11-25-2009

Respondent's Supplement Trial Brief re *Federal Way School District v. State* 07-2-02323-2-130

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

RESPONDENT'S SUPPLEMENTAL TRIAL BRIEF RE: *FEDERAL WAY SCHOOL DISTRICT v. STATE*

I. INTRODUCTION

This case concerns the constitutional adequacy of State funding for basic education. Trial of this case concluded on October 21, 2009. On November 12, 2009, the Washington Supreme Court rendered its unanimous opinion in the related case of *Federal Way School District v. State*,

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

No. 80943-7. In that opinion, the Court decided three issues that directly affect the outcome of the case of *McCleary v. State.*

First, the Court held that the State's 30 plus year old statutory funding formulae for the base salary of school district staff is constitutional, despite the fact that State funding for district staff varies significantly by district. Next, in the face of claims that the State's funding was based on a decades old "snapshot" that the Legislature had left largely static for many years, the Court adhered to its longstanding deference to, and non-interference with, the Legislature's enactments of the means of fulfilling Article IX's duty. Finally, the justiciability of the Petitioners' claims depends upon each Petitioner's showing of actual harm or denial of a benefit and, under the *Federal Way* decision, individual parents, students and teachers have no claim regarding educational funding decisions.

II. ARGUMENT

At trial, the Petitioners claimed that evidence of constitutional underfunding of basic education consisted of: (1) the testimony of school district superintendents and the districts' F-196 financial statements that confirm that districts spend more money to operate K-12 public schools than the State provides; (2) the testimony and documents from the State's Office of Superintendent of Public Instruction that allegedly indicate a billion dollar deficit in annual State funding of Washington's school districts; and (3) the academic performance of Washington's students in that not all students pass the WASL exams or graduate from high school. Moreover, Petitioners contended that alleged evidence of "foot-dragging" and a failure to address funding shortfalls over a protracted period of time created an imperative for immediate judicial intervention in the ongoing legislative reform of the programs and funding of basic education. The *Federal Way* decision negatively impacts each of the contentions.

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

A. The State's Provision of Disparate, Unequal Funding for School District Staff Is Constitutional.

Part of Petitioners' underfunding claim at trial concerned the fact that the "base salary" funding that the State provided for certificated, classified and administrative school employees was based on an irrational "snapshot" of what school districts paid these employees 30 years ago. Based on the same contentions and evidence, the trial court in the *Federal Way* case concluded that the State's disparate formulae for funding of base salaries for all staff was unconstitutional.[1]

The Supreme Court reversed, holding that the use of "differing salary allocations to school districts with historically disparate average salaries" did not violate Article IX's mandate that "ample provision" be made for education of all Washington's children through a "general and uniform system of public schools." *Federal Way Sch. Dist. No. 210 v. State*, 2009 WL 3766092, at *8 (Wash. 2009). (A copy of the decision is Attachment 1 hereto).

The *Federal Way* Court's holding is controlling in the *McCleary* case in at least two respects. First, the fact that the current State funding of staff "base salaries" is neither uniform nor equal among districts has no constitutional significance. As held by the Court, there is "no authority for the argument that, in order for resources to be constitutionally sufficient, the legislature must allocate them uniformly or use uniform formulas." *Id.* at *6.

Next, the *Federal Way* decision also rejects, as a matter of law and fact, Petitioners' contention that the State underfunds basic education by $393 million every year because it has not "equalized" staff base salary allocations to Washington's 295 school districts. (This contention was based upon the lay opinion testimony of OSPI's Jennifer Priddy and Rep. Skip Priest. Trial Transcript, pp. 1178-80; 1471-72, 4532-34). If Article IX does not require uniformity of State funding levels to the school districts, the Constitution does not require "equalization" of those funding levels. Moreover, the Supreme Court specifically found that the fact that school districts

[1] The *Federal Way* trial decision was based, in part, on Article IX, section 2. That court rejected Article IX, section 1 as a basis for its decision. Federal Way School District, however, continued to contend that disparate State funding of school district staff was a failure to make "ample provision" under Section 1. The Supreme Court decision thus is based on both sections 1 and 2 of Article IX.

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

have disparate salaries for their employees is not due to State action, but was caused by local "collective bargaining contracts, staff experience levels and local school levies passed by voters." *Id.* at *1. Thus, the practice of local school districts in bargaining for more staff positions than the State funds who are, in turn, paid at higher compensation levels than the State currently funds is not proof that the State underfunds basic education. Coupled with the testimony that the other alleged, significant area of underfunding (NERCs) was predicated upon a survey comprising a "wish list" of what district employees wanted for their schools, with the assumption that the State would pay for it all (DeLeeuw Dep. at 145-48), this opinion testimony claiming current underfunding is not persuasive.

Moreover, the *McCleary* Petitioners and the *Federal Way* plaintiffs both have contended that immediate Court intervention is necessary to put a stop to the "foot-dragging" and decades of constitutional non-compliance by the Legislature. As in *Federal Way*, Petitioners in this case have claimed that the current system is an outmoded, archaic "snapshot" of a funding system put in place 30 years ago. However, the Supreme Court examined this identical claim, traced the history of State funding from 1977 to 2007 and concluded: "[B]etween 1977 and 2007, the legislature not only enacted numerous uniform salary increases but also narrowed the salary allocation gap repeatedly." *Id.* at *8. Given the Supreme Court's view of legislative efforts in reforming basic education staff funding allocations and the State's evidence in the *McCleary* case of the steady and deliberate progress of education reform in the 1990's and 2000's, this Court should reject Petitioners' contention that legislative "foot-dragging" requires immediate judicial intervention. This is particularly appropriate as a response to Petitioners' demand that the Court order the Legislature to do another "cost study" for basic education.

