

2-27-2009

## Stipulation and Order for Change of Trial Date 07-2-02323-2-78

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**FILED**  
KING COUNTY WASHINGTON

FEB 27 2009

SUPERIOR COURT CLERK  
THERESA GRAHAM  
DEPUTY

The Honorable John P. Erlick

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

MATHEW & STEPHANIE McCLEARY,  
on their own and on behalf of KELSEY &  
CARTER McCLEARY, their two children  
in Washington's public schools; ROBERT  
& PATTY VENEMA, on their own behalf  
and on behalf of HALIE & ROBBIE  
VENEMA, their two children in  
Washington's public schools; and  
NETWORK FOR EXCELLENCE IN  
WASHINGTON SCHOOLS ("NEWS"), a  
state-wide coalition of community groups,  
public school districts, and education  
organizations,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

NO. 07-2-02323-2 SEA

STIPULATION AND [PROPOSED]  
ORDER FOR CHANGE OF TRIAL  
DATE

Clerk's Action Required

Pursuant to this Court's Amended Scheduling Order of August 26, 2008, Civil Rule 40(d) and King County Local Rule 40(e)(2), the Parties stipulate as follows to a short 90-day continuance of the trial date and all pretrial deadlines:

STIPULATION AND [PROPOSED]  
ORDER FOR CHANGE OF TRIAL  
DATE

**ORIGINAL**  
1

ATTORNEY GENERAL OF WASHINGTON  
Complex Litigation Division  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7352

1 I. STIPULATION

2 1. This case involves a challenge to the constitutional sufficiency of the education  
3 that the State currently provides children of Washington. It is brought under Article IX, § 1 of  
4 the Washington State Constitution, which states: "It is the paramount duty of the state to make  
5 ample provision for the education of all children residing within its borders, without  
6 distinction or preference on account of race, color, caste, or sex".

7 2. Petitioners instituted this case on January 11, 2007. Prior to that date, the State  
8 had concluded a comprehensive education study called Washington Learns. As a follow up to  
9 that study, the Legislature enacted further legislation in the Spring of 2007 to fund a Joint  
10 Legislative Task Force on Basic Education Finance ("Basic Education Task Force"). The  
11 Task Force was directed to conduct an in-depth review of, and report on, new approaches to  
12 K-12 public education which, if adopted, would substantially increase the amounts of funding  
13 for education. The Task Force included several state legislators, school district  
14 superintendents, the Superintendent of Public Instruction and other professionals. During  
15 2007 and 2008, the Task Force conducted monthly public meetings, heard presentations by a  
16 number of education groups, reviewed several proposals for reforming education and  
17 compiled a final report and recommendations for consideration in the 2009 legislative session.

18 3. In 2007, the Court heard Summary Judgment Motions that were decided in  
19 September, 2007. Due to a stay on discovery pending decisions on those Motions, the Court  
20 set March 2, 2009, as the trial date. This case's current June 1, 2009, trial date was then set in  
21 an August 25, 2008, telephone status conference with Judge Paris Kallas. The reason for the  
22 new trial date was a conflict in the Court's calendar due to the setting of a new trial for a  
23 pending criminal case.

24 4. From the outset, both sides have anticipated that the Washington Learns and  
25 Basic Education Task Force proceedings would be an important part of this case at trial. At  
26 the time this case's current June 1, 2009, trial date was set, the parties anticipated the Basic

1 Education Task Force would release its final report on December 1, 2008; however, the final  
2 report did not issue until January 14, 2009, two days after the legislative session started.  
3 Several bills relating to the Basic Education Task Force report have been introduced in the  
4 Legislature. The final outcome of those bills, however, will not be known until after the 2009  
5 legislative session ends. The regular session is scheduled to end on April 26, 2009. The State  
6 believes, however, it is very likely that the session will continue up to the June 1 trial date due  
7 to the economic crisis nationwide and the number of issues and programs under consideration  
8 in Washington.

9  
10 5. The Parties want to get this case efficiently resolved as soon as practical. The  
11 recent release of the Basic Education Task Force report, the pending legislative proposals for  
12 education reform and the fact that events critical to the full development of the issues in this  
13 case may continue well after the current discovery cutoff and trial date make the current  
14 June 1 trial date impractical.

15  
16 6. The Parties have been working diligently to narrow issues and to reduce the  
17 total number of possible trial witnesses. Even so there are still over 100 potential witnesses  
18 identified. Further substantial reductions in expected fact and expert witnesses, which will  
19 occur as the Parties continue with fact and expert discovery, will result in a trial lasting more  
20 than 20 days. Although full weeks of depositions have been scheduled, there are not enough  
21 days between now and June 1 to conveniently accommodate the anticipated fact and expert  
22 discovery that both sides require to prepare for trial.

23  
24 7. Under the current Case Schedule, the Parties have until February 23, 2009, to  
25 move for a Change of Trial Date. The Parties agree that justice requires a short (90-day)  
26 continuance of the trial date and all pretrial deadlines so that they may further narrow the  
issues and trial witnesses through discovery. *See* CR 40(d) and KCLR 40(e)(2). This brief  
delay will allow a more just and speedy determination of this case at trial. *See* CR 1. Subject

1 to the Court's approval, the Parties have accordingly agreed to a 90-day continuance of the  
2 trial date to August 31, 2009. The Parties anticipate that trial will take up to six weeks, or  
3 24 court days. A trial of this length would be consistent with the two prior trials of issues  
4 involving the constitutionality of state funding for public K-12 education. *Seattle Sch. Dist. v.*  
5 *State*, 90 Wn.2d 476, 486 (1978) involved a nine-week trial, while *Seattle Sch. Dist. v. State*,  
6 Thurston County No. 81-2-1713-1, involved an eight-week trial.

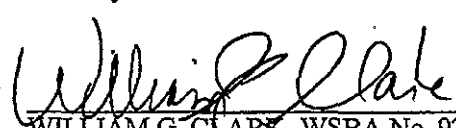
7 8. The Parties have also agreed (and request Court approval) to postpone the  
8 deadline for disclosure of additional witnesses by one week to February 17, 2009, or such  
9 other date agreed to by the Parties, while the Court considers this stipulated order.

10 DATED this 11<sup>th</sup> day of February, 2009.

11 FOSTER PEPPER PLLC

ROBERT M. MCKENNA  
Attorney General

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13   
14 THOMAS F. AHEARNE, WSBA No. 14844  
15 Attorneys for Petitioners

  
16 WILLIAM G. CLARK, WSBA No. 9234  
17 Assistant Attorney General  
18 Attorneys for Respondent

19 **II. ORDER**

20 Based on the above Stipulation of the Parties, IT IS ORDERED, ADJUGED AND  
21 DECREED that the trial date and all pretrial deadlines in this matter are continued 90 days.

22 Trial is set to commence before this Court on August 31 (month and date), 2009.

23 An amended case schedule reflecting this new trial date will be issued by the clerk.

24 DONE IN OPEN COURT this 25<sup>th</sup> day of February, 2009.

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26 JOHN P. ERLICK, JUDGE

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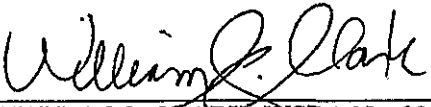
Presented jointly by:

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