

5-18-2016

## 2016 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation

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May 18, 2016, 3:41 pm

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# Washington State Legislature

Olympia

May 18, 2016

Washington State Supreme Court  
Temple of Justice  
Olympia, WA 98504

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

Per this Court's orders of July 18, 2012, and January 11, 2016, in *McCleary v. State*, No. 84362-7, please find attached the 2016 report of the legislative Joint Select Committee on Article IX Litigation. This report was adopted by the Committee at its meeting on May 11, 2016. The Committee looks forward to continued dialogue and cooperation with this Court.

Respectfully,

Senator David Frocht, Co-Chair  
46<sup>th</sup> Legislative District

Representative Chad Magendanz, Co-Chair  
5<sup>th</sup> Legislative District

Senator Joe Fain, 47<sup>th</sup> Legislative District  
Representative Kristine Lytton, 40<sup>th</sup> Legislative District  
Senator Steve Litzow, 41<sup>st</sup> Legislative District  
Representative Kevin Parker, 6<sup>th</sup> Legislative District  
Senator Christine Rolfes, 23<sup>rd</sup> Legislative District  
Representative Pat Sullivan, 47<sup>th</sup> Legislative District

Enclosures

# **2016 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation**

## **Part I: Introduction and background**

Pursuant to this Court's ruling and subsequent orders in *McCleary v. State*,<sup>1</sup> since 2012 the Joint Select Committee on Article IX Litigation (Committee) has filed an annual report with the Court to describe the State's progress toward meeting the state's Article IX obligation as expressed in Engrossed Substitute House Bill 2261 (ESHB 2261)<sup>2</sup> and Substitute House Bill 2776 (SHB 2776).<sup>3</sup> This is the fifth such report.

### **A. Overview of changes to K-12 funding since 2012.**

When this Court issued its initial ruling in 2012, the Legislature had already enacted "promising" education funding reforms in ESHB 2261 and SHB 2776, "which if fully funded, will remedy deficiencies in the K-12 funding

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<sup>1</sup> *McCleary v. State*, 173 Wn.2d 477 (2012).

<sup>2</sup> Chapter 548, Laws of 2009.

<sup>3</sup> Chapter 236, Laws of 2010.

system."<sup>4</sup> At the time of the Court's original ruling, the Legislature, struggling with the impact of the recession, had achieved only slight progress toward implementing the statutorily specified investments in transportation, materials, supplies, and operating costs (MSOC), all-day kindergarten, and K-3 class size reduction.<sup>5</sup>

Beginning with the 2013-15 biennial budget and continuing through the 2015-17 biennial budget, the Legislature has committed substantial state funding to fulfill the state's statutory obligations under ESHB 2261 and SHB 2776. Significantly, the State has achieved this implementation by the deadlines established in that legislation. As explained in more detail in the 2015 Committee Report, appropriations enacted by the 2015 Legislature fund the specified enhancements of ESHB 2261 and SHB 2776 according to those bills' statutory timetables.<sup>6</sup>

- The enhanced statutory formula for materials, supplies, and operating costs (MSOC) is fully funded in the 2015-16 school year, as scheduled.<sup>7</sup>

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<sup>4</sup> *McCleary*, 173 Wn.2d at 484.

<sup>5</sup> *McCleary*, 173 Wn.2d at 545-46. *See also* 2012 Report of Joint Select Committee on Article IX Litigation, at 27 (describing how K-12 funding was preserved to extent possible during recession).

<sup>6</sup> *See generally* 2015 Report of Joint Select Committee on Article IX Litigation at 27 (describing 2015-17 biennial appropriations).

<sup>7</sup> RCW 28A.150.260(8).

- Full statewide funding for full-day kindergarten is fully implemented in the 2016-17 school year, one year ahead of the statutory schedule.<sup>8</sup>
- State investment for K-3 class size reduction places the state squarely on target to achieve full funding of this enhancement by the statutory due date of the 2017-18 school year. The two phase-in steps funded for each of the school years in the 2015-17 budget escalate to achieve the statutory target of a class size of 17 in grades K-1 in high poverty schools in school year 2016-17, a year ahead of the statutory schedule.<sup>9</sup> These investments leave a remaining increment to be funded by the statutory due date of the 2017-18 school year,<sup>10</sup> and this increment is reflected for the 2017-19 biennium in the state's four-year balanced budget process.
- The fully funded pupil transportation formula is maintained.
- In addition, the 2015-17 budget funded K-12 cost-of-living salary adjustments of 3 percent for school year 2015-17 and 1.8 percent for school year 2016-17.

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<sup>8</sup> RCW 28A.150.315(1).

<sup>9</sup> RCW 28A.150.260(4)(b).

<sup>10</sup> Please see the Appendix to this Report for an explanation of how the 2015-17 biennial budget funds K-3 class size reduction and how the remaining increment fits in with prior investments.

