejecting the Plaintiffs’ arguments challenging the use of a prototypical school funding model, the Court examined whether EHB 2242 and the 2017-19 Operating Budget, SSB 5883 (Laws of 2017, 3d Spec. Sess., ch. 1), fully funded the components of basic education identified in ESHB 2261, SHB 2776, and the Court’s 2012 decision. The Court determined that the State is now fully funding all of those basic education components. *See* Order (Nov. 15, 2017), at 28 (materials, supplies, and operating costs); *id.* at 29-30 (transportation); *id.* at 30-31 (all-day kindergarten); *id.* at 32-33 (K-3 class size reduction); *id.* at 34 (categorical programs).²

The Court concluded that, as to each of these components of basic education, “the legislature has acted within the broad range of its policy discretion in a manner that ‘achieves or is reasonably likely to achieve’ the constitutional end of amply funding K-12 basic education.” *Id.* at 37 (citing *McCleary*, 173 Wn.2d at 519). As to each of these components, “the State

² The Court explicitly rejected the Plaintiffs’ attempts to import capital costs into article IX, section 1. The November 2017 Order explained that article IX, section 1 does not require the State to fully fund capital costs attendant to the basic education program. Order (Nov. 15, 2017), at 31. The State notes however, that the 2018 Legislature adopted a 2017-19 Capital Budget that contains approximately \$1 billion for school construction projects. ESSB 6095, §§ 5003, 5007, 5008 (Laws of 2018, ch. 298, §§ 5003, 5007, 5008).

has satisfied the court’s mandate to fully fund the program of basic education established by ESHB 2261 in accordance with the formulas and benchmarks set forth in SHB 2276 and this court’s orders.” Order (Nov. 15, 2017), at 37.

The Court also concluded that “the new salary model established by EHB 2242 provides for full state funding of basic education salaries sufficient to recruit and retain competent teachers, administrators, and staff . . . consistent with the standards established for constitutional compliance.” *Id.* at 40. The single area of noncompliance the Court found was the two-year phase-in of state funding for salaries:

As things stand today, the salary allocation model enacted in EHB 2242 complies with the State’s obligation to fully fund K-12 basic education salaries, but it will not be implemented by September 1, 2018. The State thus remains out of full compliance with its constitutional duty under article IX, section 1.

Id. at 43. As explained in the *2018 Report* and the following section of this brief, the 2018 Legislature corrected this last remaining constitutional deficiency during its 2018 regular session.

B. The 2018 Legislature Fully Implemented the New Salary Model by September 1, 2018, as Ordered by the Court

Two bills enacted by the 2018 Legislature fully implement the new salary model by September 1, 2018. E2SSB 6362 (Laws of 2018, ch. 266) modifies the funding provisions and policy choices enacted in EHB 2242.

Specifically, section 202 amends RCW 28A.150.410 to require the State to fully allocate the new salary levels for all three staff classifications in School Year 2018-19, instead of the previous plan to allocate 50 percent in School Year 2018-19 and expand to 100 percent in School Year 2019-20. *2018 Report* at 11-13; E2SSB 6362, § 202.

ESSB 6032 (Laws of 2018, ch. 299) is the Fiscal Year 2018 Supplemental Operating Budget, which adjusts appropriations for the 2017-19 biennium. ESSB 6032 increases total state appropriations for K-12 public schools by over \$803 million dollars for the 2017-19 biennium compared with the 2017-19 Operating Budget (Laws of 2017, 3d Spec. Sess., ch. 13). *2018 Report* at 10.

The minimum salary allocation for School Year 2018-19 is increased for Certificated Instructional Staff to \$65,216.05; for Certificated Administrative Staff to \$96,805.00; and for Classified Staff to \$46,784.33. ESSB 6032, § 503(1)(c). After application of regionalization factors for School Year 2018-19, funded salary allocations for Certificated Instructional Staff range from \$65,216.05 to \$80,867.90. The range for Certificated Administrative Staff is \$96,805.00 to \$120,038.20. The range for Classified Staff is \$46,784.33 to \$58,012.57. *2018 Report* at 14. Based on those numbers, \$775.8 million in Fiscal Year 2019 (July 1, 2018 – June 30, 2019) supports the new salary levels through the first ten months of

School Year 2018-19. *2018 Report* at 10; ESSB 6032, § 504(5).³ Because the last two months of School Year 2018-19 fall in the first two months of Fiscal Year 2020, \$194.0 million will be provided in the Fiscal Year 2020 Operating Budget to support July and August 2018 payments to school districts for salaries. *2018 Report* at 10. *See* RCW 28A.510.250 (schedule of state payments to school districts). The total funding for the new salary allocations in School Year 2018-19 (not counting regionalization adjustments) thus is \$969.8 million (\$775.8 million + \$194.0 million). *2018 Report* at 13.

C. Additional Enhancements to Basic Education Made by the 2018 Legislature

In its 2012 decision, the Court noted that the State’s program of basic education is “not etched in constitutional stone.” *McCleary*, 173 Wn.2d at 484. The Legislature has a continuing obligation to review and update the basic education program as the needs of students and the demands of society evolve. *Id.* Accordingly, the 2018 Legislature has enacted policy improvements and funding enhancements beyond those

³ Section 504(5) contains appropriations of \$783,457,000 (\$699,437,000 + \$84,020,000) covering compensation increases, regionalization adjustments, the special education multiplier, and a delay of a professional learning day (which was ultimately vetoed). The breakdown of the budgeting adjustments producing the specific appropriations will be available in the Legislative Budget Notes when published. (Notes are typically published within two months of the enactment of the Operating Budget and posted on the Legislative Evaluation and Accountability (LEAP) website, <http://fiscal.wa.gov/BudgetOBillsLBNs>).

required to achieve compliance with the *McCleary* decision and the Court's November 15, 2017 Order, and beyond those established in EHB 2242 in 2017.

First, the 2018 Legislature took additional steps to ensure that the State continues to fund actual market rate salaries into the future. State salary allocations now will be rebased every four years, instead of every six years, to improve their currency. Rebasing also will include an analysis of which inflationary measure is most representative of actual market experience for school districts. State allocations for annual salary inflationary increases now begin with School Year 2019-20, instead of School Year 2020-21. *2018 Report* at 13-14; E2SSB 6362, §§ 203(1), 206.

