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Justices wonder how to coerce lawmakers to fully fund schools

By [Jerry Cornfield](#), Herald Writer

OLYMPIA — In a much-anticipated clash, state Supreme Court justices on Wednesday scolded lawmakers for disregarding their orders over public school funding. But they didn't seem certain what more they wanted to do, or could do.

Throughout a [45-minute hearing](#), justices wrestled with the level of response warranted should they find lawmakers in contempt for ignoring [a January order to provide a detailed plan for fully funding schools by 2018](#).

Possible punishments discussed at the hearing included a stern warning, invalidating tax breaks to bring in revenue and simply continuing the hearing to see what transpires during the 2015 legislative session.

“Short of doing nothing, what can we do?” Justice Mary Yu asked of Senior Assistant Attorney General Alan Copsey in the hearing's final moments.

Copsey argued against sanctions but asked that if the court settles on a punishment, it not be imposed until after the 2015 session.

Lawmakers understand the seriousness of the situation and are motivated to make decisions in the upcoming session to ensure they meet the deadline, he said. Sanctions intended to coerce behavior might actually compel elected officials to push back against the court, he said.

The attorney for the families and education organizations behind the original lawsuit over funding, known as [McCleary vs. the state of Washington](#), urged justices to act or risk having the case back on their docket next year.

“Don't be afraid to say they're in contempt,” Thomas Ahearne told justices.

He suggested they give lawmakers until the end of the year to come up with the detailed plan. If they don't, then bring the hammer down with sanctions that “make legislators uncomfortable,” he said.

Overall, the rare showdown between two branches of government generated few fireworks and the tameness seemed to quash concerns, for now, that a constitutional crisis is in the offing.

“I sense that they want to do something that will be effective, but they're not sure what would be the most effective,” Ahearne said afterward.

State Sen. David Frockt, D-Seattle, one of three lawmakers attending the hearing, had a similar take.

“What I heard is that they're going to hold the state in contempt but defer a remedy,” he said.

Wednesday's hearing is the latest confrontation in a legal saga that began in 2007. The McClearys and other families claimed in the lawsuit that the state was failing to meet a state constitutional duty to cover the full cost of a basic education for students in public elementary and secondary schools.

In 2012, [the Supreme Court found](#) the state in violation of the constitution by not amply funding public schools. It gave lawmakers until the 2017-18 school year to comply and demanded regular updates on progress.

Then in January, the court told lawmakers it wanted this year's update to include a detailed plan as to how they would complete the task. Lawmakers said they tried during this year's legislative session, but differences — political and philosophical — prevented an agreement.

In scheduling Wednesday's hearing, the court listed several possible actions it might take if it found lawmakers in contempt.

Those included imposing fines, prohibiting spending on non-education services and programs, ordering the Legislature to provide specific amounts of money for education, and even shutting down schools by prohibiting funding of an “unconstitutional education system.”

It's not known when justices will render a decision. Lawmakers, meanwhile, aren't expected back at work until January. Most are focused now on getting re-elected in November, not figuring out how they will come up with some or all of an estimated \$3.5 billion to \$4 billion a year needed to adequately fund public schools.

Knowing any legislative action might not come until next year is why educators such as Nick Brossoit are relying on justices to be decisive.

“I think the court clearly is frustrated with the state,” said Brossoit, the superintendent of Edmonds School District. He is also president of the Network for Excellence in Washington Schools, a plaintiff in the case.

“My hope is that the court will issue a contempt ruling with a clear deadline for a specific consequence,” he said. “Hopefully it will have the effect of coercing the state to comply.”

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