

Kansas Democratic Legislative Leadership

Jim Ward
KANSAS HOUSE



Anthony Hensley
KANSAS SENATE

May 16, 2017

Senate President Susan Wagle
House Speaker Ron Ryckman
Members of the Kansas Senate
Members of the Kansas House of Representatives

Dear President Wagle and Speaker Ryckman:

As the Democratic Leaders of the Kansas House and Senate, we write this letter to express our interpretation of the trial panel and Supreme Court decisions in *Gannon*. Specifically, we seek to address the misconception of members of the legislature that these decisions do not address the amount of funding necessary to be “reasonably calculated to address the constitutional violations” of the adequacy requirement while also satisfying the equity requirement.¹

We believe that any attempt to satisfy the Court’s order to enact a new school finance system by June 30, 2017, must include three key components. First, it must be an actual formula structured to provide for the equitable and adequate funding of K-12 education. This includes base funding for all students with weightings for underperforming subgroups and indexed. Second, that formula must be adequately funded by the state to ensure the “outputs” meet the *Rose* standards. Third, the legislature must take action to structurally fix our budget to provide for sustainable funding for K-12 education into the future.

In *Gannon IV* the Supreme Court affirmed the trial panel’s finding that student achievement demonstrated CLASS’s implementation was not reasonably calculated to meet the *Rose* standards. “Based upon its finding that a correlation existed between funding and achievement, the panel determined the inadequacy was **caused by underfunding**. It based its determination in part upon the legislatively commissioned LPA study . . . which we found paralleled the *Rose* capacities . . . and who concluded that more funding was necessary to meet them.” (Emphasis added).² The Court went on to acknowledge “that the estimates of the various cost studies are just that: estimates. But they do represent evaluations that we cannot simply disregard. 298 Kan. At 1170 (“[A]ctual costs remain a valid factor to be considered during application of our test for determining constitutional adequacy under Article 6.”). Accordingly, the state should not ignore them in creating a remedy.”³

¹ *Gannon v. State*, No. 113,267 at 81 (Kan. Sup. Ct. March 2, 2017) (*Gannon IV*)

² *Id* at 75-76.

³ *Id* at 80.

There is no question that increases in funding or “inputs” produces greater student achievements or “outputs.” Both the 2006 LPA study and the 2010 Commission found direct correlations between these funding levels and student achievement at issue under the *Rose* standards. The 2006 LPA Study concluded with “99% confiden[ce],” that the relationship between student performance and district spending was positive, *i.e.*, that a 1% increase in student performance was associated with a .83% increase in spending. And the legislatively-created 2010 Commission concluded that ‘Kansas students have made great academic strides . . . largely due to the infusion of school funding.’ (Emphasis added).⁴ The trial panel also found, through substantially competent evidence, that:

. . . the infusion of additional money into the K-12 educational system after *Montoy IV* in 2006 was “making a difference.” The panel found this was evidenced by considerable progress in student achievements until it began to waiver during the 2011-2012 school year once the residual effects of the *Montoy* extra funding wore off after cuts began in 2009. The panel spent considerable effort reviewing several years’ worth of KSDE student achievement statistics – for all students and for subgroups – through 2012-2013, which helped lead it to find that achievement actually declined as funding decreased.⁵

As the Supreme Court noted in *Gannon IV*, the Court dismissed the *Montoy* litigation after the legislature responded to that litigation provided for a 3-year funding plan. Several years after *Montoy* was dismissed, the State began making significant cuts to Kansas education funding.⁶ In fiscal year 2009, the BSAPP was reduced from the statutorily specified amount of \$4,443 to \$4,400. For fiscal year 2010, the actual appropriation for fiscal year 2010 was reduced to \$4,012. By fiscal year 2012, the legislature had reduced BSAPP to \$3,780. In total, the reduction to education funding through these BSAPP reductions constituted a loss of more than \$511 million to local districts.⁷ The Kansas State Board of Education (“SBE”) estimated that during that same timeframe, schools were underfunded \$1.23 billion dollars in total funding.

Some believe the reduction in BSAPP is irrelevant as the Supreme Court did not limit the State to any specific system or structure, such as the former SDFQPA, or ignore funding outside the BSAPP such as local revenue sources like the LOB, KPERS and federal funds for purposes of evaluating adequacy. While the legislature is not limited to any one way to adequately fund Kansas schools, the Court and trial panel have previously ruled the structure of the SDFQPA to be constitutional and the legislature seems likely to return to a school finance formula modeled off that structure. Additionally, the Court noted that changes made to the state’s K-12 system specifically through reduction in BSAPP funding had a pronounced effect on local districts’ ability to meet the *Rose* standards – even when considering any purported increases to other sources of funding.

⁴ *Id* at 60.

⁵ *Id* at 51.

⁶ *Id* at 37.

⁷ *Id*.

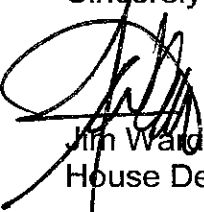
While the focus of the discussion on school finance has been on “outputs,” it is important to remember that the Court’s analysis first begins with the amount of funding necessary “to sustain a constitutionally adequate education” and “inputs.”⁸ The 2006 LPA Study, along with the SBE and the Kansas 2010 Commission were all cited by the trial panel and the Court as recommending funding BSAPP levels well above this \$3,780 amount and much closer to the \$4,492 level and to adjust that amount annually for inflation. The SBE has come out more recently with updated recommendations on how much funding would be necessary to meet the Rose standards. These recommendations are a product of the findings of the trial panel in its December 2014 decision.⁹ Based on the trial panel’s findings and discussion, the SBE has recommended an increase in the BSAPP from \$3,852 to \$4,604 in fiscal year 2018 and from \$4,604 to \$5,090 in fiscal year 2019. This would total approximately \$825 million over two-years.¹⁰

As we said at the outset of this letter, any school finance plan we pass must include an actual formula which provides suitable base funding for all students and weightings to direct funds to underperforming subgroups. That formula must also be funded with an adequate amount of money reasonably calculated to have all Kansas public education students meet or exceed the Rose standards. The legislature must also be able to show the Court that it can make good on its promise and sustain this formula into the future.

The current level of funding that was contained in CLASS, \$3,852 BSAPP, is well below what we believe the Court will approve. The latest numbers distributed by the chairman of the Senate Select Committee on Education Finance would only increase the BSAPP to \$4,080 through the inclusion of \$175 million in one-time new funding. Additionally, the bill that passed out of the House K-12 Budget Committee (HB 2410) provides for a BSAPP of \$4,006 in FY 2018.

We believe that any school finance plan which falls short of providing a BSAPP by FY 2020 of at least \$4,500 per student, appropriately weighted, and indexed, will not be “reasonably calculated to address the constitutional violations” of the adequacy requirement. We would also note that \$4,500 per student is only \$100 more than the \$4,400 “high water mark” we achieved under the previous formula in the 2008-2009 school year, which would equal a \$12.50 increase each year over the last eight years.

Sincerely,



Jim Ward
House Democratic Leader



Anthony Hensley
Senate Democratic Leader

Cc: Jeff King, Legislative Counsel

⁸ *Id* at 50-51.

⁹ *Gannon v. State*, No. 2010cv1569 at 101-105 (Shawnee Co. Dist. Ct. Dec. 30, 2014).

¹⁰ <http://www.ksde.org/Home/Quick-Links/News-Room/ArtMID/3386/ArticleID/28/Kansas-State-Board-of-Education-votes-on-budget-recommendations> (retrieved May 12, 2017).