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[McCleary Record on Appeal, Part 5] 07-2-02323-2-172 Part 5

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improvements in student achievement. Recognition for improvements in student achievement shall include consideration of one or more of the following accomplishments:

(i) An increase in the percent of students meeting standards. The level of achievement required for recognition may be based on the achievement goals established by the legislature under RCW 28A.630.8E7 (as recodified by this act) and the commission under (a) of this subsection;

(ii) Positive progress on an improvement index that measures improvement in all levels of the assessment; and

(iii) Improvements despite challenges such as high levels of mobility, poverty, English as a second language learners, and large numbers of students in special populations as measured by either the percent of students meeting the standard, or the improvement index.

When determining the baseline year or years for recognizing individual schools, the commission may use the assessment results from the initial years the assessments were administered, if doing so with individual schools would be appropriate;

(d) Adopt objective, systematic criteria to identify schools and school districts in need of assistance and those in which significant numbers of students persistently fail to meet state standards. In its deliberations, the commission shall consider the use of all state-wide mandated criterion-referenced and norm-referenced standardized tests;

(e) Identify schools and school districts in which state intervention measures will be needed and a range of appropriate intervention strategies, beginning no earlier than June 30, 2001, and after the legislature has authorized a set of intervention strategies. Beginning no earlier than June 30, 2001, and after the legislature has authorized a set of intervention strategies, at the request of the commission, the superintendent shall intervene in the school or school district and take corrective actions. This chapter does not provide additional authority for the commission or the superintendent of public instruction to intervene in a school or school district;

(f) Identify performance incentive systems that have improved or have the potential to improve student achievement;

(g) Annually review the assessment reporting system to ensure fairness, accuracy, timeliness, and equity of opportunity, especially with regard to schools with special circumstances and unique populations of students, and a recommendation to the superintendent of public instruction of any improvements needed to the system;

(h) Annually report by December 1st to the legislature, the governor, the superintendent of public instruction, and the state board of education on the progress, findings, and recommendations of the commission. The report may include recommendations of actions to help improve student achievement;

(i) By December 1, 2000, and by December 1st annually thereafter, report to the education committees of the house of representatives and the senate on the progress that has been made in achieving the reading goal under RCW 28A.630.887 (as recodified by this act) and any additional goals adopted by the commission;

(j) Coordinate its activities with the state board of education and the office of the superintendent of public instruction;

(k) Seek advice from the public and all interested educational organizations in the conduct of its work; and

(1) Establish advisory committees, which may include persons who are not members of the commission;

(2) Holding meetings and public hearings, which may include regional meetings and hearings;

(3) Hiring necessary staff and determining the staff's duties and compensation. However, the office of the superintendent of public instruction shall provide staff support to the commission until the commission has hired its own staff, and shall provide most of the technical assistance and logistical support needed by the commission thereafter. The office of the superintendent of public instruction shall be the fiscal agent for the commission. The commission may direct the office of the superintendent of public instruction to enter into subcontracts, within the commission's resources, with school districts, teachers, higher education faculty, state agencies, business organizations, and other individuals and organizations to assist the commission in its deliberations; and

(4) Receiving per diem and travel allowances as permitted under RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 103. COMMISSION'S REPORT ON ACCOUNTABILITY POLICIES. By September 5, 2000, the academic achievement and accountability commission shall recommend accountability policies to the governor, the superintendent of public instruction, and the education and fiscal committees of the house of representatives and senate. The policies shall include, but need not be limited to:

(1) A graduated series of increasingly intensive state intervention strategies for schools and school districts in which low-performance persists over an identified period of time.

(a) The strategies shall be formulated in accordance with the assumption that school districts have primary responsibility for intervening in schools with relatively large numbers of students who are not achieving the essential academic learning requirements.

(b) The strategies shall be formulated in accordance with the assumption that continued low performance despite school district efforts shall trigger an evaluation by the commission. The evaluation is intended to identify the next steps needed to improve student performance. In its evaluation, the commission shall use multiple sources of information that may include, but need not be limited to:

- (i) The results of the Washington assessment of student learning;
- (ii) The results of state-mandated norm-referenced standardized tests;
- (iii) Student achievement evidence from other district or school assessments;
- (iv) The level of improvement in student achievement over time;
- (v) Student mobility and poverty;
- (vi) Attendance and dropout rates;
- (vii) Graduation rates and posthigh school indicators;
- (viii) The percent of students in special programs; and
- (ix) Other factors presented by individual districts or schools.

(c) In its deliberations, the commission shall consider issues of due process, student dropout rates, management and personnel, and educational options, including public school choice options, for students attending schools in which the state has intervened. The commission may consider intervention strategies underway in Washington and other states;

- (2) Additional assistance measures for students and schools;
- (3) Rewards for successful schools and school districts; and
- (4) Any statutory changes necessary to give the superintendent of public instruction the authority to implement, in a school or school district, the state intervention strategies identified in subsection (1) of this section.

PART 2

ACCOUNTABILITY GOALS, INCLUDING GOALS IN READING AND MATHEMATICS

Sec. 201. RCW 28A.630.887 and 1998 c 319 s 101 are each amended to read as follows:

(1) ~~((By December 15, 1998,))~~ Each school district board of directors shall:

(a) Select the reading standard results on either the 1997 or 1998 fourth grade Washington assessment of student learning as the school district's initial baseline reading standard. Districts may select the 1997 results only if all of the elementary schools with fourth grade students administered the assessment;

(b) By December 15, 2001, select the mathematics standard results on the 1998, 1999, or 2000 fourth grade Washington assessment of student learning as the school district's fourth grade baseline mathematics standard, using for its baseline a year in which all of the elementary schools with fourth grade students administered the assessment;

(c) Establish ((a)) three-year, district-wide goals to increase, by the end of the 2000-01 school year, the percentage of students who meet or exceed the reading standard, and by the 2003-04 school year, the percentage of students who meet or exceed the mathematics standard on the fourth grade Washington assessment of student learning. The three-year percentage increase goal in each subject may not be less than the district's total percentage of students who did not meet the baseline ((reading)) standard in each subject multiplied by twenty-five percent;

~~((+e))~~ (d) Specify the annual district-wide percentage improvement increments to meet the ~~((three-year))~~ goals; and

~~((+d+))~~ (e) Direct each elementary school to establish ((a)) three-year goals for its fourth grade students, subject to approval by the board. The aggregate of the elementary school goals must meet or exceed the district-wide goals established by the board.

(2) ~~((Each school district board of directors shall:~~

~~(a) Report biannually to parents in writing and to the community in a public meeting the following information:~~

~~(i) District-wide and school-level three-year goals;~~

~~(ii) Student performance relative to the goals; and~~

~~(iii) District-wide and school-level plans to achieve the reading goal in kindergarten through fourth grade, including grade-level expectations, curriculum and instruction, parental or guardian involvement, and resources available to parents and guardians to help students meet the reading standard;~~

~~(b) Report annually to the superintendent of public instruction and in a news release to the local media the district's progress toward meeting the district-wide and school-level goals; and~~

~~(c) Include the reported information in each school's annual school performance report under RCW 28A.320.205.~~

~~(3) By December 1, 2000, the superintendent of public instruction shall report to the education committee of the house of representatives and the senate on the progress that has been made in achieving the three-year reading goal, and provide recommendations to the legislature on setting reading goals for the next three years.~~

~~(4) This section expires July 1, 2006.)~~ By December 15, 2001, each school district board of directors shall:

(a) Select the mathematics standard results on the 1998, 1999, 2000, or 2001 seventh grade Washington assessment of student learning as the school district's seventh grade baseline mathematics standard;

(b) Establish a three-year district-wide goal to increase, by the end of the 2003-04 school year, the percentage of students who meet or exceed the mathematics standard, on the seventh grade Washington assessment of student learning. The district shall select for its baseline a year in which all of the schools with seventh grade students administered the assessment. The percentage increase goal may not be less than the district's total percentage of students who did not meet the baseline standard in mathematics multiplied by twenty-five percent;

(c) Specify the annual district-wide percentage improvement increments necessary to meet the goal; and

(d) Direct each middle or junior high school, as appropriate, to establish a mathematics goal for its seventh grade students, subject to approval by the board. The aggregate of the middle or junior high school goals must meet or exceed the district-wide goals established by the board in each subject.

(3) Schools and school districts in which ten or fewer students are eligible to be assessed in a grade level are not required to establish numerical improvement goals and performance relative to the goals.

PART 3

REPORTING RESULTS

Sec. 301. RCW 28A.630.889 and 1998 c 319 s 301 are each amended to read as follows:

(1) By September 10, 1998, and by September 10th each year thereafter, the superintendent of public instruction shall (+

~~(a))~~ report to schools, school districts, and the legislature on the results of the ~~((fourth grade))~~ Washington assessment of student learning ~~((+ and~~

~~(e) Post individual school results of the fourth grade Washington assessment of student learning on the superintendent of public instruction's internet world wide web site))~~ and state-mandated norm-referenced standardized tests.

(2) The reports shall include the assessment results by school and school district, and include changes over time. For the Washington assessment of student learning, results shall be reported as follows:

(a) The percentage of students meeting the standards;

(b) The percentage of students performing at each level of the assessment; and

(c) A learning improvement index that shows changes in student performance within the different levels of student learning reported on the Washington assessment of student learning.

(3) The reports shall contain data regarding the different characteristics of schools, such as poverty levels, percent of English as a second language students, dropout rates, attendance, percent of students in special education, and student mobility so that districts and schools can learn from the improvement efforts of other schools and districts with similar characteristics.

(4) The reports shall contain student scores on mandated tests by comparable Washington schools of similar characteristics.

(5) The reports shall contain information on public school choice options available to students, including vocational education.

(6) The reports shall be posted on the superintendent of public instruction's internet web site.

(7) To protect the privacy of students, the results of schools and districts that test fewer than ten students in a grade level shall not be reported. In addition, in order to ensure that results are reported accurately, the superintendent of public instruction shall maintain the confidentiality of state-wide data files until the superintendent determines that the data are complete and accurate.

(8) The superintendent of public instruction shall monitor the percentage and number of special education and limited English-proficient students exempted from taking the assessments by schools and school districts to ensure the exemptions are in compliance with exemption guidelines.

~~((2) This section expires July 1, 2006-))~~

NEW SECTION. Sec. 302. SCHOOL DISTRICT REPORTS ON PROGRESS TOWARD PERFORMANCE GOALS. Each school district board of directors shall:

(1) (a) Annually report to parents and to the community in a public meeting and annually report in writing the following information:

(i) District-wide and school-level performance improvement goals;

(ii) Student performance relative to the goals; and

(iii) District-wide and school-level plans to achieve the goals, including curriculum and instruction, parental or guardian involvement, and resources available to parents and guardians to help students meet the state standards;

(b) Report annually in a news release to the local media the district's progress toward meeting the district-wide and school-level goals; and

(c) Include the school-level goals, student performance relative to the goals, and a summary of school-level plans to achieve the goals in each school's annual school performance report under RCW 28A.320.205 (as recodified by this act).

(2) School districts in which ten or fewer students in the district or in a school in the district are eligible to be assessed in a grade level are not required to report numerical improvement goals and performance relative to the goals, but are required to report to parents and the community their plans to improve student achievement.

Sec. 303. RCW 28A.320.205 and 1993 c 336 s 1006 are each amended to read as follows:

(1) Beginning with the 1994-95 school year, to provide the local community and electorate with access to information on the educational programs in the schools in the district, each school shall publish annually a school performance report and deliver the report to each parent with children enrolled in the school and make the report available to the community served by the school. The annual performance report shall be in a form that can be easily understood and be used by parents, guardians, and other members of the community who are not professional educators to make informed educational decisions. As data from the assessments in RCW 28A.630.685 (as recodified by this act) becomes available, the annual performance report should enable parents, educators, and school board members to determine whether students in the district's schools are attaining mastery of the student learning goals under RCW 28A.150.210, and other important facts about the schools' performance in assisting students to learn. The annual report shall make comparisons to a school's performance in preceding years and shall (~~project goals in performance categories~~) include school level goals under

RCW 28A.630.887 (as recodified by this act), student performance relative to the goals and the percentage of students performing at each level of the assessment, a comparison of student performance at each level of the assessment to the previous year's performance, and information regarding school-level plans to achieve the goals.

(2) The annual performance report shall include, but not be limited to: (a) A brief statement of the mission of the school and the school district; (b) enrollment statistics including student demographics; (c) expenditures per pupil for the school year; (d) a summary of student scores on all mandated tests; (e) a concise annual budget report; (f) student attendance, graduation, and dropout rates; (g) information regarding the use and condition of the school building or buildings; (h) a brief description of the (~~restructuring~~) learning improvement plans for the school; and (i) an invitation to all parents and citizens to participate in school activities.

(3) The superintendent of public instruction shall develop by June 30, 1994, and update periodically, a model report form, which shall also be adapted for computers, that schools may use to meet the requirements of subsections (1) and (2) of this section. In order to make school performance reports broadly accessible to the public, the superintendent of public instruction, to the extent feasible, shall make information on each school's report available on or through the superintendent's internet web site.

PART 4

ASSISTANCE FOR SCHOOLS AND DISTRICTS

Sec. 401. RCW 28A.300.130 and 1996 c 273 s 5 are each amended to read as follows:

(1) Expanding activity in educational research, educational restructuring, and educational improvement initiatives has produced and continues to produce much valuable information. The legislature finds that such information should be shared with the citizens and educational community of the state as widely as possible. To facilitate access to information and materials on educational improvement and research, the superintendent of public instruction, to the extent funds are appropriated, shall establish the center for the improvement of student learning. The primary purpose of the center is to provide assistance and advice to parents, school board members, educators, and the public regarding strategies for assisting students in learning the essential academic learning requirements pursuant to RCW 28A.630.885. The center shall work in conjunction with the academic achievement and accountability

commission (~~on student learning~~), educational service districts, (~~and~~) institutions of higher education, and education, parent, community, and business organizations.

(2) The center, in conjunction with other staff in the office of the superintendent of public instruction, shall:

(a) Serve as a clearinghouse for the completed work and activities of the academic achievement and accountability commission (~~on student learning~~);

(b) Serve as a clearinghouse for information regarding successful educational (~~restructuring~~) improvement and parental involvement programs in schools and districts, and information about efforts within institutions of higher education in the state to support educational (~~restructuring~~) improvement initiatives in Washington schools and districts;

(c) Provide best practices research and advice that can be used to help schools develop and implement: Programs and practices to improve (~~reading~~) instruction of the essential academic learning requirements under section 701 of this act; systems to analyze student assessment data, with an emphasis on systems that will combine the use of state and local data to monitor the academic progress of each and every student in the school district; (~~school~~) comprehensive, school-wide improvement plans; school-based shared decision-making models; programs to promote lifelong learning and community involvement in education; school-to-work transition programs; programs to meet the needs of highly capable students; programs and practices to meet the diverse needs of students based on gender, racial, ethnic, economic, and special needs status; research, information, and technology systems; and other programs and practices that will assist educators in helping students learn the essential academic learning requirements;

(d) Develop and distribute, in conjunction with the academic achievement and accountability commission (~~on student learning~~), parental involvement materials, including instructional guides developed to inform parents of the essential academic learning requirements. The instructional guides also shall contain actions parents may take to assist their children in meeting the requirements, and should focus on reaching parents who have not previously been involved with their children's education;

(e) Identify obstacles to greater parent and community involvement in school shared decision-making processes and recommend strategies for helping parents and community members to participate effectively in school shared decision-making

processes, including understanding and respecting the roles of school building administrators and staff;

~~((f))~~ (f) Develop and maintain an internet web site to increase the availability of information, research, and other materials;

~~((g))~~ (g) Take other actions to increase public awareness of the importance of parental and community involvement in education;

~~((h))~~ (h) Work with appropriate organizations to inform teachers, district and school administrators, and school directors about the waivers available ((under RCW 28A.305.140)) and the broadened school board powers under RCW 28A.320.015;

~~((i))~~ (i) Provide training and consultation services, including conducting regional summer institutes;

~~((j))~~ (j) Address methods for improving the success rates of certain ethnic and racial student groups; and

~~((k))~~ (k) Perform other functions consistent with the purpose of the center as prescribed in subsection (1) of this section.

(3) The superintendent of public instruction, after consultation with the academic achievement and accountability commission ((on student learning)), shall select and employ a director for the center.

(4) The superintendent may enter into contracts with individuals or organizations including but not limited to: School districts; educational service districts; educational organizations; teachers; higher education faculty; institutions of higher education; state agencies; business or community-based organizations; and other individuals and organizations to accomplish the duties and responsibilities of the center. ~~((The superintendent shall contract out with community-based organizations to meet the provisions of subsection (2) (d) and (e) of this section.))~~ In carrying out the duties and responsibilities of the center, the superintendent, whenever possible, shall use practitioners to assist agency staff as well as assist educators and others in schools and districts.

~~((5) The superintendent shall report annually to the commission on student learning on the activities of the center.))~~

NEW SECTION. Sec. 402. ACCOUNTABILITY IMPLEMENTATION FUNDS. (1) To the extent funds are appropriated, the office of the superintendent of public instruction annually shall allocate accountability implementation funds to school districts. The purposes of the funds are to: Develop and update student learning improvement plans; implement curriculum materials and instructional strategies; provide staff

professional development to implement the selected curricula and instruction; develop and implement assessment strategies and training in assessment scoring; and fund other activities intended to improve student learning for all students, including students with diverse needs. Activities funded by the allocations must be consistent with the school or district improvement plan, designed to improve the ability of teachers and other instructional certificated and classified staff to assist students in meeting the essential academic learning requirements, and designed to achieve state and local accountability goals. Activities funded by the allocations shall be designed to protect the teachers' instructional time with students and minimize the use of substitute teachers.

(2) Schools receiving funds shall develop, update as needed, and keep on file a school student learning improvement plan to achieve the student learning goals and essential academic learning requirements and to implement the assessment system as it is developed. The plan shall delineate how the accountability implementation funds will be used to accomplish the requirements of this section. The plan shall be made available to the public and to others upon request.

(3) The amount of allocations shall be determined in the omnibus appropriations act.

(4) The state schools for the deaf and blind are eligible to receive allocations under this section.

(5) The superintendent of public instruction may adopt timelines and rules as necessary under chapter 34.05 RCW to administer the program, and require that schools and districts submit reports regarding the use of the funds.

NEW SECTION. Sec. 403. HELPING CORPS. (1) In order to increase the availability and quality of technical assistance state-wide, the superintendent of public instruction, subject to available funding, may employ school improvement coordinators and school improvement specialists to provide assistance to schools and districts. The improvement specialists shall serve on a rotating basis and shall not be permanent employees.

(2) The types of assistance provided by the improvement coordinators and specialists may include, but need not be limited to:

(a) Assistance to schools to use student performance data and develop improvement plans based on those data;

(b) Consultation with schools and districts concerning their performance on the Washington assessment of student learning and other assessments;

(c) Consultation concerning curricula that aligns with the essential academic learning requirements and the Washington assessment of student learning and that meets the needs of diverse learners;

(d) Assistance in the identification and implementation of research-based instructional practices;

(e) Staff training that emphasizes effective instructional strategies and classroom-based assessment;

(f) Assistance in developing and implementing family and community involvement programs; and

(g) Other assistance to schools and school districts intended to improve student learning.

PART 5

TRANSFER OF DUTIES AND MATERIALS

NEW SECTION. Sec. 501. SUPERINTENDENT OF PUBLIC INSTRUCTION'S DUTIES FOR STANDARDS AND ASSESSMENTS. (1) The superintendent of public instruction shall identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals in RCW 28A.150.210, develop student assessments, and implement the accountability recommendations and requests regarding assistance, rewards, and recognition of the academic achievement and accountability commission.

(2) The superintendent of public instruction shall periodically revise the essential academic learning requirements, as needed, based on the student learning goals in RCW 28A.150.210. Goals one and two shall be considered primary. To the maximum extent possible, the superintendent shall integrate goal four and the knowledge and skill areas in the other goals in the essential academic learning requirements.

(3) In consultation with the academic achievement and accountability commission, the superintendent of public instruction shall maintain and continue to develop and revise a state-wide academic assessment system for use in the elementary, middle, and high school years designed to determine if each student has mastered the essential academic learning requirements identified in subsection (1) of this section. The academic assessment system shall include a variety of assessment methods, including criterion-referenced and performance-based measures.

(4) The assessment system shall be designed so that the results under the assessment system are used by educators as tools to evaluate instructional practices, and to initiate appropriate educational support for students who have not mastered the essential academic learning requirements at the appropriate periods in the student's educational development.

(5) To the maximum extent possible, the superintendent shall integrate knowledge and skill areas in development of the assessments.

(6) Assessments for goals three and four of RCW 28A.150.210 shall be integrated in the essential academic learning requirements and assessments for goals one and two.

(7) The superintendent shall develop assessments that are directly related to the essential academic learning requirements, and are not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender.

(8) The superintendent shall consider methods to address the unique needs of special education students when developing the assessments under this section.

(9) The superintendent shall consider methods to address the unique needs of highly capable students when developing the assessments under this section.

NEW SECTION. Sec. 502. COMMISSION ON STUDENT LEARNING--TRANSFER OF POWERS.

(1) Beginning July 1, 1999, the powers, duties, and functions of the commission on student learning are transferred to the academic achievement and accountability commission or to the superintendent of public instruction as appropriate under the transfer of duties made from the commission on student learning to the academic achievement and accountability commission or the superintendent of public instruction under this act. All references to the commission on student learning in the Revised Code of Washington shall be construed to mean the academic achievement and accountability commission when addressing the duties, activities, or functions regarding the accountability system under this act. All references to the commission on student learning in the Revised Code of Washington shall be construed to mean the superintendent of public instruction when addressing the duties, activities, or functions regarding the essential academic learning requirements, the standards, or the assessments addressed under this act.

(2) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the commission on student learning shall be delivered to the custody of the academic achievement and accountability commission or the superintendent of public instruction, as appropriate. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the commission on

student learning shall be made available to the academic achievement and accountability commission or the superintendent of public instruction, as appropriate.

(3) The transfer of the powers, duties, functions, and personnel of the commission on student learning shall not affect the validity of any act performed before the effective date of this section.

PART 6

MISCELLANEOUS

NEW SECTION. Sec. 601. ANALYSIS OF FOURTH GRADE MATHEMATICS ASSESSMENT. By August 1, 2000, the superintendent of public instruction shall complete an objective analysis of the fourth grade mathematics assessment. The analysis shall include, but need not be limited to, the student developmental level required to achieve the fourth grade standard successfully and the extent to which the assessment measures a student's computational skills, problem-solving skills, math communications skills, and a breakdown of other skills assessed. The analysis shall include the percentage of items that: Require students to use computational skills without the use of technology; require the use of technology to complete an item; measure mathematics communication skills; measure problem-solving skills; and measure other skills included in the mathematics assessment. The superintendent of public instruction shall consult recognized experts with differing views on the instruction of mathematics, and report the results of the analysis to the governor and the education committees of the house of representatives and the senate by August 15, 2000.

NEW SECTION. Sec. 602. CONSOLIDATED PLANNING. The superintendent of public instruction, in consultation with school district personnel, shall consolidate and streamline the planning, application, and reporting requirements for major state and federal categorical and grant programs. The superintendent also shall take actions to increase the use of online electronic applications and reporting.

NEW SECTION. Sec. 603. SLIGS REPEALED. RCW 28A.300.138 (Student learning improvement grants) and 1994 c 245 s 1 & 1993 c 336 s 301 are each repealed.

NEW SECTION. Sec. 604. REPEALERS. The following acts or parts of acts are each repealed:

- (1) 1998 c 225 s 3 (uncodified);
- (2) 1995 c 209 s 3 (uncodified); and

(3) 1995 c 209 s 2 & 1992 c 141 s 203 (uncodified).

NEW SECTION. Sec. 605. PART HEADINGS AND SECTION CAPTIONS NOT LAW. Part headings and section captions used in this act are not any part of the law.

NEW SECTION. Sec. 606. NEW ACCOUNTABILITY CHAPTER CREATED. Sections 101 through 103, 302, 402, 403, 501, 502, and 602 of this act constitute a new chapter in Title 26A RCW.

NEW SECTION. Sec. 607. RECODIFICATIONS. The following sections are each recodified as new sections in the chapter created in section 606 of this act:

RCW 28A.320.205

RCW 28A.630.887

RCW 28A.630.889

RCW 28A.630.883

RCW 28A.630.885

RCW 28A.630.945

RCW 28A.630.950

RCW 28A.630.951

RCW 28A.630.952

RCW 28A.630.953

RCW 28A.630.954

NEW SECTION. Sec. 608. EMERGENCY CLAUSE. (1) Section 101 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999.

(2) Sections 502 and 604 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

NEW SECTION. Sec. 609. SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 24, 1999.

Passed the House April 24, 1999.

Approved by the Governor May 18, 1999.

Filed in Office of Secretary of State May 18, 1999.

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BULKY SUB

CASE# 07-2-02323-2SEA

SEGMENT 2 OF 2

EXHIBIT C

WASL Washington State

Trend Search: School District

>Washington State

Office of Superintendent of Public Instruction OSPI Web site
 Superintendent Dr. Terry Bergeson Old Capitol Building 600 South Washington Olyn
 (360) 725-6000

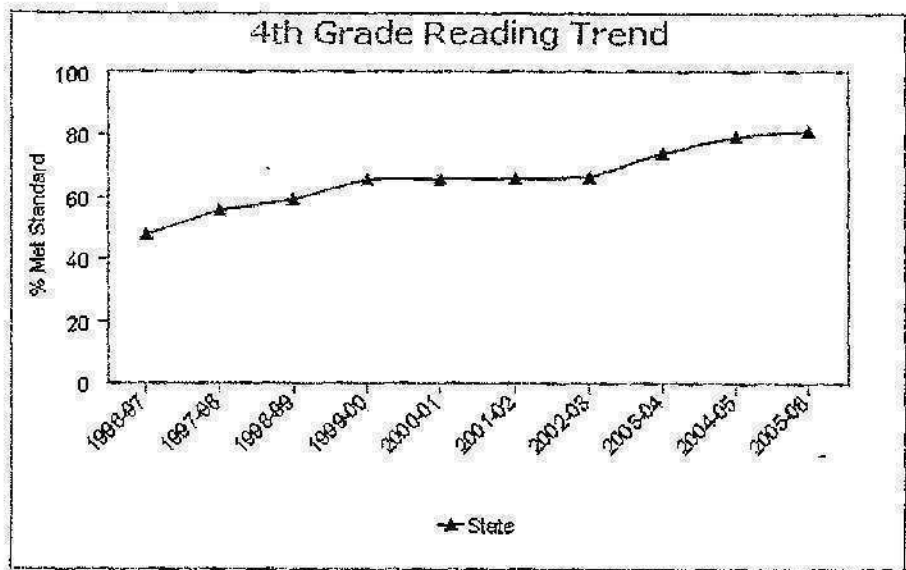
WASL Trend

This displays student performance information for the Washington Assessment of Student Learning (WASL).

Select a category of students: 4th All Line Chart

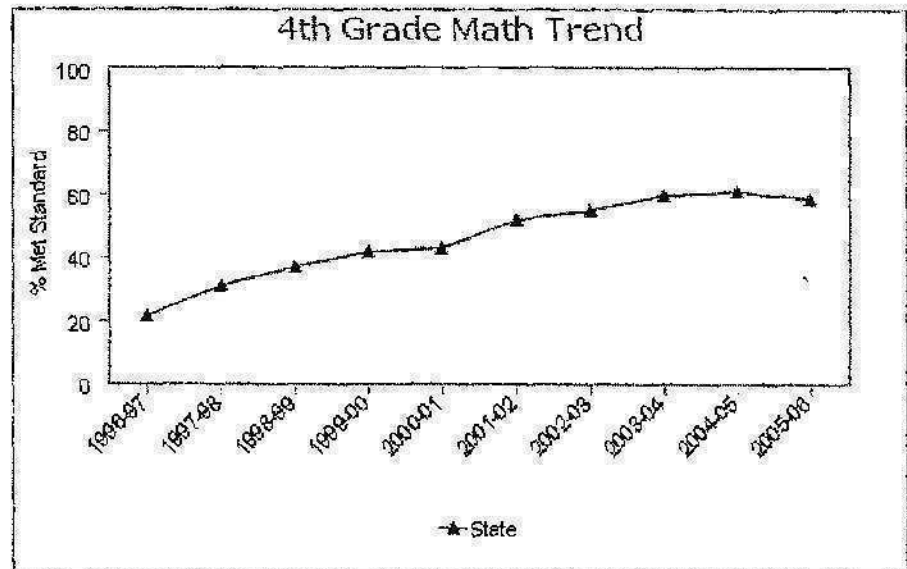
4th Grade Reading

Year	State
1996-97	47.9%
1997-98	55.6%
1998-99	59.1%
1999-00	65.8%
2000-01	66.1%
2001-02	65.6%
2002-03	66.7%
2003-04	74.4%
2004-05	79.5%
2005-06	81.2%



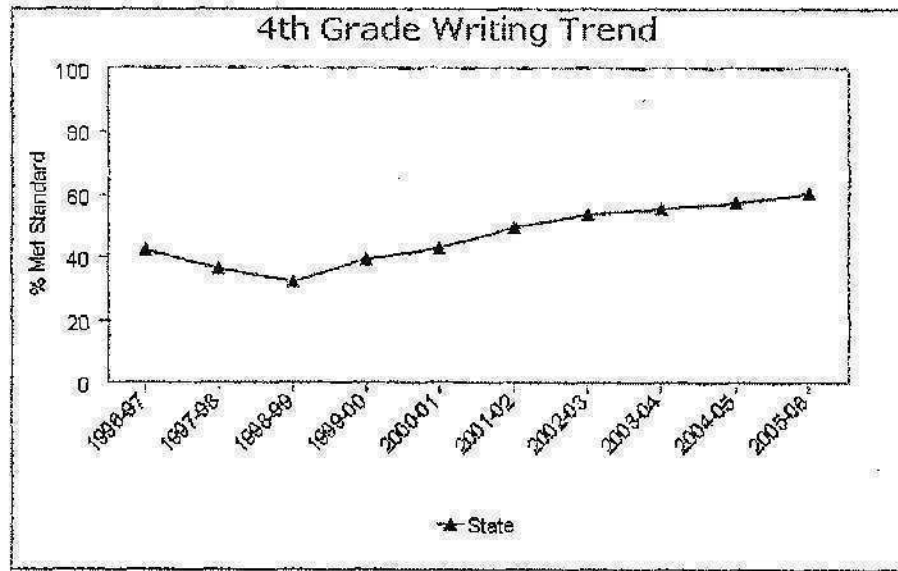
4th Grade Math

Year	State
1996-97	21.4%
1997-98	31.2%
1998-99	37.3%
1999-00	41.8%
2000-01	43.4%
2001-02	51.8%
2002-03	55.2%
2003-04	59.9%
2004-05	60.8%
2005-06	58.9%



4th Grade Writing

Year	State
1996-97	42.8%
1997-98	36.7%
1998-99	32.6%
1999-00	39.4%
2000-01	43.3%
2001-02	49.5%
2002-03	53.6%
2003-04	55.8%
2004-05	57.7%
2005-06	60.4%



Results with fewer than 10 students are not shown. Results not shown may also indicate data not available.

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[OSPI Home](#)

Office of Superintendent of Public Instruction OSPI Web site

Superintendent Dr. Terry Bergeson
 (360) 725-6000

Old Capitol Building 600 South Washington Olyn

WASL Trend

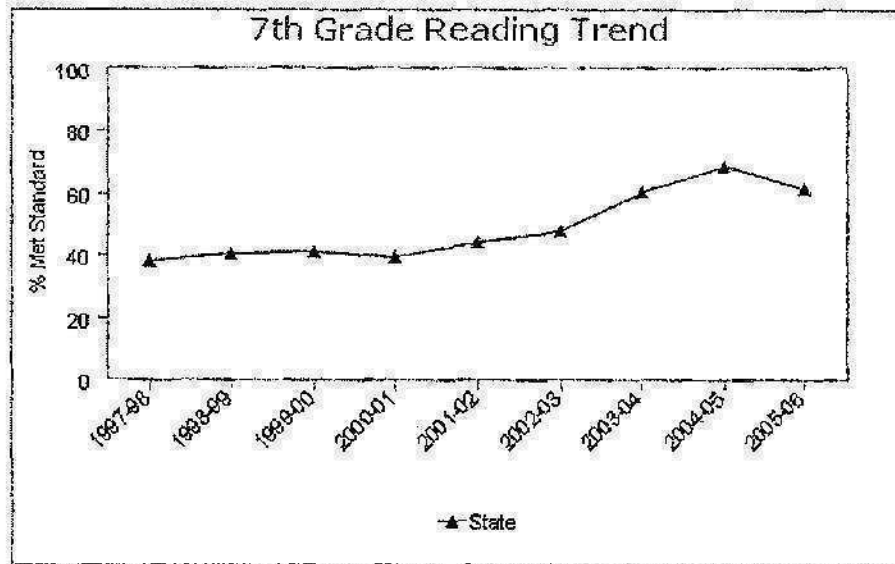
This displays student performance information for the Washington Assessment of Student Learning (WASL).

Select a category of students: 7th All

Line Chart

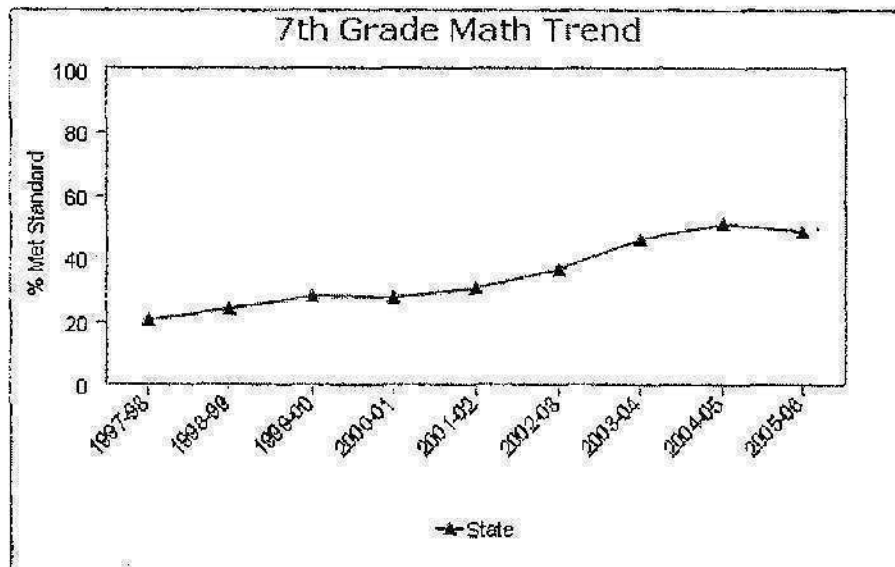
7th Grade Reading

Year	State
1997-98	38.4%
1998-99	40.8%
1999-00	41.5%
2000-01	39.8%
2001-02	44.5%
2002-03	47.9%
2003-04	60.4%
2004-05	69.0%
2005-06	61.5%



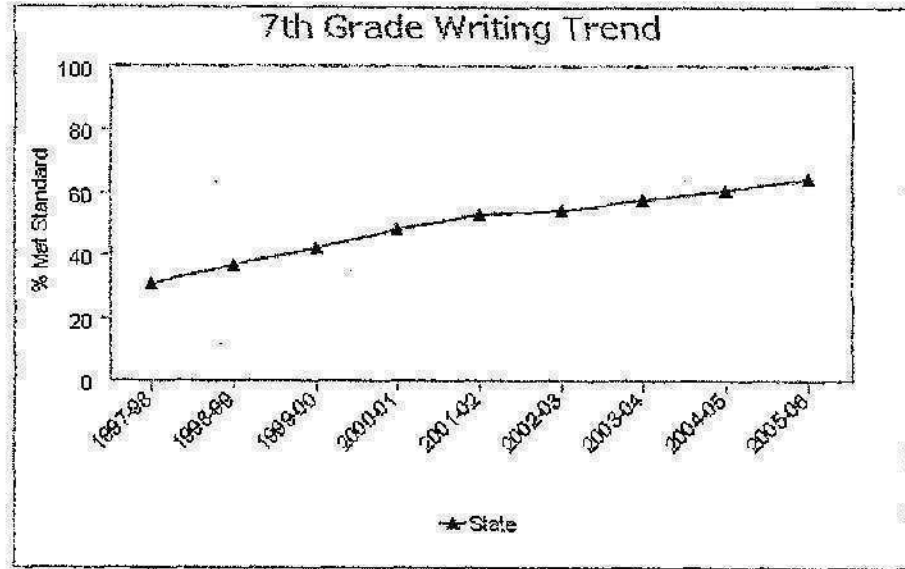
7th Grade Math

Year	State
1997-98	20.1%
1998-99	24.2%
1999-00	28.2%
2000-01	27.4%
2001-02	30.4%
2002-03	36.8%
2003-04	46.3%
2004-05	50.8%
2005-06	48.5%



7th Grade Writing

Year	State
1997-98	31.3%
1998-99	37.1%
1999-00	42.6%
2000-01	48.5%
2001-02	53.0%
2002-03	54.7%
2003-04	57.9%
2004-05	61.2%
2005-06	64.6%



Results with fewer than 10 students are not shown. Results not shown may also indicate data not available.

