

NETWORK FOR EXCELLENCE IN WASHINGTON SCHOOLS (“NEWS”)

Presentation to the
Basic Education Finance Joint Task Force
November 19, 2007

- What & Who are we?
- Seven Legal Principles
- Three Historical Patterns
- Current Status of Compliance

**Legal Principles & Historical Patterns
relating to the State's obligation under
Article IX, §1.**

Article IX, §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.”

1977/1978

*Seattle School
District case*



Rodney Newport H.S.
Tom yearbook

- **Car of the Year**: Plymouth Horizon
- **Movies**: Grease; Animal House; Close Encounters of the Third Kind; Saturday Night Fever

1977/1978

*Seattle School
District case*

- **TV**: Happy Days; All in the Family; Charlie's Angels; Mork & Mindy; M*A*S*H*; Roots Miniseries

First Principle:

No other State Constitution has a stronger Education Mandate than our State Constitution

- “Clearly, Const. art. 9, §1 is unique among state constitutions” [*Seattle School District, 90 Wn.2d at 498.*]
- “Constitution Article IX, §1, which stands at the vortex of the entire dispute is unique.... Careful examination of our constitution reveals that the framers declared only once in the entire document that a specified function was the State’s paramount duty. That singular declaration is found in Constitution Article IX, §1. Undoubtedly, the imperative wording was intentional. ... **No other State has placed the common school on so high a pedestal.** [*90 Wn.2d at 510-11.*]

Second Principle:

Article IX, §1 “is mandatory and imposes a judicially enforceable affirmative duty.”

- Above quote is from *Seattle School District v. State*, 90 Wn.2d at 482.
- It “is the proper function of the judiciary to interpret, construe and enforce the constitution of the State of Washington”, and “This duty must be exercised even when an interpretation serves as a check on the activities of another branch of government or is contrary to the view of the constitution taken by another branch.” [90 Wn.2d at 482 & 503-04.]
- “Flowing from this constitutionally imposed ‘duty’ is its jural correlative, a corresponding ‘right’ Therefore, all children residing within the borders of the State possess a ‘right’, arising from the constitutionally imposed ‘duty’ of the State, to have the State make ample provision for their education. Further, since the ‘duty’ is characterized as paramount the correlative ‘right’ has equal stature.” [90 Wn.2d at 511-512.]

Third Principle:

“paramount” means “paramount”

- “ ‘Paramount’ is not a mere synonym of ‘important.’ Rather, it means superior in rank above all others, chief, preeminent, supreme, and in fact dominant. ... When a thing is said to be paramount, it can only mean that it is more important than all other things concerned.” [*Seattle School District v. State*, 90 Wn.2d at 511.]
- “paramount” means “having a higher or the highest rank or authority” that is “superior to all others.” [*Webster’s Third New Int’l Dictionary* (1993) at 1638.]

Fourth Principle:
“ample” means “ample”

- Article IX, §1 requires the State’s funding to be “fully sufficient” [*Seattle School District, 90 Wn.2d at 518 & 537 (emphasis added).*]
- “ample” means “more than adequate”, “AMPLE always means considerably more than adequate or sufficient.” [*Webster’s Third New Int’l Dictionary (1993) at 74.*]

Fifth Principle:
“all” means “all”

- “**all** children residing within the borders of the State possess a ‘right’, arising from the constitutionally imposed ‘duty’ of the State, to have the State make ample provision for their education.” [*Seattle School District, 90 Wn.2d at 511-12*]
- “**all** children residing within the State’s borders have a ‘right’ to be amply provided with an education.” [*90 Wn.2d at 513.*]
- “**all**” means “every member or individual component of”, “each and every one of”. [*Webster’s Third New Int’l Dictionary (1993) at 54.*]

Sixth Principle:

“education” means substantive content beyond mere reading, writing, and arithmetic

[T]he 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 market place of ideas. 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. 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 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 market place of ideas... [T]he effective teaching and opportunities for learning of these essential skills make up the *minimum* of the education that is constitutionally required.”

[Seattle School District v. State, 90 Wn.2d 476, 517-18 (underline added; italics in original).]

