

NO. 113,267

IN THE SUPREME COURT OF THE STATE OF KANSAS

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

Plaintiffs/Appellees,

vs.

STATE OF KANSAS, *et al.*,

Defendants/Appellants.

**PLAINTIFFS' RESPONSE TO
BRIEF OF APPELLANT STATE OF KANSAS**

Appeal from the District Court of Shawnee County, Kansas
Honorable Judges Franklin R. Theis, Robert J. Fleming, and Jack L. Burr
Case No. 10-c-1569

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INTRODUCTION

Common sense dictates that the magnitude of the State’s remedy (*i.e.*, the amount of the monetary increase adopted in S.B. 19) must meet the magnitude of the problem. As this Court has noted, “The adequacy of any remedy is determined solely by its ability to mitigate constitutional error[.]” *State v. McGinnes*, 266 Kan. 121, 131, 967 P.2d 763, 770 (1998) (quoting *Rushen v. Spain*, 464 U.S. 114 (1983)). In finding CLASS unconstitutional, this Court identified several “constitutional errors,” including, a “steady regression” of “student improvements,” a decrease in students that met “the state’s own minimum standards for proficiency,” and the State’s failure “to provide approximately one-fourth of all its public school K-12 students with the basic skills of both reading and math.” *Gannon v. State*, 305 Kan. 850, 904-07, 390 P.3d 461 (2017) (“Gannon IV”). It tasked the State with correcting these deficiencies by increasing funding. *Gannon IV*, 305 Kan. at 864, 892. To establish compliance, the State has the burden to demonstrate the new system is constitutional and to “explain[] its rationales for the choices made to achieve [compliance].” *Gannon IV*, 305 Kan. at 856 (citing *Gannon v. State*, 303 Kan. 682, 709, 368 P.3d 1024 (2015) (“Gannon II”).

The State responded to the Court’s Order by increasing funding by only \$292.5 million. That level of funding does not match the magnitude of the constitutional deficiency and, therefore, cannot remedy it. In fact, in the next year, the State actually intends to *decrease* the funding received by 53 school districts. In a system where “nearly one-half of our state’s African American students,” “more than one-third of all Hispanic students,” and “nearly one-fourth of all its public school K-12 students” are not

being provided *with the basic skill of reading*, nothing about S.B. 19 can be deemed “reasonably calculated” to funding education at a constitutional level. The State’s response is diminutive in comparison to the problem that it is attempting to correct; it is overwhelmingly underwhelming.

The State attempts to defend S.B. 19 three ways. It argues that: (1) it increased funding to at-risk students; (2) it used a “successful schools” method to determine the amount of money that schools need; and (3) it is funding education at a level that comports with the LPA Study. Each of these arguments fail; none of them demonstrate that the State has complied with the burden placed on it by this Court.

First, the increase in funding to at-risk students – while necessary – falls far short of what Kansas at-risk students actually need to meet or exceed the *Rose* standards. The State attempts to take credit for funding education for at-risk students at the level that the LPA Study recommended. It did not. And, the magnitude of the State’s purported fix is insufficient in response to the significant achievement gap and failure rates that this Court noted in its March 2 Order. The Court specifically noted that 37.5% of students receiving free and reduced lunch (those students typically labeled “at-risk”) did not meet the State’s minimum standards for math. *Gannon IV*, 305 Kan. at 907. More than one-third of those students are also not being provided with the basic skill of reading. *Id.* The State’s response to these achievement failures was to fund \$74 million *less* than what the LPA estimated should be spent on at-risk students in 2007. This is not a constitutional response.

Second, the State’s own explanation for how it reached the appropriate level of funding (*i.e.*, using the purported “successful schools” method) demonstrates that at least half of the 41 districts that *it selected as the most successful schools in Kansas* are spending more than \$4,128 per pupil to be “successful.” Even setting aside the substantial flaws with the State’s method, the State wholly fails to explain how it expects Kansas school districts to reach constitutional compliance with a base of \$4,006 in FY18 and a base of \$4,128 in FY19 *when the best schools in Kansas* (as hand-selected by the State) cannot do so by spending that amount.

Third, the State argues that its spending exceeds the amounts found necessary by the LPA Study when LOB funds are considered. All funds, including the funds generated within the LOB, were being spent by school districts at the time that this Court issued its March 2 Order and determined that “the numbers of all students failing to reach proficiency in court subjects each year continue to be significant.” *Gannon IV*, 305 Kan. at 913. Arguing over whether those funds are included in the Court’s determination that the system was unconstitutional – which they were – does not change the result. Merely funding those same, unconstitutional levels is not reasonably calculated to have these students’ achievement levels increase to meet or exceed the *Rose* factors. And, the State’s calculations are wrong. It is not funding the level deemed acceptable by the LPA Study, it is actually funding \$1,172 short of that *per pupil*.

For the reasons set forth herein and in Plaintiffs’ Opening Brief, the State cannot meet its burden to demonstrate constitutional compliance.

ARGUMENTS AND AUTHORITIES

None of the arguments set forth by the State support dismissal of this case. S.B. 19 is not reasonably calculated to address the constitutional violations identified in *Gannon IV*, 305 Kan. at 856 (citing *Gannon v. State*, 303 Kan. 682, 743, 368 P.3d 1024 (2015) (“Gannon II”)). It does not comport with previously identified constitutional mandates such as equity. The State is not in compliance with Article 6 of the Kansas Constitution and dismissal of this matter is not appropriate.

I. THIS COURT SHOULD NOT DELAY A CONSTITUTIONAL EDUCATION TO KANSAS SCHOOLCHILDREN AND SHOULD NOT REWARD THE STATE FOR ITS DELAY TACTICS

When the State adopted S.B. 7, it did so because it indicated that a “complete overhaul” of the SDFQPA was necessary to constitutionally fund education going forward. *See, e.g.*, Brief of Appellant, at p.8, dated 9-2-15. However, the adoption of S.B. 7 appears to be nothing more than yet another attempt by the State to stall in providing Kansas students with a constitutional education. In the two years that S.B. 7 controlled education funding in Kansas, the Legislature wholly failed to “overhaul” the school finance formula. Instead, what the State actually did was adopt virtually *the same formula*, significantly underfund it, and promise to “keep up with inflation” going forward.

The parties agree that the SDFQPA’s structure was a constitutionally sound basis for funding education, when fully funded. Plaintiffs argued as much when the State adopted S.B. 7. The State then conceded this point when it adopted S.B. 19 and returned to a “materially identical” formula. State’s 6-30-17 Brief, p.3.

The main issue in this litigation was never the structure of the formula and instead was always the level of funding implementing the formula. Since Plaintiffs filed this lawsuit in 2010, the level of funding has been far too low to meet constitutional compliance. *Gannon IV*, 305 Kan. at 913 (“As a result of this and other findings, the panel determined that *more money was needed* to make the inadequate CLASS legislation constitutional. *We agree*, based upon the demonstrated inputs and outputs found by the panel[.]”) (emphasis added). *However*, the soundness of the formula became an issue when the State adopted S.B. 7.

Due to the State’s failure to “overhaul” the system, it now appears that the State’s adoption of S.B. 7 was merely a delay tactic to skirt its constitutional obligations. By adopting S.B. 7 – and temporarily changing the focus of this litigation – the State significantly delayed any remedy to the students of Kansas.

Now, the State attempts to compound the problem by extending the constitutional deficiencies *yet another* year. State’s 6-30-17 Brief, p. 25 (“the Court should allow year one of the law to remain in effect”). After having two years to “overhaul” the old formula, the State delayed yet another three months after this Court’s March 2 Order before advancing S.B. 19 as the “solution.” By playing out the clock of the legislative session, but then blaming the Court’s June 30 deadline and the school district budget deadlines, the State now seeks a further delay of an additional year. This Court should not reward this behavior. While districts may have already adopted budgets using S.B. 19 as a guide, districts have always had – and retain – the ability to republish their budgets to take advantage of any increased funding.

Kansas public education has been underfunded and unconstitutional for far too long. Kansas students who started kindergarten in a public school in Kansas in 2009-2010, when the cuts began, will now begin the eighth grade without ever enjoying the benefit of a constitutionally adequate education. High-school seniors scheduled to graduate in 2018 have not benefitted from a constitutionally-funded education since they were in the fourth grade. This should not be allowed to continue. This Court must declare S.B. 19 unconstitutional, stop the State's pattern of unconstitutionally underfunding public education, and retain jurisdiction until a constitutional system is implemented.

II. S.B. 19 FAILS ARTICLE 6'S ADEQUACY TEST

Overall, S.B. 19 will only increase funds for FY18 by \$194.7 million. Appx. B-1 to Pls' 6-30-17 Brief, at 2017ADEQ00021 (Col. 2). This level of funding does not even get the State back to where it was *before* the State began cutting education funding. By FY12, the cuts to education funding totaled more than \$511 million. *Gannon v. State*, 298 Kan. 1107, 1115, 319 P.3d 1196 (2014) ("Gannon I") ("cuts to BSAPP in fiscal years 2009 to 2012 totaled more than \$511 million"); *Gannon IV*, 305 Kan. at 880. In the meantime, enrollment has increased, the number of "more expensive to educate students" has increased, and inflation has taken its toll. S.B 19 provides only a fraction of what the districts lost, despite the fact that Plaintiffs have proven that the cost of an education *increases* every year.

Nevertheless, the State makes three arguments in support of its contention that it provides a level of funding that is reasonably calculated to provide all Kansas K-12

students with an education that meets or exceeds the *Rose factors*: (1) the State targeted additional resources to at-risk students; (2) the State calculated the level of funding necessary by using a purported “successful schools” analysis; and (3) the funding levels align with the LPA cost study estimates. None of these three arguments demonstrate constitutional compliance.

A. S.B. 19 targets some money to at-risk students, but fails to provide enough funds to meet constitutional compliance.

S.B. 19’s at-risk funding is \$74 million short of what the LPA estimated that funding should be in 2007. Pls’ 6-30-17 Brief, p.33 (citing Appx. N). Yet, the State makes the bold claim that “Undeniably, SB 19 targets *more* aid for the education of at-risk students than what this Court found constitutionally sufficient in *Montoy*.” State’s 6-30-17 Brief, p.9.