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Office of Superintendent of Public Instruction

Superintendent Dr. Terry Bergeson
(360) 725-6000


OSPI Web site

Old Capitol Building 600 South Washington Olympia 98504

WASL Trend

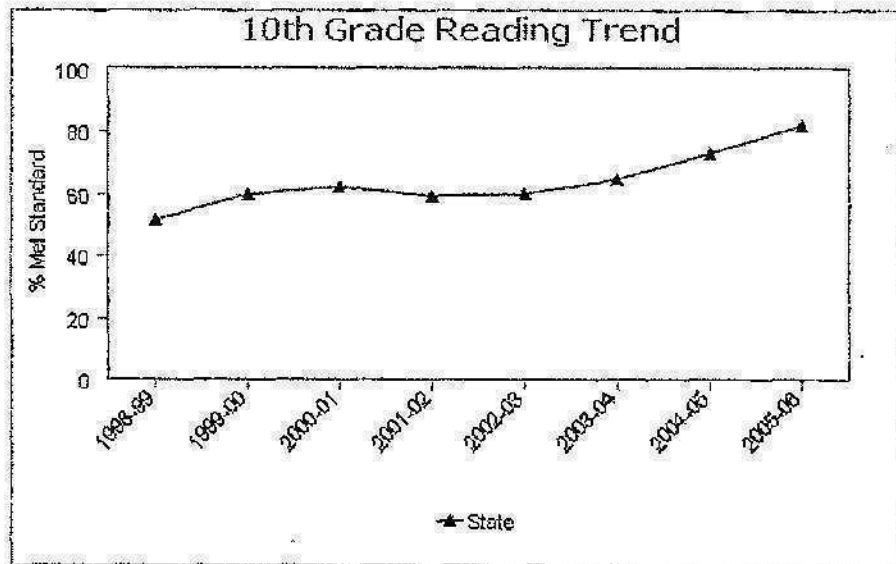
This displays student performance information for the Washington Assessment of Student Learning (WASL).

Select a category of students: 10th All

Line Chart 

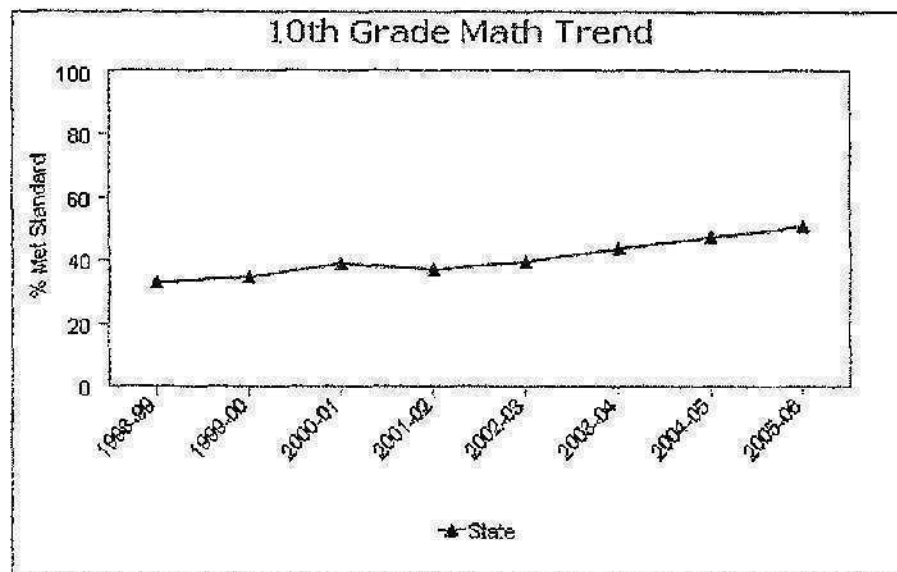
10th Grade Reading

Year	State
1998-99	51.4%
1999-00	59.8%
2000-01	62.4%
2001-02	59.2%
2002-03	60.0%
2003-04	64.5%
2004-05	72.9%
2005-06	82.0%



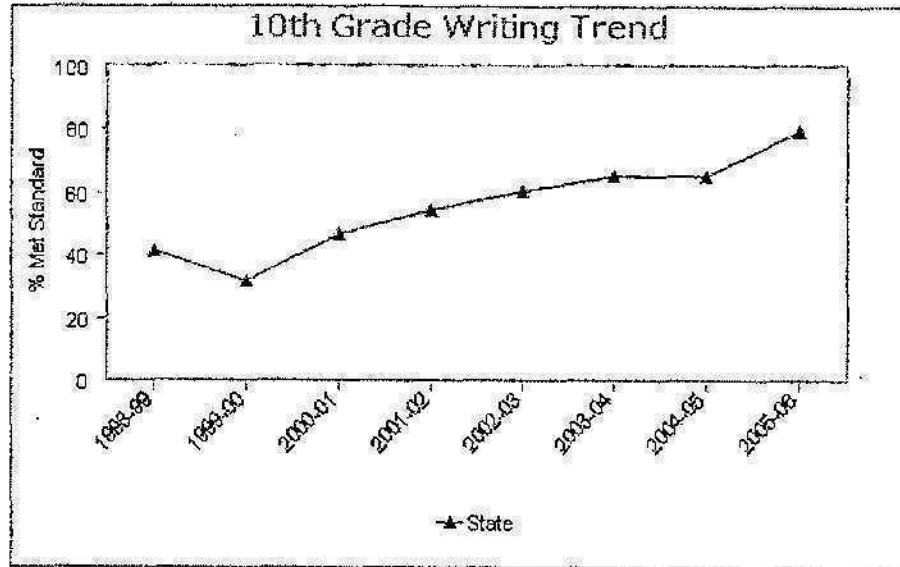
10th Grade Math

Year	State
1998-99	33.0%
1999-00	35.0%
2000-01	38.9%
2001-02	37.3%
2002-03	39.4%
2003-04	43.9%
2004-05	47.5%
2005-06	51.0%



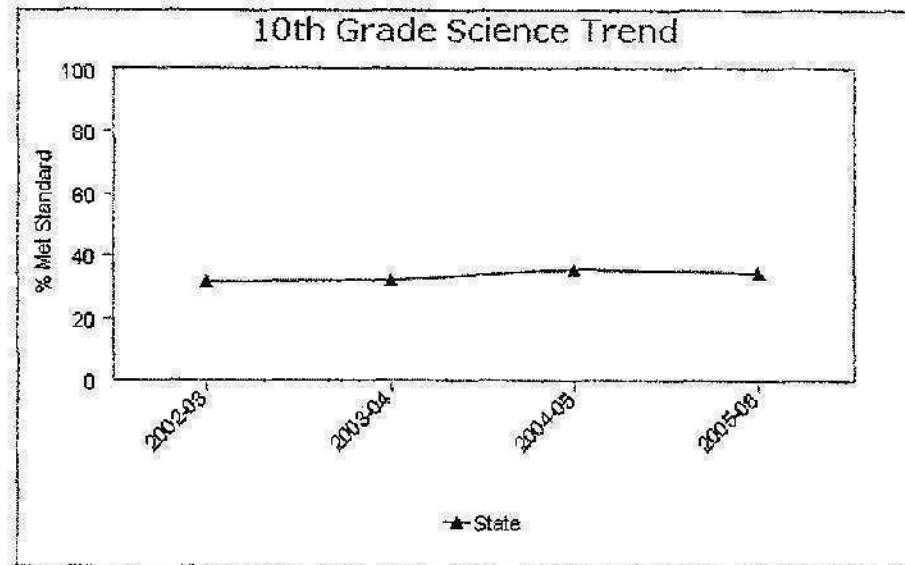
10th Grade Writing

Year	State
1998-99	41.1%
1999-00	31.7%
2000-01	46.9%
2001-02	54.3%
2002-03	60.5%
2003-04	65.2%
2004-05	65.2%
2005-06	79.8%



10th Grade Science

Year	State
2002-03	31.8%
2003-04	32.2%
2004-05	35.8%
2005-06	35.0%



Results with fewer than 10 students are not shown. Results not shown may also indicate data not available.

EXHIBIT D

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6023

Chapter 354, Laws of 2007

(partial veto)

60th Legislature
2007 Regular Session

WASHINGTON ASSESSMENT OF STUDENT LEARNING

EFFECTIVE DATE: 07/22/07

Passed by the Senate April 22, 2007
YEAS 30 NAYS 18

BRAD OWEN

President of the Senate

Passed by the House April 22, 2007
YEAS 56 NAYS 41

FRANK CHOPP

Speaker of the House of Representatives

Approved May 8, 2007, 2:51 p.m., with
the exception of sections 9, 10, 11 and
13 which are vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is ENGROSSED
SUBSTITUTE SENATE BILL 6023 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 10, 2007

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 6023

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators McAuliffe and Rasmussen)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to the Washington assessment of student learning;
2 amending RCW 28A.655.061, 28A.155.045, 28A.655.070, 28A.655.065,
3 28A.655.063, and 28A.655.200; adding new sections to chapter 28A.655
4 RCW; creating new sections; providing expiration dates; and declaring
5 an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. Sec. 1. (1) The legislature maintains a strong
8 commitment to high expectations and high academic achievement for all
9 students. The legislature finds that Washington schools and students
10 are making significant progress in improving achievement in reading and
11 writing. Schools are adapting instruction and providing remediation
12 for students who need additional assistance. Reading and writing are
13 being taught across the curriculum. Therefore, the legislature does
14 not intend to make changes to the Washington assessment of student
15 learning or high school graduation requirements in reading and writing.
16 (2) However, students are having difficulty improving their
17 academic achievement in mathematics and science, particularly as
18 measured by the high school Washington assessment of student learning.
19 The legislature finds that corrections are needed in the state's high

1 school assessment system that will improve alignment between learning
2 standards, instruction, diagnosis, and assessment of students'
3 knowledge and skills in high school mathematics and science. The
4 legislature further finds there is a sense of urgency to make these
5 corrections and intends to revise high school graduation requirements
6 in mathematics and science only for the minimum period for corrections
7 to be fully implemented.

8 **Sec. 2.** RCW 28A.655.061 and 2006 c 115 s 4 are each amended to
9 read as follows:

10 (1) The high school assessment system shall include but need not be
11 limited to the Washington assessment of student learning, opportunities
12 for a student to retake the content areas of the assessment in which
13 the student was not successful, and if approved by the legislature
14 pursuant to subsection (10) of this section, one or more objective
15 alternative assessments for a student to demonstrate achievement of
16 state academic standards. The objective alternative assessments for
17 each content area shall be comparable in rigor to the skills and
18 knowledge that the student must demonstrate on the Washington
19 assessment of student learning for each content area.

20 (2) Subject to the conditions in this section, a certificate of
21 academic achievement shall be obtained by most students at about the
22 age of sixteen, and is evidence that the students have successfully met
23 the state standard in the content areas included in the certificate.
24 With the exception of students satisfying the provisions of RCW
25 28A.155.045 or section 4 of this act, acquisition of the certificate is
26 required for graduation from a public high school but is not the only
27 requirement for graduation.

28 (3) Beginning with the graduating class of 2008, with the exception
29 of students satisfying the provisions of RCW 28A.155.045, a student who
30 meets the state standards on the reading, writing, and mathematics
31 content areas of the high school Washington assessment of student
32 learning shall earn a certificate of academic achievement. If a
33 student does not successfully meet the state standards in one or more
34 content areas required for the certificate of academic achievement,
35 then the student may retake the assessment in the content area up to
36 four times at no cost to the student. If the student successfully
37 meets the state standards on a retake of the assessment then the

1 student shall earn a certificate of academic achievement. Once
2 objective alternative assessments are authorized pursuant to subsection
3 (10) of this section, a student may use the objective alternative
4 assessments to demonstrate that the student successfully meets the
5 state standards for that content area if the student has ~~((retaken))~~
6 taken the Washington assessment of student learning at least once. If
7 the student successfully meets the state standards on the objective
8 alternative assessments then the student shall earn a certificate of
9 academic achievement.

10 (4) Beginning no later than with the graduating class of ~~((2010))~~
11 2013, a student must meet the state standards in science in addition to
12 the other content areas required under subsection (3) of this section
13 on the Washington assessment of student learning or the objective
14 alternative assessments in order to earn a certificate of academic
15 achievement. The state board of education may adopt a rule that
16 implements the requirements of this subsection (4) beginning with a
17 graduating class before the graduating class of 2013, if the state
18 board of education adopts the rule by September 1st of the freshman
19 school year of the graduating class to which the requirements of this
20 subsection (4) apply. The state board of education's authority under
21 this subsection (4) does not alter the requirement that any change in
22 performance standards for the tenth grade assessment must comply with
23 RCW 28A.305.130.

24 (5) The state board of education may not require the acquisition of
25 the certificate of academic achievement for students in home-based
26 instruction under chapter 28A.200 RCW, for students enrolled in private
27 schools under chapter 28A.195 RCW, or for students satisfying the
28 provisions of RCW 28A.155.045.

29 (6) A student may retain and use the highest result from each
30 successfully completed content area of the high school assessment.

31 (7) ~~((Beginning in 2006,))~~ School districts must make available to
32 students the following options:

33 (a) To retake the Washington assessment of student learning up to
34 four times in the content areas in which the student did not meet the
35 state standards if the student is enrolled in a public school; or

36 (b) To retake the Washington assessment of student learning up to
37 four times in the content areas in which the student did not meet the
38 state standards if the student is enrolled in a high school completion

1 program at a community or technical college. The superintendent of
2 public instruction and the state board for community and technical
3 colleges shall jointly identify means by which students in these
4 programs can be assessed.

5 (8) Students who achieve the standard in a content area of the high
6 school assessment but who wish to improve their results shall pay for
7 retaking the assessment, using a uniform cost determined by the
8 superintendent of public instruction.

9 ~~(9) ((Subject to available funding, the superintendent shall pilot~~
10 ~~opportunities for retaking the high school assessment beginning in the~~
11 ~~2004-05 school year. Beginning no later than September 2006,))~~
12 Opportunities to retake the assessment at least twice a year shall be
13 available to each school district.

14 (10)(a) The office of the superintendent of public instruction
15 shall develop options for implementing objective alternative
16 assessments, which may include an appeals process for students' scores,
17 for students to demonstrate achievement of the state academic
18 standards. The objective alternative assessments shall be comparable
19 in rigor to the skills and knowledge that the student must demonstrate
20 on the Washington assessment of student learning and be objective in
21 its determination of student achievement of the state standards.
22 Before any objective alternative assessments in addition to those
23 authorized in RCW 28A.655.065 or (b) of this subsection are used by a
24 student to demonstrate that the student has met the state standards in
25 a content area required to obtain a certificate, the legislature shall
26 formally approve the use of any objective alternative assessments
27 through the omnibus appropriations act or by statute or concurrent
28 resolution.

29 (b)(i) A student's score on the mathematics ~~((portion of the~~
30 ~~preliminary scholastic assessment test (PSAT))~~), reading or English, or
31 writing portion of the scholastic assessment test (SAT)((7)) or the
32 American college test (ACT) may be used as an objective alternative
33 assessment under this section for demonstrating that a student has met
34 or exceeded the ~~((mathematics))~~ state standards for the certificate of
35 academic achievement. The state board of education shall identify the
36 scores students must achieve on the ~~((mathematics))~~ relevant portion of
37 the ~~((PSAT,))~~ SAT~~((7))~~ or ACT to meet or exceed the state standard
38 ~~((for mathematics))~~ in the relevant content area on the Washington

1 assessment of student learning. The state board of education shall
2 identify the first scores by December 1, (~~2006, and thereafter~~) 2007.
3 After the first scores are established, the state board may increase
4 but not decrease the scores required for students to meet or exceed the
5 state standards (~~(for mathematics)~~).

6 (ii) Until August 31, 2008, a student's score on the mathematics
7 portion of the preliminary scholastic assessment test (PSAT) may be
8 used as an objective alternative assessment under this section for
9 demonstrating that a student has met or exceeded the state standard for
10 the certificate of academic achievement. The state board of education
11 shall identify the score students must achieve on the mathematics
12 portion of the PSAT to meet or exceed the state standard in that
13 content area on the Washington assessment of student learning.

14 (iii) A student who scores at least a three on the grading scale
15 of one to five for selected advance placement examinations may use the
16 score as an objective alternative assessment under this section for
17 demonstrating that a student has met or exceeded state standards for
18 the certificate of academic achievement. A score of three on the
19 advance placement examinations in calculus or statistics may be used as
20 an alternative assessment for the mathematics portion of the Washington
21 assessment of student learning. A score of three on the advance
22 placement examinations in English language and composition may be used
23 as an alternative assessment for the writing portion of the Washington
24 assessment of student learning. A score of three on the advance
25 placement examinations in English literature and composition,
26 macroeconomics, microeconomics, psychology, United States history,
27 world history, United States government and politics, or comparative
28 government and politics may be used as an alternative assessment for
29 the reading portion of the Washington assessment of student learning.

30 (11) By December 15, 2004, the house of representatives and senate
31 education committees shall obtain information and conclusions from
32 recognized, independent, national assessment experts regarding the
33 validity and reliability of the high school Washington assessment of
34 student learning for making individual student high school graduation
35 determinations.

36 (12) To help assure continued progress in academic achievement as
37 a foundation for high school graduation and to assure that students are

1 on track for high school graduation, each school district shall prepare
2 plans for students as provided in this subsection (12).

3 (a) Student learning plans are required for eighth through twelfth
4 grade students who were not successful on any or all of the content
5 areas of the Washington assessment for student learning during the
6 previous school year. The plan shall include the courses,
7 competencies, and other steps needed to be taken by the student to meet
8 state academic standards and stay on track for graduation. ~~((This~~
9 ~~requirement shall be phased in as follows:~~

10 ~~((i)) Beginning no later than the 2004-05 school year ninth grade~~
11 ~~students as described in this subsection (12)(a) shall have a plan.~~

12 ~~((ii)) Beginning no later than the 2005-06 school year and every year~~
13 ~~thereafter eighth grade students as described in this subsection~~
14 ~~(12)(a) shall have a plan.~~

15 ~~((iii))~~ (i) The parent or guardian shall be notified, preferably
16 through a parent conference, of the student's results on the Washington
17 assessment of student learning, actions the school intends to take to
18 improve the student's skills in any content area in which the student
19 was unsuccessful, strategies to help them improve their student's
20 skills, and the content of the student's plan.

21 ~~((iv))~~ (ii) Progress made on the student plan shall be reported
22 to the student's parents or guardian at least annually and adjustments
23 to the plan made as necessary.

24 (b) ~~((Beginning with the 2005-06 school year and every year~~
25 ~~thereafter,))~~ All fifth grade students who were not successful in one
26 or more of the content areas of the fourth grade Washington assessment
27 of student learning shall have a student learning plan.

28 (i) The parent or guardian of ~~((a))~~ the student ~~((described in this~~
29 ~~subsection (12)(b))~~) shall be notified, preferably through a parent
30 conference, of the student's results on the Washington assessment of
31 student learning, actions the school intends to take to improve the
32 student's skills in any content area in which the student was
33 unsuccessful, and provide strategies to help them improve their
34 student's skills.

35 (ii) Progress made on the student plan shall be reported to the
36 student's parents or guardian at least annually and adjustments to the
37 plan made as necessary.

1 **Sec. 3.** RCW 28A.155.045 and 2004 c 19 s 104 are each amended to
2 read as follows:

3 Beginning with the graduating class of 2008, students served under
4 this chapter, who are not appropriately assessed by the high school
5 Washington assessment system as defined in RCW 28A.655.061, even with
6 accommodations, may earn a certificate of individual achievement. The
7 certificate may be earned using multiple ways to demonstrate skills and
8 abilities commensurate with their individual education programs. The
9 determination of whether the high school assessment system is
10 appropriate shall be made by the student's individual education program
11 team. Except as provided in section 4 of this act, for these students,
12 the certificate of individual achievement is required for graduation
13 from a public high school, but need not be the only requirement for
14 graduation. When measures other than the high school assessment system
15 as defined in RCW 28A.655.061 are used, the measures shall be in
16 agreement with the appropriate educational opportunity provided for the
17 student as required by this chapter. The superintendent of public
18 instruction shall develop the guidelines for determining which students
19 should not be required to participate in the high school assessment
20 system and which types of assessments are appropriate to use.

21 When measures other than the high school assessment system as
22 defined in RCW 28A.655.061 are used for high school graduation
23 purposes, the student's high school transcript shall note whether that
24 student has earned a certificate of individual achievement.

25 Nothing in this section shall be construed to deny a student the
26 right to participation in the high school assessment system as defined
27 in RCW 28A.655.061, and, upon successfully meeting the high school
28 standard, receipt of the certificate of academic achievement.

29 **NEW SECTION. Sec. 4.** A new section is added to chapter 28A.655
30 RCW to read as follows:

31 (1) Beginning with the graduating class of 2008 and through no
32 later than the graduating class of 2012, students may graduate from
33 high school without earning a certificate of academic achievement or a
34 certificate of individual achievement if they:

35 (a) Have not successfully met the mathematics standard on the high
36 school Washington assessment of student learning, an approved objective

1 alternative assessment, or an alternate assessment developed for
2 eligible special education students;

3 (b) Have successfully met the state standard in the other content
4 areas required for a certificate under RCW 28A.655.061 or 28A.155.045;

5 (c) Have met all other state and school district graduation
6 requirements; and

7 (d)(i) For the graduating class of 2008, successfully earn one
8 additional high school mathematics credit or career and technical
9 course equivalent, including courses offered at skill centers, after
10 the student's eleventh grade year intended to increase the student's
11 mathematics proficiency toward meeting or exceeding the mathematics
12 standards assessed on the high school Washington assessment of student
13 learning and continue to take the appropriate mathematics assessment at
14 least once annually until graduation; and

15 (ii) For the remaining graduating classes under this section,
16 successfully earn two additional mathematics credits or career and
17 technical course equivalent, including courses offered at skill
18 centers, after the student's tenth grade year intended to increase the
19 student's mathematics proficiency toward meeting or exceeding the
20 mathematics standards assessed on the high school Washington assessment
21 of student learning and continue to take the appropriate mathematics
22 assessment at least once annually until graduation.

23 (2) The state board of education may adopt a rule that ends the
24 application of this section with a graduating class before the
25 graduating class of 2012, if the state board of education adopts the
26 rule by September 1st of the freshman school year of the graduating
27 class to which the provisions of this section no longer apply. The
28 state board of education's authority under this section does not alter
29 the requirement that any change in performance standards for the tenth
30 grade assessment must comply with RCW 28A.305.130.

31 (3) This section expires August 31, 2013.

32 **Sec. 5.** RCW 28A.655.070 and 2005 c 497 s 106 are each amended to
33 read as follows:

34 (1) The superintendent of public instruction shall develop
35 essential academic learning requirements that identify the knowledge
36 and skills all public school students need to know and be able to do
37 based on the student learning goals in RCW 28A.150.210, develop student

1 assessments, and implement the accountability recommendations and
2 requests regarding assistance, rewards, and recognition of the state
3 board of education.

4 (2) The superintendent of public instruction shall:

5 (a) Periodically revise the essential academic learning
6 requirements, as needed, based on the student learning goals in RCW
7 28A.150.210. Goals one and two shall be considered primary. To the
8 maximum extent possible, the superintendent shall integrate goal four
9 and the knowledge and skill areas in the other goals in the essential
10 academic learning requirements; and

11 (b) Review and prioritize the essential academic learning
12 requirements and identify, with clear and concise descriptions, the
13 grade level content expectations to be assessed on the Washington
14 assessment of student learning and used for state or federal
15 accountability purposes. The review, prioritization, and
16 identification shall result in more focus and targeting with an
17 emphasis on depth over breadth in the number of grade level content
18 expectations assessed at each grade level. Grade level content
19 expectations shall be articulated over the grades as a sequence of
20 expectations and performances that are logical, build with increasing
21 depth after foundational knowledge and skills are acquired, and
22 reflect, where appropriate, the sequential nature of the discipline.
23 The office of the superintendent of public instruction, within seven
24 working days, shall post on its web site any grade level content
25 expectations provided to an assessment vendor for use in constructing
26 the Washington assessment of student learning.

27 (3) In consultation with the state board of education, the
28 superintendent of public instruction shall maintain and continue to
29 develop and revise a statewide academic assessment system in the
30 content areas of reading, writing, mathematics, and science for use in
31 the elementary, middle, and high school years designed to determine if
32 each student has mastered the essential academic learning requirements
33 identified in subsection (1) of this section. School districts shall
34 administer the assessments under guidelines adopted by the
35 superintendent of public instruction. The academic assessment system
36 (~~shall~~) may include a variety of assessment methods, including
37 criterion-referenced and performance-based measures.

1 (4) If the superintendent proposes any modification to the
2 essential academic learning requirements or the statewide assessments,
3 then the superintendent shall, upon request, provide opportunities for
4 the education committees of the house of representatives and the senate
5 to review the assessments and proposed modifications to the essential
6 academic learning requirements before the modifications are adopted.

7 (5) ~~((a))~~ The assessment system shall be designed so that the
8 results under the assessment system are used by educators as tools to
9 evaluate instructional practices, and to initiate appropriate
10 educational support for students who have not mastered the essential
11 academic learning requirements at the appropriate periods in the
12 student's educational development.

13 ~~((b) Assessments measuring the essential academic learning
14 requirements in the content area of science shall be available for
15 mandatory use in middle schools and high schools by the 2003-04 school
16 year and for mandatory use in elementary schools by the 2004-05 school
17 year unless the legislature takes action to delay or prevent
18 implementation of the assessment.))~~

19 (6) By September 2007, the results for reading and mathematics
20 shall be reported in a format that will allow parents and teachers to
21 determine the academic gain a student has acquired in those content
22 areas from one school year to the next.

23 (7) To assist parents and teachers in their efforts to provide
24 educational support to individual students, the superintendent of
25 public instruction shall provide as much individual student performance
26 information as possible within the constraints of the assessment
27 system's item bank. The superintendent shall also provide to school
28 districts:

29 (a) Information on classroom-based and other assessments that may
30 provide additional achievement information for individual students; and

31 (b) A collection of diagnostic tools that educators may use to
32 evaluate the academic status of individual students. The tools shall
33 be designed to be inexpensive, easily administered, and quickly and
34 easily scored, with results provided in a format that may be easily
35 shared with parents and students.

36 (8) To the maximum extent possible, the superintendent shall
37 integrate knowledge and skill areas in development of the assessments.

1 (9) Assessments for goals three and four of RCW 28A.150.210 shall
2 be integrated in the essential academic learning requirements and
3 assessments for goals one and two.

4 (10) The superintendent shall develop assessments that are directly
5 related to the essential academic learning requirements, and are not
6 biased toward persons with different learning styles, racial or ethnic
7 backgrounds, or on the basis of gender.

8 (11) The superintendent shall consider methods to address the
9 unique needs of special education students when developing the
10 assessments under this section.

11 (12) The superintendent shall consider methods to address the
12 unique needs of highly capable students when developing the assessments
13 under this section.

14 (13) The superintendent shall post on the superintendent's web site
15 lists of resources and model assessments in social studies, the arts,
16 and health and fitness.

17 Sec. 6. RCW 28A.655.065 and 2006 c 115 s 1 are each amended to
18 read as follows:

19 (1) The legislature has made a commitment to rigorous academic
20 standards for receipt of a high school diploma. The primary way that
21 students will demonstrate that they meet the standards in reading,
22 writing, mathematics, and science is through the Washington assessment
23 of student learning. Only objective assessments that are comparable in
24 rigor to the state assessment are authorized as an alternative
25 assessment. Before seeking an alternative assessment, the legislature
26 expects students to make a genuine effort to meet state standards,
27 through (~~retaking the Washington assessment of student learning,~~)
28 regular and consistent attendance at school(+) and participation in
29 extended learning and other assistance programs.

30 (2) Under RCW 28A.655.061, beginning in the 2006-07 school year,
31 the superintendent of public instruction shall implement objective
32 alternative assessment methods as provided in this section for students
33 to demonstrate achievement of the state standards in content areas in
34 which the student has not yet met the standard on the high school
35 Washington assessment of student learning. A student may access an
36 alternative if the student meets applicable eligibility criteria in RCW
37 28A.655.061 and this section and other eligibility criteria established

1 by the superintendent of public instruction, including but not limited
2 to attendance criteria and participation in the remediation or
3 supplemental instruction contained in the student learning plan
4 developed under RCW 28A.655.061. A school district may waive
5 attendance and/or remediation criteria for special, unavoidable
6 circumstances.

7 (3) For the purposes of this section, "applicant" means a student
8 seeking to use one of the alternative assessment methods in this
9 section.

10 (4) One alternative assessment method shall be a combination of the
11 applicant's grades in applicable courses and the applicant's highest
12 score on the high school Washington assessment of student learning, as
13 provided in this subsection. A student is eligible to apply for the
14 alternative assessment method under this subsection (4) if the student
15 has a cumulative grade point average of at least 3.2 on a four point
16 grading scale. The superintendent of public instruction shall
17 determine which high school courses are applicable to the alternative
18 assessment method and shall issue guidelines to school districts.

19 (a) Using guidelines prepared by the superintendent of public
20 instruction, a school district shall identify the group of students in
21 the same school as the applicant who took the same high school courses
22 as the applicant in the applicable content area. From the group of
23 students identified in this manner, the district shall select the
24 comparison cohort that shall be those students who met or slightly
25 exceeded the state standard on the Washington assessment of student
26 learning.

27 (b) The district shall compare the applicant's grades in high
28 school courses in the applicable content area to the grades of students
29 in the comparison cohort for the same high school courses. If the
30 applicant's grades are equal to or above the mean grades of the
31 comparison cohort, the applicant shall be deemed to have met the state
32 standard on the alternative assessment.

33 (c) An applicant may not use the alternative assessment under this
34 subsection (4) if there are fewer than six students in the comparison
35 cohort.

36 (5) The superintendent of public instruction shall develop an
37 alternative assessment method that shall be an evaluation of a

1 collection of work samples prepared and submitted by the applicant, as
2 provided in this subsection and, for career and technical applicants,
3 the additional requirements of subsection (6) of this section.

4 (a) The superintendent of public instruction shall develop
5 guidelines for the types and number of work samples in each content
6 area that may be submitted as a collection of evidence that the
7 applicant has met the state standard in that content area. Work
8 samples may be collected from academic, career and technical, or
9 remedial courses and may include performance tasks as well as written
10 products. The superintendent shall submit the guidelines for approval
11 by the state board of education.

12 (b) The superintendent shall develop protocols for submission of
13 the collection of work samples that include affidavits from the
14 applicant's teachers and school district that the samples are the work
15 of the applicant and a requirement that a portion of the samples be
16 prepared under the direct supervision of a classroom teacher. The
17 superintendent shall submit the protocols for approval by the state
18 board of education.

19 (c) The superintendent shall develop uniform scoring criteria for
20 evaluating the collection of work samples and submit the scoring
21 criteria for approval by the state board of education. Collections
22 shall be scored at the state level or regionally by a panel of
23 educators selected and trained by the superintendent to ensure
24 objectivity, reliability, and rigor in the evaluation. An educator may
25 not score work samples submitted by applicants from the educator's
26 school district. If the panel awards an applicant's collection of work
27 samples the minimum required score, the applicant shall be deemed to
28 have met the state standard on the alternative assessment.

29 (d) Using an open and public process that includes consultation
30 with district superintendents, school principals, and other educators,
31 the state board of education shall consider the guidelines, protocols,
32 scoring criteria, and other information regarding the collection of
33 work samples submitted by the superintendent of public instruction.
34 The collection of work samples may be implemented as an alternative
35 assessment after the state board of education has approved the
36 guidelines, protocols, and scoring criteria and determined that the
37 collection of work samples: (i) Will meet professionally accepted
38 standards for a valid and reliable measure of the grade level

1 expectations and the essential academic learning requirements; and (ii)
2 is comparable to or exceeds the rigor of the skills and knowledge that
3 a student must demonstrate on the Washington assessment of student
4 learning in the applicable content area. The state board shall make an
5 approval decision and determination no later than December 1, 2006, and
6 thereafter may increase the required rigor of the collection of work
7 samples.

8 (e) By September of 2006, the superintendent of public instruction
9 shall develop informational materials for parents, teachers, and
10 students regarding the collection of work samples and the status of its
11 development as an alternative assessment method. The materials shall
12 provide specific guidance regarding the type and number of work samples
13 likely to be required, include examples of work that meets the state
14 learning standards, and describe the scoring criteria and process for
15 the collection. The materials shall also encourage students in the
16 graduating class of 2008 to begin creating a collection if they believe
17 they may seek to use the collection once it is implemented as an
18 alternative assessment.

19 (6) (a) For students enrolled in a career and technical education
20 program approved under RCW 28C.04.110, the superintendent of public
21 instruction shall develop additional guidelines for a collection of
22 work samples that evidences that the collection:

23 (i) Is relevant to the student's particular career and technical
24 program;

25 (ii) Focuses on the application of academic knowledge and skills
26 within the program;

27 (iii) Includes completed activities or projects where demonstration
28 of academic knowledge is inferred; and

29 (iv) Is related to the essential academic learning requirements and
30 state standards that students must meet to earn a certificate of
31 academic achievement or certificate of individual achievement, but also
32 represents the knowledge and skills that successful individuals in the
33 career and technical field of the approved program are expected to
34 possess.

35 (b) To meet the state standard on the alternative assessment under
36 this subsection (6), an applicant must also attain the state or
37 nationally recognized certificate or credential associated with the
38 approved career and technical program.

1 (c) The superintendent shall consult with community and technical
2 colleges, employers, the work force training and education coordinating
3 board, apprenticeship programs, and other regional and national experts
4 in career and technical education to create an appropriate collection
5 of work samples and other evidence of a career and technical student's
6 knowledge and skills on the state academic standards.

7 (7) The superintendent of public instruction shall study the
8 feasibility of using existing mathematics assessments in languages
9 other than English as an additional alternative assessment option. The
10 study shall include an estimation of the cost of translating the tenth
11 grade mathematics assessment into other languages and scoring the
12 assessments should they be implemented.

13 (8) The superintendent of public instruction shall implement:

14 (a) By June 1, 2006, a process for students to appeal the score
15 they received on the high school assessments; and

16 (b) By January 1, 2007, guidelines and appeal processes for waiving
17 specific requirements in RCW 28A.655.061 pertaining to the certificate
18 of academic achievement and to the certificate of individual
19 achievement for students who: (i) Transfer to a Washington public
20 school in their junior or senior year with the intent of obtaining a
21 public high school diploma, or (ii) have special, unavoidable
22 circumstances.

23 (9) The state board of education shall examine opportunities for
24 additional alternative assessments, including the possible use of one
25 or more standardized norm-referenced student achievement tests and the
26 possible use of the reading, writing, or mathematics portions of the
27 ACT ASSET and ACT COMPASS test instruments as objective alternative
28 assessments for demonstrating that a student has met the state
29 standards for the certificate of academic achievement. The state board
30 shall submit its findings and recommendations to the education
31 committees of the legislature by January 10, 2008.

32 (10) The superintendent of public instruction (~~may~~) shall adopt
33 rules to implement this section.

