

"It is the paramount duty of the state to make ample provision for the education of all children residing within its borders..."
Article IX, Section 1, Washington State Constitution

FREQUENTLY ASKED QUESTIONS (FAQs) ABOUT THE *McCLeARY* CASE AND OUR CONSTITUTION'S PARAMOUNT DUTY PROVISION

What does the "paramount duty" provision in our constitution say?

Article IX, section 1 of the Washington Constitution says "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders".

Who decides what constitutional provisions require?

The judicial branch determines what constitutional provisions require.

As high school civics students know, *Marbury v. Madison* established this basic principle early on in our nation's democracy. The Washington Supreme Court reiterated this same point in its *McCLeary* ruling, explaining that "it is emphatically the province and duty of the judicial department to say what the law is ... even when that interpretation serves as a check on the activities of another branch or is contrary to the view of the constitution taken by another branch." (173 Wn.2d at 515 (quoting from *Marbury v. Madison*, *U.S. v. President Nixon*, and *Seattle School District v. State of Washington*)).

Does our constitution require the State to amply fund education first?

Yes. State government has many important considerations. But our State Constitution designates education as the one that's **paramount** above all others. The *McCLeary* Court accordingly ruled that our Constitution's paramount duty provision requires that "the State **must** amply provide for the education of all Washington children as the State's first and highest priority before **any** other State programs or operations" (173 Wn.2d at 520; again in October 2016 Order at p.1) (*bold added*). For example, before any State tax exemption programs and before any State highway or

transportation operations. The *McCleary* Court ruled our Constitution requires the State to amply fund education first.

Does our constitution’s “ample” mandate require more than just “adequate” State funding?

Yes. The *McCleary* Court ruled the “ample” mandate in our Constitution’s paramount duty provision requires State funding to be “**considerably more than** just adequate or merely sufficient” (173 Wn.2d at 484 and 528) (*bold added*).

Does our constitution’s “all children” mandate really encompass all children in Washington?

Yes. The *McCleary* Court ruled the “all children” mandate in our Constitution’s paramount duty provision covers “each and **every child. ... No child is excluded**” (173 Wn.2d at 520) (*bold added*).

Our State does an impressive job educating many of the over 1 million children in its public schools. But “many” isn’t “all”. As the court explained: “the word ‘all’ in Article IX, §1 means what it says.... It encompasses each and every child since each will be a member of, and participant in, this State’s democracy, society, and economy. Article IX, §1 accordingly requires the Respondent State to amply provide for the education of **every** child residing in our State – not just those children who enjoy the advantage of being born into one of the subsets of our State’s children who are more privileged, more politically popular, or more easy to teach.” (*Final Judgment at ¶168 (bold added).*)

Do Washington children have a constitutional right to an amply funded education?

Yes. The *McCleary* Court ruled our Constitution’s paramount duty provision “confers on children in Washington a positive **constitutional right** to an amply funded education” (173 Wn.2d at 483) (*bold added*). The Court emphasized this right is each child’s **paramount** right under our State Constitution (173 Wn.2d at 518).

And the *McCleary* Final Judgment reiterated this right’s essential **civil rights** role, ruling that “Education ... plays a critical civil rights role in promoting equality in our democracy. For example, amply provided, free public education operates as the great equalizer in our democracy, equipping citizens born into underprivileged segments of our society with the tools they need to compete on a level playing field with citizens born into wealth or privilege. Education ... is the number one civil right of the 21st century.” (*Final Judgment at ¶¶132 and 134.*)

Is our State government violating that constitutional right?

Yes. The *McCleary* Court ruled that “The State has **not** complied with its article IX, section 1 duty to make ample provision for the education of all children in Washington” (173 Wn.2d at 484) (*bold added*). And our Supreme Court has repeatedly rejected the State’s claim that the legislature is making sufficient progress to timely end that violation. (October 2016 Order at pp.2-5 and 10-13.)

Are there compliance deadlines the State must meet?