Taken together, these and other K-12 investments total \$4.8 billion and represent a 36 percent increase<sup>11</sup> in state K-12 operating funding since the Court issued its ruling in 2012.<sup>12</sup>

The Legislature and this Court have recognized that under ESHB 2261, the specific statutory formula enhancements in SHB 2776 do not represent the totality of the state's Article IX obligation. Both the Legislature, in Engrossed Second Substitute Senate Bill 6195 (E2SSB 6195), and this Court, in *McCleary* and subsequent orders, have identified a need for the Legislature to address state allocations for school district staff salaries. Although ESHB 2261 and the staffing ratios in the prototypical school formula constituted "promising" reforms, this Court determined that salary assumptions used in that funding formula fall short of school districts' actual cost of hiring teachers, administrators, and classified staff.<sup>13</sup> This Court acknowledged that some of this difference represented permissible local enhancements for locally determined services that are not part of the state's program of basic education.<sup>14</sup> But, the Legislature and this Court have determined that at least

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<sup>11</sup> Except as otherwise noted, all dollar and percentage references in this report are Near-General Fund plus Opportunity Pathways (NGFS + Op), which consists of the state General Fund, the Education Legacy Trust Account, and the Opportunity Pathways Account.

<sup>12</sup> 2015 Report of Joint Select Committee on Article IX Litigation, at 7, 38.

<sup>13</sup> *McCleary*, 173 Wn.2d at 484, 536-37.

<sup>14</sup> *McCleary*, 173 Wn.2d at 536-37.

some of the gap in state salary allocations has caused school districts to rely on local levies to support the state's statutory program.<sup>15</sup> Most recently, in 2015 this Court imposed sanctions on the State for failure to submit a plan to the Court for addressing this remaining component of education funding.<sup>16</sup>

With the investments in the 2015-17 budget the Legislature has achieved funding of its reforms to its basic education formulas in accordance with their respective statutory timelines. Further, as explained in more detail below, in E2SSB 6195, the Legislature has complied with the Court's request to provide this Court with a plan for legislative action on the remaining issue of funding for the state's program of basic education. In addition, E2SSB 6195 provides the Legislature with a mechanism to gather the remaining data needed to quantify the remaining portion of the state's salary obligation.

## **B. Overview of the 2016 report.**

This Committee's 2016 report contains a summary of education funding and policy legislation enacted during the 2016 legislative session, including an appendix to explain details of the underlying 2015-17 biennial budget, as the

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<sup>15</sup> *Id.*

<sup>16</sup> *McCleary v. State*, Order of August 13, 2015, at 9-10.

Legislature moves toward implementing remaining education funding reforms by the statutory due date of 2018.

**1. E2SSB 6195.** First, and most significantly, the 2016 Legislature enacted the plan requested by the Court to describe how the State will address remaining elements of ESHB 2261 and the Article IX duty by the statutory due date. E2SSB 6195 establishes a legislative commitment to enact legislation in 2017 that will eliminate school districts' dependency on local levies for implementation of the state's program of basic education. As explained in more detail in Part II of this report, E2SSB 6195 specifies a process for the Legislature to assemble the final pieces of analysis necessary to make data-based revisions to the state's salary allocations. By enacting E2SSB 6195, the Legislature has established deadlines and deliverables for the final step of ESHB 2261 implementation: aligning state salary allocations with the costs of implementing the state's program of basic education. Further, E2SSB 6195 specifies that the Legislature must enact these reforms in the 2017 legislative session, so that they may be implemented in 2018 as generally directed in ESHB 2261 and by this Court.



## **2. Summary of additional K-12 investments in the 2016 supplemental budget.**

Building on the State's substantial K-12 investments in the 2015-17 biennial budget, the supplemental budget enacted in 2016<sup>17</sup> makes strategic investments to support the state's basic education program by investing in education objectives outside the basic education formulas. First, as described in more detail in the 2015 report, the 2015-17 biennial capital budget made notable investments in capital construction, which is outside the statutory program of basic education.<sup>18</sup> In addition to those capital investments, the 2016 supplemental capital budget<sup>19</sup> bolsters school construction funding by adding an additional \$34.8 million<sup>20</sup> in the School Construction Assistance Program, and an additional \$40 million<sup>21</sup> to support all-day kindergarten and K-3 class size reduction. Second, among other things, the 2016 supplemental operating budget additions include \$7 million for teacher preparation and recruitment.

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<sup>17</sup> Chapter 36, Laws of 2016, 1<sup>st</sup> sp. s.

<sup>18</sup> See 2015 Report of Joint Select Committee on Article IX Litigation, at 35-37.

<sup>19</sup> Chapter 35, Laws of 2016, 1<sup>st</sup> sp. s.

<sup>20</sup> \$31.2 million from the Common School Construction Fund and \$3.6 million from the Building Construction Account (general obligation bond proceeds).

<sup>21</sup> Building Construction Account (general obligation bond proceeds) (\$34.5 million for the K-3 Class Size Reduction Grant Program and \$5.5 million for modular classrooms to support reduced class size).

