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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS,
IN THE MATTER OF PROCEEDINGS BEFORE THE
THREE-JUDGE PANEL APPOINTED PURSUANT TO
K.S.A. 72-64b03 IN RE SCHOOL FINANCE
LITIGATION, to-wit:

LUKE GANNON, By his next)
friends and guardians, et al,)
)
Plaintiffs,)
vs.)
)
STATE OF KANSAS,)
)
Defendant.)

Case No. 2010CV1569

FILED

FEB 18 2015

HEATHER L. SMITH
CLERK OF APPELLATE COURTS



MEMORANDUM OPINION AND ORDER ON REMAND

By an *Opinion* issued March 7, 2014, with a mandate returned to this judicial panel filed March 31, 2014, the Kansas Supreme Court has tasked this panel with an additional review, expressing its views as to the necessity therefore, as follows:

"With our adoption of *Rose*, we now clarify what Article 6 of our constitution requires. We hold its adequacy component is met when the public education financing system provided by the legislature for grades K-12-through structure and implementation is reasonably calculated to have all Kansas public education

students meet or exceed the standards set out in *Rose* and presently codified in K.S.A. 2013 Supp. 72-1127.

This test necessarily rejects a legislature's failure to consider actual costs as the litmus test for adjudging compliance with the mandates of Article 6. For example, even if a legislature had not considered actual costs, a constitutionally adequate education nevertheless could have been provided--albeit perhaps accidentally or for worthy non-cost-based reasons. And actual costs from studies are more akin to estimates than the certainties the panel suggested. Nevertheless, actual costs remain a valid factor to be considered during application of our test for determining constitutional adequacy under Article 6.

The *Gannon* panel acknowledged it used the *Montoy* case as 'the template' for determining legislative compliance with the constitutional mandate expressed in Article 6, Section 6(b). But the panel essentially used only *Montoy's* statements about basing the financing formula or funding decisions upon 'actual costs' as its exclusive test for constitutional compliance. The panel found the legislature did not consider the actual costs, *i.e.*, the studies by Augenblick & Myers or legislative post audit, of providing a 'constitutionally suitable education' in making its appropriations in its annual sessions from 2009 through 2012. The panel concluded, perhaps from this finding alone, 'that plaintiffs have established beyond any question the state's K-12 educational system now stands as unconstitutionally *underfunded*.' (Emphasis added.)

Because the panel understandably did not apply our *Rose*-based test when it extended *Montoy* to exclusively focus on cost estimates, the panel made no findings arising from that test that we may review. So we must remand for the panel to make an adequacy determination, complete with findings, after applying the test to the facts. We express no opinion whether the panel needs to reopen the record to make its adequacy determination. That decision is best left to the panel as the factfinder.

In the panel's assessment, funds from all available resources, including grants and federal assistance, should be considered. The legislative history of Article 6 reveals the intent to provide a system of educational finance that is sufficiently flexible to be able to utilize such sources. See Kansas Legislative Council, *The Education Amendment to the Kansas Constitution*, pp. 31-32 (Publication No. 256, December 1965) (noting '[t]he advisory committee emphasized that the legislature should have specific broader powers ... in matching federal funds' and expressing intent that Article 6 provide 'greater flexibility ... in ... matching new federal and private grants'). We appreciate the panel's concern about overreliance on unpredictable federal funding. But there was an obvious increase in federal monies during the years at issue in this litigation, and the legislature was constitutionally empowered to respond with adjustments in state spending. Moreover, state monies invested in the Kansas Public Employees

Retirement System (KPERS) may also be a valid consideration because a stable retirement system is a factor in attracting and retaining quality educators—a key to providing an adequate education.

The panel may consider the restrictions on the use of these federal, pension, and other funds and determine that even with the influx of these additional monies the school districts are unable to use them in the manner necessary to provide adequacy under Article 6. But regardless of the source or amount of funding, total spending is not the touchstone for adequacy.

In short, the panel should apply the *Rose*-based test articulated in this opinion for adequacy in school finance to the evidence it deems relevant to its analysis, recognizing the test does not require the legislature to provide the optimal system. See *U.S.D. No. 229*, 256 Kan. at 254 (issue is whether SDFQPA satisfies the constitution by providing suitable financing, not whether level of finance is optimal or the best policy). While the wisdom of the legislature's policy choices in allocating financial resources is not relevant to this analysis, the panel can consider how those choices impact the State's ability to meet the *Rose* factors. Ultimately, the panel must assess whether the public education financing system provided by the legislature for grades K-12 'through structure and implementation' is reasonably calculated to have all Kansas public education students

meet or exceed the standards set out in *Rose* and as presently codified in K.S.A. 2013 Supp. 72-1127.”

Gannon v. State, 298 Kan. 1107, 1170-72 (2014).

In undertaking our obligations under the *mandate* we issued an *Order to Show Cause* on April 25th in regard to the legislative response to the Kansas Supreme Court’s opinion in reference to supplemental general state aid and capital outlay funding requesting the parties’ positions. We set a hearing on these two equity issues for June 11th.

Simultaneous with our filing, the State filed a “*Notice of Full Equalization Funding and Motion to Dismiss the Individual Plaintiffs and the Equity Claims*”. The State further responded to our show cause order as did the Plaintiffs. In the interim to the hearing, though extraneous to the show cause order, the Plaintiffs filed a *Motion for Judgment on the Existing Record* to which the State filed a *Response* and Plaintiffs later filed a *Reply*.

At the hearing, the Court did not address adequacy issues. It did conclude that the legislature had complied with the high court's order in regard to supplemental state aid and capital outlay funding. The Court reserved the issue of whether all "equity claims" that might be embedded in an adequacy review should be dismissed. Subsequently, the Plaintiffs also filed a motion to dismiss the individual Plaintiffs. A journal entry in regard to these issues was submitted which exhibited conflict over the resulting case caption if the individual Plaintiffs were dismissed.

We now find that in regard to the dismissal of the individual Plaintiffs that the individual Plaintiffs were effectively dismissed by our original *Gannon* trial court opinion and by its affirmance on the issue of the individual Plaintiffs standing on appeal and that a further journal entry is not necessary on that issue. Further, we find that amending the caption of the case would serve no good purpose. The caption of a case but

reflects its original filing and this case is on remand and is not a new case.

Further, the opinion of this Court and that of the Kansas Supreme Court spoke to the specific equity issues resolved at the hearing. No other equity issues were addressed. We found, and do find, the legislature substantially complied with their obligations in regard to supplemental state aid and capital outlay. No further journal entry is required beyond our finding here. Further, we are of the opinion that if any equity issues arise as a matter of our adequacy review, we believe they are not precluded by the remand order.

At the hearing, we requested certain information from the Kansas State Department of Education and invited proffers from the parties of any further evidence or considerations thought appropriate. To which the State by a pleading of August 1st formally objected, but, notwithstanding, provided further information and filed its proposed *Findings of Fact and Conclusions of Law* to which the Plaintiffs responded.

The State subsequently filed a *Motion in Support of Judgment Pursuant to K.S.A. 60-252(c)* to which the Plaintiffs responded. Plaintiffs on September 2nd filed a *First Supplemental Response to the Panel's Request for Information*.

We have concluded all these motions and arguments implicitly by our opinion following. We have limited our review to the past record, but where we deemed appropriate, we have taken judicial notice of subsequent documents and legislative action which we firmly believe are not reasonably subject to dispute.

We believe the Plaintiffs' Proposed Findings of Fact attached to their pleadings for Judgment on the Existing Record speak the truth, as we also believed their original Proposed Findings of Fact spoke the truth. As before in our original *Opinion*, all facts, by whomever presented, could not reasonably be discussed individually. Facts inconsistent with our original *Opinion* and our *Opinion* issued following are rejected implicitly. We diligently searched the

State's proffers for facts or issues that would alter our original judgment or change the course of the one we now issue and found none would be of material, controlling significance. No testimony was proffered nor can we perceive of any but a pure recantation of prior testimony that would cause us to consider any had it been offered. As is obvious by the resulting opinion following, our divergence with the Plaintiffs rests principally in the amount of dollars believed to represent a state of adequacy in meeting the *Rose factors*, not the clear fact that constitutional inadequacy from any rational measure or perspective clearly has existed and still persists in the State's approach to funding the K-12 school system.

What then, at the time of our trial, was the state of the constitutional adequacy of the Kansas's K-12 educational system? Has there been any material change? We find the following:

ADEQUACY AS A MATTER OF PRECEDENT LEGAL OPINION:

The *Rose* factors referenced were articulated in the *Rose* case, quoted by the Kansas Supreme Court in *Gannon* as follows:

"' [A]n efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.' 790 S.W.2d at 212."

298 Kan. at 1164.

As noted by the Gannon Court these factors have long been seen as substantively incorporated by Kansas statute, to-wit:

"The Rose court constitutional standards have been remarkably paralleled since 2005 by the Kansas Legislature's express educational goals—now set forth in K.S.A, 2013 Supp. 72-1127(c). And those statutory goals appear to signal a deliberate legislative decision to adopt the Rose standards as articulated by the district court quoted in U.S.D. No. 229 11 years earlier."

298 Kan. at pps. 1166-67.

As such, these standards for testing the adequacy of measures or funding of the Kansas K-12 school system have been known and hence its principles have been implicitly recognized by the Kansas judiciary at every stage, as the Gannon Court noted, beginning in some measure since 1994. Just as any person who enters into an agreement affected by the law, that law becomes a part of the agreement, expressed or not. Likewise here, if doubt exists, we always intended to speak in this case implicitedly in regard to K.S.A. 72-1127(c) and the Rose tenets it emulated. Further, if emphasis

in our original *Opinion* rested in cost analysis, it was borne of two factors.

First, the Legislative's Post Audit Study of 2006 was framed from the perspective of what it would cost to accomplish the goals set forth in K.S.A. (2005) 72-1127(c), hence, the outputs recognized were mirrored and mated to these experts' estimates of the costs to their accomplishment. See Plaintiffs' Exhibit 199: *LPA study, Appendix 2*, pps. 139-142. Further, the experts, Ducombe & Yinger, were well versed in school finance issues. *Id.*, References at pps. C-41, C-42. Further, though the Augenblick & Meyers study of 2002 has been characterized as overly input based, we sincerely doubt that its authors, or the objectives for which the inputs were formented, expressed or not, did so in ignorance of recognized educational objectives, such as the Rose factors, themselves formally enunciated in 1989. See also, K.S.A. (2001) 72-6439(a); Plaintiffs' Exhibit 203: *A&M study* at 111, pps. 111-1 - 111-3 and Tables 111-1, 111-2. Admittedly, however, the

performance standards were lower. *Id.*, Appendix B at "outcomes". The Rose factors, as well articulated as they are, nevertheless, seem to only express but the commonsense foundation for any enlightened K-12 educational system. As such, as the Gannon case noted, their lack of explicit statutory expression would not negate either their existence or their application. 278 Kan. at pps. 1166-67. Nevertheless, it must be acceded, these *Rose factors*, as specifically identified, had not until the Gannon case been adopted expressly as the basis for the determination of Kansas Art. 6, § 6(b) constitutional adequacy.

Secondly, in *Montoy II, Montoy v. State*, 278 Kan. 769 (2005), the Kansas Supreme Court had found that the 2002 Augenblick & Meyers cost estimates had been found to represent the only evidence of costs and recognized that the study evidenced a substantial shortfall in state funding based on then existing state standards 278 Kan. at 771-773. In *Montoy III, Montoy v. State*, 279 Kan. 817 (2005), the Court found that the

Legislature had yet to meet the cost deficiencies noted in *Montoy II* after the legislature had ordered a partial increase in funding pending a new cost study. 279 Kan. at 844-845. Finally, in *Montoy IV*, 282 Kan. 9 (2006), the Court found that the intervening Legislative Post Audit study that was performed in that interim from *Montoy III* had substantially confirmed the Augenblick & Meyers study costs and did so in terms of the cost of meeting the K.S.A. 72-1127(c) standards. Further, the *Montoy IV* Court found its past findings had been substantially met by the legislative enactments to that date, which included formula changes and the multi-year funding promised, which ultimately ended with a BSAPP of \$4492 for fiscal year 2010 (July 1, 2009 - June 30, 2010) and the enactment of a statute that provided for regular funding revisions based on inflation, *i.e.*, K.S.A. 72-64c04. However, the *Montoy IV* Court opined that substantive reliance or any defects or deficiencies in the LPA study or the ultimate effect of the statutory formula changes to the

school finance structure could not be authoritatively reached in that appeal, leaving any test of those changes or that cost study's accuracy as being representative of the adequacy of funding to a later day, if ever need be. 282 Kan. at 21, 23.

The need arose in the form of the filing of this Gannon case on November 2, 2010. The pleadings, and the evidence produced at this subsequent trial, over which we presided, reflected that the Plaintiffs' complaints were not so much occasioned by any shortfall or defect in the A & M study's, or the LPA study's, analysis and conclusions, but rather from the wholesale abandonment of the commitments made to the *Montoy IV* Court by the executive and legislative branches of government subsequent. Hence, we tested the underlying analysis of not only the LPA study, since it had never been tested, but also retested the A&M study as to its findings. As noted, the former was premised on meeting the *Rose* mirrored goals set out by K.S.A. 72-1127(c) enacted in the 2005 legislative session. We found the

results of that study substantially authenticated and supported, in dollar terms, what was needed to meet the K.S.A. 72-1127(c) standards, the Kansas Supreme Court's judgments made in *Montoy III* and *Montoy IV*, and, with appropriate reconciliation of the costs factors producing both studies' results, that the LPA study was relatively complementary to the A&M study's results. We, then proceeded to determine what, if any reasons existed, for the abandonment of the statutory and funding commitments made that had led to the *Montoy IV* court's release of that case in 2006 as in "substantial compliance" with its *Montoy* judgments. In this latter sense, and as did the Plaintiffs in much of the presentation of their case, we treated this case presumptively as a question of enforcement of the *Montoy* cases, hence, looking only for changes, up or down, that would require from the new facts adduced any material alteration to any of the previous conclusions reached.

As we noted, the subsequent legislative and executive retreat from that "substantial compliance" found by the *Montoy* court, at least at first, was prompted by the "Great Recession", the effects of which discombobulated government revenue streams across the entirety of the United States, as well as globally. However, its effects were moderated on state governments to some degree by federal assistance in the form of federal ARRA grants, which in Kansas were applied, *in substitution for state revenues*, in part, to mitigate the effect of the revenue shortfalls on the Kansas K-12 educational system. By an example, sixty-six percent (66%) of the supplemental state aid, in fiscal 2010 was funded by these intended *short term* federal dollars (Plaintiffs' Exhibit 296). We attempted to detail, by following the pattern and thrust of the evidence advanced at trial in support of, or in opposition to, Plaintiffs' claims, the impact of the budget cuts on the State of the Kansas's K-12 education system beginning from the filing of the

original *Montoy* case to the time of our issuance of an opinion by us in this *Gannon* case on January 11, 2013.

This history and the evidence adduced revealed that, yes, money makes a difference, such that from the infusion of new money into the K-12 educational system, beginning in 2005 after *Montoy* II and ending with the commitments made to the *Montoy* IV Court in 2006, until the beginning of the retreat from those commitments after the BSAPP had reached \$4,433 for FY2009 on July 1, 2008, student performances/achievements, based on accepted testing methods, evidenced considerable progress, *i.e.*, money was making a difference. We found this educational progress continued and did not level off until the 2010-11 school year, even though State funding had dwindled, which result we found had most likely been a carryover from the educational inputs made in the earlier years of the increased funding and sustained, in part subsequent, by the noted federal assistance, local school district efforts to dip into, and use, their cash balance reserves, and

local school district efforts to shield the classrooms, as best they could, from the continuing lack of the once anticipated state funding. Our conclusion, certainly based, in part, on the precedent of the facts underlying the *Montoy* decisions, was that the current funding levels, having devolved to pre-*Montoy* levels, could not be sustained, that is, that *no evidence* justified a conclusion that what was now less funding could somehow equate to equal or more in supporting the outcomes demanded by the K.S.A. 72-1127(c) standards and the study experts opinions. (District Court *Gannon Opinion* at pps. 183-185).

Accordingly, we found the Kansas K-12 school financing formula constitutionally inadequate in its present failure to implement the necessary funding to sustain a constitutionally adequate education as a matter of current fact as well as the precedent facts that supported the *Montoy* decisions. That is still our opinion.

ADEQUACY AS A MATTER OF STUDENT PERFORMANCE:

While at the time of the trial to the time of our original *Opinion* in this case, many of the FY2012 student performance statistics were unavailable or at least not in final form, but their direction at best was such that, but for the *Waiver* received from the federal *No Child Left Behind Act*, that Act's compliance thresholds would not have been met. The facts found at trial revealed substantial gaps remained in student performance on student achievement tests when students were categorized into subgroups by race or ethnicity, English speaking ability, or family economic circumstance and were most likely to continue unabated without adequate funding. (*Gannon*, District Court *Opinion* at pps. 159-190). Such a result could not remotely be "fitting, proper, appropriate or satisfactory", *Gannon*, 298 Kan. at p. 1150. Such a downward result would now affront the "Rose factors" across the board, but, particularly, factor "(i) sufficient . . . communication skills . . ."; factor

"(vi) sufficient . . . preparation . . . to choose and to pursue life work intelligently"; and factor "(vii) sufficient levels of academic or vocational skills to compete favorably [in the marketplace]". The "Rose factors" speak not to the majority of students, but to each student individually. See, "Rose factors", *supra*, at pps. 5-6.

That students in these subgroups have the same capacity to learn and achieve, given adequate funding and the right approach, is demonstrated by the evidence advanced concerning the Emerson elementary school in Kansas City, Kansas, as detailed by the Kansas City, Kansas, USD 500 Superintendent, Dr. Cynthia Lane, as follows:

"Q. Do you have a school in Kansas City, Kansas USD 500 called Emerson?

A. I do.

Q. I'd like you to tell the Court - is that a grade school?

A. It's an elementary school.

Q. I'd like you to tell the Court the history of Emerson Elementary.

A. I'd be glad to. Emerson Elementary School is a small neighborhood school and in the part of the community that's referred to as Argentine. And it has a rich history of very much a community center. Unfortunately, part of its history was that three years ago it was declared the lowest performing elementary school in the State of Kansas.

You may be aware that federal department of education requires that our state department rank order all schools based on their performance on state assessment, and Emerson Elementary was at the very bottom of performance; extremely discouraging and heart wrenching to know that we had fewer than 30 percent of the children in that building who were able to meet standard.

The demographic make-up of Emerson, at that time, and continues to be about 50 percent African American and about 48 percent Hispanic, so high minority, very few Caucasian children in the school. But we implemented some very extreme interventions, if you will, that

were funded by a federal School Improvement Grant. We were really fortunate that with this bad news came resources.

And very pleased to be able to tell you that they have increased their performance on both the reading and math state assessment to have more than 85 percent of their children meeting or exceeding expectations just in the last three years. It's a remarkable story.

Two weeks ago, the assistant secretary of education, Jason Snyder, visited Emerson because he had seen their results. And he came to see what we're doing there and to hold that up to the nation of what needs to be done to help kids succeed, particularly kids that come from minority backgrounds.

So we're real proud of Emerson and it's a success story. And we're looking at that now, the model that they used there, to try to replicate that in some of our other elementary schools that are very challenged.

Q. Let's talk about how that turnaround occurred. What were the strategies that were implemented at Emerson that

caused the increase in performance?

A. Well, the first thing we did was sit down and have a conversation with every employee that was assigned to the building. And part of the conversation was to really determine whether or not they believe that children, regardless of their background and their poverty situation, could learn at high levels of expectation. And to be honest with you, about 50 percent of them did not believe that the children that were attending that school could truly perform and meet the high expectations met by our state and by the district.

So we removed the principal and we replaced 50 percent of the staff -- it's a small building so eight to 12 teachers, a principal and a secretary -- and began providing that group of individuals intensive professional development, particularly in the areas of literacy. We found that the staff really didn't understand how to teach children to read and write and to do that in a way that kids could express what they knew effectively. So we provided intense training.

We put in place a parent liaison who spent the first year of school having porch visits, going to each family's home to try to fully engage the family in what was happening there. We've extended their school year and their school day. Children come to school at eight and stay until seven in the evening, and we provide intensive literacy and math instruction as part of their after-school program, as well as enrichment kinds of things.

We implemented what we call a bookbag program, so every week children take backpacks full of books home, because we want parents to have a meaningful way of helping their children improve. So those are some of the things we have done.

Another thing I might mention is strong partnership with some community agencies to help families meet needs, help them pay utility bills, help them access resources for food. And in some cases, we make connections with their parents in terms of employment opportunities.

Q. The strategies that you've identified, did those come with a cost?

A. It came with a significant cost. Emerson receives, in that grant, the initial year was \$2 million in additional resources, and for a school that has 180 children, that was significant. And that amount has declined over the last -- last year was about 1.2 million, I believe, and next year will be slightly under a million dollars.

So the next challenge for us will be, now that we know what we know, we know what the children need in order to be successful and how to engage families, how will we sustain those resources.

Q. And \$2 million grant came from what source?

A. Came from the federal School Improvement Grant under -- the department of Title I -- or Title.

Q. Was there any additional state funding that was supplied to Emerson three years ago that affected the turnaround?

A. No. No additional state money; only the federal grant.

Q. And with that federal grant you were able to turn that school around to take it off the

bottom of the list of elementary schools in the State of Kansas?

A. That's right. Their performance is now very, very strong and very competitive.

Q. What did the school district do in order to get the grant, this \$2 million grant, three years ago?

A. It was a competitive grant process. Our partners at the state department notified us that the school was eligible. The first thing we had to do was sit down and have real conversations about why is it we're not meeting needs of these kids -- they call that root cause analysis, what's in the way -- and craft a plan using actual student performance data, here's what we know now and here's what we expect, and submitted that application. And we're pleased that it was funded.

Q. In your opinion, did the additional resources that were provided through the federal grant have anything to do with the turnaround?

A. It had everything do with the turnaround because without that, we wouldn't have been able to purchase the -- we have a lot

of technology now the children are using and are learning.

We wouldn't have been able to do the professional development to help teachers learn how to teach literacy, in particular. We wouldn't be able to provide that extended day for them. We wouldn't be providing a summer session for the children who need it. None of those resources would be available.

Q. And what do the test scores at Emerson look like today?

A. Reading is at 85 percent of the children meeting or exceeding standards and math is just under that at 83 percent, keeping in mind that they were in the 30s just three or four years ago.

TR: p. 216, l. 21 - p. 222, l. 24.

. . .

Q. With additional resources, would you be able to reach those kids and enhance their proficiencies?

A. It's not about the children's capacity to learn. It's about being able to provide them instruction in a

way that helps them move forward.

And we have examples that we've talked about already. Sumner Academy of Arts & Science, Emerson Elementary School, and I can name others, places where they are moving their children forward. So with the additional resources, if I could replicate in every elementary school what we have happening at Emerson, I'm confident that our children would do very well.

TR: p. 284, l. 9 - 21.

. . .

Q. Well, when there's a cut in funding, does the cost of those kids go down?

A. Yes, the cost stays the same and actually is there, but we have less funding to be able to fund that.

Q. Okay. And in terms of additional resources, are those additional resources needed for kids that cost more?

A. The additional resources are needed for those kids that cost more, absolutely.

Q. I asked you during the break to get some information on Emerson.

A. Mm-hmm.

Q. And I want to ask you about Emerson. The grant money that was received at Emerson, divided by the number of pupils at Emerson, is what number?

A. Approximately \$6,500 per student, keeping in mind that is a School Improvement Grant fund, so in essence, that's like a windfall of money. It's a one-time grant opportunity that lasts for three years. So that's in addition to the base state aid that we would receive, so \$6,500 on top of the base state aid."

TR: p. 408, 1. 2 - 1. 24.

While no one saw fit to specifically provide the actual Emerson school's before and after staffing patterns or program details to this Court as an exemplar, nevertheless, by reference to Dr. Lane's testimony and to the descriptions of the federal program backing this funding initiative, which we here

judicially notice (U.S. Department of Education at ED. Gov: School Improvement Grants), it ranged from the readjustment of attitudes of educators, extensive professional redevelopment and retraining, the extension of school hours, the addition of adjunctive personnel, and, generally, a more hands-on, holistic family and educator involvement in the success of each student, such that Emerson, a grossly non-performing school previously that was principally composed of the same character of student sub-groups that lag student achievement goals statewide as do those subgroups in the Plaintiff school districts, went from a 30% achievement test success rate to an achievement test success rate of 85%.

We, in conjunction with the above discussion, further note that these achievement gaps still exist statewide and at the Plaintiff school districts. The 2011-12 testing records for those tested reveal a static or downward direction as to all students and for all student subgroups in reading from that of 2010-

2011. They reflect only a slight uptick in math proficiency in all categories except students with disabilities. The Plaintiff school districts substantially follow suit. (Judicial notice of Kansas State Department of Education: "Report Cards 2011-12" v. "Report Cards 2010-11"). While the testing nomenclature for the results of testing for school year 2012-2013 has changed due to the Waiver from the *No Child Left Behind Act* from "annual yearly progress (AYP)" to "annual measurable objectives (AMO)", the Kansas Department of Education statewide "Report Card" for the 2013 testing in math and reading reflects a substantial downshift in all scores, particularly, the subgroups. This 2012-2013 statewide "Report Card", as noted, shows drops in all categories. From 2011-2012 to 2012-2013, by example, African Americans *not* meeting the standard in reading statewide went from 27.7% up to 31.6%; Hispanics from 21.7% up to 26%; the economically disadvantaged from 15.9% up to 18.9%; and English language learners (ELL) from 25.2% up to now 31.1%.

Similarly, in math, African Americans *not* meeting standard went from 31.8% to 40.7%; Hispanics from 22.5% to 33%; the economically disadvantaged from 21.8% to 30.8%; and the English language learners from 25.5% to 37.6%. For all students statewide, those *not* meeting the reading standard went from 12.1% to 14.4% and for math those *not* meeting the standard went from 14.2% to 20.8%. White students statewide went from 8% *not* meeting the reading standard to 9.8% and in math went from 10.2% *not* meeting the standard to now 20.8% *not* meeting it. The Plaintiff school district's substantially followed suit. (Judicial notice of 2012-2013 Statewide "Report Cards" for reading and math). Further, a randomly selected examination of a "Report Card" - the Shawnee Mission USD 512 school district - also reflected comparable, across the board, decreases. *Id.*, 2012-2013 "Report Card" at "all students, all assessments". We recognize, as proffered by the State, these 2012-2013 statistics were possibly affected by the change in nomenclature and the approach to the

proficiency measures. See *State's Proposed Findings of Fact and Conclusions of Law*, Fact 82, Defendant's proffered Exhibit 1522: Message From the Commissioner. Nevertheless, the tests noted were still given, and minimally, these statistics provide no evidence of student progress and no evidence has been proffered to us otherwise. Plaintiffs' Exhibit 422: DeBacker Deposition TR: at p. 31, l. 16 - p. 33, l. 16; p. 87. l. 15 - l. 22; p. 89, l. 15 - p. 90, l. 14. A new category of "approaches standard" is one, nevertheless, below the standard.

As to these achievement gaps, we further note that often raw statistics can lack true meaning if not placed in a familiar context or other personal reference perspective. Nameless numbers or percentages, presented only in the abstract, are but naked descriptions. We offer this example. In the 2010-11 school year, the number of students statewide not meeting the standard set in math was 69,670 students or 14.6% of all students and in reading it was

58,218 students or 12.2%. (Gannon District Court Finding of Fact No. 453) If the statewide category of demonstrable non-proficient students in reading was considered to be the sole student body of a single, separate, school district (58,218), this school district would have constituted the largest school district in the state, where Wichita U.S.D. 259 was then the largest with 44,936 students. If this hypothetical school district was composed of only those statewide who were non-proficient in math (69,670), such district would almost equal the student bodies of all the named Plaintiff school districts, which had 74,004 students in this period.

The economically disadvantaged subcategory of non-proficient students statewide in reading achievement was 44,248 or 19.5% of all students and 50,734 or 22.2% of them statewide were non-proficient in math. Either of these two latter separate categories of non-proficient students could have filled nearly every seat in every school in every school district in every

county with an eastern boundary beginning west of Salina, which school districts had 51,617 total students overall. (See Plaintiffs' Exhibit No. 11, *Gannon District Court Opinion* at Findings of Fact Nos. 405, 406, 453).

The number of Hispanic students statewide not meeting the math standard was 27.6% of all such students or 17,579 and in reading 21.6% or 16,801 students. The number of African American students statewide not meeting the math standard statewide was 11,569 students or 32.6% of all such students. (*Id.* at Fact No. 406) Their number not meeting the reading standards was 9,582 students or 27%. *Id.* at Fact No. 405. If these separate categories of Hispanic or African American students who were non-proficient were each considered to be the inhabitants of a separate city in Kansas, Hispanics would have comprised, respectively, the 25th largest city and the 26th largest city, just behind Newton, Kansas, and ahead of Great Bend, Kansas, while the African American students would

have comprised, respectively, the 32nd largest city, a city larger than each of the cities of Atchison, Merriam, or Parsons, Kansas, and the latter group of non-proficient math students would have comprised the 38th largest city in the state or larger than each of the cities of Independence, Mission, or Augusta, Kansas (2010 U.S. Census).

The number of English language learners (ELL) not meeting the reading standard statewide was 12,675 of such students or 25.2%. *Id.* at Fact No. 405. Their number not meeting the math standard was 11,489 students or 27.8% (*Id.* at Fact No. 405). If each of these non-proficient categories of ELL students each comprised the fulltime equivalent student body for any Kansas college that student body would have been larger than the student body of any Kansas college or university except K.U. (20,596) and K.S.U. (22,468) (Kansas Board of Regents, Kansas Higher Education Enrollment Report, Fall 2012). Either group would have filled substantially all the seats in the Johnson

County Community College in 2012 (12,955) (Kansas Community College Enrollment, Kansas Association of Community College Business Officers, January, 2012).

As we found earlier in our first Gannon District Court Opinion, the overwhelming majority of educators and experts firmly believe educational success, particularly, for those students often dealing with circumstances or personal issues beyond their control, and which, by expert consensus, are generally more difficult to educate or amenable to educational breakthroughs, find benefit only in more personal attention from their instructors, associated instructional personnel, and from other supporting services. The Plaintiff school districts particularly are representative of such schools having these large subgroups. This, of course, means smaller class sizes and more teachers and adjunctive educational personnel to assist both students and teachers. *Gannon District Court Opinion* at pps. 61-68.

However, a great many of the known and successful educational approaches, as recited at the trial, e.g., Dr. Lane, were abandoned or greatly restricted as a result of the funding shortfalls we noted, which have not, by any evidence, ever been even closely restored to that level of funding where consistent progress was firmly evident. See Plaintiffs' Exhibits 253-268, 272, 273, 275-281, 283-285, 296, 335, and *Appendix B* attached hereto. Given the continuing grade advancement and migration upwards of K-12 schoolers during their school careers, it seems but obvious that for educational advancement, much less the maintenance of results accomplished prior with the earlier funding initiatives implemented, but now abandoned, that the revenue streams which supported those results for students in that period of favorable funding needed to be continued to be provided in order to properly educate the continuing stream of new faces going forward, either initially entering the school system or

advancing in grade. No evidence or proffer of evidence supports otherwise.

As the *Rose factors* convey, K-12 school is also a means of learning how to interact with each other, be competitive without being hostile or devastated, and appreciating the arts, music, sports and both self and the world around us. These attributes of K-12 schooling are deemed very important and an integral part of an educational pursuit if the system is to be considered constitutionally adequate. See *Rose factors* at "(iv) sufficient self knowledge [and one's state of being]"; "(v) sufficient grounding in the arts . . . to appreciate his or her cultural and historical heritage." We would believe these latter "awareness" factors also would include student interactions, whether in the classroom or in extra-curricular pursuits, that would engender a respect for others' aspirations, the undeniable value of teamwork, an understanding of the necessity for fundamental fairness in all human endeavors, and that setbacks can be

opportunities for learning and moving forward, not giving up. Yet, it was many of these types of programs and their associated personnel that would lead to such "awareness" that fell by the wayside first in the local school boards' attempts to salvage the "three Rs". By the evidence, or rather by the lack of evidence or any proffer of restoration, such programs remain impeded. See Gannon District Court Opinion, p. 65 at Finding No. 203; Plaintiffs' Exhibits 253, 254, 255, 335 and 296. As Plaintiffs' Exhibit 254 details, which we have included here as *Appendix B*, the impact of the loss of funding was endemic, systemic, and statewide, including the named Plaintiff school districts.

While we found the BSAPP figure set by the school finance formula was the driver of educational funding to its weighted resulting total, other funding sources provided independently by the legislature were also important, much of which, were eliminated or reduced, requiring those programs if they were to be maintained, to be funded from the diminished BSAPP dollars, e.g.,

Gannon District Court Opinion, pps. 79-80 at Findings Nos. 253-257, 259. These programs such as teacher mentoring, parents as teachers, and the professional development of educators all dovetail into those endeavors which import quality and breadth of effort and involvement into a successful, constitutional K-12 system, all of which programs, like the Emerson school example demonstrates, have the capacity to increase the likelihood of achieving better individual student learning and performance. Thus, when eliminated, cut, or otherwise put in competition for dollars intended elsewhere, as has been done, the K-12 school system's forward progress is stalled and remains inadequate to the task and diminishes the required learning experience.

Here, an example rests in the fact that transition to the *Common Core* standards and the success of the objectives sought by them, which encompass a great swath of the Rose factors, is keyed initially, much like was done at Emerson school in implementing its

changes, in intensive teacher retraining. Here, that training was left, or will be principally left, to existing and, probably, local resources, meaning Common Core may succeed but, if so, most likely at some other program's or learning opportunity's expense. Here, we, acknowledge a Legislative Post Audit study concerning this expense which sees its implementation costs as likely not continuing beyond five years (See *State's Proposed Findings of Fact and Conclusions of Law* at Exhibit 1504, pps. 15-20: *Legislative Post Audit Performance Audit Report*). We acknowledge it, not for its veracity or soundness of conclusion, but, rather to only note, if correct, the cost of implementation of Common Core standards, if not funded separately or by an increase in other available funds, would be but an exemplar of the fact that individual student and any systemic progress in the K-12 system is now, principally, at this particular state of constitutionally inadequate funding, wholly cannibalistic in nature.

Similarly, if other professional development is not fully funded separately or by an increase in other funds, a teacher will more likely than not only gain professional expertise in one area of instruction at the expense of gaining expertise in another, much the same as where the student artist, musician, or athlete has been forced to yield those pursuits to the budget imperative of preserving the learning of the fundamentals of reading, writing, and arithmetic. The same principle of robbing Peter to pay Paul applies to any other necessary but independently paid program or expense that is underfunded and not accommodated elsewhere.

Since the date of an original decision in January 2013, the BSAPP, then at \$3780, has only risen, first to \$3838 for FY2014 (7/1/13 - 6/30/14) and now at \$3852 for FY2015 (7/1/14 - 6/30/15). This amounts to a total increase in the BSAPP, but only as of late, since FY2009 of but 1.9% against a rise in inflation for that period of approximately 11% or an effective net loss in

purchasing power of 9.1%. The local option budget cap set by K.S.A. 72-6433d, which was principally at \$4333 at the time of our decision remained so until this year, when it was raised in the 2014 legislative session to \$4490 with the local option budget authority for those few districts able to employ the high end of authority raised to 33% from 31%. This represents only a 1.3% increase since 2008. However, even this increase in authority is set to expire in FY2017.

We find that on the other hand certain programs related to technical or tradesman education or joint high school and college course crediting are a boon to the K-12 system, particularly, in tailoring educational opportunities to likely student abilities, preferences, and needs. Further, they do not appear structured or funded such that they necessarily cannibalize other programs or student needs because many have drawn in resources outside the K-12 school system for assistance. As such, being innovative, yet, addressing need and lessening barriers, they are to be applauded.

Yet, these programs are neither universal in accessibility nor universal to the need. By example, only higher achievers qualify for college course crediting. See, Kansas Board of Regents Regulations at K.A.R. 88-29-1, *et seq.*; *e.g.*, K.A.R. 88-29-1(g); 29-11; 29-12; 29-18; and 29-19. Outside supported technical education may be limited by the student's particular geographical location in the State. While we requested information from the State in regard to the number of students affected by these programs, it has yet to be provided. See *State's Objection to Panel's Requests for Information Not in the Trial Record: "State's Response . . ."* at p. 6, column 4 across, column 4 down.

While these noted programs do add to the K-12 educational system and advance student goals, they do not of themselves, as such, cure the K-12 system's deficiencies in providing the underlying breadth of resources that would support some reasonable assurance that each student, so inclined, is able to obtain this

third party assisted benefit in aid of "(i)", "(vii)", and, particularly, "(vii)" of the "Rose factors": "sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently".

These noted programs are the type of educational innovations and endeavors which, perhaps, we might assume the Kansas Supreme Court referred in its Opinion, 298 Kan. at p. 1170, when it said ". . . even if a legislature had not considered actual costs, a constitutionally adequate education nevertheless could have been provided - albeit perhaps accidentally, or for worthy non-cost-based reasons". They are, however, by the limitations of their offerings and by the specialty of their attraction or qualification, too few and spring from too narrow of an educational launch pad to cure the overall disease of chronic underfunding occasioned to the educational mission as a whole, which undermines accomplishment of the educational landmarks

as set by the *Rose factors*. We uniformly doubt, and certainly no evidence has been provided nor proffered that would give us a rational basis to believe, that merely meeting a testing proficiency cutoff of 68 on a scale of 100 in either reading or math, which skills lay the foundation for understanding all else and enabling critical and logic based thinking, would satisfy the *Rose factors* or enable such a merely "proficient" student to enter college programs or rewarding careers generally, much less meet the qualifications needed to be admitted into this limited genre of special collaborative programs.

ADEQUACY AS A MATTER OF DOLLAR FUNDING:

On this particular discussion of constitutional adequacy, we would begin by readopting what we stated in our original opinion at pps. 55-190 by fully incorporating what we found without restatement here.

The Augenblick & Meyers study of 2002 recommended its findings be "restudied" every 4-6 years and interim thereto the legislature was to devise and maintain an

inflation mechanism enabling such costs to keep pace. (Plaintiffs' Exhibit 203 at p. ES-4; *Gannon* District Court *Opinion* at p. 91). Subsequently, the Legislature set \$4492 as the fiscal year 2010 BSAPP (K.S.A. 72-6410(b)(1)) and K.S.A. 72-64c04 provided a statutory means for an inflation adjustment going forward. By the time of our trial in the summer of 2012, both the funding of the statutory \$4492 BSAPP and the statute providing for an inflation adjustment of it had long gone by the wayside, the former either by legislative non-appropriation or executive action in the form of an allotment. The \$4492 statutory figure for the BSAPP was eliminated in the 2014 legislative session to now not be below \$3838. See § 37(b)(1) of Senate Substitute for HB2506, amending K.S.A. 72-6410(b)(1). No new cost study has ever been commissioned. Thus, the reduced funding status discussed in the original trial court *Gannon* opinion still exists, notwithstanding the 2013 legislative session's \$38 increase in the BSAPP, the 2014 legislative session's boost of the

BSAPP by \$14, the 2014 legislative sessions' restoration of the separately paid and calculated capital outlay and supplemental state aid, and the increase in the local option budget authority by raising the K.S.A. 72-6433d cap from \$4333 to \$4490 while giving the ability to *some* districts to raise their taxing cap from 31% to 33%. As we noted, the total raise in the BSAPP only boosted that statutory fiscal driver of the school district's general funds by 1.9%, since FY2009, however, when the consequence of inflation is considered, the currently set BSAPP of \$3852 actually reflects a loss of purchasing power totaling 9.1% since then. Similarly, as we noted, the raise in the K.S.A. 72-6433d BSAPP to \$4490 was only a 1.3% increase but left a 9.7% decrease in its purchasing power from that of FY2009.

Again by reference to the cost studies, which we adjusted to assure uniformity of expenditures to obtain the comparative results necessary to a constitutionally adequate education as defined by the *Rose factors* and

which we then further adjusted the dollar projections for the effect of inflation to 2012 dollars, all as reflected in our charts and their footnotes in our original *Opinion*, it can be demonstrated that the State's school funding system, as presently situated, remains constitutionally inadequate. Even more salient, however, assuming the State is to get credit for local school district revenues derived from the State's extension to local school districts of local taxing authority for a local option budget, that inadequacy persists.

Considering our charts in our original *Opinion*, we attempted to show in a uniform fashion how the cost studies inflation projected recommendations comported with various funding levels, including a projection that would include the local option budget. See *Gannon District Court Opinion* at pps. 102-107. We have done that again here, as well, but modified our approach to the LPA study in regard to federal funds and capital outlay. See *Appendix A* to this *Opinion*. Our

determination at the close of trial, which was based on the then status of state funding, the fact that the Kansas school finance formula's principal intended driver is its BSAPP to which weightings are then applied, the fact K.S.A. 72-6410(b)(1) still then set the BSAPP for FY2010 at \$4492, the obvious need for further legislative action to reflect the effect of inflation, and the absence of evidence quantifying in dollar terms the actual costs or embedded costs, if any, of complying with the *Waiver* or the Common Core standards, and, lastly our deference to what we hoped would be a legislature that would act in compliance with Article 6, § 6(b) as declared by the *Montoy* opinions, we, and as a beginning means of enforcement, enjoined funding of the BSAPP below the then statutorily set sum in K.S.A. of 72-6410(b)(1) of \$4492 as unconstitutional.