Second, the 2018 Legislature made policy changes and added funding to address concerns raised by school administrators, school staff, and others in response to the revised funding formula enacted last year in EHB 2242. For example, the legislation fine-tuned the regionalization factors for school districts and established a new salary adjustment factor that increases salary allocations for school districts that have high percentages of highly experienced certificated instructional staff. *2018 Report* at 15-16; E2SSB 6362, § 203(2).

Third, the Legislature continued to add resources for special education. Last year, the Legislature increased the percentage of enrolled

students for whom districts may receive a special education excess cost allocation; the percentage was increased from 12.7 percent to 13.5 percent. EHB 2242, § 406. The 2018 Legislature further increased support for special education in three ways: it increased the special education excess cost multiplier from 0.9309 to 0.9609; it provided additional flexibility in the use of safety net funding and now requires consideration of the extraordinary high-cost needs of special education students served in institutional settings; and it adds professional learning days to the base allocation for special education. *2018 Report* at 18-20; E2SSB 6362, §§ 102(2)(b), 106.

Fourth, the 2018 Legislature revised the criteria to qualify for the Learning Assistance Program to improve the continuity of supplemental state funding for schools in the Program. *2018 Report* at 20; E2SSB 6362, §§ 101(10)(a)(2), 104; ESSB 6032, § 515.

Fifth, the 2018 Legislature included provisions to smooth the disruption for school districts caused both by the transition to full state funding for basic education (achieved by EHB 2242) and for the influx of additional state money to fully fund salaries during School Year 2018-19 (achieved by E2SSB 6362 and ESSB 6032). For example, the 2018 Legislature established and funded a hold-harmless payment to protect

school districts against a possible reduction in total funding during the transition. *2018 Report* at 22; E2SSB 6362, §§ 401, 407.⁴

D. The 2018 Legislature Fully Paid the Contempt Sanction Into a Dedicated Account, as Ordered by the Court

In the November 2017 Order, the Court reiterated its directive that the State establish a separate account dedicated to public education into which contempt sanctions are to be deposited, and to appropriate funds for sanctions. Order (Nov. 15, 2017), at 43 n.17. The Legislature has done so, depositing \$105,200,000 to pay the contempt sanction that has accrued from August 13, 2015 (*see* Order (Aug. 13, 2015), at 9-10 (imposing the sanction)), through June 30, 2018. *2018 Report* at 23; ESSB 6032, § 802.

The Court ordered that the contempt sanction would accrue “until the State purges its contempt by enacting measures to fully implement the program of basic education, including to fully fund the new salary allocation model effective for the 2018-19 school year.” Order (Nov. 15, 2017), at 44. As explained in the *2018 Report*, at pages 11-13, and in the preceding section of this brief, E2SSB 6362 amended the new salary allocation model to fully implement it by September 1, 2018, and ESSB 6032 provides full

⁴ The Governor vetoed a less-prescriptive hold-harmless provision in ESSB 6032, § 502(1)(h), in part because the vetoed provision assumed a local funding baseline that had not been implemented. Veto Message on ESSB 6032 (Mar. 27, 2018), <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Vetoed/Senate/6032-S.VTO.pdf>.

funding for the model for School Year 2018-19. Those measures were enacted on March 8, 2018, and signed into law by the Governor on March 27, 2018.⁵ Accordingly, consistent with the Court’s November 2017 Order, the State purged its contempt on March 27, 2018.

The Court should (1) find that the State purged contempt as of March 27, 2018, and lift its contempt order; (2) stop the accrual of the daily sanction, effective March 27, 2018; (3) find that the State has fully paid the sanction and deposited it in a separate account dedicated to basic education; and (4) allow the sanction funds to be expended to support basic education in Washington, as contemplated in ESSB 6032, §§ 504(5) and 507(13) (appropriating and allocating the accumulated sanction to school employee salaries, regionalization, and special education).

E. Because the State Has Fully Complied With Article IX, Section 1, and Fully Paid the Contempt Sanction, the Court Should Terminate Review

The Court retained jurisdiction to “help ensure steady and measurable progress in the State’s plan to fully implement reforms by September 1, 2018.” Order (Nov. 15, 2017), at 1. As the Court explained, it did not retain jurisdiction “to take over public education,” but rather to

⁵ The bill history for E2SSB 6362 is available at <http://apps2.leg.wa.gov/billsummary?BillNumber=6362&Year=2017>. The bill history for ESSB 6032 is available at <http://apps2.leg.wa.gov/billsummary?BillNumber=6032&Year=2017>.

fulfill its constitutional obligation to determine whether the State “is complying with its positive constitutional duty to make ample provision for the basic education of all children in the state.” *Id.* at 21. Accordingly, when the State achieves constitutional compliance, the justification for retained jurisdiction is at an end.

As explained in the *2018 Report* and in this brief, the State has taken the last step to achieve compliance, and the State now is in full compliance with article IX, section 1 and this Court’s 2012 decision, ending that basis for retained jurisdiction.

As also explained above, because the State is in compliance, there is no further basis for continuing the order of contempt and the imposition of a daily sanction, and any justification for retained jurisdiction on that basis also has ended.

The State has responded to the Court, reforming the state program of basic education, assuming full responsibility for funding that program, and increasing biennial funding over six years from \$13.4 billion in the 2011-13 biennium to \$22.8 billion in the 2017-19 biennium, and \$26.7 billion in the 2019-21 biennium. *2018 Report* at 6. Because the State has responded by fully implementing and funding its program of basic education by the 2018 deadline, the justification for continuing jurisdiction

no longer exists. The Court should relinquish its retained jurisdiction over this appeal and terminate review.

VI. CONCLUSION

The Court should find that the legislation enacted in the 2018 legislative session corrects the final item of constitutional noncompliance identified in the Court's November 2017 Order. The Court should hold that the State has achieved full compliance with article IX, section 1 of the Washington Constitution and with the Court's 2012 *McCleary* decision, and has done so by September 1, 2018.

The Court should find that the State purged contempt as of March 27, 2018, and lift its contempt order. The Court should stop the accrual of the daily sanction as of March 27, 2018.

