

The logo for Prevention Alliance features a blue curved line above the text "Prevention Alliance" in a bold, blue, sans-serif font.

# Prevention Alliance

## **ISSUE BRIEF: THE MCCLEARY DECISION – AMPLY FUNDING BASIC EDUCATION**

September 2016

### **EXECUTIVE SUMMARY**

Since 2012, the Washington legislature has been facing a countdown to a deadline where they must alter the way basic education has been funded across the state, and therefore must make significant changes to both how and how much the state pays for education. Washington state has historically failed to meet the constitutional obligation to amply fund basic education and with this court ruling that must change. However, the task of meeting this obligation is complex and has repeatedly raised more questions than answers – What specifically should be considered as basic education? How much funding is needed to fully fund basic education? When the courts set a deadline of “2018”, what specific date does that actually mean?

One thing is certain: everything will come to a head during the 2017 legislative session with an impact that will be felt well beyond those who work on education issues. Health prevention advocates have been working to protect health and prevention programs and will continue to do so as the remaining and largest education funding hurdles are addressed in 2017. Advocates will need to fight to avoid the worst case scenario of ‘education by starvation’ – where the state meets the obligation to fully fund basic education without new revenue, but at the expense of health care, housing, public health, early learning, and everything in the budget that is not either protected by constitutional obligation or by a federal match.

### **COURT CASE AND INITIAL RULING**

The *McCleary vs State of Washington* lawsuit was originally filed in 2007 on behalf of two Washington families – the Venema and McCleary families, several teachers unions, school districts, and others. The court case and subsequent ruling regard Article IX, Section 1 of the Washington State Constitution, which states “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.”<sup>1</sup> The plaintiff cited that the State of Washington needed to fulfill its paramount constitutional duty to make ample provision for the education of all Washington children.

In 2012, the Washington State Supreme Court ruled in favor of the plaintiff and thus declared the state was violating the constitutional obligation to fully fund basic education. The court also ruled that local levies are being used to fund basic education rather than state appropriations (*see Prevention Alliance Brief on Levy Reform for more information*). Beyond just the ruling, the Supreme Court also took the unprecedented step of retaining jurisdiction over

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<sup>1</sup> Washington State Constitution, <http://leg.wa.gov/LawsAndAgencyRules/pages/constitution.aspx>

the case to ensure the legislature meets the court order of amply funding basic education by 2018.

## DEFINING BASIC EDUCATION

Basic education has had different definitions over the years, but the legislature passed [ESHB 2261](#) (2009) and [SHB 2776](#) (2010) to define the core of basic education, establish a new prototypical school model, set formulas for allocating state funding, and put in place a timeline for meeting the constitutional obligation. Some argue the definition should include more than is included in those bills as passed, and some believe it should include less. However, these are serving as the basis for what the state is working toward funding.

At a high level, the legislature defined “basic education” as whatever is necessary to give students the *opportunity* to master the state’s four learning goals and the Essential Academic Learning Requirements (EALRs). The legislature further defined the specifics of what is needed to give students that opportunity. These specifics are grouped into four main buckets – Learning Tools, Learning Environment, School and District Staff, and Learning Programs. See *Appendix A* for an overview of the EALR goals and also what falls under the four buckets for the purposes of the McCleary decision.

## HOW MUCH MORE WILL IT COST

Even with the definitions established through ESHB 2261 and SHB 2776, there has not been agreement amongst interested parties in how much it will cost to meet the McCleary obligation. Opinions vary greatly on how much more funding is needed beyond the funding that has already been secured between 2012-2016:

**\$3.5 billion per biennium** – Many legislators and state officials cite this amount as what it will take to finish implementing K-3 class size reduction and fully fund staff compensation, which the state argues is the bulk of what remains. This amount is based on a June 2015 fiscal analysis<sup>2</sup>. As directed by E2SB 6195, the actual cost for compensation will be determined and submitted to the Education Funding Task Force and Governor by November 15, 2016. Beyond these remaining pieces of compensation and K-3 class size reduction, the state has argued it has funded basic education based on the funding formulas and timeline as established through ESHB 2261 and SHB 2776.