In arriving at our initial decision, we through our comparison chartings and discussions concerning the premises for the figures displayed - principally

through footnotes - reconciled the expert reports as best we could such that each figure used encompassed the same factors to its dollar figures and then displayed several arrays for comparison. *Gannon* District Ct. Opinion at pps. 97-119. Our point in doing so was intended to encompass, in part some answers to the Kansas Supreme Court *Gannon* opinion's admonition to us to consider federal funds, KPERS, and other total revenue sources in our evaluation of adequacy. 298 Kan. at 1171.

As a panel, our intent was to convey originally, perhaps not well articulated, that the BSAPP of \$3780 in FY2012 as adopted by the legislature and as it was represented and compared in our charts and discussions was constitutionally inadequate in comparison with the need as projected by two expert costs studies that were intended to reflect *only core outcome, performance based, education expenditures such as were necessary to support a constitutionally suitable adequate education within the meaning of Art. 6, § 6(b)*. That state of

constitutional inadequacy would remain now in the face of the formal adoption of the *Rose factors* by the Kansas Supreme Court in this present proceeding and notwithstanding the Kansas legislature's subsequent increases in the BSAPP to \$3852 and the restoration of capital outlay and supplemental state aid funding authority as it existed in FY2010. We stand on our belief that precedent Kansas Supreme Court cases, as well as the legislature, implicitly, if not expressly, accepted that the then existing Kansas's educational standards approximated the functional equivalent of the *Rose factors* and those factors most likely guided the cost study reports as well.

ADEQUACY OF DOLLAR FUNDING IN TERMS OF SOME OTHER K-12 EXPENDITURES OR THEIR FUNDING SOURCE:

Certainly by the evidence, the BSAPP as then constituted, and as conformed for the purpose of our charting comparisons, reflected no room for diversions from its purposes nor excess cash availability embedded within it to divert to, or be in substitute for, other

necessary expenditures such as for the independently paid state KPERS contribution, capital outlay, or for supplemental state aid. KPERS funding, then and now, involves a pass-through accounting.

Special education, in effect, is separately funded. By K.S.A. 72-978, it is the equal of the weighting for special education students, e.g. Plaintiffs' Exhibit 12, p. 10, columns 18 and 18(a). It is then set off as a credit as "local effort", effectively reducing the State financial aid payment made pursuant to K.S.A. 72-6416 by an amount equal to the additional dollars that would otherwise be generated from this special education weighting. Though this special education payment is initially deposited to a school district's general fund, it is required to be transferred to the special education fund of the school district. See K.S.A. 72-979(a); K.S.A. 72-6420(a). This fund is a special use, restricted, fund. See K.S.A. 72-965; K.S.A. 72-6420(b). Accordingly, in our current charting comparisons in Appendix A, the special

education payment has been removed from the general fund used for cost estimate comparisons. Neither of the cost studies included special education in their estimates.

Federal funds, where federal flexibility exists for credit against state obligations, appear to have been accommodated in the "local effort". For those federal programs not so accommodated, it is more than clear that they are specifically targeted funds, limited to the identified category of students targeted, limited in use, and limited in duration. Further, federal funding, by example to the Emerson school, is limited in breadth such that not all school districts with similar needs are included in the funding. Therefore, without statutory authority or a reliable mechanism to adjust for the receipt of such funds for a single school district, but not others, a blanket credit for all such federal funds in establishing a BSAPP amount is unwarranted when assessing adequate funding for *all* school districts. The *School District Finance and*

Quality Performance Act clearly recognizes this fact and the fact these federal funds fall without the intended scope for the district's operating budget structure. See K.S.A. 72-6430(f).

Further, and principally, all such federal funds substantially go to groups for which the Kansas school finance formula provides a weighting. However, the Kansas school finance formula, by reference to the noted cost studies recommendations, has, for the most part, never reached the essential weighting multipliers suggested as necessary by the cost studies, particularly, in the larger schools, e.g., Plaintiffs' Exhibit 199, Ducombe & Young Study, at pps. C-27 - C-32. Thus, in so far as this latter is true, then besides federal prohibitions on substituting federal funds for state funds and the limited focus and time qualified nature of these principally discretionarily dispersed federal funds, Kansas's lower than recommended formula weightings for these targeted groups would belie the consideration of the federal

funds in any test of *state funding adequacy* particularly, *statewide school funding adequacy*.

Further as we noted in Footnote 9 in our original Gannon trial court opinion at p. 105 in reference to the LPA study, we doubted, which means we simply did not believe it was proved, that federal funds would be a deduct from the costs shown needed. If one references what Ducombe & Young listed as "expenditures", it included the general fund and supplemental general fund as well as other special funds or sources of funding, including federal. *Id.* at pps. C-47-C-48. Yet, however, the comments in its *conclusion* section clearly delineate its study was constructing a school district's general fund. *Id.*, at pps. C-39-C49. Ducombe & Young described their cost projections for each school district in their *Appendix F*, which is reflected at an asterisk at the end, the following:

"*Base State Aid Per Pupil (BSAPP) for 2005-06 multiplied by weighted FTE without weights for special education, vocational

education, or transportation. The product is divided by the unweighted FTE and by a deflator (1.06) to turn it into 2003-04 dollars."

Thus, unless and until, expenditures from federal funds may be used as a credit against *and supplant* state funds, and it was state funds only that the authors understood made up a school district's general fund, implying federal funds would cover outcome expenditures identified seem incorrectly premised. Further, attempting to extend the credit beyond the very student constituency or school to which it applies would diminish the needed resources for those others not its recipient. This is particularly true of federal funds for the reasons earlier noted.

Hence, the LPA estimates in our *present* chart in *Appendix A* do not reflect a deduction for federal funds. The legislative post audit division removed federal funds from its experts' projections. See, Plaintiffs' Exhibit 199 at p. 35 and Appendix 1.2. Of course, the Augenblick & Myers study excluded federal

funding consideration altogether. No distinction in the State's obligation was made by the studies for the source of other funding sources listed, including the supplemental general fund. Subsequently, the legislative post audit division, itself, did make a distinction in estimating the State's obligation in terms of the BSAPP necessary when, by example, the Legislature declared that supplemental general state aid funding was to be considered in meeting its obligation after *Montoy III* by enacting K.S.A. 72-6434(e)(1). See Plaintiffs' Exhibits 176, 197. Thus, in so far as our original footnoted comparative analysis of costs in relation to the LPA study in the Gannon trial court opinion adjusted cost projections downward for federal funds, we believe both we and the legislative post audit erred.

Further, carryover cash balances from certain local school district funds, including its general fund, are recognized and set off as credits to the state against the State school finance payment due as calculated from

the BSAPP and the number of weighted students, just as the State's financial obligation only arises after the locally imposed 20 mill-state property tax is considered. See K.S.A. 72-6416; K.S.A. 72-6410(c): "Local effort". Also see, Plaintiffs' Exhibit 3; Gannon District Court opinion, chart footnotes, pps. 103-107.

Certainly, by example, it would benefit local school districts if State KPERS moneys were *added* so as to be included in the BSAPP since that would boost the general fund as weighted, unless it would be setoff as is done with the special education weighting. Such a cost or expenditure, nevertheless, cannot reasonably be considered as a setoff or credit against, or as a cost or expenditure to be considered in lieu of, some other costs or expenditures reflected in the BSAPP, or as it is weighted, in measuring the *Rose factors* adequacy of the currently structured and funded Kansas school finance formula. To do so would necessarily supplant funds overwhelmingly shown as now inadequate to fund

the legitimate needs that comprise an adequate "Rose" factors, constitutional, education. The same can be said of any other independently derived state payment such as capital outlay, bond and interest funding, supplemental state aid, or, as we will discuss subsequently, local option budget revenues. Too, as noted, the special education weighting is essentially neutral in regard to a school district's general fund by its use as a credit to the state payment otherwise due a school district. Thus, no payment or credit advanced, however realistic, necessary or required it may be overall in regard to the State's K-12 education system, should properly be seen as one to be included in any measure of the adequacy of the Kansas K-12 school finance formula *as currently structured*. Hence, only when a separate payment or receipt previously made was not to be made or reduced and would cause the school system to cannibalize other funds in compensation for the loss, would separate payments become relevant, here, by example, the prior cutoff of

capital outlay funding or the reduction in supplemental State aid.

ADEQUACY AS A MATTER OF DOLLAR FUNDING WITH THE LOCAL OPTION BUDGET TREATED AS A STATE FUNDING RESOURCE:

Within an adequacy inquiry, there needs to be more critical attention to the question whether a unified school district's local option budget in full or in part, including as it may be supplemented by general state aid payment entitlements to some school districts, should be considered as part of a fiscal adequacy test of meeting the State's Art. 6, § 6(b) constitutional obligations. This arises because of the 2014 legislative's declaration in § 28(c) of Senate Substitute for HB2506 claiming credit for those funds in fulfilling its Art. 6, §6(b) constitutional duties.

A unified school district that seeks to implement a local option budget finds that its local option budget is capped and is not an unlimited one. One component of the cap is the amount of dollars generated by the authorized BSAPP amount and the various weighting or

factors as set by the legislature in the school finance formula which govern the dollar size of a district's general fund (K.S.A. 72-6410; K.S.A. 72-6433(a)) or, alternatively, a legislatively designated BSAPP amount when a currently funded BSAPP amount is less than a certain sum (K.S.A. 72-6433d). A second component of the cap comes into play by the legislature's specification of an applicable percentage of a school district's general fund for which local taxes may be imposed to reach an authorized cap. (K.S.A. 72-6433(a)). At this juncture, a third component of a cap comes into play. This is the option of a local school board to set the actual percentage for its LOB budget within that authorized limit as set by the legislature, which amount may be subject to an enhanced percentage of the cap to which the citizens of that unified school district may agree through a ballot initiative (K.S.A. 72-6433(e)). *There is, however, no legislative mandate requiring a local option budget.* The only mandatory taxation imposed on local school districts is for the

20 mill state imposed property tax which is credited first to fund a district's general fund budget obligations up to the extent of the weighted per pupil costs produced by the established BSAPP with any balance of tax revenues gained from the 20 mills assessment being within the control of the State.

While incentive exists by law to encourage a local option budget, such as supplemental general state aid payments, a grant of capital outlay authority, or the ability to make certain interfund transfers if a LOB is adopted, it is the practical limits to its property tax raising resources and local interest and concern, or exigencies, such as evidenced in this case, when the abandonment, in part, of state funding responsibility occurred beginning in February, 2009, that drive the creation of, or size, of a local option budget.

Further, because a local option budget, if one is adopted, is capped by the dollar amount of its general fund or the alternative calculation permitted by K.S.A. 72-6433d and by local school board or voter decision as

to the taxable percentage, supplemental general state aid, when provided, may be an addition to, and sometimes in lieu of, local funds that would have otherwise had to have been required to have been generated by an adopted LOB.

The need for this equalizing supplemental state aid payment arises because of a lack of existing property tax eligible resources in a school district that could be used to achieve such LOB revenues from a mill levy within the authorized percentage cap and/or by virtue of local school board or voter choice in setting the taxable percentage. Supplemental state aid encourages the adoption of an LOB to the amount available for the reasons earlier noted and in some instances supplemental state aid softens the impact to local taxpayers in adopting an LOB because the local option budget, whether derived from local revenues solely or with the addition of supplemental state aid, would remain capped by the BSAPP amount selected to generate the general fund used to calculate the LOB.

LOB receipts are placed in a school district's supplemental general fund, including supplemental state aid payments, and these funds are to be expended for school purposes (K.S.A. 72-6433(j)). School districts may keep the unexpended balances in such fund at the end of a fiscal year with the exception that any percentage remaining of unexpended balances attributable to supplemental state aid is required to be paid back to the State (K.S.A. 72-6433(4)).

In our first *Gannon* opinion we discussed the LOB and the statutory provision of K.S.A. 72-6434(e)(1), which declared supplemental general state aid's use as in, and for, satisfaction of the state's educational standards and ensuing obligation to provide a constitutionally adequate education to each Kansas K-12 student. Heretofore, LOB funds, including supplemental state aid, was thought to have been left to local school board initiative in providing what the local school board deemed wisest in assuring the best school experience for its own K-12 students. We found that the

K.S.A. 72-6434(e)(1) provision noted, which directed to state control the expenditure choice for these equalizing payments made for the supplemental general fund, to be directory only as otherwise that statutory provision created, depending on the extent of the dollar receipt of supplemental general state aid by the district, an inequitable encroachment on local control. It created a disparity between districts in their choice of how to expend funds in their supplemental general fund "for school purposes" when not all of that fund was derived from the exercise of their LOB taxable authority. District Court *Gannon* opinion at pp. 132-133. The greater the need for supplemental state aid, the greater the restriction, hence, the greater the disparity and encroachment on heretofore perceived local choice of expenditure and authority. Further, the "use it or lose it" requirement of K.S.A. 72-6433(4) for those receiving supplemental state aid enhanced the disparity in choice. As we will discuss subsequently, that disparate impact may be ephemeral

and exist in theory only when the school district's general fund, as weighted, is underfunded because either the BSAPP, or the weightings available to it, are set too low.

The first question, however, is whether the existence of LOB authority and the fact of local school board choice to exercise that authority to some degree up to the maximum authority granted should be included within a test of adequacy in meeting Art. 6, § 6(b) compliance, particularly, if local school board expenditures derived from the fact of the implementation of LOB authority to tax locally are themselves necessitated in order to provide a constitutional education in light of the *Rose factors* to students of the local district due to a lack of direct state funding from state taxable resources. In other words, if the LOB funds are derived from that discretionary authority for local taxation, can they, without more than mere declaration, be claimed by the State as in satisfaction of any Art. 6, § 6(b)

constitutional adequacy test, particularly, if they are required to be applied by local school districts just in order to meet the *Rose factors* by a necessity borne of the legislative decision to not provide state revenues derived from statewide sources to school districts? Can the fact of the existence of these local school board choices to have an LOB in a certain amount count as a measure of funding adequacy as long as the choice to generate such funds was, in fact, made and the funds generated or received, in fact, are so applied? If so, our noted finding regarding the disparity between local school districts in the use of their supplemental general fund based on the source of the funds within it, while it may be true, has been mooted by the reality of the necessity of expending LOB funds, however derived, to make up for, and make due for, the inadequacy of its BSAPP generated general fund to meet the standards of a *Rose factors* education.

Seemingly, advocacy for, and countenance of, the use of these funds to meet any adequacy test is now

firmly the State's position, whereas, heretofore, it only was so impliedly. We admit, that beyond the question of the use of LOB funds derived from supplemental state aid, we considered the accepted purpose of a LOB was for enhancements for a school district's K-12 students which its local board wished to provide voluntarily in an effort to provide better than what Art. 6, § b(b) might deem adequate. In other words, in terms of the latter, a *local choice* to use *local funds* to provide the most optimum education its taxpayers were willing to *voluntarily* support. Nevertheless, we held no doubt that LOB expenditures, to a very great extent, were directed toward meeting, as the local board thought best, and in prescient fashion, the K.S.A. 72-1127(c) standards. In fact, as state school funding was ratcheted down beginning in February, 2009, the budget cuts implemented by local school districts indicate that many of what we believe are the truly necessary personnel and programs that are needed to meet the *Rose factors* were actually being

funded, even then, by the LOB funds, i.e., "not mandated", under the guise of enhancements, e.g. Plaintiffs' Exhibit 288 (Hutchinson U.S.D. 308).

The State's position of seeking credit for LOB expenditures has now gained formal legislative expression, consistent now with that earlier expressed claim for credit for supplemental state aid funds by, as we noted, 2014 Senate Sub HB 2506, § 28(c)'s inclusion of revenues derived from the local taxation authority granted by the legislature for LOB's as one component of the State's contribution to meeting its Art. 6 § 6(b) obligations:

"New Sec. 28. Article 6 of the constitution of the state of Kansas states that the legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools; provide for a state board of education having general supervision of public schools, educational institutions and the educational interests of the state, except those delegated by law to the state board of regents; and make suitable provision for finance of the educational interests of the state. It is the purpose and intention of the legislature to provide a financing system for the education of

kindergarten and grades one through 12 which provides students with the capacities set forth in K.S.A. 2013 Supp. 72-1127, and amendments thereto. Such financing system shall be sufficiently flexible for the legislature to consider and utilize financing methods from all available resources in order to satisfy the constitutional requirements under article 6. Such financing methods shall include, but are not limited to, the following:

. . .

(c) any provision which authorizes the levying of local taxes for the purpose of financing public schools; and" [Emphasis added]

It may well be true as a matter of theory, even as a matter of fact, that an expenditure from its supplemental general fund - its LOB fund - by a school district could in some instances, maybe in many instances, maybe in all instances, *depending on the point of time or circumstances*, materially aid in providing or sustaining a constitutionally suitable education and could, *at a particular point in time and through a proper statutory structure*, be considered within the total framework of school funding to be a relevant part of a test of meeting "adequacy" in terms

of Art. 6, § 6(b)'s command to "make suitable provision for finance" of Kansas's K-12 educational system.

However, in our view, *as the statutory structure now stands*, only if "accidentally" or "fortuitously" can stand as principled constitutional standards under Art. 6, § 6(b) could this be true.

We believe the state school finance formula's failure to provide a statutory mechanism to delineate and assure a fail-safe, such as a contingency reserve of funds, that would provide reliable state sourced funding when such voluntary taxation, *i.e.*, the LOB, including supplemental state aid, falls short represents a structural flaw in the argument made and a constitutionally unacceptable flaw in what § 28(c) of Senate Substitute for HB2506 purports to support or implement. A mere declaration such as § 28(c) cannot suffice as an enforceable command by present statutory structure as it leaves the option for a local option budget and its amount voluntary. If this is to be the legislative direction, then there needs to be in

addition to a fail-safe, a ceiling or a floor, by example, most equitably by percentage, defining the limits to the State's right to compel the use of such funds as the State would direct in meeting the State's obligation under Art. 6, § 6(b) to provide a Rose factors education for each and every K-12 student. This lack of enforceable defining features to § 28(c)'s declaration represents a structural flaw to its consideration as a reliable, constitutionally acceptable statutory structure, rather than its present discretionary structure, to assure the constitutional adequacy of the K-12 school finance formula or its funding. The LOB portion of the Kansas school finance formula is not so sufficiently designed today, nor was it structurally originally intended, to stand as a failsafe funding mechanism that would assure each and every Kansas K-12 student the education our Kansas constitution commands and is designed to assure.

Further, one cannot accept the State's argument or § 28(c)'s declaration as constitutionally sound just

because such dollar adequacy might exist *at this, or any other, moment in time.* To do so would make the Art. 6, § 6(b) constitutional assurance of an adequate education in light of the *Rose factors* a function of fortuity and local largess rather than one of enforceable constitutional substance. Constitutional funding adequacy could exist, but would vary as a local phenomena only, yet the cure for any deficiency could not be a challenge under the present statutory structure to local school board discretion in establishing a local option budget or school board or voter discretion in the amount of its funding, but rather, by the current statutory structure of the Kansas school finance formula itself, even if § 28(c) of Senate Substitute for HB2506 is to be considered, the cure would still remain one directed to the State by our Kansas constitution. Legislative compliance with Art. 6, § 6(b)'s command to "make suitable provision for finance" can be neither discretionary nor haphazard by result nor may such obligation be

delegated to other entities having such a discretion. As such, advancing a mere declaration as is § 28(c) and a consequent unsecured reliance on a voluntary local option budget as proof of the constitutional adequacy of the State's school finance system is flawed as it exposes a structural flaw in the State's duty to provide that "suitable provision for finance" that would secure a constitutionally adequate education for each and every Kansas K-12 student.

The disparities that can be, and are, produced by incorporating the statutory availability of a voluntary LOB as a measure of the constitutional adequacy of K-12 funding is reflected in a chart prepared by us attached to this opinion as Appendix A. Plaintiffs' Exhibits 243-245 also reflect, in some measure, the breadth of that disparity. It also demonstrates that at the time of our original decision in January 2013, as well as presently, that funding adequacy, even when school districts' LOBs are drafted, whether as *de facto* in the past, or now as attempted *de jure*, in support of K-12

school funding adequacy, it is not accomplished or certainly not structurally likely to reliably, uniformly, or equitably be accomplished.

Rather than encumber this opinion here with an explanation of these charts, we put those explanations in a preface to that *Appendix*. We have attempted also to make it self-explanatory otherwise. As the charts would reveal, just to cover the funding shortfall existing in FY2012 *by just the average of the cost studies per pupil estimates from the general fund of a school district only*, and using U.S.D. 259 in Wichita as the first example, U.S.D. 259 would need to have an increase in its available funds of \$136,583,532. (- \$2980 per pupil x 45,833.4 FTEs). See, *Appendix A, Chart USD 259, Col. J ÷ Col. B*. For Plaintiff USD 308 in Hutchinson, the need would be \$13,835,493; for Plaintiff U.S.D. 443 in Dodge City, the need would be \$15,863,059; for Plaintiff U.S.D. 500 in Kansas City, the need would be \$60,953,510; and statewide the need would be \$1,185,684,916 if only school district general

funds were to be the sole source of funding and not LOBS. Even at the current FY2015 BSAPP of \$3852, these general fund shortfalls would only be reduced by 1.9%. Further, given inflation from 2012 to 2014 of 3.606%, this subsequent increase in the BSAPP actually amounts to a 1.7% decrease since 2012 in terms of the purchasing power of these general funds.

Even were the above noted school districts general funds in FY2012 combined with their FY2012 LOBs, the funding shortfall, based on the average of the cost estimates, would yet be for U.S.D. 259, a remaining (-)\$40,333,392 shortfall ((-) \$880 X 45,833.4 FTEs); for U.S.D. 308, a (-)\$5,063,877 shortfall; for U.S.D. 443, a (-)\$1,189,485 shortfall; for U.S.D. 500, a (-)\$15,460,181 shortfall; and statewide, a remaining (-)\$218,391,696 shortfall. Even with the increase of the LOB BSAPP cap of K.S.A. 72-6433d from \$4433 to \$4490 for FY2015 or 1.2858% or \$12,440,361, the total increase in the combined statewide general funds and supplemental general funds of \$61,101,595 is but a

1.7342% increase against inflation from 2012 of 3.606% or \$127,011,847 (Statewide Chart, col. M: 3,522,236,455 X 1.03606) or a net loss in purchasing power from 2012 of \$65,910,252.

Of the statewide shortfall in FY2012 from *all funds available to school districts*, the Plaintiff school districts were bearing 28.41% of the statewide shortfall ($\$62,046,935 \div \$218,391,696$). Hence, while merely bumping up the total revenues to cover the average statewide shortfall shown in *Appendix A* of (-)\$480 per pupil might benefit Dodge City's FY2012 (-)\$196 per pupil shortfall from all funds ((-)\$480 v. (+)\$196 = +\$284 per pupil gain), it would leave a collective shortfall to the other three Plaintiff school districts of \$27,488,186 or \$395.40 per pupil short of the average of the cost estimates even when *all* current sources of revenue are considered, ranging from (-)\$400 per pupil in Wichita, (-)\$573 per pupil in Hutchinson, and (-)\$339 per pupil in Kansas City. Even Dodge City's gain of \$284 per pupil if there was to be

an across the board \$480 per pupil statewide rise in funds available would be but \$1,723,454 for Dodge City, leaving it just 11.74% of its FY2012 LOB ($\$1,723,454 \div \$14,675,900$), it having already exhausted its general fund and all contingent cash reserves.

Further, by examining the charts in *Appendix A*, it can be seen that funding Kansas K-12 schools to the average of the cost studies estimates through the general fund alone in FY2012 would produce significant disparities when the statewide average shortfall per pupil (-\$2606) is compared with that of the Plaintiff school districts. By example, U.S.D. 259's shortfall was (-) \$2980 or 14.4% above the statewide average; U.S.D. 308's shortfall was (-) \$2877 or 10.39% above the statewide average; U.S.D. 443's shortfall was (-) \$2614 or 3.06% above the statewide average, and U.S.D. 500's shortfall was (-) \$3229 or 24% above the statewide average shortfall.

Further, by examining the charts in *Appendix A*, it can be seen that while funding Kansas K-12 schools to

the average cost estimate of the cost studies from the general fund only in FY2012 reflects significant disparities between school districts, that disparity is much more pronounced when the FY2012 LOBs are added in to meet the costs each would experience in providing a constitutionally adequate education. When the general fund and LOBs are combined, U.S.D. 500 maintains a 78.6% shortfall above the average statewide (-\$819 v. -\$480); U.S.D. 259, an 83% shortfall above that average (-\$880 v. -\$480); and U.S.D. 308, a 219.375% shortfall above that average (-\$1053 v. -\$480). Only U.S.D. 443's shortfall of (-) \$196 falls \$284 below the statewide average of (-) \$480 per pupil. Nevertheless, that disparity from the average statewide is 69%.

These comparisons indicate that statewide, as a systemic whole, the FY2012 BSAPP of \$3780, when weighted to make the general fund, and less the special education payment, and even when the school districts' LOBs in FY2012 are added in, the Plaintiff school districts, and school districts on the average

statewide, were put in a substantial financial bind, such there can simply be no doubt, *if any credence at all is given to the cost studies*, that a state of inadequacy in the capacity to provide an education meeting the *Rose* factors existed in FY2012 even when *all school district funds are considered*. The veracity of the cost studies is further buttressed by the cuts in staffing and programs evidenced after February 2009, *e.g., Appendix B*.

In the chart in Appendix A, we have projected the shortfall at different funding levels statewide. The special education payment is excluded in the comparisons. The exclusion of the special education payment is recognized by a reduction in the general funds totals shown. In FY2012, the special education payment, equal to its weighting, was \$435,961,209. The general fund amount shown represents the amount that would be left to be paid by the State after the special education payment is deducted from the state payment due pursuant to K.S.A. 72-6416.

The revelations coming from this chart provide evidence of the legal fact that the continuing, and presently existing, legislative failure to set the BSAPP at a higher level and/or adjust the weightings to be applied upward in support of producing a district's general fund represents a glaring constitutional flaw in implementation of the K-12 school finance system. The chart's revelations further belie any practical, as well as legal, reliance on a LOB as a constitutionally adequate funding source given its statutory funding design is optional and voluntary as to both its existence and in the dollar contribution to be made by it. Further, budget projections are compromised by the differing deadlines for determining the State budget and for determining a school district's budget. The State has to act on its budget generally in the spring (legislative session) before the school districts declare their budget commitments (August).

Reference, too, to our *Appendix B*, which reflects the decimation that occurred to staffing and school

programs from cuts initiated beginning in February 2009, evidences that requiring the LOBs and necessary reserve funds to be consumed is itself an insufficient backstop for insufficient funding from direct statewide resources to the BSAPP and its weightings. As we have noted earlier, the legislature's failure to restore the BSAPP and its weightings to an adequate level, in fact, allowing the BSAPP, as the generator of adequate funds, to actually fall 9.1% in purchasing power since 2009, despite token increases since, answers the question of whether adequacy has somehow been restored or achieved.

Further it should be considered that just to have restored the reserve funds held by schools in FY2009, even if perhaps now accomplished, would have required the cannibalization of other funds since these reserve funds principally originated from transfers from the general fund. See K.S.A. 72-6409(b); K.S.A. 72-6426; K.S.A. 72-6428. Maintenance of reserve funds is an important component of budgeting. See Plaintiffs' Exhibit 348. Most certainly, LOB budgets guided by the

alternative BSAPP LOB budget cap of \$4433 until this year provided no source for the restoration of school resources, purchasing power having been eroded by 11% by the effect of inflation since that alternative BSAPP figure was set by K.S.A. 72-6433d. The 1.2858% increase to \$4490 in the K.S.A. 72-6433d cap enacted in the 2014 legislative session for FY2015 obviously cannot provide an adequate resource except by reducing the lost purchasing power from 11% to 9.7% beginning in FY2015. Further, since inflation is a constant factor going forward, to stand still is to lose more.

ADEQUACY AS A MATTER OF EXPERT OPINION, EXPERTISE, OR INVOLVEMENT:

Considering the previous discussion, we find it significant that the true experts, and the true expertise in the area of education, as presented to us, were from those trained or tasked with actually providing, or overseeing, the state's educational pursuits. In this case, these are the teachers and staff of the local school districts, the local boards

of education, the members of the Kansas State Board of Education, and others who have been tasked with the day to day duties or have material involvement with the needs and operation of the Kansas K-12 school system. Of the experts presented extraneous to the Kansas school system, such as Dr. Baker or the retained and underlying principals behind the Augenblick & Myers study and the retained and underlying principals behind the LPA study, we find these authors' credentialed opinions, prefaced as they were against the outputs to be achieved, to be highly credible and wholly unimpeached. We find the State's expert, Dr. Hanacek, as we had earlier noted in our original *Opinion*, believed that educational advancement rests in the quality of, not necessarily the quantity of, the resources it purchases. This, of course, is but a truism. We doubt he would eschew any of the Rose factors as not proper goals of an educational system nor doubt that the overwhelming majority of students can be taught, rather differing only on how best, how

efficiently, or at what cost it can be done. He acceded that it was the quality of the teaching that is key. Hence, Dr. Hanacek's opinions would not impeach the existence of achievement gaps, only question the strategies employed to overcome them. He proffered no solutions, but quality teachers, and certainly nothing that could be provided cheaper, much less free. As we noted, nothing in this case impedes independent inquiry into efficiencies, but the State's constitutional duty of providing a constitutionally adequate K-12 education cannot wait on the resolution of better or less expensive methods to its end.

The Kansas 2010 Commission, originally created by the legislature to monitor and report on school finance issues, recommended in its annual reports from December 2007 through its last report to the 2011 legislature issued in December 2010 that the BSAPP be set at \$4492 and that figure be inflation adjusted. (Plaintiffs' Exhibits 178 (2010) - 181 (2007)).

Further, the Kansas State Board of Education, has by a majority, at its meetings in July of each year beginning in 2009 recommended, unfailingly until this year, that the Legislature "fund current law" for the fiscal year next following the meetings. Before this year, there was a statutorily set BSAPP of \$4492. Further, other separately paid school funding was recommended including supplemental state aid, capital outlay, parents as teachers, the Mentor Teacher Program, professional development, school lunch, and national board certifications. See Plaintiffs' Exhibit 188: Board minutes (2009) at pps. 3-4); Plaintiffs' Exhibit 190: Board minutes (2010) at p. 3; Plaintiffs' Exhibit 186: Board minutes (2011) at p. 4 (also by judicial notice); Board minutes (7/10/12) at p. 5 (judicial notice); Board minutes (7/9/13) at p. 3 (judicial notice): recommendation for FY 2015 (judicial notice). For FY2016, the Board recommended the BSAPP be at \$4200 but increase the special education payment to 92% consistent with the long existing statute

(K.S.A. 72-978(a)(11)), increase Parents as Teachers funding and partially fund other noted separately paid programs. Prior to this meeting, the 2014 legislature had restored capital outlay funding and full supplemental state aid funding pursuant to an order of the Kansas Supreme Court. However, the legislature amended the \$4492 BSAPP set in K.S.A. 72-6410(b)(1) to reduce it to "be at least \$3838". (Senate Substitute for HB2506 § 37(a)). Hence, using its prior terminology of "funding the law" the Board obviously believed was not appropriate. For FY2017, the Board recommended the BSAPP be increased by \$100 per year as their recommendation after FY2016 and adopted like recommendations made for FY2016. Board minutes (7/8/14) at pps. 3-4 (judicial notice). No evidence has been proffered for the \$4200 BSAPP sum and the \$100 annual increments. As we note, that beginning sum is inconsistent with the established facts, both present and historical.

Every school district official, every teacher, and every school employee that dealt with students and every official from any association that dealt with K-12 schools and their funding needs opined that school district needs in terms of funding were presently, and clearly, inadequate to the tasks of providing a constitutionally adequate education to Kansas's K-12 students. None waivered in their opinion, no opinion faltered in the face of cross-examination, and no evidence, other than that previously rejected by us, was offered to the contrary. The experts whose studies propounded the costs to sustain a constitutionally adequate education similarly stood unimpeached as to either qualifications, expertise, or their conclusions reached. Nothing advanced here subsequent has undermined their opinions.

Accordingly, we conclude that that the Kansas K-12 school finance formula still stands as constitutionally inadequate by its failure to assure and implement adequate funding to meet and sustain a constitutionally

adequate education as a matter of sound expert opinion and sound opinion from those with relevant and reliable expertise and experience with the Kansas K-12 school system. As the *Rose* factors but express the accepted, common sense, outcomes to be achieved from a K-12 education, the approaches and principles to that end must rest currently with educators and those others knowledgeable in the approaches to accomplish those ends. It is fair and reasonable to believe, as highly true, from all the evidence advanced in this case emanating from these knowledgeable people, that these educational goals, these *Rose* standards, are not met, and will not be met, by the current level of state supported educational funding. School districts now stand belabored by fiscal incapacity to do so and hampered further by the resulting inability to accomplish those ends over the necessary time it takes to develop plans to do as was expressed by Dr. Lane. Clearly, the conclusion expressed directly, and certainly implicity, by all such individuals at

trial was that current funding was inadequate to the task of assuring a constitutionally adequate education, one that is tailored to, and will meet, the needs of the wide diversity of individual students that comprise the Kansas K-12 student body.

CONCLUSIONS:

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. It was supported by, and based upon, a consensus of expert opinion, both as to need and expense. At that time, the Kansas K-12 school system had the apparent necessary fiscal capacity and statutorily set funding in the future to plan to meet, and meet, the *Rose factors* if the LOB was considered, as well, a financial resource to some greater or lesser extent. At that time, the BSAPP was \$4433, capital outlay was fully funded to its statutory measure, special State supplemental aid was fully funded,

special education was funded above the federal "maintenance level", other programs such as Teacher Mentoring and Parents as Teachers were funded, Title I federal funds were being used, and a measure of LOB funds were still available for local enhancements or innovations. There was no cannibalization evident that would sacrifice essential staffing or programs to even still more essential staffing and programs. At that point the K-12 system was constitutionally functioning and moving, in our view, toward improving students' progress and opportunities as identified by the *Rose factors*. There were, in that period, resources available that gave school districts the fiscal capacity to provide a constitutionally adequate K-12 school education in light of the *Rose factors* to each student in Kansas willing to grasp it. The removal of any one of these financial pillars, whether separately funded or not - this *total* funding - was, is, and would be, a negative and demonstrably, in the recent past,

turned, and still turns, the K-12 system on itself harming its students.

Such a condition, as evidenced by the lack of proffers of any material change and the lack of any material dollar resources coming into the system, still materially persists. The recent restoration of capital outlay and supplemental state aid funding for FY2015 only eliminated the cannibalization of other needed funds that were used to augment these recently restored source of funds in the past. Therefore, in our view, as we noted, any claims for credit or setoff for otherwise independently *established* sources of funding has clearly not been sufficiently advanced, if at all, or otherwise lacks the facts, good sense, or sophistication to support the attempt and must be rejected. K-12 school funding in Kansas is still proceeding by political choice to use otherwise available state financial resources elsewhere or not at all or to shield above a certain level important local property tax resources from statewide taxation, both to

the harm of the Kansas K-12 school system and in the face of the constitutional imperative of Art. 6, § 6(b).

As we said in our original *Opinion* at p. 110:

“Certainly what the exact amount needed can well be seen to be within a range where some discretion may be exercised simply from the complexity and imprecision of the forecasting tools. A point fixed such as to discourage waste and promote efficiency is rational, but that point cannot be set merely by the amount of funds elected to be made available. Compare, *Americare Properties, Inc. v. Whiteman*, 257 Kan. 30 (1995).”

Importantly, we then felt, and still feel, that it is very important to ensure that a “brightline” of funding and formula structure be established from which to measure needs, whether that be an increase or decrease, and as a basis from which to assure constitutional adequacy has been maintained. The continuity of funding - its stability - is important for institutional planning and the maximization of existing resources and efficiencies. It was once said in a prior opinion that “hundreds” of ways were

available to the legislature to address K-12 funding issues. We would disagree as to the number, however, more to the point is that there are equally many such ways to undermine the K-12 school system, including to simply misspeak the essential expenditure needs that actually further student achievement. Without a brightline, the plethora of means to make dissipating changes to the Kansas K-12 finance formula can be gauged neither easily nor are they readily subject to prompt scrutiny. An example would rest in the elimination by § 36(f), § 36(u), and § 67 of Senate substitute for HB2506 of the non-proficient weighting for students otherwise ineligible for a free lunch, which caused a statewide decrease in funds that would have otherwise been employed to combat student non-proficiency, which status epitomizes a failure of educational purpose at a level far below that envisioned by the *Rose* factors. A brightline would also establish a baseline from which to calculate inflation. As a "brightline", such sum and the

statutes distributing it, would stand as clear markers to evaluate the effect of any forthcoming, or in-progress, changes to the K-12 school system as well as to accommodate in dollars any efficiencies that might be subsequently brought to bear in the future that could diminish or stabilize system costs.

We did not, at the entry of our original *Opinion*, expressly include a future inflation adjustment above the BSAPP of \$4492 we deemed preliminarily "adequate". Rather, we sacrificed that obvious need in favor of that fixed brightline set by statute K.S.A. 72-6410(b)(1), since repealed and now reduced to \$3838, leaving the obvious to the legislature or by the passage of further time to a modification of our brightline judgment amount on appeal. Nevertheless, inflation needs to be considered.

As we have discussed in our earlier analysis, if the LOBS are to be relied upon as a significant funding source, both a fail-safe and a floor need to be established to assure the existence and continuity of

adequate funding. However, until a floor is established to determine where and at what level reliance on local option budgets must necessarily cease and a fail-safe funding mechanism established to assure constitutional funding adequacy in order to prevent an unconstitutional shortfall, no proper allocation between a BSAPP and LOB funding can be identified, only the total of the shortfall can be best identified by reference to the per pupil core expenditures necessary to meet the educational outcomes set by the *Rose factors*. Thus, at least in the first instance, a political judgment must be made by the legislature in regard to the proper reaches of, and parameters for, the concept of the LOB in terms of the use of those funds for enhancements or spending at the choice of local school boards. However, the need to establish such a floor and establish such a fail-safe is not an option if the LOB is to be relied upon as a pillar of constitutionally adequate funding. Without such a line and without such a fail-safe, the Kansas school finance

formula's current reliance on the LOB as a funding mechanism is clearly violative of Art. 6, § 6(b) as it lacks assurance to the funding.

Here, as we noted earlier, the long time consensus of expert opinion and expertise reflected that any sum less than the value of \$4492 as the BSAPP, including the pre-existing weightings to be derived from it, would be inadequate from any expert or evidential perspective. The unanimous evidence was that the Kansas K-12 system was progressing in its educational mission from and after the *Opinion in Montoy II* to the beginning of the cuts first had in February, 2009, when the BSAPP beginning July 1, 2008, had been set at \$4433 and was scheduled for FY2010 to be \$4492. These established BSAPP amounts were subject to set off for the State's special education payment after weighting to comprise a school district's general fund. Inflation was not a factor, given the "Great Recession", until beginning in 2010. Now \$4492, as the FY2010 BSAPP was then set to begin July 1, 2009, would

be worth \$4980 in 2014 dollars. A BSAPP in 2012 dollars of \$4492, as we sought to enforce in our January 2013 *Opinion*, would now be worth \$4654 in 2014 dollars.

Of note to these funding considerations, however, is that in FY2009 the LOBs of school districts statewide at that BSAPP funding level of \$4492 in 2009 dollars would have required about 66% of those funds, *as measured against the average of the cost projections, to be used to support a constitutionally adequate level of funding*, hence, leaving about 34% to be substantially used in their traditional sense for enhancements. This allocation was determined by using our charting methodology in reference to Plaintiffs' Exhibit 9 - *FY2009 Legal Max* - and adjusting the general funds, exclusive of special education, and the LOBs upward by 1.33% to reflect the higher BSAPP of \$4492, then deflating the cost estimates, as shown in 2012 dollars, by 7.01%. That BSAPP sum of \$4492 in FY2009, based on the allocation of costs between the

general funds and the LOBs statewide, comports with our demonstrative charts at about 5.5% above that for a BSAPP set at \$4654 in 2014 dollars. See Appendix A. All USDs at Column V. However, when a BSAPP of \$4492 in 2012 dollars is configured against the needs of the Plaintiff school districts, with the exception of U.S.D. 443 in Dodge City, the LOB funds remaining, if any, for accomplishing a locally determined use are substantially, even perilously, reduced, in fact down to below zero in U.S.D. 308 in Hutchison, leaving only about 8% in U.S.D. 259 in Wichita, and only near 16% in U.S.D. 500 in Kansas City. Only Dodge City, at about 42% remaining, escapes this dearth in funds available for purely local discretion and choice. Inflation adjustments, which also require inflation adjustments to the study cost projections, do nothing but maintain the status quo, by example, a \$4492 BSAPP in 2012, which would be \$4654 in 2014 dollars, is but a maintenance mechanism for a status quo not a cure for any deficiencies existing in funding. Hence, the above

discussion in reference to the Plaintiff school districts applies without material change at a BSAPP of \$4654.

