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SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

RANDY DORN, in his official capacity as
SUPERINTENDENT OF PUBLIC
INSTRUCTION,

Plaintiff,

v.

STATE OF WASHINGTON, SEATTLE
SCHOOL DISTRICT NO. 1, EVERETT
SCHOOL DISTRICT, BELLEVUE SCHOOL
DISTRICT, SPOKANE SCHOOL DISTRICT,
TACOMA SCHOOL DISTRICT, EVERGREEN
SCHOOL DISTRICT, and PUYALLUP
SCHOOL DISTRICT,

Defendants.

No. 16-2-17134-6 SEA

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Superintendent of Public Instruction Randy Dorn alleges as follows:

I. INTRODUCTION

In January 2012, the Washington Supreme Court decided *McCleary v. State*, 173Wn.2d 477, holding that “[t]he state has not complied with its article IX, section 1 duty to make ample provision for the education of all children in Washington.” The Court further held that “[a]mple funding for basic education must be accomplished by means of dependable and regular tax sources” and that local levies were not dependable and regular tax sources:

1 Our insistence on “regular and dependable tax sources” in *Seattle*
2 *School District* focused appropriately on state-provided funding.
3 Contrary to the State’s view, we rejected special excess levies as
4 “dependable and regular” not only because they are subject to the
5 whim of the electorate, but also because they are too variable
6 insofar as levies depend on the assessed valuation of taxable real
7 property at the local level. . . . All local-level funding, whether
8 by levy or otherwise, suffers from this same infirmity. In short,
9 the State’s reliance on local dollars to support the basic education
10 program fails to provide the “ample” funding article IX, section 1
11 requires.

8 Despite the Court’s holding, the State and local school districts continue to rely on local
9 levies to fund basic education, including supplemental pay for teachers. They are able to do so
10 because local school districts were not defendants in *McCleary* and are not constrained by its
11 holding. Local school districts, of which the named defendants are examples, are using their
12 local levies to increase salaries through the use of supplemental contracts for time,
13 responsibility, or incentives (“TRI”) which can add as much as 46 percent to the salary of a
14 classroom teacher. These supplementary salaries, while likely consistent with the quality and
15 quantity of work performed and the local labor market, are illegal under Washington law. The
16 action of local districts in raising levies to fund these supplemental contracts enables the
17 Legislature to evade its duty to amply fund education, and these concerted state and local
18 actions violate Article IX of the state constitution.

19 **II. PARTIES**

20 2.1 Plaintiff Randy Dorn is the elected Superintendent of Public Instruction
21 having “supervision over all matters pertaining to public schools.”
22 Wash. Const. Art. II, Sec. 22; RCW 28A.300.040(1). Superintendent
23 Dorn has a duty to ensure that schools are funded and operated in
24 compliance with the law.

25 2.2 Defendant State of Washington is the entity charged by Article IX of the
26 State Constitution with the “paramount duty . . . to make ample provision
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1 for the education of all children residing within its borders, without
2 distinction or preference on account of race, color, caste, or sex. The
3 Washington Legislature has responsibility for appropriating sufficient
4 funds to carry out this duty.

5 2.3 Defendant Seattle School District #1 is a public school district in King
6 County, Washington, serving over 52,000 students.

7 2.4 Defendant Everett School District #2 is a public school district in
8 Snohomish County, Washington, serving over 19,000 students.

9 2.5 Defendant Bellevue School District #405 is a public school district in
10 King County, Washington serving over 19,000 students.

11 2.6 Defendant Spokane School District #81 is a public school district in
12 Spokane County, Washington, serving over 30,000 students.

13 2.7 Defendant Tacoma School District #10 is a public school district in
14 Pierce County Washington, serving over 28,000 students.

15 2.8 Defendant Evergreen School District #114 is a public school district in
16 Clark County, Washington, serving over 26,000 students.

17 2.9 Defendant Puyallup School District #3 is a public school district in
18 Pierce County, Washington, serving over 22,000 students.

19 **III. JURISDICTION AND VENUE**

20 3.1 This court has jurisdiction over this matter under chapter 7.24 RCW.

21 3.2 This court also has jurisdiction under RCW 2.08.010 and RCW 7.40.010.

22 3.3 Venue is properly placed in King County, Washington, pursuant to RCW
23 4.92.010.