The Court should find that the State has fully paid the accumulated contempt sanction into a separate account dedicated to basic education, as the Court directed in its November 2017 Order, and allow the funds paid into the segregated account to be expended to support basic education in Washington.

Finally, the Court should relinquish its retained jurisdiction and terminate review.

RESPECTFULLY SUBMITTED this 9th day of April 2018.

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CERTIFICATE OF SERVICE

I certify that I served a copy of the State of Washington's Memorandum Transmitting the Legislature's 2018 Post-Budget Report, via electronic mail, upon the following:

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I certify under penalty of under the laws of the State of Washington that the foregoing is true and correct.

DATED this 9th day of April 2018, at Olympia, Washington.

s/ Kristin D. Jensen

KRISTIN D. JENSEN
Confidential Secretary



Washington State Legislature

Olympia

April 3, 2018

Washington State Supreme Court
Temple of Justice
Olympia, WA 98504

Dear Chief Justice Fairhurst and Honorable Members of the Washington State Supreme Court,

Per this Court's orders of July 18, 2012, and November 15, 2017, in *McCleary v. State*, No. 84362-7, please find attached the 2018 report of the legislative Joint Select Committee on Article IX Litigation. This report was adopted by the Committee at its meeting on April 3, 2018.

Respectfully,

Senator David Frocht, Co-Chair
46th Legislative District

Representative Paul Harris, Co-Chair
17th Legislative District

Senator Joe Fain, 47th Legislative District
Representative Kristine Lytton, 40th Legislative District
Senator Christine Rolfes, 23rd Legislative District
Representative Drew Stokesbary, 31st Legislative District
Representative Pat Sullivan, 47th Legislative District
Senator Hans Zeiger, 25th Legislative District

Enclosures

2018 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation

Introduction and Overview

In 2017, the Legislature enacted comprehensive reforms to K-12 funding, along with the appropriations necessary to support these reforms in the 2017-19 fiscal biennium.¹ Engrossed House Bill 2242 (2017) (EHB 2242) declared that it was intended to complete the process of K-12 policy and finance reform that was initiated in Engrossed Second Substitute

¹ Laws of 2017, 3rd. sp. sess., ch. 13 (hereinafter "EHB 2242") (K-12 funding reforms); and Laws of 2017, 3rd. sp. sess., ch. 1 (appropriations act). In accordance with Article VIII, section 4 of the state constitution, the 65th Legislature may enact appropriations through the 2017-19 fiscal biennium, and it may not make appropriations for future biennia. However, under the Budget Outlook process required by RCW 43.88.055, the four-year balanced budget reflects planned appropriations for the 2019-21 fiscal biennium to implement the requirements of EHB 2242 and Engrossed Second Substitute Senate Bill 6362 (2018) (E2SSB 6362). See Legislative Fiscal Committees, *Summary of K-12 Basic Education Program Allocations* (showing four-year projected expenditures), available at http://leap.leg.wa.gov/leap/Budget/Detail/2017/hoK12Statewide_0629.pdf; House Appropriations Committee, *Conference Report for ESSB 6032 Summary 21* (2018) available at http://leap.leg.wa.gov/leap/Budget/Detail/2018/hoOutlook_0226.pdf. See also Joint Select Committee on Article IX Litigation, 2014 Report to Washington State Supreme Court (hereinafter "2014 Report"), at 50-54 (constitutional restrictions on appropriations).

House Bill 2261 (2009) (E2SHB 2261)² and Substitute House Bill 2776 (2010) (SHB 2776).³

In its order of November 15, 2017, this Court upheld the funding reforms of EHB 2242, deeming that the education policies and funding levels in that legislation fell within the range of discretion granted to the Legislature under Article IX's paramount duty.⁴ The Court determined, however, that the Legislature's statutory schedule for phasing in its new salary allocation policies did not comply with the Court's requirement to complete full implementation of funding reforms by the 2018-19 school year.⁵ For that reason, the Court found that the State had failed to achieve full compliance with the Court's previous orders, and it continued to retain jurisdiction over the case.⁶

The Committee reports that with policy⁷ and appropriations⁸ legislation enacted in 2018, the Legislature has provided funding to implement fully

² Laws of 2009, chapter 548 (hereinafter "ESHB 2261").

³ Laws of 2010, chapter 236 (hereinafter "SHB 2776").

⁴ *McCleary v. State* No. 84362-7 (Wash. Nov. 15, 2017) at 37 (hereinafter "Court's 2017 Order").

⁵ *Id.* at 43.

⁶ *Id.*

⁷ Engrossed Second Substitute Senate Bill 6362 (hereinafter "E2SSB 6362") Laws of 2018 (K-12 policy and funding legislation).

⁸ Engrossed Substitute Senate Bill 6032 (hereinafter "ESSB 6032" (2018 supplemental operating budget)).

its salary allocation plan in the 2018-19 school year, completing the tasks identified by this Court as necessary for the State's compliance with Article IX.⁹ Since the Court's original ruling of January 5, 2012, state funding for K-12 has increased from \$13.4 billion in the 2011-13 biennium to \$22.8 billion in the 2017-19 biennium.

Part I of this report provides an overview of K-12 funding progress since the Court's original ruling. Part II of this report provides information on legislation enacted during the 2018 legislative session that addresses the Court's order, including the appropriations that implement salary allocations and the ways in which E2SSB 6362 revises salary allocations and the program of basic education.

I. K-12 Funding since the Original *McCleary* Ruling

A. Mileposts in the Progress Toward Full Funding

Since the Court's initial *McCleary* ruling in 2012,¹⁰ the State has enacted substantial increases to funding for its K-12 program. In 2009 and 2010, the Legislature enacted major reforms to the Basic Education Act and the way in which the State allocates funding to school districts for the state's

⁹ See Court's 2017 Order at 41-44.

¹⁰ *McCleary v. State*, 173 Wn.2d 477 (2012).

program. Engrossed Substitute House Bill 2261 and SHB 2776 required many changes to funding for schools.