Finally, the Supreme Court also addressed the issue of whether Article IX requires the State to provide successful outcomes, as opposed to opportunities to succeed. Though expressed with regard to section 2 and its "general and uniform" requirement, the Court's language should also apply to the section 1 mandate of making "ample provision":

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

> Every child shall have the same advantages and be subject to the same discipline....[with] free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities to at least the 12th grade....

Id. at 13-14. Thus, the *Federal Way* court would reject any suggestion that Article IX makes the State the guarantor of successful school outcomes.

B. The *Federal Way* Decision Reaffirms the Principle of Judicial Deference to Legislative Enactments to Fulfill Article IX's Duties.

The parties in the *Federal Way* case analyzed the steps taken by the Legislature from 1977 to 2007 to address State funding and allocations for staff compensation. They disagreed over the conclusion to be drawn from that 30-year history. Plaintiffs contended this evidence confirmed that the Legislature had failed to cure a constitutional deficiency that had existed for a long time. The State contended—as in this case—that the steps taken confirmed that the Legislature was fulfilling its Article IX obligations. The Supreme Court agreed with the State.

In so holding, the Court reaffirmed that "the minutiae of funding" is the province of the legislative branch—unless specifically mandated by the constitution. *Id.* at *5. The Court also reaffirmed that the quantum of proof necessary for Petitioners challenging the constitutionality of the State's statutory funding of basic education was proof beyond a reasonable doubt. *Id.* at #6. This court should rule accordingly.

C. The McClearys and Venemas Must Show Actual Harm to Present Justiciable Article IX Claims.

Neither side in the *McCleary* trial addressed the justiciability of Petitioners' claims. However, the Court in *Federal Way* ruled that individual plaintiffs such as parents, students, teachers and taxpayers had no claims unless they could prove "the adverse impact of insufficient revenue on educational programs for individual students." *Id.* In fact, the Court determined that individual parents, students and teachers have no personal claim to education funding allocations." *Id.* at *7. This ruling applies to the claims brought by the McCleary and Venema families.

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

Under cross-examination, Mrs. McCleary confirmed that her daughter Kelsey has performed well in school throughout her career. Trial Transcript at 492-93, 497-98. Though her son Carter failed his 4th grade writing WASL, he passed the math and reading WASL's and Mrs. McCleary confirms he is capable of mastering the knowledge and skills necessary to meet state standards. *Id.* at 424-25.

Regarding the Venema children, Mrs. Venema confirmed that her son has had no particular difficulties, has passed all his course and WASL exams. *Id.*, at 2165-66. While her daughter has struggled with math, she will graduate from high school, having successfully met the math WASL requirement through the "collection of evidence" method. *Id.* at 2150.

Based on the *Federal Way* case, the individual Petitioners do not have justiciable claims. There is no evidence that their children have been denied the opportunity to get a basic education; much less a benefit denied due to insufficient funding.

III. CONCLUSION

The *Federal Way* decision impacts both the liability claim in this case and the extremely limited remedy this Court can provide if liability is established beyond a reasonable doubt. The State's disparate funding for staff is not a violation of Article IX. Should this Court conclude that other features of current basic education are contrary to Article IX, however, the Court should defer to the Legislature as to the means of remedying the situation.

DATED this 25th day of November, 2009.

ROB MCKENNA
Attorney General

/s/ William G. Clark
WILLIAM G. CLARK, WSBA #9234
Attorney General of Washington
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
Email: BillC2@atg.wa.gov
Telephone: (206) 464-7352
Fax: (206) 587-4229
Attorneys for Respondent

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

☒Hand delivered by Aaron Williams

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

DATED this 25th day of November, 2009, at Seattle, Washington.

/s/ Agnes Roche
AGNES ROCHE
Legal Assistant
Attorney General of Washington
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
Email: AgnesR@atg.wa.gov
Telephone: (206) 464-7352
Fax: (206) 587-4229

ATTACHMENT 1

--- P.3d ----, 2009 WL 3766092 (Wash.)
(Cite as: 2009 WL 3766092 (Wash.))

Only the Westlaw citation is currently available.

Supreme Court of Washington,
En Banc.

FEDERAL WAY SCHOOL DISTRICT NO. 210, a municipal corporation; Ed Barney; Cynthia Black; Evelyn Castellar; Ginger Cornwell; Charles Hoff; David Larson, individually and as guardian for Andrew Larson and Joshua Larson; Thomas Madden, individually and as guardian for Bryce Madden; Shannon Rasmussen; Sandra Rengstorff, individually and as guardian for Taylor Rengstorff and Kali Rengstorff, Respondents,

v.

The STATE of Washington; Christine Gregoire, in her capacity as Governor of the State of Washington; Terry Bergeson, in her capacity as Superintendent of Public Instruction; Brad Owen, in his capacity as President of the Senate and principal legislative authority of the State of Washington; Frank Chopp, in his capacity as Speaker of the House of Representatives and principal legislative authority of the State of Washington, Appellants.

No. 80943-7.

Nov. 12, 2009.

Background: School district, teachers, parents and students in district brought action against state, seeking a declaration that disparate school employee salary figures in school funding formulas under the Basic Education Act violated the state constitution. The Superior Court, King County, Michael J. Heavey, J., entered summary judgment in favor of district, and state appealed.

Holdings: The Supreme Court, sitting en banc, J.M. Johnson, J., held that:
(1) funding formulas did not violate constitutional provision requiring uniform school funding;
(2) finding formulas did not violate constitutional provision requiring ample funding for education; and
(3) individual plaintiffs lacked standing under Uniform Declaratory Judgments Act.

