

**NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION  
WASHINGTON ATTORNEY GENERAL**

The Washington Attorney General issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the Attorney General's Office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should notify the Attorney General's Office of your interest by April 8, 2009. This is not the due date by which comments must be received. However, if you do not notify the Attorney General's Office of your interest in commenting on an opinion request by this date, the opinion may be issued before your comments have been received. You may notify the Attorney General's Office of your intention to comment by calling (360) 586-0728, or by writing to the Office of the Attorney General, Solicitor General Division, Attention Jeffrey T. Even, Deputy Solicitor General, P.O. Box 40100, Olympia, Washington 98504-0100. When you notify the office of your intention to comment, you may be provided with a copy of the opinion request in which you are interested; information about the Attorney General's Opinion process; information on how to submit your comments; and a due date by which your comments must be received to ensure that they are fully considered. If you are interested in receiving notice of new formal opinion requests via e-mail, you may visit the Attorney General's website at [www.atg.wa.gov/AGOOpinions/default.aspx](http://www.atg.wa.gov/AGOOpinions/default.aspx) for more information on how to join our Opinions ListServ. The Attorney General's Office seeks public input on the following opinion request(s):

**Opinion Docket No. 09-03-06**

**Request by Honorable Rosemary McAuliffe, State Senator, et al.**

1. Currently some early learning grants from the state are provided to sectarian organizations under an analysis using Article I, section 11 of the Washington state Constitution, the general establishment clause. However, if any early learning program for at-risk, low-income children age three and four is included in the definition of basic education would the analysis switch to an analysis using Article IX, section 4 of the Washington Constitution, the specific establishment clause addressing public education? If so, would that analysis prohibit state funds whether as an appropriation or a grant from being provided to sectarian organizations?
2. The 2009 legislation provides that it is the intent of the Legislature for the basic education program of early learning to replace the current Early Childhood Education and Assistance Program (ECEAP), as it applies to at-risk children. Currently, the Department of Early Learning administers ECEAP. Article III, section 22, of the Washington Constitution provides that the Superintendent of Public Instruction shall have supervision over all matters pertaining to public schools. If the Legislature passed legislation creating a basic education program of early learning to replace ECEAP would the program need to be administered by the Office of the Superintendent of Public Instruction and not the Department of Early Learning?
3. Article IX, section 1, provides that the State must make ample provision for the education of all resident children. Article IX, section 2 requires the state to maintain a general and uniform system of public schools. In addition, the federal and state constitutions have equal protection clauses. Do any of these provisions constrain the state's ability to create a basic education program for early learning for only at-risk students who are from low income families, i.e., a subset of pre-kindergarten children residing in the state?
4. Currently, there are waiting lists for ECEAP. If the Legislature created a basic education program for early learning to replace ECEAP would the previously mentioned constitutional provisions permit the state to continue to maintain waiting lists of eligible students for the new basic education early learning program? Would the analysis be different if the state does not currently have the building or staff capacity to provide an early learning program for all of the eligible children?
5. Under the proposed 2009 legislation, the basic education program of early learning will be based on Head Start standards. Neither the Head Start nor the ECEAP standards require teachers to be certificated or have a degree in education. However, currently teachers in the K-12 system must be certificated, which means that they have successfully completed an education degree program. If the Legislature created a basic education program for early learning, do the constitutional requirements for basic education require that the teachers in the early learning program be certified and have completed an education degree program?
6. The Task Force recommendations also include transportation to and from the school as part of the K-12 basic education program. If the Legislature decides to include transportation to and from school as part of the K-12 basic education program, would transportation need to be extended to the students who participate in the basic education program of early learning?

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