Yes. The *McCleary* Court adopted the deadlines promised by the State: (1) the 2017 legislature must, before it adjourns, enact all details, funding sources, and appropriations for full compliance in the 2017-19 biennium, and (2) the State must fully implement the biennium’s constitutional compliance by September 1, 2018 (October 2016 Order at p.13). As the *McCleary* Court told the State many years ago, 2018 is “a **firm** deadline for **full** constitutional compliance.” (December 2012 Order at p.2) (*bold added*).

What must State funding do to comply with our constitution’s ample funding mandate?

The State must update its funding formulas to **fully** fund the **actual** cost of implementing the State’s basic education program.

The *McCleary* Court ruled that **partially** funding implementation does not suffice: “If the State’s funding formulas provide only a portion of what it actually costs a school to pay its teachers, get kids to school, and keep the lights on, then the legislature cannot maintain that it is fully funding basic education through its funding formulas.” (173 Wn.2d at 532.)

Does the State know how much compliance with our constitution’s ample funding mandate will cost?

Yes. State testimony and State documents in the *McCleary* case show that compliance with the ample funding mandate in our Constitution’s paramount duty provision requires State funding of at least \$16,030 per pupil (above federal funding and local levies).

For example, the following four categories alone add up to State funding of \$16,030/pupil (above federal funding and local levies):

\$9,710 The State’s sworn trial testimony assured the court that its funding reform legislation (ESHB 2261) would increase State funding to \$9710/pupil **before** adding compensation increases to attract and retain competent school personnel, inflation after 2008, and needed capital construction.

\$2,100 The State’s court filings acknowledge that the Final Report of ESHB 2261’s compensation study determined the salary increases needing “immediate implementation” to attract and retain competent school personnel cost at least \$2.1 billion a year (before restoring all I-732 COLAs). That adds about \$2,100/student for the State’s approximately 1 million students, bringing the ESHB 2261 total to \$11,810. ($\$9,710 + \$2,100 = \$11,810$.)

\$2,220 The past and forecasted CPI inflation rate adopted by Washington voters for school funding under I-732 is 18.8% for 2008-2018. Inflation after 2008 to September 1, 2018 thus adds approximately \$2,220 to the above ESHB 2261 total. ($0.188 \times \$11,810 = \$2,220.28$.)

