(Donna Grethen / Special to The Seattle Times)

Washington's constitution protects K-12 funding. The coronavirus will test that promise.

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This is the second of two stories on education funding as schools consider their next steps amid fallout from the coronavirus pandemic.

The fate of Andy Kidd's teaching job was almost decided by a high-stakes card draw.

It was 2008, and budget cuts were imminent. With the country headed into terrible financial straits, school districts around Washington decided to lay off teachers in order to weather the storm.

One day, administrators summoned Kidd to Shoreline district headquarters. He and another Shorecrest High School teacher each drew from a deck of cards. A peculiar set of union seniority rules dictated what happened next: the person with the higher card, he said, would be spared.

Kidd lost. "It felt like there was no hope," he said. His students wore ribbons that read "Save Mr. Kidd."

As the nation once more descends into economic uncertainty, scenes like this could play out in Washington's schools again. This time, state leaders face a budget challenge of unknown proportions that will test their ability to preserve education funding, as the state Supreme Court ordered them to do in 2012. State officials are confident they can, but in a bleak budget situation, there are still ways for important programs to lose money.

K-12 education funding makes up more than half of the state's $53.3 billion biennial operating budget. Consumer spending dips during recessions, and the state tops the nation for its reliance on sales tax. Preliminary estimates show the state could lose $7 billion over three years. And this time, the downturn is tied to a global pandemic, with no clear end in sight.

In the years after Kidd received his layoff notice, the state cut and slowed spending to K-12 programs in response to the downturn. The state's contribution to schools was already at a low point. In the end, at least $800 million was shaved from the state's education budget. The effects dragged on for years.

Districts around the state issued more than 2,000 layoff notices, just one of many options they had in order to react, including furloughs and pay cuts. Most were hired back.

"This is potentially bigger than the last recession, which we all thought was the biggest thing we would ever see in our lifetimes," said the state's budget director, David Schumacher, referring generally to the economy.

The state has already made small trims. Gov. Jay Inslee vetoed more than $151 million in new education spending last month, and Schumacher's office is estimating $97 million in cuts. Some districts are tightening their belts, though the state hasn't yet made any education reductions: Aberdeen reduced positions for more than 40 teachers and staff. Spokane Public Schools officials have considered declaring a financial emergency.

Many districts say they are struggling to pay for costly technology for remote learning. Additional cuts may hit property-poor districts harder than others, since they rely on portions of the state budget that are most likely to get slashed.

And yet, ahead of the state's June financial forecast, many working in and with state government say they believe education will be largely spared.

Since the 2012 ruling in the landmark state Supreme Court school funding case, McCleary v. Washington, dollars for

education are not so easily scrapped. Justices ruled the state was violating its own constitution by not providing enough education funding. The result: reforms that legally protect against cuts to "basic education" — an evolving list of programs defined by state lawmakers that includes teacher salaries, some special education programs and transportation. Left most vulnerable are property-poor districts and some programs designed to help populations that need it most.

With so many unknowns — prospects for federal aid, the cost of COVID-19 — others aren't as optimistic.

"I'm worried that's wishful thinking," said Marguerite Roza, a Seattle-based education finance policy professor at Georgetown University. "There is a lot of precedent across the country of the court ordering the state to do things, and the state saying, 'We don't have the money.'"

In a recession, lawmakers may not have the luxury of avoiding cuts, especially at the expense of other critical needs with less legal protection, such as mental health care and homeless services.

"That is a legal argument, not a math argument," said Roza.

In Aberdeen, a district of about 3,240 students, administrators have already slashed $6 million, about 12% of the district budget, in anticipation of reduced enrollment and state cuts.

"We could not build a budget on hope," said district Superintendent Alicia Henderson.

No cuts?

The notion that schools should be safeguarded is as old as the state itself.

"It is the paramount duty of the state to make ample provision for the education of all children residing within its borders," reads the state constitution.

But many, including the state's highest court, argued this mandate was largely ignored. For decades, lawmakers allowed districts to fund large portions of their operations by taxing homes in their attendance boundaries, an arrangement that rewarded wealthy areas like Seattle over poor ones like Yakima.

Lawmakers reformed this model in 2017, five years after the McCleary ruling commanded them to make the state the sole provider of basic education money. Legislators capped the amount districts could raise through local property taxes, and restricted those funds for use on programs or staff other than basic education. At the same time, they increased the state's contribution to schools.

"The paramount duty role in the constitution hasn't changed," said Rob McKenna, a Republican who served as the state's attorney general at the time of the McCleary ruling. "It's just that the Supreme Court [of Washington] has shown a willingness to enforce the law."

Lawmakers have added more programs to basic education since the last recession — money that comes with stiff protections. The courts have ruled it can't be cut without a compelling educational reason.

As a result, nearly all of the state's education budget is "untouchable," said Schumacher. State education officials estimate this figure at 96%. Several experts say these new protections should prevent slips in funding that defined the last recession.

"It would be a lot harder to backslide on that and it would be tricky to do it legally," said William Zumeta, public policy and education professor at the University of Washington.

State education officials say about 4% — or an estimated $500 million of the state's annual education budget — isn't considered basic education and is vulnerable to cuts. This includes funds for low-achieving districts, some after-school programs, a mentorship initiative for teachers and certain foster and homeless youth programs.

And it's unclear if emergency federal education aid to the state, about $273 million so far, will sufficiently fill in gaps, as it did a decade ago under the American Recovery and Reinvestment Act. The state considered the added federal funding to be a lifeline back then, but state schools chief Chris Reykdal says he's concerned federal backfill may endanger some programs when funds run out.

