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**No. 15-113267-S**

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**IN THE SUPREME COURT OF THE STATE OF KANSAS**

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**Luke Gannon, *et al.*,**  
Plaintiffs-Appellees,

v.

**State of Kansas, *et al.*,**  
Defendants-Appellants.

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Appeal from Appointed Panel  
Presiding in the District Court of Shawnee County, Kansas

Honorable Franklin R. Theis  
Honorable Robert J. Fleming  
Honorable Jack L. Burr

District Court Case No. 2010-CV-1569

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**RESPONSE BRIEF OF APPELLANT STATE OF KANSAS**

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Oral Argument: One Hour

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The Kansas Constitution tasks the Legislature with making “suitable provision for finance of the educational interests of the state.” Kan. Const. art. 6, § 6(b). Ignoring that command, Plaintiffs invite this Court to sit as a super-legislative body, unmoored by constitutional authority, that accommodates Plaintiffs’ education policy preferences and displaces the collective judgment of the People’s elected representatives in the legislative and executive branches of government. Plaintiffs attempt to bolster support for their policy preferences with stray comments from legislators, aspirational goals, “facts” they believe the Legislature should have found dispositive, and reports it appears they commissioned for this appeal. This Court’s cases have repeatedly and wisely rejected such a capacious view of judicial power.

Plaintiffs’ cavalier invitation is necessary because bipartisan majorities of the Legislature passed and the Governor signed a series of bills that, once fully phased in, will annually infuse more than one *billion* dollars of new state money into the school finance system. While the amount is so staggering as to preclude any reasonable question about its constitutional adequacy, the Legislature confirmed this intuition by basing the funding increases on funding levels and distribution principles this Court approved in the *Montoy* litigation.

The State respectfully requests this Court conclude the Legislature has made “suitable provision for finance of the educational interests of the state” and dismiss this case with prejudice.

**I. The Legislature’s Bipartisan Response to *Gannon V* Satisfies Adequacy.**

**A. Bringing total education spending into line with the amount this Court approved in *Montoy IV* (adjusted for inflation) satisfies adequacy.**

There is no basis for the Court to find that funding to the *Montoy IV* level, adjusted for enrollments and inflation, is anything other than reasonably calculated to make our schools’ funding constitutionally adequate.

The Panel held Kansas public schools were last adequately funded in the 2009-10 school year, when the base state aid per pupil was initially set at \$4,492. *See Gannon v. State*, 306 Kan. 1170, 1177, 402 P.3d 513 (2017) (*Gannon V*); R. Vol. 24 at 3139 (“At the beginning of FY 2009 (July 1, 2008), the evidence established that the Kansas K-12 school system was functioning as a K-12 school system should in order to provide a constitutionally adequate education to Kansas children.”).

Plaintiffs cannot avoid that conclusion. This Court has stated that it must follow the Panel’s findings of fact, where supported by substantial competent evidence. *See Gannon v. State*, 305 Kan. 850, 881, 390 P.3d 461 (2017) (*Gannon IV*). Moreover, the Court summarized and accepted the Panel’s findings that the increased funding for the 2009-10 school year level resulted in “considerable progress in student achievement,” which retreated when reductions in funding below the *Montoy* approved levels began. *Gannon IV*, 305 Kan. at 892. Therefore, it was perfectly reasonable for the Legislature to conclude that bringing total funding into line with *Montoy IV*-level funding was reasonably calculated to satisfy its constitutional duty.

Plaintiffs now argue that the *Montoy IV* level of funding (adjusted for inflation) is *not* reasonably calculated to have all Kansas public education students meet or exceed the standard set out in *Rose*. Plaintiffs’ Opening Br. at 42. Incredibly, Plaintiffs say the passage of time makes the *Montoy IV* level of funding unacceptable for three reasons: increased standards, changed demographics, and inflation. *Id.* at 41. Each of these arguments is wrong.

Plaintiffs’ vision of increased standards—based on the State Board of Education’s “moon shot” aspirational goals—is not the metric by which this Court measures the Legislature’s compliance with Article 6, § 6 of the Kansas Constitution. The *Gannon I* adequacy test, as vague as the *Rose* standards may be, is not subject to change by the State Board of Education. To the extent the People of Kansas have entrusted the power to determine compliance with Article 6 to any entity other than the Legislature, they have entrusted that power to this Court—not to the State Board of Education.

Plaintiffs’ other two concerns—changing student demographics and inflation—are accounted for in the analysis that produced the \$522.2 million target as explained in the State’s Opening Brief at 7, 15-16. And the increased funding under SB 19, SB 423, and SB 61 exceeds the so-called maintenance level of funding in the Taylor Study, which would have steadily increased the share of students at or above Level 2 in English language arts (“ELA”) from 72.6% in 2016-17 to 84.6% in 2022-23, and the share of students at or above Level 2 in math from 72.4% in 2016-17 to 84.4% in 2022-23. App. 1213 (Taylor Addendum at 8).



Plaintiffs' assertion that *Montoy IV*-level funding, as implemented by the Legislature in SB 19, SB 423, and SB 61, does not substantially comply with this Court's orders has no merit.

**B. Article 6 does not require a strict accounting for inflation.**

Contrary to Plaintiffs' apparent desires, this Court never has said Article 6, § 6 constitutionalizes any particular rules of accounting for inflation. Nor should it. The Legislature's reasonable calculation to account for inflation is rational on its face, and the record before this Court certainly offers no basis to reject it.

1. *There is no basis to constitutionalize any particular approach to accounting for inflation.*

Plaintiffs' attempt to discount the substantial amount of new funding the Legislature has provided in SB 19, SB 423, and SB 61—more than one billion dollars—has no constitutional basis and should be rejected. By urging the Court to adopt their particular assumptions about future inflation (which, by their nature, are speculative), Plaintiffs invite the Court to weigh and resolve conflicting evidence and make policy by second-guessing the Legislature's chosen approach to account for inflation. *But see Gannon v. State*, 298 Kan. 1107, 1151, 319 P.3d 1196 (2014) (*Gannon I*) (“[O]ur Kansas Constitution clearly leaves to the legislature the myriad of choices available to perform its constitutional duty.”). There is no basis for constitutionalizing any particular approach to accounting for inflation.

As recognized by Plaintiffs' expert, wage costs—which districts control—are more important than consumer price indices in calculating the effect of inflation for school districts: “The cost of providing comparable education services over time

depends on the wages necessary to continue recruiting and retaining a similarly qualified teaching workforce, and not on changes to the price of a loaf of bread or gallon of gasoline (as per a CPI).” Plaintiffs’ App. 14. In fact, employee wages and benefits are “by far the largest single component in each school district’s budget.” App. 415-16 (transcript at 30-31). Yet Districts have a fair amount of control over these costs. While they must offer salaries sufficient to attract and retain quality teachers, there is no evidence that this requires strict annual increases in line with any particular consumer price index. Thus, the Legislature, after adjusting total funding under *Montoy* for inflation, decided to phase in its billion dollar increase and to tie future increases in funding to the CPI-U Midwest only after the end of this phase-in period.

2. *Plaintiffs’ 2.1% annual rate of inflation overstates likely inflation over the next five years, but the Legislature’s chosen CPI-U Midwest was based on expert assessment of school districts’ actual costs.*

In the past, Plaintiffs or their experts have used various consumer price indices to report the effects of inflation. *See, e.g.*, Plaintiffs’ Opening Br., filed June 30, 2017, Appendix F (applying U.S. Dept. of Labor, CPI-U for all urban consumers in Kansas City, Missouri and Kansas). Now, Plaintiffs’ most recent inflation calculations use the CPI-U for all urban consumers. Plaintiffs’ App. 11, 12, 17, 18, 20, 21, 45, 46. For their estimations of future inflation, Plaintiffs pick the 2017 average rate of increase of 2.1%—a five-year high that saw a 0.8% spike in inflation and was higher than the previous four years of inflation by at least 0.5% and as much as 2%. *See* Plaintiffs’ App. 45. In fact, inflation in the Kansas City area was

lower than the other two cities listed—Denver and St. Louis, ranging from -0.2% to 1.9% in the past five years. *Id.* Thus, Plaintiffs’ chosen inflation rate is overstated.

In contrast, the inflation calculations that the Legislature selected are based on the Consumer Price Index-Urban, for Midwest Region (CPI-U). Supp. App. 1. Dr. Taylor testified the CPI-U Midwest area was reasonable to measure the impact of inflation on Kansas districts’ purchasing power. App. 961. Further, Dr. Taylor and Dr. Levin both used that index to estimate likely future effects of inflation on education funding in Kansas. App. 1184, 1189 (Levin Report at 19-24); App. 1213 (Taylor Addendum at 8). SB 423 and SB 61 employ the index to determine the increase in the BASE aid starting in the 2023-24 school year. SB 423, § 2(e)(6); SB 61, § 4(e)(6).

Determining the best method of accounting for inflation is well within the Legislature’s broad discretion in making reasonable policy judgments about whether the funding is suitable. *See* Plaintiffs’ Br. at 32 n.5 (“There is no consensus on what rate should be used for inflation.”). The Legislature acted well within its discretion to use the three-year rolling average of the CPI-U Midwest to account for inflation, and to delay automatic, inflationary increases until 2023-24—after the more than one billion dollars is phased into the system. *See* Video of House K-12 Budget Committee, March 28, 2018 Hearing at 6:52:15-35, <http://sg001-harmony.sliq.net/00287/Harmony/en/PowerBrowser/PowerBrowserV2/20180328/1/3875> (Rep. Rooker stating that the “CPI escalator” helps ensure funding does not “fall behind” after the five years of specific BASE aid increases).

In the current posture of this litigation, the Court, which does not weigh legislative evidence or decide contested issues of fact, has no basis for adopting or rejecting any particular approach to accounting for inflation. Plaintiffs' demand that the Kansas Constitution requires this Court to order a different inflation calculation from what the Legislature reasonably chose is baseless.

**C. Kansas students are not “failing” under the *Rose* standards.**

Faced with convincing the Court that adding one billion dollars in annual education spending within five years is inadequate, Plaintiffs build their case on the false premise that Kansas students are failing. They are not. And Plaintiffs' refrain that 67% of all Kansas students are failing math and 58% are failing reading is misleading, at best. Indeed, were it true, one would expect the Legislature to have heard testimony that a whole swath of schools are at risk of losing their accreditation. That testimony was absent because it is not true.

