



RCWS AND WACS AND COURT ORDERS -- OH MY!

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THE DISCLAIMER

- ▶ I'm not a lawyer.
 - ▶ We're in a transitional year, and a great deal of uncertainty remains from all parties involved in making highly capable programming a part of basic education.
 - ▶ I have flying monkeys, and I'm not afraid to use them.
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DEFINITIONS

- ▶ **RCW – Revised Code of Washington.** The law as passed by the Legislature and signed by the Governor
- ▶ **WAC – Washington Administrative Code.** Current administrative regulations created by state agencies to carry out the laws passed by the state legislature. Interested parties may be involved in the rule writing process. When rules are proposed, they must be published and an opportunity given for public comment before they can go into effect.
- ▶ **Basic Education - RCW 28A.150.200:**“That which is necessary to provide the opportunity to develop the knowledge and skills necessary to meet the state-established high school graduation requirements that are intended to allow students to have the opportunity to graduate with a meaningful diploma that prepares them for postsecondary education, gainful employment, and citizenship. Basic education by necessity is an evolving program of instruction intended to reflect the changing educational opportunities that are needed to equip students for their role as productive citizens and includes...transportation and transportation services to and from school for eligible students

THE LAW

- ▶ ESHB 2261 passed during the 2009 legislative session
- ▶ Effective September 1, 2011, “The instructional program of basic education provided by each school district shall include...programs for highly capable students under RCW 28A.185.010 through 28A.185.030.”

MORE LAW

- ▶ RCW 28A 185.020 (1) states that: “The Legislature finds that for highly capable program students, access to accelerated learning and enhanced instruction is access to a basic education. There are multiple definitions of highly capable, from intellectual to academic to artistic. The research literature strongly supports using multiple criteria to identify highly capable students, and therefore the Legislature does not intend to prescribe a single method. Instead, the Legislature intends to allocate funding based on 2.314 percent of each school district’s population and authorize school districts to identify through the use of multiple, objective criteria those students most highly capable and eligible to receive accelerated learning and enhanced instruction in the program offered by the district. Access to accelerated learning and enhanced instruction through the program for highly capable students does not constitute an individual entitlement for any particular student.”

We're not in Kansas anymore.



ONE BRICK AT A TIME

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- ▶ Instead, the Legislature intends to allocate funding based on 2.314 percent of each school district's population and authorize school districts to identify through the use of multiple, objective criteria those students most highly capable and eligible to receive accelerated learning and enhanced instruction in the program offered by the district.
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WHY IS THAT A BIG DEAL?

- ▶ Basic education is the paramount duty of the State under the Washington Constitution.
- ▶ The Legislature is legally required to provide ample funding for basic education.
- ▶ Basic education funding is “protected” from cuts.
- ▶ In *McCleary vs. State*, and in several findings that followed, the Supreme Court has repeatedly held that full funding of basic education must be in place by the beginning of the 2017-2018 school year.

THE WACS

▶ 392-170-030

Substance of annual school district plan.

▶ The school district's annual plan shall contain the following:

- ▶ (1) A report of the number of K-12 students who are highly capable that the district expects to serve by grade level;
- ▶ (2) A description of the district's plan to identify students;
- ▶ (3) A description of the highly capable program goals;
- ▶ (4) A description of the services the highly capable program will offer;
- ▶ (5) A description of the instructional program the highly capable program will provide;
- ▶ (6) A description of ongoing professional development for educators of students who are highly capable and general education staff;
- ▶ (7) A description of how the highly capable program will be evaluated that includes information on how the district's highly capable program goals and student achievement outcomes will be measured;
- ▶ (8) A fiscal report; and
- ▶ (9) Assurances signed by the school district's authorized representative that the district will comply with all applicable statutes and regulations.

MORE WACS

▶ 392-170-035

Definition—Students who are highly capable.

- ▶ As used in this chapter, highly capable students are students who perform or show potential for performing at significantly advanced academic levels when compared with others of their age, experiences, or environments. Outstanding abilities are seen within students' general intellectual aptitudes, specific academic abilities, and/or creative productivities within a specific domain. These students are present not only in the general populace, but are present within all protected classes according to chapters [28A.640](#) and [28A.642](#) RCW.