This assertion is demonstrably false. In *Montoy v. State*, 282 Kan. 9, 138 P.3d 755 (2006) (“Montoy V”), this Court considered the constitutionality of the State’s three-year funding scheme (“S.B. 549”). Ultimately, the Court withheld any conclusion about the constitutionality of S.B. 549, but did determine that it complied with previous court orders and dismissed the case. Under S.B. 549, the State was obligated to fund a base of \$4,492 in FY10 with an at-risk weight of 0.456. *See* 2008 K.S.A. 72-6410; 2006 K.S.A. 72-6414. Thus, the per pupil funding to be received for each at-risk student post-*Montoy* was \$6,540.32 ($\$4,492 * 0.456 + \$4,492$). S.B. 19 intends to fund a \$4,006 base with an at-risk weighting of 0.484. Under S.B. 19, districts will only receive \$5,944.90 per at-risk student ($\$4,006 * 0.484 + \$4,006$). Without even taking inflation into account, it is

clear that S.B. 19 funds \$596 less per at-risk pupil (\$6,540-\$5,944) than what the State was to fund post-*Montoy*.

The State itself admits that S.B. 19 only provides \$23 million more in aid for at-risk students during the next school year. State's 6-30-17 Brief, p.4. This is only \$121.11 per at-risk student (\$23 million / 189,909¹). This is not "substantial" new funding. It is not a level of funding that, reasonably, can correct the poor achievement results noted by this Court in its March 2, 2017 Order. As demonstrated herein, the magnitude of the State's remedy directed to at-risk students pales in comparison to the magnitude of the problem it purports to correct.

For perspective purposes, in finding S.B. 7 unconstitutional, the Court specifically noted (a) 37.5% of students receiving free and reduced lunch did not meet the State's minimum standards for math and (b) 34.8% were not being provided with the basic skill of reading. *Gannon IV*, 305 Kan. at 906, 907.

1. S.B. 19's change to the at-risk weighting provides additional at-risk funding, but not at the level necessary for the State to demonstrate constitutional compliance.

The State wants this Court to determine that it adopted a constitutional funding formula because it increased the at-risk weighting from 0.456 to 0.484, as recommended by the LPA Study. However, the State's decision to increase the weighting must also be viewed in light of its decision to use a much lower base than the LPA Study recommended to fund the weighting (the LPA Study recommended a base of \$4,659 for

¹ The free lunch headcount for FY17. See Appx. B-1 to Pls' 6-30-17 Brief, at 2017ADEQ00024.

2007; S.B. 19 funds a first-year base of \$4,006). Even the State acknowledges that the recommendations within the LPA Study were all based on certain assumptions, and different variables can have a significant effect on the overall estimate of what it actually costs to fund an education. State's 6-30-17 Brief, p.14 n.2. S.B. 19's at-risk funding is \$74 million short of what the LPA estimated that it should be in 2007. Pls' 6-30-17 Brief, p.33 (citing Appx. N). S.B. 19 does not provide sufficient funding for at-risk students.

Moreover, nearly 10% of the at-risk funding that is provided to Kansas public schools (\$2 million) is provided to only two school districts to support a need that the districts. Pls' 6-30-17 Brief, p.30. This funding is based solely on political compromise, and not need. *Id.* The State argues that "economies of scale" entitle these two districts to at least a minimal amount of at-risk funding to enable the creation of a program to benefit at-risk students. This argument fails. Blue Valley gets funding for 531 weighted at-risk students and DeSoto gets funding for 293.7 weighted at-risk students *without* the 10% floor. *See* Appx. X to Pls' 6-30-17 Brief, at 2017ADEQ00131. Based on those enrollment levels, Blue Valley would have received \$2,127,186 to implement at-risk programs. (531 weighted at-risk students x \$4,006) *Id.* DeSoto would have received \$1,176,562 to establish at-risk programs. (293.7 weighted at-risk students x \$4,006) *Id.* No "economies of scale" analysis was necessary to establish at-risk programs for these two districts. And, the fallacy of the State's arguments otherwise is demonstrated by the fact that S.B. 19 would give a district a 10% floor *even if it had no at-risk students whatsoever*.

The magnitude of the State's "fix" in S.B. 19 is not reasonably calculated to overcome the significant achievement gap between all students and at-risk students. The increased weighting does not cause S.B. 19 to be in compliance with Article 6 of the Kansas Constitution.

2. Funding all-day kindergarten cannot cure the constitutional violations that this Court identified in its March 2 Order.

The State asks this Court to dismiss this case because S.B. 19 fully funds all-day kindergarten. The State contends that funding all-day kindergarten will: (1) benefit underperforming subgroups directly; and (2) free up additional at-risk funding for other purposes. Neither of these alleged results, however, demonstrate that S.B. 19 provides a constitutional level of funding to Kansas students.

First, all-day Kindergarten is a beneficial strategy and will benefit some *future* students, but 91.1% of all Kansas Kindergartners already attend all-day Kindergarten. Pls' 6-30-17 Brief, p.34 (citing Appx. Q). The achievement failure rates noted by this Court cannot improve with the initiation of full-day Kindergarten because it effectively already existed at the time that the failure rates were noted. Current students have either already received that benefit or already missed their chance.

Second, funding all-day kindergarten will only free up a nominal amount of additional at-risk funding. The additional appropriation for all-day Kindergarten amounts to \$62 million. Pls' 6-30-17 Brief, p.35 (citing Appx. B). This represents only 1.8% of General Fund spending. The State cannot demonstrate that the magnitude of this

increased funding is sufficient to correct the constitutional deficiencies noted by this Court in its March 2 Opinion.

Further, the State's contention that this will necessarily "free up at-risk funds to help under-performing students in more targeted ways," *see* State's 6-30-17 Brief, p. 9, is factually flawed. Some school districts were charging students to attend all-day kindergarten. *See e.g.*, Legislative Testimony.² In these districts, the State is not freeing up at-risk funds, it is merely freeing up dollars for the parents of kindergarteners in these districts. And, this funding goes to all districts, not just high at-risk districts.

3. The State offers no evidence that providing \$2 million for preschool-aged at-risk students is reasonably calculated to have all students meet or exceed the *Rose* factors.

The State further asks this Court to find S.B. 19 constitutional because "it provides about \$2 million for preschool-aged at-risk students." State's 6-30-17 Brief, p.8. While Plaintiffs acknowledge that an increase in targeted, at-risk funding is helpful, the magnitude of a \$2 million increase to at-risk funding for preschool students is minuscule compared to the number of students that are currently below proficient. This represents 6/100ths of 1% of the General Fund spending each year.

Increasing the funds dedicated to preschool-aged at-risk students, while important for future generations, does not adequately address the current constitutional violations

² Available at:

http://www.kslegislature.org/li/b2017_18/committees/ctte_h_k12_education_budget_1/documents/testimony/20170215_21.pdf and
http://www.kslegislature.org/li/b2017_18/committees/ctte_h_k12_education_budget_1/documents/testimony/20170327_15.pdf.

associated with the funding levels of the formula. The State cannot demonstrate that it has provided the currently failing students with the additional resources that they need to meet or exceed the *Rose* standards.

B. The purported “successful schools” model used by the State is not reasonably calculated to have all Kansas students meet or exceed the *Rose* factors.

While the State was obligated to take action to address the fact that it was “leaving behind significant groups of harder-to-educate students,” such as at-risk students, this Court also noted that “approximately one-fourth of all of [Kansas’] public school K-12 students” did not have basic reading and math skills. *Gannon IV*, 305 Kan. at 855 (emphasis added); *see also* State’s 6-30-17 Brief, p.8. Thus, it is imperative that the State take action to address the state-wide achievement problem for ALL students, not just the subgroups. The State provides no evidence that the funding increase is sufficient to have non-at-risk students meet or exceed the *Rose* factors. It fails to “show its work” to demonstrate how it determined that S.B. 19 was reasonably calculated to do so.

In support of its argument that S.B. 19 was reasonably calculated to provide the one-fourth of its students with the basic skills of reading and math, the State argues that it “employed a ‘successful schools’ analysis.” State’s 6-30-17 Brief, p.10. According to the State, it determined that the average spending by successful school districts was \$4,080 per weighted student. *Id.* at p.11.

The State indicates that it “averages” the spending of the purported “successful” schools to come up with the magic base of \$4,080. As in other areas, “averages hide the problem.” The range of spending by these districts runs from a low of \$3,559 (Gardner

Edgerton) to a high of \$4,690 (Wallace County). Appendix 2: Demonstrative Exhibit Regarding “Successful Schools.” The median base is \$4,135, or \$55 more than the average. If the State only funds \$4,080 per Wallace County pupil, will that school district still be a “successful” school with \$610 *less per pupil*? The State offers no evidence that it will. Dividing the total spending of all “successful” schools in the sample (\$459,326,415) by the sample’s total weighted students (82,933), would result in a suggested base of \$3,956, which is only \$104 more than the current base of \$3,852. It appears that the State simply came up with a politically-palatable base, that it deemed it could afford, and backed into a formula that would produce it. The result is the purported “successful schools” analysis.

It was wholly unreasonable for the State to rely on this purported “successful schools” model to estimate necessary funding levels for FY18. The method is significantly flawed. First, the successful schools approach is merely a mathematical recalculation of what 41 hand-chosen school districts were allowed to spend under a former formula that was unconstitutionally underfunded. The State’s decision to intentionally underfund education in the past necessarily restrained the ability of all districts, including these districts, to spend the appropriate amount of money to meet the Constitution’s mandates.

Second, a significant number of these school districts – about half – spend more than \$4,128 per pupil (S.B. 19’s FY 19 base) in order to be “successful.” Appx. 2. The State does not explain how it expects all Kansas school districts to meet or exceed the

Rose standards with \$4,006 per pupil when half of the 41 districts *that it selected as the most successful schools in Kansas* cannot reach that result with that spending.

Third, these “successful schools” are not successful or “overachieving.” While these districts may outperform expectations, they do not pass constitutional muster. In finding S.B. 7 unconstitutional, the Court specifically noted that “the State fail[ed] to provide approximately one-fourth of all its public school K-12 students with the basic skills of both reading and math.” *Gannon IV*, 305 Kan. at 855. Many of the school districts that the State deems “successful” have high rates of students “not on grade level” in either reading or math. These successful schools have failure rates ranging up to 28%. *See* Appx. 2, at 2017ADEQ00502.