Assuming all other financing sources established by law are substantially funded in full and assuming no material changes to the statutory formula or weightings have been made or if made to the downside will not be maintained, our charting would indicate that a BSAPP near \$4654 could be appropriate, *but only so if it was also accompanied by selective and relevant upward changes in weightings* such as to meet the obvious needs of the Plaintiffs, and like school districts with large subgroups, that, in having been forced to use their LOB funds in the past or will without increased direct state sourced funding, need to in order to provide their students with the adequacy of education the Constitution demands. That sum of \$4654 as a BSAPP would also assume a low floor would be left for the discretionary use of LOB funds, but a BSAPP near \$4654, *coupled with relevant weightings increased upward in*

percentage, could fairly mark, when coupled with a floor and fail-safe, a bottom threshold level in our view of a range of reasonableness of constitutional funding adequacy as set against the *Rose factors*.

As our charting notes, a BSAPP of \$4492 in 2009 was worth \$4807 in 2012 dollars or an increase of approximately 7.01% above 2009 and is now worth \$4980 in 2014 dollars or a further increase of approximately 3.6%. However, common sense would dictate that the trauma of underfunding since 2009 brought a more critical eye to school district expenditures and some aspects of business as usual. Hence, the full impact of inflation may have been muted. In fact, reference to Plaintiffs' exhibits evidencing the ramifications of funding cuts by school districts during this period would reflect that some non-classroom or non-student oriented cuts, facially at least, reflect good business sense. Further, as previously noted, the ratio of use of the school district's general funds and their LOBs as applied against the average of the cost estimates

has stayed relatively consistent notwithstanding inflation.

However, if the LOB, as a financial resource, is to be to some substantial degree maintained for locally determined purposes, then a BSAPP funding threshold in the range of \$4980 or above in 2014 dollars could likely be needed just as a matter of having available dollars in an LOB for those purely local choices. A BSAPP sum of \$4980, as shown by our demonstrative chart, would provide more funds for local choice than the approximate probable usage in FY2009 of 66% of LOB funds for expenditures that can now be seen as actually necessary to support a constitutionally adequate education in light of the *Rose factors*, rather than merely "enhancements" as previously characterized. We cite again Plaintiffs' Exhibit 288 as an example of LOB usage for many such critical programs and staffing.

However, as we have noted, and by reference to our charting, at whatever BSAPP, a vagary between districts would exist in funds remaining in an LOB usable for

principally local enhancements above the fiscal capacity needed by a school district to pursue educational opportunities for its students in light of the *Rose factors*. This vagary cannot simply be corrected by a change in the BSAPP as it could overpay some school districts statewide and, like the examples with the Plaintiff school districts, does not level the playing field for the needs evidenced in all cases. It evidences a risk of inherent inequity if not properly tuned. Hence, at whatever BSAPP, attention to an upward increase in weightings needs to be considered, both as to fulfilling relevant needs that flow from such subgroupings and as a cost containment measure in lieu of a too broadly funded BSAPP for others. Such selective increases in weightings could well substitute for a greater increase in the BSAPP, which can be, as shown, not a one size fits all funding mechanism. Further, as noted, and similarly, whatever level is preserved in an LOB for strictly local use needs to be uniform in percentage while remaining equal in

purchasing power to the tax effort in order to avoid issues of inequity in funding and opportunity as well as in the use of the LOB funds.

We caution here we are not directing an exact BSAPP figure nor are we directing any exact method to any funding, but rather only noting parameters which should be considered in formulation to avoid unconstitutional results. As it is, we have no other reference from which to speak but the existing Kansas school finance formula. Whether, in fact, the LOB itself as a concept is to be maintained or what its parameters would be is one principally for the legislature. Rather, again, by reference to the adjusted overall study projections of the *core expenditure per pupil costs*, it is the necessity of an assured total of funding for *core educational expenditures* that needs to be met from whatever source that is our focus and is the focus of Art. 6, § 6(b) of our Constitution. It is best evidenced in this case by a per pupil dollar expenditure range for core expenditures that needs to

be met without reference to the nomenclature of how it would be met. We have only provided the examples. As such, the best guide to the appropriate funding to assure a constitutionally adequate education in light of the *Rose factors*, above any discretionary funding elected to remain in an LOB, is reflected by the per pupil expenditures needed for core expenditures as reflected in the cost studies as adjusted by us. In our charting, this is reflected for the Plaintiff school districts, as well as statewide, by columns E, F, and G or columns O, P, and Q, where shown as inflation adjusted for 2014.

Our approach to funding considerations is fortified by evidence of the unqualified invasion and overrun of LOB generated funds and local reserves during the shortfall in funds beginning in February 2009 and the layoff of staff and programs shown by the evidence to be instrumental to student success and an adequately balanced, *Rose factors*, K-12 education. Since 2009, these programs and staffing could only have been

restored from funds representing an increase in the student body count overall and any associated weightings. While we used the FY2012 "Legal Max's" "Total Adjusted Enrollment" figures in our analysis for constructing our discussions and charting here and in our prior *Opinion* (Plaintiffs' Exhibit 12), reference to the FY2015 "Legal Max", which we judicially notice, shows "Total Adjusted Enrollment" for FY2015 to now be 460,926.7 or a gain of 5944 new students. (See FY2015 "Legal Max" at Col. 4(c)). The category noted as "Subtotal weighted FTEs, excluding special education" (*Id.* Column 17(a)) reflects 683,497.2 or an increase, as weighted, of 11,528.2 students. Given the level of existing funding, these new funds generated based on an increase in students would have had to have been cannalibized when measured by the per pupil expenditures that go to providing a *Rose factors* education. Simply, no other identifiable source of funds has been identified or proffered that would have

made up for these shortfalls and inflation has just dug the hole deeper.

As we have found, if a school district's LOB is to be relied upon as a constitutionally acceptable pillar of funding, a statutory fail-safe and an equitable and enforceable floor to the credit sought by the State for heretofore "local funds" should be seen as necessary of establishment to protect against local funding inadequacy or local resistance by those who might see through what appears to be the mirage that currently stands under the nomenclature of local effort, local choice, or local control. The diversion of local funds to substitute for statewide resources at some point would seemingly seem to substitute a state conservatorship for local choice and control.

We find that as the financing system now stands, one cannot classify the school financing structure as reliably constitutionally sound because the legislature has tied its constitutional duty to the unenforceable precept, yet parochial illusion, of local control and

local funding choices as one linchpin for the assurance of constitutionally adequate funding. However, that delegation of constitutional duty to discretionary choice is both unlawful under Art. 6, § 6(b) and substantially threatens the common good of all Kansas children wherever they may reside in Kansas.

Further, *current* dollar funding inadequacy has been established beyond any doubt notwithstanding the use of those LOB resources. As our *All USDs* chart in *Appendix A* evidences, a bottom range of reasonableness is reflected to be somewhere near \$4654 per pupil, *but only when that BSAPP is coupled with increases in weightings*, the LOB is intended to be consumed substantially in full to meet the *Rose factors*, and a fail-safe exists that would kick in that would backstop any shortfall. If that approach is chosen, then substantially all choice of expenditure purpose for an LOB has been surrendered to the State.

At a BSAPP of \$4980, only about one-half of the LOB funds *statewide* would remain for what before stood as

local efforts and sacrifice to improve their local system beyond merely adequate. Nevertheless, the vagary between school districts in the amount of traditional use LOB funds left may vary and expose an inequity. As we have noted, and as can be ascertained from our charting in *Appendix A at All USDs, Columns A-J*, if *all* the funds to provide a *Rose factors* education at a BSAPP of \$4980 were to come from local districts general funds as generated by a BSAPP and its weightings, *exclusive of special education*, and the LOBs were fully preserved as originally envisioned, the *increase in the funding obligation from statewide resources* would then range from \$491 per unweighted pupil to \$1692 per unweighted pupil with the average being \$1092 per unweighted pupil. If not, then this range of amounts otherwise would be left to be drawn instead from LOB funds, including as supported by supplemental state aid, yet, as the current formula stands, the lack of an assurance of adequate funding from LOB sources, being unenforceable as to result, and

without a fail-safe and an equitable floor, cannot stand as constitutionally acceptable support for a constitutionally adequate education in light of the *Rose factors*.

Nevertheless, whether, and how, that overall obligation is to be shared or imposed is a matter for the legislature after consulting with their constituents. However, imperative to that legislative choice to rely on the LOBS, if that be the choice, then, beyond any floor or fail-safe needed, there is also a necessity for an expenditure mandate to the use of funds at least equal to the one accompanying supplemental state aid payments. This would, in turn, make the latter mandatory, rather than discretionary as we previously found. See K.S.A. 72-6434(e)(1) and (f). Further, it is a choice that the State, *as the ultimately responsible party by our Kansas Constitution*, would need to be committed to enforce. It would be a choice that could also carry other litigation risks for the State or the school districts.

By example, if the LOB funds remaining were too low or too restricted, other objections may come to fore, e.g., *Patrella v. Brownback*, 980 F.Supp.2d, 1293 (D. Kan. 2014); *U.S.D. 229 v. State*, 256 Kan. 232 (1994); and *U.S.D. 380 v. McMillen*, 252 Kan. 451 (1993).

However, what that line is, if that course is chosen, is not ours at this time nor should it ever be in the first instance. Of course, a, perhaps, more difficult choice, yet the most straight forward and transparent choice, would be for the State to fully fund the formula from the front end rather than approach it from the rear. While subtlety accompanied this backdoor financing approach in the past, that choice would now become transparent.

Accordingly, paraphrasing the textual premise of the Kansas Supreme Court's Remand Order, we find the Kansas public education financing system provided by the legislature for grades K-12 - through structure and implementation - is *not* presently reasonably calculated to have all Kansas public education students meet or

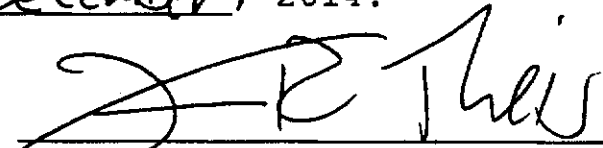
exceed the *Rose factors*. As we have analyzed, it is inadequate from any rational perspective of the evidence presented or proffered to us.

For obvious reasons, we would caution that this case not be summarily concluded, *i.e.*, be dismissed, until the appropriate and necessary judgments have been made by the legislature and some time passes thereafter which would be used to gauge the effects of the judgments made that would assure a constitutional commitment to constitutionally acceptable funding has been reached. Only then could the long pattern of faltered compliance with Art. 6, § 6(b) of the Kansas Constitution not again work harm to any K-12 students. If constitutionally conforming action is taken by the legislature, its tenets should be reduced to a binding enforceable judgment. Nevertheless, we understand the self-imposed fiscal dilemma now facing the State of Kansas, both with or without this *Opinion*. Since the obligations here declared emanate from our Kansas Constitution, avoidance is not an option. However, the

affirmative path to compliance and its duration may well rest in sincerity, practicality, and reasonable accommodation. A renewed effort at mediation focused on a remedy would seem appropriate, yet, at the parties choice. We do not perceive we have authority through this remand to enter but a declaratory judgment and findings. We only declare the omissions or defects identified by the evidence under the auspices of the mandate. Accordingly, a declaratory judgment is entered as stated aforesaid in this *Memorandum Opinion*. However, this Court stands always ready on proper application to act to enforce our Kansas Constitution.

Lastly, in concluding, we highly commend the efforts of all attorneys who presented their respective positions professionally and competently on the issues in this important case and we appreciate the patience accorded us in the completion of our task.

By the agreement of the Panel, IT IS SO ORDERED,
this 30th day of December, 2014.

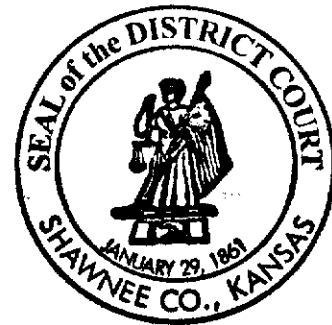


Franklin R. Theis
Judge of the District Court,
Panel Member and Presiding Judge

Robert J. Fleming
Judge of the District Court,
Panel Member

Jack L. Burr
District Court Judge Retired,
Panel Member

cc: Alan Rupe
Jessica L. Skladzien
John S. Robb
Arthur Chalmers
Gaye B. Tibbets
Jerry D. Hawkins
Rachel E. Lomas
Stephen R. McAllister
Jeffrey A. Chanay
M.J. Willoughby
Derek Schmidt

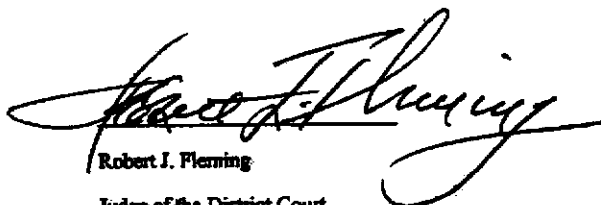


STATE OF KANSAS, COUNTY OF SHAWNEE, S.S.
I hereby certify the above and foregoing to be
a true and correct copy, the original of which
is filed and entered of record in the court
Dated February 12, 2015

CLERK of the DISTRICT COURT
By Ashley Michaelis
DEPUTY

By the agreement of the Panel, IT IS SO ORDERED, this _____ day of _____, 2014.

Franklin R. Theis
Judge of the District Court,
Panel Member and Presiding Judge



Robert J. Fleming
Judge of the District Court,
Panel Member

Jack L. Burr
District Court Judge Retired,
Panel Member

Alan Rupe


- Jessica L. Skladzien
- John S. Robb
- Arthur Chalmers
- Gaye B. Tibbets
- Jerry D. Hawkins
- Rachel E. Lomas
- Stephen R. McAllister
- Jeffrey A. Chanay
- M.J. Willoughby
- Derek Schmidt

By the agreement of the Panel, IT IS SO ORDERED, this

_____ day of _____, 2014.

Franklin R. Theis
Judge of the District Court,
Panel Member and Presiding Judge

Robert J. Fleming
Judge of the District Court,
Panel Member



Jack L. Burr
District Court Judge Retired,
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APPENDIX A

The following charts attempt to separately reflect the overall school districts statewide general funds total and each individual Plaintiff school district's general fund - U.S.D. 259, Wichita; U.S.D. 308, Hutchinson; U.S.D. 443, Dodge City; and U.S.D. 500, Kansas City, Kansas - all exclusive of special education, the approximate LOB applicable to each entity charted given a certain dollar level of a BSAPP, the value per pupil of these funds, a comparison of the per pupil costs taken from the Augenblick & Myers and Legislative Post Audit Studies with those values, and ending dollar balances in such funds or the lack thereof if such cost estimates were met at the BSAPP levels profiled.

While the charts should be mostly self-explanatory, the study estimates need further explanation. The estimates from the cost studies in the noted columns were conformed by us as best as possible to reflect equal component measures. See our original trial court

Gannon opinion at pps. 98 - 108. The Augenblick & Myers study estimates were constructed as done in that earlier opinion.

The Legislative post audit study estimates also follow our original Gannon opinion footnotes, however, here, the LPA estimates have been individualized for the noted school district charts and for the statewide - all USDs - composite of school districts chart. Here, the beginning basis for the LPA study estimates was taken from *Appendix F* of that study (Plaintiffs' Exhibit 199, pps. C68-C77) and appropriately inflation adjusted from 2003-04 dollars (*Id.*, p. C77).

Further, for reasons explained in the *Opinion* of which this Appendix is a part, federal funds are not deducted in the LPA estimates as they were by the LPA or as we assented to in our original Gannon opinion. Further, although we had deducted expense attributed to capital outlay in our earlier *Opinion*, as did the LPA, it was not deducted here from the inflation adjusted estimates shown in 2012 dollars since no capital outlay

was paid in that period and school district's general funds, as a practical matter, and as we found, substituted therefore, if at all.

However, since capital outlay was reinstated for FY2015, capital outlay is appropriately deducted based on an exhibit proffered by both parties, which is the Dale Dennis's Memorandum of April 17, 2014, with an attachment showing the effects of Senate Substitute for HB2506, which included a reference to "Proposed Capital Outlay Aid". See *Plaintiffs' Motion for Judgment on the Existing Record* at Exhibit B; *Plaintiff's Supplemental Response to Show Cause Order* at Exhibit 507; and the *State's Proposed Findings of Fact and Conclusions of Law* at Ex. 1501.

The capital outlay amount to be deducted from the estimates was arrived at by dividing the capital outlay entitlements shown for each noted school district and then for the school districts statewide by the school district or statewide, as appropriate, 2014 per pupil "total adjusted enrollment" as shown in the "FY2015

Legal Max", which we also judicially notice. These adjustments for capital outlay are reflected in the 2014 inflation adjusted estimates under the BSAPP comparisons for \$4654 and \$4980. Because the other comparisons stated in 2012 dollars do not reflect a capital outlay adjustment, there is some distortion on what would have otherwise occurred with the inflation adjustments with the LPA comparisons. Further, as to all comparisons, rounding of the numbers may have produced some imprecision.

	H	I	J	K	L	M	N	O	P	Q	R
d - e \$)	Difference + or - Actual General Fund Per Pupil vs. A&M Projection Per Pupil \$ (D-E)	Difference + or (-) Actual General Fund Per Pupil vs. LPA Projection Per Pupil \$ (D-F)	Difference + or - Actual General Fund vs. A&M/LPA Projection Average Per Pupil \$ (D-G)	LOB \$	LOB Per Pupil \$	General Fund and LOB Combined \$	General Fund & LOB Per Pupil \$	A&M Pro- jection Per Pupil \$	LPA Projec- tion Per Pupil \$	A&M and LPA Projec- tions Averaged Per Pupil \$	Difference + or (-) Actual General Fund and LOB Combined Per Pupil vs. A&M Projection Per Pupil \$ (N-O)
	(-) 3159	(-) 2053	(-) 2606	967,519,099 (Plaintiff's Exh. 12)	2126	3,522,236,455	7741	8774	7668	8221	(-) 1033
	(-) 2101	(-) 995	(-) 1548	969,208,721 From Plaintiff's Exh. 253, p. 8, Col. D)	2130	4,005,132,097	8803	8774	7668	8221	(+) 29
	(-) 2177	(-) 976	(-) 1577	1,004,158,387	2207	4,149,557,160	9120	9090	7889	8490	(+) 30
	(-) 1634	(-) 528	(-) 1081	1,037,150,252	2280	4,285,921,857	9420	8774	7668	8221	(+) 646
	(-) 1692	(-) 491	(-) 1092	1,074,549,890	2362	4,440,441,117	9760	9090	7889	8490	(+) 670
	(-) 1815	(-) 872	(-) 1344	917,235,442	2039	3,752,787,610	8343	8199	7176	7648	(+) 144

A&M and LPA Projections Averaged Per Pupil \$ (E+F÷2)	Difference + or - Actual General Fund Per Pupil vs. A&M Projection Per Pupil \$ (D-E)	Difference + or (-) Actual General Fund Per Pupil vs. LPA Projection Per Pupil \$ (D-F)	Difference + or - Actual General Fund vs. A&M/LPA Projection Average Per Pupil \$ (D-G)	LOB \$	LOB Per Pupil \$	General Fund and LOB Combined \$	General Fund & LOB Per Pupil \$	A&M Projection Per Pupil \$	LPA Projection Per Pupil \$	A&M and LPA Projections Averaged Per Pupil \$ (O+P÷2)	Difference + or (-) Actual General Fund and LOB Combined Per Pupil vs. A&M Projection Per Pupil \$ (N-O)
8918	(-) 2779	(-) 3181	(-) 2980	96,249,466 (Plaintiff's Exh. 12)	2100	368,403,379	8038	8717	9119	8918	(-) 679
8918	(-) 1661	(-) 2013	(-) 1862	98,071,821 From Plaintiff's Exh. 253, Col. D)	2140	421,448,645	9196	8717	9119	8918	(+) 479
9253	(-) 1720	(-) 2063	(-) 1942	101,608,291	2217	436,687,526	9528	9031	9374	9253	(+) 497
8918	(-) 1166	(-) 1568	(-) 1357	104,946,656	2290	451,034,999	9841	8717	9119	8918	(+) 1124
9253	(-) 1208	(-) 1551	(-) 1430	108,731,032	2372	467,299,321	10,196	9031	9374	9253	(+) 1165

r	A&M and LPA Projections Averaged Per Pupil \$ (E+F÷2)	Difference + or - Actual General Fund Per Pupil vs. A&M Projection Per Pupil \$ (D-E)	Difference + or (-) Actual General Fund Per Pupil vs. LPA Projection Per Pupil \$ (D-F)	Difference + or - Actual General Fund vs. A&M/LPA Projection Average Per Pupil \$ (D-G)	LOB \$	LOB Per Pupil \$	General Fund and LOB Combined \$	General Fund & LOB Per Pupil \$	A&M Projection Per Pupil \$	LPA Projection Per Pupil \$	A&M and LPA Projections Averaged Per Pupil \$ (O+P÷2)	Difference or (-) Actual General and I Combi Pupil A&M Projection Per Pupil \$ (N-O)
	8099	(-) 3402	(-) 2351	(-) 2877	8,773,919 (Plaintiff's Exh. 12)	1824	33,937,140	7046	8624	7573	8099	(-)
	8099	(-) 2418	(-) 1367	(-) 1893	8,920,822 From Plaintiff's Exh. 253, p. 8, Col. D)	1855	38,764,369	8061	8624	7573	8099	(-)
	8372	(-) 2505	(-) 1379	(-) 1942	9,242,507	1922	40,162,212	8351	8935	7809	8372	(
	8099	(-) 1983	(-) 932	(-) 1458	9,546,172	1985	41,481,752	8626	8624	7573	8099	
	8372	(-) 2055	(-) 929	(-) 1492	9,890,407	2057	42,977,584	8937	8935	7809	8372	

A&M and LPA Projections Averaged Per Pupil \$ (E+F÷2)	Difference + or - Actual General Fund Per Pupil vs. A&M Projection Per Pupil \$ (D-E)	Difference + or (-) Actual General Fund Per Pupil vs. LPA Projection Per Pupil \$ (D-F)	Difference + or - Actual General Fund vs. A&M/LPA Projection Average Per Pupil \$ (D-G)	LOB \$	LOB Per Pupil \$	General Fund and LOB Combined \$	General Fund & LOB Per Pupil \$	A&M Projection Per Pupil \$	LPA Projection Per Pupil \$	A&M and LPA Projections Averaged Per Pupil \$ (O+P÷2)	Difference + or (-) Actual General Fund and LOB Combine Per Pupil vs. A&M Projection Per Pupil \$ (N-O)
8958	(-) 2468	(-) 2759	(-) 2614	14,675,900 (Plaintiff's Exh. 12)	2418	53,176,249	8762	8812	9103	8958	(-) 50
8958	(-) 1273	(-) 1564	(-) 1419	14,895,541 From Plaintiff's Exh. 253, Col. D)	2455	60,647,816	9994	8812	9103	8958	(+) 118
9251	(-) 1319	(-) 1561	(-) 1440	15,432,674	2543	62,834,776	10354	9130	9372	9251	(+) 122
8958	(-) 744	(-) 1035	(-) 890	15,939,718	2627	64,899,225	10694	8812	9103	8958	(+) 188
9251	(-) 771	(-) 1013	(-) 892	16,514,504	2721	67,239,199	11080	9130	9372	9251	(+) 195

and ec- s age r l \$ +2)	Difference + or - Actual General Fund Per Pupil vs. A&M Projection Per Pupil \$ (D-E)	Difference + or (-) Actual General Fund Per Pupil vs. LPA Projection Per Pupil \$ (D-F)	Difference + or - Actual General Fund vs. A&M/LPA Projection Average Per Pupil \$ (D-G)	LOB \$	LOB Per Pupil \$	General Fund and LOB Combined \$	General Fund & LOB Per Pupil \$	A&M Pro- jec- tion Per Pupil \$	LPA Projec- tion Per Pupil \$	A&M and LPA Projec- tions Averaged Per Pupil \$ (O+P+2)	Difference + or (-) Actual General Fund and LOB Combined Per Pupil vs. A&M Projection Per Pupil \$ (N-0)
16	(-) 2489	(-) 3969	(-) 3229	45,495,582 (Plaintiff's Exh. 12)	2410	162,281,133	8597	8676	10,156	9416	(-) 79
16	(-) 1324	(-) 2804	(-) 2064	46,450,692 From Plaintiff's Exh. 253, Col. D)	2461	185,233,969	9813	8676	10,156	9416	(+) 1137
90	(-) 1372	(-) 2773	(-) 2073	48,125,704	2549	191,913,506	10167	8989	10,390	9690	(+) 1178
16	(-) 811	(-) 2291	(-) 1551	49,706,886	2633	198,170,716	10,498	8676	10,156	9416	(+) 1822
90	(-) 841	(-) 2242	(-) 1542	51,526,456	2730	205,343,892	10,878	8989	10,390	9690	(+) 1889

APPENDIX B

**PLAINTIFFS'
EX. 254**

KSDE000045

1/12/20	Col 1	Col 2			
USD#	County Name	USD Name	Programs Under Consideration for Reducing or Eliminating -- 2010-11		
		2009-10 FTE Enroll (inc MLT/VRT)	2010-11 FTE Position Reductions		
101	Neosho	Eric	506.5	30.00	Baseball, softball, golf, cross country, forensics, debate, chess, HS choir/band, HS speech/debate, vocational agriculture, wood shop, foreign language, business programs, preschool, transportation, custodial services, food service/cafeteria, library services, counseling services, career development food service, reduced mailings, preschool, inservice, health insurance, textbooks, assistance, elective programs, extracurricular activities, gifted services, summer school, paraprofessionals, utilities
102	Gray	Cameron-Ensign	658.7	10.00	
103	Cheyenne	Cheyfin	136.5	1.00	Combine elementary classrooms, industrial education, vocational agriculture, art, paraprofessionals, after school and summer school programs
105	Rawlins	Rawlins County	312.2	6.00	Industrial arts, vocational agriculture, music, math, science, social studies, foreign language, library services, athletics, paraprofessionals, maintenance, custodial, food service, PE, technology
106	Neos	Western Plains	164.0	5.00	K-5 music and art, 9-12 industrial arts, after school, summer and preschool programs
107	Jewell	Rock Hills	293.5	0.00	Not applicable
108	Washington	Washington County	396.5	5.00	track, golf
109	Republic	Republic County	473.0	8.00	Vocational agriculture, math, English, social studies, music
110	Phillips	Thunder Ridge	235.5	0.00	NA
111	Douglas	Douglas West	376.5	0.00	Covered by consolidation law
200	Grady	Grady County	214.0	5.00	
202	Wyandotte	Turner	3,785.7	30.00	Parents as teachers, transportation, communications, health insurance, video productions, marketing, middle school tennis, varsity athletics, Freshman athletics, middle level athletics
203	Wyandotte	Piper	1,635.0	26.00	Full-day kindergarten, pre-kindergarten, library services, K-3 counseling, K-3 art and music, extended day learning services/tutoring, summer school, lunch bus service to only 2.5 miles or more, lunch and extracurricular participation in activities, eliminate some activities, increase elementary class size above 30, increase HS classes to 39-40 students
204	Wyandotte	Bonner Springs	2,366.5	20.00	Nurses, media center personnel (cut secondary librarians), some counselors, increasing class size, fifth grade band, decrease sports and increase bus significantly, contract service for cleaning
205	Butler	Bloomton	535.5	5.00	HS career and technical education, HS English and social studies electives, establish multi-grade classrooms, middle school electives, nurses, school resource officer, elementary counselor, fifth day of school week, music, elementary school aides
206	Butler	Remington-Whitewater	524.5	3.50	Nurses, library services, remedial programs, athletics, activities, paraprofessionals
207	Leavenworth	Pt. Leavenworth	2,037.5	14.50	Custodial, food service fees, textbooks, transportation, junior high athletics, professional development, instructional materials
208	Trego	WaKeeney	411.2	10.50	FACS, vocational business, science, driver's education, music, art, library services, parents as teachers, preschool, paraprofessionals
209	Sevier	Moore	187.8	5.50	Shop, art, business, baseball, cross country
210	Sevier	Hogton	983.9	4.00	All summer school, after school tutoring, summer school music, parents as teachers, some athletic offerings
211	Norton	Norton	689.3	6.00	Reduction in staff
212	Norton	Northern Valley	196.5	4.00	Vocational agriculture, vocal
213	Norton	West Solomon	38.0	15.00	Disorganizing effective July 1, 2010
214	Grant	Ulysses	1,615.7	10.00	Parents as teachers, mentoring program, Career Learning Academy, courses, soccer, athletics, field trips, textbooks
215	Keany	Lakin	628.5	5.00	Summer school, non-varsity athletics, transportation
216	Keany	Deerfield	246.9	8.00	Art, business, library services, counseling services, increase elementary class size, participation fees for athletic and academic events, professional development, student fees, activities
217	Morris	Reha	199.0	3.00	Music, athletics, at-risk, scholar's bowl, forensics, activities, field trips
218	Morton	Bibb	643.1	9.00	Parents as teachers, three-year-old program, four-year-old program, transportation, golf, wrestling, cross country
219	Clark	Missouri	262.0	8.00	
220	Clark	Ashtand	222.0	5.00	Transportation, sports, activities, paraprofessionals art, after school and summer programs
223	Washington	Barnes	329.8	5.00	Elective classes, woods, agriculture, art, music
224	Washington	Clifton-Clyde	280.5	5.00	School schedule, summer school, field trips, transportation, athletics
225	Moore	Fowler	162.0	2.50	Elementary band/vocal music, librarian/library services/media, industrial arts (woodworking, metals/welding, CAD), physical education

1/12/20		Col 1	Col 2	
		2009-10	2010-11	
USD#	County Name	USD Name	FTE Enroll (inc MIL/T/VIRT)	FTE Positions Reductions
Programs Under Consideration for Reducing or Eliminating -- 2010-11				
226	Meade	Meade	477.4	4.70
227	Hodgeman	Jennare	264.5	8.00
228	Hodgeman	Hanston	74.5	0.00
229	Johnson	Blue Valley	20,320.8	170.00
230	Johnson	Spring Hill	2,833.5	10.00
231	Johnson	Gardner-Edgerton	4,567.5	60.00
232	Johnson	DeSoto	6,217.0	50.00
233	Johnson	Olathe	25,542.1	187.00
234	Bourbon	Pt Scom	1,842.3	20.00
235	Bourbon	Uniontown	438.5	6.00
237	Smith	Smith Center	433.0	3.00
239	Osawa	North Osawa Co.	620.5	8.00
240	Osawa	Twin Valley	607.5	5.50
241	Wallace	Wallace	200.0	3.00
242	Wallace	Weskan	183.0	4.50
243	Coffey	Lebo-Waverly	526.0	10.00
244	Coffey	Budington	823.0	10.00
245	Coffey	LeRoy-Ordley	246.5	4.00
246	Crawford	Northeast	561.5	10.00
247	Crawford	Cherokee	657.0	10.00
248	Crawford	Girard	1,007.0	24.00
249	Crawford	Frontenac	830.0	8.00
250	Crawford	Pittsburg	2,710.1	20.00
251	Lyon	North Lyon Co.	596.6	14.00
252	Lyon	Southern Lyon Co.	495.8	7.00
253	Lyon	Emporia	4,337.9	41.43
254	Barber	Barber Co.	455.8	5.00
255	Barber	South Barber Co.	227.5	2.00
256	Allen	Marion Valley	338.5	8.00

1/12/20		Col 1	Col 2		
		2009-10	2010-11		
USD#	County Name	USD Name	FTE Enroll (inc MLT/VIRT)	FTE Position Reductions	
Programs Under Consideration for Reducing or Eliminating -- 2010-11					
257	Allen	Jola	1,303.7	19.00	Building trades, alternative education, technology lab, photography, creative writing, driver's education, elementary art and music, PE, counseling services, increase class size
258	Allen	Flintfield	528.0	8.00	Reading, paraprofessionals, custodial, extracurricular activities
259	Sedgwick	Wichita	46,444.3	320.00	Close alternative schools, four-day school week, paraprofessionals, custodial, security, maintenance, athletics, fine arts, after school programs, library services, transportation, elementary art, C-cess athletics, transportation, pay in place, number of instructional days, parents as teachers, increase class size, field trips, all-day kindergartens, custodial, maintenance, four-day school week, tutoring programs, instructional supplies, summer school, clerical, community use of facilities, professional development, technology, district publications, emergency phone program, block scheduling, paraprofessionals
260	Sedgwick	Derby	6,330.7	60.00	Schools, school resource services, summer school and remedial/enrichment programs, after school tutoring, seventh grade athletics, athletics/activities, music, leadership academies, professional development transportation foreign language, textbooks, special education resource rooms
261	Sedgwick	Hayesville	4,780.6	75.00	Schools, school resource services, summer school and remedial/enrichment programs, after school tutoring, seventh grade athletics, athletics/activities, music, leadership academies, professional development transportation foreign language, textbooks, special education resource rooms
262	Sedgwick	Valley Center	2,533.7	30.00	Funding for technology, professional development, summer school, driver's education, athletics and activities, partnership with Wichita-based Communities in Schools program, reduce four-year-old at-risk positions, at-risk services, maintenance, transportation, food service, custodial
263	Sedgwick	Minerva	1,855.0	15.00	Parents as teachers, all-day kindergartens, four-year-old at-risk, IIS at-risk, technology
264	Sedgwick	Clearwater	1,275.4	15.00	Foreign language, sleep, art, drama
265	Sedgwick	Goddard	4,911.2	36.00	Counseling services, media services, technology, clerical, nurses, maintenance/custodial, transportation, food service, athletics, student activities, paraprofessionals
266	Sedgwick	Maine	6,381.7	75.00	All elective programs
267	Sedgwick	Berwick	1,945.7	18.00	Music, junior varsity athletics, golf, IIS bowling, middle school athletics, IIS cross country and wrestling, advanced placement programs, all-day kindergartens, reading/math specialists, paraprofessionals, Odyssey of the Mind program, Robotics program, Science Olympiad program, yearbook, library media services, music, art, foreign languages, computer applications
268	Sedgwick	Cheney	784.9	5.00	Parents as teachers, preschool, athletics, foreign language, all-day kindergartens, counseling services, fine arts
269	Roots	Palco	147.5	5.50	Vocational agriculture, custodial, clerical, combine attendance centers
270	Roots	Plainville	368.2	0.00	Parents as teachers, summer school, softball/baseball, cross country, tennis, communications technology, vocational agriculture, library services, counseling services, art
271	Roots	Stanton	288.0	10.00	Every program that is not mandated will be considered including the arts, vocational programs
272	Mitchell	Wacousta	357.3	5.00	All-day kindergartens, IIS elective classes, counseling services
273	Mitchell	Beloit	744.9	0.00	Covered by constitution law
274	Logan	Oakley	413.4	5.00	Nurses, K-8 art, elementary music, vocational programs, wood working, elementary PE, scholar's bowl, forensics, cross country, golf
275	Logan	Tupkins	82.5	14.00	Reductions would be catastrophic and likely close district
281	Graham	Graham County	372.5	7.00	All-day kindergartens, counseling services, health insurance for paraprofessionals, elective programs (IIS), elementary PE and music, increase elementary class size, athletic sports, scholar's bowl, science competitions, field trips
282	EBK	West EBK	337.2	7.00	Custodial, food service, clerical, library services, math, business
283	EBK	EBK Valley	198.6	1.00	Physical education, nurse para/aid positions
284	Chase	Chase County	405.1	5.20	Textbooks, custodial, maintenance, closed school day, four-day school week, transportation, IIS track, softball, baseball, wrestling, middle school track and wrestling
285	Chautauque	Cedar Vale	144.0	0.00	All-day kindergartens, athletics, combine elementary classes, clerical, counseling services
286	Chautauque	Chautauque	367.5	5.00	After school and summer school programs, professional development, extracurricular activity trips for students
287	Franklin	West Franklin	700.5	4.50	Increase elementary class size, student support services, athletics, secondary elective courses
288	Franklin	Central Heights	532.0	7.00	Summer school, athletics, preschool, wrestling, golf, debate, parents as teachers
289	Franklin	Wellsville	846.0	13.00	Elementary music, art, PE, all-day kindergartens, vocational IIS and middle school electives, middle school athletics, sub-varsity athletics, non-athletic activities

1/12/2011		Col 1	Col 2		
		2009-10	2010-11		
USD#	County Name	USD Name	FTE Enroll (see MFLY/VRK)	FTE Position Reductions	
Programs Under Consideration for Reducing or Eliminating -- 2010-11					
290	Franklin	Osawa	2,444.2	39.00	All-day kindergarten, at-risk academic coaching, bilingual, building aides, transportation, elementary art, librarians, technology, food service, criminal justice, electives, health careers, band/vocal music (middle and HS), language arts, technology, special education
291	Gove	Grinnell	73.8	2.00	Elective classes, combine elementary grades
292	Gove	Wheatland	182.0	5.00	Consolidating elementary classes, closing elementary building, contracting students to neighboring districts, discontinuing FACS, reducing vocational classes
293	Gove	Quinter	266.5	3.94	Art, vocational agriculture, music, library services
294	Douglas	Oberlin	358.0	6.00	Art, elementary music and PE, industrial arts
297	Cherokee	St. Francis	286.3	3.00	Music, art, counseling services, computer/Internet, industrial technology, library services, vocational agriculture, journalism, volleyball, basketball, basketball, wrestling, track, cheerleading
298	Lincoln	Lincoln	340.0	5.00	
299	Lincoln	Sylvan Grove	139.3	3.00	Music, art, some athletics, after school program
300	Comanche	Comanche County	317.0	8.00	Counseling services, driver's education
303	Neosho	New City	291.0	3.00	English, science, food service, custodial, art, music, business, FACS, industrial technology, vocational agriculture
305	Saline	Saline	7,050.5	75.00	Increase class size and reduce all programs in the district
306	Saline	Southeast of Saline	490.8	9.00	Vocational programs, art, music, PE/health, at-risk programs
307	Saline	ED-Saline	468.0	6.00	Library services, art, industrial arts, vocational agriculture, business, science, Plato math and FastForward, after school and summer school programs, athletics, food service, transportation, custodial
308	Reno	Hutchinson	4,661.7	37.00	Increase class size, library services, counseling services, FACS, music, art, all-day kindergarten, technology, day care center, school resource services, custodial, clerical, maintenance, nurses, student activities
309	Reno	Nicholson	1,167.0	10.80	Para-professionals, at-risk, library services, counseling services, career and technical education, music, art
310	Reno	Fairfield	303.1	5.00	After school and summer school programs, all-day kindergarten, pre-kindergarten, middle school sports, vocational programs
311	Reno	Prairie Prairie	258.4	7.35	Vocational programs, HS electives, HS and middle school music, yearbook, elementary at-risk reading and math, library services, after school program, junior varsity athletics (middle and HS), transportation, drama, forensics, scholar's bowl
312	Reno	Hayes	1,001.5	15.00	Library services, wrestling, golf, curriculum and teach fairs, close attendance center, scholar's bowl, elementary art
313	Reno	Baldler	2,143.5	27.00	All-day kindergarten, counseling services, library services, music, elementary art, HS electives, health insurance
314	Thomas	Brewster	98.0	2.00	Industrial arts, FACS
315	Thomas	Colby	919.1	13.00	Music, art, at-risk, special education, career and technical programs, reading, driver's education, counseling services, library services, technology, food service, transportation, maintenance, PE, Thomas County Academy
316	Thomas	Golden Plains	204.5	3.00	Parents as teachers, three-year-old preschool, elementary music and PE, library services, counseling services, vocational
320	Pottawatomie	Wamego	1,305.0	14.00	MAP test, after school programs, custodial field trips, professional development, technology, counseling services, music, robotics, at-risk, library services, instructional materials, food service, athletics, language arts, FACS, vocational agriculture, extracurricular activities, tennis, golf, cheerleaders, foreign language, forensics, student organizations, science, math, English, transportation, maintenance
321	Pottawatomie	Kaw Valley	1,124.9	75.00	Para-professionals, custodial, clerical, instructional materials, maintenance, utilities, athletics, at-risk, preschool, all-day kindergarten, vocational, elective courses, increase class size, counseling services
322	Pottawatomie	Osgo	318.5	10.00	Four-day school week, music, art, math
323	Pottawatomie	Westmorland	845.1	6.21	Transportation, capital outlay, staff development, technology, music, after school and summer school programs, parents as teacher, adjust school year, maintenance, student activities
325	Phillips	Phillipsburg	629.1	4.00	Vocational words and agriculture, FACS, middle school reading, health, art, library services, combine elementary classes
326	Phillips	Logan	188.5	4.00	Maintenance, reduce school work, extracurricular activities, clerical summer programs, art, music, combine elementary grades, pre-kindergarten, three-year-old program, at-risk, transportation, state health insurance
327	Ellsworth	Ellsworth	625.0	6.50	service, transportation, instructional supplies
328	Ellsworth	Lorraine	424.6	3.00	Preschool, (TV dual credit classes, baseball, cross country
329	Wabensaw	Alma	473.7	5.50	Counseling services, athletics, vocational programs, elementary humanities