Reversed.

West Headnotes

[1] Appeal and Error 30 ⚿893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases
A grant of summary judgment is reviewed de novo on appeal.

[2] Appeal and Error 30 ⚿934(1)

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k934 Judgment
30k934(1) k. In General. Most Cited Cases
On appeal from a grant of summary judgment, an appellate court views the facts and all reasonable inferences in the light most favorable to the nonmoving parties.

[3] Appeal and Error 30 ⚿893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases
Interpretation of the constitution is a question of law, which an appellate court review de novo.

[4] Schools 345 ⚿19(1)

345 Schools
345II Public Schools
345II(A) Establishment, School Lands and Funds, and Regulation in General
345k16 School Funds
345k19 Apportionment and Disposition
345k19(1) k. In General. Most Cited Cases
Disparate school employee salary figures in school funding formulas under the Basic Education Act did not violate state constitutional provision requiring legislature to provide for a general and uniform system of public schools; constitutional provision required uniformity in the educational program provided, not the minutiae of funding. West's RCWA Const. Art. 9, § 2; RCW 28A.150.200; RCW 28A.150.410.

[5] Constitutional Law 92 ⚿990

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In General. Most Cited Cases

Constitutional Law 92 ⚿1030

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)4 Burden of Proof
92k1030 k. In General. Most Cited Cases
Statutes are presumed constitutional, and the burden is on the party challenging the statute to prove its unconstitutionality.

[6] Schools 345 ⚿11

345 Schools
345II Public Schools
345II(A) Establishment, School Lands and Funds, and Regulation in General
345k11 k. School System, and Establishment or Discontinuance of Schools and Local Educational Institutions in General. Most Cited Cases
Provision of state constitution, stating that legislature shall provide for a general and uniform system of public schools, imposes upon the state a fundamental duty to create a common school system. West's RCWA Const. Art. 9, § 2.

[7] Schools 345 ⚿11

345 Schools
345II Public Schools
345II(A) Establishment, School Lands and Funds, and Regulation in General
345k11 k. School System, and Establishment or Discontinuance of Schools and Local Educational Institutions in General. Most Cited Cases

Schools 345 ⚿148(1)

345 Schools
345II Public Schools
345II(L) Pupils
345k148 Nature of Right to Instruction in General
345k148(1) k. In General. Most Cited Cases
"Uniform," under provision of state constitution stating that legislature shall provide for a general and uniform system of public schools, means that every child shall have the same advantages and be subject to the same discipline as every other child. West's RCWA Const. Art. 9, § 2.

[8] Schools 345 ⚿19(1)

345 Schools
345II Public Schools
345II(A) Establishment, School Lands and Funds, and Regulation in General
345k16 School Funds

345k19 Apportionment and Disposition

345k19(1) k. In General. Most Cited Cases

Disparate school employee salary figures in school funding formulas under the Basic Education Act did not violate state constitutional provision requiring state to provide ample funding for education, since provision did not require uniformity. West's RCWA Const. Art. 9, § 1; West's RCWA §§ 28A.150.200, 28A.150.410.

[9] Declaratory Judgment 118A 300

118A Declaratory Judgment
118AIII Proceedings
118AIII(C) Parties
118Ak299 Proper Parties
118Ak300 k. Subjects of Relief in General. Most Cited Cases

Individual teachers, parents, and students in school district did not have a personal claim to education funding allocations made by legislature, and thus individuals lacked standing, pursuant to Uniform Declaratory Judgments Act, to bring action challenging, as violation of state constitution, disparate school employee salary figures in school funding formulas under the Basic Education Act, absent a showing of actual harm caused by disparate funding; individuals did not determine how allocated funds were spent, since teacher salaries were negotiated between district and unions, and only evidence on harm showed that district students scored above average on state achievement tests. West's RCWA Const. Art. 9, §§ 1, 2; West's RCWA 7.24.020, 28A.150.200, 28A.150.410.

[10] Declaratory Judgment 118A 299.1

118A Declaratory Judgment
118AIII Proceedings
118AIII(C) Parties
118Ak299 Proper Parties
118Ak299.1 k. In General. Most Cited Cases

Uniform Declaratory Judgments Act provision, granting standing to persons whose rights are affected by a statute, is consistent with the general rule that a party must be directly affected by a statute to challenge its constitutionality. West's RCWA 7.24.020.

[11] Declaratory Judgment 118A 299.1

118A Declaratory Judgment
118AIII Proceedings
118AIII(C) Parties
118Ak299 Proper Parties
118Ak299.1 k. In General. Most Cited Cases

In order to have standing to bring an action under the Uniform Declaratory Judgments Act, parties must show that they are being affected or denied some benefit; mere interest in state funding mechanisms is not sufficient to make a claim justiciable. West's RCWA 7.24.020.

[12] Declaratory Judgment 118A 300

118A Declaratory Judgment
118AIII Proceedings
118AIII(C) Parties
118Ak299 Proper Parties
118Ak300 k. Subjects of Relief in General. Most Cited Cases

Individual teachers in school district lacked standing, pursuant to Uniform Declaratory Judgments Act, to challenge, as violation of privileges and immunities section of state constitutional provision, disparate school employee salary figures in school funding formulas under the Basic Education Act, since teachers' claims were hypothetical; challenged salary provisions determined only overall allocations and not individual teacher pay, which was negotiated between teachers' union and district. West's RCWA Const. Art. 1, § 12, 7.24.020, 28A.150.200, 28A.150.410.