As explained in more detail in earlier reports submitted by this Committee, from the time of the Court's original ruling through the 2016 legislative session, the Legislature funded and implemented these reforms to the Basic Education Act according to the enacted statutory schedule.¹¹ In addition, during this period the Legislature funded additional enhancements to the state's program beyond those previously required under ESHB 2261 and SHB 2776.¹²

B. 2017: K-12 Funding Reforms Enacted in EHB 2242

In 2017, the Legislature enacted reforms that have resulted in unprecedented increases to state K-12 funding allocations. As is described in more detail in the Committee's 2017 Report,¹³ the funding and program changes enacted in EHB 2242 and supporting appropriations legislation

¹¹ See generally Joint Select Committee on Article IX Litigation, 2017 Report to Washington State Supreme Court at 3-9 (hereinafter "2017 Report"); 2015 Report to Washington State Supreme Court at 7-11 (hereinafter "2015 Report").

¹² Laws of 2015 3rd sp. sess, ch. 3, §§ 502, 514, 515 (staffing increases and additional instruction in the Learning Assistance Program and Transitional Bilingual Instruction Program funded in budget as part of the basic education program but not codified at that time into the Basic Education Act).

¹³2017 Report at 9-43.

resulted in fundamental changes to the State's approach to funding K-12 education, including:

- Increasing state salary allocations, adjusted for regional costs and inflation, to be phased in over two years beginning with school year 2018-19.¹⁴
- Increasing the funded enrollment percentage for special education from 12.7 percent to 13.5 percent.¹⁵
- Establishing a new high-poverty, school-based allocation for the Learning Assistance Program.¹⁶
- Increasing funding formulas for the Transitional Bilingual, Highly Capable, and Career and Technical Education programs.¹⁷
- Establishing a phased-in funding allocation for professional learning.¹⁸
- Revising state school property taxes, school district enrichment levies, and Local Effort Assistance (LEA, also known as levy equalization).¹⁹

¹⁴ 2017 Report at 19-27 (providing citations to chapter law sections).

¹⁵ 2017 Report at 29-31 (providing citations to chapter law sections).

¹⁶ 2017 Report at 31-33 (providing citations to chapter law sections).

¹⁷ 2017 Report at 33-38 (providing citations to chapter law sections).

¹⁸ 2017 Report at 39 (providing citations to chapter law sections).

¹⁹ 2017 Report at 46-62 (providing citations to chapter law sections).

- Establishing new accounting and auditing requirements.²⁰

C. 2018: Further K-12 Funding Increases under E2SSB 6362

As is described in more detail in Part II of this report, E2SSB 6362 results in state investments in K-12 funding that surpass those established last year in EHB 2242. Since the Court's original ruling of January 5, 2012, state funding for K-12 has increased from \$13.4 billion in the 2011-13 biennium to \$22.8 billion in the 2017-19 biennium. In the 2019-21 fiscal biennium, EHB 2242 and E2SSB 6362 will result in expenditures that total \$26.7 billion. Under the four-year balanced budget requirement of RCW 43.88.055, these planned future expenditures are incorporated into the balanced projected expenditures for the 2019-21 fiscal biennium. As compared to 2011-13 K-12 appropriations, this expansion in K-12 funding is a \$13.3 billion increase—an increase of *99.25 percent*. Additionally, as depicted in the following graph, during this time K-12 funding has substantially increased as a percentage of Near-General Fund²¹ spending.²²

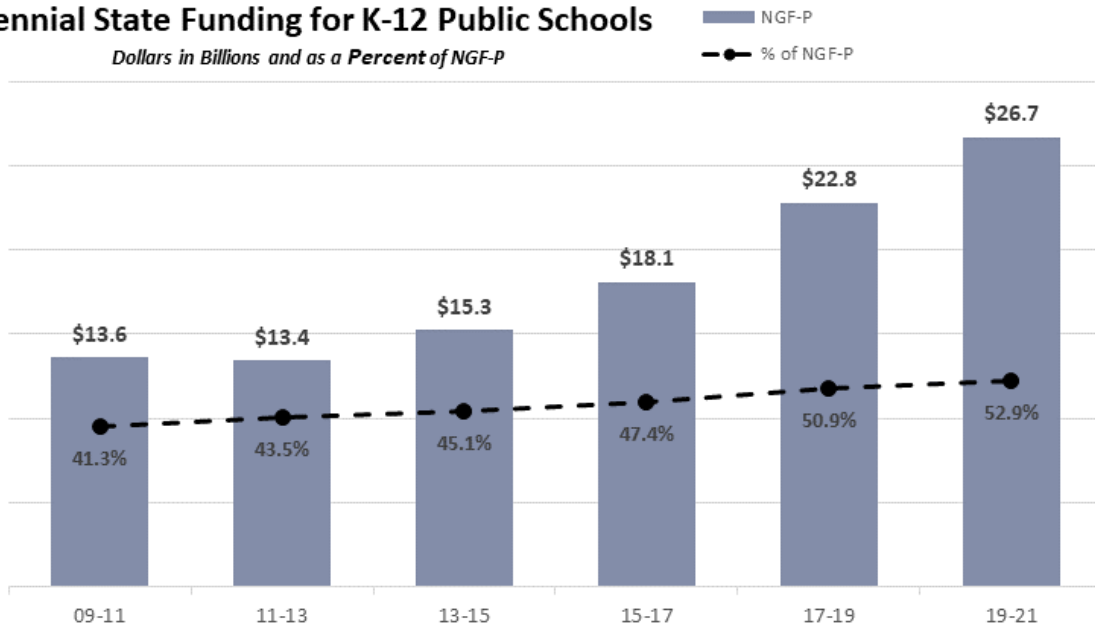
²⁰ 2017 Report at 62-64 (providing citations to chapter law sections).

²¹ The Near-General Fund–State (NGF-P) consists of the State General Fund (GFS), the Education Legacy Trust Account, and the Opportunity Pathways Account. These accounts have separate revenue sources and are accounted for separately, but are grouped together to illustrate spending. In addition, for purposes of this report, NGF-P includes the Dedicated McCleary Penalty Account (the revenue source of which was \$105.2 million is transferred from the GFS into this newly created account).

²² See Appendix for a longer-term illustration of this growth.