Fourth, as the State itself pointed out in 2014, “all experts testifying at trial criticized” this method for estimating the costs of a providing a constitutional education. R. Vol. 22 (State’s Proposed FOF/COL, 8-1-14, at FOF ¶22). “None of the experts [including Plaintiffs’ expert and the State’s experts] felt that the ‘successful school approach’ to determine costs . . . *had any value.*” *Id.* (emphasis added). However, that is the measure that the State chose to use when tasked with adopting a constitutional funding formula. The State’s expert, Dr. Hanushek, testified as follows:

Q. Are you familiar with [the successful schools model] of trying to come up with the cost of a child’s education?

A. I am.

Q. Okay. And do you find that method reliable?

A. No. It does not answer the basic question, how much does it cost to achieve some given level of achievement.

R.Vol. 38, p. 2267. At his deposition, Dr. Hanushek further testified as follows:

Q. Okay. What is the difficulty in relying on successful schools?

A. Successful schools first is unclear whether you can reproduce the successful schools if you spend that much money, simply because they have no structural understanding of what led to better performance. But secondly, the successful schools is completely unprepared to provide guidance on what would happen if you wanted to improve performance above what it is today.

Appendix 3: Excerpts from Hanushek Depo., at 71:17-72:3.

Both of Dr. Hanushek's concerns are also problematic here. The districts chosen by the State as "successful" may have vastly different reasons for "making the cut." Some are very small districts, some are very wealthy, some have very few numbers of "more expensive to educate" students. The State's analysis identifies no reason *why* these districts outperformed their expectations. There is no evidence that other districts in the State could replicate this success with the same spending. And, there is no evidence provided by the State that other non-"successful" districts are not already spending at these levels, also with unacceptable achievement levels.

Additionally, there is no indication that spending at these levels can *increase* performance, as mandated by the Kansas Constitution. The Kansas Constitution "imposes a *mandate* that our educational system cannot be static or regressive but *must* be one which 'advances to a better quality or state.'" *Gannon I*, 298 Kan. at 1146 (citing *Montoy v. State*, 278 Kan. 769, 773, 120 P.3d 306, 310 (2005) ("Montoy II")). The "successful schools" that the State relied on in concluding that the base should be \$4,080 are not performing at levels that would pass constitutional muster. *See* Appx. 2. If the "successful schools" model cannot provide guidance on how to increase performance

above what these schools are already achieving, there is no conceivable way that funding a *lower* base of \$4,006 would result in school districts performing *better* on assessments than these “successful” schools – whose failure rates are significant. And, more than half of the “successful” schools were spending *more than* S.B. 19’s second year base of \$4,128 to achieve these unconstitutional achievement rates. *Id.*

Finally, the State attempts to argue that it funded the lower base of \$4,006 to prevent waste. There are methods by which the State could address this “problem” short of denying school districts the money that the State admits they need. For instance, while it may be difficult for the districts to hire teachers late in the school year, there is no evidence that the school districts would have any difficulties hiring paraprofessionals, which are a proven method for increasing student performance. *See, e.g., Gannon IV*, 305 Kan. at 898 (discussing paraprofessionals and other staff members that “are vital to the achievement of the *Rose* standards”). There are more than 1,100 non-teaching positions that have been eliminated due to the State’s cuts to education funding. *See* Appx. CC to Pls Brief; *see also Gannon IV*, 305 Kan. at 898 (school districts eliminated over 500 paraprofessionals when the cuts started in 2009-10).

Successful schools are those that can provide an education to their students that meets or exceeds the *Rose* standards. This is not what the State chose to replicate. Doing so necessarily requires a significant increase in the level of funding provided to school districts, as every expert body involved in this case has recommended. The State eschewed all of this expert advice. Instead, it used a “successful schools” model that “[n]one of the experts felt. . . *had any value*” to justify its funding decisions. There is no

basis for concluding that this decision was “reasonably calculated” to do anything other than justify the politically compromised base on which the Legislature could agree.

C. S.B. 19 does not align with the LPA Study.

The State contends that “[w]ith LOB considered, SB 19 provides \$118,297,424 more funds in FY18 than if the LPA study’s base – as calculated by the panel – were applied without LOB funding.” State’s 6-30-17 Brief, p.15. This misses the mark. All funds, including the funds generated within the LOB, were already being spent by school districts at and prior to the time that this Court issued its March 2 Order and determined that “the numbers of all students failing to reach proficiency in core subjects each year continue to be significant.” All funds, including LOB, produced the current, unacceptable achievement levels. Merely funding those same, unconstitutional levels is not reasonably calculated to have these students’ achievement increase to meet or exceed the *Rose* factors. The Panel found, “current dollar funding inadequacy has been established beyond any doubt notwithstanding the use of those LOB resources.” R.Vol. 24, p.3157.

Further flaws in the State’s position can be seen by considering statutory funding levels in FY10, the last time that the system was functioning in a way that was reasonably calculated to meet the *Rose* factors. Again, it is the State that adopted the SDFQPA, with its previous funding levels, and conceded that those levels were necessary to demonstrate constitutional compliance. At that time, like now, LOB was no longer considered “extra” and was largely used to finance general education. *See Montoy II*, 120 P.3d 306, 310.

In FY10, the statutorily-set base was \$4,492. Appendix 1: Base State Aid Per Pupil Amounts including LOB Per Pupil. Districts could establish up to a 30% LOB. 2011 K.S.A. 72-6433d. Thus, the effective base, with LOB included, was \$5,839 (\$4,492 + \$1,347 (30% of \$4,492)). See Appx. 1, at 2017ADEQ00501.

Under S.B. 19, the effective base for FY18, with LOB included, is \$5,353. (\$4,006 + 30% of \$4,490). This is \$486 less than what the State conceded was necessary to provide a constitutional education in FY10 and *ignores* inflation. Appx. 1. And, even then, the assessment data suggested achievement levels were unacceptable at the much-higher *Montoy* level. See Pls' 6-30-17 Brief, p.39. There is no basis for the State to conclude that *lower* levels of funding will somehow achieve *higher* assessment results.

Solely comparing the current levels of funding to the LPA Study's recommendation is faulty. The KSBE's recent recommendation to increase funding by \$893 million specifically considered the Court's March 2, 2017 Order, see Appx. D to Pls' 6-30-17 Brief.

Finally, the State's LPA-comparison is incorrect. The State contends that the LPA study's recommendation, inflated, would require funding a base of \$5,468 in FY18. But, adjusted for inflation, compliance with the LPA study would require a base of \$6,435 in FY18.³ The current base, authorized by S.B. 19, provides \$2,429 less dollars *per weighted student* than the LPA recommendation. Even with LOB included with the base,

³ Appx. F, at 2017ADEQ00041; R.Vol. 14, p.1801; R.Vol. 13, p.1660 (Pls' FOF/COL ¶¶270); R.Vol. 14, p. 1777, 1801; R.Vol. 13, pp. 1634, 1661 (Pls' FOF/COL ¶¶189(d), 271).

S.B. 19 falls far short. The State argues that the effective base for FY18, with LOB considered, is \$5,639. The State's base plus LOB calculation is still \$796 short.

By all measures, the State is – once again – underfunding Kansas public education.

D. The State's recognition of the importance of inflation does not, alone, satisfy constitutional compliance.

The State – in its briefing – acknowledges the ravaging effects of inflation on school funding levels. State's 6-30-17 Brief, p.13 (“the Legislature accepted testimony from the Kansas Association of School Boards that keeping the formula in line with inflation is the most important aspect of ensuring adequate funding for schools”). This acknowledgment alone does not satisfy constitutional compliance. The State only pays lip service to the concept, as Plaintiffs demonstrated in their brief. Pls' 6-30-17 Brief, p.19 (noting that the total funding, considering inflation alone, is \$232 million short). Over the next two years, inflation will consume approximately \$158 million, more than half of S.B. 19's \$292.5 million “increase.” *Id.* at p.25. And, the provisions requiring future legislatures to increase funding based on the CPI, should be viewed skeptically. *Id.* at p.36.

E. The State's adoption of delayed best practices does not satisfy the demands of the Constitution.

The State contends that S.B. 19 is constitutional because it requires that “the at-risk state aid and funding raised under the LOB attributable to the at-risk weightings be used for at-risk students, constituent with Section 25 of S.B. 19, which requires that all at-risk funding be only spent upon “at-risk educational programs based on best practices”

as determined by KSBE. Plaintiffs erroneously indicated in their Opening Brief that the bill mandates compliance with best practices for FY18. The bill actually delays the requirement until FY19; this delay was not in either the House or Senate bill and was added in the Conference Committee Report. Nevertheless, if the KSBE's "new" best practices are similar to the prior at-risk spending mandates issued by KSDE, this new provision will not materially change how at-risk funds are spent. And, there are no significant increases in the resources provided to fund these "best practices." It is speculative, at best, to argue that new, undefined spending instructions will impact achievement to the required magnitude. These "best practices" do not render S.B. 19 constitutional.

F. The State fails to inform the Court that 53 school districts lose a combined total of \$11.3 million in funding for FY18.

Under S.B. 19, some school districts actually lose funds. Pls' 6-30-17 Brief, p.27 (citing Appx. J). The State does not raise this issue in its Opening Brief. Nor does it explain how, in light of this Court's finding that "more money was needed" to achieve constitutional compliance, *see Gannon IV*, 305 Kan. at 913, it defies logic that the State can achieve constitutional compliance for these districts by *reducing* funds. R.Vol. 14, p. 1877 (Panel's conclusion that "there is simply no reliable evidence advanced by the State that indicates that *a reduction in funds available* to the K-12 school system" would result in compliance with the "requirements of Article 6"). In fact, two of the State's "successful" schools will lose funding under S.B. 19 in both the first and second year of its implementation.