[13] Declaratory Judgment 118A 65

118A Declaratory Judgment
118AI Nature and Grounds in General

118AI(D) Actual or Justiciable Controversy
118Ak65 k. Moot, Abstract or Hypothetical Questions. Most Cited Cases
To be justiciable under the Uniform Declaratory Judgments Act, a controversy must be an actual, present and existing dispute, not possible, dormant, or hypothetical. West's RCWA 7.24.020.

[14] Declaratory Judgment 118A 300

118A Declaratory Judgment
118AIII Proceedings
118AIII(C) Parties
118Ak299 Proper Parties
118Ak300 k. Subjects of Relief in General. Most Cited Cases
Individual teachers and parents in school district lacked standing as taxpayers to bring declaratory judgment action to challenge disparate school employee salary figures in school funding formulas under the Basic Education Act; individuals were challenging lower taxation levels, not high taxes or improper expenditures, and individuals could bypass tax system and voluntarily contribute to school district directly. West's RCWA 7.24.020, 28A.150.200, 28A.150.410.

Appeal from King County Superior Court, Honorable Michael J. Heavey, J.David Alan Stolier, Attorney General's Office, Maureen A. Hart, Attorney at Law, Olympia, WA, for Appellant.

Lester. Porter Jr., Kathleen J. Haggard, Lynette Meachum Baisch, Dionne & Rorick, Seattle, WA, for Respondent.

Catherine E. Maxson, Davis Wright Tremaine LLP, Seattle, WA, Amicus Curiae on behalf of League of Education Voters Foundation.

J.M. JOHNSON, J.

***1** ¶ 1 In The Washington Basic Education Act of 1977,[FN1] the legislature began a system of funding to school districts that improved all salaries but still allowed local teacher salary variation. By 2007, the gap between the highest and lowest average school salary figures had been narrowed considerably. **Federal Way School District** No. 210 receives the lowest salary funding level from the State. The school district, along with individual teacher, parent, and student plaintiffs, sought a court declaration that the State's continued use of the disparate salary figures in its funding formulas violated article IX, sections 1 and 2 and article I, sections 3 and 12 of the Washington Constitution. The trial court granted summary judgment for the school district and the individual respondents. We hold that the legislature's funding and formulas do not violate the Washington Constitution and reverse.

Facts and Procedural History

¶ 2 This is an appeal from a grant of summary judgment for **Federal Way School District** and several individual student, teacher, and parent respondents. The facts presented in this action, while complex, are essentially undisputed.

A. Recent History of Basic Education Funding

¶ 3 Since before statehood, financial resources to fund local schools varied widely, as did local costs of living. Washington Constitution article IX, section 1 declares it is "the paramount duty of the state to make ample provision for the education of all children residing within its borders...." *See Seattle Sch. Dist. No. 1 v. State,* 90 Wash.2d 476, 511-12, 585 P.2d 71 (1978) (analyzing article IX, section 1). Article IX, section 2 states, "[t]he legislature shall provide for a general and uniform system of public schools." Prior to 1977, state operational funding to school districts was determined through a formula in which a minimum funding guaranty per student was enhanced by weighting factors. The school districts are locally elected and districts paid varying salaries to teachers, administrators, and classified staff. This variation was due to collective bargaining contracts, staff experience levels, and local school levies passed by voters.

¶ 4 The legislature replaced the weighted student formula when it passed The Washington Basic Education Act of 1977. Laws of 1977, 1 st Ex.Sess., ch. 359, §§ 4, 5 (codified at ch. 28A.150 RCW), *amended by* Laws of 2009, ch. 548. The act sets forth a three part program: (1) educational system goals, (2) educational program requirements, and (3) a new funding mechanism, called the staff unit allocation system. RCW 28A.150.200, *amended by* Laws of 2009, ch. 548, § 101 (effective until Sept. 1, 2011).

¶ 5 The staff unit allocation system consisted of staff to student ratios and funding allocation formulas,[FN2] including a formula to allocate funding for certificated school staff (administrators and teachers) and classified school staff salaries.[FN3] *See* Laws of 1977, 1 st Ex.Sess., ch. 359, § 5. The system did not create a uniform statewide salary schedule; the legislature was aware that total salary equalization would upset political and economic expectations and disregard local variation in cost of living.[FN4] To account for the variance in existing school district salaries, the initial formula used amounts based on the existing average salaries paid by districts in the 1976-77 school year. *See* Laws of 1977, 1st Ex.Sess., ch. 339, § 97(1)(e)(i). Consequently, initial staff unit-based allocations varied widely.

***2** ¶ 6 The legislature continued to narrow the gap over time. Accordingly, from 1977 to 1989, it enacted a series of weighted salary increases while imposing salary controls on higher salary school districts.[FN5] Although not all of the legislature's efforts were equally effective, the end result was that education salary allocations were increased in each biennium from 1977 to 1989, and the allocation gap was reduced in each year except 1983. By 1989, only 34 out of 295 school districts statewide were allocated higher teacher base salaries than the others.

¶ 7 After the 1987-89 biennium, the legislature shifted its focus to increasing salaries for all educational staff. In 1989 and 1991, the legislature boosted teacher salaries, with the biggest increases going to the lowest paid teachers and those with master's degrees. Other staff received uniform increases.[FN6] From 1995 to 1999, the legislature increased all salary allocations to school districts uniformly for all three classes of staff. In 1999, the legislature again raised teacher salaries, with larger increases for beginning teachers.