*1. The State Board of Education's standards for gauging student achievement are far more rigorous than the Rose standards.*

Plaintiffs claim that the performance thresholds used in the Taylor Study reflected the authors' attempt to translate the *Rose* standards into measurable outcomes. Plaintiffs' Opening Br. at 9. But, as Dr. Taylor and her co-author Jason Willis explained, it was not their job to quantify the *Rose* standards or to set any achievement goal; rather, they used the only quantifiable standards they could find—the State Board of Education's recently adopted and extremely rigorous assessment standards. *See State's Opening Br. at 17-18.* Those assessments are scored on four levels of achievement:

Level 4: indicates that the student is performing above expectations for that grade level and is on track to being college ready.

**Level 3**: indicates that the student is performing at academic expectations for that grade level and is on track to being college ready.

Level 2: indicates that the student is doing grade-level work found in the standards but not at the depth or level of rigor to be considered on-track for college readiness.

Level 1: indicates that a student is not performing at grade level standards, and additional supports are needed.

App. 672 (Taylor Study at 43) (emphasis in original).

Under the Board’s new assessment standards, “proficiency” requires achieving Level 3. That aspiration is not constitutionally required by *Rose*. The Taylor Study observed that the Board’s recently adopted “moon shot” standards were substantially higher than the standards students were being assessed against in *Montoy* and at the time of the *Gannon* trial. *Id.* at 43-44. Surely Level 2—“doing grade-level work found in the standards”—does not fall below the “minimal standards” set out in *Rose*.

The aspirational nature of the Board’s standards becomes clearer when comparing graduation rates with the ESSA and Taylor goals. As discussed previously, the Taylor Study articulated the vision of a 95% statewide graduation rate by 2022.<sup>1</sup> App. 678 (Taylor Study at 49). KSDE articulated this vision through

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<sup>1</sup> Dr. Taylor admitted that even this nationally unprecedented graduation rate falls well short of the ESSA 2030 objective. The ESSA submission provides: “In order to lead the world in the success of each student, Kansans aim for a long-term graduation goal of 95 percent by 2030 *for all districts, schools and subgroups.*” App.

the ESSA submission as a “long-term ambitious goal” whose objective “is to lead the world in the success of each student.” App. 240-41 (ESSA Submission at 19-20). It supported this claim by referencing a chart that indicates no other country in the world has attained a 95% graduation rate *even as a national average*, let alone for every school and every subgroup. *See* App. 240 (ESSA Submission at 19 n.6); *see* <http://www.oecd.org/education/Education-at-a-Glance-2014.pdf> at 43. Nor has any state achieved such graduation success. App. 1213 (Taylor Addendum at 8). Thus, the ESSA submission (as mostly captured by the aspirations set forth in the Taylor Study) requires Kansas to attain a graduation rate for every school and subgroup in the State that no state or nation has achieved even in aggregate. Such historic goals cannot constitute the “minimal standards” that this Court has articulated as the constitutional test for adequacy.

Plaintiffs urge this Court to hold that the State Board has the authority to convert its aspirational goals into a constitutional edict. The Constitution, of course, precludes that argument. Under the Kansas Constitution, it is the *Legislature’s* nondelegable duty to “provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.” Kan. Const. art. 6, § 1. Consistent with its sole

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239 (ESSA Submission at 18) (emphasis added). To attain a 95% graduation rate for each subgroup and each school, if even possible, Dr. Taylor admitted would require a “statewide graduation rate well in excess of 95%.” App. 678 (Taylor Study at 49).

authority to appropriate funds from the treasury, the Legislature is therefore solely responsible to “make suitable provision for finance of the educational interests of the state.” Kan. Const. art. 6, § 6(b). The Legislature must then create “a state board of education” that is to “have general supervision of public schools, educational institutions and all the educational interests of the state.” Kan. Const. art. 6, § 2(a). Just as the power to administer the courts cannot be stripped from this Court by statute, *see Solomon v. State*, 303 Kan. 512, 529, 364 P.3d 536 (2015), neither can Plaintiffs crown the State Board with authority to direct or control the Legislature’s constitutional duty to establish and maintain public schools or to dictate how to fund them.

2. *Student performance is better than Plaintiffs would like to admit.*

Nevertheless, Plaintiffs harp on the new, more rigorous assessments to insist that Kansas students are failing. But Kansas students are actually doing better than Plaintiffs would like to admit.

For example, in translating scores on the new assessments to the proficiency standards in effect at the time of trial and *Montoy IV*, Dr. Taylor reported that in 2016-17, 72.6% of students were proficient in ELA and 72.4% were proficient in math when proficiency is defined to include Level 2. *See State’s Opening Br.* at 3, 5, 25-26; App. 674, 716 (Taylor Study at 45, 87); App. 1213 (Taylor Addendum at 8).

The 2017 National Assessment of Educational Progress (“NAEP”) scores confirm that Kansas students are outperforming many of their peers in other States. In fourth grade reading, only nine jurisdictions had significantly higher

average scores,<sup>2</sup> and in math only 11 jurisdictions had significantly higher average scores.<sup>3</sup> Kansas eighth graders fared even better against their peers in both reading (only eight jurisdictions had significantly higher average scores)<sup>4</sup> and math (only 10 jurisdictions had significantly higher average scores).<sup>5</sup> While progress remains to be made—and the Legislature reasonably concluded that providing one billion dollars in additional funding would dramatically improve student achievement to satisfy the *Rose* standards—current student achievement is not the dismal image Plaintiffs portray. One must reasonably wonder, how can these results equate to a funding regime that falls below the constitutional floor?

That is not to say that the Board and school districts should stop encouraging excellence and creating an environment for all students to achieve the aspirational goals the Board has laid out. But that is a different standard than what Article 6 requires.

**D. The Legislature’s response to *Gannon V* is not an “outlier.”**

In *Gannon V*, this Court listed the State Board’s budget recommendation for FY 2019 and Plaintiffs’ averaging of the A&M and LPA studies (adjusted for inflation) as the high end for “wide-ranging calculations.” 306 Kan. at 1206. The

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<sup>2</sup> NAEP, The Nation’s Report Card, Kansas State Comparisons, Grade 4—Reading—2017: Average Scale Scores, <http://bit.ly/2KjaSVq>.

<sup>3</sup> NAEP, The Nation’s Report Card, Kansas State Comparisons, Grade 4—Mathematics—2017: Average Scale Scores, <http://bit.ly/2ICEGix>.

<sup>4</sup> NAEP, The Nation’s Report Card, Kansas State Comparisons, Grade 8—Reading—2017: Average Scale Scores, <http://bit.ly/2rGd7ei>.

<sup>5</sup> NAEP, The Nation’s Report Card, Kansas State Comparisons, Grade 8—Mathematics—2017: Average Scale Scores, <http://bit.ly/2rGlqXK>.



Court stated that the magnitude of the difference between the base state aid per pupil (“BSAPP”) amounts in the previous studies and SB 19 “emphasize[d] the need for the State to truly demonstrate the validity of its funding approach and the financial figures that approach produces.” *Id.* Plaintiffs now try to apply that same label—“outlier”—to SB 423 and SB 61. Plaintiff’s Opening Br. at 24-28. That label does not apply to the remedial legislation before this Court.

1. *The A&M and LPA studies are deeply flawed, and in any event, the Legislature has provided funding in the ballpark of the studies’ average when all sources of revenue are considered.*

Plaintiffs claim that the combined additional funding in SB 19, SB 423, and 61 is an “outlier” by comparing it to the average of inflated bases recommended in the A&M and LPA studies. But Dr. Levin, the expert the Legislature retained to peer review the Kansas cost studies, including the A&M and LPA studies, found those studies to be deeply flawed. App. 526-75, 1165-94.

Dr. Levin told the Legislature that the successful schools methodology, used by A&M, had “fatal flaws,” App. 532, to the point that it is “useless for determining the costs of suitable education.” App. 544. He also outlined other problems with the study’s attempt to mix a professional judgment methodology into its recommendations: the authors failed to employ safeguards to ensure that those supplying the professional judgments would account for efficient use of funds, App. 553, 556; did not have enough panels of “experts,” App. 554, 556; failed to sufficiently analyze whether the recommendations were based on realistic and

grounded specifications and cost, App. 557; and lacked any effort to validate the study's results, App. 558.

Dr. Levin's views aligned with all experts testifying at trial, each of which criticized the A&M study's use of the successful schools methodology. These experts testified that the A&M study's "successful school approach"—which the authors used as a foundation for recommending BSAPP, Vol. 82 at 4158—lacked any value. *See, e.g.*, R. Vol. 34 at 1421-23. And in *Montoy IV*, this Court found that the Legislature had substantially complied with its orders on adequacy even though the Legislature's cure did not fully comply with the A&M estimates. The A&M base should be given no weight in deciding whether the State's remedial legislation fixes the adequacy problems addressed in *Gannon IV* and *V*.

Moreover, Plaintiffs' average uses "updates" of the LPA study that the Panel did not accept as valid. Rather, the Panel did its own comparison of the A&M and LPA studies—which did not use either of the BSAPPs calculated in the "updates" to the studies, *see* R. Vol. 14 at 1820, 1822, 1824—and held that "it is our analysis that controls our ultimate conclusions." R. Vol. 14 at 1805.

If the inflated A&M study's base aid is disregarded—as it must be—and the LPA study's recommendations—not that of the LPA "update"—are considered against funding under SB 423 and SB 61, including SB 19 funding, Plaintiffs' outlier argument collapses.

Dr. Levin's peer reviews demonstrate this. He found the LPA study required an additional \$399 million. App. 1160. After adjusting for inflation and excluding

federal revenue, he found an additional \$719 million is needed to reach the LPA estimate for required funding in the upcoming year. App. 1162, 1169-70, 1189-91. The Legislature exceeded this estimate by providing roughly \$854 million in additional funding (excluding KPERS and LOB) by the end of the phase-in period. State's Opening Br. at 7; App. 1249 (May 1, 2018, KLRD Memo at 2).

