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Order

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FILED
JUN - 7 2018
WASHINGTON STATE
SUPREME COURT

THE SUPREME COURT OF WASHINGTON

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

ORDER

Supreme Court No.
84362-7

King County No.
07-2-02323-2 SEA

In *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), this court recognized our duty to interpret and apply the Washington Constitution’s requirement that the State fulfill its “paramount duty . . . to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste or sex.” WASH. CONST. art. IX, § 1; *McCleary*, 173 Wn.2d at 515. We unanimously held that the State had failed to meet that paramount duty. We recognized, however, that the legislature had enacted a promising set of reforms and was making progress toward funding those reforms.

The court therefore deferred to the legislature’s chosen means of discharging its paramount duty, while retaining jurisdiction to help ensure steady and measurable progress. We set a firm deadline for full compliance of September 1, 2018. The court has measured progress specifically according to the areas of basic education identified in Engrossed Substitute House Bill (ESHB)

2261 (LAWS OF 2009, ch. 548) and the implementation benchmarks established by Substitute House Bill (SHB) 2776 (LAWS OF 2010, ch. 236). *See McCleary*, 173 Wn.2d at 484.

In 2014, the court directed the State to provide a complete plan for fully implementing its program of basic education for each school year leading up to the target date for full funding: the 2018-19 school year. When the State failed to comply with this directive, the court found the State in contempt, but initially withheld sanctions. When noncompliance continued, we imposed a sanction of \$100,000 per day until the State adopted the court-ordered plan for complying with its constitutional obligation, with the funds from the sanction to be held in a segregated account for the benefit of basic education.

Progress followed. In an order issued on November 15, 2017, the court determined that the State had achieved full compliance with this court's orders and with the provisions of ESHB 2261 and SHB 2776 save in one major respect: the legislature delayed complete implementation of the new allocation model for full state funding of basic education salaries until the 2019-20 school year. Finding that the model was adequate but that the delay failed to satisfy the State's obligation to fully implement its program of basic education by September 1, 2018, the court ruled that the State remained in contempt and we kept sanctions in place until the State purged its contempt by enacting measures fully funding the program of basic education, including the new salary allocation model, by the 2018-19 school year.¹

Further progress followed these orders. During the 2018 legislative session, the legislature enacted measures designed to fully implement the new salary allocation model by the 2018-19 school

¹ The court further noted that the State had failed to establish a separate account dedicated to public education into which the sanctions were to be deposited, and failed to appropriate funds for the sanctions.

year, amending its 2017 legislation to make the new minimum state salary allocations fully effective as of the 2018-19 school year and supplementing the 2017-19 biennial budget to reflect increased salary allocations for the 2018-19 school year and to appropriate additional funds. LAWS OF 2018, ch. 266, § 202(5), (6), (7); LAWS OF 2018, ch. 299, §§ 503(1)(c), 504(5).² Also, the 2018 supplemental budget establishes a dedicated penalty account for the contempt sanctions, and it appropriates to that account \$105.2 million, representing accumulated sanctions from the date sanctions were imposed to the end of the 2018 fiscal year, June 30, 2018. LAWS OF 2018, ch. 299, §§ 802, 920. From that account, the supplemental budget appropriates \$84,020,000 toward basic education salaries and \$21,180,000 to fund an increased special education excess cost multiplier. *Id.* §§ 504(5), 507(13).

In light of these developments, the State asks this court to (1) find that it has completed the final item of compliance specified by this court's order of November 15, 2017, (2) hold that the State has fulfilled this court's directives issued pursuant to *McCleary*, (3) find that the State has purged its contempt, lift the contempt order, and permit the funds paid into the segregated account to be expended on basic education, and (4) relinquish the court's retained jurisdiction and terminate appellate review.

The plaintiffs still dispute the constitutional adequacy of the funding formulas. But they acknowledge that the State has now complied with this court's orders to fully implement the State's

² To fund the increased allocations for the 2018-19 school year, the supplemental budget appropriates an additional \$775.8 million for the 2019 fiscal year to cover the first 10 months of the school year, LAWS OF 2018, ch. 299, § 504(5), with the expectation that \$194 million will be appropriated for fiscal year 2020 to cover the last two months of the school year. This approach is necessitated by the fact that the school year and the fiscal year do not exactly correspond to one another. Plaintiffs accept the State's representation that it will appropriate the additional funds for the last two months of the 2018-19 school year during the 2019 legislative session.

new program of basic education by September 1, 2018, and that therefore the State's appeal that led to this court's decision in *McCleary* may come to an end. As one item of affirmative relief, the plaintiffs request that the court order the State to pay prejudgment interest on the accrued sanctions.

The court concludes that the State has complied with the court's orders to fully implement its statutory program of basic education by September 1, 2018, and has purged its contempt. This justifies the termination of the court's retained jurisdiction and the lifting of the contempt sanctions.

Therefore, it is hereby

ORDERED:

(1) The monetary penalty of \$100,000 per day is lifted, and the court approves the expenditure of funds deposited into the dedicated *McCleary* penalty account for the support of basic K-12 education.

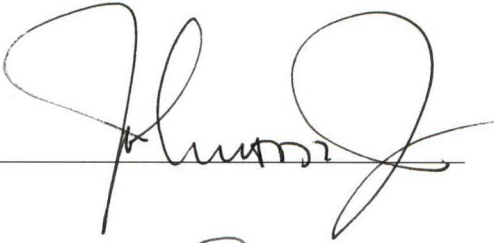
(2) The request for prejudgment interest on sanctions is denied.


(3) This court's retention of jurisdiction pursuant to *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), is terminated.


DATED at Olympia, Washington, this 7th day of June, 2018.

Fairhurst, C.J.
Chief Justice

WE CONCUR:


Plum, J.
Madsen, J.


Owen, J.
Stephan, J.


Wiggins, J.
Conzalez, J.
Kas Mad, J.
Ju, J.