

NO. 89714-0

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Appellants,

v.

STATE OF WASHINGTON,

Respondent,

and

WASHINGTON STATE CHARTER SCHOOLS ASSOCIATION; LEAGUE OF EDUCATION VOTERS; DUCERE GROUP; CESAR CHAVEZ SCHOOL; TANIA DE SA CAMPOS; and MATT ELISARA,

Intervenors.

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**STATE OF WASHINGTON'S  
MOTION FOR STAY OF THE MANDATE**

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## **I. INTRODUCTION AND IDENTITY OF MOVING PARTY**

More than 1,300 Washington students began attending nine charter schools this fall. These students have been in classes for over a month, and most started school weeks before this Court issued its opinion. Because Washington's charter school law was targeted at serving at-risk students, a high proportion of these children are low income, qualify for special education, are English language learners, or are otherwise at risk. For example, at every one of the nine schools, over half of the students qualify for free or reduced-price lunch.

Education experts and policy-makers, including the Superintendent of Public Instruction and the State School Directors' Association, agree that an orderly transition period will benefit the students currently attending charter schools, as well as their families. Negative impacts from school disruption are more likely where a child is at risk.

The State therefore respectfully asks the Court to stay the mandate in this case if it denies the State's motion for reconsideration.<sup>1</sup> Staying the mandate would allow students and their families to remain in their current schools until the end of this school year. This will allow existing charter schools an opportunity to work with state and local officials to determine

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<sup>1</sup> The State has moved for reconsideration and the Intervenors have indicated they will also do so by October 23. If this Court reverses its decision as a result, this motion will become moot. The State brings this motion now, however, to attempt to ensure minimal disruption to charter school students in the event the Court denies reconsideration.

whether they can convert to another status that allows them to remain open long term, thereby eliminating the need for students to change schools. And if that fails, children who move back into traditional public schools could do so in an orderly way at the beginning of next school year, providing time for schools and families to prepare for the transition.

The State is aware that charter schools are endeavoring to raise private funds to remain open for the remainder of this year even if state funding disappears. There is no guarantee that the fundraising efforts will succeed, however, and the students and their families relying on these schools should not have to worry about whether their school will close if fundraising falls short. The Court can and should address this unfortunate predicament by adjusting the time at which it issues its mandate.

## **II. STATEMENT OF RELIEF SOUGHT**

The State, including the Superintendent of Public Instruction, respectfully requests that this Court stay the mandate in this case until June 30, 2016, allowing charter school students to remain in their current schools with their current teachers without disruption until the end of this school year. The Spokane School District also supports this request.

## **III. GROUNDS FOR RELIEF AND ARGUMENT**

In order to serve the ends of justice, the State respectfully asks this Court to exercise its authority under RAP 1.2(c) and RAP 12.5 to stay the

issuance of the mandate until June 30, 2016, to allow students to remain in their schools until the end of this school year. This timeline would allow students to finish school and a few additional days to allow for orderly facility closure and disposal of school property.

**A. Without a Stay, Students and Their Families Will Suffer Harmful Disruption**

Forcing charter schools to close abruptly would cause significant turmoil for more than 1,300 students who currently attend these schools, as well as their families. Children who are forced to change schools during the school year often suffer social and educational setbacks. Dorn Decl. at 3; Hill Decl. at 2-4; McGuire Decl. at 2-3. One study found that “even one nonpromotional school move both reduced elementary school achievement in reading and math and increased high school dropout rates.” Nat’l Educ. Policy Ctr., Russell W. Rumberger, *Student Mobility, Causes, Consequences, and Solutions* at 8 (June 2015) <http://nepc.colorado.edu/publication/student-mobility> (describing a 2010 national study). Other studies have likewise found that changing schools has significant adverse impacts on student performance. *See, e.g.*, Lisa Melman Heinlein & Mary Beth Shinn, *School Mobility and Student Achievement in an Urban Setting*, 37 *Psychol. in Schs.* 349 (July 2000) (Early Elementary Students); Russell W. Rumberger & Katherine A.