Seventh Principle:

State must do four things - *first two are:*

1. further define “basic education” with additional substantive content beyond that described in the prior quote, and
2. define a basic “program” of education to provide that basic education

“basic education” and basic “program” of education are two separate things

- The “basic education” described in the Court’s reading/writing/arithmetic ruling is not “fully descriptive of the State’s paramount duty.” [*Seattle School District v. State, 90 Wn.2d at 518 (emphasis added).*]
- “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.” [*90 Wn.2d at 482 (emphasis added).*]
- (1978 ruling): the legislature has 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.” [*90 Wn.2d at 519 (emphasis added).*]
- “We have great faith in the Legislature and its ability to define ‘basic education’ and a basic program of education.” [*90 Wn.2d at 537 (emphasis added).*]

Seventh Principle:

State must do four things

1. further define “basic education” with additional substantive content beyond that described in the prior quote, and
2. define a basic “program” of education to provide that basic education, and
3. fully fund the actual cost of providing that basic education and program, and
4. provide that funding with dependable and regular State sources.

Patterns in Response to Court's 1978 Ruling:

1977/1978

*Seattle School
District case*

First Pattern in Response to Court's 1978 Ruling: Sincere Expressions of Urgency



Gov. Evans 1977
State of State Address

Gov. Ray 1979
State of State Address

Gov. Spellman 1984
State of State Address

Gov. Locke 1998
State of State Address

Gov. Gregoire 2007
Wash. Learns Message

“Now it is important to provide long term, consistent and dependable financing for basic education.”

“We have already delayed too long.... [F]ull funding of K-12 is mandated by the courts. We should do it now.”

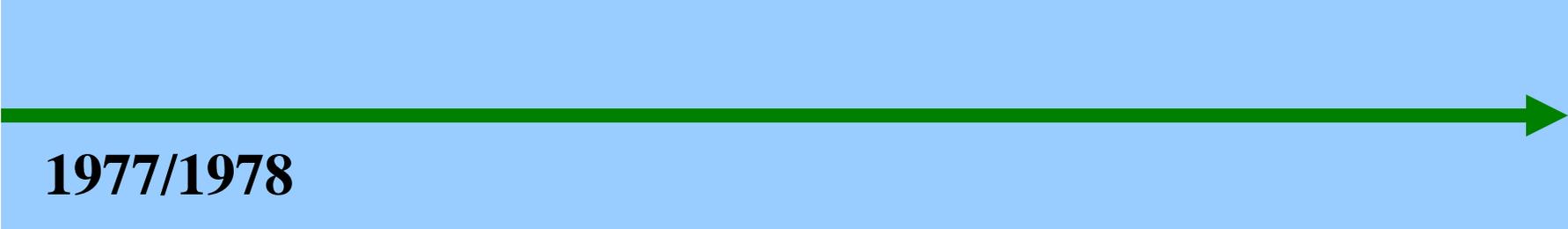
“We must finish the work of meeting our mandate to provide fully for basic education....”

“it’s not enough to tell their parents that our schools will do better with next year.... Last year’s [students] need help now”

“It is time for bold, purposeful action. It is time to make some big changes to Washington’s education system.... It is time to get to work.”

Second Pattern in Response to Court's 1978 Ruling:
Studies upon Studies

over 103 studies



1977/1978

*Seattle School
District case*

Third Pattern in Response to Court's 1978 Ruling:
Repeated Confirmation of *Seattle School District* Principles

School Funding II
(1983)

Court interprets
Article IX, §1 to
mandate programs
outside of the
Basic Education
Act programs

Third Pattern in Response to Court's 1978 Ruling:
Repeated Confirmation of *Seattle School District* Principles

School Funding III
(1988)

Formulas based on
averages
Constitutional as
long as a State
safety net pays
actual costs above
the formula
payments

Third Pattern in Response to Court's 1978 Ruling:
Repeated Confirmation of *Seattle School District* Principles

Tunstall
(2000)

education
programs need not
be identical

Courts hold the
ultimate power to
interpret & enforce
the State's duty
under Article IX

Third Pattern in Response to Court's 1978 Ruling:
Repeated Confirmation of *Seattle School District* Principles

McGowan
(2002)

“all” means “all”

Courts hold the
ultimate power to
interpret & enforce
the State's duty
under Article IX

Third Pattern in Response to Court's 1978 Ruling:
Repeated Confirmation of *Seattle School District* Principles

Brown
(2005)

Substantive
content (not budget
language)
determine if “basic
education”

Article IX, §1 “is
substantive and
enforceable”

Third Pattern in Response to Court's 1978 Ruling:
Repeated Confirmation of *Seattle School District* Principles



Special Ed. Suit
(2006)

12.7% cap
unconstitutional
unless State
provides for actual
costs above the
cap

Third Pattern in Response to Court's 1978 Ruling:
Repeated Confirmation of *Seattle School District* Principles

Salary Allocation Suit
(2007)

different salary
allocation schedules
are unconstitutional
because differences
are not based on
actual costs
[no rational basis]

Status of Compliance with the Court's 1978 Ruling

1977/1978

*Seattle School
District case*

2007

McCleary case

?Status of Compliance with the Court's 1978 Ruling?