¶ 8 In 2000, voters passed Initiative 732 (I-732) mandating uniform yearly cost of living increases without regard to salary differences (but providing no funding source). RCW 28A.400.205, *amended by* Laws of 2009, ch. 573 (effective July 1, 2009). In 2003 and 2004, the legislature enacted and funded measures to narrow the gap between the lowest paid teachers and those with more experience. In the 2005 biennium, the legislature again adopted uniform salary increases. In the 2007 biennial budget, the legislature appropriated funds for uniform cost of living increases for all three classes of employees as well as funds to narrow the differences in the salary schedules between school districts. Laws of 2007, ch. 522, § 503.

¶ 9 Thus, between 1977 and 2007, the legislature not only enacted numerous uniform salary increases but also narrowed the salary allocation gap repeatedly. This was especially true for teacher salaries. Under the 1977 budget, the highest teacher average base salary was more than 150 percent greater than the lowest. By the 2008-09 school year, that gap had been reduced to 4.9 percent. LEAP 2, Clerk's Papers (CP) at 266-73; *see also supra* note 5.

B. *Current Allocations* [FN7]

¶ 10 Currently, average base salary amounts used in funding formulas are contained in LEAP 2. In 2007, the legislature determined allocations for certificated administrative and classified staff by multiplying the average number of full-time students in each school district by prescribed staff to student ratios, then multiplying the result by the average

salary figure listed for each district in LEAP 2. *See* Laws of 2007, ch. 522, § 503(1)(a) (uncodified appropriations bill) (incorporating LEAP 2 by reference); RCW 28A.150.410. Allocations for teacher salaries are calculated the same way, but each district's average base salary figure is modified by factoring in a staff mix factor that adds funding based on higher levels of teacher experience and education.[FN8]

***3** ¶ 11 In the 2007 biennial budget, some school districts that historically paid higher salaries continued to receive allocations based on higher staff unit salary figures than **Federal Way School District**. [FN9] No single district received the highest staff unit allocation salary figures in all three categories of staff.[FN10] Out of 295 districts, 64 districts, including **Federal Way School District**, received allocations based on the lowest staff unit salary figures on LEAP 2 in all three staff categories.

¶ 12 The greatest disparity among school districts is in the salary figures for administrators. For the 2008-09 school year, four districts received funds calculated using the highest average base salary figure of $84,362, while **Federal Way School District** and 88 other districts received $57,986-a 45 percent gap.[FN11] For classified staff, the Seattle School District average base salary was $36,777, while for **Federal Way School District** and 224 other districts, the average base salary was $31,865-a 15 percent gap.

¶ 13 For teachers, **Federal Way School District** and 282 other districts' funding was calculated using the teacher average base salary figure of $33,898. Only 12 districts' funding was based on higher numbers up to $35,581. This is a 4.9 percent gap statewide. LEAP 2, CP at 266-73. **Federal Way School District** argues that in the 2006-07 school year, it would have received an additional $7.1 million in basic education funding if its allocation had been calculated using the highest salary figures on LEAP 2. CP at 112.

C. Procedural History

¶ 14 **Federal Way School District** filed suit in King County Superior Court seeking a declaration that the State's funding formulas for all three categories of public school employees violate the Washington Constitution. The superior court held that the disparity in salary figures on LEAP 2 (and incorporated into the appropriations act) violates the uniformity requirement of Washington Constitution article IX, section 2, and violates the equal protection rights of the individual respondents under article I, section 12. [FN12] Accordingly, the superior court granted the school district's motion for summary judgment. The State moved for direct review, which this court granted.

Standard of Review

[1][2][3] ¶ 15 A grant of summary judgment is reviewed de novo. *Amalgamated Transit Union Local 587 v. State,* 142 Wn.2d 183, 206, 11 P.3d 762, 27 P.3d 608 (2000). We view the facts and all reasonable inferences in the light most favorable to the nonmoving parties. *Berrocal v. Fernandez,* 155 Wash.2d 585, 590, 121 P.3d 82 (2005). Interpretation of the constitution is a question of law, which we review de novo. *State v. Chenoweth,* 160 Wash.2d 454, 462, 158 P.3d 595 (2007). Summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Amalgamated Transit,* 142 Wash.2d at 206, 11 P.3d 762; CR 56(c).

Analysis

A. Article IX, Section 2 (the "uniformity clause")

***4** [4] ¶ 16 The superior court held that the legislature's current funding allocation system violates the education article of our state constitution, which requires the legislature to "provide for a general and uniform system of public schools." Const. art.

IX, § 2. We disagree.

¶ 17 A brief historical note first will add perspective to the analysis. At the time of the constitution, and since, total education funding has varied statewide, and local control has been assured through locally elected school board administrators and local voter-approved tax levies.

[5][6][7] ¶ 18 Statutes are presumed constitutional, and the burden is on the party challenging the statute to prove its unconstitutionality. *Tunstall ex rel. Tunstall v. Bergeson,* 141 Wash.2d 201, 220, 5 P.3d 691 (2000). This court has long held that article IX, section 2 imposes upon the State a fundamental duty to create a common school system.[FN13] *Tunstall,* 141 Wash.2d at 221, 5 P.3d 691. We have previously elaborated on what such a system must consist of. "Uniform" means that "every child shall have the same advantages and be subject to the same discipline as every other child." *Sch. Dist. No. 20 v. Bryan,* 51 Wash. 498, 502, 99 P. 28 (1909).

> A general and uniform system, we think, is, at the present time, one in which every child in the state has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities to at least the 12th grade-a system administered with that degree of uniformity which enables a child to transfer from one district to another within the same grade without substantial loss of credit or standing and with access by each student of whatever grade to acquire those skills and training that are reasonably understood to be fundamental and basic to a sound education.