Finally, as mentioned in the State's Opening Brief, at 29-31, the base aid recommended by A&M and the LPA consultants did not account for federal funding and LOB revenue. R. Vol. 82 at 4123 (Ex. 203 at E-3); R. Vol. 81 at 3953 (Ex. 199 at 35-36). This failure to consider all sources of funding makes using their average bases irrelevant. *See, e.g., Gannon IV*, 305 Kan. at 893 (requiring consideration of all sources of revenue). With federal and LOB revenue considered, there is no outlier gap between the average of the studies' recommended base aid.

Consideration of LOB revenue is all the more appropriate now because SB 61 guarantees that districts maintain an LOB of at least 15% of their "total foundation aid." SB 61, § 5. SB 423 removed any structural impediment to considering this guaranteed district revenue. *See Gannon V*, 306 Kan. at 535-36 (discussing the former impediments to closely employing LOB with state aid funding). Now, at-risk factors apply to LOB funds because they are in the calculation of total foundation aid. The 15% LOB is the same fixed amount per weighted pupil regardless of locale because districts must continue to raise that much. The LOB funds raised by at-risk and bilingual weighting must be spent on at-risk and bilingual programs. For 2018-19, the 15% LOB will total about \$541 million. Total LOB revenue is projected to be

approximately \$1.108 billion if it remains the same as the 2017-18 school year. App. 999.

Seeking to wrest from the Legislature the constitutional authority to set educational funding policy for the State, Plaintiffs point to “studies” that they recently commissioned. These studies were not presented to legislative committees responsible for crafting remedial legislation or in sufficient time to even be considered by the Legislature. Rather, they appear to be intended only for this Court’s consideration. These studies are irrelevant to this litigation and the Court should reject Plaintiffs’ request to consider them. They were not part of any legislative history of SB 423 or SB 61, are not properly subject to judicial notice, and do not qualify as legislative history tending to show the Legislature’s intent (which is the most the new studies can possibly stand for, *see Montoy v. State*, 282 Kan. 9, 21, 138 P.3d 755 (2006) (*Montoy IV*) (holding that the LPA study was not “substantial competent evidence of the actual and necessary costs of providing a suitable education”)). This Court cannot act as a super-legislative body that displaces the collective judgment of elected legislators or to circumvent lower-court factfinding. *See Gannon IV*, 305 Kan. at 881 (appellate courts are not to “reweigh the evidence or assess the credibility of witnesses”).

2. *The State Board’s request for \$893 million in additional funding was not based on the Rose standards, but in any event the Legislature has provided funding in the ballpark of the request.*

During its July 2016 meeting, the State Board of Education requested \$893 million in additional school funding. The Plaintiffs have relied heavily on this

number. *See* Plaintiffs’ Opening Br., filed June 30, 2017, at 12-13; Plaintiffs’ Opening Br., filed May 7, 2018, at 25. But as the State explained in its response brief in *Gannon V*, there is no evidence the State Board’s request was based on the *Rose* standards. *See* State’s Response Br., filed July 7, 2017, at 6-7. Instead, the request was derived from the funding amounts specified by the panel, which incorrectly assumed LOB and other sources of revenue were not to be considered. *Id.* As Dr. Levin’s peer review explained, “it is unclear whether any of the [Board’s] recommendations had any basis in formal analysis designed to investigate the funding necessary to provide an adequate education.” App. 1169 (Levin Second Report at 4). In addition, the State Board cannot dictate the amount of funding necessary to satisfy Article 6, which is a determination entrusted to the Legislature.

Even so, the remedial legislation—excluding LOB funds and KPERS payments—provides approximately \$854 million, nearly 96% of what the Board sought. *See* State’s Opening Br. at 7; App. 1249 (May 1, 2018, KLRD Memo at 2). There was, of course a disagreement between the Board and the Legislature: The Board asked that the funds be phased in over a two-year period, but the Legislature reasonably determined to phase in the money over a longer period of time, as recommended in the Taylor Study. The Board preferred the funding to be spent differently, too. Despite this difference of opinion, the Legislature’s appropriation is not an “outlier.” Rather, it is an exercise of discretion consistent with the Kansas Constitution’s express designation of it—not the Board—to make suitable provision for the funding of public education.

3. *The only outliers are the Taylor compensatory support scenarios and the Plaintiffs' demands.*

The only outliers are the Taylor compensatory support scenarios, which price aspirational goals based on the State Board's "moon shot," and even those scenarios only represent one-time, temporary funding. *See* Opening Br. at 17-20. Of course, Plaintiffs unsurprisingly latch onto those outlier numbers in their demand for at least \$500 million more than the \$1 billion increase the Legislature has approved. *See* Plaintiffs' Opening Br. at 48-49. Given the aspirational standards the Taylor study chose as its metric, it is no surprise that the funding estimates calculated were equally high. This Court, however, is only focused upon the minimum standards that the Kansas Constitution requires. The remedial legislation passed by the Legislature falls somewhere in between such minimum standards and the Taylor aspirations.

**E. Adding more than \$86 million in special education over six years does not create a new adequacy issue.**

Plaintiffs' challenge to 2018-19 funding of special education should be barred by the law of the case doctrine. Plaintiffs ask the Court to order "full" state funding of special education aid. Plaintiffs' Opening Br. at 40. But by law, the annual funding available for these programs is dependent upon the appropriation made each fiscal year. *See* K.S.A. 2017 Supp. 72-3422.

At trial in 2012, Plaintiffs unsuccessfully challenged the practice of appropriating less than "full" state funding for these programs. They lost on these challenges. *See* R. Vol. 14 at 1950-51 (Panel rejecting challenge to special education

aid funding). Plaintiffs did not appeal. Plaintiffs should be precluded from relitigating the issue under the law of the case doctrine. *See State v. Finical*, 254 Kan. 529, 532, 867 P.2d 322 (1994) (“We repeatedly have held that when an appealable order is not appealed it becomes law of the case.”).

Nevertheless, funding for special education next year is constitutionally adequate. SB 423 provides an additional \$44 million in special education aid. App. 1220, 1249. This was to comply with the State Board’s budget request that special education aid should be funded at 85% of “excess costs,” which the Board states would require an additional \$43,132,257. Supp. App. 8.

## **II. SB 423 and SB 61 Satisfy Article 6’s Equity Requirement.**

Plaintiffs concede that SB 423 remedied three of the four equity violations identified in *Gannon V*. But they claim that by continuing to subject a district’s decision to increase its LOB over 30% to a protest petition, SB 423 and SB 61 have not cured the fourth violation. They also purport to raise two new alleged equity violations related to the bills’ LOB provisions. Their assertions have no merit.

### **A. Subjecting a board’s decision to adopt an LOB over 30% to a protest petition does not violate Article 6’s equity requirement.**

In *Gannon V*, this Court held that SB 19 violated Article 6’s equity requirement “by imposing different procedures for certain districts to raise their maximum LOB.” 306 Kan. at 1223. Specifically, the law “allowed certain districts to increase their LOB authorization above 30% without having to be concerned about the uncertainties of an election process,” while other districts were required to

“clear the structural hurdle imposed by the protest-petition process reinstated by S.B. 19, § 15.” *See id.* at 1229.

SB 423 and SB 61 removed the grandfathering provision of SB 19, which theoretically allowed certain districts to maintain an LOB over 30% without being subject to a protest petition or election. Now, all districts wishing to increase their LOB over 30% are treated equally in that they must have obtained that authority subject to a protest petition or election, and so the Legislature has satisfied the equity requirement of Article 6.

Despite the Legislature having addressed the equity violation actually identified by this Court in *Gannon V*, Plaintiffs claim that the protest-petition process continues to violate Article 6’s equity requirement because elections to raise the LOB over 30% are allegedly less likely to be successful in poorer districts. Plaintiffs claim that Article 6 requires that districts be able to raise an LOB up to 33% by board action alone.

Plaintiffs’ argument goes beyond this Court’s holding in *Gannon V* and is inconsistent with Plaintiffs’ prior stipulations in this Court. In *Gannon III*, Plaintiffs argued that “the election process itself is inherently unfair,” the exact argument they now resurrect. *See* Response Br. of Appellees at 17 (filed April 25, 2016). This Court did not accept that argument, holding instead that the Legislature failed to comply with Article 6’s equity requirement for other reasons. *Gannon v. State*, 304 Kan. 490, 50-13, 372 P.3d 1181 (2016) (*Gannon III*). Then, following the Legislature’s response to *Gannon III*, the Plaintiffs stipulated that the



Legislature had satisfied the equity component of Article 6, and this Court accepted that stipulation. *See Stipulation*, filed June 27, 2016; Order, dated June 28, 2016. The law at the time did not allow districts to exceed 30% LOB by board action alone. *See Gannon V*, 306 Kan. at 1225-26. Given this stipulation and the Legislature's continued reliance upon it, Plaintiffs cannot claim a violation now.

Even if Plaintiffs were correct that it is more difficult as a practical matter for poorer districts to raise their LOB (and their evidence on that point only shows correlation, not causation), that is up to the local voters to decide. It does not prevent districts from having "reasonably equal access to substantially similar educational opportunity through similar tax effort." *Gannon I*, 298 Kan. at 1175 (stating Article 6's equity test). Rather, it permits local voters to determine whether they want to exercise their tax effort, a power entrusted to local voters with or without a protest petition since local boards are elected. Kan. Const. art. 6, § 5 (Local schools "shall be maintained, developed and operated by *locally elected* boards." (emphasis added)). Plaintiffs' anti-democratic theories contravene Article 6.

**B. Requiring districts to adopt a 15% LOB does not violate Article 6's equity requirement.**

Plaintiffs also challenge the requirement in SB 423, § 4, that every district adopt an LOB of at least 15%, a requirement that was retained by SB 61 (although SB 61 removed the provision of SB 423 that counted this levy as part of the BASE). They claim that because this portion of the LOB is now mandatory, the Legislature must equalize it at 100%.

Two points bear mention. One is constitutional. This Court has repeatedly held that the Legislature does not violate the equity requirement of Article 6 by providing supplemental general state aid to equalize at the 81.2 percentile of AVPP. *See, e.g., Gannon I*, 298 Kan. at 1198. Not only is this law of the case, but Plaintiffs point to nothing in the Kansas Constitution to undermine this holding.

