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No State Constitutional Duty to Fully Fund Capital Construction Costs of Washington K-12 School Districts

On September 7, 2023, the Washington State Supreme Court (the “Court”) ruled in *Wahkiakum Sch. Dist. No. 200 v. State* that the State of Washington’s “paramount duty . . . to make ample provision for the education of all children residing within its borders” as set forth in Article IX, Section 1 of the Washington State Constitution does not include the duty to fully fund capital construction costs of school buildings.

It has long been established that the State’s paramount constitutional duty to educate children requires the State to “amply fund” the “basic education” needs of its students.¹ In its 1975 *Seattle Schools* opinion, the Court held “basic education” must go “beyond mere reading, writing and arithmetic,” and the State’s provision of ample funding for such education must come from “dependable and regular” tax sources rather than local school districts’ special excess levies.² Notably, the Court’s definition of “basic education” did not address capital construction costs.³

Nearly 40 years later, in its 2012 *McCleary* opinion, the Court found the State was still failing to meet its constitutional duty to amply fund basic education through dependable and regular tax sources, and then held the State Legislature in contempt for failing to make adequate progress toward remedying its unconstitutional education funding scheme.⁴ In response, the State Legislature created a new “prototypical school model” outlining the core components of basic education and shifted the funding responsibilities of the “prototypical school model” to the State. The legislation creating the “prototypical school model” and funding of the same was silent on the provision of State funding for capital construction costs.⁵

In 2021, after perennial failures to pass capital levies, the Wahkiakum School District (the “District”) filed suit against the State asserting the State’s “paramount” constitutional “duty” to fully fund education also requires the State to provide ample funding for capital improvement projects. In its recent 2023 *Wahkiakum* opinion, the Court rejected the District’s argument.

The Court reasoned that the Washington State Constitution taken as a whole does not conflate capital construction funding with other education funding. Several articles in the Washington State Constitution

¹ *Seattle Sch. Dist. No. 1 of King Cnty. v. State*, 90 Wash. 2d 476 (1978).

² *Id.* at 483.

³ *Id.* at 516.

⁴ *McCleary v. State*, 173 Wash. 2d 477 (2012).

⁵ *Wahkiakum Sch. Dist. No. 200 v. State*, No. 101052-4, 2023 WL 5762673, at *3 (Wash. Sept. 7, 2023).

Contacts

Tanya Lawless

Spokane
(509) 252-2692
tanya.lawless@kutakrock.com

Brian Kistler

Spokane
(509) 252-2689
brian.kistler@kutakrock.com

Nathan Smith

Spokane
(509) 252-2690
nathan.smith@kutakrock.com

Alexander Fern

Spokane
(509) 252-4579
alexander.fern@kutakrock.com

treat capital construction costs differently from noncapital school costs and provide greater flexibility for local school districts to generate revenue for capital construction funding than for noncapital education funding. Given this distinction, the Court held capital construction costs are a “shared responsibility” of local school districts and the State. Such costs are not a component of ‘basic education’ that must be amply funded by the State alone.

For a K-12 school district to qualify for State funding for a capital project under current legislation, it must demonstrate the ability to provide local matching funds, which are typically generated from capital levies. While voters in high-income school districts are more likely to approve capital levies, low-income rural school districts may find it difficult, if not impossible, to pass a capital levy to generate local matching funds.

As a possible solution, Justice Johnson recommended in his concurring opinion to *Wahkiakum* that, while the State is not solely responsible for capital construction costs, it should examine how much responsibility it should bear for such costs and suggested that the District raise the issue for the Court to determine. Justice Johnson also suggested that, on remand, the parties should discuss how much responsibility the State may bear for school capital construction costs if it is less than 100% of those costs, and whether a separate provision of the State Constitution (Article IX, Section 3) creates an obligation that the common school construction fund be distributed in a manner that is accessible to low income, rural districts.

Until the question is raised again, capital construction costs will remain the shared responsibility of local school districts and the State.

Additional Information

For more information regarding the *Wahkiakum* opinion and its effect, this update on educational funding, please contact Kutak Rock attorneys [Tanya Lawless](#), [Brian Kistler](#), [Nathan Smith](#) or [Alex Fern](#), listed on the left. You may also visit us at www.KutakRock.com.