**3. Summary of major 2016 education policy legislation.** Third, as summarized in Part IV of this report, the 2016 Legislature enacted policy legislation to support basic education and other legislative education priorities. Notable education policy legislation enacted in 2016 included Engrossed Second Substitute Senate Bill 6455 (E2SSB 6455) (teacher recruitment, preparation, and retention), Engrossed Second Substitute Senate Bill 6194 (E2SSB 6194) (charter schools), and Fourth Substitute House Bill 1541 (4SHB 1541) (addressing the educational opportunity gap).

**4. Technical appendix.** The report contains a technical appendix to explain the funding trajectory for K-3 class size reduction in the underlying 2015-17 biennial budget, and to explain maintenance level adjustments in the 2016 supplemental budget.

## **Part II: E2SSB 6195 (basic education funding plan)**

During the 2016 legislative session, the Legislature passed Engrossed Second Substitute Senate Bill (E2SSB 6195)<sup>22</sup>, which specifically notes that during the past two biennia, the Legislature has demonstrated its commitment to

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<sup>22</sup> Chapter 3, Laws of 2016.

funding education through strong bipartisan support to fund its statutory formulas for: pupil transportation; MSOC; full-day kindergarten; and class size reductions. E2SSB 6195 also provides that the state is fully committed to funding its program of basic education as defined in statute and to eliminating school district dependency on local levies for implementation of the state's program of basic education. Additionally, the legislation makes findings that the lack of transparency in school district data regarding how school districts use local levy funds limits the Legislature's ability to make informed decisions concerning teacher compensation. Further, previous studies did not provide data and analysis of district-paid compensation beyond the state basic education salary allocations and above the statutory prototypical school model, the source of funding for this compensation, and the duties, uses, or categories for which that compensation is paid. E2SSB 6195 declares that this foundational data is necessary to inform the Legislature's decisions.

E2SSB 6195 also creates the legislative Education Funding Task Force (Task Force) to make recommendations to the Legislature on implementing the program of basic education as defined by statute. Additionally, the bill provides funding for the Washington State Institute for Public Policy to contract for independent professional consulting services to collect and

analyze school staff compensation and labor market data and report the information to the Task Force. The Task Force must review the compensation and labor market information provided by the contracted consultant and the report on teacher shortages by the Professional Educator Standards Board.<sup>23</sup>

The Task Force must make recommendations regarding the following:

- Compensation that is sufficient to hire and retain state-funded basic education staff, including whether and how future salary adjustments and a local labor market adjustment should be incorporated;
- Whether additional state legislation is needed to help school districts to support state-funded all-day kindergarten and K-3 class size reduction;
- Improvement or expansion of existing educator recruitment and retention programs;
- Maintenance and operation levies and Local Effort Assistance (levy equalization);
- School district collective bargaining;

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<sup>23</sup> The Task Force held its first two meetings on April 20 and May 11. Additionally, the independent consultant has been selected and the finalized contract is expected by the end of May.

- Clarification of the distinction between basic education and local enrichment services;
- Provision and funding of school employee health benefits; and
- Sources of state revenue to support the state's statutory program of basic education.

E2SSB 6195 directs the Legislature to take legislative action by the end of the 2017 session to eliminate school district dependency on local levies for implementation of the state's program of basic education.

### **III. The 2015-17 biennial budget and the 2016 supplemental budget**

#### **A. The state budget and school funding progress to date.**

Since the Court's order of December 20, 2012, state funding for K-12 Public Education has increased from \$13.4 billion for the 2011-13 biennium to \$18.2 billion for the 2015-17 biennium.<sup>24</sup> This is an increase in state funding of \$4.8 billion (36 percent). In that time, the state has fully funded the required enrichments to the state's program of basic education by the

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<sup>24</sup> Figures described are based on the state's enacted biennial and supplemental budgets. Final actual expenditures differ slightly due to differences in budgeted to final actual caseload.

timetable established in SHB 2776. These include: pupil transportation; increased instructional hours; the opportunity for 24 credits for high school graduation; MSOC; and all-day kindergarten. Furthermore, the state has increased funding to support smaller class sizes in grade K-3, which will be fully implemented in the 2017-18 school year, and the costs of implementing the remaining K-3 increment have been incorporated into the state's four-year balanced budget process.<sup>25</sup> In addition to these statutorily required enhancements, the state has also: increased support for English language learner students through increased transitional bilingual instruction funding; increased support for students needing additional academic supports through increased learning assistance program funding; and enhanced the prototypical school funding formula, increasing the allocations for elementary school parent involvement coordinators, and middle and high school guidance counselors.<sup>26</sup>

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<sup>25</sup> Although the four-year balanced budget requirement in RCW 43.88.055 permits the Legislature to exclude costs related to *McCleary* from the ensuing biennium balance requirement, the 2015 Legislature chose to include the costs of the remaining K-3 increment to demonstrate its commitment to funding the increment in the 2017-19 biennium.