11/12/10			Col 1	Col 2	
			2009-10	2010-11	
USD#	County Name	USD Name	FTE Enroll (inc MILY/VRT)	FTE Position Reductions	Programs Under Consideration for Reducing or Eliminating -- 2010-11
330	Webb	Webb East	499.5	9.20	Industrial arts, business, graphic arts, agriculture, FACS, foreign language, five-day school week, custodial/maintenance, athletics, textbooks, media services, music, combine elementary classes, paraprofessionals, summer and after school programs, bilingual, clerical, technology, student activities/field trips, classroom budgets
331	Kingman	Kingman	989.9	5.00	Music, technology, business, counseling services, FACS, cross country, golf, tennis, debate
332	Kingman	Cunningham	178.6	6.00	Shag, civil air patrol school based programs, business education/accounting
333	Cloud	Concordia	1,068.9	20.00	Vocational, after school programs, technology, library services, math, maintenance, custodial, transportation, field trips, increase class size, extracurricular activities, elective classes, block schedule, school summer services, clerical, increase school day, paraprofessionals
334	Cloud	Southern Cloud	256.5	8.00	Vocational agriculture
335	Jackson	North Jackson	376.5	6.50	Parents as teachers, parent resources, World History, reading, music, counseling services, all-day kindergarten
336	Jackson	Holco	1,057.5	25.00	Athletics, transportation, student insurance, custodial, paraprofessionals, at-risk, counseling services, length of school day, mobile units, medical center class, Washburn Tech classes
337	Jackson	Mayetta	908.2	17.00	Alternative education courses (9-12), writing services, clerical, after school athletic routes, staff development, non-varsity athletics, summer school, music, paraprofessionals, library services, math, reading assistance, art, food service
338	Jefferson	Valley Falls	414.3	5.00	K-12 art program, 6-12 FACS program
339	Jefferson	Jefferson County	482.5	7.00	Counseling services, assessment coordination, preschool, all-day kindergarten, combine classes, subtraction/activities
340	Jefferson	Jefferson West	893.9	21.00	Non-varsity athletics, elementary music, PE, art, middle school art and computers, science
341	Jefferson	Oaklawn	540.1	4.10	Vocational, summer school, PE, reading, art, FACS, early childhood, custodial, transportation, athletics, food service, maintenance, alternative school, technology
342	Jefferson	McLouth	493.1	7.50	Paraprofessionals, clerical, maintenance, summer school, all-day kindergarten, junior varsity athletics, parents as teachers, instructional materials, increase class size, PE, counseling services
343	Jefferson	Perry	956.3	7.00	Food service, transportation, sports, paraprofessionals, reduce building budgets
344	Lin	Pinestown	323.0	7.00	Eliminate elementary music, librarians, driver education, extracurricular programs, reduce vocational programs and staff development
345	Shawnee	Seaman	3,552.1	25.00	Library services, vocational programs, travel, equipment, field trips, at-risk, professional development, psychology advanced education, paraprofessionals, summer school, A-Reader, A-Math, music, instructional services, transportation
346	Lin	Jayhawk	519.1	8.00	Library services, FACS, welding, music, woodworking, food service, custodial, maintenance, increase class size, parents as teachers, textbook purchases, preschool, paraprofessionals
347	Edwards	Klaney-Ottawa	357.5	5.00	Increase class size, HS electives, paraprofessionals, health insurance, before and after school tutoring, summer school, adjust school year, Saturday school, textbook/instructional supplies, athletics, maintenance, food service fees
348	Douglas	Baldwin City	1,346.9	12.00	Shorten school week, lengthen school day, class attendance center, transportation, student activities
349	Stafford	Stafford	268.9	4.00	Parents as teachers, one sport, all-day kindergarten, driver's education, one-on-one laptop initiative, vocational programs (marketing and entrepreneurship, health sciences, FACS, FOCLA, agriculture (FFA), building trades)
350	Stafford	St. John-Hudson	318.5	5.00	FACS, elementary music and art, music, library services, all-day kindergarten, cross country, tennis, summer school, driver's education, counseling services, drama, student organizations
351	Stafford	Mackaville	265.0	2.00	FACS, library media, vocational education
352	Sumner	Goodland	900.0	14.00	Athletics, clubs, library services, jobs, increase class size, competitions, field trips, professional development
353	Sumner	Wellington	1,463.0	34.00	Vocational programs, math, science
354	Barton	Clifton	211.0	4.00	Industrial arts, preschool, all-day kindergarten, summer school, at-risk programs, athletics, music, art
355	Barton	Ellinwood	407.2	5.00	Elementary and middle school PE, social studies, increase class size, paraprofessionals, industrial arts, vocational business, music, athletics, extracurricular activities, custodial, food service, clerical, music, counseling services
356	Sumner	Conway Springs	514.9	7.00	Raise enrollment fees, increase pay to play fees, raise food service prices, transportation, activities programs, community use of facilities, raise textbook/class fees
357	Sumner	Belle Plaine	657.0	7.00	Vocational, music technology, athletics, counseling services, student activities, after school and summer school programs, field trips, at-risk, combine classes, paraprofessionals, technology, professional development, entrepreneurship (HS), after school and summer school programs, athletics
358	Sumner	Oxford	327.5	10.00	

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1/12/20	Col 1	Col 2			
			2009-10	2010-11	
USD#	County Name	USD Name	FTE Enroll (inc MILY/VERT)	FTE Positions Reductions	
Programs Under Consideration for Reducing or Eliminating - 2010-11					
359	Sumner	Argonia	179.5	3.00	Paraprofessionals, clerical, food service, student insurance, insurance deductibles
360	Sumner	Caldwell	234.0	5.00	Food service, reduce school week, art, industrial technology, music, multimedia, science
361	Harper	Anthony-Harper	845.1	12.00	At-risk programs, FACS, increase class size
362	Lin	Prarie View	944.9	13.00	Elementary PE, elementary music, library services, vocational programs, FACS, golf, cross country, freshman sports, sub varsity sports, middle school sports/activities, non-athletic activities
363	Fancy	Holcomb	946.0	12.00	Student organizations, counseling services, library services, technology, summer school, textbooks, art, business, vocational agriculture, Saturday school, swimming, increase class size, PE
364	Marshall	Marysville	721.7	8.00	Alternative school, at-risk programs, remedial classes, art, music, athletics (junior high & freshman), field trips, golf, tennis, softball, baseball, clerical, maintenance, computer replacement
365	Anderson	Garnett	1,300.9	15.00	supplies
366	Woodson	Woodson	398.5	18.00	Preschool, all-day kindergarten, IDL courses/connectivity, driver's education, after school and summer school programs, cross country, golf
367	Miami	Oswatimie	1,137.5	12.00	All-day kindergarten, middle school athletics, wrestling, parents as teachers, library services, summer school, summer band
368	Miami	Paoli	2,033.1	25.00	Reduce instructional days, elementary art, science, PE, computers, increase elementary class size, class attendance center, all-day kindergarten transportation, studentfood service bus, cabinmaking, culinary arts, music, custodial, maintenance: nurses, counseling services, clerical, library services, athletic/activities, community use of facilities
369	Harvey	Barton	237.2	5.00	Staff reductions
371	Gray	Montezuma	244.8	4.00	Transportation, vocational program, junior varsity extracurriculars, pre-kindergarten, all-day kindergarten, all elective courses
372	Shawnee	Silver Lake	743.6	10.00	Counseling services, after school and summer programs, elementary art, all-day kindergarten
373	Harvey	Newton	3,408.2	40.00	Building trades program, Visual Prescriptive Computer tutorial learning program, clerical, elective courses, increase class size, administrative and instructional supplies, paraprofessionals, transportation, athletics/activities, utilities, summer school
374	Hinsell	Sobieska	479.9	3.00	Elementary paraprofessionals, athletic/academic teams, vocal music, wood shop/welding, district in-service activities
375	Butler	Circle	1,629.7	12.00	Parents as teachers, talent programs, field trips (curriculum based instruction), staff development, textbooks, art, journalism, clubs
376	Rice	Sterling	530.5	6.00	K-12 art, Title I, tennis, golf, wrestling
377	Atchison	Atchison County	664.6	6.00	Elementary art, music, preschool, middle school art, after school tutorial, summer school, parents as teachers, middle school and freshman athletics
378	Riley	Riley County	684.5	11.00	Custodial services, transportation, technology, athletics, clerical, food service, student and lunch bus, instructional materials, professional development, FACS, elementary art, counseling services, preschool, food service, four-day school week, combine classes, forensics, debate, media courses, music, library services
379	Clay	Clay Center	1,354.5	18.00	Parents as teachers, all-day kindergarten, industrial arts, FACS, business technology, elementary art, music, counseling services, PE, art, library services, athletics, transportation, technology
380	Marshall	Vernilion	527.5	7.50	Vocational, reading recovery programs, summer school, professional development, cheerleaders/chorus teams, golf, track and field
381	Ford	Spawville	358.0	5.00	Field trips, music, athletics, student organizations, driver's education, paraprofessionals, scholar's bowl, cheerleading/dance, elementary vocal, before and after school programs, at-risk, professional development
382	Frank	Frank	1,109.4	22.00	Media, FACS, technology, counseling services, nurses, Freshman athletics, middle school art and technology, class attendance center
383	Riley	Manhattan	5,958.3	75.00	Nonprofits programs
384	Riley	Blue Valley	217.5	4.00	Parents as teachers, reading recovery, one-half of FACS, combine grades 1-4, maintenance and grounds program, (1) bus and (1) bus route, subsistence at home football games
385	Butler	Andover	4,703.3	60.00	Instructional materials, all programs, athletics, student activities, support services
386	Greenwood	Madison-Vigil	230.2	2.50	Student support services, elective classes
387	Wilson	Albion-Midway	183.5	7.00	Art, vocational agriculture, FACS, music, PE
388	Ellis	Ellis	394.1	6.00	Scholar's bowl, forensics, student organizations, golf, cross country, summer school, driver's education, cheerleading, athletics, at-risk, journalism, student activities
389	Greenwood	Eureka	610.0	8.00	Art, technology, vocal/drama (HS), transportation, all-day kindergarten, increase elementary class sizes

1/12/09		Col 1	Col 2	
USD#	County Name	USD Name	2009-10 FTE Enroll (inc MILTV/IRT)	2010-11 FTE Position Reductions
Programs Under Consideration for Reducing or Eliminating -- 2010-11				
390	Crawwood	Hamilton	93.5	1.00 At-risk programs, summer school, driver's education, transportation, teaching materials/equipment, extracurricular activities
392	Osborne	Osborne	331.9	4.50 Vocational, art, music, language arts, math, science, social studies, PE, clerical, custodial, transportation, paraprofessionals
393	Dickinson	Solomon	372.0	5.50 Counseling, clerical, academic support programs, maintenance
394	Buder	Rose Hill	1,727.6	32.00 Facility usage, summer school, all-day kindergarten, at-risk, athletics/activities, golf, cheerleading, soccer, baseball/softball, wrestling, football, cross country, student organizations, school resource services, parents as teachers, chemistry music, art, technology, MTSS
395	Rush	LaCrosse	294.5	6.00 Increase elementary class size, French, art, physical education, sports, scholar's bowl, FFA, FFA, FFA, band/vocal, ITV foreign language (Spanish), vocational agriculture, field trips, extracurricular activities
396	Buder	Douglas	740.3	15.00 Increase class size, employee benefits, library services, athletics/activities, field trips, school fees, paraprofessionals, curriculum materials, food and cafeteria education
397	Marion	Conant	241.0	4.90 Extracurricular activities, four-year-old at-risk, library services, driver's education, all-day kindergarten, vocational
398	Marion	Perdoo-Burns	325.9	6.00 All-day kindergarten, preschool, after school programs, credit recovery program, driver's education, drama/music, HS, junior varsity, junior high athletics, golf, bowling, cheerleading, cross country, quiz bowl, forensics, yearbook
399	Russell	Paradee	125.4	4.00 After school programs for at-risk, enrichment programs, combine elementary classes
400	McPherson	Smoky Valley	997.7	10.00 All-day kindergarten, at-risk programs, library/media services, vocational, fine arts, field trips
401	Rice	Chapp	139.5	3.00 Summer school and after school programs, athletics, activities, food service transportation, classroom supplies, professional development, utilities, student fees, shorten school year, staff development, combine classes, testing materials, technology
402	Buder	Atchison	2,180.5	17.50 All-day kindergarten, pay-to-play, pay to travel/activity/field trips, block scheduling, art, library services, athletics, technology, social studies, foreign language, custodial services, school resource services, music services, technology support
403	Rush	Otto-Bloom	177.0	9.00 Reduce FACS and industrial arts programs to half size, provide Spanish via ITV, counseling services
404	Chester	Riverton	796.0	7.13 Before and after school and summer school programs, alternative education, driver's education, technology, building trades/wood technology, art assessment preparation, drug testing, extracurricular activities, recognition program, Saturday school
405	Rice	Lyons	800.7	10.00 Middle school wrestling and tennis, HS boys' golf
406	Doniphan	Waltona	411.0	6.00 Elementary art, counseling services, summer school, junior varsity athletics, nurses, alternative school, after school tutoring, increase class size
407	Russell	Russell	945.5	12.00 All-day kindergarten
408	Marion	Marion	579.3	7.00 Elective classes
409	Atchison	Atchison	1,732.1	12.00 Extracurricular activities, library services, technology, summer school, interventions for students not meeting AYP, custodial services, food service, clerical, professional development, field trips
410	Marion	Durham-Hills	587.3	7.00 Maintenance, counseling services, technology, at-risk, food service, transportation, instructional materials, parents as teachers, elementary art and PE, low enrollment elective programs, special education, field trips, music, athletics
411	Marion	Gorham	257.5	2.00 All-day kindergarten, library services, athletics
412	Sheridan	Harcis	288.0	2.00 Vocational agriculture, increase class size
413	Neosho	Cherokee	1,818.6	15.00 After school and summer programs, field trips/extended learning, transportation, professional development, driver's education
415	Brown	Haworth	837.4	28.00 Profound athletes, at-risk, paraprofessionals, parents as teachers, business, reading program, industrial technology, applied technology, music, music, PE, middle school wrestling
416	Missi	Louisburg	1,676.0	20.00 Profound athletes, at-risk, paraprofessionals, parents as teachers, business, reading program, industrial technology, applied technology, music, music, PE, middle school wrestling
417	Morris	Morris County	750.9	8.00 Alternative learning, FACS, transportation, activity trips, advisory committees, counseling services, technology labs, driver's education, all-day kindergarten, at-risk programs, middle and HS athletics, music, Virtual Restorative Learning Lab
418	McPherson	McPherson	2,262.3	31.00 All-day kindergarten, library services, counseling services, music, clerical, custodial, increase class size, close elementary attendance center
419	McPherson	Canton-Galva	374.0	7.00 Athletics, activities, class sponsorships, clubs and organizations, curriculum work, professional development
420	Ozark	Ozark City	644.2	11.00 Cross country, MTSS support, track, baseball, softball, graduation recovery program
421	Ozark	Lyndon	427.0	8.00 Technology, at-risk, all-day kindergarten, driver's education, increase class size, PE, music paraprofessionals, summer school, after school program, athletics/activities, custodial, counseling services, technology
422	Keosauqua	Greensburg	206.0	0.00 None - cooperative agreement

1/12/20		Col 1	Col 2	
		2009-10	2010-11	
USD#	County Name	USD Name	FTE Enroll (inc MLE/VIRT)	FTE Position Reductions
				Programs Under Consideration for Reducing or Eliminating - 2010-11
423	McPherson	Moundridge	418.0	7.74
424	Kiowa	Madillville	223.4	4.00
426	Republic	Pine Valley	248.0	3.50
428	Barton	Grant Bond	3,049.8	33.00
429	Douglas	Troy	348.5	5.00
430	Brown	Brown County	617.2	9.00
431	Barton	Hempington	622.5	7.00
432	Ellis	Victoria	256.0	4.00
434	Osage	Santa Fe	1,061.5	20.00
435	Dickinson	Abbots	1,534.6	18.10
436	Montgomery	Camey	628.6	10.50
437	Shawnee	Auburn Washburn	5,412.0	238.00
438	Pratt	Skylark	342.5	3.00
439	Harvey	Sedgwick	354.3	0.00
440	Harvey	Halsomed	783.6	11.50
441	Nemaha	Subetha	926.6	9.00
442	Nemaha	Nemaha Valley	436.3	4.00
443	Ford	Dodge City	5,832.1	60.00
444	Rice	Latic River	320.0	3.00
445	Montgomery	Colleyville	1,816.0	32.00
446	Montgomery	Independence	1,840.2	24.50
447	Montgomery	Cherryvale	887.2	10.00
448	McPherson	Iman	456.0	4.00
449	Leavenworth	Easton	699.3	12.00
450	Shawnee	Shawnee Heights	3,405.3	25.00
451	Nemaha	B & B	186.5	5.00
452	Stanton	Stanton County	463.0	5.00
453	Leavenworth	Leavenworth	3,887.0	27.00
454	Osage	Burlingame	317.0	3.00
456	Osage	Marais Des Cygnes	263.0	6.00

1/12/20		Col 1	Col 2		
		2009-10	2010-11		
USD#	County Name	USD Name	FTE Enroll (loc MIL/7/VIRT)	FTE Positions Reductions	
Programs Under Consideration for Reducing or Eliminating - 2010-11					
457	Fancy	Garden City	6,934.3	55.00	Counseling services, services, increase class size, paraprofessionals, school resource services, clerical, maintenance, equipment/supplies
458	Leavenworth	Beaumont-Linwood	2,131.5	12.00	Parents as teachers, Youth Friends, all-day kindergarten, at-risk reading, standards classes, middle school activities, vocational, elementary art
459	Ford	Bucklin	244.7	6.00	Reduce school year and lengthen school day, social work, textbooks, technology
460	Harvey	Houston	812.1	8.00	Elementary and middle school art, counseling services, library services, FACS, health services, nurses, middle school athletics, clerical, vocational, field trips, professional development, all-day kindergarten, technology, junior varsity athletics, business
461	Wilson	Needville	718.3	3.00	Middle and HS industrial art, welding, baseball/softball (middle and HS)
462	Cowley	Central	347.0	6.00	Industrial art, vocational agriculture, K-12 art, FACS, library/media, computer applications/accounting/business, elementary reading and PE
463	Cowley	Udell	364.0	8.00	Agriculture/workshop, after school and summer school programs, art, yearbook, athletic, specialized reading programs
464	Leavenworth	Tonganoxie	1,860.8	10.00	Food service, transportation, custodial, paraprofessionals, increase class size
465	Cowley	Winfield	2,359.9	24.00	Alternative high school, counseling services, middle school electives, driver's education, summer school, Project Lead the Way program, Summer school/activities, drug testing, Success Center, library services, counseling services, elementary art, music, PE, after school program, reduce school year, textbooks, athletics, activity travel, professional development
466	Scott	Scott County	869.7	15.00	reduce school year, textbooks, athletics, activity travel, professional development
467	Wichita	Leoti	426.5	6.50	Vocational, library services, all-day kindergarten, baseball, field trips, transportation, clerical, custodial, maintenance, increase class size
468	Lawe	Floral	94.5	15.00	Music, PE, business
469	Leavenworth	Lansing	2,502.5	21.00	Parents as teachers, English second language, C-career athletics, PE, professional development
470	Cowley	Arkansas City	2,639.1	15.00	Custodial, transportation, clerical, at-risk, after school programs, anti-bullying, health/wellness, professional development, athletics, student activities, textbooks, instructional materials, advanced placement/enrichment programs, technology, health insurance
471	Cowley	Dexter	152.0	3.00	Summer school, driver's education, sharing of teachers, extracurricular activities, athletics, technology, library services
473	Dickinson	Chapman	967.2	2.00	Alternative school, transportation
474	Kiowa	Haviland	141.8	8.00	Cross country, volleyball, football, basketball, track, distance learning, transportation, scholar's bowl, raising lunch prices
475	Geary	Junction City	7,507.0	140.00	After school programs, tutoring, field trips, student learning enhancements, maintenance, professional development
476	Clay	Connell	107.0	2.00	Transportation, all-day kindergarten, pre-kindergarten, junior varsity extracurriculars
477	Gray	Ingalis	229.0	2.00	Industrial arts, four-year-old at-risk, kindergarten, after school and summer school programs
479	Anderson	Crest	224.5	4.00	Golf, middle school sports/club, high school cheerleaders, driver's education, librarians, half-day kindergarten, parents as teachers, middle school teacher
480	Seward	Liberal	4,375.0	75.00	Dual language, school resource officer, Community Learning Center, after school and summer school programs, alternative school, transportation, insurance, science fair, small group learning, instructional coaches, advanced placement classes, local business testing, preschool
481	Dickinson	Rural Vista	413.0	6.50	Preschool, all-day kindergarten, custodial, clerical, food service, library services, at-risk, technology, transportation, nurses, junior high athletics, variety of instructional days, counseling services, after school program, parents as teachers, driver's education
482	Lawe	Dighton	244.5	4.00	Increase elementary class size, parents as teachers, art, band, FACS
483	Seward	Kismet-Plains	725.0	5.00	All-day kindergarten, after school and summer programs, activity some transportation, driver's education, scholar's bowl, forensics, student insurance, vocational programs, professional development, sub-varsity or middle school athletics, low-enrollment elective disciplines
484	Wilson	Proctor	732.1	21.00	Reading recovery, at-risk, drama, English, forensics, social studies, library services, cross country, golf, combine elementary classes, maintenance, technology, transportation, textbook/instructional equipment, summer school, elective classes
486	Desha	Elwood	303.3	4.00	Elementary art, counseling services, before/after school and summer school programs, alternative school, junior varsity athletics, nurses, increase class size
487	Dickinson	Herington	506.1	9.00	Before/after/summer school programs, media services, music, PE, parents as teachers, summer driver's education, food service, clerical, maintenance, technology, custodial

1/12/09		Col 1	Col 2		
		2009-10	2010-11		
USD#	County Name	USD Name	FTE Enroll (inc MILT/VIRT)	FTE Positions Reductions	
Programs Under Consideration for Reducing or Eliminating - 2010-11					
488	Marshall	Axtell	295.0	7.00	Combine elementary classes, technology, field trips, textbooks/instructional materials, professional development, junior varsity athletics, compressed schedule
489	Ellis	Hays	2,843.8	24.00	All-day kindergarten, transportation, block scheduling, close attendance centers, health services, health insurance, food service, technology, four-year-old at-risk, community use of facilities, music, non-athletic extracurricular activities, athletics, PE, library services, counseling services, nurses, FAC, business, industrial technology, foreign language, four-day school week, monoflex school day/year, MAP testing, district school resource services, safety education, nurses, driver's education, summer school, intramurals, all-day kindergarten, extracurricular activities, athletics, field trips, library services, custodial, elementary art, professional development, clerical, maintenance, technology, community programs
490	Butler	El Dorado	1,994.6	14.00	Close early childhood center, all-day kindergarten, math, science, language arts, social studies, increase class size, culinary arts, health career science, graphic design, printing, middle school reading program, maintenance, middle school activities, reduce school days/add instructional time per day, clerical, custodial, food service
491	Douglas	Eudora	1,453.7	13.90	Industrial technology (middle and HS), yearbook (middle and HS), business/computer application type courses, HS newspaper, elective PE courses, vocal/instrumental offerings
492	Butler	Flint Hills	284.5	8.00	Alternative/urgent recovery, counseling services, after school and summer school programs, driver's education
493	Cherokee	Columbus	1,113.0	12.00	Support program for care classes
494	Hamilton	Syracuse	490.5	5.00	All-day kindergarten, library services, art, maintenance, music, athletics, increase class size
495	Pawnee	Pt. Larned	886.0	8.00	Paraprofessionals, elective programs, at-risk, golf, athletics, close attendance center, four-day school work, combine elementary classes, transportation, instructional supplies, textbooks
496	Pawnee	Pawnee Heights	150.1	0.00	Library services, counseling services, nurses, technology, instructional support, transportation, maintenance, increase class size, athletics, fine arts, activity programs, closure of attendance centers
497	Douglas	Lawrence	10,668.9	94.00	Art, FACS, Spanish, music, athletics, vocational agriculture
498	Marshall	Valley Heights	366.5	10.00	Driver's education, summer and after school programs, art, athletics, band, choir, foreign language (Chinese or Spanish), FAC, business, industrial art, multi-media, counseling services
499	Cherokee	Galena	756.5	10.00	Music, drama, athletics, student activities, four-day school work, maintenance, custodial, transportation
500	Wyandotte	Kansas City	18,941.7	193.00	Technology, out-of-state travel, instructional and non-instructional supplies, clerical, KATS/Walden Tech (vocational), professional development, utilities, school safety, maintenance, insurance, transportation, close attendance centers, custodial, counseling services, social work, block scheduling, pay to play athletics, health services, paraprofessionals, music
501	Stawnee	Topick	13,292.0	195.00	Staff reductions
502	Edwards	Lewis	109.0	2.00	Robotics, welding, auto mechanics, CADD, construction, FACS, music, art, counseling services, parents as teachers
503	Labette	Parsons	1,230.7	12.00	Elementary counseling, instrumental music, FAC, Gen-Y advanced computer studies, industrial technology, art
504	Labette	Oswego	465.0	8.00	After school and summer school programs, FACS, athletics, extracurricular activities/sports, clerical, paraprofessionals, custodial, food service, counseling services, math, reading, increase class size, library services, textbook purchases, transportation
505	Labette	Cherokee - St. Paul	497.6	8.00	Substantial reductions were made in 2009-10 affecting social services, nurses, paraprofessionals, technology, maintenance, transportation utilities, clerical, custodial
506	Labette	Labette County	1,607.4	10.00	Counseling services, maintenance, food service, paraprofessionals, student insurance, baseball/softball, transportation
507	Haskell	Salina	339.5	4.00	After school and summer school, credit recovery, preschool, vocational through area vocational school, evening tutorial, middle school intramurals, dual credit courses
508	Cherokee	Baxter Springs	927.0	3.00	Parents as teachers, preschool, science, paraprofessionals
509	Sumner	South Haven	222.0	2.00	Parents as teachers, art, activities
511	Harger	Axtell	139.0	2.00	Non-mandated programs, increase class size
512	Johnson	Shawnee Mission	26,339.6	197.00	
TOTALS			454,261.8	3,097.10	

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS,
IN THE MATTER OF PROCEEDINGS BEFORE THE
THREE-JUDGE PANEL APPOINTED PURSUANT TO
K.S.A. 72-64b03 IN RE SCHOOL FINANCE
LITIGATION

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

2015 JAN 23 P 3:06

LUKE GANNON, *et al.*

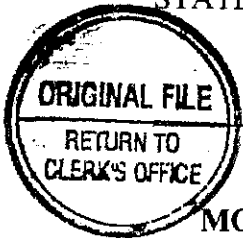
Plaintiffs,

v.

STATE OF KANSAS,

Defendant.

Case No. 2010C1569



FILED

FEB 18 2015

HEATHER L. SMITH
CLERK OF APPELLATE COURTS

**MOTION AND MEMORANDUM OF THE STATE OF KANSAS TO ALTER AND
AMEND THE PANEL'S OPINION AND ORDER ON REMAND**

Pursuant to K.S.A. 60-259(f) and K.S.A. 60-252(b), Defendant State of Kansas ("State") moves that the Panel alter and amend its "Opinion and Order on Remand" ("Remand Opinion"), filed December 30, 2014. In support of this motion the State declares the following:

I. The Remand Opinion *does not comply* with K.S.A. 60-252(a) and Supreme Court Rule 165 because the Panel's vague decision regarding the parties' extensive proposed findings of fact makes it impossible for the parties to take effective appeals and, more importantly, for the Supreme Court to engage in meaningful appellate review of the factual determinations the Panel has purported to make.

Critically, the Panel effectively failed to make findings of fact when it addressed the parties' extensive proposed findings as follows:

We believe the Plaintiffs' Proposed Findings of Fact attached to their pleadings for Judgment on the Existing Record speak the truth, as we also believed their original Proposed Findings of Fact spoke the truth. As before in our original *Opinion*, all facts, by whomever [sic] presented, could not reasonably be

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discussed individually. Facts inconsistent with our original *Opinion* and our *Opinion* issued following are rejected implicitly.

Remand Opinion, p. 8.

The “speak the truth” and “spoke the truth” statements are, to be candid, extremely ambiguous and largely unhelpful for meaningful appellate review. Even blanket adoption of either side’s proposed findings would at least be clear, and certainly clearer than the Panel’s vague and uncertain declaration above. It does not appear that the Panel is, or in fact would, adopt either side’s proposed findings wholesale. Indeed, the Panel rejected or appeared to reject many of the findings the plaintiffs proposed after trial when the Panel issued its original “Memorandum Opinion and Entry of Judgment of January 2012” (“Initial Opinion”). Moreover, in the more recent proceedings since the remand, the State has vigorously and explicitly contended that many of the plaintiffs’ proposed findings offered before and after the appeal are not supported by any evidence or the weight of the evidence.

Unfortunately, the Panel’s cryptic statement about facts being “rejected implicitly” is truly unhelpful and creates great uncertainty about the factual record on appeal and the factual basis for the Panel’s most recent decision. Neither the parties nor the Kansas Supreme Court can be sure whether the Panel is now adopting *all* of the plaintiffs’ proposed findings of fact? Or, if not, is the Panel simply agreeing with the legal conclusions the plaintiffs urged it to draw? Or, if the Panel agrees with some of the proposed findings of the plaintiffs but not others, which proposed findings fall within each category?

The Panel’s “implicit” rejection of “facts,” whether presented by the plaintiffs or the State, “inconsistent with” the Remand Opinion or the Initial Opinion, will require the Supreme Court to acquire encyclopedic knowledge of the case and the record. Further, the “implicit” rejection without explicit findings will require both the parties and the Supreme Court to engage

in rank speculation and a high stakes guessing game as to what the Panel has determined are the actual facts and whether such facts are consistent or inconsistent under the Panel's legal conclusions.

Furthermore, the Panel included the following and similarly erroneous language in its opinion: "no evidence has been proffered to us otherwise" and "no evidence or proffer of evidence supports otherwise." Remand Opinion, pp. 34, 40. Specific findings of fact are necessary so that these erroneous conclusions are corrected to allow proper review by the Supreme Court.

For example, the Panel wrote:

. . . , it seems but obvious that for educational advancement, . . . , that the revenue streams which supported those results for students in that period of favorable funding needed to be continued to be provided in order to properly educate the continuing stream of new faces going forward, either initially entering the school system or advancing in grade. *No evidence or proffer of evidence supports otherwise.*

Opinion, pp. 39-40 (emphasis added). This is the Panel's *evaluation* [the State contends it is the Panel's *policy judgment* on the subject]. It is not a statement that the State failed to proffer and present evidence on the subject. Indeed, the cause of any such failure lies with the Panel and not with the State.

First, the State was precluded from presenting new evidence. Opposing the districts' motion for judgment, the State contended a judgment that current K-12 funding was inadequate could not be entered from the evidence presented before remand. The State asserted that it would present "evidence about all present sources of local district revenue; current educational standards; current school accreditations; implication of the present federal 'waiver'; districts satisfying requirements tied to the goals described in *Rose* under present funding levels; LPA studies on district efficiency and common core implementation performed and completed after

trial; data and information about present funding levels and finance system calculations aimed at satisfaction of the *Rose* standards/goals; and legislative history relating to recent legislative enactments.” “Response to Plaintiff’s Motion for Judgment” [June 9, 2014], p. 17. It was also stated that “[i]f the plaintiffs choose not to rest their case on the existing record, then some discovery will be necessary in order to prepare for and present the new facts the panel should review,” and suggested that the Panel set “deadlines for witness and substance of testimony identification, document/exhibit production, any opinion testimony disclosures and deposition discovery.” *Id.* at 20. When told it should propose post-remand findings for the Panel to consider them, the State provided detailed proposed findings, which incorporated post-remand data and information. Yet, the State explained:

The post-trial information described in these findings will be supported by the documents described in the following new exhibits 1500-1528 and in testimony that the State anticipates presenting at any subsequent evidentiary hearings. *However, its evidence must not be limited to the information described here. Some pertinent budget and spending evidence is just now becoming available. Moreover, the State insists upon the rights to conduct limited discovery necessary to locate and present relevant evidence to buttress the findings that it proposes and to support additional findings.*

“State’s Proposed Findings of Fact and Conclusions of Law” (July 31, 2014), p. 2, n. 1 (emphasis added). The State also objected to limited consideration of factual information that the Panel requested from the parties after the remand, “IF THE PANEL WILL NOT CONSIDER ALL RELEVANT EVIDENCE THAT THE STATE OFFERS ON THE SUBJECT OF ADEQUACY OF CURRENT PUBLIC K-12 FINANCING.” “State’s Objection to the Panel’s Requests for Information Not in the Trial Record” (August 1, 2014), ¶ 6 (emphasis original).

Second, evidence was proffered and presented, from which it could be inferred, that the 2009-10 state aid per pupil level of State K-12 revenue was not necessary for continued educational advancement, particularly when all sources of revenue and actual spending after

2009-10 are considered. The State presented detailed findings, citing to the record and current public documents, that: School spending in Kansas is at record levels; Revenue to schools exceeded the Panel's former target for adequate funding; The Plaintiff Districts' revenue has increased when all sources of revenue are considered; Cost studies presented at trial have only marginal relevance; School funding has approximated or exceeded the LPA Study's recommended foundation spending, if not its consultant's estimate; Substantial federal funding is annually available to Kansas schools; Funding is adequate to meet the accreditation requirements for Kansas schools and these requirements are reasonably calculated to have all Kansas students meet or exceed the standards set out in *Rose*; Objective evidence shows Kansas students are able to compete favorably with students in other States; and, The districts' outdated evidence of cuts to programs and staffing and claims of increased economic demands fail to prove that the present school financing system is not reasonably calculated to satisfy the *Rose* standards.

"State's Proposed Findings of Fact and Conclusions of Law" (July 31, 2014).

Ultimately, the litigants, the Supreme Court and Kansas citizens are entitled to a thorough, objective, and explicit identification of the facts that the Panel has found, the very facts essential to supporting the Panel's legal reasoning and ultimate conclusion. Otherwise, meaningful appellate review of the Panel's factual findings and ultimate decision is not possible.

In summary, while the State continues to maintain that the Panel was obligated to presume the constitutionality of the legislative actions and decisions the Plaintiff Districts challenge in this Article 6 adequacy inquiry, and in doing so must accept the Legislature's actual and presumed fact findings, the Panel should identify, by document and number, the proposed findings of fact that it accepts as accurate, and further modify any such findings where necessary. The Supreme Court should be given the whole of the Panel's findings of fact, not left to guess

about them along with the parties. The Panel should make these findings, even if it concludes the findings do not change its ultimate conclusions concerning the adequacy of present financing of K12 public education, if for no other reason than to guard against the necessity of additional lower court proceedings or a remand precisely to engage in such fact- finding.

All that said, the State does not waive its objections to the Panel refusing to permit the parties to introduce additional, more current evidence about the schools and education finance in Kansas, nor does the State waive its objection to the Panel refusing to permit the State additional discovery of more recent and relevant evidence regarding the Plaintiff Districts and their operations. The State also objects to the Panel's selective judicial notice of post-remand "evidence."

II. The State contends the following proposed findings are accurate and based upon undisputed testimony, unchallenged documents or proper judicial notice. The proposed findings come from the “State’s Proposed Findings of Fact and Conclusion of Law” [July 31, 2014] and “First Supplement to State’s Response to Panel’s Request for Information” [August 27, 2014].

The Panel should make these findings of fact:

1. Ex. 241, adopted in the Initial Opinion at 75-76, reported only the reduction in revenue if hypothetically the BSAPP had remained at \$4,492 after 2010; Special Education funding had not be reduced 2% during 2009; and capital outlay and LOB had been fully equalized per statutes. Ex. 241. The “cuts” described in the exhibit were to revenue districts expected to receive, not reductions from previous funding levels.

2. The Panel adopted the districts’ proposed Finding 260 in its Initial Opinion. Initial Opinion at 80. The finding relates to funding in 2011-12 and does not address all sources of revenue regularly available to districts. Federal and LOB revenue are excluded. Initial Opinion at 86-119 [analysis of cost studies], 132-37 & 142-43 [supplement aid discussions], 149 [consideration of LOB state aid is “contrary to the evidence on a basis of either costs or equity”]. Finding 260 relied upon Ex. 328. The spending data summarized and referenced in Ex. 328 reported per pupil expenditures were the highest in Kansas history in 2011-12 when all source of revenue are considered. Ex. 328 at KASB000340.

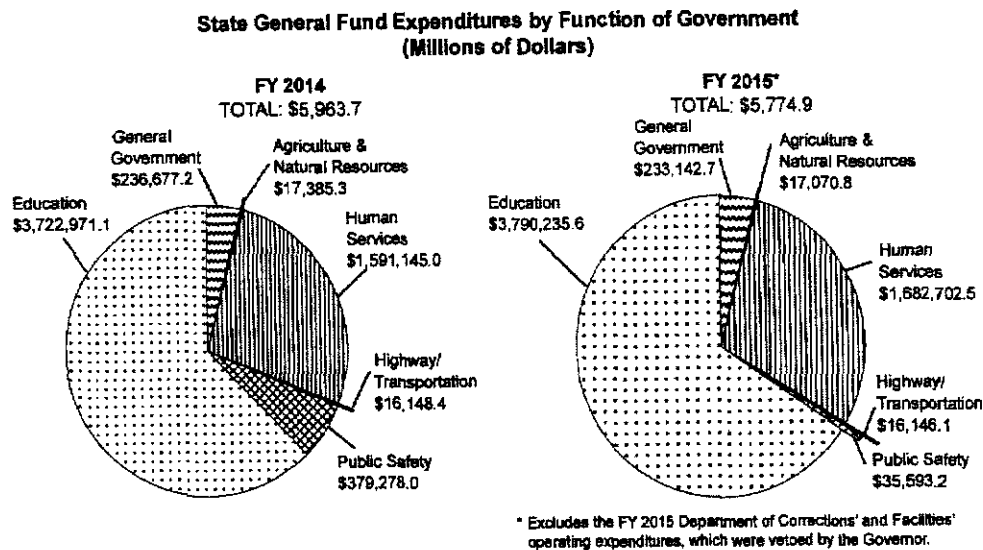
3. The State approved a \$3.8 billion FY2015 budget for its portion of the funding of primary and secondary education, which includes special education, general state aid, supplemental general state aid, discretionary grants, KPERS, pre-kindergarten, parent education and miscellaneous items.¹ Ex. 1502, pp. 2-157 to 2-161; *See also*, 2013 Kan. Sess. Laws, Ch. 136, § 144.

4. Then, by Senate Substitution for House Bill 2506 (“HB2506”), the State increased its FY2015 budget and appropriations for primary and secondary education. The bill appropriates an additional \$109.3 million for Supplemental General State Aid (LOB equalization) and arranges for transfer of \$25.2 million to the Capital Outlay Fund from the State General Fund. Additionally, HB 2506 made adjustments to K.S.A. 72-6405, et seq. (“School District Finance and Quality Performance Act” or “SDFQPA”). The Base State Aid Per Pupil (“BSAPP”) is increased for the 2014-15 school year to \$3,852 from \$3,838. The

¹ The FY2015 appropriation, made in 2013, is part of the current two year budgeting process. 2013 Kan. Sess. Laws, Ch. 136, § 144. The State appropriated approximately \$3 billion to the State General Fund for the budget, making up the \$3.8 billion with transfers from other funds. Ex. 1502 at 2-158.

net increase from the raised BSAPP in districts' revenue from state aid is estimated to be \$1.34 million. Ex(s). 1500, § 6; 1501.

5. Since 2000, more than half of the State General Fund, which is about half of the State's total budget, has been going to education. Tr., Tallman, at 1119-20. For FY2015, nearly two-thirds of the State General Fund was spent on Kansas education, including K-12 education. The following chart depicts this.

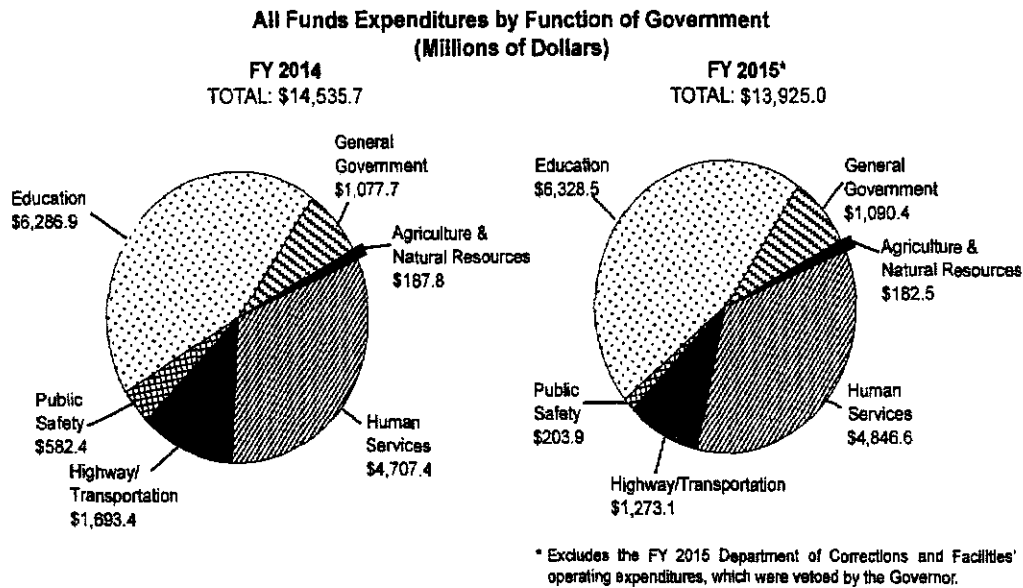


Ex. 1503 at 12.

