

POLICY NOTE

Is public education spending “constitutionally protected”?

By Liv Finne, Director, Center for Education

June 2020

Key Findings

1. State officials say they will receive an estimated \$7 billion less in revenue over the next three years than they expected to get when they enacted the 2019-21 state budget.
2. Some observers are saying the constitution protects education spending from cuts. This is not the case.
3. State spending on K-12 schools has doubled in the last eight years, from \$13.5 billion in 2013 to \$27.3 billion today.
4. The state supreme court has said education spending is “not etched in stone” and can be changed.
5. The legislature has an obligation to review the basic education program as the needs of students and the demands of society evolve.
6. The legislature can make budget changes to improve the quality of education services.
7. The legislature has many options to balance the state budget in ways that improve the quality of education services.

Introduction

State officials say they will receive an estimated \$7 billion less in revenue over the next three years than they expected to get when they enacted the 2019-21 state budget. Passed at a time of record economic growth and low unemployment, lawmakers increased state spending by 19 percent, believing that over the next two years taxpayers would provide the funding.

The COVID-19 health crisis and subsequent government-ordered economic lock-down have sharply changed these expectations. State leaders are now seeking savings in a budget to which they added billions of dollars in new spending.

Fifty-one percent of the state budget is spent on the schools, an increase from 43 percent ten years ago. Examining education spending is a logical place for lawmakers to look for savings. Yet some observers say the education budget is “constitutionally protected” and cannot be changed.

Representing this view, Senator Christine Rolfes (D-Bainbridge), Chair of Senate Ways and Means Committee, recently said the budget for K-12 schools cannot be cut. In a news interview she said, “Let’s for the sake of argument, let’s say it is a \$50 billion two-year budget, a little bit more than half of the budget is for the K-12 schools, for the school system, so that constitutionally cannot be cut.”¹

This Policy Note examines whether this statement is true; whether the legislature can in fact make changes in the education system that would result in better outcomes for children and a slowing of spending increase for the state.

The rise in education spending

In examining this question, a related finding is that school districts do not lack for money. State spending on K-12 schools has doubled in the last eight years, from \$13.5 billion in 2013 to \$27.3 billion today. Total per-student spending has grown from under \$10,000 to \$15,800, and average teacher pay grew from around \$65,000 to \$83,000 a year. Public schools

1 “Inside Olympia—Special Edition,” Austin Jenkins, TVW, May 19, 2020, At 14:46, at: <https://www.tvw.org/watch/?eventID=2020051071>.

now receive more money per-student in state funding than the tuition at many private schools.

If the legislature reduces the increase in education in the current budget, public schools would still receive more money than ever before.

State supreme court: Education spending is “not etched in stone”

The state supreme court has ruled that it is the legislature’s duty under the state constitution to define and fund the program of education.²

In a more recent case, *McCleary v. State of Washington*, the court ruled the legislature has an obligation to review the program of education to meet the evolving needs of society, and to make changes in ways that benefit children.³

The key language from *McCleary* provides:

“While the legislature has long recognized [learning programs] as central to the basic education program, they are not etched in constitutional stone as part of the definition of ‘education.’”

“The legislature has an obligation to review the basic education program as the needs of students and the demands of society evolve. From time to time, the legislature will need to evaluate whether new offerings must be included in the basic education program.

“Likewise, the importance of certain programs or offerings may prove less compelling over time.

“The legislature generally enjoys broad discretion in selecting the means of discharging its duty under article IX, section 1, including deciding which programs are necessary to deliver the constitutionally required ‘education.’”

“...to ensure that the legislature exercises its authority within constitutionally prescribed bounds, any reduction of programs or offerings from the basic education program must be accompanied by an educational policy rationale.”

These court rulings make it clear that the legislature defines the state’s program of public education and funds it accordingly. The courts also ruled that lawmakers can make changes in education policy to improve or amend the system of education and make changes in future spending levels accordingly.

The legislature can make budget changes to improve the quality of education services

The legislature has many objective educational reasons to make alterations to the K-12 school budget. Scores on state and national tests are flat and declining. One in five students fails to graduate from high school; one in three minority students fails to graduate. Washington’s academic achievement gap between minority and white students is not narrowing but growing.

² *Seattle School District v State of Washington*, 90 Wn.2d 476, 585 P.2d 71 (1978).

³ *McCleary v State of Washington*, 173 Wn2d 477, 269 P.3d 227 (2012).