<sup>26</sup> 2013 Report of the Joint Select Committee on Article IX Litigation, at 15-17.

**B. The 2015-17 biennial budget and the 2016 supplemental budget: providing second-year increases to implementation of SHB 2776.**

Washington operates on a biennial (two-year) budget cycle. The budgets for the 2015-17 fiscal biennium cover the period from July 1, 2015, through June 30, 2017. In general, in biennial budgets the Legislature makes significant funding decisions to cover the full biennium, including incremental enhancements implemented from year to year within the biennium. In contrast, supplemental budgets typically make adjustments to policies previously established in the biennial budget. These adjustments may address a number of different areas, including revisions to revenue estimates, updates to caseload estimates, and updates for statutorily required inflationary increases. The Legislature may also choose to enact new policies that increase or decrease spending.

The 2015-17 biennial budget<sup>27</sup> increased funding for K-12 public education by \$2.9 billion, including \$1.3 billion in enhancements to the state's program of basic education and \$618 million for state-funded compensation increases. Included in these biennial increases were a number of planned annual incremental increases within the biennium to provide for continued

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<sup>27</sup> Chapter 36, Laws of 2016, 1<sup>st</sup> sp. s. (Second Engrossed Substitute House Bill 2376).

implementation of the basic education enhancements specified in ESHB 2261 and SHB 2776. In total, the biennial budget included an increase in K-12 funding of \$575.3 million from fiscal year 2016 to fiscal year 2017. In other words, in addition to continuing the policies that were funded in fiscal year 2016, the underlying biennial budget increased K-12 funding in the second year of the biennium.

In terms of the change in the funding formula that school districts will experience in school year 2016-17, the state is providing the following enhancements as compared with the current 2015-16 school year:

**1. Materials, supplies, and operating costs.** State funding for MSOC is increased from a rate of \$1,210.05 per full-time equivalent student to a rate of \$1,223.36 per full-time equivalent student. At this rate, the state is maintaining the fully funded MSOC allocation that was provided in the 2015-16 school year, and is also increasing the allocation to address the impact of inflation. Similar adjustments are made for the MSOC allocations for the additional 9-12th grade MSOC allocation, and MSOC allocations for students in vocational programs.



**2. All-Day kindergarten.** All-day kindergarten is fully implemented beginning with the 2016-17 school year, increasing from just under 72 percent of kindergarten enrollment receiving state funded all-day kindergarten in the 2015-16 school year to 100 percent of enrollment in the 2016-17 school year. This incremental funding increase (\$124.5 million) was provided in the 2015-17 biennial budget and is maintained in the 2016 supplemental budget.

**3. Early elementary class size reductions.**<sup>28</sup> State support for smaller early elementary class sizes is continued in the 2016-17 school year, as planned in the 2015-17 biennial budget with \$267.6 million in fiscal year 2017. In high poverty schools funding is provided to fully implement a class size of 17 students in kindergarten and first grade, a class size of 18 students in second grade, and 21 students in third grade. In all other schools funding is provided to support a class size of 19 students in kindergarten, 21 students in first grade, and 22 students in second and third grade. Put another way, class size funding for high poverty schools is increased to support an average class size of 18.25 students in the 2016-17 school year as compared to 20.75 students in the 2015-16 school year, and class size funding for all other

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<sup>28</sup> All class size ratios are expressed as full-time equivalents. See part A of the Appendix for a table illustrating funded class size ratios.

schools is increased to support an average class size of 21 students in the 2016-17 school year as compared to 23.5 students in the 2015-16 school year.

Most state funding under the prototypical school formula, including funding for K-3 class size reduction, is allocated on a staff-to-student ratio. In general, state prototypical school funding is provided for allocation purposes only, and school districts are not required to staff according to the prototypical school model. However, as a condition of receiving the new maximum state funding allocation for K-3 class size reduction, a district must demonstrate that it has achieved the state-funded class size ratios on a districtwide weighted average basis. This means that a district may count all of its classroom teachers, including specialists such as art and physical education teachers, to meet the state-funded ratio and receive full funding.

The four-year balanced budget process for the 2015-17 biennial budget also includes an assumption that the state will fully fund a class size of 17 full-time equivalent students for grades K-3 in both general education and high poverty schools beginning with the statutory due date of the 2017-18 school year. The estimated cost for full implementation included in the four-year balanced budget process is \$1.1 billion. This cost includes biennializing of (carrying forward) the 2016-17 class size policies, the estimated impact of

higher enrollment in the 2017-18 and 2018-19 school years, and the full cost of implementing the remainder of the statutory class size reduction policy. Much like the MSOC allocation in the 2015-17 biennial budget, the K-3 class size funding will be included in maintenance level in the next biennial budget.

**4. Pupil transportation.** The pupil transportation funding formula was fully implemented in the 2014-15 school year. The state continues to make adjustments to funding to reflect changing variables. The 2016 supplemental budget increases funding for pupil transportation by \$22 million.