34 Sec. 7. RCW 28A.655.063 and 2006 c 115 s 5 are each amended to
35 read as follows:

36 Subject to the availability of funds appropriated for this purpose,
37 the office of the superintendent of public instruction shall provide

1 funds to school districts (~~((shall))~~) to reimburse students for the cost
2 of taking the tests in RCW 28A.655.061(10)(b) when the students take
3 the tests for the purpose of using the (~~((mathematics))~~) results as an
4 objective alternative assessment. The office of the superintendent of
5 public instruction may, as an alternative to providing funds to school
6 districts, arrange for students to receive a testing fee waiver or make
7 other arrangements to compensate the students.

8 **Sec. 8.** RCW 28A.655.200 and 2006 c 117 s 4 are each amended to
9 read as follows:

10 (1) (~~((In the absence of mandatory, statewide, norm-referenced~~
11 ~~assessments,))~~) The legislature intends to permit school districts to
12 offer norm-referenced assessments, make diagnostic tools available to
13 school districts, and provide funding for diagnostic assessments to
14 enhance (~~((guidance and planning for students and to))~~) student learning
15 at all grade levels and provide early intervention before the high
16 school Washington assessment of student learning.

17 (2) In addition to the diagnostic assessments provided under
18 (~~((subsection (5) of))~~) this section, school districts may, at their own
19 expense, administer norm-referenced assessments to students.

20 (3) (~~((By September 1, 2005, subject to available funds,))~~) The
21 office of the superintendent of public instruction shall post on its
22 web site for voluntary use by school districts, a guide of diagnostic
23 assessments. The assessments in the guide, to the extent possible,
24 shall include the characteristics listed in subsection (4) of this
25 section.

26 (4) Beginning September 1, 2007, the office of the superintendent
27 of public instruction shall make diagnostic assessments in reading,
28 writing, mathematics, and science in elementary, middle, and high
29 school grades available to school districts (~~((diagnostic assessments~~
30 ~~that))~~). Subject to funds appropriated for this purpose, the office of
31 the superintendent of public instruction shall also provide funding to
32 school districts for administration of diagnostic assessments to help
33 improve student learning, identify academic weaknesses, enhance student
34 planning and guidance, and develop targeted instructional strategies to
35 assist students before the high school Washington assessment of student
36 learning. To the greatest extent possible, the assessments shall be:

37 (a) Aligned to the state's grade level expectations;

- 1 (b) Individualized to each student's performance level;
- 2 (c) Administered efficiently to provide results either immediately
- 3 or within two weeks;
- 4 (d) Capable of measuring individual student growth over time and
- 5 allowing student progress to be compared to other students across the
- 6 country;
- 7 (e) Readily available to parents; and
- 8 (f) Cost-effective.

9 ~~(5) ((Beginning with the 2006-07 school year, the superintendent of~~
10 ~~public instruction shall reimburse school districts for administration~~
11 ~~of diagnostic assessments in grade nine for the purpose of identifying~~
12 ~~academic weaknesses, enhancing student planning and guidance, and~~
13 ~~developing targeted instructional strategies to assist students before~~
14 ~~the high school Washington assessment of student learning.~~

15 ~~(6))~~ The office of the superintendent of public instruction ~~((is~~
16 ~~encouraged to))~~ shall offer training at statewide and regional staff
17 development activities ~~((training opportunities that would assist~~
18 ~~practitioners))~~ in:

- 19 (a) The interpretation of diagnostic assessments; and
- 20 (b) Application of instructional strategies that will increase
- 21 student learning based on diagnostic assessment data.

22 ***NEW SECTION.** Sec. 9. A new section is added to chapter 28A.655
23 RCW to read as follows:

24 (1) (a) The legislature's intent is to make significant improvements
25 in the high school Washington assessment of student learning in the
26 content areas of mathematics and science before requiring students to
27 meet the state standard on the assessment for graduation purposes.

28 (b) The legislature believes that a high school assessment system
29 where students receive instruction through credited high school
30 mathematics and science courses and have their knowledge and skills
31 assessed after they complete the courses would be a superior assessment
32 system for mathematics and science to the current form of the
33 Washington assessment of student learning. The legislature also
34 believes that end-of-course assessments would offer more timely
35 results, better diagnostic information, and improved alignment between
36 curriculum, instruction, and assessment. End-of-course assessments in
37 mathematics should cover the content of at least algebra I and

1 geometry. End-of-course assessments in science should cover the
2 content of at least biology, but also address other science content
3 areas.

4 (c) However, the legislature acknowledges that replacing the
5 current form of the Washington assessment of student learning in
6 mathematics and science with end-of-course assessments represents a
7 significant change that should be thoroughly evaluated and that an
8 implementation timeline to shift to end-of-course assessments no later
9 than for the graduating class of 2013 should be carefully developed.

10 (2) The state board of education, in consultation with the
11 superintendent of public instruction, shall examine and recommend
12 changes to the high school Washington assessment of student learning in
13 the content areas of mathematics and science. The state board of
14 education may contract with one or more independent national
15 consultants to conduct the examination. The primary change to be
16 examined shall be replacing the current high school Washington
17 assessment of student learning with a limited series of end-of-course
18 assessments in mathematics and science. The examination of end-of-
19 course assessments shall include:

20 (a) An objective analysis of the potential strengths and weaknesses
21 of end-of-course assessments as the primary high school assessment tool
22 for student and school accountability;

23 (b) Analysis of the possible impact of end-of-course assessments on
24 curriculum and instruction in mathematics and science;

25 (c) The appropriate mathematics and science content to be covered
26 by end-of-course assessments;

27 (d) Recommended implementation timelines and issues to be addressed
28 in replacing the current assessment; and

29 (e) An analysis of the costs of adopting end-of-course assessments.

30 (3) In any request for proposals for a new testing contractor for
31 the Washington assessment of student learning, the superintendent of
32 public instruction shall include the possible changes being examined by
33 the state board of education so that additional information about the
34 cost and feasibility of the changes can be provided by prospective
35 testing contractors.

36 (4) The state board of education shall submit a report to the
37 superintendent of public instruction and the education committees of
38 the legislature by January 10, 2008. The report shall contain findings

1 from the examination under this section, recommendations for changes to
2 the high school Washington assessment of student learning in
3 mathematics and science, and a timeline for expedited implementation of
4 the recommended changes.

5 (5) The legislature intends that the changes recommended by the
6 state board of education under this section shall be able to be
7 implemented no later than the 2010-11 school year in order to apply to
8 the graduating class of 2013. If the state board of education finds
9 that the changes cannot feasibly be implemented by the 2010-11 school
10 year, the state board shall state the specific reasons for such a
11 finding, along with supporting evidence, and recommend a revised
12 expedited timeline.

13 (6) This section expires June 30, 2009.

*Sec. 9 was vetoed. See message at end of chapter.

14 *NEW SECTION. Sec. 10. A new section is added to chapter 28A.655
15 RCW to read as follows:

16 (1) Before the 2007-08 school year, each educational service
17 district shall implement an appeals panel or panels comprised of
18 teachers, principals, and members of the business community with
19 relevant knowledge or expertise to review and decide appeals submitted
20 by students who did not meet the state standard on the tenth grade
21 Washington assessment of student learning or an objective alternative
22 assessment in one or more of the content areas assessed. The appeal
23 under this section shall be an appeal by a student to demonstrate that
24 he or she has the level of understanding of a content area assessed on
25 the Washington assessment of student learning necessary to meet the
26 state standard but was unable to demonstrate that understanding on the
27 assessment or alternative assessment. An appeals panel must issue a
28 determination of whether the appeal is approved or denied within sixty
29 days of receiving an appeal application.

30 (2) A student is eligible to access the appeals process under this
31 section if the student is in his or her junior or senior year of high
32 school; has retaken the Washington assessment of student learning or
33 has taken an alternative assessment in the content area in which the
34 student is appealing; has participated in the remediation or
35 supplemental instruction contained in the student learning plan
36 developed under RCW 28A.655.061; and meets at least one of the
37 following additional eligibility requirements:

1 (a) The student has met or is on track to meet all other state and
2 local graduation requirements except for meeting the state standard on
3 the Washington assessment of student learning;

4 (b) The student has completed a career and technical education
5 industry certification program, or is on track to enter an articulated
6 postsecondary program in an accredited community or technical college
7 that leads to industry certification;

8 (c) The student is eligible for assessment accommodations,
9 including accommodations for students with individualized education
10 programs, students with plans developed pursuant to section 504 of the
11 rehabilitation act of 1973, and English language learners. For
12 students appealing under this subsection (2)(c), the panel shall
13 consider, at a minimum, whether the appropriate assessment
14 accommodation was provided; or

15 (d) The student is an English language learner who has been in the
16 United States for fewer than three years.

17 (3) The educational service districts shall jointly submit an
18 annual report to the legislature on the number and types of appeals
19 received and approved.

20 (4) The state board of education shall adopt rules to implement
21 this section by August 1, 2007. The rules shall include uniform
22 criteria to be used by the appeals panels in making the panels'
23 determinations. The criteria shall include review of the student's
24 cumulative grade point average for those courses required for high
25 school graduation; whether the student had regular and consistent
26 attendance at school; the student's high school and beyond plan; and
27 the student's culminating project. The state board of education may
28 include additional criteria if necessary and shall determine how much
29 weight shall be given to each criteria.

**Sec. 10 was vetoed. See message at end of chapter.*

30 *NEW SECTION. Sec. 11. A new section is added to chapter 28A.655
31 RCW to read as follows:

32 English language learners who score below level four on the
33 Washington language proficiency test or the equivalent level of the
34 evaluation used by the superintendent of public instruction to assess
35 the English and academic proficiency of English language learners under
36 RCW 28A.180.090 shall not be required to take the Washington assessment

1 of student learning, except as required by federal law. However, these
2 students are still subject to the graduation requirements established
3 in RCW 28A.655.061.

*Sec. 11 was vetoed. See message at end of chapter.

4 NEW SECTION. Sec. 12. (1) The superintendent of public
5 instruction and the workforce training and education coordinating board
6 shall jointly convene and staff an advisory committee to identify
7 career and technical education curricula that will assist in preparing
8 students for the state assessment system and provide the opportunity to
9 obtain a certificate of academic achievement.

10 (2) The advisory committee shall consist of the following nine
11 members:

12 (a) Four members of the legislature, with two members each
13 appointed by the respective caucuses of the house of representatives
14 and the senate;

15 (b) One representative from the career and technical education
16 section of the office of the superintendent of public instruction;

17 (c) One member appointed by the workforce training and education
18 coordinating board; and

19 (d) Three members appointed by the superintendent of public
20 instruction and the workforce training and education coordinating board
21 based on recommendations from the career and technical education
22 community.

23 (3) The advisory committee shall appoint a chair from among the
24 nonlegislative members.

25 (4) Legislative members of the advisory committee shall be
26 reimbursed for travel expenses in accordance with RCW 44.04.120.
27 Nonlegislative members, except those representing an employer or
28 organization, are entitled to be reimbursed for travel expenses in
29 accordance with RCW 43.03.050 and 43.03.060.

30 (5) By January 15, 2008, the advisory committee shall provide an
31 initial report to the governor and the legislature and, if necessary,
32 a work plan with additional reporting deadlines, which shall not extend
33 beyond December 15, 2008.

34 *NEW SECTION. Sec. 13. This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

*Sec. 13 was vetoed. See message at end of chapter.

Passed by the Senate April 22, 2007.

Passed by the House April 22, 2007.

Approved by the Governor May 8, 2007, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 10, 2007.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Sections 9, 10, 11 and 13, Engrossed Substitute Senate Bill 6023 entitled:

"AN ACT Relating to the Washington assessment of student learning."

Sections 1 through 7 of this bill provide for the adjustment of high school assessment provisions related to state high school graduation requirements. These include specific changes related to mathematics and science, as well as the addition of several alternative assessments and modification of two other alternative assessments. Section 8 expands the provision of diagnostic assessments to assist students in developing the skills required to be demonstrated on state assessments. Section 12 creates an advisory committee to identify curricula that will assist in preparing students for the state assessment system.

Section 9 of this bill directs the State Board of Education, in consultation with the Superintendent of Public Instruction, to study, examine and recommend changes to the high school assessments in mathematics and science, focusing on replacement of the current assessments with specifically identified end-of-course assessments. The study's recommendation topics and timelines are structured to point to implementing end-of-course assessments as the predetermined outcome. For this reason, I am vetoing Section 9.

However, I am well aware of the strong legislative interest in this subject, specifically related to mathematics and science assessments. I have asked the State Board of Education to conduct a broad, objective study of end-of-course assessments. In the course of this study they will examine the various end-of-course assessment systems used by other states; their purposes; the subjects assessed and how they align with state standards, curriculum, and instruction; whether the exams are used singly or in combination with other assessments for graduation decision purposes; how the exams integrate with an entire assessment system (all grades and subjects); implementation issues; costs and lessons learned. Additionally, OSPI will ask potential test vendors to provide information regarding cost and technical aspects of implementing end-of-course assessments and that information will be shared with the State Board. The State Board of Education will provide recommendations based upon their study and present the study information and recommendations by January 15, 2008.

Section 10 of this bill provides for the implementation of appeals panels in each education service district for students who have not been successful in meeting state standards through the high school assessment system. The appeals criteria specified in the legislation does not relate to the student's knowledge and skill of the state standards. Therefore, I do not support this activity. Additionally, I am concerned that such a system will not yield consistent results from appeals board to appeals board.

Section 11 of this bill sets forth the threshold for student English skills required for participation in the state assessment system, with the exception that meeting standards through the state assessment system remains a requirement for high school graduation. However, in practice, the provision of excusing students from the assessments has no effect since the federal statute sets requirements for student participation for federal accountability purposes. When the federal statutes are changed, state participation requirements will be adjusted. While this provision is well-meaning, having it in statute will be confusing to students and parents.

Section 13 of this bill is an emergency clause. I am vetoing Section 13, as the issues in this legislation do not rise to the level of an emergency that requires the immediate revision of state laws.

For these reasons, I have vetoed Sections 9, 10, 11 and 13 of Engrossed Substitute Senate Bill 6023.

With the exception of Sections 9, 10, 11 and 13, Engrossed Substitute Senate Bill 6023 is approved."

EXHIBIT E

Graduation Requirements

Translations:

Information on this page is available in the following languages

- English
(pdf), w/o color (pdf)
- Spanish
(Word) (pdf)
- Russian
(Word) (pdf)
- Ukrainian
(Word) (pdf)
- Vietnamese
(Word) (pdf)
- Korean
(Word) (pdf)
- Somali
(Word) (pdf)
- Tagalog
(Word) (pdf)
- Cambodian
(Word) (pdf)

The WASL and the High School Diploma

All students need a solid foundation of reading, writing and math skills for whatever they plan to do after high school. Several statewide graduation requirements help make sure students have this foundation. Recently, state lawmakers made changes to the Washington Assessment of Student Learning (WASL) graduation requirement, including postponing the passing of math and science until 2013.

For the graduating classes of 2008-2012, students must pass the **reading and writing** WASL, a state-approved alternative to the WASL or an assessment for students in special education. Students can meet the state's **math** requirement by passing the math WASL, a state-approved alternative or an assessment for students in special education, **OR**, they can continue to earn math credits until they graduate. Students who pass the reading, writing and math assessments earn a Certificate of Academic Achievement or Certificate of Individual Achievement and a high school diploma. Students who fulfill the math requirement by earning math credits do not receive a certificate but do earn a diploma.

This delay for math and science gives the school system time to make any needed changes to the state's learning standards, provide better curriculum choices for schools, review the assessments and provide professional development for teachers. It is not a retreat from the skills and knowledge every student needs.

Washington State Graduation Requirements

(Determined when a student enters ninth grade)

Class of 2008 (Students in grade 11 in 2006-07)	Classes of 2009-2012 (Students in grades 7-10 in 2006-07)	Classes of 2013 and Beyond (Students in grades 6 and below in 2006-07)
<p style="text-align: center;">READING AND WRITING</p> <p>Pass reading and writing High School WASL or assessment for students in special education.</p> <p style="text-align: center;">--OR--</p> <p>Pass Certificate of Academic Achievement Option (state-approved)</p>	<p style="text-align: center;">READING AND WRITING</p> <p>Pass reading and writing High School WASL or assessment for students in special education.</p> <p style="text-align: center;">--OR--</p> <p>Pass Certificate of Academic Achievement Option (state-approved)</p>	<p style="text-align: center;">READING AND WRITING</p> <p>Pass reading and writing High School WASL or assessment for students in special education.</p> <p style="text-align: center;">--OR--</p> <p>Pass Certificate of Academic Achievement Option (state-approved)</p>

alternative).*	alternative).*	alternative).*
MATH	MATH	MATH AND SCIENCE
Pass math High School WASL or assessment for students in special education.	Pass math High School WASL or assessment for students in special education.	Pass math and science High School WASL or assessment for students in special education.
--OR--	--OR--	--OR--
Pass Certificate of Academic Achievement Option (state-approved alternative).*	Pass Certificate of Academic Achievement Option (state-approved alternative).*	Pass Certificate of Academic Achievement Option (state-approved alternative).*
--OR--	--OR--	
Earn one math credit (or career and technical course equivalent) after 11 th grade AND retake the WASL or an approved math assessment one more time. (<i>Student required to pass math classes, not assessment, to earn diploma.</i>)	Earn two math credits (or career and technical course equivalent) after 10 th grade AND retake the WASL or an approved math assessment annually. (<i>Student required to pass math classes, not assessment, to earn diploma.</i>)	
OTHER REQUIREMENTS	OTHER REQUIREMENTS	OTHER REQUIREMENTS
Meet all other state and school district graduation requirements: Culminating Project, High School and Beyond Plan and all state and local credit requirements.	Meet all other state and school district graduation requirements: Culminating Project, High School and Beyond Plan and all state and local credit requirements. (<i>The State Board of Education will soon increase the number of math credits all students must earn from two to three credits.</i>)	Meet all other state and school district graduation requirements: Culminating Project, High School and Beyond Plan and all state and local credit requirements. (<i>The State Board of Education will soon increase the number of math credits all students must earn from two to three credits.</i>)

*Students must take the High School WASL at least once before using one of the Certificate of Academic Achievement Options. Updated 5.22.07

About the Certificate of Academic Achievement and Certificate of Individual Achievement

- The certificates tell businesses and colleges that a student has a solid foundation of

key skills and knowledge in reading, writing and math. Students who earn a certificate will have it noted on their transcript.

- **Certificate of Academic Achievement** – Not a requirement for graduation until 2013, but students can still earn it by passing the WASL or a Certificate of Academic Achievement Option (a state-approved alternative) in reading, writing and math.
- **Certificate of Individual Achievement** – Only for students in special education. Not a requirement for graduation until 2013, but students can still earn it by passing the WASL-Modified, Portfolio or the Developmentally Appropriate WASL (DAW) in reading, writing and math.
- Students in the classes of 2008-2012 who earn math credits until graduation, but do not pass the WASL or another approved math assessment, are still eligible to earn a diploma but they won't earn a certificate.
- An appeal system is available for students who transfer in from other states and countries or have special, unavoidable circumstances. Students who are successful with an appeal will earn a diploma but not a certificate.

About the High School WASL

- Students have five state-funded opportunities during high school to take each WASL content area: reading, writing, math and science.
- Students pass with a Level 3 or 4 score.
- WASL testing occurs in March/April and August each year.
- Score appeal process: Parents/guardians, after reviewing their student's test, may file a score appeal with the state.
- To learn more about the WASL, please visit: www.waslinfo.org.

About Certificate of Academic Achievement Options (state-approved alternatives to the WASL)

- Students who have the skills but are unable to show them on the WASL may use the Certificate of Academic Achievement Options.
- Students may access the options after taking the WASL once.
- The Certificate of Academic Achievement Options are:
 - **Collection of Evidence** – Students compile a set of classroom work samples with the help of a teacher(s). Collections for students in Career and Technical Education programs can include work from their program and other classes. The state scores collections two times a year.
 - Fee Waivers are available for eligible students to take the approved PSAT, SAT, ACT and AP assessments.
 - **SAT or ACT** – Students may use their math, reading or English and writing scores on college readiness tests.
 - Minimum math scores: SAT – 470; and ACT – 19.
 - Minimum SAT and ACT reading and writing scores: State Board of Education to determine by Dec. 1, 2007, or earlier, if possible.
 - **PSAT** – Right now, students may submit a math score of 47 as an approved alternative. After Aug. 31, 2008, the PSAT will no longer be an approved alternative.
 - **Advanced Placement (AP)** – Students may use a score of **three or higher** on select AP exams.
 - Math: Calculus or statistics
 - Writing: English language and composition
 - Reading: English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics
 - **WASL/Grades Comparison** – A student's grades in math courses and/or English courses are compared with the grades of students who took the same courses AND passed the WASL. This option is available to students in 12th.

grade. To access this option, a student must have an overall cumulative Grade Point Average (GPA) of at least 3.2 on a 4.0 grading scale.

About Assessments for Students in Special Education

- Students in special education may take the High School WASL with or without accommodations or use one of the Certificate of Academic Achievement Options.
- The following options are also available:
 - **WASL-Modified – Students take the High School WASL** – with or without accommodations – but IEP teams adjust passing criteria from Proficient (Level 3) to Basic (Level 2).
 - **Washington Alternate Assessment System Portfolio** – Students unable to take paper and pencil tests show their skills and knowledge through a collection of their work.
 - **Developmentally Appropriate WASL (DAW)** – Students in **grades 11 and 12 only** take the WASL – with or without accommodations – at a grade level that best matches their abilities. Students pass the DAW by earning Proficient (Level 3) on each test taken.
- The WASL-Modified is given in March/April and August each year. The Portfolio and the DAW are given in March/April and November.

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EXHIBIT F

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE HOUSE BILL 1906

Chapter 396, Laws of 2007

60th Legislature
2007 Regular Session

MATHEMATICS AND SCIENCE EDUCATION

EFFECTIVE DATE: 07/22/07 - Except section 14, which becomes effective 09/01/09; and sections 1 and 2, which become effective 05/09/07.

Passed by the House April 17, 2007
Yeas 96 Nays 2

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 11, 2007
Yeas 37 Nays 12

BRAD OWEN

President of the Senate

Approved May 9, 2007, 9:52 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SECOND SUBSTITUTE HOUSE BILL 1906 as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 11, 2007

Secretary of State
State of Washington

SECOND SUBSTITUTE HOUSE BILL 1906

AS AMENDED BY THE SENATE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Hunter, Anderson, Wallace, Seaquist, Eddy, P. Sullivan, McDermott, Ormsby, McIntire, Pedersen, Rolfes, Barlow, Goodman, Rodne, O'Brien, Kenney, McDonald, Morrell, Newhouse, Hurst, Skinner, Wood and Bailey)

READ FIRST TIME 03/28/07.

1 AN ACT Relating to improving mathematics and science education;
2 amending RCW 28A.660.005, 28A.660.050, 28B.102.080, 28A.230.130, and
3 28A.230.130; adding new sections to chapter 28A.305 RCW; adding new
4 sections to chapter 28A.300 RCW; adding a new section to chapter
5 28A.415 RCW; adding new sections to chapter 28A.660 RCW; adding a new
6 section to chapter 28B.10 RCW; adding a new section to chapter 28A.320
7 RCW; adding a new section to chapter 28A.655 RCW; adding a new section
8 to chapter 28B.76 RCW; creating new sections; providing an effective
9 date; providing expiration dates; and declaring an emergency.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.305
12 RCW to read as follows:

13 **MATHEMATICS AND SCIENCE STANDARDS AND CURRICULUM.** (1) The
14 activities in this section revise and strengthen the state learning
15 standards that implement the goals of RCW 28A.150.210, known as the
16 essential academic learning requirements, and improve alignment of
17 school district curriculum to the standards.

18 (2) The state board of education shall be assisted in its work
19 under subsections (3) and (5) of this section by: (a) An expert

1 national consultant in each of mathematics and science retained by the
2 state board; and (b) the mathematics and science advisory panels
3 created under section 2 of this act, as appropriate, which shall
4 provide review and formal comment on proposed recommendations to the
5 superintendent of public instruction and the state board of education
6 on new revised standards and curricula.

7 (3) By September 30, 2007, the state board of education shall
8 recommend to the superintendent of public instruction revised essential
9 academic learning requirements and grade level expectations in
10 mathematics. The recommendations shall be based on:

11 (a) Considerations of clarity, rigor, content, depth, coherence
12 from grade to grade, specificity, accessibility, and measurability;

13 (b) Study of:

14 (i) Standards used in countries whose students demonstrate high
15 performance on the trends in international mathematics and science
16 study and the programme for international student assessment;

17 (ii) College readiness standards;

18 (iii) The national council of teachers of mathematics focal points
19 and the national assessment of educational progress content frameworks;
20 and

21 (iv) Standards used by three to five other states, including
22 California, and the nation of Singapore; and

23 (c) Consideration of information presented during public comment
24 periods.

25 (4) By January 31, 2008, the superintendent of public instruction
26 shall revise the essential academic learning requirements and the grade
27 level expectations for mathematics and present the revised standards to
28 the state board of education and the education committees of the senate
29 and the house of representatives as required by RCW 28A.655.070(4).
30 The superintendent shall adopt the revised essential academic learning
31 requirements and grade level expectations unless otherwise directed by
32 the legislature during the 2008 legislative session.

33 (5) By June 30, 2008, the state board of education shall recommend
34 to the superintendent of public instruction revised essential academic
35 learning requirements and grade level expectations in science. The
36 recommendations shall be based on:

37 (a) Considerations of clarity, rigor, content, depth, coherence
38 from grade to grade, specificity, accessibility, and measurability;

1 (b) Study of standards used by three to five other states and in
2 countries whose students demonstrate high performance on the trends in
3 international mathematics and science study and the programme for
4 international student assessment; and

5 (c) Consideration of information presented during public comment
6 periods.

7 (6) By December 1, 2008, the superintendent of public instruction
8 shall revise the essential academic learning requirements and the grade
9 level expectations for science and present the revised standards to the
10 state board of education and the education committees of the senate and
11 the house of representatives as required by RCW 28A.655.070(4). The
12 superintendent shall adopt the revised essential academic learning
13 requirements and grade level expectations unless otherwise directed by
14 the legislature during the 2009 legislative session.

15 (7)(a) By May 15, 2008, the superintendent of public instruction
16 shall present to the state board of education recommendations for no
17 more than three basic mathematics curricula each for elementary,
18 middle, and high school grade spans.

19 (b) By June 30, 2008, the state board of education shall provide
20 official comment and recommendations to the superintendent of public
21 instruction regarding the recommended mathematics curricula. The
22 superintendent of public instruction shall make any changes based on
23 the comment and recommendations from the state board of education and
24 adopt the recommended curricula.

25 (c) By May 15, 2009, the superintendent of public instruction shall
26 present to the state board of education recommendations for no more
27 than three basic science curricula each for elementary, middle, and
28 high school grade spans.

29 (d) By June 30, 2009, the state board of education shall provide
30 official comment and recommendations to the superintendent of public
31 instruction regarding the recommended science curricula. The
32 superintendent of public instruction shall make any changes based on
33 the comment and recommendations from the state board of education and
34 adopt the recommended curricula.

35 (e) In selecting the recommended curricula under this subsection
36 (7), the superintendent of public instruction shall provide information
37 to the mathematics and science advisory panels created under section 2

1 of this act, as appropriate, and seek the advice of the appropriate
2 panel regarding the curricula that shall be included in the
3 recommendations.

4 (f) The recommended curricula under this subsection (7) shall align
5 with the revised essential academic learning requirements and grade
6 level expectations. In addition to the recommended basic curricula,
7 appropriate diagnostic and supplemental materials shall be identified
8 as necessary to support each curricula.

9 (g) Subject to funds appropriated for this purpose and availability
10 of the curricula, at least one of the curricula in each grade span and
11 in each of mathematics and science shall be available to schools and
12 parents online at no cost to the school or parent.

13 (8) By December 1, 2007, the state board of education shall revise
14 the high school graduation requirements under RCW 28A.230.090 to
15 include a minimum of three credits of mathematics, one of which may be
16 a career and technical course equivalent in mathematics, and prescribe
17 the mathematics content in the three required credits.

18 (9) Nothing in this section requires a school district to use one
19 of the recommended curricula under subsection (7) of this section.
20 However, the statewide accountability plan adopted by the state board
21 of education under RCW 28A.305.130 shall recommend conditions under
22 which school districts should be required to use one of the recommended
23 curricula. The plan shall also describe the conditions for exception
24 to the curriculum requirement, such as the use of integrated academic
25 and career and technical education curriculum. Required use of the
26 recommended curricula as an intervention strategy must be authorized by
27 the legislature as required by RCW 28A.305.130(4)(e) before
28 implementation.

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.305
30 RCW to read as follows:

31 **ADVISORY PANELS.** (1) The state board of education shall appoint a
32 mathematics advisory panel and a science advisory panel to advise the
33 board regarding essential academic learning requirements, grade level
34 expectations, and recommended curricula in mathematics and science and
35 to monitor implementation of these activities. In conducting their
36 work, the panels shall provide objective reviews of materials and
37 information provided by any expert national consultants retained by the

1 board and shall provide a public and transparent forum for
2 consideration of mathematics and science learning standards and
3 curricula.

4 (2) Each panel shall include no more than sixteen members with
5 representation from individuals from academia in mathematics and
6 science-related fields, individuals from business and industry in
7 mathematics and science-related fields, mathematics and science
8 educators, parents, and other individuals who could contribute to the
9 work of the panel based on their experiences.

10 (3) Each member of each panel shall be compensated in accordance
11 with RCW 43.03.220 and reimbursed for travel expenses in accordance
12 with RCW 43.03.050 and 43.03.060. School districts shall be reimbursed
13 for the cost of substitutes for the mathematics and science educators
14 on the panels as required under RCW 28A.300.035. Members of the panels
15 who are employed by a public institution of higher education shall be
16 provided sufficient time away from their regular duties, without loss
17 of benefits or privileges, to fulfill the responsibilities of being a
18 panel member.

19 (4) Panel members shall not have conflicts of interest with regard
20 to association with any publisher, distributor, or provider of
21 curriculum, assessment, or test materials and services purchased by or
22 contracted through the office of the superintendent of public
23 instruction, educational service districts, or school districts.

24 (5) This section expires June 30, 2012.

25 NEW SECTION. Sec. 3. A new section is added to chapter 28A.300
26 RCW to read as follows:

27 AFTER-SCHOOL MATHEMATICS SUPPORT PROGRAM. (1) The after-school
28 mathematics support program is created to study the effects of
29 intentional, skilled mathematics support included as part of an
30 existing after-school activity program.

31 (2) The office of the superintendent of public instruction shall
32 provide grants to selected community-based, nonprofit organizations
33 that provide after-school programs and include support for students to
34 learn mathematics.

35 (3) Grant applicants must demonstrate the capacity to provide
36 assistance in mathematics learning in the following ways:

1 (a) Identifying the mathematics content and instructional skill of
2 the staff or volunteers assisting students;

3 (b) Identifying proposed learning strategies to be used, which
4 could include computer-based instructional and skill practice programs
5 and tutoring by adults or other students;

6 (c) Articulating the plan for connection with school mathematics
7 teachers to coordinate student assistance; and

8 (d) Articulating the plan for assessing student and program
9 success.

10 (4) Priority will be given to applicants that propose programs to
11 serve middle school and junior high school students.

12 (5) The office of the superintendent of public instruction shall
13 evaluate program outcomes and report to the governor and the education
14 committees of the legislature on the outcomes of the grants and make
15 recommendations related to program continuation, program modification,
16 and issues related to program sustainability and possible program
17 expansion. An interim report is due November 1, 2008. The final
18 report is due December 1, 2009.

19 NEW SECTION. Sec. 4. A new section is added to chapter 28A.415
20 RCW to read as follows:

21 MATHEMATICS AND SCIENCE INSTRUCTIONAL COACH PROGRAM. (1) A
22 mathematics and science instructional coach program is authorized,
23 which shall consist of a coach development institute, coaching
24 seminars, coaching activities in schools, and program evaluation.

25 (2) The office of the superintendent of public instruction shall
26 develop a mathematics and science instructional coach program that
27 includes an initial coach development experience for new coaches
28 provided through an institute setting, coaching support seminars, and
29 additional coach development services. The office shall draw upon the
30 experiences of coaches in federally supported elementary literacy
31 programs and other successful programs, research and policy briefs on
32 adult professional development, and research that specifically
33 addresses the instructional environments of middle, junior high, and
34 high schools as well as the unique aspects of the fields of mathematics
35 and science.

36 (3) The office of the superintendent of public instruction shall
37 design the application process and select the program participants.

1 (4) Schools and school districts participating in the program shall
2 carefully select the individuals to perform the role of mathematics or
3 science instructional coach. Characteristics to be considered for a
4 successful coach include:

5 (a) Expertise in content area;

6 (b) Expertise in various instructional methodologies and
7 personalizing learning;

8 (c) Personal skills that include skilled listening, questioning,
9 trust-building, and problem-solving;

10 (d) Understanding and appreciation for the differences in adult
11 learners and student learners; and

12 (e) Capacity for strategic planning and quality program
13 implementation.

14 (5) The role of the mathematics or science instructional coach is
15 focused on supporting teachers as they apply knowledge, develop skills,
16 polish techniques, and deepen their understanding of content and
17 instructional practices. This work takes a number of forms including:
18 Individualized professional development, department-wide and school-
19 wide professional development, guidance in student data interpretation,
20 and using assessment to guide instruction. Each coach shall be
21 assigned to two schools as part of the program.

22 (6) Program participants have the following responsibilities:

23 (a) Mathematics and science coaches shall participate in the coach
24 development institute as well as in coaching support seminars that take
25 place throughout the school year, practice coaching activities as
26 guided by those articulated in the role of the coach in subsection (5)
27 of this section, collect data, and participate in program evaluation
28 activities as requested by the institute pursuant to subsection (7) of
29 this section.

30 (b) School and district administrators in districts in which the
31 mathematics and science coaches are practicing shall participate in
32 program evaluation activities.

33 (7) (a) The Washington State University social and economic sciences
34 research center shall conduct an evaluation of the mathematics and
35 science instructional coach program in this section. Data shall be
36 collected through various instruments including surveys, program and
37 activity reports, student performance measures, observations,
38 interviews, and other processes. Findings shall include an evaluation

1 of the coach development institute, coaching support seminars, and
2 other coach support activities; recommendations with regard to the
3 characteristics required of the coaches; identification of changes in
4 teacher instruction related to coaching activities; and identification
5 of the satisfaction level with coaching activities as experienced by
6 classroom teachers and administrators.

7 (b) The Washington State University social and economic sciences
8 research center shall report its findings to the governor, the office
9 of the superintendent of public instruction, and the education and
10 fiscal committees of the legislature. An interim report is due
11 November 1, 2008. The final report is due December 1, 2009.

12 **Sec. 5.** RCW 28A.660.005 and 2001 c 158 s 1 are each amended to
13 read as follows:

14 (1) The legislature finds and declares:

15 ~~((1))~~ (a) Teacher qualifications and effectiveness are the most
16 important influences on student learning in schools~~((-))~~;

17 ~~((2))~~ (b) Preparation of individuals to become well-qualified,
18 effective teachers must be high quality~~((-))~~;

19 ~~((3))~~ (c) Teachers who complete high-quality alternative route
20 programs with intensive field-based experience, adequate coursework,
21 and strong mentorship do as well or better than teachers who complete
22 traditional preparation programs~~((-))~~;

23 ~~((4))~~ (d) High-quality alternative route programs can provide
24 more flexibility and expedience for individuals to transition from
25 their current career to teaching~~((-))~~;

26 ~~((5))~~ (e) High-quality alternative route programs can help school
27 districts fill subject matter shortage areas and areas with shortages
28 due to geographic location~~((-))~~;

29 ~~((6))~~ (f) Regardless of route, all candidates for residency
30 teacher certification must meet the high standards required by the
31 state; and

32 (g) Teachers need an adequate background in subject matter content
33 if they are to teach it well, and should hold full, appropriate
34 credentials in those subject areas.