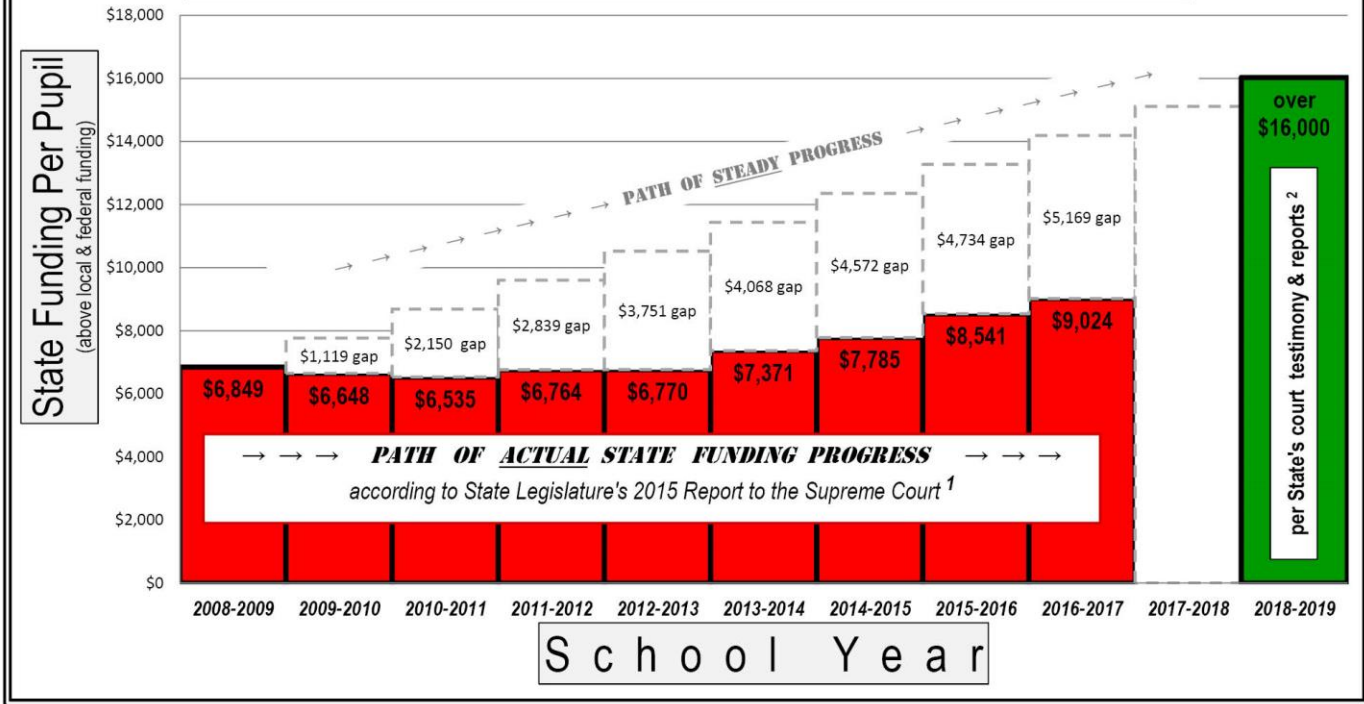
+ \$2,000 The State’s Superintendent of Public Instruction reported that the additional classrooms required to implement all-day kindergarten and K-3 class size reforms under ESHB 2261’s prototypical schools model will cost \$2 billion, which equates to \$2,000/student if spread out over the State’s approximately 1 million students.

\$16,030

Do the State funding increases after *McCleary* satisfy our constitution’s ample funding mandate?

No. In October 2016, the *McCleary* Court reiterated again that the State is **still** in contempt of court for failing to make “steady and measurable progress” towards complying with the paramount duty provision’s ample funding mandate by the 2018 deadline (*October 2016 Order at p.11*). The following chart illustrates why the State’s funding increases still fall far short of steady progress towards full constitutional compliance by September 1, 2018:

AMPLE STATE FUNDING "PROGRESS"



¹ The per pupil State funding amounts for 2008-2009 through 2016-2017 are the amounts stated in Chart B of the Legislature's 2015 Report to the Supreme Court.

² The per pupil State funding amount for 2018-2019 is based on the State's court testimony and reports. The State's trial testimony assured the court that ESHB 2261 would increase State funding per pupil to **\$9,710** before adding compensation increases to attract & retain school personnel, inflation after 2008, and capital construction needs. The State's Supreme Court filings acknowledge that the Final Report of ESHB 2261's Compensation Technical Work Group then determined the compensation funding increase needing "immediate implementation...to attract and retain" quality educators is at least \$2.1 billion a year (before restoring all I-732 COLAs). \$2.1 billion equates to **\$2,100** per pupil for the State's approximately 1 million students. That brings the ESHB 2261 total to at least \$11,810/pupil (\$9,710+\$2,100=\$11,810). The past and forecasted CPI inflation rate adopted by Washington voters for school funding under I-732 is 18.8% for 2008-2018. This inflates that \$11,810 by **\$2,220**, bringing the ESHB 2261 total (before including capital construction needs) to \$14,030/pupil (\$11,810+\$2,220=\$14,030). The State's Superintendent of Public Instruction reported the additional classrooms required to implement the all-day kindergarten & K-3 class size reduction components of the State's basic education program under ESHB 2261's prototypical school model is approximately \$2 billion. That equates to **\$2,000** per pupil when spread out over the State's approximately 1 million students. These amounts bring the ESHB 2261 total to at least \$16,030/pupil in the 2018-2019 school year. (**\$9,710 + \$2,100 + \$2,220 + \$2,000 = \$16,030**).