6. At the trial, the most current local district spending data was from FY2011 because FY2012 data was not available until after 2011-12 school year had ended. Yet, even then, the total expenditures in FY2011 (state, local and federal) had decreased by 1.4% after the "Great Recession" (1.36% in FY2010 and .04% in FY2011). Ex. 1186.

7. As reported by the KSDE, FY2013 expenditures for K-12 education were \$81,459,983 higher than FY2012 and higher than any other time in Kansas history. [Ex. 1506 at 1] Revenue to districts has increased each year since FY2013. *Id.* Per pupil expenditures were the highest in history. [Judicial Notice, Ex. 1507 at III] Total operating expenditures per pupil were also the highest in history. *Compare* Ex. 1508 *with* Ex. 1037A. It is expected a new record for K-12 spending was set in FY2014; and a new record will be set in FY2015. Ex(s). 1500, §6; 1501; 1502, pp. 2-157 to 2-161. *See also*, 2013 Kan. Sess. Laws, Ch. 136, § 144.

8. For FY2015, nearly half all Kansas government spending, state and local, will be on Kansas education, including K-12 education.² The following chart depicts this.



Ex. 1503 at 10.

9. In FY2015, many districts will have greater flexibility to spend revenues. HB 2506 provides at least \$134 million in capital outlay and LOB equalization. Part of the LOB equalization (supplemental state aid) will reduce property taxes. But districts will likely increase capital outlay levies (and thereby capital outlay revenue) to take advantage of the capital outlay equalization without having to raise mill levies because of the increase in LOB equalization payments. Tr., D. Dennis testimony at June 11, 2014 hearing, p. 51. Further, districts may choose to use revenues for operational costs that they were allocating to capital outlay expenses because of the lack of capital outlay equalization.

10. K-12 funding as a result of the *Montoy* litigation peaked in 2008-09 just before the Great Recession. But present funding surpasses Plaintiff Districts' spending in 2008-09.

- Wichita budgeted to spend \$636,861,044 in FY2014. Ex. 1511 at 2. It estimated that it would spend \$13,107 per pupil. Excluding capital outlay and bond expense, it estimated \$11,798 would be spent per pupil. By comparison, Wichita spent \$603,976,572 in FY2009 and \$12,978 per pupil. *Id.*

² Estimated, approximately \$5.5 billion of this spending is for K-12 public education. Compare Ex. 1506 at 1 (\$5.4 billion state and local money spent on K-12 public education in FY2013).

- Hutchinson budgeted to spend \$66,242,354 in FY2014. Ex. 1512 at 2. It estimated that it would spend \$13,800 per pupil. Excluding capital outlay and bond expense, it estimated \$12,096 would be spent per pupil. By comparison, Hutchinson spent \$60,502,157 in FY2009 and \$13,076 per pupil. *Id.*
- Dodge City budgeted to spend \$44,948,604 in FY2014. Ex. 1513 at 2. It estimated that it would spend \$13,833 per pupil. Excluding capital outlay and bond expense, it estimated \$ 12,180 would be spent per pupil. By comparison, Dodge City spent \$40,558,786 in FY2009 and \$13,269 per pupil. *Id.*
- Kansas City budgeted to spend \$341,838,994 in FY2014. Ex. 1514 at 2. It estimated that it would spend \$18,006 per pupil. Excluding capital outlay and bond expense, it estimated \$15,251 would be spent per pupil. By comparison, Kansas City spent \$184,480,074 in FY2009 and \$ 17,790 per pupil. *Id.*

11. The Plaintiff Districts received LOB and federal revenues.

- Wichita's LOB budget in FY2014 was \$109.4 million and had been \$95 million in FY2009. It received \$78.9 million in federal funds in FY2014 and \$56.2 million in FY2009. Ex. 1511 at 7.
- Hutchinson's LOB budget in FY2014 was \$9.1 million and had been \$7.3 million in FY2009. It received \$8.1 million in federal funds in FY2014 and \$7.1 million in FY2009. Ex. 1512 at 6.
- Dodge City's LOB budget in FY2014 was \$ 11.4 million and had been \$14.9 million in FY2009. It received \$7.9 million in federal funds in FY2014 and \$9.2 million in FY2009. Ex. 1513 at 6.
- Kansas City's LOB budget in FY2014 was \$44 million and had been \$39.4 million in FY2009. It received \$38.8 million in federal funds in FY2014 and \$26.8 million in FY2009. Ex. 1514 at7.

12. FY2015 federal funding to Kansas K-12 education is summarized in the following table.

	Statute or Regulatory Authority for Funding	Actual or Estimated FY2015 Funding	Breadth and substances of the program(s) funded	# of students served by program and locations of students
Federal funding	Elementary and Secondary Education Act Individuals with Disabilities Act	\$449,522,906	Federal Funds generally fall within one of three categories: 1. Food programs; 2.	Title I – 249,878 Neglected/Delinquent – 5,506 Special Education VIB – 56,519 Rural and Low Income Students –

	National School Lunch Program		Special education; and 3. Title programs to improve targeted student education. A description of the title programs is provided in Ex. A.	30,813 Title III Language Assisted – 37,385 Special Education Preschool – 10,850 Migrant – 3,849 National School Lunch Program Breakfast - 17,373,987 Lunch - 54,319,399 After School Snack Program - 1,652,237
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“State’s Response to Panel’s Request for Information,” [July 31, 2014], p. 1.

13. Evidence concerning the Augenblick & Myers “Calculation of the Cost of a Suitable Education in Kansas in 2000-2001 Using Two Different Approaches,” dated May 2002 (“A&M study”), Ex. 203, and the LPA “Elementary and Secondary Education in Kansas: Estimating the Costs of K-12 Education Using Two Approaches,” dated January 2006 (“LPA study”), Ex. 199, was submitted at trial. *See, e.g.*, Initial Opinion at 238.

14. The legislature expressed its intent not to be bound by the study’s recommendations with the passage of K.S.A. 2013 Supp. 46-1226 (L. 2005, ch. 2, § 15 [Special Session]; L. 2008, ch. 112, § 1; May 1) (cost studies “shall not be binding upon the legislature” and the Legislature “may reject, at any time, any such analysis, audit or study and any conclusions and recommendations thereof”).

14. Neither the A&M, nor the LPA studies attempted to estimate FY2015 costs. The A&M Study estimated costs for three to five years, but recommended a new study thereafter. *Tr., Myers*, at 1661-62. The LPA Study was only designed to estimate costs for 2006 and 2007. *Tr., Frank*, at 2044-45.

15. All experts testifying at trial criticized both of the methods the A&M Study used to arrive at its cost estimates. None of the experts felt that the “successful school approach” to determine costs – the first of two approaches used in the A&M Study that its authors settled upon to recommend a foundation BSAPP, Ex. 203, p. VII-7 – had any value. *E.g., Tr., Baker*, at 1421-23. The A&M Study acknowledged that the “professional judgment” methodology, the Study’s second approach, generate higher cost estimates. Ex. 203, p. II-4; *Tr., Myers*, at 1666. Dr. Eric Hanushek explained the professional judgment methodology generates a “wish list.” *Tr., Hanushek*, at 2272. Dr. Hanushek testified that teachers and administrators are not able to estimate actual costs to achieve desired outcomes, in part, because social scientific studies have not

identified the strategies that can produce the desired outcomes. *Id.* at 2267-81. The districts' expert, Dr. Bruce Baker, acknowledged that teachers and administrators are likely to be biased in favor of the strategies they themselves are using in classrooms, even though there often may be superior or equally effective strategies which cost less to implement. Tr., Baker, at 1417-21.

16. The LPA Study reported two approaches to calculate both total required funding and proper distribution of funding foundation education. Ex. 199 at 26, 123-25. The inputs part of the study produced cost estimates resulting in a range of proposed BSAPPs. *Id.* at 26. The inputs methodology did not include school finance weighting factors. *Id.* The study's "output" analysis was premised on the assumption that undirected increases in money to school districts will increase academic achievement. Ex. 199 at 123-25; App. 17 [C-7 – C-9]. A peer-reviewed and published statistical study, reviewing the same data used by the LPA Study, concluded there was little or no correlation between the amounts Kansas schools spent and their students' achievement. Ex. 1009. *See also*, Ex. 199 at 107-13 (LPA concluding educational research offers mixed opinions about whether increased spending for educational inputs is related to improved student outputs).

17. The LPA Study calculated the spending baseline by employing data about how much Kansas schools spent in the 1999-2000 to 2003-04 school years. Ex. 199 at 34, 123, Apx 17 [C-5 to C-6]. The economic efficiency of that spending was not questioned and, therefore, the LPA study necessarily failed to evaluate whether there are less costly methods to produce achievement on the Kansas assessment tests than those used in the 1999-2000 through 2003-04 school years. *See Id.*, at 125, Apx. 17 [C-14 to C 16]; Tr., Baker, at 1431-38.

18. Both the A&M and LPA Studies were specifically designed to estimate the amount of money needed for students to meet the then-existing state achievement standards as measured by Annual Yearly Progress ("AYP"). Ex. 203 at ES-1, I-1 to I-2, III-1 to III-3; Ex. 199 at 30, Apx. 17 [C-7 to C-9]. Under both studies, the "outputs" assessments effectively incorporated Kansas' AYP goals set to obtain federal funds under the Elementary and Secondary Education Act, known as the No Child Left Behind Act of 2001 ("NCLB"), 20 U.S.C. §§ 6301, *et seq.* The A&M Study's "professional judgment" approach used Panels of "qualified persons" to identify what was needed to obtain a "suitable education" as defined in the study. Ex. 203 at ES-2, ES-3. The LPA Study's cost function analysis tried to statistically determine the costs to achieve desired outputs. Ex. 199 at 31, 124-25, Apx. 17 [C-4 to C-5]. This study's suitable education definition required, as outputs, achieving the AYP percentages of students scoring "meets standard" or above on the annual Kansas assessment tests in math and reading and targeted graduation rates. *Id.* at 124-25, Apx. 17 [C-7 to C-9].

19. Kansas accountability measures now implement a multi-dimensional look at student performance reviewed against Annual Measurable Objectives (“AMOs”) replacing AYP performance targets. DeBacker Depo. at 31-33; Ex. 1300 at 65, 69-76.

20. Kansas assessments are designed to test whether students have grade level proficiency in the subjects tested. Ex. 1130. Student achievement tests are tied to the State’s education standards. Tr., Foster, at 2711-12. The standards, school curricula and assessment tests all have changed significantly since the 2006 LPA Study. Tr., Neuenswander, at 2114; Ex. 108; Ex. 1300 at 25-28. Most recently, the Kansas NCLB Waiver incorporated use of the Common Core Standards (“CCS”), adopted in Kansas in 2010. *Id.*

21. The principal author of the LPA “update” testified that he was uncomfortable using the 2006 study’s data to predict costs in 2013 or 2014; he explained the further one gets from the original data the less predictive the estimate. Tr., Frank, at 2044-45.

22. Local districts’ spending (“cost data”), used by the LPA to calculate what it believed had to be spent to achieve the desired outputs, included only certain categories of overall spending on primary and secondary public education. Tr., Frank, at 2007-08; Tr., Dennis, at 3378-79; Ex. 199 at 123; App. 17 [C-47, C-48, C-125]. Those categories were selected because of their purported impact on student achievement. Ex. 199 at 123; App. 17 [C-47, C-48, C-125]. At trial, the expenditures in these categories were called “operational expenditures.” Ex. 1192. Ultimately, the LPA Study estimated the BSAPP and weightings needed to fund local districts’ operational expenditures. Ex. 199 at 123, 125. The LPA Study did not draw a distinction between whether the operational expenditures were funded by federal, state or local money. Tr., Frank, at 2018.

23. After *Montoy*, the legislature adopted the LPA’s recommendation for weightings with modifications. *Montoy v. State*, 282 Kan. 9, 19, 138 P.3d 755 (2006). And the LPA Study did not entirely adopt its consultant’s conclusions. Ex. 199 at 127.

24. *Montoy* endorsed that the weightings adopted by the Legislature substantially complied with its orders to remedy Article 6 violations. *Gannon v. State*, 298 Kan. 1107, 1114, 319 P.3d 1196 (2014); *Montoy v. State*, 282 Kan. 9, 19, 138 P.3d 755 (2006).

25. In this case, the Panel evaluated the constitutionality of the weightings employed after *Montoy*. After noting, with the except for the bilingual weighting in LPA consultants’ study, the average of the weightings for bilingual students, at-risk students, and special education students are lower in the formula than those recommended by both the A&M and the consultant’s studies, Initial Opinion at

229-30, it found the districts had failed to show the weighting violated Article 6 of the Kansas Constitution. *Id.* at 230-31.

26. The districts did not appeal the Panel's judgment concerning the SDFQPA's weights.

27. Under the Elementary and Secondary Education Act, Kansas school districts receive federal funds, including funding under Title I (for supplemental services to schools and school districts with a high percentage of students from low-income families), Title II (for library resources, textbooks, and other instructional materials, including professional development), and Title III (for bilingual education). Federal funding is also provided for special education and food services. The FY2014 budgets of the Plaintiff Districts show anticipated federal revenue, exclusive of special education, vocational and food services funding, in the following amounts: Wichita \$34,036,357; Hutchinson \$4,872,000; Dodge City \$5,762,382; and Kansas City \$16,750,000. Ex(s). 1511 at 7, 1512 at 7, 1513 at 7 and 1514 at 7. Statewide federal revenue for FY2013 totaled \$460,323,467. Ex. 1506 at 1. No evidence exists that the federal government will no longer support Kansas schools in similar amounts in FY2015 and thereafter. Rather all federal funding to local districts in FY2015 is estimated at approximately \$449.5 million. Ex. 1505.

28. Since the 2012 Kansas ESEA Flexibility Request, schools will no longer be designated as for "improvement," "corrective action" or "restructuring" under NCLB. Ex. 1300 at 8, 9, 66. This allows Kansas to direct federal assistance to "priority schools," the lowest 5% achieving schools over the past 5 years, and "focus schools," 10% of schools with the largest standardized testing gaps between student scores over the last five years. Ex. 1300 at 126, 160; Ex. 1516; Ex. 1517. Doing so provides Kansas with greater flexibility to direct federal aid where it can be best put to use. *Id.* In FY2015 allocations of federal Title I, IIA, III and migrant funds to districts total approximately \$148 million. Ex. 1515.

29. The following are the current priority schools in the plaintiff districts which receive greater attention and federal money: **Wichita:** Marshall Middle School, Hamilton Middle School, Mead Middle School, Pleasant Valley Middle School, Truesdell Middle School, Jardine Technology Middle Magnet, Curtis Middle School, Mueller Aerospace/Engineering, Gordon Parks Academy, Spaght Multimedia Magnet, Cloud Elementary, Stanley Elementary and Anderson Elementary; **Kansas City:** M E Pearson Elementary, Northwest Middle School, Douglass Elementary, Rosedale Middle School, Grant Elementary, Mark Twain Elementary, Argentine Middle School, Whittier Elementary, Welborn Elementary, Banneker Elementary, Bertram Caruthers Elementary, New Stanley Elementary, Central Middle School, Coronado Middle School, West Middle School. Ex. 1517.

30. And the following are the current focus schools in the Plaintiff Districts which receive greater attention and federal money: **Wichita**: Pleasant Valley Elementary, Franklin Elementary, Lawrence Elementary, Linwood Elementary, Gardiner Elementary, Washington Accelerated Learning, Woodman Elementary, Jefferson Elementary, L'Ouverture Computer Technology, Cessna Elementary, Irving Elementary, Harry Street Elementary, Allen Elementary, Enterprise Elementary and Caldwell Elementary; **Hutchinson**: Lincoln Elementary School and McCandless Elementary; **Dodge City**: Sunnyside Elementary and Comanche Intermediate Center; **Kansas City**: McKinley Elementary School, Eugene Ware Elementary, Stony Point North Elementary, Silver City Elementary, John F. Kennedy Elementary, Quindaro Elementary, Chelsea Elementary, Frances Willard Elementary, Lindbergh Elementary, John Fiske Elementary, Noble Prentis Elementary, Stony Point South Elementary, Thomas A Edison Elementary and Hazel Grove Elementary. Ex. 1516.

31. Kansas accredits K-12 schools according to administrative regulations, known as Quality Performance Accreditation ("QPA"). Schools have been assigned accreditation status annually based upon performance and quality criteria. Ex. 1121. The QPA quality criteria are based upon eleven specific processes, programs, and policies that are required to be in place in each school, as follows:

(a) Each school shall be assigned its accreditation status based upon the extent to which the school has met the performance and quality criteria established by the state board in this regulation.

(b) The performance criteria shall be as follows:

(1) Except as provided in subsection (d), having met the percentage prescribed by the state board of students performing at or above the proficient level on state assessments or having increased overall student achievement by a percentage prescribed by the state board;

(2) having 95% or more of all students and 95% or more of each student subgroup take the state assessments;

(3) having an attendance rate equal to or greater than that prescribed by the state board; and

(4) for high schools, having a graduation rate equal to or greater than that prescribed by the state board.

(c) The quality criteria shall consist of the following quality measures, which shall be required to be in place at each school:

- (1) A school improvement plan that includes a results-based staff development plan;
- (2) an external technical assistance team;
- (3) locally determined assessments that are aligned with the state standards;
- (4) formal training for teachers regarding the state assessments and curriculum standards;
- (5) 100% of the teachers assigned to teach in those areas assessed by the state or described as core academic subjects by the United States department of education, and 95% or more of all other faculty, fully certified for the positions they hold;
- (6) policies that meet the requirements of S.B.R. 91-31-34 [concerning teacher staffing, minimum enrollment, records, interscholastic athletics, and athletic practice];
- (7) local graduation requirements that include at least those requirements imposed by the state board;
- (8) curricula that allow each student to meet the regent's qualified admissions requirements and the state scholarship program;
- (9) programs and services to support student learning and growth at both the elementary and secondary levels, including the following:
 - (A) Computer literacy;
 - (B) counseling services;
 - (C) fine arts;
 - (D) language arts;
 - (E) library services;
 - (F) mathematics;
 - (G) physical education, which shall include instruction in health and human sexuality;
 - (H) science;

(I) services for students with special learning needs; and

(J) history, government, and celebrate freedom week. Each local board of education shall include the following in its history and government curriculum:

(i) Within one of the grades seven through 12, a course of instruction in Kansas history and government. The course of instruction shall be offered for at least nine consecutive weeks. The local board of education shall waive this requirement for any student who transfers into the district at a grade level above that in which the course is taught; and

(ii) for grades kindergarten through eight, instruction concerning the original intent, meaning, and importance of the Declaration of Independence and the United States Constitution, including the Bill of Rights, in their historical contexts, pursuant to L. 2013, ch. 121, sec. 2 and amendments thereto. The study of the Declaration of Independence shall include the study of the relationship of the ideas expressed in that document to subsequent American history;

(10) programs and services to support student learning and growth at the secondary level, including the following:

(A) Business;

(B) family and consumer science;

(C) foreign language; and

(D) industrial and technical education; and

(11) local policies ensuring compliance with other accreditation regulations and state education laws.

(d) If the grade configuration of a school does not include any of the grades included in the state assessment program, the school shall use an assessment that is aligned with the state standards.

K.A.R. 91-31-32 (2014).

32. K.S.A. 72-1127, as amended, directed the State Board of Education to impose graduation requirements. It has, as follows:

(a) Each local board of education shall adopt a written policy specifying that pupils are eligible for graduation only upon completion of at least the following requirements:

(1) Four units of English language arts, which shall include reading, writing, literature, communication, and grammar. The building administrator may waive up to one unit of this requirement if the administrator determines that a pupil can profit more by taking another subject;

(2) three units of history and government, which shall include world history; United States history; United States government, including the Constitution of the United States; concepts of economics and geography; and, except as otherwise provided in S.B.R. 91-31-32, a course of instruction in Kansas history and government;

(3) three units of science, which shall include physical, biological, and earth and space science concepts and which shall include at least one unit as a laboratory course;

(4) three units of mathematics, including algebraic and geometric concepts;

(5) one unit of physical education, which shall include health and which may include safety, first aid, or physiology. This requirement shall be waived if the school district is provided with either of the following:

(A) A statement by a licensed physician that a pupil is mentally or physically incapable of participating in a regular or modified physical education program; or

(B) a statement, signed by a lawful custodian of the pupil, indicating that the requirement is contrary to the religious teachings of the pupil;

(6) one unit of fine arts, which may include art, music, dance, theatre, forensics, and other similar studies selected by a local board of education; and

(7) six units of elective courses.

(b) A minimum of 21 units of credit shall be required for graduation.

(c) Any local board of education may increase the number of units of credit required for graduation. Any additional requirements of the local board of education that increase the number of units of credit required for graduation shall apply to those students who will enter the ninth grade in the school year following the effective date of the additional requirement.

(d) Unless more stringent requirements are specified by existing local policy, the graduation requirements established by this regulation shall apply to those students who enter the ninth grade in the school year following the effective date of this regulation and to each subsequent class of students.

K.A.R. 91-31-34 (2014).

33. All of the *Rose* standards/goals are addressed by the programs and services required “to support student learning and growth at both the elementary and secondary levels” and the Board of Education’s graduation requirements. Required curriculums and areas of instruction are interrelated, but the curricula for computer literacy, library services, foreign language and language arts (which must include reading, writing, literature, communication, and grammar), at a minimum, are reasonably calculated to provide [standard 1] “oral and written communication skills”; the curriculums for history, government, family and consumer science and business are reasonably calculated, at a minimum, to provide [standard 2] “knowledge of economic, social and political systems”; the curriculums for history, government are reasonably calculated, at a minimum, to provide [standard 3] “understanding of governmental processes”; the curriculums for physical education, which shall include instruction in health and human sexuality are reasonably calculated, at a minimum, [standard 4] “knowledge of . . . mental and physical wellness”; the curriculums for fine arts (which may include art, music, dance, theatre, forensics, and other similar studies), language arts and library services are reasonably calculated, at a minimum, to provide [standard 5] “grounding in the arts.” The [standard 6] training or preparation for advanced training in either academic or vocational fields” and [standard 7] “academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states” are provided in the curriculums for each of the first five standards and in the curriculums for mathematics, science and industrial and technical education.

34. The Board of Education has approved, published and disseminated “standards” for: college and career-ready; English for speakers of other languages; English arts; mathematics; science; social studies; communication/marketing; driver’s education; fine arts; library; media; technology; physical education/health; social, emotional and character; development; and world languages. See <http://www.ksde.org/>. These standards shape the local districts curriculums.

35. In October of 2011, the U.S. Department of Education invited states to apply for a waiver of the specific requirements of the current Elementary and Secondary Education Act known as the No Child Left Behind Act of 2001 (“NCLB”), 20 U.S.C. §§ 6301, *et seq.* The Kansas ESEA Flexibility Request (“Waiver”) was approved in July 2012 during trial. DeBacker Depo. at 29-30; Ex.

1300. Then the Waiver was revised and amended twice, most recently in January of 2013.

<http://www.ksde.org/Portals/0/Title%20Programs%20and%20Services/KansasESEARrequest201301.pdf>.

36. The Waiver addressed state standards. Ex. 1300 at 24-25. A new set of educational quality standards, known as Common Core Standards (“CCS”), had been adopted by the State Board of Education (“Board”) on October 12, 2010. Ex(s). 1130, 1131, 1300 at 26, 27, 243; Tr., Neuenswander, at 2084; 2114-15; DeBacker Depo. at 67-69. Use of the CCS was approved in the Waiver. DeBacker Depo. at 89.

37. The CCS is aligned to provide students with the required knowledge and skills to be “college or career ready” upon graduation. DeBacker Depo. at 64, 67-71. It is benchmarked so that students can be successful in either post-secondary education or with businesses and industry. *Id.*

38. The Waiver implements a multi-dimensional (four-part) look at student performance, in contrast to NCLB’s single focus on assessment test scores. Ex. 1300 at 81-82. The first look is achievement, still measured by math and reading scores on the Kansas assessment tests. *Id.* However, while test scores continue as part of measuring student performance, the Annual Yearly Progress (“AYP”) targets from NCLB for standardized test results are replaced by an index, the Annual Performance Index (“API”). Ex. 1300 at 39-40, 70, 81-106. Growth is the second look, which is measured by improvement of test scores. Ex. 1300 at 81-82, 107-09. Reduction of the gap between the students that score the highest and lowest on the tests is the third look. Ex. 1300 at 81, 109-11. Reduction of the number of students below standard is the last look. Ex. 1033 at 81, 112-14. Thus, under the Waiver, progress based upon multiple Annual Measurable Objectives (“AMOs”) replaces AYP performance targets for schools and local districts. Ex. 1300 at 81-82; DeBacker Depo. at 35-36, 39-40, 70.

39. After the Waiver, schools will no longer be designated as for “improvement,” “corrective action” or “restructuring” under NCLB. DeBacker Depo. at 51, 55-62.

40. The Waiver also addressed support to assure students are being instructed by “highly effective teachers,” as defined by federal law. Ex. 1300 at 202-14. In its waiver request, Kansas committed to having a model evaluation system that districts can use to review teacher performance. *Id.* A component of the model will take into account how well the teacher’s students are achieving. *Id.* Kansas has been piloting the Kansas Educator Evaluation Protocol (“KEEP”), developed by the KSDE and a consultant. *Id.* The Teaching in Kansas Commission II was formed to recommend how student achievement will be integrated into KEEP. *Id.* Full implementation of KEEP is scheduled for 2014-2015. <http://community.ksde.org/Default.aspx?tabid=4419>.

41. No evidence has been presented that any local district is now unable, because of lack of funds, to satisfy accreditation requirements implemented after *Montoy*.

42. Then KSDE Commissioner Dr. Diane DeBacker testified that the Waiver's student performance criteria, AMOs, are achievable. DeBacker Depo. at 47-48, 100. No evidence was presented that Kansas schools will be unable to successfully meet the AMOs under current funding levels.

43. All primary and secondary public schools in Kansas are accredited. Tr., Tallman, at 1075; Tr., Neuenswander, at 2124; Ex. 1139.

44. Every year, each school district submits a QPA summary report to the KSDE in which each school district provides written assurances to the KSDE that it has fully satisfied the QPA performance and quality criteria. Tr., Neuenswander, at 2126-27. The KSDE also independently audits licensed personnel reports from the school districts for compliance with that quality criteria. *Id.*

45. Each of the Plaintiff Districts provided written assurances that its schools fully satisfy accreditation requirements. Tr., Neuenswander, at 2124, 2128-29.

46. There was no showing that current accreditation standards are inadequate. The Panel expressly held that districts failed to prove that the educational standards, which are the bedrock Kansas' accreditation requirements, are too low. Initial Opinion at 151. ("No standards currently in effect, or in the process of implementation, stand here challenged [as] to their suitability by education professionals, except by Plaintiff Districts' expert Dr. Baker who raises, but which we find Plaintiff Districts have not proved, questions of whether, in fact, they are too low.").

47. At the trial, over continuing objection, the districts' witnesses testified as to what constituted a "suitable education." For example, the Kansas City, Kansas administrator, Dr. Cynthia Lane, opined "suitable education" was compliance with the federal "No Child Left Behind Act." Lane Tr., p. 108, l. 22 – p. 109, l. 10; p. 121, l. 21 – p. 122, l. 2; p. 136, ll. 19-22. This conclusion led to her assertion that if any single child failed to score proficient on any state assessment test, the State is obligated to provide more funding.

Q. Until we get that goal, as you understand it, and as you said, the State said it exists, funding will never be adequate, and you'll always be back in court asking for more money, won't you?

A. What we want to be able to do is access those resources that we know work, and they cost money. It's not unlimited but we need to be able to provide kids intervention, tutoring, extended –

Q. (By Mr. Chalmers) And that is, you indicated in your last answer there is some ending point where enough money is enough, where it's adequate, where it's suitable?

A. I believe what I talked about were the kinds of things that we need to be able to provide children. If we had the resources to provide those, then we can be successful with our kids.

Q. Is there an ending point where enough is enough?

A. I think you're suggesting that what I'm advocating for is unlimited resources, and that misses the point. What I'm advocating for is to implement for children the strategies they need to be successful, and they cost money.

Q. You don't want unlimited resources?

A. What I want is for our kids to be successful.

Q. You can agree that you don't want unlimited resources?

A. I want whatever it takes.

Q. There is a limit where you don't have to go anything more?

A. That limit is based on kids being successful.

Q. And you define that on every kid, no matter their circumstances, no matter what conditions, being able to satisfy the meets standards on the Kansas assessment tests?

A. Perhaps, Mr. Chalmers, it's not as important what I say as what the law is now requiring. Right now, No Child Left Behind says, 100 percent by 2014.

Tr., Lane, at 325-27. Similarly, Dr. Shelly Kiblinger admitted that her definition of a school's ability to provide a suitable education turned on whether there was a failure by any student to score proficient on the state assessment test or graduate on time. She contended this was the case regardless of whether the student's lack of success had anything to do with Kansas schools, much less the funding of the schools. She testified:

Q. We got a kid that moves into your high school, transfers in his or her junior year and is woefully behind, you do your best to educate that kid. They don't graduate, at least in the four years, or maybe they didn't even graduate in that five years. Has your district failed to provide to that kid a suitable education?

A. If they came from the State of Kansas, then Kansas has failed them.

Q. . . . Say that they came in from Samoa.

A. Well, we -- you know, they won't be able to graduate if -- if they aren't college and career -- if they're that far behind, you know, then they're going to become a dropout statistic so ... I said, they'll -- you know, they're going to become a dropout statistic. If we haven't -- if we haven't gotten them to their full potential by the time they get out of high school, then we -- we have failed them.

Tr., Kiblinger, at 3205-06. *See also*, superintendent and administrator testimony: Allison [Tr. at 2501-03, 2509-10, 2514, 2560], Cunningham [Tr. at 1857-58, 1863-37, 1909-10], Kiblinger [Tr. 3154-55, 3202-06] and from teachers or principals Davis [Tr. at 3043-47], Doyle [Tr. at 2874], Hungria [Tr. at 2900], Ortiz-Smith [Tr. at 1753], Ramsour [Tr. at 1780], Roehm [Tr. 3063-64], Stroh [Tr. at 3096-97]. Rather, each testified, in various ways, that students did not receive a "suitable education" if they did not score proficient on a state assessment test - apparently at any time, did not graduate within 5-years or were not ready for college. *See principal and teacher testimony*: Principal Stewart said cuts affected what her high school had wanted to do [Tr. at 920]; Teacher Feist said she had to do things which were less effective for students because of her increased class size [Tr. at 1700]; Teacher Rathbum testified focus on AYP has short-changed kindergarten and first grade students at her school so that they received less attention because they are not given assessment tests [Tr. at 3110-11].

48. Plaintiffs' expert, Dr. Bruce Baker, testified that just one child not meeting proficiency on the State assessment tests does not mean that the State is not adequately funding a suitable education. Trial Transcript, Dr. Bruce Baker, p. 1362. Dr. Baker testified that the test as to whether a suitable education is being provided is whether each student is being given adequate access to opportunity to succeed, not whether the students are succeeding or failing in and of itself. *Id.*

49. The Kansas assessment tests are designed to test required knowledge and skills outlined in standards adopted by the State Board of Education. Tr., Foster, at 2703.

50. Cut scores are set within categories. There are five performance categories – academic warning, approaches standard, meets standards, exceeds standard and exemplary – with a cut score for each category. Trial Transcript, Dr. Tom Foster, p. 2685. For example, in third grade math, a student has to score between 70 and 84 points to meet the standard and if they score above 84, then they exceed the standard and if they score below 70, then they are approaching the standard. Trial Transcript, Dr. Tom Foster, p 2686. For high school math, the cut scores are 50 to 67. The 50 here is not the same as in the classroom, the 50 represents a very specific approach to how students do on assessments. In the process to determine the cut scores, a large group of experts determined that to be an appropriate score and the federal government also reviewed the cuts scores and determined them to be appropriate. Trial Transcript, Dr. Tom Foster, pp. 2686-87.

51. State academic standards and their associated assessment tests change over time. The Kansas assessment tests in place between 2006 and 2013 are based on the standards which predated adoption of the CCS. Tr., Foster, at 2683-84. The tests are now being redesigned because of the adoption of the CCS. *Id.* at 2707. This redesign started in 2011. *Id.* New tests go through a design, vetting and

approval process. *Id.* at 2708-09. Full implementation of the testing on the CCS was scheduled to occur in 2014-15. *Id.* at 2708.

52. In 2012-13, the State used assessment tests premised on measuring progress against the pre-CCS standards even though students received instruction under the CCS standards. The KSDE explained the impact:

As Kansas continues its transition to higher education standards for college and career readiness, many schools experienced a decline in the results of their students' latest state assessment scores. While this is never a desired outcome, in a time of transition it is certainly not altogether unexpected. Assessments are a critical component of the education process, but this transition period has created a bit of an anomaly. Because the new standards assessment was not available for the 2012-13 assessment period, students were assessed using the existing testing tool which is no longer aligned with the new instruction. As such, we caution the use of recent assessment scores as a true indication of the student's progress.

Ex. 1522 (emphasis added).

53. Results for the 2013-14 test are not available because of problems in the administration of the tests which invalidated the results. Tr., D. Dennis at June 11, 2014 hearing, p. 97.

54. Kansas schools have made progress in advancing students not only across the proficiency line, but into the highest performance levels and across all levels of the spectrum of the test since the enactment of NCLB. Tr., Foster, at 2721-23; Ex. 1129 at 40-44; Ex. 1218; Ex. 1223; Ex. 1300 at 84. Evidence at trial showed that Kansas students' proficiency on assessment tests has increased 40% over the last decade and now exceeds 80% at each level. Ex. 131 at 2; Ex. 1300 at 88.

55. From 2003 to 2011, the State saw improvement on state assessment test scores for the all students group in math and reading. Ex. 1207; Ex. 1217; Ex. 1224. Math scores for all students increased from 73.5% proficient in 2003 to 87.6% in 2011 for 4th grade; increased from 60% proficient in 2003 to 81.6% in 2011 for 7th grade; and increased from 45.6% proficient in 2003 to 81.5% in 2011 for 11th grade. *Id.* Reading scores for all students increased from 68.7% proficient in 2003 to 86.7% in 2011 for 5th grade; increased from 75.1% proficient in 2003 to 87.1% in 2011 for 8th grade; and increased from 60.6% in 2003 to 88.3% in 2011 for 11th grade. *Id.*

56. Additionally, the Kansas test scores improved from 2003, when *Montoy* was tried, to 2011 on state assessment test scores in math and reading for its "free and reduced lunch" students. Even among the "free and reduced lunch students," math scores increased from 61.1% proficient in 2003 to 81.9% in 2011 for 4th

grade; increased from 40.7% proficient in 2003 to 72.1% in 2011 for 7th grade; and increased from 25.8% proficient in 2003 to 69.9% in 2011 for 11th grade. Ex(s). 1229-1239, 1207. Reading scores increased from 55.1% proficient in 2003 to 79.8% in 2011 for 5th grade; increased from 70.5% proficient in 2003 to 78.9% in 2011 for 8th grade; and increased from 42.9% proficient in 2003 to 80% in 2011 for 11th grade. *Id.*

57. The Kansas Report Card for 2011-12, Ex. 1524, shows that the percentage proficient on the math test increased for all students and for free and reduced lunch, ELL, African-American, Hispanic, White, Asian, American Indian/Alaska Native and Native Hawaiian/Pacific Islander above 2010-2011 percentages. The percentages increase on the reading test for Students with Disabilities, White, Asian, American Indian/Alaska Native and Native Hawaiian/Pacific Islander. The all student percentage proficiency was only 0.1% less than in 2010-2011. *Id.* at 1.

58. Below are the statewide results for the percentages of students who tested at or above proficient in Reading.

Reading	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
All students	70.5	73.7	80.3	81	84.3	85.8	86.3	87.8	87.6
Free & Reduced Lunch	57.8	62.7	67.7	70.4	74	76.5	77.7	80.5	79.8
Students with Disabilities	45.2	50.3	57.4	64.3	66.6	69.4	69.6	71.6	71.2
ELL Students	55.3	64.2	49.8	55.1	63.5	65.5	57.4	72.2	71.8
African-American Students	48.9	53.7	60.3	61.4	66.1	68.2	69.4	73	71.1
Hispanic	56	61.5	61.5	63.8	69	71.9	75.2	78.4	77.9
White	74.6	77.6	85.2	86.8	89	90.4	90.7	91.7	91.7
American Indian	59.9	64.7	75.3	77.3	79.5	80.7	81.4	84.3	84.7
Multi-Racial	68.8	70.3	77.7	68.2	82.6	83.5	85	86.9	85.9
Asian/Pacific Islanders	69.5	74.7	80.8	81.7	86	86.8			
Asian							88	89	89.1
Native Hawaiian/Pacific Islander							85.7	81.6	84.8

Exhibit 1153 (FY 2003-2011); Exhibit 412 and Exhibit 1230 (FY 2012 Preliminary Data)

59. Below are the statewide results for the percentages of students who tested at or above proficiency in Math.

Math	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
All students	65.3	68.6	74.7	78.3	82	83.5	83.6	85.4	85.9
Free & Reduced Lunch	52.2	56.6	62.6	68.4	72	74.3	75	77.8	78.2
Students with Disabilities	46.4	50.5	52.7	59.8	64.9	67.2	66.8	69.5	68.6
ELL Students	45.1	48.7	55.7	61.6	68.3	69.9	71.2	74.8	75.2
African-American Students	40.9	44.4	51.5	57.2	61.3	63.8	64.2	67.4	67.7
Hispanic	48.1	51.6	59.3	65.2	70.1	72.4	74.2	77.4	77.8
White	70.2	73.6	79.4	83.4	86.3	87.7	87.7	89.1	89.8
American Indian	52.5	58.2	66.5	72.3	74.5	76.8	76.8	79.4	81.4
Multi-Racial	62	64.5	72.2	66	79.7	80.5	81.0	82.2	83
Asian/Pacific Islanders	70.9	74.8	82.4	84.7	88.3	89.5			
Asian							90.5	91.9	92.3
Native Hawaiian/Pacific Islander							80.9	80	86.5

Exhibit 1153 (FY 2003-2011); Exhibit 412 and Exhibit 1230 (FY 2012 Preliminary Data)

60. Statewide Kansas graduation rates have improved, both for all students and in the major student subgroups. Almost universally, the same is true for the four Plaintiff Districts. Starting in the 2010-11 school year graduation rate calculations were changed so that 4-year and 5-year graduation cohort rates were collected and reported.

Although the KSDE Website cautions: “NOTE: Due to changes in the graduation formula, it is imperative that no comparisons be made between graduation data from 2009 and earlier and graduation data from 2010 and beyond because: The 2009-2010 graduation data and beyond uses the Four-Year Adjusted Cohort formula which is significantly different than the NCES and NCLB formulas. The 2002-2003 through 2008-2009 graduation data uses the No Child Left Behind (NCLB) formula. Graduation data available from this site prior to 2002-2003 uses the National Center for Education Statistics (NCES) formula. See http://cpfs.ksde.org/cpfs/custom_rpts5.aspx?display_wait=1. (emphasis supplied)

61. The following tables set out the graduation rates.]

Percentage Graduation Rate on 4-year Cohort

All Students

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	80.7	63.1	80.6	82.7	59.7
2011-12	83	66.2	82.4	82	62.9
2012-13	84.9	74.1	83.2	84.2	66.8

Free and Reduced Lunch Students

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	70.1	61.6	72.9	80.1	59.4
2011-12	72.2	70.1	74.3	78.8	62.2
2012-13	76	69.2	76.9	82.6	65.9

Hispanic

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	70.3	59.3	82	78.4	55.1
2011-12	72.9	70.3	81.4	76.2	58.3
2012-13	76.4	70.2	83.8	83.6	63.2

African American

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	66.2	59.9	73.1	80	65.8
2011-12	69	66.2	76.2	75	69.6
2012-13	75.9	73.2	77.8	85.7	71.9

White

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	84.5	65.5	80.8	86.8	51.3
2011-12	85.5	84.5	82	89.3	52.4
2012-13	87.7	74.8	82.6	84	57.3

Percentage Graduation Rate on 5-year Cohort

All Students

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	75.2	60.2	68.7	77.7	48.3
2011-12	82.1	66.7	80.7	82.8	61.9
2012-13	84.4	69.3	83.2	81.4	66.2

Free and Reduced Lunch Students

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	63.3	59.2	60.5	72.6	50.2
2011-12	72.2	65.5	73	80.8	62
2012-13	75.3	66.4	75.1	78.3	65.6

Hispanic

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	62.1	52.6	64.3	77.7	46.9
2011-12	72.9	64.3	82	78.9	58
2012-13	75.2	62.1	83.3	76.2	61.3

African American

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	50	58.1	70.8	60.5	53.4
2011-12	69	61.4	73.1	80	67.5
2012-13	74.6	70.5	80	83.3	72.6

White

Year	State	Wichita	Hutchinson	Dodge City	Kansas City
2010-11	81.1	64.2	75.7	85.7	43.9
2011-12	85.5	68.3	80.9	86.4	53.2
2012-13	87.3	71.1	82.3	86.9	56.9

Ex(s). 1521 at 1, 1523 at 1, 1524 at 1.

