

IT IS THE PARAMOUNT DUTY OF THE STATE TO MAKE
AMPLE PROVISION FOR THE EDUCATION OF
ALL CHILDREN RESIDING WITHIN ITS BORDERS....

McCLeary: 10 Years On 1 Page

The Past (lawsuit filed January 2007 ... most recent Court Order November 2017)

- **Constitutional Right:** *Brown v. Board of Education* confirmed that courts – not legislators – have the final say on the constitutional rights of public school children. The *McCLeary* Court ruled that:
 - the “ample” mandate in Article IX, section 1 [quoted above] gives each and every child in Washington “a positive constitutional right to an amply funded education.”¹
 - constitutionally “ample” funding requires “considerably more than just adequate or merely sufficient.”²
 - the State funding formulas at the time of trial (2009) violated our constitution’s “ample” mandate.³
 - September 1, 2018 is the “firm deadline for full constitutional compliance” by the State.⁴
- **New Funding Formulas:** After the *McCLeary* trial (August-October, 2009), the State started phasing in new funding formulas to increase funding for the ten components of the State’s basic education program.⁵
- **State Budgets:** Have provided districts **more** money by (a) **restoring** cuts made after the 2008 recession, (b) **addressing** inflation increases, (c) **adjusting** for student population changes, and (d) **starting** to fund the State’s new funding formulas. *Added together, (a)+(b)+(c)+(d) have totalled billions of dollars over the years.*⁶
- **State “Reforms”:** Leave districts with **less** money by (e) **taking** away billions of dollars of local levy authority (e.g., *EHB 2242’s levy swipe*) and (f) **imposing** new unfunded requirements on school districts (e.g., *Core 24’s requiring districts to provide high school students 4 more credit hours of instruction for graduation*).⁷
- **The State’s New Salary Formula → State Admits \$1 Billion Shortfall:** The State told the *McCLeary* Court that the 2017 legislature failed to fund \$1 billion of the State’s new **salary** formula by the September 1, 2018 deadline, and that the State has the money to fund that shortfall.⁸
The Court’s November 2017 Order required the 2018 legislature to provide districts that additional \$1 billion, and warned that “If such measures are not enacted by the end of the regular session [March 8, 2018], the court will immediately address the need to impose additional remedial measures.”⁹
- **All The State’s New Formulas → State Says They’ll Prove Themselves In Practice:** The *McCLeary* Court accepted the legislature’s assurance that **all** the State’s new formulas calculate the funding amount necessary to implement the State’s basic education program.¹⁰ Giving legislators the benefit of the doubt, the Court’s November 2017 Order therefore concluded: “At this point, the court is willing to allow the State’s program to operate and let experience be the judge of whether it proves adequate.”¹¹

The Future (2018 legislative session ... ensuing school years)

- **Next Court Filings:** The State’s next filing is due April 9, plaintiffs respond 20 days later, and the State replies 10 days after that. Amicus briefs are due in April, with the State and plaintiffs filing Answers 10 days later.¹²
- **What’s Left To Be Done:** The Supreme Court’s November 2017 Order put two items on the table:
 - This year:** the 2018 legislature must provide school districts the additional \$1 billion needed to fully fund the State’s new salary formula for the 2018-2019 school year.¹³
 - Next year:** school district experience will determine if the State’s new funding formulas for special education, transportation, K-3 class sizes, MSOCs, compensation, etc. prove constitutionally adequate in practice.¹⁴

¹ January 2012 McCleary decision, 173 Wn.2d at 483 (“Article IX, section 1 confers on children in Washington a positive constitutional right to an amply funded education”) & at 520 (the “all children” mandate in Article IX, section 1 means what it says: “each and every child”; “No child is excluded”); November 2017 McCleary Order at 19-21 (reiterating the same).

² E.g., January 2012 McCleary decision, 173 Wn.2d at 484 (“considerably more than just adequate or merely sufficient”); November 2017 McCleary Order at 20 (“ample” requires “full, sufficient, and considerably more than just adequate funding”).

³ E.g., January 2012 McCleary decision, 173 Wn.2d at 547 (“The State has failed to meet its duty under article IX, section 1 by consistently providing school districts with a level of resources that falls short of the actual costs of the basic education program”).