24 **IV. RELEVANT FACTS**

25 4.1 Everett School District

26 a. The Everett School District has an excess levy of 26.51 percent.
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- 1 b. The collective bargaining agreement (“CBA”) between the Everett
2 School District and the Everett Education Association provides a
3 supplemental contract to every teacher that ostensibly is for extra
4 time and responsibility. CBA sec. 8.01.C.2.
- 5 c. The “extra” responsibilities include “communicating with students or
6 parents, supporting school/student activities, providing individual
7 help to students, evaluating student work” and other activities that
8 are generally expected of teachers in exchange for the state-paid base
9 salary. CBA sec. 8.01.C.3.
- 10 d. During the current school year, these supplement contracts add
11 \$12,643 or 38 percent to the \$33,483 salary of a beginning teacher
12 for a total of \$46,126. These contracts add \$30,730 or nearly 47
13 percent to the salary of a teacher at the \$65,778 top of the salary
14 schedule, for a total of \$96,508. CBA Appendix 3C and D.
- 15 e. The total compensation provided under these contracts exceeds the
16 State’s allocation for basic education salaries. The contracts are paid
17 in large part from the local excess levy.

18 4.2 Seattle School District

- 19 a. The Seattle School District’s excess levy is 36.97 percent.
- 20 b. The collective bargaining agreement between the Seattle School
21 District and Seattle Education Association provides that every
22 teacher with a regular contract is eligible for a supplemental contract
23 for time, responsibility and incentives. CBA sec. IV.4.c.
- 24 c. In exchange for the TRI contract, teachers are required to
25 communicate with students or parents, support school/student
26 activities, provide individual help to students, evaluate student work
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1 and perform other activities that are generally expected of teachers in
2 exchange for the state-paid base salary. CBA sec. IV.5.

- 3 d. During the last school year, these TRI contracts added \$11,643 or 32
4 percent to the \$35,305 salary of a beginning teacher for a total of
5 \$46,948. These contracts added \$22,889 or 33 percent to the salary
6 of a teacher at the \$68,410 top of the salary schedule, for a total of
7 \$91,299. CBA Appendix A.
- 8 e. The total compensation provided under these contracts exceeds the
9 State's allocation for basic education salaries. The contracts are paid
10 in large part from the local excess levy.

11 4.3 Bellevue School District

- 12 a. The Bellevue School District's excess levy is 34.66 percent.
- 13 b. The collective bargaining agreement between the Bellevue School
14 district and the Bellevue Education Association provides two
15 supplemental contracts for each teacher, one for "time and
16 responsibility" and the other for an "incentive." CBA, Art. 22,
17 secs. 4, 8.
- 18 c. In exchange for these contracts, teachers are required to meet with
19 parents formally and informally, plan curriculum, participate in
20 professional development activities, and perform other activities that
21 are generally expected of teachers in exchange for the state-paid base
22 salary. CBA, Appendix 1.5.
- 23 d. During the last school year, these supplemental contracts added
24 \$10,355, or 29 percent, to the \$35,721 salary for a beginning teacher
25 for a total of \$46,077. These contracts added \$21,111, or 31 percent,
26 to the \$67,152 base salary for a teacher at the top of the salary
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1 schedule, for a total of \$88,263. CBA, Appendix 3.1 as updated at
2 www.bsd405.org/wp-content/pdf/cba/teacher-salary-schedule.pdf.

- 3 e. The total compensation provided under these contracts exceeds the
4 State's allocation for basic education salaries. The contracts are paid
5 in large part from the local excess levy.

6 4.4 Spokane School District

- 7 a. The Spokane School District's excess levy is 26.39 percent.
8 b. The collective bargaining agreement between the Spokane School
9 District and the Spokane Education Association provides
10 supplemental contracts to each teacher as a "Professional
11 Responsibility Stipend." CBA, Art. VI, sec. 11.
12 c. In exchange for payment of the Professional Responsibility Stipend,
13 teachers are required to grade assignments, plan classes, collaborate
14 with colleagues, and perform other activities that are generally
15 expected of teachers in exchange for the state-paid base salary.
16 CBA, Art. VI, sec. 11(C).
17 d. During the current school year, these supplemental contracts added
18 12.49 percent to the salary of teachers with 23 years of experience or
19 less and 14.69 percent to the salary of teachers with 24 years of
20 experience or more. CBA, Art. VI, sec. 11(B).
21 e. The total compensation provided under these contracts exceeds the
22 State's allocation for basic education salaries. The contracts are paid
23 in large part from the local excess levy.

24 4.5 Tacoma School District

- 25 a. The Tacoma School District's excess levy is 31.10 percent.
26 b. The collective bargaining agreement between the Tacoma School
27 District and the Tacoma Education Association provides

1 supplemental contracts to each teacher as a “Professional
2 Responsibility Stipend.” CBA, Art. III, Sec. 21(B).