**\$7.6 billion per biennium** – Superintendent Randy Dorn has laid out a plan<sup>3</sup> for what he believes it takes to fully fund basic education for all students. Important to note is that Dorn’s plan adds reducing class size for grades 4-12 in accordance with initiative 1351, which was not included in ESHB 2261 or SHB 2776 and therefore is not part of the legislature’s estimates for meeting the court’s ruling.

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<sup>2</sup> June 10, 2015. *Senate Bill 6130 – Concerning the State’s Constitutional Basic Education Obligation*, <https://app.leg.wa.gov/CMD/Handler.ashx?MethodName=getdocumentcontent&documentId=yJ1ViThL5g&att=false>

<sup>3</sup> April 20, 2015. *Dorn’s Complete Plan to Fully Fund Basic Education for All Students*. <http://www.k12.wa.us/Communications/FullyFundPlan/>

**\$8 billion per biennium plus \$2 billion** – The lawyer representing the McCleary plaintiffs, Tom Ahearne, and the Paramount Duty coalition have said it will cost closer to \$8 billion per biennium in additional funds for operations costs. The plaintiffs argue that the funding formulas used by the state provide some funding toward basic education, but not the actual costs incurred by schools and not *ample* funding as directed by the constitution, and ample means more than adequate. Unlike Superintendent Dorn, this estimate does not include class size reduction for grades 4-12 since that requirement came about through initiative 1351 and is therefore after the McCleary ruling. In addition, they argue that an additional \$2 billion in one-time funding is needed to build new classrooms to lower class sizes for K-3 and to support full day kindergarten.<sup>4</sup>

While it is likely that the plaintiffs, Superintendent Dorn, and others will continue to make the case that the funding provided to date has not been sufficient to amply fund basic education, it is unlikely the legislature will deviate from their thinking unless explicitly called for by the court. The state has argued that in the court’s original order they cited implementing the reforms of ESHB 2261 in reference to achieving compliance.<sup>5</sup> Further, as passed, ESHB 2261 states, “It is the intent of the legislature that specified policies and allocation formulas adopted under this act [ESHB 2261] will constitute the legislature’s definition of basic education under Article IX of the state Constitution once fully implemented.”<sup>6</sup> Therefore, items not included in this legislation are unlikely to be addressed unless specifically outlined through other legislation passed by the legislature or ordered by the court.

## **2018 DEADLINE**

Another area that has created great disagreement between the state and the plaintiffs over the past several years is the actual deadline for full compliance with the McCleary decision. The court recently asked both the state and the plaintiff to clarify what they believe the deadline is. The state believes the deadline for compliance is September 1, 2018 and argue that the court endorsed this deadline in the 2012 decision in its reference to ESHB 2261 since that is the deadline that legislation established. The plaintiff believes the deadline for compliance is the 2017-18 school year because the 2017-18 school year is the one after the 2017 legislative session and that is the year of the “Class of 2018” graduates. On October 6, 2016 a new court order came out that included, amongst other things, a statement saying the state must pass the remaining details, including funding sources and necessary appropriations, for McCleary by the end of the 2017 legislative session, but the state has until September 1, 2018 to fully implement the basic education program.<sup>7</sup>

## **FUNDING SECURED TO DATE**

Since 2012 there has been significant activity relating to McCleary, including in the realms of the legislature taking some steps to meet the court’s order, further court activity, and the legislature planning for the final push to meet the 2018 deadline.

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<sup>4</sup> Washington’s Paramount Duty, FAQs, <http://paramountduty.org/faqs/>

<sup>5</sup> July 18, 2012, Supreme Court Order McCleary v State, page 3. <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/mcclearyOrder.pdf>

<sup>6</sup> 2009 Session Law, Chapter 548 [Engrossed Substitute House Bill 2261], *Education Generally*. <http://leg.wa.gov/CodeReviser/documents/sessionlaw/2009pam4.pdf>

<sup>7</sup> October 6, 2016, Supreme Court Order 84362-7, <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/843627Order100616.pdf>

While many have argued that the legislature has not made enough progress in funding basic education since 2012, they clearly have taken steps toward funding some components. That progress was summarized in the legislature's 2016 report to the court<sup>8</sup> and includes (but is not limited to) the following items:

- **Materials, Supplies, and Operating Costs (MSOC)**

The enhanced statutory formula for MSOC includes funding for technology, utilities, curriculum and textbooks, instructional supplies and library materials, professional development, facilities maintenance, custodial, security, and central office administration.