1. further define “basic education” with additional substantive content beyond that described in the read/write/arith. quote,
2. define a basic “program” of education to provide that basic education, and
3. fully fund the actual cost of providing that basic education and program, and
4. provide that funding with dependable and regular State sources.

Status of Compliance with the Court's 1978 Ruling

1. further define “basic education” with additional substantive content beyond that described in the read/write/arith. quote,

basic education means substantive content beyond mere reading, writing, and arithmetic

[T]he 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 market place of ideas. 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. 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 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 market place of ideas... [T]he effective teaching and opportunities for learning of these essential skills make up the *minimum* of the education that is constitutionally required."

[Seattle School District v. State, 90 Wn.2d 476, 517-18 (underline added; italics in original).]

basic education means substantive content beyond mere reading, writing, and arithmetic

- “goes beyond mere reading, writing and arithmetic.”
- “equip our children for their role as citizens and as potential competitors in today’s market as well as in the market place of ideas.
- “It **must** prepare our children to participate intelligently and effectively in our open political system to ensure that system’s survival.”
- “It **must** prepare them to exercise their First Amendment freedoms both as sources and receivers of information”
- “it **must** prepare them to be able to inquire, to study, to evaluate and to gain maturity and understanding.”
- “The constitutional right ... 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 market place of ideas.”
- “[T]he effective teaching and opportunities for learning of these essential skills make up the *minimum* of the education that is constitutionally required.”

Legislature provided substantive content beyond mere reading, writing, and arithmetic

First Section of HB 1209 provided:

The legislature finds that student achievement in Washington must be improved to keep pace with societal changes, changes in the workplace, and an increasingly competitive international economy.

To increase student achievement, the legislature finds that the state of Washington needs to develop a public school system that focuses more on the educational performance of students....

The legislature further finds that improving student achievement will require (1) Establishing what is expected of students, with standards set at internationally competitive levels....

[first section of House Bill 1209, (Section 1).]

Legislature provided substantive content beyond mere reading, writing, and arithmetic

Next Section of HB 1209 then defined substantive content for those student performance standards with the following knowledge and skills:

- (1) Read with comprehension, write with skill, and communicate effectively and responsibly in a variety of ways and settings;
- (2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history; geography; arts; and health and fitness;
- (3) Think analytically, logically, and creatively, and to integrate experience and knowledge to form reasoned judgments and solve problems; and
- (4) Understand the importance of work and how performance, effort, and decisions directly affect future career and educational opportunities.

[second section of House Bill 1209, (Section 101).]
(codified as §.210 of the Basic Education Act, RCW 28A.150.210)

Legislature provided substantive content beyond mere reading, writing, and arithmetic

Amended §.210 of the Basic Education Act:

- (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 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

(codified as §.210 of the Basic Education Act, RCW 28A.150.210)

Legislature provided substantive content beyond mere reading, writing, and arithmetic

Based on those four numbered provisions of §.210, the State also established Essential Academic Learning Requirements (“EALRs”) in eight core subjects:

- (1) Reading;
- (2) Mathematics;
- (3) Science;
- (4) Writing;
- (5) Communication;
- (6) Social Studies: civics, economics, geography, & history;
- (7) Arts; and
- (8) Health & Fitness.

Status of Compliance with the Court's 1978 Ruling:

1. further define “basic education” with additional substantive content beyond that described in the read/write/arith. quote:
 - four numbered provisions of §.210
 - eight EALRs

*Enforcing next steps of compliance with the Court's
1978 Ruling*

1977/1978

*Seattle School
District case*

2007

McCleary case

Article IX, §1 requires State to determine the actual cost of amply providing all children with the “basic education” that has already been defined by the substantive content of §.210 & the EALRs

Article IX, §1 requires State to determine how it will fund that actual cost with stable & dependable State sources