Northshore Sch. Dist. No. 417 v. Kinnear, 84 Wash.2d 685, 729, 530 P.2d 178 (1974), *overruled on other grounds by Seattle Sch. Dist. No. 1 v. State,* 90 Wash.2d 476, 514, 585 P.2d 71 (1978).

¶ 19 The legislature created a common school system at its first session. [FN14] *Newman v. Schlarb,* 184 Wash. 147, 152, 50 P.2d 36 (1935). The Washington Basic Education Act of 1977 provided for uniform educational content, teacher certification, and instructional hour requirements, as well as a statewide assessment system enabling students to transfer from one school district to another without loss of credit and with access to substantially the same educational opportunities. *See* RCW 28A.150.200, *amended by* Laws of 2009, ch. 548, § 101 (effective until Sept. 1, 2011) (basic educational program requirements).[FN15] This court recently held that Title 28A RCW's "Common School Provisions," which include the basic education act, satisfy the "general and uniform" portion of the legislature's article IX duty. *Tunstall,* 141 Wash.2d at 221, 5 P.3d 691.[FN16]

¶ 20 **Federal Way School District** argues that the current school funding system violates the uniformity requirement of article IX, section 2 because funding for staff salaries in some school districts is calculated using different base salary figures than for others.[FN17] **Federal Way School District** relies primarily on *Seattle School District No. 1,* 90 Wash.2d 476, 585 P.2d 71 and *McGowan v. State,* 148 Wash.2d 278, 60 P.3d 67 (2002).[FN18]

***5** ¶ 21 **Federal Way School District's** reliance on *Seattle School District No. 1* is misplaced. **Federal Way School District** argues that that case stands for the proposition that the State's school funding violated article IX, section 2's uniformity clause. But *Seattle School District No. 1* addressed the local excess levy funding system, which has been replaced by a completely new and different funding mechanism by The Washington Basic Education Act of 1977. *Seattle Sch. Dist. No. 1,* 90 Wash.2d at 519 n. 14, 585 P.2d 71 (calling the act "a commendable effort to alleviate the constitutional void" addressed by the decision).

¶ 22 In *Seattle School District No. 1,* we held that the previous system was invalid under article IX, section 1-not under section 2. Regarding the interplay between section 2 and specific funding mechanisms, we said only that sections 1 and 2 together "require the State to amply provide for the education guaranteed through the medium of 'a general

and uniform *system of public schools.* ' " *Seattle Sch. Dist. No. 1,* 90 Wash.2d at 522, 585 P.2d 71 (quoting Const. art. IX, § 2). This holding does not define a "uniform" system, and our cases have never held that the provision requires uniform funding.

¶ 23 **Federal Way School District** also relies on *McGowan,* 148 Wash.2d 278, 60 P.3d 67. In that decision, the court struck down a provision of I-782 that defined basic education to include specific salary increases for school employees as contrary to the requirements of article IX. We explained that the definition was unconstitutional because it sought to write into the State's constitutional obligation to provide basic education a requirement for a specific type and amount of funding. Our holding actually rebuts respondents' argument because they-similar to the plaintiffs in *McGowan*-seek to write into the State's increases for this district and its obligation to provide a uniform school system a specific type of funding, viz., uniform salary figures statewide. Moreover, *McGowan* does not address the interplay of article IX, section 2 and specific funding mechanisms, other than repeating *Seattle School District No. 1's* holding that compliance with article IX, sections 1 and 2 cannot be achieved through local levies. *McGowan,* 148 Wash.2d at 293-94, 60 P.3d 67. Thus, like *Seattle School District No. 1, McGowan* does not define "uniform" and does not hold that the provision requires uniform funding.

¶ 24 **Federal Way School District** has not cited any persuasive authority for its argument that article IX, section 2 requires the State to calculate basic education funding using uniform salary figures statewide. Our cases discussing article IX, section 2 make it clear that the provision requires uniformity in the educational program provided, not the minutiae of funding. Such details-unless specifically mandated by the constitution-are the province of the legislative branch. *See* Const. art. II, § 1 (legislative authority vested in the legislature, subject to powers reserved by the people); Const. art. IX, § 2 (mandating limits on the use of common school fund revenues). **Federal Way School District** fails to overcome the presumption that the statutory funding formulas are constitutional and fails to prove that the disparities in those formulas have violated article IX, section 2.

B. Article IX, section 1 (the "ample funding clause")

***6** [8] ¶ 25 **Federal Way School District** cross-appeals on the issue of ample funding. The district argues that the legislature's salary allocation formulas for school staff violate article IX, section 1 by failing to fund all school districts at the same level. "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, ..." Const. art. IX, § 1. In its summary judgment ruling, the trial court explicitly held that respondents had failed to prove beyond a reasonable doubt that **Federal Way School District** is not amply funded. The trial court emphasized its decision "should in no way be construed to find or even suggest that the legislature has not provided for full funding of education in the **Federal Way School District**." CP at 434.

¶ 26 **Federal Way School District's** argument essentially relies on a single passage in *Seattle School District No. 1,* stating that the legislature must expressly deploy resources that are sufficient to provide for basic education. 90 Wash.2d at 537, 585 P.2d 71. But this court did not require uniformity of funding formulas or salary multipliers. Moreover, the cited passage merely begs the question of what is "sufficient." *Id.* **Federal Way School District** cites no authority for the argument that, in order for resources to be constitutionally sufficient, the legislature must allocate them uniformly or use uniform formulas. Our decision in *Seattle School District No. 1* does not support the argument nor does the constitutional provision, and therefore we reject it.

C. None of the Individual Respondents Present Jus-

ticiable Claims

[9] ¶ 27 The trial court also held that the legislature's funding formulas violate some individual respondents' constitutional rights. The State continues to argue that the individual respondents' claims do not meet requirements for justiciability. The superior court did not address this argument. Because we require claims to be justiciable before we will decide them, we must address this threshold.