62. Kansas schools are preparing more students for college than in the past. Tr., Tallman, at 2734-49; Ex. 131 at 1, 6, 7. Kansas scores for college-bound students rank in the top 10 of all states and have improved over the past 15 years. *Id.* While, ACT Benchmarks are different than the Kansas standards currently in place and thus are not designed for comparison with the Kansas standards, Kansas has a higher percentage of students who meet the ACT College Readiness Benchmarks (“Benchmarks”) than the national average. Ex. 166 at SIG-ACT64.

63. The undisputed fact is that no teacher, school, district, or State – anywhere in the United States or around the world – has found a way to satisfactorily educate *every* student.

64. “Gap” is a term used to describe the difference in scores on assessment tests between groups of students, usually between non-free or reduced lunch white students and the other groups, *e.g.*, Hispanic or African American. Tr., Foster, at 1396. Achievement gaps have always existed and are a national problem. Tr., Neuenswander, at 2123; Tr., Baker, at 1524-26. No school district anywhere has been able to fully close the gaps. *Id.* This fact is not surprising given that social and family background factors generally far beyond a school’s ability to influence achievement gaps. *Id.*

65. The following figures show the test score gaps between Hispanic/White students and African American/White students on NAEP’s 2013 fourth-grade mathematics exam. They illustrate gaps on standardized achievement tests exist and also show the gaps in Kansas are less than the national average.

MATHEMATICS 4TH GRADE

RACE/ETHNICITY

WHITE - HISPANIC

Average scores and score gaps in NAEP mathematics for White and Hispanic fourth-grade public school students, by state/jurisdiction: 2013

	Hispanic	Score gap	White
Nation (public)	230	20	250
Arkansas	234	12*	246*
DoDEA	240*	9*	250
Florida	238*	12*	251
Georgia	226*	15*	250
Hawaii	241*	12*	253*
Indiana	242*	10*	252*
Kansas	238*	15*	250
Louisiana	232	11*	242*
Mississippi	230	13*	243*
Missouri	233	12*	245*
Montana	237*	11*	248*
Nevada	230	15*	245*
New Mexico	229	16*	245*
North Carolina	239*	15*	254*
North Dakota	237*	12*	249
Virginia	236*	15*	252
Wyoming	238*	14*	249
Alabama	228	14	242*
Alaska	238	14	249
Arizona	232	19	251
Delaware	234*	18	252*
Idaho	228*	19	244*
Illinois	229	19	248
Iowa	234	15	249
Kentucky	234	10	244*
Michigan	226	18	244*
Minnesota	234	21	259*
New Hampshire	236	18	254*
New Jersey	234*	20	254*
New York	229	19	248
Ohio	237*	15	252
Oklahoma	229	16	245*
Oregon	224*	21	245*
Pennsylvania	229	20	250
South Carolina	229	18	247*
South Dakota	226	21	247*
Tennessee	229	18	247*
Texas	235*	20	255*
Washington	229	22	251
California	224*	25*	249
Colorado	233	23*	256*
Connecticut	224*	29*	253*
District of Columbia	228	49*	276*

Score gap is narrower than nation (public)

Score gap is not significantly different from nation (public)

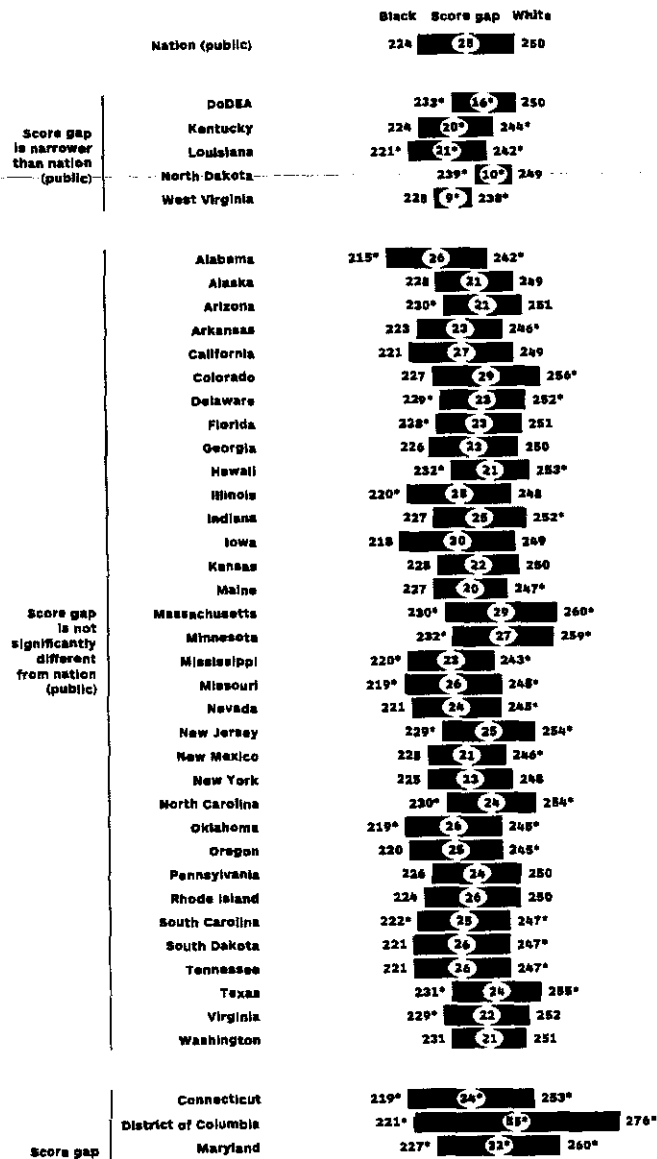
Score gap

MATHEMATICS 4TH GRADE

RACE/ETHNICITY

WHITE - BLACK

Average scores and score gaps in NAEP mathematics for White and Black fourth-grade public school students, by state/jurisdiction: 2013

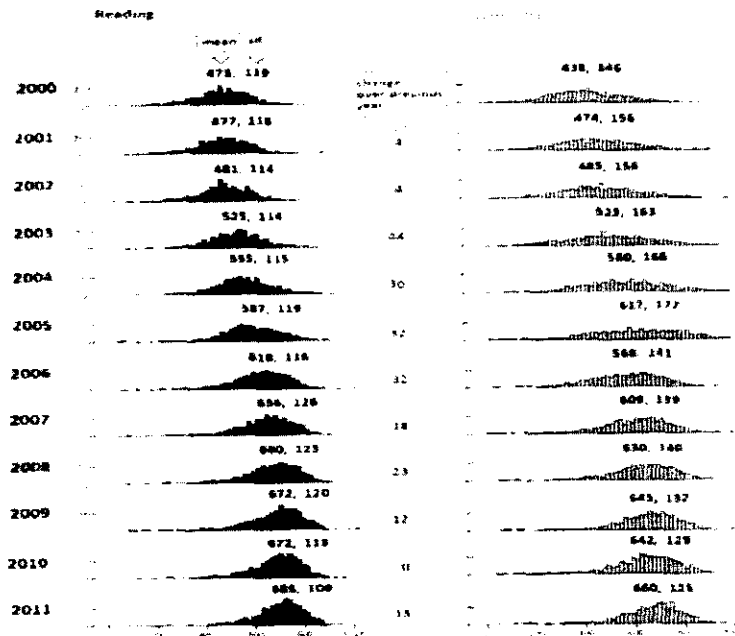


Ex. 1520 at 3, 4, 7, 8.

66. Kansas has made progress in narrowing achievement gaps. R. Vol. 11, p. 1396, ¶ 232. For example, in 2006 every major subgroup was below 65 percent proficient in math. By 2011, every group was above 65 percent and had an average increase of 15 percentage points from 2006. Ex. 131 at KASB319-321; Tr., Tallman, at 1126; Tr. Neuenswander, at 2123. In 2006, every major subgroup was below 70 percent proficient in reading. By 2011, every group was above 70 percent and had increased at least 10 percentage points from 2006. *Id.* The final 2011-12 data was not available at the trial. The Kansas Report Card for 2011-12

shows, by 2012 the proficient percentages of every major subgroup remained above 65 percent in math and 70 percent in reading. Ex. 1523 at 1.

67. When analyzed against the new API, two important conclusions emerge: (1) Kansas test scores within every performance category have *increased* since 2000; and (2) the gap between the lowest performing students and highest performing students *has narrowed*. The API graphs, in Ex. 1300 at 88 [below], show Kansas math and reading assessment test score distributions starting in 2000 through 2011. *Id.* Rightward movement demonstrates improvement on test scores across all categories. *Id.* The clustering proves the gap between students who score the lowest on the tests and students who score the highest is narrowing. *Id.*



68. In January of 2012, the Kansas Association of School Boards ranked Kansas public education among the top 10 of all states in the “all student” and “free and reduced lunch” categories for reading and math, based on NAEP scores for the past several years. Tr., Tallman, 1127-28; Ex. 131 at 2, 4, 5.

69. For the years 2003, 2005, 2007, 2009, 2011 and 2013, Kansas test scores on the National Assessment of Educational Progress (“NAEP”) are higher than the national average, and the scores have also generally improved over those years. Ex(s). 1225 & 1519 & 1521. NAEP administers nationwide assessments to try to determine progress students are making over time. Tr., Foster, at 2673-74. It is often called the Nation’s Report Card. *Id.* Because each state uses different assessment tests, scores on the NAEP tests are the only way to judge how Kansas schools are performing compared to other states. Tr., Hanushek, at 2214-15.

70. At trial the most recent NAEP test results were for 2011. These results were:

- Kansas ranked 7th in the Nation on the 2011 NAEP 4th grade math test for all students. Ex. 1169 at 1.
 - Kansas ranked 11th in the Nation on the 2011 NAEP 8th grade math test for all students. Ex. 1169 at 2.
 - Kansas ranked 4th in the Nation on the 2011 NAEP 4th grade math test for free and reduced lunch students. Ex. 1169 at 3.
 - Kansas ranked 8th in the Nation on the 2011 NAEP 8th grade math test for free and reduced lunch students. Ex. 1169 at 4.
 - Kansas ranked 14th in the Nation on the 2011 NAEP 4th grade reading test for all students. Ex. 1169 at 5.
 - Kansas ranked 20th in the Nation on the 2011 NAEP 8th grade reading test for all students. Ex. 1169 at 6.
 - Kansas ranked 13th in the Nation on the 2011 NAEP 4th grade reading test for free and reduced lunch students. Ex. 1169 at 7.
 - Kansas ranked 13th on the 2011 NAEP 8th grade reading test for free and reduced lunch students. Ex. 1169 at 8.
71. 2013 NAEP results support Kansas Students continue to perform well in comparison to other states.
- The average scores of Kansas, in all of NAEP tests Kansas students took in 2013, exceeded the national average scores.
 - Only 4 states scored better on the 2013 NAEP 4th grade math test for all students.
 - Only 5 states scored better on the 2013 NAEP 8th grade math test for all students.
 - Only 9 states scored better on the 2013 NAEP 8th grade reading test for all students.
 - Only 15 states scored better on the 2013 NAEP 8th grade reading test for all students.
 - The relatively small performance gaps, in comparison to the rest of the nation, between free and reduced lunch students and all students did not significantly change on any of the 2013 tests.

Ex. 1521.

71. Kansas has done even better in statewide comparisons with at-risk students. Tr., Hanushek, at 2217. Kansas students rank in the top for all students and for low-income students, who traditionally have had lower academic performance. Tr., Tallman, at 2217. The poverty students in Kansas are 4th in the Nation in terms of performance compared to other states. Tr., Hanushek, at 2217. In January 2012, the Kansas Association of School Boards ranked Kansas public education in the top 10 of all states in the all student and free and reduced lunch categories for reading and math, based on NAEP scores for the past several years, Tr., Tallman, at 1127-28; Ex. 131 at KASB319, -322-23, finding that Kansas school districts produced these top 10 results with per pupil spending near the national average. *Id.*

72. The Figure 1 below is reprinted from the Kansas Association of School Board's (KASB) website.

http://tallmankasb.blogspot.com/2014_05_01_archive.html.

It displays a state-by-state comparison on the basis of student performance on various 2012 standardized tests. Kansas is among the highest ranked states; and ranks equal to Missouri and above Nebraska, Colorado and Oklahoma, its surrounding sister-states. Supporting Figures 2-5 for these ratings are also set out below and are found at findthebest website, <http://public-schools.findthebest.com>. The darker the blue, the higher the states' average score.

Figure 1, States' School Ratings

States by School Rating (SAT, ACT, AP, NAEP)

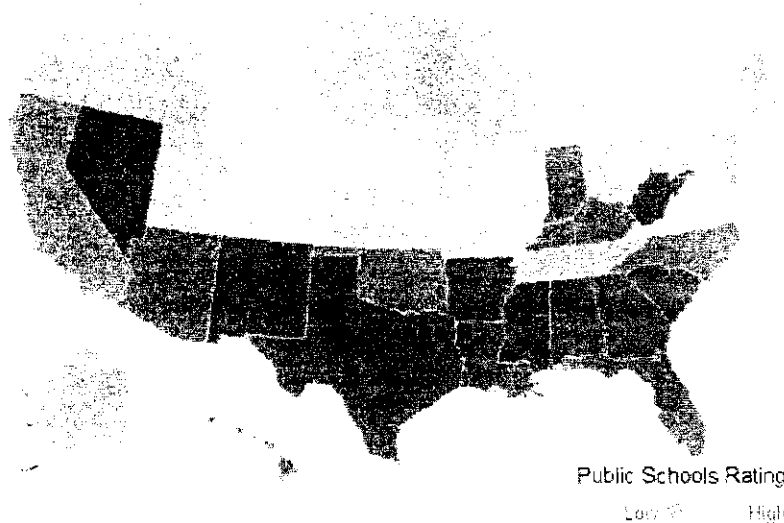


Figure 2, ACT Average Scores

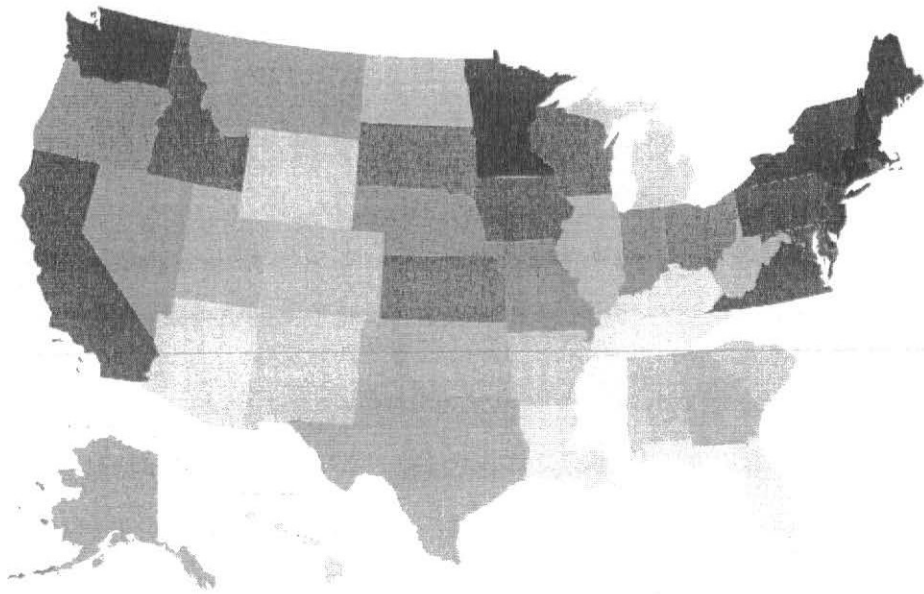


Figure 3, SAT Average Scores

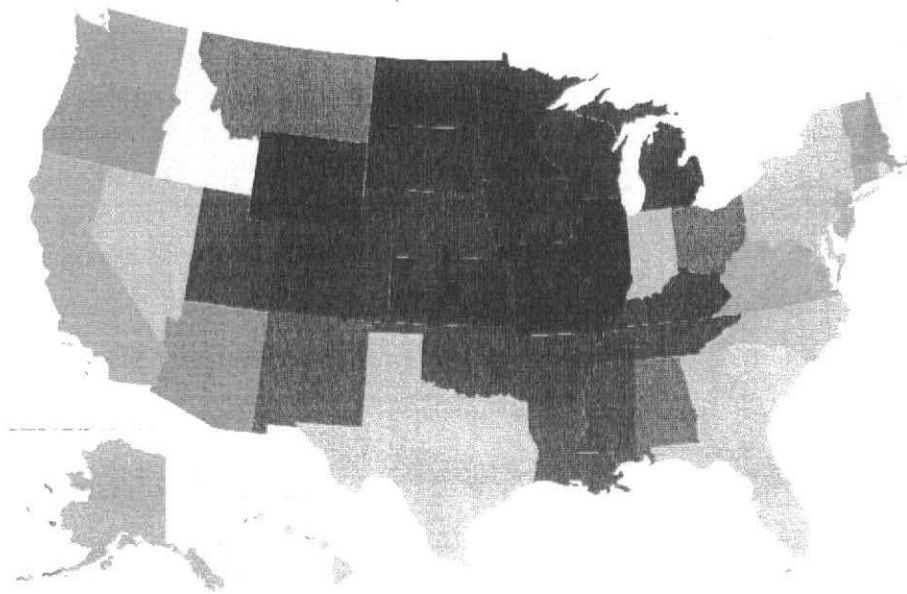


Figure 4, 4th Grade NAEP Assessments

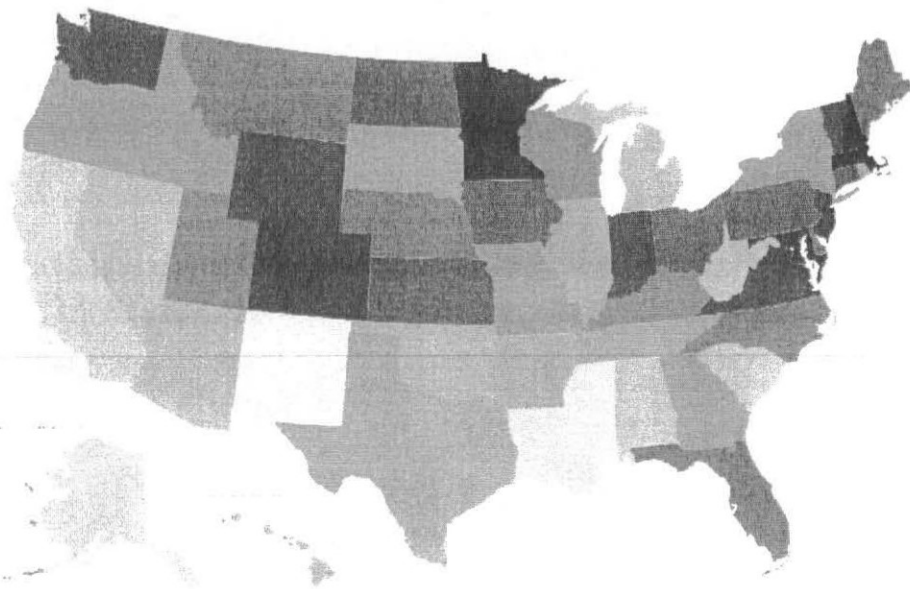
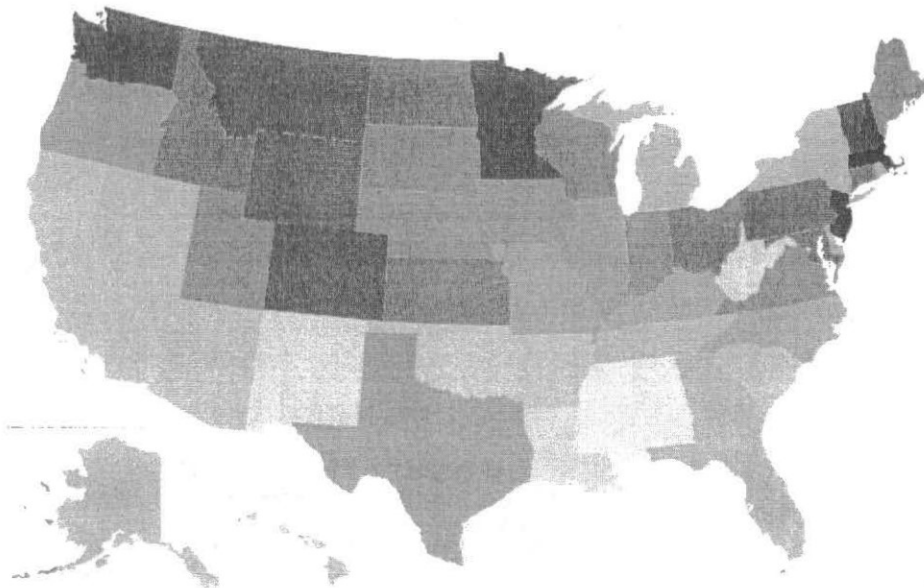


Figure 5, 8th Grade NAEP Assessment



73 None of the evidence presented at trial applies to school programs and staffing after 2012. Most of the “cuts” described in the evidence were to programs and staffing in 2009-10. Very little evidence was presented about the possibility of additional cuts to personnel and programs in the Plaintiff Districts for after FY2012. No state-wide evidence was presented that school districts generally were required to make additional cuts to personnel or programs after FY2011. No evidence has been provided of actual cuts in FY2012, FY2013 or FY2014, or of cuts planned for FY2015.

74. A comparison of FY2009 to FY2014 data (the most recent available) demonstrates that there were more teachers employed by the Plaintiff Districts than before the complained-of “cuts.” The chart below reports the applicable data from the districts’ own budget materials.

2008-2009	FTE Administrators (certified/non-certified)	FTE Teachers (full-time)	FTE Other Certified (licensed) Personnel	FTE Classified Personnel	Budget for substitute and temporary help
Wichita	242.6	3340.4	738.3	2457.5	\$12.5 million
Hutchinson	34	339	71.1	284.1	\$400,000
Dodge City	42	385.4	28	353	\$1 million
Kansas City	133	1527	169	1019	\$3 million

2013-2014	FTE Administrators (certified/non-certified)	FTE Teachers (full-time)	FTE Other Certified (licensed) Personnel	FTE Classified Personnel	Budget for substitute and temporary help
Wichita	229.1	3449.4	734.1	2081.3	\$18.4 million
Hutchinson	29	341	75.3	309.7	\$550,000
Dodge City	53	405	36.8	474	Not reported
Kansas City	124	1653	93	1375	\$2.6 million

Ex(s) 1511, at 11, 1512 at 11, 1513 at 11, 1514 at 11.

75. There have been only modest changes in pupil teacher ratios since the “cuts” to the BSAPP. There is no evidence that the *Rose* goals cannot be satisfied by the modest increases in these ratios.

Pupil Teacher Ratios	2008-2009	2012-2013
State	14.4	15.1
Wichita	15.5	15.6
Hutchinson	15.1	16.2
Dodge City	16.5	15.8
Kansas City	15	16.7

Ex. 1525 at [2013-14] 2, 3, 5, 6, [2008-09] 2, 5, 6.

76. The Plaintiff Districts attempted to keep any “cuts” they made out of the classroom. *See, e.g.,* Tr., Allison, at 2526-27; Tr., Kiblinger, at 3151; Tr., Blakesley, at 2997. KSDE data, which reports district spending by categories,

shows “instructional” category spending – direct spending on classroom education – generally continued to increase after the reductions in the BSAPP. Ex. 1037A. The last available data from FY13 shows \$2,969,190,760 was spent statewide instructional expenditures. This was the highest in Kansas history. *Compare* Ex 1037A to Ex. 1508 at 1. Wichita, instructional spending went from \$286,676,689 in 2008-09 to \$295,744,587 in 2012-13. Ex. 1037 at 6; Ex. 1508 at 2. Wichita budgeted instructional spending in 2013-14 for \$324,987,173. Ex. 1511 at 2. In Hutchinson, instructional spending went from \$27,245,024 in 2008-09 to \$29,219,016 in 2012-13. Ex. 1037 at 13; Ex. 1508 at 5. Hutchinson budgeted instructional spending in 2013-14 for \$36,262,988. Ex. 1512 at 2. In Dodge City, instructional spending went from \$36,020,253 in 2008-09 to \$38,666,897 in 2012-13. Ex. 1037 at 21; Ex. 1508 at 6. Dodge City budgeted instructional spending in 2013-14 for \$44,948,604. Ex. 1513 at 2. In Kansas City, instructional spending went from \$134,157,945 in 2008-09 to \$128,848,175 in 2012-13. Ex. 1037 at 28;; Ex. 1508 at 7. Kansas City budgeted instructional spending in 2013-14 for \$183,409,105. Ex. 1514 at 2.

77. Since 1997, average Kansas administrator and teacher salaries, with benefits, have steadily increased each year with the single exception being the average superintendent salaries declined .69% in 2010-2011. This is shown in the following KSDE tables.

Table I: State Average Classroom Teachers' Salary

School Year	Average Salary for Classroom Teachers	Average Extra Pay (Supplemental & Summer School Salaries)	Average Fringe Benefits	TOTAL Average Salary (Including Salary + Supplemental & Summer School Salaries + Fringe Benefits)	Total Salary Percentage Increase from prior year
1997-1998	33,579	1,498	1,536	36,613	2.16%
1998-1999	34,369	1,601	1,536	37,507	2.74
1999-2000	35,244	1,666	1,669	38,579	2.86
2000-2001	35,794	1,753	1,862	39,409	2.86
2001-2002	37,095	1,854	2,223	41,172	4.47
2002-2003	38,030	1,888	2,640	42,558	3.37
2003-2004	38,836	1,924	3,146	43,906	3.15
2004-2005	39,351	1,924	3,146	44,421	2.20
2005-2006	40,000	2,122	3,457	45,579	2.92
2006-2007	43,318	2,260	3,674	49,252	4.68
2007-2008	45,235	2,312	4,166	51,713	3.48
2008-2009	46,234	2,312	4,166	52,712	3.42
2009-2010	46,660	2,419	4,574	53,653	0.90
2010-2011	46,585	2,086	4,574	53,247	0.11
2011-2012	48,372	2,175	4,804	55,351	0.38
*2012-2013	47,361	2,127	4,935	54,423	1.82

State Average Classroom Teachers' Salary

(including Supplemental and Summer School Salaries and Fringe Benefits)

School Year	Low	Median	High	FTE - Total Teachers
2001-2002	24,840	38,588	48,951	35,734.0
2002-2003	26,551	39,639	51,551	36,085.1
2003-2004	26,909	40,736	53,736	35,420.6
2004-2005	27,059	41,678	53,955	35,596.7
2005-2006	31,301	44,485	57,210	36,741.0
2006-2007	33,809	44,987	58,864	38,143.5
2007-2008	38,344	46,810	60,586	38,784.7
2008-2009	32,993	48,257	63,666	39,232.8
2009-2010	33,331	47,756	66,701	38,510.3
2010-2011	34,067	48,984	66,483	38,027.0
2011-2012	34,420	49,040	65,443	37,570.0
*2012-2013	33,961	49,750	66,899	37,906.0

*Contracted

See next page for definitions of column headings.

Table I: State Average Principals' Salary

School Year	Average Salary	Average Fringe Benefits	Average Salary (with fringe benefits)	Percentage increase (salary with fringe benefits)
1997-1998	55,091	2,002	57,049	2.73%
1998-1999	57,121	2,010	59,130	3.65
1999-2000	58,879	2,265	61,144	3.4
2000-2001	60,743	2,599	63,342	3.59
2001-2002	62,163	2,985	65,148	3.80
2002-2003	64,469	3,455	67,924	3.30
2003-2004	65,912	3,898	69,810	2.86
2004-2005	67,484	4,161	71,645	2.55
2005-2006	70,439	4,561	75,000	4.37
2006-2007	73,351	4,575	77,927	4.22
2007-2008	76,119	4,763	80,882	3.79
2008-2009	78,510	5,256	83,767	3.57
2009-2010	79,173	5,583	84,756	1.18
2010-2011	79,202	5,909	85,192	0.57
2011-2012	79,546	6,371	85,917	0.61
*2012-2013	80,934	6,339	87,272	1.82

Average Principals' Salary (including Fringe Benefits)

School Year	Low	Median	High
2001-2002	\$ 16,500	\$ 61,287	\$ 93,256
2002-2003	36,240	63,050	96,314
2003-2004	30,000	64,709	99,085
2004-2005	30,000	66,858	99,966
2005-2006	30,000	68,358	102,756
2006-2007	30,000	70,978	103,693
2007-2008	30,000	72,511	108,884
2008-2009	54,843	76,035	115,103
2009-2010	59,282	78,323	117,234
2010-2011	35,528	77,965	118,569
2011-2012	30,528	79,085	116,578
*2012-2013	33,423	79,935	117,811

*Contracted

Ex. 1527.

Average Superintendent Salary

School Year	Average Superintendent Salary (with supplemental and fringe benefits)	Percentage Change
1997-1998	\$ 72,341	1.00%
1998-1999	\$ 74,959	3.62
1999-2000	77,154	2.88
2000-2001	\$ 78,662	2.02
2001-2002	\$ 81,730	3.90
2002-2003	\$ 83,920	2.68
2003-2004	\$ 86,122	2.44
2004-2005	\$ 88,503	2.98
2005-2006	\$ 90,197	1.91
2006-2007	\$ 95,544	5.60
2007-2008	\$ 98,313	2.91
2008-2009	\$ 103,258	5.03
2009-2010	\$ 105,659	2.36
2010-2011	\$ 104,966	-0.69
2011-2012	\$ 107,788	2.69
*2012-2013	\$ 108,893	1.02

State Average Superintendent Salaries

School Year	Low	Median	High
1997-1998	15,268	59,891	171,425
1998-1999	15,408	71,731	179,257
1999-2000	19,090	73,388	182,436
2000-2001	5,000	75,904	202,153
2001-2002	18,950	78,350	211,333
2002-2003	36,300	80,240	225,879
2003-2004	18,000	82,630	238,838
2004-2005	13,350	84,566	240,413
2005-2006	7,260	88,173	249,730
2006-2007	5,880	91,373	265,048
2007-2008	20,000	92,783	264,154
2008-2009	11,487	97,255	304,092
2009-2010	34,391	97,188	287,208
2010-2011	15,000	98,600	274,890
2011-2012	41,258	100,154	275,200
*2012-2013	41,500	102,348	279,602

*Contracted

Ex. 1528.

78. While the Panel accepted general opinion testimony that districts were confronted with increased economic demands, it now makes no findings quantifying the increase or its impact on whether any single district, including the Districts, could meet accreditation and its associated requirements. *E.g.*, Initial Opinion at 169. No evidence was presented that tended to establish a range or dollar amount of the alleged increase in costs to either any local district or state-wide. In fact, no evidence was presented on whether adoption of Common Core Standard or other parts of the NCLB Waiver would cause districts to incur expense significantly beyond already budgeted, planned expense for replacement of class room materials or professional development. DeBacker Depo. at 77-78; Tr., Mather, at 453; Tr., Schaeffer, at 1803; Ex(s). 1021-1028.

79. The Panel found that “[w]hile evidence has been presented about the likely increases in costs to be brought to our school system due to increased standards and the State’s Waiver from the No Child Left Behind Act, exactly what those exact costs are likely to be has *not* been presented to us.” Initial Opinion at 236.

80. Costs associated with implementation of the Kansas Waiver, CCS and Regents’ admission requirements are tied together. The Waiver adopted continued compliance with the CCS. The CCS is designed to provide students with the required knowledge and skills to be “college or career ready” upon graduation. Tr., Neuenswander, at 2084. The Board of Regents committed to allowing high school graduates who score proficient or above in subjects on Kansas assessment tests aligned with the CCS to immediately take credit courses in those subjects. DeBacker Depo. at 68-69; Ex. 1300, Attachment 5.

81. After the trial, the LPA completed a study estimating potential costs related to the implementation of the Kansas Waiver. That study concluded all local districts together are likely to incurred only between \$15 million and \$25 million in real (additional expense above currently budgeted funds) or opportunity (other professional training deferred or replaced) costs to implement the Waiver in FY2015. Ex. 1504 at 15. The cumulative total, most of which has already been incurred, was estimated at \$32 million to \$60 million in real or opportunity costs through FY2015. *Id.* at 9.

82. In its Initial Opinion, the Panel did not find any increase in demands on local districts that was unaccounted for by the SDFQPA, as a result of changing student demographics. Rather, under the school finance formulas more funds are provided to local districts for every increase in student enrollment. The BSAPP is only the starting point for application of weightings to arrive at a school district’s General Fund balance. Initial Opinion at 88-89.

83. The following tables summarize some of the data from the Plaintiff Districts’ draft 2014-2015 budget documents. These tables were submitted to the Panel in August of 2104 before the final budget documents were passed and submitted to the KSDE. Final budgets are now available, but are not part of the record. The tabled contrast current funding levels with the districts’ expenditures in 2008-2009, reported both in actual and 2015 dollars.

Table 1 – USD 259 (Wichita)

	Est. 2014-2015 ³	Actual 2013-2014	Actual 2008-2009 ⁴	Actual 2008-2009 in 2015 dollars ⁵
Total Expenditures	\$680.12 million	\$623.62 million	\$573.94 million	\$650.76 million
Instructional Expenditures	\$341.99 million	\$313.82 million	\$293.70 million	\$333.01 million
Total Estimated Local Tax Rates (mills)	53.619	57.215	53.309	
Estimated Rate (mills): Supplemental General	16.139	25.200	20.411	
Estimated Rate (mills): Capital outlay	8	4.254	7	
Total Expenditures Per Pupil	\$13,753	\$12,687	\$12,332	\$13,983
Total Expenditure Per Pupil Current Expenditures	\$12,016	\$11,388	Not reported	
# Full Time Equivalent Teachers	3,492	3,451	3,340.4	
Average Teacher Salary	\$59,486	\$57,858	\$58,466	

³ Exhibit 1530 and Exhibit 1531.

⁴ Exhibit 214, pp. 290-98.

⁵ The 2015 dollar calculations in this document used the on-line U.S. Bureau of Labor Statistics “CPI inflation calculator,” <http://data.bls.gov/cgi-bin/cpicalc.pl>, to arrive at a 2014 figure and then added 2.1 percent based on the Kansas Division of the Budget and Kansas Legislative Research Department 2015 inflation estimate.

Table 2 - USD 308 (Hutchinson)

	Est. 2014-2015 ⁶	Actual 2013-2014	Actual 2008-2009 ⁷	Actual 2008-2009 in 2015 dollars
Total Expenditures	\$68.58 million	\$60.04 million	\$53.4 million	\$60.55 million
Instructional Expenditures	\$38.26 million	\$33.60 million	\$29.33 million	\$33.25 million
Total Estimated Local Tax Rates (mills)	52.102	60.183	45.850	
Estimated Rate (mills): Supplemental General	13.426	22.871	15.120	
Estimated Rate (mills): Capital outlay	4	3.957	3.9	
Total Expenditures Per Pupil	\$14,133	\$12,372	\$11,759	\$13,333
Total Expenditure Per Pupil Current Expenditures	\$12,136	\$10,984	Not reported	
# Full Time Equivalent Teachers	340	340	343	
Average Teacher Salary	\$54,618	\$53,790	\$52,008	

⁶ Exhibit 1532

⁷ Exhibit 218, pp. 260-68.

Table 3 - USD 443 (Dodge City)

	Est. 2014-2015 ⁸	Actual 2013-2014	Actual 2008-2009 ⁹	Actual 2008-2009 in 2015 dollars
Total Expenditures	\$90.84 million	\$81.7 million	\$71.40 million	\$80.96 million
Instructional Expenditures	\$47.34 million	\$43.37 million	\$38.02 million	\$43.11 million
Total Estimated Local Tax Rates (mills)	56.998	60.616	56.778	
Estimated Rate (mills): Supplemental General	16.618	30.446	19.73	
Estimated Rate (mills): Capital outlay	8	.35	3.997	
Total Expenditures Per Pupil	\$14,212	\$13,195	\$11,903	\$13,496
Total Expenditure Per Pupil Current Expenditures	\$12,386	\$11,572	Not reported	
# Full Time Equivalent Teachers	415	405	385.4	
Average Teacher Salary	\$51,822	\$50,025	\$52,443	

⁸ Exhibit 1533.

⁹ Exhibit 224, pp. 180-88.

Table 4 - USD 500 (Kansas City)

	Est. 2014-2015 ¹⁰	Actual 2013-2014	Actual 2008-2009 ¹¹	Actual 2008-2009 in 2015 dollars
Total Expenditures	\$433.37 million	\$389.846 million	\$300.76 million	\$341.01 million
Instructional Expenditures	Not Available	Not Available [estimated \$183.41 million ¹²]	\$163.45 million	\$185.33 million
Total Estimated Local Tax Rates (mills)	49.204	60.204	53.441	
Estimated Rate (mills): Supplemental General	13.414	30.994	21.781	
Estimated Rate (mills): Capital outlay	8	4.476	3.97	
Total Expenditures Per Pupil	Not Available	Not Available [estimated \$18,006]	\$16,322	\$18,506.74
Total Expenditure Per Pupil Current Expenditures	Not Available	Not Available [estimated \$15,251]	Not reported	
# Full Time Equivalent Teachers	Not Available	Not Available	1,527	
Average Teacher Salary	Not Available	Not Available	\$53,714	

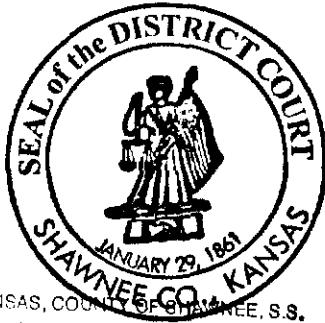
¹⁰ Exhibit 1534.

¹¹ Exhibit 228, pp. 180-91.

¹² Exhibit 1514.

Respectfully submitted,

OFFICE OF ATTORNEY GENERAL
DEREK SCHMIDT



STATE OF KANSAS, COUNTY OF SHAWNEE, S.S.

I hereby certify the above and foregoing to be
a true and correct copy, the original of which
is filed and entered of record in the court.

Dated February 12, 2015

CLERK of the DISTRICT COURT

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DEPUTY

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Attorneys for the State of Kansas

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 23rd day of January, 2015, a true and correct copy of the above and foregoing was mailed, postage prepaid, and delivered by electronic mail to:

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Mr. John S. Robb
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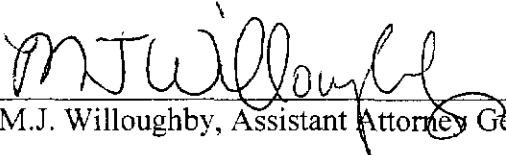
Attorneys for Plaintiffs

And was mailed, postage prepaid, to:

The Honorable Franklin R. Theis
Shawnee County District Court
200 S.E. 7th Street, Room 324
Topeka, KS 66603

The Honorable Robert J. Fleming
Labette County District Court
201 South Central Street
Parsons, KS 67357

The Honorable Jack L. Burr
Sherman District Court
813 Broadway, Room 201
Goodland, KS 67735



M.J. Willoughby, Assistant Attorney General

IN THE THIRD JUDICIAL DISTRICT
DISTRICT COURT OF SHAWNEE COUNTY KANSAS
CIVIL DEPARTMENT

FILED

FEB 18 2015

HEATHER L. SMITH
CLERK OF APPELLATE COURTS

LUKE GANNON,
By his next friends and guardians, *et al.*,

Plaintiffs,

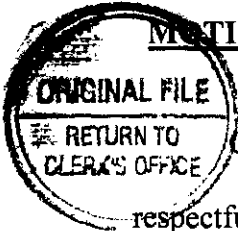
v.

STATE OF KANSAS,

Defendant.

Case No.: 10-C-1569

**MOTION TO ALTER JUDGMENT REGARDING PANEL'S PREVIOUS JUDGMENT
REGARDING EQUITY**



COME NOW Plaintiffs, by and through their undersigned counsel of record, and respectfully request that this Panel alter its December 30, 2014 judgment with regard to equity, based on the availability of new evidence and to prevent manifest injustice.

"There you go again"

In response to the Kansas Supreme Court's March decision, the Kansas Legislature adopted State's Senate Substitute for House Bill 2506 ("H.B. 2506"), purportedly restoring approximately \$129 million in funding to Kansas schools. Defending that bill, the State represented to this Panel that it "fully funded capital outlay equalization at the statutory level" and "actually *exceeds* the amount needed to 'fully fund' LOB equalization at the statutory level." Now, the State has revealed it is approximately \$63 million short of fully funding equalization aid for FY15. *Both* LOB equalization *and* capital outlay state aid remain funded at less than the full statutory amount for FY15 because the Legislature failed to take action to fully restore equalization aid when it adopted H.B. 2506. *There they go again.*

As seems to happen all too frequently in school finance litigation, the Legislature once again adopted legislation that would allow it to meet its constitutional obligations, but then chose

to fund that legislation at unconstitutional levels. So, while it *appeared* to this Panel – at the time it entered its judgment – that the Legislature had complied with the Court’s order, it is now apparent that it did not. And, the shortfall is not *de minimis*. The \$63 million shortfall represents almost half of what the Legislature originally provided by way of equalization aid (approximately \$129 million) within H.B. 2506.

