



THE WASHINGTON STATE BOARD OF EDUCATION

A high-quality education system that prepares all students for college, career, and life.

DRAFT

September 1, 2015

Dear Governor and Members of the Washington State Legislature:

In light of the Supreme Court's August 13th, 2015 court order and the financial penalty levied upon the Legislature in the *McCleary* case, the Board believes it is appropriate to offer our recommendations on the state's efforts to achieve constitutional compliance by 2018. While the Board has previously issued guidance to the Legislature in the form of a [2014 resolution](#), our recommendations are hereby updated to reflect current events. Accordingly, we recommend the following:

1. The Governor should heed the Court, and convene a special session to address the Court's order.

Given the relatively modest size of the Court's fine, and subsequent statements by legislative leadership, there appears to be at least some chance that the legislature will proceed as usual and not convene a special session prior to January of 2016. There is the potential for the Court to see this as a willful disregard for the penalty which might escalate its level of involvement in the process in ways that neither party welcomes.

The Court's August order appropriately struck a tone of urgency. We call upon the Governor and the Legislature to reflect that level of urgency by calling a special session.

2. Spend the amount reserved for the *McCleary* fine in a manner that is both visible to the public, and reflects the spirit of helping all students make up for lost time to fully achieve the goals of basic education.

The Court has fined the Legislature \$100,000 per day for failure to comply with previous Court orders. If the legislature does not achieve full compliance by the beginning of the January 2016 session, the fine will have grown to approximately \$15 million. By the end of the 2016 session, it could be closer to \$25 million. Even if the Court subsequently vacates the fines, funding in this amount should be directed in a transparent way to the needs of students who have fallen behind, just as the Legislature has.

Accordingly, the funding should be reserved for state-subsidized summer school and extended day offerings for students not on track to graduate on time from high school. Summer instructional programs should be free to students who need them, and are motivated to better themselves when school is not in session. With the right investments, we can turn summer 'loss' into summer 'gain'.

3. Keep the focus of the *McCleary* case on the amplexness of school funding.

The core legal issue at stake in the *McCleary* case is whether the state makes ample provision for schools, and whether it does so through regular and dependable revenue sources. The State's legal briefs have acknowledged noncompliance with article IX of the constitution, and expressed a desire and intent to achieve full compliance by 2018.¹ The legislature has every right to protect the authority of the

¹ State of Washington's legal response to Plaintiff/Respondents' 2014 Post-Budget Filing; May 29, 2014



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legislative branch, but not at the expense of compliance with the state's paramount duty. We urge the Legislature and the Governor to focus its debate on what constitutes ample provision, and how that standard can be met by 2018.

4. Ensure a degree of funding equity in the system for students, regardless of where they go to school in the state.

The Board believes that inequitable funding will inevitably produce inequitable outcomes for students. In the same vein, the Supreme Court's original 2012 *McCleary* ruling was clear that local excess levies were inappropriate for support of basic education programs not only because of their lack of dependability, but also because they are "too variable" across communities of varying wealth. The Court was clear that reliance on excess levies "implicates both the equity and the adequacy of the K-12 funding system." Accordingly, the Board urges the legislature to create structures and safeguards to ensure that local levy funding does not fund basic education programs or salaries, and current inequities in funding are not maintained in the new system of financing public schools.

The Board stands ready to assist you as you undertake this historic effort.

On behalf of the Board,

Kevin Laverty, Vice Chair
Washington State Board of Education