The other concerns reality. Plaintiffs argue that greater equalization is required because the remedial legislation increases reliance on LOB. This ignores the fact that *every* school district currently has an LOB over 15%. *See* Plaintiffs' App. 37 (2017-18 Legal Max, "LOB Percent Used" column). Requiring districts to maintain their existing LOB rate at or above the 15% threshold does not make districts any more or less reliant on LOB funds. Districts have been and will continue to use their LOB funds to help satisfy the *Rose* standards. This merely codifies that these funds, which the Legislature has provided for districts to use, should be counted in determining whether the Legislature has made "suitable provision for finance of the educational interests of the state." Kan. Const. art. 6, § 6(b); *see also* SB 61, § 1(b).

**C. SB 423 and SB 61 do not violate Article 6's equity requirement by requiring districts to use the portion of their LOB funds attributable to the at-risk and bilingual weightings for at-risk and bilingual programs.**

Plaintiffs also challenge a provision of SB 423 and SB 61 that requires districts to transfer the portion of their LOB attributable to the at-risk and bilingual weightings to their at-risk and bilingual education funds. *See* SB 423,

§ 4(i)(2); SB 61, § 5(i)(2). This provision responds to an apparent concern in *Gannon V* that the “at-risk factor does not apply to LOB funds.” *See* 306 Kan. at 1203.

A district’s LOB is determined as a percentage of the “total foundation aid,” which for LOB purposes is calculated by multiplying the artificial base by the district’s adjusted enrollment. *See* K.S.A. 2017 Supp. 72-5132(jj) (SB 61, § 4(ii)); SB 61, § 2(a)(2), (e). Because the at-risk and bilingual weightings are reflected in districts’ adjusted enrollment, *see* K.S.A. 2017 Supp. 72-5132(a) (SB 61, § 4(a)), districts obtain additional LOB funds specifically as a result of the at-risk and bilingual weightings. The provision to which Plaintiffs object simply requires districts to use their LOB funds attributable to these weightings for the benefit of the students the weightings were designed to assist.<sup>6</sup>

There is no equity violation because this provision treats all districts the same. While some districts have more at-risk or bilingual students than others, the formula makes certain they obtain more LOB funds as a result. Plaintiffs have failed to explain how requiring districts to use these increased funds—which they only obtain because of their number of at-risk and bilingual students—for the purpose of educating those students violates Article 6’s equity requirement.

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<sup>6</sup> This provision does *not* require a district to transfer a percentage of its LOB equal to the percent of its at-risk and bilingual students to its at-risk and bilingual education funds, as some have suggested. That is, a district with 83% at-risk and bilingual students is not required to spend 83% of its total LOB funds on at-risk and bilingual programs. Rather, SB 423 and SB 61 only require districts to use those LOB funds that are attributable to the at-risk and bilingual *weightings* for those purposes.

As best as the State can discern, Plaintiffs' complaint stems from the fact that some districts will adopt higher LOBs than others and therefore will have more LOB funds to spend on at-risk and bilingual students. But this disparity is inherent in the ability of districts to locally choose their LOB. It has nothing to do with the requirement that LOB funding attributable to the at-risk and bilingual weightings be used for at-risk and bilingual programs. Even without this targeting, districts with a higher LOB would obtain more money to spend on their students. But this Court has repeatedly upheld the ability of districts to determine their LOBs, at least up to 33%, so long as the State equalizes at the 81.2 percentile.

In any event, Plaintiffs allege that districts currently spend more on at-risk programs than this provision requires. Plaintiffs' Opening Br. at 48. Given that, it is difficult to see how requiring them to spend their LOB funds attributable to the at-risk weighting, as opposed to money from the general fund, for at-risk programs could possibly deny them "reasonably equal access to substantially similar educational opportunity through similar tax effort." *Gannon I*, 298 Kan. at 1175.

**III. On Its Face, the Substantial Funding Increases Based on Legislation Approved by this Court in *Montoy* and Enacted by Bipartisan Majorities of the House and Senate Satisfy the State's Remedial-Stage Burden to Demonstrate Constitutional Compliance.**

In this remedial stage, this the State bears the burden of showing constitutional compliance. *See Gannon IV*, 305 Kan. at 856. At the same time, the *inherent nature* of the legislative process necessarily constrains the Legislature's ability to "show its work" and thus unavoidably limits the options available for the State to show this Court it has met its burden. *See State's Opening Br.* at 11-13. As

it has in the past, this Court should consider the legislative history of the remedial legislation, *see Montoy IV*, 282 Kan. at 20-21, and conclude that it demonstrates the State’s compliance with this Court’s orders to adequately fund K-12 public education.

First, the new state money provided by this remedial legislation—which exceeds the \$755 million that resulted in dismissal of *Montoy*—is a “substantia[ll] respon[se]” to this Court’s finding of inadequacy. *Id.* at 21. It is indisputable that, once fully phased in, the amount of *additional money from the State treasury* that will be spent *annually* on K-12 public education because of this remedial legislation will exceed \$1 *billion*. Whether one uses the \$1 billion figure describing total funds diverted from other public purposes to public education or the \$854 million that excludes KPERS and LOB funds, the unavoidable conclusion is that this new remedial legislation infuses a massive amount of new state money to adequately fund public education as required by Article 6.

Second, this remedial legislation follows the proven path to constitutional adequacy previously trod in *Montoy*—the *only* path this Court has approved as “substantially complying” with the adequacy requirement of Article 6. *See Montoy IV*, 282 Kan. at 24-25.

Third, this remedial legislation targets underperforming subgroups of students for whom this Court previously has expressed concern. *See Gannon IV*, 305 Kan. at 855; State’s Opening Br. at 26-29.

Fourth, a majority of elected legislators, all of whom have sworn an oath to uphold the Kansas Constitution, voted for SB 19, SB 423, and SB 61. Even legislators cited by Plaintiffs for criticism of the final product, including Senate Minority Leader Anthony Hensley, nonetheless voted for it.

Fifth, the unprecedented amount of new state funding provided by this remedial legislation—more than \$1 billion in annual spending phased in over five years, including \$854 million if KPERS and LOB funds are not considered—is consistent with the various assessments of the Taylor Study maintenance level (\$669 million), the State Board of Education request (\$893 million), and the amount approved by this Court in *Montoy IV* after adjustment for inflation (\$522.2 million on top of the \$95.6 million in scheduled increases under SB 19). The only outlier is the Plaintiffs’ ever-increasing demand. If the constitutional standard for adequacy follows the Plaintiffs’ wishes, then this litigation will be endless. That simply cannot be what the People of Kansas intended in their Constitution. After all, while the People imposed a *duty* on the Legislature to make suitable provision for financing of public education, they also *entrusted* their *Legislature* to do so. Kan. Const. art. 6, § 6(b).

The remedial legislation satisfies the State’s burden to demonstrate compliance with this Court’s orders.

## CONCLUSION

For the reasons above, the State urges the Court to find substantial compliance and dismiss this case.

Respectfully submitted,

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The undersigned hereby certifies that on the 14th day of May 2018, the above brief was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants, and copies were electronically mailed to:

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Consumer Price Index  
Midwest  
All Urban Consumers (CPI-U): All Items, 1982-84=100

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg	Percent Change	
														Dec.-Dec.	Avg.-Avg.
1990	124.5	124.9	125.5	125.8	126.0	126.9	126.9	128.4	129.4	130.0	130.4	130.2	127.4	5.7	4.9
1991	130.5	130.8	131.3	131.5	132.3	132.6	132.4	132.8	133.4	133.6	134.0	134.1	132.4	3.0	3.9
1992	134.1	134.3	134.8	135.1	135.5	136.0	136.3	136.7	137.2	137.4	137.6	137.7	136.1	2.7	2.8
1993	138.1	138.6	139.0	139.4	139.8	140.0	140.0	140.4	140.9	141.5	141.4	141.2	140.0	2.5	2.9
1994	141.5	142.1	142.6	142.9	143.3	144.0	144.3	145.2	145.6	145.3	145.8	145.7	144.0	3.2	2.9
1995	146.1	146.7	147.3	148.1	148.3	148.7	148.8	148.9	149.4	149.6	149.5	149.5	148.4	2.6	3.1
1996	150.2	150.8	151.7	152.3	152.7	152.9	153.2	153.4	154.0	154.4	155.0	155.3	153.0	3.9	3.1
1997	155.5	155.9	155.9	156.1	156.3	156.7	156.6	157.2	157.5	157.7	157.7	157.3	156.7	1.3	2.4
1998	157.6	158.0	158.4	159.0	159.4	159.5	159.8	159.5	159.9	160.1	160.1	159.8	159.3	1.6	1.7
1999	160.4	160.5	161.0	162.2	162.2	162.5	162.9	163.2	164.3	164.3	164.6	164.4	162.7	2.9	2.1
2000	164.9	165.9	167.1	167.0	167.5	169.7	168.8	168.2	170.0	170.1	170.3	170.2	168.3	3.5	3.4
2001	171.9	172.1	171.7	172.8	174.2	173.8	172.5	173.0	174.6	172.6	172.5	171.9	172.8	1.0	2.7
2002	172.1	172.5	173.6	174.7	174.8	175.3	175.3	175.8	176.2	176.3	176.1	175.5	174.9	2.1	1.2
2003	176.2	177.8	178.6	177.8	177.7	178.4	178.1	178.8	179.5	179.1	178.9	178.4	178.3	1.7	1.9
2004	179.4	180.2	181.0	181.5	182.9	183.3	183.2	183.3	183.6	184.5	184.8	183.8	182.6	3.0	2.4
2005	184.1	185.2	186.3	187.7	187.4	187.8	188.4	189.7	192.5	192.1	190.3	189.7	188.4	3.2	3.2
2006	190.8	190.7	192.0	193.0	193.6	194.1	194.6	195.1	193.7	192.3	192.8	192.9	193.0	1.7	2.4
2007	193.068	194.458	196.389	197.405	199.194	199.263	198.989	198.551	199.714	199.455	200.762	200.227	198.123	3.8	2.7
2008	201.427	201.896	203.723	205.393	207.168	208.968	210.071	209.351	209.252	206.019	201.737	199.582	205.382	-0.3	3.7
2009	200.815	201.453	202.021	202.327	203.195	205.350	204.814	205.632	205.601	205.706	206.247	205.613	204.064	3.0	-0.6
2010	206.564	206.563	207.359	207.777	207.987	207.886	208.211	208.639	208.788	208.689	208.816	209.270	208.046	1.8	2.0
2011	210.388	211.090	212.954	214.535	215.899	215.954	216.099	216.586	216.968	215.653	215.614	215.173	214.743	2.8	3.2
2012	216.368	216.855	218.975	219.405	219.145	219.017	218.956	220.462	221.125	220.375	219.483	219.033	219.100	1.8	2.0
2013	219.282	221.599	222.121	221.931	223.049	223.775	222.902	223.046	223.252	222.171	221.718	221.194	222.170	1.0	1.4
2014	222.247	223.493	225.485	226.214	226.565	227.588	226.997	226.587	226.913	225.793	224.396	222.821	225.425	0.7	1.5
2015	221.545	222.301	223.550	223.797	224.732	225.946	225.853	225.830	225.184	225.050	224.009	222.722	224.210	0.0	-0.5
2016	223.301	223.196	224.621	225.609	226.476 <sup>R</sup>	227.835 <sup>R</sup>	226.786 <sup>R</sup>	227.097 <sup>R</sup>	227.636	227.358	226.673	226.794	226.115	1.8	0.8
2017	228.279	228.633	228.824	229.682	229.705	229.780	229.820	230.443	231.030	230.660	231.084	230.548	229.874	1.7	1.7
2018	232.028	232.512	232.931												

R Revised.