*Status:* The state has argued these are fully funded according to the statutory formula; the plaintiff and Superintendent Dorn believe the amount of funding secured to date is not enough to cover the actual cost.

- **Transportation**

Covering the cost to transport students to and from school.

*Status:* The state has argued the cost of student transportation is now fully funded; the plaintiff and Superintendent Dorn believe the amount of funding secured to date is not enough to cover the actual cost.

- **Full-Day Kindergarten**

Phasing-in full-day kindergarten began during the 2007-08 school year. Having full-day kindergarten available statewide was amended to count as basic education under ESHB 2261.

*Status:* The state has claimed this is fully funded and was achieved a year ahead of the statutory schedule; the plaintiff and Superintendent Dorn believe the amount of funding secured to date is not enough. E2SB 6195 passed in 2016 requires the Education Funding Task Force to review available information and determine if additional legislation is needed to support full-day kindergarten.

- **Reducing Class Size in Grades K-3**

The state must provide funding to reduce class sizes in grades kindergarten through third grade to no more than 17 students per teacher.

*Status:* The state has said they have made some progress in this area, but additional allocations are needed to achieve full K-3 class size reduction by the deadline. The plaintiff and Superintendent Dorn agree progress has been made but is not complete. E2SB 6195 passed in 2016 requires the Education Funding Task Force to review available information and determine if additional legislation is needed to support class-size reduction.

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<sup>8</sup> May 18, 2016. *2016 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation*, <http://leg.wa.gov/JointCommittees/AIXLJSC/Documents/2016%20FINAL%20REPORT%20submitted%20to%20Court%20on%20May%2018%2016%20with%20Date%20Stamp.pdf>

- **Teacher and Other Staff Compensation**

Through SHB 2776 the legislature updated the formula for prototypical school staffing levels. This includes for school administrators, librarians, school nurses, office support, guidance counselors, and other school staff. This formula determines the number of each staff the state will fund based on student population. Beyond just increasing the number of staff the state funds, the legislature also needs to provide increased funding for competitive salaries and benefits for school staff.

**Status:** The state has said they have made some progress by funding a K-12 cost-of-living-adjustment (COLA) of 3% for 2015-17 school year and 1.8% for school year 2016-17, but much work remains to be done. The legislature passed E2SB 6195 in 2016 in an order to collect the foundational data needed to determine needed funding levels for staff compensation and establish an education funding task force to review that data and make recommendations to the legislature.

The state estimates that these and other K-12 investments have totaled \$4.8 billion increase in state funding for K-12 education. That is a 36% increase since the court's initial ruling in 2012.<sup>9</sup>

## **CONTEMPT ORDER & SANCTIONS**

In 2014, the court held the State in contempt for failing to submit a complete plan for meeting the 2018 deadline for providing ample funding for basic education. It is important to note that the contempt ruling was not for failing to meet the 2018 deadline, but rather is for failing to submit a *complete plan* for meeting the funding requirements by 2018. Leading up to the contempt ruling, the legislature had passed the two main bills relating to education reform: ESHB 2261 provided a framework for reforming basic education and the funding methodology and SHB 2776 established a formula enhancements relating to the policy reforms needed and included deadlines for implementing those enhancements. One main component that was left out of these 'plan bills' was staff compensation. The court therefore ruled that the legislature had not provided a *complete plan*, which led to the contempt ruling. The court gave the legislature until the end of the 2015 legislative session to produce a complete plan. The legislature did not adopt a plan for addressing the outstanding compensation issue, which resulted in the court ordering sanctions beginning August 13, 2015 in the amount of \$100,000 per day to begin accruing. The sanctions were ordered to continue until the legislature produces a complete plan. In 2016 the legislature passed E2SB 6195 which established the Education Funding Task Force and secured a consultant to compile data and a report to the legislature with recommendations for staff compensation levels needed to meet the McCleary obligation. The court ruled on October 6, 2016 that while the state has made substantial progress on many pieces, including establishing the task force to look into teacher compensation, they do not believe the state has put forth a complete plan mainly because they have not identified revenue sources to meet the funding needs. Therefore, the court kept the contempt order and thus the \$100,000 per day sanctions in place.

