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The Honorable Michael Heavey
Hearing Date: November 2, 2007, 9:00 a.m.

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

*FEDERAL WAY SCHOOL DISTRICT
NO. 210, a municipal corporation; et
al.,*

Plaintiffs,

v.

THE STATE OF WASHINGTON,

Defendants.

NO. 06-2-36840-1 KNT

~~ORDER DENYING~~
PLAINTIFFS' SUMMARY
JUDGMENT MOTION

Granting *MJK*

THIS MATTER came on regularly for hearing before the undersigned judge of the above-entitled Court on Plaintiffs' motion for summary judgment, which was fully briefed by the parties and then argued on Friday, November 2, 2007. This Court has considered the pleadings and files in this case, including:

1. Plaintiffs' Motion for Summary Judgment;
2. The Declaration of Lester "Buzz" Porter, Jr., dated October 4, 2007, in Support of Plaintiffs' Motion for Summary Judgment, and the exhibits attached thereto;
3. The Declaration of Sally McLean, dated October 4, 2007, in Support of Plaintiffs' Motion for Summary Judgment, and the exhibits attached thereto;
4. Defendant's Opposition to Summary Judgment;

~~ORDER DENYING
PLAINTIFFS' SUMMARY JUDGMENT
MOTION~~

1 5. The Declaration of David Stolier, dated October 22, 2007, in Support of
2 Defendant's Opposition to Summary Judgment, and the exhibits attached thereto;

3 6. The Declaration of Julie Salvi, dated October 19, 2007, in Support of
4 Defendant's Opposition to Summary Judgment, and the exhibits attached thereto;

5 7. The Declaration of Michael D.C. Mann, dated October 19, 2007, in Support of
6 Defendant's Opposition to Summary Judgment, and the exhibits attached thereto; and

7 8. Plaintiffs' Reply Brief, ~~with supporting declarations, if any.~~ *mfh*

8 Having reviewed these materials and having heard from the parties, and the Court being
9 fully informed,

10 IT IS HEREBY ORDERED that:

11 1. Plaintiffs' Motion for Summary Judgment is ~~DENIED~~ ^{Granted} *mfh*

12 DONE IN OPEN COURT this 2nd day of November, 2007.

13
14 *Michael Heavey*
15 MICHAEL HEAVEY, JUDGE

16
17 Presented by:

18 ROBERT M. MCKENNA
19 Attorney General

20 *David Stolier*

21 DAVID STOLIER, WSBA No. 24071
22 DIERK J. MEIERBACHTOL, WSBA. No. 31010
23 Assistant Attorneys General
Attorneys for STATE OF WASHINGTON


24 Approved as to form and for entry;
25 Notice if presentation waived

26

1 DIONNE & RORICK

2

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LESTER "BUZZ" PORTER, WSBA No. 23194

KATHLEEN HAGGARD, WSBA No. 29305

LYNETTE MEACHUM BAISCH, WSBA No. 37180

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Attorneys for PLAINTIFFS

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1 SUPERIOR COURT FOR THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

3
4 FEDERAL WAY SCHOOL DISTRICT NO. 210, a

5 municipal corporation; ED BARNEY; CYNTHIA

6 BLACK; EVELYN CASTELLAR; GINGER

7 CORNWELL; CHARLES HOFF; DAVID

8 ;ARSON, individually and as guardian for

9 ANDREW LARSON and JOSHUA LARSON;

10 THOMAS MADDEN, individually and as guardian

11 for BRYCE MADDEN; SHANNON

12 RASMUSSEN; SAANDRA RENGSTROFF,

13 individually and as guardian for TAYLOR

14 RENGSTORFF and KALI RENGSTORFF,

15 Plaintiffs,

16 V.

17 THE STATE OF WASHINGTON;

18 CHRISTINE GREGOIRE, in her capacity as

19 Governor of the State of Washington; TERRY

20 BERGESON, in her capacity as Superintendent

21 of Public Instruction; BRAD OWEN, in his

22 capacity as President of the Senate and principal

23 legislative authority of the State of Washington;

24 FRANK CHOPP, in his capacity as Speaker of

25 the House of Representatives and principal

NO. 06-2-36840-1 KNT

SUMMARY JUDGMENT OPINION

ORIGINAL

1 legislative authority of the State of Washington

2 Defendants.

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4
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6 GENERALLY

7 First of all, this decision should in no way be construed to find or even suggest
8 that the legislature has not provided for full funding of education in the Federal Way School District.