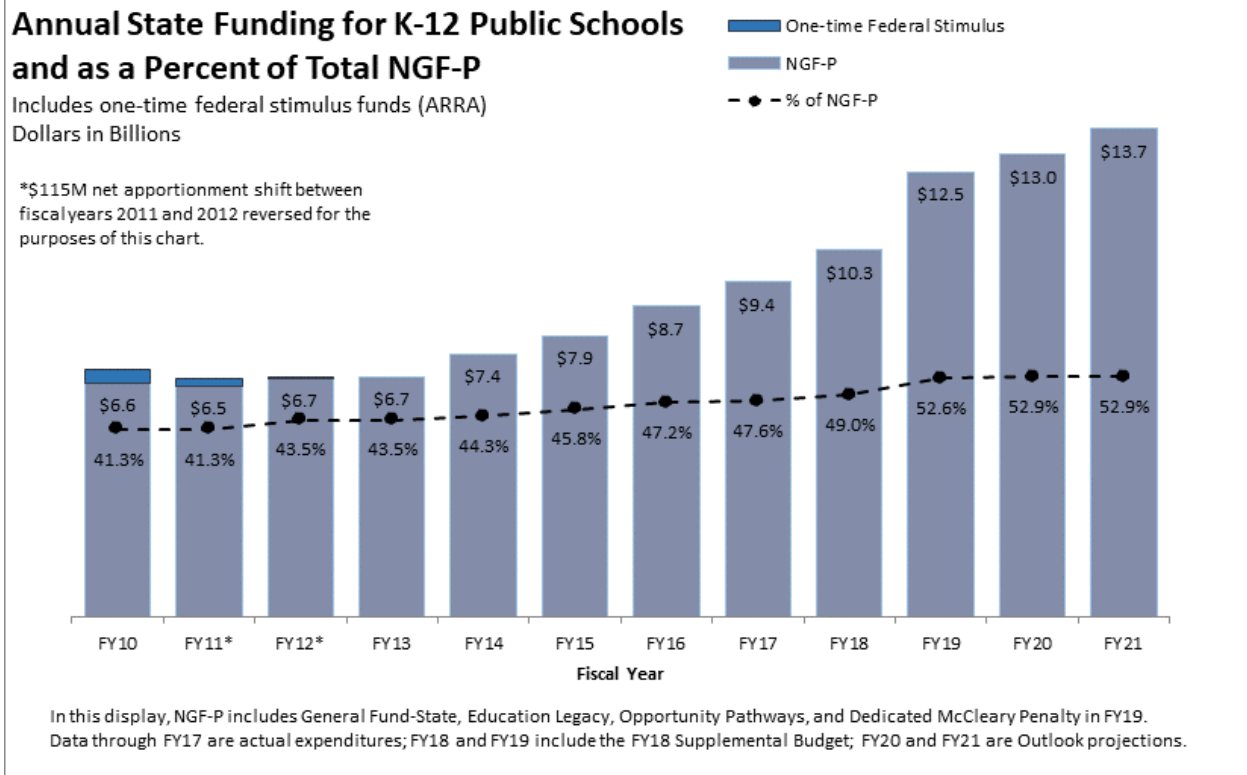
Biennial State Funding for K-12 Public Schools

Dollars in Billions and as a Percent of NGF-P



In this display, NGF-P includes General Fund-State, Education Legacy, Opportunity Pathways, and Dedicated McCleary Penalty in FY19. Data through 15-17 are actual expenditures; data for 17-19 include the FY18 Supplemental Budget; data for 19-21 are Outlook projections.

On an annual basis, state funding for K-12 has increased from \$6.5 billion in fiscal year 2011, the first year in which the prototypical school funding model was in effect, to \$13.7 billion planned for fiscal year 2021. This increase more than doubles state funding for K-12 public schools since the 2012 order.



As modified by the 2018 supplemental budget bill, the 2017-19 state operating budget provides K-12 public education funding totaling \$22.8 billion for 2017-19 and planned K-12 expenditures totaling \$26.7 billion for the 2019-21 biennium. As compared to the 2015-17 actual expenditures, the revised 2017-19 operating budget increases funding for K-12 public education by \$4.7 billion. As a result of the 2018 supplemental budget, planned expenditures for the 2019-21 operating budget increase funding for K-12 public education by an additional \$3.9 billion over the 2017-19 appropriations to bring the total increase to \$8.6

billion as compared to the 2015-17 estimated expenditures. As compared with the 2015-17 biennial budget, the State's spending for K-12 public education increased by 25.8 percent in 2017-19 and 47.3 percent in 2019-21. The table on page 10 provides a specific outline of the increases described above.

State Funding Increases for K-12 Public Schools²³	
<i>Actual 2015-17 Expenditures for K-12 Public Schools</i>	<i>\$18,122,604,000</i>
<i>Enacted Appropriations 2017-19 for K-12 Public Schools Adjusted for the 2018 Supplemental Budget Maintenance Level²⁴</i>	<i>\$21,993,775,000</i>
K-12 Items - 2018 Supplemental Budget	
K-12 Salary Allocations	\$775,791,000
Regionalization Adjustments	\$4,393,000
Special Education Multiplier	\$26,917,000
All Other ²⁵	(\$3,649,000)
<i>Total 2018 Supplemental Budget Appropriation Increases</i>	<i>\$803,452,000</i>
Total Biennial Appropriations for K-12 Public Schools, as Revised by the 2018 Supplemental Budget	\$22,797,227,000
2019-21 Public Education Increases	
<i>Estimated 2019-21 Expenditures for K-12 Public Schools (Maintenance Level)</i>	<i>\$26,523,308,000</i>
Completed Salary Allocation in 2018-19 School Year (pursuant to E2SSB 6362)	\$193,999,000
Regionalization Factor Adjustment	\$11,921,000
Experience Factor Adjustment	\$34,625,000
Special Education Multiplier	\$70,312,000
All Other ²⁶	(\$142,621,000)
2019-21 Planned Appropriations for K-12 Public Schools	\$26,691,543,000

²³ Prior biennia expenditures displayed in this table are based on actual expenditures for those respective biennia rather than initial appropriated levels, and for that reason they may differ slightly from the estimated expenditures discussed in the Committee's prior reports to this Court.

²⁴ This amount reflects the 2017-19 enacted budget appropriations (as enacted in 2017 in SSB 5883), including the 2018 supplemental Budget maintenance adjustments for caseloads and inflation

²⁵ This amount reflects all other items in the GFS, Education Legacy Trust Account, and the Opportunity Pathways account, including a savings from the delay in professional learning days that was assumed in the enacted budget, although the delay was later vetoed in E2SSB 6362.

