

State of  
Washington  
House of  
Representatives



April 28, 2016

The Honorable Bob Ferguson  
Washington State Attorney General  
PO Box 40100  
Olympia, WA 98504-0100

**Re: Request for Opinion — Payment of Teachers & Staff in the Event of a  
Court-Ordered Schools Shutdown**

Dear Attorney General Ferguson:

I am writing to respectfully request an opinion generally relating to whether teachers and school district staff could still be paid in the event that the Supreme Court takes action resulting in a shutdown of Washington's public schools.

The on-going *McCleary* case on education funding is well known, especially to your office. Whatever the theoretical meaning of Article IX of the Constitution of the State of Washington provisions on education funding may be, and wherever the correct limits of legislative and judicial powers under our state's separation of powers system of government should be drawn, the state, as a practical matter, has been held in contempt of court and currently pays a penalty of \$100,000 per day for each and every day that the Supreme Court of the State of Washington deems us to be insufficiently meeting our education funding obligations. This past Session, Engrossed Second Substitute Senate Bill 6195 (Chapter 3, Laws of 2016) was enacted, which, along with other actions taken, proponents hope will satisfy the Supreme Court and make significant progress towards meeting the Court's deadline for certain education funding in 2018.

Without debating the merits of that legislation, and irrespective of possible future legislative action, it is uncertain what view the Supreme Court will take of the issue and our progress to date. While it is to be hoped that the Court will look favorably upon this progress and lift the sanctions, it is also possible that the Court may impose different penalties or take additional actions. It is not inconceivable that the Court could invalidate the entire operating budget currently in effect, or at least the portions of it relating to education. The Court may declare certain school programs or functions inoperable, or it may invalidate all or portions of the statutory law relating to public schools. It may take other action that, while not directly affecting school funding or operations, may indirectly make it impossible for schools to open or continue classes. There are many possible ways that schools could be shut down or closed, at least temporarily. While this eventuality would be tragic for our students, parents, and state as a whole, and while I am committed to working to

Attorney General Bob Ferguson

April 28, 2016

Page 2

ensure this does not happen, my questions relate to if and how public school teachers and staff may be paid, receive benefits, and accrue governmental service credits if schools close or suspend service.

While it is not directly on-point, I have read your letter opinion of June 19, 2013 to State Treasurer McIntire, who inquired as to certain legal issues relating to payment of state obligations in the event that a state operating budget was not enacted. In that opinion, you essentially identified three areas of governmental operations that could likely continue and be funded even in the absence of an operating budget: agencies and programs funded through other budgets (such as transportation); agencies and programs fund through unappropriated sources; and agencies and programs “the continued operation of which is mandated either constitutionally or by federal law.” (Letter Opinion to Treasurer McIntire, page 5). As you know, the primary issue in *McCleary*, for example, relates to whether the state is adequately funding education, which Article IX of the Constitution of the State of Washington mandates as our “paramount duty.” The language in Article IX could be interpreted as one such constitutional mandate that may operate irrespective of certain budgets—or, perhaps, even the invalidation of budgets or statutes by court order. I am curious if you think this interpretation might have relevance or application to the questions I pose with respect to the disposition of teachers and staff if schools are closed.

In sum, it would be very helpful to have discussion, clarification, and answers to the following questions:

1. In the event that public schools are shutdown or rendered inoperable because of a court order or other judicial action, could teachers and other public school employees continue to be paid, receive benefits, and accrue service credits?
2. If public school teachers and staff may not be paid because a court order or judicial action results in a shutdown of public schools, may those employees subsequently receive retroactive payment, benefits, and service credits once the public schools are again open or operational?

I very much look forward to your views on this matter, including any ancillary topics or questions that occur to you as you work through these issues. I appreciate your time and expertise. If I may provide any additional information, please do not hesitate to contact me.

Sincerely,



Matt Manweller

Representative – 13th Legislative District  
State of Washington