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<sup>9</sup> 2016 Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation. May 18, 2016. <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/160518StateMemoranFINAL%20REPORT.pdf>

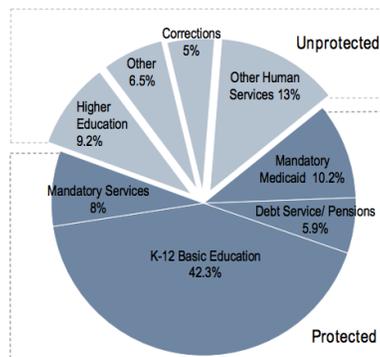
## LAWSUITS FILED BY SUPERINTENDENT DORN

In July 2016 Superintendent Dorn filed lawsuits against seven school districts alleging that they illegally rely on local levies to fund basic education. The school districts being sued by Dorn are Seattle, Everett, Bellevue, Spokane, Tacoma, Evergreen, and Puyallup.<sup>10</sup> The use of local levies is one of the pieces of the McCleary case that the court ruled the state was in fact violating, though the preemptive action of Superintendent Dorn filing suit against the school districts themselves was unexpected. Dorn has stated that the purpose of the lawsuits is not actually to fault the schools, but to put additional pressure on the legislature to come up with a complete plan to fully fund education by the court's deadline of 2018.

## PREPARING FOR 2017 – BEYOND FUNDING EDUCATION

While there is a clear discrepancy around the adequacy of funding secured to date and how much remains to be funded to meet the constitutional obligation, even the most conservative estimates are still significant. In order to fund the remaining appropriations needed to meet the McCleary obligation the legislature will be considering everything from increases in revenue to closing tax loopholes to cutting existing programs. However, in regards to the latter option of cuts, about two-thirds of the operating budget is protected by either constitutional obligations or federal requirements (*see Figure 1*).<sup>11</sup> If the legislature were to rely on cuts alone to meet the McCleary obligation, state funded programs such as higher education, human services, health and prevention, early learning, and corrections would be decimated.

Figure 1: Washington State Budget



Source: OFM State Budget Update, 2014

Advocates who have worked to build these programs over the past years and decades will need to make the case for their importance and the negative outcomes that would result if they were to be cut. Basic education alone is not enough to create the opportunity for kids to be successful. Hunger, adverse childhood experiences, homelessness, inadequate health coverage, and other barriers all hinder a child's opportunity to have a successful education. As the 2017 legislature considers how they will meet the McCleary obligation, many feel it is vital

<sup>10</sup> Complaint for Declaratory And Injunctive Relief No. 16-2-17134-6 SEA.

<http://www.k12.wa.us/Communications/PressReleases2016/ComplaintAsFiled.pdf>

<sup>11</sup> Office of Financial Management, *State Budget Update: More Big Challenges Ahead*, November 2014.

[http://ofm.wa.gov/budget/documents/state\\_budget\\_prelim\\_outlook\\_pres\\_2014.pdf](http://ofm.wa.gov/budget/documents/state_budget_prelim_outlook_pres_2014.pdf)

they do not do so by putting other aspects of children and families lives at risk through budget cuts, and in fact must look for future opportunities to grow those investments and further break down barriers.

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## APPENDIX A: BASIC EDUCATION DEFINED

At a high level, the legislature defined “Basic education” as whatever is necessary to give students the *opportunity* to master the state’s four learning goals and the Essential Academic Learning Requirements<sup>12</sup>:

Goal 1: Read with comprehension, write effectively, and communicate successfully in a variety of ways and settings and with a variety of audiences.

Goal 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;

Goal 3: Think analytically, logically, and creatively, and to integrate technology literacy and fluency as well as different experiences and knowledge to form reasoned judgments and solve problems; and

Goal 4: Understand the importance of work and finance and how performance, effort, and decisions directly affect future career and educational opportunities.