"We intend to not take any cuts," he said.

The more realistic vision isn't wide-scale cuts, but little or no increased spending, said Democratic Sen. Christine Rolfes, the Senate's budget writer who worked on the McCleary fix. This was mostly the case during the last recession.

"If the budget were to completely collapse on itself, you could say everything is open [to cuts], but with everything we're seeing is that it will be a temporary recession, not a decade long," she said. "I can't imagine we would redefine our constitutional obligations for K-12."

On one thing, many can agree: districts may still feel the hurt.

Feeling the hurt

Many districts face new pressures, such as buying devices or internet hotspots. Meanwhile, some costs may be down, like busing. We will soon have a window into COVID-19 related costs: Districts are expected to submit such financial information to state officials this summer.

Another pressure: Many large districts in Puget Sound are in the middle of paying large raises to educators, one ripple effect of the Legislature's funding overhaul.

In its bid to satisfy the court ruling, the state released hundreds of millions in funding for teacher salaries in summer 2018, a move that triggered contracts to reopen virtually everywhere in the state. Many bargained away that money and more on salaries and benefits and now rely on their cash reserves and local levies to split the difference. This is legal, so long as the local levy money is spent on school employees that are beyond what the state's basic education formula provides them.

Unforeseen expenses, coupled with teachers' tendency to avoid retiring amid a recession, may lead to political pressure to raise levy caps to avoid layoffs, said Roza. This happened last year.

Relaxing local levy lids further won't violate the court order. But it's unclear if that would solve budget concerns — and over time, Washington could end up where it started before McCleary, with much of the burden for funding schools resting on local dollars.

"We cannot fall down that trap again," said Republican Sen. John Braun, a chief architect of the 2017 McCleary fix. "It's not that local levies are bad inherently, it's that we've not been showing the discipline to use them only for supplemental services."

Cuts to state funding could hit property-poor areas hardest: these districts don't earn the same level of revenue from levies, and rely more on state aid. The current budget has about $332 million set aside to help these districts, but it doesn't fall within the protected pot of "basic education" funds, making it vulnerable to cuts.

"It's going to knock things farther and farther out of equity," said Zahava Stadler, a policy analyst for EdBuild, a New Jersey-based think tank. This "creates the worst of all worlds."

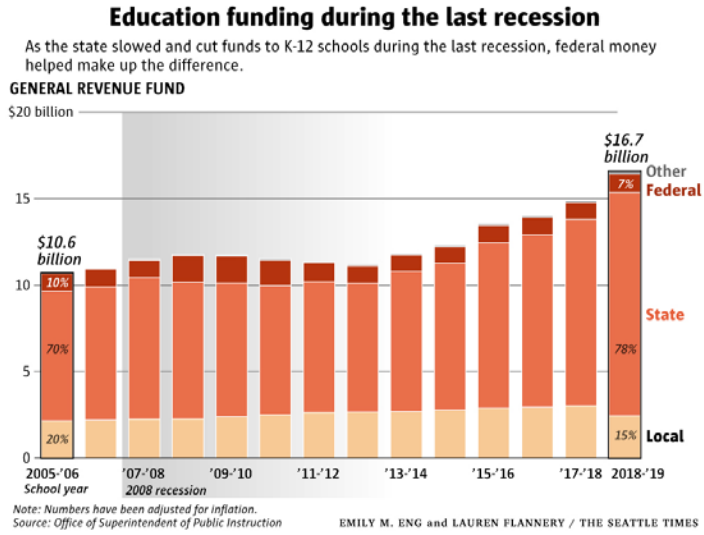
Making change

One question that could drive funding changes: whether students return to school buildings this fall.

Washington is paying districts using an estimate based on how many students attended in February, the last full

month of class before buildings closed. The state's education department has promised to keep districts "whole" through this school year. But what if it's unsafe for children to return?

"It's not just a question of what is basic education and what isn't," said Sen. Lisa Wellman, D-Mercer Island, who leads the Senate's K-12 education committee. "We need a go, no-go date," she said, suggesting that continuing remote instruction could affect funding.



Officials say of the state's roughly $53 billion biennial budget, about $37 billion — including more than $26 billion for K-12 education — is protected. But budgets may be strained in future cycles. The federal government's promise to chip in will only go so far: Its $273 million pledge for education here so far amounts to less than 1% of what the state pays school districts annually.

If the state ends up in a true budget emergency, the Supreme Court may be willing to bend on requiring lawmakers to provide educational proof before cutting funding, said McKenna.

Lawmakers could also shift money from one program to another. If districts are spending less on transportation while buildings are closed, lawmakers could, for instance, argue to use those funds for other aspects of basic education.

Such a shift could be supported by state statute, which suggests basic education funding is an "evolving program" of services, said Rep. Sharon Santos, D-Seattle. Ultimately districts have discretion when spending state dollars.

There is wiggle room to make changes.

But any adjustments, said Wellman, should "provide for what kids need if they are not in a classroom in front of a teacher physically."

Other clues to what's different from 2008: the nature of the recession and what caused it. The coronavirus has no effective vaccine yet. Economists hesitate to predict how or when the state's economy will rebound.

Any cuts that come this year may foreshadow more severe austerity measures in the future.

Kidd got lucky in the end. His bosses pulled some strings and he was back teaching soon after he was laid off, in the same job he's now had for 13 years.

As he hears about his district's upcoming plans, he often thinks about his brush with joblessness. He believes Shoreline will try to save as many people as possible, as they did for him. But he worries about others going through what he did, and worse.

"At the time, it felt like dead man walking."

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