On December 9, 2014, the State’s Director of the Budget admitted that the local option budget costs, capital outlay costs, and bond/interest aid for capital improvements were *understated* when the Legislature adopted H.B. 2506. As a result, further action must be taken to actually fulfill the promises that the Legislature and the State made to Kansas schoolchildren, to ensure that the State is in compliance with the March 2014 Order from the Kansas Supreme Court, and to comply with the Kansas Constitution. Specifically, additional expenditures must be made from the FY 2015 State General Fund. Therefore, Plaintiffs respectfully request that, consistent with the new evidence provided herein, this Panel alter its December 30, 2014 judgment with regard to equity and instead enter the following orders, which ensure that the State does what it represented to this Panel, the Kansas Supreme Court, and the citizens of Kansas that it would do (through the adoption of H.B. 2506):

(1) An injunction requiring the State to segregate and encumber \$45 million from the State General Fund until the State Board of Education certifies the entitlements of school districts to the Director of Accounts and Reports, as set forth in K.S.A. 72-8814(c); *and*

(2) An injunction requiring the Director of Accounts and Reports to transfer the school districts’ entitlements from the State General Fund to the school district capital outlay state aid fund, as set forth in K.S.A. 72-8814(c), no later than 30 days after receipt of the State Board of Education’s certification of entitlements or by June 1, 2015, whichever is earlier; *and*

(3) An injunction requiring the Director of Accounts and Reports, within 15 days of the transfer from the State General Fund to the school district capital outlay state aid fund, to draw a warrant on the state treasurer payable to the treasurer of the school district, consistent with the requirements of K.S.A. 72-8814(d); *and*

(4) An injunction requiring the State to either:

(a) Fully fund the supplemental general state aid, as follows:

(i) The State shall make a supplemental appropriation of \$34,278,000.00 into the FY 2015 State General Fund on or before April 15, 2015; *and*

(ii) The Director of Accounts and Reports shall draw a warrant on the state treasurer payable to the treasurer of the districts entitled to supplemental general state aid, as set forth in K.S.A. 72-6434(c), no later than 30 days after receipt of the State Board of Education's certification of the amount due to each district on or by June 1, 2015, whichever is earlier; *or*

(b) Fully fund the supplemental general state aid, as follows:

(i) The State, in lieu of making the supplemental appropriation, shall segregate and encumber \$34,278,000.00 from the FY 2015 State General Fund on or before April 15, 2015; *and*

(ii) The Director of Accounts and Reports shall draw a warrant on the state treasurer payable to the treasurer of the districts entitled to supplemental general state aid, as set forth in K.S.A. 72-6434(c), no later than 30 days after receipt of the State Board of Education's

certification of the amount due to each district on or by June 1, 2015,
whichever is earlier; *or*

- (c) Show cause as to why the Panel should not enjoin the operation of the local option budget funding mechanism, consistent with the Supreme Court's Order in *Gannon v. State*, 298 Kan. 1107, 1170-72 (2014).

RELEVANT FACTUAL STATEMENT

1. On March 7, 2014, the Kansas Supreme Court tasked this Panel with reviewing the State's compliance with the equity component of Article 6 of the Kansas Constitution. *Gannon v. State*, 298 Kan. 1107, 1170-72 (2014).
2. In response to the Supreme Court's order, the Legislature adopted 2014 Senate Substitute for House Bill 2506 ("HB 2506").
3. On April 25, 2014, this Court issued its Order to Show Cause and Scheduling Order, which allowed the parties to "proffer and show cause" regarding their positions on H.B. 2506.
4. In response, Plaintiffs voiced their concerns about H.B. 2506, including that it did not provide for full funding of equalization and was instead based on estimates. *See e.g.* Plaintiffs' Response to Show Cause Order, at pp. 2-3 ¶3.b.
5. The State, however, assured the Panel otherwise, representing to this Panel that the bill "fully funded capital outlay equalization at the statutory level" and that "the legislature's appropriation actually *exceeds* the amount needed to 'fully fund' LOB equalization at the statutory level." *See* Response to Show Cause Order by Defendant State of Kansas, at p. 2.
6. On June 11, 2014, the Panel held a hearing regarding whether the adoption of H.B. 2506 brought the State into compliance with the Supreme Court's equity mandate.

7. During that hearing, Plaintiffs – reiterating their concerns – predicted as follows:

The qualifiers are that the capital outlay equalization and the LOB equalization in House Bill 2506 were based on estimates and as we have seen since the passage of the legislation, those estimates may not be all that accurate. The State may very well run out of money and if they do, then in that situation, we're looking at allotments and it was – if you remember the history of school finance in Kansas, it was an allotment that eliminated capital outlay equalization once before. So we're qualifying the yes with a probably, assuming the estimates are accurate and assuming that the State money which, by the way, it was reported yesterday that it was reduced again, may not be available.

See Exhibit A, Excerpts from Transcript of June 11, 2014 Hearing, at pp. 5:18-6:6. Plaintiffs further stated:

In the spirit of cooperation, Mr. Chalmers was talking about, it probably makes sense to cooperate with the legislature and not dismiss the case but trust and verify and suggest that the equity piece, if you decide nothing more should be done, follow what the supreme court says and say nothing more should be done. But don't dismiss it. What's the hurry? Why are they so anxious to get a dismissal of the equity piece? Let's cooperate with the legislature and see what they – if they fulfill what they said they'd do. That's cooperation. I don't think we need to dismiss the case.

Id. at pp. 28:19-29:5.

8. On December 30, 2014, the Panel issued judgment on the equity issue in favor of Defendant, stating that “the legislature substantially complied with their obligations in regard to supplemental state aid and capital outlay [through the adoption of H.B. 2506].” *See Gannon Panel Decision (Dec. 30, 2014), at p. 7.*

9. Since the Panel's December 30 Order, new evidence has become available that confirms Plaintiffs' stated fears: the Legislature did not make sufficient appropriations to fully restore equalization aid, as the Legislature promised it would when it adopted H.B. 2506.

10. In order to fully restore equalization aid, as contemplated in H.B. 2506, the State will need to make additional expenditures in FY 2015. Director of the Budget Shawn Sullivan, in a memorandum to Governor Brownback, indicated that these additional expenditures would

increase the FY 2015 budget by \$63.9 million. *See* Exhibit B, Memoranda Regarding Allotment, at p. 1. He further indicated that the additional expenditures were caused “as a result of *understating* the local option budget costs, capital outlay costs and bond/interest aid for capital improvements.” *Id.* (emphasis added).

11. Governor Brownback included a plan to fully fund equalization aid in his January 15, 2015 budget recommendations for fiscal years 2015, 2016, and 2017. *See generally* Exhibit C, Excerpts from FY 2016 Governor’s Budget Report (released January 16, 2015) (“Budget Excerpts”).

12. Governor Brownback’s plan requires the Legislature to make at least two “Current Year Adjustments” to the FY15 budget. Exhibit C, Budget Excerpts, at p. 289. “Current Year Adjustments” are additional expenditures that “represent funds approved to be spent prior to FY 2015 under authority granted in legislation.” *Id.* at p. 283.

13. Governor Brownback’s plan requires the Legislature to make a FY15 adjustment of \$19,799,214 for “Capital Outlay Aid – Demand Transfer.” Exhibit C, Budget Excerpts, at p. 289. According to the budget recommendation, “[t]his payment is scheduled to be made in February 2015.” *Id.* at 117.

14. Governor Brownback’s plan further requires that the Legislature make a FY15 adjustment of \$34,278,000 for “Supplemental General State Aid.” Exhibit C, Budget Excerpts, at p. 289. His budget acknowledged that the supplemental general state aid “recommendation requires a FY 2015 State General Fund supplemental appropriation of \$34.3 million.” *See id.*, at p. 115.

15. Currently, because of budget shortfalls, the restoration of supplemental state aid and capital outlay, as set forth in H.B. 2506, has fallen short of *full* restoration of those funds.

This is especially concerning because – absent a reduction in expenditure and the operation of the allotment procedure – “the FY 2015 State General Fund ending balance will be approximately \$280 million below zero.” *See e.g.* Exhibit B, Memoranda Regarding Allotment, at p. 1 (emphasis added); *id.* at p. 3 (Governor’s FY 2015 Allotment Plan indicates the projected FY 2015 shortfall is \$280 million); Exhibit C, Budget Excerpts, at p. 39 (same).

16. As a result of the predicted shortfall, Governor Brownback implemented an allotment system to reduce FY 2015 expenditures. *See* Exhibit B, Memoranda Regarding Allotment, at p. 1.

ARGUMENTS AND AUTHORITIES

I. Applicable Legal Standard

Plaintiffs file this motion pursuant to K.S.A. 60-259(f). “[T]he purpose of a motion to alter or to amend under K.S.A. 60–259(f) is to allow a trial court an opportunity to correct prior errors.” *Antrim, Piper, Wenger, Inc. v. Lowe*, 37 Kan. App. 2d 932, 939, 159 P.3d 215, 221 (2007); *Denno v. Denno*, 12 Kan. App. 2d 499, 501, 749 P.2d 46 (1988). The decision to grant or deny a motion to alter or amend the judgment is within the sound discretion of the trial court. *Mitchell v. City of Wichita*, 270 Kan. 56, 66-67, 12 P.3d 402, 411 (2000). A motion to alter or amend judgment may be granted if the moving party can establish “the availability of new evidence that could not have been obtained previously through the exercise of due diligence” or “the need to correct clear error or prevent manifest injustice.” *Boardwalk Apartments v. State Auto Property and Casualty Insur.*, No. 11-2714, 2015 WL 197300 (D. Kan. Jan. 14, 2015) (citing *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)); *Brumark Corp.*

v. *Samson Res. Corp.*, 57 F.3d 941, 948 (10th Cir. 1995); *Somerlott v. Cherokee Nation Distributors, Inc.*, 686 F.3d 1144, 1153 (10th Cir. 2012).¹

Here, a motion to alter the Panel's previous judgment on the equity issue is proper for two reasons: (1) newly available evidence shows that the State is not, in fact, in substantial compliance with the Supreme Court's mandate, as previously understood; and (2) failing to alter the previous judgment would result in manifest injustice to the Plaintiffs. For the reasons set forth more fully below, Plaintiffs respectfully request that this Panel alter its previous judgment.

II. This Panel Should Take Judicial Notice of Additional Evidence That is Now Available Regarding Equity

Plaintiffs ask the Panel to take judicial notice of the following additional evidence that is newly available to this Panel, for purposes of altering their earlier equity judgment, including:

- The FY 2016 Governor's Budget Report (released January 16, 2015), available online only through the Kansas Division of the Budget, at <http://budget.ks.gov/gbr.htm>.
- The FY 2015 Allotment Notification (attached hereto as Exhibit B), available at [http://budget.ks.gov/files/FY2015/Allotment Letters Plan--12-09-2014.pdf](http://budget.ks.gov/files/FY2015/Allotment%20Letters%20Plan--12-09-2014.pdf).
- The November 17, 2014 Consensus Revenue Estimate, available at [http://budget.ks.gov/files/FY2016/CRE Long Memo Nov2014.pdf](http://budget.ks.gov/files/FY2016/CRE%20Long%20Memo%20Nov2014.pdf).

Judicial notice regarding each of these documents is proper pursuant to K.S.A. 60-409.

III. This Panel Has Authority from the Kansas Supreme Court to Enter Plaintiffs' Requested Order

On March 7, 2014, the Kansas Supreme Court issued an order requiring the Panel to conduct an additional review of the public education financing system. Part of that order required that both the Legislature and the Panel take certain actions with regard to the equity

¹ K.S.A. 60-259(f) is identical to Rule 59(e) of the Federal Rules of Civil Procedure. Compare K.S.A. 60-259(f) with Fed. R. Civ. P. 59(e). Therefore, this Panel can look to federal case law applying Rule 59(e) in making its decision. See e.g. *Back-Wenzel v. Williams*, 279 Kan. 346, 349 (2005) (citing *Moore v. Luther*, 29 Kan. App. 2d 1004, 35 P.3d 277 (2001)) ("[B]ecause the Kansas Rules of Civil Procedure are patterned after the federal rules, Kansas appellate courts often turn to federal case law for persuasive guidance."); *Garcia v. Ball*, 323 P.3d 872 (Kan. App. April 25, 2014) (citing *Lackey v. Medora Township*, 194 Kan. 794, 796, 401 P.2d 911 (1965)).

component of the funding formula. Preliminarily, the Court gave the Legislature several options for complying with its equity mandate.

With regard to capital outlay state aid payments, the Kansas Supreme Court gave the Legislature two options: The Legislature could either fully fund the provision as contemplated in K.S.A. 72-8814 (§1.a. of the remedy section) or “otherwise” cure the inequities (§1.b. of the remedy section). *Gannon*, 319 P.3d at 1252. Similarly, with regard to LOB equalization (or supplemental general state aid), the Kansas Supreme Court gave the State two options: it could “fully fund the supplemental general state aid provision . . . without proration” by July 1, 2014 or “otherwise” act to cure the inequities. *Id.*

While the Court did provide the State with options for funding both equalization mechanisms, it did so with the following caveat: Ultimately, it was the Panel’s task to ensure that the inequities in the operation of the capital outlay statutes and in the local option budget and general state aid statutes were cured. *Gannon*, 319 P.3d at 1252. And, with regard to both provisions, the Supreme Court stated that the Panel could “enter such orders as the panel deems appropriate” if the State failed to cure the inequities. *Id.*

The Kansas Legislature appeared to comply with the Court’s order by adopting H.B. 2506 before the July 1, 2014 deadline. However, a chronic problem in the area of school finance litigation then repeated itself: the Legislature did not actually fully fund the equalization aid portions of H.B. 2506 as it was presented to this Panel for review. Thus, while it may have *appeared* that the Legislature had complied with the Court’s order, it is now apparent that it did not. Instead, the Legislature now needs to come up with an additional \$63 million (at the same time it is facing a significant budget shortfall and attempting to reduce state expenditures) to

fulfill its obligations to Kansas schoolchildren and school districts. The State continues to demonstrate creative ways to avoid meeting its constitutional funding obligations.

The Kansas Supreme Court gave this Panel the authority to enter such orders that the Panel deemed appropriate if the State failed to cure the inequities present within the funding of the capital outlay state aid and supplemental general state aid. While the Legislature purported to cure the inequities by adopting H.B. 2506, it failed to provide the funding that H.B. 2506 promised and that the Kansas Constitution requires. As such, this Panel has the authority to “enter such orders as [it] deems appropriate.” Plaintiffs respectfully ask that this Panel enter the orders described herein.

IV. **Plaintiffs Can Establish, Based on the Current Factual Circumstances, That An Injunction is Proper**

Plaintiffs request that this Panel enter several injunctions, described herein, in order to ensure that the Legislature substantially complies with the equity requirements imposed upon it by the Kansas Constitution. While the Supreme Court has already given this Panel authority to enter orders to enforce its judgment that the funding levels were inequitable, this Panel also has independent authority to enter the requested injunctions because Plaintiffs can prove the following four elements:

(1) substantial likelihood that the movant will eventually prevail on the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing parties; and (4) a showing that the injunction, if issued, would not be adverse to the public interest.

Brown v. ConocoPhillips Pipeline Co., 47 Kan. App. 2d 26 (2011). Plaintiffs can meet each of these elements and the requested injunction is proper.

- A. Here, where the Supreme Court has already indicated that the Legislature's actions with regard to equity violate Article 6 of the Kansas Constitution, there is a substantial likelihood that Plaintiffs will prevail on the merits.**

The Kansas Supreme Court, in its March Order, fully understood that the adoption of Article 6 of the Kansas Constitution represented the “unmistakable” “intent of the people of Kansas” to include the specific provisions of the Kansas Constitution that are at play in this litigation. *Gannon*, 298 Kan. at 1142. With that understanding in mind, the Kansas Supreme Court stated the following regarding the equity component of Article 6, Section 6 of the Kansas Constitution:

Education in Kansas is not restricted to that upper stratum of society able to afford it. Such a result would be generally inconsistent with the economic philosophy inherent in Article 6, Section 6(b) of the people's constitution that prohibits the charging of tuition for attendance at any public school to pupils required by law to attend them.

Our test for equity in K-12 public education finance is clarified and succinctly stated as follows: School districts must have reasonably equal access to substantially similar educational opportunity through similar tax effort. Simply put, equity need not meet precise equality standards. As the Vermont Supreme Court has held, “[m]oney is clearly not the only variable affecting educational opportunity, but it is one that government can effectively equalize.” *Brigham v. State*, 166 Vt. 246, 256, 692 A.2d 384 (1997).

Gannon, 298 Kan. at 1174-75. The Court then applied this equity test to the facts of this case. In doing so, the Court held that the Panel had correctly held that the State created unconstitutional, wealth-based disparities by: (1) eliminating capital outlay state aid; and (2) by prorating and reducing supplemental general state aid payments. *Id.* at 1175-1189. As a result, the Court gave the State the option to either fully fund these provisions or to “otherwise” act to cure the inequities. *Gannon*, 319 P.3d at 1252.

Although the Kansas Supreme Court gave the Legislature discretion in how to cure the inequities, the Court's decision was replete with warnings about the unconstitutional effect of funding equalization aid below the statutory levels. The Court explained that “the State's

proration of the equalizing payments has made it even more difficult for those districts with lower property wealth to obtain reasonably equal access to substantially similar educational opportunity through similar tax effort. *Gannon*, 298 Kan. at 1187; *see id.* at 1188 (“Prorating all supplemental general state aid to which a district is entitled has the same basic effect as failing to provide equalization aid for a specified portion of a district’s LOB.”).

Yet, as of January 27, 2015, the Legislature has failed to fully restore the equalization aid, as it indicated it was doing through the adoption of H.B. 2506. While H.B. 2506 was supposed to fund approximately \$129 million in funding to Kansas schools, the State is approximately \$63 million short of fully funding equalization aid for FY15. The equalization aid is not fully funded. As such, the Panel’s December 30 Order is no longer appropriate. Plaintiffs will be successful on the merits in establishing that the State is not currently in compliance with the Supreme Court’s mandate.

B. Plaintiffs will suffer irreparable harm if this Panel does not issue the orders requested by Plaintiffs.

If the Panel does not issue the orders requested by Plaintiffs, the availability of the equalization funds will expire upon the conclusion of the state fiscal year (June 30, 2015) and Plaintiffs will never be able to access the money to which they are entitled. This threat of irreparable harm is not illusory. This exact situation has played out before this very Panel in this very case. In the Panel’s original decision, they acknowledged: “Unless encumbered, the availability of the appropriated funds for the purpose expires after the period for which the appropriation was made.” *See* Panel’s Original Decision, at p. 203 (citing *Hyre v. Sullivan*, 171 Kan. 309 (1951)). Therefore, if the Panel does not act consistent with the Plaintiffs’ request, the funds will expire.

Moreover, current Kansas revenue estimates are grim. Absent a reduction in expenditure and the operation of the allotment procedure, “the FY 2015 State General Fund ending balance will be approximately \$280 million below zero.” *See e.g.* Exhibit B, Memoranda Regarding Allotment, at p. 1; *id.* at p.3; Exhibit C, Budget Excerpts, at p. 39 (same). While the allotment system has been implemented, the Governor’s Budget shows that significant changes will need to be made to ensure that FY 2015 expenditures do not exceed State General Fund resources. Governor Brownback’s plan suggests that the Legislature should take action to fully fund equalization aid consistent with H.B. 2506. *See generally* Exhibit C, Budget Excerpts. However, there is no guarantee that the Legislature will comply with those recommendations, especially in the face of significant budget cuts that will need to be made. Unless and until the Legislature takes the appropriate, necessary actions to fully fund equalization aid, the representations made to this Panel (that equalization aid is fully funded) are false.

C. The orders requested by Plaintiffs are in the best interest of the public.

There is no question that the issues raised in this litigation are of a significant public interest. The Kansas Supreme Court, in its March Order, fully understood that the adoption of Article 6 of the Kansas Constitution represented the “unmistakable” “intent of the people of Kansas” to include the specific provisions of the Kansas Constitution that are at play in this litigation. *Gannon*, 298 Kan. at 1142. It is the people of Kansas, through the Kansas Constitution, that have demanded that the Legislature fund education equitably. Requiring the Legislature to comply with that obligation is in the best interest of the public.

And, in entering the orders requested by Plaintiffs, neither Plaintiffs nor this Panel are telling the Legislature how to cure the present inequities. It is the State that chose to adopt H.B. 2506 and to make repeated representations that it was doing so *as a measure to fully fund the equalization provisions*. It is in the best interest of the public to ensure that the Kansas

Legislature actually does what it represented to this Panel, the Kansas Supreme Court, and the citizens of Kansas that it would do (through the adoption of H.B. 2506).

D. The State will not be damaged by the orders requested by Plaintiffs.

The State will suffer no harm by being ordered to comply with the Kansas Constitution. *See e.g. Brady v. National Football League*, 640 F.3d 785, 795 (8th Cir. 2011) (“Moreover, the fact the [defendant] must comply with the law . . . does not constitute irreparable harm — it is the absolute minimum that could be expected of the [defendant].”); *Anderson v. Govt. of Virgin Islands*, 947 F. Supp. 894, 902 (D.V.I. 1996) (“[T]he Court’s modest requirement that the agency comply with well-established legal standards can hardly constitute the infliction of irreparable harm to its operations.”); *Perry v. Judd*, 840 F. Supp.2d 945, 960 (E.D. Va. 2012) (“An injunction enjoining the Commonwealth from enforcing a regulation that the Court has determined is likely to be found unconstitutional cannot qualify as harm.”).

CONCLUSION

WHEREFORE, for the reasons stated herein, Plaintiffs request that this Panel enter the following orders:

(1) An injunction requiring the State to segregate and encumber \$45 million from the State General Fund until the State Board of Education certifies the entitlements of school districts to the Director of Accounts and Reports, as set forth in K.S.A. 72-8814(c); *and*

(2) An injunction requiring the Director of Accounts and Reports to transfer the school districts’ entitlements from the State General Fund to the school district capital outlay state aid fund, as set forth in K.S.A. 72-8814(c), no later than 30 days after receipt of the State Board of Education’s certification of entitlements or by June 1, 2015, whichever is earlier; *and*

(3) An injunction requiring the Director of Accounts and Reports, within 15 days of the transfer from the State General Fund to the school district capital outlay state aid fund, to draw a

warrant on the state treasurer payable to the treasurer of the school district, consistent with the requirements of K.S.A. 72-8814(d); *and*

(4) An injunction requiring the State to either:

(a) Fully fund the supplemental general state aid, as follows:

(i) The State shall make a supplemental appropriation of \$34,278,000.00 into the FY 2015 State General Fund on or before April 15, 2015; *and*

(ii) The Director of Accounts and Reports shall draw a warrant on the state treasurer payable to the treasurer of the districts entitled to supplemental general state aid, as set forth in K.S.A. 72-6434(c), no later than 30 days after receipt of the State Board of Education's certification of the amount due to each district on or by June 1, 2015, whichever is earlier; *or*

(b) Fully fund the supplemental general state aid, as follows:

(i) The State, in lieu of making the supplemental appropriation, shall segregate and encumber \$34,278,000.00 from the FY 2015 State General Fund on or before April 15, 2015; *and*

(ii) The Director of Accounts and Reports shall draw a warrant on the state treasurer payable to the treasurer of the districts entitled to supplemental general state aid, as set forth in K.S.A. 72-6434(c), no later than 30 days after receipt of the State Board of Education's certification of the amount due to each district on or by June 1, 2015, whichever is earlier; *or*

(c) Show cause as to why the Panel should not enjoin the operation of the local option budget funding mechanism, consistent with the Supreme Court's Order in *Gannon v. State*, 298 Kan. 1107, 1170-72 (2014).

Dated this 26th day of January, 2015.



STATE OF KANSAS, COUNTY OF SHAWNEE, S.S.
I hereby certify the above and foregoing to be
a true and correct copy, the original of which
is filed and entered of record in the court.

Dated February 12, 2015
CLERK of the DISTRICT COURT

By Ashley Michaelis
DEPUTY

Respectfully Submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2015, a true and correct copy of the above and foregoing was sent by first-class mail to the following:

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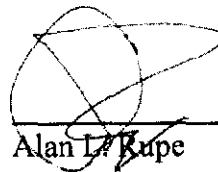
Attorneys for Defendant

Additionally, the above and foregoing was sent by e-mail and first-class mail to the following:

Honorable Franklin R. Theis
Shawnee County District Court
200 S.E. 7th Street, Room 324
Topeka, KS 66603

Honorable Robert J. Fleming
Labette County District Court
201 South Central Street
Parsons, KS 67357

Honorable Jack L. Burr
Sherman County District Court
813 Broadway, Room 201
Goodland, KS 67735


Alan L. Rupe

1 **IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS**
2 **DIVISION 7**

3 LUKE GANNON, *et al.*,)
4 ----- Plaintiffs,) Case No.: 2010-CV-1569
5) vs.)
6 STATE OF KANSAS,)
7 ----- Defendant.)

8 **TRANSCRIPT OF HEARING**

9 **PROCEEDINGS** had before the
10 Honorable Franklin R. Theis, the Honorable Jack L.
11 Burr, and the Honorable Robert J. Fleming, Judges of
12 the District Court, State of Kansas, in Shawnee
13 County, Topeka, Kansas, on the 11th day of June,
14 2014.

15 **APPEARANCES:**

16 The Plaintiff, Mr. Luke Gannon, appeared by
17 and through his counsel, Mr. Alan Rupe, Kutak Rock,
18 1605 North Waterfront Parkway, Suite 150, Wichita,
19 Kansas 67206-6635; also present was Mr. John S. Robb
20 and Ms. Jessica Skladzien.

21 The Defendant, State of Kansas, appeared by
22 and through its counsel, Mr. Arthur Chalmers, Hite
23 Fanning & Honeyman, 100 North Broadway, Suite 950,
24 Wichita, Kansas 67202-2209; also present was Mr.
25 Stephen McAllister. Mr. Jeffrey Chanay, and Ms. M.J.
 Willoughby.

I N D E X

1

2

3 ARGUMENT BY MR. RUPE. 5/88

4 ARGUMENT BY CHALMERS 17/84

5 FINDINGS BY THE COURT 91

6 CERTIFICATE. 105

7

W I T N E S S E S

8 ON BEHALF OF THE STATE: DIR CRS RD RCRS

9 DALE DENNIS

10 By the Court 77

11 By Mr. Chalmers 30 60

12 By Mr. Rupe 48 77

E X H I B I T S

13 PLAINTIFFS' NOS.: MK'D OFF'D ADM'D

14 501 (Maximum LOB Budget) --

15 502 (Maximum Capital Outlay) --

16 503 (Failed Elections) --

17 504 (Assessed Valuation/Pupil)--

18 507 (Chart) --

19 508 (Equity Perspective) --

20 509 (Gannon Equity Test) --

21

22

23

24

25

1 JUDGE THEIS: The case is captioned *Luke*
2 *Gannon, et al., versus State of Kansas*, 10-C-1569.
3 It returns here to the Court to deal with a subject
4 on compliance with a judgment entered by the Kansas
5 Supreme Court that sustained this Court's findings in
6 certain equitable distribution of funds and the
7 provision of it. So I think we've received
8 everything you've submitted. The only thing that's
9 submitted late was one of the plaintiffs'
10 supplemental response, which dealt with a matter
11 which I thought would have been addressed on May 16th
12 so I doubt if the State has had time to respond to
13 that.

14 MR. McALLISTER: We've seen it, but we
15 haven't responded to it.

16 JUDGE THEIS: I have seen it, but I have
17 not responded to it either. So we'll proceed as we
18 can. I assume we'll go in regular order. Plaintiff
19 can proceed and then we'll hear from the State on the
20 issues raised. Any questions about procedure?

21 MR. CHALMERS: I do have a question, Your
22 Honor. I had listed what I thought were the issues
23 before the panel this afternoon. As our motion to
24 dismiss the individual plaintiffs, which I don't
25 think is opposed, that's as a result of the standing

1 decision by the supreme court. Then there is the
2 issue of compliance with the equity judgment and then
3 I have an issue which I captioned has to do with
4 plaintiffs' motion for judgment and that is, should
5 plaintiff have to rest first which is a request that
6 we're making of the Court. We would ask the Court to
7 decide whether they should rest their case before we
8 get to that issue. Be helpful to have that done
9 today.

10 But I mention that because we are not prepared to
11 talk about the motion for judgment. We don't think
12 that's ripe. We had not understood it was set for
13 hearing today.

14 JUDGE THEIS: It's not. I don't think any
15 of these orders were noticed up for setting. Some of
16 these are collateral ones but we'll take up what we
17 can and anything that deals with the scheduling
18 future proceedings and goes beyond equitable issue
19 or -- we'll probably certainly give everyone an
20 opportunity to reply. Probably not make too many
21 decisions on those today.

22 MR. CHALMERS: Thank you, Your Honor.

23 JUDGE THEIS: Did we get an appearance?

24 MR. RUPE: For the plaintiffs, Allen Rupe,
25 John Robb, and Jessica Skladzien.

1 MR. CHALMERS: For the defendant State,
2 Arthur Chalmers, Stephen McAllister, Jeff Chanay, and
3 M.J. Willoughby.

4 JUDGE THEIS: All right. Mr. Rupe.

5 MR. RUPE: Yes, probably, and no way.
6 Those are the answers to the questions. The first
7 question, it deals with whether the passage of the
8 legislation that brings us here today, whether those
9 funds -- which LOB equity and capital outlay
10 equalization were put back into the formula --
11 whether that comports with what the supreme court
12 asked to be done in one of their suggestions and as
13 we indicated in our brief, the answer to that is did
14 they put that money back. The answer is, yes, they
15 did. But the yes has a qualifier or some qualifiers
16 which brings us to probably as the second answer to
17 the first question.

18 The qualifiers are that the capital outlay
19 equalization and the LOB equalization in House Bill
20 2506 were based on estimates and as we have seen
21 since the passage of the legislation, those estimates
22 may not be all that accurate. The State may very
23 well run out of money and if they do, then in that
24 situation, we're looking at allotments and it was --
25 if you remember the history of school finance in

1 Kansas, it was an allotment that eliminated capital
2 outlay equalization once before. So we're qualifying
3 the yes with a probably, assuming the estimates are
4 accurate and assuming that the State money which, by
5 the way, it was reported yesterday that it was
6 reduced again, may not be available.

7 There is also the notion as a qualifier that this
8 legislation because it wasn't just doing what the
9 supreme court suggested in item one, it was doing
10 more than that, there's a possibility that the
11 legislation is subject to a constitutional attack in
12 about six different ways. We outline these in our
13 briefs but I'll briefly state it again.

14 The legislation has multiple subjects in a
15 substantive legislation. As you know because of the
16 line item veto, you can have that kind of multiple
17 subjects in an appropriations bill but what the
18 legislature did was tuck in some other substantive
19 legislation into the bill and you combine substantive
20 legislation with appropriations and that spells
21 possibly unconstitutional.

22 They eliminated, and I don't think anybody has
23 not heard of this, but they eliminated teacher due
24 process and we think as we outlined in our brief, it
25 may be subject to an attack. I understand the KNEA

1 Montoy case. I'm not sure Mr. Chalmers' statements
2 of legislative cooperation on the issue of cutting.
3 I understand what he's talking about, but I'm not
4 understanding that what he's talking about is
5 supported by historical action.

6 In June of 2010, four years ago, we filed our
7 notice of claim and in our notice of claim, we said
8 that a distinct pattern had emerged over the last
9 50 years and almost every school finance case follows
10 it. First, the affected individuals and districts
11 challenge the district of the legislative failure.
12 The court is now called to assess the legislative
13 action or lack of it indicates that the legislation
14 will be overturned. Before the court can do
15 anything, the legislature adopts new legislation and
16 then the court accepts the legislative response as a
17 good faith effort, releases its jurisdiction, and we
18 start the cycle all over again so.

19 In the spirit of cooperation, Mr. Chalmers was
20 talking about, it probably makes sense to cooperate
21 with the legislature and not dismiss the case but
22 trust and verify and suggest that the equity piece,
23 if you decide nothing more should be done, follow
24 what the supreme court says and say nothing more
25 should be done. But don't dismiss it. What's the

1 hurry? Why are they so anxious to get a dismissal of
2 the equity piece? Let's cooperate with the
3 legislature and see what they -- if they fulfill what
4 they said they'd do. That's cooperation. I don't
5 think we need to dismiss the case.

6 With regard to the action that is being taken
7 here today and the argument, in your e-mail, you
8 asked for us to advise you whether the supreme court
9 judgment in terms of equity and ramification, you
10 said be prepared to advise why it meets the supreme
11 court's judgment in terms of equity and ramifications
12 and you also said in your show cause order talking
13 about capital outlay and LOB equalization, such
14 dollar sums as provided and as will be distributed
15 standing alone meet any declared constitutional tests
16 of equity.

17 So that's why we are suggesting to you that if
18 you want to apply the measuring stick of the *Gannon*
19 equity test to what has been done overall, we don't
20 get there. But did they do the two things that the
21 supreme court suggested in item number one they do,
22 put back the LOB equitable equalization and the
23 capital outlay equalization, yes, they did that.
24 Don't dismiss this case. Cooperate with the
25 legislature and trust and verify.

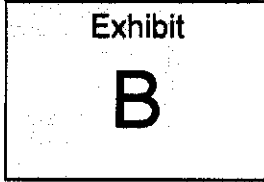
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Phone: (785) 296-2436
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shawn.sullivan@budget.ks.gov

Shawn Sullivan, Director of the Budget

Sam Brownback, Governor



MEMORANDUM

TO: Governor Sam Brownback
Jim Clark, Secretary of Administration

FROM: Shawn Sullivan, Director of the Budget

DATE: December 9, 2014

SUBJECT: FY 2015 State General Fund Allotment

After considering current consensus revenue estimates, consensus caseload adjustments and the FY 2015 approved budget, the resources of the State General Fund are likely to be insufficient to cover the appropriations made against the State General Fund. Therefore, I advise that the use of an allotment plan as provided for in K.S.A. 75-3722 is necessary and beneficial to the state.

At the close of FY 2014, the State General Fund had a preliminary ending balance of \$380 million. When the consensus estimating group met on November 10, consensus revenue estimates for FY 2015 were decreased by \$205.9 million from the FY 2015 approved budget. The education consensus caseload was also updated on November 10 and the State is now set to spend \$253.9 million more in the 2014/2015 school year as compared to the 2013/2014 school year. This includes an increase of \$63.9 million to the FY 2015 budget as a result of understating the local option budget costs, capital outlay costs and bond/interest aid for capital improvements. The consensus caseload for Medicaid was also updated and \$46 million has been added to the FY 2015 approved Medicaid budget, which is primarily due to the health insurance premium tax from the Affordable Care Act.

Taking into account these factors, estimated revenues, and approved expenditures, the FY 2015 State General Fund ending balance will be approximately \$280 million below zero unless corrective action is taken.



Office of the Secretary
1000 SW Jackson, Suite 500
Topeka, KS 66612

Phone: 785-296-3011
Fax: 785-296-2702
www.admin.ks.gov

Jim Clark, Secretary

Sam Brownback, Governor

MEMORANDUM

TO: Heads of State Agencies
FROM: Jim Clark, Secretary of Administration
DATE: December 9, 2014
RE: FY 2015 State General Fund Allotments

In a memorandum dated December 9, 2014 (attached), State Budget Director Shawn Sullivan has advised me that the expected resources of the State General Fund are insufficient to cover appropriations made against it and that the use of an allotment plan as provided for in KSA 75-3722 et seq. is necessary and beneficial to the state. In accordance with the authority granted by this statute, an allotment system is now imposed upon selected State General Fund accounts for FY 2015. Implementation of the allotment system is necessary to ensure that State General Fund expenditures in FY 2015 will not exceed State General Fund resources.

The attached spreadsheet outlines the reductions that will be applied to affected agencies.

KSA 75-3722 provides that you may appeal this allotment decision to the Governor. Please deliver any appeal in writing with support information to the Division of the Budget no later than December 19. The information submitted must explain the reasons that these allotments are inappropriate and the result that would occur if the allotments remain unchanged.

If you have questions about this process, please contact your analyst in the Division of the Budget or State Budget Director Shawn Sullivan.

Governor's FY 2015 Allotment Plan

Projected FY 2015 Shortfall: \$280.0 million

Fund Transfers

Fund Transfers from Cabinet Agencies and Elected Offices*	\$	18,600,000
Kansas Endowment for Youth Sweep*		14,500,000
Children's Initiatives Fund Sweep*		500,000
Kansas Department of Health & Environment Fee Fund Sweep*		55,000,000
Department of Commerce Impact Bonds*		14,200,000
Debt Set-Off Program Expansion*		3,000,000
State Highway Fund Transfer*		95,679,087
Subtotal	\$	201,479,087

Expenditure Reductions

Lapse Reappropriations		(6,276,894)
KPERS Employer Contribution Rate at 9.5%		(40,700,000)
4% Reduction to Cabinet Level and Other SGF Funded Agencies		(6,893,973)
- Adjutant General	(106,472)	
- Department for Aging & Disability Services	(599,235)	
- Department of Agriculture	(199,668)	
- Department of Administration	(194,391)	
- Office of the Governor	(139,182)	
- Department of Health & Environment - Environment	(774,198)	
- Department of Labor	(6,671)	
- Department of Commerce	(5,000)	
- Department of Revenue	(290,582)	
- Department for Children and Families	(3,980,880)	
- Kansas Water Office	(23,862)	
- Attorney General	(125,102)	
- Secretary of State	(880)	
- Kansas Guardianship Program	(23,307)	
- Historical Society	(92,437)	
- State Library	(85,038)	
- Board of Tax Appeals	(17,196)	
- Department of Education	(229,872)	
4% Reduction to Legislative Agencies*		(562,459)
- Revisor of Statutes	(63,739)	
- Legislative Coordinating Council	(11,343)	
- Legislative Research Department	(74,995)	
- Legislative Division of Post Audit	(49,097)	
- Legislature	(363,285)	
4% Reduction to Select EDIF Funded Agencies*		(786,000)
- Department of Administration--Public Broadcasting	(12,000)	
- Department of Commerce	(274,000)	
- Department of Wildlife, Parks & Tourism	(500,000)	
4% Reduction to Select Agencies with State Highway Fund Transfers*		(2,021,587)
- Department of Revenue	(918,543)	
- Highway Patrol	(1,103,044)	
4% Reduction to Department of Corrections Operations		(153,000)
4% Reduction to Board of Regents Operations		(67,000)
Department of Transportation Operations Reduction*		(7,800,000)
Bond Refinancing		(2,860,000)
Larned State Hospital--Meyer Building Expansion Delay		(5,400,000)
Reduce Kansas Bioscience Authority Transfer*		(5,000,000)
Subtotal	\$	(78,520,913)
Total Fee Transfers and Expenditure Changes	\$	280,000,000

*Subject to legislation

4% reduction applies to the last six months of the fiscal year

Exhibit
C



THE GOVERNOR'S

Budget

STATE OF KANSAS

Report

VOLUME 1 FISCAL YEAR 2016

Sam Brownback
SAM BROWNBACK, GOVERNOR

January 15, 2015

Dear Fellow Kansans:

With the submission of this report, I present my revised budget recommendations for fiscal years 2015, 2016 and 2017 for consideration by the 2015 Kansas Legislature.

Four years ago, I announced that the days of ever expanding government in Kansas were over. We have worked hard to reduce the size and cost of state government while also providing much needed tax relief to the people of Kansas. This has led to strong small business growth, private sector job growth, personal wage growth, state gross domestic product growth and a low unemployment rate.

My biennial budget proposal builds upon the foundation set for growth and prosperity through strong fiscal governance and lower taxes. My budget proposal recognizes that the current budget trajectory is unsustainable and that difficult solutions are required by state law as well as by fiscal prudence. It also recognizes that an ever growing governmental budget cannot bring lasting prosperity to its citizens and that to live within our means we must make structural reforms to the elementary and secondary education school finance formula, KPERS pension system and to Medicaid. Past government spending growth was not reflective of the trajectory of our population or our economy and it was government getting too big, too fast. The era of ever expanding government is over because it has to be in order for the budgets of our State's citizens to be of higher priority.

If you would like additional information or if you have questions, I encourage you to contact my office or the Division of the Budget.

Sincerely,



SAM BROWNBACK
Governor

State General Fund Expenditures

As depicted in the charts in the overview, the State General Fund makes up the largest source of financing for the budget. The Governor proposes a revised FY 2015 budget of \$6,321.7 million, a FY 2016 budget of \$6,228.9 million and a FY 2017 budget of \$6,240.5 million. The tables on the following pages detail the major adjustments for these fiscal years. Schedule 8 in the back of this volume details the agency by agency adjustments to budgets since the session's adjournment.

FY 2015

It was anticipated that the State General Fund would end FY 2014 with \$697.1 million. While agencies underspent their approved budgets, a large decrease to individual income tax receipts pushed FY 2014 ending the balance downward to \$379.7 million.

The new Consensus Revenue Estimate was issued November 10, 2014, and lowered State General Fund receipt estimates by \$205.9 million to \$5,768.7 million. Adjustments to revenues are detailed in the State General Fund Consensus Revenues section of this report. To this revised revenue estimate, the Governor proposes several changes, which are also detailed in that section of this volume. When the Governor's receipt estimates are added to the beginning balance, \$6,393.9 million is available for FY 2015.

