

## The State Supreme Court's Special Ed Suit Decision

On December 9, 2010, the Washington Supreme Court affirmed the Court of Appeals decision against the plaintiff school districts in the *School District Alliance For Adequate Funding Of Special Education v. State Of Washington* case.

The *Alliance* districts had based their lawsuit on the premise that if you ignore the money they receive in the State's Basic Education Allocation ("BEA"), then the State does not fully fund the cost of special education.

That premise greatly simplified their case. They did not introduce evidence at trial to show the State's total funding amount was inadequate. Nor did they introduce evidence at trial to show that State underfunding harms any students. Instead, they focused on the State's special education funding standing alone not being enough.

The Supreme Court rejected the premise upon which the *Alliance* districts had based their case. It held that the State's Basic Education Allocation ("BEA") can not be ignored when judging the adequacy of State funding for the education of special education students.<sup>1</sup> Given the *Alliance* districts' failure to produce evidence showing the State's total funding amount is inadequate or that State underfunding harms any students, the closing sentence of the Court's majority opinion succinctly held: "When the BEA is included, the *Alliance* has not proved beyond a reasonable doubt that the State underfunds special education."<sup>2</sup>

That ruling does not help the State's appeal of the ruling against it in the *NEWS* case. The plaintiffs in the *NEWS* case did not claim that any single piece of the State's K-12 education funding could (or should) be assessed in isolation from the other pieces. As the trial court's written decision confirmed, the testimony and exhibits in the *NEWS* case's 8-week trial established – beyond a reasonable doubt – that the State's total K-12 funding amount is grossly inadequate, and that the State's widespread underfunding is causing real and substantial harm to large numbers of public school students all across our State. Those facts are crucial.

The Supreme Court opinions filed in the *Alliance* case also support legal rulings in the *NEWS* case. For example, Justice Stephens' concurring opinion confirms that Article IX, §1 establishes an affirmative obligation of the State, and a corresponding positive constitutional right held by the State's public school children.<sup>3</sup> Justice Stephens' and Justice Chambers' opinions also confirm that Article IX, §1 creates rights and duties that courts will (and must) enforce.<sup>4</sup>

Since the *Alliance* districts had failed to prove any violation to trigger enforcement, however, those opinions emphasized that enforcement "raises questions that must be considered, but that consideration awaits another day."<sup>5</sup> That day will come when the Supreme Court addresses the *NEWS* appeal early next year.

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<sup>1</sup> E.g., pdf version of majority opinion at p. 15 (rejecting *Alliance* districts' argument that courts should look at special ed funding apart from the BEA (Basic Ed Allocation), bluntly stating: "Such a result would be absurd.").

<sup>2</sup> Page 19 of the pdf version of the majority opinion.

<sup>3</sup> Page 2 of pdf version of Justice Stephens' concurring opinion (joined by Justice Fairhurst).

<sup>4</sup> Page 3 of pdf version of Justice Stephens' concurring opinion (joined by Justice Fairhurst); page 1 of pdf version of Justice Chambers' concurring-in-part/dissenting-in-part opinion (joined by Justice James Johnson).

<sup>5</sup> Pages 3-4 of pdf version of Justice Stephens' opinion (joined by Justice Fairhurst).