²⁶ This amount reflects assumed reductions in the School Employees Benefits Board rate, as well as a savings from the delay in professional learning days that was assumed in the enacted budget, although the professional learning days delay was later vetoed in E2SSB 6362.

II. Summary of Engrossed Second Substitute Senate Bill 6362 and Associated Appropriations

A. E2SSB 6362 Modifies and Provides for Earlier Implementation of EHB 2242's Salary Allocation Reforms

Engrossed Second Substitute Senate Bill 6362 builds on, expands, and provides for earlier implementation of EHB 2242. As described in more detail in the Committee's 2017 report,²⁷ EHB 2242 contains two types of enhancements to the prototypical school funding model. First, EHB 2242 makes comprehensive changes to state salary allocations for each of the three state-funded staff types in the prototypical school funding model.²⁸ These revisions not only substantially increase funding for K-12 salaries but they also include a redesign of the State's method for adjusting future salary allocations and other policy changes, with the declared intent of ensuring that salary funding aligns with future salary costs.²⁹ Because funding for categorical programs is based on instructional costs in the general apportionment program, these increases to salary allocations for general apportionment also had the effect of increasing salary funding for

²⁷ 2017 Report at 14-16.

²⁸ 2017 Report at 17-27; *see* EHB 2242, §§ 101-04.

²⁹ 2017 Report at 23-26.

categorical programs.³⁰ Second, in addition to these salary increases for general apportionment and categorical programs, EHB 2242 also enhances instructional time and program offerings in categorical instruction programs.³¹

Engrossed Second Substitute Senate Bill 6362 builds on and expands EHB's 2242's salary allocation plan in several ways.³² Most notably, and most relevant to the Court's review, E2SSB 6362 and its implementing appropriations result in full funding of increased state salary allocations in the 2018-19 school year, instead of funding that is phased in over the 2018-19 and 2019-20 school years.

1. Timing of Full Salary Allocations

As originally enacted, the timing of EHB 2242's increases to salary allocations corresponded to the other changes in EHB 2242's comprehensive revisions to state and local school funding and revenues.³³

³⁰ 2017 Report at 16-17, 28-19; see Court's 2017 Order at 28 (noting that increased salary allocations for prototypical school formula ripple through categorical program funding).

³¹ 2017 Report at 28-38; see EHB 2242, § 402-412.

³² In addition to the education funding changes described in this Report, E2SSB 6362 also made other changes to education policies. For a full description of these changes, please see the Final Bill Report at <http://lawfiles/biennium/2017-18/Pdf/Bill%20Reports/Senate/6362-S2.E%20SBR%20FBR%2018.pdf>.

³³ 2017 Report at 20, 61-62 (discussing coordination of timing among various tax and expenditure revisions), 73-75 & Appendix A (comprehensive timeline of EHB 2242

Under EHB 2242, this phase-in of increased state salary allocations was scheduled to begin with the 2018-19 school year and to be completed in school year 2019-20. In E2SSB 6362, the Legislature has addressed the Court's order to fully implement the increase in salary allocations by September 1, 2018. Engrossed Second Substitute Senate Bill 6362 revises the statutory implementation schedule for state salary allocations to begin on that date, and the 2018 supplemental budget provides appropriations of \$775.8 million in state fiscal year 2019, which will result in funding of \$969 million for the new salary allocations in the 2018-19 school year.³⁴

2. Rebasing Process for Salary Allocations

Engrossed Second Substitute Senate Bill 6362 also makes changes to the process for rebasing state salary allocations. The rebasing process must occur every four years, rather than every six years, and the rebasing review must include the inflationary measure that is the most

reforms). See 2014 Report at 56 (illustrating difference between fiscal year used for state budgeting and school year used for school district budgeting). In addition, the state property for schools and school district local levies are collected on calendar years, requiring further coordination among fiscal periods. RCW 84.52.053; -.065.

³⁴E2SSB 6362, § 202 (changing date for full implementation of new salary allocations). See 2014 Report at 56 (illustrating difference between fiscal year used for state budgeting and school year used for school district budgeting, and why this results in a difference between state appropriations based on the state fiscal year and school district expenditures based on school years, a portion of which fall into the following state fiscal year).

representative of the actual market experience for school districts.³⁵ The period for the annual inflationary salary adjustment using the implicit price deflator for teachers and other school employees is moved up to the 2019-20 school year from the 2020-21 school year.

State-Funded Salary Allocations, as Required by EHB 2242 and E2SSB 6362 and as Provided in the 2018 Supplemental Budget and 2019-21 Planned Expenditures ³⁶			
	2017-18 Salary Allocations	2018-19 State Funded Salary Range	2019-20 Planned State Funded Salary range
Certificated Instructional Staff	\$55,852.27	\$65,216.05 to \$80,867.90	\$66,455.15 to \$85,062.59
Classified Staff	\$34,677.52	\$46,784.33 to \$58,012.57	\$47,673.23 to \$59,114.81
Certificated Administrative Staff	\$64,277.75	\$96,805.00 to \$120,038.20	\$98,644.30 to \$122,318.93

³⁵ E2SSB 6362, § 203.

³⁶ Salary allocations described in the table above include the impact of inflationary adjustments and regionalization factors (beginning in the 2018-19 school year) applied to school district staffing allocations. LEAP Document 3 provides a district-by district table of the regionalization and experience factors applied to each district. http://leap.leg.wa.gov/leap/Budget/leapdocs/coLEAPDocH3_0307.pdf

3. Salary Allocation Regionalization

Engrossed Second Substitute Senate Bill 6362 revises the salary allocation regionalization process originally established in EHB 2242. Engrossed House Bill 2242 required the State to adjust its salary allocations to reflect regional differences in the cost of hiring staff.³⁷ Under this regionalization plan, the regionalization factor for each school district is based, in part, on differences in the median residential value of each school district as well as all neighboring districts within a 15-mile radius.³⁸ Districts whose median residential values exceed the statewide average receive upward adjustments of 6, 12, or 18 percent, subject to further adjustments specified in the budget bill.³⁹

Engrossed Second Substitute Senate Bill 6362 fine-tunes the original regionalization plan of EHB 2242 by providing for an additional type of regionalization adjustment. This adjustment is required for districts that are west of the crest of the Cascade Mountains and that share a border

³⁷ RCW 28A.150.412 (EHB 2242 § 104).; *see* RCW 28A.400.205 (EHB 2242, § 102) (applying regionalization to minimum state salary allocations; RCW 28A.400.200 (EHB 2242 § 103) (applying regionalization to minimum and maximum salaries).