**C. The 2016 supplemental budget: additional K-12 investments outside the program of basic education.**

In addition to maintaining each of the enhancements planned for in the 2015-17 biennial budget, the 2016 supplemental budget makes additional investments outside of the program of basic education to recruit and retain teachers, to improve stability for homeless students, and to close the opportunity gap. The 2016 Legislature considered multiple options for reducing reliance on local levies for educator compensation and support, including increasing the statewide allocation for beginning teachers and

providing funding for educator support.<sup>29</sup> Ultimately, the policy did not pass in part because it was unclear to some how the policy would supplant local dollars with state dollars. The 2016 supplemental budget did provide \$7 million to address teacher recruitment and retention. Specifically, \$1.75 million is provided for professional development for classroom paraeducators; \$3.5 million is provided for the beginning educator support team program (also known as BEST), increasing the funding for the program to \$9 million in the 2016-17 fiscal year; and \$1.7 million to implement E2SSB 6455, consisting of \$0.5 million for a statewide initiative to increase the number of qualified individuals who apply for teaching positions in Washington and improved web-based access for job applications, and \$1.2 million for the teacher shortage conditional and the student teaching residency conditional grant programs. Funding totaling \$1.2 million is provided to implement 4SHB 1541, which addresses the educational opportunity gap, including development of training for school staff, establishment of the Washington Integrated Student Supports Protocol to promote the success of students by coordinating academic and non-academic supports, and addressing long-term student suspensions and expulsions. Funding totaling \$2 million is provided to implement Third Substitute House

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<sup>29</sup> Senate Bill 6241 (2016).

Bill 1682 (3SHB 1682)<sup>30</sup>, including homeless student stability grants for up to 15 school districts, increasing identification of homeless students and increasing the capacity to provide support to those students, once identified. Additionally, under Fourth Substitute House Bill 1999 (4SHB 1999)<sup>31</sup>, the administration and the state funding for three programs established to improve educational outcomes for youth in foster care is transferred from the Department of Social and Human Services (DSHS) to the Office of the Superintendent of Public Instruction (OSPI) or the Washington Student Achievement Council (WSAC).

**D. The 2016 supplemental capital budget: providing additional support for the implementation of ESHB 2261 and SHB 2776 outside the program of basic education.**

In the 2015-17 biennial capital budget, the Legislature appropriated \$611.1 million<sup>32</sup> for full funding of the School Construction Assistance Program (SCAP), including funding for skills centers, distressed schools experiencing overcrowding, and science, technology, engineering, and mathematics labs

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<sup>30</sup> Chapter 157, Laws of 2016.

<sup>31</sup> Chapter 71, Laws of 2016.

<sup>32</sup> State Building Construction Account and Common School Construction Account.

and classrooms. In addition, the Legislature provided \$200 million<sup>33</sup> for the K-3 Class Size Reduction Grant Program to help school districts expand the number of classrooms in support of the K-3 class size reduction and all-day kindergarten expansion. In the 2016 supplemental capital budget, the Legislature funded an additional \$34.8 million<sup>34</sup> to support the SCAP and an additional \$34.5 million<sup>35</sup> for the K-3 Class Size Reduction Grant Program. The Legislature also provided \$5.5 million<sup>36</sup> for K-3 modular classrooms that also supports K-3 class size reduction. Further, Substitute House Bill 2985<sup>37</sup> was enacted to improve access to SCAP funding by changing eligibility criteria as districts implement all-day kindergarten or K-3 class size reduction. This temporary eligibility change will allow school districts to use all space available needed to implement ESHB 2261 and SHB 2776 without penalizing their ability to secure state construction funding through the SCAP.

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<sup>33</sup> State Building Construction Account.

<sup>34</sup> State Building Construction Account and Common School Construction Account.

<sup>35</sup> State Building Construction Account.

<sup>36</sup> State Building Construction Account.

<sup>37</sup> Chapter 159, Laws of 2016.

**E. Budget intent regarding timing of revisions to school district levies.**

Additionally, in section 515 of the 2016 supplemental operating budget<sup>38</sup>, the Legislature confirms its obligation, as expressly recognized in E2SSB 6195, to provide state funding in the 2017 legislative session for competitive compensation to recruit and retain competent common school staff and administrators, while eliminating school district dependency on local levies for implementation of the state's program of basic education. In order to facilitate budget and personnel planning by local school districts for the 2017-18 school year, and to minimize any disruption to that planning, the Task Force established by E2SSB 6195 must either: (a) determine that the Legislature will meet its obligation to provide state funding for the competitive compensation and eliminating dependency on local levies for basic education and that such legislative action will be completed by April 30, 2017; or (b) introduce legislation that will extend the current state levy policy for at least one calendar year, with the objective of enacting such legislation by April 30, 2017.<sup>39</sup>

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<sup>38</sup> Chapter 36, Laws of 2016, 1<sup>st</sup> sp. s.