To create the opportunity for students to master these goals, the legislature further defined basic education as including the following<sup>13</sup>:

### Learning Tools

- Books, computers, and other supplies

### Learning Environment

- A full day of kindergarten (new in 2009; before that it was a half-day)
- No more than 17 students per certificated staff member in grades K-3. (*This is commonly referred to as “class size.” But it’s important to understand that the actual requirement is a ratio of students to all certificated instructional staff, which includes teachers, librarians, counselors, health services staff and others.*)
- A district-wide average of 1,080 hours of instruction for each school year for high school students, and at least 1,000 hours for grades K-8
- At least 180 days of school each year

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<sup>12</sup> RCW 28A.150.210, <http://app.leg.wa.gov/rcw/default.aspx?cite=28A.150.210>

<sup>13</sup> The Seattle Times, *What Does it Mean to Fully Fund Basic Education*, <http://projects.seattletimes.com/2016/education-funding/>

- The opportunity to earn 24 credits to earn a high-school diploma
- Bus transportation for students who live more than one to two miles from school, depending on the grade level

#### **School District and Staff**

- Qualified teachers paid a competitive salary
- Other qualified school staff — like librarians, counselors, custodians, security guards, principals — paid a competitive salary
- A central office staff that supports schools

#### **Learning Programs**

- Special education to help students with disabilities
- Bilingual program for students who need help learning English
- Remedial education for students who fall behind
- An accelerated or enriched learning program for students who qualify. These are often referred to as highly capable programs
- An educational program for students who are in a juvenile-detention center, a state institution or a residential school

## **APPENDIX B: MCCLEARY DECISION TIMELINE**

Below is a high-level overview of the McCleary timeline to date.<sup>14</sup> There is much activity before and between these dates, but these were some key moments that led to this point.

**January 2007** – The McCleary and Venema families along with school districts, teachers unions, and others file a lawsuit to sue the state for not meeting its constitutional duty to amply fund basic education

**February 2010** – The King County Superior Court rules in favor of the plaintiffs. The state appeals the ruling and the case later moves to the WA Supreme Court.

**January 2012** – The Supreme Court upholds the King County ruling. The court mandates that the state must fully fund basic education by 2018.

**July 2012** – The court orders the legislature to give reports after each session to update the court on the progress made.

**December 2012** – The court says the state’s first report on progress made is inadequate.

**January 2014** – The court tells the legislature they have until April 2014 to provide a plan to fully fund basic education by 2018.

**September 2014** – The court finds the state in contempt for failing to provide a plan in accordance with the January 2014 order. It is unclear what a contempt ruling means if the state continues to not meet the court’s order. The court says they will not enforce the contempt order until after the 2015 session.

**August 2015** – The court declares the state has not provided a sufficient plan and therefore is still in contempt. The court orders sanctions of \$100,000 a day against the state.

**February 2016** – The legislature passes E2SB 6195 laying out a plan for meeting the McCleary obligations, in which the legislature establishes an education funding task force.

**July 14, 2016** – The Supreme Court orders the state and plaintiffs to appear before the court on September 7<sup>th</sup> for oral arguments to address four questions to determine if the contempt ruling should be lifted. The questions include: “(1) what remains to be done to timely achieve constitutional compliance, (2) how much it is expected to cost, (3) how the State intends to fund it, and (4) what significance, if any, the court should attach to E2SB 6195 in determining compliance with the court's order to provide a complete plan.”<sup>15</sup> The state responds arguing

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<sup>14</sup> The Seattle Times recently released a detailed timeline for the McCleary Decision and ensuing activity. Visit this website for a more comprehensive timeline: <http://www.seattletimes.com/seattle-news/education/how-we-got-here-key-events-of-mccleary-school-funding-decision/>

<sup>15</sup> Supreme Court of Washington Order No. 84362-7. July 14, 2016. <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/OrderMcClearyv.StateofWashington071416.pdf>

the contempt order should be lifted while the plaintiffs argues the state hasn't submitted a complete plan and sanctions should be strengthened. Superintendent Randy Dorn submits an amicus brief that makes a similar argument as the plaintiffs.

**July 19, 2016** – Superintendent Randy Dorn files lawsuits against seven school districts for their reliance on local levies to fund basic education. Dorn argues that the move is intended to motivate progress from the legislature.

**September 7, 2016** – The state and plaintiffs make oral arguments before the Supreme Court arguing their respective stance on whether the state has made sufficient progress in providing a plan to meet the McCleary obligations.

**October 6, 2016** – The court releases an order ruling that the state has not purged contempt and the \$100,000 per day sanction will remain in place. They also stated the deadline for the state passing complete details of their plan, appropriating the funds needed, and identifying funding sources is the end of the 2017 session. However, full implementation does not need to be complete until September 1, 2018.