9 This decision will only be temporary. The losing party on each issue, will appeal this
10 matter to the Washington State Supreme Court who will review this matter completely anew based
11 upon the record presented to this court. Their decision will be the final word. Normally, on a
12 summary judgment decision the judge lists the documents that he or she considered and then the
13 order reflects whether the motion was granted or denied. I am going outside the normal process in
14 attaching this opinion to the order because of the importance of the issue and for non-lawyers and
15 those not at the hearing to know why I decided the way I did.

16 If this decision is upheld by the Washington State Supreme Court it will be of little moment.
17 The State legislature has been moving closer to equalization over the years and getting there will
18 not require great effort. For example, the state currently pays the vast majority (271) of school
19 districts \$32,746 per teacher (before adjustments are made for staffing mix). There are 24 districts
20 who are paid from \$32,763 to \$34,612(Everett).

21 In a way this court is particularly well suited to hear this matter. After 14 years in the
22 legislature, 1987 to 2000, I am aware of equalization attempts (e.g. 1987 levy equalizations) and
23 the politics that frustrate educating all of the States' students equally. I have great respect and
24 admiration for the legislators, past and present of both parties, who labor hard at providing for the
25 education of all our state's children.

1 Of particular note is State Representative Helen Sommers who is currently the chair of the
2 House Appropriations Committee. In 1978 representative Sommers filed a friend of the court brief
3 urging the Supreme Court to overturn prior case law and declare the then funding of state schools
4 unconstitutional. On a personal note I had the privilege to be seated next to Representative
5 Sommers on the House floor in the 1987 and 1988 legislative sessions.

6 In a way this court is *not* well suited to hear this matter. I am reminded of the wise saying
7 "You are never a prophet in your own land." Nevertheless, this decision has fallen to me for the
8 moment.

9
10 FACTS

11
12 The legislature essentially pays money to school districts based upon the number of
13 students in a school district. The number of students authorizes a specific staff allocation and then
14 the legislature allocates money for the payment of staff. Staff are divided into three categories: 1)
15 teachers, 2) administrators, and 3) classified staff. The amounts paid have ranges in each of the
16 three categories. Because of the "ranges" there are 258 different funding levels for the State's 295
17 school districts.

18 Classified staff salary allocated in the 2007-08 school year has a range from \$30,111
19 (shared by 171 districts) to a high of \$35,227 in the Seattle School District.

20 Administrative staff has the greatest disparity among the three. Four districts received the
21 top salary allocation for certified staff which was \$80,807 and 61 districts were at the bottom with
22 an allocation of \$54,405. The administrative staff allocations have no relationship to actual costs.
23 In 2006-07 Federal Way paid an average of \$94,486 per administrator, quite a bit more than the
24 \$54,405 the state funds for 2007-08.

1 Teaching staff is the closest in equality. In 2007-08 the state will pay a base salary to
2 teachers in 272 districts the amount of \$32,746. Twenty-three districts receive more with the
3 Everett district receiving the high of \$34,612. From the base the state adds money for the staff
4 mix, the more education and experience a teacher has the more money the state pays out. State
5 law prohibits the school districts from paying their teachers an average salary that exceeds the
6 district's average salary allocation received from the state. Therefore teachers in Everett will
7 receive an average of \$1,866 more than the average teacher salary in Federal Way and 270 other
8 school districts.