Larson, *Student Mobility and the Increased Risk of High School Dropout*, Am. J. of Educ., Nov. 1998, Vol. 107 No. 1, at 1-35.

Longer term, students who had nonpromotional changes in their schools between kindergarten and 12th grade “had lower levels of occupational prestige in their jobs, experienced more symptoms of depression, and were more likely to be arrested as adults.” Rumberger, *Student Mobility, Causes, Consequences, and Solutions* at 8 (describing the 2010 national study). These impacts were above and beyond the impacts of associated risks like poverty and residential mobility. *Id.*

The negative impacts of changing schools are “more pronounced” in children of low socioeconomic status, who have disabilities, or who are English language learners. *Id.* (describing a 2013 study). It is particularly difficult for special education students to successfully transition after the beginning of the school year, and some of the existing charter schools have a large proportion of special education students. Dorn Decl. at 3; Hill Decl. at 3-4; Halsey Decl. at 5. For example, in one charter school located in the Tacoma School District, more than one in every five students is a special education student. Halsey Decl. at 4. In all but one of the nine charter schools, ten percent or more of the students receive special education services. Halsey Decl. at 3-4 and Attach. A. Any change in these students’ school will require changes to the child’s Individualized

Education Program team and a potential reevaluation of the child's Program that could be severely disruptive to educational continuity for these vulnerable children. *See* WAC 392-172A-03105(4); *see also* Dorn Decl. at 3; Halsey Decl. at 4-5; McGuire Decl. at 3. At the very least, a transition period allowing each student's family and school to prepare will help minimize the risk of disruption in the implementation of Individualized Education Programs. *See* McGuire Decl. at 3-4; Hill Decl. at 3.

Meanwhile, at each of the nine charter schools, more than half of the student body qualifies for free or reduced lunch. Halsey Decl. at 3 and Attach. A; Gering Decl. Ex. A. At four of the nine schools, that figure is more than 75 percent. Halsey Decl. Attach. A. Low socioeconomic status is another risk factor that makes changing schools more likely to have serious negative impacts on students. Rumberger, *Student Mobility, Causes, Consequences, and Solutions* at 8; Dorn Decl. at 3; Hill Decl. at 3.

Similarly, one charter school's student body consists of almost 30 percent English language learners, while three more charter schools have more than ten percent of their student body speaking English as a second language. Halsey Decl. at 3-4 and Attach. A. Students with limited English proficiency also suffer more than others when required to change

schools. *See* Rumberger, *Student Mobility, Causes, Consequences, and Solutions* at 8.

Finally, two charter schools have structured mentor programs integrated into their curricula. Halsey Decl. at 4. The 244 students at those schools have been matched with their teacher-mentors for almost six weeks. *Id.* Premature termination of a mentoring relationship is detrimental to youth and can exacerbate pre-existing challenges. Wright Decl. at 2-3. When a mentor relationship must be terminated, the relationship should be tapered mindfully, rather than abruptly ended. Wright Decl. at 3. Ideally, the relationship should continue at least six months, and as close to 12 months as possible, to minimize harm to the child. Wright Decl. at 3. Because an abrupt closure of these two schools would end mentoring relationships, there could be additional harm to these students.

Without a stay of the mandate, students who have been attending charter schools for over a month will suffer negative impacts on their educational performance and on their social and emotional health. *See* Dorn Decl. at 2-3; Hill Decl. at 2-3. Statewide, educational experts and policy-makers recognize that a stay of the mandate would significantly alleviate these negative consequences for students and their families. *See generally* Dorn, Hill, McGuire, Halsey, Wright, and Gering Decls.

**B. Without a Stay, Some School Districts and Traditional Public Schools Will Likely Face Disruption**

To the extent that charter school students move back into traditional public schools, those schools will need time to prepare for an orderly transition. School districts have already set their staffing levels for the 2015-16 school year in accordance with enrollment counts and with collective bargaining agreements. Dorn Decl. at 3. An influx of new students into a particular school or school district would create challenges that the districts will need time to resolve. Dorn Decl. at 3.