Source: U.S. Bureau of Labor Statistics.

Consumer Price Index  
Midwest  
Urban Wage Earners and Clerical Workers (CPI-W): All Items, 1982-84=100

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg	Percent Change	
														Dec.-Dec.	Avg.-Avg.
1990	122.5	122.8	123.3	123.7	123.9	124.8	124.7	126.3	127.4	128.0	128.3	128.2	125.3	5.9	4.9
1991	128.3	128.5	128.9	129.2	130.1	130.4	130.1	130.5	131.0	131.1	131.6	131.7	130.1	2.7	3.8
1992	131.6	131.7	132.2	132.6	133.1	133.5	133.7	134.1	134.6	134.7	135.0	135.1	133.5	2.6	2.6
1993	135.4	135.8	136.2	136.6	137.2	137.3	137.2	137.6	137.9	138.5	138.5	138.2	137.2	2.3	2.8
1994	138.5	139.0	139.4	139.8	140.2	140.9	141.3	142.2	142.5	142.2	142.8	142.7	141.0	3.3	2.8
1995	143.0	143.6	144.2	145.0	145.2	145.6	145.5	145.6	146.1	146.3	146.2	146.3	145.2	2.5	3.0
1996	147.0	147.5	148.3	149.0	149.4	149.5	149.8	149.9	150.6	151.0	151.7	151.9	149.6	3.8	3.0
1997	152.1	152.4	152.4	152.6	152.8	153.1	153.1	153.6	153.9	154.0	154.0	153.7	153.1	1.2	2.3
1998	153.9	154.2	154.4	155.0	155.6	155.7	155.9	155.6	156.0	156.2	156.2	156.0	155.4	1.5	1.5
1999	156.6	156.5	156.9	158.2	158.3	158.5	159.1	159.4	160.6	160.6	160.9	160.7	158.9	3.0	2.3
2000	161.3	162.3	163.5	163.3	163.9	166.2	165.1	164.3	166.4	166.4	166.8	166.5	164.7	3.6	3.7
2001	168.2	168.4	167.8	169.0	170.7	170.1	168.4	168.9	170.8	168.4	168.2	167.6	168.9	0.7	2.6
2002	167.7	168.1	169.1	170.3	170.3	170.7	170.8	171.3	171.7	171.8	171.6	171.0	170.4	2.0	0.9
2003	171.8	173.3	174.1	173.1	172.9	173.7	173.3	174.1	174.6	174.1	173.9	173.4	173.5	1.4	1.8
2004	174.5	175.3	175.8	176.3	177.8	178.2	178.0	178.2	178.6	179.5	179.8	178.8	177.6	3.1	2.4
2005	179.1	180.2	181.2	182.8	182.4	182.9	183.6	185.1	188.2	187.6	185.6	185.1	183.7	3.5	3.4
2006	186.2	185.9	187.0	188.3	189.0	189.5	190.0	190.4	188.7	187.0	187.5	187.8	188.1	1.5	2.4
2007	187.811	189.121	191.145	192.379	194.553	194.538	194.219	193.663	194.828	194.384	196.056	195.493	193.183	4.1	2.7
2008	196.617	197.110	198.989	200.788	202.912	204.867	206.038	205.121	205.023	201.236	196.346	193.987	200.753	-0.8	3.9
2009	195.245	195.813	196.453	196.933	197.971	200.487	199.824	200.723	200.658	200.781	201.553	200.999	198.953	3.6	-0.9
2010	202.180	202.044	202.966	203.426	203.674	203.524	203.877	204.273	204.442	204.329	204.468	205.024	203.686	2.0	2.4
2011	206.258	206.981	209.094	210.991	212.572	212.556	212.718	213.212	213.626	212.038	211.969	211.459	211.123	3.1	3.7
2012	212.756	213.248	215.788	216.160	215.713	215.455	215.341	217.113	217.940	216.886	215.699	215.160	215.605	1.8	2.1
2013	215.240	217.978	218.491	218.210	219.482	220.269	219.214	219.334	219.551	218.251	217.590	217.163	218.398	0.9	1.3
2014	218.292	219.470	221.748	222.508	222.822	223.929	223.180	222.737	223.054	221.564	219.886	217.963	221.429	0.4	1.4
2015	216.078	217.027	218.486	218.701	219.773	221.193	221.136	221.188	220.121	219.875	218.569	217.076	219.102	-0.4	-1.1
2016	217.406	217.002	218.761	219.816	220.831 <sup>R</sup>	222.229 <sup>R</sup>	221.079 <sup>R</sup>	221.405 <sup>R</sup>	221.759	221.422	220.560	220.938	220.267	1.8	0.5
2017	222.428	222.507	222.671	223.577	223.575	223.625	223.626	224.366	225.026	224.515	225.210	224.631	223.813	1.7	1.6
2018	226.170	226.564	227.007												

R Revised.

Source: U.S. Bureau of Labor Statistics.

# **Kansas State Department of Education**

## **Budget Appeal to the Legislature Fiscal Year 2019**

**KANSAS STATE DEPARTMENT OF EDUCATION  
BUDGET APPEAL TO THE LEGISLATURE  
SUMMARY SHEET**

**FISCAL YEAR 2019**

	<b><u>Agency Request</u></b>	<b><u>Governor's Recommendation</u></b>	<b><u>Amount of Appeal</u></b>	<b><u>Page No.</u></b>
<b><u>State Operations</u></b>				
<b><u>State General Fund</u></b>				
1. Monumental Building Surcharge	\$ 162,141	\$ 0	\$ 162,141	1
<b>Total</b>	<b>\$ 162,141</b>	<b>\$ 0</b>	<b>\$ 162,141</b>	
<b><u>State Aid to Local School Districts</u></b>				
<b><u>State General Fund</u></b>				
1. State Foundation Aid	\$2,724,770,996	\$2,162,421,996	\$562,349,000	3
2. Special Education Services Aid	496,112,712	452,980,455	43,132,257	4
3. Professional Development Aid	4,750,000	1,700,000	3,050,000	6
4. Mentor Teacher Program Grants	3,000,000	800,000	2,200,000	7
5. Agriculture in the Classroom	35,000	0	35,000	11
6. Disc. Grants – Environmental Education	35,000	0	35,000	12
7. Disc. Grants – Communities in Schools	35,000	0	35,000	13
<b>Total</b>	<b>\$3,228,738,708</b>	<b>\$2,617,902,451</b>	<b>\$610,836,257</b>	
<b><u>State Highway Fund</u></b>				
1. CTE Transportation	\$ 1,666,667	\$ 650,000	\$ 1,016,667	9
<b>Total</b>	<b>\$ 1,666,667</b>	<b>\$ 650,000</b>	<b>\$ 1,016,667</b>	
<b><u>State Safety Fund Transfers</u></b>				
1. Driver's Education	\$ 1,100,000	\$ 0	\$ 1,100,000	15
<b>Total</b>	<b>\$ 1,100,000</b>	<b>\$ 0</b>	<b>\$ 1,100,000</b>	

FISCAL YEAR 2019

**STATE OPERATIONS – MONUMENTAL BUILDING SURCHARGE**

Included in this year's Budget Cost Indices is the rate for the monumental building surcharge which all state agencies located in Shawnee County must pay to support the State Capitol, Judicial Center, Cedar Crest, and Capitol Complex parking lots. The monumental surcharge is assessed against all leased space in Shawnee County, including space in state office buildings. For Fiscal Years 2018 and 2019, the surcharge rate is \$2.66 per square foot. For Fiscal Years 2018 and 2019, the amount of our annual surcharge is expected to be \$177,145, of which \$162,141 will be paid from the state general fund and the remainder from state special revenue/fee funds.

The monumental building surcharge was initiated by the Department of Administration in FY 2005 at a rate of \$.94 per square foot. Our agency's assessment totaled \$51,648 that year, in comparison to \$177,145 for FY 2018. In 13 years, the rate has increased 183 percent. In comparison, the Consumer Price Index (CPI) has increased 29 percent during the same time period, as reported by the U.S. Department of Labor.

Since its inception, no additional funding has been appropriated to assist the Department of Education in paying the monumental building surcharge. Rather, the department has had to absorb this cost by increasing its shrinkage rate and reducing other areas of its budget. To compound this situation, the surcharge cannot be charged to federal funds, which pay more than one-quarter of the agency's office rent.

The Department wishes to note that in Sections 33 and 34 of Senate Substitute for House Bill No. 2002, passed by the 2017 Legislature, the Legislative Division of Post Audit was exempted from paying the monumental building surcharge in Fiscal Years 2018 and 2019. The department commends the Legislature for taking such action and requests that it either be extended the same consideration or that funds be provided to pay the surcharge. As an alternative, to minimize the cost impact of the surcharge to any one agency and apply it more equitably, the Department recommends that the surcharge be allocated across all office space located in Kansas which is owned or leased by state agencies.

Savings from the elimination of the surcharge would be used to reduce the agency's shrinkage rate and fund projected increases in the rates for KPERS, group health insurance, unemployment insurance, workers compensation insurance as well as travel.