[10][11] ¶ 28 The Uniform Declaratory Judgments Act grants standing to persons "whose rights ... are affected by a statute." RCW 7.24.020. This is consistent with the general rule that a party must be directly affected by a statute to challenge its constitutionality. *To- Ro Trade Shows v. Collins,* 144 Wash.2d 403, 411-12, 27 P.3d 1149 (2001). Respondents must show they are being affected or denied some benefit; mere interest in state funding mechanisms is not sufficient to make a claim justiciable. *See Walker v. Munro,* 124 Wash.2d 402, 419, 879 P.2d 920 (1994). We held in *Seattle School District No. 1* that both parent and children plaintiffs had standing where the adverse impact of insufficient revenue on educational programs for individual students was demonstrated by the record. *Seattle Sch. Dist. No. 1,* 90 Wash.2d at 495, 585 P.2d 71 (holding that students "are the intended and immediate objects of Title 28A RCW").

*7 ¶ 29 First, the individual parent, student, and teacher respondents claim they are alleging denial of a benefit and therefore do not have to show actual harm. But these individuals do not establish any benefit they are personally being denied. Individual parents, students, and teachers have no personal claim to education funding allocations; the funds are a benefit paid to the school district. Because teacher salaries are negotiated between the district and unions, individual parents, students, and teachers do not determine how allocated funds are spent (or receive any direct benefit).

¶ 30 Alternately, the individual parent and student respondents argue that the funding system-where other school districts receive more money for staff salaries-creates actual harm. This argument relies on the implicit assumption that unequal funding formulas result in disparate educational quality. But the only evidence in this record shows that **Federal Way School District** students generally score above the state average, as measured by WASL (Washington Assessment of Student Learning) scores. No adverse impacts are demonstrated by this record. Respondents have shown no educational opportunities unequal to those provided in other school districts in violation of the constitution. *See Tunstall,* 141 Wash.2d at 222, 5 P.3d 691.

[12][13] ¶ 31 Similarly, the individual teachers' article I, section 12 claim fails. To be justiciable under the Uniform Declaratory Judgments Act, a controversy must be an actual, present and existing dispute, not possible, dormant, or hypothetical. *To- Ro Trade Shows,* 144 Wash.2d at 411, 27 P.3d 1149. The LEAP 2 salary figures determine only overall allocations and not individual teacher pay, which is negotiated between the union and district. Even if we affirm the superior court's judgment and the legislature equalized allocation formula salary figures, that would not translate to any individual benefit for the teacher whose salary is determined through negotiation with the school district. The teachers' dispute is therefore hypothetical and nonjusticiable.

[14] ¶ 32 Finally, eight of the parent and teacher respondents claim standing as taxpayers because they were unable to pay higher taxes in support of **Federal Way School District** due to limits on levy authority that are tied to the salary allocations. While taxpayers may have standing to protest high taxes or improper expenditures, this court has said it is doubtful there is taxpayer standing to protest lower taxes or limits on taxation. *Walker,* 124 Wash.2d at 402, 879 P.2d 920. Moreover, the posture of the parent and teacher respondents' argument is misleading; they do not merely seek to support **Federal Way School District**. That could be accomplished by bypassing the tax system and voluntarily con-

tributing to the school district directly. Their complaint apparently is that the school district is unable to ask for more taxes from them (and others). A municipal corporation's inability to ask for voter approval of a levy for a specific dollar amount is not a justiciable harm to an individual taxpayer. Moreover, the controversy is hypothetical; there is no evidence that the school district would ask for higher levies. To the contrary, in 2007, the school district sought voter approval for $1 million less than its full levy authority. Since the parent and teacher respondents also lack taxpayer standing for separate claims, none of their claims are justiciable.

Conclusion

***8** ¶ 33 The legislature's use of the staff unit allocation system to fund education with differing salary allocations to school districts with historically disparate average salaries does not violate article IX, section 2, although there remains a slight gap between the highest and lowest salary funding statewide.[FN19] There is no showing that the legislature's funding allocations, including those for **Federal Way School District**, do not constitute "ample provision for the education of all children" as required under article IX, section 1. The legislature has acted well within its constitutional authority and its duty to make ample provision for the education of children and to provide for a general and uniform system of education under article IX. The individual respondents' claims do not meet requirements for justiciability and should be dismissed. Accordingly, we reverse.

WE CONCUR: GERRY L. ALEXANDER, C.J., CHARLES W. JOHNSON, BARBARA A. MADSEN, RICHARD B. SANDERS, TOM CHAMBERS, SUSAN OWENS, MARY E. FAIRHURST, and DEBRA L. STEPHENS, JJ.

FN1. RCW 28A.150.200, *amended by* Laws of 2009, ch. 548, § 101 (effective until Sept. 1, 2011).

FN2. The distribution formula is for determining total funding amounts only and is not intended to prescribe how any individual employee is paid or the number of staff a district may hire. *See* RCW 28A.150.260(2)(c) (formula "shall not be construed as mandating specific operational functions of local school districts ..."), *amended by* Laws of 2009, ch. 548, § 106 (effective until Sept. 1, 2011).

FN3. "Certificated staff" initially included administrative staff and instructional staff, which includes teachers, counselors, librarians, and other nonsupervisory certificated positions. Classified staff included all noncertificated positions. *See* Laws of 1977, 1 st Ex.Sess., ch. 359, § 5. In 1987, the legislature made administrative staff a separate group. The initial figures used for average administrator salary allocations were based on actual average salaries paid during the 1986-87 school year. Consequently, like the average salary amounts adopted in 1977, average salary amounts for administrators varied widely between districts.