<sup>39</sup> Legislation to implement this one-year extension of the current state levy policy now rather than next legislative session was introduced and considered by the 2016 Legislature but ultimately did not pass due to concerns by some that the delay would continue the unconstitutional local reliance on levies. *See* Senate Bill 6353, House Bill 2361, Engrossed House Bill 2698, and Senate floor amendment #685 to Senate Bill 6246.

## **IV. K-12 policy legislation enacted in 2016**

In addition to the funding enhancements provided by the Legislature in the 2016 supplemental budget, the Legislature enacted policy legislation outside the program of basic education to address the opportunity gap and expand the professional educator workforce to support the basic education program. The Legislature also enacted legislation to establish charter schools outside of the common school system.

### **A. 4SHB 1541<sup>40</sup>: strategies to close the educational opportunity gap.**

- Implements recommendations of the Educational Opportunity Gap Oversight and Accountability Committee related to student discipline, educator cultural competence, English learner instruction, disaggregation of student and educator data, family engagement, and integrated student services, including the following:
  - Directs school districts to provide an opportunity for students to receive educational services during periods of suspension or expulsion.

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<sup>40</sup> Chapter 72, Laws of 2016.



- Prohibits long-term suspension or expulsion as a form of discretionary discipline, and limits suspension or expulsion to the length of an academic term.
- Requires school districts to adopt, enforce, disseminate, monitor the impact of, and update discipline policies and procedures.
- Requires a regular report on the educational and workforce outcomes of youth in the juvenile justice system.
- Requires development of cultural competence training for school staff, school board members, and superintendents.
- Requires that teachers assigned to the Transitional Bilingual Instruction Program (TBIP) be endorsed in Bilingual Education or English Language Learner beginning in the 2019-20 school year.
- Requires collection and posting of student and educator data disaggregated by subracial and subethnic categories.
- Requires that, for public reporting and accountability purposes, student data be reported when 10 or more students are in a grade level or student subgroup.

- Establishes the Washington Integrated Student Supports Protocol (WISSP) to promote the success of students by coordinating academic and non-academic supports.
- Increases the flexibility in the use of Learning Assistance Program funding.

**B. E2SSB 6455: professional educator workforce.<sup>41</sup>**

- Creates financial aid programs for individuals wishing to teach in subject or geographic shortage areas, or in Title I schools.
- Increases teacher mentoring support.
- Requires that certain advanced level, out-of-state teachers be issued a Washington professional certificate.
- Provides that certain retired teachers may work as substitute teachers for up to 867 hours per year without a suspension of their pension benefits, under certain conditions.
- Expands Alternative Route to Teacher Certification programs.
- Requires dissemination of information about teacher preparation programs and teaching in Washington.

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<sup>41</sup> Chapter 233, Laws of 2016.

- Requires that an online job application depository for teaching positions be made available to school districts.
- Requires school districts to report the number of teachers hired in the previous year and the number expected to be hired in the following year, disaggregated by content area.

**C. E2SSB 6194: charter schools.<sup>42</sup>**

- Reenacts and amends Initiative 1240 (charter schools) to address this Court's ruling in *League of Women Voters*<sup>43</sup> by authorizing a limited number of charter schools to provide a program of basic education, outside of and funded separately from the common school system.
- Declares that charter public schools are not common schools, operate outside the common school system, and are funded from the Washington Opportunity Pathways Account.
- Makes numerous additional modifications, including the following:
  - Bars the conversion of common schools into charter schools;

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<sup>42</sup> Chapter 241, Laws of 2016.

<sup>43</sup> See *League of Women Voters v. State*, 184 Wn.2d 393 (2015).

- Prohibits the state Common School Construction Fund and local school district levy revenues from being appropriated for charter schools;
- Adds the Superintendent of Public Instruction and the Chair of the State Board of Education to the membership of the Washington State Charter Commission (Commission);
- Changes the Commission to reside, for administrative purposes, in the Office of the Superintendent of Public Instruction instead of the Governor's Office;
- Requires the members of the Commission and charter school boards to file personal financial affairs statements with the Public Disclosure Commission; and
- Directs charter school boards to contract for independent performance audits.

## **V. Monetary sanction in *McCleary v. State***

In Supreme Court Order No. 84362-7 (August 13, 2015), the State of Washington was assessed a monetary sanction of \$100,000 per day until the state "adopts a complete plan for complying with article IX, section 1 by

2018." The Court directed that the penalty "shall be payable daily to be held in a segregated account for the benefit of basic education" and will "continue to accrue until the State achieves compliance."

The budget proposals considered during the 2016 legislative session took a variety of approaches to an appropriation of the monetary sanction.<sup>44</sup>

Ultimately, a majority of the Legislature did not reach agreement on how to address appropriation of the penalties that had accrued as of the end of the 2015 session, and the final 2016 supplemental budget submitted to the Governor does not include such an appropriation.<sup>45</sup>

The Office of Financial Management is computing the accumulated amount of the sanction on a daily basis and submitting weekly reports to the Legislature and the State Treasurer. As of May 18, 2016, the Office of Financial Management reports an accumulated sanction of \$27.9 million.