The Kansas Department of Transportation (KDOT) indicates that preservation projects already announced for FY 2015 and FY 2016, as well as expansion and modernization projects announced for the course of T-WORKS, will be let as scheduled. Yet to be programmed State Highway Fund dollars will be applied to additional preservation projects at a level that allows KDOT to maintain a positive yearly ending balance in the State Highway Fund. The agency notes that estimated State Highway Fund yearly ending balances are very fluid and are shaped by a number of ever changing variables and assumptions. Based on KDOT's most current information and assumptions, the T-WORKS program can maintain a commitment to construct all of the announced expansion projects and

program preservation projects at a level that achieves the performance targets for road and bridge conditions.

The 2014 Legislature approved an FY 2015 budget of \$6,300.8 million. At the end of FY 2014, \$24.1 million of expenditure authority carried forward, making a revised approved FY 2015 budget of \$6,324.9 million.

The Governor now recommends a revised FY 2015 budget that is \$3.2 million less than the legally authorized amount but retains the state's new estimates of expenses for state aid to K-12 schools to ensure that base state aid per pupil remains at \$3,852, and adding necessary increases for health and human service caseload entitlement programs. However, because of the lowering of revenue estimates it was determined that FY 2015 resources would not be adequate to sustain the approved budget. As a result, the Governor initiated a State General Fund allotment plan which is detailed in the table below. KSA 75-3722 authorizes application of an allotment system to the State General Fund or any state special revenue fund. It is applied in

State General Fund FY 2015 <i>(Dollars in Millions)</i>	
Beginning Balance	\$ 379.5
Revenue:	
November Consensus Revenue Est.	5,768.7
Allotment Plan Transfers & Fee Sweeps	201.5
Other Fund Transfers	38.9
All Other Adjustments	5.3
Total Available	\$ 6,393.9
Expenditures:	
Approved Budget (June 2014)	6,300.8
Allotment Plan Reductions	(78.5)
Information Technology	(3.8)
Expenditure Authority Shifting from FY 14	24.1
Health/Human Service Consensus Estimates	46.2
K-12 Consensus Estimates*	58.8
Net All Other Adjustments	(25.9)
Total Expenditures	\$ 6,321.7
Ending Balance	\$ 72.2

* Capital improvement aid caseload increase is in SGF revenue transfers.

those instances when it appears the resources of a fund are likely to be insufficient to cover the authorized appropriations.

The Governor's recommended FY 2015 budget of \$6,321.7 million incorporates the allotment plan and makes other adjustments to bring expenditures in alignment with adjusted revenues. It is expected that these adjustments will produce a current year ending balance of \$72.2 million.

Governor's FY 2015 Allotment Plan	
Projected Shortfall: \$280.0 million	
Fund Transfers	
Fund Transfers From Cabinet Agencies & Elected Offices*	18,600,000
Kansas Endowment for Youth Sweep*	14,500,000
Children's Initiative Fund Sweep*	500,000
Kansas Department of Health & Environment Fee Fund Sweep*	55,000,000
Department of Commerce Impact Bonds*	14,200,000
Debt Setoff Program Expansion*	3,000,000
State Highway Fund Transfer*	95,679,087
Subtotal	\$ 201,479,087
Expenditure Reductions	
Lapse Reappropriations	(6,276,894)
KPERS Employer Contribution Rate at 9.5%	(40,700,000)
4% Reduction to Cabinet Level & Other SGF Funded Agencies	(6,893,973)
4% Reduction to Legislative Agencies*	(562,459)
4% Reduction to Select EDIF Funded Agencies*	(786,000)
4% Reduction to Select Agencies with State Hwy Fund Transfers*	(2,021,587)
4% Reduction to Department of Corrections Operations	(153,000)
4% Reduction to Board of Regents Operations	(67,000)
Department of Transportation Operations Reduction*	(7,800,000)
Bond Refinancing	(2,860,000)
Larned State Hospital--Meyer Building Expansion Delay	(5,400,000)
Reduce Kansas Bioscience Authority Transfer*	(5,000,000)
Subtotal	\$ (78,520,913)
Total Fee Transfers & Expenditure Changes	\$ 280,000,000

*Subject to legislation

4% reduction applies to the last six months of the fiscal year

FY 2016

The November Consensus Estimate for FY 2016 totals \$5,811.4 million. To that total, the Governor proposes increases to the revenue estimate of \$206.4 million. Much of this increase can be attributed to additional transfers from the State Highway Fund and other special revenue funds. Also, the combined effects of the tax policy changes outlined in the State General Fund Revenue Adjustments section are estimated to bring in \$211.0 million in additional revenue. The beginning balance, plus the revenue estimate combined with the Governor's adjustments, equal \$6,316.5 million available for the FY 2016 budget.

Recommended expenditures in FY 2016 decrease by \$92.8 million or 1.5 percent below the FY 2015 recommendation. The budget contains increases for human service caseloads and debt service but also includes an array of reductions across functional areas. In particular, structural and policy reforms to K-12 finance, KPERS, and KanCare will produce substantial savings in FY 2016. Descriptions and discussions of these reforms can be found in their respective subject areas within this volume. Some of the items in the allotment plan, such as the 4.0 percent reductions and bond refinancing, will be carried into FY 2016. A reduction to health insurance rates is expected to save the state approximately \$12.0 million. Consolidation of state information technology systems is estimated to produce savings of approximately \$15.0 million.

State General Fund FY 2016	
<i>(Dollars in Millions)</i>	
Beginning Balance	\$ 72.2
Revenue:	
November Consensus Revenue Est.	5,811.4
Tax Policy Changes	211.1
State Highway Fund Transfer	115.2
Suspend LAVTR Transfer	54.0
EDIF Transfer	17.0
KEY Fund Transfer	9.2
Other Fund Transfers	11.0
All Other Adjustments	15.4
Total Available	\$ 6,316.5
Expenditures:	
FY 2016 Budget-Total Expenditures	6,228.9
Key Adjustments Included in Total:	
KanCare Privelege Fee Increase	(79.9)
KanCare Policy Changes	(50.0)
KPERS Policy Changes	(39.6)
Agency Across-the-Board Reductions	(32.7)
KBA Financing Model Change	(22.0)
Eliminate One-Time Shifts in FY 2015	(17.8)
Information Technology	(15.0)
SEHP Savings	(12.0)
Bond Refinancing	(6.0)
KUMC Education Building	4.5
KBI Lab Debt Service	6.0
NBAF Debt Service	16.1
Health/Human Service Caseloads	76.0
Ending Balance	\$ 87.6

FY 2017

FY 2017, the November Consensus Estimate totals \$5,876.6 million. The Governor adds \$529.3 million to the estimate from adjustments to transfers and the tax changes mentioned above. When the beginning balance is included, a total of \$6,493.5 million will be available for FY 2017.

Many of the recommended expenditure adjustments that are part of the FY 2016 budget are also applied to the FY 2017 budget, which totals \$6,240.5 million. Required obligations in the forms of human service caseloads, state payroll and debt service are added. Additional information and discussion regarding the 27th pay period can be found in the State Employees section and the State General Fund Revenue Adjustments section. Reductions resulting from reforms to KPERS, school finance, and KanCare will continue into FY 2017. Across-the-board cuts of 4.0 percent to certain agencies, bond refinancing, health insurance savings, and information technology efficiencies are also part of the Governor's proposal for the out year.

The ending balance at the close of FY 2017 is now projected to be \$253.0 million or 4.0 percent. The pie charts in the overview section show FY 2017 proposed expenditures by function and the sources from which State General Fund revenues are received.

Outlook

The table on the following page outlines the current multi-year scenario for the State General Fund.

State General Fund FY 2017 (Dollars in Millions)	
Beginning Balance	\$ 87.6
Revenue:	
November Consensus Revenue Est.	5,876.6
Tax Policy Changes	212.8
State Highway Fund Transfer	115.2
Suspend LAVTR Transfer	54.0
Kansas Biosciences Authority	40.0
Suspend CCRF	35.3
Expiration of STAR Bonds	20.8
EDIF Transfer	17.0
KEY Fund Transfer	9.1
Other Fund Transfers	9.7
All Other Adjustments	15.4
Total Available	\$ 6,493.5
Expenditures:	
FY 2017 Budget-Total Expenditures	6,240.5
Key Adjustments Included in Total:	
KPERS Policy Changes	(92.8)
KanCare Privelege Fee Increase	(82.1)
KanCare Policy Changes	(50.0)
Agency Across-the-Board Reductions	(33.4)
Medicaid Eligibility Change	(26.0)
Information Technology	(15.0)
SEHP Savings	(12.2)
Bond Refinancing	(6.0)
KUMC Education Building	4.5
KBI Lab Debt Service	6.0
NBAF Debt Service	16.1
27th Pay Period	32.4
Health/Human Service Caseloads	44.0
Ending Balance	\$ 253.0

State General Fund Outlook

(Dollars in Millions)

	FY 2012	FY 2013	FY 2014	FY 2015	FY 2015	FY 2016	FY 2017
	<u>Actual</u>	<u>Actual</u>	<u>Actual</u>	<u>Approved</u>	<u>Gov. Est.</u>	<u>Gov. Rec.</u>	<u>Gov. Rec.</u>
Beginning Balance	\$ 188.3	\$ 503.0	\$ 709.3	\$ 379.7	\$ 379.7	\$ 72.2	\$ 87.6
Revenues							
Taxes	6,160.5	6,333.2	5,632.1	6,034.5	5,830.7	5,970.6	6,113.5
Income Tax Adjustments/Stabilization Fund	-	-	-	-	-	73.2	108.7
Tax Amnesty Program	-	-	-	-	-	30.0	-
Consumption Taxes	-	-	-	-	-	107.9	104.1
Interest	9.7	11.1	11.5	10.0	12.0	8.0	8.1
Agency Earnings	62.1	57.9	49.6	50.3	53.3	67.2	68.6
Transfers:							
School Capital Improvement Aid	(104.8)	(111.5)	(129.7)	(137.0)	(147.0)	(155.0)	(162.5)
Regents Faculty of Distinction	(0.6)	(0.1)	(0.2)	(0.2)	(0.2)	0.2	0.2
Regents Research Corp Debt Service	(6.0)	(1.1)	(0.2)	-	-	-	-
Health Care Stabilization Fund	-	-	(2.5)	(4.0)	(4.0)	(4.0)	(4.0)
Biosciences Initiatives	(11.3)	(12.3)	(10.0)	(32.0)	(32.0)	(35.0)	(35.0)
Business Incentives	(12.3)	(11.1)	(10.4)	(10.2)	(10.2)	(10.1)	(10.1)
KDHE Fee Fund	-	-	-	-	55.0	-	-
Highway Patrol	32.8	-	-	-	-	-	-
Highway Fund	205.0	0.2	15.0	15.0	165.0	115.0	115.0
State-Owned Casino Revenue	40.4	(2.0)	-	-	-	-	-
All Other Transfers	37.4	76.9	98.0	48.2	84.5	72.8	75.0
Other Revenue Adjustments	-	-	-	-	7.1	3.5	24.3
Total Available	<u>\$ 6,601.1</u>	<u>\$ 6,844.1</u>	<u>\$ 6,362.5</u>	<u>\$ 6,354.3</u>	<u>\$ 6,393.9</u>	<u>\$ 6,316.5</u>	<u>\$ 6,493.5</u>
Expenditures							
Aid to K-12 Schools/KPERS School	3,066.4	3,060.3	2,951.8	3,147.4	3,159.6	3,158.7	3,151.9
Higher Education	739.2	770.2	761.9	794.1	799.6	788.2	802.4
Health/Human Service Caseloads	990.0	970.9	1,006.1	1,099.0	1,130.1	1,240.7	1,270.3
KPERS State Employer Contribution	39.3	39.7	41.0	47.6	34.1	51.4	58.4
Judiciary	102.5	106.1	96.5	97.8	97.5	96.7	96.7
General Government	272.5	235.3	252.7	204.4	220.1	233.0	235.1
Public Safety	394.5	386.1	383.9	394.1	391.3	398.9	412.5
Agriculture & Natural Resources	26.9	18.5	16.4	17.2	16.9	15.8	16.5
Key Budget Items:							
KPERS Policy Changes	-	-	-	-	-	(39.6)	(92.8)
Managed Care Privilege Fee Offset	-	-	-	-	-	(79.8)	(82.1)
KanCare Savings from Policy Changes	-	-	-	-	-	(50.0)	(50.0)
Medicaid Eligibility Determination Change	-	-	-	-	-	-	(26.0)
4.0 Percent Reductions to Select Agencies	-	-	-	-	-	(32.8)	(33.4)
KBA Financing Model Changes	-	-	-	-	-	(22.0)	(22.0)
Information Technology	-	-	-	-	-	(15.0)	(15.0)
State Employee Health Plan Savings	-	-	-	-	-	(12.0)	(12.2)
Bond Refinancing	-	-	-	-	-	(6.0)	(1.2)
All Other Expenditures	466.8	547.6	472.5	499.2	472.5	502.7	531.4
Total Expenditures	<u>\$ 6,098.1</u>	<u>\$ 6,134.8</u>	<u>\$ 5,982.8</u>	<u>\$ 6,300.8</u>	<u>\$ 6,321.7</u>	<u>\$ 6,228.9</u>	<u>\$ 6,240.5</u>
Ending Balance	<u>\$ 503.0</u>	<u>\$ 709.3</u>	<u>\$ 379.7</u>	<u>\$ 53.5</u>	<u>\$ 72.2</u>	<u>\$ 87.6</u>	<u>\$ 253.0</u>
As Percentage of Expenditures	<u>8.2%</u>	<u>11.6%</u>	<u>6.3%</u>	<u>0.8%</u>	<u>1.1%</u>	<u>1.4%</u>	<u>4.1%</u>

Totals may not add because of rounding.

FY 2015 Approved Revenues includes April, 2014 CRE with legislative adjustments published June 16, 2014.

FY 2015 Approved Expenditures include expenditures as published in the Comparison Report

Revenues for FY 2015, FY 2016 and FY 2017 Governor's Recommendations reflect Consensus Revenue Estimate from November 2014 adjusted by the Governor.

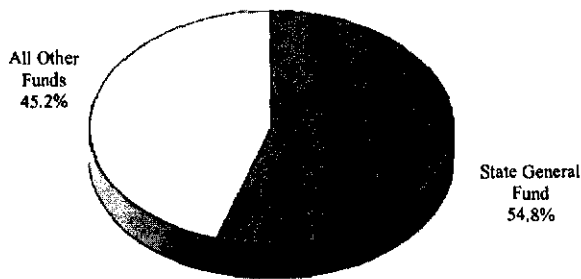
Employer contributions to KPERS from the SGF on behalf of state employees are estimated.

Education

Education Summary

The Education function includes expenditures for state support of primary, secondary, and higher education. Agencies in this function are the Department of Education, including the Schools for the Deaf and Blind; Board of Regents and the institutions under its authority; the State Historical Society; and the State Library. For Education, the Governor recommends \$7.3 billion annually for both FY 2015 and FY 2016 and \$7.4 billion for FY 2017. The funding includes approximately \$4.0 billion annually from the State General Fund.

How It Is Financed



FY 2016

For K-12 education, the Governor recommends \$4.6 billion in FY 2015 and FY 2016, including State General Fund expenditures of \$3.2 billion. The recommendation for FY 2017 is \$4.1 billion, including \$3.3 billion from the State General Fund. Because the state cannot sustain the long-term level of expenditure increases for elementary and secondary education, the Governor recommends sunsetting the current school finance formula, effective July 1, 2015. The Governor will work with the 2015 Legislature to reform school finance with a new formula. Until a new formula becomes law, the Governor recommends using a block grant to distribute state funding to districts in FY 2016 and FY 2017.

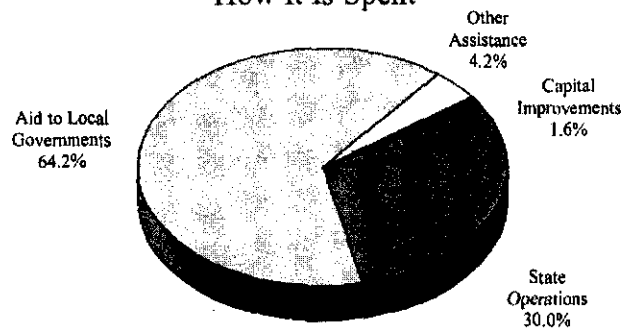
The Governor's recommendation for the School for the Blind and School for the Deaf includes a 1.5 percent salary increase for the schools' teachers, as required by statute. The increases are linked to those given by the Olathe School District to its teachers. Amounts include \$50,8763 in FY 2016 and \$51,613 in FY 2017 for the School for the Blind, and \$69,365 in

FY 2016 and \$72,916 in FY 2017 for the School for the Deaf, all from the State General Fund.

For postsecondary education the Governor recommends \$2.7 billion in FY 2015 through FY 2017. The totals include State General Fund expenditures of \$800.0 million in FY 2015, \$778.2 million in FY 2016, and \$802.4 million in FY 2017 from the State General Fund. The Board of Regents will be restructuring the Technical Education Initiative through policy changes in order to better meet the needs of students. The initiative is proposed to receive a one-time increase in the FY 2015 budget of \$2.85 million, which is offset by eliminating the \$1.5 million incentive payment to school districts.

The Governor's recommendation for the State Library is \$6.0 million in FY 2015, and \$6.5 million in both FY 2016 and FY 2017. All three years include State General Fund expenditures of \$4.1 million and will continue to support grants to public libraries, research databases, specialized services to children, including summer reading programs in every library in Kansas and support for the Talking Books Program.

How It Is Spent



FY 2016

The Historical Society's budgetary recommendation for FY 2015 is \$8.0 million, including \$5.0 million from the State General Fund. The recommendation for FY 2016 is \$7.7 million and \$8.0 million for FY 2017, \$4.4 million of which is from the State General Fund in both years. The funding for each fiscal year will maintain the properties for which the agency is responsible, as well as to continue to provide a variety of educational and research services.

Elementary & Secondary Education

The ten-member State Board of Education is given responsibility by the *Kansas Constitution* for general supervision of public schools and educational institutions, except those delegated to the State Board of Regents. Under the guidance of the State Board of Education and the Board's appointed Commissioner of Education, the Department of Education provides funding and program guidance in carrying out federal and state law for all of the state's 286 unified school districts.

The state's largest category of expenditure, state aid to school districts, is distributed through various aid programs, including general state aid, through which monies are sent to school districts on a per pupil basis; supplemental general state aid which is the state's share of the cost for local option budgets; special education; and the employer's cost for teacher retirement benefits through KPERS. The cost of educating public school students is divided between local, state, and federal resources. On page 117, a table shows the budgeted amounts by major aid program that includes state and federal sources.

Historically, Kansas has followed a foundation formula, which provides for a base funding amount that is multiplied by a weight for each student. The weight factor varies depending on the attributes defined in the formula. For example, varying funding levels are provided to students enrolled in at-risk programs or bilingual education programs, and to students enrolled in smaller school districts.

Although General State Aid and Supplemental State Aid expenditures have traditionally been primarily considered in how much state support is given to local school districts, there are other considerable items of expenditures that benefit local school districts but which are financed by the state. For example, the state makes the entire employer contribution for all KPERS School employees, which is estimated to total \$495.2 million by FY 2017. As districts elect to increase teacher or other employee salaries, the state must increase its payments into KPERS accordingly.

The following sections summarize the Governor's recommendations for the elementary and secondary education for FY 2015, FY 2016 and FY 2015.

FY 2015 Recommendations

The table on the following page titled "Major Categories of State Aid for K-12 Education in Kansas" gives a summary of the level of the main state contributions to elementary and secondary education that comes from the state. For FY 2015, the Governor recommends \$4,070.3 million of major state aid programs, which are detailed below.

General State Aid. For FY 2015, the Governor recommends total expenditures of \$2,609.4 million from all funding sources, including \$1,886.7 million from the State General Fund, \$579.2 million from funds generated from the 20-mill local property tax levy, \$96.6 million from the State Highway Fund, and \$46.8 million from the School District Finance Fund. Expenditures from the State Highway Fund are utilized for the transportation weighting in the school finance formula. Funding at these levels will provide a base state aid per pupil funding of \$3,852, which is at the level that the 2014 Legislature approved.

Local Option Budget (LOB) Aid. The state's share of local option budget aid is paid through supplemental general state aid. As local school boards or district voters allow for the increase in the size of their local option budgets, the state's expenses grow. Those districts with lower property valuations receive more state aid, according to an equalization formula in the state law. The Governor's recommendation includes \$482.8 million from the State General Fund in FY 2015. This recommendation requires a FY 2015 State General Fund supplemental appropriation of \$34.3 million.

Special Education Services Aid. For special education services in FY 2014, the Governor recommends expenditures of \$533.3 million from all funding sources, including \$418.3 million from the State General Fund and \$10.0 million from the State Highway Fund. State support of special education services at the level are expected to meet federal maintenance of effort requirements for FY 2015.

KPERS School Employer Contributions. Although employees of unified school districts are not state

employees, the employer's cost of providing their retirement benefits have been paid by the state. Appropriations are made to the Department of Education to cover quarterly payments to KPERS for this cost. These funds are disbursed to the school districts, which then route the funds back to KPERS.

The Governor's recommendation includes \$357.8 million in FY 2015 for the KPERS School employer contribution, including \$318.3 million from the State General Fund and \$39.5 million from the Expanded Lottery Act Revenues Fund (ELARF). This recommendation reflects an allotment reduction of

Major Categories of State Aid for K-12 Education in Kansas					
<i>(Dollars in Thousands)</i>					
	<u>FY 2013</u> <u>Actual</u>	<u>FY 2014</u> <u>Actual</u>	<u>FY 2015</u> <u>Gov. Rec.</u>	<u>FY 2016</u> <u>Gov. Rec.</u>	<u>FY 2017</u> <u>Gov. Rec.</u>
Unweighted FTE Enrollment	456,738	458,324	459,700	461,100	462,500
Block Grant to Districts					
SGF Appropriation	\$ --	\$ --	\$ --	\$ 2,312,899	\$ 2,259,923
20-Mill Local Prop. Tax*	--	--	--	600,247	622,634
Mineral Production Fund	--	--	--	--	28,427
State Highway Fund	--	--	--	96,600	96,600
Total--Block Grants	\$ --	\$ --	\$ --	\$ 3,009,746	\$ 3,007,584
General State Aid (GSA)					
SGF Approp./Actuals	\$ 1,978,613	\$ 1,893,464	\$ 1,886,709	\$ --	\$ --
20-Mill Local Prop. Tax*	557,753	563,961	579,232	--	--
School Dist. Fin.Fund	46,180	51,096	46,849	--	--
State Highway Fund	--	96,600	96,600	--	--
Total--GSA	\$ 2,582,546	\$ 2,605,121	\$ 2,609,390	\$ --	\$ --
Supplemental State Aid (LOB)					
SGF Approp./Actuals	\$ 339,222	\$ 339,214	\$ 482,755	\$ --	\$ --
Special Education					
SGF Approp./Actuals	\$ 430,426	\$ 385,703	\$ 418,361	\$ 424,903	\$ 423,980
State Highway Fund	--	43,000	10,000	10,000	10,000
Total--Special Ed.	\$ 430,426	\$ 428,703	\$ 428,361	\$ 434,903	\$ 433,980
KPERS--School					
SGF Approp./Actuals	\$ 323,068	\$ 324,063	\$ 318,282	\$ 412,246	\$ 459,736
Expanded Lottery Fund	--	37,512	39,490	36,159	35,431
Total--KPERS-School	\$ 323,068	\$ 361,575	\$ 357,772	\$ 448,405	\$ 495,167
Capital Outlay Aid					
SGF Demand Transfer	--	--	45,000	--	--
Capital Improvement Aid					
SGF Revenue Transfer	111,550	129,726	147,000	155,000	162,500
Total--Major Categories	\$ 3,786,812	\$ 3,864,339	\$ 4,070,278	\$ 4,048,054	\$ 4,099,231
<i>Change from Prior Yr.</i>		\$ 77,527	\$ 205,939	\$ (22,224)	\$ 51,177
<i>% Chg. from Prior Yr.</i>		2.0%	5.3%	(0.5%)	1.3%
Per Unweighted FTE	\$ 8,291	\$ 8,431	\$ 8,854	\$ 8,779	\$ 8,863

* Beginning in FY 2015, the previously locally distributed 20-mill property tax levy is remitted to and distributed by the state to school districts. For comparative information, amounts for the 20-mill local property tax have been included prior to FY 2015.

\$40.4 million from the State General Fund, which would fund a composite employer contribution for KPERS at 9.5 percent for the last two quarters of FY 2015.

Capital Outlay State Aid. The 2014 Legislature resumed the state's participation in equalizing state aid to districts for capital outlay expenditures through a demand transfer from the State General Fund. Based on revised estimates, the demand transfer will be \$45.0

million, all from the State General Fund, which is an increase of \$19.8 million from the FY 2015 estimate that was used at the end of the 2014 Legislative Session. This payment is scheduled to be made in February 2015.

Bond & Interest State Aid. A revenue transfer from the State General Fund of \$147.0 million is included in FY 2015 to aid school districts with capital improvement bond and interest payments. Amounts

State & Federal Support of Elementary & Secondary Education in Kansas

(Dollars in Thousands)

	FY 2015 GOV Rec.		FY 2016 GOV Rec.		FY 2017 GOV Rec.	
	SGF	All Funds	SGF	All Funds	SGF	All Funds
Block Grants to USDs	\$ --	\$ --	\$2,312,899	\$3,009,746	\$2,259,923	\$3,007,584
General State Aid*	1,886,709	2,609,391	--	--	--	--
Supplemental General State Aid	482,755	482,755	--	--	--	--
Capital Outlay State Aid	45,000	45,000	--	--	--	--
Technical Education Transportation	--	650	--	650	--	650
Bond & Interest Aid	--	147,000	--	155,000	--	162,500
Fort Riley School Const. Match	--	--	410	410	--	--
Special Education Aid	418,361	533,326	424,903	539,868	423,980	538,946
Deaf-Blind Program Aid	110	110	110	110	110	110
KPERS Employer Contribution	318,282	357,772	412,246	448,405	459,736	495,167
Teacher Excellence Grants	328	347	328	328	328	328
Pre-K Program	--	4,800	--	4,800	--	4,800
Juvenile Detention Grants	4,972	4,972	4,972	4,972	4,972	4,972
Parents As Teachers Program	--	7,238	--	7,238	--	7,238
Driver Education Program Aid	--	1,104	--	704	--	1,456
Communities in Schools	250	300	--	50	--	50
Other State-Funded Grants	313	313	313	313	313	313
No Child Left Behind & Other Fed. Aid:						
Elem. & Secondary Education Prog.	--	123,012	--	122,469	--	122,472
Improving Teacher Quality	--	17,221	--	17,221	--	17,221
21st Century Community Learning	--	8,064	--	7,386	--	7,386
Rural & Low Income Schools	--	575	--	473	--	473
Language Acquisition State Grants	--	3,750	--	3,750	--	3,750
Ed. Research and Innovative Prog.	--	2,400	--	2,355	--	2,336
Vocational & Technical Education	--	4,195	--	4,195	--	4,195
Alcohol & Drug Abuse	--	2,330	--	200	--	--
School Food Assistance	2,510	187,595	2,510	190,956	2,510	194,725
Total State & Federal Funding	\$3,159,589	\$4,544,218	\$3,158,690	\$4,521,596	\$3,151,871	\$4,576,668
<i>Amount Change from Prior Year</i>	<i>207,770</i>	<i>772,209</i>	<i>(899)</i>	<i>(22,622)</i>	<i>(6,819)</i>	<i>55,072</i>
<i>Percent Change from Prior Year</i>	<i>6.8%</i>	<i>21.0%</i>	<i>(0.0%)</i>	<i>(0.5%)</i>	<i>(0.2%)</i>	<i>1.2%</i>

Note: Totals may not add because of rounding.

* Beginning in FY 2015, expenditures from all funding sources for General State Aid include the 20-mill property tax levy.

for this aid program are transferred from the State General Fund to a special revenue account in the Department for expenditures for eligible districts and are not considered direct State General Fund expenditures but are a liability of the Fund.

State Assessments. The Governor's FY 2015 budget recommendation includes approved funding of \$1.1 million from a special revenue fund for additional costs associated with the development of new state assessments. The amount included in FY 2015 is the same as the Legislative approved amount, and is funded from a \$1.1 million transfer from the State Safety Fund.

Governor's Teaching Excellence Awards Program. The Governor recommends expenditures totaling \$327,500 from the State General Fund in FY 2015 to fund awards to teachers who attain National Board Certification. A certificate awarded by the National Board attests that a teacher has been judged by his or her peers as one who meets high rigorous professional standards and has demonstrated the ability to make sound professional judgments about students' best interests. Kansas teachers who have attained National Board Certification are paid through this program an annual incentive bonus of \$1,000 for up to ten years, as long as the teacher retains a valid master teacher's certificate.

State Match for Fort Riley School Construction. Previously, the Legislature approved State General Fund expenditures of \$1.5 million in FY 2013 and FY 2014 for part of a local match requirement to construct two elementary schools at Fort Riley. As a result of enrollment growth in military personnel on Fort Riley and the condition of the existing school buildings, the United States Department of Defense provided most of the funding for two grade schools on Fort Riley. Because USD 475 (Fort Riley) did not have legal authority to issue bonds for the construction of these schools, the state aid was provided. Because of higher-than-expected bids on this project, the state was notified that its contribution must increase by \$409,541. As a result, the Governor has included funding in FY 2015 from the State General Fund for this project.

Parent Education. The Parent Education Program provides expectant parents and parents of infants and toddlers with advice and resource materials related to

parenting skills, positive approaches to discipline, and development of self-esteem. The Governor recommends continued funding for the state's program to assist parents of younger children. For FY 2015, the Governor recommends expenditures of \$7,237,635, all from the Children's Initiatives Fund.

Pre-K Program. This program prepares four-year-olds for success in school. All classrooms in the program are required to meet teacher qualification requirements, implement a research-based curriculum, maintain low teacher to child ratios, complete at least 15 hours of teacher training annually, and provide referrals to additional community services for families that need them. For FY 2015, the Governor recommends expenditures of \$4,799,812, all from the Children's Initiatives Fund.

Driver's Education Program. For FY 2015, the Governor recommends \$1.1 million from the State Safety Fund and the Motorcycle Safety Fund for driver's education program grants to local education agencies.

Juvenile Detention Facilities. The state provides special support to meet the educational needs of students housed in juvenile detention facilities and a variety of other alternative juvenile placements, such as the Flint Hills Job Corps Center. School districts receive aid based on twice the base state aid per pupil or the actual expenses of providing the educational services, whichever is less. For FY 2015, the Governor recommends expenditures totaling \$5.0 million in support of juvenile detention facilities, all from the State General Fund.

Department of Education Operating Expenditures. The Governor recommends operating expenditures from the State General Fund totaling \$12.0 million in FY 2015. In FY 2014, the Department moved from its previous location at 10th Street and Quincy Avenue to the Landon State Office Building.

FY 2016 & FY 2017 Recommendations

Because the state cannot sustain the long-term level of non-base state aid expenditure increases for elementary and secondary education, the Governor recommends to sunset the current school finance formula, effective July 1, 2015. The Governor will work with the 2015 Legislature to reform school

finance with a new formula. Until a new formula becomes law, the Governor recommends using a block grant to distribute state funding to districts in FY 2016 and FY 2017. Former school finance formula items that comprise the block grant include General State Aid, Supplemental State Aid and Capital Outlay Aid.

Block Grants. For FY 2016, the Governor recommends total expenditures of \$3,009.7 million from all funding sources, including \$2,312.9 million from the State General Fund, \$600.2 million from funds generated from the 20-mill local property tax levy, and \$96.6 million from the State Highway Fund. For FY 2017, the Governor recommends total expenditures of \$3,007.6 million from all funding sources, including \$2,259.9 million from the State General Fund, \$622.6 million from funds generated from the 20-mill local property tax levy, \$96.6 million from the State Highway Fund, and \$38.4 million from the Mineral Production Fund.

Special Education Services Aid. For special education services in FY 2016, the Governor recommends expenditures of \$539.9 million from all funding sources, including \$424.9 million from the State General Fund and \$10.0 million from the State Highway Fund. For FY 2017, the Governor's budget includes expenditures totaling \$538.9 million from all funding sources, including \$424.0 million from the State General Fund and \$10.0 million from the State Highway Fund. State support of special education services at these levels is estimated to meet federal maintenance of effort requirements for FY 2016 and FY 2017.

KPERS School Employer Contributions. The Governor's recommendation includes \$448.4 million in FY 2016 for the KPERS School employer contribution, including \$412.2 million from the State General Fund and \$36.2 million from the Expanded Lottery Act Revenues Fund (ELARF). For FY 2017, the Governor recommends expenditures totaling \$495.2 million, including \$459.7 million from the State General Fund and \$35.4 million from the ELARF. The Governor's recommended funding levels for FY 2016 and FY 2017 will have the state resume at the statutorily required contribution rate for the KPERS-School employer contribution.

Bond & Interest State Aid. Revenue transfers from the State General Fund of \$155.0 million in FY 2016

and \$162.5 million are included in the Governor's recommendations to aid school districts with capital improvement bond and interest payments.

State Assessments. The Governor's FY 2016 and FY 2017 budget recommendations include an appropriation of \$1.1 million from the State General Fund for costs associated with the development of state assessments. Instead of funding the state assessments from a special revenue fund like in FY 2015, the Governor recommends a State General Fund appropriation. To offset these additional expenditures, the Governor recommends resuming the transfer of \$1.1 million from the State Safety Fund to the State General Fund each year, beginning in FY 2016.

Governor's Teaching Excellence Awards Program. The Governor recommends expenditures totaling \$327,500 from the State General Fund in FY 2016 and FY 2017 to fund awards to teachers who attain National Board Certification.

Parent Education. The Parent Education Program provides expectant parents and parents of infants and toddlers with advice and resource materials related to parenting skills, positive approaches to discipline, and development of self-esteem. The Governor recommends continued funding for the state's program to assist parents of younger children. For FY 2016 and FY 2017, the Governor recommends expenditures of \$7,237,635 each year, all from the Children's Initiatives Fund.

Pre-K Program. This program prepares four-year-olds for success in school. All classrooms in the program are required to meet teacher qualification requirements, implement a research-based curriculum, maintain low teacher to child ratios, complete at least 15 hours of teacher training annually, and provide referrals to additional community services for families that need them. For FY 2016 and FY 2017, the Governor recommends expenditures of \$4,799,812 each year, all from the Children's Initiatives Fund.

Driver's Education Program. For FY 2016, the Governor recommends \$703,774 from the State Safety Fund and the Motorcycle Safety Fund for driver's education program grants to local education agencies. For FY 2017, the Governor recommends \$1,456,308 from all funding sources. The Governor's recommended expenditures is the same as the agency's request for these programs.

Juvenile Detention Facilities. For FY 2015, the Governor recommends expenditures totaling \$5.0 million in support of juvenile detention facilities, all from the State General Fund.

Department of Education Operating Expenditures. The Governor recommends operating expenditures from the State General Fund totaling \$11.7 million in FY 2016 and \$12.0 million in FY 2017. These amounts exclude the appropriation for the state assessments that was discussed earlier.

School for the Blind

The School for the Blind provides educational, residential, outreach and health care services for children with visual or other impairments until the age of 21. The School's curriculum includes all academic subjects necessary for accreditation by the Department of Education. An Individual Education Plan is developed to measure each student's progress and plan for future educational goals. Many students also receive intensive instruction in specific learning skills, such as cane use, assistive technology, daily living, and Braille. In addition to extra hours of academic work, students residing in the dormitory receive instruction in life skills to foster independent living in adulthood.

For FY 2016, the Governor recommends expenditures totaling \$6,935,034 from all funding sources, including \$5,384,904 from the State General Fund. For FY 2017, expenditures totaling \$7,033,596 from all funding sources, including \$5,577,226 from the State General Fund, are recommended by the Governor. The recommendations will fund 81.50 FTE positions each year.

State law requires that teachers at the School for the Blind be paid a level of compensation that is equal to

teachers' salaries of USD 233, Olathe. To match the most recent teacher pay plan, the Governor's recommendations include \$68,162 in FY 2016 and \$65,183 in FY 2017 from the State General Fund for the School for the Blind teacher salary increases.

School for the Deaf

The School for the Deaf provides services that include educational, residential, outreach, and health care for children with hearing and other impairments until the age of 21. Included in the School's curriculum are all academic subjects necessary for accreditation by the Department of Education. Each student's progress and achievement is measured through their Individual Education Plan. Students also receive intensive instruction in learning skills that are specific to their disability with a special emphasis on speech and communication skills at the elementary level. Students residing in the dormitory receive additional hours of instruction related to academics and special needs to help encourage independent living.

For FY 2016, \$10,447,566 is recommended from all funding sources including \$8,804,615 from the State General Fund. For FY 2017, the Governor recommends expenditures totaling \$10,697,207 from all funding sources, including \$9,072,698 from the State General Fund. This level of spending will support 143.50 FTE positions at the school each year.

Like the School for the Blind, state law also requires that teachers at the School for the Deaf be paid a level of compensation that is equal to teachers' salaries of USD 233, Olathe. To finance the increases, the Governor has included funding totaling \$69,365 in FY 2016 and \$72,916 in FY 2017 from the State General Fund.

Schedule 8—Current Year Adjustments reconcile the differences between the approved FY 2015 budget, as published in the *Comparison Report* (July 2014) by the Division of the Budget, and the Governor’s estimate of revised expenditures for FY 2015, as published in this report. The purpose of the schedule is to track the changes that have occurred since the 2014 Legislature approved the FY 2015 budget.

From the time when the *Comparison Report* was published, a number of changes have occurred. Revised expenditures reflected in the Governor’s recommendations include reappropriation of expenditures from FY 2014 to FY 2015. These reappropriations represent funds approved to be spent prior to FY 2015 under authority granted in legislation. Other changes that have occurred include actions taken by the State Finance Council, actions accomplished through Executive Directive authority of the Governor, internal transfers between a central office and its institutions or between institutions, and recommendations by the Governor to reflect updated information on caseloads or institutional populations, changes in expenditure patterns, new or revised policy directives, or changes in federal grants.

Schedule 8—Current Year Adjustments

	<u>State General Fund</u>	<u>All Funding Sources</u>
Department of Labor		
Allotment	(6,671)	(6,671)
\$250 State Employee Payment	598	111,141
KPERS Rate Reduction	(1,270)	(258,577)
Additional Debt Service Interest Payment	--	40,161
Total--Department of Labor	\$ (7,343)	\$ (113,946)
Commission on Veterans Affairs Office		
Operations Shift of Expenditure Authority from Prior Year	1,527	1,527
\$250 State Employee Payment	25,866	77,877
KPERS Rate Reduction	(47,628)	(139,746)
Miscellaneous Operating Expenditure Adjustments	--	76,405
SIBF Shift of Expenditure Authority from Prior Year	--	498,158
SIBF Adjustments	--	(800,244)
Total--Commission on Veterans Affairs Office	\$ (20,235)	\$ (286,023)
Kansas Guardianship Program		
Allotment	(23,307)	(23,307)
\$250 State Employee Payment	3,038	3,038
KPERS Rate Reduction	(4,445)	(4,445)
Total--Kansas Guardianship Program	\$ (24,714)	\$ (24,714)
Total--Human Services		
	\$ 42,678,664	\$ 106,867,366
Department of Education		
Operations Shift of Expenditure Authority from Prior Year	885,207	885,207
Allotment	(229,872)	(229,872)
\$250 State Employee Payment	32,555	66,903
KPERS Rate Reduction	(40,506,261)	(40,590,576)
Capital Outlay Aid--Demand Transfer	19,799,214	19,799,214
Bond & Interest State Aid	--	12,000,000
General State Aid	(945,000)	(945,000)
20-Mill Property Tax Estimate for School Finance	--	(7,601,000)
Supplemental General State Aid	34,278,000	34,278,000
Juvenile Detention Centers Aid	(600,000)	(600,000)
School District Finance Fund	--	949,473
Fee & Federal Monies	--	2,279,269
Total--Department of Education	\$ 12,713,843	\$ 20,291,618
School for the Blind		
\$250 State Employee Payment	20,873	21,201
KPERS Rate Reduction	(50,325)	(51,974)
Fee & Federal Monies	--	218,621
SIBF Shift of Expenditure Authority from Prior Year	--	19,643
Total--School for the Blind	\$ (29,452)	\$ 207,491
School for the Deaf		
\$250 State Employee Payment	35,079	35,568
KPERS Rate Reduction	(82,015)	(83,186)
Fee & Federal Monies	--	(257,481)
SIBF Shift of Expenditure Authority from Prior Year	--	264,763
Total--School for the Deaf	\$ (46,936)	\$ (40,336)
Board of Regents		
Operations Shift of Expenditure Authority from Prior Year	1,708,237	1,771,482
Allotment	(67,324)	(67,324)
\$250 State Employee Payment	9,650	15,643
KPERS Rate Reduction	(4,869)	(7,756)
Tech. Ed. Tuition	2,850,000	2,850,000
Fee & Federal Monies	--	1,193,895
Educational Building Fund Distribution	--	(35,000,000)
Total--Board of Regents	\$ 4,495,694	\$ (29,244,060)
Emporia State University		
\$250 State Employee Payment	100,559	201,764
KPERS Rate Reduction	(70,065)	(112,984)
Housing Equipment & Improvements	--	2,569,207
Tuition	--	2,114,000
Educational Building Fund Transfer & Carry Forward	--	4,478,485
Total--Emporia State University	\$ 30,494	\$ 9,250,472