Washington state has 118 identified failing schools, politely called “Priority” schools by state education officials. These schools have a disproportionate impact on children of color. The 44,000 students that administrators send to “Priority” schools are most at risk, and therefore have the greatest need for alternative choices. The state’s nine charter schools are located in the very neighborhoods with failing “Priority” schools, just where families need them most.

Expanding family access to public charter and public online schools would be a logical response to help families and save money for the budget at the same time. Public charter and public online schools spend less on delivering a quality education than traditional schools.

The legislature could also create a parent choice program to find savings in the state budget and improve the quality of education children receive. For example, during the 2020 Legislative Session, Representative Vicki Kraft (R-Vancouver) introduced HB 2933, the Education Choice Scholarship Program. This program would be completely voluntary, and only for families who wish to apply. The program would save the state about \$2,800 per student and provide families \$13,000 in state funding to educate their child in a quality private school.⁴

Schools have been shut down - legislative options for balancing the budget

Before the COVID crisis, Washington state planned to spend \$17 billion on the schools in 2019-20. Governor Inslee shut the schools on March 13th,⁵ and then on April 6th extended the closure order through the end of the school year. This means that Governor Inslee cancelled one-third of the school year. Students are now falling behind in their learning.

The options to balance the state budget include the following:

1. 85 percent of the education budget is on salaries and benefits of employees. The legislature can find savings by suspending collective bargaining agreements, leaving existing education programs for students untouched. The Washington Education Association should not object to such an approach, as the it has repeatedly said “we are all in this together;”
2. Banking savings that come from the fact that schools were shut down;
3. Expanding access to public charter and public online schools would generate budget savings;
4. Creating an Education Choice Scholarship Program for parents who volunteer to participate would provide budget savings;
5. Cancelling planned pay and benefit increases in the current state budget.⁶

4 “HB 2933, “Creating the Education Choice Scholarship Program,” introduced February 10, 2020, at: <https://app.leg.wa.gov/bills/summary?BillNumber=2933&Initiative=false&Year=2019>.

5 “COVID 19: Statewide K-12 School Closures,” Proclamation 20-09,” Governor Inslee, March 13, 2020, at: <https://www.governor.wa.gov/sites/default/files/proclamations/20-09%20Coronavirus%20Schools%20Amendment%20%28tmp%29.pdf>.

6 See Section 505 of 2019-21 state budget, ESSB 6168, at: <http://leap.leg.wa.gov/leap/budget/lbns/2020Omni6168-S.SL.pdf>.



Liv Finne is the Director of the Center for Education at Washington Policy Center. She is the author of *An Option for Learning: An Assessment of Student Achievement in Charter Public Schools*, which in 2011 reignited the charter school debate in Washington state. She wrote “*Why parents will love charter schools*,” “*Why teachers will love charter schools*,” and many other publications during the 2012 public debate on Initiative 1240, the nation’s first charter school initiative. When charter schools came under attack from the state teachers union, she wrote “*Analysis: Why the state supreme court ruling against charter schools is wrong*.” She is also the author of Washington Policy Center’s widely-read education blog, and of Washington Policy Center’s Education Reform Plan: *Eight Practical Ways to Improve Public Schools*. Liv holds a law degree from Boston University School of Law and a Bachelor of Arts degree from Wellesley College. She retired from civil litigation practice to raise two children and work as business partner for a small business she owns with her husband.

Washington Policy Center is an independent research organization in Washington state.

Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

Published by
Washington Policy Center
© 2020

washingtonpolicy.org
206-937-9691

Conclusion

The state supreme court has repeatedly held the state constitution makes the legislature responsible for defining and funding the program of education. This responsibility is the paramount duty of the legislature, a duty which is not being fulfilled while schools are closed and the state budget is in crisis.

It is simply untrue that the state constitution prevents the legislature from reducing the level of spending on education. Education spending is not “etched in constitutional stone,” a finding confirmed by the courts.

The legislature is obligated to review and change the education program “as the needs of students and the demands of society evolve.” Reductions to programs are permissible if accompanied by “an educational policy rationale.” The legislature can reduce education services to improve the quality of education that children in Washington state receive.

The legislature has many educational rationales to change the way money is spent in public education. These education reasons include low graduation rates and a growing academic achievement gap between white and minority students. The legislature could improve the quality of education students receive by expanding access to public charter and public online schools, which deliver quality education programs for less money. The legislature could also offer parents scholarships to send their children to private schools and to receive tutoring, another way to achieve savings while providing families quality education options.

If the legislature adopts one or more of these policy options and slows the rate of planned spending increase, only future spending levels would change, and education spending would still increase compared to the last budget.