The Committee notes that the 2016 supplemental budget submitted to the Governor on March 29, 2016, left an unrestricted ending fund balance of \$577.5 million in the Near General Fund, as well as an additional reserve of

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<sup>44</sup> See sec. 707, House Bill 2376/Senate Bill 6246; sec. 708, Engrossed Substitute House Bill 2376; Engrossed Substitute Senate Bill 6246.

<sup>45</sup> Chapter 36, Laws of 2016, 1st sp. s.

\$700.7 million in the Budget Stabilization Account, for a total reserve of \$1.278 billion, an amount that far exceeds the accumulated total of the monetary sanction.

## **VI. Conclusion**

As described above, the underlying 2015-17 biennial budget fully funds the statutorily specified enhancements required by SHB 2776 by the respective due dates, with the remaining K-3 class size reduction increment due in the 2017-18 school year accounted for in the state's four-year balanced budget process. Beyond this, the Legislature in the 2016 supplemental budget provided additional funding outside of the basic education program to support implementation of ESHB 2261 and SHB 2776, including construction funding with an emphasis on K-3 class size reduction, funding for teacher preparation, recruitment, and retention, and funding for reducing the educational opportunity gap and supporting homeless students. Most importantly, the 2016 Legislature enacted E2SSB 6195, which contains the plan requested by this Court. E2SSB 6195 establishes the process for the Legislature enact legislation to address the remaining aspects of ESHB 2661 and this Court's ruling, with legislation required in the 2017 legislative session to end school districts' reliance on levies to support the state's statutory program of basic education.

## **APPENDIX**

### **Additional information about the budget.**

This Appendix provides additional information on specific aspects of K-12 funding in the underlying 2015-17 biennial budget and on adjustments to funding levels in the 2016 supplemental budget.

State funding to support basic education programs is allocated through various formulas, the details of which are specified in statute and through the budget.<sup>46</sup> The components of the prototypical school model are statutory ratios that, when combined with the inputs to the model, determine the funding allocation for each school district based on each school district's characteristics such as enrollment, geography, and teacher education and experience. As input values change, such as the number of full-time equivalent (FTE) students, the allocation to the school district will also change. The state continuously refines its estimates of these formula inputs with the assistance of the Office of the Superintendent of Public Instruction (OSPI), the Office of Financial Management, and the Caseload Forecast Council. Final allocations of state funding are calculated by the OSPI and are

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<sup>46</sup> See generally 2014 Report of the Joint Select Committee at pp. 38-50 (explaining K-12 formulas).

paid to school districts based on each district's respective actual final input values.

**A. Funding for K-3 class size reduction in the 2015-17 biennial budget compared to earlier estimates.**

In its order of August 13, 2015, the Court questioned whether the State was on track to achieve full funding of K-3 class size reduction by the statutorily specified deadline of the 2017-18 school year, and the Court pointed to the Joint Task Force on Education Funding (JTFEF) estimates to demonstrate what it believed to be a discrepancy. Specifically the Court's order declared that "the appropriation of \$350 million for the 2015-17 biennium is considerable, but the Legislature's own JTFEF estimated in 2012 that \$662.8 million would be needed this biennium for K-3 class size reduction, and that the 2017-18 biennium would require an expenditure of \$1.15 billion." The figures noted in the Court's response were from the table that was included on page 3 of the report by the JTFEF.

The 2012 JTFEF figures, while useful, are not comparable to the incremental policy items appropriated in the budget for two reasons. First, the 2012 JTFEF table showed the estimated biennial cost of annual linear implementation (equal annual increments) each biennium, as compared to the



estimated maintenance level for the 2013-15 biennial budget. As funded in the 2015-17 biennial budget, the K-3 class size reduction expenditures assumed a different phase-in plan: a targeted "follow the cohort" policy rather than a straight linear implementation policy. This difference in how implementation is staged results in different costs of each year of the phase-in.

The following table compares the Legislature's progress with the JTFFEF's 2012 recommended linear schedule. Numbers in bold type show where the Legislature's funding approach reduces average class size as quickly as or more quickly than the JTFFEF recommendation.