- 3 c. In exchange for payment of the Professional Responsibility Stipend,
4 teachers are required to evaluate student work, plan classes and
5 curriculum, and perform other activities that are generally expected
6 of teachers in exchange for the state-paid base salary. CBA, Art. III,
7 Sec. 21(C).
- 8 d. During the 2014-15 school year these contracts added \$6,057 or 17.8
9 percent to the \$34,048 base salary of a beginning teacher and
10 \$16,073 or 25 percent to the \$64,075 salary for a teacher at the top of
11 the salary schedule, for a total of \$80,148. CBA, Appendix III.
- 12 e. The total compensation provided under these contracts exceeds the
13 State’s allocation for basic education salaries. The contracts are paid
14 in large part from the local excess levy.

15 4.6 Evergreen School District

- 16 a. Evergreen School District’s excess levy is 23.89 percent.
- 17 b. The collective bargaining agreement between the Evergreen School
18 District and Evergreen Education Association provides that every
19 teacher with a regular contract is eligible for a supplemental contract
20 for time, responsibility and incentives. CBA Art. VI, sec. C.
- 21 c. In exchange for the TRI contract, teachers are required to conference
22 with parents, plan curriculum, grade students, and perform other
23 activities that are generally expected of teachers in exchange for the
24 state-paid base salary. CBA, Art. VI, Sec. C.
- 25 d. During the 2015-16 school year, these contracts added 15.25 percent
26 to the state-paid salary for each teacher. CBA, Art. VI, Sec. C.
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1 e. The total compensation provided under these contracts exceeds the
2 State's allocation for basic education salaries. The contracts are paid
3 in large part from the local excess levy.

4 4.7 Puyallup School District

- 5 a. Puyallup School District's excess levy is 28.67 percent.
- 6 b. The collective bargaining agreement between Puyallup School
7 District and Puyallup Education Association provides that every
8 teacher with a regular contract is eligible for a supplemental
9 "responsibility contract." CBA, Sec. 18.2.
- 10 c. In exchange for this contract, teachers are required to communicate
11 with students and parents, evaluate student work, provide individual
12 help to students, and perform other activities that are generally
13 expected of teachers in exchange for the state-paid base salary.
14 CBA, Sec. 18.2.C.
- 15 d. During the 2015-16 school year, these contracts added \$5,382, or
16 15.8 percent, to the \$34,073 base salary of a beginning teacher for a
17 total of \$39,455. These contracts added \$14,049, or 21.8 percent, to
18 the \$64,222 base salary of a teacher at the top of the salary schedule
19 for a total of \$78,271. CBA, Appendix A.
- 20 e. The total compensation provided under these contracts exceeds the
21 State's allocation for basic education salaries. The contracts are paid
22 in large part from the local excess levy.

23 4.8 State of Washington

- 24 a. The average excess levy for all school districts in Washington is
25 21.75 percent.
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- 1 b. The statewide average state-funded teacher salary in 2014-15 was
2 \$52,944, but the average actual salary was \$66,605, with local levies
3 adding \$13,661 or 26 percent.
- 4 c. The statewide average state-funded salary for school administrators
5 in 2014-15 was \$59,954, but the average actual salary was \$115,090,
6 with local levies adding \$55,136 or 92 percent.
- 7 d. The statewide average state-funded salary for classified staff in 2014-
8 15 was \$32,334, but the average actual salary was \$46,425, with
9 local levies adding \$14,091 or 44 percent.

10 **V. CLAIM—DECLARATORY JUDGMENT AGAINST SCHOOL**
11 **DISTRICT DEFENDANTS**

12 5.1 RCW 28A.400.200 authorizes supplemental contracts for teachers for
13 extra time, responsibility, and incentives, but it places limits on their use.
14 RCW 28.A.400.200(3)(a) provides, in relevant part: “The actual average
15 salary paid to certificated instructional staff shall not exceed the district's
16 average certificated instructional staff salary used for the state basic
17 education allocations.” The next subsection provides: “No district may
18 enter into a supplemental contract under this subsection for the provision
19 of services which are a part of the basic education program required by
20 Article IX, section 3 of the state Constitution.

21 5.2 Pursuant to RCW 28A.400.200, defendant schools districts have entered
22 into supplemental contracts that provide every teacher in the district with
23 compensation ranging from 12 to 46 percent of their base salaries. This
24 supplement is the equivalent of adding 22 to 83 days to the 180 day
25 contract. Funds for the base salaries come from the state as part of the
26 district’s basic education allocation. Funds for the salary supplements
27 come largely from local excess levies.