35 (2) The legislature recognizes widespread concerns about the
36 potential for teacher shortages and finds that classified instructional

1 staff in public schools, current certificated staff, and unemployed
2 certificate holders represent a great untapped resource for recruiting
3 ((the)) more teachers ((of the future)) in critical shortage areas.

4 NEW SECTION. Sec. 6. A new section is added to chapter 28A.660
5 RCW to read as follows:

6 (1) The pipeline for paraeducators conditional scholarship program
7 is created. Participation is limited to paraeducators without a
8 college degree who have at least three years of classroom experience.
9 It is anticipated that candidates enrolled in this program will
10 complete their associate of arts degree at a community and technical
11 college in two years or less and become eligible for a mathematics,
12 special education, or English as a second language endorsement via
13 route one in the alternative routes to teacher certification program
14 provided in this chapter.

15 (2) Entry requirements for candidates include district or building
16 validation of qualifications, including three years of successful
17 student interaction and leadership, as a classified instructional
18 employee.

19 NEW SECTION. Sec. 7. A new section is added to chapter 28A.660
20 RCW to read as follows:

21 (1) The retooling to teach mathematics and science conditional
22 scholarship program is created. Participation is limited to current K-
23 12 teachers and individuals having an elementary education certificate
24 but who are not employed in positions requiring an elementary education
25 certificate. It is anticipated that candidates enrolled in this
26 program will complete the requirements for a mathematics or science
27 endorsement, or both, in two years or less.

28 (2) Entry requirements for candidates include:

29 (a) Current K-12 teachers shall pursue a middle level mathematics
30 or science, or secondary mathematics or science endorsement.

31 (b) Individuals having an elementary education certificate but who
32 are not employed in positions requiring an elementary education
33 certificate shall pursue an endorsement in middle level mathematics or
34 science only.

1 **Sec. 8.** RCW 28A.660.050 and 2004 c 23 s 5 are each amended to read
2 as follows:

3 The ~~((alternative route))~~ conditional scholarship programs ~~((is))~~
4 in this chapter are created under the following guidelines:

5 (1) The programs shall be administered by the higher education
6 coordinating board. In administering the programs, the higher
7 education coordinating board has the following powers and duties:

8 (a) To adopt necessary rules and develop guidelines to administer
9 the programs;

10 (b) To collect and manage repayments from participants who do not
11 meet their service obligations; and

12 (c) To accept grants and donations from public and private sources
13 for the programs.

14 (2) Requirements for participation in the ~~((alternative route))~~
15 conditional scholarship programs are as provided in this subsection
16 (2).

17 (a) The alternative route conditional scholarship program is
18 limited to interns of the partnership grant programs under RCW
19 28A.660.040. In order to receive conditional scholarship awards,
20 recipients shall:

21 (i) Be accepted and maintain enrollment in alternative
22 certification routes through the partnership grant program;

23 (ii) Continue to make satisfactory progress toward completion of
24 the alternative route certification program and receipt of a residency
25 teaching certificate; and

26 (iii) Receive no more than the annual amount of the scholarship,
27 not to exceed eight thousand dollars, for the cost of tuition, fees,
28 and educational expenses, including books, supplies, and transportation
29 for the alternative route certification program in which the recipient
30 is enrolled. The board may adjust the annual award by the average rate
31 of resident undergraduate tuition and fee increases at the state
32 universities as defined in RCW 28B.10.016.

33 (b) The pipeline for paraeducators conditional scholarship program
34 is limited to qualified paraeducators as provided by section 6 of this
35 act. In order to receive conditional scholarship awards, recipients
36 shall:

37 (i) Be accepted and maintain enrollment at a community and

1 technical college for no more than two years and attain an associate of
2 arts degree;

3 (ii) Continue to make satisfactory progress toward completion of an
4 associate of arts degree. This progress requirement is a condition for
5 eligibility into a route one program of the alternative routes to
6 teacher certification program for a mathematics, special education, or
7 English as a second language endorsement; and

8 (iii) Receive no more than the annual amount of the scholarship,
9 not to exceed four thousand dollars, for the cost of tuition, fees, and
10 educational expenses, including books, supplies, and transportation for
11 the alternative route certification program in which the recipient is
12 enrolled. The board may adjust the annual award by the average rate of
13 tuition and fee increases at the state community and technical
14 colleges.

15 (c) The retooling to teach mathematics and science conditional
16 scholarship program is limited to current K-12 teachers and individuals
17 having an elementary education certificate but who are not employed in
18 positions requiring an elementary education certificate as provided by
19 section 7 of this act. In order to receive conditional scholarship
20 awards:

21 (i) Individuals currently employed as teachers shall pursue a
22 middle level mathematics or science, or secondary mathematics or
23 science endorsement; or

24 (ii) Individuals who are certificated with an elementary education
25 endorsement, but not employed in positions requiring an elementary
26 education certificate, shall pursue an endorsement in middle level
27 mathematics or science, or both; and

28 (iii) Individuals shall use one of the pathways to endorsement
29 processes to receive a mathematics or science endorsement, or both,
30 which shall include passing a mathematics or science endorsement test,
31 or both tests, plus observation and completing applicable coursework to
32 attain the proper endorsement; and

33 (iv) Individuals shall receive no more than the annual amount of
34 the scholarship, not to exceed three thousand dollars, for the cost of
35 tuition, test fees, and educational expenses, including books,
36 supplies, and transportation for the endorsement pathway being pursued.

37 (3) The Washington professional educator standards board shall
38 select (~~interns~~) individuals to receive conditional scholarships.

1 ~~((3) In order to receive conditional scholarship awards,~~
2 ~~recipients shall be accepted and maintain enrollment in alternative~~
3 ~~certification routes through the partnership grant program, as provided~~
4 ~~in RCW 28A.660.040. Recipients must continue to make satisfactory~~
5 ~~progress towards completion of the alternative route certification~~
6 ~~program and receipt of a residency teaching certificate.))~~

7 (4) For the purpose of this chapter, a conditional scholarship is
8 a loan that is forgiven in whole or in part in exchange for service as
9 a certificated teacher employed in a Washington state K-12 public
10 school. The state shall forgive one year of loan obligation for every
11 two years a recipient teaches in a public school. Recipients ~~((that))~~
12 who fail to continue a course of study leading to residency teacher
13 certification or cease to teach in a public school in the state of
14 Washington in their endorsement area are required to repay the
15 remaining loan principal with interest.

16 (5) Recipients who fail to fulfill the required teaching obligation
17 are required to repay the remaining loan principal with interest and
18 any other applicable fees. The higher education coordinating board
19 shall adopt rules to define the terms for repayment, including
20 applicable interest rates, fees, and deferments.

21 ~~(6) ((To the extent funds are appropriated for this specific~~
22 ~~purpose, the annual amount of the scholarship is the annual cost of~~
23 ~~tuition, fees, and educational expenses, including books, supplies, and~~
24 ~~transportation for the alternative route certification program in which~~
25 ~~the recipient is enrolled, not to exceed eight thousand dollars. The~~
26 ~~board may adjust the annual award by the average rate of resident~~
27 ~~undergraduate tuition and fee increases at the state universities as~~
28 ~~defined in RCW 28B.10.016.~~

29 ~~(7))~~ The higher education coordinating board may deposit all
30 appropriations, collections, and any other funds received for the
31 program in this chapter in the ~~((student loan))~~ future teachers
32 conditional scholarship account authorized in RCW ~~((28B.102.060))~~
33 28B.102.080.

34 **Sec. 9.** RCW 28B.102.080 and 2004 c 58 s 9 are each amended to read
35 as follows:

36 (1) The future teachers conditional scholarship account is created
37 in the custody of the state treasurer. An appropriation is not

1 required for expenditures of funds from the account. The account is
2 not subject to allotment procedures under chapter 43.88 RCW except for
3 moneys used for program administration.

4 (2) The board shall deposit in the account all moneys received for
5 the future teachers conditional scholarship and loan repayment program
6 and for conditional loan programs under chapter 28A.660 RCW. The
7 account shall be self-sustaining and consist of funds appropriated by
8 the legislature for the future teachers conditional scholarship and
9 loan repayment program, private contributions to the program, ((and))
10 receipts from participant repayments from the future teachers
11 conditional scholarship and loan repayment program, and conditional
12 loan programs established under chapter 28A.660 RCW. Beginning July 1,
13 2004, the board shall also deposit into the account: (a) All funds
14 from the institution of higher education loan account that are
15 traceable to any conditional scholarship program for teachers or
16 prospective teachers established by the legislature before June 10,
17 2004; and (b) all amounts repaid by individuals under any such program.

18 (3) Expenditures from the account may be used solely for
19 conditional loans and loan repayments to participants in the future
20 teachers conditional scholarship and loan repayment program established
21 by this chapter, conditional scholarships for participants in programs
22 established in chapter 28A.660 RCW, and costs associated with program
23 administration by the board.

24 (4) Disbursements from the account may be made only on the
25 authorization of the board.

26 NEW SECTION. Sec. 10. A new section is added to chapter 28B.10
27 RCW to read as follows:

28 (1) By September 1, 2008, the state board for community and
29 technical colleges, the council of presidents, the higher education
30 coordinating board, and the office of the superintendent of public
31 instruction, under the leadership of the transition math project and in
32 collaboration with representatives of public two and four-year
33 institutions of higher education, shall jointly revise the Washington
34 mathematics placement test to serve as a common college readiness test
35 for all two and four-year institutions of higher education.

36 (2) The revised mathematics college readiness test shall be
37 implemented by all public two and four-year institutions of higher

1 education by September 1, 2009. All public two and four-year
2 institutions of higher education must use a common performance standard
3 on the mathematics placement test for purposes of determining college
4 readiness in mathematics. The performance standard must be publicized
5 to all high schools in the state.

6 NEW SECTION. Sec. 11. A new section is added to chapter 28A.320
7 RCW to read as follows:

8 (1) Subject to funding appropriated for this purpose and beginning
9 in the fall of 2009, school districts shall provide all high school
10 students enrolled in the district the option of taking the mathematics
11 college readiness test developed under section 10 of this act once at
12 no cost to the students. Districts shall encourage, but not require,
13 students to take the test in their junior or senior year of high
14 school.

15 (2) Subject to funding appropriated for this purpose, the office of
16 the superintendent of public instruction shall reimburse each district
17 for the costs incurred by the district in providing students the
18 opportunity to take the mathematics placement test.

19 NEW SECTION. Sec. 12. The legislature finds that knowledge,
20 skills, and opportunities in mathematics, science, and technology
21 should be increased for all students in Washington. The legislature
22 intends to foster capacity between and among the educational sectors to
23 enable continuous and sustainable growth of the learning and teaching
24 of mathematics, science, and technologies. The legislature intends to
25 foster high quality mathematics, science, and technology programs to
26 increase the number of students in the kindergarten through twelfth
27 grade pipeline who are prepared and aspire to continue in the areas of
28 mathematics, science, and technology, whether it be at a college,
29 university, or in the workforce.

30 Sec. 13. RCW 28A.230.130 and 2003 c 49 s 2 are each amended to
31 read as follows:

32 (1) All public high schools of the state shall provide a program,
33 directly or in cooperation with a community college or another school
34 district, for students whose educational plans include application for

1 entrance to a baccalaureate-granting institution after being granted a
2 high school diploma. The program shall help these students to meet at
3 least the minimum entrance requirements under RCW 28B.10.050.

4 (2) All public high schools of the state shall provide a program,
5 directly or in cooperation with a community or technical college, a
6 skills center, an apprenticeship committee, or another school district,
7 for students who plan to pursue career or work opportunities other than
8 entrance to a baccalaureate-granting institution after being granted a
9 high school diploma. These programs may:

10 (a) Help students demonstrate the application of essential academic
11 learning requirements to the world of work, occupation-specific skills,
12 knowledge of more than one career in a chosen pathway, and
13 employability and leadership skills; and

14 (b) Help students demonstrate the knowledge and skill needed to
15 prepare for industry certification, and/or have the opportunity to
16 articulate to postsecondary education and training programs.

17 (3) Within funds specifically appropriated therefor, a middle
18 school that receives approval from the office of the superintendent of
19 public instruction to provide a career and technical program directly
20 to students shall receive funding at the same rate as a high school
21 operating a similar program. Additionally, a middle school that
22 provides a hands-on experience in math and science with an integrated
23 curriculum of academic content and career and technical education, and
24 includes a career and technical education exploratory component shall
25 also qualify for the career and technical education funding.

26 (4) The state board of education, upon request from local school
27 districts, may grant waivers from the requirements to provide the
28 program described in subsections (1) and (2) of this section for
29 reasons relating to school district size and the availability of staff
30 authorized to teach subjects which must be provided. In considering
31 waiver requests related to programs in subsection (2) of this section,
32 the state board of education shall consider the extent to which the
33 school district has offered such programs before the 2003-04 school
34 year.

35 **Sec. 14.** RCW 28A.230.130 and 2006 c 263 s 407 are each amended to
36 read as follows:

37 (1) All public high schools of the state shall provide a program,

1 directly or in cooperation with a community college or another school
2 district, for students whose educational plans include application for
3 entrance to a baccalaureate-granting institution after being granted a
4 high school diploma. The program shall help these students to meet at
5 least the minimum entrance requirements under RCW 28B.10.050.

6 (2) All public high schools of the state shall provide a program,
7 directly or in cooperation with a community or technical college, a
8 skills center, an apprenticeship committee, or another school district,
9 for students who plan to pursue career or work opportunities other than
10 entrance to a baccalaureate-granting institution after being granted a
11 high school diploma. These programs may:

12 (a) Help students demonstrate the application of essential academic
13 learning requirements to the world of work, occupation-specific skills,
14 knowledge of more than one career in a chosen pathway, and
15 employability and leadership skills; and

16 (b) Help students demonstrate the knowledge and skill needed to
17 prepare for industry certification, and/or have the opportunity to
18 articulate to postsecondary education and training programs.

19 (3) Within funds specifically appropriated therefor, a middle
20 school that receives approval from the office of the superintendent of
21 public instruction to provide a career and technical program directly
22 to students shall receive funding at the same rate as a high school
23 operating a similar program. Additionally, a middle school that
24 provides a hands-on experience in math and science with an integrated
25 curriculum of academic content and career and technical education, and
26 includes a career and technical education exploratory component shall
27 also qualify for the career and technical education funding.

28 NEW SECTION. Sec. 15. A new section is added to chapter 28A.300
29 RCW to read as follows:

30 The superintendent of public instruction shall provide support for
31 statewide coordination for math, science, and technology, including
32 employing a statewide director for math, science, and technology. The
33 duties of the director shall include, but not be limited to:

34 (1) Within funds specifically appropriated therefor, obtain a
35 statewide license, or otherwise obtain and disseminate, an interactive,
36 project-based high school and middle school technology curriculum that
37 includes a comprehensive professional development component for

1 teachers and, if possible, counselors, and also includes a systematic
2 program evaluation. The curriculum must be distributed to all school
3 districts, or as many as feasible, by the 2007-08 school year;

4 (2) Within funds specifically appropriated therefor, supporting a
5 public-private partnership to assist school districts with implementing
6 an ongoing, inquiry-based science program that is based on a research-
7 based model of systemic reform and aligned with the Washington state
8 science grade level expectations;

9 (3) Within funds specifically appropriated therefor, supporting a
10 public-private partnership to provide enriching opportunities in
11 mathematics, engineering, and science for underrepresented students in
12 grades kindergarten through twelve using exemplary materials and
13 instructional approaches;

14 (4) In an effort to increase precollege and prework interest in
15 math, science, and technology fields, in collaboration with the
16 community and technical colleges, the four-year institutions of higher
17 education, and the workforce training and education coordinating board,
18 conducting outreach efforts to attract middle and high school students
19 to careers in math, science, and technology and to educate students
20 about the coursework that is necessary to be adequately prepared to
21 succeed in these fields;

22 (5) Coordinating youth opportunities in math, science, and
23 technology, including facilitating student participation in school
24 clubs, state-level fairs, national competitions, and encouraging
25 partnerships between students and university faculty or industry to
26 facilitate such student participation;

27 (6) Developing and maintaining public-private partnerships to
28 generate business and industry assistance to accomplish the following:

29 (a) Increasing student engagement and career awareness, including
30 increasing student participation in the youth opportunities in
31 subsection (5) of this section;

32 (b) Creation and promotion of student scholarships, internships,
33 and apprenticeships;

34 (c) Provision of relevant teacher experience and training,
35 including on-the-job professional development opportunities;

36 (d) Upgrading kindergarten through twelfth grade school equipment
37 and facilities to support high quality math, science, and technology
38 programs;

1 (7) Assembling a cadre of inspiring speakers employed or
2 experienced in the relevant fields to speak to kindergarten through
3 twelfth grade students to demonstrate the breadth of the opportunities
4 in the relevant fields as well as share the types of coursework that is
5 necessary for someone to be successful in the relevant field;

6 (8) Providing technical assistance to schools and school districts,
7 including working with counselors in support of the math, science, and
8 technology programs; and

9 (9) Reporting annually to the legislature about the actions taken
10 to provide statewide coordination for math, science, and technology.

11 NEW SECTION. **Sec. 16.** A new section is added to chapter 28A.655
12 RCW to read as follows:

13 (1) Within funds specifically appropriated therefor, by December 1,
14 2008, the superintendent of public instruction shall develop essential
15 academic learning requirements and grade level expectations for
16 educational technology literacy and technology fluency that identify
17 the knowledge and skills that all public school students need to know
18 and be able to do in the areas of technology and technology literacy.
19 The development process shall include a review of current standards
20 that have been developed or are used by other states and national and
21 international technology associations. To the maximum extent possible,
22 the superintendent shall integrate goal four and the knowledge and
23 skill areas in the other goals in the technology essential academic
24 learning requirements.

25 (a) As used in this section, "technology literacy" means the
26 ability to responsibly, creatively, and effectively use appropriate
27 technology to communicate; access, collect, manage, integrate, and
28 evaluate information; solve problems and create solutions; build and
29 share knowledge; and improve and enhance learning in all subject areas
30 and experiences.

31 (b) Technology fluency builds upon technology literacy and is
32 demonstrated when students: Apply technology to real-world
33 experiences; adapt to changing technologies; modify current and create
34 new technologies; and personalize technology to meet personal needs,
35 interests, and learning styles.

36 (2)(a) Within funds specifically appropriated therefor, the
37 superintendent shall obtain or develop education technology assessments

1 that may be administered in the elementary, middle, and high school
2 grades to assess the essential academic learning requirements for
3 technology. The assessments shall be designed to be classroom or
4 project-based so that they can be embedded in classroom instruction and
5 be administered and scored by school staff throughout the regular
6 school year using consistent scoring criteria and procedures. By the
7 2010-11 school year, these assessments shall be made available to
8 school districts for the districts' voluntary use. If a school
9 district uses the assessments created under this section, then the
10 school district shall notify the superintendent of public instruction
11 of the use. The superintendent shall report annually to the
12 legislature on the number of school districts that use the assessments
13 each school year.

14 (b) Beginning December 1, 2010, and annually thereafter, the
15 superintendent of public instruction shall provide a report to the
16 relevant legislative committees regarding the use of the assessments.

17 NEW SECTION. Sec. 17. A new section is added to chapter 28B.76
18 RCW to read as follows:

19 As part of the state needs assessment process conducted by the
20 board in accordance with RCW 28B.76.230, the board shall assess the
21 need for additional baccalaureate degree programs in Washington that
22 specialize in teacher preparation in mathematics, science, and
23 technology. If the board determines that there is a need for
24 additional programs, then the board shall encourage the appropriate
25 institutions of higher education or institutional sectors to create
26 such a program.

27 NEW SECTION. Sec. 18. Beginning September 1, 2007, through
28 December 1, 2008, the state board of education shall provide a status
29 report at the beginning of each calendar quarter on the activities and
30 progress in completing the requirements under section 1 of this act.
31 The report shall be provided to the governor and the members of the
32 education committees of the senate and the house of representatives.

33 NEW SECTION. Sec. 19. Captions used in this act are not any part
34 of the law.

1 NEW SECTION. Sec. 20. Section 13 of this act expires September 1,
2 2009.

3 NEW SECTION. Sec. 21. Section 14 of this act takes effect
4 September 1, 2009.

5 NEW SECTION. Sec. 22. Sections 1 and 2 of this act are necessary
6 for the immediate preservation of the public peace, health, or safety,
7 or support of the state government and its existing public
8 institutions, and take effect immediately.

Passed by the House April 17, 2007.

Passed by the Senate April 11, 2007.

Approved by the Governor May 9, 2007.

Filed in Office of Secretary of State May 11, 2007.

FILED

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own
behalf and on behalf of KELSEY & CARTER
MCCLEARY; ROBERT & PATTY VENEMA, on their own
behalf and on behalf of HALIE & ROBBIE VENEMA;
and NETWORK FOR EXCELLENCE IN WASHINGTON
SCHOOLS ("NEWS"),

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

Honorable Paris K. Kallas

*Hearing Date:
9:00 a.m., August 24 2007*

No. 07-2-02323-2 SEA

PETITIONERS' CLOSING BRIEF

Original

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1 **I. INTRODUCTION**

2 The Petitioners' May 4 Motion presented four specific legal issues for this Court to
3 resolve as a matter of Washington law. At the State's request, this Court granted the parties
4 leave to file "supplemental" closing briefs on August 3 (State) and August 10 (Petitioners).

5 The supplemental brief and over 200 pages of supplemental papers filed by the State
6 make several arguments. But as the following 12 pages explain, the State's supplemental filings
7 still do not refute the central point that a trial is not necessary to resolve the four legal issues
8 presented by the Petitioners' May 4 Motion, and that Petitioners are entitled to judgment on each
9 of those four issues as a matter of Washington law.

10 **II. THE FOUR ISSUES PRESENTED BY PETITIONERS' MAY 4 MOTION**

- 11 1. **The State still has not refuted that the words "paramount", "ample", and "all" in**
12 **Article IX, §1 should be interpreted to have the common English meaning set forth in**
the Petitioners' May 4 Motion [Proposed Order ¶2].

13 The first issue presented by Petitioners' May 4 Motion is whether the words
14 "paramount", "ample", and "all" in Article IX, §1 should be interpreted to have the common
15 English meaning set forth in that Motion. Petitioners' May 4 Motion at 8, issue #1.

16 The State does not dispute that this issue of interpretation is a pure question of law.¹ Nor
17 does the State offer any alternative to the common English interpretation explained at
18 pages 10:11-11:23 of Petitioners' Motion.

19 Instead, the State's supplemental brief suggests that this Court should reject Petitioners'
20 interpretation because it rests on a current edition of *Webster's Third New Int'l Dictionary*
21 instead of an 1863 dictionary. But using the current edition of *Webster's Third New Int'l*
22 *Dictionary* (instead of an 1863 dictionary) is precisely what our State Supreme Court does when
23 interpreting the words used in Article IX. E.g., *Seattle School District v. State*, 90 Wn.2d at 511
24 (1978 decision quoting the 1971 edition of *Webster's Third New Int'l Dictionary* for the meaning
25

26 ¹ *Petitioners' May 4 Motion at 9:15-10:11 & m. 23-24.*

1 of words used in Article IX).² The State's supplemental brief simply does not refute the validity
2 of the May 4 Motion's interpretation of "paramount", "ample", and "all" in Article IX, §1.

3 **2. The State still has not refuted the May 4 Motion's showing that RCW 29A.150.210**
4 **should be interpreted to define the substantive content of basic education in our State**
5 **[Proposed Order ¶3].**

6 The second issue presented by Petitioners' May 4 Motion is whether RCW 29A.150.210
7 should be interpreted to define the substantive content of basic education in our State.
8 Petitioners' May 4 Motion at 8, issue #2.

9 The State does not dispute that this question of statutory construction is a question of
10 law.³ Nor does the State dispute that the *Seattle School District* quote at Tab 2 sets forth "the
11 minimum of the education that is constitutionally required", that our Supreme Court instructed
12 the legislature to provide additional "substantive content" to further define that basic education,
13 and that the Respondent State's Chief Education Officer testified under oath that the four
14 numbered paragraphs in RCW 29A.150.210 "are the substantive content of what drives
15 education in our State". May 4 Motion at 3:9-6:2, 12:1-14:12.

16 Instead, the State's supplemental filings make two basic arguments.

17 *First*, the State argues that the *Seattle School District* decision allowed the legislature to
18 ignore the Court's direction to provide additional "substantive content" to define the basic
19 education described in Tab 2 if the legislature instead enacted a basic program of education. In
20 other words, the State posits that the *Seattle School District* Court instructed the legislature to
21 define basic education with additional "substantive content" beyond that specified in Tab 2 *or*
22 enact a basic program of education – and it then argues that since the legislature enacted

23 ² *Indeed, the State's invocation of an 1863 dictionary to "freeze" the meaning of our living Constitution's*
24 *education mandate is similar to the State's claim in the Seattle School District case that the State could fulfill its*
25 *ample provision duty under Article IX, §1 by "providing more acceptable educational facilities than those of 1889"*
26 *– a claim that our Supreme Court rejected as being "utter nonsense". 90 Wn.2d at 514-17. Compare also L.K.*
Beale, Note, Charter Schools, Common Schools, and the Washington State Constitution, 72 Wash.L.Rev. 535, 542 &
556 (1997) (explaining that before and during early statehood "the Legislature intended to provide only a
rudimentary education: an 1881 law forbade teaching of any language other than English and any mathematics
higher than arithmetic" and "common schools initially intended only to offer primary instruction").

³ *Petitioners' May 4 Motion at 14:8-9 & n.27.*

1 statutory provisions to operationally establish a basic program of education (instructional
2 hours/days/staffing ratios/etc.), the legislature was not required to also enact the substantive
3 content in RCW 29A.150.210 to further define basic education.

4 But that is not what *Seattle School District* said. The Supreme Court directed the
5 legislature to do *both*. It instructed the legislature to define “basic education” with additional
6 substantive content beyond that in Tab 2 *and* define a basic program of education to provide that
7 basic education. Petitioners’ May 4 Motion at 4:10-6:12 (citing, e.g., 90 Wn.2d at 482 (“The
8 Legislature must act to carry out its constitutional duty by defining and giving substantive
9 content to ‘basic education’ and a basic program of education”), at 519 (noting legislature had
10 not yet passed legislation “defining or giving substantive content to ‘basic education’ or a basic
11 program of education. Thus, the Legislature must hereafter act to comply with its constitutional
12 duty by defining and giving substantive meaning to them.”), at 537 (“We have great faith in the
13 Legislature and its ability to define ‘basic education’ and a basic program of education”), and at
14 484 (“The Legislature has the duty to define ‘basic education’ ”) (emphasis added)).

15 *Second*, the State submits supplemental declarations from two of its employees stating
16 legal conclusions about whether they think the substantive content enacted in the four numbered
17 provisions of RCW 29A.150.210 (House Bill 1209) should be interpreted to be the additional
18 substantive content that further defines the “basic education” set forth in Tab 2.

19 But as noted before, interpreting RCW 29A.150.210 presents a question of law for this
20 Court to decide. Washington law accordingly requires the legal conclusions submitted by the
21 State’s employees to be disregarded.⁴ Washington law requires this Court to instead base its
22 legal interpretation of this legislation on the language of this legislation. And as detailed at 4:9-

23
24 ⁴ E.g., *Terrell v. DSHS*, 120 Wn.App. 20, 30 (2004) (disregarding declaration as presenting inadmissible legal
25 conclusions because, even though the witness did not explicitly state that he was testifying to the “legal” duty at
26 issue, “that is what he was attempting to establish”); *Ball v. Smith*, 87 Wn.2d 717, 722-23 (1977) (refusing to allow
a chief electrical inspector to testify concerning his opinion of applicable law because “a witness is not permitted to
give his opinion on a question of domestic law or upon matters which involve questions of law”); see also cases
cited in May 29 Reply at 3:21.

1 6:2 & 12:3-14:12 of Petitioners' May 4 Motion, the language of this legislation (House
2 Bill 1209) confirms that the four numbered paragraphs enacted into RCW 29A.150.210 should
3 be interpreted to define the substantive content of "basic education" in our State pursuant to the
4 *Seattle School District* ruling.

5 In short, the State's supplemental papers do not refute the Petitioners' May 4 showing
6 that those substantive content established under RCW 29A.150.210 is our State's current legal
7 definition of the "basic education" required by Article IX, §1.

8 **3. The State still has not raised any fact material to the yes-or-no question of whether it is**
9 **currently complying with this Court's legal interpretation of Article IX, §1**
10 **[Proposed Order #4].**

11 The third issue presented by Petitioners' May 4 Motion is the yes-or-no question of
12 whether the State is currently complying with this Court's legal interpretation of Article IX, §1.
13 Petitioners' May 4 Motion at 9, issue #3. As the case law quoted in Petitioners' prior briefing
14 noted, "There is no such thing as 'a little bit pregnant' and there is no such thing as 'slightly
15 unconstitutional'." The State is either complying with its Constitutional duty or it is not. The
16 State's supplemental papers fail to refute Petitioners' showing that the State is not.

17 And while the State's supplemental briefing now argues that our Constitution does not
18 guarantee 100% success in the education the State provides to our State's children, the State
19 provides no legal authority for its suggestion that the State's paramount duty under our State
20 Constitution has a "good enough for government work" exception that somehow excuses the
21 significant education failures established by the State's own evidence.

22 (a) *State's own WASL testimony.*

23 The State does not dispute the May 4 Motion's showing that:

- 24 (1) The State established the Essential Academic Learning Requirements (EALRs) to
25 specify the basic math/science/etc. skills established by RCW 29A.150.210, and that
26

1 those EALRs “specify the skills and knowledge in core subjects that all students are
2 expected to master as they move through Washington’s public schools”.⁵

3 (2) The State established the Washington Assessment of Student Learning (“WASL”) to
4 measure whether students possess those basic math/science/etc. skills established by
5 RCW 29A.150.210, and that the State’s measurement “is one of the most rigorous
6 and reliable assessments of student achievement in the country.”⁶

7 Nor does the State dispute the current failure rates identified at 15:13-21 of that May 4 Motion
8 (e.g., only about 1/3 of our State’s 10th graders have the science knowledge and skills that the
9 State has determined they need in today’s society, only about 1/2 of 10th graders have the math
10 knowledge and skills that the State has determined they need, only about 16% of our State’s
11 African-American male students have the math knowledge and skills that the State has
12 determined are needed in today’s society, and only about 37% of them have the reading
13 knowledge and skills that the State has determined are needed).

14 Instead, the State’s supplemental briefing makes four types of arguments to try to change
15 the subject.

16 *First*, the State’s supplemental briefing cites “cumulative” pass rates – e.g., asserting the
17 “cumulative” rate for 10th grade math is 74%. (The State’s WASL Report shows the
18 “cumulative” pass rate for all students is actually less than 62%; the “74%” figure comes from a
19 subset of students.⁷)

20 But even using the misleading 74% figure, the State’s failing to provide a 10th grade math
21 education to the remaining 26% of our high school students (instead of 50%) goes to the *extent*
22 of the State’s failure – it does not dispute the *existence* of that failure. Nor does that
23 “cumulative” rate dispute the May 4 Motion’s demonstration of the gross disparity in our State
24 between the education provided to minority students and that provided to others. Nor does that
25 “cumulative” pass rate for 10th grade math even relate to 10th graders – for the “cumulative” rates

26 ⁵ May 4 Motion at 5:6-6:2 & n.13; accord State’s first opposition brief at 7:25-26 & 8:5-6 (admitting the Respondent State adopted the Essential Academic Learning Requirements (EALRs) to establish the basic reading, writing, math, science, etc. skills set forth in §.210).

⁶ May 4 Motion at 15:2-12.

⁷ 8/10 Robb Multi-Year Data Dec. at ¶2 & Exhibit II.

1 cited by the State are for a subset of 11th graders in the Class of 2008.⁸ The 74% “cumulative”
2 math pass rate cited by the State therefore proves nothing more than the State is currently failing
3 to provide at least 26% of our State’s 11th graders with the basic math education that the State
4 has determined all 10th graders need. That confirms – rather than disputes – the State’s
5 education failure.

6 *Second*, the State’s supplemental papers suggest that the State’s current failure should be
7 ignored because its even more dismal failure in prior years suggests things might now finally be
8 getting better. But like the State’s talk of possible benefits from future legislation, this “trending
9 better” argument goes to guessing *how long* the State’s current failure will continue into the
10 future – it does not disprove the current *existence* of that failure. Looking at prior years,
11 moreover, confirms that things are not necessarily even “trending up” or “getting better”.⁹

12 *Third*, the State’s supplemental briefing argues that the education provided by
13 Washington State compares favorably that provided by other States. But Petitioners’ May 4
14 Motion does not ask for a ruling on whether the State of Washington is failing to provide the
15 education required by the Constitutions of other States. That is important because the
16 Respondent State does not dispute that no other State’s Constitution has a stronger education
17 mandate than ours.¹⁰

18 The third issue presented by Petitioners’ May 4 Motion is whether the State of
19 Washington is failing to provide the education mandated by this Court’s legal interpretation of
20 the Washington Constitution – i.e., the “basic education” defined by Tab 2, §.210, and the
21 corresponding EALRs. The only assessment of whether students are learning the substantive
22 content established by Washington law’s definition of basic education is the Respondent State’s
23 WASL assessment – and that assessment establishes (rather than disputes) that the State is
24 currently failing to provide that basic education to our State’s public school students.

25 ⁸ 8/10 Robb Multi-Year Data Dec. at ¶2 & Exhibit II.

26 ⁹ 8/10 Robb Multi-Year Data Dec. at ¶4 & Exhibit KK; accord ¶¶6-8 & Exhibits MM-OO.

¹⁰ Petitioners’ May 4 Motion at 3:11-12 & n.7, 23:2-7.

1 **Fourth**, the State's supplemental brief makes an "output doesn't matter" argument that
2 insists the fact that the State is failing to provide our public school students the basic education
3 established by Tab 2, §.210, and the corresponding EALRs is not relevant to whether or not the
4 State is failing to comply with its Constitutional duty to provide our public school students that
5 basic education.

6 But that argument makes no logical sense. It is akin to a property owner arguing that the
7 fact that he is failing to provide invitees a safe premises is not relevant to whether or not he is
8 failing to comply with his legal duty to provide invitees a safe premises.

9 Nor does that argument have a legitimate legal basis. Article IX, §1 imposes a
10 paramount Constitutional duty upon the State to make ample provision for the education of all
11 children in our State – with that Constitutionally mandated education being the basic education
12 established by Tab 2, §.210, and the corresponding EALRs. Neither the unpublished *Camer* case
13 improperly cited by the State nor the solo concurring opinion by a former Justice in *Tunstall*
14 operate to overrule the Washington Supreme Court's holding in *Seattle School District* that
15 Article IX, §1 requires the State to provide our public school students that basic education.¹¹

16
17 ¹¹ *The State's invocation of the unpublished Camer case is completely improper. Johnson v. Allstate*, 126
18 *Wn.App. 510, 519-20 (2005)* ("We agree that Allstate improperly relied on our unpublished opinion and that the
19 trial court also erred in relying on it"; unpublished opinions are not part of the state common law and "should not
20 be considered by the trial court"); accord *RAP 10.4(h)*. Moreover, the aspect of this unpublished opinion that the
21 State invokes is not even relevant here because it addressed an Article IX claim against a school district (not the
22 State), and the dismissal of that claim of course made sense because, as our Supreme Court confirmed in *Tunstall*,
23 school districts have no Article IX duties. *Tunstall*, 141 *Wn.2d* at 232 & n.24. The Article IX ruling in the published
24 *Camer* decision similarly does not provide legal authority for the State's argument because it concerned the res
25 *judicata* doctrine – not private rights of action. See *Camer v. Seattle School Dist.*, 52 *Wn.App. 531, 535-36 (1988)*.