³⁸ RCW 28A.150.412 (EHB 2242, § 104(2)); *see* 2017 Report, Appendix C (LEAP Document 3, 2017-19).

³⁹ *See* 2017 Report, Appendix C (LEAP Document 3, 2017-19) and http://leap.leg.wa.gov/leap/Budget/leapdocs/coLEAPDocH3_0307.pdf

with another district that has a regionalization adjustment more than one tercile higher.⁴⁰

Engrossed Second Substitute Senate Bill 6362 also establishes an experience factor adjustment. Under the experience factor, beginning in the 2019-20 school year a district receives a 4 percent experience factor increase to its salary allocation if it has certificated instructional staff (CIS) years of experience above the median statewide experience and a ratio of CIS with advanced degrees that exceeds the statewide ratio.⁴¹

Taken together, the additional new regionalization and experience factors result in an increase of \$4.4 million in the 2017-19 biennial budget and \$50.9 million in the four-year projection.⁴²

To align with school district salary regionalization, E2SSB 6362 also changes the statutes that govern salaries of charter schools, tribal compact schools, the State School for the Blind and the Washington State Center for Childhood Deafness and Hearing Loss.⁴³ Salaries will be adjusted by the regionalization factor that applies to the school district in which the

⁴⁰ E2SSB 6362, § 203(2)(b).

⁴¹ E2SSB 6362, § 203(2)(c).

⁴² ESSB 6032, § 504.

⁴³ E2SSB 6362, §§ 403-05.

school is geographically located. References to staff mix in charter school and tribal school statutes were removed.

4. Temporary Limits on Salary Increases

For school year 2018-19, EHB 2242 established limits on salary increases that were based on the Consumer Price Index.⁴⁴ Engrossed Second Substitute Senate Bill 6362 authorizes exceptions to these limits that permit salary increases under defined circumstances. The exceptions include: increases for annual experience and education salary step increases; if the district is below the average total salary by staff group then the district may provide increases up to the statewide average allocation; salary changes for staffing increases due to enrollment growth or state-funded increases; and CIS salary changes to provide professional learning, National Board for Professional Teaching Standards bonuses, or hire new staff in the 2018-19 school year.

5. Salary Allocations and Class Size Compliance

Under E2SSB 6362, the requirement to meet the 17:1 class size ratio for K-3 to receive funding at that ratio is delayed until September 1, 2019.⁴⁵

⁴⁴ E2SSB 6362, §§ 204, 207, 208.

⁴⁵ E2SSB 6362, § 101.

This means that in the 2018-19 school year districts will receive the full funding allocation without being required to demonstrate actual class size reduction.

B. E2SSB 6362 Provides Further Increases to Special Education Funding Formulas

The State allocates funding for a program of special education for students with disabilities.⁴⁶ The State uses an excess cost formula that funds a student enrollment percentage based on a percentage of the general education costs.⁴⁷ In addition, the State uses a safety net to supplement special education allocations for districts that are able to demonstrate additional need.⁴⁸ In the 2017-19 biennium, the State has increased the special education funding formula in three ways.

First, EHB 2242 increased the funded percentage of a school district's student enrollment on which the funding for the special education program is based. Engrossed House Bill 2242 increased the funded percentage from 12.7 percent to 13.5 percent of the enrollment in a district.⁴⁹

⁴⁶ RCW 28A.150.260, -.390; *see generally* Ch. 28A.155 RCW.

⁴⁷ RCW 28A.150.390.

⁴⁸ RCW 28.150.392.

⁴⁹ RCW 28A.150.390 (as amended by EHB 2242, § 406).

Second, E2SSB 6362 further enhances the special education formula by increasing the excess cost percentage.⁵⁰ The special education excess cost multiplier is increased from 0.9309 to 0.9609.⁵¹ Professional learning days are included as part of the special education base allocation.⁵² In the 2018 supplemental budget, an additional \$26.9 million is appropriated for special education for these purposes, with a four-year total estimated at \$97.2 million.⁵³

Third, E2SSB 6362 provides additional flexibility in the use of safety net funding. In addition to the existing criteria for safety net awards, the Special Education State Oversight Committee must also consider the extraordinary high-cost needs of special education students served in institutional settings.⁵⁴ The Office of the Superintendent of Public Instruction must revise rules by December 1, 2018, rather than September 1, 2019, to achieve full implementation of the Legislature's changes to the

⁵⁰ E2SSB 6362, § 102 (amending RCW 28A.150.390).

⁵¹ *Id.*

⁵² *Id.*

⁵³ ESSB 6032, § 507.

⁵⁴ E2SSB 6362, § 106 (amending RCW 28A.150.392).

safety net process, including provision of flexible access to community impact awards.⁵⁵

C. E2SSB 6362 Revises the Learning Assistance Program Qualification Requirements.

Engrossed House Bill 2242 increased funding for the Learning Assistance Program (LAP) by creating a new high-poverty, school-based LAP allocation for schools with at least 50 percent of the students who are eligible for free- or reduced-priced meals.⁵⁶ School districts must distribute this allocation to the school buildings that generate the allocation.⁵⁷

Engrossed Second Substitute Senate Bill 6362 modified the allocation to apply to qualifying schools rather than school buildings.⁵⁸ Further, a qualifying school is defined as a school in which the three-year rolling average of the prior year total annual average enrollment that qualifies for free- or reduced-price meals equals or exceeds 50 percent or more of its total annual average enrollment.⁵⁹

⁵⁵ *Id.*

⁵⁶ RCW 28A.165.005, -.015, -.055 (EHB 2242, §§ 403-05).

⁵⁷ *Id.*

⁵⁸ E2SSB 6362 §§ 101, 104.