9 Federal Way is at the bottom level in all three salary allocation ranges.

10 On a per student basis the following are the allocations received from the State for the
11 2007-08 school year:

12	Federal Way	\$ 3,005.31
13	Highline	\$ 3,075.47
14	Vashon	\$ 3,184.33
15	Tacoma	\$ 3,118.71
16	Shaw Island	\$ 3,707.20
17	Index	\$ 2,766.00
18	Skykomish	\$ 3,270.33
19	Everett	\$ 3,322.23

20
21 If Federal Way were paid the same per student as Tacoma they would have received an
22 average of \$114.40 more per student for a total of \$2,380,946.40 more to the district in the 2007 -
23 08 school year.

24 If Federal Way were paid the same per student as Everett they would have received an
25 average of \$316.92 more per student for a total of \$6,654,052.32 more to the district. The

1 allocations from the State have a ripple effect that further affect allocations for special education
2 and levy authority.

3 Some of these disparate levels of funding are due to the staffing mix of each district but
4 most are based on actual average salaries in the 1976-77 school year. The disparate salary levels
5 have been brought forward by "grandfathering". So if a school district paid any or all of the three
6 staffs comparatively low in 1976 -77 – they have been locked into those low numbers for the last 30
7 years.

8 In 1976-77 teacher/administer salaries ranged from a low district average of \$7200 to a
9 high of \$18,300. Classified salaries ranged from a low of \$5,000 average to a high of \$12,509.
10 The ranges between school districts have narrowed over the years but because of their being
11 "grandfathered" are still the main reason for the disparities in the funding of school districts. These
12 disparate salary ranges have no relation to current circumstances or current realities.

13 The Reff report published in 1982 reports on p. 44, after noting the large salary variations:

14 "Regardless of the cause, once the staff ratio concept had been
15 determined, a salary component needed to be developed and the wide
16 variation in pay practices and salary taken into consideration. There
17 appeared to be general legislative agreement that in the interest of
18 equity, and perhaps to comply with the court mandate, the wide range
19 in salaries needed to be narrowed. There was also agreement that
20 politically and economically this narrowing could not take place immed-
21 iately; it would have to occur over a period of years"

22
23 Significant narrowing has occurred over the years but equity has not been reached.
24
25

LAW AND DECISION

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2 1. Article IX, Section 1 of the Washington State Constitution provides:

3 It is the paramount duty of the State to make ample provision
4 for the education of all children residing within its borders,
5 without distinction or preference on account of race, color, cast
6 or sex.

7 The Plaintiffs have failed to prove beyond a reasonable doubt that they are not amply
8 funded.

9 2. Article IX, Section 2 of the Washington State Constitution requires "The legislature
10 shall provide for a general and uniform system of public schools."

11 In December of 1974 the Washington Supreme Court held –

12 "That the public schools are partly funded with local property taxes
13 does not deprive the system, we think, of those constitutional qualities
14 described as general and uniform...A general and uniform system, that is,
15 a system which, within reasonable constitutional limits of equality, makes
16 ample provision for the education of all children, cannot be based upon exact
17 equality of funding per child because it takes more money in some districts per
18 child to provide about the same level of educational opportunity than it does in
19 others."

20
21 *Northshore School District v. Kinnear*, 84 Wn.2nd 685 at 727, 728(1974)

22 Thus within a "general and uniform system of public schools" the legislature could
23 constitutionally and rationally create different funding levels that stem from differences in
24 educational costs. However, the disparities in the current system are not based on the cost of
25 providing educational opportunity in any district. Instead the disparities are bases upon historic

1 salary levels paid during the school year of 1976 -77 when according to the Supreme Court of
2 Washington, the State of Washington school funding system was not general and uniform. See
3 *Seattle School District v. State*, 90 Wn.2nd 476 at 519 (1978) where it held that Legislature "has not
4 fully implemented Const. Art. 9, Sections 1 and 2."

5 In *Brown v. State* 155 Wn.2nd 254, at 269(2005) the Supreme Court held "With every
6 passing year, the state's contribution to the budgets of districts... would increase in comparison to
7 those districts that did not. Thus some districts would receive more state funding than others,
8 quickly violating the constitutional command that the State provide a general and uniform
9 education." Thus, the current funding at disparate levels with no rationale for differences violates
10 the constitutional requirement of providing a general and uniform system.