MORE AND MORE WACS

▶ 392-170-075

Selection of most highly capable.

- ▶ Each school district's board of directors shall adopt policies and procedures for the selection of the most highly capable students by the multidisciplinary selection committee. Such policies and selection procedures:
 - ▶ (1) Shall not violate federal and state civil rights laws including, without limitation, chapters [28A.640](#) and [28A.642](#) RCW;
 - ▶ (2) Shall be based on professional judgment as to which students will benefit the most from inclusion in the district's program; and
 - ▶ (3) Shall be based on a selection system that determines which students are the most highly capable as defined under WAC [392-170-055](#), and other data collected in the assessment process.

EVEN MORE WACS

▶ 392-170-078

Program services.

- ▶ Districts shall make a variety of appropriate program services available to students who participate in the district's program for highly capable students. Once services are started, a continuum of services shall be provided to the student from K-12. Districts shall periodically review services for each student to ensure that the services are appropriate.

▶ 392-170-080

Educational program for highly capable students.

- ▶ Each student identified as a highly capable student shall be provided educational opportunities which take into account such student's unique needs and capabilities. Such program shall recognize the limits of the resources provided by the state and the program options available to the district, including programs in adjoining districts and public institutions of higher education. Districts shall keep on file a description of the educational programs provided for students selected.

MCCLEARY VS. STATE

- ▶ State Supreme Court issued its ruling on January 5, 2012
 - ▶ “...the State has not complied with its Article IX, section 1 duty to make ample provision for the education of all children in Washington”
 - ▶ “The State may not make reductions ‘for reasons unrelated to education policy, such as fiscal crisis or mere expediency’”
- ▶ **What was the State’s defense?** The State had assured the Court that it is increasing K-12 funding so as to amply fund all Washington’s public schools by no later than the 2018 deadline noted in ESHB 2261.
- ▶ Not impressed by the progress made to comply so far, the Court ordered the Legislature to offer up a plan for full compliance by the 2018 school year no later than April 30, 2014.

MCCLEARY AND HIGHLY CAPABLE PROGRAMMING

- ▶ The Supreme Court's January 2012 decision expressly recognized that "ESHB 2261 broadened the instructional program of basic education by specifically adding ... the program for highly capable students."
- ▶ **2. The State's Highly Capable Program "Plan" & "Progress"**
 - ▶ **(a) The State's "Detailed Plan".**
 - ▶ The State's 2013 filing does not submit any plan or any periodic benchmarks for full funding of the highly capable program added by ESHB 2261.
 - ▶ Instead, defendant completely disregards the "detailed plan" requirement in the Supreme Court Order.
 - ▶ **(b) The State's "Progress".**
 - ▶ The State's 2013 filing does not claim any progress towards funding the highly capable program added by ESHB 2261.
 - ▶ **No** progress is not the *steady, real, and measurable* progress this Court Ordered.



WHAT'S BEHIND THE CURTAIN

- ▶ State funding for Highly Capable is still using a formula from 2007
 - ▶ In 2007, HCP was optional, offered by about 60% of districts and primarily served kids who were in grades 3 – 6.
- ▶ The State funds about \$9 million per year for HCP (using the old formula). Local Districts supplement that with about \$46 million per year.
- ▶ From the most recent Supreme Court ruling on McCleary, issued January 9, 2014: ***“We recognized long ago that the paramount duty to amply fund education under article IX, section 1 must be borne by the State, not local school districts.”***

YOUR JOB

- ▶ Hold your District to the task. Highly capable programming is no longer an enhancement, it's basic education.
- ▶ Hold your Legislators to the task. Ample funding for basic ed includes ample funding for highly capable.
- ▶ Realize that there are limits (no individual entitlement), but law of the land now requires ALL districts to provide a continuum of services to their most highly capable learners, grades K-12.
- ▶ Educate yourself. Ask to see your district's plan.
- ▶ If you haven't already, begin a conversation with your legislators about how we can achieve full and equitable funding for highly capable programming.