26 The State's invocation of the solo concurring opinion of a former Justice in *Tunstall* similarly does not provide
legal authority for the State's argument. Indeed, the part of that solo concurrence that the State invokes is the part
that none of the other eight Justices in *Tunstall* joined – namely, that solitary (former) Justice's indication that he
would overrule the holding in *Seattle School District* that Article IX grants every child in our State a fundamental,
judicially enforceable Constitutional right to a basic education. *Tunstall*, 141 *Wn.2d* at 233 & 236 (Talmadge, J.,
concurring) (disparaging this aspect of *Seattle School District* as "loose language", and arguing instead that the
Court should grant complete deference to the legislature). (This extreme (and lone) position is not surprising
considering that Justice Talmadge was a former State legislator, and that during his subsequent service on the
Court he frequently disagreed with the Court's holdings by arguing the Court should grant the legislature more
deference. See, e.g., *PACCAR v. State*, 135 *Wn.2d* 301, 332 (1998) (Talmadge, J., dissenting); *State v. Jackson*, 137
Wn.2d 712, 732 (1999) (Talmadge, J., dissenting); *National Elec. Contractors v. Riveland*, 138 *Wn.2d* 9, 33 (1999)

1 (b) *State's own high school graduation testimony.*

2 The State does not dispute the May 4 Motion's showing that the State's own testimony
3 establishes that about ¼ of all ninth graders in our State fail to graduate from high school with
4 their peers, that the corresponding failure rate for minority students is even worse (about 40% for
5 our black and Hispanic students), that "too many students in our State never obtain a high school
6 diploma", that "thousands" of those who do receive a diploma each year are "not earning a
7 diploma backed by skills they need to succeed", and that the State does not "amply provide for
8 the education of our State's public high school students today". May 4 Motion at 16:7-19 &n.33.

9 Instead, the State's supplemental briefing makes two types of arguments to try to change
10 the subject.

11 *First*, the State suggests that its current high school graduation failure should be ignored
12 because its even more dismal failure in prior years indicates things might now finally be getting
13 better. But such "trending better" arguments do disprove current failure. Moreover, looking at
14 prior years shows things are not necessarily "trending up" or "getting better".¹²

15 *Second*, the State's supplemental papers emphasize that graduation rates are higher than
16 they otherwise could be because the State does not refuse to graduate students who fail the
17 WASL. But that only confirms – rather than disputes – the State's failure to comply with its
18 paramount education duty under Article IX, §1. According to the State's own sworn testimony,
19 the State's WASL assessment measures whether students possess the skills and knowledge in
20 core subjects that all students are expected to master as they move through Washington's public
21 schools. The State's argument that it awards high school diplomas to students even if they do
22 not have those basic skills and knowledge confirms the State's failure to comply with its
23 paramount duty under Article IX, §1 – not its compliance. And that failure is even more

24 (*Talmadge, J., dissenting*); *State v. Cruz*, 139 Wn.2d 186, 194 (1999) (*Talmadge, J., dissenting*); *Wenatchee*
25 *Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 182 (2000) (*Talmadge, J., dissenting*); *Association of Rural*
26 *Residents v. Kitsap County*, 141 Wn.2d 185, 197 (2000) (*Talmadge, J., dissenting*); *Sebastian v. State*, 142 Wn.2d
280, 286 (2000) (*Talmadge, J., dissenting*.)

¹² 8/10 Robb Multi-Year Data Dec. at ¶5 & Exhibit LL.

1 dramatic when one also remembers that these students receiving high school diplomas still
2 cannot pass the 10th grade WASL, and that to pass a student only has to score a 60 or 65.¹³

3 (c) *State's own sworn testimony that our children do not receive the basic education set
4 forth in the 1978 Seattle School District v. State decision.*

5 The State's supplemental papers do not dispute the sworn deposition testimony of the
6 Respondent State's Superintendent of Public Instruction, who candidly admitted that the State is
7 not currently providing all children in our State the basic education specified by our State
8 Supreme Court's *Seattle School District* decision (Tab 2). May 4 Motion at 17:2-19.

9 (d) *State's own admission that its basic education funding does not include basic
10 education prerequisites such as new school or classroom construction.*

11 The State's supplemental papers do not refute that the State's sworn discovery responses
12 show that the State's current provision of basic education under Article IX, §1 categorically
13 excludes at least one significant component necessary to any public school system – namely,
14 new school or classroom construction. May 4 Motion at 17:22-18:7; May 29 Reply at 3:1 & n.3.

15 Instead, the State's supplemental papers invoke a 1995 report noting that in the
16 mid-1990's the State was "involved" in construction funding and calling the State's overall
17 financing system "optimal" because it did not rely entirely on local funding.¹⁴ But that 1995
18 report did not address or even consider our State's Constitutional duty under Article IX, §1. The
19 State's supplemental argument that a 1995 report noted that Washington was at that time
20 "involved" in some school construction does not refute the current fact that the Respondent
21 State's provision of basic education under Article IX, §1 categorically excludes at least one
22 significant component necessary to any public school system – namely, new school or classroom
23 construction.
24

25 ¹³ 8/10 Robb Multi-Year Data Dec. at ¶3 & Exhibit JJ.

26 ¹⁴ 1995 Report at 43 (explaining that an "optimal" finance system shouldn't "leave capital costs, transportation costs, or another type of spending as a totally local responsibility") and at 44 (concluding that Washington at that time met that test because there was State "involvement" in major areas of school spending).

1 (e) *State's most recent education study (the Washington Learns report).*

2 The State's supplemental papers do not refute that the State's November 2006
3 Washington Learns report confirmed that "Washington has a constitutional duty to provide a
4 basic education for all children from kindergarten through twelfth grade", or that the negative
5 findings of that State study further demonstrate the State's current failure to fully comply with
6 that duty. May 4 Motion at 18:20-19:19.

7 (f) *The "yes" or "no" answer to the May 4 Motion's third question.*

8 The May 4 Motion's third issue presents a binary yes-or-no question: As we stand here
9 today, is the State fully complying with its legal duty under Article IX, §1? While the State's
10 supplemental papers assert arguments disputing the extent to which the State is failing to
11 comply, those arguments do not refute the fact that the State's own testimony and documents
12 establish that the current answer to the yes-or-no question at issue is "no".

13 **4. The State still has not refuted that this Court should grant the limited relief requested**
14 **in Petitioners' May 4 Motion [Proposed Order ¶5].**

15 The fourth issue presented by Petitioners' May 4 Motion concerns the relief this Court
16 should grant to enforce its legal interpretation of Article IX, §1 and the State's current lack of
17 compliance with that interpretation. Petitioners' Motion at 9, issue #4. As this Court knows, the
18 specifically tailored relief Petitioners request is simply an enforcement Order requiring the
19 Respondent State to take two initial steps towards curing its current lack of full compliance with
20 its paramount duty under Article IX, §1 – i.e., (1) determine the actual dollar cost of complying
21 with this Court's legal interpretation of Article IX, §1, and (2) determine how the State will fully
22 fund that actual cost with stable and dependable sources as required by the *Seattle School*
23 *District* decision.

24 The State's supplemental brief makes three basic arguments against the propriety of
25 issuing such an enforcement Order.
26

1 *First*, the State's supplemental brief asserts that this Court cannot grant any relief because
2 Washington law reserves responsibility for compliance with Article IX, §1 solely to the
3 legislature.

4 But the State provides no legal authority for that assertion. That is because the our State
5 Supreme Court has already ruled to the contrary, holding that Article IX, §1 "imposes a
6 judicially enforceable affirmative duty" on the Respondent State. Petitioners' May 4 Motion
7 at 20:15-23:19. Article IX, §1 establishes a "paramount duty" – not an "unenforceable
8 suggestion".

9 *Second*, the State's supplemental brief argues that the first step requested by Petitioners'
10 proposed enforcement remedy – requiring the State to start its compliance with this Court's legal
11 interpretation of Article IX, §1 by determining the actual dollar cost of that compliance – is "bad
12 science" because the "undisputed"¹⁵ testimony in Mr. Hanushek's declaration is that spending
13 more money doesn't matter. What Mr. Hanushek's testimony really goes to is the idea that
14 simply throwing money at a problem is not a cure, and that money foolishly spent does not
15 matter.¹⁶ That notion does not negate the reasonableness of the first step of this Court's
16 enforcement Order being to require the State to determine the actual cost (presumably with
17 dollars wisely spent) of providing all children in our State the basic education established by this
18 Court's legal interpretation of Article IX, §1.

19 *Third*, the State's supplemental brief suggests that requiring the State to determine the
20 actual dollar cost of complying with this Court's legal interpretation of Article IX, §1 is
21

22
23 ¹⁵ Although irrelevant to the pending May 4 Motion, Petitioners note that the State's implication that
24 compliance with Article IX, §1 will not cost any more money is disputed by the in-depth cost analysis conducted by
25 the State as part of its 18-month Washington Learns study, which determined that compliance with Article IX, §1
26 will require "significantly more state funding." May 4 Motion at 7:3-10 & n.18.

¹⁶ As noted in the Montoy decision previously submitted by Petitioners in this case, Mr. Hanushek's fuller
opinion under oath is that "Only a fool would say money doesn't matter", and his real conclusion is that "money,
foolishly spent" won't help. Montoy v. State of Kansas, Findings And Conclusions Of Fact & Law ¶80 (Kansas
State Dist. Court, Div. 6, Dec. 2, 2003), submitted as Exhibit T to the 5/29 Robb Reply Dec

1 inappropriate because Petitioners “concede” that funding is irrelevant. But that misstates
2 Petitioners’ position.

3 Plaintiffs in other States have employed the following “inadequate funding” approach to
4 prove the defendant State’s violation its State Constitution: (1) it would cost x dollars to
5 adequately fund the education required by the defendant State’s Constitution, and (2) the fact
6 that the defendant State funds less than x dollars proves the State is not providing students the
7 education required by that State’s Constitution.

8 Petitioners’ May 4 Motion employs a different approach to establish the Respondent
9 State’s violation: (1) the *Seattle School District* ruling at Tab 2, §.210, and the corresponding
10 EALRs define the basic education that Article IX, §1 requires the State to provide all children in
11 our State, and (2) the Respondent State’s own testing and testimony prove that the State is not
12 currently providing that basic education to all children in our State.

13 The fact that the Petitioners’ May 4 Motion did not employ the “inadequate funding”
14 approach to show the State’s violation of Article IX, §1 does not mean Petitioners “concede” that
15 the State can proceed to effectively cure that violation without first determining the actual dollar
16 cost of complying with this Court’s legal interpretation of the State’s education duty under
17 Article IX, §1. Indeed, this first step of the relief requested by Petitioners’ May 4 Motion is the
18 same first step ordered in the New York case that the State’s prior opposition brief cited to this
19 Court.¹⁷ And Petitioners’ request that the State be ordered to determine the actual dollar cost of
20 compliance and how that cost will be funded is a much more limited enforcement approach than
21 that taken in other States where the court has determined that cost of compliance and ordered the
22 legislature to fund that amount. See Petitioners’ May 4 Motion at 21:9-14 & nn.41-42.

23
24
25
26 ¹⁷ *Campaign for Fiscal Equity v. New York*, 8 N.Y.3d 14, 21 (N.Y. 2006) (“we instructed the State to ascertain the actual cost of providing a sound basic education”).

1 **III. CONCLUSION**

2 It is this Court's duty to protect the paramount Constitutional right granted to the children
3 of our State by Article IX, §1. The State's supplemental brief and over 200 pages of
4 supplemental papers do not refute the Petitioners' entitlement to judgment on the four issues
5 presented in the pending May 4 Motion. This Court should issue the rulings requested in that
6 May 4 Motion to make the State's paramount legal obligation under Article IX, §1 perfectly
7 clear, and issue the narrowly tailored enforcement Order requested in that Motion to require the
8 State to take the first (and long overdue) steps towards bringing its 29 years of foot dragging and
9 excuses to an end.

10 **RESPECTFULLY SUBMITTED** this 10th day of August, 2007.

11 **FOSTER PEPPER PLLC**

12 

13 Thomas F. Ahearne, WSBA No. 14844
14 Ramsey Ramerman, WSBA No. 30423
15 Edmund W. Robb, WSBA No 35948
16 Attorneys for Petitioners

1

Article IX, section 1

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

TAB I

2

unfit for office." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 19 (1824). The Constitution is "intended to endure for the ages to come, and consequently, to be adapted to the various crises of human affairs." *Cullom v. Maryland*, 17 U.S. (4 Wheat.) 316, 416, 418, 575 (1819). In short, the Constitution was not intended to be a static document incapable of coping with changing times. It was meant to be, and is, a living document with current effectivity. As so well stated by Mr. Justice Holmes in *Sourin v. Holland*, 255 U.S. 416, 433, 434 (1921), 38 S.Ct. 388, 40 A.L.R. 98 (1920):

"When we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into being a being that develops out of which cannot have been foreseen or completed by the most gifted of its beggars. It was enough for them to realize that to hope that they had created such a mechanism; it has taken a century and has cost the sweat and blood of many to prove that they had created a nation. The case before us must be considered in the light of our noble experiment and not merely in that of

[13] Consequently, the State's constitutional duty goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the marketplace of ideas. *Robinson v. Cahill*, 62 N.J. 473, 515, 303 A.2d 273 (1973); see also *Keyishian v. Board of Regents*, 385 U.S. 589, 603, 17 L. Ed. 2d 629, 87 S.Ct. 675 (1967). Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to ensure that system's survival. See *Wisconsin v. Yoder*, 406 U.S. 205, 221, 32 L. Ed. 2d 15, 92 S.Ct. 1526 (1972). It must prepare them to exercise their First Amendment freedoms both as sources and receivers of information; and, it must prepare them to be able to inquire, to study, to evaluate and to gain

TAB 2

maturity and understanding. The constitutional right to have the State "make ample provision for the education of all [resident] children" would be hollow indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the marketplace of ideas.

and judgment as to express their same broad educational concepts in terms of constitutional rights. The judicial court did not, nor do we, deal with the above mentioned educational concepts as fully derivative of the State's paramount duty. Rather, we hold that they constitute broad guidelines and that the effective teaching and opportunities to learn these essential skills make up a minimum of the education that is constitutionally required.

We hold further that the mandate of Const. art. 9, § 1 is addressed to the State and requires, as a first priority, full sufficient funds for the general and uniform system of public schools" which the Legislature is obligated to establish pursuant to Const. art. 9, § 2. Through this system our children will receive their constitutionally guaranteed education.

B. Legislative implementation of the State's mandatory duty. Although the mandatory duty of Const. art. 9, § 1 is imposed upon the State, the organization of administration, and operational details of the "general and uniform system" required by Const. art. 9, § 2 are the province of the Legislature. In the latter area the judiciary is primarily concerned with whether the Legislature acts pursuant to the mandate of having acted, whether it has done so constitutionally. Within the parameters, therefore, the system devised to obtain the domain of the Legislature.

[14] While the judiciary has the duty to construe and protect the words of the Constitution by providing broad constitutional guidelines, the Legislature is obligated to give spe-

EXHIBIT
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2-167 Bingham

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CASE NUMBER: 07-2-02323-2 SEA

CLERK'S MINUTES

SCOMIS CODE: SMJHRG

Judge: Paris K. Kallas
Bailiff: John Rodenberg
Clerk: Barbara Winter
Reporter: Not Reported

Dept. 35
Date: 8/24/2007

Page 1 of 1

KING COUNTY CAUSE NO.: 07-2-02323-2 SEA

Matthew & Stephanie McCleary vs State of Washington

Appearances:

Petitioners Matthew & Stephanie McCleary present, represented by counsel Tom Ahearne and Edmund Robb
Respondent represented by counsel Bill Clarke and Dave Stolier

MINUTE ENTRY

This cause comes on for Petitioner's motion for summary judgment:
Court denies prior motion to strike
Court hears argument

Court denies the motion for summary judgment

Order signed

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KING COUNTY WASHINGTON

AUG 24 2007

SUPERIOR COURT CLERK
BARBARA WINTER
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own behalf 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.

Honorable Paris K. Kallas

Hearing Date:

9:00 a.m., August 24, 2007

No. 07-2-02323-2 SEA

(PKK)
~~PROPOSED~~ DENYING *wgc* *VPK*
ORDER GRANTING SUMMARY
JUDGMENT CONCERNING
LEGAL INTERPRETATION

Clerk's Action Required

THIS MATTER came before this Court on Petitioners' Motion For Summary Judgment Concerning Legal Interpretation, which was fully briefed by the parties and then argued on Friday, August 24, 2007. This Court has considered the pleadings and files in this case, including:

1. The Petitioners' Motion For Summary Judgment Concerning Legal Interpretation;
2. The May 4, 2007 Declaration Of Ramsey Ramerman Authenticating Documents and exhibits thereto;

ORDER GRANTING SUMMARY JUDGMENT CONCERNING LEGAL
INTERPRETATION - 1

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1 3. The May 4, 2007 Declaration Of Edmund Robb Authenticating State's Cost
2 Calculation Discovery Responses and exhibits thereto;

3 4. Errata Sheet to the Declaration of Edmund Robb Authenticating State's Cost
4 Calculation Discovery Responses;

5 5. The Respondent's Opposition To Motion For Summary Judgment On Liability
6 And Remedy (Corrected);

7 6. The Respondent's Opposition To Motion For Summary Judgment On Liability
8 And Remedy—Errata Page on Corrected Opposition Brief;

9 7. The Declaration of William G. Clark In Opposition to Summary Judgment;

10 8. The Supplemental Declaration of William G. Clark In Opposition to Summary
11 Judgment Motion On CR 56(f) Grounds;

12 9. The Declaration of Julie Salvi In Opposition To Motion For Summary Judgment;

13 10. The Declaration of Eric A. Hanushek In Opposition To Motion For Summary
14 Judgment;

15 11. The Short Reply In Support Of Motion For Summary Judgment Concerning
16 Legal Interpretation;

17 12. The Reply Declaration Of Edmund Robb Regarding Documents To Which The
18 State Has Objected;

19 13. The Declaration Submitting All Excerpts From Bergeson Deposition Relied On
20 By Any Party;

21 14. The Reply Declaration Of Alice M. Ostdiek Authenticating Documents In Reply
22 To State's Opposition;

23 15. Respondent's Supplemental Opposition to Motion for Summary Judgment on
24 Liability & Remedy;

25 16. Third Declaration of William G. Clark in Opposition to Motion for Summary
26 Judgment;

ORDER GRANTING SUMMARY JUDGMENT CONCERNING LEGAL
INTERPRETATION - 2

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SEATTLE, WASHINGTON 98101-3299 ♦ 206-447-4400

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- 1 17. Supplemental Declaration of Julie Salvi in Opposition to Motion for Summary
2 Judgment;
3 18. Declaration of Joseph Willhoft in Opposition to Motion for Summary Judgment;
4 19. Petitioners' Closing Brief;
5 20. Supplemental Declaration of Edmund W. Robb Authenticating Multi-Year State
6 Data; and
7 21. August 24, 2007 Hearing Documents.

8 Having reviewed the materials submitted by the parties; having heard from the parties,
9 and the Court being fully informed,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 11 1. Petitioners' Motion For Summary Judgment Concerning Legal Interpretation is

12 ~~GRANTED.~~ DENIED.

TFJ
WJR

- 13 ~~2. The words "paramount", "ample", and "all" in Article IX, §1 of the Washington
14 State Constitution have their common English meaning.~~

15 (a) Given the plain English meaning of the word "paramount", Article IX, §1
16 requires the Respondent State to make ample provision for the education of all
17 Washington children its first and highest priority above all other programs and
18 operations.

19 (b) Given the plain English meaning of the word "ample", Article IX, §1
20 requires the amount of the Respondent State's funding to be more than merely
21 adequate or sufficient to provide for the education of all Washington's children.
22 Article IX, §1 requires the Respondent State's funding amount to be ample
23 without needing supplementation or backfilling by local levies, PTA fundraisers,
24 participation fees, private donations, or other non-State funds.

TFJ
WJR

25 (c) Given the plain English meaning of the word "all", Article IX, §1
26 requires the Respondent State's above education funding to amply provide for

1 the education of every child residing within our State's borders - not just the
2 convenient, popular, or advantaged subsets of our State's children.

3 3. The basic "education" mandated by Article IX, §1 is currently defined by the
4 substantive content specified in the four numbered provisions of §.210 of the
5 Basic Education Act (RCW 28A.150.210) and the State's corresponding
6 Essential Academic Learning Requirements. TFA
WJC

7 4. The Respondent State is not currently complying with its Constitutional duty
8 under the above legal interpretation of Article IX, §1 of the Washington State
9 Constitution.

10 5. To halt that lack of compliance, the Respondent State must promptly determine
11 (1) the actual dollar cost of providing all children residing in our State with the
12 education mandated by this Court's legal interpretation of Article IX, §1, and
13 (2) how the State will fully fund that actual cost with stable and dependable State
14 sources. The Respondent State must make those two determinations within one
15 year of this Order's entry.

16 * DONE IN OPEN COURT this 24 day of August, 2007.

18 *Paris K. Kallas*

19 The Honorable Paris K. Kallas
20 Washington Superior Court Judge

21 Presented by:
22 FOSTER PEPPER PLLC

23 

24 Thomas F. Ahearne, WSBA No. 14844
25 Ramsey Ramerman, WSBA No. 30423
26 Alice M. Ostdiek, WSBA No. 31490
Edmund W. Robb, WSBA No 35948
Attorneys for the Petitioners

* 2. State's motion to strike
the newspaper articles
is granted.
3. Petitioners' motion to
strike the legal
conclusions in the
State witnesses'
declarations is granted.
4. All other motions to
strike are denied.

TFA
WJC

ORDER GRANTING SUMMARY JUDGMENT CONCERNING LEGAL
INTERPRETATION - 4

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SEATTLE, WASHINGTON 98101-3299 ♦ 206-447-4400

1 Approved as to form and for entry;
Notice of presentation waived:
2 OFFICE OF THE WASHINGTON ATTORNEY GENERAL
ROBERT M. MCKENNA

3 

4 _____
William G. Clark, WSBA No. 9234
5 David S. Stoler, WSBA No. 24071
Jon P. Ferguson, WSBA No. 5619
6 Dierk Meierbachtol, WSBA No. 31010
Attorneys for the Respondent State
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ORDER GRANTING SUMMARY JUDGMENT CONCERNING LEGAL
INTERPRETATION - 5

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7 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

8 MATHW & STEPHANIE MCCLEARY, on their own
9 behalf and on behalf of KELSEY & CARTER
10 MCCLEARY; ROBERT & PATTY VENEMA, on their own
11 behalf and on behalf of HALIE & ROBBIE VENEMA;
12 and NETWORK FOR EXCELLENCE IN WASHINGTON
13 SCHOOLS ("NEWS"),
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Petitioners,
v.
STATE OF WASHINGTON,
Respondent.

Honorable Paris K. Kallas

Hearing Date:

No. 07-2-02323-2 SEA

MOTION FOR
RECONSIDERATION RE:
LEGAL ISSUE NUMBER 2

MOTION FOR RECONSIDERATION RE: LEGAL ISSUE #2

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ORIGINAL

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1 **I. RELIEF REQUESTED**

2 Petitioners respectfully request that this Court reconsider its August 24 decision to not
3 grant either party judgment on the second issue raised by Petitioners' summary judgment motion
4 – i.e., the issue of whether RCW 29A.150.210 should be interpreted to define the substantive
5 content of “basic education” in our State.

6 **II. BACKGROUND FACTS**

7 The background underlying this motion consists of five simple points:

- 8 • The Washington Supreme Court ruled in 1978 that “The Legislature has
9 the duty to define ‘basic education’”. *Seattle School District v. State*, 90
10 Wn.2d at 484.¹
- 11 • Petitioners’ interpret the four numbered provisions of RCW 28A.150.210
12 to provide that legislative definition.²
- 13 • The State interprets the basic program of education provided by
14 RCW 28A.150.220 *et seq.* to be the equivalent of that legislative
15 definition.³
- 16 • The parties’ briefing does not dispute that this statutory interpretation
17 issue is a pure issue of law for the Court do decide.
- 18 • This Court’s August 24 summary judgment ruling declined to rule in this
19 statutory interpretation issue.⁴

20 **III. ISSUE PRESENTED**

21 Should this Court reconsider its August 24 decision to not grant either party judgment on
22 the second issue raised by Pctitioners’ summary judgment motion (i.e., the issue of whether
23

24 ¹ See generally discussion at Petitioners’ May 4 Motion at 4:10-6:12.

25 ² The Petitioners’ interpretation of RCW 28A.150.210 (H.B. 1209) is summarized in its
26 August 10 Closing Brief at 2:3-4:7. Pursuant to that statute the State then adopted the
corresponding eight Essential Learning Requirements (EALRs) to further establish the skills and
knowledge that the State expects all Washington students to master. May 4 Motion at 5:6-6:2 &
n.13, also at 13:18-24; accord State’s Opposition Brief at 7:25-26 & 8:5-6 (admitting the
Respondent State adopted the Essential Academic Learning Requirements (EALRs) to establish
the basic reading, writing, math, science, etc. skills set forth in RCW 28A.150.210); accord
State’s August 3 Supplemental Opposition Brief at 7:22-8:2 (admitting that “The EALRs for
reading, writing, math and science were all developed to carry out the four goals in the 1993
HB 1209 [RCW 28A.150.210]”).

³ The State’s interpretation arguments are briefed at State’s May 21 Opposition Brief and
August 3 Supplemental Opposition Brief.

⁴ Petitioners’ May 4 Motion at 14:8-9 & n.27, Petitioners’ August 10 Closing Brief at 2:8-9.

1 RCW 29A.150.210 should be interpreted to define the substantive content of basic education in
2 our State)?

3 **IV. EVIDENCE RELIED UPON**

4 Petitioners rely upon this motion and the records and files in this case.

5 **V. LEGAL DISCUSSION**

6 Civil Rule 56 provides in part that “The judgment sought shall be rendered forthwith if
7 the pleadings, depositions, answers to interrogatories, and admissions on file, together with the
8 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving
9 party is entitled to a judgment as a matter of law.” CR 56(c). This rule applies to the second
10 issue raised by Petitioners’ May 4 Motion because, as noted earlier, the parties’ summary
11 judgment briefing acknowledges that it presents a statutory interpretation issue as to which one
12 party (or the other) is entitled to judgment as a matter of law.

13 Civil Rule 59 further provides that this Court has discretion to reconsider a decision if it
14 determines that “substantial justice has not been done”. CR 59(a)(9). This rule applies to this
15 Court’s decision to not rule on the statutory interpretation issue presented by the parties because,
16 as outlined below, resolving that legal issue will significantly effect the scope, direction, and
17 expense of discovery and trial in this case, as well as the State’s impending Washington
18 Learns II study.

19 **A. If The State’s Interpretation Is Correct, Substantial Justice Calls For This Court To**
20 **Say So Now Because The State’s Interpretation Could Make A Trial Unnecessary.**

21 The fundamental issue in this case is whether the State is complying with its “basic
22 education” obligation under Washington law. And as noted earlier, the Petitioners interpret the
23 four numbered provisions of RCW 28A.150.210 to provide the current legislative definition of
24 “basic education” in Washington.

1 The Respondent State flatly disagrees: "Contrary to Petitioners' contention, that statute
2 [RCW 28A.150.210] does not define the content of basic education."⁵ As noted earlier, the State
3 instead interprets the basic program of education established by RCW 28A.150.220 *et seq.* to be
4 the equivalent of that legislative definition.

5 If the State's legal interpretation is correct, then a trial in this case may be completely
6 unnecessary – for the State insists that its enactment and funding of that program is accordingly
7 all that Washington law requires.⁶

8 Petitioners do not agree with the State's interpretation. But they do agree that if the
9 State's interpretation is correct, substantial justice is best served by this Court issuing that legal
10 interpretation ruling now instead of burdening the parties and this Court with preparing for a trial
11 that (under the State's reasoning) is completely unnecessary as a matter of law.

12 **B. Substantial Justice Calls For This Court To Tell The Parties The Legal**
13 **Interpretation That Will Govern This Case Before They Embark On Long And**
14 **Expensive Discovery Into Whether The State Is Satisfying Its "Basic Education"**
15 **Obligation.**

16 The current uncertainty over what definition of "basic education" will be applied in this
17 case also unnecessarily increases the burden and expense of the upcoming discovery phase.

18 The parties agree that discovery in an education suit such as this can be far-ranging and
19 expensive. For example, the State has budgeted approximately \$1 million this year alone to pay
20 for school funding litigation,⁷ and its briefing in this case has argued that discovery will be
21 "cumbersome" and require "Third-party discovery across Washington and in other states".⁸ The

22 ⁵ Respondent's Opposition at 17:23–24 (*emphasis added*).

23 ⁶ Respondent's Opposition at 19:3–5 ("The Basic Education Act itself declares that
24 implementation of its statutory program and funding of the costs of basic education is 'full
25 funding'. RCW 28A.150.250.").

26 ⁷ 5/29 Osdiek Reply Dec. at Ex. GG (\$992,000 for current fiscal year)

⁸ Respondent's Opposition To Motion For Summary Judgment On Liability And Remedy at
13:15 – 17.

1 Petitioners have similarly acknowledged that the type of discovery sought by the State “will open
2 up a consuming can of litigation worms” of expert discovery and intensive studies.⁹

3 Recent education cases in other States confirm this expensive fact. For example, even
4 though the education litigation in Nebraska is “in its infancy”, the plaintiffs in that case have
5 already identified eleven expert witnesses and more than 130 fact witnesses.¹⁰ As another
6 example, the recent education funding trial in Missouri involved a “host of education finance
7 experts”, cost more than \$2.9 million in legal fees, and lasted more than two months.¹¹ And as
8 the Court itself noted during the August 24 hearing in this case, the trial in the *Seattle School*
9 *District* litigation lasted more than two months.

10 The above expense will only be greater, and the discovery more sweeping and unfocused,
11 if the parties do not know the legal interpretation of “basic education” that this Court will be
12 applying in this case. Substantial justice is therefore best served if this Court rules on this legal
13 interpretation issue before the parties undertake discovery on this case’s fundamental issue of
14 whether the State is satisfying its “basic education” obligation as defined under Washington law.

15 **C. Substantial Justice Calls For The Court To Establish The Legal Interpretation That**
16 **Will Govern This Case At The Outset In Order To Avoid The Ping-Pong Litigation**
Exercise Experienced In Other States.

17 The experience of other States confirms that the courts’ failure to establish the underlying
18 legal standard that will apply before the trial at hand runs a significant risk of unnecessarily
19 wasting the time and resources of the parties and judicial system – and needlessly delaying
20 resolution for the children whose education is ultimately at stake in such litigation.

21 For example, the trial court in Massachusetts issued a “thoughtful and comprehensive”
22 318-page decision after considering the testimony of 114 witnesses and over 1000 exhibits in a
23 six-month trial – but its decision was ultimately reversed because the proceedings were

24 ⁹ *Motion for a Protective Order at 7:1 – 5.*

25 ¹⁰ *Certificate of Compliance Concerning Discovery Conferences at ¶4 and Ex. 1.*

26 ¹¹ *Certificate of Compliance at ¶4 and Ex. 2.*

1 conducted under the wrong legal standard. *Hancock v. Comm'r of Educ.*, 822 N.E.2d 1134,
2 1145–1153 (Mass. 2005). Similarly, the judicial referees in New York issued a 57-page decision
3 after a several month long proceeding that New York’s highest court said “commands our
4 attention as well as our respect” – but that decision too was overturned because the lengthy lower
5 court proceedings were not conducted on the correct legal footing. *Campaign for Fiscal Equity,*
6 *Inc. v. State*, 861 N.E.2d 50, 57 (N.Y. 2006) The trial court in Minnesota issued a written
7 decision after a 67-day trial – but was ultimately overturned because the evidence was viewed
8 under the wrong legal standard. *Skeen v. State*, 505 N.W.2d 299, 301, 310-12 (Minn. 1993).
9 And the lack of an initial legal standard ruling in New Jersey (see *Abbott v. Burke*, 495 A.2d 376,
10 393 (1985), has effectively resulted in the *Abbott* case ping-ponging between the trial court, the
11 State Supreme Court, and the legislature for more than 30 years. See *Abbott v. Burke*, -- A.2d --,
12 2007 WL 1518909 (N.J. 2007) (“Abbott XIV” compliance proceeding).

13 In short, substantial justice is best served if the definition of “basic education” that will
14 apply in this case is established before the parties undertake lengthy discovery and trial over
15 whether or not the State is satisfying that “basic education” obligation as defined under
16 Washington law. (The issuance of such a ruling would also allow the parties to confirm the
17 correctness of that ruling by seeking interlocutory appeal if appropriate.)

18 **D. Substantial Justice Calls For This Court To Establish The Legal Interpretation Of**
19 **“Basic Education” Before Washington Learns II Undertakes Its Impending Study**
Of Financing For The Basic Education Required By Washington Law.

20 As the Respondent State noted in the underlying summary judgment proceedings, the
21 State is about to commence a Washington Learns II study under Engrossed Second Substitute
22 Senate Bill 5627 (“Senate Bill 5627”), which promises to “make provision for some significant
23 steps towards a new basic education funding system”. Senate Bill 5627, Section 1. Much like
24 the prior Washington Learns I bill, Senate Bill 5627 creates a task force to study the current
25 education system and make recommendations for future changes. *Id.* That task force’s first
26 responsibility is to “review the definition of basic education and all current basic education

1 funding formulas". Senate Bill 5627, Section 2. This task force must then report its
2 recommendations on funding basic education to the legislature by September 15, 2008.¹²

3 But this new Washington Learns II endeavor – along with its studies and resulting report
4 – will be of doubtful relevance unless it uses the same “basic education” definition that this
5 Court eventually holds is the proper interpretation under Washington law.

6 By delaying its ruling on the statutory interpretation issue at hand, this Court is missing a
7 significant opportunity to ensure that the “basic education” studied by the State’s latest education
8 task force is the same “basic education” that is defined under Washington law. There can be no
9 dispute that taxpayer funds for the State’s upcoming education study would be better directed if
10 this Court rules on this fundamental “basic education” definition issue before the State’s
11 Washington Learns II study begins. Substantial justice accordingly calls for this Court to
12 establish the legal interpretation of “basic education” before the Washington Learns II study
13 financing that basic education proceeds.

14 VI. CONCLUSION

15 The parties, this Court, our State’s taxpayers, and the students whose education is
16 ultimately at stake in this suit are all better served if this Court rules on the parties’ dispute over
17 the legal interpretation of “basic education” under Washington law now rather than later. That
18 issue is a pure issue of statutory interpretation to which one side or the other is entitled to a
19 judgment as a matter of Washington law. The Petitioners therefore respectfully request that this
20 Court enter judgment for either the State or the Petitioners on this fundamental legal issue that
21 has been fully briefed and argued by the parties. Petitioners respectfully request the Court to
22 reconsider its August 24 decision and rule on this question of statutory interpretation that has
23 been presented.

24
25
26 ¹² Respondent’s Supplemental Opposition To Motion For Summary Judgment On Liability And
Remedy at 8:22 – 23.

1 RESPECTFULLY SUBMITTED this 4th day of September, 2007.

2 FOSTER PEPPER PLLC

3 

4 Thomas F. Ahearne, WSBA No. 14844
5 Edmund W. Robb, WSBA No. 35948
6 Attorneys for Petitioners

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MOTION FOR RECONSIDERATION RE: LEGAL ISSUE #2 - 7

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THE HONORABLE PARIS K. KALLAS

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 OPPOSITION TO
MOTION FOR RECONSIDERATION
OF RULING RE: RCW 28A.150.210

I. INTRODUCTION

On August 24, 2007, the Court denied Petitioners' Motion for Summary Judgment regarding all liability and remedy issues in the case. One of the rulings the Court rejected was a declaration that RCW 28A.150.210 was passed in order to "define" the substantive content of a basic education. With such a declaration in hand, Petitioners hoped to convince the Court

1 that Article IX of the state constitution required the State to ensure successful educational
2 outcomes for all Washington students without regard to the adequacy or inadequacy of
3 education funding. In opposition, the State urged the Court to rule instead, as a matter of law,
4 that a claim for alleged breaches of the Article IX duty had to be tied to proof of
5 constitutionally inadequate funding and that the State had no Article IX duty to ensure
6 successful outcomes regardless of the adequacy of funds provided.¹ The Court declined to
7 issue either ruling.

8 Now Petitioners move the Court to reconsider its denial of summary judgment on this
9 issue of the interpretation and construction of RCW 28A.150.210. No new or different
10 grounds are urged. Petitioners merely incorporate by reference arguments on the merits that
11 were previously rejected by the Court. They then contend that issuance of one of the
12 previously denied rulings will eliminate trial altogether (if the Court adopts the State's
13 requested ruling) or will promote judicial economy. Finally, they contend that the ruling they
14 have requested will provide marching orders to the legislature as it continues to exercise its
15 constitutional prerogative to reform education.