G. Districts are unable to access the full LOB authority because of the dis-equalizing Protest/Election requirement.

The State asks this Court to find S.B. 19 constitutional because, “[i]n theory, if all districts raise their budgets to 33%, LOB could provide approximately \$89 million in additional operating revenue.” The 33% option was put into statute in 2014. Despite being constitutionally underfunded, only 44 districts, or 15% of all districts, have been able to access those additional funds. Only those districts that previously adopted a 33% LOB will be able to continue to access those funds at the beginning of S.B. 19’s implementation. Any district wanting to increase their LOB percentage for FY18 will not have time to publish a resolution and hold an election in time to effect an increase in this tax levy. These will have to wait for next year, and – even then – the increase will be subject to protest/election. The fact that the State retained the protest/election requirement further demonstrates that S.B. 19 violates the equity provisions of Article 6.

The *Gannon* Panel has already found this process to deny equal access to less wealthy districts. *See e.g.*, R.Vol. 137, p.1469. The Panel found LOB structurally unsound because “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.” R. Vol. 24, p.3130. “Some school boards or taxpayers may reject a local tax to support their school district, children in districts in which base level funding is inadequate and in which an LOB is not adopted, or is not adopted at the full cap, may not have the funds necessary for a constitutionally adequate education. In other words, if a district or its voters choose not to adopt LOB funding in

full or in part, the legislature has not met its constitutional duty to those children in that district.” R. Vol. 14, p.1847. The Panel reasoned that the LOB protest/election process is a “delegation of constitutional duty to discretionary choice [that] is both unlawful under Art. 6, Sec. 6(b) and substantially threatens the common good of all Kansas children wherever they may reside in Kansas.” R.Vol. 24, p.3157.

III. S.B. 19 FAILS ARTICLE 6’S EQUITY TEST

The State has the burden to demonstrate that S.B. 19 comports with all “previously identified constitutional mandates,” including Article 6’s equity requirements. *Gannon IV*, 305 Kan. at 856. Despite the State’s contentions otherwise, the burden is on the State – and not Plaintiffs – to show that S.B. 19 distributes funds in an equitable manner. After all, it was the State that chose to re-adopt the SDFQPA, including its components that do not pass the Court’s equity test. These equity concerns are discussed in detail in Plaintiffs’ Brief.

The State contends that allowing districts to use capital outlay funds for operational expenses – including utilities, and property and casualty insurance – comports with the equity requirements of Article 6 because the fund is equalized. State’s 6-30-17 Brief, p.19. However, as Plaintiffs argued, because the Capital Outlay fund is equalized at a much less favorable rate than the LOB, that fund is not equalized in a manner that allows for the expenditure of operational expenses. Pls’ 6-30-17 Brief, pp. 43-44. By allowing school districts to expand capital outlay uses and pay certain *operational costs* from the capital outlay fund, S.B. 19 significantly disrupts whether school districts have

reasonably equal access to substantially similar educational opportunity and therefore violates Article 6's equity test.

CONCLUSION

The State's task is not only to show that it increased funding levels or that it targeted money to the students that fail to meet basic proficiency levels on State assessments. The State was specifically given the burden of proof to demonstrate that it adopted a new funding formula that was "reasonably calculated to have all Kansas public education students meet or exceed the *Rose* factors." *Gannon IV*, 305 Kan. at 855-56. The State has not met this burden.

Plaintiffs have produced significant material regarding the magnitude of the remedy needed to cure the specific constitutional violations that this Court identified in its March 2 Order. This Court should pay special attention to the KSBE's recommendation to increase funding by \$893 million over the next two years. As this Court recognized in its Order, "the legislature itself necessarily acknowledges that the [KSBE] – which the legislature has entrusted with developing curriculum for Kansas public school students – is capable of understanding, measuring, and implementing the *Rose* educational goals in order to meet its important statutory duty." *Gannon IV*, 305 Kan. at 864-65. In response to that Order, the KSBE opined that adopting its budget recommendations would cure the unconstitutionality that this Court identified. Appx. D. to Pls' Brief ("Based on today's Supreme Court ruling, it appears the FY 2018 and 2019 budgets as submitted by the state board are consistent with the court's ruling.").

S.B. 19 falls \$600 million short of providing the funding recommended by the KSBE; it funds only one-third of the request. This is further evidence that the magnitude of the increase needed to remedy the violations identified by this Court in its March 2 Order is much more significant than the remedy that the State adopted when it enacted S.B. 19.

For the reasons stated above, Plaintiffs request that this Court:

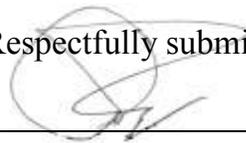
- (1) Declare S.B. 19 unconstitutional.
- (2) Enter a finding that the Legislature should appropriate at least enough money to meet the KSBE's request for additional resources. This would require funding a base in FY18 of \$4,604, costing approximately \$567 million, and a base in FY19 of \$5090, costing an additional \$328 million for a total two-year increase of \$893 million. It should also require full funding of Special Education at 92% of Excess Costs as required by statute.
- (3) Disallow the addition of utilities and insurance expenditures to capital outlay authorization.
- (4) Authorize all districts a starting LOB of 33%,
- (5) Remove any requirement that LOB authority be linked to a protest/election requirement.
- (6) Disallow the discriminatory 10% floor to at-risk funding.
- (7) Require that LOB be equalized in the current year rather than the prior year.

Plaintiffs request that the court set a new deadline of September 1, 2017 for these unconstitutional provisions to be remedied. Allowing the unconstitutional system to

continue for yet another year upon the hope that next year's legislature might enact a better cure is not appropriate. The children of Kansas have waited long enough. Absent a constitutional cure, Plaintiffs request that the implementation of the finance system be declared void. Plaintiffs would further request the opportunity to brief exceptions to any spending injunction to allow for the preservation and security of district properties and systems should that be necessary. Additionally, Plaintiffs request that this Court retain jurisdiction of the case during any phase-in period of a remedy to assure compliance with constitutional mandates.

Dated this 7th day of July, 2017.

Respectfully submitted,



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I hereby certify that on this 7th day of July, 2017, I electronically served the foregoing to:

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APPENDICES

- Appendix 1:** Base State Aid Per Pupil Amounts including LOB Per Pupil
- Appendix 2:** Demonstrative Exhibit Regarding “Successful Schools”
- Appendix 3:** Excerpts from Hanushek Deposition

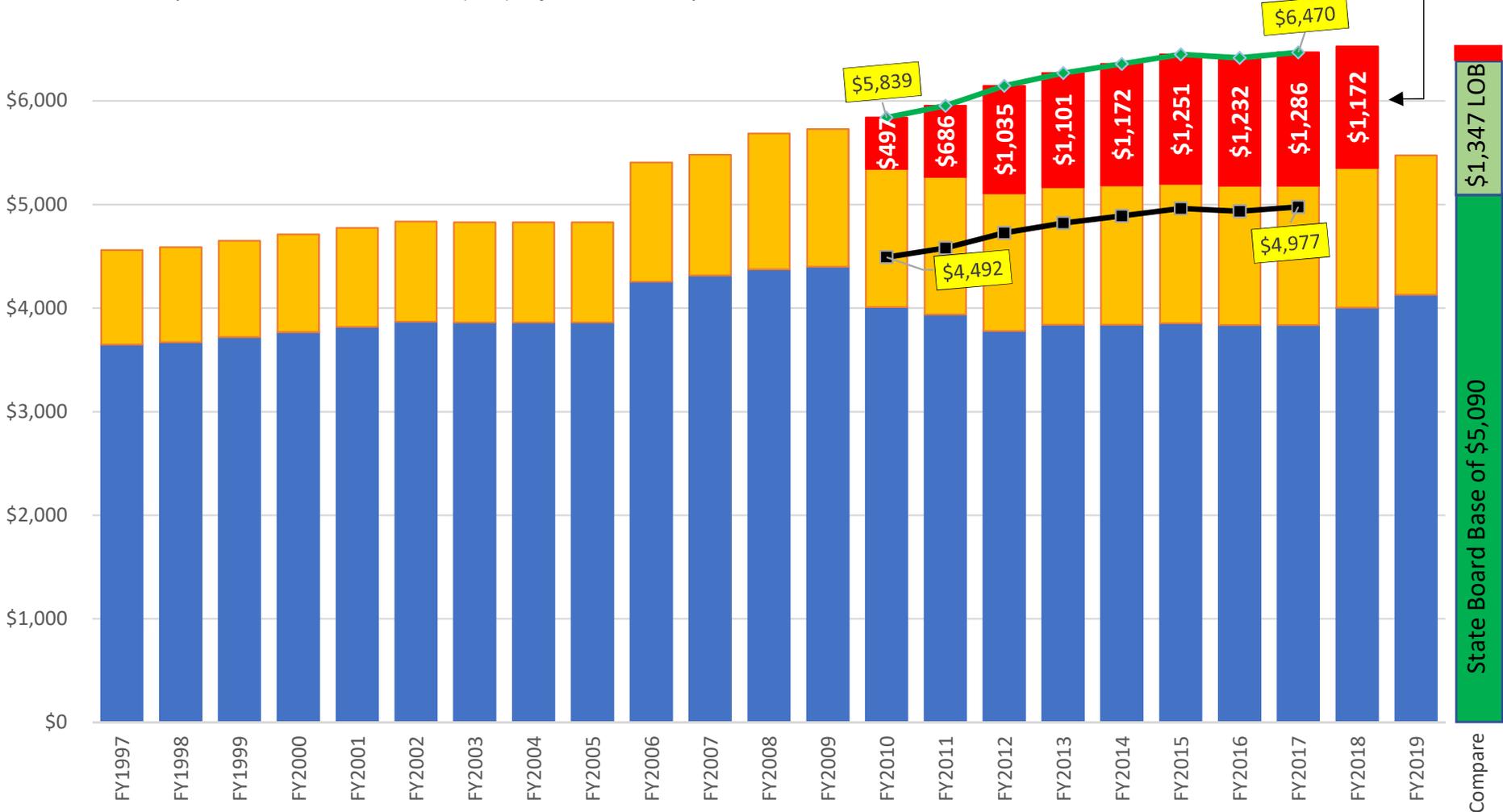
Appendix 1:

Base State Aid Per Pupil Amounts including LOB Per Pupil

The Chart at 2017ADEQ00499 is a demonstrative exhibited based on data from 2017ADEQ00500, publically available at http://www.kslegislature.org/li/b2017_18/committees/ctte_spc_select_committee_on_education_finance_1/documents/testimony/20170523_02.pdf and the CPI calculations provided at 2017ADEQ00501. It is appropriate to take judicial notice of 2017ADEQ00500, and Plaintiffs respectfully request that this Court do so. K.S.A. 60-409(b)(4); K.S.A. 60-412(c).