AVERAGE CLASS SIZE—HIGH POVERTY SCHOOLS								
	<i>Actual</i>		<i>JTFEF-Recommended Linear Schedule</i>					
	SY 2011-12	SY 2012-13	SY 2013-14	SY 2014-15	SY 2015-16	SY 2016-17	SY 2017-18	SY 2018-19
K-3	24.10	24.10	22.68	21.26	19.84	18.42	17.00	17.00
	<i>Actual</i>		<i>Schedule Funded By Legislature</i>					
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
K	24.10	24.10	<b>20.85</b>	<b>20.30</b>	<b>18.00</b>	<b>17.00</b>	<b>17.00</b>	<b>17.00</b>
1	24.10	24.10	<b>20.85</b>	<b>20.30</b>	<b>19.00</b>	<b>17.00</b>	<b>17.00</b>	<b>17.00</b>
2	24.10	24.10	24.10	24.10	22.00	<b>18.00</b>	<b>17.00</b>	<b>17.00</b>
3	24.10	24.10	24.10	24.10	24.00	21.00	<b>17.00</b>	<b>17.00</b>
AVERAGE CLASS SIZE—NON-POVERTY SCHOOLS								
	<i>Actual</i>		<i>JTFEF-Recommended Linear Schedule</i>					
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
K-3	25.23	25.23	23.58	21.94	20.29	18.65	17.00	17.00
	<i>Actual</i>		<i>Schedule Funded By Legislature</i>					
	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
K	25.23	25.23	25.23	25.23	22.00	19.00	<b>17.00</b>	<b>17.00</b>
1	25.23	25.23	25.23	25.23	23.00	21.00	<b>17.00</b>	<b>17.00</b>
2	25.23	25.23	25.23	25.23	24.00	22.00	<b>17.00</b>	<b>17.00</b>
3	25.23	25.23	25.23	25.23	25.00	22.00	<b>17.00</b>	<b>17.00</b>

Second, and much more importantly, the columns in the 2012 JTFEF recommendation for the 2015-17 and 2017-19 biennia showed *cumulative* costs, not incremental costs. This means that the columns showed the continuing *total* cost over multiple biennia of implementing each of the policies from a zero base. In the JTFEF's three-biennium estimate, the

first column (2013-15 biennium) assumes a starting point in which no enhancements have been funded yet, so it represents the difference between zero and one-third of the policy's full cost. The second column (2015-17 biennium) is the cumulative difference between zero and two-thirds of the full cost. The second column does not reflect the *incremental* cost of increasing from the prior biennium's one-third to that biennium's two-thirds. Likewise, the third column is the difference between zero and a fully implemented policy, not the incremental cost in the 2017-19 biennium of going from two-thirds to full implementation. For that reason, the cumulative figures in the 2012 JTFFEF report are not comparable to the incremental cost of the intermediate step in funding a single policy item for a single biennium.

## **B. Adjustments to K-3 class size funding.**

The 2015-17 biennial budget requires school districts to demonstrate that state funding allocations for K-3 class size reduction be used for this purpose. Specifically, the funding language requires that that the superintendent must "...allocate funding for class size reductions to the extent of, and in proportion to, the school district's demonstrated actual weighted average class size for grades kindergarten through three, down to the weighted average class size specified..." In other words, school

districts must maintain a minimum actual staffing ratio in grades K-3 in order to receive the maximum additional state allocation for early elementary class size reductions.

The 2016 supplemental budget retains this policy, so it includes a maintenance level adjustment to reflect the actual cost to the state of the estimated actual funded school district class size ratios achieved by school districts. Like any other adjustment to the variable inputs, estimates will continue to be refined and final allocations of state funds for early elementary class size reductions paid to school districts will be based on the final actual input values.<sup>47</sup>

### **C. Interaction of funding for charter schools and common schools.**

The 2016 supplemental budget also makes funding changes to address how funding for charter schools interacts with funding for common schools. As discussed earlier in this report, E2SSB 6194 authorized a limited number of charter schools to provide a program of basic education

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<sup>47</sup> Estimated school district kindergarten through third grade class size compliance can be found here: <http://www.k12.wa.us/SAFS/Misc/2015-16/K-3Estimate2015-16MarchData.xlsx>

and specified that charter schools are funded from the Washington Opportunity Pathways account. Based on experience in Washington and elsewhere in the country, some students who enroll in charter schools will have previously been enrolled in common schools, while other students will have previously been enrolled in private schools or home schools and will thus be new enrollments in the overall publicly funded school system.

For these reasons, funding for charter schools in the 2016 supplemental budget reflects both types of enrollment assumptions. First, this budget assumes that there will be a decrease in the caseload number of students enrolled in common schools as those students move from existing common schools to charter schools, so it makes a downward adjustment to funding for common schools and adds corresponding funding for charter school enrollments. For instance, as of February 2016, there were approximately 780 FTE students enrolled in the Mary Walker School District that had been enrolled in one of eight charter schools. As those students moved from the prior charter school system to the Mary Walker School District, the funding for the common schools was increased. Funding levels in the 2016 supplemental budget assume that those same students will return to a charter school once charter schools are reestablished, thus reducing the number of students in the common school

system and the entitled caseload for which the state provides funding.

Second, the 2016 supplemental budget assumes that charter school legislation will result in a net increase to the number of children enrolled in publicly funded schools (common schools plus charter schools), so the budget includes funding for new enrollments based on the assumption that some students enrolled in charter schools will come from private schools or home schools and will thus be new to the public school system.