11 To the extent the *Northshore School District v Kinnear* case holds the state can fund
12 school districts at unequal levels; this court believes it is no longer good law. Its precedent value is
13 suspect. Put in context with the general overruling of *Kinnear*, its finding regarding Article 9,
14 Section 2 has been overruled directly and by implication in *Seattle School District*. In the 1974
15 *Kinnear* case the minority opinion noted it was done in a "cavalier manner" and an opinion that
16 "may be short-lived." The dissent in *Kinnear* beginning on p. 731 of 84 Wn.2nd is quite an
17 interesting read. Not only interesting to read but prophetic. Less than four years later in *Seattle*
18 *School District v State*, 90 Wn.2nd 476 (1978) *Kinnear* was overruled extensively.

19 The State of Arizona 's Constitution Article XI, Section I is similar to our provision and
20 requires a general and uniform public education system. In *Hull v. Albrecht*, 960 P. 2nd 634 (Ariz.
21 1998) the Arizona Supreme Court held that the general and uniform public school system clause of
22 the Arizona Constitution, Art XI, Section I forbids "a state funding mechanism that itself causes
23 disparities between districts" and found also "the general and uniform requirement will not tolerate
24 a state funding mechanism that itself causes disparities between districts".

25

1 The plaintiffs have shown proof beyond a reasonable doubt that school districts are funded
2 at disparate levels; that the different levels are based upon a discredited and unconstitutionally
3 funded system of 30 years ago. There is no rational reason to continue this. This violates the
4 general and uniform requirement of our constitution.

5
6 3. The State Constitution in Article 1, Section 12 requires equal protection
7 under the law. To wit, that similarly situated individuals have the right to be treated equally under
8 the law. This court does not feel a suspect class or fundamental right is involved.

9 Disparate treatment of similarly situated individuals "will be upheld unless it rests on
10 grounds wholly irrelevant to the achievement of legitimate state objectives." *State v. Shawn P.*,
11 122 Wn. 2nd 553, 561 (1993).

12 The disparate levels of funding are based upon the salaries in existence in 1976-77. The
13 legislature has many times tried to equalize the salaries, an admission that there is no rational
14 reason to continue this inequality and that the State objective should be to equalize funding.
15 Because of the vested interests in the *status quo* these disparate, irrational and inequitable salary
16 allocations will continue for the next thirty years if not found unconstitutional. This court finds that
17 basing funding levels on salary levels of 30 years ago is arbitrary and wholly irrelevant to the
18 achievement of legitimate state objectives. Today's State funding has no basis in reality and is a
19 vestige from a discredited and unconstitutional system. It cannot stand. This is not to say that the
20 State cannot fund in the future at disparate levels, if it is done on a rational basis; e.g. cost of living
21 adjustments, staffing mix, English as a second language, small school districts, etc. This court
22 finds and concludes that the current funding levels are irrational and cannot stand, they violate the
23 equal protection rights of Federal Way's students, teachers and taxpayers.

24 The court declines to make further rulings on issues presented by the Plaintiffs.
25

1 CONCLUSION

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3 In conclusion this court finds that the disparate funding to school districts violates the

4 constitution of the State of Washington because it is not general and uniform. Further it finds that

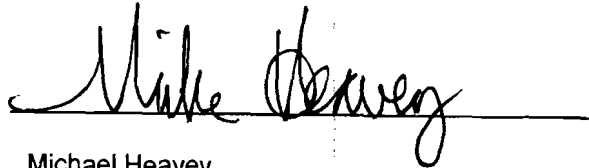
5 the disparate funding violates the constitutional equal protection rights of Federal Way's teachers,

6 students and taxpayers.

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9 DATED this 2nd day of November 2007.

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12 Michael Heavey

13 Judge of the Superior Court

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