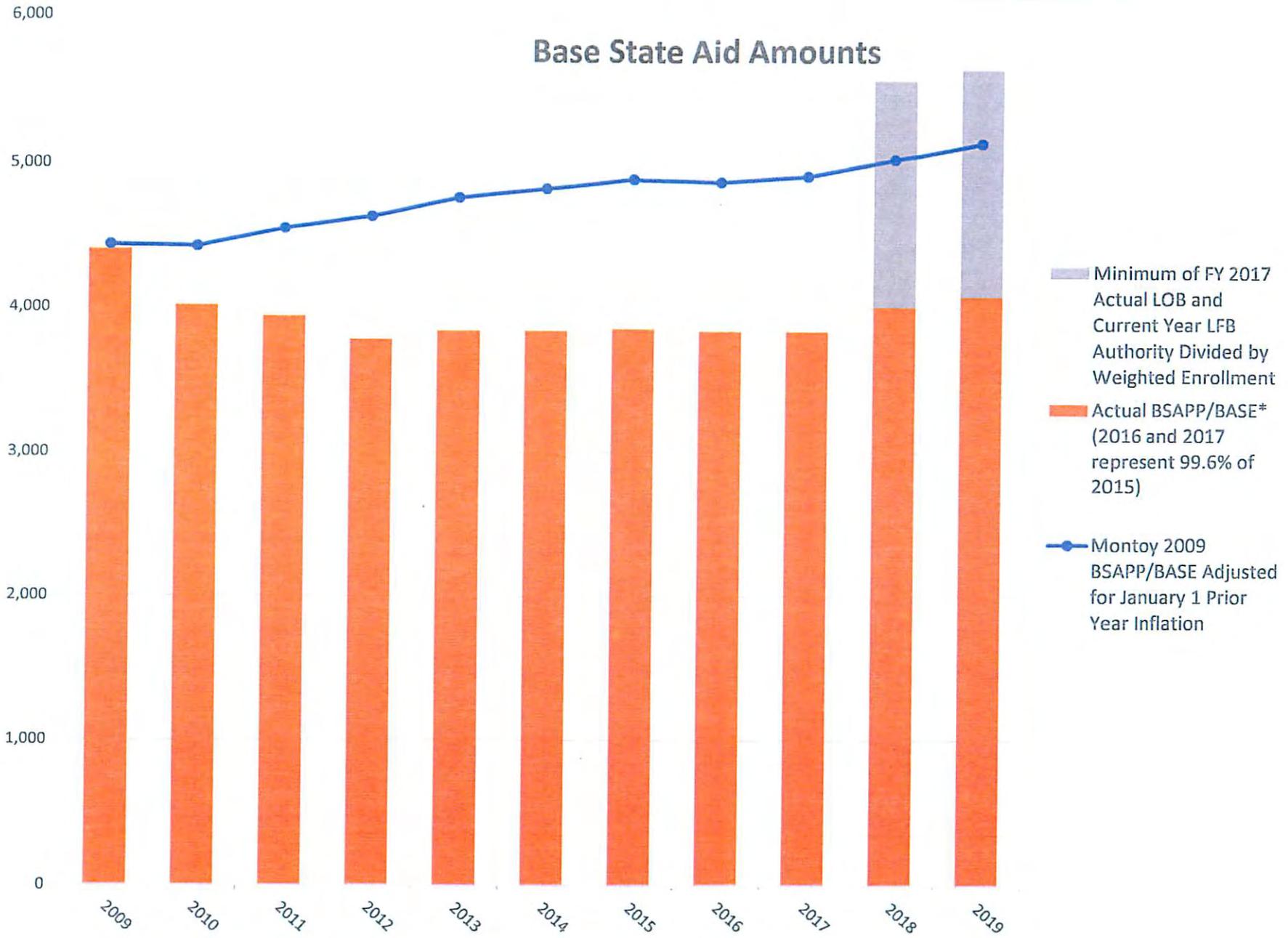
Base State Aid Per Pupil Amounts including LOB Per Pupil

- Amount Underfunded from Montoy Accepted Increase
- Maximum Actual LOB without an Election (30% of Base or False Base)
- Actual BSAPP/Base (2016 & 2017 represent 99.6% of 2015)
- Montoy FY10 BSAPP/Base Adjusted for January 1 Prior Year Inflation
- ◆ Montoy FY10 \$4492 Base + \$1347 LOB (30%) Adjusted for January 1 Prior Year Inflation



FY18 Base + LOB is underfunded by \$1,172

Base State Aid Amounts



	Actual BSAPP/	Maximum Actual LOB without an election (30% of base or false base)		Montoy FY10 BSAPP/Base Adjusted for January 1 Prior Year Inflation	Montoy FY10 \$4492 Base + \$1347 LOB (30%) Adjusted for January 1 Prior Year Inflation	CPI-All Items in Midwest urban, all urban	Prior Year Percent Inflation Change
FY1997	\$3,648	\$912 25% of Base				156.7	
FY1998	\$3,670	\$918 25% of Base				159.3	1.66%
FY1999	\$3,720	\$930 25% of Base				162.7	2.13%
FY2000	\$3,770	\$943 25% of Base				168.3	3.44%
FY2001	\$3,820	\$955 25% of Base				172.8	2.67%
FY2002	\$3,870	\$968 25% of Base				174.9	1.22%
FY2003	\$3,863	\$966 25% of Base				178.3	1.94%
FY2004	\$3,863	\$966 25% of Base				182.6	2.41%
FY2005	\$3,863	\$966 25% of Base				188.4	3.18%
FY2006	\$4,257	\$1,149 27% of Base				193	2.44%
FY2007	\$4,316	\$1,165 27% of Base				198.123	2.65%
FY2008	\$4,374	\$1,312 30% of Base				205.382	3.66%
FY2009	\$4,400	\$1,330 30% of \$4433				204.064	-0.64%
FY2010	\$4,012	\$1,330 30% of \$4433	\$4,492	\$5,839		208.046	1.95%
FY2011	\$3,937	\$1,330 30% of \$4433	\$4,580	\$5,953		214.743	3.22%
FY2012	\$3,780	\$1,330 30% of \$4433	\$4,727	\$6,145		219.1	2.03%
FY2013	\$3,838	\$1,330 30% of \$4433	\$4,823	\$6,269		222.17	1.40%
FY2014	\$3,838	\$1,347 30% of \$4490	\$4,891	\$6,357		225.425	1.47%
FY2015	\$3,852	\$1,347 30% of \$4490	\$4,962	\$6,450		224.21	-0.54%
FY2016	\$3,837	\$1,347 30% of \$4490	\$4,935	\$6,415		226.115	0.85%
FY2017	\$3,837	\$1,347 30% of \$4490	\$4,977	\$6,470			
FY2018	\$4,006	\$1,347 30% of \$4490					
FY2019	\$4,128	\$1,347 30% of \$4490					

If FY2017 Base + LOB was \$6,470, and inflation continued at 0.85%, the FY18 BASE + LOB should be 1.0085 x \$6,470, or \$6,525.

SB 19 Base	\$4,006
SB 19 LOB	+ \$1,347
SB 19 Base + LOB	<u>\$5,353</u>

Montoy 4492 Base + LOB	\$6,525
SB 19 Base + LOB	- \$5,353
Amount SB19 is short in year 1:	<u>\$1,172</u>

Appendix 2:

Demonstrative Exhibit Regarding “Successful Schools”

The Chart at 2017ADEQ00502 is a demonstrative exhibited based on data from 2017ADEQ00503 through 2017ADEQ00508. Assessment data is publically available at http://ksreportcard.ksde.org/2015_2016_Assessment_Full_File.xlsx. It is appropriate to take judicial notice of this information, and Plaintiffs respectfully request that this Court do so. K.S.A. 60-409 (b)(4); K.S.A. 60-412(c).