In particular, the Spokane School District supports a stay of the mandate until the end of this school year. Gering Decl. at 3. The Spokane School District wishes to avoid student disruption by keeping students in its two school district-authorized charter schools, even if the schools must be operated by the district as another type of public school program that would serve the same population of students. *Id.* Changing these schools from charters to other types of programs would require the District to negotiate, renegotiate, or terminate numerous contracts, to assume leases or relocate the programs, and to resolve multiple issues ranging from curriculum purchases to District collective bargaining. *Id.* These changes cannot happen overnight, but they could allow charter school students to remain in their current schools. *Id.*

Other school districts and traditional public schools would also face challenges absent a stay of the mandate. Dorn Decl. at 3-4. One elementary school in the Highline School District could face an influx of 40 students if one charter school closes. Dorn Decl. at 3. Similarly, a single high school in the Tacoma School District could face 60 returning students if another charter school closes. *Id.* at 3-4. One school district would receive an influx of 108 students from one charter school, while the Tacoma School District would receive 266 returning students from three charter schools. *Id.* at 4. Such sudden influxes of students resulting from school closures has been found to cause negative impacts on teachers and staff in the receiving schools, including significant demoralization and stress. Rumberger, *Student Mobility, Causes, Consequences, and Solutions* at 10.

In sum, traditional public schools and school districts could face the unnecessary disruption of a sudden influx of students absent a stay.

**C. A Stay of the Mandate Until the End of This School Year Will Allow Charter Schools to Work With State and Local Officials to Ease Transitions for At-Risk Students**

A stay of the mandate could entirely prevent disruption for vulnerable students if the current charter schools, in cooperation with the State Board of Education, the Superintendent of Public Instruction, and

school districts, can convert to another type of public school program that is constitutionally permissible. *See* Dorn Decl. at 4-5; Gering Decl. at 3.

A stay of the mandate would also allow the district-authorized charter schools in the Spokane School District to work with the District to convert to a relationship that complies with the Court's decision in this case. Gering Decl. at 3. The Spokane School District has indicated, however, that this transition will take time because it will require adjustments to multiple contracts, the resolution of questions regarding leases and collective bargaining, and changes in school board policies and administrative regulations. *Id.*

The Superintendent of Public Instruction has committed to working with willing school districts and charter school operators to explore converting charter schools to publicly funded alternative learning experience programs. Dorn Decl. at 4. This option may allow charter school students to continue attending the same public school with the same teachers. *See id.* But these programs must be adjusted to meet state legal requirements for alternative learning experiences and to conform with local school district policies and collective bargaining agreements. *Id.* This option would also take time to explore and implement. A stay would allow time to pursue such alternatives. *Id.*

Finally, a stay of the mandate will also allow the Charter School Commission to provide oversight and regulation while charter schools either convert to other types of schools or wind down. *See* Halsey Decl. at 4-5. It would “ensure orderly transition of students and student records to new schools . . . and proper disposition of public school funds, property, and assets,” all contemplated by the Charter School Act’s termination provision. RCW 28A.710.210. The Charter School Commission has also adopted rules to effectuate an orderly wind down of schools, which not only ensure that children are transitioned with as little disruption and harm as possible, but also result in orderly accounting for state and federal funds received by the schools and disposition of assets purchased with those funds. *See* WAC 108-40-110 to -200. The Charter School Commission should be permitted to remain in its oversight role until all of the charter schools are converted or closed.

#### **IV. CONCLUSION**

Allowing charter schools to remain open for the rest of the school year would provide their already vulnerable students a chance to either remain in the school of their choice as the school reconfigures consistent with the Court’s opinion or transition back to their traditional public

school in an orderly fashion. The Court should stay its mandate to grant them that time.

RESPECTFULLY SUBMITTED this 24th day of September, 2015.

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