FN4. Among the groups opposing a uniform statewide salary schedule was the teachers' union, which supported local salary bargaining.

FN5. Salary controls, first enacted in 1981, prevented school districts from paying salary increases greater than those authorized in the legislature's funding formula. In 1987, the legislature lifted controls on administrator and classified staff salaries but left teacher salary controls in place. The salary cap amount is taken from the salary tables contained in LEAP Document 2 (LEAP 2), Clerk's Papers (CP) at 266-73; therefore, lower salary allocation figures effectively act as a lower salary cap. *See* RCW 28A.400.200(3)(a).

LEAP 2 is created by a legislative agency called the "Legislative Evaluation and Accountability Program Committee" (RCW 44.48.010), which is "the Legislature's independent source of information and technology for developing budgets, communicating budget decisions, and tracking revenue, expenditure, and staffing activity." Wash. State Legislative Evaluation & Accountability Program Comm., *An Independent Source of Information Technology and a Resource for Fiscal Information, available at* http:// leap.leg.wa .gov/leap/overview/default.asp (last visited Nov. 4, 2009).

FN6. **Federal Way School District** correctly notes that uniform percentage increases had the effect of widening average salary gaps between school districts if calculated in dollars.

FN7. On May 19, 2009, the governor signed Engrossed Substitute House Bill (ESHB) 2261, a 66-page bill that substantially amends laws relating to the program and funding of education. *See, e.g.,* Laws of 2009, ch. 548, § 106 (effective until Sept. 1, 2011) (amending the prescribed student-staff ratios to be used in funding formulas). ESHB 2261 provides that the legislature intends to implement a new instructional program funded by a new funding formula. Laws of 2009, ch. 548, §§ 1, 2. But the sections relating to funding do not take effect until 2011. *See* ESHB 2261, Laws of 2009, ch. 548 § 804 (providing that sections 101 through 110 become effective Sept. 1, 2011); *id.* § 112(2) (calling for a "technical working group" to work out the details of new funding formulas). Thus, the amendments in ESHB 2261 do not appear to be of consequence to this case.

FN8. The staff mix factors are located in a table called LEAP Document 1. CP at 262-64.

FN9. **Federal Way School District** has access to certain additional sources of funding other than staff unit-based allocations that are not available equally to all districts. First, **Federal Way School District** has excess levy authority higher than that generally available to other districts. *See* RCW 84.52.0531, *amended by* Laws of 2009, ch. 4 (effective Feb. 18, 2009). In 2007, **Federal Way School District** had levy authority for over $32 million, and sought voter approval for $31 million. Second, a state program entitled Local Effort Assistance, provided an additional $4 million in 2007. *See* RCW 28A.500.10-.30. The respondents do not contend that disparities between districts created by these alternative funding channels are unconstitutional.

FN10. There is no correlation between higher allocation amounts in one category and another; for example, Seattle received the top salary allocation for classified staff but ranks 150th for administrator salary.

FN11. These figures have no correlation to the real cost of hiring administrators; the average **Federal Way School District** administrator makes $94,486.

FN12. The superior court did not address justiciability arguments raised by the State. CP at 418-26.

FN13. Newspaper editorials at the time of our constitutional convention heavily influenced the debate on the new educational system. *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1,* 149 Wash.2d 660, 672, 72 P.3d 151 (2003) (quoting Quentin Shipley Smith, *Analytic-*

al Index to The Journal of the Washington State Constitutional Convention 1889, at 685 (Beverly Paulik Rosenow ed., 1999)). We have noted that one such editorial highlighted the "uniformity in charts, manuals, methods, and highly competent instructors" of Australia's common school system. *Id.* (quoting Tacoma Daily Ledger, July 3, 1889).

FN14. Even prior to enactment of the basic education act, this court held that the common school system then in place provided a general and uniform system of public schools. *Kinnear,* 84 Wash.2d at 729, 530 P.2d 178, *overruled on other grounds by Seattle Sch. Dist. No. 1,* 90 Wash.2d at 514, 585 P.2d 71.

FN15. *See also* ch. 28A.410 RCW (uniform teacher certification requirements), *amended by* Laws of 2009, ch. 548, § 402 (effective July 26, 2009) (mandating new uniform teacher performance standards for 2010); ch. 28A.655 RCW (academic achievement and accountability), *amended by* Laws of 2009, ch. 548, § 202 (effective July 26, 2009) (providing for electronic collection of teacher and student data).

FN16. **Federal Way School District** attempts to distinguish *Tunstall* because it did not address school funding, but that distinction presumes that article IX, section 2 applies to school funding mechanisms.

FN17. Amicus League of Education Voters Foundation supports this argument with its own analysis of article IX, section 2 but cites no additional authority.

FN18. **Federal Way School District** also relies on *Brown v. State,* 155 Wash.2d 254, 269, 119 P.3d 341 (2005), which echoes the holding in *McGowan.* Because *Brown* relies entirely on *McGowan* for the argument cited, it is not persuasive here.

FN19. As previously noted, the gap in teacher funding statewide under the legislature's budget was only 4.9 percent, significantly less than cost-of-living variations between school districts in our state. *See* Wash. State Office of Fin. Mgmt., A Review of K-12 Regional Cost Issues app. at A1-A9 (Dec.2000) (statistics showing household expenses in the most expensive school district were 37 percent higher than those in the least expensive district), *available at* http://www.ofm.wa.gov/fiscal/k12cola/k12cola.pdf (last visited Nov. 4, 2009).

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