1 5.3 In exchange for the supplemental salaries, the collective bargaining
2 agreements require that teachers talk to students and families, grade
3 papers, plan lessons, and engage in other activities that were already
4 required of teachers under the base contract and are part of any basic
5 education program.

6 5.4 School district superintendents widely agree that the salary supplements
7 are necessary to attract and retain qualified teachers. Without the
8 supplements, the base salaries are considerably below market in most, if
9 not all, areas of the state.

10 5.5 School district superintendents widely agree that the state should be
11 responsible for paying teachers' salaries as part of basic education.

12 5.6 Plaintiff seeks a declaratory judgment that the supplemental TRI
13 contracts entered into by defendant school districts pay for basic
14 education services and thus violate RCW 28A.400.200.

15 **VI. CLAIM—DECLARATORY JUDGMENT AGAINST ALL DEFENDANTS**

16 6.1 Article IX, sec. 1 of the Washington Constitution requires that the state
17 provide ample funding for public education.

18 6.2 The Supreme Court has held that “ample funding” requires that the State
19 pay 100 percent of the cost of basic education because local excess levies
20 are variable—not “regular and dependable.”

21 6.3 The State Legislature enacted SHB 455 in 1987 (codified at RCW
22 28A.400.200), authorizing districts to supplement teachers' salaries with
23 TRI contracts for truly extra work while prohibiting them from using
24 these contracts to pay for basic education services.

25 6.4 Over time, the Legislature has allowed these contracts to become a
26 substantial part of teacher pay, allowing the Legislature to avoid paying
27 for increases in the cost of living or market rate adjustments. In so

1 doing, the State has fallen farther and farther behind in amply funding
2 basic education.

3 6.5 School districts have been complicit in this abdication of responsibility
4 in agreeing to larger and larger TRI contract packages in exchange for
5 fewer and fewer services that are beyond the scope of basic education.

6 6.6 Plaintiff asks for a declaratory judgment that RCW 28A.400.200 is
7 unconstitutional as it is currently being applied by defendant school
8 districts to relieve the State of its duties under Art. IX, sec. 1 of the State
9 Constitution.

10 **VII. CLAIM—DECLARATORY JUDGMENT AGAINST ALL DEFENDANTS**

11 7.1 Article IX, sec. 1 of the Washington Constitution requires that the state
12 provide ample funding for public education.

13 7.2 The Supreme Court has held that “ample funding” requires that the state
14 pay 100 percent of the cost of basic education because local excess levies
15 are variable—not “regular and dependable.”

16 7.3 In 1987, the Legislature enacted SHB 455, establishing an intention to
17 limit school district excess levies at 20 percent, but grandfathering
18 districts above that percentage and requiring a phase-down.

19 7.4 The Legislature subsequently failed to provide the funds necessary to
20 phase down the local levies, and in fact increased both the allowable
21 percentage and the base upon which the percentage is computed in order
22 to permit *more* local levy dollars to fund schools. Today RCW
23 84.52.0531 allows districts levies of 28 percent, and some districts are
24 still grandfathered above that level. The Legislature’s action in
25 increasing the permitted level of local levies has allowed it to avoid its
26 obligation to amply fund education.
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1 7.5 School districts have been complicit in this abdication of responsibility
2 by lobbying the Legislature to maintain the high level of local funding,
3 sending larger local levies to the ballot, and utilizing levy proceeds for
4 TRI contracts and otherwise subsidizing basic education.

5 7.6 Plaintiff asks for a declaratory judgment that levies in excess of 20
6 percent as currently levied by the defendant school districts are
7 unconstitutional under Art. IX, Sec. 1 of the State Constitution because
8 their primary purpose is to avoid that constitutional mandate.

9 **VIII. RELIEF REQUESTED**

10 Plaintiff requests the following relief from this Court:

- 11 1. The declaratory judgments requested in paragraphs 5.6, 6.8, and 7.6 of this
12 Complaint.
- 13 2. An injunction prohibiting the use of local levies to fund supplemental TRI
14 contracts under RCW 28A.400.200.
- 15 3. Such other relief as this Court deems just and equitable.

16 DATED this 19th day of July, 2016.

17 Davis Wright Tremaine LLP
18 Attorneys for Superintendent of Public Instruction

19 By /s/ Michele Radosevich
20 Michele Radosevich, WSBA #24282
21 Harry Korrell, WSBA #23173