STATE GENERAL FUND

FY 2019 <u>Request</u>	Governor's <u>Recommendation</u>	Amount of <u>Appeal</u>
\$162,141	\$0	\$162,141

Sec. 34.

DIVISION OF POST AUDIT

(a) There is appropriated for the above agency from the state general fund for the fiscal year ending June 30, 2019, the following:

Operations (including legislative post audit committee) (540-00-1000-0100) ..... \$2,499,604

Provided, That any unencumbered balance in the operations (including legislative post audit committee) account in excess of \$100 as of June 30, 2018, is hereby reappropriated for fiscal year 2019.

(b) There is appropriated for the above agency from the following special revenue fund or funds for the fiscal year ending June 30, 2019, all moneys now or hereafter lawfully credited to and available in such fund or funds, except that expenditures shall not exceed the following:

Audit services fund (540-00-9204-9000)..... No limit

Provided, That the division of post audit is hereby authorized to fix, charge and collect fees for copies of public records of the division, including distribution of such copies: Provided further, That such fees shall be fixed to recover all or part of the expenses incurred for reproducing and distributing such copies and shall be consistent with policies and fees established in accordance with K.S.A. 46-1207a, and amendments thereto: And provided further, That all moneys received for such fees shall be deposited in the state treasury in accordance with the provisions of K.S.A. 75- 4215, and amendments thereto, and shall be credited to the audit services fund.

Conversion of materials and equipment fund (540-00-2416-2000)..... No limit

State agency audits fund (540-00-2200-2100)..... No limit

(c) Notwithstanding the provisions of any statute, during the fiscal year ending June 30, 2019, the above agency shall not expend any moneys appropriated for the fiscal year ending June 30, 2019, from the state general fund or in any special revenue fund or funds for such state agency by this or other appropriation act of the 2017 or 2018 regular session of the legislature to pay for any monumental building surcharge charged by the department of administration or any other state agency. During the fiscal year ending June 30, 2019, the above agency shall not be liable to pay and shall be exempt from such surcharge.

FISCAL YEAR 2019

**STATE FOUNDATION AID  
(GENERAL STATE AID)**

In response to the March 2, 2017 Kansas Supreme Court's ruling in the *Gannon v. Kansas* school finance lawsuit, the 2017 Legislature enacted Senate Bill 19 in an effort to meet the state's constitutional requirement to provide suitable funding for education. The bill provides approximately \$284 million in additional state aid over two years to fund the operations of local school districts. Senate Bill 19 increases the "base aid for student excellence" amount to \$4,006 for the 2017-18 school year and to \$4,128 for the 2018-19 school year, with annual inflationary adjustments thereafter. In its most recent opinion issued October 2, 2017, the Supreme Court ruled the state's new school finance formula to be unconstitutional. The Court found the state failed to meet the constitutional requirement to adequately fund education and ordered a fairer distribution of state funding to ensure that students in poor districts have the same educational opportunities as their peers in wealthier communities.

Both the plaintiff's and the State's briefs addressing any legislative remedies of "constitutional infirmities" are to be submitted to the Supreme Court no later than April 30, 2018 with response briefs due on May 10, 2018. Oral arguments are scheduled for May 22, 2018 with a court decision to be communicated by June 30, 2018.

In recognition of the Kansas Supreme Court's ruling in *Gannon v. Kansas*, the Governor's budget proposal includes an additional \$700.8 million in additional funding above FY 2018 over a period of five years. This recommendation includes an overall increase of \$100 million in the 20 mills statewide property tax levy assessed to fund school finance.

In response to years of inadequate state funding and increased operating costs incurred by school districts, the Kansas State Board of Education is requesting to increase the base amount to \$5,090 at an additional cost of \$562,349,000 over the Governor's recommendation for the 2018-19 school year. Last fall, school district officials reported that any additional funding approved by the Legislature would be spent primarily to improve low teacher salaries, boost funding for at-risk children, enhance services for lower achieving students, reduce class size, increase graduation rates and better prepare students for postsecondary success. Kansas currently ranks 42<sup>nd</sup> nationally in average teacher salaries. School district officials argue that low teacher salaries make it difficult to compete with other industries for talent. Schools along the state's borders also struggle to compete with districts across the state line.

It is important to note that the statutory base state aid amount for the 2008-09 school year was \$4,433. The State Board's recommendation essentially provides for annual inflationary growth of 1.4 percent over 10 years.

Since there is no guarantee the Supreme Court will accept a five-year phase-in plan, the State Board urges the Legislature to approve its recommendation which it believes will comply with the Supreme Court's recent ruling. This proposal will help to eliminate the achievement gap in our state and ensure that all students are college and career ready upon graduation from high school.

STATE GENERAL FUND

FY 2019 <u>Request</u>	Governor's <u>Recommendation</u>	Amount of <u>Appeal</u>
\$2,724,770,996	\$2,162,421,996	\$562,349,000



FISCAL YEAR 2019

**SPECIAL EDUCATION SERVICES AID**

The federal Individuals with Disabilities Education Act (IDEA) requires states to provide a free appropriate public education to all children with disabilities between the ages of 3 and 21. This Act defines "children with disabilities" as those children who need special education and related services because of conditions such as mental retardation, hearing or visual impairment, emotional disturbance, or autism. The Kansas Special Education for Exceptional Children Act augments federal law by requiring school districts to provide special education services to gifted children as well.

In response to the Supreme Court's ruling in the *Montoy v. Kansas* school finance court case, the Legislature made several adjustments in the funding formula including those aimed at increasing funding for special education. Specifically, the Legislature amended K.S.A. 72-978, which mandates that state aid for special education be equal to 92 percent of the estimated excess costs of educational services provided to students with disabilities.

In light of the state's current financial situation and to meet the needs of students with disabilities, the State Board of Education is recommending that funding for special education be increased to 85 percent of excess costs for FY 2019. The percentage of excess costs not funded by the state must be financed by school districts from their general fund or supplemental general fund, thereby reducing the amount of money available to fund general education. Obviously, this situation compounds the problem of school districts not having available resources to adequately fund K-12 public education in our state.

Based on the October 31, 2017 consensus education estimates prepared by the Division of the Budget, the Legislative Research Department and the Department of Education, the additional cost to fund 85 percent of special education excess costs is \$43,132,257. The Governor's recommendation is projected to fund 77.7 percent of special education excess costs for FY 2019. That percentage reflects a reduction from the current year projection of 78.5 percent.

In order to more fully fund the actual costs of educational and related services that local school districts are required by state and federal law to provide students with disabilities, the State Board urges the Legislature to recommend funding special education at 85 percent of excess costs for Fiscal Year 2019.

STATE GENERAL FUND

<u>FY 2019 Request</u>	<u>Governor's Recommendation</u>	<u>Amount of Appeal</u>
\$496,112,712	\$452,980,455	\$43,132,257

## Estimated Special Education Excess Costs--FY 2018 & FY 2019

<b>FY 2017 Actual Expenditures</b>	<b>\$ 862,481,386</b>
------------------------------------	-----------------------

### FY 2018 Estimate

FY 2017 Actual		862,481,386
Percent Change (Based on teacher salary increase avg.)	4.50%	38,811,662
Added Teachers No./Amount	80 \$ 64,980	5,198,400
<b>Estimated Total FY 2018 Expenditures</b>		<b>906,491,448</b>

### Excess Cost Computation:

Projected Total Expenditures		906,491,448
Less Ave per Pupil Cost of Regular Ed. \$ 7,149		
times FTE special ed pupils exc. SRS residents	27,590	197,240,910
Less Federal Aid		104,000,000
Less Medicaid Reimbursements		36,756,516
Less SRS Administrative Costs (State Hospitals)		300,000
<b>FY 2018 Excess Costs</b>		<b>\$ 568,194,022</b>

**State Aid at 92.0%**

**\$ 522,738,500**

### FY 2019 Projection

FY 2018 Estimate		906,491,448
Percent Change (Based on teacher salary increase avg.)	3.10%	28,101,235
Added Teachers No./Amount	60 \$ 66,994	4,019,640
<b>Estimated Total FY 2019 Expenditures</b>		<b>\$ 938,612,323</b>

### Excess Cost Computation:

Projected Total Expenditures		\$ 938,612,323
Less Ave per Pupil Cost of Regular Ed. \$ 7,370		
times FTE special ed pupils exc. SRS residents	27,860	205,328,200
Less Federal Aid		105,500,000
Less Medicaid Reimbursements		37,939,756
Less SRS Administrative Costs (State Hospitals)		300,000
<b>FY 2019 Excess Costs</b>		<b>\$ 589,544,367</b>

**State Aid at 92.0%**

**\$ 542,380,818**

Date of Consensus Education Meeting: October 31, 2017 (KSDE, DOB, KLRD)

**PROFESSIONAL DEVELOPMENT AID**

K.S.A. 72-9601 authorizes the Education Professional Development Act. Professional development activities help educators improve their teaching skills and enhance student achievement. Teachers must continually be challenged and stimulated to grow and develop their skills and abilities. Successful teachers must have a strong knowledge and understanding of the subject material they are teaching their students. Professional development strengthens a teacher’s understanding of how students learn and process the information which they are expected to learn and be tested on. Strong professional development programs also lead to improved job satisfaction which results in greater recruitment and retention of teachers and administrators.

Today, even the best-trained teachers need to keep up with changes in their subject field. They must:

- Keep abreast of changes in statewide student performance standards and learn how to incorporate the standards into their teaching;
- Become up-to-date on new research on how children learn;
- Become familiar with new methods of teaching reading, mathematics and other subjects;
- Become familiar with new curriculum resources;
- Learn how to make the most effective instructional use of computers and other technology in their classrooms; and,
- Adapt their teaching to shifting school environments, and to a changing and increasingly diverse student population.

Research studies show that between 20 to 40 percent of the variation in student achievement is attributable to teacher expertise. Put simply, the better the teacher, the more successful the student. High-quality professional development includes rigorous and relevant content, strategies, and organizational supports that ensure the preparation and career-long development of teachers and other educators whose competence, expectations and actions significantly influence the learning environment.

The state’s current professional development program is designed to allow school districts to use local funds and receive matching state aid. All requests for state aid must be preceded by a written plan submitted by the school district and approved by the State Board of Education. Expenditures must be incurred for professional development activities for licensed personnel. The amount of state aid that a school district may receive is limited to ½ of one percent of the district’s general fund budget or 50 percent of actual professional development expenditures, whichever is less.

