



## Covering Agency Attorney General Costs

### 2025–27 Operating Budget Decision Package

## RECOMMENDATION SUMMARY

The Office of Superintendent of Public Instruction (OSPI) requests funding for the defense of two lawsuits and necessary legal advice relating to an increase in complex Public Records Act (PRA)-related issues. This request includes funding for OSPI's audit resolution case that seeks to recoup over \$4 million that Summit Public Schools are alleged to have improperly received, to defend a PRA lawsuit, and to provide advice on complex PRA-related issues.

## FISCAL DETAIL

Operating Expenditures	FY 2026	FY 2027	FY 2028	FY 2029
Fund 001-1 (program 010)	\$460,000	\$231,000	\$0.00	\$0.00
<b>Total Expenditures</b>	<b>\$460,000</b>	<b>\$231,000</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Biennial Totals</b>	<b>\$691,000</b>		<b>\$0.00</b>	
Staffing	FY 2026	FY 2027	FY 2028	FY 2029
FTEs	0.0	0.0	0.0	0.0
<b>Average Annual</b>	<b>0.0</b>		<b>0.0</b>	
Object of Expenditure	FY 2026	FY 2027	FY 2028	FY 2029
Obj. E	\$460,000	\$231,000	\$0.00	\$0.00
Revenue	FY 2026	FY 2027	FY 2028	FY 2029
Fund AAA-X	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Revenue</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Biennial Totals</b>	<b>\$0.00</b>		<b>\$0.00</b>	

## PACKAGE DESCRIPTION

OSPI allocates and distributes state funds to local education agencies, including school districts, state-tribal education compact schools, and charter schools. This funding is calculated using formulas established by the Legislature and data submitted by each local education agency. Part of OSPI's fiscal responsibility includes auditing local education agencies to make sure that funds were properly received and recover funds, when appropriate.

### What is the problem, opportunity, or priority you are addressing with the request?

*OSPI v. Summit Public Schools* is an audit resolution proceeding, prompted by findings by the Washington State Auditor's Office and validated by OSPI. In this case, OSPI seeks to recoup over

\$4 million in state funding that three Summit charter schools are alleged to have received due to improper reporting that inflated the funding amounts appropriated for those schools. This case has been heavily litigated and had a hearing in September 2024. The case has been continued twice before. The hearing is anticipated to require involved post-hearing briefing and, depending on the outcome, it is believed that an appeal is likely and would then carry over into the next biennium.

In *Pope v. OSPI*, OSPI defended its suppression of some personally identified data under the federal Family Education Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). The court held, in part, that FERPA exempts personally identifiable information from disclosure under the Public Records Act (PRA) and determined that a very small amount of non-personally identifiable information was improperly withheld. A low penalty of \$5,935 was imposed. Motion practice relating to attorney fees is ongoing and heavily contested. It is anticipated that this case will be appealed, resulting in additional briefing during the remainder of fiscal year 2025 and into the next biennium. The implications of any case involving FERPA have the potential to be far reaching as FERPA applies to both K–12 and higher education institutions.

OSPI has also seen an increase in the number and complexity of public records requests (PRR) received by the agency. The number of PRRs received by OSPI significantly increased in 2023. In 2021, OSPI received 828 PRRs; 768 in 2022; and 1,169 in 2023. This has resulted in an increased need for legal advice to help OSPI balance the privacy interests of individuals and students engaging in Washington’s education system against the right of the public to access education and related records. In fiscal year 2024, OSPI needed 81.7 hours of public records related advice. This is expected to increase to 144 hours in fiscal year 2025. Allocation of resources designed to foster PRA compliance is fiscally prudent given the significant exposure that can arise when non-compliance with the PRA occurs.

### **What is your proposal?**

This proposal is related to the central service legal services allocation to OSPI.

### **How is your proposal impacting equity in the state?**

1. N/A
2. N/A
3. OSPI consulted with the Attorney General’s Office (AGO) to establish a collaborative approach to this funding request.
4. N/A

### **What are you purchasing and how does it solve the problem?**

This package is being presented as a joint request with AGO to defend the two cases as they concern the fiscal safeguarding of scarce resources available for Washington’s schools and the privacy safeguards to which parents/guardians and students are entitled under FERPA. Additionally, investment of legal resources in support of PRA compliance supports the nuanced analysis necessary to preserve individual privacy interests while complying with the PRA. For purposes of this request, failure to mount a robust defense in these instances is assumed to

have the potential for significant impact on education funding, privacy interests, and governmental transparency.

### **What alternatives did you explore and why was this option chosen?**

No alternatives were explored.

### **What resources does the agency already have that are dedicated to this purpose?**

OSPI receives an annual central service allocation to support this work. OSPI collaborated with the AGO and determined that the current allocation is insufficient to meet the agency's needs.

## **ASSUMPTIONS AND CALCULATIONS**

### **Expansion, reduction, elimination or alteration of a current program or service:**

This request will support the efforts already underway by the AGO in these cases to ensure that OSPI's legal positions are well presented before the court. OSPI's budget for legal services is inadequate to support the costs of the identified litigation and an increased need for public records advice. In fiscal year 2023, OSPI's legal costs increased to \$978,767 largely due to litigation and advice, an increase from the \$552,895 billed in fiscal year 2022. Fiscal year 2024 costs increased to \$1,224,952 and it is anticipated that fiscal year 2025 will be similar to fiscal year 2024.

### **Detailed assumptions and calculations:**

OSPI and the AGO are requesting funding for continued litigation of *OSPI v. Summit Public Schools* and *Pope v. OSPI*, as well as advice on PRRs.

### **Workforce assumptions:**

N/A

### **Historical funding:**

#### **Fiscal Year 2026**

- FTE = 0.0 FTE
- Total Funds = \$747,000
- Near General Fund = \$628,000
- Other Funds = \$119,000

#### **Fiscal Year 2027**

- FTE = 0.0 FTE
- Total Funds = \$743,000
- Near General Fund = \$624,000
- Other Funds = \$119,000

# STRATEGIC AND PERFORMANCE OUTCOMES

## Strategic framework:

This request supports the Governor's Results Washington priorities of:

- Goal 1: World-class education: Providing every Washingtonian a world-class education that prepared him or her for a healthy and productive life, including success in job or career, in the community and as a lifelong learner
- Goal 5: Efficient, Effective and Accountable Government: Fostering a Lean culture that drives accountability and results for the people of Washington.

## Performance outcomes:

If funded, this request would allow the AGO to be paid for work performed through the central service allocation provided to OSPI for legal services.

# OTHER COLLATERAL CONNECTIONS

## Intergovernmental:

While the issues in *OSPI v. Summit Public Schools* are uniquely linked to the accuracy or lack thereof of information submitted by Summit Public Schools, the amount of overpayment in and of itself has an impact on available funding throughout the K–12 system.

Similarly, the issues raised in *Pope v. OSPI* have the potential to affect both K–12 and higher education institutions in Washington because the issues involve the interpretation and application of FERPA in the context of the PRA Client.

## Stakeholder impacts:

The provider agency supports this request.

## Legal or administrative mandates:

- *OSPI v. Summit Public Schools*
- *Pope v. OSPI*
- Washington State Public Records Act, Chapter 42.56 RCW
- The Family Education Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA)

## Changes from current law:

None.

## State workforce impacts:

None.

## State facilities impacts:

None.

**Puget Sound recovery:**

N/A

**Governor's salmon strategy:**

N/A