16 The Court should deny the Motion. First, Petitioners fail to satisfy the legal standards
17 that govern motions under CR 59 and CR 56. Second, the Court correctly concluded that
18 issues of fact and law required rejection of Petitioners' requested ruling. Finally,
19 unsubstantiated allegations that judicial economy and expediency will result if the Court
20 issues either Petitioners' or Respondents' requested ruling do not constitute a valid basis for
21 awarding either party summary judgment or for issuing marching orders to the Legislature as
22 to how to fulfill its duty to reform education. To the contrary, given the substantial increase in
23 funding for education--\$1.8 billion more in the 2007 legislative session alone—and
24 Washington Learns' emphasis on educational reform that promotes better student
25

26 ¹ In fact, the State's expert, Dr. Hanushek, has provided this Court with undisputed testimony that there is no connection between poor student achievement and alleged underfunding.

1 achievement through accountability, the Court should continue to resist Petitioners' demand
2 for judicial intervention in ongoing legislative reform.

3 **II. ARGUMENT**

4 Petitioners' Motion for Reconsideration is deficient under the Civil Rules and is based
5 entirely on previously rejected arguments and new arguments that are irrelevant to the grant or
6 denial of summary judgment. Moreover, it is an improper attempt to meddle with the
7 Legislature's ongoing education reform efforts.

8 **A. Petitioners' Motion Fails to Satisfy the Legal Requirements for Reconsideration
9 and Summary Judgment.**

10 The legal basis for Petitioners' Motion is CR 59(a)(9). Under that rule, the "party
11 aggrieved" must show injury "materially affecting [their] substantial rights" because
12 "substantial justice has not been done." Of the nine grounds allowed for reconsideration
13 motions, CR 59(a)(9) is a final "catch all" category. In Washington, granting reconsideration
14 for "lack of substantial justice" should be relatively rare. *See Knecht v. Marzano*, 65 Wn.2d
15 290, 297, 396 P.2d 782 (1964).

16 CR 59 Motions are addressed to the trial court's discretion. *Lilly v. Lynch*, 88 Wn.
17 App. 306, 321, 945 P.2d 727 (1997). Denial of such a motion is an abuse of discretion only
18 where the decision rests on untenable grounds or reasons. *Kleyer v. Harborview Medical
19 Center*, 76 Wn. App. 542, 545, 887 P.2d 468 (1995). Motions for reconsideration do not
20 provide litigants with the opportunity for a "second bite at the apple"; courts will not permit
21 parties to merely reargue issues already addressed. *See Anderson v. Farmer's Ins. Co. of
22 Washington*, 83 Wn. App. 725, 923 P.2d 713 (1996), *as cited in* 15A Teglund & Ende, *Wash.
23 Handbook on Civil Procedure* § 65.1, at 488 (2007). (Copy attached as Attachment A). Nor
24 does CR 59 permit reconsideration based upon new arguments that could have been made
25 earlier. *E.g., Eugster v. City of Spokane*, 121 Wn. App. 799, 811, 91 P.3d 117 (2004) and
26

1 *Sterling Savings Ass'n v. Ryan*, 751 F. Supp. 871 (E.D. Wash.1990), *vacated on other*
2 *grounds*, 959 F.2d 241 (9th Cir. 1992).

3 Though the federal rule is different, motions for reconsideration under Fed. R. Civ. P.
4 59 are governed by the same principles:

5 Motions for “reconsideration” will not [be] granted absent “highly
6 unusual circumstances”—they do not provide litigants an opportunity for a
7 “second bite at the apple” or allow them, like Emperor Nero, to “fiddle as
8 Rome burns”, or license a litigation “game of hopscotch”, allowing parties to
9 switch from one legal theory to a new one “like a bee in search of honey”.
Such motions are not vehicles for relitigating old issues. Courts properly
decline to consider new arguments or new evidence on reconsideration where
those arguments or evidence were available earlier.

10 (Citations omitted). Baicker-McKee-Janssen & Corr, *Federal Civil Rules Handbook*, at 962
11 (2006). (Copy attached as Attachment B). Indeed, as one of the numerous court decisions in
12 this portion of the *Handbook* noted in denying reconsideration of a summary judgment order:
13 Mere disagreement with the Court’s ruling on summary judgment does not support a Rule 59
14 motion. *U.S. ex rel. Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir.
15 2002). Thus, neither the recapitulated arguments previously rejected by this Court nor the
16 additional arguments raised for the first time in the Motion for Reconsideration satisfy
17 CR 59’s requirement.

18 Petitioners’ Motion also fails under standards governing summary judgment motions.
19 Petitioners are telling the Court that it must pick either of the two rulings proposed by the
20 parties as the law of the case regarding the interpretation and construction of
21 RCW 28A.150.210. This is incorrect. Both parties, in effect, cross-moved for summary
22 judgment on this issue. However, even if the parties agree that there are no factual issues, the
23 parties can never force the Court to award summary judgment. “The fact that both parties
24 simultaneously are arguing that there is no genuine issue of fact...does not establish that a
25 trial is unnecessary thereby empowering the court to enter judgment as it sees fit.” Wright,
26 Miller & Kane, *Federal Practice* § 2720 (3d. Ed. 1998). *See also United States v. Fred A.*

1 *Arnold, Inc.*, 573 F2d 605 (9th Cir. 1978) (The filing of cross-motions, both parties asserting
2 there are no issues of material fact, does not vitiate court's responsibility to determine whether
3 issues of fact preclude summary judgment).

4 Indeed, when the facts are undisputed, but reasonable minds can draw different
5 conclusions from them, summary judgment must be denied. *Fleming v. Stoddard Wendle*
6 *Motor Co.*, 70 Wn.2d 465, 467, 423 P.2d 926 (1967); *Money Savers Pharm. V. Koffler Stores*,
7 73 Wn. App. 602, 608, 682 P.2d 960 (1984). Differing factual conclusions about the intent
8 and meaning of this statute preclude summary judgment.

9 Petitioners try to avoid this result by arguing the construction of a statute is a legal
10 issue. However, as noted below, there are disputed fact issues about the meaning of, and
11 intent behind, the statute that are not resolvable on summary judgment.

12 **B. Issues of Fact About the Meaning and Legislative Intent of RCW 28A.150.210**
13 **Preclude Summary Judgment for Petitioners.**

14 The Court correctly ruled that it could not grant Petitioners the ruling they requested
15 concerning RCW 28A.150.210. That ruling should stand because Pctitioners raise no new
16 arguments about the statute, its language or the intent behind the statute, or of its application,
17 if any, to the State's duty under Article IX.² Petitioners' contention that this statute was a 15-
18 year delayed response to *Seattle Sch. Dist. No 1 v. State* is contradicted by the fact that the
19 statute amended a prior statement of statutory "goals" that had existed since the passage of the
20 Basic Education Act of 1977. Nothing in the statute or its legislative history suggests that it
21 "defines" or is "the substantive content" of basic education. See Salvi and Wilhoft Decls.

22 That the statute somehow "defines" basic education is flatly contradicted by the
23 statute's language. RCW 28A.150.210 expressly provides that it is a statement of "goals" and

24 ² Petitioners incorrectly claim that this issue is a pure issue of law. Where, as in this case, both sides
25 have conflicting views about the construction of a statute, the Court must review the statutory language itself, the
26 legislative history and other sources to resolve the conflict. *Ballard Square Condo. Owner Ass'n, v. Dynasty*
Constr. Co., 158 Wn.2d 603, 612, 146 P.3d 914 (2006). That extrinsic, factual evidence contradicts the scant
evidence Petitioners cite regarding the meaning and effect of this statute.

1 "opportunities," not "outcomes." RCW 28A.150.220 specifically provides that those "goals"
2 are deemed implemented by the program of basic education set forth in .220 which, in turn, is
3 deemed "fully funded" by amounts appropriated pursuant to RCW 28A.150.250 and .260.
4 Petitioners' claim that the statute was intended to "define" basic education is also contradicted
5 by the undisputed testimony about the passage of, and intent behind, this statute that is
6 contained in the Salvi and Wilhoft Declarations.

7 Nor can RCW 28A.150.210 be interpreted or construed to impose a duty on the State
8 to provide successful educational outcomes. As outlined in Respondent's Supplemental Brief
9 of August 3, 2007, neither Article IX's language, nor the *Seattle Sch. Dist. No. 1 v. State*
10 decision construing Article IX, support imposing such a duty. To the contrary, our Supreme
11 Court held that the State's obligation under Article IX was to define and make ample
12 provision for funding whatever the State's Article IX duty is: whether it be "basic education"
13 or "a program of basic education," or both.³ (See Attachment C hereto for summary of
14 holding in *Seattle Sch. Dist. v. State*).

15 Finally, as demonstrated in Respondent's Supplemental Memorandum of August 3,
16 2007, there is no support, factually or legally, in Washington or elsewhere, for this Court to
17 rule that the State has a constitutional duty to provide successful outcomes for Washington's
18 students. Evidence of outcomes is relevant; however, as the State's WASL expert has
19 testified, the State's assessment of student performance was intended to measure progress
20 toward the improved student performance goals of RCW 28A.150.210, not the performance of
21 Article IX obligations.

22
23
24 ³ The sole support Petitioners cite for the proposition that Article IX imposes two duties, to provide
25 "basic education" and a "program of basic education," is the Table of Contents the Supreme Court provided at the
26 outset of its opinion. 90 Wn.2d at 484. This aid to organizing a very lengthy opinion is not the substantive
decision. The holding of the case, 90 Wn.2d at 519-20, indicates that the alleged dual obligation is actually one
and the same duty and that the State fulfills that duty by defining it and fully funding it.

1 **C. Unsubstantiated Allegations About Efficiencies and Judicial Economy Are Not**
2 **Grounds for Awarding Summary Judgment.**

3 Even if the Motion were appropriate under Rules 59 and 56, Petitioners'
4 unsubstantiated claims that discovery will be less expensive, that there might be a shorter trial
5 or no trial at all and that the Court and parties will avoid the protracted process of appeals and
6 remands experienced elsewhere do not justify entering summary judgment in their favor.
7 CR 56 does not recognize "efficiencies" or "judicial economy" as grounds for summary
8 judgment. Neither does CR 59 embrace those concepts as proper grounds for a motion for
9 reconsideration. The focus is on whether the moving party proves that there are no issues of
10 fact material to the merits and also proves entitlement to judgment as a matter of law.
11 CR 56(c).

12 However, even if such considerations were germane to summary judgment, Petitioners
13 claim, but fail to demonstrate, that granting a partial summary judgment will eliminate or
14 shorten this case or diminish its expense. Indeed, the claim is dubious. If the Court entered
15 the ruling requested by the State, that the State has no duty to ensure successful outcomes
16 without regard to the adequacy of funding provided, the ruling will terminate the case only if
17 Petitioners non-suit their entire case in the face of such a ruling. Otherwise, it is only a partial
18 summary judgment ruling. CR 56(d).

19 Without resolution of the entire case, Petitioners' claims that discovery will be limited
20 and less expensive are not credible. Their entire case boils down to whether or not the State is
21 making ample provision for education in compliance with Article IX. That case inevitably
22 will concern itself with the sufficiency of resources the State is providing; i.e., the
23 constitutional adequacy of funding. In fact, the adequacy of funding will be the sole issue for
24 trial as the Petitioners have already conceded—in oral argument and in their current Motion—
25 that there is no complaint regarding the State's "definition" of basic education or its
26 "definition" of the program of basic education. Petitioners will have to abandon their curious

1 position that their education “adequacy” lawsuit (in contrast to every such lawsuit brought in
2 Washington and elsewhere) has nothing to do with the adequacy of funding provided.

3 Finally, there is no basis to conclude that entering a ruling on RCW 28A.150.210 will
4 avoid the typically protracted course and expensive nature of education adequacy cases. To
5 suggest that ruling now on this issue will avoid appeals is nonsense. Cases of this magnitude
6 and, particularly, concerning the adequacy of funding for public education inevitably are
7 appealed and, in most instances, retried in whole or in part. They are also expensive and
8 frequently involve many fact and expert witnesses, taking several weeks to try. However,
9 Petitioners lose sight of the one factor that sets this litigation apart from all the others and it
10 has nothing to do with the requested ruling. The Article IX duty and its implementation were
11 established by our Supreme Court almost 30 years ago. The parties in this case have not
12 started from scratch. There is considerable appellate court precedent—the *Seattle Sch. Dist.*
13 *No. 1, Tunstall, Camer* and *Brouillet* decisions—as well as the trial court education cases cited
14 in the State’s Opposition, to provide guidance to the parties and this Court. The danger of
15 “ping pong” litigation is a hollow threat and Petitioners’ unswerving reluctance to invest the
16 time and money to fulfill their obligation to prove their case is no basis for forcing the Court
17 into the improvident grant of summary judgment.

18 **D. This Court Should Not Issue Advisory Opinions to the Legislature nor Interject**
19 **Itself into the Legislature’s Constitutional Right to Reform Education.**

20 The final ground urged for entering summary judgment is the “opportunity”
21 Petitioners see for court intervention in, and direction of, the Washington Learns reform
22 effort. In essence, Petitioners want the Court to issue an advisory opinion because this ruling
23 is not based upon some finding by the Court that such an order is necessary or warranted
24 under the facts of the case. As noted at 4, line 8, in the State’s Opposition, the Legislature is
25 charged, in the first instance, with periodic review and reform of education and its funding.
26 (*School Funding II*, Conc. of Law 9.) Unless and until the Legislature reforms the definitions

1 and/or funding of education, there is no justiciable controversy over what the Legislature has
2 yet to accomplish through Washington Learns. See *Seattle Sch. Dist. v. State*, 90 Wn.2d at
3 519, fn.14.⁴ Indeed, as noted in our Opposition at 4, line 21, Petitioners cannot meet their
4 heavy burden to prove that judicial intervention and direction is necessary as long as the State
5 is actively engaged in the reform of basic education. (*School Funding II*, Conc. of Law 16.)


6 The opportunity to issue an advisory opinion about ongoing but uncompleted
7 legislative activity is no basis for an award of summary judgment. Nor is it a basis for
8 reconsideration. The Court should reject the solicitation to inject itself into a reform process
9 our Supreme Court has said is the proper duty and prerogative of the legislative branch.

10 **III. CONCLUSION**

11 Petitioners filed this case on January 11, 2007. By bringing a total summary judgment
12 motion at the outset of the case, Petitioners have prevented the State's discovery and the
13 preparation of its defense for several months. The Motion for Reconsideration is another
14 backward step as it raises the same arguments the Court has rejected, interposes arguments
15 about the convenience of the parties and judicial economy that are factually incorrect and
16 legally irrelevant to the entry of summary judgment and invites the Court to issue an advisory
17 ruling about the Legislature's ongoing education reform efforts. The Court should deny the
18 Motion.

19 DATED this 17th day of September, 2007.

20 ROBERT M. MCKENNA
21 Attorney General

22 
23 WILLIAM G. CLARK, WSBA #9234
24 Assistant Attorney General
25 Attorneys for Respondent

26 ⁴ The Supreme Court declined to opine on the Basic Education Act, which was in the process of enactment while *Seattle School District* was still a pending case.

1 **PROOF OF SERVICE**

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

11 DATED this 17th day of September, 2007, at Seattle, Washington.

12
13 Agnes Roche
14 AGNES ROCHE

ATTACHMENT A

WASHINGTON PRACTICE
SERIES™

Volume 15A

WASHINGTON HANDBOOK
ON CIVIL PROCEDURE

2007 EDITION

By

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The trial court's decision on a motion for reconsideration is discretionary. *Lilly v. Lynch*, 88 Wn.App. 306, 945 P.2d 727 (1997); *Kleyer v. Harborview Medical Center of University of Washington*, 76 Wn.App. 542, 887 P.2d 468 (1995); *Schultz v. Werelius*, 60 Wn.App. 450, 803 P.2d 1334 (1991). The motion does not provide litigants with an opportunity for a second bite at the apple. Courts will not permit parties to merely re-argue issues already addressed. See *Anderson v. Farmers Ins. Co. of Washington*, 83 Wn.App. 725, 923 P.2d 713 (1996). And courts may decline to consider new arguments or new evidence on reconsideration where those arguments or evidence were available earlier. E.g., *Eugster v. City of Spokane*, 121 Wn.App. 799, 91 P.3d 117 (2004) (CR 59 does not permit a plaintiff, finding a judgment unsatisfactory, to suddenly propose a new theory of the case); *Marquis v. City of Spokane*, 76 Wn.App. 853, 888 P.2d 753 (1995) (unpleaded allegation not timely raised on motion for reconsideration of order granting summary judgment); *Webber v. Mefford*, 43 F.3d 1340 (10th Cir.1994) (counsel must show that evidence is either newly discovered or, if available, how counsel made diligent, though unsuccessful, attempts to obtain it); *Sterling Savings Ass'n v. Ryan*, 751 F.Supp. 871 (E.D.Wash. 1990), vac'd on other grounds, 959 F.2d 241 (9th Cir.1992) (motion for reconsideration may not be used for offering theories of law that were available at the time of the initial ruling).

The rule on consideration of additional evidence has been relaxed somewhat in the context of a summary judgment. See *Applied Indus. Materials Corp. v. Melton*, 74 Wn.App. 73, 872 P.2d 87 (1994) (on summary judgment, there is no prejudice to any findings if additional facts are considered); *Meridian Minerals Co. v. King Cy.*, 61 Wn.App. 195, 203, 810 P.2d 31, 35, review denied, 117 Wn.2d 1017, 818 P.2d 1099 (1991) ("Although not encouraged, a party may submit additional evidence after a decision on summary judgment has been rendered, but before a formal order has been entered."). But if there was ample opportunity to submit the evidence prior to the summary judgment hearing, it is not error for the trial court to refuse to consider additional evidence on reconsideration. *Wagner Development, Inc. v. Fidelity & Deposit Co.*, 95 Wn.App. 896, 977 P.2d 639 (1999). For further discussion of reconsideration of judgments entered on dispositive motions, see Section 70 of this Handbook, below.

Local rule alert: Most counties regulate the use of motions for reconsideration to some extent. Many counties provide that the motion will be considered on briefs and affidavits only, without oral argument, unless argument or a telephone conference is called for by the court. Local rules may or may not authorize the submission of a response and/or reply. As always, familiarity with the applicable rules is a must. Local rules are readily available from a number of sources (see note at beginning of Chapter 6).

ATTACHMENT B

TION

EVIDENCE
Joseph Sanders

CTIONS

FEDERAL CIVIL RULES HANDBOOK

28

2006

By

STEVEN BAICKER-McKEE
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however, the applicable legal analysis will depend on the grounds asserted for the relief requested.⁶⁴

Motions for "reconsideration" will not be granted absent "highly unusual circumstances"⁶⁵—they do not provide litigants with an opportunity for a "second bite at the apple"⁶⁶ or allow them, like Emperor Nero, to "fiddle as Rome burns,"⁶⁷ or license a litigation "game of hopscotch", allowing parties to switch from one legal theory to a new one "like a bee in search of honey".⁶⁸ Such motions are not vehicles for relitigating old issues.⁶⁹ Courts properly decline to consider new arguments or new evidence on reconsideration where those arguments or evidence were available earlier.⁷⁰

Motions to Include Prejudgment Interest

Generally, motions to amend to include an award of either mandatory or discretionary prejudgment interest are treated under this Rule and, thus, must be sought within 10 days of entry of the judgment or be deemed waived.⁷¹

ADDITIONAL RESEARCH REFERENCES

Wright & Miller, *Federal Practice and Procedure* §§ 2801-21.

C.J.S. Federal Civil Procedure §§ 1061-1103 et seq., 1233-1251 et seq.

West's Key No. Digests, Federal Civil Procedure §§ 2311-2377, 2641-2662.

64. See *Jennings v. Rivers*, 394 F.3d 850, 855 (10th Cir. 2005) (because litigant sought relief based upon attorney mistake, motion filed within 10 days would nevertheless be evaluated under Rule 60(b)(1)).

65. See *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999). See also *United States ex rel. Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (simple disagreement with the court's ruling will not support Rule 59(e) relief).

66. See *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136 (2d Cir. 1998); *Bhatnagar v. Surrendra Overseas Ltd.*, 52 F.3d 1220, 1231 (3d Cir. 1995); *Sensa-Gel Corp. v. Seiffhart*, 803 F.2d 661, 664 (Fed. Cir. 1986).

67. *Vasapoli v. Rostoff*, 39 F.3d 27, 36 (1st Cir. 1994) (Selya, J.) ("Unlike the Emperor Nero, litigants cannot fiddle as Rome burns. A party who sits in silence, withholds potentially relevant information, allows his opponent to configure the summary judgment record, and acquiesces in a particular choice of law does so at his peril").

68. See *Cochran v. Quest Software, Inc.*, 328 F.3d 1, 11 (1st Cir. 2003) (noting that

litigants "frame the issues in a case before the trial court rules" and, once framed, should not be permitted to switch from theory to theory thereafter).

69. See *Michael Linet, Inc. v. Village of Wellington*, 408 F.3d 757, 759 (11th Cir. 2005); *Templet v. HydroChem Inc.*, 367 F.3d 473, 478-79 (5th Cir. 2004); *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000); *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136 (2d Cir. 1998).

70. See *Michael Linet, Inc. v. Village of Wellington*, 408 F.3d 757, 759 (11th Cir. 2005); *Templet v. HydroChem Inc.*, 367 F.3d 473, 478-79 (5th Cir. 2004); *Rivera v. Puerto Rico Aqueduct & Sewers Auth.*, 331 F.3d 183, 193 (1st Cir. 2003); *Moyasis v. DTG Datanet*, 278 F.3d 819, 829 n. 3 (8th Cir. 2002).

71. See *Osternech v. Ernst & Whinney*, 489 U.S. 169, 173-78, 109 S.Ct. 987, 989-92, 103 L.Ed.2d 146 (1989) (mandatory prejudgment interest); *McCalla v. Royal MacCabees Life Ins. Co.*, 369 F.3d 1128, 1130-34 (9th Cir. 2004) (mandatory prejudgment interest); *Crowe v. Bolduc*, 365 F.3d 86, 92-93 (1st Cir. 2004) (mandatory or discretionary prejudgment interest).

ATTACHMENT C

Seattle School District No.1 v. State

90 Wn.2d 519-520

"...we shall refer to the Legislature's obligation as one to provide "basic education" **through** a basic program of education as distinguished from total "education" or all other "educational" programs, subjects, or services which might be offered."

"...the Legislature has heretofore enacted laws to "provide for a general and uniform system of public schools." However, it has not as yet fully implemented Const. art. 9, ss 1 and 2 by defining or giving substantive content to "basic education" **or** a basic program of education."

"We are confident the Legislature will consider each of these concerns as well as all other appropriate matters when framing its definition of basic education and when giving **substantive content to a basic program of education.**"

"Finally, the constitution requires **more than a mere definition of "basic education" or a basic program of education.....the State also** has an affirmative paramount duty to make ample provision for **funding** the "basic education" **or** basic program of education defined."

FILED

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own
behalf and on behalf of KELSEY & CARTER
MCCLEARY; ROBERT & PATTY VENEMA, on their own
behalf and on behalf of HALIE & ROBBIE VENEMA;
and NETWORK FOR EXCELLENCE IN WASHINGTON
SCHOOLS ("NEWS"),

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

Honorable Paris K. Kallas

Hearing Date:

*3:00 p.m., Friday, September 21
(same date & time as the status
conference)*

No. 07-2-02323-2 SEA

REPLY TO STATE'S
OPPOSITION TO PETITIONERS'
MOTION FOR
RECONSIDERATION RE:
LEGAL ISSUE NUMBER 2

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REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION RE: LEGAL
ISSUE #2

ORIGINAL

FOSTER PEPPER PLLC
1115 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

1 **I. INTRODUCTION**

2 The Petitioners' Motion For Reconsideration Re Legal Issue #2 concerns only one of the
3 issues raised in the August summary judgment proceeding – i.e., the statutory interpretation issue
4 of whether RCW 29A.150.210 currently defines the substantive content of “basic education” in
5 our State. The State’s Opposition does not refute the reasons Petitioners presented for why this
6 Court should reconsider its decision to not grant either party judgment on that issue.

7 **II. RED HERRINGS**

8 Petitioners initially note that several of the State’s assertions have nothing to do with the
9 statutory interpretation of RCW 29A.150.210. Three quick examples illustrate this point:

- 10 • The State asserts its education spending is “\$1.8 billion more in the 2007
11 legislative session alone”.¹ But that assertion has nothing to do with the legal
12 issue of whether RCW 29A.150.210 defines the substantive content of “basic
13 education” in our State. [Nor is the State’s assertion candid – for its own
14 testimony confirms the falsity of its representation to this Court.²]
- 15 • The State argues that Article IX only requires the State to provide funds for “basic
16 education” or provide opportunities for “basic education” – not actually provide
17 all children a “basic education”. But that argument has nothing to do with the
18 legal issue of whether RCW 29A.150.210 defines the substantive content of that
19 “basic education”. Instead, it’s a repetition of the educational-outcomes-don’t-
20 matter argument that the State made on other issues raised in the August summary
21 judgment proceedings.
- 22 • The State represents to this Court that “in fact, the adequacy of funding will be the
23 sole issue for trial as the Petitioners have already conceded”, and “there is no
24 complaint regarding the State’s “definition” of basic education”.³ But in truth
25 Petitioners argue the exact opposite of that supposed concession,⁴ and their
26 complaint expressly seeks a declaratory judgment that RCW 29A.150.210
currently defines “basic education”.⁵

In short, Petitioners respectfully request that this Court ignore the red herrings throughout the
State’s Opposition and focus instead on the merits of Petitioners’ motion.

23 ¹ State’s Opposition Brief at 2:28.

24 ² 5/29 Complete Bergeson Tpt. Dec. at Tpt. pp 83:7-84:8 & Ex. 10 (confirming the \$1.8 billion
figure asserted by the State is in truth a \$143 million/year State funding increase).

25 ³ State’s Opposition Brief at 7:22-25 (emphasis in original).

26 ⁴ Petitioners’ August 10 Closing Brief at 12:3-22.

⁵ Petitioners’ Complaint at ¶¶ 30 & 108(d) and Request For Relief ¶1.

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III. MERITS

1. **Legislature's duty to define "basic education" consistent with Tab 2.** Petitioners' motion points out the *Seattle School District* decision held that "The Legislature has the duty to define 'basic education'." 90 Wn.2d at 484. The State responds that this ruling should be ignored because the Supreme Court made it "at the outset of its opinion".⁶ But the State offers no legal authority for its proposition that rulings at the beginning of Supreme Court opinions should be ignored. [Nor did the Supreme Court make this ruling only "at the outset" – for it reiterated throughout its opinion that the legislature has at least two duties: (1) to define "basic education" with additional substantive content beyond that in Tab 2 *and* (2) define a basic program of education to provide that basic education.⁷]

2. **Parties' existing statutory interpretation dispute.** Petitioners' motion points out that the parties actively dispute which statutory provision should be interpreted to provide the current legislative definition of "basic education" in compliance with the Supreme Court's above ruling – with Petitioners' interpreting the four numbered provisions of RCW 28A.150.210 to be that definition, and the State interpreting the program of education provided by RCW 28A.150.220 *et seq.* to be the equivalent of that "basic education" definition.⁸ The State

⁶ *State's Opposition Brief* at 5, n.3.

⁷ *E.g.*, 90 Wn.2d at 482 ("The Legislature must act to carry out its constitutional duty by defining and giving substantive content to 'basic education' and a basic program of education"), at 519 (noting legislature had not yet passed legislation "defining or giving substantive content to 'basic education' or a basic program of education. Thus, the Legislature must hereafter act to comply with its constitutional duty by defining and giving substantive meaning to them."), at 537 ("We have great faith in the Legislature and its ability to define 'basic education' and a basic program of education"), and thus at 484 ("The Legislature has the duty to define 'basic education' ") (*emphasis added*)).

⁸ *Petitioners' statutory interpretation is in their August 10 Closing Brief* at 2:3-4:7, *May 29 Reply Brief* at 1:15-2:19; and *May 4 Motion* at 5:6-6:2 & n.13 and 12:1-14:12; *accord State's May 21 Opposition Brief* at 7:25-26 & 8:5-6 (admitting State adopted the Essential Academic Learning Requirements (EALRs) to establish the basic reading, writing, math, science, etc. skills set forth in RCW 28A.150.210); *State's August 3 Supplemental Opposition Brief* at 7:22-8:2 (admitting "The EALRs for reading, writing, math and science were all developed to carry out the four goals in the 1993 HB 1209 [RCW 28A.150.210]"). The State briefs its statutory interpretation in its *May 21 Opposition Brief* and *August 3 Supplemental Opposition Brief*, and reiterates it again in its *September 17 Opposition To Reconsideration* at 6:1-3 & n.3.

1 does not dispute the existence of that dispute. Instead, the State insists this Court should not rule
2 on that dispute because “unless and until the Legislature reforms the definitions ... there is no
3 justiciable controversy.”⁹ But the State provides no binding legal authority for its notion that a
4 current controversy over the interpretation of an existing statute is not justiciable if the statute
5 might be changed in the future. [The State similarly provides no binding legal authority for its
6 repeated claims that a court’s ruling on the interpretation of education statutes impermissibly
7 “meddles” in the legislature’s work – and misses the judicial branch’s fundamental role in our
8 system of checks and balances.]

9 **3. Statutory interpretation is a question of law.** Petitioners’ motion points out that
10 none of the parties’ briefing disputed that this statutory interpretation issue is a pure question of
11 law for the Court to decide. The State responds by now insisting (for the first time) that issues of
12 statutory interpretation are questions of fact.¹⁰ But the *Ballard Square* case it cites for that
13 proposition did not make that holding.¹¹ And the “fact” testimony that the State cites (the Salvi
14 and Wilhoft testimony¹²) is the testimony that this Court struck from the record precisely because
15 that testimony was about legal conclusions (for the Court to decide) rather than factual matters
16 (for witnesses to testify about). [Indeed, is the State really contending that whenever the
17 interpretation, meaning, or intent of a statute is raised in a case, the legislators who voted for that
18 statute should (or even can) be deposed and called as fact witnesses at trial? Of course not. The
19 meaning of statutes is a question of law for Courts to resolve based on the statute the legislators

20 ⁹ State’s Opposition Brief at 8:26-9:1 (emphasis added).

21 ¹⁰ E.g., State’s Opposition Brief at 5, n.2 (citing the *Ballard Square* case).

22 ¹¹ *Ballard Square* upheld a summary judgment order based on statutory interpretation and the
23 corresponding issue-of-law *de novo* standard. 158 Wn.2d at 612. That makes sense because
24 Washington case law uniformly holds that “interpretation of a statute is a question of law,
25 subject to *de novo* review”. *Restaurant Development v. Canawill*, 150 Wn.2d 674, 681 (2003)
26 (construing statutory language and legislative history as a matter of law); accord, *Cosmopolitan*
Engineering v. Ondeo, 159 Wn.2d 292, 298 (2006) (statutory interpretation is a question of law);
Cockle v. Department of Labor and Industries, 142 Wn.2d 801, 808 (2001) (using “principles of
statutory construction, legislative history, and relevant case law” to decide dispute over
statutory construction as a matter of law).

¹² E.g., State’s Opposition Brief at 5:7-8, 3:20-21, 6:5-6.

1 passed – not the depositions, declarations, or trial testimony of legislators or other government
2 witnesses as to their “intent” when they enacted that statute.]

3 **4. Rule 56 mandates judgment on matters of law shall be granted forthwith.**
4 Petitioners’ motion points out that Rule 56(c) mandates that “The judgment sought shall be
5 rendered forthwith if ... there is no genuine issue as to any material fact and that the moving
6 party is entitled to a judgment as a matter of law.” The State does not contest this point.

7 **5. Rule 59 allows this Court to do substantial justice.** Petitioners’ motion points out
8 that Rule 59(a)(9) allows this Court to reconsider a decision if it determines that “substantial
9 justice has not been done”. The State responds that reconsidering a decision in order to do
10 “substantial justice” should be “relatively rare”.¹³ But rare does not mean never. And the State
11 does not refute the various reasons presented in Petitioners’ motion as to why this Court’s
12 resolving the statutory interpretation issue at hand now (rather than later) would do substantial
13 justice in this case.

14 **6. If the State’s statutory interpretation is correct, there is nothing for trial.**
15 Petitioners’ motion points out that the fundamental issue in this case is whether the State is
16 complying with its “basic education” obligation under Washington law. The State’s Opposition
17 agrees with this point, asserting that this “entire case boils down to whether or not the State is
18
19

20 ¹³ *State’s Opposition Brief at 3:13-16. Moreover, the one case the State cites to support its*
21 *“relatively rare” argument held that courts should rarely use Rule 59’s substantial justice*
22 *provision to overturn a jury verdict when they “simply disagree[] with the jury”. Knecht v.*
23 *Marzano, 65 Wn.2d 290, 291-92 (1964) (reversing trial court’s decision to order new trial based*
24 *on an “impression” and “strong feeling that substantial justice was not done”). Such reversals*
25 *are not allowed because “a trial judge is not a ‘thirteenth juror’”. State v. Williams, 96 Wn.2d*
26 *216, 221-22 (1981)(explaining Knecht). Petitioners, however, are not asking this Court to*
substitute its opinion for a jury’s. They are instead asking for a legal ruling that will streamline
discovery and trial. Not only does CR 59 allow this Court to make such a ruling, CR 16
encourages this Court to do so to “expedite the final determination of the issues being litigated”.
In re Glant’s Estate, 57 Wn.2d 309,312 (1960). See also Karl B. Tegland, 3A Washington
Practice: Rules of Practice at 355 (explaining CR 16 adoption to “shorten trial time and limit the
issues to be tried”).

1 making ample provision for education in compliance with Article IX.”¹⁴ The State’s Opposition
2 also does not dispute that if this Court adopts the State’s (rather than Petitioners’) statutory
3 interpretation, then a trial may be completely unnecessary because the State interprets the basic
4 program of education established by RCW 28A.150.220 *et seq.* to be the equivalent of the
5 legislature’s “basic education” definition – and insists that the State’s enactment and funding of
6 that program is therefore all Washington law requires. The State accordingly does not refute that
7 if its statutory interpretation is correct, substantial justice is best served by this Court issuing that
8 statutory interpretation ruling now, instead of burdening all concerned with preparing for a trial
9 that (under the State’s statutory interpretation) is completely unnecessary as a matter of law.

10 **7. Proving whether the “basic education” standard is met requires knowing what**
11 **the definition of that “basic education” is.** Noting the practical realities of this case and the
12 experience of litigation in other States, the Petitioners’ motion also points out that this Court’s
13 decision to not rule on the legislative definition of “basic education” under the Washington
14 statutes increases the burden and expense of the upcoming discovery phase and eventual trial –
15 for the parties cannot effectively or efficiently prepare for a trial on whether the State is
16 complying with its “basic education” duty if they do not know what the legal definition of that
17 “basic education” is. The State accordingly does not refute that substantial justice is best served
18 if this Court rules on this legal interpretation issue before the parties embark on discovery and
19 trial preparation.

20 **8. Delaying this statutory interpretation ruling only invites wasteful remand &**
21 **retrial.** Noting the practical realities of this case and the experience of litigation in other States,
22 the Petitioners’ motion also points out that a court’s failure to establish the underlying legal
23 standard that will apply before the trial at hand runs a significant risk of unnecessarily wasting
24 the time and resources of the litigants and judicial system – and needlessly delaying resolution

25
26 ¹⁴ *State’s Opposition Brief at 7:19-20. Recall that the Seattle School District case established that a “basic education” is the “education” required by Article IX.*

1 for the children whose education is ultimately at stake in such litigation. The State's response is
2 that this point should be ignored because cases like this "are inevitably appealed and in most
3 instances retried in whole or in part."¹⁵ But that response misses the point. Such cases are
4 re-tried (and resources wasted, and children's education delayed) precisely because the trial court
5 in those cases applied the wrong legal definition of the education State law required. The State's
6 point that re-trials inevitably result in cases where the legal standard is not resolved first
7 therefore supports (rather than negates) the fact that substantial justice is best served if the
8 definition of "basic education" is established before the parties undertake lengthy discovery and
9 trial over whether or not that "basic education" standard is being met – a step which, as
10 Petitioners' motion noted, would also allow the parties to confirm the correctness of that ruling
11 on the governing legal standard by seeking interlocutory appeal if appropriate.