In light of the state’s financial condition, the State Board of Education is requesting that Professional Development Aid be prorated at 50 percent of the state aid entitlement at an annual cost of \$4.75 million for FY 2019. The Governor’s recommendation is expected to result in a proration of 17.9 percent.

STATE GENERAL FUND

FY 2019 <u>Request</u>	Governor’s <u>Recommendation</u>	Amount of <u>Appeal</u>
\$4,750,000	\$1,700,000	\$3,050,000

## FISCAL YEAR 2019

### MENTOR TEACHER PROGRAM GRANTS

The Mentor Teacher Program is authorized pursuant to K.S.A. 72-1412. It was established by the 2000 Legislature for implementation beginning with the 2001-2002 school year. It is a voluntary program maintained by local school boards to support new teachers during their first three years of teaching with professional support and continuous assistance by an on-site mentor teacher. A mentor teacher is a licensed teacher who has completed at least three consecutive school years of employment in the district, has been selected by the school board as having demonstrated exemplary teaching ability, and has completed training provided by the school district in accordance with criteria established by the State Board of Education.

To receive a grant, a school district must submit an application to the State Board. Within available appropriations, the State Board of Education will provide grants in amounts not to exceed \$1,000 for each mentor teacher. Fiscal Year 2002 was the first year the Mentor Teacher Program was funded. It was not funded during Fiscal Years 2003, 2004 and 2005; however, the Governor recommended funding to resume this program beginning in Fiscal Year 2006.

During Fiscal Years 2006 and 2007, funding was provided only to support beginning teachers in their first year of teaching. During FY 2008 through FY 2011, sufficient funding was available to provide \$1,000 grants to teachers supporting first year teachers and a pro-rated amount to teachers supporting second year teachers. No funding was available for teachers mentoring beginning teachers in their third year of teaching. No funds were appropriated for this program for Fiscal Years 2012 through 2017.

New teachers, whose first few first years on the job include quality mentoring, develop the skills they need to teach successfully and gain the support and confidence they need to remain in the teaching profession. Mentoring programs have thus become a key strategy in not only improving teaching skills, but also in retaining high quality teachers.

Indicated below are some of the areas where mentoring programs prove extremely useful to beginning teachers:

- Setting up a classroom for the first time;
- Learning school routines and procedures;
- Designing lesson plans;
- Developing classroom management skills;
- Responding effectively to behavior and discipline problems;
- Working effectively with English-language learners and students with disabilities;
- Understanding social and environmental factors that may contribute to student behavior and performance;
- Assessing student performance;
- Understanding district and state standards and assessments and how they impact teaching strategies;
- Understanding curriculum adoption;
- Learning to communicate with and involve parents;
- Developing organization and time management skills; and,
- Connecting theories and teaching methods learned in college to classroom practice.

Research shows that benefits for students and schools that have successful mentoring programs include higher student achievement and test scores; higher quality teaching and increased teacher effectiveness; stronger connections among the teaching staff, leading to a more positive and cohesive environment for students; and, fewer resources expended on recruiting and hiring replacements. Mentoring programs also provide veteran teachers with an opportunity to increase their professional competency, renew their teaching commitment, engage in reflective practice, enhance their self-esteem and increase their leadership capacity.

According to the National Education Association, Kansas ranked 42nd nationally in average teacher salaries for the 2015-16 school year (most recent year available). In light of this fact, it is critical that we maintain strong professional development and mentoring programs if we are to be successful in recruiting and retaining high quality teachers.

For FY 2019, the Kansas State Board of Education requests a total of \$3 million to fully fund the Mentor Teacher Program. Under this recommendation, funding would be distributed to school districts to provide \$1,000 to qualified teachers who mentor new teachers during their first three years of service. The Governor recommends \$800,000.

STATE GENERAL FUND

FY 2019 <u>Request</u>	Governor's <u>Recommendation</u>	Amount of <u>Appeal</u>
\$3,000,000	\$800,000	\$2,200,000

FISCAL YEAR 2019

**CAREER AND TECHNICAL EDUCATION TRANSPORTATION**

In 2012, the Governor launched a plan to enhance career and technical education in Kansas to better prepare students for college and careers. To succeed in our state, business and industry will increasingly demand more highly-skilled and trained workers and the Governor’s plan is aimed at meeting those demands.

One of the components of the Governor’s plan, subject to annual appropriation, is for the state to reimburse school districts a portion of the costs to transport 11<sup>th</sup> and 12<sup>th</sup> grade students to postsecondary vocational programs. This reimbursement is based on the total number of miles driven and the size of the vehicle used. Due to an increasing number of districts participating in this program, state aid was prorated at 42 percent in FY 2017 and is expected to be prorated at 41 percent for FY 2018 and 39 percent for FY 2019 under the Governor’s recommendations. Shown below are the actual costs for FY 2017 and our estimates for Fiscal Year 2018 and 2019.

	Actual FY 2017	Estimate FY 2018	Estimate FY 2019
Total Miles Driven	373,657	381,452	401,014
Reimbursement per Mile/ C & D Bus	x \$1.45	x \$1.45	x \$1.45
Reimbursement	\$541,802	\$553,106	\$581,471
Total Miles Driven	199,901	204,071	214,537
Reimbursement per Mile/ A & B Bus	x \$1.15	x \$1.15	x \$1.15
Reimbursement	\$229,886	\$234,682	\$246,717
Total Miles Driven	868,087	886,198	931,643
Reimbursement per Mile/Van or Suburban	x \$0.90	x \$0.90	x \$0.90
Reimbursement	\$781,278	\$797,578	\$838,479
State Aid Required to Fully Fund Program	\$1,552,966	\$1,585,366	\$1,666,667
State Aid Proration Percent	x 0.42	x 0.41	x 0.39
Prorated State Aid (Rounded)	\$652,132	\$650,000	\$650,000
Less: Overpayments/Rounding Adjustments	(2,132)		
Total Expenditures	\$650,000	\$650,000	\$650,000
<b>Additional Request</b>			<b>\$1,016,667</b>
<b>Total Request</b>			<b>\$1,666,667</b>

A career and technical education offers preparation for high-demand jobs being created by advances in technology and global competition. Under the Governor’s leadership, Kansas has a coordinated approach to career and technical education that spans both secondary and postsecondary opportunities and offers a streamlined and affordable pathway to a fulfilling and financially rewarding career. Through numerous financial incentives offered by the state, high school students are increasingly earning postsecondary credit and industry-recognized credentials which allows them to earn higher wages upon graduation or as they work toward a postsecondary degree. The following page highlights the tremendous impact these initiatives have had. To ensure we maintain a skilled workforce in our state through successful career and education training, the State Board is requesting that the CTE Transportation Program be fully funded in FY 2019.

STATE HIGHWAY FUND

FY 2019 <u>Request</u>	Governor’s <u>Recommendation</u>	Amount of <u>Appeal</u>
\$1,666,667	\$650,000	\$1,016,667



# KANSAS BOARD OF REGENTS

## Excel in Career Technical Education Initiative

July 2017

In 2012, the Legislature enacted Governor Brownback's proposal for an innovative plan to enhance career technical education in Kansas and better prepare high school students for college and careers.

This initiative now provides state-financed college tuition for high school students in postsecondary technical education courses and incentives to school districts for students earning industry-recognized credentials in high-demand occupations (visit [kansasregents.org](http://kansasregents.org) and click on "Excel in CTE Initiative (SB155)" under "Workforce Development" for a complete list of qualifying credentials).

	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016
Participating Headcount	3,475	3,870	6,101	8,440	10,275	10,023
College Credit Hours Generated	28,000	28,161	44,087	62,195	76,756	79,488
Credentials Earned	--	548	711	1,419	1,682	1,228

Source: KBOR KHEDS AY Collection 2010-2016; KSDE Credential Production

## CREDENTIALS EARNED BY STUDENTS

	2013		2014		2015		2016	
Health (CNA)	578	81.29%	1,028	72.45%	1,299	77.23%	905	73.70%
Construction (NCCER)	51	7.17%	132	9.30%	103	6.12%	71	5.78%
Automotive (ASET/NATEF)	22	3.09%	86	6.06%	78	4.64%	52	4.23%
Welding (AWS)	51	7.17%	98	6.91%	111	6.60%	126	10.26%
Manufacturing (NIMSMA)	2	0.28%	5	0.35%	11	0.65%	9	0.73%
Commercial Driver (CDL)	6	0.84%	9	0.63%	14	0.83%	8	0.65%
Networking (CompTIA-N)	1	0.14%	1	0.07%				
KS Agriculture Skills/Competencies			51	3.59%	26	1.55%	9	0.73%
Residential HVAC (ICER)			4	0.28%				
Nat'l Restaurant Assoc. (ProStart)			5	0.35%				
ServSafe Food Protection					29	1.72%	34	2.77%
Automotive (ICAR)					5	0.30%		
Computer (A+)					3	0.18%		
Firefighter I					3	0.18%		
HVAC (ICE)							5	0.41%
Microsoft (MCSA/MTA)							5	0.41%
Cisco Certified Network Assoc. (CCNA)							4	0.33%
<b>Total</b>	<b>711</b>		<b>1,419</b>		<b>1,682</b>		<b>1,228</b>	

Source: KSDE Credential Production

## FUNDING

Tuition costs are paid directly to the community college or technical college offering the course; credential incentives are paid to the participating high school, based on the credentials earned.

	2012-2013		2013-2014		2014-2015		2015-2016	
	Available	Expended	Available	Expended	Available	Expended	Available	Expended
Secondary Student Tuition	\$11,750,000	\$12,018,419	\$18,035,000	\$16,969,784	\$23,100,000	\$22,128,899	\$20,250,000	\$20,127,423
AO-K Adult Tuition*	--	--	--	--	\$500,000	\$532,635	\$500,000	\$622,577
Credential Incentives	\$1,500,000	\$694,168	\$1,500,000	\$1,419,190	\$750,000	\$750,000	\$50,000	\$50,000
<b>Total</b>	<b>\$13,250,000</b>	<b>\$12,712,587</b>	<b>\$19,535,000</b>	<b>\$18,388,974</b>	<b>\$24,850,000</b>	<b>\$23,411,534</b>	<b>\$20,800,000</b>	<b>\$20,800,000</b>

\*The Legislature requires expenditures of at least \$500,000 for the AO-K Adult Tuition program; any amount over that comes from the secondary student tuition line.