⁴ E.g., December 2012 McCleary Order at 2 (“firm deadline for full constitutional compliance”); October 2016 McCleary Order at 12 (“full state funding of basic education must...be fully implemented not later than September 1, 2018”) & at 13 (“the State has until September 1, 2018 to fully implement its program of basic education”); November 2017 McCleary Order at 43 (“In prior orders, the court has reminded the State of the firm September 2018 deadline and the need to act with dispatch. The opportunity to take timely action did not suddenly present itself in the 2017 legislative session.”).

⁵ The legislature has defined the State’s basic education program to include the following ten components: (1) Pupil transportation; (2) Materials, Supplies, & Operating Costs [MSOCs]; (3) Full-Day Kindergarten; (4) K-3 class sizes of 17 students per classroom; (5) Special education; (6) Remediation for struggling students [LAP]; (7) Transitional Bilingual Education [TBIP or ELL]; (8) Highly capable student instruction; (9) 24 credit high school graduation requirement [Core 24]; and (10) Compensation that attracts & retains competent teachers, administrators, & staff to implement all the above. January 2012 McCleary decision, 173 Wn.2d at 496-499, 505-506, 509-510, 526, 533-535, 545 [detailed in Plaintiffs’ 2017 Post-Budget Filing at 7-8 [available at <https://www.courts.wa.gov/content/publicUpload/McCleary/McClearyPlaintiffFiling.pdf>].

⁶ For example, the Court recently noted “state funding for K-12 education is increased from \$13.4 billion in the 2011-13 biennium to \$22 billion in the current biennium”. November 2017 McCleary Order at 23.

⁷ The State’s own numbers are detailed in Plaintiffs’ 2017 Post-Budget Filing at footnote 41 (over \$2.5 billion levy swipe) & footnote 106 (Core 24) [available at <https://www.courts.wa.gov/content/publicUpload/McCleary/McClearyPlaintiffFiling.pdf>].

⁸ The Court’s November 2017 Order accordingly noted that the State acknowledged that “EHB 2242 and the 2017-19 budget fall short by about a billion dollars in fully funding the salary increases by the 2018-19 school year”, and “The State does not dispute, indeed it concedes, that there is enough money in the State’s Near General Fund to fully pay for the program of basic education, including salaries. Nor does it dispute that sufficient revenue will be collected to provide full funding.” November 2017 McCleary Order at 41 & 43.

⁹ November 2017 McCleary Order at 43-44 (underline added). As the Court explained: “The court has been clear and consistent that while the constitution empowers the legislature alone to write the budget, in doing so it must meet its ‘paramount’ obligation first” (November 2017 McCleary Order at 43, citing January 2012 McCleary decision, 173 Wn.2d at 520). The Court has repeatedly emphasized that the “paramount duty” mandate in Article IX, section 1 requires the legislature to amply fund the public schools before any other State programs or operations. E.g., January 2012 McCleary decision, 173 Wn.2d at 520 (“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”); August 2015 McCleary Order at 2 (“the State’s ‘paramount duty’ under article IX, section 1 is of first and highest priority, requiring fulfillment before any other State program or operation”); November 2017 McCleary Order at 20. The Court’s November 2017 Order is unequivocal: the State remains in contempt of court, it must fully fund the new salary formula in the 2018-2019 school year, and “as the court has said throughout, it expects its directives to be obeyed.” November 2017 McCleary Order at 43-44. “The Court’s responsibility is to the schoolchildren of this State who have an enforceable right under article IX, section 1 to an amply funded education”, and “It is the court’s responsibility to ... ensure the State complies with its constitutional duties, particularly its paramount duty to amply fund K-12 public education.” November 2017 McCleary Order at 2 & 43 (citing January 2012 McCleary decision, 173 Wn.2d at 515-16, 519-20).

¹⁰ November 2017 McCleary Order at 22 & 26 (Court accepting the State’s claim that its new funding formulas “achieve or are reasonably likely to achieve full state funding of basic education” because they are “evidence-based formulas” which are “designed to calculate the amount of state funding necessary to provide for the program of basic education”), at 28-37 (Court accepting the State’s claim that its new formulas fully fund the first nine [non-salary] components of the State’s basic education program) & at 43 (Court accepting the State’s claim that its new salary formula fully funds the final [salary] component of the State’s basic education program).

¹¹ November 2017 McCleary Order at 37.

¹² November 2017 McCleary Order at 44-45.

¹³ November 2017 McCleary Order at 43-44.

¹⁴ November 2017 McCleary Order at 37.