USD	USD Name	County Name	Net Spend	Per KLRD	Weighted FTE per KLRD	Per Pupil	Per Pupil / 1.4	2015-16	
								Percent of Students Level 1, Not on Grade Level	Percent of Students Level 1, Not on Grade Level
231	Gardner Edgerton	Johnson	31,244,283	6270.3	4,982.90	3559	15.93	15.14	
383	Manhattan-Ogden	Riley	35,113,087	6956.5	5,047.52	3605	13.56	16.72	
446	Independence	Montgomery	12,963,695	2551.1	5,081.61	3630	24.18	22.31	
445	Coffeyville	Montgomery	11,794,217	2314.8	5,095.13	3639	24.23	27.67	
305	Salina	Saline	46,378,537	9053.4	5,122.78	3659	22.29	27.89	
110	Thunder Ridge Schools	Phillips	1,850,846	358.6	5,161.31	3687	17.85	20.86	
413	Chanute Public Schools	Neosho	12,037,844	2293.2	5,249.37	3750	21.39	22.08	
390	Hamilton	Greenwood	908,324	172.2	5,274.82	3768	23.25	13.95	
503	Parsons	Labette	8,827,451	1670.5	5,284.32	3775	19.79	23.11	
415	Hiawatha	Brown	6,016,243	1128.6	5,330.71	3808	17.04	21.34	
232	De Soto	Johnson	38,811,853	7127.8	5,445.14	3889	8.61	9.49	
323	Rock Creek	Pottawatomie	6,036,555	1106.9	5,453.57	3895	12.84	9.86	
212	Northern Valley	Norton	1,663,603	302.2	5,504.97	3932	17.94	11.53	
388	Ellis	Ellis	2,900,892	522.8	5,548.76	3963	12.19	16.51	
249	Frontenac Public Schools	Crawford	6,101,839	1098.1	5,556.72	3969	17.25	22.86	
272	Waconda	Mitchell	2,313,472	411.8	5,617.95	4013	14.64	17.19	
346	Jayhawk	Linn	4,222,985	745.4	5,665.39	4047	18.81	19.25	
336	Holton	Jackson	7,221,920	1274.1	5,668.25	4049	19.12	16.51	
113	Prairie Hills	Nemaha	7,389,570	1300.1	5,683.85	4060	14.48	10.61	
332	Cunningham	Kingman	1,549,772	269.2	5,756.95	4112	10.97	18.29	
109	Republic County	Republic	3,558,332	614.7	5,788.73	4135	17.14	17.55	
389	Eureka	Greenwood	4,976,803	859.3	5,791.69	4137	13.75	16.87	
366	Woodson	Woodson	3,475,425	596.7	5,824.41	4160	24.79	19.42	
361	Chaparral Schools	Harper	6,454,789	1095.4	5,892.63	4209	27.25	23.73	
405	Lyons	Rice	6,381,059	1082.4	5,895.29	4211	22.91	23.77	
298	Lincoln	Lincoln	2,833,171	480.5	5,896.30	4212	17.90	16.66	
229	Blue Valley	Johnson	134,632,082	22819.8	5,899.79	4214	6.36	7.92	
268	Cheney	Sedgwick	5,240,967	886.6	5,911.31	4222	10.75	13.25	
275	Triplains	Logan	863,417	145.2	5,946.40	4247	8.82	-	
282	West Elk	Elk	2,802,729	470.5	5,956.92	4255	19.16	13.85	
235	Uniontown	Bourbon	3,523,905	587.5	5,998.14	4284	18.09	16.74	
371	Montezuma	Gray	1,992,555	331.1	6,017.99	4299	12.85	12.67	
239	North Ottawa County	Ottawa	4,622,340	767.9	6,019.46	4300	19.28	14.65	
440	Halstead	Harvey	5,610,952	927.8	6,047.59	4320	20.05	21.11	
376	Sterling	Rice	3,960,972	651.9	6,076.04	4340	14.39	19.62	
504	Oswego	Labette	3,793,502	618.2	6,136.37	4383	17.80	17.88	
380	Vermillion	Marshall	3,903,645	636	6,137.81	4384	8.74	14.06	
460	Hesston	Harvey	5,637,377	910.6	6,190.84	4422	11.64	10.73	
223	Barnes	Washington	2,890,330	458.4	6,305.26	4504	19.40	18.51	
372	Silver Lake	Shawnee	4,903,381	771.8	6,353.18	4538	9.78	10.32	
241	Wallace County Schools	Wallace	1,921,694	292.7	6,565.40	4690	15.38	9.89	
			459,326,415	82,933					
						Median of Districts	4135	17.25	16.74
						Average Per District	4080	16.65	16.64
						Overall Per Pupil	3956		

Districts below
the line are all
spending MORE
than the base of
\$4128 per pupil
to be "successful"

Assesment data from: http://ksreportcard.ksde.org/2015_2016_Assessment_Full_File.xlsx
Spending from KLRD and Dave Trabert Testimony on Successful Schools Calculation 5/23/2017

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May 12, 2017

To: Senate Select Committee on Education Finance

From: Edward Penner, Research Analyst

Re: Base Amount Calculations

Chairperson Denning requested our office perform calculations to identify a base amount for school finance. The following memorandum summarizes those calculations and provides the result of the calculations.

Calculating the Spending Level of School Districts

The sum of expenditures from the general fund, supplemental general fund, at-risk funds, and bilingual fund (excluding flow-through aid, transfers and transportation expenditures) was divided by the weighted enrollment according to the weightings recommended by the Legislative Division of Post Audit cost study. This amount was then divided by 1.4, to account for the fact that local option budgets are approximately 40 percent of general fund budgets, to get to a per weighted pupil base amount. The average of those per weighted pupil base amounts of the identified schools was \$4,080.

Identifying Schools

Four measures were used to identify school districts. The measures used were the percent of students at grade level on state math and English language arts assessments, the percent of students at college and career ready level on state math and English language arts assessments, the average composite ACT score, and the 4 year graduation rate. For each measure, the metric was graphed opposite the percentage of students in that district eligible for free lunch under the National School Lunch Program for every district with 500 or more students. Those graphs were used to identify a line of best fit, and the formula associated with that line was used to determine the expected results of a district at any given percentage of students eligible for free lunch. The actual results of the districts were then compared to the expected results of districts with the same percentage of students eligible for free lunch.

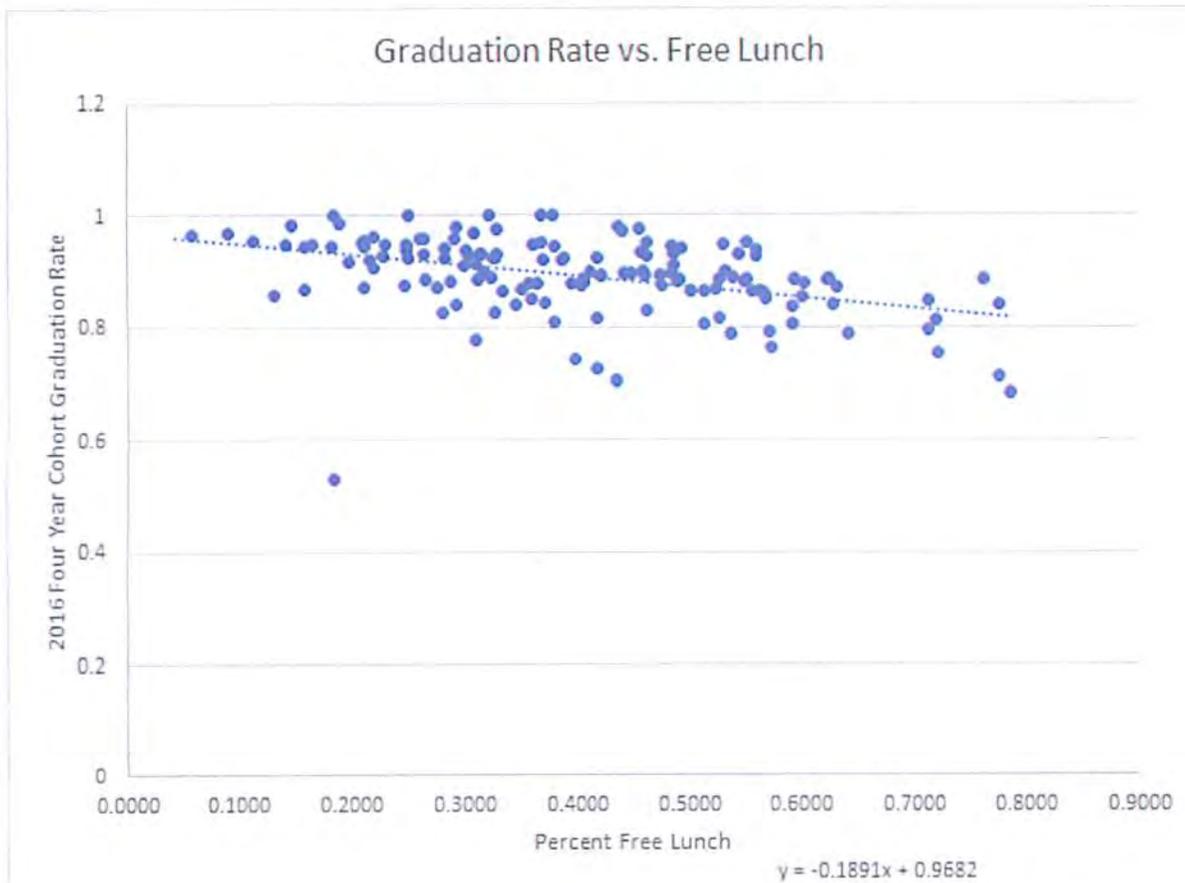
The first set of identified districts were those that exceeded their expected results on all 4 measures; 26 districts were identified using this approach.

The second set of identified districts were those whose average scaled difference on all 4 measures was greater than or equal to 1 standard deviation from the average scaled difference of all districts; 30 districts were identified using this approach.

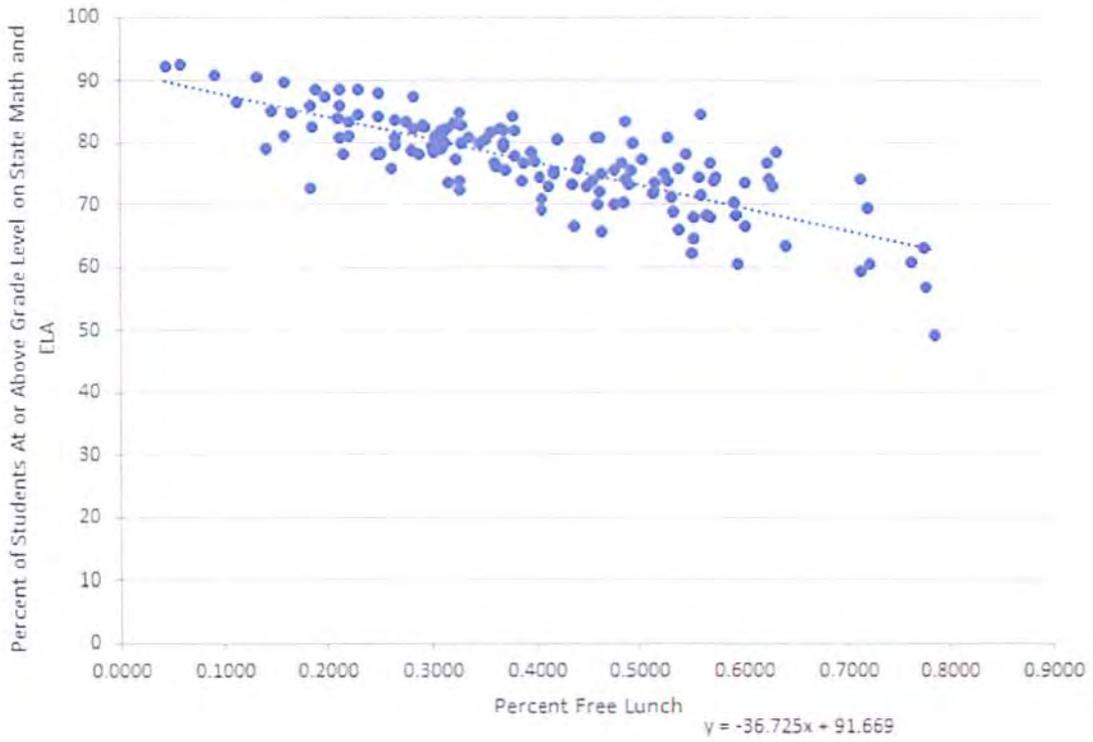
Because 15 districts were identified using both approaches, a total of 41 districts were identified:

- | | | |
|---------------------------|-------------------|--------------------|
| 109 – Republic County | 275 – Triplains | 383 – Manhattan |
| 110 – Thunder Ridge | 282 – West Elk | 388 – Ellis |
| 113 – Prairie Hills | 298 – Lincoln | 389 – Eureka |
| 212 – Northern Valley | 305 – Salina | 390 – Hamilton |
| 223 – Barnes | 323 – Rock Creek | 405 – Lyons |
| 229 – Blue Valley | 332 – Cunningham | 413 – Chanute |
| 231 – Gardner-Edgerton | 336 – Holton | 415 – Hiawatha |
| 232 – De Soto | 346 – Jayhawk | 440 – Halstead |
| 235 – Uniontown | 361 – Chaparral | 445 – Coffeyville |
| 239 – North Ottawa County | 366 – Woodson | 446 – Independence |
| 241 – Wallace County | 371 – Montezuma | 460 – Hesston |
| 249 – Frontenac | 372 – Silver Lake | 503 – Parsons |
| 268 – Cheney | 376 – Sterling | 504 – Oswego |
| 272 – Waconda | 380 – Holton | |

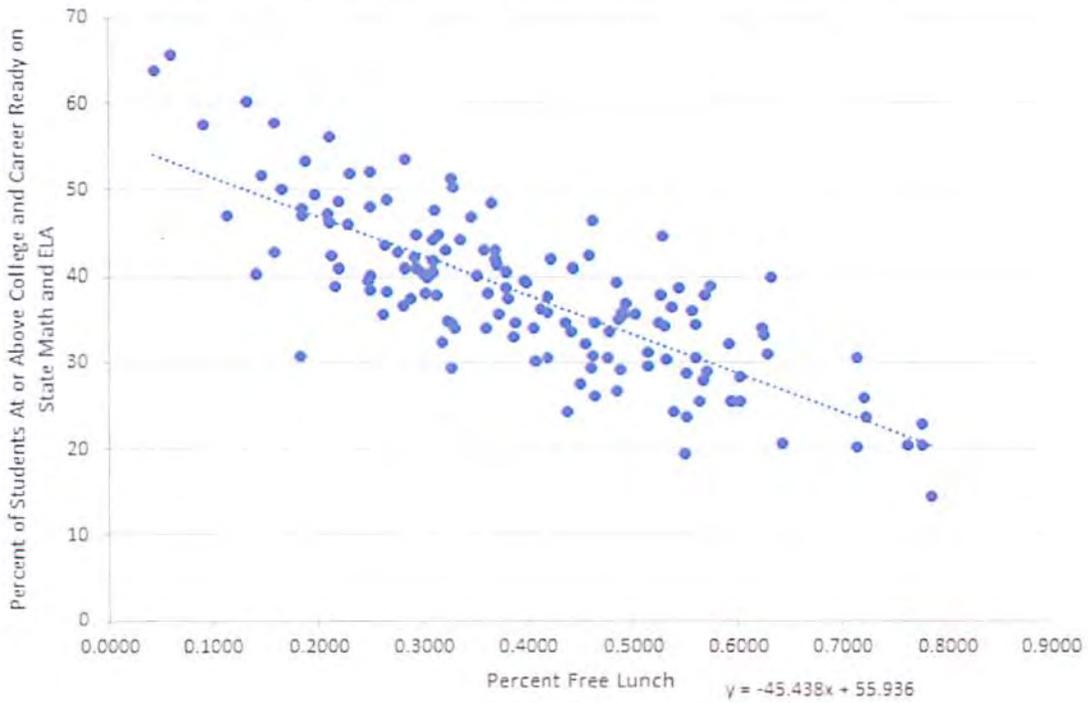
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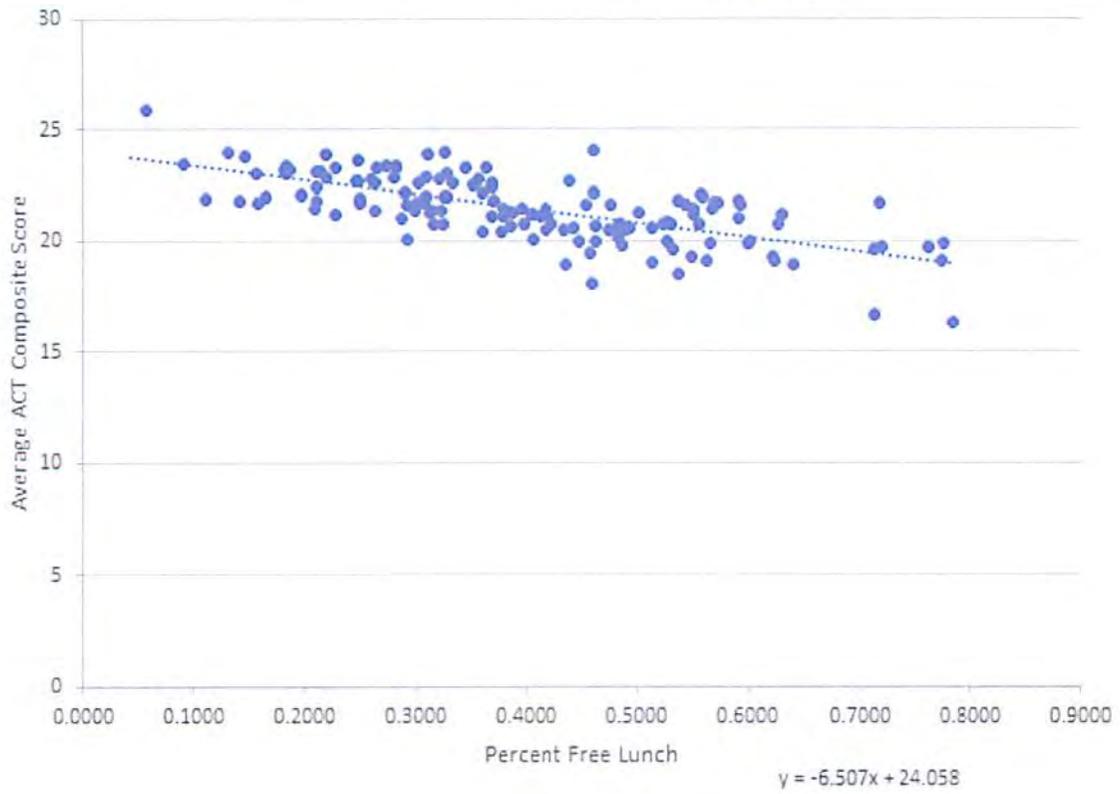
Grade Level Assessments vs. Free Lunch



College and Career Ready Assessments vs. Free Lunch



ACT Composite Score vs. Free Lunch



SB 251 Opponent testimony – in person
 Senate Select Committee on School Funding
 Proposed new school funding formula
 Dave Trabert - President
 May 23, 2017



Chairman Denning and Members of the Committee,

We appreciate this opportunity to present testimony on the calculation of Base State Aid Per Pupil in SB 251.

Kansas Legislative Research confirms that the methodology used to calculate the amount per pupil was based on a simple average of spending per pupil for the 41 selected districts. That simple average had gross State and Local spending per-pupil at \$5,712, resulting in BSAPP of \$4,080 (Gross divided by 1.4).

The Department of Education always reports spending per-pupil on a weighted average, which is also universal common practice. The weighted average gross spending for those districts is \$5,539 per-pupil and dividing that by 1.4 sets minimum Base State Aid Per Pupil at \$3,956.

Reasonably Calculated BSAPP Saves \$83 Million Per Year		
Description	Simple Average	Weighted Average
Gross State & Local Spending	\$ 5,712	\$ 5,539
State adjustment	÷ 1.4	÷ 1.4
Base State Aid Per Pupil	\$ 4,080	\$ 3,956
Weighted Enrollment	671,500	671,500
Cost of Base State Aid (millions)	\$ 2,739.6	\$ 2,656.5
Excess Cost (millions)	\$ 83.1	

Source: Kansas Legislative Research

Accordingly, we propose amending SB 251 to set FY 2018 Base State Aid Per Pupil at \$3,952 and increase it for inflation for FY 2019. Doing so would fulfill the Court’s requirement that funding be reasonably calculated and prevent Kansas from being overtaxed by roughly \$83 million per year.

Should the Committee decline to do so, we recommend amending the bill to at least establish that the math only requires BSAPP of \$3,956 and spending above that level is voluntary on the part of the Legislature.

A copy of our calculation is attached for your consideration.