For more information about the Kansas Excel in Career Technical Education Initiative, contact us at [kansasregents.org](http://kansasregents.org).

FISCAL YEAR 2019

**KANSAS FOUNDATION FOR AGRICULTURE IN THE CLASSROOM**

The Kansas Foundation for Agriculture in the Classroom (KFAC), a non-profit corporation, was formed in 1983 to serve as a link between agriculture and education in Kansas. KFAC meets this challenge by educating elementary school teachers (and college students majoring in education) who in turn educate their students about the entire agriculture system. Services offered by the Foundation reach all 105 counties of the state.

As a non-profit foundation, KFAC is dependent on many partners, including the Kansas State Department of Education, to provide funding that allows this organization to continue offering curriculum at little or no cost to Kansas students and their teachers. The State Board's request represents about 15 percent of KFAC's annual budgetary needs.

KFAC has a strong track record of providing factual, hands-on learning materials that are aligned with the state's academic curricular standards. KFAC provides teachers with lesson plans and numerous opportunities for professional development, including the annual KFAC Summer Conference, Summer Institutes, in-service workshops and presentations at educational events. Additionally, it makes available several different educational magazines that connect kids to agriculture.

Today, teachers are being challenged with the College and Career Readiness standards to provide applied learning to their students. The pendulum is swinging away from memorization and testing towards evaluations that are based on projects and applied learning. The lesson plans, magazines and other educational resources provided by KFAC are cross-curricular in nature and provide important vocabulary and understanding of agriculture as a teaching tool for math, science, technology, engineering, language arts and social studies.

For over twenty years, the Kansas Legislature provided an annual appropriation that ranged between \$25,000 and \$35,000 to help fund the operations of the Kansas Foundation for Agriculture in the Classroom. Beginning with FY 2012, state funding for this program was eliminated. For FY 2019, the State Board of Education is requesting \$35,000 from the state general fund to re-establish its financial commitment in bringing agriculture literacy to students in Kansas. If approved the State Board recommends a \$1 for \$1 match from private contributions.

The State Board strongly supports the Kansas Foundation for Agriculture's mission of "Connecting Classrooms to Kansas Agriculture", and urges the Legislature to support this request.

STATE GENERAL FUND

FY 2019 <u>Request</u>	Governor's <u>Recommendation</u>	Amount of <u>Appeal</u>
\$35,000	\$0	\$35,000



FISCAL YEAR 2019

**DISCRETIONARY GRANTS – ENVIRONMENTAL EDUCATION**

For Fiscal Year 2019, the State Board of Education is requesting \$35,000 to restore funding for environmental education that was eliminated by the Legislature beginning in FY 2010. For approximately fifteen years leading up to FY 2010, the Department of Education received an annual appropriation ranging from \$25,000 to \$35,000 to support environmental education.

Funding provided by the Legislature is distributed to the Kansas Association for Conservation & Environmental Education (KACEE) which is a statewide non-profit organization that promotes and provides effective, non-biased, science-based conservation and environmental education in our state. KACEE's workshops and environmental education resources for preservice and inservice educators provide opportunities for professional development in using the engaging and relevant context of the environment as an integration tool to more effectively teach mathematics, science, social studies, and reading/writing standards developed at the state level. Annually, KACEE provides professional development to approximately 1,300 Kansas educators impacting over 39,000 Kansas children/students.

KACEE will continue to work with the Kansas State Department of Education to integrate environmental education into core curricular areas and Career and Technical Education (CTE). Studies continue to show that hands-on, environmentally-focused learning helps to boost test scores, increase attendance, and spur parent and community involvement in schools. Programs such as those sponsored by KACEE, including Project Learning Tree, Project WET, WET in the City, Project WILD, and Leopold Education Project provide teachers with the tools to integrate curriculum areas in age and grade appropriate ways. These programs encourage the use of critical thinking, problem solving, and effective decision-making skills to analyze information and improve written and verbal communication.

KACEE will continue the Kansas Green Schools initiative, a program established in 2008, which provides technical support and professional development for teachers, schools, and districts to engage students in hands-on projects that not only help conserve natural resources, but also serve as a tool for real-life and relevant learning across the curriculum. Currently, the Kansas Green Schools Network includes more than 420 schools.

In addition to improving their academic and technical skills, environmental education provides the training students need to make well informed decisions later in life regarding environmental issues. For this reason, the State Board is requesting the Legislature to approve funding environmental education in the amount of \$35,000 for FY 2019. All funding approved by the state will be matched 100 percent by KACEE from private sources.

STATE GENERAL FUND

FY 2019	Governor's	Amount of
<u>Request</u>	<u>Recommendation</u>	<u>Appeal</u>
\$35,000	\$0	\$35,000

## FISCAL YEAR 2019

### DISCRETIONARY GRANTS – COMMUNITIES IN SCHOOLS

Communities in Schools (CIS) of Kansas was established in 1995 after the highly successful implementation of a CIS program in Wichita/Sedgwick County in 1990 led more and more communities to seek how they could establish their own CIS programs. In 2014, CIS of Kansas became Communities In Schools of Mid-America with the addition of programs in Tulsa, OK, Omaha, NE, Waterloo, IA and Kansas City, MO. Today, the CIS of Mid-America network includes seven local affiliates, providing services in 67 schools to more than 48,000 students each year.

Communities in Schools is the nation's largest and most effective dropout prevention organization. It is the mission of Communities in Schools of Mid-America to surround students with a community of support, empowering them to achieve in school and in life. To accomplish that mission, CIS of Mid-America aggressively seeks partnerships with school districts to substantially reduce the number of students dropping out of school. In Kansas, CIS is delivering its full model in 34 schools and providing alternative levels of service to an additional seven schools in our state. Overall, CIS serves more than 33,000 Kansas students annually.

When CIS of Mid-America initiates a program in a Kansas school, it rigorously delivers its proven model of service delivery, which is evidence-based and proven effective through independent evaluation. Following its model, CIS of Mid-America places a site coordinator on a school campus to work each day directly with students who are most at risk to fail academically and drop out of school. The site coordinator delivers two forms of social service to a school where he/she works. The first service form includes school-wide services. These services are programs, events or activities that address identified needs that exist in a school, such as activities to address financial literacy, a problem with bullying or a food delivery program to help students who have little healthy food available to them when they are out of school. The second form of service is case management which provides targeted support to individual students. Students who have demonstrated behaviors that place them at risk of dropping out of school, such as poor academic performance or excessive absenteeism, are enrolled in case management. These students work with the site coordinator to develop and implement a case management plan to address their specific challenges.

CIS of Mid-America continues to report impressive results from its work in schools. Shown below are the results for those students in case management during the 2015-16 school year.

- 98% of students tracked as potential dropouts remained in school throughout the year;
- 93% of students were promoted to the next grade level;
- 91% of eligible seniors graduated;
- 81% of students tracked for behavior problems showed improvement in behavior;
- 81% of students tracked for attendance problems showed improvement in attendance; and,
- 86% of students tracked for academic performance showed improvement in academics.

CIS of Mid-America provides training and technical support that empowers local communities to engage key leaders around children and family issues, with 60 percent of those leaders coming from the private sector. Over 2,400 volunteers currently support CIS of Mid-America programs providing more than 15,000 hours of service annually to students. CIS of Mid-America assists communities and school districts with needs assessments, promotes a planning process for community programming and resource development, and provides tools for developing a strong local organizational structure that can be sustained through local, private, state and federal support. As a result, children have increased

access to personalized, coordinated, and accountable resources that provide them with a foundation for success in school and in life.

For several years, the Legislature has provided various levels of funding for Communities in Schools through the State Board of Education's Discretionary Grants Program and an annual transfer of \$50,000 from the Family and Children Investment Fund administered by the Kansas Children's Cabinet. In addition to the transfer, the Legislature provided \$250,000 to support Communities in Schools for FY 2014 and FY 2015. In order to ensure that a portion of the state's most at-risk students succeed in school and in life, the State Board is requesting the Legislature to restore these critically needed funds in the amount of \$35,000 for FY 2019.

STATE GENERAL FUND

FY 2019 <u>Request</u> \$35,000	Governor's <u>Recommendation</u> \$0	Amount of <u>Appeal</u> \$35,000
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FISCAL YEAR 2019

**STATE SAFETY FUND – DRIVER EDUCATION**

K.S.A. 8-267 establishes the State Safety Fund for the purpose of providing funds for driver training courses. The fund is financed through driver’s license fees. Twenty percent of all monies received from class M driver’s licenses, 37.5 percent of all monies received from class C driver’s licenses, 20 percent of all monies received from class A or B driver’s licenses and 20 percent of all monies received from the commercial driver’s license class are deposited directly into this fund by the Division of Motor Vehicles.

K.S.A. 8-272 authorizes the State Board of Education to provide reimbursement to any school district conducting an approved course in driver education as well as any student attending an approved course at a non-public school accredited by the State Board. Pursuant to provisions in last year’s appropriation bills, funds shall be distributed by the State Board as soon as moneys are available. **K.S.A. 8-272 specifically states that no moneys in the State Safety Fund shall be used for any purpose other than to support driver improvement programs.**

In 2017 Senate Bill 19, provisos were included that authorize the Director of Accounts and Reports to make two transfers of \$550,000 during FY 2019 from the State Safety Fund to the State General Fund.

The Shawnee County District Court recently ordered the State of Kansas to repay \$3 million from the State General Fund to replenish funds that were illegally swept from fee funds. In response to the court case, the 2017 Legislature enacted House Bill 2054 which prohibits such fee fund sweeps. Section 5 of the bill prohibits sweeps from certain specified fee funds as well as “any other fund in which fees are deposited for licensing, regulating or certifying a person, profession, commodity or product”. In light of the court case and the enactment of House Bill 2054, the State Board requests the Legislature to recommend discontinuing sweeps from the State Safety Fund.

STATE SAFETY FUND TRANSFERS

<u>FY 2019</u> <u>Request</u>	<u>Governor’s</u> <u>Recommendation</u>	<u>Amount of</u> <u>Appeal</u>
\$1,100,000	\$0	\$1,100,000