12 **9. Delaying this statutory interpretation ruling defeats the value of the upcoming**
13 **Washington Learns II exercise touted by the State.** As Petitioners have pointed out
14 previously, the Washington Learns I report noted the State should consider redefining "basic
15 education" by amending the statute at issue in this motion – i.e., RCW 28A.150.210.¹⁶ And the
16 Respondent State thus noted in the underlying summary judgment proceedings that the State is
17 about to commence a Washington Learns II study which (according to the authorizing bill)
18 promises to "make provision for some significant steps towards a new basic education funding
19 system", and whose first responsibility is to "review the definition of basic education and all
20 current basic education funding formulas".¹⁷ The Petitioners' motion accordingly pointed out
21 that this new Washington Learns II endeavor – along with its studies and resulting report – will
22 be of doubtful relevance if it does not employ the same "basic education" definition that this
23 Court eventually holds is the proper interpretation under Washington law. The State does not
24

25 ¹⁵ *State's Opposition Brief at 8:5-7.*

26 ¹⁶ *5/29 Complete Bergeson Tpt. Dec. at Tpt. pp 79:10-80:25 & Ex. 6 at 48-9.*

¹⁷ *Senate Bill 5627, Sections 1 & 2.*

1 dispute the fact that taxpayer funds for the State's upcoming education study would be better
2 directed - and our State's children would receive their Constitutionally mandated "basic
3 education" more promptly - if this Court were to rule, before the above Washington Learns II
4 study begins, on this case's currently active dispute as to whether RCW 28A.150.210 provides
5 the current definition of "basic education" under Washington law. Instead, the State's responds
6 that this Court should simply ignore this fact. That is not substantial justice.

7 IV. CONCLUSION

8 The State clearly does not want this Court to rule on the statutory interpretation issue at
9 hand - i.e., whether the four numbered provisions of RCW 29A.150.210 currently define the
10 substantive content of "basic education" in our State in accordance with Tab 2. But the State
11 does not refute the Petitioners' underlying point that the parties, this Court, our State's taxpayers,
12 and the students whose education is ultimately at stake in this suit are all better served if this
13 Court resolves the parties' dispute over the legal interpretation of "basic education" under
14 Washington law now rather than later. The State does not refute that this is a pure issue of
15 statutory interpretation as to which one side or the other is entitled to a judgment as a matter of
16 law "forthwith" under CR 56. The Petitioners therefore respectfully request that this Court grant
17 their motion for reconsideration on legal issue #2, and enter judgment for either the State or the
18 Petitioners on this case's threshold legal issue of statutory interpretation.

19 RESPECTFULLY SUBMITTED this 19th day of September, 2007.

20 FOSTER PEPPER PLLC


21 
22 _____
23 Thomas F. Ahearne, WSBA No. 14844
24 Edmund W. Robb, WSBA No. 35948
25 Attorneys for Petitioners
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Exhibit 1

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own behalf 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.

Honorable Paris K. Kallas

*Hearing Date:
3:00 p.m., September 21, 2007*

No. 07-2-02323-2 SEA

[PROPOSED]
ORDER GRANTING
PETITIONERS' MOTION FOR
RECONSIDERATION
REGARDING LEGAL ISSUE
NUMBER 2

Clerk's Action Required

THIS MATTER came before this Court on Petitioners' Motion For Reconsideration, which was fully briefed by the parties and argued at the September 21, 2007 status conference. This Court has considered the pleadings and files in this case, including:

1. The August 24, 2007 Order Denying Petitioners' Motion For Summary Judgment (including pleadings listed therein);
2. Petitioners' September 4, 2007 Motion For Reconsideration Re: Legal Issue Number 2;
3. Respondent's September 17, 2007 Opposition To Motion For Reconsideration Of Ruling Re: RCW 28A.150.210; and

ORDER GRANTING PETITIONERS' MOTION FOR
RECONSIDERATION REGARDING LEGAL ISSUE
NUMBER 2 - 1

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299 ♦ 206-447-4400

1 4. Petitioners' September 19, 2007 Reply To State's Opposition To Petitioners'
2 Motion For Reconsideration Re: Legal Issue Number 2.

3 Having reviewed the materials submitted by the parties; having heard from the parties,
4 and the Court being fully informed,

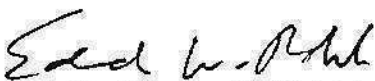
5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- 6 1. Petitioners' Motion For Reconsideration Re: Issue Number 2 is GRANTED.
7 2. The four numbered provisions of RCW 29A.150.210 currently define the
8 substantive content of "basic education" in our State.

9 DATED this _____ day of September, 2007.

10
11
12 _____
The Honorable Paris K. Kallas
Washington Superior Court Judge

13 Presented by:
14 FOSTER PEPPER PLLC

15
16 
17 _____
Thomas F. Ahearne, WSBA No. 14844
Edmund W. Robb, WSBA No 35948
Attorneys for the Petitioners

18 Approved as to form and for entry;
19 Notice of presentation waived:
20 OFFICE OF THE WASHINGTON ATTORNEY GENERAL
ROBERT M. MCKENNA

21
22 _____
William G. Clark, WSBA No. 9234
David S. Stolier, WSBA No. 24071
23 Jon P. Ferguson, WSBA No. 5619
Dierk Meierbachtol, WSBA No. 31010
24 Attorneys for the Respondent State

25
26
ORDER GRANTING PETITIONERS' MOTION FOR
RECONSIDERATION REGARDING LEGAL ISSUE
NUMBER 2 - 2

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SEATTLE, WASHINGTON 98101-3295 ♦ 206-447-4400

Exhibit 2

unfit for office." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 135, 144 (1824). The Constitution is "intended to endure for some ages to come, and consequently, to be adapted to the various crises of human affairs." *Cutler v. Maryland*, 17 Md. (4 Wheat.) 316, 416, 419 (Ed. 579) (1819). In short, the Constitution was not intended to be a static document incapable of coping with changing times. It was meant to be, as Justice Brandeis said in *Whitely v. Albers*, a living document with current effectiveness. As Justice Brandeis said in *Whitely v. Albers*, 313 U.S. 413, 416 (1942), as well as in *Missouri v. Holland*, 252 U.S. 416, 433 (1920), and *Chick v. Frazier*, 400 U.S. 12, 15 (1970):

"When we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into being a being that develops out of which countless foreseen and unforeseen changes of fortune and hope that they had created for them to realize and to hope that they had created for their country; it has taken a century and has cost the sweat and blood of countless generations to create this great nation. These words must be considered in the light of our whole experience and not merely in that of the time when they were written."

[13] Consequently, the State's constitutional duty goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the marketplace of ideas. *Robinson v. Cahill*, 62 N.J. 473, 515, 303 A.2d 273 (1973); see also *Keyishian v. Board of Regents*, 385 U.S. 589, 603, 17 L. Ed. 2d 629, 87 S. Ct. 675 (1967). Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to ensure that system's survival. See *Wisconsin v. Yoder*, 406 U.S. 205, 221, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972). It must prepare them to exercise their First Amendment freedoms both as sources and receivers of information; and, it must prepare them to be able to inquire, to study, to evaluate and to gain

TAB 2

maturity and understanding. The constitutional right to have the State "make ample provision for the education of all [resident] children" would be hollow indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the marketplace of ideas.

and judgment as to how to express these same broad educational concepts in terms of constitutional rights. The judicial court did not, nor do we, deal with some above mentioned educational concepts as fully derivative of the State's paramount duty. Rather, we hold that they constitute broad guidelines and that the effective teaching and learning opportunities for these essential skills make up a *minimum* of the education that is constitutionally required.

We hold further that the mandate of Const. art. 9, § 1 is addressed to the State and requires, as a first priority, full sufficient funds for the general and uniform system of public schools" which the Legislature is obligated to establish pursuant to Const. art. 9, § 1. Through this system our children will receive their constitutionally guaranteed education.

B. Legislative implementation of the State's mandatory duty.

Although the mandatory duty of Const. art. 9, § 1 is imposed upon the State, the organization, administration, and operational details of the "general and uniform system" required by Const. art. 9, § 2 are the province of the Legislature. In the latter area the judiciary is primarily concerned with whether the Legislature acts pursuant to the mandate of the Constitution, whether it has done so constitutionally. Within these parameters, the system devised to maintain the domain of the Legislature.

[14] While the judiciary has the duty to construe and interpret the words "education" by providing broad constitutional guidelines, the Legislature is obligated to have spe-

EXHIBIT
2
2-2-67 Boyer

FILED

2007 SEP 19 PM 4:39

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

The Honorable Nicole MacInnes
Hearing Date: September 24, 2007
Hearing Time: 9:00 am
Oral Argument Requested
Moving Party

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

GENE W. McCLEARY,

Plaintiff,

v.

ALBANY INTERNATIONAL; et al.,

Defendants.

NO. 03-2-37208-1 SEA

DEFENDANT SCAPA DRYER
FABRIC, INC.'S REPLY IN SUPPORT
OF MOTION IN LIMINE TO
EXCLUDE CERTAIN TESTIMONY
OF JAMES MILLETTE

Brayton Group 2

I. INTRODUCTION

Defendant Scapa Dryer Fabrics, Inc., submits this reply in support of its motion in limine to exclude testimony of plaintiff's expert, James Millette, about tests he performed in 2003 and 1998 on dryer felt materials, and his papers titled "Dryer Felts Fiber Release Testing" dated January 27, 2003, and "Microscopical Studies of the Asbestos Fiber Releasability of Dryer Felt Textiles" dated 1999. Exs. A and B to 9/10/07 Christopher S. Marks Declaration. Plaintiff's response does not show that Dr. Millette's tests of dryer felts followed a generally accepted scientific protocol, nor does plaintiff establish that Dr. Millette's testimony about those tests and related papers would assist the trier of fact under the circumstances of this case.

II. ARGUMENT IN REPLY

Plaintiff wants to introduce certain testimony of Dr. Millette to support his contention that he has an asbestos-related disease caused by asbestos allegedly released from Scapa dryer

DEFENDANT SCAPA DRYER FABRIC, INC.'S REPLY IN
SUPPORT OF MOTION IN LIMINE TO EXCLUDE CERTAIN
TESTIMONY OF JAMES MILLETTE - 1

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1 felts. Millette's 9/5/07 deposition transcript is not yet available, but his July 2007 deposition in
2 Barabin v. Albany International Corp., King County No. 06-2-39452-6 SEA and deposition
3 testimony in other cases show that Millette's testing of dryer felts discussed in the 1999 and
4 2003 reports was not performed in a scientifically sound manner, nor was it representative of
5 actual working conditions at any paper mill. See Marks Declaration, Exs. D-H.

6 A. Millette's 2003 and 1998 Tests Did Not Follow a Generally Accepted Protocol.

7 Plaintiff's argument that Millette used NIOSH Methods 7400 and 7402 in his tests to
8 count asbestos fibers misses the mark. If the asbestos fibers he purported to count were not the
9 result of a reliable test, then his counting methods are irrelevant. Millette claims that his 2003
10 test protocol was "based on information" from U.S. Consumer Product Safety Commission
11 (CPSC) Memorandum of October 18, 1985, and U.S. Environmental Protection Agency (EPA)
12 600/S2-85/044, and that his 1998 glove box test was based on protocols from the same
13 agencies. Exs. A and B. He did not comply, however, with any of the following EPA protocol
14 mandates for verification of test results:

15 (1) performing glove box experiments of asbestos release rates to develop and
16 verify consistent fiber generation and sampling analytical procedures;

17 (2) developing a mathematical model that accounts for the environmental field
18 parameters and predicts asbestos breathing zones concentration in the field
19 using glove box release rate data;

20 (3) performing full room tests (in a standard test room) simulating field
21 conditions in an attempt to calibrate the field model; and

22 (4) conducting field experiments to verify the usefulness of the model in
23 predicting asbestos breathing zone concentrations in the field from glove box
24 asbestos release data.

25 Ex. H, 6/16/98 Millette Dep. at 139, 188-89, 194, and 230. Moreover, in contrast to the 2001
continuous 30-day study at Western Michigan University simulating plant conditions,
Millette's 2003 test lasted only 10 minutes, and did not reflect actual papermaking working
conditions. Compare Ex. A with Ex. C; see also Ex. G, 7/13/07 Dep. at 23-25, 28-36.

DEFENDANT SCAPA DRYER FABRIC, INC.'S REPLY IN
SUPPORT OF MOTION IN LIMINE TO EXCLUDE CERTAIN
TESTIMONY OF JAMES MILLETTE - 2

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1 The 1998 glove box test likewise did not comply with the EPA protocols. Ex. B. In
2 addition, the Post-It note and “finger touch” techniques he says he used in the 1998 study, Ex.
3 B, are not generally accepted scientific methodologies, and have apparently only been used in
4 asbestos litigation. See Ex. F at 163. Plaintiff’s response fails to show that the scientific
5 community has accepted Millette’s “protocol” as a reliable and verifiable methodology for
6 testing potential asbestos fiber release from dryer felts.

7 The analysis under Fryc v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923), as to
8 whether offered evidence is based on established scientific methodology, “requires both an
9 accepted theory and a valid technique to implement that theory.” Grant v. Boccia, 133 Wn.
10 App. 176, 179, 137 P.3d 20 (2006), rev. denied, 154 P.3d 919 (2007) (citation omitted)
11 (holding that plaintiffs provided no evidence that their experts’ methodologies were
12 sufficiently established to have gained general acceptance); see also State v. Huyhn, 49 Wn.
13 App. 192, 194-95, 742 P.2d 160 (1989).

14 B. Millette’s Tests Do Not Reflect the Relevant Plant Conditions or Practices and Are
15 Irrelevant; Thus, Millette’s Testimony About Them Will Not Be Helpful to the Jury.

16 Results of experiments are “helpful” and admissible only if “the conditions under which
17 they are conducted are substantially similar to those existing at the time of the ... occurrence
18 in question.” Knight v. Borgan, 52 Wn.2d 219, 230, 324 P.2d 797 (1958). Evidence of
19 experiments “should be admitted with care -- and only when it appears that the conditions
20 under which the test was made and all of the surrounding circumstances are reasonably
21 comparable to those with which the court is concerned.” Quinn v. McPherson, 73 Wn.2d 194,
22 201-02, 437 P.2d 393 (1968) (citation omitted). The burden of demonstrating similarity rests
23 with the party seeking to admit the evidence. Id. at 201.

24 Plaintiff provides no support for his assertion that Millette’s tests mimic the way that
25 dryer felts are used in a paper mill, much less the Weyerhaeuser Longview Paper Mill, and

1 Millette's own testimony belies that assertion. Although Millette thought, for purposes of his
2 2003 study, that a worker "might" use different angles than those used in the 30-day Western
3 Michigan University study conducted to replicate actual papermaking processes, Millette did
4 not record what angles he used over the 10-minute period of his test. Ex. D at p. 36; Ex. G at
5 33. In designing his 1998 test, he did not observe or conduct any tests of a dryer felt in use.
6 Ex. H at 185. He did not determine the percentage of liquid or moisture typically found in a
7 dryer felt or account for the effect of the composition of paper stock. Ex. F at 32-33. The
8 same is true for his 2003 test. Ex. A. In both instances he failed to simulate actual blowdown
9 practices.¹ Indeed, Millette has never seen a blowdown or a paper break at any commercial
10 paper mill. Ex. G at 24-25.

11 Millette has admitted that his tests cannot be used to make a quantitative estimate of
12 actual exposure in a paper mill from working with or around dryer felts. Ex. F at 162. He
13 conducted no air sampling at any mill to determine what level of exposure, if any, a worker
14 would have from working around an asbestos-containing dryer felt. Id. at 25. He likely cannot
15 provide any actual exposure number for Mr. McCleary as he has been unable to do so for
16 plaintiffs in other mills. E.g., Ex. G at 43. Millette agreed that the potential for asbestos
17 exposure varies by job location and work activity, and that the mere fact of asbestos released
18 from a product does not mean it will be breathed in; it has to be in the breathing vicinity. Id. at
19 26. Both ventilation and humidity levels are important factors affecting a worker's potential
20 exposure to asbestos. Id. at 26, 29-31. Although some allowance was made for humidity in
21 the glove box test, neither Millette's Post-It note test nor his glove box test made any attempt to

22
23 ¹ In his 1998 glove box test, Millette used a six-inch square piece of felt, blew 60 psi of compressed air for five
24 minutes at a 90° angle four inches from the felt and measured particulate in front of the air stream. Ex. B. In the
25 2003 test, the angle was restricted to perhaps 30°. Ex. G at 33. He did not measure fibers released at each angle,
but only cumulatively. Id. Under plant conditions, however, the worker performing the blowdown stands outside
the dryer section and directs compressed air into the operating, ventilated and partially enclosed machine at far
greater distances and the compressed air impacts the dryer felt or fabric at approximately 15° - 20° angles, see Ex.
C, Figure 1, not the 90° angle Millette used in 1998 or the greater than 30° angles used in the 2003 test. Ex. C.

DEFENDANT SCAPA DRYER FABRIC, INC.'S REPLY IN
SUPPORT OF MOTION IN LIMINE TO EXCLUDE CERTAIN
TESTIMONY OF JAMES MILLETTE - 4

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1 replicate actual paper mill conditions, including ventilation conditions. Id. at 34-35. Thus, by
2 his own testimony, Millette's tests did not reflect the working environment at any mill, and any
3 testimony about the tests and related papers should be excluded.

4 V. CONCLUSION

5 Millette's tests fail to meet the Frye standard and any testimony based thereon should
6 be excluded. Moreover, testimony as to the tests would not be helpful to the trier of fact
7 because the testing conditions were not substantially similar to conditions at any paper mill.
8 An additional ground for exclusion is plaintiff's failure to make Millette available for
9 deposition until more than two weeks after the deadline passed.

10 DATED this 19th day of September, 2007.

11 WILLIAMS, KASTNER & GIBBS PLLC

12 By 
13 Christopher S. Marks, WSBA #28634
14 Attorneys for Defendant Scapa Dryer Fabrics, Inc.

FILED
KING COUNTY WASHINGTON
SEP 20 2007
CLERK
BARBARA WINTER
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own behalf 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.

Honorable Paris K. Kallas

No. 07-2-02323-2 SEA

(P214)

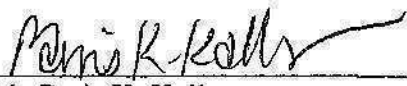
[PROPOSED] ORDER ON PETITIONERS' MOTION FOR RECONSIDERATION

ORIGINAL

THIS MATTER came before this Court on Petitioners' Motion For Reconsideration Re: Legal Issue No. 2. Having considered that motion and the pleadings on file in this case, *the request, did the reply,*

IT IS HEREBY ORDERED that Petitioners Motion for Reconsideration Re: Legal Issue No. 2 *is denied* shall be discussed at the Rule 16 status conference scheduled for Friday, September 21, 2007, and if the Court desires briefing, a briefing schedule will be set at that time.

DATED this 20 day of September, 2007.



The Honorable Paris K. Kallas
Washington Superior Court Judge

[PROPOSED] ORDER ON PETITIONERS' MOTION FOR RECONSIDERATION - 1

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1 Presented by:
2 FOSTER PEPPER PLLC

3 

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5 Ramsey Ramerman, WSBA No. 30423
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9 Approved as to form and for entry;
10 Notice of presentation waived:
11 OFFICE OF THE WASHINGTON ATTORNEY GENERAL
12 ROBERT M. MCKENNA

13 _____
14 William G. Clark, WSBA No. 9234
15 David S. Stolier, WSBA No. 24071
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18 Attorneys for the Respondent State

19
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26
[PROPOSED] ORDER ON PETITIONERS'
MOTION FOR RECONSIDERATION - 2

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447-4400

FILED
KING COUNTY SUPERIOR COURT
WASHINGTON

SEP 24 2007

SUP. COURT CLERK
BARBARA WINTER
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF KING

McCleary,

Plaintiff,

v.

St of Washington, Defendant.

CAUSE No. 07-2-02323-2 SEA
~~ORDER ON CIVIL MOTION~~
~~(ORMA)~~ continuing trial
and lifting discovery
stay

This Court, having heard a motion conducted a CRILE conference
by telephone

IT IS HEREBY ORDERED that the trial date is continued to
March 2, 2009. The court will issue an amended case schedule.
The discovery stay is lifted. Petitioners will
file amended pleadings no later than mid October,
2007.

DATED this 21 day of September, 2007

Paris K. Kallas

Honorable Paris K. Kallas

Presented by:

ORDER ON CIVIL MOTION

Judge Paris K. Kallas
King County Superior Court
516 3rd Avenue E-847
Seattle, WA 98104
(206) 296-9105

FILED

2007 DEC -6 PM 2:14

CLERK OF SUPERIOR COURT
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MATHEW & STEPHANIE MCCLEARY, on their own behalf 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.

Honorable Paris K. Kallas

No. 07-2-02323-2 SEA

AMENDED
PETITION FOR DECLARATORY
JUDGMENT ENFORCING OUR
CONSTITUTION

ORIGINAL

The above Petitioners allege as follows against the Respondent State of Washington:

INTRODUCTION TO THIS AMENDED PETITION

1. Petitioners believe that the proceedings in this case have served to significantly focus the fundamental issues in dispute. Petitioners file this Amended Petition to narrowly focus on those issues in the hope that it will allow this suit to be resolved in a more efficient manner under this Court's Civil Rules.

2. In short, the Petitioners seek four types of relief from this Court.

First, the proceedings to date confirm that the Petitioners and Respondent State disagree on the legal meaning of the words "paramount", "ample", and "all" as used in Article IX, §1 of

1 our State Constitution. Petitioners seek a declaratory judgment ruling to resolve that dispute
2 under Washington law. See paragraphs 9 – 21 and 107 – 108 below.

3 **Second**, the proceedings to date confirm that the Petitioners and Respondent State
4 disagree on the current legal definition of the basic “education” mandated by Article IX, §1.
5 Petitioners seek a declaratory judgment ruling to resolve that dispute under Washington law.
6 See paragraphs 22 – 41 and 107 – 108 below.

7 **Third**, the proceedings to date confirm that the Petitioners and Respondent State
8 disagree on the following yes-or-no question: “Is the Respondent State currently fully
9 complying with its legal duty under Article IX, §1?” Petitioners seek a declaratory judgment
10 ruling to resolve that dispute under Washington law. See paragraphs 42 – 84 and 107 – 108
11 below.

12 **Fourth**, the proceedings to date confirm that the Petitioners and Respondent State
13 disagree on what judicial remedy is appropriate to enforce Article IX, §1 of our State
14 Constitution. Petitioners seek what they contend is a narrowly tailored Court order to enforce
15 the declaratory judgment rulings they seek concerning the Respondent State’s legal duty under
16 Article IX, §1 of our State Constitution. See paragraphs 85 – 104 and 107 – 108 below.

17 **PARTIES**

18 3. **Petitioners**: This Amended Petition does not change the Petitioners in this case.
19 They continue to be:

20 (a) **The McCleary Family**: Carter and Kelsey McCleary attend Washington public
21 schools. When this suit was filed, Carter was a 7 year old second grader at Chimacum Creek
22 Primary School, and his sister Kelsey was a 13 year old seventh grader at Chimacum Middle
23 School. Thirteen is the same age Kelsey’s mom was when the Washington Supreme Court
24 issued its *Seattle School District* decision.

1 Carter's and Kelsey's parents are Matt and Stephanie McCleary. They are voters and
2 taxpayers living in Jefferson County, Washington. They bring this action on their own behalf
3 and as legal guardians on behalf of their two children.

4 The McCleary petitioners have satisfied all conditions precedent to bring this suit.

5 (b) The Venema Family: Robbie and Halie Venema attend Washington public
6 schools. When this suit was filed, Robbie was a 12 year old sixth grader at Cathcart Elementary
7 School, and his sister Halie was a 15 year old ninth grader at the Snohomish High School
8 (Freshman Campus). High School is the same level Halie's mom was when the Washington
9 Supreme Court issued its *Seattle School District* decision.

10 Robbie's and Halie's parents are Robert and Patty Venema. They are voters and
11 taxpayers living in Snohomish County, Washington. They bring this action on their own behalf
12 and as legal guardians on behalf of their two children.

13 The Venema petitioners have satisfied all conditions precedent to bring this suit.

14 (c) Network for Excellence in Washington Schools ("NEWS"): The Network for
15 Excellence in Washington Schools ("NEWS") is a State-wide coalition of community groups,
16 education organizations, public school districts, and others who support better education in the
17 public schools of our State. NEWS is a non-profit corporation organized under the laws of the
18 State of Washington, and has satisfied all conditions precedent to bring this suit.

19 The members of NEWS include the 150,000-member Washington State PTA; the
20 23-chapter League of Women Voters of Washington; the Urban League of Metropolitan Seattle;
21 the Washington State Special Education Coalition; the American Association of University
22 Women of Washington; the Pierce County Black Collective; the Equitable Opportunity Caucus;
23 the Minority Executive Directors Coalition; the Washington Protection and Advocacy System;
24 the 74,000-member Washington Education Association; the Arlington, Bainbridge Island,
25 Bellevue, Chimacum, Edmonds, Lakewood, North Kitsap, Omak, Pasco, Peninsula, Seattle,
26 Snohomish, South Kitsap, and Spokane school districts (which range in size from 1,200 to

1 45,800 students, and location from Jefferson and Pierce to Okanogan, Franklin, and Spokane
2 counties); as well as the 15 local teacher & educator associations in each of those school
3 districts. See http://www.waschoolexcellence.org/about_us/news_members.

4 4. Respondent: This Amended Petition does not change the Respondent in this case. It
5 continues to be the State of Washington. The Respondent State of Washington is required to
6 comply with the Constitution of Washington.

7 JURISDICTION & VENUE

8 5. This Court has jurisdiction to issue a declaration that the State is, or is not,
9 complying with the State's Constitutional duties.

10 6. This Court has jurisdiction to enforce the Washington State Constitution.

11 7. This Court has jurisdiction over this action.

12 8. Venue for this action properly lies in this Court.

13 THE FOUR FUNDAMENTAL ISSUES PRESENTED BY THIS SUIT

14 First Issue:

15 Legal Interpretation of the words "paramount", "ample", and "all" in Article IX, §1

16 9. The Washington Supreme Court has held that it "is the proper function of the
17 judiciary to interpret, construe and enforce the constitution of the State of Washington". *Seattle*
18 *School District v. State*, 90 Wn.2d 476, 482 (1978).

19 10. The Washington Supreme Court has held that "the judiciary has the ultimate power
20 and the duty to interpret, construe and give meaning to words, sections and articles of the
21 constitution. It is emphatically the province and duty of the judicial department to say what the
22 law is. This duty must be exercised even when an interpretation serves as a check on the
23 activities of another branch of government or is contrary to the view of the constitution taken by
24 another branch." *Seattle School District v. State*, 90 Wn.2d 476, 503-504 (1978).

25 11. Article IX, §1 of the Washington State Constitution states: "It is the paramount duty
26 of the state to make ample provision for the education of all children residing within its borders,

1 without distinction or preference on account of race, color, caste, or sex.” A copy of
2 Article IX, §1 is attached as Tab 1.

3 12. Petitioners contend that the word “paramount” in Article IX, §1 should be
4 interpreted to mean “having the highest rank that is superior to all others”.

5 13. Petitioners contend that the word “paramount” in Article IX, §1 is not a mere
6 synonym of “important”, but rather means superior in rank above all others – preeminent,
7 supreme, and more important than all other things concerned.

8 14. Given the plain English meaning of the word “paramount”, Petitioners contend that
9 Article IX, §1 requires the Respondent State to make the State’s ample provision for the
10 education of all Washington children the State’s first and highest priority above all other
11 programs and operations.

12 15. The Respondent State does not agree with the Petitioners’ interpretation of the word
13 “paramount” in Article IX, §1.

14 16. Petitioners contend that the word “ample” in Article IX, §1 should be interpreted to
15 mean “more than adequate” or “considerably more than adequate or sufficient.”

16 17. Given the plain English meaning of the word “ample”, Petitioners contend that
17 Article IX, §1 requires the Respondent State’s provision to be more than merely “adequate” or
18 “sufficient” to provide for the education of all Washington’s children – and thus, for example,
19 not require supplementation or backfilling by local levies, PTA fundraisers, private donations,
20 or other non-State sources.

21 18. The Respondent State does not agree with the Petitioners’ interpretation of the word
22 “ample” in Article IX, §1.

23 19. Petitioners contend that the word “all” in Article IX, §1 should be interpreted to
24 mean “every” or “each and every one of”.

25 20. Given the plain English meaning of the word “all”, Petitioners contend that
26 Article IX, §1 requires the Respondent State to make ample provision for the education of every

1 child residing in our State – not just those children who are in convenient, popular, advantaged,
2 or politically expedient subsets of our State’s children.

3 21. The Respondent State does not agree with the Petitioners’ interpretation of the word
4 “all” in Article IX, §1.

5 **Second Issue:**
6 **Legal Interpretation of the basic “education” mandated by Article IX, §1**

7
8 **The “minimum” definition of basic education under**
9 **our State Supreme Court’s Seattle School District Ruling**

10 22. The Washington Supreme Court has declared the following with respect to the scope
11 of “education” mandated by Article IX, §1:

12 [T]he State’s constitutional duty goes beyond mere reading, writing and
13 arithmetic. It also embraces broad educational opportunities needed in the
14 contemporary setting to equip our children for their role as citizens and as
15 potential competitors in today’s market as well as in the market place of ideas.
16 Education plays a critical role in a free society. It **must** prepare our children to
17 participate intelligently and effectively in our open political system to ensure that
18 system’s survival. It **must** prepare them to exercise their First Amendment
19 freedoms both as sources and receivers of information; and, it must prepare them
20 to be able to inquire, to study, to evaluate and to gain maturity and
21 understanding. The constitutional right to have the State “make ample provision
22 for the education of all (resident) children” would be hollow indeed if the
23 possessor of the right could not compete adequately in our open political system,
24 in the labor market, or in the market place of ideas.

18 *Seattle School District v. State*, 90 Wn.2d 476, 517-18 (1978) (emphasis added; internal
19 citations omitted). A copy of the above ruling is attached as Tab 2.

20 23. The Washington Supreme Court referred to the education described in Tab 2 as a
21 “basic education”, and held that “**effective** teaching and opportunities for learning of these
22 essential skills make up the *minimum* of the education that is constitutionally required.” *Seattle*
23 *School District v. State*, 90 Wn.2d 476, 518 (1978) (underline added; italics in original).

24 24. The State agrees that effective teaching and opportunities for learning the essential
25 skills described in Tab 2 make up the minimum of the education that is constitutionally
26 required.

1
2 The additional substantive content defined by the
3 Legislature's enactment of the four numbered provisions in §.210 of the Basic Education Act

4 25. The Washington Supreme Court held that the "basic education" described in Tab 2 is
5 not "fully descriptive of the State's paramount duty". *Seattle School District v. State*, 90 Wn.2d
6 476, 518 (1978) (emphasis added). The Washington Supreme Court accordingly ordered the
7 legislature to do at least two things:

8 (1) further define "basic education" with additional substantive content beyond that
9 described in Tab 2, and

10 (2) define a basic program of education to provide that basic education.

11 E.g., *Seattle School District v. State*, 90 Wn.2d at 482 ("The Legislature must act to carry out its
12 constitutional duty by defining and giving substantive content to 'basic education' and a basic
13 program of education") (underline added), at 519 (noting that in 1978 the legislature had not yet
14 passed legislation "defining or giving substantive content to 'basic education' or a basic
15 program of education. Thus, the Legislature must hereafter act to comply with its constitutional
16 duty by defining and giving substantive meaning to them." (underlines added), at 537 ("We
17 have great faith in the Legislature and its ability to define 'basic education' and a basic program
18 of education") (underline added), and thus at 484 ("The Legislature has the duty to define 'basic
19 education' ").

20 26. Petitioners contend that the legislature complied with its duty to provide further
21 substantive content for the definition of "basic education" when it enacted the four numbered
22 provisions of §.210 of the Basic Education Act (RCW 28A.150.210(1)-(4)).

23 27. The Respondent State's Superintendent of Public Instruction (Dr. Terry Bergeson)
24 has acknowledged in her sworn testimony in this case that the four numbered provisions of
25 §.210 of the Basic Education Act "are the substantive content of what drives education in our
26 State".

1 28. The legislature first enacted those four numbered provisions in 1993 when it passed
2 House Bill 1209 into law. The first section of House Bill 1209 explained the legislature's intent
3 to establish substantive student performance standards for our State's education system:

4 The legislature finds that student achievement in Washington must be improved
5 to keep pace with societal changes, changes in the workplace, and an
6 increasingly competitive international economy.

7 To increase student achievement, the legislature finds that the state of
8 Washington needs to develop a public school system that focuses more on the
9 educational performance of students....

10 The legislature further finds that improving student achievement will require
11 (1) Establishing what is expected of students, with standards set at internationally
12 competitive levels....

13 House Bill 1209, Sec. 1 (emphasis added).

14 29. The next section of House Bill 1209 established the substantive content for those
15 student performance standards by specifying the following knowledge and skills:

16 (1) Read with comprehension, write with skill, and communicate effectively and
17 responsibly in a variety of ways and settings;

18 (2) Know and apply the core concepts and principles of mathematics; social,
19 physical, and life sciences; civics and history; geography; arts; and health and
20 fitness;

21 (3) Think analytically, logically, and creatively, and to integrate experience and
22 knowledge to form reasoned judgments and solve problems; and

23 (4) Understand the importance of work and how performance, effort, and
24 decisions directly affect future career and educational opportunities.

25 House Bill 1209, Sec. 101 (codified as §.210 of the Basic Education Act, RCW 28A.150.210).

26 30. The wording of the four numbered provisions of §.210 of the Basic Education Act
were amended in 2007 to specify the following knowledge and skills:

(1) Read with comprehension, write effectively, and communicate successfully
in a variety of ways and settings and with a variety of audiences;

(2) Know and apply the core concepts and principles of mathematics; social,
physical, and life sciences; civics and history, including different cultures and
participation in representative government; geography; arts; and health and
fitness;

(3) Think analytically, logically, and creatively, and to integrate different
experiences and knowledge to form reasoned judgments and solve problems;
and

(4) Understand the importance of work and finance and how performance, effort,
and decisions directly affect future career and educational opportunities.

1 E2SSB 5841, Sec. 1 (codified as §.210 of the Basic Education Act, RCW 28A.150.210).

2 31. The Respondent State has confirmed in this case that the above amendment does not
3 change the substantive content of §.210 of the Basic Education Act (RCW 28A.150.210).

4 32. Petitioners interpret the four numbered provisions of RCW 28A.150.210 to provide
5 the current legislative definition of the substantive content of "basic education" in our State
6 under the Washington Supreme Court ruling attached at Tab 2.

7 33. The Respondent State disagrees with the Petitioners' interpretation of
8 RCW 28A.150.210.

9
10 *The additional substantive content defined by the*
11 *State's adoption of the eight Essential Academic Learning Requirements (EARLs)*

12 34. The Respondent State has established Essential Academic Learning Requirements
13 (EARLs) for the following core subjects: (1) Reading; (2) Mathematics; (3) Science;
14 (4) Writing; (5) Communication; (6) Social Studies: civics, economics, geography, & history;
15 (7) Arts; and (8) Health & Fitness.

16 35. The Respondent State admits that the Essential Academic Learning Requirements
17 (EARLs) are part of the instruction required for Washington students.

18 36. The Essential Academic Learning Requirements (EARLs) specify the skills and
19 knowledge in core subjects that all students are expected to master as they move through
20 Washington's public schools.

21 37. The Respondent State admits that it adopted the Essential Academic Learning
22 Requirements (EARLs) to specify the basic skills established by RCW 28A.150.210.

23 38. Petitioners interpret the Respondent State's Essential Academic Learning
24 Requirements (EARLs) to further define the current substantive content of "basic education" in
25 our State under the Washington Supreme Court ruling attached at Tab 2.
26

1 39. The Respondent State disagrees with the Petitioners' interpretation of the
2 Respondent State's Essential Academic Learning Requirements (EALRs).

