THE SPOKESMAN-REVIEW July 20, 2015

Washington Supreme Court to review education lawsuit progress

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Associated Press

Teacher Joy Burke works with her fifth-grade students at John Hay Elementary School in Seattle on Oct. 2, 2014. Burke is an "RCS" (Reduction in Class Size) teacher at the school, a new position that allows her to give additional attention to students in math and reading skills. Lawmakers allocated hundreds of millions of dollars in education funding, but also failed to fully implement a measure to reduce class sizes.

Fourth special session?

The Washington Supreme Court will soon decide whether to issue sanctions to go with last fall's contempt order over the Legislature's lack of progress toward answering the McCleary decision No one knows exactly what the sanctions could be, but the possibilities could include coercing the Legislature to come back for a fourth special session this fall.

SEATTLE – The new state budget makes a $1.3 billion down payment toward fully paying the cost of basic education in Washington. But even the lawmakers who crafted the budget do not expect the Supreme Court to be satisfied with their progress toward fulfilling the court's order on dollars for K-12 schools.

The court is expected to grade their efforts sometime in the next weeks or months. The justices will decide whether to issue sanctions to go with last fall's contempt order over the Legislature's lack of progress toward answering the 2012 McCleary decision on public education funding.

Lawmakers are meeting Thursday in Bellevue to discuss what to say in their formal report to the court, which is due July 27. The plaintiffs in the school funding lawsuit will file their own analysis of legislative progress. Then the court will decide whether sanctions are warranted.

House budget writer Rep. Ross Hunter, D-Medina, says the state budget delivers on what he calls "phase one" of McCleary. But he says Democrats and Republicans – leadership in the House and the Senate – are still too far apart on the remaining issues to be close to an agreement on the other parts of McCleary.

"It's not something you can do overnight," Hunter said.

Hunter plans to work with lawmakers through the fall to come up with a plan that is ready for a vote when the Legislature reconvenes in January.

“You can’t have a special session that’s productive until you have a solution that enough people agree on,” Hunter said.

It’s possible the court won’t give them that much time.

No one knows exactly what the sanctions could be, but the possibilities could include coercing the Legislature to come back for a fourth special session this fall.

The Supreme Court ruled in its 2012 McCleary decision that the state is failing to meet its constitutional duty to pay for the cost of basic education for its 1 million schoolchildren.

The justices told the Legislature to find a way to pay for the reforms and programs they had already adopted, including all-day kindergarten, smaller class sizes, student transportation and classroom supplies, and to fix the state’s overreliance on local levies to pay for education.

Every state budget since then has made some progress, but there’s still work to do by the 2018 deadline.

There are at least two expensive problems to be resolved: how to fix the local levy system and how to take responsibility for the entire cost of teacher and school staff salaries, which are partially paid today with local dollars.

“I would expect the court to be highly critical about the fact that we haven’t done that,” said state Sen. Bruce Dammeier, R-Puyallup.

The Senate leadership’s plan for the interim is to take their proposal about how to fix the school salary system and local levies “on the road” to find out what the citizens want them to do.

The Senate Republican plan, which didn’t made it out of committee this year, does not include a way to pay its estimated $3.5 billion cost, but Dammeier expects turning local levies into a state education tax will be at least part of the solution.

The way the state pays for public schools is a problem that is getting worse by the year, Dammeier acknowledged.

“It’s incredibly complex policy that involves incredibly complex politics,” he said.

The lawyer who represents the coalition that sued the state over education funding agrees with lawmakers that they have not finished the work.

But Thomas Ahearne does not agree that they have made measureable progress.

“They wrote another episode of that movie, ‘Groundhog Day,’ ” he said.

Finding less than a billion dollars during each of the last four years toward what Ahearne has called a $6 billion problem is not progress, in his opinion.

McCleary is not just about money and where it’s going to come from. It’s about equity for kids all over the state, Ahearne said.

He expects the court will schedule another hearing before deciding on sanctions.

The court has many possible ways to force the Legislature to finish its work, Ahearne said. His best guess is that the court will give lawmakers until January or possibly the end of the next legislative session to complete their work, and if they fail, the court will do something that stops schools from going into session in fall 2016.

Another option, Ahearne said, would involve getting involved in the current state budget by doing what Justice Charles Johnson suggested last fall: invalidating all state tax exemptions. That would free up an estimated $30 billion, which would be more than enough for any changes needed to meet the McCleary ruling.

“We will see,” Ahearne said. “It will be interesting.”

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