⁵⁹ *Id.*

D. Professional Learning Days

Engrossed House Bill 2242 requires the State to phase in funding allocations for three professional learning days, beginning with the 2018-19 school year.⁶⁰ The learning days must meet the statutory definitions and standards for professional learning.⁶¹ This additional state funding must be fully implemented by school year 2020-21.⁶²

As enacted by the Legislature, E2SSB 6362 delayed the beginning of the phase-in of three learning days from 2018-19 to 2019-20.⁶³ The version of the bill that passed the Legislature also made further changes to policies governing professional learning days.⁶⁴

However, the Governor vetoed these revisions to professional learning days, so the delay to the 2019-20 school year will not take effect.⁶⁵ For that reason, the statutory obligation remains in place for the State to fund

⁶⁰ RCW 28A.150.415 (EHB 2242, § 105).

⁶¹ *Id.* See RCW 28A.415.430 - .434 (professional learning standards) (as recodified by EHB 2242).

⁶² RCW 28A.150.415.

⁶³ E2SSB 6362, § 402.

⁶⁴ *Id.*

⁶⁵ E2SSB 6362, Governor's Veto Message, available at <http://lawfilesexext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Veto/Veto/Senate/6362-S2.VTO.pdf>.

the professional learning days beginning in school year 2018-19, even though the appropriations bill does not assume this funding.

E. E2SSB 6362 Establishes a Total Funding Hold-Harmless Payment

Engrossed Second Substitute Senate Bill 6362 also establishes a hold-harmless payment to address the possibility of a reduction to total funding available to a school district.⁶⁶ For the 2018-19 and 2019-20 school years, a school district qualifies for a hold-harmless payment if the total state allocation, enrichment levies, and Local Effort Assistance (LEA, also known as levy equalization) is less than what the district would have received based on local levies collected in 2017.⁶⁷ In fiscal year 2019, an appropriation of \$12 million is provided for hold harmless payments, prioritized for districts that would receive less than half in local levies and LEA than they would have received under law as it existed on January 1, 2017, and that have an adjusted assessed property value in the district of greater than \$20 billion.⁶⁸

⁶⁶ ESSB 6362, § 401.

⁶⁷ *Id.*

⁶⁸ ESSB 6362, § 407.

F. The Supplemental Operating Budget Funds the *McCleary* Monetary Penalty

The 2018 supplemental operating budget establishes a dedicated account into which is deposited the accrued monetary penalty imposed by this Court.⁶⁹ The budget deposits \$105.2 million from the state general fund into the newly created Dedicated McCleary Penalty Account (Account).⁷⁰ This amount represents the accrued penalty from August 13, 2015, when this Court initially imposed the monetary sanction, through June 30, 2018, the end of the 2018 fiscal year.⁷¹ Per this Court's directive that the monetary sanction may be spent only for basic education, the language governing the Account specifies that appropriations from the Account may be used only for basic education as defined in RCW 28A.150.220.⁷² The 2018 supplemental budget includes appropriations from the Account of \$74 million for the accelerated implementation of the new basic education salary allocation, \$26.8 million for the enhancement of the special education multiplier, and \$4.4 million for the regionalization factor increase.⁷³

⁶⁹ ESSB 6032, § 920.

⁷⁰ ESSB 6032, § 802.

⁷¹ *Id.*

⁷² ESSB 6032, § 920.

⁷³ ESSB 6032, §§ 504, 507.

Conclusion

With the enactment of E2SSB 6362 and the associated appropriations in the 2018 supplemental operating budget, the State has completed the final legislative steps identified by this Court as necessary to achieve full compliance with Article IX.

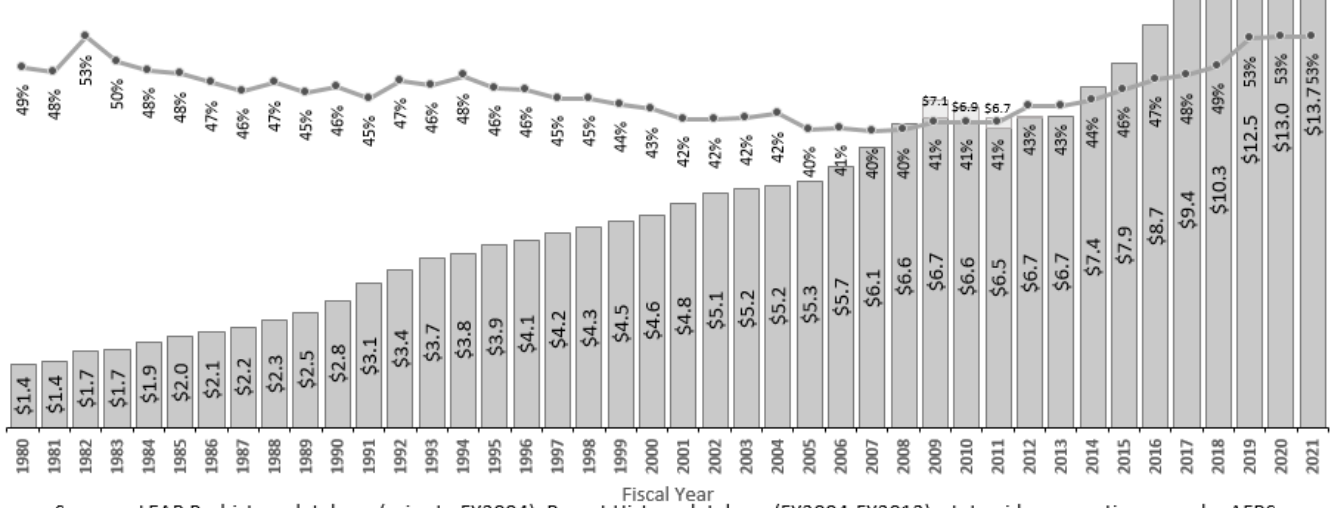
Appendix

Extended Graph of State Funding for K-12 as a Percentage of Total NGFP State Expenditures

State Funding for K-12 Public Schools and as a Percent of Total Near General Fund

Includes one-time federal stimulus funds (ARRA)
Dollars in billions

*\$115M net apportionment shift between fiscal years 2011 and 2012 reversed for the purposes of this chart.



Sources: LEAP Prehistory database (prior to FY2004); Recast History database (FY2004-FY2013); statewide accounting records--AFRS (FY2014-FY2017); legislative budget development system--Winsum (FY2018-FY2021).

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