

Special Education Lawsuit
State Administration, 010; RecSum Code, 60
Office of Superintendent of Public Instruction, 350

Short Description

Funding is required for an ongoing lawsuit related to the level of state funding for special education services. A group of twelve school districts is challenging current state funding levels on constitutional grounds. This funding request is for additional lawsuit-related expenses through June 30, 2007. This request is a companion to the request by the Attorney General's Office (AGO) for new FTEs and expenses for the work on this lawsuit. Although the presiding judge has recently granted a conditional stay, the AGO continues to incur costs and bill the Office of Superintendent of Public Instruction. The costs detailed in this request total \$1 million for the biennium, assuming the conditional stay continues until the trial date of October 30, 2006.

Fiscal Summary

Operating Expenditures		FY 2006	FY 2007	Total
Legal Services Revolving Acctount	001-01	\$506,510	\$592,082	\$1,098,592
Total Cost		\$506,510	\$592,082	\$1,098,592

Narrative Justification and Impact Statement

History or Problem Statement

A major lawsuit has been filed alleging that the state is not meeting its constitutional responsibilities to fully fund basic education. Specifically, there are approximately 122,000 students that require special education services, and the lawsuit alleges the state is not providing sufficient funding for the required services for these special education students. The amount of \$100,000 has already been appropriated in the 2005-2007 biennium for this lawsuit, but will not be sufficient to cover the costs of defending this case. Depending on the outcome of the case, and any possible appeals, additional funding may be required in future biennia.

Description of Request

This lawsuit is a major challenge to state funding levels and practices for special education, and involves in excess of \$100 million per year. In addition to the \$100,000 already appropriated, this case is expected to require the services of 2.0 FTE Assistant Attorneys General, 1.0 FTE paralegal, and 1.0 FTE legal assistant on a continuing basis throughout this biennium. Litigation support costs are also necessary and are estimated in the amount of \$200,000 for depositions, expert witnesses, document preparation and other costs. The nature of the case will require substantial document production, expert witnesses, and depositions.

The lawsuit was filed on September 30, 2004, and names Governor Locke, Superintendent of Public Instruction Terry Bergeson, Lt. Governor Brad Owen and House Speaker Frank Chopp. It is currently scheduled for trial beginning on October 30, 2006.

Special Education Lawsuit
State Administration, 010; RecSum Code, 60
Office of Superintendent of Public Instruction, 350

The AGO has stated in their companion decision package that the scope and size of this case are beyond the capacity of the AGO to provide legal services from existing appropriations. Therefore, the Superintendent of Public Instruction, requires additional funding to pay AGO for the continued preparation for this case. The amount of state funding at issue is quite large, and it is critical that the state protect the interests of taxpayers by mounting a high-quality vigorous defense. This is not possible without additional resources.

Impact/Outcome

Alignment with Agency Strategic Plan and Governor's Priorities of Government Process

This budget request supports Goal #1 of the OSPI Strategic Plan "Supporting Student Achievement". The strategic goal states that "Each of Washington's diverse students demonstrates high levels of achievement in the four state learning goals and graduates from high school ready to implement a positive plan for his or her future."

This request contributes to Statewide Results #1 "Improve student achievement in elementary, middle and high schools". This directly supports the mission of OSPI.

Reason for Change

This request is in response to a major complex lawsuit filed by twelve public school districts. This case is being brought against the state alleging that a history of under funding special education has imposed a major financial burden on school districts, and is essentially an unfunded mandate.

Impact on Other State Programs or Units of Government

This additional funding is necessary for the AGO to adequately respond to the lawsuit that faces the state. Quick response to this major case is necessary given the nature of the issues involved and the major amount of state funding involved.

Required Changes to RCW, WAC, or Contracts

None.

Discussion of Alternatives

AGO explored the following alternatives to the proposed request for additional funds:

1. Do not respond in a timely manner to the lawsuit and risk an adverse court decision.
2. Require AGO staff currently assigned to other education-related activities and programs to respond to this new workload. This would result in a variety of legal complications in the state's educational system, with the likely effect of additional lawsuits in those areas.

Special Education Lawsuit
State Administration, 010; RecSum Code, 60
Office of Superintendent of Public Instruction, 350

3. The AGO can contract with private law firms to act as SAAGs to represent the state in this matter. Because of the highly specialized nature of this lawsuit it would be extremely difficult to find the necessary legal expertise, and the cost of legal services would increase by 200 percent or more.

OSPI agrees with AGO that these options are less desirable than the proposed budget request due to higher cost, increased risk, and the undesirable precedent of the state not actively protecting the legal interests of taxpayers.

Impact in Future Biennia

The potential state expenditures at issue in this case exceed \$100 million annually, with this cost expected to continue in the future, and even grow. This funding request is to cover litigation costs in addition to the \$100,000 already appropriated for the 2005-2007 biennium. This request covers anticipated costs through this biennium, when the trial and subsequent appeals are expected to be complete. If either the trial or potential subsequent appeals are delayed, the case may continue and additional funds will be necessary in future biennia.

Distinction between one-time and ongoing costs:

These are one-time costs that will continue until the court has ruled and appeals exhausted or settlement has been reached.

Effect of Not Funding

If OSPI does not receive the extra funding, they will not be able to pay AGO for their services so the AGO will not have the ability to prepare adequately for this case. The risk is increased for an adverse ruling. This would be very expensive for the state and could give rise to “copy cat” lawsuits in the area of pupil transportation, learning assistance, bilingual education, and other programs where funding levels could be challenged.

Object Detail

	FY 2006	FY 2007	Total
Employee FTE			
Salary and Wages			
Employee Benefits			
Goods and Services	\$606,510	\$592,082	\$1,098,592
Travel			
Capital Outlay			
Grants			
Subtract current appropriation	\$-100,000	\$0	\$-100,000
Total	\$506,510	\$592,082	\$1,098,592

Special Education Lawsuit
State Administration, 010; RecSum Code, 60
Office of Superintendent of Public Instruction, 350

Activity Inventory Detail

Activity Inventory Item	Program	FY 2006	FY 2007	Total
A002 Administration	010	\$506,510	\$592,082	\$1,098,592
Total Activities		\$506,510	\$592,082	\$1,098,592