3
4 The current legal definition of the basic education mandated by Article IX, §1

5 40. With respect to the second issue raised in this case, the Petitioners accordingly
6 contend that the scope of education described by the Washington Supreme Court ruling attached
7 as Tab 2 is the *minimum* basic "education" mandated by Article IX, §1 of our State
8 Constitution, and that the current substantive content for that constitutionally mandated basic
9 education has been further defined by the four numbered provisions of §.210 of the Basic
10 Education Act (RCW 28A.150.210(1)-(4)) and the Respondent State's eight Essential Academic
11 Learning Requirements (EALRs).

12 41. The Respondent State disagrees with the Petitioners' interpretation of the basic
13 education mandated by Article IX, §1 of our State Constitution.

14 **Third Issue:**
15 **The State's Current Lack Of Full Compliance With Article IX, §1**

16 The education provided to Washington's children confirms the State's noncompliance

17 42. The third issue raised in this case is not a matter-of-degree question. It does not seek
18 a ruling on the degree or amount by which the Respondent State is currently failing to fully
19 comply with its education duty under Article IX, §1. Instead, the third issue raised in this case
20 is a binary yes-or-no question: As we stand here today, is the State fully complying this Court's
21 interpretation of the State's paramount education duty under Article IX, §1 – yes or no?

22 43. As another court noted in a prior constitutional challenge to a State's education
23 system, "This case involves the fundamental law of our land and this Court has no discretion
24 whatsoever in whether it will be enforced and preserved. There is no higher duty of any judicial
25 officer than to see to the adherence of government to our Constitutions. There is no such thing
26 as "a little bit pregnant" and there is no such thing as "slightly unconstitutional." " *Montoy v.*

1 *State of Kansas* (case no. 99-C-1738, Shawnee County District Court, Memorandum Decision
2 dated December 2, 2003, at second-to-last page). Similarly here, there is no such thing as our
3 State's current education system being "slightly unconstitutional" under Article IX, §1. It's
4 either constitutional or it's not.

5 44. Article IX, §1 of our State Constitution does not have a "close enough for
6 government work" exception to excuse failures in the education provided by our State to our
7 State's children.

8 45. Currently, the Respondent State is not fully complying with its Constitutional duty
9 under the correct legal interpretation of Article IX, §1.

10 46. All children residing within the State of Washington are not receiving the education
11 mandated by Article IX, §1 of our State Constitution.

12 47. The Respondent State does not provide every child in our State's public schools with
13 the basic education mandated by Article IX, §1 of our State Constitution.

14 48. The Respondent State's Superintendent of Public Instruction has acknowledged in
15 her sworn testimony in this case that the State is not currently providing all children in our State
16 the education described in the State Supreme Court ruling attached as Tab 2.

17 49. The Respondent State's 2005-2006 Washington Learns study concluded that the
18 Respondent State is failing to provide students the education they need in today's society.

19 50. After exhaustively studying the State's public education system in 2005-2006, the
20 Respondent State's November 2006 Washington Learns report stated that "our education system
21 is not preparing our students to compete" and that "Our students are falling behind other states
22 and nations".

23 51. The Respondent State's Governor has publicly stated to the citizens of our State that
24 "Obviously the system has failed for our students."

25 52. An unacceptable number of students in our State fail to graduate from high school
26 with their peers.

1 53. The students in our State who fail to graduate from high school with their peers are
2 disproportionately from our State's minority populations.

3 54. The students in our State who fail to graduate from high school with their peers are
4 disproportionately from our State's lower income populations.

5 55. An unacceptable number of the students in our State who receive a high school
6 diploma each year are not earning a diploma backed by skills they need to succeed.

7 56. The Respondent State created the Washington Assessment of Student Learning
8 ("WASL") to measure whether students in our public school system are mastering the
9 fundamental skills in mathematics, science, reading, and writing identified in the Essential
10 Academic Learning Requirements (EALRs).

11 57. According to the State, the Washington Assessment of Student Learning ("WASL")
12 is one of the most reliable assessments of student achievement in the country.

13 58. The Respondent State's WASL assessment is the only existing assessment of
14 whether students are or are not learning the substantive content established by the Respondent
15 State's Essential Academic Learning Requirements (EALRs).

16 59. An unacceptable number of students in our State fail to pass the Science WASL.

17 60. An unacceptable number of students in our State fail to pass the Math WASL.

18 61. An unacceptable number of students in our State fail to pass the Reading WASL.

19 62. An unacceptable number of students in our State fail to pass the Writing WASL.

20 63. The students in our State who fail to pass the WASL are disproportionately from our
21 State's minority populations.

22 64. The students in our State who fail to pass the WASL are disproportionately from our
23 State's lower income populations.

24 65. The Respondent State's Superintendent of Public Instruction has acknowledged in
25 her sworn testimony in this case that "struggling students are disproportionately ethnic students
26 or low income students."

1 66. The above examples of our State's educational failures confirm the following fact:
2 The Respondent State does not provide for all of the teachers, staff, training, curriculum,
3 materials, supplies, equipment, technology & infrastructure support, facilities, construction,
4 maintenance, operations, kindergarten readiness, transportation, special education, bilingual,
5 arts, health & fitness, and other elements necessary to provide all children residing in our State
6 with the basic education mandated by Article IX, §1 of our State Constitution.

7 State's excuses

8 67. The Respondent State has suggested that its current failure to fully comply with
9 Article IX, §1 is disproven by (or should be ignored because of) the fact that, under some
10 measures, the State's provision for the education of our State's children might now be getting
11 better.

12 68. Petitioners contend that such a "trending better" argument does not negate or
13 disprove that the Respondent State is currently failing to fully comply with Article IX, §1.
14 Instead, that argument addresses how long the Respondent State's current failure will continue
15 into the future.

16 69. The Respondent State has suggested that its current failure to fully comply with
17 Article IX, §1 is disproven by (or should be ignored because of) the fact that, under some
18 measures, the education many of our State's children receive is better than that received by
19 children in other States.

20 70. Petitioners contend that purportedly favorable comparisons to other States do not
21 negate or disprove the Respondent State of Washington's failure to fully comply with our
22 State's Constitution.

23 71. No other State's Constitution has a stronger education mandate than our State's
24 Constitution.
25
26

1 72. The only assessment by the Respondent State of whether students are learning the
2 substantive content established by §.210 of Washington's Basic Education Act and
3 Washington's corresponding EALRs is the Respondent State's WASL assessment.

4 73. The Respondent State has suggested that its current failure to fully comply with
5 Article IX, §1 is disproven by (or should be ignored because of) the fact that, under some
6 measures, the State is not failing as badly as some of the data indicates.

7 74. Petitioners contend that the Respondent State's arguments over the extent to which
8 the Respondent State is currently failing to fully comply with Article IX, §1 do not refute the
9 fact that the Respondent State is currently failing to fully comply with Article IX, §1.

10 75. The Respondent State has suggested that its current failure to fully comply with
11 Article IX, §1 is disproven by (or should be ignored because of) the fact that the Respondent
12 State believes that inadequate funding might not be the cause of the State's current failure to
13 provide the education mandated by Article IX, §1 to all children in our State.

14 76. Petitioners contend that the Respondent State's arguments over the cause of the
15 Respondent State's current failure to provide the education mandated by Article IX, §1 to all
16 children in our State do not refute the fact that the Respondent State is currently failing to
17 provide the education mandated by Article IX, §1 to all children in our State.

18 77. The Respondent State has suggested that its current failure to fully comply with
19 Article IX, §1 is disproven by (or should be ignored because of) the fact that the Respondent
20 State believes school districts (or school district teachers and other employees) might be to
21 blame for our State's current failure to provide the education mandated by Article IX, §1 to all
22 children in our State.

23 78. Petitioners contend that the Respondent State has no legal basis for its suggestion
24 that it can shift the blame to someone else for our State's current failure to provide the education
25 mandated by Article IX, §1 to all children in our State. See, for example *Bellevue School*
26 *District v. Brazier*, 103 Wn.2d 111, 116 (1984) ("The state has ... made the local school district

1 its corporate agency for the administration of a constitutionally required system of free public
2 education”); *Tunstall v. Bergeson*, 141 Wn.2d 201, 232 (2000) (“school districts have no duty
3 under Washington’s constitution. Article IX makes no reference whatsoever to school
4 districts.”); *Orion Corp. v. State*, 109 Wn.2d 621, 643-44 (1987) (State liable for
5 unconstitutional taking from County’s enactment of regulations as agent of the State because
6 “As the principal of an agent acting within its authority, the State must take full responsibility if
7 a taking occurred”).

8 79. The Respondent State has suggested that its current failure to fully comply with
9 Article IX, §1 is disproven by (or should be ignored because of) the fact that the State believes
10 that providing children a mere “opportunity” to get an education should suffice.

11 80. Petitioners contend that even if such a mere “opportunity” theory were legally valid,
12 the substantial achievement gap in our State refutes any notion that the Respondent State is in
13 fact currently providing ample “opportunity” to all children in our State.

14
15 *The State’s current failure to fully comply with Article IX, §1*

16 81. Plaintiffs in other States have employed the following “inadequate funding”
17 approach to prove the defendant State’s violation its State Constitution: (1) it would cost
18 x dollars to adequately fund the education required by the defendant State’s Constitution, and
19 (2) the fact that the defendant State funds less than x dollars proves the State is not providing
20 students the education required by that State’s Constitution.

21 82. As the above paragraphs show, however, the Petitioners in this case employ a
22 different approach to establish the Respondent State’s violation: (1) the *Seattle School District*
23 ruling at Tab 2, §.210 of the Basic Education Act, and the corresponding EALRs define the
24 basic education that Article IX, §1 of the Washington Constitution requires the State to provide
25 all children in our State, and (2) the performance of our State’s education system confirms that
26

1 the Respondent State is not currently meeting its Constitutional duty with respect to providing
2 that basic education to all children in our State.

3 83. With respect to the third issue raised in this case, the Petitioners accordingly contend
4 that the Respondent State currently is not fully complying with its legal duty under
5 Article IX, §1 of our State Constitution.

6 84. The Respondent State disagrees, and contends that the Respondent State currently is
7 fully complying with its legal duty under Article IX, §1.

8
9 **Fourth Issue:**
10 **Remedy For The Respondent State's Current Lack Of Full Compliance With**
11 **Article IX, §1**

12 85. The Washington Supreme Court has held that Article IX, §1 of our State
13 Constitution "is unique among state constitutions" (*Seattle School District v. State*, 90 Wn.2d at
14 498), and has explained that:

15 Careful examination of our constitution reveals that the framers declared only
16 once in the entire document that a specified function was the State's paramount
17 duty. That singular declaration is found in Constitution Article IX, §1.
18 Undoubtedly, the imperative wording was intentional. ... No other State has
19 placed the common school on so high a pedestal.

20 *Seattle School District v. State*, 90 Wn.2d at 510-11.

21 86. The Washington Supreme Court has held that Article IX, §1 "is mandatory and
22 imposes a judicially enforceable affirmative duty" upon the State. *Seattle School District v.*
23 *State*, 90 Wn.2d at 482 (1978).

24 87. The Washington Supreme Court has held that Article IX, §1 "is substantive and
25 enforceable" in the courts. *Brown v. State*, 155 Wn.2d 254, 258 (2005).

26 88. The Washington Supreme Court has held that the Article IX, §1 grants all children in
our State a Constitutional right:

1 [A]ll children residing within the borders of the State possess a “right”, arising
2 from the constitutionally imposed “duty” of the State, to have the State make
3 ample provision for their education. Further, since the “duty” is characterized as
4 paramount the correlative “right” has equal stature.

5 *Seattle School District v. State*, 90 Wn.2d at 511-512.

6 89. As the prior paragraphs explain, Petitioners contend that the Respondent State
7 currently is not fully complying with Article IX, §1. The fourth issue raised in this case is
8 therefore one of how this Court should tailor its enforcement Order to ensure compliance with
9 this Court’s legal rulings.

10 90. The Washington Supreme Court has held that Article IX, §1 requires the Respondent
11 State to provide “fully sufficient funds” and a “level of funding that is fully sufficient”. *Seattle
12 School District v. State*, 90 Wn.2d at 518 & 537.

13 91. The Washington Supreme Court has held that Article IX, §1 requires the Respondent
14 State to provide that fully sufficient funding with State funds (rather than local or other
15 non-State funds), provide that fully sufficient State funding from dependable and regular State
16 sources, and make that fully sufficient State funding the State’s first priority. *Seattle School
17 District v. State*, 90 Wn.2d at 484, 518, 520, & 525-26.

18 92. To fulfill its duty to fully fund the basic education mandated by Article IX, §1 of our
19 State Constitution, the Respondent State must at least know the actual dollar cost of providing
20 the basic education mandated by Article IX, §1 of our State Constitution.

21 93. The Respondent State has not determined the actual dollar cost of providing the
22 basic education mandated by Article IX, §1 of our State Constitution.

23 94. The Respondent State does not know the actual dollar cost of providing the basic
24 education mandated by Article IX, §1 of our State Constitution.

25 95. The Picus & Odden cost study done as part of the Respondent State’s 18-month
26 Washington Learns study determined that the actual dollar cost of providing Washington’s
children with an adequate education would require significantly more state funding.

1 96. The Respondent State's Superintendent of Public Instruction has acknowledged in
2 her sworn testimony in this case that State funds do not amply provide for the education of our
3 State's public high school students today.

4 97. The Respondent State's Superintendent of Public Instruction has acknowledged in
5 her sworn testimony in this case that school districts today are left to rely heavily on local levies
6 to fund basic education.

7 98. In fact, the funds provided by the Respondent State do not fully pay for the teachers,
8 staff, training, curriculum, materials, supplies, equipment, technology & infrastructure support,
9 facilities, construction, maintenance, operations, kindergarten readiness, transportation, special
10 education, bilingual, arts, health & fitness, and other costs necessary to provide all children
11 residing in our State with the basic education mandated by Article IX, §1 of our State
12 Constitution

13 99. The Respondent State does not provide the stable, dependable, and regular State
14 funding necessary to provide every child in our State the basic education mandated by
15 Article IX, §1 of the Washington State Constitution.

16 100. The Respondent State does not provide the stable, dependable, and regular State
17 funding necessary to provide every child in our State the basic education described in the
18 Washington State Supreme Court ruling attached as Tab 2.

19 101. The Respondent State does not provide the stable, dependable, and regular State
20 funding necessary to provide every child in our State the education described in the four
21 numbered provisions of §.210 of the Basic Education Act.

22 102. The Respondent State does not provide the stable, dependable, and regular State
23 funding necessary to provide every child in our State the basic education specified in the
24 Respondent State's eight Essential Academic Learning Requirements (EALRs).

1 (a) "Paramount" means paramount. As used in Article IX, §1, the word
2 "paramount" means "having the highest rank that is superior to all others". As used in
3 Article IX, §1, the word "paramount" is not a mere synonym of "important", but rather means
4 "superior in rank above all others – preeminent, supreme, and more important than all other
5 things concerned." Article IX, §1 accordingly requires the Respondent State to make the State's
6 ample provision for the education of all Washington children the State's first and highest
7 priority above all other programs and operations.

8 (b) "Ample" means ample. As used in Article IX, §1, the word "ample" means
9 "more than adequate" or "considerably more than adequate or sufficient." Article IX, §1
10 accordingly requires the Respondent State's provision for the education of all Washington
11 children to be more than merely "adequate" or "sufficient" to provide the Constitutionally
12 required education to all Washington's children, without any supplementation or backfilling by
13 local levies, PTA fundraisers, private donations, or other non-State sources

14 (c) "All" means all. As used in Article IX, §1, the word "all" means "every" or
15 "each and every one of". Article IX, §1 accordingly requires the Respondent State to make
16 ample provision for the education of every child residing in our State, not just those children
17 who are in convenient, popular, advantaged, or politically expedient subsets of our State's
18 children.

19 (d) The basic "education" mandated by the Washington State Constitution is a solid
20 constitutional floor below which the State cannot fall. At the very *minimum*, Article IX, §1
21 requires the Respondent State to provide every child residing in our State the full,
22 comprehensive, well-rounded education described by the Washington Supreme Court in the
23 *Seattle School District v. State* ruling attached as Tab 2. The substantive content of that
24 Constitutionally mandated basic education currently includes the substantive content specified
25 in the four numbered provisions of §.210 of the Basic Education Act
26

1 (RCW 28A.150.210(1)-(4)) and the Respondent State's eight Essential Academic Learning
2 Requirements (EALRs).

3 (e) The Respondent State currently is not fully complying with its Constitutional
4 duty under Article IX, §1. The Respondent State is not satisfying its paramount Constitutional
5 duty to make ample provision for the education of every child residing in our State.

6 (f) The Respondent State must fully comply with Article IX, §1 of our State
7 Constitution. Mere first steps, partial steps, or half steps do not satisfy the Respondent State's
8 Constitutional duty.

9 (g) The Respondent State must promptly comply with Article IX, §1 of our State
10 Constitution. The Respondent State's approximately 30-year delay after the Washington
11 Supreme Court's *Seattle School District v. State* ruling in 1978 has, as a matter of law, been far
12 too long.

13 (h) To halt the Respondent State's longstanding lack of full compliance with
14 Article IX, §1 of our State Constitution, the Respondent State must promptly (1) determine the
15 actual dollar cost of providing all children in our State with the education mandated by this
16 Court's legal interpretation of Article IX, §1, and (2) determine how the Respondent State will
17 fully fund that actual dollar cost with stable and dependable State sources.

18 **RELIEF REQUESTED**

19 It is the judicial branch's duty to uphold and enforce the Constitution. The Petitioners
20 accordingly seek the following relief from this Court to require the State of Washington to obey
21 the Constitution of Washington:

- 22 1. The declaratory judgments requested in this Petition concerning the State's
23 paramount education duty under Article IX, §1 of our State Constitution;
- 24 2. An enforcement Order requiring the State to promptly determine the complete,
25 actual dollar cost of providing the Constitutionally mandated basic education to every child
26

1 residing in our State, and to determine how it will fully fund that actual dollar cost with stable,
2 dependable, and regular State funding sources.

3 3. An award reimbursing Petitioners' attorney fees, expenses, and costs to the full
4 extent allowed by law.

5 4. Permission to amend the pleadings to add additional claims or parties to conform to
6 discovered evidence or the proof offered at the time of hearing or trial.

7 5. Such other relief and/or writs as appears to the Court to be just and equitable.

8 RESPECTFULLY SUBMITTED this 6th day of December, 2007.

9 FOSTER PEPPER PLLC

10
11 

12 Thomas F. Ahearn, WSBA No. 14844
13 Edmund W. Robb, WSBA No. 35948
14 Ramsey Ramerman, WSBA No. 30423
15 Alice M. Ostdick, WSBA No. 31490
16 Attorneys for petitioners

Tab 1

Article IX, section 1

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

TAB I

Tab 2

FILED

KING COUNTY, WASHINGTON

AUG 07 2008

**SUPERIOR COURT CLERK
JENNIFER L. SCHNARR
DEPUTY**

THE HONORABLE PARIS K. KALLAS

**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

**AMENDED ANSWER TO
AMENDED PETITION FOR
DECLARATORY JUDGMENT
ENFORCING CONSTITUTION**

I. ANSWER

Respondent State of Washington (hereinafter respondent), by and through its undersigned counsel of record hereby submits its Amended Answer to the Amended Petition for Declaratory Judgment (hereinafter Amended Petition). Topical headings from the Amended Petition are reproduced for ease of reference only.

Respondent admits, denies and alleges as follows:

1 10. Answering paragraphs 12, 13 and 14 of the Amended Petition, respondent
2 admits that petitioners make the contentions in these paragraphs. Respondent further admits
3 that the terms used in Article IX, Section 1, including those which are addressed in
4 paragraphs 12, 13 and 14 of the Amended Answer, have been interpreted and construed by the
5 Washington Supreme Court. Respondent denies that the terms in Article IX, Section 1 require
6 any further interpretation or construction and denies each and every other allegation contained
7 in paragraphs 12, 13 and 14.

8 11. Answering paragraph 15 of the Amended Petition, respondent admits that the
9 word "paramount" in Article IX, Section 1 has already been interpreted and construed by the
10 Washington Supreme Court. Respondent denies that this term requires any further
11 interpretation or construction.

12 12. Answering paragraphs 16 and 17 of the Amended Petition, respondent admits
13 that petitioners make the contentions in these paragraphs. Respondent further admits that the
14 terms used in Article IX, Section 1, including those addressed in paragraphs 16 and 17 of the
15 Amended Petition, have been interpreted and construed by the Washington Supreme Court.
16 Respondent denies that Article IX, Section 1 requires any further interpretation or
17 construction.

18 13. Answering paragraph 18 of the Amended Petition, respondent admits that the
19 word "ample" in Article IX, Section 1 has already been interpreted and construed by the
20 Washington Supreme Court. Respondent denies that this term requires any further
21 interpretation or construction.

22 14. Answering paragraphs 19 and 20 of the Amended Petition, respondent admits
23 that petitioners make the contentions in these paragraphs. Respondent further admits that the
24 terms used in Article IX, Section 1 have been interpreted and construed by the Washington
25 Supreme Court. Respondent denies that Article IX, Section 1 requires any further
26 interpretation or construction.

1 15. Answering paragraph 21 of the Amended Petition, respondent admits that the
2 word "all" in Article IX, Section 1 has already been interpreted and construed by the
3 Washington Supreme Court. Respondent denies that this term requires any further
4 interpretation or construction.

5 Second Issue:

6 Legal Interpretation of the basic "education" mandated by Article IX, §1

7 The "minimum" definition of basic education under our
8 State Supreme Court's Seattle School District Ruling

9 16. Answering paragraphs 22 and 23 of the Amended Petition, respondent admits
10 that the quoted excerpts in these paragraphs and the language reproduced as Tab 2 to the
11 Amended Petition are from the *Seattle School District v. State* decision. That Supreme Court
12 decision speaks for itself. Respondent denies each and every other allegation in paragraphs 22
13 and 23.

14 17. Answering paragraph 24 of the Amended Petition, respondent admits it
15 provides the resources for effective teaching and opportunities for learning for Washington's
16 students. Respondent denies each and every other allegation in paragraph 24.

17 The additional substantive content defined by the Legislature's enactment of the
18 four numbered provisions in §.210 of the Basic Education Act.

19 18. Answering paragraph 25 of the Amended Petition, respondent admits that the
20 quoted language is excerpted from the Washington Supreme Court opinion in *Seattle School*
21 *District v. State*. That decision speaks for itself. Respondent denies each and every other
22 allegation in paragraph 25.

23 19. Answering paragraph 26 of the Amended Petition, respondent admits that
24 petitioners appear to be contending what is contained in paragraph 26.

25 20. Answering paragraph 27 of the Amended Petition, respondent admits that the
26 Superintendent of Public Instruction, Dr. Terry Bergeson, has testified in this case and that her

1 testimony speaks for itself. Respondent denies each and every other allegation in
2 paragraph 27.

3 21. Answering paragraph 28 of the Amended Petition, respondent admits that
4 House Bill 1209 was enacted into law in 1993, that it amended RCW 28A.150.210 that
5 originally was enacted in 1977 and that the excerpted language quoted in paragraph 28 is from
6 House Bill 1209. Respondent denies each and every other allegation in paragraph 28.

7 22. Answering paragraph 29 of the Amended Petition, respondent admits that
8 House Bill 1209 contains four goals which appear in paragraph 29. Respondent denies each
9 and every other allegation in paragraph 29.

10 23. Answering paragraph 30 of the Amended Petition, respondent admits that the
11 Legislature again amended RCW 28A.150.210 in 2007 and that the four goals quoted in
12 paragraph 30 are included in the amendment. Respondent denies each and every other
13 allegation in paragraph 30.

14 24. Respondent denies the allegations contained in paragraph 31 of the Amended
15 Petition.

16 25. Answering paragraph 32 of the Amended Petition, respondent admits that
17 petitioners interpret RCW 28A.150.210 as described in paragraph 32.

18 26. Answering paragraph 33 of the Amended Petition, respondent admits that the
19 State denies that Section 210 should be interpreted or construed as the petitioners contend.

20 *The additional substantive content defined by the State's adoption*
21 *of the eight Essential Academic Learning Requirements (EARLs)*

22 27. Answering paragraphs 34 and 35 of the Amended Petition, respondent admits
23 the same.

24 28. Answering paragraph 36 of the Amended Petition, respondent admits that the
25 EARLs specify skills and knowledge that Washington students are provided the opportunity
26

1 to master as they progress in the public schools. Respondent denies each and every other
2 allegation in paragraph 36.

3 29. Answering paragraph 37 of the Amended Petition, respondent admits that the
4 EALRs were promulgated, in part, pursuant to RCW 28A.150.210. Respondent denies each
5 and every other allegation in paragraph 37.

6 30. Answering paragraph 38 of the Amended Petition, respondent admits that the
7 petitioners interpret the EALRs as stated in paragraph 38.

8 31. Answering paragraph 39 of the Amended Petition, respondent denies the
9 petitioners' characterization of the respondent's positions in this lawsuit and further denies
10 that the EALRs should be interpreted or construed as petitioners contend.

11 The current legal definition of the basic education mandated by Article IX, §1

12 32. Answering paragraph 40 of the Amended Petition, respondent admits that the
13 allegations in this paragraph appear to be one of the petitioners' contentions in this lawsuit.

14 33. Answering paragraph 41 of the Amended Petition, respondent denies the
15 petitioners' characterization of the respondent's positions in this lawsuit and further denies
16 petitioners' contentions about the interpretation and construction of the statutes and case law
17 pertaining to basic education in Washington.

18 Third Issue:

19 The State's Current Lack of Full Compliance With Article IX, §1

20 The education provided to Washington's children confirms the State's noncompliance

21 34. Answering paragraph 42 of the Amended Petition, respondent admits that this
22 paragraph summarizes what petitioners' contend is the third issue underlying their liability
23 case. The issue, as phrased, constitutes legal argument. To the extent an answer is required,
24 respondent denies the same.

25 35. Answering paragraph 43 of the Amended Petition, respondent is without
26 knowledge and information about the quoted excerpted language in the paragraph and,

1 therefore, denies the same. Respondent further denies that the quoted, excerpted language has
2 any relevance to this case. Respondent denies each and every other allegation in this
3 paragraph.

4 36. Answering paragraphs 44 through 47 of the Amended Petition, respondent
5 denies these paragraphs in their entirety.

6 37. Answering paragraph 48 of the Amended Petition, respondent admits the
7 Superintendent of Public Instruction has provided sworn testimony in this case that speaks for
8 itself. Respondent denies each and every other allegation in this paragraph.

9 38. Respondent denies the allegations in paragraph 49 of the Amended Petition.

10 39. Answering paragraph 50 of the Amended Petition, respondent admits that
11 Washington Learns studied the public education system and issued a report in November
12 2006. Respondent denies each and every other allegation in this paragraph.

13 40. Answering paragraph 51 through 55 of the Amended Petition, respondent
14 denies the allegations of these paragraphs.

15 41. Answering paragraph 56 of the Amended Petition, respondent admits that one
16 reason for the creation of the WASL was to have an accountability measure for schools as an
17 aid in determining how to allocate resources. Respondent denies each and every other
18 allegation in paragraph 56.

19 42. Answering paragraph 57 of the Amended Petition, respondent admits that the
20 WASL and other assessments are among the most reliable assessments of a school's
21 accountability and performance. Respondent denies each and every other allegation in this
22 paragraph.

23 43. Answering paragraphs 58 through 64 of the Amended Petition, respondent
24 denies the same.

1 44. Answering paragraph 65 of the Amended Petition, respondent admits the
2 Superintendent of Public Instruction has provided sworn testimony in this case that speaks for
3 itself. Respondent denies each and every other allegation in this paragraph.

4 45. Respondent denies the allegations in paragraph 66 of the Amended Petition.

5 State's excuses

6 46. Answering paragraphs 67 through 80 of the Amended Petition, respondent
7 denies that its factual and legal positions in this case constitute "excuses." Respondent further
8 denies petitioners' attempts to characterize respondent's factual and legal positions in this
9 case and denies each and every other allegation in these paragraphs.

10 The State's current failure to fully comply with Article IX, §1

11 47. Answering paragraph 81 of the Amended Petition, respondent admits that it is
12 aware that plaintiffs in other states have made allegations that adequate funding for education
13 in their states would cost "X" dollars while their states fund less than "X" dollars.
14 Respondent denies each and every other allegation in paragraph 81.

15 48. Answering paragraph 82 of the Amended Petition, respondent admits that
16 petitioners herein do not intend to allege or prove a case of constitutionally inadequate
17 funding or that adequate funding for education in Washington would cost "X" dollars while
18 Washington funds less than "X" dollars. Respondent denies each and every other allegation
19 in paragraph 82.

20 49. Respondent admits that Petitioners make the contention alleged in paragraph 8
21 of the Amended Petition, but denies the allegations in this paragraph.

22 50. Answering paragraph 84 of the Amended Petition, respondent admits that it
23 fully complies with Article IX, Section 1 of the state constitution and denies any allegation to
24 the contrary.

25 Fourth Issue:

Remedy for the Respondent State's Current Lack of Full Compliance

With Article IX, §1

1 51. Answering paragraphs 85 through 88 of the Amended Petition, respondent
2 admits that the quoted passages contained in these paragraphs appear in the *Seattle School*
3 *District v. State* and/or *Brown v. State* decisions. Respondent denies each and every other
4 allegation in paragraphs 85 through 88.

5 52. Respondent denies the allegations in paragraph 89 of the Amended Petition.

6 53. Answering paragraph 90 of the Amended Petition, respondent admits that the
7 quoted language appears in the *Seattle School District v. State* decision. Respondent denies
8 each and every other allegation contained in paragraph 90.

9 54. Answering paragraphs 91 through 103 of the Amended Petition, respondent
10 denies the same in their entirety.

11 55. Answering paragraph 104 of the Amended Petition, respondents admit that the
12 only remedy sought by petitioners is the enforcement Order outlined in this paragraph.
13 Respondent denies the other allegations in this paragraph and denies that petitioners are
14 entitled to any relief herein.

15 DECLARATORY JUDGMENT CLAIM

16 56. Answering paragraph 105 of the Amended Petition, respondent realleges and
17 incorporates by reference herein its prior admissions, denials and allegations in this answer to
18 the Amended Petition.

19 57. Answering paragraph 106 of the Amended Petition, respondent admits that a
20 judiciable controversy is alleged in the Amended Petition as to petitioners' McCleary and
21 Venema. Respondent denies each and every other allegation of paragraph 106.

22 58. Answering paragraphs 107 and 108 of the Amended Petition, respondent
23 denies these paragraphs in their entirety.

RELIEF REQUESTED

1
2 59. Answering the prayer for relief contained on pages 21 and 22 of the Amended
3 Petition, respondent denies that the petitioners are entitled to the judgment and/or any of the
4 relief requested therein.

5 60. Further answering the Amended Petition, respondent denies each and every
6 other allegation not previously addressed herein.

II. AFFIRMATIVE DEFENSES

7
8 Further answering the Amended Petition by way of affirmative defenses, respondent
9 alleges:

10 By Way of FURTHER ANSWER and FIRST AFFIRMATIVE DEFENSE, respondent
11 alleges that in carrying out its constitutional duties, the Washington State Legislature
12 possesses the exclusive right to determine what programs and what levels of funding are
13 necessary and appropriate for public education and that the current statutes, programs and
14 funding meet those constitutional obligations.

15 By Way of FURTHER ANSWER and SECOND AFFIRMATIVE DEFENSE,
16 respondent alleges that Washington school districts can provide an adequate program of
17 education as defined by the Washington State Legislature for all students with the funding
18 provided by the Washington State Legislature.

19 By Way of FURTHER ANSWER and THIRD AFFIRMATIVE DEFENSE,
20 respondent alleges that school districts expend significant funds due to the provision of
21 constitutionally unnecessary programs and services and/or that school districts expend
22 significant funds on matters of local district choices, local district philosophies and local
23 district accounting practices.

24 By Way of FURTHER ANSWER and FOURTH AFFIRMATIVE DEFENSE,
25 RESPONDENT ALLEGES that only the state legislature has the right and responsibility to
26

1 define and fund basic education for Washington's students. Neither the petitioners herein nor
2 the courts can intrude on that exclusive, legislative responsibility.

3 By Way of FURTHER ANSWER and FIFTH AFFIRMATIVE DEFENSE,
4 respondent alleges that this Court lacks jurisdiction to award any relief to petitioners other
5 than a simple declaration that the State is, or is not, complying with its constitutional duties.
6 The means of satisfying its constitutional duties rest exclusively with the legislature.

7 By Way of FURTHER and SIXTH AFFIRMATIVE DEFENSE, respondent alleges
8 that some or all of the petitioners lack standing to bring this suit.

9 By Way of FURTHER ANSWER and SEVENTH AFFIRMATIVE DEFENSE,
10 respondent alleges that the petitioners have failed to state a claim for which relief may be
11 granted.

12 **III. PRAYER FOR RELIEF**

13 WHEREFORE, having fully answered the Amended Petition, respondent prays:

- 14 1. That the Amended Petition be dismissed with prejudice;
15 2. For an award of costs and attorneys fees as authorized by law; and
16 3. For such other and further relief as the Court deems appropriate.

17 DATED this 1ST day of August, 2008.

18 ROBERT M. MCKENNA
19 Attorney General

20 

21 WILLIAM G. CLARK, WSBA #9234
22 Assistant Attorney General
23 Attorneys for Respondent
24
25
26

1 **PROOF OF SERVICE**

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

4 US Mail Postage Prepaid via Consolidated Mail Service

5 ABC/Legal Messenger

6 State Campus Delivery

7 Hand delivered by _____
8

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

11 DATED this 1st day of August, 2008, at Seattle, Washington.

12
13 
14 _____
15 AGNES ROCHE

FILED
KING COUNTY, WASHINGTON

AUG 26 2008

SUPERIOR COURT CLERK
JENNIFER L. SCHNARR
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF KING

mc Cleary

Plaintiff,

v.

State of Washington

Defendant.

CAUSE No. ~~07-2-0333-2 SA~~
ORDER ON CIVIL MOTION
(ORM) continuing trial

This Court, having heard a motion ~~conducted a telephone~~
~~status conference, at which the court's availability,~~
~~witness availability, and discovery status was addressed,~~
IT IS HEREBY ORDERED that
~~the parties agree to continue the trial to~~
~~June 1, 2009.~~
~~the court will issue an amended case schedule.~~
~~Motions in limine will be heard beginning~~
~~Tuesday, May 26, 2009.~~

DATED this 25 day of August, 2008
Paris K. Kallas
Honorable Paris K. Kallas

Presented by:

ORDER ON CIVIL MOTION

ORIGINAL

Judge Paris K. Kallas
King County Superior Court
516 3rd Avenue
Seattle, WA 98104
(206) 296-9105

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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

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-2188
(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 5. The Parties want to get this case efficiently resolved as soon as practical. The
10 recent release of the Basic Education Task Force report, the pending legislative proposals for
11 education reform and the fact that events critical to the full development of the issues in this
12 case may continue well after the current discovery cutoff and trial date make the current
13 June 1 trial date impractical.

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

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

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 11th day of February, 2009.

11 FOSTER PEPPER PLLC

12 ROBERT M. MCKENNA
13 Attorney General

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

14 
15 WILLIAM G. CLARK, WSBA No. 9234
Assistant Attorney General
Attorneys for Respondent

17 **II. ORDER**

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

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

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

22 DONE IN OPEN COURT this 25th day of February, 2009.

23
24 
25 JOHN P. ERLICK, JUDGE
26

STIPULATION AND [PROPOSED]
ORDER FOR CHANGE OF TRIAL
DATE

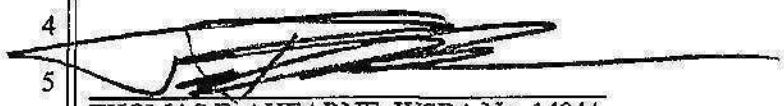
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Presented jointly by:

FOSTER PEPPER PLLC



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Attorney General



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

STIPULATION AND ~~PROPOSED~~
ORDER FOR CHANGE OF TRIAL
DATE

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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 TRIAL BRIEF

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