USD	USD Name	County Name	School Year	Net Spend Per KLRD	Weighted FTE per KLRD	Per Pupil
109	Republic County	Republic	2016	3,558,332	614.7	5,788.73
110	Thunder Ridge Schools	Phillips	2016	1,850,846	358.6	5,161.31
113	Prairie Hills	Nemaha	2016	7,389,570	1300.1	5,683.85
212	Northern Valley	Norton	2016	1,663,603	302.2	5,504.97
223	Barnes	Washington	2016	2,890,330	458.4	6,305.26
229	Blue Valley	Johnson	2016	134,632,082	22819.8	5,899.79
231	Gardner Edgerton	Johnson	2016	31,244,283	6270.3	4,982.90
232	De Soto	Johnson	2016	38,811,853	7127.8	5,445.14
235	Uniontown	Bourbon	2016	3,523,905	587.5	5,998.14
239	North Ottawa County	Ottawa	2016	4,622,340	767.9	6,019.46
241	Wallace County Schools	Wallace	2016	1,921,694	292.7	6,565.40
249	Frontenac Public Schools	Crawford	2016	6,101,839	1098.1	5,556.72
268	Cheney	Sedgwick	2016	5,240,967	886.6	5,911.31
272	Waconda	Mitchell	2016	2,313,472	411.8	5,617.95
275	Triplains	Logan	2016	863,417	145.2	5,946.40
282	West Elk	Elk	2016	2,802,729	470.5	5,956.92
298	Lincoln	Lincoln	2016	2,833,171	480.5	5,896.30
305	Salina	Saline	2016	46,378,537	9053.4	5,122.78
323	Rock Creek	Pottawatomie	2016	6,036,555	1106.9	5,453.57
332	Cunningham	Kingman	2016	1,549,772	269.2	5,756.95
336	Holton	Jackson	2016	7,221,920	1274.1	5,668.25
346	Jayhawk	Linn	2016	4,222,985	745.4	5,665.39
361	Chaparral Schools	Harper	2016	6,454,789	1095.4	5,892.63
366	Woodson	Woodson	2016	3,475,425	596.7	5,824.41
371	Montezuma	Gray	2016	1,992,555	331.1	6,017.99
372	Silver Lake	Shawnee	2016	4,903,381	771.8	6,353.18
376	Sterling	Rice	2016	3,960,972	651.9	6,076.04
380	Vermillion	Marshall	2016	3,903,645	636	6,137.81
383	Manhattan-Ogden	Riley	2016	35,113,087	6956.5	5,047.52
388	Ellis	Ellis	2016	2,900,892	522.8	5,548.76
389	Eureka	Greenwood	2016	4,976,803	859.3	5,791.69
390	Hamilton	Greenwood	2016	908,324	172.2	5,274.82
405	Lyons	Rice	2016	6,381,059	1082.4	5,895.29
413	Chanute Public Schools	Neosho	2016	12,037,844	2293.2	5,249.37
415	Hiawatha	Brown	2016	6,016,243	1128.6	5,330.71
440	Halstead	Harvey	2016	5,610,952	927.8	6,047.59
445	Coffeyville	Montgomery	2016	11,794,217	2314.8	5,095.13
446	Independence	Montgomery	2016	12,963,695	2551.1	5,081.61
460	Hesston	Harvey	2016	5,637,377	910.6	6,190.84
503	Parsons	Labette	2016	8,827,451	1670.5	5,284.32
504	Oswego	Labette	2016	3,793,502	618.2	6,136.37
				459,326,415	82,933	5,538.55
				weighted average		3,956.11
						5,711.79
				simple average		4,079.85

Note: Per Pupil amounts may vary from the schedule prepared by KLRD by a tiny amount because Weighted FTE in this schedule come from a PDF, showing enrollment rounded to the nearest tenth; the actual KLRD enrollment was not rounded.

Appendix 3:

Excerpts from Hanushek Deposition

Page 1	Page 3
<p>1 .</p> <p>2 IN THE DISTRICT COURT OF SHAWNEE COUNTY KANSAS</p> <p>3 CIVIL DEPARTMENT</p> <p>4 .</p> <p>5 LUKE GANNON, by his next)</p> <p>6 friends and guardians, et al.)</p> <p>7)</p> <p>8 Plaintiffs,)</p> <p>9)</p> <p>10 vs.)No. 10-C-1569</p> <p>11)</p> <p>12 STATE OF KANSAS,)</p> <p>13)</p> <p>14 Defendant.)</p> <p>15 _____)</p> <p>16 .</p> <p>17 DEPOSITION OF</p> <p>18 ERIC A. HANUSHEK, M.D.</p> <p>19 WEDNESDAY, APRIL 18, 2012</p> <p>20 .</p> <p>21 .</p> <p>22 Reported by: MARK I. BRICKMAN, CSR, RPR</p> <p>23 License No. 5527</p> <p>24 .</p> <p>25 .</p>	<p>1 BE IT REMEMBERED that, pursuant to Notice of</p> <p>2 Taking Deposition, and on April 18, 2012, at</p> <p>3 the hour of 10:03 AM, at 450 Sierra Mall,</p> <p>4 Stanford, California, before me, MARK I.</p> <p>5 BRICKMAN, CSR No. 5527, State of California,</p> <p>6 there personally appeared</p> <p>7 ERIC A. HANUSHEK, Ph.D.</p> <p>8 who was provided as a witness under the</p> <p>9 provisions of the Kansas Rules of Civil</p> <p>10 Procedure.</p> <p>11 ---o0o</p> <p>12 .</p> <p>13 .</p> <p>14 .</p> <p>15 .</p> <p>16 .</p> <p>17 .</p> <p>18 .</p> <p>19 .</p> <p>20 .</p> <p>21 .</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>
Page 2	Page 4
<p>1 A-P-P-E-A-R-A-N-C-E-S</p> <p>2 .</p> <p>3 For the Plaintiff: KUTAK & ROCK LLP</p> <p>4 Luke Gannon, et al. 1605 N. Waterfront</p> <p>5 Parkway, Suite 150</p> <p>6 Wichita, Kansas 67206</p> <p>7 By: ALAN L. RUPE, ESQ</p> <p>8 Telephone(316)609-7900</p> <p>9 .</p> <p>10 For the Defendant: HITE, FANNING &</p> <p>11 State of Kansas HONEYMAN LLP</p> <p>12 100 N. Broadway,</p> <p>13 Suite 950</p> <p>14 Wichita, Kansas 67202</p> <p>15 By: ARTHUR S. CHALMERS, ESQ</p> <p>16 Telephone (316)265-7741</p> <p>17 The Videographer: BRAD LIPETZ</p> <p>18 ---o0o</p> <p>19 .</p> <p>20 .</p> <p>21 .</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>	<p>1 INDEX</p> <p>2 Examination by: Page</p> <p>3 Mr. Rupe: 6</p> <p>4 .</p> <p>5 EXHIBITS</p> <p>6 Plaintiff's No.</p> <p>7 No 1 Notice of Deposition Duces Tecum 7</p> <p>8 No 1A Envelope of numerous thumb drives 14</p> <p>9 No 1B Documents responsive to duces</p> <p>10 tecum 17</p> <p>11 No 1C Amended petition with e-mail</p> <p>12 cover pages 33</p> <p>13 No 2 Article by Bruce Baker 23</p> <p>14 No 3 Rebuttal testimony by Bruce Baker 23</p> <p>15 No 4 Article by Baker, Sciarra and</p> <p>16 Ferrie 24</p> <p>17 No 5 NAEP report 92</p> <p>18 No 6 The Nation's Report Card -</p> <p>19 Pilot Results 93</p> <p>20 No 7 Article by Bruce Baker 93</p> <p>21 No 8 Article by John Yinger 94</p> <p>22 No 9 Article by Linda Darling-Hammond 95</p> <p>23 No 10 Article by Joydeep Roy 98</p> <p>24 No 11 Article by Baker and Welner 99</p> <p>25 No 12 Article by Goertz and Weiss 100</p>



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1 **involves by way of money?**

2 MR. CHALMERS: Object to the form
3 as being complex, compound, vague.

4 THE WITNESS: As I hear your
5 question, I don't know of any way to do
6 that.

7 MR. RUPE: In Chapter 7 in your
8 book, you mention the Augenblick and Myers
9 report and you also in the book
10 Schoolhouses, Courthouses and Statehouses,
11 and you mentioned Kansas as a unique
12 situation where there was a study
13 commissioned by the legislature that
14 actually came up with a number.

15 **Q. Do you recall writing that?**

16 A. Vaguely. I -- you know, I hadn't
17 read that recently, but I vaguely remember
18 it.

19 **Q. Okay.**

20 A. It is one of the unique situations.

21 **Q. All right. And with regard to that
22 unique situation, in -- the procedure for
23 determining what that cost was involved
24 several methods, professional judgment and
25 others that you discuss in your book. Do**

1 **you recall writing about those --**

2 A. I'm sure I did. If I talked about
3 Kansas, Kansas, I talked about their
4 professional judgment in their professional
5 schools, but those are discussed in great
6 detail in that same chapter of what --

7 **Q. Right.**

8 A. -- the inherent flaws are in them.

9 **Q. And my question to you is: Are
10 those anyhow, any way helpful tools in
11 determining what that cost of moving
12 performance upward is?**

13 A. They might provide input to the
14 legislature to understand what some
15 different districts are spending and
16 achieving. They aren't useful in -- for the
17 purpose of making a political decision upon
18 how much to spend as far as in my judgment.

19 **Q. And is your answer the same with
20 regard to cost function and production
21 function?**

22 A. Yes.

23 **Q. And let's take these one at a time.
24 With regard to professional judgment, is the
25 -- I assume your testimony's going to be**

1 **that the problem with professional judgment
2 is what you discussed with getting
3 information from teachers and super-
4 intendents about improved performance.**

5 A. Oh, it's that and more.

6 **Q. Okay. What else?**

7 A. There's professional judgment --
8 first, it goes beyond what most of the
9 professionals are used to making decisions
10 about; but secondly, they are instructed, as
11 they were in the Augenblick and Myers study,
12 to disregard any notion of how much it
13 costs, but to just have a wish list. And so
14 if they think that this is going to
15 influence what happens in schools, they're
16 likely to -- to dream big.

17 **Q. Okay. What is the difficulty in
18 relying on successful schools?**

19 A. Successful schools first is unclear
20 whether you can reproduce the successful
21 schools if you spend that much money, simply
22 because they have no structural
23 understanding of what led to better
24 performance. But secondly, the successful
25 schools is completely unprepared to provide

1 guidance on what would happen if you wanted
2 to improve performance above what it is
3 today.

4 **Q. And cost function?**

5 A. Cost function is inherently subject
6 to problems of measuring the inputs to
7 schools and to eliminating inefficiencies in
8 spending.

9 **Q. And why is that?**

10 A. The method just doesn't support
11 dealing with inefficient spending.

12 **Q. And what is it about the method?**

13 A. Statistical analysis relies upon
14 having measures of the various inputs that
15 are important and it is completely
16 consistently dependent upon all of the
17 existing regulations, contracts, pay, what
18 have you for personnel in the system.

19 **Q. So your answer's too many variables?**

20 A. Too -- too many variables, but not
21 -- not enough information about what would
22 happen if some of them would change.

23 **Q. My question is with regard to
24 production function.**

25 A. It suffers in much the same way. I

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